

**Comparative Studies  
in Continental and Anglo-American Legal History**

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**Vergleichende Untersuchungen zur kontinentaleuropäischen  
und anglo-amerikanischen Rechtsgeschichte**

**Band 12**

**The Growth of the Bank as  
Institution and the Development  
of Money-Business Law**

edited by  
**Vito Piergiovanni**



**Duncker & Humblot · Berlin**

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and the Development of Money-Business Law**

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**Herausgegeben von**

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## Foreword

The volume is a collection of essays which examine in different historical social contexts the role of credit, of bankers and of the juridical instruments used by these.

A systematic picture of the discipline of credit does not of course emerge from the sum of the contributions — that is not the aim of the volume. This is rather a collection of materials and reflections which, coming as they do both from the Continental European and the Anglo American experience, can provide useful starting-points for comparison.

The protagonists of the volume are undoubtedly those, who, both in commerce of land and sea and in their financial speculations, make use of money and of banks. No less important, however, are the technical juridical instruments which become progressively more refined, complex and adaptable to even changing contingencies, in a perspective where credit becomes one of the motive forces of economic life.

The figure of the banker is certainly central, and many pages of the volume are dedicated to it, but the clients are also significantly present, their solvency or insolvency being able to make, in turn, the fortune or the ruin of the lender. The documentation studied by Linehan is very interesting in this regard, as it reveals a politico-financial interlacement which, starting from Spain, unravels through Italy and through France, involving kings, popes and Florentine bankers, with, at its centre, a cultivated bishop of Toledo plunged into debt: a history of credit certainly, but perhaps even more of debts: an approach towards the same problem from the opposite direction, which proves to be extremely interesting, not only technically but also socially and politically.

The political horizon within which the actors of Linehan's study move are typically medieval, and bear witness to a private relationship between banker and client, economically and legally simple and easy to schematize within the traditional loan. With the essays on Renaissance Florence, however, written by Kirshner, we are already introduced to a new dimension of credit in which the presence and the guarantees of the public authorities tend to oppose new parameters, economic certainly but also moral and juridical, with respect to those championed by the private bankers.

It is the dialectic between public and private, perhaps even more than the debate as to the lawfulness or the usurious wickedness of banking operations,

which seems to offer itself as the qualifying characteristic of the research contained in this volume, or at least for the majority of it, and it is certainly a characteristic on which one should reflect deeply when dealing with the history of credit and of its instruments.

It is the guarantees lent to the State and the more marked forms of responsibility which pick out the figure of the Genoese banker from the Middle Ages to the Modern Era, as Piergiovanni maintains, and which differentiate his economic and legal position from that of the other merchants.

Coquillette's research, by fixing the birth of a modern banking system in seventeenth century England and by determining the different political, economic, juridical and philosophical coordinates which are at its base, and which make the English experience unique among the other European nations, emphasizes the important consequences deriving from the creation and development of the Bank of England in 1694.

Among the apparatuses of the State which intervene and mediate in or direct the world of business also certainly figure the Courts, which from Rogers' study on accommodation bills, make clear their role of reflecting the social conscience and refute the assumption that, in this case, "law merely follows business" and that "normative issues and social conflicts have not played any significant role in the development of the rules of private law governing commerce".

The illustration of banking in Frankfurt am Main, studied by Lammel, also takes us back to a scheme of financial Capitalism by now refined and further underlines the balancing role of the Courts in opposing financial operations they considered too risky, if not to say fraudulent. The same Author points out, however, that the differing opinions of the jurists, in these debateable cases, demonstrate a close interreliance between commercial and legal circles: for the latter, perhaps, "law merely follows business".

If, on the one hand, the Genoese experience shows an attempt by the jurists to justify and defend a financial supremacy already in existence, the English experience is the response to the national demand for a regularized economic system, in which credit assumes a primary function. Even commercial juridical science tends to assume lines of development careful, in the various national contexts, to assist the emerging needs of individual situations.

The problem of the relation between public and private, with the contrast between 'bancos' and 'tablas', is present also in Spain, but the original interpretation of the phenomenon, offered by Clavero, introduces the predominant presence of religion which in the ambit of a monarchy which declares itself to be 'catholic', allows for the interpretation of the problems of credit and deposits, and the solutions adopted, in the light of principles of conscience and of charity suggested, even in their terminology, more by theology than by law.

A public presence but also changes in culture and the conditioning of the economic structures bound to the traditional propertied classes characterize the banking history of eighteenth-century Spain, outlined by Petit: the types of organization described, or at least the cultural references, circulate here too as elsewhere, but the different outcomes — and the comparison between contemporary events narrated by Coquillette and by Petit is illuminating in this respect — are the result of dissimilar social equilibriums, both economic and juridical.

A sector does exist, however, in which there is a greater osmosis between the various national juridical organizations and this is in the field of maritime law. In this area, internationalism seems to be the constant which was the characteristic identifying feature in the development of commercial law from the Middle Ages onwards and which signified the habitual circulation of contractual and procedural forms and the widespread utilization of doctrinal works and of court sentences: the articles by Frenzt and by Rodgers, relative to some forms of maritime credit respectively in German and English experience, are interesting testimonies of the circulation of institutions and of doctrine in a field which seems almost predisposed to comparative analysis.

These brief introductory notes pick out, as is obvious, only some of the distinctive points presented in the essays which make up the volume, without any claim at exhausting the richness of the individual contributions.

I have to thank Mr. Christian Wieland and Mr. Dieter Waibel who have given in Tübingen an important contribution in the print of the volume.

The individual Authors collaborated with enthusiasm and a constructive spirit to the outcome of the volume. I don't know if gratitude is also a fit subject for comparative study, but the coordinator's gratitude is truly great.

*Vito Piergiovanni*





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PETER LINEHAN

## **An Archbishop and his Bankers: Gonzalo Pérez Gudiel of Toledo 1280-1283**

In the history of medieval indebtedness, if ever it comes to be written, Archbishop Gonzalo Pérez ('Gudiel') will deserve at least half a chapter to himself.

In 1280 Gudiel was about fifty when Nicholas III appointed him to the see of Toledo after judging Ferrán Rodríguez (abbot of Covarrubias whom the chapter of that church had chosen five years before) guilty of having alienated its goods. The new archbishop was no stranger to the primatial church of the Spains and its affairs. A member of one of the city's leading Mozarabic families, he had held high office in the chapter prior to his promotion to the see of Cuenca in 1272 and to that of Burgos in 1275. A man of singular versatility, he was also a close confidant of Alfonso X; the king's chancellor and notary at the time of his promotion to Toledo, with an intellectual range of interests which paralleled that of 'el Rey Sabio' himself. The contents of his remarkable library, his university career at Padua in the 1260s, and his involvement in the king's historical as well as his legal enterprises, all attest to Gudiel's exceptional qualities. He was a cosmopolitan churchman as much at ease in the pope's court as in the king's. These qualities would be severely tested in his dealings with his bankers in the early 1280s.

In a study published twenty years ago I gave some account of these dealings.<sup>1</sup> Since then further documentation bearing on his financial affairs has been discovered in the archive of Toledo cathedral by the archivist of that exceptional repository, Ramón González, and Francisco Hernández (Carleton University, Ottawa) in the course of their preliminary work for the Proyecto Burriel.<sup>2</sup> Dr. Hernández and I have in preparation a study of Gudiel's life and career in which the archbishop's financial affairs will be fully described and documented. In anticipation of that, for the moment I shall seek to do no more than indicate the scale of his borrowing operations and just something of the value of this material for students of medieval banking practices.

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<sup>1</sup> *The Spanish Church and the Papacy in the Thirteenth Century*, Cambridge 1971, 134-7.

<sup>2</sup> The aim of which is to publish all the pre-1500 material contained in the chapter archive of Toledo cathedral. The first fruits of the project have been published by *F. J. Hernández*, *Los Cartularios do Toledo. Catálogo documental, Monumenta Ecclesiae Toletanae Historica I.1*, Madrid: Fundación Ramón Areces, 1985. Pp. xxxix + 854.

At the time of Gudiel's appointment as archbishop the church of Toledo was already all too familiar with the ramifications of international finance. In September 1279 a debt of 9333 maravedís 'et tercia' which Archbishop Sancho II had contracted to Per Simón de Martell merchant of Calatayud and 'compañeros' had been settled by the surrender of a collection of jewels and precious objects from Sancho's chapel, the value of which it had proved impossible to estimate in Spain. On the authority of the archbishop-elect, Per Simón undertook to sell them for the best price he could get either at Montpellier or 'en corte de Roma'.<sup>3</sup> More serious for the future, however, was the fact that by that date the archbishop-elect, Ferrán Rodríguez, was already heavily in debt. At Christmas 1277 Alfonso X, who had previously advanced him the massive sum of 4 000 marks of silver on the security of the rents of his church, promised to underwrite further debts to be contracted at Rome where the question of his confirmation was pending. There, between December 1279 and April 1280, the archbishop-elect borrowed £ 3 000 *turonenses* from Nicolas de Giulio (? Nicolas Egidii) and Paulo de Petro Dalio 'mercadores de Roma': a sum which the king repaid in April 1281. Ferrán Rodríguez, who by this date was studying theology at the curia, challenged his creditors' figures. But Alfonso could not afford to quibble. For by April 1281 he desperately needed the assistance in Castile of his new archbishop.

Gudiel had been at the papal court in Orvieto at the time of his promotion in May 1280, and there, and at Viterbo, Avignon, Nîmes and Montpellier he was constrained to remain for the next four years, the prisoner of his creditors. His imprisonment was not altogether unwelcome to him however. For in Castile the tensions between the king and his son, the Infante Sancho, were becoming ever more acute, and in April 1282 the civil war began which was to continue until Alfonso's death two years later. By offering to clear his debts, thereby enabling him to return to Castile, Alfonso and Sancho both attempted to secure Gudiel's influential support. But the prudent archbishop preferred not to commit himself to either side, and elected to remain in convenient exile.

From between December 1280 and May 1283 some thirty documents have survived from which it is possible to follow the course of the archbishop's negotiations with his creditors — the Chiarenti and the Ammanati of Pistoia, principally the former. It is rather an exciting story, a story of ever-approaching deadlines and of nemesis constantly threatening. Historians never tire of describing medieval Spain as a 'society organised for war'. The leader of the Spanish Church in the early 1280s might equally well be described as an 'archbishop organised for business'. He had been trained in the royal chancery, and one of the lessons he had learned there was never to throw anything away. Gudiel was a great hoarder of papers (and many of his records are indeed paper documents).

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<sup>3</sup> Memorial Histórico Español i, Madrid 1851, 330-32. Archbishop Sancho had died in battle in October 1275.

Amongst them we find various corrected drafts of financial deeds, including forms of blank cheque for use by his agents: ‘Nouerint uniuersi quod cum nos G. etc. teneamur *talibus* mercatoribus *talis* societatis in *tanta* summa pecunie quam in *tali* termino tenebamur . . .’

The sums borrowed by him amounted to £ 13 700 *turonenses*. The value of this sum in terms of the revenue of his see can be calculated from the equivalences supplied in the settlement made by him with his successor as bishop of Burgos in November 1281. To the abbot of Cardeña he owed ‘39 marchas sterlingorum que valuerunt tunc 1638 [maravedís]’, while to the archdeacon of Valpueda ‘pro centum marchis’ 4 000 maravedís were due; giving an exchange rate for the mark of between 40 and 42 maravedís at this troubled time.<sup>4</sup> The rents of the archdiocese which the abbot of Covarrubias had deposited as security for the king’s 4 000 marks loan must therefore have been worth about 160 000 maravedís, and Gudiel’s £ 13 700 loan slightly more than five times that sum, about 822 000 maravedís: perhaps four to five years’ worth of the ordinary revenues of his church.<sup>5</sup> The archbishop of Toledo was playing a long game.

What it was all spent on is far from clear. Apart from the payment of £2 150 (?£ 2 450) to Cardinal Guillelmus of S. Marco, camerarius of the college of cardinals in February 1281 ‘seruitii nomine’, we know of no major item of expenditure — though the archbishop’s notorious bibliomania may have taken its toll. What the record does reveal is that the rates of interest charged varied between 15 and 60 per cent *per annum*. For example, when at Orvieto on 24 September 1281 he borrowed £ 2 550 *parv. turonenses* from the Chiarenti (‘a dominis Clarentino dni Anselmi Clarentis et Johanne Gualandeschi de societate domini Anselmi Clarentis . . . pro se et nomine dicti dni Anselmi Clarentini filii sui, Mergolglisii, Bracii, Bertini, Fortebraccii, Paccii, Raynerii et Marsupini Meliorati et aliorum sociorum suorum’), he promised repayment on the feast of Assumption, 15 August 1282, at Nîmes ‘aut in Romana curia ubicumque fuerit’: ‘quod si . . . in dicto termino non soluerit et omnia et singula in hoc contractu contenta non obseruabit promisit eisdem creditoribus ut dictum est stipulantibus reficere et restituere eis omnia et singula dampna et expensa, interesse et constamenta que uel quas iidem creditores aut eorum socii fecerint uel substituerint in defectum dicte solutionis aut pro ipsa pecunia exigenda.’ But in the following June, when part of the debt was repaid, the sum due was stated to be £ 3 500. In nine months, damages, expenses, interest and costs on a loan of £ 2 550 had amounted to £ 950.<sup>6</sup>

<sup>4</sup> Yet in Castile in February 1282 an exchange of £ 22 *turon.* = 550 maravedís was stated.

<sup>5</sup> For further data from the years 1309-1311, see *Linehan*, *The Church, the economy and the reconquista in early fourteenth-century Castile*, *Revista Española de Teología*, 43 (1983) 300-01.

<sup>6</sup> In April 1280 the penalty stipulated for late repayment of a £ 1 200 loan made to Ferrán Rodríguez and due at Alcalá on 1 July 1280 was 10 % per two months.