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## Treatise on Money

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The previously published article, Francisco Gómez Camacho, "Introduction," *Journal of Markets & Morality* 8, no. 1 (Spring 2005): 167- 198, has been formally retracted by the editors of the *Journal of Markets & Morality* for improper use of published material without attribution. For more information on this retraction, see Jordan J. Ballor, "Editorial: Plagiarism in a Digital Age," *Journal of Markets & Morality* 17, no. 2 (Fall 2014): 349-352.

## Argument 396<sup>1</sup>

### **Diverse Senses in Which the Terms *Barter* and *Exchange* May Be Used: To Barter in a Strict Sense**

Assuming that to barter or truck<sup>2</sup> is similar to exchanging, and both are similar to the purchase and sale operation,<sup>3</sup> it is necessary to explain them. To exchange means the same as to barter, since, in a wider sense both terms mean the same.<sup>4</sup> However, both terms are used in a triple sense.

First, in a very broad sense, they mean any type of exchange or commutation and, in this sense, they apply to any nongratuitous contract, such as the

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<sup>1</sup> Tr. note: My thanks to P. Rafael Garay, S.J., for the time he devoted to finding the notes in their modern form ( ), both in this volume as well in that dedicated to *Loans and Usury*. Whatever mistake the readers encounter is under my whole responsibility.

<sup>2</sup> Tr. note: In the original “permuta o trueque.”

<sup>3</sup> Leg. 2. ff. de rerum permuta. (D., 19, 4, 2).

<sup>4</sup> Diego de Covarrubias, *Tract. Numismatum*, c. 7, no. 5 (Cfr. *Opera omnia*, t. 1., Venetiis, 1581).

buying, the renting, the *mutuo*,<sup>5</sup> and all other nongratuitous [contracts], both those that are specifically provided for by the law (nominate) as well as those that are not (innominate).<sup>6</sup> They are all called nongratuitous because in all of them something is done, promised or given as payment for something received. This was the first sense in which they used the term *barter* or *exchange*, and all the other [meanings] were acquired as a result of use and have a narrower scope. This explains why they are not called contracts that are specifically provided for by the law (nominate), because in order for a contract to be judged as specifically provided for by the law it should not only keep its generic name due to custom, but it should be named as a result of its own particularities.<sup>7</sup> Because we are only dealing here with specific contracts, this is not the right time to take on the exchange and barter in such a broad sense.

The second meaning has a narrower scope, and refers to the innominate contract expressed in the phrase *do ut des*, that is, one thing is exchanged for a different one, both if the first is considered indeterminate as individual, but specifically or generically distinct, as if both are considered individually determinate.<sup>8</sup> As it happens, this contract is called one of barter or exchange because of use or custom but is different from the rest of the contracts, both the nominate as the innominate, and it applies to the two parts that constitute it: one, that by which one good that is not considered to be price is exchanged for another which is not considered to be price either, as when a horse is exchange for an ox, wheat for oil, one horse for another, and so forth. The other [part], that by which a good that is considered price is exchanged for another that is also considered price, as when we exchange gold coins for others that are silver, or coins from one place for coins from another. Because the contract in

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<sup>5</sup> Tr. note: *Mutuo*: Actual contract in which money, oil, grain, or any other fungible thing is given, so that the other party takes it as his, with the obligation to restore the same quantity and the same kind on a designated date.

<sup>6</sup> Tr. note: Innominate contracts are those that lack any special nomination or classification in the law.

<sup>7</sup> See Argument 253.

<sup>8</sup> See Argument 253, where Ignacio de Lassarte quotes Padilla, Pinel, and others with whom he agrees. Ignacio de Lassarte, *De decima venditionis et permutatio-nis*, Matriti, 1599, c. 17, no. 7.

which something that is not considered price is exchanged for another that is considered such is a contract we call a *contract of sale*, and thus, nominate.

Because of what we have said about barter and exchange as an innominate contract, in this second sense of the term all contracts that are specifically provided for by the law (nominate) are excluded, such as the buying, the renting one, and so forth. Because of what we have added to indicate that it is a contract in which a good is exchanged (not something that is done or a service) for another good, the other three innominate contracts are also excluded, that is, those that are known as *do ut facias*, *facio ut des*, and *facio ut facias*, in which at least one of the parties is exchanging something that is done or a service. Here we intend to discuss bartering in this second sense, and its parts; and it shall not be necessary to add other particular arguments about the other innominate contracts, as they do not present any special difficulty and may be sufficiently understood with what has already been expounded on in Argument 253 and with what we shall say on bartering and on the rest of the contracts.

The third sense in which the terms *barter* and *exchange* are used is even more precise. To barter means the exchange in which none of the things being bartered is considered as price, for example, a horse for an ox. Exchange is the contract where both of the things being exchanged are considered as price and, in this sense, the exchange is different from the barter. It is in this sense that we shall study the exchange.

To barter or truck, in this third sense, is much like the buying and selling, because of which we may apply to it anything we say about this last contract, as long as the laws do not say differently.<sup>9</sup> For this same reason, in the barter or truck contract, and in the cases in which they could be applied to the contract of sale, there may be loss of rights, redhibitory action, and the “*quantominoris*.”<sup>10</sup> Things may also be bartered when they have not come into existence yet but in hopes of when they do, because they can also be bought and sold like this, as proved in Argument 340, and as long as there is nothing

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<sup>9</sup> Leg. 2. ff. de rerum permut. (D., 19, 4,2); leg. 2, C. eod. tit. (Cod. 4, 64, 2); Argument 253.

<sup>10</sup> Tr. note: *Quanti minoris* is the action of reducing the price for defects in an article sold.



against it.<sup>11</sup> The same may be said of exchanging in a strict sense. Moreover, when buying and selling of a certain good is forbidden, then it is fair to conclude that its barter is also forbidden.

It is uncertain whether property rights are transferred in the barter and exchange as in the buying and selling operation, that is, not when the good is delivered but when the price or corresponding fee has been paid or is considered paid, as said in Argument 338. Some laws<sup>12</sup> determine that such way of transferring property rights pertains solely to the contract of sale, because of special privilege, and that in the barter as in all other contracts in which property rights are transferred, the transference is carried out before the other party complies with the contractual obligations, which the law seems to agree with;<sup>13</sup> although Bartolo and the gloss judge differently,<sup>14</sup> that is, that in the barter and in all other contracts the property rights are not transferred by merely delivering the good, but the other party is required to meet the terms of the contract.<sup>15</sup> I think, however, that the first opinion is better, which seems much more in accordance with the two paragraphs from the *Instituciones* earlier cited. In addition, the fact that in the barter the property rights are transferred before the other party complies with the contract is so clear in the law,<sup>16</sup> that it is surprising that Bartolo does not take this law into account, nor the law that he refers to in order to prove his argument demonstrates anything at all, not even in appearance. As it only says that if the debtor goes to his creditor to ask for the security which he left as guarantee saying he wants to pay the debt, and then later the debtor spends the collateral with whom he had previously decided upon in order not to pay the debt, the creditor shall withhold his right over the

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<sup>11</sup> Martín de Azpilcueta, *Manual de confesores*, cap. 17, no. 287. Contra Soto y Silvestre.

<sup>12</sup> Gloss.leg. 2. C. de rerum permut. (Cod. 4, 64, 2); leg. 1. ff. eod. tit. (D., 19, 4, 1); leg. traditionibus C. de pactis. (Cod. 2, 3, 20).

<sup>13</sup> Inst. 2, 1, 1, 41.

<sup>14</sup> Leg. 2. C. de rerum permut. (Cod. 4, 64, 2); leg. si servus, § locavi. Ff. de furt. (D., 47, 2, 62).

<sup>15</sup> Leg. 3. ff. de pignorat actione. (D., 13, 7, 3).

<sup>16</sup> Leg. cum precibus. C. de rerum permut. (Cod. 4, 64, 4).

security that was fraudulently taken away from him for the period of time in which it takes to pay the debt. I cannot see how Bartolo may conclude anything from this that would go to prove his argument.

On the barter or truck, in this third sense, it should be noted that the *Ordenanzas Portuguesas*,<sup>17</sup> in order to avoid the evils that follow, forbid the barter of wheat, wine, oil, or any other kind of good resulting from the year's crop for another good that is to be paid in the future and [it also forbids] that the person with whom the barter is carried out should buy from someone else. And those who barter in this way are imposed a penalty of *ipso facto* loss of the bartered good, which shall be given to the other person who shall not have the obligation to repay in any way, nor shall be able to waiver the privilege that the law grants him.

The benefits of bartering or trucking shall be commented upon when we discuss them.

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<sup>17</sup> *Ordenanzas Portuguesas*, lib. 2, tit. últ.

## Argument 397

### **Whether the “Alcabala”<sup>1</sup> Should Be Paid in Barter and Exchange Transactions?**

According to Castilian law, not only should the alcabala be paid when bartering but it should be paid twice over: one for each of the goods that are bartered. As a matter of fact, each barter operation is considered to be a double sale transaction,<sup>2</sup> one for each of the individuals participating in the barter. For this reason, in Castile, each of the two are required to pay the alcabala according to the value of the good that they receive in exchange for [the one that was given], because each receives it as if it were its price, and, as we all know, in Castile the seller is required to pay the total amount of the alcabala according to the good's price.<sup>3</sup>

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<sup>1</sup> Tr. note: *Alcabala*: A tribute of a certain percentage of the price paid to the tax authorities by the seller in the contract of sale and by both contracting parties in the contract of barter.

<sup>2</sup> Leg. sciendum, ff. de aedil. edicto (D., 21, 1, 63).

<sup>3</sup> *Nov. Coll.* ley 2, tit. 17, lib. 9 (N. R., 9, 17, 2).

In Portugal the same requirement to pay the tax exists and, for the same reason already mentioned, it is paid by the two individuals who participate in the transaction. Over there it is called *sis*, as *da sis* appears in articles. However, each of the individuals pays only half of the tax, because in Portugal, the seller pays half the tax and the buyer the other half, as mentioned when dealing with the buying and selling operation.<sup>4</sup>

There is one point of uncertainty regarding this issue. Because bartering is not considered perfect or complete before the good has been delivered by both parties, nor is it enough that only one of the parties deliver it, as pointed out in Argument 253 and Lassarte acknowledges,<sup>5</sup> it is uncertain if the tax or taxes start to be owed only when the bartering has been completely finished, so that they should not be paid if only one of the individuals delivered the good or if, as pointed out in Argument 258, once the delivery is carried out by only one of the parties, it is this [party] who should pay the tax. Finally, it is uncertain whether there is an obligation to pay the *alcabala* if the individuals decide to rescind the contract before carrying out the delivery.

According to common law, effective in Portugal as nothing has been legislated contradicting it, Lassarte<sup>6</sup> and Bartachino Firmio acknowledge that the tax is not due until the barter is concluded by both parties. According to Menchaca<sup>7</sup> the same happens in Castile, because even if here the right for judicial action is granted for the mere barter pact, and it is not licit to change one's mind when one of the parties has carried out the delivery, nor even if neither has carried it out;<sup>8</sup> however, one thing is the pact or accord to carry out and complete the barter and a different one is the action of bartering itself, that is neither considered complete nor finished before the two intervening parties carry out the delivery of their respective good. In this kingdom of Castile, the

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<sup>4</sup> See Lassarte, in schollis ad leg. 2. cit., ante c. 1 et c. 17, no. 1.

<sup>5</sup> Lassarte, c. 17, no. 3; leg. 1, ff. de rerum permut. (D., 19, 4, 1).

<sup>6</sup> Ibid., no. 25., Barachino Firmio, *De gabellis*, pt. 3, partis 8, no. 48.

<sup>7</sup> F. Vázquez de Menchaca, *Controversiarum usu frequentium*, libri tres, Barcelona, 1563, lib. 1, c. 11, no. 11; Lassarte, c. 17, no. 35.

<sup>8</sup> See Arguments 257 and 258.

second law before mentioned does not levy the alcabala on the barter pact but on the barter itself.

Lassarte has the contrary opinion in the already cited number 25, and says that in Castile this tax is paid once the barter pact has been fulfilled, and even if the delivery is never carried out and the individuals rescind the contract by mutual agreement before the delivery is fulfilled. He holds this opinion on account of the fact that because in this kingdom a mere civil pact is enough to establish the obligation between the individuals, and an action may be brought by any one of them, and one may not withdraw against the other one's wishes either if one of the parties failed to fulfill the delivery as well as if both parties failed to do so, it follows that, in this kingdom, the barter is also perfect and complete by the mere consent of both parties, as happens with the buy-sell contract. Thus, just as in the buying and selling operation the mere consent is enough for the tax officials to have the right to collect the tax, without being able to defend oneself by bringing into play the contract's rescission by the parties' mutual consent and before carrying out the delivery, so it is with bartering, and the tax must be paid to the one who is recipient and collector of it at the time of the parties' agreement, and not to the one who may exist at the time of delivery. If the above were not true, once the contract had been executed by mutual agreement and in order to evade taxes, the contracting parties would be able to delay its fulfillment and the delivery of the goods while they allowed it, and meanwhile the door would be open to the rescission of the contract if the circumstances were favorable to it.

In my opinion, there are better grounds for the opposing argument, which many doctors defend and is based on what we all know, which is that to barter does not refer to the barter pact but to the business of bartering itself which is only considered complete and finished once the mutual delivery of the goods has been carried out, just as *mutuum*<sup>9</sup> is not understood as a pact or agreement to lend but as the real business of lending itself. And just as the *mutuum* belongs to the contracts specifically provided for by the law (nominate) that perfect themselves with the deed, not only with the consent or with words, as seen in

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<sup>9</sup> Tr. note: *Mutuum*: type of loan agreement by which a lender lends money or things upon agreement that the borrower will return an equal number, type, and quality of such things at the end of the contract, with or without interest.

Argument 254, so bartering belongs to the kind of contracts that perfects itself with the deed carried out, since this is what the term *bartering* means, and not the mere consent nor agreement between the parties to barter something.<sup>10</sup>

Therefore, as long as the tax we referred to is levied on bartering, it follows that such tax is not due nor do the tax authorities have the right to collect it before the [barter] is fulfilled. And it does not make any difference if the individuals who are performing the barter decide among themselves to delay it in order to cancel out the pact if it so suits them, as they would be exercising their full rights and in no way would be failing in their duty toward the tax authorities.

Observe that exactly as according to common law an action may not be brought against the other party if there was only an agreement to carry out a mutuum, it may be brought against him if said pact were coupled to another contract, precisely as was said in Argument 253. Likewise, according to common law, or in the kingdom of Portugal where only this law is applied in this matter and the tax is levied on the barter, if there were an agreement to barter certain goods, or the barter agreement were associated to another contract, the right to bring an action that originates in such an agreement shall be acknowledged. However, because the barter has not been carried out thus far and there has only been an agreement, although concealed under the principle of stipulation or association to another contract, the tax shall not affect this agreement, as it only affects the barter contract, or the contract of sale. This explains why, according to the law in use in this kingdom, it becomes unacceptable that for the mere agreement to barter (the same as for any other agreement) the right to bring an action should be granted and the parties be denied the right to revoke [the agreement], stating that because of said agreement [they] owe the tax that is levied on barter contracts.

The reason why the tax is due in the contract of sale, and the tax authorities hold the right to collect it for the mere fact of the parties having reached an agreement is very different. And this reason is that, as set forth in Argument 254 and explained in several others, the buying and selling operation is considered complete and perfect with the individuals' consent, and the term *buy-*

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<sup>10</sup> Leg. 1. ff. de rerum permut. (D., 19, 4, 1).

*sell* refers to the already finished and completed contract, because of which it is sufficient in order [for a person] to owe the tax that is levied on it.

This explanation shall make it easy to understand that if in Castile or in Portugal an agreement is reached to barter some particular goods in times of a specific tax collector, but the barter is completed through the delivery of said goods in times of a different tax collector, it is this last [tax collector] to whom the tax belongs, as it was during the time [when he was tax collector] that the barter was completed. This would happen even if the initial agreement between the parties were concealed under the guise of mere stipulation and associating it to a different agreement. And this is so because the tax is not due for the barter agreement, even if the civil obligation to fulfill it is originated in this [agreement], but for the barter itself once it has been fulfilled, and it was not fulfilled in times of the first tax collector but [in times] of the second one.

Lassarte<sup>11</sup> believes that the tax levied on the barter is due because the civil obligation is already originated in the pact by which the parties commit themselves to barter, and calls to discuss whether the tax should be paid to the first tax collector or to the second one when the barter pact—which the common law says does not give origin to the civil obligation unless it is tied together to another contract, or were stipulated by the parties—is carried out during one tax collector's period, and the delivery [is carried out] during another tax collector's period when the civil obligation starts to be in force. He mentions Antonio Gómez's<sup>12</sup> opinion, whom Parladorius agrees with, and who states that it is the first tax collector who is due the tax. They believe this because, according to what they say, such obligation does not derive from the fulfillment of the pact and the delivery of the good, but from the pact itself that is followed by the delivery, this being only a condition that makes the obligation not derive from the pact alone.<sup>13</sup> From which follows, *sensu contrario*, that if the pact and the contract are followed by something else then there will be a right to take the legal action that is deemed convenient. And they say that since

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<sup>11</sup> Lassarte, c. 17, no. 43.

<sup>12</sup> Antonio Gómez, *Variarum resolut*, c. 8, no. 2; Parladorius, *De rerum quotidianarum*, Valladolid, c. 3 § 3, no. 35.

<sup>13</sup> Leg. Ex placito, C. de rerum permut. (Cod. 4, 64, 3).

the pact that gives origin to that action was carried out during the first tax collector's period, it follows that it is to him that the tax should be paid, even if the conditions that are necessary to give origin to that right take place during the second one's period.<sup>14</sup>

I consider Lassarte's opinion much better, that is, that the tax is due to the second tax collector and not to the first. In the first place, because the civil obligation is originated in both parts, and they are both essential to the contract and necessary for it to be considered complete and for the obligation to derive from it, as the law says.<sup>15</sup> And if there is anything *a sensu contrario* that the words that cite the *ex placito* law<sup>16</sup> prove it is merely that the obligation derives from the pact only in a particular way, which we do not deny, but they do not prove that at the same time [the obligation] does not derive from the delivery itself as part and an addition to the same contract. In the second place, because even if we say it derives only from the pact, once the condition of delivery is fulfilled, it cannot be denied that in order for the contract to be complete and fulfilled, the delivery should take place, which happens during the period of the second tax collector, and, in consequence, to him should the tax be paid. The same happens when a contract of sale is held up until the deed is written—it is not considered complete and finished and, consequently, the alcabala will be owed to the tax collector who [happens to be in office] when the deed is fulfilled.<sup>17</sup>

In the barter as well as in the buy-sell operation when both parties agree that in order for [the contract] to be considered complete and perfect the deed is needed, the contract shall be postponed by mutual agreement until the deed's execution.<sup>18</sup> In Castile, if before entering into the contract, or at the moment of entering it, somebody mentions the need of executing the deed, the contract is

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<sup>14</sup> The gloss of the *leg. Placito* (Cod. 4, 64, 3), and the *Inst. de actionib. verb. ex permutatione* seem to agree with this opinion.

<sup>15</sup> Leg. 1. ff. de rerum permut. (D., 19, 4, 1).

<sup>16</sup> Leg. ex placito (Cod. 4, 64, 3).

<sup>17</sup> Gómez, t. 2, c. 2, no. 17.

<sup>18</sup> Leg. contractus. C. de fide instrumentorum (Cod. 4, 21, 17). Such affirms Lassarte, c. 17, no. 47, and the doctors usually.



considered interrupted until the deed completes it. Argument 337 expounded on the same issue, regarding the contract of buying, unless from the concurrent circumstances in the case it is possible to surmise that the contracting parties had a different thing in mind, such as considering the deed only as proof and guaranty of the contract. Lassarte, however, warns us in the above cited text that, because the delivery is necessary to complete the barter, mere intent is not enough to consider the barter contract complete, even if it proceeds from both parties.

When the barter contract is interrupted until the deed is executed, common law and the Castilian law allow both parties to change their mind and withdraw from the contract before the deed is executed, even if one of the parties had already delivered the good. Also, if the contract were to be executed, the tax should be paid to the tax collector in office at the moment of executing the deed, because it is then that the contract is deemed complete. Such is Lassarte's<sup>19</sup> opinion, which furthermore is evident.

Lassarte<sup>20</sup> judges correctly that no tax should be paid for contracts such as the following: I give you a certain good so that you give it to Pedro after a certain period of time, or I give you one hundred units so that you give Juan fifty, or I give you a certain piece of property that I own so that you pay me or someone else a certain rent. His reason is that in order to pay taxes for the contract we call *do ut des*, it is necessary for the things that are reciprocally being delivered to be different, and one be not included in the other, nor be its fruits or the rights that derive from it. But even if Lassarte may judge all these contracts to be innominate, such as the one we call *do ut des*, I would prefer saying they are different forms of donation. And we know that donations are not subject to the alcabala, as they belong to a very different kind of contract from the one of sale and of barter in their strict sense.<sup>21</sup>

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<sup>19</sup> Lassarte, *ubi supra*.

<sup>20</sup> *Ibid.*, c. 17, no. 7.

<sup>21</sup> Argument 382, on the sale of real property, which is subject to payment of annual payments secured by a census on the property (Censo Reservativo), and on the alcabala.

Everyone agrees that when a good of a certain kind is handed over for another of a different kind, such as a horse for an ox, wheat for oil, and so forth, or an individual of a species for another of the same species but of a different value, as would be one horse for another, it is a barter and, as such, the double tax we all know should be paid. It is uncertain, however, if when a certain individual of a specific species is handed over in exchange for another of the same species and similar value, as would be a certain measure of wheat for another of equal amount, or a measure of wine or oil for another that is equal, it should be considered a barter or not, and if the tax should be paid. Parladorius, together with Bartolo and several others,<sup>22</sup> believe it should be considered a *mutuo*, because of which no tax should be paid. Lassarte seems to hold a better opinion<sup>23</sup> when he says that it is important to take into account if, given the circumstances, the individuals intend to carry out a *mutuo*, as may be considered from the way of entering into the contract and the circumstances in which it is carried out, and, in such case, no tax is owed. This happens, for example, when someone borrows wheat, wine, oil, even a ram, or similar things, which have to be paid later by giving back an individual of the same species and of a more or less similar value. They could also attempt a contract that is different from the bartering [contract], as would be a deposit or consignment of a dowry that is to be returned once the marriage is dissolved. And neither at that time should the tax be paid, even if the depositary has used up the good that was deposited, and has to pay up somewhere else delivering a similar good. Finally, given the circumstances and way of entering into the contract, the conclusion might be that the individuals want to execute a barter and, in that case, they should pay the tax even if they tried concealing the barter under the pretext of a *mutuo*.

There is no certain rule allowing us to know if what is being carried out is a barter that benefits the individuals, because if someone who owns wheat somewhere else requests in the very same place where he is that a friend lend him wheat for daily use, and this friend lends it so that it is rendered back when the other receives the wheat in this very same place, it should be considered a *mutuo* and not a barter. Likewise, if someone asked for a loan of wheat to pay

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<sup>22</sup> Parladorius, *De rerum quotidianarum*, no. 33.

<sup>23</sup> Lassarte, c. 17, no. 9; leg. 2, tt. 17, lib. 9, *Novae Collect.* (N. R., 9, 17, 2).

it later with the harvest obtained from it, it should not be considered a barter, even if it is convenient to whom grants it, but a *mutuo*. However, if someone delivered wheat in the place where he is so that the same quantity is paid back in some other place where he may sell it for a higher price, it shall be considered a barter even if they try to conceal it as a *mutuo*, unless the circumstances suggest that the one who received the wheat requested and received it as a loan. So too if there were two people who lived in different places and each had wheat where the other one lived, it would be considered a barter even if they wanted to cover it up as a *mutuo*.

All these issues make it worthwhile to entrust oneself to a prudent person who, once examined the concurrent circumstances in a case, shall judge if it is a barter or a *mutuo*.

In the event that two goods are bartered, it is the judge's responsibility or whom he designates,<sup>24</sup> to appraise both in order to estimate the tax amount. That is why it should not be appraised according to the value established by the parties, even if the barter contract indicates the value of the goods that are bartered. If initially a good was sold for its price and later on both parties decided by common agreement that instead of paying the price they shall pay by delivering another good, it shall not be considered a barter but a double sale; and the tax should be paid according to the price stipulated for each one of them.<sup>25</sup>

When a good cannot be sold because its value is considered inestimable, such as would be the right to burial and many other things that were discussed in Argument 340 and in several others, the barter of this good for another that can be priced shall not be subject to a tax for either of the goods. In fact, because it is a sacred good, of inestimable value, no tax should be paid, nor does the law cited above apply.<sup>26</sup> Moreover, just as the sale of such goods is considered invalid because of simony, so too shall the barter for a profane good be considered invalid; and we know that for an invalid sale or barter no alcabala should be paid. For this same reason, the alcabala should not be paid

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<sup>24</sup> *Novae Collect.* ley 2, tit. 17, lib. 9 (N. R., 9, 17, 2).

<sup>25</sup> A. Pinel, *Ad rubricam et legem secundam C. de rescindenda venditione commentarii*, Salamanca, 1568, part. 2, c. 1, no. 16; Lassarte, *op. cit.*, c. 17, no. 17.

<sup>26</sup> *Novae Collect.*, ley 2, tit. 17, lib. 9 (N. R., 9, 17, 2).

in the opposite case either, that is, when a profane good is bartered for another good considered of inestimable value. On the other hand, even if spiritual goods<sup>27</sup> may be bartered among them and lay people barter them, as happens with the right to burial and the chapels, no tax should be paid due to the fact that they are goods of inestimable value.<sup>28</sup>

In this Castilian kingdom there are many things that are free of alcabala, such as books, horses supplied with bit and saddle, and many others.<sup>29</sup> When anyone interchanges any of these goods such as, for example, books for cinnamon,<sup>30</sup> the person who interchanges the books is exempt of paying the alcabala. These things are considered privileged when they take the place of merchandise, so that the alcabala is not owed for the price received for them, nor for the goods that as price are received in exchange. However, the person who barter the cinnamon for the books must pay the alcabala according to the estimated value of books, because books are not considered privileged when they take the place of price paid for the other goods, as should be evident. This is easy to prove, as the reference to law establishes money to be free of alcabala when it takes the place of merchandise, as happens with exchanging in a strict sense; but it is not considered so when it takes the place of price since, in this case, money does not free from the alcabala the good for which that money is paid, but on the contrary, the seller pays the tax proportionate to the price.<sup>31</sup>

When a good is sold for an amount of money and, jointly, for another good, even if this [good] is of a much inferior value than that of the money, the Castilian law<sup>32</sup> orders both things to be jointly appraised by the judge, or by whom he designates, and the seller of the highest valued good should pay the alcabala for the total amount of the good plus the money he receives as payment, while the other individual must pay only for the value of the good he

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<sup>27</sup> C. ad quaestiones, together with the gloss. (Cod. 4, 64, 3).

<sup>28</sup> Lassarte, c. 17, no. 18.

<sup>29</sup> *Novae Collect.*, ley 2, tit. 17, lib. 9 (N. R., 9, 17, 2).

<sup>30</sup> Tr. note: In the original, “cinamomo,” which may refer to the tree or to cinnamon, the aromatic substance.

<sup>31</sup> Lassarte, c. 17, no. 19.

<sup>32</sup> *Novae Collect.*, ley 2, tir. 17, num. 9 (N. R., 9, 17, 2).

delivers. Thus, for example, if Pedro sells a property to Juan for 1,000 gold coins plus a mule, and the latter's value is estimated to be 100 gold coins, Pedro would have to pay an alcabala worth 1,100 gold coins. And even if the property is priced in 1,100 gold coins, Juan would only have to pay for the 100 coins the mule he delivers is worth.<sup>33</sup>

It is evident that the donation handed over as reward does not pay alcabala in Castile or Portugal, since it is not a barter, even if it is a reward for a good, not for a service. What happens is the donations handed over as reward are not owed out of justice as happens in bartering but originate from the individual's gratitude and generosity. And it is irrelevant that the law<sup>34</sup> says it should be considered a special kind of barter, since it does not confirm it is a barter but as having a certain likeness to it, that is, as reward for a benefit that was previously received.<sup>35</sup>

If the donation were reciprocal between the individuals, it shall be considered a barter, and the alcabala shall have to be paid. However, if when the situation is considered from a general standpoint, and not from the simple act of delivery, the reciprocal donation is seen to originate in the love and generosity that the individuals feel for each other, the conclusion may be that it is a donation as long as the circumstances persuade us that the individuals wanted to make a donation. Otherwise, we would be dealing with a barter under the guise of a donation and, in that case, the double alcabala should be paid.

Because when exchanging in a strict sense, both parties interchange money, and this is considered a privileged good regarding the payment of the alcabala, it is clear that the alcabala should not be paid for the exchange operations.

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<sup>33</sup> Lassarte, c. 17, no. 20 y sigs.

<sup>34</sup> Leg. Si et si. § consuluit. ff. de petit hereditatis (D., 5, 3, 25, 11).

<sup>35</sup> Lassarte, c. 17, no. 53.

## Argument 398

### **On Exchange in a Strict Sense and Its Types. Is the Exchange Dealer's Activity Licit?**

To exchange, in a strict sense, and we already pointed out in Argument 396, is no less than to trade money for money, and it is not necessary for the money that is exchanged to be different from the one that is received as far as the material, shape, or engraved seal on the coins, and in spite of Juan de Medina's opinion.<sup>1</sup> Because, as Soto<sup>2</sup> believes, if the money were handed over in one place to be paid or handed back somewhere else it shall be a real exchange, even if the money to be paid back is no different from the one received as far as the material or the seal.

Even if the parties who carry out the barter in the sense described in Argument 397 have the same name,<sup>3</sup> and both may be equally called barterer and barteree,<sup>4</sup> they are not called the same in the exchange, nor do they carry out

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<sup>1</sup> Juan de Medina, *De cambiis*, q. 1, Salamanca, 1550.

<sup>2</sup> Domingo de Soto, *De iustitia et iure*, lib. 6, q. 8, a. 1, Salamanca, 1556.

<sup>3</sup> D., 19, 4, 1.

<sup>4</sup> Tr. note: In the original: "permutador o permutante."

the same occupation. Because the person who is asked for the exchange may rent out the services and ability requested of him, and for this he may justly charge something more than the amount he exchanges, as shall be evident for what we shall proceed to explain. For this reason, in order to make a distinction between both parties involved in the exchange, they are given different names: the person to whom the exchange is requested, and who lends his services and resourcefulness by someone else's request is called an *exchange dealer*, especially if he holds the office in a public condition. He is also called *numulario*, *trapezita*, *collybista*, and *argentarius*, although some of these names may sometimes have a broader meaning. See Covarrubias<sup>5</sup> for further discussion on this issue. In Spanish he is called *vanquero*<sup>6</sup> [*sic*]. Conrado<sup>7</sup> calls the person who solicits the exchange *camparius*; Medina and others give him the same name, because just as the borrower is the one who receives a loan, the donee, the recipient of a donation, and the legatee one to whom a legacy is bequeathed, he who receives money in exchange is called a *campario*.

Is it licit to work as exchange dealer in order to earn a profit? It must be said that it is an activity that is dangerous in itself, more dangerous than the activity of the person who does business and looks to earn a profit by buying, bartering, or selling; an activity not suitable for some people, such as the members of the clergy, who are forbidden to engage in it. But, in spite of all this, if it is carried out as we describe below, it shall not be condemned as unjust or illicit. What is more, it may be practiced meritoriously, as said in Argument 339 of those who carry out buying and selling, and bartering, seeing that both economic activities are useful to the republic, as we shall see from what we say below.

We shall not discuss the type of exchange where there is no desire to profit, as when coins of a higher value are exchanged for others of a lower value but that as a whole are equal in value both legally and in the people's common

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<sup>5</sup> Diego de Covarrubias, *De collatione veterum nummismatum*, c. 7, in princ. ad finem no. 4, Venis, 1581.

<sup>6</sup> Tr. note: *Vanquero* becomes *banquero* or banker.

<sup>7</sup> Conrado, *Opus septipartitum de contractibus*, q. 99, Hagen, 1500; Juan de Medina, q. 1.

assessment. There is no uncertainty whatsoever in these types of contracts; we shall refer to the exchange that seeks a profit.

The type of exchange that seeks a profit, and where a difference is perceived in the value of what is given and what is received, may enter three categories, disregarding for now whether the exchange is licit or illicit. Because the exchange is not carried out if the coins are not different, this may be a difference in the coins themselves, such as because they are made of a different material, have a different legal seal, or have both a different material and legal seal; a difference as far as the place, because the coins are given in one place to be returned in another, for example, in Lisbon to be returned in Seville or Rome; or a difference as far as time, because they are given at a certain point in time to be returned at another. According to these three ways of specifying the difference, there are three types of exchange.

First, that in which the coins are exchanged because of the difference between the coins themselves. This type of exchange is usually called *petty exchange*, because in it coins of a greater value are usually exchanged for coins that are inferior [in value]. It is also known as *manual exchange*, as some people describe it, because it is practiced from hand to hand in one same place.

The second type is [the exchange] where the money is exchanged due to its different value in places that are also different. And because it is usually carried out through bills of exchange that instruct the money to be paid somewhere else, it is usually called exchange for bills of exchange (*cambium per litteras*).

The third type is that where money is exchanged because of a difference in its value over time. This type of operation may be called exchange, but it lacks precision, because, if looked upon closely, we do not find here but a loan; and if either one of the two individuals should receive anything more than the amount exchanged he would commit usury, unless the contract could be justified by reason of *lucrum cessans* (profit ceasing), *damnum emergens* (loss occurring), or any other legitimate ruling. This is the reason why I said before that I was not considering if the exchange was licit or illicit, so that this type of exchange would be included in the concept of exchange, and we will proceed to discuss it in order to admit or condemn it if such were the case.

Generally in the exchanges attention should always be paid to whether something more than the capital is received for the time difference, because whatever is received for reason of a time difference is usury and is unjustly



received, as it is received for reason of the loan that formally or virtually is carried out in that deal, unless it is justified for reason of profit ceasing or any another legitimate justification.

It is worth noting that the above-mentioned three types of exchange appear at times combined, because in the case of coins that are different between each other, there may be a difference due to place, and the deal for which they are exchanged is both an exchange of different coins and, also, in places that are also different. The difference due to place usually goes together with the difference of the moment in time when the money is to be returned, as they are usually places that are very distant between each other.

Soto admits a fourth type of exchange;<sup>8</sup> that is, one that is practiced because of the difference in value that a same kind of currency has in different places. Even if for the same coins, the *ducats*, for example, the same number of silver coins may be given in Flanders as in Spain, or in the New World, they would, however, be worth more in Flanders than in Spain, and in Spain more than in the New World, due to a lesser amount of this type of coin, and for this reason, more goods may be bought in Flanders than in Spain, and more in Spain than in the New World. I believe, however, that it is not necessary to admit this fourth type of exchange, as the difference pointed out originates from the very different circumstances that exist in places that are so distant one from the other. This problem shall be sufficiently explained, when we describe the reasons that make it licit in the exchange to receive something more than what the exchange dealer gave because of the difference of value between one place and another.

Navarro distinguishes seven types of exchange, of which only some of them include rulings or justifications for the exchange dealer to licitly receive something more than the money given.<sup>9</sup> But there is no need to multiply the types of exchange; it shall be sufficient while explaining the types [of exchange] suggested here to examine the rulings that make it licit or not to receive something more than what was given. Moreover, it shall be sufficient to explain the petty exchange and the [exchange] that takes place because of the difference in

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<sup>8</sup> Domingo de Soto, lib. 6, q. 8, a.2.

<sup>9</sup> Martín de Azpilcueta, *Manual ...*, cap. 17, no. 286; *Comentario resolutorio de usuras*, Salamanca, 1556, no. 10.

places, and, at the same time, to analyze other rulings that make it licit or not to receive any increment over the capital.

The doctors also divide the exchanges into real and dry exchange, calling real exchange that which is true exchange and which allows drawing something more than the capital that is exchanged, and dry exchange that which is not true exchange, and thus not allowing to draw either more than the capital exchanged—that is, when in the exchange an increment is received only for the delay in time, which constitutes usury. The name *dry*, or *lacking in sap*, means it cannot produce fruit or profit. This is the sense in which these words are used in Pius V's Bull *On exchanges*. Some use dry exchange to describe the exchange that is carried out when the exchange dealer hands over some money first to get it back with an increase at a later date, even if this retrieval is in a distant place. I believe that this name also results from the same previously declared notion, that is, that such exchange was considered in itself unfruitful and usurious, because of which no profit or increase could be licitly drawn from it, as the doctors affirm and the *Ordenanzas Portuguesas*<sup>10</sup> set down. But we shall examine this problem further on, and we shall prove that such definition was made without grounds. Navarrus says that these doctors call it dry because in it the exchange dealer gives the money before receiving it,<sup>11</sup> but I prefer what I have previously argued.

Medina and Conrado also divide the exchanges into pure and impure,<sup>12</sup> and call the exchange that is not mixed with any other type of contract, pure, and impure that which is mixed with another contract, which may be that of a loan, rent of the exchange dealer's services, or other similar ones. Soto says, in the second article cited earlier, that it is more expressive to call the just exchange pure and the unjust one impure.

We have said all this to better understand the doctors, which in this matter usually express themselves in different ways.

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<sup>10</sup> *Ordenanzas portuguesas*, lib. 4, tit. 14, § antepenúlt.

<sup>11</sup> Martín de Azpilcueta, *Ibidem*.

<sup>12</sup> Juan de Medina, *De cambiis*, q. 2; Conrado, q. 99, suppositione 5.

## Argument 399

### **Is It Licit for the Exchange Dealer to Receive in the Petty Exchange an Increment over the Price That the Law Has Appraised [the Coins] For?**

It is clearly evident that petty exchange is useful to the republic, as it is often that men need coins of a lesser value in order to buy the things that they need daily, or to give alms, or for other such things in which the coinage of a higher value is of no use. On the contrary, those who wish to put away a great sum of money, or take it elsewhere, need to exchange small coins for larger ones, and likewise, those who emigrate to a place where the coins of their own land are of no value need to exchange them for others that are valuable wherever they go. For these purposes, and others of the like, the republic finds it useful to have exchange dealers who have access to diverse types of coins at the right time in order to exchange them with those who need them.

Once established this, together with the doctors' common opinion, we go on to say the following: just as with the contract of sale and all other commutative contracts in which it is necessary to abide by the equality between what is given and what is received in order for [these contracts] to be fair and there be no obligation of giving back, so in the exchange in which money is given for money should there be equality, because this is the law that rules over commutative contracts, among which is the exchange.

But money has a value that has been fixed by law, because of which, from this point of view, its value is indivisible both for the one who offers as for the one who asks for it. The question now is, mainly, what rulings or grounds allow the exchanger to justly receive something more than the equivalent of what he gives, taking into account the appraised value of the coins that are being exchanged.

We must say, together with the doctors' common opinion, that exchange dealers may licitly receive a just price for the service they carry out, either from the republic, or from those people who ask for the exchange when the republic does not pay them, and as long as that price is not unwarranted in relation to the services rendered. If the price were unwarranted, there would be obligation to give back the excess charged above the rigorous just price of the service rendered. The services rendered by the exchange dealer are: getting together and having the coins of diverse types ready for those who wish to exchange them; being present for their services, whether it is themselves or someone else, at the public place of exchanges waiting for those who want to exchange; counting the money they give and the one they receive, and other such things. All these services deserve a fair retribution.

In this kingdom of Castile, anyone can undertake the public office of exchange dealer without any charge whatsoever. However, they must be elected in the royal court by the king himself. In other places they are elected by the judges and *rulers* of the city or town in which they are to practice their duties.<sup>1</sup> Under the above cited law 4 in statute 18, they are allowed to receive four *maravedis* for the exchange of one *castellano*; three *maravedis* for the exchange of one *dobla* or one ducat; two *maravedis* for the exchange of one *florin*, and the same is said of the *ducat*.<sup>2</sup> Navarrus recalls that in Salamanca, at the time when he taught in that illustrious university, there was a public exchange dealer who used to charge one *maravedi* for the exchange of each *ducat*.<sup>3</sup>

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<sup>1</sup> N. R., 5, 18, 1.

<sup>2</sup> N. R., 5, 21, 62.

<sup>3</sup> Martín de Azpilcueta, *Comentario resolutorio de usuras*, cap. final, Salamanca, 1556.

In Portugal, they forbid that for giving or receiving gold coins that are valuable in this kingdom, coined here or elsewhere, any plus or increment should be received above the just value of these;<sup>4</sup> and there is a penalty depriving [the person] of the coins' value, half of which is awarded to the accuser and half to the redemption of captives, along with the penalty of a two-year exile in Africa, excepting the case where one would have been appointed by the king as public exchange dealer of a place, allocating a certain fee to him. In that case he would be able to receive the increment licitly; but if he had not been allocated any fee whatsoever, he would not be able to receive anything, and shall be subject to the same penalties as the others, in spite of the royal appointment. However, since the fee the exchange dealer receives justly is not received for the money he gives but for the service he renders, it is reasonable to believe that there are actually two contracts in the exchange, and both of them just: one, the exchange of money for money of the same value; the other, the hiring of the exchange dealers' services, for which he collects that just increment. As said in Argument 304, following the opinion of Navarrus, Medina, Mayor, and others, in a loan, the lender may not collect anything for the loan apart from the capital, but he may, because of the very nature of the problem (*ex ipsa natura rei*), collect a moderate stipend for the job of counting the money and for other services the exchange dealer does. Likewise, he may also collect a moderate stipend for the services mentioned before.

It is uncertain whether the private exchange dealers, who have not been appointed by the republic to carry out this duty, may also receive an increment for the responsibilities they carry out in favor of those who ask for an exchange, such as counting the money and other tasks they perform. Cayetano denies this in his *opusculum* on exchange,<sup>5</sup> because, in the first place, he says that counting the money does not deserve a payment, as it has always been done for free; in the second place, because sometimes [the person] who seeks the exchange counts a larger amount of money than the exchanger; third, because the exchanger's action of counting is the same as the action carried out by the person who seeks the exchange. But the common opinion of the doctors declares

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<sup>4</sup> *Ordenanzas portuguesas*, part. 4, tit. II, ley 4, § 9.

<sup>5</sup> Tomás de Vio Cayetano, *De cambiis*, Tract. 7, caps. 1 y 6, Lugduni, 1567.

quite the opposite, that is, that private exchange dealers, the same as the official exchanger, may also licitly collect, because of the nature of the problem (*ex natura rei*), a small increment for the action of counting or other similar services rendered, in much the same way as the official exchanger. But what they may licitly collect should be less than what the public exchange dealers collect, because the [public exchange dealers'] duty takes up many more expenses and work, as he has declared above. Thus, acknowledge Medina (although, at first glance, he seems to suggest the opposite in the preceding 1.a's issue's second to last paragraph), Soto, Navarro, Conrado, Gabriel, Silvestre, and others.<sup>6</sup> The reason is that such service is worthy of remuneration, even if it is meager, because of which the first argument should be denied, which is the one that persuaded Cayetano. To the second [argument] we respond that even if the exchange dealer counts the money he gives as well as the money he receives, both things are carried out at the request of the person seeking the exchange, because of which both acts of counting should be paid, just as the lender should be remunerated for the service of counting, both when he gives the loan as when it is returned to him, as both actions are carried out for the borrowers' benefit and he could refuse them if he did not wish to carry out the service of lending. That is why it should be denied, in the third argument, that one job is compensated with another, as this does not happen either in the case of the loan, because in both cases all the work is carried out for the benefit of the one seeking the loan or the exchange.

All this explanation should be considered correct in accordance with the nature of the problem (*ex natura rei*), because the republic could forbid drawing for the exchanges an amount that is greater than the value of the exchanged coins, and this on account of the republic's own good, in order to prevent the increment in the price of coins, and to prevent foreigners from carrying gold or silver out of the country, offering for them a much better price, all of which would be detrimental to the republic.

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<sup>6</sup> Juan de Medina, *De cambiis*, q. 2 and q. 1, § penúlt; Domingo de Soto, *De iustitia et iure*, lib. 6, q. 9, a. único; Martín de Azpilcueta, *Manual ...*, cap. 17, no. 288; *Comentario resolutorio de usuras*, no. 19; Conrado, *De contractibus*, q. 99, concl. 5; Gabriel Biel, *In IV sententiarum*, dist. 15, q. 11, a 3, dub. 12; Juan Maior, *In IV sententiarum*, q. 37; Diego de Covarrubias, *De collatione ...*, cap. 7, no. 4, in prin.; Silvestre, *Summa ...*, verb. usura, 4., q. 7, pronunc. 3.

Soto says in the already referred to place, in the third conclusion, that in this kingdom there has already been a law that forbids anyone from collecting an increment over the exchanges, excepting the public exchange dealers appointed by the republic. Quite the opposite, Navarrus says, in the already quoted number 19, that even if in this kingdom it is forbidden to carry out the responsibilities of a public exchanger as a result of one's own decision, it is not, however, forbidden to exchange to private persons, nor collecting for it a profit, and he quotes the laws that resolve it. He complains that Soto does not quote the law that backs his opinion. Covarrubias, in the quoted work, embraces Soto's opinion and quotes the current laws<sup>7</sup> in favor of it. But in these laws there is only a prohibition to carry out the duties of a public exchanger in the Court without having been appointed by the king, or by the judge or rulers in other places; but they do not forbid all the rest from carrying out exchanges in private.

Perhaps it is considered forbidden for private individuals to collect an increment for petty exchange because of the laws that today appraise gold coins (which we shall shortly discuss), which forbid collecting any increment, as Gutierrez holds.<sup>8</sup> We have already said that this is the legislation in Portugal, but I believe that in neither of the two kingdoms is anything regularly collected for petty exchange.

I would like to caution that what Soto and Covarrubias declare, that is, that once the law that prohibits collecting anything for petty exchange is promulgated there is obligation to retribute if anything were received, is a complex issue, as we could be dealing here with the just price received for the service involved in the exchange. Because even if the prince might forbid in this case such increment on account of the republic's common good, and in law it is enough for a ruling to forbid something so that if it is done the contract is nullified and invalidated,<sup>9</sup> however, in the present case, it would be the just compensation derived *ex natura rei* between what is received and the [good] for which something is received. Also, from what we said in Argument 88, especially when confirming the first argument, the rulings that are not subject to

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<sup>7</sup> N. R., 5, 18, 1.

<sup>8</sup> Gutiérrez, *Practicarum Quaestionum* ..., lib. II, q. 178.

<sup>9</sup> C. 1, 14, 5.

what the law has ordered in the cited place, do not prevent the individual from receiving his just reward. That is why I believe that by violating these rulings only a sin of disobedience to the prince is committed; a disobedience that *ex genere suo* is by no means serious. And if what was received exceeded *ex natura rei* the limits of the just stipend, then the sin would certainly be *ex genere suo* serious, as a greater increment than what is just would have been received, there being obligation to restitute.

There is another resolution by which the private individuals may licitly obtain a profit, namely, when in the place where the exchange takes place they give for the exchanged money less than what it is worth, not in that place but in a different one, and then [the individuals] take the money to that other place, or they exchange it to travelers who are going there for the value it has over there, because they wish to do this favor without incurring in any loss for themselves. Thus, the residents in a country usually do business by exchanging money from other kingdoms without any value in the place where the exchange is being carried out, for a low amount. In order to do this, they buy money from other countries that lack value in the place where the exchange is taking place, because of which they buy it licitly cheap since it is not worth anything there; then they take the money bought like this to a place where it has a value appraised by law, or they exchange it to travelers who are going to that place for the value it has in that country. Medina, Cayetano, and others<sup>10</sup> agree with this. Notice, however, that sometimes the price is so low that it does not equal the value of the coins' metal, as for example, Portuguese silver coins. In that case, it would be unjust, and there would be obligation to restitute [the amount] lacking for the lowest just price; because if the price paid for the coins were below the price of the silver sold in ingots, the contract would certainly be unjust and there would be obligation to restitute.

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<sup>10</sup> Juan de Medina, *De cambiis*, q. 9 § últ.; Tomás de Vio Cayetano, *De cambiis*, cap. 6 y otros.



## Argument 400

**On Diverse Gold and Silver Coins That Have Been  
Coined in Castile and Portugal over Time.  
On Their Value at the Moment of Coinage  
and at the Present Time.  
On the Value of Gold and Silver Ingots  
in These Kingdoms at Different Times**

In order to better understand what we need to say on exchanges, we should discuss the matters indicated in the title of this argument, as we are more familiar with the coins from Castile and Portugal than with those from other kingdoms. All things considered, what we say about those from Castile and Portugal shall make it easy to surmise what should be considered about the other coins, once we have the information about the laws that refer to them and their characteristics.

For a better understanding, take into account that a half pound (*selibra*) of gold and silver, which the Spanish call *marco*, and in other places they call *marca*, is a coin that weighs eight ounces; and the ounce is divided into eight eighths, which the Hebrews call *adharcon*, and the Greek and Latin call *drachmas*. The Spanish, distorting the Greco-Roman name, call it *drama*, *adaramé*, or *adarme*. I suspect that, as happens with many words in our language,

*adarame* is a word that the Spanish inherited from the Saracens who occupied the Spanish territories, and whose language is very similar to the Hebrew tongue. In this kingdom of Castile they call the half *ochavo*,<sup>1</sup> namely the sixteenth part of an ounce, a *dram* or *adarame* and so the half pound contains 64 *ochavos*, as the eight ounces in the half pound times 8 *ochavos* make 64 *ochavos*. The gold *ochavo* has seventy-two grains.

Consider that in order to express the degree of purity or impurity of gold, the goldsmiths divide the half pound, or any other quantity of gold, into twenty-four parts, which they call *caractos*, and in Spanish, *quilates* (carats). On the other hand, each carat is divided into fourths, into eighths of a carat, and into other similar proportional parts, some bigger and some smaller. When the gold is very pure and is not mixed with any other metal, it is said that it is 24-carat, because the half pound, or any other weight of that gold, has twenty-four parts of gold and none of any other metal. And this is the gold they call *obryzo*, which in Greek means *sincere* and *delicate*. Others believe that the name comes from Ophir; but the etymology is uncertain. When a half pound of gold has twenty-three parts of gold and one part from another metal (silver, copper, or whatever it may be), it is said that it is 23-carat gold. When twenty-two parts of gold are mixed with two parts of another metal, it is said that it is 22-carat gold, and so on and so forth. Likewise, to express the purity or impurity of silver they divide the half pound (or any other mass) into twelve parts, called *denarios* (*denari*). Thus, when the half pound of silver is not mixed with any other metal but is pure silver, it is called 12 *denari* silver; and when eleven parts of silver are mixed with one part of another metal it is called *liga*<sup>2</sup> by the Spanish, it is called 11 *denari* silver, estimating it to be silver of less *denari*, the more *denari* of another metal are mixed into it. The *denari*, in turn, is divided into twenty-four parts, each of which is called a grain of silver. Thus, this [grain of silver] weighs much less than the grain of gold.

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<sup>1</sup> Tr. note: *Ochavo*: Means both one-eighth and the Spanish copper coin weighing an eighth of an ounce and worth 2 *maravedis*.

<sup>2</sup> Tr. note: *Liga*: Mix, blend.

Also consider that in this kingdom of Castile, according to Covarrubias's account,<sup>3</sup> King Ferdinand and his wife, Queen Isabella, ordered minting  $23\frac{3}{4}$ -carat gold *ducats*, hence, each of these was only short of one-fourth of a carat to be gold of the highest purity. This tiny part of metal was mixed with the gold to give it a greater consistency, as gold of the highest purity lacks solidity and bends too easily. The half pound was worked into  $65\frac{1}{3}$  *ducats*, making each *ducat* contain an eighth of an ounce of gold, taking from each of the 64 *ducats* as many grains as necessary to fabricate one more *ducat* and a third of another in order to cover the mintage expenses, which made each *ducat* contain less than one-eighth of an ounce of gold, almost  $1\frac{1}{2}$  grains less. These same kings ordered issuing a coin worth twice the value of a *ducat*, from that gold, which in this kingdom they call *dobla*; and another worth one-fifth [of the *ducat*], called *quintupla*, another they call *décupla* and others worth 20 and 50 *áureos*.<sup>4</sup>

In this kingdom, the *ducat* is worth 11 silver *reales* and 1 *maravedi*, and the silver *real* is worth 34 *maravedis*, because of which the *ducat* contains 375 *maravedis* ( $11 \times 34 + 1$ ). This is the reason why they estimate that one-half pound in this type of gold ingot was worth 24,000 *maravedis*, as ( $64 \times 375 = 24,000$ ), allocating toward minting expenses an extra  $1\frac{1}{3}$  *ducat* struck from the half pound.<sup>5</sup> But the *ducats* produced with a half pound were worth 24,500 *maravedis*, because the  $1\frac{1}{3}$  *ducat* that was taken for expenses from the 64 eighths of an ounce used for producing the other 64 *ducats* were worth 500 *maravedis*.

From what has been said, it is easy to surmise, in the first place, [the reason] why 1 *maravedi* was added to the 11 silver *reales* of a *ducat*'s price: so that the half pound of that gold was given a value of 24,000 *maravedis* and each *ducat* had a gold *drachma*, taking away from each of the 64 *ducats* the grains that were needed in order to produce  $1\frac{1}{3}$  *ducats* for minting expenses. We understand too that the Gospel's *drachmas* weighed the same as our *ducats* or silver *reales*, as we shall see from the following, as in order to prove this

<sup>3</sup> Diego de Covarrubias, *De collatione veterum* ..., cap. 3, no. 2, in pr; no. 2 § 1; N. R., 5, 21, 1.

<sup>4</sup> Tr. note: *Áureo*: Gold coin.

<sup>5</sup> N. R., 5, 21, 4.

you only need to add to the gold and silver coins what was taken from each *drachma* for expenses. They are called *drachmas* because of the coin's weight, but they were silver and not gold. And the *didrachma* which, as also mentioned in the Gospel, was paid as tax, weighed 2 *drachmas* and was worth 2 silver *reales*. In the third place, we may surmise that at the time when those *ducats* were minted, the gold grain was worth almost  $5\frac{1}{4}$  *maravedis*, because one-eighth of a gold ounce weighs seventy-two grains, which, at the rate of 5 *maravedis* per grain, amounts to 360 *maravedis*. And the 15 *maravedis* needed to complete 375 have sixty-fourths of *maravedi*, so that in order for the gold grain to be worth in those  $5\frac{1}{4}$  *maravedis*, they only needed twelve-fourths of *maravedi*.

In time, that extremely pure gold became highly coveted in other countries and was taken out of the Spanish territories. This is why, as Covarrubias<sup>6</sup> says, Charles V ordered the mintage of 22-carat gold coins, which were called *coronas* or *escudos*. Sixty-eight *escudos* weigh the same as a half pound, and the value of each [*escudo*] is 10 *reales* and 10 *maravedis* or, the equivalent 350 *maravedis*. And if you take away an *escudo* paid as duty to the king for each half pound, plus  $1\frac{3}{4}$  *tomin* for the mintage, the value of a half pound struck from a 22-carat gold ingot amounts to 23,331 *maravedis*,<sup>7</sup> since the *tomin* has 12 grains of gold and is worth 2 silver *reales*, so that the *tomin* and three-fourths have 21 grains and are worth  $3\frac{1}{2}$  silver *reales*, that is, 119 *maravedis*. This amount, together with the *escudo*, whose value was at the 350 *maravedis*, amount to 469 *maravedis*. If these are subtracted from the 23,800 *maravedis*, the gold half pound produced out of that kind of ingot is worth 23,381 *maravedis*. The 23-carat gold half pound had 95-fourths of gold carat, and one-[fourth] of another metal. The 22-carat gold half pound only had 88-fourths of gold carat and eight-fourths of another metal, because of which 23,331 *maravedis* divided by the 88-fourths of a carat equal  $265\frac{1}{11}$  *maravedis*. According to this calculation, this is the value of each carat. Consequently, a half pound of a  $23\frac{3}{4}$ -carat gold ingot, which has seven-fourths of a carat more, is worth, once the *escudos* have been minted, 25,186 *maravedis* plus seven-elevenths

<sup>6</sup> Diego de Covarrubias, *De collatione* ..., cap. 3, no. 2, in princ; no. 4, § 1; N. R., 5, 21, 10.

<sup>7</sup> N. R., 5, 21, 46.

parts. And as the 22-carat gold half pound has 2 carats of *liga* (blend), of which two parts are silver and one part is copper, it follows that said 22-carat gold half pound has  $1\frac{3}{4}$  carats of silver, as well as two-thirds carats of copper.

Therefore, as the silver half pound is worth in this kingdom 65 silver *reales*,<sup>8</sup> the silver carat shall have a value of  $92\frac{1}{12}$  *maravedis*, and  $1\frac{1}{3}$  carats shall be worth almost 123 *maravedis*. If you subtract this amount from the 25,186 the  $23\frac{3}{4}$ -carat gold half pound is worth 20,066 *maravedis*, once the *escudos* have been minted. Thus, one-eighth of an ounce of this ingot is worth  $391\frac{39}{64}$  *maravedis*. If you add 500 *maravedis* to this for minting expenses, you shall see that this was the value of 1 *ducat* in those times.

In the year 1566, our king Philip II raised the value of each *escudo* to 400 *maravedis*, without changing their weight nor the amount of gold or silver in the blending,<sup>9</sup> so that a half pound of [*escudos*] was worth 27,200 *maravedis*, which is their value today.<sup>10</sup> If you take away an *escudo* (worth today 400 *maravedis*) for the king's tax, plus 141 for expenses, which is what they pay today in Seville, where only 119 were paid before, the half pound of this gold ingot is worth 26,659 *maravedis*. And if they divide these between 88 highly pure gold carat quarts, which the half pound contains, as the other 8 are [part of the *liga* (blend)], one-fourth of highly pure gold carat is worth almost 303 *maravedis*, as  $(26,659/88 = 302, 943)$ , and the seven-fourths of pure gold carat that are also contained in the  $23\frac{3}{4}$ -carat gold half pound are worth today almost 1,222 *maravedis*. Because of which the half pound of the gold with which the *ducats* are made, without discounting anything on account of the blend, is worth today around 27,900 *maravedis*. Today almost nothing is taken away on account of the blend, because, from what I have heard in Seville, it is copper and has no silver.

The eighth of an ounce of this mass is worth around 435 *maravedis*, that is 12 silver *reales* and 27 *maravedis*, the same as what the *ducat* [of this mass] is worth if you add 541 *maravedis* for minting expenses, which are used as compensation for what is lacking in gold in each one to complete the eighth of an

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<sup>8</sup> Ibid., 5.

<sup>9</sup> Tr. note: In the original, "ley."

<sup>10</sup> N. R., 5, 21, 13.

ounce. But law 13 cited earlier ordered [the *ducats*] to be current at 429 *maravedis*, and we must abide by it. Perhaps there is something missing to explain this price difference, or perhaps, having used external help for the calculations, as I ignore arithmetic, something was erroneously calculated, but what I have just explained sheds no little amount of light on what we shall proceed to say.

I should point out three things. The first, that the Castilian goldsmiths and their helpers at the mint apply the principles disclosed on carats not to gold half pounds but to the gold of the coins called *castellanos*, worth 16 silver *reales* or 544 *maravedis*, if they are 22 carat. This is verified in the above cited law 13. And they say that the *castellano*'s highly pure carat is worth today 24 *maravedis* plus some particles from another *maravedi*, and because 50 of these coins weigh a half pound, they find it very easy to use this coin as a measure for counting carats. The second, that even if the silver mass is valued in this kingdom so that the half pound cannot exceed the price of 65 silver *reales*, no price is fixed for the gold mass, but only on the coins with which they are made, once they have discounted the cost of minting and the tax paid to the king. The third, that the law forbids the goldsmiths from producing gold objects that are not 24 carats minus an eighth of a carat, or 22 or 20 carats.<sup>11</sup> And this same law establishes penalties for those who sell gold objects with fewer carats than the ones indicated.

In this same kingdom, Ferdinand and Isabella ordered the mintage of silver made out of 11 *denari* and 4 grains in the proportion of 67 silver *reales* per half pound, because of which they had 20 grains of blend with another metal, that is, copper.<sup>12</sup> It was worth 34 *maravedis*, as is manifest in law 4 of the same section. The half pound of this silver in ingots was valued so that it could not be sold for more than 65 silver *reales*, as is manifest in law 5 of the same section, and since 67 *reales* were minted from it, as states the same law and also the second law already cited, it follows that each *real* only had 32 silver *maravedis*. And since 1 *real* plus 1 *maravedi* are paid for the expenses of casting the half pound, as is manifest in law 46 from the same section and according to what was said by a public officer in the Mint, it follows that the 33 extra

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<sup>11</sup> N. R., 5, 24, 4. (N. N. R., 9, 10, 19).

<sup>12</sup> N. R., 5, 21, 2.

*maravedis* are the profit of the person who gave the silver to produce the *ducats*. And this is specifically stated in law 5 of the same section.

The above has not been modified at all thus far, as is manifest in law 13 of the same section's declarations. There is only a difference in one point: that by a royal *cédula* sent to the Mints in the territories of Spain a tribute of 50 *maravedis* was established to be paid to the king for each silver half pound that was minted in them. This tribute is called *señorage*. This is the reason why a person who coins a silver half pound only receives  $64\frac{1}{2}$  silver *reales*.

Almost at the same time that Ferdinand and Isabella ordered the *ducats* to be minted, similar coins were coined in Portugal with highly pure 24-carat gold, which we call here *cruzados*. The simple *cruzado*, or *ducat*, had an eighth of an ounce of gold, having taken three-fourths of a grain for expenses, as they had  $71\frac{3}{4}$  grains.<sup>13</sup> The ten *ducat cruzado*, called *português* in that kingdom, had eleven-eighths ounce and  $64\frac{1}{2}$  grains, lacking only  $7\frac{1}{2}$  grains for completing ten-eighths, as said in paragraph 3 of law 4 already cited. And since the *ducat* is worth 400 *reais* in that kingdom, it follows that the half pound of that gold ingot was estimated at the time in 25,600 *reais*. But the gold half pound, converted to those coins, was worth 25,800 *reais*, with an extra charge on account of the 48 grains that were taken for expenses from the 64 *ducats*, since at the time the gold grain was worth  $5\frac{1}{2}$  *reais* plus a part of a *septil*. Seventy-two grains, at the rate of 5 *reais*, make 360 *reais*. And if each one of the 40 *reais* left to complete the 400 are divided by 2 we obtain 80 halves. And if we take from there 72 halves for the 72 grains, each grain shall be worth  $5\frac{1}{2}$  *reais* plus  $\frac{1}{72}$  *reais*, which make 24 *septiles*.

In the time of Charles V, Juan III ordered minting in Portugal *ducats* called [in this country] *cruzados de cruz piquena*, encouraged by the same reasons as the emperor. Today they call them *cruzados do meio*, because they were coined during the time between [the mintage] of those first highly pure gold ones and others of an inferior purity. The gold of these was  $22\frac{5}{8}$  carat, and they only had a mix of  $1\frac{3}{4}$  carat of another metal. Each one weighed  $71\frac{1}{4}$ , just as highly pure gold *ducats*. All this is contained in paragraph 5 of the already cited law 4.

Thus, since these *ducats* maintained the price of 400 *reais*, the half pound of impure gold started being worth the same as what the half pound of that

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<sup>13</sup> *Ordenanzas Portuguesas*, part. 4, ley 4, § 4.

highly pure gold was worth before. Subsequently, Juan III ordered minting other *ducats* called *cruzados de cruz de monte calvario*, with  $22\frac{1}{8}$ -carat gold. They weighed  $72\frac{7}{8}$  grains, because of which they only lacked one-eighth of a grain to complete the eighth of a gold ounce, as states paragraph 6 of the same law. That is why, since these *ducats* maintained the price of 400 *reais*, the half pound of this impure gold started being worth the same as the half pound of very pure gold was worth before.

Lately, King Juan III himself ordered minting a coin, which was the most commonly used in Portugal when I was teaching there these subjects. It was made with  $22\frac{1}{8}$ -carat gold. Its weight was such that 30 coins weighed a half pound, and each was worth 1,000 *reais*, hence the name *moedas de mil reais*. They had other coins that weighed half as much, so that 60 weighed one half pound and were worth 500 *reais*, and were called *moedas de quinientos reais*, as appears in paragraphs 8 and 9 of law 4 referred to earlier. Consequently, the half pound of very pure 24-carat gold was worth 25,600 *reais*, as has already been said. And when these new coins were coined, the half pound produced from the ingot of this much more impure  $22\frac{1}{8}$ -carat gold started being worth 30,000 *reais*. And the value of the highly pure gold coins increased in the same proportion, not only so that the price in coins of 1,000 *reais* would correspond to the same weight (at the rate of 30,000 *reais* the half pound), but so that a greater quantity of highly pure gold would correspond to a higher price in the same proportion in which the quantity of highly pure gold of the old coins exceeds the quantity contained in the 1,000 *reais* coins, subtracting something on account of the blend [of other metals] they contain, as was taken away from the coins from Castile. All of which is established in the *Extravagantes de Portugal* laws, law 4 above cited, as we shall later declare.

Law 4 fixed that price for the new gold coins, and in paragraph 11 it forbid obtaining a profit when exchanging them, and established a penalty of loss of the coins' value and two years of banishment in places in Africa. That is why the price fixed by the law was the current price. However, foreign merchants started offering for the 1,000 *reais* coins, 1,100, and for the coins of 500 *reais*, 550. And suddenly, during the time in which I instructed on these subjects, many hurried to offer for that price great quantities of them with full knowledge of the Senate and other public officers, without anyone stopping them. Even those who were in charge of the government's finances and the king's assets did this. Perhaps what I will go on to describe contributed greatly to this.



The silver of coins from Portugal has only 11 *denarios*, that is, there is a whole *denari* of another metal mixed into it.<sup>14</sup> As a result, in Flanders, Germany, and other nations they are not worth more than the silver they contain, taking into account, besides, their impurity. King Sebastian ordered in the cited law that from the half pound of this type of silver 24 *tostoes* were minted, worth 100 *reais* each. Therefore, the half pound was worth 2,400 *reais* or the equivalent 6 *cruzados*. Since those who brought silver in order to mint it did not pay but 60 *reais* for minting expenses, as the law orders, it follows that, in those times, the half pound of that type of silver was worth in ingots 2,340 *reais*. Juan III's grandfather had ordered minting 26 *tostoes* from the half pound of silver of that type and, because of this, at the time of Juan III the half pound of these *tostoes* was worth 1,600 *reais*, that is, 6 *cruzados* and a half, as says the same law. Before Juan III the *tostoes* weighed more, but all the *tostoes* one remembers had a value of 100 *reais*, even if some had more silver and others, less. What is more, King Sebastian ordered in the cited section's second law that the *tostoes* that Juan III had ordered minting maintain the same value, and that nobody could reject them when they were handed out to pay goods or debts. During all this time, the silver *real* was worth  $36\frac{2}{7}$  *reais* in Portugal, so that 11 of them were worth 400 *reais*, that is, 1 *cruzado*. And King Sebastian, in the cited section, decreed in the year 1558 that this was their price, and that nobody should receive more for them, under certain penalties.

At the time, in East India, the silver *real* was worth 60 *reais*, and in Africa it was worth 40 *maravedis*, and they were much preferred everywhere and were used to negotiate, and not the Portuguese silver coins. And from the region of Ethiopia called Mina, they bring to Portugal a great amount of gold, and they deliver there a lot of gold in exchange for silver coins. That is why in those times, without the referred to law being able to stop it, many bought silver *reales* for a price that was higher than the legal one in order to send great quantities of them to the East Indies. And even the king and his ministers did this. Everyone had a conscience problem over whether it was licit or not to buy them in Portugal for a higher price than the legal one. That being the situation while I taught these subjects and King Sebastian was getting ready to go to Africa, the price of the silver *real* suddenly rose in Portugal to 40 *reais*,

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<sup>14</sup> *Ordenanzas Portuguesas*, part. 5, tit. 8, ley 1.

making 10 of them start being worth 400 *reais*, that is, 1 *cruzado*. This was done without promulgating any law but, simply, because the king began to pay salaries and goods at that price, and the ministers of the king would force the private individuals to accept the silver *reales* at that same price. From then on, *tostoes* started being coined with a weight of  $2\frac{1}{2}$  *reales*, and out of one-half pound they coin 28 *tostoes*, which are worth 100 *reais* each. But who pays for the expenditures and how much these amount to, I do not know as I live far away from there. This increase in the value of money in that kingdom contributed in no small measure to large amounts being paid for the coins of 1,500 *reais*, and to the quick spoliation of the kingdom, and to the disappearance of the great amount of them that were available in other times. They tell me that the merchants from here in Castile brought huge amounts, and that they sold each coin of 1,000 *reais* for 33 silver *reales*, which taken to Portugal were worth 1,320 *reais*. That is why I warned King Sebastian that it would be convenient to increase the price of gold, and such is what I taught from my chair as professor. But it was useless, and even today the *tostoes*, both the old as well as the new ones of little weight, are exchanged for the same price of 100 *reais*, which makes them slowly disappear, either because they are taken abroad, or because they are given to goldsmiths in order to turn them to silver ingots that are sold for a much higher price than the one they have today in Portugal. Likewise, there are many today who also exchange those gold coins, even if they are scarce today, for the price of 1,000 *reais*, or at least exchanged them up to the day when I left that kingdom.

Here I want to give one word of caution. Even if the value of gold or silver coins were to increase or diminish, the copper coin, called a *real* in Portugal, maintains the same value when it is a question of paying amounts of *aúreos* or other coins that were owed, or taxes or penalties enforced by the law, as we saw in Argument 312. But they do not have the same value if it is a question of exchanging them in different places, according the merchants' usual practice, which even today is their custom. Because for 10 *reales* that are worth 400 *reais* in Portugal, 11 *reales* are not paid in Castile even if they are worth in Castile 374 *maravedis*, but only 10 *reales* are paid, exchanging them on equal terms and setting aside for the time being the increase in price due to exchange. Because in these exchanges, more importance is given to the amount of silver comparing it to an equal amount of silver, or to the amount of gold comparing it to an equal amount of gold of the same purity than to the amount of copper

and its price in different places. That is why, when the Portuguese silver *real* was worth  $36\frac{2}{7}$  *reais*, the Castilian *maravedi* was worth more than the Portuguese copper *real* among the merchants, at the rate in which  $36\frac{2}{7}$  *reais* exceed 34 *maravedis*. And for the same reason, silver *real* and silver *real* were exchanged as equal [coins] from Portugal to Castile and vice versa, and they exchanged a *ducat* for a *ducat* also as equal coins, even if [the *ducat*] was worth 400 *reais* in Portugal and 375 *maravedis* in Castile. Therefore, because the value of the silver *real* rose in Portugal to 40 *reais*, the Portuguese copper *real* is worth today less than a *maravedi* at the rate in which 40 *reais* exceed 34 *maravedis*. Therefore, when the value of the silver *real* rose they were exchanged as equal coins from Portugal to Castile and vice versa, and the *ducats* were also exchanged as equal, even if it was worth 400 *reais* in Portugal and 375 *maravedis* in Castile. This explains why, since the value of the silver *real* rose in Portugal to 40 *reais*, the Portuguese copper *real* is worth today less than the *maravedis* at the rate in which 40 *reais* exceed 34 *maravedis*. That is why, when the value of the silver *real* rose to 40 *reais* and the weight of the Portuguese silver *tostón* diminished, the value of the Portuguese copper *real* diminished, in such a way that comparing it to the same copper coin, the value of those Portuguese coins rose among the merchants. Just as it increased when buying goods with them. And the law becomes ridiculous when it fails to increase the extra charge of these coins in comparison to a same copper coin, because one has to be a fool in order to hand over today in Portugal a coin of  $27\frac{1}{2}$  silver *reales* for 25 *reales* just because in Portugal the price of the silver *real* has risen to 40 *reais*, especially since that same coin is worth much more if it is brought back to Castile or to any other nation, and since more goods are not bought today with 40 *reais* than before with 36, as prices of all goods have risen in Portugal in a continuous way with regard to that copper coin. On account of this, when the silver *real* rose to 40 *reais*, the value of the gold coins started rightfully rising in an incessant way regarding the same copper coins. So it may be understood that a  $22\frac{1}{8}$ -carat gold half pound is worth today in Portugal much more than 30,000 *reais*, at the rate in which 40 *reais* exceed those  $36\frac{2}{7}$ .

We have said all these things about the price of silver coins in Portugal in order to understand and explain all this. I hope they shed sufficient light on what we are to say about exchanges.

The mass of gold does not have a price fixed by the law in Castile and Portugal, nor does [the mass] of silver, except for the fact that in Castile the mass of 11 *denari* and 4 grains may not be sold at more than 65 *reales* for the half pound. But it is not forbidden to buy it for less, and every day they buy and sell for lower prices, each one for what he can obtain. It is easy, thus, to answer the question of whether or not the following silver purchase is just or unjust and if there is or is not an obligation to retribute.

Many people, in great need of money, sell the artistic silver objects they have, and when they offer them for sale to artisans and merchants they do not get a better price than if the silver were not carved, even if the artistic work is at times of great value. Moreover, there are times when they do not receive for the silver more than 64 *reales* for the half pound, so that, aside from the artistic value, they have to reduce even one more *real* per half pound in the silver's value. The question is whether such purchase is unfair, and if there is obligation to retribute. I believe that the answer should be this: Since no human law is broken, and the artisans and merchants invest in this material great money so that, once the silver has been purified and adapted, they can resell it for more money, the transaction may not be condemned as unjust, as long as, given all the circumstances, and in the wise men's opinion, they do not go beyond the lowest just price. Keep in mind that this is the artisans' manner of buying because of their activity, such as the booksellers buy the books they receive cheaply in order to sell them more expensively at a later date and, likewise, the merchandise offered unexpectedly is worth less. However, it may happen that the artistic value of the object is so great and so great the hope of being able to resell it in a short time for a much higher price, that the purchase may be considered unjust at times, having to retribute the difference until the lowest just price is reached, even if the half pound is paid at 65 *reales*, and regardless of the fact that in these cases the price is not undividable but allows for a wide range between the maximum and the minimum just price. And one should not condemn the practices accepted by custom, as custom is a great influence for the price in this type of purchase not to be judged unjust.

Sometimes, those who sell these kinds of objects make a deal with those who buy them wherein they do not resell them for a certain time, so that they are able to recover them within that period of time for a certain amount and a higher one than the one they now receive. Some are skeptical regarding the justness of this contract, suspecting that it conceals usury. I believe that the

following should be responded. In order for that contract to be licit and just, one should abide by the following conditions: (1) the first sale should be a genuine sale, so that if during the time [when the buyer is awaiting payment] the object perishes, it perishes for the buyer; (2) the first sale should be just, according to what we have said; (3) a higher price should not be fixed for the second sale when the object is recovered, than [the price] which the first buyer, present owner of the object, could obtain from any other buyer. These conditions prevent the contract from being usurious or unjust and make it a gratuitous contribution of the first buyer to the one who first sold the object, promising not to resell it to a third party for a certain period of time. We described this in Argument 376, and gave some examples to make it clear.

Finally, what we have explained in this argument shall help us to better understand the following. In olden times, in this kingdom of Castile there were *ducats* worth 375 *maravedis* and, in Portugal, those same *ducats* or *cruzados* were worth 400 *reais*, and money was taken from one place to another to carry out the contracts. In many contracts they mentioned the ducats, not only in these kingdoms, but in the affairs with other provinces, and even today they celebrate exchanges and other types of contracts where they order many things in terms of the *ducat* as standard. However, there has not been in these kingdoms for a long time a coin that is worth what a *ducat* [is worth], so that the value of what in other times was understood as a *ducat*, and today is still understood, is paid by compensating with an equal sum of money in other coins. Such is the evidence of everyday custom.

## Argument 401

### **If a Higher Price Than the One Set by the Law May Licitly Be Received for the Coins to Which the Public Authority Assigned a Particular Value at the Moment of Coinage?**

What was analyzed in the previous argument shall illustrate what we now go on to say. Pay heed to the existence of a custom, accepted in some provinces such as Flanders and Italy, by which the common price set by the law is not considered so rigid that it may not fluctuate according to the greater or lesser abundance of [coins] or the amount of people who desire them, as happens with the price of goods that are not appraised by the law. Thus, for example, they tell me that in Rome, even if the common value of the gold *escudo* is  $12\frac{1}{2}$  *julios*, that value suddenly increases in copper coins, even twice a month, diminishing later. And the more or less abundance of these copper coins depends on the scarcity or demand of the *escudos*, as well as on other circumstances. Wherever this custom exists, there is no doubt that it shall be licit to receive this extra charge. The difficulty seems to present itself in those places where the price of currency is set by the public authority by law in order to keep it inalterable, such as happened in the Spanish territories and in other provinces, where they used to appraise their own coins.

However, even in that case it must be said that for reason of profit ceasing, sometimes it is licit to receive something more than the legal price for the coins, taking into account the estimation of that profit's amount. For example, if a person had set money apart to take to another place where it was worth more, or to use it to buy merchandise in a place where the coins of his place of residency could not be bought, or only by losing a part of their value, this person may, when exchanging his coins for others, collect the amount in which he estimates the profit ceasing. This is Juan de Medina's<sup>1</sup> opinion, among that of others.

And at the end of Argument 364, in a similar case, we said that the owner of a lot of wheat the price of which is appraised by the law, could receive for reason of profit ceasing something more than that price if he was planning to take it to a place where it was worth more. However, he had to avoid creating a scandal. For the same reason, if an artisan who had prepared the coins that he was going to use to cover with gold the objects he produces were to lend them to someone who asks insistently for them, making him lose the benefit he hoped to obtain from his work as an artisan, he may receive in turn, together with the common price of the coins, the amount in which he estimates is the profit that he truly is being deprived of.

In Portugal it is forbidden to destroy silver coins, or sending to destroy them, even if they are coins from another kingdom, in order to produce artistic objects with them, or for any other reason, and there is a penalty of a ten-year banishment someplace in Africa, together with the loss of half the goods, which shall be divided between the informer and the royal tax authorities.<sup>2</sup> And under the same penalties it is forbidden to choose the heavier coins and sell them later according to their weight. Whoever did any of these things, if he were a minister of the king, in charge of receiving his money, would bring upon himself the death penalty and loss of all his goods. I do not know if such rigorous law is actually applied making us judge the artisan or private person who destroys a few silver coins to produce an artistic object as guilty of mortal sin, especially, after the silver *real* has risen until reaching a price of 40 *reais*, and the weight of the *tostón* has diminished, as we said in the previous argument.

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<sup>1</sup> Juan de Medina, *De cambiis*, q. 3, § antepenúlt.

<sup>2</sup> *Ordenanzas Portuguesas*, lib. 5, tit. 6, § últ.

Because, if such law were upheld with all its force, and continued being applied because the circumstances are the same as when it was promulgated, there would be no doubt that it compels under mortal sin, because of the gravity of the offense and the harm that follows for the republic. Because, as experience proves, it is the heavier coins and of a same value that are destroyed. However, this law does not deal with the silver coins that have no value in Portugal, as the laws clearly state.<sup>3</sup>

In the kingdom of Castile it is also prohibited under death penalty and loss of all goods to destroy gold, silver or copper coins, or carry them out of the kingdom.<sup>4</sup> But I understand that this law, promulgated by the Catholic kings, does not apply to the old coins that are today rare, and that were followed by others, when it is those that are destroyed in order to gild some objects, since this is something insignificant, and the change in times and circumstances make it licit.

Although the exchange of coins in one same place should be carried out for an equal value, if there were grounds to fear that over a short period of time a coin was going to be devaluated by public authority, it could be bought licitly for a lower price than the legal one, as such fear and the probability of devaluation make it lose value just as money that is at risk of a storm, or of other dangers at sea, is justly bought for a lower price than the one appraised by law. Such is Medina's opinion in the last paragraph of the place cited earlier. But meantime, while those coins are not devaluated by public authority, they may be licitly handed over at the appraised price, because in truth, they still maintain their old value, as they may be given and spent for the same uses in which they would be spent if there did not exist any fear of their devaluation.

In the already cited argument,<sup>5</sup> Medina ascertains that while the law that appraises a coin is still in force it is not licit to receive for said coins a price that is higher to the one appraised, even if the metal of which they are made has many other applications such as, for example, if it were gold of many carats (as usually happens with old coins) and were better for gilding objects,

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<sup>3</sup> *Extravagantes*, pt. 4, tit. 11, ley 3.

<sup>4</sup> N. R., 5, 21, 67 (N. N. R., 12, 8, 3); N. R., 8, 17, 6 (N. N. R., 18, 8, 2).

<sup>5</sup> Juan de Medina, *loc. cit.* § antepenúlt.



ornamentation, health reasons, and similar things. Medina's reason is that when a coin is appraised, they take into account the purity of the metal and the possible uses of it, and once all things are pondered, they fix the value of the metal to which a seal is applied, making it a coin. Therefore, just as with wheat it is not licit to receive a greater price than that appraised by law because the legal price is indivisible, it is not licit either in the case of coins to receive a greater price to that which is legal. And if it were received, there is obligation to retribute.

But Medina adds: If it became a custom to receive for certain coins something more than the price appraised by law, and the prince or senate knew about it and did not punish or tried to prevent it, one should consider that it is the prince's will that the law not be applied in this point, because of which such increment over the legal price may be accepted without fear. I would go on to add that, from then on, such extra charge falls within the limits of the just natural price, which is not rigid or indivisible, as would be the legal price. And this is why Medina considers that the practice that some have of receiving an extra charge for certain old gold coins is something that is free of blame and of the obligation to retribute.

According to this opinion, we shall have to decide if the first ones who started receiving that increment, before the tacit and presumed consent of the prince, did sin, and have the obligation to give back to those from whom they received it, as the law was still in force.

Soto, Navarro, Covarrubias, Silvestre, and Cayetano acknowledge that a coin may be considered under two aspects:<sup>6</sup> one, as coin; the other, as metal, that is, as gold of a greater or lesser purity, greater or lesser weight. And they say that if, given all circumstances, it had a certain value as metal, it would be licit to receive a higher price than that set by the law, as the [price] set by the law refers to the coins as such, that is, as price to pay for purchases, even if when assigning that value they had taken into account the value of the material it is made of and its possible applications. Many add that no one may be forced

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<sup>6</sup> Domingo de Soto, *De iustitia* ..., lib. 6, q. 9, art. único; Martín de Azpilcueta, *Manual* ..., cap. 17, no. 288; *Comentario resolutorio de usuras*, cap. últ., no. 20; Diego de Covarrubias, *De collatione* ..., cap. 7, no. 3, in Princ.; Silvestre, *Summa* ..., verb. usura, 4, q. 3; Tomás de Vio Cayetano, *De cambiis*, cap. 6.

to give for a coin a price that is above that established by the law, nor to receive it as [if it had] a lower value than the legal one, because of which it shall be licit to buy them at their legal price and sell them later for a higher price.

Regarding this issue, I shall briefly state my opinion. One word of caution before anything else to say that when coins are minted and a price is fixed on them, the material they are made of is never worth more, even if all possible applications are taken into account, than the price fixed on them. Furthermore, it does not even reach [the price], as the minting expenses and, in this case, the tribute paid to the prince are deducted from the metal with which the coins are minted. It would be foolish for a prince who ordered to mint a coin to fix on it an inferior price to the value of the metal it is made of. The price is fixed taking into account the abundance of a certain metal at the time, its possible applications and all other circumstances, making it improbable to find a better price for that metal. What Medina says about this is true. We should also add that for the mere fact of minting a gold coin that is inferior in carats or in weight, and fixing an equal or even higher price to that of the coins that have been on hand up to then, it should be assumed that the law that had fixed the price of the preceding coins ceases to be in force, and that everyone may increase the price of these [the preceding coins] within the limits of what is naturally just. Justice asks that, all things considered, things of an equal value have an equal price, unless the prince were to order the contrary for a reasonable cause. And it would be irrational and unjust that he order it without reasonable cause, since fixing unequal prices to goods of equal value without reasonable cause is irrational and injurious to his subjects.

The laws of Castile and Portugal are in agreement with this doctrine of ours, clear and manifest. Thus, for example, when Philip appraised the *escudos* so that from then on they would be worth 400 *maravedis*<sup>7</sup> and ordered that for no reason at all could anyone receive a higher price for them, he equally declared that the *ducats* that Ferdinand and Isabella had ordered minting out of finer gold had a greater value than when they had been minted, due to the greater weight and greater quantity of gold in them. And this is the reason why he ordered they be worth 429 *maravedis*, as we explained in the preceding

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<sup>7</sup> N. R., 5, 21, 13.

argument. And it is undeniable that before the rise in the price of the *escudos*, nobody could justly condemn receiving a proportionate price for the *ducats*, in view of not only the greater weight but also the greater quantity of highly pure gold that they contained.

In Portugal, the law similarly explains the greater value of the grain of gold of the 24-carat *cruzados* over the value of the grain of gold of 22<sup>1</sup>/<sub>8</sub>-carat coins, explaining that the grain of gold of these last coins is worth 6<sup>1</sup>/<sub>2</sub> *reais*, while the value of the grain of gold of the first coins was of seven *reais* plus one-third of a *septil*. And in this way it goes on to explain the value of the grain in intermediate coins.

In the third place, it is important to point out that when gold coins are minted and a price is fixed on them, there is usually abundance of that kind of gold, and the price is fixed according to [this abundance], taking into account all existing circumstances. But if the circumstances were to change with time, and having carried those highly pure gold coins out of the kingdom, whether to be used for gilding or for decorating objects, the value of the metal of such coins increased considerably, it should not be assumed that the legislators would want the laws which fixed the old rates to be still in force. And even if they wanted to, it would not be just nor fair, because of which they may be sold for their natural just price not only as goods but as price with which they pay for all other things, without [there being any] sin nor obligation to retribute, because, as Medina rightly believes, the coin's purpose is always the same, under whatever form it is considered. In the case described, good public ministers do not oppose nor punish those who proceed in the way described, nor use their power to persecute their subjects harsh and unjustly but apply the interpretation<sup>8</sup> of the laws according to the circumstances of time, place, thing, and people and understand that such laws can no longer be applied, as the present circumstances are very different from those in which the laws were issued. Consequently, even if the laws of Ferdinand and Isabella are included in the mentioned section 21, book 5 of the *New Collection*, because a great part of its content is still in force, it does not apply when it comes to the rate of the *ducat's* value, as King Philip himself declared in law 13 cited earlier. And even before this declaration it had already ceased to be in force, as we have

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<sup>8</sup> Tr. note: In the original, "epiqueya."

indicated. Nor are the words used to order obeying those rates in force. King Philip ordered that for no reason should a higher price than the one he himself appraised be received for the *escudos*, because when this law was issued there was, as even today there is, great abundance of *escudos*. But when it was time to deal with the old *ducats* he only defined the value that they have today, taking into account the value that has been given to them, without adding those words that say that for no reason should it be licit to receive for them a greater price. Because, given their scarcity, the need for them and their utility for some things, it would be licit to receive for them the whole natural value that they have, presuming those circumstances exist. In brief, it is licit to receive for any coin what would licitly be received for a piece of gold of the same weight and purity at any time, as the amount of gold in the coin is not of a worse quality for being converted into coin than if it were not. On the contrary: It is of better condition and greater value, because of which one may receive for it something more than [what is received] for an equal piece of gold.

From what is declared here and was declared earlier in the preceding argument, it shall be easy to understand that the Portuguese laws that appraised the price of gold coins do not in all conscience force [anyone] today, because of which a greater price may be received for those worsened coins, even if [it should always be done] within the limits of their natural value. And the same should be said about the more impure gold coins that were appraised 1,000 or 500 *reais*, as the law that appraised the silver *real* lost its legal force for the very fact that the silver *real* increased its value up to 40 *reais*. Also, for that same reason there were no longer any scruples nor difficulties over receiving a greater price for them than the one rated by the law when they were to be carried somewhere else, as today nobody offers for them more than 40 *reais*.

Both in Castile as well as in Portugal, the laws have established today how much the price of old gold coins has risen, and how much they are worth today. Therefore, if someone wanted to pay his creditor with these coins, the [creditor] would be forced to receive them at the price fixed by the law and, in all fairness, would not be able to receive them as [if they had] a lower price, as the price fixed by the law is the lowest just price that they have today, and there is no one who hands them over for a lower price, unless they ignore their value. As regards the greater price some coins are exchanged for today, it may be taken in all fairness, even if it exceeds the legal price. This is what we said about the Portuguese coins worth 1,500 *reais*. But a creditor may not be forced

to take them for that higher price, since the extra charge that is given for them does not affect the legal price but the natural one, and there are many who hand over those coins for the price fixed on them by the law in other times. And as long as nothing else is ordered or declared, one should judge that that price does not go beyond the limits of the lowest just price. It is the debtor who may choose to find someone who gives him a higher price for them, and then make the payment in other currencies.

## Argument 402

**If an Employee Who Was Taking Money  
in Gold Coins to Pay Some Debts,  
or to Make Some Purchases, Took Advantage on  
the Way of an Opportunity Offered to Exchange  
Those Coins for a Better Price,  
Could That Employee Appropriate for Himself the  
Extra Charge Obtained in This Manner?**

The matter we are discussing in this argument happened frequently in Portugal when I was teaching these subjects. At the time there was an abundance of coins of 1,500 *reais* and debts were paid with them, or they were handed over to an envoy to be used to buy merchandise for their owners. According to what we have said, it was possible to exchange the coins with an additional benefit over the price they had been appraised for when minted, without breaking the law for it. The issue in question is whether the envoy under discussion, when knowing beforehand who was willing to give that extra charge, or looking for [that person] himself, might carry out that exchange and get for himself the extra charge using the rest of the money to pay the debt or buy the merchandise as they had ordered him to do. May he keep the extra charge or should he retribute it? And who does he owe the restitution to?

The same uncertainty exists regarding the officers of the king who are in charge of collecting the royal revenue, and other ministers who carry out similar duties for other members of the aristocracy and, in general, the depositaries to whom many debts are paid in currency that they have no obligation of assessing for a higher price, and then, by order of the king, or of whomever they are ministers of, pay salaries, debts, and other expenses. During the time between the collection and the payment, these people have the opportunity to exchange the collected coins for other [coins], thus obtaining an increment, and it is uncertain whether they may keep that extra charge or should restitute it.

I believe the doubts regarding this issue shall be explained with the following conclusions: First, in all of the above cases, if after exchanging the gold coins with an extra charge, the officer or depositary buys other gold coins that are similar to those initially received and with them carries out the commission for the one who ordered him [to do so], he may certainly keep the extra charge as the fruits of his ingenuity, even if for obtaining it he may have taken someone else's money as an instrument to do so. It is clear because by doing so he did no harm, either [by hurting] the person in whose name he negotiated or the person to whom he had to hand over the money, due to the fact that, as we are to assume, he gave this person in due time coins of the same type and the same value as those that had been handed over to him, which make it evident that he carried out the commission he received, allowing him to keep the profit that the extra charge stands for. This is substantiated by what shall be said in the third conclusion.

If the owner's usual wish were that the debt be paid in the same currency as that which he handed over, because he favored the payee's own good to that of the envoy's, and the payee wanted to employ it in lesser expenses with an equal or greater benefit in the exchange, the envoy shall be forced to restitute the payee of all the profit he was deprived of, unless he delivers coins of the same quality as those received. It is clear because against the will of both the payer and the payee, the [payee] is denied the just benefit that he was going to collect with the coin exchange, because of which there is offence and he should receive restitution.

It could happen that the payee did not intend to obtain any special benefit from the coins, because for example, he was thinking of spending them, handing them over for their usual lowest price, and that the owner of the coins reg-

ularly favored the envoy's own good to that of the payee's, or did not even bother about it. In that case, I believe that the envoy would be able to keep that profit, and it would not be an impediment that the sender wanted that profit for himself rather than for the employee.

To prove this conclusion it is necessary to go over what was said in Argument 327, which is that what the usurer, thief, or payee gain when they negotiate with something that is not theirs, is consumable by use, and is acquired through usury, theft, or received as deposit, is acquired for themselves and they are not forced to retribute except those things they received that belonged to someone else, or other equivalent things, as well as the profit ceasing the owners could have endured because of the delay in restitution. From this we can establish the following argument to prove the first part of the conclusion: in the case set forth, the profit does not belong to the sender nor to the payee more than what it would had the envoy stolen the money or extorted money from them through usury. Therefore, just as neither the thief nor the usurer have the obligation to hand over the profit obtained, and they only have to pay up what they took (as we clearly proved in the above cited argument), neither shall the envoy in our case be forced to retribute that profit, except only to give back what he took. In truth, this is what he does when he gives the payee the money for what it would be worth in his hands. We may also use the following argument: if the envoy had not obtained any profit with the money but had lost it gambling or had spent it buying goods for their lowest price as was sometimes done, and if the payee was going to spend the money with a better exchange, it is certain that no confessor would force to retribute but the part that would had been spent in that better way. In our case, the envoy should not be forced either to further restitution.

The following objection may be raised: Such profit obtained by the thief, usurer, or envoy proceeds from something that belongs to someone else, and only from the value it has when the thief, usurer, or envoy take hold of it. Consequently it does not belong to these, but to the owner of the money or to his payee as the fruit of something that belongs to them, and not of the ingenuity of the one who carried out the exchange, even if neither the sender nor the payee had had intention of collecting that gain. So we see that the fruits from a farm or from a horse belong to the owner of the farm or horse even if the owner had not collected them.



To this argument I respond allowing the antecedent but refuting the consequence. Because even if such profit comes from the thing itself and its value, it is not, however, fruit of it but of the ingenuity of the person who negotiates with it, and of the person who buys with it to his own advantage or disadvantage: and if by giving it such use it should perish, it does not because of this perish for its owner, who has to receive full payment. And the one who negotiates with [the profit] without owning it, shall have to account for it in case there is a judicial complaint. The fruits of the thing, for example, of the horse or the farm, are not the thing itself and its value, but the fruit of them or of the use that has been made of them, or they are the price received for those fruits, which is a subsequent fruit to the thing received, for example, for the use of the horse or for the apples produced by the farm. Now then, what is earned by negotiating with a good at the risk of only the person who negotiates [with it] is fruit of his ingenuity and, thus, the profit we refer to belongs to the envoy who at his own risk and for his own benefit exchanged the coins.

I shall go on to prove the second part of the conclusion, that is, that in case the sender is usually satisfied that the profit from the exchange is greater for the envoy than for the payee (or simply, did not bother about it), the envoy could licitly keep said profit, even in the case in which the payee could have obtained a greater profit in the transaction. Because the money sent, either as donation, or as payment for a debt, or in exchange for something else, does not belong to the payee until he accepts it. Until said moment of acceptance it belongs to the sender, who may revoke the donation or the order (as said countless times in Argument 263 and others). Consequently, everything the sender or the envoy does with the money, before the acceptance happens on the payee's part and according to the owner's presumed decision that at least it is not something he finds objectionable, is not injurious to the payee and, so, does not require compensation for the fact of depriving him of the profit that through the coin exchange he wished to obtain. However, if the one transporting the money is a servant of the payee, or someone who accepted the money following his orders and received it in his name, then, because the payee acquired the property by accepting the money, according to what was said in the above mentioned argument and in several others, by depriving him now from the profit obtained for the exchange, the envoy is wronging him and must compensate for everything he is being deprived of collecting, even if the envoy had obtained with his transactions a smaller profit or even none at all.

The third part of the conclusion said that it made no difference that the sender's disposition was such that he preferred the profit for himself rather than for the envoy. It is clear, because if the envoy had stolen the money under discussion from the sender, the subsequent profit would not belong to the owner of the money, notwithstanding his desire such profit would go to him instead of to the thief, who would not be compelled to compensate but for the losses, including the profit ceasing. Consequently, in our case, the profit does not belong to the owner of the money either but to the employee, notwithstanding the master's contrary disposition to it.

It should be pointed out that, sometimes, the property of a deposit does not belong to the depositor but to the depositary, who receives it at his own risk, without being compelled to return the same [deposit] in numeric terms. Such is the case of the public money depositaries and recipients, whom they call *almojarifes* or *treasurers* of the king, and others of the like. Consequently, what we said is even truer, as even if they receive gold coins at the current price, they fulfill their obligations by giving back its value in any other currency, and by paying the king in any currency, or whomever are his ministers, or anyone else by his command. And if they make any profit by exchanging the coins, theirs shall be the profit, as this is one of the advantages they obtain in the form of salary for their occupation.

## Argument 403

### **On the Usefulness of Exchanging Money from One Place to Another; on the [Type of] Exchange in Which the Banker Receives the Money in Advance**

We have explained up to here what petty exchange is. Let us now discuss the exchange from one place to another, that is, by means of bills of exchange. This type of exchange is useful and even necessary for many reasons. Because often there is someone who needs in one place money that he has in another [place], whether to bring merchandise from there to where he needs it, or to live there or for any other expense. However, he cannot take that money there whether because it is forbidden to carry it out of the kingdom or because it may not be carried by sea without great danger and with due speed, because of thieves or other similar causes, and without incurring in great expense, effort, and inconveniences. And even if none of these circumstances were true, the money under discussion may not be worth anything in the place where he needs it, or may not be worth as much as in the place in which he has it. For these and other reasons, men find it useful many times to exchange money in one place for money [they have] available in another, for their own good or the common good. We would like to examine now if bankers may licitly charge an increase and obtain a profit for this exchange of money taking it from one place to another.

Money may have in different places a different value for several causes, and it is necessary to ponder how much the exchange should increase or decrease because of the difference in value in order to make the contract licit and just. Therefore, we must first of all examine if in the case when the money has the same value in both places the banker may collect an increase because of the formal or virtual transportation he carries out for the sake of the person seeking the exchange. This type of exchange may be carried out in two ways: the first one, when the banker receives the money first to hand it back later in a different place personally or through his correspondent—and in this case, it does not seem to be a loan nor, for this reason, usury on the banker's part. An example may be someone who is considering going to Rome and gives the banker one hundred here so that when he gets to Rome, [the banker] or his correspondent in the city give him ninety. The other way would be if the banker first gives the money to receive it himself or through a correspondent in another place with an increase, and here it does appear there is a combination of a loan on the banker's part. The doctors' opinion of each of these cases is different, because of which we shall discuss the first case in this argument, leaving the second for the following one.

All doctors agree that it is licit to charge an increase for the exchange carried out in the first case, as long as, in the prudent people's opinion, it does not exceed the value of the formal or virtual transportation of the money from one place to another, taking into account the distance, dangers and rest of circumstances.<sup>1</sup> King Sebastian did not forbid these types of exchanges in the law he promulgated in 1570. What is more, he ratified them, as is clear to whomever reads said law. Pius V is of the same opinion in the Bull he published on exchanges.

The reason for accepting it is the following: the transportation of the money for the sake of whom solicits the exchange warrants a price, since the muleteer and navigator licitly charge payment for transporting money from one place to

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<sup>1</sup> Conrado, *De contractibus*, q. 99, concl. 4 y concl. 11, reg. 3; concl. 12, corol. 3, 5 y sigs, especialmente el 12; Juan de Medina, *De cambiis*, q. 4; Domingo de Soto, *De Iustitia ...*, lib. 6, q. 10, art. 1; Cayetano, *De cambiis*, caps. 1 y 6; Martín de Azpilcueta, *Manual ...*, cap. 17, no. 289; *Comentario resolutorio de usuras*, cap. final, no. 21; Gabriel Biel, *In IV sententiarum*, dist. 15, q. 11, art. 3, dub. 12; John Mayor, *In IV sententiarum*, q. 37, y otros; *Ordenanzas Portuguesas*, lib. 4, tit. 14, § 5.

another. And they charge more the greater the distance, the greater the dangers on the road, the greater the amount of money, and so on regarding other circumstances, which may increase the value of transportation. So too the banker licitly receives the stipend that corresponds to the transportation he is carrying out. And it is beside the point that, in general, the banker is not the one carrying out a formal or real transportation because in far away places he has employees or correspondents who carry out the payment of the money, because, as the doctors are right in pointing out, the person who solicits the exchange for a certain place is rendered the same service as if they [the bankers] were truly transporting the coins there. And the fact that they can do this easier than others and with minimum expense and no danger and almost no effort, is due to their cleverness and organization, and is not an impediment for them to be able to charge a proportionate stipend for the services rendered. Notice, however, that the means they have in many places to bring or take sums of money at the service of not one but many [people], and the possibility of dedicating themselves at the same time to other lucrative businesses, decreases the value of the transportation under discussion, and the banker may not in justice charge each one as if he actually took the coins of one and not of many. The just price of this exchange, if not appraised by the law—and it usually is not—cannot be established with absolute precision but fluctuates within certain limits that a prudent person should establish, in much the same way we said in Argument 348 the limits of the natural just price should be set. In order to judge if a price is right in these matters, it helps to know what is regularly charged, as long as more than what the circumstances call for is not charged through the tyranny of a monopoly or for the insatiable thirst of increasing the price of things. It is evident that the amount of those soliciting the exchange and the scarcity of bankers increase the price of this exchange, as, on the contrary, the amount of bankers and scarcity of those who solicit the exchange decrease it. It is the same as with everything: The multitude of buyers and scarcity of sellers make prices rise and, on the contrary, the multitude of sellers and scarcity of buyers makes them fall. Medina, Navarro, and Mayor have already observed this in the already referred to places, regarding the price of exchanges, even if Medina appears not to have understood the reason regarding virtual transportation.

In the type of exchange discussed in this and the following argument there is a combination of two contracts: one, the exchange of one coin for another,

which should be carried out respecting the equality; the other, the rental of services and the necessary activity to transport the money from one place to another, at least virtually. Because of this last [endeavor], a stipend may be received. Both in the money exchange, as well as in the payment of the increase for the service rendered or which shall be rendered, there is a transfer of property.

In the exchange we are referring to in the present argument there may be injustice on the banker's part, and there shall be obligation to retribute if he were to charge a greater increase than what was warranted for the services rendered. But there cannot be usury, as the banker does not formally or virtually grant a loan. But whoever signs with him an exchange contract does virtually grant the banker a loan, as he first gives him the money in one place so that it is returned somewhere else. The person who grants it may commit usury, because of which he would be forced to retribute. For example, if he realizes that the banker needs the money here and he gives it to him so that [the banker] gives him back the same amount in a distant place, because, in that case, he would be asking in addition to the capital for the effort of transporting the money to a distant place, which deserves payment. Thus, he commits usury and has to retribute the amount in which the transportation is estimated. So say Navarro and others in the places before cited. He would have the obligation of a much greater restitution if he stipulates that [the banker] give him an equal sum of money in a place which, for the reason we shall shortly explain, the money shall be worth more. Because, in such case, he would virtually receive a much greater increment for the money he gave in advance. But if the money had the same value in one and the other place, and the distance between them were not great, it could be presumed that the banker turns it [the increment] down out of generosity, or as a reward for other favors, due to the fact that the stipend for transportation would be small. But if the stipend were important, there would need to be sufficient reasons to persuade oneself in good conscience that the banker absolves him from his payment. And if two people needed to transport money, for example, one from Lisbon to Toledo and the other from Toledo to Lisbon, even if one of them is a banker and the other is not, it would be licit to hand over the money in one place in order for the other person to hand back the same amount in the other place. Because, as we shall see in the two following arguments, either one of them can licitly sell the virtual transportation of the money that the other needs, and there would even be more sense in licitly compensating each other for the respective transportations.

## Argument 404

### **On Whether It Is Licit for the Banker to Charge a Certain Increment for the Exchange He Gives When He Anticipates the Money in One Place to Recover It in a Different Place?**

Some experts considered this type of exchange to be illicit and usurious, and forced the person to restitute the increment thus received. They justified their opinion saying that it does not seem that the banker transports any money, which would be the reason why he could licitly receive said increment due to the services he rendered [by transporting it]; and there does not seem to be any other reason for that increment other than waiting for future payment, making it a formal or virtual loan, and therefore usurious, [as] the increment thus received [is considered such]. This opinion is defended in the *Ordenanzas Portuguesas*,<sup>1</sup> when they condemn this contract as usurious and consider the banker who acts in this way liable to the penalties established against the usurers.

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<sup>1</sup> *Ordenanzas Portuguesas*, lib. 4, tit. 14, § 6.

However, the contrary opinion seems more usual among the doctors, that is, that said contract of exchange shall not be usurious as long as the increment is not received for reason of the delay in payment but for the service and virtual transportation of the money. So say Conrado, Cayetano, Soto, Navarro, Juan de Medina, and others.<sup>2</sup> King Sebastian's law promulgated November 5, 1577, agrees with this opinion, [in which law] Portugal was conceded four fairs or markets that were never celebrated. That law authorizes, not only in fairs, but at other times receiving money in exchange in Seville to pay it back with a certain increment in Portugal. In his Bull *On exchanges*, Pius V not only does not reject this opinion but explicitly approves it.

This opinion may be proved by observing that the money that is given in a far away place is not worth so much that its delivery there may be compensated with the same goods that would be delivered here for [that money] if it had any value here. Because as far away money it is coupled to the transportation that with effort and expense shall carry out the person who must make the payment, there being a just price for this transportation. Thus, when the banker anticipates the money in one place and accepts receiving the payment in another place, if the person who receives [the money] is released from the effort and expense involved in transporting the money he has elsewhere, in order to compensate with [that money] the amount he receives here, the exchange dealer may receive as just price for the transportation he provides the same amount that another exchange dealer would receive from this same person in order for the money [the exchange dealer] gave him in the place where [the person] is to be paid in the far away place referred to in the contract with the first exchange dealer. And it is beside the point if this exchange dealer has a representative in the place where the money is, allowing him to carry out the money transference without any effort or expense, as this is something that happens *per accidens*, due to his fortunate situation. This service may be assessed in monetary terms.

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<sup>2</sup> Conrado, *De contractibus*, q. 99, lugares citados en la disputa anterior; Tomás de Vio Cayetano, *De cambiis*, cap. 6; Domingo de Soto, *De iustitia ...*, lib. 6, q. 10, art. 1; Martín de Azpilcueta, *Manual ...*, cap. 17, nos. 289, 290, 294; *Comentario resolutorio de usuras*, cap. final., no. 25; Juan de Medina, *De cambiis*, qq. 4 y 5; y muchos otros sitios.



This is the reason Cayetano identifies in the place already cited, and Navarro considers more extensively in the cited *Comentario*, numbers 62 and 63, and it is of no consequence if the banker hands over the money before receiving compensation for [the money] and for releasing the client of the effort of transporting extra money to carry out the payment (as both things should be paid). Because the fact that he shall expect payment for both the money he hands over as for releasing the client from the effort of transporting it is a favor he does for him, as long as he does not receive anything for waiting to get paid, unless it is because of profit ceasing. This point is proved in the fact that the banker who receives here the money to hand over [the money] that is needed in Rome, for example, to dispatch some Bulls, does not need any more cleverness nor incurs more expenses than the banker who with the same end in mind gives the money in Rome that will be returned to him later on. More so, the service he gives is greater as he gives before receiving. Therefore, what the banker could licitly receive in the first case he may also receive in the second, as he does not receive anything on account of the payment.

Regarding the arguments of [those] whose opinion is contrary [to this one] we should say that the banker under discussion transfers the money, at least virtually or as if it were real, since he releases the person who receives the exchange from the effort of transferring it, as we have already explained, and has been demonstrated with a just argument allowing for the increment. Regarding the *Ordenanza portuguesa*, it should be said that even if the *Ordenanza* considers that the contract we are dealing with here is illicit *ex natura rei*, and makes the banker liable to the established penalties against usurers, this is not so, as we have already proved, because of which the legislators were wrong and such law is not even in force in a court of law. We should add that King Sebastian approved such contract in the law he later promulgated.

From what has been said, we understand that someone who buys a thing in a far away place may pay a lower price [for it] than what it is worth over there when the seller cannot sell it there by retail, if he can bring it without great expense. And this is so even in the case in which the buyer can use it in the place where it is without expense, or can easily sell it by retail in the market for a just price. The reason is that, given the circumstances, the thing is really worth less for the seller who is released from much effort and expense in

selling it. All this is extensively explained by Cayetano and Navarro in the already cited places.<sup>3</sup>

From here I conclude that what the Genovese did in the kingdom of Castile was not something by nature unjust. Many Castilians who lived far away from Seville had annual revenues there that the king owed them for the money he had taken as tribute. When the fleet from the New World arrived in Seville, the Genovese handed over to these people lower annual revenues in the places where they lived, in exchange for the revenue they had in Seville. I do not condemn this exchange of one income for another if the difference that results from the lower payment is moderate, taking into account the burden they released the owners of such tributes from and, also, the great effort it was sometimes to recover from the ministers of the king the sums handed over.

From what has been said I also conclude that there is nothing illicit in doing something that I have been often asked about in Lisbon. Many ladies of the Lisbon nobility have annual revenues in Castile, which are given to them ordinarily by the ministers of the king at certain dates. One part of that income is given to a merchant as payment for getting the ministers of the king to pay them the whole amount, receive it, transfer it to Lisbon and give it to them. What is more, some of them [the ladies] allow a present to be offered to the minister of the king, leaving him a share of the owed quantity, so that when the merchant shows up to collect [the money] the payment is not deferred. In this matter, the king should set clear standards on how the ministers are to proceed, and prevent them from unjustly receiving these gifts and turn these mercenary payments into legitimate settlements. Of course, he should punish them and make them retribute the gifts received. The confessors, in turn, should question these ministers regarding these practices and force them to retribute the gifts that were offered in a not wholly voluntary way to avoid inconveniences to the creditors. On this issue some God-fearing tradesmen were questioned and told me that they went to these same places, and there received the money they needed for their commercial dealings, giving it back later in Lisbon from the money they had there. I have told them that the fact that it is useful to them and may do it with scarcely any work is no impediment for them to licitly

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<sup>3</sup> Tomás de Vio Cayetano, *De cambiis*, cap. 6; Martín de Azpilcueta, *Comentario ...*, cap. final, nos. 62, 63.

receive the amount of what is worth for these ladies to carry out their commercial dealings in such a far away place and the virtual transportation of the money. This shall be easier to understand when we explain the following argument.

The stipend they usually receive is the following: They give each lady the entire amount of the gold coins that is theirs (the value of the *ducat* in Portugal is 400 *reais*, while in Castile it is worth 374 *maravedis*), but for each *aúreo* they receive in Castile 11 silver *reales* and, in Portugal, only 10, so that for each *aúreo* or *ducat* they earn 1 silver *real*, which certainly does not seem excessive for collecting the revenues in Castile and taking them back to Portugal, although it is the prudent people who should judge this, and it is always wise to act with moderation in such stipends and profits, especially, since these commercial dealings demand little work, scarce effort, and no risk.

Regarding the exchange we are referring to in this argument, in general we should know that nothing is collected for the delay in payment, and because of this, anything that is collected over the rigorous just price that is owed for the other rulings, may not be drawn for the delay in collecting, and is usurious and liable of restitution. Because of which it is not more licit to receive it when the payment shall be granted later somewhere else than if the payment is to be granted instantly, or if the money had been previously handed over somewhere else in order to be handed back here later. This was established by Pius V in his Bull *On exchanges*. This, however, should be accepted as long as there is not a real profit ceasing for the delay in payment, as Navarro<sup>4</sup> says.

Even if Pius V forbids in his Bull that the banker fix from the beginning, or whenever, a standard interest rate, even in the case of absence of payment, as Navarro says when he declared these same words in the number cited, this is based on the hypothesis that it is collected for veiled usury and not for profit ceasing [that is a consequence of] the delay in payment. Because if it were received for a profit that really is ceasing, in the person's conscience it would be licit and just to receive it, and would not be subject to restitution. Because the law that is founded on a hypothesis does not apply to the person's conscience when it is evident that the opposite of what is assumed happens to be true.

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<sup>4</sup> Martín de Azpilcueta, *Manual ...*, cap. 17, no. 301.

To prevent any usury from taking place on account of late payments, in the same Bull *On exchanges* Pius V prohibits exchanges made to any but the next fair, if the bills of exchange were signed for a place where these were being celebrated. And if the [bills of exchange] were signed for a place where a fair was not being celebrated, bills of exchange should not be given but for the nearest fair, according to the custom of allowing changes for that place. Of course, if the next fair were so close in time that it would not be possible for the bills of exchange to arrive on time in order to carry out the payment, then the “next fair” would be considered the following one, as what they are talking about is the next fair in which the payment can be carried out.

Navarro, in the number 301 cited, says when explaining these words that it is not forbidden to arrange the payment for the second, third, or fourth fair, as long as for extending the deadline the exchange is not increased more than if it were arranged for the nearest fair. Because it is considered a service and an act of charity to grant a greater time to pay without an increment, something the pope has no intention of prohibiting.

A God-fearing merchant from Lisbon did not concede exchanges but for the next fair, according to what Pius V’s Bull ordered, and asked me about this. You should know, he said, that the instrument we merchants negotiate and obtain profit with is money. And the longer you have to wait at one place for the next fair, the greater the number of merchants who take exchanges for that date, and the less time there is for the fair the fewer the merchants who want exchanges for that place, and with lower increments. That is why, if the fair of Medina (for example) is celebrated in four months, the exchange market for that fair would be regularly more expensive than after one month went by and, [after] only one month went by more expensive than two months gone by, so that, ordinarily, the less time there is until the fair, the lower the increment that is given or taken for the exchanges. The reason for this is that the longer payment for the exchange is deferred, the greater the increment that is given and taken because of the greater profit for the merchants; and the less it is deferred, so much less is given, because of the lower profit for the merchants.

My question, asked the merchant, is the following: When there is a longer period of time until the next fair may I licitly receive all the increment that is currently offered in the exchange market, or should I refrain myself from such great increment for considering I have received it for the greater delay in payment, and for this reason, in an usurious way? If I have to refrain myself, he

added, no one will want to grant the exchange in those conditions, as we merchants negotiate and make a profit with money. And if the God-fearing among us refuse to grant those exchanges, only the greedy shall take advantage of them, and consequently since those who grant the exchanges shall be fewer and many more those who solicit it, such increment shall increase, a thing not only detrimental to the God-fearing but also harmful to the public affairs and to those who solicit exchanges.

I answered that there is no reason why one should refrain from carrying out those exchanges at the current market price, as the abundance of solicitors shall make the price increase, if not for reason of the transfer of money then for other rulings that we will shortly discuss. And the fact that this is the current price in the public market greatly contributes to consider it just. We should add that the scarceness of merchants who give and take money to exchange, and the profit obtained when dealing with money are circumstances that make the price of exchange rise, even for those who take the exchange not for negotiating and earning money but with other ends in mind.

The doctors agree that everything received in excess of the capital when money was given to someone else to be given back with an increment in another place where, however, he does not have money nor anyone to pay for him, but it is presumed that it shall be paid with the increment in the same place where the exchange was carried out, is usurious and subject to restitution. This is the kind of exchange that the nobles receive in the Spanish territories to pay, for example, in Flanders or in France with the usual increment for the exchanges for those places, where they neither have money nor anyone to pay for them.

In view of the fact that in this type of exchange money is not transferred, whether formally or virtually and, in point of fact, no one who has money in a place is released of the effort of taking it to the place where he took the exchange, as there is not even an exchange of money in one place for money in another, but of money here for money also here, it is evident that to receive an increment should be considered usurious or “dry exchange,” as something would be charged for reason of delay or deferment of payment.

There is even greater injustice in allowing such individuals, in the case of not being able to pay in the place and time established beforehand, to re-exchange the bills of exchange from that place to this one with a new increment. In such a contract there are two unjust exchanges with obligation to

restitute both increments. And the banker may not excuse himself by writing to the place for which he gave the first exchange saying it is the people who took the exchange and did not pay it there who are to blame for the absence of payment, because he was willing to receive the money there. So say, among others, Cayetano and Silvestre. Today Pius V thus defines it at the beginning of the Bull *On exchanges*.

In Portugal, King Sebastian established in law in 1570 that whoever carries out an exchange in such way is subject to the penalty of losing *ipso facto* the totality of what he hands over. And the person who takes the exchange may not waive the right this law grants him, and even if he were to pay, he or his heirs could claim what was thus handed over. It also established severe penalties for the person who received an exchange under these conditions and gave back something to the banker in money or an equivalent. And the law he later promulgated regarding these exchanges, in 1577, does not modify this opinion in anything.

Navarro and Silvestre say that in order for the exchange not to be usurious and dry it is sufficient that, even if the person who receives it for a certain place does not have at the moment of receiving the exchange neither money nor someone to answer for him there, it is probable that he shall have it by the time that has been set for payment, which will allow him to pay it, whether because he hopes to obtain the money through a loan or because he shall take it with interest for another place, or in any other way. I believe, however, that this should be understood when he is hoping to obtain the money from a third party and not from the person whom he has to pay or from his representative.

What happens if the banker gave money in exchange for a certain place to someone he thought could pay him there, but then it happens that said person has no money or representative there but will pay in the same place where he received the exchange? May the banker justly accept in this case the increment on the exchange in the same place where he delivered the money? Whatever others may say, I believe that the banker may receive in this case, not only compensation for damages and losses that he has suffered for giving him the money—because if he had not given it to him he could have given it to someone else in exchange or he could have used the money in some other respectable business, but also, even if they are small losses he may also receive an amount as compensation for the opportunity he has missed for using the money that he should have received together with the increment in the pre-

established place, and he may obligate the person who took the exchange to put that money with the increment at his own expense in the pre-established place, if that were possible. I believe this because the contract was licit in itself, entered into in good faith on the banker's part, who furthermore has fulfilled it. And because it is not an innominate contract, it may force the other contracting party to fulfill his part, if he is able to fulfill it, or if he is not able to, to pay in the place where they are the total amount of what the banker would have paid for the contract to be fulfilled in that other place, according to the legal dispositions. This was said in Argument 253 and, especially, in 255. And this is valid not only in conscience but also in a court of law.

Although if there are any signs that the banker knew or should have known that the person with whom he was dealing with did not have any money nor representative in that other place, the contract shall be condemned as usurious in a court of law, and the banker shall be liable to the usurers' penalties. What has been said may be confirmed. Because frauds and tricks should not benefit their instigators. And also, as said in Arguments 327 and 380, the sale of something belonging to someone else on the thief's part is a valid contract, not in the sense that the buyer acquires the property of the thing, but in the sense that the thief, in case of eviction, is responsible as long as it is convenient to the buyer that [the thief] be considered owner of the thing. What we said in Argument 352, regarding someone who in good faith bought some oxen to a supposed owner who was renting them, is in accordance with the above.

## Argument 405

**Answers to Some Questions Regarding What Has  
Been Said in the Two Preceding Arguments.  
What Can Be Said About Those Who for a Salary  
Bring with Them the Horses They Needed to Rent  
for the Trip? Is It Licit to Receive an Increase for  
the Exchange Carried Out from One Place to  
Another Within the Same Kingdom?**

First question. There is uncertainty as to whether the two types of exchange we have explained in the two preceding arguments, in which an increment over the principal was collected, are licit not only for public bankers whose job it is to practice exchanges but also for the regular citizens. The answer is affirmative, because the service rendered in favor of whom asks for the exchange is worth that increment, whoever the person is rendering the service, and there is no law prohibiting the exercise of such type of exchange to regular citizens.

Second question. Let us suppose that someone had money, let us say, in Lisbon, and had to transfer it to Flanders to buy some goods, pay some debts, or with some other end in mind, and let us suppose that this person had thought of giving it to a merchant so that he returned it in Flanders with some kind of



discount. Finally, let us suppose that some other person came along who needed in Lisbon the money that he had in Flanders and asked the first person to exchange the money he had in Lisbon for the one the other had in Flanders, for which he would pay an increment. May the person who has his money in Lisbon licitly accept the increment they are offering him, given that he is very interested in transferring the money from Lisbon to Flanders, just as the other is in bringing his from Flanders to Lisbon? The answer has to be affirmative, as the service he carries out for the other person is really worth that increment, and if that happens to be to his advantage, it is something that occurs *per accidens*. In contracts what matters to see if they are just or not is if what one person does is equivalent to what he receives from the other in compensation, and this is what happens in our situation, as affirm Soto and Medina.<sup>1</sup>

Something similar happens when someone takes to a particular place a horse that he rented and that he had to give back to the owner, incurring certain expenses. If he found a third person who was willing to rent the horse to travel to the place of origin, he may licitly rent it for a just price, without there being an impediment that in so doing he saves money for the expenses he would incur in order to return the horse. And since there is equality between the use of the horse, which is what is granted, and the price that is paid for it, the contract thus entered shall be just, even if on the other hand, and *per accidens*, he obtains an economic advantage.

Similarly, I believe the following: Let us suppose that someone decided to rent a horse to travel to a certain place, and he found someone else who, without knowing of this trip, wished to hire him to take a horse to that same place. It must be said that he may licitly rent out his services and receive a just stipend for the job of taking the horse, without it being an impediment for doing so that he is taking the horse to the same place he was thinking of traveling, saving money on what he would have spent to rent the horse himself. The reason is the same as above: that the service he renders the other person deserves remuneration, even if *per accidens* it brings to him a greater advantage. I also say that if one were looking for someone to take a horse to a certain place and found out that another person has a need of a horse in that same place, both

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<sup>1</sup> Domingo de Soto, *De iustitia* ..., lib. 6, q. 10, art. 1; Juan de Medina, *De cambiis*, q. 5.

could agree to mutually render themselves the service, reciprocally absolving themselves from the total or partial price, as what is agreed between them shall be considered just. The reason is that neither one is obliged to enter into the agreement in order to benefit the other, nor needs to mix the contract in which they agree to render a service with another different contract. But if for reason of the personal need that is simultaneously satisfied one of them wanted to give a discount or reduction, it is something he may do. The same must be said about two merchants who know of the mutual need of transferring money from one place to another.

What was said above is consistent with strict justice and theoretical strictness, as moral and fraternal charity reasons may request loosening up that strictness. However, one may not condemn as guilty the person who does not wish to loosen up his position; or at least, he may not be accused of mortal sin.

In the cited issue, Juan de Medina affirms that if someone needing one thousand *ducats* in Flanders gives them to a merchant in the Spanish territories so that he looks for someone who wants to receive them in exchange and give them back in Flanders with an increment, he would commit usury, because in doing so he would put his money in Flanders with a profit for himself. I do not see how this may be judged as usurious as, in truth, the owner of the money uses the right he has to give it for an exchange, this being an operation in which anyone else who did not need money in Flanders could make a profit on it. And the fact that *per accidens* his money is transferred to Flanders as he expected, does not make that contract illicit, as we have already explained and Medina himself concedes. The fact that there is an invitation to directly or indirectly practice a money exchange—which in all other respects is just—does not make it illicit either.

As for the last part of the argument, namely, whether it is licit to receive an increment or benefit for the exchange carried out from one place to another in the same kingdom, as would be from Seville to Medina, even if Soto denies it, Dr. Navarro affirms it in the earlier cited *Comentario*,<sup>2</sup> and argues that it is by nature licit as long as the increment is moderate and proportional to the distance. I fully agree with his opinion, and it may be proved correct in the

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<sup>2</sup> Ibid., *De iustitia* ..., lib. 6, q. 10, art. 1; Martín de Azpilcueta, *Manual* ..., cap. 17, no. 290; *Comentario resolutorio de usuras*, cap. final, no. 28.

following way: If the activity of carrying money from one place to another outside the kingdom deserves remuneration, the same goes for carrying it within the kingdom itself, although it should be less significant if the distance is lesser and fewer the dangers of transportation, especially since there is no prohibition to transport the money within the kingdom itself as there usually is to take it out of it. And so we see that the students' errand boys justly charge their price for the formal transportation of money, and they may charge it even if they do not transport the money materially but only in a virtual way, receiving it in one place and later handing it over at the students' residence place. I do not believe Soto had any intention of denying this, but only that that transportation did not deserve such high prices as the merchants usually charged the nobles for picking up the money they gave them in the King's Court to take it to the place where the nobles have their income and residence. This is the way merchants usually conceal usuries.

Even if this is so by nature, both the citizens as well as the foreigners in this kingdom are forbidden from giving money in exchange in order to take it from one place to another in the kingdom with an increment or interest, or to take it to a fair carried out in the same kingdom.<sup>3</sup> The penalty established is the loss of all the money for the person who received it in exchange, and all the penalties established against the usurers for the person who gave it.

In Portugal, instead, even if King Sebastian prohibited these same [actions] in the law he promulgated in 1570, he later allowed them in those cases in which the money was received in one of the four fairs he established in Portugal (and which were never carried out) in order to reimburse it in one of those other fairs, or when the money was received someplace else than where the fairs took place in order to pay it in the following fair. Apart from this, the same king Sebastian, in one of his resolutions prior to the 1577 law (of which I have a copy), revoked that first law from 1570 in what regards the exchanges considered licit according to Pius V's Bull, the Portuguese law, and the natural law. The result of which is that in Portugal today it is not illicit to exchange from one place to another in the kingdom, charging an increment, as long as this is moderate.

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<sup>3</sup> N. R., 5, 18, 8 (N. N. R., 9, 3, 3).

In the places cited earlier, Navarro says that these laws that prohibit the exchange of money between places in the same kingdom should apply only to the cases in which the banker hands over the money first and later receives it with an increment somewhere else, as there may be concealed usury, such as for example, if the increment were received for reason of the loan being made, or the delay in payment, but that [the laws] should not apply when the banker first receives the money that he shall give back later somewhere else as, in this case, there is no danger of committing usury nor of concealing it. However, the prohibition in these cases could be an impediment for transferring the money from one place to another, thus being detrimental to the regular citizens and to the common good. I believe that the law of Castile cited earlier does not apply to these cases due to the fact that in them money is not given for an interest, the activity such law expects to correct.

It is worth asking oneself if in the case that someone—against what these laws regulate—received for the exchange carried out from one place to another a retribution that would be considered licit and just if it were not for such laws, he would be forced to retribute such amount *ipso facto*, that is, even before the judicial decision was issued. My opinion is that the answer is negative, because, in truth, the service rendered is worth what has been received for it. Even if the contract were null for reason of such laws (which does not seem to be the sense of the cited law of Castile, which only prohibits doing it under severe penalties), the person receiving the money would not be forced to give it back before a judicial sentence was issued forcing him to, and not without taking before a just compensation for the service rendered gratuitously. What happens in this case is the same as in those contracts where some goods are exchanged for others: If the contract is annulled, the one who carried it out does not have to give back what he received if he in turn does not get back what he gave, or is compensated for it. And even if the law enforced it, in this matter it should be considered as mere penal law, which would lack power in the conscience's realm before the judicial sentence was issued.

## Argument 406

### **On How the Same Amount of Money May Have Twice As Much Value in Different Places**

In the three preceding arguments we have examined one of the rulings or reasons for which the exchange carried out from one place to another charging an increment over the principal may be licit. Before examining two other reasons for which this type of exchange may be licitly practiced we must explain the issue before us.

A same amount of money may have more value in one place than in another in two ways: first, because according to the law or accepted custom it has, in comparison to other coins, a different value in places that are also different. Thus, for example, a *ducat* is worth 400 *reais* in Portugal and 375 *maravedis* in Castile; and a silver *real* is worth 34 *maravedis* in Castile and today it is worth 40 in Portugal. And in the kingdom of Valencia the *real* is worth fewer *dines* than in Cataluña. The *dines* are the smallest common copper coins in those kingdoms. In other places, the *real* has different values. Consequently, 11 silver *reales* are worth 374 *maravedis* in Castile, and in Portugal they are worth today 440 *reais*, disregarding other places for the time being. The gold *escudo*, which in the past was worth in Castile 10 silver *reales* and 10 *maravedis*, that is, 350 *maravedis*, was worth in Rome 11<sup>1</sup>/<sub>2</sub> *julios* (the *julio* is

equivalent to the silver *real*), and in France and in other places it had different values. Today, in Castile, its value has increased to 400 *maravedis*.

There is another way that money may have more value in one place than in another: namely, when it is more abundant. In equal circumstances, the more abundant money is in one place so much less is its value to buy things with, or to acquire things that are not money. Just as the abundance of merchandise reduces their price when the amount of money and quantity of merchants remains invariable, so too the abundance of money makes prices rise when the amount of merchandise and number of merchants remain invariable, to the point where the same money loses purchasing power. So we see that, in the present day, money is worth in the Spanish territories much less than what it was worth eighty years ago, due to the abundance of it. What was bought before for two today is bought for five, or for six, or maybe for more. In the same proportion has the price of salaries risen, as well as dowries and the value of real estate, revenues, benefices, and all other things. That is exactly why we see that money is worth much less in the New World, especially in Peru, than in the Spanish territories, due to the abundance there is of it. And wherever money is less abundant than in the Spanish territories, it is worth more. Neither is it worth the same in all parts because of this reason, yet it varies according to its abundance and all other circumstances. And this value does not remain unaltered as if it were indivisible, yet fluctuates within the limits defined by the people's estimation, the same as happens with merchandise not appraised by law. This money's value is not the same in all parts of the Spanish territories, but different, as ordinarily it is worth less in Seville—where the ships from the New World arrive, and where for that reason there is usually abundance of it—than what it is worth in other places of the same Spanish territories.

In addition to this, the greater need of money there is in one place, for example, to buy merchandise, war expenses, the Royal Court's expenditures, or for any other reason, makes money there be worth more than in other places. What is more, these same reasons make money worth more at some times than in others in one same place. Money that in one place is exchanged for money in another place functions as merchandise not appraised by law, whose value rises at some times and falls at others, depending on whether there is more or less need of it. That is why, the abundance of one type of merchandise, the

greater or lesser need of it and the greater or lesser number of merchants who want it, make its value rise or fall in a particular place. This is exactly what happens with money: its greater or lesser abundance in one place, the need there is of it, the greater or lesser number of those who want to exchange it for diverse places and of those who can and want to accept those exchanges, are the reasons for which money at a certain time is worth more in one place than in another, or at different times. And even in the same fair and in one same place, it shall be worth more or less according to whether at the beginning, middle, or end of the fair there are more or less people who need money and want to take it in exchange for other places, and more or fewer people who want to hand it over.

When in the kingdoms and republics the value of larger coins is appraised in relation to the smaller ones, such rate only applies to the exchange of some coins for others in a same place, and in the purchase of goods in that place. The kingdoms and republics have never wanted to appraise the coins as far as the value we are referring to now, that is, to exchange them for coins in other places, as this value is not constant, even if the other [type of value] is appraised by law. And because it is a just value even after the legal appraisal, appraising them [the coins in order to exchange them for coins from other places] would be to the disadvantage of kingdoms and republics, whose merchandise would start going scarce due to this [appraisal]. That is why the custom has always rightfully and notwithstanding the appraised price respected the fact that coins had this other variable value when exchanging them for coins in other places. And in his Bull Pius V approved this type of exchange with an increment.

I explained that the money from one place that is exchanged for money in another, etc., functions as a merchandise not appraised by law, etc., because concerning the place where it is it always retains the value appraised by law or accepted by custom. Because even if in Medina or in any other place where exchanges are usually taken, the value of money varies because the exchange is given more expensively for one place than for another, and even in one same place the exchange is given more expensively to some people than to others due to the fact that it is not indivisible and during the same fair it may vary according to the circumstances, however, in comparison to Medina itself and to the merchandise that is bought there at different times, or to pay debts, it

always maintains the price appraised by law, and according to that price merchandise is bought and debts are paid, even if that other value of the coin increases or diminishes. What is more, in all the places where the exchange has to be compensated, the amount of money to be paid according to the contract entered into is always estimated according to the value appraised by the law for the money in that place.



## Argument 407

### **If Coins That by Law or Generally Accepted Custom Had a Different Value in Relation to Other Copper Coins of a Lesser Value, in Places Also Different, Can They Be Justly Exchanged Between Those Places Keeping to the Equality?**

The issue is of great utility, and worth knowing seeing that the practice of the merchants and the doctrine of many doctors do not agree with each other. Some look for weakly ploys and try to make them prevail in order not to condemn the practice in some places, this being so that if their main assertion were true, such practice would be usurious, especially if the banker gives the money first so that it is later returned to him in another place. Consider that in this argument we are not discussing the increment the banker may licitly charge for reason of the exchange, nor the rulings that allow him to licitly charge it. We are discussing the commutation itself (putting aside such rulings and such increment), and want to know if there is an equality when money that in comparison to the small copper coins is worth less is exchanged for the same money to be delivered in a place where in comparison to the copper coins it is worth more, or if, on the contrary, there is no equality in such practice, and such excess or difference must be compensated in order for there to

be equality in the contract, and, thus, if the one changing the money in the place where it is worth less should reduce the exchange of the similar coins that he has to give back in another place. And vice versa, if the one who carries out the exchange where they are worth more may and should increase in the exchange the respective increment.

Some examples. When the *ducat* began to be minted, it was worth in Castile 375 *maravedis*, in Portugal 400 *reais* and, in Flanders, its value in what they call *gruesos* in that province was equivalent to 400 *reais* or *maravedis*, according to the estimation of the merchants and to the consensus in exchanges and in all negotiations. But since today there is no coin that has precisely that value—as said in Argument 400—the *ducat*'s value in these three regions is still the same to the present day, whatever the coin used to pay. What is more, if in the exchanges, or in any other business or contract, the *ducat* is suddenly mentioned for any reason, its value is understood to be in Castile 375 *maravedis*, [and] in Portugal and in Flanders 400 *reais* or *maravedis*. The question, therefore, is: when those gold coins had that value in former times, and when today, that they no longer exist, they speak of *ducats* in the exchanges making reference to the explained value, do they observe the equality when exchanging a *ducat* in Castile for a *ducat* in Portugal or in Flanders? And vice versa, when a *ducat* in Portugal or in Flanders is exchanged for a *ducat* in Castile, do they observe that equality?

Another example is that of the silver *reales* that in Castile are worth 34 *maravedis*, in Portugal 40, and in the kingdom of Valencia are worth a lower amount of *dines* than in Cataluña (the so called *dines* are each worth  $1\frac{1}{2}$  *maravedi*). The question is: Is due equality observed if 100 *reales* in Castile are commuted or exchanged for the same number in Portugal, or, the other way around, 100 in Portugal for the same amount in Castile? Or, in a similar way, 100 *reales* in Valencia for the same amount in Barcelona, and the other way around? The result of this is a much greater increment for the *ducat*, as 375 *maravedis* make in Castile 11 silver *reales* with 1 *maravedi*, and in Portugal 400 *reais* make only 10 silver *reales*. The question is: Is due equality observed in the commutation or exchange of 100 *ducats* in Castile for the same amount in Portugal, and the other way around, of 100 in Portugal for the same amount in Castile? Because if the value of a coin in comparison to the small copper coins is in one place greater than in another, but they are considered equal in the exchange from one place to another, we have here a new ruling for which

an increment may be taken through the exchange from the place where it is worth more to the place where it is worth less, and for reason of which the exchange shall have to be reduced, in order to make it on both parts equitable and just when it is carried out from the place where it is worth less to the place where it is worth more.

Navarro believes that if someone gives 100 *ducats* in Castile to get the same amount back in Portugal, or if he gives 100 silver *reales* in Castile to get back the same amount in Portugal, it is not a commutation on equal terms but an unjust and usurious loan.<sup>1</sup> Because, he says, the *ducat* and the silver *real* are worth more in Portugal than in Castile; and he refers to the time when the silver *real* was worth a little over 36 *reais* in Portugal, and when the *ducat* was worth 11 silver *reales*, which amount to 400 *reais*. And the same would say Navarro in the other examples we have included. Others who wrote after him were of the same opinion.

Even if Soto is of the same opinion when the same coin is worth more in one place than in another,<sup>2</sup> and gives the example of a *ducat* worth more silver *reales* in Italy than in the Spanish territories, when the *reales* have all the same value, or the *ducat* is worth more *gruesos* in one place than in another, I do not know, however, if he would say the same in the examples we have included.

Navarro's argumentation: Navarro's argument is that the copper coin that is called *real* in Portugal has the same value as the Castilian *maravedi*. Because in the same way that said copper coin is worth in Portugal six *ceptis*, and half of it is worth three, in Castile too, in the time where they had *cornados* and *meajas*, six of these were worth one *maravedi*, and three were worth half, which in Castile they call *blanca*. Today, in the kingdom of Galicia, six *cornados* are worth one *maravedi*. Therefore, since the value of the *maravedi* and that of the Portuguese copper *real* are the same, it is unjust to receive in Portugal one silver *real* with a value of 36 *maravedis* for one silver *real* received in Castile with a value of 34 *maravedis*. And it shall also be unjust to receive in Portugal one *ducat* of 400 *reais* for a *ducat* worth 374 *maravedis* received in Castile.

<sup>1</sup> Martín de Azpilcueta, *Manual ...*, cap. 17, no. 295, *Comentario...* cap. últ, nos. 60 and 61.

<sup>2</sup> Domingo de Soto, *De iustitia ...*, lib. 6, q. 12, art. 1.

This may be proved as follows: If one same measure of wheat is worth more in Portugal than in Castile, as usually happens, it is certainly unjust to commute one measure of wheat in Castile for an equal one in Portugal, even if the wheat from Castile is better than that of Portugal. And it would be usury to be loaned one measure of wheat in Castile for an equal one in Portugal, since the value of the one received in Portugal is greater than the [loan] of wheat that was given in Castile. For this same reason there shall be injustice and usury, with obligation to retribute, if a loan of 100 silver *reales* or 100 *ducats* is received in Castile for a same amount to be given back in Portugal, since more would be given back in Portugal than what was received in Castile.

Contrary to this, and always has been, is the practice of merchants who are more familiar with the estimation of goods than the scholastic doctors, and whose judgment we should abide by in these matters, especially when applied to the dealings they carry out with one another in which none of them complain or object. In the issue set forth concerning commuting money from one place to another, the merchants refer to the silver or gold coins which, taken from one place, maintain their value in all parts, more than to the copper ones, because these, as coins, ordinarily have a different value in the different kingdoms and regions, and the [coin] that is valuable in one place has no value in another, and for reason of the copper they possess they are worth almost nothing, because of which the expense of taking them from one place to another exceeds the value of the copper they are made of. That is why the merchants, for their exchanges and dealings from one place to another, do not take the small copper coins as standard to measure the value of those made of gold and silver, but on the contrary, they make gold and silver the measure of value of the copper coins in that place. That is why, in many places, they carry out the exchanges for diverse places using as unity the silver *marcas* (which we call *marcos* and the Latin *selibras*). And when they carry out the exchanges in *ducats* or *escudos*, as they were usually carried out for the Spanish territories or from the Spanish territories, given that the silver *real* was readily accepted in all places and the majority of the exchanges were paid off with it, they decided that when dealing from one place to another, the silver *real* would have the same value in all places. That is why, since that *real* has a different value in different places due to appraisal or custom, they decided that the small copper coins that in different places have been made the measure of the silver *real* (and, consequently, of the *ducat* and the *escudo*) should not have the same

value to buy merchandise in that region, nor to pay debts or carry out exchanges of small coins for other bigger ones. The value of small copper coins is different in the proportion in which the number of copper coins that are given for a silver *real* in one region exceeds the amount of coins that are given for it in another region. And so, among merchants, it was decided that the *maravedi* from Castile should be worth more than the Portuguese *real*. And today, in comparison to the same Portuguese coin, it has a much greater value than before, because the Portuguese silver *real* has increased its value to 40 *reais* from the 36 *reais* it was worth before.

The merchants are of the same opinion regarding the *maravedis* in Castile in comparison to the *gruesos* in Flanders, and the same should be said about the copper *denarios* from the kingdom of Valencia in comparison to the copper *denarios* from Cataluña. In agreement with this opinion is the law Charles V promulgated on exchanges, according to what Navarro<sup>3</sup> says when he states that 375 *maravedis* from Castile are worth in Portugal 400 *reais*, when he is talking about the time before the silver *real* was worth in Portugal 40 *reais*. And even if Navarro, in the cited number 60, says that one should not abide by such law, the truth is quite the contrary, as it is reasonable and such law is supported by the general opinion and the merchants' practice, which has so much weight to determine the just price of things. Another substantial argument is the one saying that the more copper coins that, according to the law, should be given for a silver *real* and for other silver and gold coins, the lower the price of the small copper coins. Experience showed in Portugal that as soon as the silver *real* increased to 40 *reais*, there was an immediate increase of the price of things expressed in those small copper coins.

If Navarro's opinion were true, today usury would be carried out by the person who gave a loan of 1,100 silver *reales* in Castile in order to get back only 1,000 in Portugal, or what is the same, the person who gave a loan of 100 *ducats* and 11 silver *reales* in exchange for only 110 *reales* to be received in Portugal. This would be usury, and the person who gave the money in Castile would be forced to retribute 26 *maravedis* for each *ducat*, because 11 *reales* of each *ducat* he loans are worth in Castile 374 *maravedis*, whereas for the 10 *reales* he receives in Portugal he would receive 400 *reais*. And if these have

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<sup>3</sup> Martín de Azpilcueta, *Comentario* ..., cap. últ. no. 30.

the same value as the Castilian *maravedi*, our man would receive in Portugal 26 extra *maravedis* for each *ducat* given in Castile. Who is the fool who would be willing to give in Castile 11 silver *reales* and 26 *maravedis* in exchange for only 10 silver *reales* he would receive in Portugal? Or who would accept in Portugal only 10 *reales* in exchange for 11 and 26 *maravedis* he would have to give back in Castile? Is there anyone who can be persuaded that such contract is equitable and just? I do not think so.

But one should take into account that such increase in the value of the gold and silver coins in relation to those of copper in the province itself where the increment is decided upon, has a certain importance, since from then on those coins shall be used to pay greater debts than before, and it shall be possible to buy more goods than before. As that is the reason why more silver and gold coins of that type arrive from other regions: that something is gained from bringing them to this province. Because of which such increase slightly reduces the price of bartering and exchanging said coins from the place where they are worth more.

Regarding this there cannot be a better rule than to pay attention to the current price in the exchange market, and to the exchanges the merchants carry out among themselves from one place to another, and to accept that price as just and accepted by the merchants' common estimation. It should be noted that after the value of the silver *real* increased to 400 *reais*, and 10 *reales* amount to one *ducat* of 400 *reais*, if changes are made from Portugal to Castile or from Castile to Portugal taking the *ducat* as unity (as was usually done before), one should note that the exchange from Portugal to Castile has lost almost the eleventh part of its old value in the same way that the *ducat* has diminished in an eleventh fraction. On the contrary, the exchange from Castile to Portugal increased almost in an eleventh part of what the Castilian *ducat* exceeds the Portuguese [*ducat*].

There are, however, today some Portuguese who grant exchanges from Lisbon to Medina for an equal amount of *ducats*, and wait to be paid a whole year, which is manifest usury and explains why a certain God-fearing merchant from Medina warned us, when I was in Lisbon, to be against this type of usury and ruin to one's own conscience. Because if such is the way 100 *ducats* are given in exchange in Lisbon, it turns out that for 1,000 silver *reales* that are given in Lisbon they want to be paid 1,100 in Medina after a year's time, deceiving other learned men by saying that they have granted exchanges on an

equal basis, that is, a *ducat* for a *ducat*, but without telling them that the Castilian *ducat* exceeds the Portuguese *ducat* in the eleventh part of its value. And the confessors pay no heed to this.

To Navarro's argument we answer by denying that the Portuguese copper *real* has the same value as the Castilian *maravedi* when the exchanges are from one place to another. Because even if in the past one was worth six copper coins, called *ceptis* in Portugal, and *cornados* and *meajas* in Castile, when the silver *real* increased its value in Portugal in comparison to those copper coins, the value of these—called *reais* and *ceptis*—diminished in the same proportion in comparison to the *maravedis* that in the past were called *cornados* and *meajas* in Castile, as has already been explained. We admit the antecedent and deny the consequence for the argument of confirmation, as we have already explained that the *ducat* was never more valuable in Portugal than in Castile, and today it is worth much less.

## Argument 408

### **On the People Who Travel from One Place to Another to Carry Out Exchanges**

Before embarking upon the last reason for which in the exchange of money from one place to another the price may licitly be increased and sometimes it is better to reduce it, we must explain a few practical issues on exchanges, which shall put an end to all this subject. And before anything else, who is involved in the business of exchanging.

Three types of people, who depend on each other, are involved in the exchanges. One type are the merchants, who on their own or through their own delegated employees (whom they call *factores*), or through correspondents, practice trading in different places, such as Lisbon, Seville, Medina, Flanders, Genoa, Florence, Venetia, and the Green Promontory, The Isle of Santo Tomé, several places in the New World, the East Indies, and other similar places, taking from one place the things that are worth more in others, and sending to the first ones those that are more valuable there. The following examples shall make it clearer. From Portugal they send to Flanders oil, salt, wine, pepper, and other things that arrive in Portugal from the East Indies, Brazil, and other lands in the Portuguese trading area. From Flanders they bring to Portugal all the things that are necessary in Portugal itself, and in the



East Indies, Brazil, and all the other regions that trade with Portugal. There is a similar commerce between the kingdom of Portugal and the several provinces and cities of the Spanish territories, France, Italy, and so forth. From there they bring paper, books, silk, scarlet fabrics (they call *rajas*), and the rest of merchandise that is necessary in the kingdom of Portugal, and in the provinces of its commercial area. And, in turn, from Portugal they send to those places those things that from Portugal and its commercial area are offered with an advantage. To Seville they bring from many provinces and cities in Europe those things that are typical of these places, and from diverse places in the New World and the Islands of the Ocean, subject to the crown of Castile. From Seville, in turn, they send to several provinces the things that there is abundance of in Seville, namely, in addition to money and great quantities of gold and silver that arrive there from the commerce with the New World, other innumerable merchandise, characteristic of the Betica,<sup>1</sup> or, particularly, brought from various places across the sea. Other similar examples may be found in other provinces and cities. Consequently, the most important merchants of each province do business in several places, so that at times they are owed money for the merchandise they have sent and at others it is they who owe money for the merchandise they have bought and carried away. At times they are in need of money, and at others they have an abundance thereof. That is why, in all those places they need employees and correspondents, and what they call credit, that is, people who accept their bills of exchange in that place and pay the amounts they order, and who receive the amounts that other similar bills of exchange order be given to them, managing their business in that place.

From all this multiple and varied negotiation they carry out in diverse places it comes to pass that, often, merchants need for their dealings and profits the money they have in other places in abundance, which gave origin to the practice that whoever needed money in one place demanded of those who had it there in abundance to exchange it for the money that they had somewhere else, or for a place where they could pay more easily. Thus, the merchants helped each other in the exchanges to facilitate their dealings and profits. This was the beginning of the exchanges between merchants, the only ones who practiced

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<sup>1</sup> Tr. note: *Bética*: Relative to that old Roman province, today Andalucía.

them among themselves. On the other hand, the exchange usually resulted in a profit in the place where it was remunerated, whether because the exchange itself deserved that the person carrying it out would benefit from it, as was proved before, or because ordinarily those to whom the money was given in exchange by doing business and buying merchandise to take to other places where it was worth more obtained a much greater profit than those who had given them the money. Consequently, anyone who had money, attracted by the chance of profit they saw in the exchange and by the safety of the business and the little effort, started to help merchants in the main business centers, and give them money in exchange, in different places in their own name or in the name of their employees and correspondents. And this business was so profitable that, exercised with ability, it brought about a great amount of money to the places where, for its very conditions, they expected it would be worth more. They even took money in exchange with a small interest for those places from which they could later give it in exchange for other places with a greater interest. And so it happened that many people ceased trading to dedicate themselves entirely to the business of exchange. And this is the second type of people involved in the practice of exchanges. They happen to be only, or mainly, exchange dealers by profession, who help the merchants in one way or another and depend on them in their business.

These people need to have their correspondents in the places where they practice trading and grant the exchanges, no less than the merchants. They also need to have credit there, for which they need people in those places to whom they can send bills of exchange to be cashed in that place, and who in their name [the exchange dealers'] give the money they have there for exchanges, whether for the place where the main banker lives, or for another where the increment is greater or is expected to be in the future. All according to the orders received, or to whatever they deem more convenient according to the circumstances.

Also the main exchange dealers often need to exchange money in the place where they are in order to take it to other places where they can make a greater profit with it in new exchanges drawn to other places, or to transfer it through successive exchanges to the place where they shall need it and expect it shall be worth more, or for other reasons of usefulness or convenience. Frequently, it is also true that they find it useful and necessary to take money in exchange in other places, whether because they need the money to pay for the exchanges

they bought for that place, or to send it through successive exchanges to the places where they shall need it, because they think it shall be worth more there. For these and other reasons, the main exchange dealer, no less than the merchants themselves, need correspondents and credit in several places.

This negotiating with exchanges is frequently carried out with credit, obtaining great profit, more so than using one's own money in cash, even though having a lot of money in different places greatly contributes to success. Because even if an exchange dealer does not have much money, if he has credit and correspondents in several places and, also, is skillful, he can give orders so that in his name his correspondents take money in exchange at those times when it is worth less to take to those other places where it is worth more, and where he will be able to pay for them more easily, and then, he can order again to give a certain amount of money in exchange with a greater increment at a time when it is worth more, or for those places where it shall be worth more, or is expected it shall be. And so, taking in exchange money from some and giving it to others, they can make a great profit with the money that initially was taken in exchange.

In a similar way, an exchange dealer has a special ability to speculate on the time and place in which money shall be worth much more for its scarcity and for the need merchants and many others shall have of it: for example, when the prince in that place is preparing for a war and collects all the money of the region, whence it is likely believed that the merchants of the fairs in that region will have great need of that money as not rarely happened in Flanders when Charles V dwelt there. If our exchange dealer in addition to foresight had the ability to transport through successive exchanges a great amount of money to have it ready at the correct time and place, he shall be able to obtain great profits by giving money in exchange with large increments for the places from where he took it out of, and on the fourth month, or later, he shall recover the money in a much greater quantity in the same places.

The third type of men who dedicate themselves to the business of exchanges are those called bankers. Their job, in those places where commerce and exchanging are the main activities, consists of receiving the money that the merchants and exchange dealers deposit in their *bank*, and be trustees of that money, pay the amount of money ordered by the depositors, keep a written account of all the amounts received and given under their orders, have the tally with their dealings with other clients always ready. Before they assume their

responsibilities, these men have to bring in guarantors and post a legal bond in those republics where they are to practice their occupation as guarantee that they will practice their occupation with integrity and pay the whole amount of what they receive in deposit.

These bankers, says Mercado, are somewhat different in Seville and in the places where they celebrate fairs, such as Medina and other similar places. Because in Seville, there are so many advantages to such deposits that they do not receive any other retribution, and they still consider it no small benefice that merchants and exchange dealers want to deposit their money in the bank, and utilize their services in that region. Navarro says this is also what happens in Rome and in some places of the Gaul and the Spanish territories.<sup>2</sup> Because the bankers, with the money that has been deposited, make a profit sometimes of 2,000 or 3,000 *ducats* in three or four months, giving it for exchanges or negotiating with it during the time in which the owners do not need it, or sending merchandise to the New World and other parts, from where they obtain no small profit. Sometimes it happens, though, that when the winds of fortune change they collapse into extreme poverty, being in danger and subject to harm by those they brought in as guarantors. When they are reduced to such poverty that they cannot pay the deposits and other debts, they say the bank has gone *bankrupt*. But as long as fortune is not so unfavorable to them, since they have deposited the money of many merchants and exchange dealers (from Lisbon, Genoa, Florence, Medina, Toledo, etc.), and from many of these they have many thousands of *ducats*, it never happens that all the depositors need their money so that they do not leave many thousands of *ducats* in deposit, which the bankers can do business with for their benefit or loss. Because these bankers, as everybody else, are the true owners of the money that is deposited in their banks, which makes them very different from other depositaries, as we shall explain later when discussing deposits. Consequently, if the money perishes, it perishes for them and not for the depositors, as they receive the money not in custody and to give back the same numerical amount, but to be ready to give back an equal amount whenever the depositor solicits it. Therefore, they receive it as a loan, under temporary use and enjoyment, and, consequently, at their own risk, so that they return it all at once or in installments when it is required of them and in such way as is required of them.

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<sup>2</sup> Martín de Azpilcueta, *Manual ...*, cap. 17, no. 293.

There are other bankers, especially in the places where fairs are celebrated, who receive the money from those who want to deposit it in their bank. These pay the letters of payment that the depositors send them, give or take money according to their instructions, keep an account of everything given and received and, finally, keep the clients' accounts. For this reason, at the end of the fair they receive from each one of these the price for their work, greater or lesser according to the volume of business carried out. Mercado says that, ordinarily, these commissions furnish each banker with 1,500 or 2,000 *ducats* in each fair.

Regarding the bankers, especially those of the first type, they should be cautioned that they mortally sin if the money they have in trust is engaged in their businesses to such a great degree that they are later unable to give back in due time the amount that the depositors request or send to disburse with a charge from the money they have deposited. Also, they are compelled to retribute the damages, including the profit ceasing, of not having complied with the order they had received to pay. Because the money was received in trust with the obligation of returning it when ordered to do so, and, thus, when the time comes and they do not pay, they sin against justice and against the pact they have with the depositors, because of which they shall be compelled to retribute the damages that followed, including the profit ceasing. Also, they mortally sin if they dedicate themselves to the type of transactions where they run the risk of getting involved in a situation where they will be unable to pay for the deposits. For example, if they send such a great amount of merchandise across sea that in case of shipwrecking, or the ship being caught by pirates, it is not possible for them to pay for the deposits, not even by selling their assets. And they not only mortally sin when the business ends badly, but also even if it were to end favorably. And this for reason of the danger they exposed themselves to, causing damage to the depositors and guarantors that they had brought in themselves for the deposits.

Regarding those who deposit their money with those bankers who do not charge anything, either for the deposit or for the rest of services we mentioned before, it is uncertain if the depositors should pay them an adequate stipend (regardless of the fact that the bankers are able to obtain advantages when doing transactions with the money that has been deposited), or, if they do not,

commit usury in not paying it. Navarro responds affirmatively.<sup>3</sup> The following argument apparently proves this opinion: Such deposit is really a loan, as has been said, and the property of the money deposited is transferred to the banker, because of which in case it perishes, it perishes for the banker. Therefore, regardless of the profit the banker manages for himself by dealing skillfully with the money deposited, even if it were a great one, the depositors may not demand nor receive from the banker any money, nor anything that is worth [that money], for that deposit and loan. Otherwise, they would commit usury and would have to retribute what they received.

This argument proves it is about, not so much a deposit in favor of the depositor, but a loan in favor of the banker, even if *per accidens* the money that the clients enter their bank accounts happens to remain in his power, the same as the money of a loan remains in power of the borrower. That is why the argument is not as sound as it would appear on the surface. Because as we said in Argument 405, when two people have a simultaneous need, one of returning a horse to a certain place and the other of renting a horse to go to that same place, either one of them may refuse to sign any other contract that is not one that cedes his service in favor of the other, for which he may receive the adequate price even if such contract brings about a great advantage for himself. Likewise, in the issue above, the banker may decide not to receive in his bank the money of others if they do not pay for the rights of custody and pay for the rest of the services he renders, and it shall be no impediment that such deposit shall provide him benefices, namely, that with such money he may carry out transactions and gain a profit. For all of this, the banker may licitly enter an agreement for an adequate stipend for such services, and may receive it regardless of obtaining a greater profit.

But on the other hand, it should be said, on the contrary, that the merchants and exchange dealers, in view of the profit the banker obtains when dealing with that money and of the need he has of it for making a profit, may not want to enter with him but a loan contract in terms that are favorable to the banker and, thus, doing him a favor by choosing him to others who would also like to [enter the contract]. It shall be no impediment to [carry this out] that with such a loan they manage to protect their money, and they get it back all at once or in

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<sup>3</sup> Ibid., *Comentario* ..., cap. ult., no. 40; *Manual* ..., cap. 17, no. 295.

installments whenever they want. Therefore, if they only had the intention of entering a loan contract, as they are capable of doing and we presume is their wish, they shall certainly not owe anything to the banker for protecting the money, [something] that is linked to the contract *per accidens*, and even if *per accidens* it happens that, as with the rest of the borrowers, they do not owe anything for such protection.

They shall not owe him anything either for the effort or for the service of counting the money, either when he receives it or when he pays it, and whether it is to the depositors themselves or to others by their orders (just as nothing is owed to other borrowers for these services, as the contract is favorable to them). Neither will they owe [the bankers] anything for reason of what is given and received, even if it is necessary to write down some documents for this, as the lender does not owe anything to the borrower for the documents that for the debts' security are signed at the time of making or paying the loan, for the borrower's own security. Because as the loan is carried out for the benefit of the borrower, it is he who has to pay for all the expenses, and not the one granting the benefice of lending.

And if the banker rendered other services to the depositor, apart from the inherent advantage to this type of loan that brings about so many benefices to him, he shall only be owed the corresponding stipend for them, unless, as is reasonable, he shall want to fulfill them gratuitously as compensation for the benefice of what it means to be chosen among all [other bankers] to carry out the deposit with him and give him access to so many advantages. Or unless he renders these services as gifts in order to attract merchants and exchange dealers to enter the money in his bank and not in others. That is why in this matter I would not worry the merchants and exchange dealers. Especially, since if a banker were ungrateful and wanted stipends on top of the great advantages and profits gained from the deposits, he would deserve the withdrawal of these. And since the merchants and exchange dealers rightly believe that these are gratuitous, if one of them did not want to carry it out [gratuitously], there shall be many others willing to readily carry it out. That is why, the merchants and exchange dealers who find out *a posteriori* that the services that they thought free of charge were not, are not forced to pay them, as they did not intend to buy them, but to receive them as compensation for the greater benefices that they were conceding with their choice, and they would have easily found someone to give them free of charge. Because of which, if the banker intends to

charge for the services, he shall have to say it beforehand so that the merchants and exchange dealers are bound to pay them. We shall later explain this more carefully, when we deal with business management.

As for the second type of bankers, all the doctors agree that they can licitly receive a stipend from each one of the merchants who does business with their bank. Because receiving, counting, and safekeeping the money, counting again when returning it, carrying a record of the transactions with third parties, giving them a copy, all with the risk of making mistakes in counting, examining, settling accounts, in accepting bills of exchange from those who at that particular time do not have the money in the bank, and being responsible for their debts, all this has a price, so much the greater because in order to render these services a person of a certain category, with some talent, ability, and qualifications is required, and [so much greater] the greater the profits they earn. The stipend is not appraised by law but is left to the parties' discretion. That is why [the merchants] in whose benefit the banker renders these services usually pay the banker at the end of the fairs what is proportionate to the managed business according to the prudent man's judgment, as said earlier.

It should be noted that although in some places they have the three types of persons we have talked about in the present argument, in others, however, it is the merchants themselves who do the work of exchange dealers and call themselves bankers. What is more, in the same places where there are people who have posted a bond before the authorities in order to be depositaries and carry out the profession of bankers, there are, in addition to them, merchants who give money in exchange. And there are public bankers who practice trading with their own money, and who by their own authority grant exchanges with their own money to their own advantage or disadvantage.



## Argument 409

### **On Some of the Ways in Which Money Is Paid for in the Exchanges. On Bills of Exchange. May the Bankers Licitly Receive Any Other Stipend?**

In order to understand the practice of exchanging and examine if the bankers may licitly receive any other stipend, there are a few things worth examining. There are many who say that the exchanges are received in many places, but Mercado states that neither in Rome nor in Seville do they commonly receive them.<sup>1</sup>

There are two ways in which bankers receive the money: one, in cash, by giving currency to them; the other, by bills of exchange, or any other letter of payment given to them, by virtue of which the person who has to pay the bill starts owing the bank the amount stipulated there to be paid into the account of the person who enters the bill in the bank.

And just as there are two ways of paying the money to the banker, there are also two ways in which he can pay: one, in cash; the other, without utilizing currency and by doing one of the following: by transferring the amount to the

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<sup>1</sup> Tomás de Mercado, *Summa de tratos y contratos*, cap. 13, Sevilla, 1571.

bank account of one of the bank's debtors, from where it shall be charged; by furnishing a bill of exchange for a place where the creditor prefers; by setting up the bank as debtor for that sum in relation to the creditor who wishes the money to be paid into the account he has in the bank, or in relation to others to whom the creditor transfers the credit and they prefer to enter the amount into their bank account, or pay with it a debt that they have with the bank.

This is the reason why in the fair of Medina or in any other where many go to buy merchandise, even if there are many transactions carried out in cash, the majority are through documents that prove that the bank owes them or that it accepts paying by entering the money into the bank. This is how deals are closed, by compensating some debts with others and through the signature of bills of exchange issued to different places.

Also note that the bills of exchange are drafted utilizing several phrases and so, in some of them it says: "As soon as you receive or read the present [document]," or some such sentence. These payments are usually called "in full view," because the money has to be paid the moment the bill is shown and read. Other times it says: "On such day or in so many days, months, or whatever it is, after receiving the present [document]." In that case, the money must be paid on the appointed day. In some bills it says: "In such fair," for example, Medina or Amberes, you shall pay a certain amount. In that case, one should abide by custom, and if [custom] were that such bills had to be paid at the beginning of the fairs, then they should be paid at that time. However, I believe that usually, the custom is to pay at the end of the fairs, when there is a fixed time to pay off those debts, formalizing through signed documents the majority of the transactions that are previously carried out; since money is not so abundant that it allows buying in cash the enormous amount of merchandise that is taken there to be sold if the payment is to be carried out in cash, nor that it allows carrying out so many transactions. The merchants call this period in which accounts are closed and money is given to those who are creditors "setting up the tables"<sup>2</sup> for the payments in the fair, and "opening the exchanges."<sup>3</sup>

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<sup>2</sup> Tr. note: In the original: "montar las mesas."

<sup>3</sup> Tr. note: In the original: "abrir los cambios."

What Soto says<sup>4</sup> on fairs and the practices of exchanges is in keeping with what has been said. His sources of information are the accounts of merchants. He says that in the kingdom of Castile there are four main fairs, spread out according to the four seasons of the year, and they correspond to another four fairs in Flanders and in other places. In these fairs they accept exchanges for other fairs held in different places, and for places where they do not have fairs. In a similar way, in other places and other fairs they accept exchanges for these ones.

The first of these four fairs takes place in Medina del Campo in the month of May, and in them they set up the tables and open the exchanges on the fifteenth day of July, and the payments last until August 10. This fair corresponds to another one in Flanders in the month of September, where they set up the tables and open the exchanges on November 10, and the settlements last all month.

The second fair takes place in the other Medina, the one they call Rioseco. There the exchanges open on September 15 and last until October 10. This fair corresponds to another in Flanders, which takes place at Christmas time. There they open the exchanges on February 10 and the settlements last until the end of the month.

The third fair takes place in Medina del Campo in October, and in it the exchanges open in December, and the settlements last until the end of the month. This fair corresponds to the fair of Resurrection in Flanders, where the exchanges open on May 10 and last all month.

The fourth fair takes place in the region of Villalón. Its exchanges open in the middle of Lent and last until Resurrection. It corresponds to the fair in Flanders in June, where the exchanges open in August and last until the end of the month.

However, sometimes the four fairs that take place in Spain, especially that of Medina del Campo, continue by order of the king until the arrival of the fleet from the New World, or for other reasons, according to Soto. The purpose of this practice of carrying out the exchanges between the Castilian fairs and those of Flanders is allowing only three months for the payment, which is the period of time until the next Flemish fair, and is considered sufficient to send

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<sup>4</sup> Domingo de Soto, *De iustitia* ..., lib. 6, q. 12, art. 2.

the bills of exchange from Castile. Inversely, the same amount of time is granted between the fairs of Flanders and those of Castile. Because if in the fair that in May takes place in Medina an exchange dealer draws up the balance at the end of July or beginning of August for the fair of Flanders, the money should be paid in Flanders in the next fair, that is, the one in September, when the exchanges are opened there. According to Soto, the same happens regarding the other fairs that are related to each other.

The above should not be interpreted as if money in cash could not be taken for the exchanges at the beginning of the fair and during the year even if there were a need to do it; or as if the bills of exchange that have been sent in which a payment is ordered on a certain day, or as soon as they are handed over, cannot be paid at that moment and had to wait until the exchanges are open and the tables set up. Note that it is not considered that someone is buying on credit if the price is debited from his own bank account, even if the payment is not in cash for the time being, because the banker shall pay in cash whatever is the balance due, in any case at the end of the fair. In the fairs it is considered that someone is buying on credit when he buys to pay at some other time. Finally, you should know that the bills of exchange are not usually addressed to the banker, but to one of his representatives who will assume responsibility for the amounts indicated in the bills of exchange. The representative enters the money in his bank account so that the bank pays the money on the day specified in the bill of exchange—if its specifications were to pay an amount to whoever presents it—or receives the money on behalf of the one sending the bills of exchange if it is ordered in it that such amount of money be paid to its sender or representative in that place.

Once explained this, Mercado, Soto, and Navarro<sup>5</sup> report that in many places the custom is that the banker, when he pays the bills of exchange in cash, charges a five or six per thousand over the amount paid, a commission he does not receive if the payment is not in cash but using bank accounts in any of the ways described above. Thus, when someone charges the bank what is owed to him, he receives the total amount of what the bill indicates, because when the banker enters the amount into the account he enters the total amount

<sup>5</sup> Tomás de Mercado, *Summa de tratos y contratos*, cap. 13; Domingo de Soto, *De iustitia* ..., lib. 6, q. 11, art. único; Martín de Azpilcueta, *Comentario* ..., cap. últ., no. 37 y sigs.; *Manual* ..., cap. 17, no. 293.

that he shall pay in cash when the time comes, unless there is a compensation that shall prevent him from paying in cash. However, and after all, both if he pays the total in cash as if he pays part of the amount entered, he charges a five or six per thousand from the amount he pays in cash. That is why the sellers of merchandise sell them more expensively to anyone paying through the bank. In addition to this, the seller shall have to wait until the end of the fair to collect. This explains why when selling in fairs, the merchants ask what the method of payment shall be before fixing a price.

In order to better understand when the things we are talking about take place, and in order to expose some abuses, we point out that when one deposits money in cash in the bank to withdraw it later, the banker does not charge this five or six per thousand but gives a free service. For the same reason, if the depositor sends bills of exchange, or other similar ones, so that from his money something is given to another person, the banker does not receive anything for carrying out this delivery in cash, since he does not have just motive to do so, nor do I think it is the custom. What is more, they tell me that in some places, the banker usually gives the depositor an interest of four or five per thousand as compensation for the profit earned from using the money deposited, and that in other places, the custom is that if the depositor has deposited, for example, 10,000 *ducats*, he obtains credit with the banker for another 5,000, so that if the depositor authorizes the bank to make payments of up to 15,000 *ducats*, the bank takes charge of them, and compels himself to pay them without getting any stipend for that greater credit and the obligations he takes on himself.

Although it seems Soto accepts this at the end of the last article,<sup>6</sup> both practices are usurious by nature if the banker carries them out by virtue of a pact and not out of generosity or gratitude, as it would mean a profit originated in a loan since, as we have proved before, this type of deposit is equivalent to a loan. Navarro<sup>7</sup> and Mercado agree with us in the above-cited place.

But if the banker were to do it out of generosity and gratitude, as a reward for the benefit received and with the intention of encouraging the depositor with this favor to continue his deposit, it shall not be usury nor sin, as long as scandal is avoided.

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<sup>6</sup> Domingo de Soto, *De iustitia* ..., lib. 6, q. 11, art. últ., ad finem.

<sup>7</sup> Martín de Azpilcueta, *Comentario* ..., cap. últ. no. 4; *Manual* ..., no. 293; Tomás de Mercado, *Summa* ..., cap. 13.

In the cited chapter,<sup>8</sup> Mercado says that this is so only when whoever sends the bill of exchange does not have any deposit in the *bank* where the payment is to be authorized; because, in that case, in order for the *bank* to feel compelled to pay that money at the end of the fair, it is an accepted custom in some places to charge a five or six per thousand, to be paid in cash, in addition to the stipend that is usually charged for managing the business of its usual clients. He considers that this is a good enough reason, because the guarantor may licitly charge an adequate price for the obligation he assumes in lending, as we saw in Argument 319. So the same may be said of the banker who assumes the obligation of paying that money at the end of the fair in the name of whoever sends the bill of exchange: He may justly receive a reward. Aside from this, Mercado points out that the bills of exchange are sent to the representative in the following way: In such a fair you shall pay one thousand and shall consign this bill in the bank with a six per thousand commission for paying it. The point of this, he says, is that one thousand and six are deposited in the bank so that whoever presents the bill can charge the total amount to the person who sold him the merchandise, and the bank pays him in this way at the end of the fair. When the banker pays in cash a part of the money at the end of the fair to the person who presented the bill, or to whoever he ordered it be paid to, the banker shall receive the six per thousand of what he paid in [cash]. The result of which is, all things considered, that those six per thousand are paid by the person who sent the bill and in it he cedes those six per thousand to whoever accepted it as means of payment. The six per thousand shall go to the banker if he pays the bill in cash. And whoever draws the bill is acting in his own interest when he concedes those six per thousand, because since he does not have money in the bank, he would have to take it in exchange in his own name, and exchanges are very expensive during the fair, as there are many who want them to be able to carry out their dealings. But once the fair is over they are not as expensive. Therefore, instead of taking money in exchange they prefer to draw a bill with a six per thousand commission so that the banker takes responsibility for paying the one thousand when the fair is over.

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<sup>8</sup> Tomás de Mercado, *Summa ...*, cap. 13.

Soto<sup>9</sup> seems of this opinion, although he does not explain it as clearly, and suggests that in the kingdom of Castile the law says that those six per thousand should be paid to the banker when the payment is settled in cash. But Navarro is right when he rejects this opinion, because if a law existed before approved by Ferdinand and Isabella, they themselves revoked it.<sup>10</sup> Navarro absolutely condemns the custom of charging a five or six per thousand to the person to whom a payment is made by order of whomever deposited the money in the bank,<sup>11</sup> and says that the banker has the obligation of restituting that six per thousand to the person it was charged to. The only exception is the case where the person that should receive the restitution has already sold the merchandise at a higher price for reason of such charge, or when he simply wants to exonerate him. But in this matter mere presumption is not enough, and the reason for this is that everything the banker does he does as a service for the person who gives the order to pay that sum of money, and in whose name he acts. Therefore, it is to him he should ask for the stipend, and not to the person [the banker] pays.

Navarro supposes that the custom is that, when the payment is in cash, they do not consign in the bank one thousand and then six that the banker shall receive in the end, but only the one thousand owed to the person for whom the money is consigned. He even says that it happened to him to go to the bank to collect some money they had sent him in a bill of exchange from another place and the banker refused to pay him without charging the six per thousand, and since all his arguments were useless to convince him, he was not able to rightly receive the money. I shall give my opinion on this matter in a few conclusions.

First conclusion: In the case where the banker takes responsibility for paying an amount of money at the end of the fair on behalf of someone who does not have money deposited in the *bank*, it does not seem that the banker should be condemned for collecting a six per thousand of what he pays, especially if it is the custom there. This because he has just reason to charge it, namely, accepting the obligation, as Soto and Mercado rightly say.

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<sup>9</sup> Domingo de Soto, *De iustitia ...*, lib. 6, q. 11, art. único.

<sup>10</sup> N. R., 5, 18, 5.

<sup>11</sup> Martín de Azpilcueta, *Comentario ...*, no. 37; *Manual ...*, cap. 17, no. 293.

Second conclusion: That interest should be formally or virtually paid by the person in whose name the money was entered into the bank in the first place, and not by those who are to be paid. This may be proved with Navarro's argument: that the obligation the banker assumes, in truth, is assumed by himself and not by the person in whose name the money was first deposited, and in whose favor he pledges to carry out the payments. Therefore, that is the person who should pay the stipend, and not those to whom the payments are made. If, as Mercado says happens, someone who owes another person 1,000 *ducats* consigns 1,006 in the bank because of the stipend that the banker shall receive at the end, it is he who shall formally pay such stipend. However, if he were only to consign one thousand because that is the value of what he bought from the other person, and this person knew about or should know about the operation, the banker would be able to retain from those one thousand the amount corresponding to his payment and, in such case, the person in whose favor the money was consigned in the bank shall pay the stipend.

Third conclusion: When 1,000 *ducats* are consigned in the bank and that is the amount that has to be paid in cash to the person in whose name they were consigned, without [this person] having any reason to think differently, the banker may charge for himself the stipend taking it from the 1,000 *ducats* he pays in cash, as one should deem that he wanted to obligate himself with the requirement of receiving the usual stipend. It is evident that the person to whom the one thousand were owed in their entirety has a right to request from the person who consigned the money to pay the 1,000 *ducats*.

Fourth conclusion: When there has not been a previous commitment on the banker's part to pay in cash in someone else's name, the banker may not deduct any amount from what he pays in cash, but must make do with the stipend that in any case he should collect from the person whose business he manages. This may be proved because the counting and paying of that money, if he gives it so that it is returned to him in the same place, has the characteristics of a loan, because of which he may not licitly receive more than what was loaned.

Here, I must refer to another abuse bankers usually put into practice. When there is an amount of money consigned in their bank to pay at the end of the fair, if the person for whom it was consigned in the first place in order to pay creditors from whom he has bought merchandise demands that the money be paid before the end of the fair, the bankers usually give it to him but charging the interest, which is usually charged on money given in exchange to other



places or any other interest. Therefore, whatever is received in this way is usurious and must be restituted, as the anticipated payment is virtually a loan, because of which anything that is received for it shall be usury, unless it is received for reason of the profit ceasing the banker incurs when he anticipates the payment, which rarely happens. So much more shall it be considered sinful, when the time of payment comes and in order to prevent the payment from being delayed, to receive something from the creditor. So, too, do these have obligation to retribute, because everything that is received in this way is only halfway voluntary, and is received unjustly when it is not a sign of the generous spirit of the giver.

## Argument 410

**On Exchanges and the Different Value  
of Money in Different Places,  
Not in Comparison to Small Coins Any Longer  
but Because of Concurrent Circumstances.  
Thus, We End Our Study on Money.**

In Argument 406 we introduced a distinction in the value of money, considering it according to a double aspect. In the second of these, money, not this or that from a certain region, but all of money is worth more in one place than in another comparing equal amounts in one and the other, even if in one and the other place they are equal coins as far as material, weight, metal alloy, and the seal itself, and to which the law has assigned the same value in comparison to the other coins in the place. We were saying that this value does not originate in the currency itself, but in the circumstances, and is a very inconstant value, which is not fixed in an indivisible point but moves within certain limits. It is like the value of the other merchandise, which as long as it is not appraised by the law is not fixed in one exact point. What we are trying to find out now is if for reason of the difference in this type of value it is licit to increase the price of exchanges from one place to another or if it is more convenient to reduce it sometimes according to the greater or lesser value that money has in that place.

Soto, Navarro, and others respond affirmatively,<sup>1</sup> and their opinion may be proven because the commutation of two things which are equal in value is in itself licit. Therefore, if at one point 360 *maravedis* in Flanders are worth the same as 400 in Medina (for the scarcity of coin in Flanders and the abundance in Medina, and for other concurrent reasons), it shall be licit—if all other circumstances are equal—to exchange 360 *maravedis* given in Flanders for 400 to be delivered in Medina. And, quite the contrary, it shall be licit to exchange 400 given in Medina for 360 to be delivered in Flanders, the same as it is licit to exchange one hundred units of wine or oil given in the Spanish territories for eighty that are given in Flanders. And on the contrary, eighty that are given in Flanders shall be exchanged for one hundred to be given in the Spanish territories, as eighty units of wine or oil are worth in Flanders the same as one hundred in the Spanish territories, reason for which wine and oil are taken to Flanders.

For this motive, it is frequently licit to exchange a greater amount of currency, which is handed over in the place where the currency is worth less, for a lesser quantity that shall be handed over where as currency it is worth more. And, quite the opposite, it is also licit to exchange a lesser amount of currency where as such currency it is worth more for a greater quantity to hand over where as currency it is worth less. According to Soto, in the cited place, and Mercado,<sup>2</sup> the exchange dealers take into account today this greater or lesser value of money for their exchanges from one place to another. And this is the way they justify the exchanges they carry out.

Against this argument—most important reason for the exchanges from one place to another such as they are practiced today—someone could argue: If in the place where there is less money and more need of it, it is licit to exchange a lesser amount in order to give back a greater amount where there is a greater abundance and lesser need [of it]—and this because due to circumstances, money is worth less in one place than in another—it follows that it is licit in

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<sup>1</sup> Domingo de Soto, *De iustitia* ..., lib. 6, q. 12, arts. 2 y sigs.; Martín de Azpilcueta, *Comentario* ... cap. últ., nos. 51, 59, 65 y sigs.; *Manual* ..., cap. 17, no. 294 y sigs.

<sup>2</sup> Domingo de Soto, *Ibidem*; Mercado, Tomás de, *Summa* ..., lib. *De los cambios*, caps. 5 y sigs.

one same place to exchange a smaller amount of money at the time when in that place it is scarce and there is a greater need of it, for another greater amount to give back at a time of greater abundance of money and lesser need. Now then, no one shall admit the consequent and, in consequence, neither the antecedent.

Soto, in the cited article 2, denies that one thing follows the other, and gives no other reason but that when money is given back in the same place and at a different time, it will be a loan, and for reason of the loan, nothing may be collected. But when the money is given back somewhere else there is an exchange of two things of equal value, although unequal in amount, which is licit.

However, this solution is not acceptable, because also in the loan, if what is given back is equal—at the time in which it is given back—to the value of what was loaned—at the time in which it was loaned—the contract shall be licit, without there being any problem in giving back a greater amount than what was received. For example, it shall be licit to loan two units of wheat at the time when each one is worth two *ducats* in order to get back four units at the time of harvest when it is estimated that each unit shall be worth one *ducat*, since here is seen the equality between what is given and what is received, even if there is inequality in the amount or number of units. What is more, it would be usury to lend four units of wheat in times in which each one is worth a *ducat* to be given back as many units when it is estimated that each shall be worth two *ducats*. Thus was said in its place in the ruling *Naviganti de usuries*, and Soto himself approves of this. Because of which, if a lesser amount of money is now worth because of its scarcity and need the same as a greater amount shall be worth later in that same place for the abundance they expect, there is no reason to deny that one thing follows the other.

The true reason for which this inference should be denied appeared at the end of Argument 406. Money, both if there is scarcity and need as if there is abundance thereof, should never be considered merchandise in relation to the place where it is, but always retains the price or value appraised by law or accepted by custom (I am talking about the countries in which the prices of coins are fixed and do not depend on the will or pact between the private persons), and, because of this, in relation to that place it is not worth more at one time than another. Its value only varies when exchanging for coins from another country, as was explained there. One should take into account, however, that for reason of profit ceasing, because money was lent at a time in

which there was less abundance of it in order to get it back when there was a greater one, one may receive an increase that is equivalent to the estimated profit ceasing. For example, at a time when money is scarce and therefore the price of things drops, if the person who has money had been thinking about buying things to make a profit or to support his family and had to do without this opportunity in order to lend money to someone else, when giving the loan he may agree an increment on the loaned capital that is equivalent to the estimated profit ceasing. Likewise, the one who when lending foresees that later he will have to buy at a higher price whatever he needs for his family, may agree to an increment that is equivalent to that loss occurring. In a similar way, if he was thinking to give money in exchange for another place with a good profit, which he has to do without when accepting that the money be given back in the same place, he may agree to an increment that is equivalent to the profit he is being deprived of.

To sum up all this matter of exchanges practiced from one place to another, and bring the rest of the argument to an end, we must consider simultaneously three rulings to judge if the exchange is just or not, and to judge what increment it is just to collect in each case, and when—in order for the exchange to be just—not to collect any increment to begin with, or even to receive a sum that is inferior to the one handed out. And we are not referring here to dry exchange, which we said enough of in Argument 404 but to the rest of exchanges carried out from one place to another. We shall proceed with those three rulings but not in the same order in which they were presented.

The first ruling is the different value a coin may have in comparison to the petty coins. Thus if the exchange is carried out reckoning in larger coins, such as *ducats*, *escudos*, or silver *reales* (which is the custom), and if the value of these coins is different in the place where the exchange is being carried out and in the place for which it is given, it has already been proven in Argument 407 (against what some doctors think) that although one should consider somewhat this greater or lesser value, this should have a very small influence in the increase of the type of exchange, if it is to be considered just.

On the contrary, if the exchange is carried out expressing the amounts in petty coins (which is not frequently done), for example in *maravedis* to be given back in *reais* in Portugal, and vice versa, then, as the *maravedis* are worth in Castile more than the *reais* in Portugal, as was proven in that argument, one should take into consideration such difference of value. Because,

abstaining from other arguments which allow the type of exchange to rise or fall, if for 374 *reais* given in Portugal an equal amount of *maravedis* were received in Castile, it would not be an exchange of equal for equal and, thus, it would be unjust and there would be obligation to retribute. Because in Portugal, for those *reais* they would give us a little over 9 silver *reales* and, in Castille, for the *maravedis*, they would give us 11 whole silver *reales*.

The second ruling is that of the formal or virtual transport of money from the place where the exchange dealer gives the money to the place where he receives it. By this ruling the exchange dealer may increase the exchange as much as the value of said transport is estimated according to the prudent people's judgment, taking into account the distance between both places, the difficulty of transport and all other circumstances, as we explained in Argument 403 and the two following ones.

The third ruling is the different value of money in diverse places due to the abundance or scarcity of it, the need there is of it and other circumstances, as we have explained in the present Argument and in Argument 406. But although by virtue of this ruling—and the same goes for the virtual transport—it is licit to frequently increase the exchange, it happens sometimes that by reason of this ruling it shall be necessary to reduce it so that the exchange is equitable and just. For example, when the value of the money in the place in which it is given is lower in comparison to its value in the place in which it has to be received, as has already been said. And if the value of the money in the place in which it is given is inferior in an equivalent amount to the cost of transport, then, in order for the contract to be equitable and just, the exchange should be carried out for equal sums of money, compensating the cost of transport with the inferior value of money in the place where it is given. If the cost of transport were to exceed that difference, the excess may be reflected in an increment in the amount to be received for the exchange. On the contrary, if the difference exceeds [the cost of transport] then and only then shall it be necessary to increase the amount of money given in comparison to the one received in order for the contract to be just.

However, neither the cost of transport nor the excess of value that money has for this third ruling can be fixed with all precision but shall be just within certain limits. That is why it is sufficient that the contracting parties do not break away from the limits of what is just. Consequently, the bounds specifying what is just in the exchanges, taking into account all the rulings for which

the type of exchange may be increased or decreased, may not be fixed with all precision, and there shall be a greater laxness the more rulings there are according to which the justice of the exchange from one place to another is to be judged.

Soto says that when this third ruling may be applied, namely, charging an increment because money is worth more where the exchange dealer hands it over than where he receives it, it is not licit to charge on top of this another increment for reason of the virtual transport of the money, unless perhaps a very small quantity.<sup>3</sup> This may be confirmed because when you transport for me an amount of money from a place where it is worth less to another where it is worth more, the increase in value should be in my favor, as I pay for the transport. Therefore, if the exchange dealer charges a price for the formal or virtual transport, he may not besides licitly charge more because of the greater value money has there, and, if he charges for reason of the greater value of money in that place, he may not charge for the transport, as he is not transporting anything for the person who takes the money in exchange.

Despite this argument, I believe it more plausible to state that it is licit to charge something for the virtual transport or, rather, for the discharge it means for the one asking for the exchange of not having to transport the money. This is evident because when giving the equivalent value to him in the place where he needs the money he is really discharged of the job of transporting and taking it there, and that is something that deserves remuneration and may be sold. Therefore, in order to accomplish this in his favor I may receive a just stipend, notwithstanding the fact that I may *per accidens* get the job done easily and without expense through a correspondent I have there, as was explained in Argument 403. This is so because to the prudent merchants' judgment, 370 in Flanders are worth the same as 400 in Medina, for example, and apart from that, the virtual transport of money from Flanders to Medina (or rather being discharged of the need of taking care of the transport) is worth another ten. Therefore, the exchange is licit when the exchange dealer gives 400 in Medina for 370 that shall be given back in Flanders, so that 360 are given as equal value to the money he received in Medina, and the other 10 for saving the transport from Flanders to Medina. For the same reason, if the exchange dealer gives 360 in Flanders he may receive in Medina something more than 400, so

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<sup>3</sup> Ibid., *De iustitia* ..., lib. 6, q. 12, art. 2.

that 400 are the payment for the equal value of money given in Flanders, and the excess is given for having discharged from the need of transporting the money.

The conclusion is obvious, as in neither of the two cases is there a formal transport of the money but simply an avoiding the annoyance of transporting it and, in both cases, leaving aside the amount that is received for this, there is an equality between what is given and what is received if one takes into account the difference in value of the money in one place and the other. Soto would not deny the antecedent as in such exchange nothing is received for reason of the greater value of the money in the place in which the exchange dealer gives it, as the money is worth less in Medina, where he gives it, than in Flanders, and that is why in Flanders less money is received than what is given in Medina. And Soto himself states that when an increment is not received for reason of the greater value that money has in that place, it may be received for reason of virtual transport. And notice that the exchange dealer, apart from what he receives for reason of the virtual transport, does not receive an increment either in the amount of money or in its value there where money is worth more, but there where it is worth less he receives an increment, not in the value but in the amount of money in order to compensate the greater value that his money has in the other place.

To the argument we have presented in favor of the contrary opinion we must say: in the first place, that it implies something that is false, namely, that the exchange dealer receives the money in the place where the money is worth more. Let us add that the antecedent is true when the money is really carried, but not when the equivalent is given in a place for the equivalent in another and the one who receives it saves himself the job of transporting it, because then what each one gives is valuable for him in the place where he gives it and not in any other place. Also, the person who is requested by another to discharge him through that commutation of the annoyance of transporting the money, may receive a just stipend for his involvement.

From what we have just said it is evident that one should not condemn the fact that an exchange dealer who gives 360 in Flanders receive in Medina more than what he himself gives in Medina for the 360 that they give him back in Flanders, because Soto says that when there was no difference in the value of money in two places, it was a practice in his time that an exchange dealer gave in Medina 410 in exchange for receiving 360 in Flanders, and, on the contrary,



when he gave exchange in Flanders for Medina, for the 360 he gave in Flanders he received 430 in Medina. However, Soto condemns this last [case], as he says that if the first exchange was equitable, the second was not so.

In spite of this, it may be responded that both exchanges are just for the following reason: because 360 in Flanders may be worth because of the state of affairs the same as 420 in Medina, and so, if an exchange is solicited in Medina for Flanders, the exchange dealer acts justly when subtracting 10 from the 420 for the job of discharging the person who asks for the exchange. And if an exchange is solicited from Flanders to Medina, he justly adds 10 to the 420, which they are to give him back in Medina for his work in discharging the person who asks for the exchange.

As said above, the just value of money in the different places and in a certain moment in time cannot be determined with all precision but fluctuates between certain limits the same as the rest of merchandise that is not appraised by law and, since the just price of the virtual transport of money from one place to another cannot be determined with all precision either, it follows that the just price of the exchanges, not only in different places but in one same place and at one same moment in time, is situated within a range of a certain amplitude. Moreover, the circumstances that make the value of money and its transport increase or decrease change easily, all of which makes it logic for the just price of exchanges to change and be different, not only regarding exchanges between different places, but also regarding exchanges in one same place at different times, mainly, because when the amount of money increases or decreases, the just prices of the rest of things vary, as vary too the just profits that are pursued with the exchanges. Because men do not want to employ their money to give exchanges unless these bring about greater benefits, otherwise, they prefer using it in other endeavors.

I would like to caution here that we do not mean that the examples presented here dealing with exchanges carried out between one place and another, and which may be found in the doctors' writings, reflect real life, as if the practice of exchanges should adjust itself to them, seeing that with the passing of time circumstances vary and we find very different practices.

Because the natural just price of all things depends on the common estimation in one place (as said in Argument 348 and frequently in others), we should not consider the commonly accepted price for exchanges from one place to another unjust, but rather just and a standard to judge whether the [exchanges]

that greatly move away from it because of excess or insufficiency, exceed what is just. This must be understood as long as the actual price has not been manipulated by means of monopoly or other frauds. Because if those who have the money agree that neither one of them shall give in exchange except with an agreed upon increment, and that increment exceeds the price that would be current if it were not for the monopoly, those who provoked that excessive and unjust price, certainly, do not only mortally sin but are forced to retribute that increment to those who paid it.

Likewise, if before the fair takes place, or at the very beginning of it, some take all the money there is in that place to exchange in different places in order to give it later during the fair with a much greater increment and at their own discretion to those who would need it, since they are the only ones who have money, they certainly also mortally sin, and are forced to retribute if they give it for a price that exceeds the strictly just one that would be current if it were not for them, and is the equitable [price].

Because if neither these nor the others exceeded the strictly just price, I would not force them to retribute, according to what we said on this matter in Argument 345, and was later proven. There may be, certainly, a sin against charity against one's own brother and against the country, a sin that deserves being prohibited and punished, as was said before. But if any, foreseeing that the money shall be very expensive in one fair, took before [this fair] exchanges for diverse places for the amount of all the money that there is in that place, in order to give exchanges later at the maximum just price that is equitable given the circumstances, he should not be condemned of mortal sin, because in acting as he did he has used his right and has harmed no one. His actions are born of his ability and experience in doing business. This principle must be accepted as long as that usual price does not obey any ruling for which something may be obtained unjustly, as would be if for an extension in time a greater price were usually given for the money offered for exchange: that would be a sin with obligation to retribute the excessive increment, even if it is a usually accepted practice. As Navarro well notes,<sup>4</sup> the abundance of buyers, when the thing is sold unjustly, does not make the price of the thing increase. Therefore, the just price of the thing is not reflected in the common use.

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<sup>4</sup> Martín de Azpilcueta, *Comentario* ..., cap. últ. no. 59.

Finally, we must observe two things: the first, that in the exchanges sometimes by the name of *ducat* one same value is understood in the place where the exchange is given and in the place where it is later paid. So the increases or deductions are expressed adding or taking away *ducats* from the sum to be paid in the place for which the exchange is given. For example, in a certain place 110 or 115 *ducats* are received for which bills of exchange are given so that in another place 100 *ducats* are paid. This means that an increment of 10 or 15 *ducats* are received. I understand this to be so even when the *ducats* have a different value appraised by law or accepted by custom in the different provinces. It happens in Portugal, where the *ducat* is worth 400 *reais*, but only 10 silver *reales*, while in Castile it is worth 375 *maravedis* or also 11 silver *reales* and 1 *maravedi*. That is why, when exchanges are carried out from Castile to Portugal, expressing the sums of money in terms of *ducats*, we may apply what we have described above. As the Castilian *ducat* is worth 1 silver *real* more than the one in Portugal, if the exchange is given from Castile to Portugal with an increase of three or 4 percent, 100 *ducats* are received, for example, in Castile and letters of payment are given in Portugal for 113 or 114 *ducats*. Since 100 *ducats* in Castile and 110 in Portugal are equal quantities (as both quantities are worth 1,100 silver *reales*), the person who gives said exchange from Castile to Portugal receives an increment of 3 or 4 Portuguese *ducats*. And if with the same increment an exchange were given from Portugal to Castile, 100 *ducats* would be received in Portugal and bills of exchange would be given for Castile for a value of a little over  $93\frac{1}{2}$  or  $94\frac{1}{2}$ .

Because in Flanders there were frequent variations in the value of coins, in 1527 the merchants adopted by common agreement a fixed value for those coins, which had to be maintained among them forever, even if their value changed in one region or another. And so, in the bills of exchange that were given in Flanders, they often said: You shall pay so many *ducats*, the third part, for example, in gold, and the rest in silver according to the valuation of coins in 1527.

Sometimes, however, the merchants do not use in their contracts the term *ducat* with the valuation this [coin] has in the place from which or for which the exchange is given, but with a conventional valuation that they themselves establish when the contract of exchange is drafted, namely, increasing or reducing the value of the *ducat* in the place in which the exchange is to be paid, according to the circumstances. This is the way that 100 *ducats* [worth] 360

*maravedis* were usually received in Flanders in exchange for another 100 [worth] 400 *maravedis* to be paid in Medina. And in Medina bills of exchange were given in the following way: You shall 100 *ducats* worth 400 *maravedis* each. And since neither then nor now did they have in Medina *ducats* with such value, the merchants gave them an imaginary reality for their exchanges and businesses. In a similar way do they “create” today *ducats* and *escudos* for different places with different values, according to what the merchants agree among themselves. Navarro<sup>5</sup> was strongly against these imaginary *ducats* but then changed his mind<sup>6</sup> and believed they should be admitted.

The second thing that must be observed is that what has been said on this matter of exchanges should be interpreted with benevolence. Because we have stretched the doctrine to the limit of what is just in order that it may be used as guideline to confessors and others who must respond to questions on the subject, so that they do not force the exchangers to retribute when they do not have obligation to do so, and do not condemn what does not deserve to be condemned. But that does not mean that very frequently one should not advise men to abstain themselves from such exchanges because of the abuses that in them they frequently commit and for the danger of losing the eternal salvation to which the not-too-God-fearing who devote themselves to this business expose themselves.

As far as if the intermediaries employed by the exchange dealers and all the others who help in illicit exchanges sin and are forced to retribute, what was said in Argument 331 about those who cooperate with usury can also be applied to them.

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<sup>5</sup> Ibid., no. 53.

<sup>6</sup> Martín de Azpilcueta, *Manual ...*, cap. 17, no. 302.

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