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«Contracts damned by God and by the World»: Litigating the Just Price in Early Modern Venice

Abstract

The records of the Office of the Piovego enable analysis of how the just price was litigated in seventeenth-century Venice. The evidence shows that Venetians adhered to the general moral principle that the just price should be determined collectively, rather than being a matter for individuals, with litigants attempting to establish the customary rate in any particular sector. The main exception to this was barter, an alternative mode of exchange that was regarded with suspicion due to its links with usury. Nevertheless, the lack of standardized procedure meant that in practice the determination of the just price was dependent upon the initiative of the parties. The flexible application of legal rules helped the court to find solutions appropriate for particular sectors, in line with its equitable approach to justice. But this also meant that getting results meant being able to mobilize resources to prove a case. In practice, the court functioned as a resource in the process of debt negotiation that could be instrumentalized by litigants to suit their own purposes.

Key words: just price, litigation, usury, barter, contract law

Introduction

Disputes over the just price provide a key means of observing the tensions surrounding exchange within a social order and the way that moral and legal discourse relate to practice.[*] In late medieval and early modern Europe, theoretical discussion of the just price was framed within the prevailing moral condemnation of usury. Theologians and jurists were well aware that usury could be concealed by manipulating the price of goods. For example, loans could be presented as sales of goods at inflated prices[1]. Prices, then, were not always what they

[*] All archival references are to the Archivio di Stato di Venezia. In the footnotes, dates for archival sources are provided *more veneto* (mv), the year beginning on 1 March. I am very grateful to the editors and reviewers of *Quaderni Storici* for their advice in revising this paper.

[1] P. BRAUNSTEIN, *Le prêt sur gages à Paduoe et dans le Paduoan au milieu du XVe siècle*, in G. COZZI (a cura di), *Gli ebrei e Venezia: secoli XIV-XVIII*, Atti del convegno internazionale organizzato dall'Istituto di storia della società e dello Stato veneziano della Fondazione Giorgio Cini, (Venezia, 5-10 giugno 1983), Milan 1987, pp. 651-69, pp. 654, 657; F. ZEN BENETTI, *Prestatori ebraici e cristiani nel Padovano fra Trecento e Quattrocento*, in *Ivi.*, pp. 629-50, p. 629; M. GAZZINI, *'Dare et habere'. Il mondo di un mercante Milanese del Cinquecento*, Milan 1997, pp. 147-8; P.T. HOFFMAN, G. POSTEL-VINAY, and J.-L. ROSENTHAL, *Priceless Markets: The Political Economy of Credit in Paris, 1660-1870*, Chicago 2000, p. 14; N.L. JONES, *God and the*

seemed. There were various legitimate grounds for a merchant to charge a higher price (such as the costs and risks of transporting goods), but it was difficult for courts to determine which practices were legitimate and which constituted usury in disguise. In practice, moralists recognised it was necessary to consider the specific circumstances of transactions and intentions of the parties.

This task became more complex in the early modern period, as the volume and range of forms of credit expanded to meet the needs of a commercializing economy. As Benedetto Cotrugli argued in his treatise on the perfect merchant, the times had changed: «today the world is so accustomed to this business, that almost nothing is bought if not on credit»[2]. Already by his time, a «juridical arsenal» of contractual forms gave specific groups access to interest-bearing credit, including landowners, international merchants and financiers, governments, and licensed moneylenders[3]. Changing attitudes in the early modern period can also be seen in the establishment of *Monti di Pietà*, charitable banks with papal licence to charge interest to borrowers and pay dividends to investors[4]. By the seventeenth century, these practices had become normalized. The idea of an early modern «savings revolution» expresses the greater opportunities available for legitimate investment – government bonds, mortgages, annuities, joint stock companies – which could plausibly be presented as benefitting the public good[5]. At the same time, commerce and production were increasingly dependent upon credit, with the further development of putting-out systems, long-distance trade, and international financial markets.

Moneylenders: Usury and Law in Early Modern England, Oxford 1989, p. 131; N.D. RAY, *The Medieval Islamic System of Credit and Banking: Legal and Historical Considerations*, in «Arab Law Quarterly», 12, 1 (1997), pp. 43-90; J.H. MUNRO, *The Medieval Origins of the Financial Revolution: Usury, 'Rentes', and Negotiability*, in «International History Review», 25, 3 (2003), pp. 505-562, p. 512.

[2] B. COTRUGLI, *Della mercatura et del mercante perfetto*, Brescia 1602, [Venice 1573], p. 107, «hoggidì il mondo è tanto accommodato à questo trafico, che quasi non si compra, ne vende se non à tempo». For publication dates see B.S. YAMEY, *Benedetto Cotrugli on bookkeeping (1458)*, in «Accounting, Business & Financial History», 4, 1 (1994), pp. 43–50.

[3] G. TODESCHINI, *Eccezioni e usura nel duecento: Osservazioni sulla cultura economica medievale come realtà non dottrinaria*, in «Quaderni Storici», 131, 2 (2009), pp. 443-60, p. 448.

[4] B. PULLAN, *Rich and Poor in Renaissance Venice: The Social Institutions of a Catholic State, to 1620*, Oxford 1971, pp. 466, 474; G. TODESCHINI, *Ricchezza francescana: Dalla povertà volontaria alla società di mercato*, Bologna 2004, p. 185.

[5] MUNRO, *The Medieval Origins* cit.; T. CARTER and R.A. GOLDTHWAITE, *Orpheus in the Marketplace: Jacopo Peri and the Economy of Late Renaissance Florence*, Cambridge MA 2013, p. 355; M. VAQUERO PIÑEIRO, *I censi consegnativi. La vendita delle rendite in Italia nella prima età moderna*, in «Rivista di storia dell'agricoltura», 47, 1 (2007), pp. 57-94, p. 91.

By examining litigation from the early modern period, this paper aims to move away from the focus on theoretical discussion to consider how the just price was negotiated in practice. Much of the scholarship has focused on intellectual history, for example by tracing the links between late medieval scholasticism, the second scholastics of the early modern period and the political economy of the eighteenth century. This paper will take a different approach, considering how the discourse was articulated at the practical level of litigation.[6] This approach is more feasible in the early modern period, partly due to the greater survivability of documents, but also because the growing reliance on credit was accompanied by a range of contractual forms and a court system to handle litigation. In the specific case of seventeenth-century Venice, the records of the Office of the Piovego permit us to observe tensions over the just price as they were negotiated in a «baroque economy» – a commercial republic with developed financial systems embedded within the legal institutions of a hierarchical society[7]. Were the norms on usury just a matter for the individual conscience, or could they have concrete effects in law? How was the just price determined in practice and what tolerance was there for prices to deviate from that? To what extent were general rules applied or did the just price mean different things for different types of transactions?

Historiography and Sources

The need for a contextualised approach is underlined by a historiography of the just price that has often reflected ideological concerns. In the late nineteenth and early twentieth centuries, liberal historians portrayed the scholastics as irredeemably backward, arguing that the Catholic religion obstructed the progress of capitalism[8]. Post-war scholars sought to rehabilitate the scholastics, showing that they were not implacably opposed to market forces[9]. For example, De Roover argued that Thomas Aquinas saw the just price not as something objective, but as fluctuating in accordance with supply and demand and therefore corresponding to the market price[10]. Yet as Martinat has argued, this view of Aquinas as a

[6] For a rare example of a seventeenth-century campaign to prosecute usury, see R. ROSOLINO, *Crimes contre le marché, crimes contre Dieu: Le juste prix dans la Sicile du XVIIe siècle*, in «Annales. Histoire, Sciences Sociales», 60, 6 (2005), pp. 1245-1273.
[7] R. AGO, *Economia Barocca: Mercato e istituzioni nella Roma del Seicento*, Rome 1998.
[8] C. LENOBLE, *Iustum pretium, justice sociale, lois du marché et croissance: histoire de sous-entendus*, in V. CHANKOWSKI, C. LENOBLE, and J. MAUCOURANT (a cura di), *Les infortunes du juste prix. Marchés, justice sociale et bien commun de l'antiquité à nos jours*, Lormont 2020, pp. 69-101, p. 73.
[9] J.A. SCHUMPETER, *History of Economic Analysis*, London 1954.
[10] R. DE ROOVER, *The Concept of the Just Price: Theory and Economic Policy*, in «Journal of Economic History», 18, 4 (1958), pp. 418-34.

pioneer of free markets was rooted in the ideological debates of De Roover's time. She emphasizes the importance of understanding the market not as an abstract model of supply and demand, but as a concrete *marketplace*, a structured space for exchange dominated by a moral consensus[11]. Theoretical discussion of the just price needs to be understood in relation to social context, rather than as the precursor of enlightenment political economy.

Indeed, just price theory often reflected the engagement of theologians and jurists with concrete practical situations[12]. Extrinsic titles to interest and legitimate forms of investment developed in relation to the needs of specific groups[13]. The close relationship between moral theology and economic practice intensified in the early modern period – many of the second scholastics were acutely concerned with how the just price should be applied to practical problems. For example, Leonardo Lessius was deeply concerned with helping the laity to apply Christian teachings in their daily lives[14]. Along with his personal observation of business life in Antwerp, he was strongly influenced by a list of practical questions submitted by the Spanish merchant community of the city to the Sorbonne in 1530[15]. This also made theologians aware of the possibility of subterfuge – that legitimate contractual forms might operate as a mask for usury. Due to the difficulty of establishing general rules to cover all cases, such questions could only by resolved by detailed consideration of the circumstances of exchange[16].

This practical orientation can also be found in juridical texts of the period. Barbot reveals the discourse guiding the implementation of the just price by lawyers, notaries and judges,

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[11] M. MARTINAT, *Chi sa quale prezzo è giusto? Moralisti a confronto sulla stima dei beni in età moderna*, in «Quaderni Storici», 135 (2010), pp. 825-856; R. ROSOLINO, *Justice in the Marketplace. The Politics of Grain Supply in Early Modern Sicily*, in «Social History », 37, 2 (2012), pp. 187-203; S.L. KAPLAN, *Principio di mercato e piazza di mercato nella Francia del XVIII secolo*, in «Quaderni storici», 20, 58 (1985), pp. 225-239. For examples focusing on real estate, see G. LEVI, *Inheriting Power: The Story of an Exorcist*, Chicago 1988, [Turin 1985]; J.-F. CHAUVARD, *La circulation des biens à Venise. Stratégies patrimoniales et marché immobilier*, Rome 2005; M. BARBOT, *The justness of aestimatio and the justice of transactions. Defining real estate values in early modern Milan*, in B. DE MUNCK and D. LYNA (a cura di), *Concepts of Value in European Material Culture, 1500-1900*, Farnham 2015, pp. 133-49.

[12] LENOBLE, *Iustum pretium* cit., p. 78; W. DECOCK, *Theologians and Contract Law: The Moral Transformation of the Ius Commune (ca. 1500-1650)*, Leiden 2013, p. 590.

[13] TODESCHINI, *Eccezioni* cit..

[14] L. LESSIUS, *On Buying and Selling (1605)*, in «Journal of Markets & Morality», 10, 2 (2007), pp. 433–516, pp. x, xii.

[15] T. VAN HOUDT, *'Lack of money': a reappraisal of Lessius' contribution to the scholastic analysis of money-lending and interest-taking*, in «European Journal of the History of Economic Thought», 5, 1 (1998), pp. 1-35, pp. 13-15.

[16] *Ivi.*, p. 10.

highlighting the tendency to particularism that was characteristic of Italian manuals[17]. Vernacular textbooks such as Giovanni Battista De Luca's *Il dottore volgare* (1673) provided an accessible guide to courtroom practice, with detailed discussion of specific issues regarding the just price, law of contract, and usury[18]. The jurist Giulio Cesare Giussani presented a minute categorisation of the different types of prices that could resulting from different transactions[19]. Close engagement with the practical details of disputes led to further specialization, for example the jurist Lanfranco Zacchia dedicated a treatise to the just wage[20].

A further normative source on the just price are merchant manuals, which in the early modern period developed from simply providing technical advice to setting out a moral framework of behaviour for the Christian merchant[21]. For example, in his discussion of the «perfect merchant» (first printed in Venice, 1573), Benedetto Cotrugli appealed to his practical experience to argue that commercial credit was «licit, useful and necessary», that trade was impossible without it, and that time was the same thing as money for merchants[22]. Similarly, Giovanni Domenico Peri's *Il Negoziante* (1638-55), reflected his background in the commercial and financial culture of Genoa, and sought to establish legitimacy in terms of the prevailing discourse[23]. Savelli describes a «double exchange», or mutual influence, between mercantile practice and «juridico-theological» discourse, consisting of the writings of

[17] M. BARBOT, *Les prix et l'estimation au prisme du droit civil (France et Italie, XVIIe-XVIIIe siècles)*, in V. CHANKOWSKI, C. LENOBLE, and J. MAUCOURANT (a cura di), *Les infortunes du juste prix. Marchés, justice sociale et bien commun de l'antiquité à nos jours*, Lormont 2020, pp. 103-17; M. BARBOT, *"Precium indicat contractum": i prezzi delle cose e il diritto civile (Italia e Francia, XVII sec.)*, in G. NIGRO (a cura di), *I prezzi delle cose nell'età preindustriale: selezione di ricerche*, Florence 2017, pp. 147-63.
[18] G.B. DE LUCA, *Il Dottor Volgare, overo il compendio di tutta la legge Civile, Canonica, Feudale, e Municipale, nelle cose più ricevute in pratica*, Rome 1673.
[19] BARBOT, *Les prix* cit., p. 110.
[20] F. TRIVELLATO, *Salaires et justice dans les corporations vénitiennes au 17e siècle: le cas des manufactures de verre*, in «Annales», 54, 1 (1999), pp. 245-73; A. CARACAUSI, *I giusti salari nelle manifatture della lana di Padova e Firenze (secoli XVI-XVII)*, in «Quaderni Storici», 135 (2010), pp. 857-84.
[21] J. HOOCK, *Professional Ethics and Commercial Rationality at the Beginning of the Modern Era*, in M.C. JACOB and C. SECRETAN (a cura di), *The Self-Perception of Early Modern Capitalists*, New York 2008, pp. 147-59, p. 149.
[22] COTRUGLI, *Della mercatura* cit., pp. 39, 46, 108, «lecito, utile, & necessario» (at p. 39). See also O. LANGHOLM, *The Merchant in the Confessional: Trade and Price in the Pre-Reformation Penitential Handbooks*, Leiden 2003, p. 267; L. BOSCHETTO, *Tra Firenze e Napoli. Nuove testimonianze sul mercante-umanista Benedetto Cotrugli e sul suo "Libro dell'arte di mercatura"*, in «Archivio Storico Italiano», 163, 4 (2005), pp. 687-715, pp. 710-1.
[23] A. CARACAUSI, *Capitali e mercanti-imprenditori in età moderna (Italia settentrionale, secc. XVII-XVIII)*, in «Annali di storia dell'impresa», 18 (2007), pp. 283-299, pp. 255-7; F. BOLDIZZONI, *Means and Ends: The Idea of Capital in the West, 1500–1970*, London 2008, p. 13.

theologians, jurists and the published decisions of the courts[24]. Together, these normative sources (theological, juridical, mercantile) constituted a discourse of the just price that was tailored to the diversity of practice, acting as a guide to morally correct behaviour in a range of different circumstances.

The Piovego

The responsiveness of the discourse of the just price to specific circumstances can be related to the particular approach taken in Venice. Venetians asserted an image of the republic's justice as based in equity, the principle that the judges should apply the laws in a flexible manner, taking the specific merits of the case into consideration[25]. This was what the Venetians referred to as *arbitrium*, that is, the discretion of judges to give sentence according to conscience[26]. As Giulio Dal Pozzo stated in his manual of Venetian law (1697), the principle was that «one should judge according to what was just and fair», meaning «that equity, which does not permit rigorous interpretation of the words of the law»[27].

This was particularly the case at the Office of the Piovego, which was given the task of prosecuting usury at the end of the thirteenth century[28]. Since usury could be easily disguised by manipulating the price, quality and quantity of goods, in 1328 the Piovego was given the power to overturn contracts on grounds of the «exquisite frauds» that could be concealed under cover of various «veils and colours»[29]. The judges had the authority to determine such

[24] R. SAVELLI, *Modelli giuridici e cultura mercantile tra XVI e XVII secolo*, in «Materiali per una storia della cultura giuridica», XVIII (1988), pp. 3-24.
[25] G. COZZI, *La politica del diritto nella Repubblica di Venezia*, in Idem., *Stato società e giustizia nella Repubblica veneta (sec. XV-XVIII)*, Rome 1980, pp. 15-152; G. COZZI, *Repubblica di Venezia e Stati italiani. Politica e giustizia dal secolo XVI al secolo XVIII*, Turin 1982; J.E. SHAW, *The Justice of Venice: Authorities and Liberties in the Urban Economy, 1550-1700*, Oxford 2006; M. FUSARO, *Politics of Justice/Politics of Trade: Foreign Merchants and the Administration of Justice from the Records of Venice's Giudici del Forestier*, in «Mélanges de l'Ecole Française de Rome. Italie et Méditerranée modernes et contemporaines», 126, 1 (2014), accessed 15 Apr 2015, http://mefrim.revues.org/1665.
[26] L. PANSOLLI, *La gerarchia delle fonti di diritto nella legislazione medievale veneziana*, Milan 1970, p. 117; M. BELLABARBA, *Le pratiche del diritto civile: gli avvocati, le Correzioni, i "conservatori delle leggi"*, in G. COZZI and P. PRODI (a cura di), *Storia di Venezia, vol.VI, Dal Rinascimento al Barocco*, Rome 1994, pp. 795–824, p. 797.
[27] G. DAL POZZO, *Le institutioni della prudenza civile*, Venice 1697, p. 23 «gli Veneti legislatori, dove dissero, che si giudicasse secondo il Giusto, e l'Equo, intesero quell'equità, che non permette rigorosa interpretatione delle parole della Legge». See COZZI, *Repubblica* cit., pp. 324, 338.
[28] M. TIEPOLO, *Archivio di Stato di Venezia*, in *Guida Generale degli Archivi di Stato Italiani*, Rome 1994, pp. 957-8. M. FERRO, *Dizionario del diritto comune e veneto*, Venice 1845, [1778-1781], vol. 2, p. 440, voce *piovego*.
[29] Archivio di Stato di Venezia (hereafter ASV), *Compilazione Leggi*, serie 1, b. 303, c. 304, 11 Sep 1328, «exquisitas fraudes pravasq' malitias sub diverso velamine et colore reperire»; ASV, *Piovego* (hereafter PVG), b. 141, filza «G. Piovego C.o Consoli», 2 Sep 1328 [sic].

matters according to conscience, «considering not the written form», but instead «…the quality of the parties, and the conditions of the facts, and the other circumstances, reasons and causes as they see fit»[30]. (In the seventeenth century, Piovego verdicts routinely referred to this law, abbreviated as *Cum sit malitiis hominum obviandum*[31].) The Piovego was one of a group of Venetian magistracies where judges were permitted to exercise *arbitrium*, to apply the law flexibly in relation to the specific circumstances of the case, and with discretionary powers in sentencing[32].

To establish whether formal contracts represented the true nature of transactions, the judges were permitted to consult a much broader range of proof than was normally admitted in civil litigation, including witness testimony, informal documentation and circumstantial evidence. In fraud cases, documentation that would normally have been decisive could be called into question, offering a means of challenging «contracts damned by God and by the world»[33]. The seventeenth-century evidence shows that this was a process led primarily from below by the parties, rather than by the judges. Although the judges had the power to prosecute usury *ex officio* in response to anonymous denunciations, such cases were rare (around 5% of the total)[34]. Instead, the vast majority of cases were initiated with a *querela* (complaint) registered by the aggrieved party to a contract. These narratives varied considerably, as we would expect from a court that responded to special circumstances, but at the same time the standardized rhetoric employed indicates the role of legal professionals in drawing up plaints, mirrored in the sample plaint given in Battista Nani's 1668 manual of Venetian civil law (see below)[35]. Led by the litigants and their legal advisors, the documentation should be understood in the broader context of the process of debt negotiation. The Piovego was

[30] *Volumen Statutorum Legum, ac Iurium DD. Venetorum*, Venice 1678, p. 155, «come per sua conscientia i dieno procedere, considerato non la scrittura, ma la qualità del fatto... considerando la qualità delle persone, & le conditione de fatti, & le altre circonstantie, rasone, & casone che li parerà».
[31] The law also appears in DAL POZZO, *Le instituzioni* cit., p. 11.
[32] G.I. CASSANDRO, *La Curia di Petizion e il diritto processuale di Venezia*, in «Archivio Veneto», ser. 5, 20 (1937), pp. 1-210, pp. 2-4; FUSARO, *Politics of Justice/Politics of Trade: Foreign Merchants and the Administration of Justice from the Records of Venice's Giudici del Forestier* cit., para 7; PANSOLLI, *La gerarchia* cit., p. 139; K. NEHLSEN VON STRYK, *"Ius Comune", "Consuetudo" e "Arbitrium Iudicis" nella prassi giudiziaria Veneziana del quattrocento*, in K. NEHLSEN VON STRYK and D. NORR (a cura di), *Diritto comune, diritto commerciale, diritto veneziano*, Venice 1985, pp. 107-39.
[33] ASV, PVG, b. 33, 11 Jan 1665 mv, convent of S Zaccaria vs. Francesco Grana «contrati danati da Dio, et dal Mondo».
[34] The main series of *querele*, ASV, PVG, bb. 27-39, includes six anonymous denunciations (2% of the total). In addition, bb. 144, 156 contain a further ten anonymous denunciations from the seventeenth century. If these are included, the proportion of secret denunciations reaches 5% of the total.
[35] F. NANI, *Prattica Civile delle Corti del Palazzo Veneto*, Venice 1668, p. 240.

primarily a court used by debtors to suspend proceedings made against them at other courts. This might give them time to find the funds they needed, or put pressure on creditors to reach a settlement, rather than necessarily pursuing a case to a verdict. Even if a verdict was given, that might mean further litigation if the defendant chose to appeal – it did not necessarily lead to a decisive result one way or another[36].

Following the registration of a complaint, the plaintiff then submitted *capitoli* (points of fact) to be established through proof of various kinds, most typically witness testimony, but sometimes other types of documentation including account books, contracts, and receipts. Subsequently, defendants could contest this version of the facts by presenting their own *capitoli* and proofs. As was normal for Venetian civil procedure, witnesses were also subject to *oppositioni* presented by the other side, for example on grounds of enmity or blood relation. The majority of disputes were either abandoned or settled through arbitration – only 18% of complaints resulted in a verdict. Although the court leaned towards favouring defendants (61% of verdicts), the data are too limited to reach definitive conclusions, and no motivation was ever stated for the judges' decision – verdicts simply indicated the evidence and any laws that the judges had consulted in reaching the decision. This was characteristic of an equity approach, where each verdict was intended to be specific to the individual case, rather than act as a precedent for analogous cases. As a result, each case was argued purely on its own merits and the parties never referred to previous decisions of the court (also reflecting the fact that verdicts were not publicly available).

Litigants were not required to identify themselves in a systematic way, but from the surviving complaints (322 across the period 1600 to 1700), it is possible to establish a profile of this group of largely metropolitan debtors[37]. Nobles made up 5% of plaintiffs, a little higher than the proportion of the population, suggesting that they were more likely to go to court than other groups, and 12% of defendants, indicating that they were more prominent as creditors than as debtors[38]. Jews made up less than 2% of plaintiffs, roughly in proportion with the population, and 6% of defendants, again indicating their greater prominence as creditors[39].

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[36] *Ivi.*, p. 198.
[37] ASV, PVG, bb. 27-39.
[38] D. BELTRAMI, *Storia della popolazione di Venezia dalla fine del secolo XVI alla caduta della Repubblica*, Padua 1954, p. 72, gives the nobles as 3.7% of the population in 1642.
[39] F. RUSPIO, *Nazione portoghese. Ebrei ponentini e nuovi cristiani a Venezia*, Turin 2007, p. 113 indicates a Jewish population of 2671 in 1642 (about 2.2% of the total).

Similarly, litigants with occupational titles (including dyers, fishermen, clerks, cheesemongers, barbers, printers, merchants) were more common as defendants (15%) than as plaintiffs (8%), indicating the role of merchants and shopkeepers in providing credit. Women were underrepresented in general, but appeared more often as plaintiffs (12%) than as defendants (7%). Their greater prominence as plaintiffs was probably due to the fact that they could use the Piovego to contest settlements defrauding them of their dowry or inheritance. Finally, although usury restrictions were intended particularly to protect the poor from exploitation, and plaintiffs often argued that they had only accepted unfair prices out of «necessity», very few litigants identified themselves as «poor» – only 1% of plaintiffs, and none of the defendants.

Analysis

In the scholastic tradition, there were three primary modes of establishing the just price: prices set by the authorities, the common estimate (i.e. prices determined collectively), and prices determined by recognized experts in the trade[40]. This was followed for example in Peri's merchant manual, which set out three modes of determining the just price: the «legal price» set by the authorities, the «common price», and the «conventional price»[41]. Each mode was appropriate for a different kind of goods, for example, basic foodstuffs were typically set a maximum legal price by the authorities, while luxury goods were considered a case apart.

The Legal Price

Starting with the «legal price», it was the orthodox opinion that the authorities should set price ceilings on the retail of prime necessities in order to protect the poor, particularly at times of scarcity[42]. Peri for example stated that authorities should set a price on prime necessities in order to maintain public order. In seventeenth-century Venice, public authorities played an active role in trying to ensuring the city's food supplies, with a range of systems as was considered appropriate for each sector. A *calmiere* (price cap) and quality controls were imposed on prime necessities such as bread, meat, and fish, each subject to a

[40] MARTINAT, *Chi sa* cit., p. 836.
[41] G.D. PERI, *Il Negotiante*, Vol. 2, Venice 1672, [Genoa 1647], p. 28, «la legge del Prencipe... l'uso commune del Foro, e la libera conventione delle parti». On publication dates see M. MAIRA NIRI, *Gio. Domenico Peri, scrittore, tipografo, uomo d'affari nella Genova del Seicento*, in «La Berio», XXVI, 3 (1986), pp. 3-27, p. 11.
[42] MARTINAT, *Chi sa* cit., p. 842, notes that Molina was an exception to this.

dedicated magistracy[43]. For example, in 1606 the Giustizia Vecchia imposed price limits on the retail of eels at the city fish markets according to their weight[44]. Perhaps because of the existence of these specialized magistracies, these sorts of price controls were never a reference point in litigation at the Piovego.

The Common Estimate

Outside of the special case of food supplies, what the scholastics called the «common estimate» or «natural price» referred to the going rate for goods as recognized collectively. This meant that prices were expected to change in response to supply and demand, to vary from place to place and over time. However, it is important to underline that this did not mean that individuals were free to set their own prices. Rather, the marketplace was an organized public space, intended to establish transparency, common standards and to bring individual competition under control.[45] Scholastic authors were sometimes vague as to how the common estimate should be established in practice, but by the seventeenth century the orthodoxy was that it should be determined by the group consensus of experts in the trade – both Molina and Lessius referred to the collective role of *prudentes* (experts)[46]. Peri also referred to the common estimate as the «prudential» price, meaning that it should be established by experts[47].

This emphasis on the role of experts reflected understanding of how such disputes were normally resolved through a judicial process of estimation[48]. In the case of the Piovego, the common estimate, referred to as the «ordinary», «authentic» or «mercantile» price, was normally established through the testimony of experts, but exactly how this happened was contingent upon the initiative of the parties. Instead of there being a standard procedure, it

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[43] L. PEZZOLO, *L'economia*, in G. BENZONI and G. COZZI (a cura di), *Storia di Venezia, vol.VII, La Venezia Barocca*, Rome 1997, pp. 369-433; M. DELLA VALENTINA, *I mestieri del pane a Venezia tra seicento e settecento*, in «Atti dell'Istituto Veneto di Scienze, Lettere ed Arti», CL (1991-92), pp. 113-217; I. MATTOZZI et al., *Il politico e il pane a Venezia (1570-1650): calmieri e governo della sussistenza*, in «Società e Storia», 20 (1983), pp. 271-303; U. TUCCI, *L'Ungheria e gli approvvigionamenti veneziani di bovini nel cinquecento*, in T. KLANICZAY (a cura di), *Rapporti veneto-ungheresi all'epoca del rinascimento*, Budapest 1975, pp. 153–171; J.E. SHAW, *Retail, Monopoly and Privilege: The Dissolution of the Fishmongers' Guild of Venice, 1599*, in «Journal of Early Modern History», 6, 4 (2002), pp. 396-427.
[44] ASV, *Giustizia Vecchia*, b. 2, reg. 6, pp. 52v-53r, 22 Dec 1606.
[45] MARTINAT, *Chi sa* cit., pp. 847-8
[46] W. DECOCK, *Lessius and the Breakdown of the Scholastic Paradigm*, in «Journal of the History of Economic Thought», 31, 1 (2009), pp. 57-78, p. 62.
[47] PERI, *Negotiante* cit., p. 28, «prezzo volgare, ò prudentiale... perche viene assegnato da gli huomini periti, e prudenti della Piazza».
[48] BARBOT, *Precium* cit., p. 163.

was up to the parties to decide what *capitoli* (points of fact) they intended to prove, and find the supporting evidence. Plaintiff Giovanni Battista van Axel's *capitoli* asserted the price of various goods at the time of the transaction, for example «ordinary Venetian *panni* (wool cloths) of good or perfect quality produced in 1674 were worth around 100 ducats more or less»[49]. His witnesses included brokers in the cloth trade, whose authority came from personal experience: «so I have practised and seen practised by others»[50]. Those who were experts in the trade were expected to know the going rate, a fact that might be turned against plaintiffs, for example Zuanne Nasocchio was described as «highly expert in the trade of weaver», and who would therefore never have purchased goods if not at the «ordinary and mercantile price»[51]. In other words, he should have known better.

Experts not only testified to standard prices in their sector; they could also evaluate specific goods that were in dispute. Here the procedure was for plaintiffs to present the goods to the court (assuming these were still in their possession), and to ask the court to appoint experts from the trade. Given the greater role for interpretation in evaluating specific goods, experts were appointed by lot in such cases, rather than being nominated by the parties. In the case of the printer Zuan Pietro Bergonzi, who claimed to have been paid in the form of goods that were worth far less than stated in the contract, the court appointed two painters to evaluate the paintings, and two mercers to evaluate the cloths. In each case they were drawn by lot from a pool of four candidates[52]. Although the experts appointed by the court were typically members of the city guilds, this could vary according to the case: in a dispute over the value of a «woman's cloak» sold on credit for 28 ducats, the court appointed two «mistresses of cloaks» as experts, who evaluated it at 20 or 25 ducats respectively. In this case, however, the defendant Anzelica Zachera produced other women to testify that they had purchased the same sort of cloak at 28 ducats or even 30 ducats, and the verdict went in her favour[53].

This ad hoc assemblage of proofs, which mostly depended upon being able to produce witnesses, can be seen in a complaint presented by the nobleman Gerolemo Querini and the *cittadino* Alessandro Bin. They had purchased 36 woollen cloths on credit at 28 ducats each,

[49] ASV, PVG, b. 36, 23 Nov 1675, Giovanni Battista Van Axel vs. Davide Bensusseno, «che li panni ordinarij venetiani di buona o perfetta qualità [e] fabrica l'anno 1674 valevano D100 i[n] circa poco piu [ò] meno».
[50] *Ivi.*, «cosi io ho praticato, et ved[ut].o praticare d'altri».
[51] ASV, PVG, b. 35, 29 Feb 1672 mv, Zuanne Nasocchio vs. Virginio Pareschi, «molto perito nell'impiego di testor non sarà concorso alla compreda della robba espressa nel scritto se non alli prezzi ordinarij e mercantili».
[52] ASV, PVG, b. 35, 2 Jan 1672 mv, Zuan Pietro Bergonzi vs. Pietro Pietrogalli.
[53] ASV, PVG, b. 29, 29 Sep 1627, Santina Corazza vs. Anzelica Zachera.

and the total bill of 1008 ducats was to be paid over a period of four years at six month intervals. Since they were unable to sell the cloth for any more than 18 ducats per piece, their claim was to pay only the «just price» of the goods they had purchased. They also tried to demonstrate that they had not actually received the cloths, but that that these had been sold on their behalf by a broker. This was an attempt to present the transaction as a typical *stocco*, the Venetian term for a technique where money loans were disguised through the sale and repurchase of goods[54]. Their opponent, the nobleman Carlo Angaran, defended himself by arguing that sellers were morally permitted to try to get the best deal possible, and that he had never known that it was forbidden to sell goods on time, «nor did I ever imagine that using courtesy and giving easy terms to the buyer might be regarded as a sign of wrongdoing»[55]. Decisive in this case were the witnesses that Angaran presented to show that such cloths were typically retailed for 26 to 28 ducats each, including a wool merchant, the son of a tailor, and the son of a cloth merchant[56]. The court agreed with him, and the plaint of Querini and Bin was rejected.

Latitude

As noted, moral theology recognized that the just price could vary according to the particular circumstances of the exchange, varying over time and from place to place. To some extent it also recognized that this might include subjective factors. The idea that individuals might be permitted a certain latitude around the common estimate according to their specific circumstances could be found in thirteenth-century nominalists such as Peter Olivi and Duns Scotus[57]. It was subsequently developed by scholastics of the fifteenth and sixteenth centuries, including Antoninus of Florence, Bernardino of Siena, Battista Trovamala and Thomas Cajetan[58]. By the seventeenth century this was the orthodoxy, for example Lessius recognized that «the common price admits of a certain latitude», within a spread defined by a

[54] J.E. SHAW, *The Informal Economy of Credit in Early Modern Venice*, in «Historical Journal», 61, 3 (2018), pp. 623-642.
[55] ASV, PVG, b. 34, 23 May 1668, Gerolemo Querini & Alessandro Bin vs. NH Carlo Angarano «chi hà delle robba dà vender procura di esitarla nella miglior forma che può, ne hò mai creduto, che sij prohibito il vender la robba à tempo, ne mai mi son immaginato che dà l'usare cortesia et aggevoleza di tempo al comp[rato].re se ne possi desumere argomento di reità è mancam[en].to».
[56] *Ivi*.
[57] J. KAYE, *Economy and Nature in the Fourteenth Century: Money, Market Exchange, and the Emergence of Scientific Thought*, Cambridge 1998, ch. 5; DECOCK, *Theologians* cit., p. 527.
[58] LANGHOLM, *The Merchant* cit., pp. 178, 189; J.A. BROWN, *St Antonin of Florence on Justice in Buying and Selling: Introduction, Critical Edition, and Translation*, PhD thesis, University of Toronto, 2019, pp. 299, 357; MARTINAT, *Chi sa* cit., p. 832.

tripartite scheme of the lowest (or «pious») price, the middle price, and the highest (or «rigorous») price[59]. Peri's manual presented a similarly flexible approach to «equity in pricing» with a tripartite scheme of the «charitable», «moderate» and «rigorous» price[60].

The tripartite scheme gave individuals the discretion to adjust prices within moderate bounds according to circumstances. This effectively permitted them to charge more for sales on credit, as Trovamala (1484) explicitly recognized: «A merchant may sell on credit up to the ultimate rigid price that which the same merchant also often sells for cash»[61]. Although the precise degree of latitude must be deduced from Trovamala's examples, these indicate that it was limited to just 1% either side of the common estimate[62]. By the seventeenth century, a greater degree of tolerance was acceptable: Lessius' examples vary but indicate a latitude of 5% or 10%, while Peri's examples indicate a latitude of 5%[63]. The growing legitimacy of latitude meant that traders could adjust prices and so effectively charge interest for selling on credit, while feeling that their souls were safe.

The Venetian evidence indicates that this model had very little practical effect on litigation. These were limits of *conscience* rather than of law. As scholastics recognized, it was one thing to encourage the faithful to adhere to the Christian ideal of just pricing within the permitted degrees of latitude, but quite another to expect these to be enforced in the secular courts.[64] Occasionally, litigants spoke of «rigorous» prices, but not in any precise manner. One plaint describes how cloth was typically retailed at the shops at «the more rigorous price», for example[65]. However, no attempt was ever made to appeal to the theological model of latitude in court, or to apply limits of 1%, 5% or 10%, which would have surely have overwhelmed the courts with litigation. Nevertheless, as we shall see below, these limits do reflect broader moral norms about the acceptability of discount rates in credit transactions.

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[59] LESSIUS, *On Buying* cit., p. 468.
[60] PERI, *Negotiante* cit., p. 28, «l'equità ne' prezzi».
[61] O. LANGHOLM, *The Legacy of Scholasticism in Economic Thought: Antecedents of Choice and Power*, Cambridge 1998, pp. 104, 189.
[62] LANGHOLM, *The Merchant* cit., p. 178, «some may find that they are worth fifty ducats, and this may be called the pious price level. Others may estimate them at fifty and a half, others again at fifty-one, which are the discreet and the rigid price levels».
[63] LESSIUS, *On Buying* cit., p. 468, «For instance, with respect to a middle price of 10, the lowest is 9, and the highest is 11; with respect to a middle price of 100, the lowest is 95, and the highest is 105»; PERI, *Negotiante* cit., p. 29.
[64] DECOCK, *Theologians* cit., p. 533; LESSIUS, *On Buying* cit., p. xix.
[65] ASV, PVG, b. 34, Gerolemo Querini & Alessandro Bin vs. Carlo Angarano, «per no[n] haverlo comprato alle botteghe al costo piu rigoroso».

Laesio enormis

Far more relevant for litigants at the Piovego was the Roman legal remedy on grounds of *laesio enormis* (gross disparity), which allowed prices to differ from the common estimate by up to 50%. In late antiquity, the remedy was limited to sellers, who might rescind sales of real estate on grounds that the price was too low, but in the late medieval period it was extended to protect buyers of any kind of goods on the grounds that the price was too high[66]. Exceeding the permitted 50% was grounds for rescission of the contract[67]. This was a far higher degree of price flexibility than permitted under the tripartite scheme of the just price, and it was for this reason that theologians like Antoninus of Florence and Leonardus Lessius referred to the rule as the «justice of men» or the «external court», in order to distinguish what was legally permitted from what was morally right[68]. *Laesio enormis* provided an objective standard to measure «excessive» variance from the just price, so allowing courts to determine whether there was usury, regardless of the intentions of the parties[69]. Intention was something difficult to prove in a court of law, but *laesio* was a rule that could be applied precisely: as Lessius put it, if you sold a field worth 100 pounds for 50 pounds, you had no remedy at law; but if you sold it for 49 pounds, then there was a case for rescinding the contract[70].

At the Piovego, litigants often employed the language of *laesio* (lesion), typically in the preamble of plaints where they described the role of the court. Constantin Tirabosco, dealer in preserved fish, set out the moral logic: «people should try to sell their merchandise with authenticity…, and not with fraud and deceit, and without lesion of the buyer». He praised the Piovego for its role in protecting the «oppressed poor», so that «contracts should not be made with oppression of either of the parties»[71]. Camilla Grandi, protesting a sale of property

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[66] J.W. BALDWIN, *The Medieval Theories of the Just Price: Romanists, Canonists, and Theologians in the Twelfth and Thirteenth Centuries*, in «Transactions of the American Philosophical Society», 49, 4 (1959), pp. 1-92, pp. 22-3, 27; KAYE, *Economy* cit., p. 91.
[67] BALDWIN, *Medieval Theories* cit., pp. 22-27, 42-46 LANGHOLM, *The Legacy* cit., pp. 34, 103; LANGHOLM, *The Merchant* cit., pp. 29, 177.
[68] LESSIUS, *On Buying* cit., p. 472, «in the external court no legal action is given to the offended if he has not been deceived for more than half of the just price»; See also BROWN, *St Antonin* cit., pp. 347, 352, 354; DECOCK, *Theologians* cit., p. 549.
[69] BALDWIN, *Medieval Theories* cit., p. 50.
[70] LESSIUS, *On Buying* cit., p. 472.
[71] ASV, PVG, b. 28, 5 May 1627, Costantin Tirabosco vs. Thomaso Rubin «Che gl'huomini procurino vender' le loro mercantie con realtà et con le condittioni che si ricercano et non con fraudi et inganni, et senza lesione del compratore,... che li contrati [non] siano fatti con oppressione d'alcuno delle parti... per soccorer all'indemnnità de poveri oppressi».

in the Levant made by her 85 year old brother, similarly described how the «Sacrosanct laws» detested «those contracts containing most damned and enormous lesion», used by the rich to exploit the poor[72]. For Gerolemo Querini and Alessandro Bin (see above), the Piovego was a tribunal that considered «the equity of contracts» and prevented «enormous lesions» from disturbing that «inviolable proportion» that should balance the interests of the parties[73]. The standardized nature of this rhetoric indicates its broader diffusion in society as a set of moral principles. In Nani's legal manual, a model complaint to the Piovego employs a similar rhetoric of «bloodthirsty creditors» exploiting the plaintiff's « necessity» to oblige him to sign a contract full of lesion[74].

As Barbot emphasizes, implementation of the rules of lesion could vary across Italy, for example a stricter limit of 33% of the just price applied in Rome[75]. In theory this was also the case in Venice – according to Ferro's eighteenth-century compilation of Venetian law, a Piovego law of 1499 defined «usurious contracts» as those where lesion exceeded 33% of the just price[76]. However, a 1793 Venetian edition of Domat's civil laws (orig. pub. 1686) questioned whether this rule was ever actually implemented, on grounds that it appeared only in the rule-book of the Piovego[77]. The evidence from litigation is ambiguous on this point. There are a number of references to the more generous rule of 50%: the cheesemonger Carlo Amigoni contested a contract on grounds of lesion since the goods were worth barely half of the agreed price[78], while in another case, the judges admonished Zuanne Schioppi for selling hides of such poor quality that «they are not worth half the price you set, which is totally damned by the laws»[79]. However, some litigants referred to one half or one third of the value as if these were interchangeable. In the case of the Jew Abram Morter, denounced for usury,

[72] ASV, PVG, b. 34, 10 Apr 1670, Camilla Grandi vs. Giovanni Antonio Santonini, «Sacrosante leggi... detestati et abboriti quelli contrati che contengono danatiss[i].ma et enormiss[i].ma lesione con notabiliss[i].mo pregiud[izi].o di povere persone che indote dalla necessità convengono soggetarsi alla rapacità di chi, con pocho timor della Divine et Humana Giustitia procura di fabricarsi oppulente facoltà con l'esterminio del prossimo».
[73] ASV, PVG, b. 34, 23 May 1668, Gerolemo Querini & Alessandro Bin vs. Carlo Angarano, «La Giustitia di questo dignissimo tribunal che con singolar rettitudine pondera l'equita de' contratti non permette giamai che con enormi lesioni indiminuisa quell'inviolabile proportione».
[74] NANI, *Prattica* cit., pp. 240-1, «Quelli, che con via rapace procurano di assorbir il sangue de gl'altri... sapendo il stato di necessità, nel quale mi trovava», «quest'huomo sitibondo del mio sangue, me li ha voluti pagar Ducati ottanta il Campo solamente».
[75] BARBOT, *Les prix* cit., pp. 162-3; DE LUCA, *Il Dottor* cit., vol. 7, p. 42.
[76] FERRO, *Dizionario* cit., vol. 2, p. 828, voce *usura*: «I contratti usuratizii sono quelli, nei quali la quantità della lesione consiste in un terzo del vero valore della cosa venduta».
[77] J. DOMAT and G.A. ZULIANI, *Le leggi civili nel lor ordine naturale*, Vol. 2, Venice 1793, p. 251.
[78] ASV, PVG, b. 31, 9 Dec 1647, Carlo Amigoni vs. Francesco Roncali, «come fatto con enorme lesione».
[79] ASV, PVG, b. 28, 1 Sep 1618, Piero Zuliani vs. Iseppo dai Schiopi, *costituto* of 15 Sep 1618 «non valgiano la mita di quello gli havete poste el che è danatissimo dalle leggi».

a witness described how he sold clothing for «a third and even a half more than it is worth»[80]. Marc'Alvise Bembo described a contract «so fraudulent and injurious that it cannot be tolerated in heaven or earth», in which he had bought cloth that was «not worth half or even a third» of the agreed price[81]. The same ambiguity is found in Nani's manual, where one of his examples falls below the limit of one half of the just price, and another exceeds it[82]. This suggests that lesion was a term used in a rhetorical manner to build a moral case, along with descriptions of «excessive» or «vile» prices, rather than in the precise way that Lessius indicated. Typically such complaints were accompanied by a request that the debt be liquidated at the «true price». «Poor» Lorenzo Gasparini of Bottenigo, near present-day Marghera, complained that he had bought a pair of oxen from the «crafty» Ogniben Secco, citizen of Padua, for 110 ducats with payment in six months' time, when their true value was only 60 ducats. He asked for the contract to be cancelled so that the «true and authentic value of said oxen could be liquidated»[83].

A further distinction found in the juridical literature was between *lesione enorme* and *lesione enormissima*[84]. According to De Luca, in a case of «enormous lesion» the plaintiff could demand rescission of the contract, but the defendant could prevent this by making up the difference. On the other hand, in the case of extraordinary or «most enormous» lesion, the presumed bad faith of the defendant meant that rescission of the contract could not be prevented and that interest was also due on use of the property[85]. However, De Luca noted that it was difficult to establish a clear rule distinguishing between these two forms, and that it was an «arbitrary matter» which required close consideration of the specific circumstances to establish if there was fraudulent intent[86]. This language was sometimes used by litigants at the Piovego. Nicolo Abstenio denounced a contract he had made while in debtors' prison, as

[80] ASV, PVG, b. 27, 11 May 1612, *denontia* vs. Abram Morter, testimony of Zuanne Cecari, «il terzo et anche la mita di piu d[i]' q[ue]'llo che la valeva».
[81] ASV, PVG, b. 35, Marc'Alvise Bembo vs. Isach Grassin, «non valevano ne valgiono no[n]' l[a]'metà ne meno un terzo di quanto mi sono stati datti dalli ebrei soprad[et].ti un contrato cosi fraudolente e lesivo che non puol esser tolerato ne in cielo ne in tera».
[82] NANI, *Prattica* cit., pp. 241-2.
[83] ASV, PVG, b. 28, 30 Apr 1627, Lorenzo Gasparini vs. Ogniben Secco, «persona accortissima», «liquidato il vero et real vallore dei detti Boi».
[84] BARBOT, *Precium* cit., p. 162; DECOCK, *Theologians* cit., p. 556.
[85] DE LUCA, *Il Dottor* cit., vol. 7, ch. 6, pp. 44-46; FERRO, *Dizionario* cit., vol. 2, p. 184, voce *lesione*.
[86] DE LUCA, *Il Dottor* cit., vol. 7, ch. 6, pp. 49-50, «materia arbitraria, per nascere la decisione dalle circostanze particolari di ciascun caso».

«fraudulent, usurious, full of rapacity and most enormous lesion»[87]. Giulia Capello complained that in buying furniture from the Jew Salamon di Ventura, she had suffered «the most enormous lesion», asking that the «deceitful and detestable» contract be annulled and offering to pay the «true price» as liquidated by the court[88]. However, this appears to have functioned primarily as a rhetorical form, used to make a moral case and indicate the kind of remedies the plaintiff was seeking, rather than as a precise legal category.

The Conventional Price

In addition to the legal price and the common estimate, a third mode of establishing the just price could be applied to unique or rare luxury items. Here there was some controversy over the extent to which the just price might admit subjective taste. In the sixteenth century, Francisco de Vitoria argued that luxuries were a special case, purchased by the wealthy out for pleasure rather than due to necessity, and some later scholastics also followed this position[89]. Peri called this the «conventional price», established through the «free convention of the parties», to be applied only in the case of «rare and highly-prized items». It was a radical position that opened up the possibility of individuals determining prices freely, even if Peri stressed that this only applied to exceptional goods such as «a painting of Apelles», «a statue by Michelangelo», «a famous sword», «a diamond of unusual size», the kind of luxuries bought and sold by «great personages»[90]. Nevertheless, the more orthodox position was represented by Lessius, who stated that even unique items «should not be sold at the price arbitrarily determined by the will of the seller», but rather for the «just price… derived from the judgment of a knowledgeable merchant»[91]. A similar position can be found in De Luca, who noted the additional caution required in establishing the just price of unique goods like houses, where subjective factors played a role[92]. Like Lessius, he felt the safest solution was to have such goods evaluated by experts.

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[87] ASV, PVG, b. 27, 10 Sep 1613, Nicolo Abstenio «fraudolente usuratico et pieno di rapacità et di enormiss.a lesione».
[88] ASV, PVG, b. 28, 1 Dec 1618, Giulia Capello vs. Salamon di Ventura, «enormissima lesione», «inganevolle et detestando contrato», «liquidato il vero prezzo».
[89] DECOCK, *Lessius* cit., p. 70; DECOCK, *Theologians* cit., p. 528.
[90] PERI, *Negotiante* cit., p. 28, «libera conventione delle parti», «cose rare e molto stimate», «una pittura d'Apelle... una statua di Michel'Angelo... una spada famosa... un Diamante di quantità insolita... Cose che per lo più frà personaggi grandi si ritrovano, e contrattano».
[91] LESSIUS, *On Buying* cit., pp. 470-1. See DE ROOVER, *The Concept* cit., p. 427; TODESCHINI, *Ricchezza* cit., p. 193; MARTINAT, *Chi sa* cit., p. 838.
[92] BARBOT, *Precium* cit., p. 157.

This debate sometimes played out in the Piovego litigation. In the case of the printer Bergonzi (see above), the defendant Pietro Petrogalli tried to argue that paintings were a special category of goods, which should be evaluated like jewels, «more or less according to different occasions and needs»[93]. This was an argument that luxury items were a special case, were subjective tastes came into play. Petrogalli's witnesses included the Reverend Polidoro Polidori, who testified that it was well-known that, «like jewels», paintings were priced «according to the occasion». However, Polidoro also conceded (unhelpfully for Petrogalli) that «the person who has knowledge can distinguish the value», confirming that their objective value might be established through expert appraisal[94]. Other cases at the Piovego confirm that the accepted solution for paintings was to have them evaluated by experts in the trade. In the claim of Daniel Fabrizi, expert painters appointed by the court testified that eighteen paintings given him in payment by the apothecary Carlo Lodoli were worth only 68½ ducats, rather than the price of 400 ducats stated in the contract[95]. Despite some efforts to assert this argument, Venetian practice tended to conform to the orthodox position: even in the case of unique items, the price was not arbitrary, but should be established by experts in the trade[96].

Barter

An alternative way to argue that individuals should be allowed to set their own prices was to claim that a specific transaction was a *baratto* (barter). This was an alternative form of contract, legally termed a *permuta*, where there was no legal requirement for a certain price[97]. Some theologians sought to argue that barter should be subject to the same moral rules as buying and selling, concerned that barter could be a mask for usurious transactions[98]. These concerns also appear in the merchant manuals, which demonstrate awareness of these sorts of illicit practices. Cotrugli described barter as a useful means of conducting international trade,

[93] ASV, PVG, b. 35, 2 Jan 1672 mv, Z Pietro Bergonzi stampatore vs. Pietro Pietrogalli, «più è meno secondo le ocas[io].ne et ocorrenze».
[94] *Ivi.*, «è cosa nottoria, che le pitture vengono appretiate secondo sè appretiazono q[ua]'nto le zogie più è meno secondo l'occ[asio].ne è la p[er]sona che hà cognit[ion].e puol destinguer il valore».
[95] ASV, PVG, b. 30, Daniel Fabricij vs. Carlo Lodoli.
[96] MARTINAT, *Chi sa* cit., p. 838.
[97] BARBOT, *Precium* cit., p. 154; DE LUCA, *Il Dottor* cit., vol. 7, ch. 2, p. 15 «permutazione, la quale trà negozianti si dice baratto».
[98] M. DE AZPILCUETA and R. MUÑOZ, *Commentary on the Resolution of Money*, in «Journal of Markets & Morality», 7, 1 (2004), pp. 171–312, p. 75; DE LUCA, *Il Dottor* cit., vol. 7, ch. 1, p. 11.

but which required great caution[99]. Although barter might be justified in foreign commerce, for the internal market it was associated with the dubious practices of credit sales where the price of goods was manipulated to conceal the interest on loans[100]. Similarly, after briefly acknowledging the good origins of barter, which permitted goods to be exchanged before the invention of money, Peri immediately warned that barter was often a cover for abuse, repeating the proverb «in barter one of the parties is cheated». He bemoaned the way «modern traders» profited at the expense of others, with «exorbitant prices» that were «twice what they [the goods] are worth». In such dealings, it was necessary to be like «an Argus», with eyes everywhere. This was particularly so if one of the parties was «obligated by necessity», since they would probably be «cheated in the goods or the price»[101]. Brokers might help people to make informed decisions, although Peri also warned that they might be complicit with the stronger party. Peri's conclusion that «barter and fraud are synonymous» reflected awareness that barter could be used as a mask for usurious credit practices[102].

The Piovego evidence shows that barter was an ambiguous term that could be used to defend individuals setting their own prices, but which was also associated with dishonest practices. The complaint of the Venetian cheesemonger Carlo Amigoni regarding his purchase of overpriced cloth from the mercer Francesco Roncalli shows how arguments about the just price might be contested in this way. Because Amigoni had not actually paid in cash, but with a variety of goods and credits against third parties, Roncalli claimed this was a barter trade, in which he and Amigoni had agreed on the price of each individual item «by common consent». The controversial nature of the term was also reflected in the way the judges took their distance from it when questioning Roncalli – «that which you call barter»[103]. Use of the term marked the boundary between fair dealing and a sort of dishonest trade in which the parties might legitimately try to cheat each other – as when the judges asked Roncalli if these were «just and real prices», or whether the parties intended to «do harm to each other»[104]. Barter operated according to different rules: if both parties cheated, then they were equally

[99] COTRUGLI, *Della mercatura* cit., p. 32. On Pacioli and Cotrugli, see YAMEY, *Benedetto Cotrugli* cit., p. 48 and fn.
[100] COTRUGLI, *Della mercatura* cit., pp. 109-10.
[101] PERI, *Negotiante* cit., p. 20, «nelle baratte una della partie resta baratta»; «prezzi tanto esorbitanti; che sono valutati il doppio più di quello vagliono»; «qui bisogna aprir ben gl'occhi, e desiderarsi Argo, perche se chi piglia il danaro negotia, forzato dal bisogno, il più delle volte riceve pregiudicio, ò nella mercantia, che dà valutandola meno di quello vale, ò in quella, che riceve apprezzandola di vantaggio di giusto prezzo».
[102] *Ivi.*, p. 21, «il baratto, e baratteria sono sinonimi».
[103] ASV, PVG, b. 31, 9 Dec 1647, Carlo Amigoni vs. Francesco Roncali, «che voi dite barato».
[104] *Ivi.*, «pretij per giusti et reali o[p]'pur[e] à dar botta l'uno all'altro».

guilty, and the transaction could not be overturned by the courts[105]. As Jacopo Foresti's *Confessionale* (ca. 1497) stated, someone who charged more for goods than they were worth in a barter transaction committed an injustice, «unless the other did him the same injustice»[106]. In this case, Roncalli countered the accusation that his prices were exorbitant by showing that many of the goods Amigoni had supplied him were defective, and that he had been paid in credits against third parties that were turned out to be valueless.

The same argument can be seen in the case of the Venetian nobleman Domenico Donato, who had sold a mortgage credit to raise money. Instead of being paid cash, as the contract stated, he had been paid with «second-hand goods of very little value», including gilded leather wall-hangings, a dress, mirrors, handkerchief rings and credits against third parties. One of the witnesses, the broker Paolo Filamandi, emphasized that the parties had «reached agreement in barter and valued the goods as agreed in the course of the barter»[107]. Barter was a mode of trading with different rules, in which prices were established by private agreement and cheating was regarded as legitimate, in the sense that there could be no legal redress, so long as it was practised by both sides.

Discounting

Although barter was a morally ambiguous mode of exchange, linked to fraud and usury, it shaded into the established practice of charging different prices for goods according to the terms of credit. In the case of the printer Zuan Pietro Bergonzi, who submitted paintings for evaluation in court (see above), the opposing party's witnesses testified that paintings had different prices depending on whether they were sold «for cash» or «for barter», for example the «large paintings» were valued at 8 ducats for cash and 10 ducats for barter[108]. The case shows that «barter» was sometimes used in a looser sense to refer to the much more conventional idea that prices might vary according to the terms of the contract, in particular the timing and modality of payment.

The standard practice of varying the price according to the credit terms can also been in the *sconto*. Although related to the modern concept of discount, the *sconto* was technically a

[105] LANGHOLM, *The Merchant* cit., pp. 154, 188, 193.
[106] *Ivi.*, p. 211
[107] ASV, PVG, b. 33, 28 May 1657, Domenico Donato vs. Francesco Grimani, testimony of Paolo Filamandi, «in barato restorno d'acordo e le valutorono secondo che tra loro si avenero media[n]'te il med[esi].mo barato».
[108] ASV, PVG, b. 35, 2 Jan 1672 mv, Zuan Pietro Bergonzi vs. Pietro Pietrogalli, testimony of 6 Apr 1673, with different prices «in contanti» or «à barato».

measure of time rather than money: it referred to what we would now call the credit terms, i.e. when payment was due. If the parties agreed to reduce (*battere*) or increase (*crescere*) the *sconto*, then the price would be adjusted accordingly. In a 1627 dispute over the price of quills supplied from Nuremberg to Venice, Antonio Detti and Francesco Galilei proved that it was «inveterate usage» and «ordinary practice» in Venice «to sell on time with agreement to discount (*batter il sconto*) at the rate of 9% per annum»[109]. Similarly, Peri's manual described the standard discount rate for paying cash as being 8% per annum, and 9% in the special case of wool[110]. The conventional nature of the discount rate can be seen in its repetition in Venetian manuals of arithmetic. Giacomo Campolini explained how to calculate the *batter il sconto* for a customer who wished to pay immediately rather than in instalments. This was a matter of calculating the number of months of *sconto* so as to reduce the price in proportion, again applying a fixed annual rate of 9%[111]. The same 9% rate is reported in eighteenth-century manuals by Giovanni Maria Bianchi and by Girolamo Pietro Cortinovis, which described «how this is done in Venice»[112]. Similarly, in a Piovego case from the late eighteenth century, the judges referred to «the usual mercantile discount of nine per cent»[113]. It even appears in a 1675 poem by Domenico Balbi, which described how you could pay a lower price by *batter el sconto*[114]. In the guise of the *sconto*, the charging of interest on credit sales was standard commercial practice by the seventeenth century.

The orthodox position was that selling on credit did not justify a higher price: «Not to sell for more on credit», as Francesco di Mozzanica put it (1509)[115]. Along with the various other exceptions used to justify higher prices, the *sconto* was a way of getting around this restriction: although it was not morally acceptable to charge more for credit, you could legitimately offer a discount for paying cash[116]. The legitimacy of the practice was contested, but it received support from the nominalist tradition of scholastic thought, such as Pietro

[109] ASV, PVG, b. 29, 17 Nov 1627, Francesco & Marco Galletti vs. Antonio Francesco Detti & Francesco Galilei, *capitoli* of 15 Apr 1628 «Che e uso inveteratissimo nella piaza di q[ue]'sta città il vender à tempo con patto di batter il sconto, che e in ragione di 9 per cento al anno et cosi si fa ordinar[iamen].te».
[110] PERI, *Negotiante* cit., pp. 115, 148, 152.
[111] G. CAMPOLINI, *Propositioni aritmetiche*, Venice 1700, pp. 158, 178.
[112] G.M. BIANCHI, *Tariffa, o sia modo facilissimo di convertire la valuta di banco in valuta corrente*, Venice 1732, p. 109; G.P. CORTINOVIS, *Abbaco ovvero pratica generale dell'Arimmetica*, 4th edn, Venice 1759, [1749], p. 66, «Come si pratica; ovvero si costuma in Venezia».
[113] ASV, PVG, b. 41, no. 1, 6 May 1776, Francesco & Giacomo Steffani vs. Emanuel Iacer, *costituto* of 5 Jun 1776, «solito sconto mercantile del nove per cento».
[114] D. BALBI, *Il Ligamatti, Cioè Raccolte Morali in Lingua Venetiana, estese in Quaderni*, Venice 1675, p. 139.
[115] LANGHOLM, *The Merchant* cit., p. 197.
[116] MUNRO, *The Medieval Origins* cit., p. 512.

Olivi, via Bernardino da Siena and Antoninus of Florence[117]. Thus, at the same time as Bernardino argued that goods should always be sold at the just price, whether for credit or cash, it was legitimate to offer a discount to those who wished to pay in advance[118]. Similarly, Cotrugli stated that while goods should always be sold «according to the common tendency of the markets» and «not exceeding a convenient, limited and just price», at the same time, «you may sell it for less for cash, due to your need for money»[119]. This way of presenting things, where the credit price was the norm, but with a discount for those paying in cash, was solidly established by the early modern period. Although Lessius argued the potential merits of *carentia pecuniae*, justifying charging a market rate of interest on grounds of the time value of money, this was ultimately rejected due to opposition in Rome and the dangers of encouraging usury[120]. Discounting remained a morally safer way of presenting such charges.

Some thinkers explicitly identified the acceptable limits for the discount rate with the tripartite scheme of the just price, with the cash price marking the lower limit, and the credit price marking the higher limit, as maintained by Battista Trovamala (1494) and Teofilo Vegio (1518)[121]. If we accept that those bounds were approximately 5% either side of the just price by the seventeenth century (as indicated by Peri and Lessius), then the standard 9% discount rate found in Venice would fall comfortably within this range, indicating that the practice conformed to the rules of good conscience. Discounting was therefore both morally and legally acceptable, so long as it remained within the bounds of moderation. As Lessius warned, «It is illicit to pay a price lower than the lowest just price merely by virtue of advance payment itself»[122].

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[117] KAYE, *Economy* cit., p. 118; P.J. OLIVI, *Usure, compere e vendite: la scienza economica del XIII secolo*, a cura di A. SPICCIANI, P. VIAN, and G. ANDENNA, Novara 1990, p. 69; G. ANDENNA, *Prestito, interesse e usura in età comunale: riflessioni economiche e canonistiche (XII-XIV secolo)*, in S. BRACCI (a cura di), *Marco da Montegallo (1425-1496): Il tempo, la vita, le opere*, Atti del Convegno di studio (Ascoli Piceno 12 ottobre 1996 e Montegallo 23 agosto 1997), Padua 1999, pp. 23-41, pp. 40-41.
[118] R. DE ROOVER, *San Bernardino of Siena and Sant'Antonino of Florence: The Two Great Economic Thinkers of the Middle Ages*, Boston 1967, p. 30.
[119] COTRUGLI, *Della mercatura* cit., p. 108, «secondo il commun corso della piazza, non eccedendo un conveniente, limitato, & giusto prezzo»; p. 109 «*Et non ostante*, che tu la vendessi meno a contanti per bisogno c'havessi di danari».
[120] VAN HOUDT, *Lack of money* cit.
[121] LANGHOLM, *The Merchant* cit., pp. 189, 209.
[122] LESSIUS, *On Buying* cit., p. 492.

Evidence from the Piovego indicates how discount rates might influence price disputes. The widow Giustina Vio and her son Bastian, from Burano, complained to the Piovego about the «most enormous lesion» they had suffered due to the «excessive price» of 70 soldi per pound that they had agreed to pay for 505 pounds of *bulgari* (Russian leather)[123]. Their case hinged on the disparity between the price they paid for the leather and its true value: when they sold it to Giacomo Biasi to settle a pre-existing debt to him, the price was just under 50 soldi per lb[124]. Giustina and Bastian presented various leather merchants as expert witnesses, who testified that the normal cash price for this quality of leather was only 50 soldi per pound[125].

However, the case was complicated by the fact that they had bought the leather on credit, with a contract to pay in instalments over a period of 18 months. The same expert witnesses testified that the price of leather was higher when purchased on credit, at around 64 soldi per pound over a two year period, although they also indicated that the precise details of any credit arrangement were a matter for negotiation[126]. The existence of a price differential for goods bought for cash and goods bought on credit was something that the witnesses regarded as standard practice. Giustina and Bastian won their case (which was immediately appealed), not because the contracted price was higher than the cash value of the leather, but because they had agreed to pay more for the credit than was the norm in the sector (70 soldi per lb over 18 months, rather than 64 soldi per lb over two years). This suggests that the court accepted the norm of charging a higher price for credit sales, but only within customary limits. In this case, the acceptable discount rate indicated by witnesses was approximately 11%, while Giustina and Bastian were paying around 19%. What mattered in this case was not establishing the precise extent of lesion, but whether prices adhered to the discount rates customary in a particular trade. The case demonstrates the nuanced approach adopted in establishing the just price, paying attention to the specific practices of different sectors of the economy, as reflected the equity approach of the Piovego but also the more general contemporary legal thinking on such disputes, as set out by De Luca.

[123] ASV, PVG, b. 35, 2 Oct 1670, Giustina & Bastian Vio vs. Marco Cagnis & Bortolo Marciliani, «enormiss.mo lesione... per robbe havute à pretij eccessivi».
[124] *Ivi.* Bastian agreed to pay 1767 lire 10 soldi in instalments of 50 ducats every 3 months. The hides were given to Biasi to settle a debt of 1201 lire 11 soldi.
[125] *Ivi.*
[126] *Ivi.*

Conclusions

This paper underlines the importance of shifting the focus from intellectual history to considering the just price in the context of litigation. Contemporary legal textbooks are a key resource for the rules that guided the courts, but there are few studies of how the just price was actually litigated in practice. The records of the Venetian Office of the Piovego show that although moral theology certainly influenced the rhetoric of litigants, much of the scholastic debate over the just price had little direct relevance in terms of legal effects. The tripartite scheme of latitude around the just price did not appear as point of reference in Piovego litigation, for example. After all, these were intended as guides for the conscience, matters for the internal forum rather than the secular courts. Nevertheless, moral theology informed the widespread practice of discounting, establishing a preferred idiom for presenting interest in credit transactions. Prices could legitimately be adjusted to reflect the terms of credit, applying the rates that were customary to any particular sector. Although discount rates varied considerably, they appear to have been roughly in line with the greater degree of latitude offered by moral theology in the seventeenth century.

On the whole the Piovego evidence indicates a commitment to the general principle that the just price should be determined collectively, rather than being a matter for individuals. Occasionally attempts were made to appeal to the idea that there could be a subjective or «conventional» price for certain categories of luxury goods, such as paintings and jewels. Even here, however, we see a preference for collective price setting, with litigants attempting to establish the customary or going rate in any particular sector. The main exception to this was barter, an alternative mode of doing business where the parties were permitted to deceive each other. This was regarded with suspicion in the moral theology and merchant manuals of the period, reflecting awareness that it could easily serve as a mask for usury. By framing moneylending as an exchange of goods by both parties, perhaps supplemented with cash, creditors could provide themselves a potential defence against accusations of usury.

How the just price should be established was in practice dependent upon the initiative of the parties, without any systematic procedure. The result was an ad hoc assortment of methods – for example, witnesses testifying to the prices customary in a sector, or their having bought goods at particular prices, account books documenting the prices paid at a particular time, or the court appointing experts to evaluate goods. This made the Piovego flexible, able to adapt

to particular circumstances and find solutions appropriate for particular sectors. But it also meant that getting results meant being able to assemble resources to prove a case – lawyers, witnesses, documentation. Rather than the court applying specific rules for specified categories of persons, we find individuals mobilizing their social and business networks to construct as effective a case as possible.

The flexibility of the rules is particularly clear in the case of lesion. The theological and legal literature was clear that lesion marked a precise cut-off point for determining whether cases should be dealt with by the external or internal court. By contrast, the Piovego evidence shows that the term lesion was employed as a loose moral rhetoric than as a means of measuring the morality of prices. Litigants were vague as to whether the limit referred to one half or one third of the just price, and the precise location of the boundary was never a reference point in the proceedings. Similarly, although in theory the distinction between *laesio enorme* and *enormissima* had significant effects in terms of legal results, in practice they appear to have functioned more as rhetorical terms. Again, rather than systematic rules, the court was distinguished by its flexible practice and reliance on moral narratives.

Overall the case of the Piovego shows how a late medieval institution with the task of combatting usury functioned in the changed context of the commercial ethics of the seventeenth century. At the same time as it preserved the moral principle of the just price, in practice it functioned as a legal tool available to litigants. Although perhaps intended to protect the poor from exploitation, in practice it was chiefly an instrument used by people with the resources to obstruct, slow down and frustrate creditors, to contest transactions in which they had lost out, and to expose moneylenders when relations broke down. By shifting the focus from theory to the practice, norms are situated in their practical context, revealing how litigants instrumentalized the discourse to suit the purposes of their particular circumstances.