LENDING MONEY WITHOUT INTEREST.

THE present paper has a very limited scope, indeed, and begins by deprecating any expectation that it will try to solve the question why the Church, after so long forbidding interest on money, now allows it to be taken. We admit that in the interval facts have changed, but no one will say that money had no commercial use at all during the long ago in which the mediæval law was upheld.

As a suggestion for those who will apply it as far as they find it applicable, we may refer to Aristotle's "Ethics" (V,. 7), where he distinguished rights into natural and institutional or positive. Having made the division, he signifies that it has not absolute rigidity "except perhaps among the gods; among ourselves there is indeed that which is right by nature; nevertheless, always with some mutability."

The Sertart version—and that of the immoderate Scotist Ockham—is that while the commandments of the first table, ordering man to keep a religious attitude to God without a shadow of irreverence, is yet beyond any dispensing power, the second table prescribing men's relations *inter se* is not so unexceptional, but needs admixture or determination of this positive law, with some variation in the matter as circumstances change. Such is the loaning of money; such also is the control of the temporal power by the spiritual. If, then, we say that these two last concerns rest on immutable principles, that is true, yet not with the rigidity of "Thou shalt not have false gods," "Thou shalt not take the name of the Lord thy God in vain." God could not so dispense with His rights as to allow a man to blaspheme, but He may, as Supreme Lord, give leave to spoil the Egyptians or to sacrifice Isaac; for He holds eminent dominion over property and life.

So much of prefatory remark will, it is hoped, move the reader to accept what follows as only a confined outlook upon a much wider question which can be examined only in its long and complex history. It is left for other pages to discuss whether money has changed its nature or the Church her law, or both one and the other, between the Council of Vienne, which reaffirmed the old order, and our own times, when religious houses that are commercially unproductive have often to live on interest from capital. Those who keep to the notion that there is nothing new under the sun deny that money has assumed simply a new character since classical and mediæval days, when commerce was fairly developed; they are content to assert simply an immense growth of a previously living use.

Others prefer the aspect that money to-day has a new application warranting a new law.

Among the mediæval scholastics there was recognized a form of gratuitous contract in which the lender of money imposed on the borrower no other obligation than that of returning the equivalent of the sum, often at a fixed date. This was called *contractus mutui*, which was counted gratuitous in contrast to the *contractus fenebris*, or the loan upon interest. It is not so much that to-day the former has developed into the latter as that the latter has sprung up into admitted existence out of germs that were visible long ago and found at least some recognition on the permitted practice of *locatio* and *clusus*.

No one will deny that in the relation between man and man there is occasion for the charity of a disinterested loan, and that for it there sometimes arises a distinct obligation, though this is not technically one of justice. Before rendering such a service the benefactor is supposed by St. Thomas fairly to weigh the urgency of the call by the side of his own ability to meet its demands at the cost of a self-renunciation. Such contract if called onerous is especially so on the side of the lender, who as a benefactor is generally burdened by his act,[1] being deprived for a time of the uses of his money and exposed perhaps to some risk of losing it in part or in the whole. But these inconveniences do not enter into the *contractus mutui* as such; if there is any bargain about them, it is on another score, as we shall see later. To the hard man of business the *contractus mutui* when duly explained is simply a reminder how far away it lies from his sphere of operations. It is a mode of almsgiving, which like all such charities, should be judicious and should not be done with results which are rather mischievous than beneficial to the community at large. One consideration that is apt to dry up the sources of almsgiving is the unfortunate fact that it does so easily miscarry in its general results.

Money once lent becomes, as St. Thomas says, the property of the new possessor, and therefore for him it fructifies—*res fructificat domino*. But the normal end of the *contractus mutui* is not that it should bring large profits, or even any profit at all. Its natural purpose is to tide a man over a difficulty, to help a lame dog over a stile and, furthermore, if possible, to cure his lameness. The typical speculator is not the person for whom the free loan is designed, and when he applies, one may with a calm conscience send him about his business, often without any commendation of this same business of his.

[1] Here we do not deal with the technical meaning of *contractus onerosis*; the borrower is under the burden to repay the loan.

It will now be evident that the *contractus mutui* allows of no interest so far as concerns its intrinsic nature. And the mention of the word intrinsic is very important. Always when we talk of intrinsic or extrinsic we should have a definite term of reference, for it is idle to speak about inside and outside in relation to nothing in particular. Let us then see some possible claims to interest which lie *outside* the *contractus mutui* considered in its own nature of a free loan made by a charitable man who helps a neighbor with a sum of money on the sole condition of equal repayment of the original quantity at a fixed date.

1. There is the *legal title* on which the law is conceived to give a right otherwise non-existent to demand interest. Some of the Schoolmen admit this right, but with a special understanding which will at once appear necessary. St. Thomas rejects it, yet not from every point of view. In self-consistency he maintains that if free loan is to remain free loan it must not be paid for, even by order of the law. An extrinsic price must not expose an intrinsic principle of charity.

2. While such a law would obviously be extrinsic, a less obvious case under the same category is the *Damnum energens,* or loss arising out of lending the money. This loss the gratuitous *mutuator* is supposed to accept after duly considering his own position. In English law we have for sales the enactment *Caveat Emptor*—let a purchaser look to his own concern in a bargain; so in free loans there is an implied *caveat mutuator.* "He who lends money," says St. Thomas, "De Malo," Q. XIII., A. 4 ad 4, "ought to have a care how he suffers thereby." At the same time St. Thomas allows that foreseen losses may be made matter of a special contract outside the *mutuum,* and herein he supports a part of the modern theory about lawful interest. "He who furnishes the *mutuum* may justly bargain for compensation to cover loss of his rights, for this is not to sell the use of money, but to avoid loss. But the mere foregoing of gain should not be introduced into the bargain, since no man should sell what he does not yet possess" (2 da 2 dd, A. 2 ad 1).[2]

The last words here are excessive and St. Thomas does not quite abide by them elsewhere.

3. A third extrinsic title is *lucrum cessans,* which, as we have just seen, St. Thomas will not allow to enter into the gratuitous contract, but he might have allowed by the side of this contract another, especially if the borrower were likely to see better days and would consent to add an agreement to compensate for lost gains if ever he should be in a position easily to do so. So far as the free

[2] St. Thomas also allows a charge for the delay of repayment beyond the stipulated time.

loan is concerned, that of itself admits no such obligation within its own proper purview.

4. The fourth of the extrinsic grounds is the *periculum torts,* or risk of losing the capital through the misfortune or through the fault of the borrower. The allowance and the disallowance of it may be settled on principles already stated.

If we return now to interest, taken on whatever plea, no doubt in regard to it there was before the mind of the mediævalists the fact that the Jew was forbidden to take interest from the Jew, and therefore Christians, with their wide brotherhood, seemed bound not to fall below their Jewish predecessors. Moreover, there were the strong words of Christ which appeared to sacrifice even the capital; and if these are in part of counsel, they are also in part of precept: "Lend, hoping for nothing in return:" ***mutuum date, nihil inde sperentes*** (Luke vi., 35). From the Fathers might be gathered by mediæval theologians at least detached sentences seeming to condemn all interest on money as guiltily usurious. In his uncompromising way St. Chrysostom lays it down that as for the Jews it was forbidden to take interest from Jews, so for Christians from Christians.[3] What these preachers specially denounced was the actual state of things at their own time, when they saw carried out in practice an immoderately high demand of interest; and on complaining of facts they did not stop nicely to define theories. As to the mediæval Church, it must be admitted that its legislation was restrictive of practices now tolerated. The fact that there had occurred a relaxation of the old rule is apparent, for instance, in the answer sent by the Congregation of the Inquisition to a French Bishop August 15, 1830, admitting that persons taking a moderate rate of interest on their money were not to be interfered with—*non esse inquietandos.* The sender of the question, who wanted to stop the perplexing results from different confessors within his diocese giving different solutions to their penitents, was less accurate in his wording when he spoke of the loans on interest as *mutuum,* a term which in strictness belongs to the gratuitous contract. However, the history of the gradually diminishing rigor of the Church in this matter under the much older character of money transactions is quite beyond the scope of the present paper.

But we are here concerned with a special lesson to be learned from the freely made loan as an act of charity, which St. Thomas distinguished from the investments which he called *locatio,*[4] for in-

[3] "Hom XLI. in Gen.," Migne, tom. 53, col. 376-379. As summing up previous patristic doctrine, may be quoted St. Ambrose "de Tobia," Migne, tom. 14, col. 756. St. Jerome, as usual, is severe in his utterances, tom. 15, col. 176. See St. Augustine, tom. 36, col. 356.

[4] St. Thomas "De Malo," Q. XIII. a 4 ad 15. The Scholastics allowed interest to be taken under the names of census and societor, rent and partnership—even sleeping partnership.

stance, lending gold coin for show, like gold plate, or putting it into a business managed by another person. What he protested against was the enforced payment for an act of charity, after a gratuitous contract to that effect had been or ought to have been made. Likewise, with Aristotle, he was intolerant of avarice, of seeking to gain more than one's share of wealth against the law of a proportionate equality among men. He tolerated no monetary monsters, for they came under the idea so hateful to the Greeks. In his "Ethics" he follows up what he has to say on justice by insisting on friendship as the corrector of an overstrict justice and as standing for equity. Aristotle, with his Greek disdain for trade, did not frame doctrines for the highest development of commerce. Some of his views may be set aside as being on the whole detrimental to social progress in material well-being. A certain amount of hard business, so long as it is not unjust, adds to the general comfort of a people by promoting trade on the whole. Nevertheless, what works most profitably for the kingdom of earth may at times be laudably foregone for the sake of the Kingdom of Heaven. A country may consent to be less rich in gold if thereby it becomes richer in charity.[5] If business is business, charity is charity; and in this world, while we necessarily make room for both, a preference for the lower good must not be allowed to render us unchristian and liable to the fate that befell Dives when confronted with Lazarus.

Mr. Lecky falls into an instinctive mistake when he says that "theologians, believing money to be sterile, held that he who has returned what he borrowed has canceled all the benefit he has received from the transaction." The *contractus mutui* never aimed at such a canceling; it deliberately renounced not all gain, but even a certain possessed advantage; it was meant to be an act of self-sacrifice, except in the rare case when not only was repayment in due season certain, but the money lent was lying absolutely idle and could be parted with for a time at no inconvenience whatever. But usually the lender charitably puts himself at a disadvantage. In the Church's doctrine no countenance is shown to the bad borrowers described by Ecclesiasticus xxix., 4-13: "Many look upon what they have borrowed as what they have found. They are obsequious while borrowing, and when the time for repayment comes they crave delays, plead the hardness of the times and blame exaction. They declare creditors their enemies and call them by evil names. Many

[5] St. Thomas, following Aristotle on the barrenness of money and the absurdity of *tokos*, a fruit from the barren, had an obviously right sense and an easy way to a fallacy. The barrenness appears in the scholastic definition, Mutuatio est contractus quo res infructuosa et primo usu consumptabeles alteri traditus at hic rem similia postea redat.—Aristotle, Politics, I., 4, 2.

persons are deterred from lending, not because they are hard of heart, but because they fear to be cheated. Nevertheless, be thou full of forbearance towards the destitute and do not keep them waiting for thy alms. Because of the commandment and for the sake of the poor man in distress leave him not without help. Lose thy money in the cause of thy brother and thy friend; hide it not under a stone to thy own undoing."

A contrivance for easy loans during the Middle Ages is described by Abbot Gasquet in an account of our English practice: "The parish wardens had their duties towards the poorer members of the district. In more than one instance they were guardians of the common chest, out of which temporary loans could be obtained by needy parishioners to tide over persons in difficulties. These loans were secured by pledges and the additional security of other parishioners. No interest was charged for the use of the money, and in case the pledge had to be sold, everything over and above the sum lent was returned to the borrower." Answering to such an institution the *Montes Pietatis* in modern times have provided loans for the poor.

After all, we must allow for the existence of those who are called by Hermos "those who have got an unequally large store of the world's goods," honestly, as we will suppose, and who are constantly increasing it by interest. For them holds the principle laid down by the Fathers that if the possession is private the use must be public, that is, the very rich must be very bountiful to private and public benefactions. How large their donations must be cannot exactly be said.

Like many more matters, it must in the end be left to the individual conscience. Furthermore, the desire needs checking to become one of these. The supreme contention of life should not be to swell into a millionaire or a multi-millionaire. Aristotle tells us that we may strive as hard as we like to excel in spiritual possessions, but not in material. Here we must not "go with the multitude to do evil." Salvation is an affair of aiming at the select in life. It is a bad policy to do as most people do and go where most people go at the end of all.

JOHN RICKABY, S. J.

Stonyhurst, England.