

This is an extract from:

*The Economic History of Byzantium:
From the Seventh through the Fifteenth Century*

Angeliki E. Laiou, Editor-in-Chief

Scholarly Committee

Charalambos Bouras

Cécile Morrisson

Nicolas Oikonomides[†]

Constantine Pitsakis

Published by

*Dumbarton Oaks Research Library and Collection
Washington, D. C.*

in three volumes as number 39 in the series

Dumbarton Oaks Studies

© 2002 Dumbarton Oaks

Trustees for Harvard University

Washington, D.C.

Printed in the United States of America

www.doaks.org/etexts.html

The Byzantine Law of Interest

Demetrios Gofas

By the end of the postclassical period of Roman law, the rate of interest on monetary debts had climbed slightly. This was the result of the currency reform of Constantine the Great, who had set the value of the gold solidus (aureus or nomisma) at $\frac{1}{72}$ of a litra of gold and divided it into 24 silver siliquae (*keratia*). As a consequence, the *hekatostaios tokos* (*centesimae usurae*) of classical Roman law, which corresponded to precisely 1% per month or 12% on an annual basis,¹ ceased to be an absolute rate as it had been in the past and was set at 3 *keratia* per month—that is, $\frac{1}{8}$ of a *nomisma*—amounting to 12.5% per year. In practice, however, the term *hekatostai* continued to be used.²

In parallel, some more specific instances of payment of interest had come into being, including debts that were not in cash but in kind, where under the influence of the Hellenistic *hemiolion* or *hemiolia* the interest rate was 50%.³ The *hemiolion* was also applicable in cases of cash debts, but on condition that two months had elapsed since the issuing of a court decision finding the debtor guilty, that he had failed to discharge his obligation, and that the creditor had taken measures to have the court confirm that

This chapter was translated by John Solman. Because of the indisposition of Professor Gofas, certain essential changes to the text and notes were made by A. E. Laiou.

¹ G. Billeter, *Geschichte des Zinsfusses im griechisch-römischen Altertum bis auf Justinian* (Leipzig, 1898; repr. Vaduz, 1970), 269 n. 1; E. Levy, *Weströmisches Vulgarrecht: Das Obligationenrecht* (Weimar, 1956), 161–62; M. Kaser, *Das römische Privatrecht*, 2d ed. (Munich, 1975), 2:341 (hereafter *RPR*).

² Cf. IP (*Interpretatio*) in *Pauli Sententiae* (P. F. Girard, *Textes de droit romain*, 7th ed. (Paris, 1967), 1:381, ad PS 2.14.1 and 2), which expressly mentions “centesimae”; Levy, *Weströmisches Vulgarrecht*, 162 n. 27. Ed. note: It should be noted that the slight increase in the annual interest rate, from 12%, 8%, 6%, and 4% to 12.5%, 8.33%, 6.24%, and 4.2%, respectively, is neither of legal significance, as Billeter, *Geschichte des Zinsfusses*, 269 n. 1, correctly points out, nor, if the truth be told, of economic importance. When the sources of the period give the interest rate as a proportion, as in *CI* 4.32.36 = *Bas.* 23.3.74, it is always 12%, and so on. However, when the interest rate is expressed as a subdivision of the gold *nomisma*, as in Justinian’s Novel 32, then of necessity it is slightly higher, since, for example, 1 *keration* on the *nomisma* or $\frac{1}{24}$ of the *nomisma* is 4.2% and not 4%. See A. E. Laiou, “Exchange and Trade, Seventh–Twelfth Centuries,” *EHB* 710 n. 63. This artificial increment should not be seen as an increase in interest rates as the result of economic factors.

³ L. Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs* (Leipzig, 1891; repr. Hildesheim, 1963), 513–14; Levy, *Weströmisches Vulgarrecht*, 116. Cf. *CTh* de usuris 2.33.1, Constantine the Great, year 326. Mitteis, *Reichsrecht*, 513, and Billeter, *Geschichte des Zinsfusses*, 267 and 303, date it to A.D. 325.

the debtor had not complied with the decision. In this instance, furthermore, the interest was doubled as of the date on which the decision was issued.⁴ Another case in which the rate of interest might be higher than 12.5% per year was that of maritime loans, in which the rate was unrestricted.⁵

By way of contrast, the maximum rate of interest that members of the class of the *illustres* (*synkletikoi*) could charge on loans they granted was limited to half a *hekatoste* per month, or 6% (= 6.25%) per year.⁶

The charging of interest, at whatever rate, always encountered the strong disapprobation of the church.⁷ The most important ecclesiastical writers and orators disapproved of it,⁸ though they never reached the point of prohibiting it, and clergymen were expressly forbidden to charge interest. This ban was enshrined in various ecclesiastical texts, the most important prohibition being that of a canon issued by the ecumenical Council of Nicaea in 325. Clergymen who violated the rule were liable to be deposed.⁹

The legislation of Justinian, under the influence of the concepts of the church, frowned upon the charging of interest and attempted to restrict it. The fundamental provision regarding this is in the Justinianic Code.¹⁰ The maximum rate of interest was set, as a rule, at 6% (= 6.25%), whereas for the *illustres* and those still higher in rank the limit was even stricter: a maximum rate of 4% (= 4.2%).¹¹ However, in the case of some categories of persons involved in trade, Justinian set an interest rate higher than the generally applicable 6%. For those in charge of commercial establishments (“*qui ergasteriis praesunt*”),¹² for example, the maximum rate was set at 8% (=

⁴ *CTh* 4.19.1 pr. and 1, year 380, with IP. Cf. Levy, *Weströmisches Vulgarrecht*, 116; M. Kaser, *Das römische Zivilprozessrecht* (Munich, 1966), 512 n. 7, and idem, *RPR*, 341 n. 44. Billeter, *Geschichte des Zinsfusses*, 260 and 284–86, believes that the text of this provision is partially interpolated.

⁵ *CI* 4.33.1, Diocletian and Maximian, A.D. 286, PS 2.14.3 (Girard, *Textes*, 299) and IP for the provision of PS 2.14.3 in Girard, *Textes*, 381.

⁶ *CTh* 2.33, 4, year 405.

⁷ Psalm 15 asks, “Lord, who shall abide in thy tabernacle?” and the answer includes the person “that putteth not out his money to usury.” For the attitude of the ancient Hebrews to interest, see R. Zimmermann, *The Law of Obligations: Roman Foundations of the Civil Tradition* (Cape Town, 1990), 170 n. 2.

⁸ G. Cassimatis, *Les intérêts dans la législation de Justinien et dans le droit byzantin* (Paris, 1931), 35–37; Billeter, *Geschichte des Zinsfusses*, 237–42.

⁹ Council of Nicaea, canon 17. Cf. Cassimatis, *Intérêts*, 33–35, n. 1; Billeter, *Geschichte des Zinsfusses*, 278–81; and G. Maridakis, *Τὸ Ἀστικὸν Δίκαιον ἐν ταῖς Νεαροῖς τῶν Βυζαντινῶν Αὐτοκρατορῶν* (Athens, 1922), 223 n. 4, all of whom mention ecclesiastical sources referring to the subject. See also A. E. Laiou, “God and Mammon: Credit, Trade, Profit and the Canonists” in *Τὸ Βυζάντιο κατὰ τὸν 12^ο αἰῶνα*, ed. N. Oikonomides (Athens, 1991), 261–300, esp. 297–98 n. 103.

¹⁰ *CI* 4.32.26, year 528; see Billeter, *Geschichte des Zinsfusses*, 332, and K. E. Zachariae von Lingenthal, *Geschichte des griechisch-römischen Rechts*, 3d ed. (Berlin, 1892; repr. Aalen, 1955), 310.

¹¹ *CI* 4.32.26.2. The *illustres* were later called *protospatharioi* (Zachariae von Lingenthal, *Geschichte*, 309, and after him Cassimatis, *Intérêts*, 50 n. 3). The *Basilics* (*Bas.* 23.3.74) talk of “on the part of *illustres* and senior persons” (*ἀπὸ ἰλλουστρίων καὶ ἀνωτέρων*). For an interpretation of the purpose of this provision, see Cassimatis, *Intérêts*, 51–53.

¹² For support for the view that the principal meaning of *ergasterion* was a commercial establishment, see *CI* 12.33(34).1. Cf. LSJ, s.v., and in particular Hyperides, *Κάτ’ Ἀθηνογ.* (IV) 6, and Billeter,

8.33%, the *besses centesimae*) per year. The same rate of 8% (= 8.33%)¹³ was expressly set in the case of bankers by a later provision, Novel 136 of the year 535.¹⁴ In the case of maritime loans, on which the rate of interest had previously been unrestricted, Justinian set a maximum of 12% (= 12.5%), to be calculated by the year.¹⁵

Twelve years later, this provision of Justinianic law was modified by a provision the emperor introduced, as he himself tells us, as an adjustment to the current practice in shipping. The new provision was contained in Novel 106 of 540, the most important innovation of which was the linking of the interest payable to the voyage covered by the loan, regardless of its duration. Novel 106 also ratified a long-standing maritime practice by admitting that the debtor who had received a loan might, at the creditor's discretion, be obliged to ship, free of charge, one modios of wheat or barley belonging to the creditor for each gold nomisma (solidus) of the loan. When this arrangement was applied, the rate of interest would be 10% on the value of the loan; otherwise, it would be 12.5% (i.e., $\frac{1}{8}$ of the principal), regardless of the duration of the voyage.¹⁶ However, although this novel clearly reflected the practice in the Hellenistic maritime world,¹⁷ it was abolished by Justinian only a year later in Novel 110 of 541, which restored the provisions of the Code as they had been implemented before Novel 106.

The Justinianic legislation included special regulations for loans to farmers. If these loans were in kind (*specierum fenori dationes*), Justinian set the rate of interest at 12%.¹⁸ Three novels of 535 fixed the interest rate on loans in kind to farmers in the provinces

Geschichte des Zinsfusses, 332–33. H. Heumann and E. Seckel, *Handlexikon zu den Quellen des römischen Rechts*, 10th ed. (Graz, 1958), s.v., however, believe “Werkstatt” to have been the principal meaning and give that of the shop (“Kramladen”) second, referring specifically to the provision under discussion here.

¹³ The provision of section 4 of Novel 136 refers to this interest rate (8% = 8.33%) as already in force (since 528, under *CI* 4.32.26.2) for bankers. Cf. Cassimatis, *Intérêts*, 46, 52–53.

¹⁴ Novel 136 (year 535), “Concerning transactions involving the changing of money,” 4: “Whereas we have introduced a law to the effect that those in charge of the money-changing banks may not lend at more than two-thirds of *centesimae usurae*, we now determine that this rate [$\frac{2}{3}$ of the *centesimae usurae*] should be paid to them not only in the case of written contracts but for the unwritten ones as well” (Ἐπειδὴ δὲ νόμον ἔθεμεθα, μὴ περαιτέρω τοὺς ἀργύρου τραπέζης προεστώτας διμοιραίου τόκου δανείζειν . . . θεσπίζομεν, μὴ μόνον τὸν ἐπερωτήσεως αὐτοῖς δίδοσθαι τόκον, ἀλλὰ καὶ τὸν ἐξ ἀγράφων τοιοῦτον . . . τουτέστι τὸ ἐκ διμοίρου τῆς ἑκατοστῆς). Cf. also *CI* 4.32, 26.2.

¹⁵ *CI* 4.32.26.2, of the year 528. For bibliography, see D. Gofas, *Μελέτες Ἱστορίας τοῦ Ἑλληνικοῦ Δικαίου τῶν Συναλλαγῶν* (Athens, 1993), 396 nn. 6 and 7, and 398 n. 17; more specifically, see Cassimatis, *Intérêts*, 54, for the fact that under *CI* 4.32.26.2 interest was calculated per year and not per voyage.

¹⁶ See the preamble to Novel 106 and the observations of A. Biscardi, *Actio pecuniae traiectionis*, 2d ed. (Turin, 1974), 54–56. See also R. Zeno, *Storia del diritto marittimo italiano nel mediterraneo* (Milan, 1946), 22; P. Huvelin, *Études d'histoire du droit commercial romain* (Paris, 1929), 208; and Billeter, *Geschichte des Zinsfusses*, 323–30.

¹⁷ Unlike the Romans, the Greeks usually calculated interest by the voyage and not by the year. Cf. U. E. Paoli, “Il prestito marittimo nel diritto attico,” in *Studi di diritto attico* (Florence, 1930; repr. Milan, 1974), 61 and nn. 5, 68; G. Astuti, *Origine e svolgimento storico della commenda fino al secolo XIII* (Casale Monferrato, 1933; repr. Turin, 1993), 112. However, this was not an “Oriental” practice, as Huvelin, *Droit commercial*, 208 and, following him, Astuti, *Commenda*, would have it, but a Greek one.

¹⁸ *CI* 4.32.26.2 of the year 528 (see the text in note 19 below). Cf. Cassimatis, *Intérêts*, 55, and Billeter, *Geschichte des Zinsfusses*, 355.

of Thrace, Illyricum, and Moesia (*Moesia Secunda*)¹⁹ at 12.5%. However, when the loan to the farmer was in cash, one of these three novels (Novel 32) determined the rate of interest as 4% (= 4.2%), setting the maximum payment of interest at one keration (siliqua) per nomisma (solidus) per year.²⁰

In a regulation of a specific character and particular importance, modifying the provisions in force to that time,²¹ the doubling of the interest in the event of a court decision finding the debtor guilty was to occur, under Justinianic law, four months (not two) after the issuing of the decision in question or after its upholding if an appeal (*provocatio*) was lodged against it.²²

In another provision, also of a specific nature, a claim resulting from the formation of a dowry or its return in the event of termination of the marriage was to bear interest at 4% per year after a specific length of time had elapsed from the date of the marriage or its termination. Where the formation of the dowry was concerned, a provision of 530 contained in the Code of Justinian laid down that if, within two years of the wedding, a dowry consisting of cash or of objects evaluated by the person who had undertaken to give the dowry had not been delivered to the beneficiary (the husband), then as of the expiry of the two-year period the person who had undertaken to provide the dowry owed the husband interest at 4% (= 4.2%) per year.²³ When the dowry had to be returned on the termination of the marriage, another provision of the same year, also included in the Code of Justinian, determined that the husband was obliged, within one year of termination of the marriage, to return to those who were beneficiaries under the law the things of which the dowry had consisted, whether mobile (*res mobiles vel se moventes*) or incorporeal (*res incorporales*). Otherwise, he would be obliged to pay interest at 4% per year.²⁴ Another special exception was established by Novel 120 of 544, which set a maximum of 3% on the interest rate for loans to churches and charitable foundations.²⁵

¹⁹ Novel 32, section 1: “if the things lent are nomismata, each nomisma shall bear 1 keration per year as a kind of interest” (εἰ δὲ νομίσματα τὰ δανεισθέντα εἶη, ἐφ’ ἐκάστῳ νομίσματι ἐνιαύσιον κεράτιον ἐν προφάσει τόκου). Novel 34 is addressed to the *praeses* of Haemimontus in Thrace, but it emerges from the text that it actually concerned “Mysia [= Moesia] secunda provincia.” Cf. Billeter, *Geschichte des Zinsfusses*, 339–40, who accepts that its applicability extended to the entire Byzantine state. Otherwise, see Kaser, *RPR*, 52, p. 342 n. 52.

²⁰ Billeter, *Geschichte des Zinsfusses*, 340–42; Cassimatis, *Intérêts*, 56–58.

²¹ See above, note 4.

²² *CI* 7.542, of the years 529 and 531. Cf. Cassimatis, *Intérêts*, 97: after the four months had elapsed, the interest became 12%.

²³ *CI* 5.12.31.5 and 6 of the year 530. Cf. Kaser, *RPR*, 187–88, 342 n. 52; Billeter, *Geschichte des Zinsfusses*, 346; Cassimatis, *Intérêts*, 96. For the fact that the 4% (= 4.2%) was a fixed rate, not a maximum, see Billeter, *op. cit.*, 346.

²⁴ *CI* 5.13.1.7b. Cf. Kaser, *RPR*, 192 n. 45, and 342 n. 52; Billeter, *Geschichte des Zinsfusses*, 346–47; Cassimatis, *Intérêts*, 96; J. Sontis, *Die Digestensumme des Anonymos* (Heidelberg, 1937), 1:96ff.

²⁵ Novel 120 (year 549), section 6: “As for the interest, not more than a fourth part of a hekatoste” (Τὰ δὲ εἰς τόκους οὐ πλείονας τοῦ τετάρτου μέρους τῆς ἑκατοστῆς). One-quarter of a hekatoste would be the monthly rate (Cassimatis, *Intérêts*, 59–60, Billeter, *Geschichte des Zinsfusses*, 343–44) and would correspond to 3% per year. In the event of *antichresis* (the substitution of usufruct for interest), any excess paid would be deducted from the principal (see Cassimatis, *op. cit.*, 60 n. 1, and Billeter, *op. cit.*, 343–44) until repayment, and after repayment it would be refunded.

Post-Justinianic Byzantine Law

The *Ecloga* of the Isaurian emperors makes absolutely no mention of interest, either on ordinary loans or on maritime loans.²⁶ We are informed that Nikephoros I (802–811) issued a provision—which has not survived—prohibiting the charging of interest altogether.²⁷ Since it is no longer possible to discover what the precise content of this prohibition may have been, much of what follows is hypothesis. From the scanty information that has survived, we learn that Nikephoros I granted maritime loans,²⁸ by way of exception, to the healthiest of the shipping firms of Constantinople; the loans were of a standard value of 12 litrai of gold (864 gold nomismata) at an interest rate of 16.66% or, as the sources have it, 4 keratia for each nomisma of gold,²⁹ although the enterprises receiving the loans were not, for this reason, to be released from their other tax obligations (“the usual *kommerkia*”). The surviving information does not allow us to conclude whether the ban on interest applied in general or was confined only to maritime loans, although the latter seems more reasonable. Nor do we know whether the prohibition also applied to shipowners who were not based in Constantinople or only to those whose headquarters were there but who could not be numbered among the most financially sound enterprises.

Various views have been advanced as to whether the measure introduced by Nikephoros I was compulsory or not and as to the purpose he may have been trying to achieve.³⁰ However this may be, the regulation of interest on maritime loans intro-

²⁶ L. Burgmann, ed., *Ecloga: Das Gesetzbuch Leons III. und Konstantios V.* (Frankfurt am Main, 1983), E.10.1; cf. Zachariae von Lingenthal, *Geschichte*, 312 n. 56, and 301; Cassimatis, *Intérêts*, 112–13. However, the wording of the *Ecloga*—“the debtor is not permitted to invoke an enemy raid or a shipwreck in order to postpone his debt to the creditor” (μη ἔχοντος ἄδειαν τοῦ δανεισαμένου ἐχθρικήν ἐπιδρομήν ἢ ναυάγιον θαλάσσης . . . πρὸς διαστροφήν ἢ ἀναγωγήν προτίθεσθαι τοῦ δανείσαντος)—was clearly composed in view of the terms of maritime loan contracts.

²⁷ Theophanes, *Chronographia*, ed. C. de Boor, 2 vols. (Leipzig, 1883–85; repr. Hildesheim, 1963), 488.11 (hereafter Theophanes) (= *Georgius Cedrenus*, ed. I. Bekker (Bonn, 1839), 2.39.10 (hereafter Kedrenos). On this question, see also Laiou, “Exchange and Trade,” 711.

²⁸ It is hard to understand Cassimatis’ view that this is not a maritime loan (“il ne s’agissait pas d’un prêt maritime,” *Intérêts*, 111 n. 2). In translating the texts of Theophanes and Kedrenos, Cassimatis himself rendered the phrase “τοκισμοὺς ἐν πλοίοις” as “des intérêts dans le prêt maritime” (p. 114).

²⁹ This is the “tenth vexation” of Nikephoros I, dating from 811, the last year of his reign. Cf. A. Christophilopoulou, “Ἡ οἰκονομική καὶ δημοσιονομική πολιτεία τοῦ Αὐτοκράτορος Νικηφόρου Α’” in *Ἀνάπτυξιν εἰς μνήμην Κ. Ι. Ἀμάντου* (Athens, 1960), 431 n. 2, referring to Theophanes, 488 = Kedrenos 2.39.8 (“in the ninth year”). According to Theophanes, 487.17–19 = Kedrenos, 2.38.13–15 (see also *Ioannis Zonarae epitome historiarum*, ed. M. Pinder and T. Büttner-Wobst (Bonn, 1841–97), 3:307.6–9), Nikephoros I “assembled the official *naulkeroi* of Constantinople and gave them each 12 litrai of gold at an interest rate of 4 keratia per nomisma, retaining the usual *kommerkia*” (τοὺς ἐν Κωνσταντινουπόλει ἐπισήμους ναυκλήρους συναγαγὼν, δέδωκεν ἐπὶ τόκῳ τετρακεράτῳ τὸ νόμισμα ἀνά χρυσίον λιτρῶν δώδεκα, τελούντας καὶ τὰ συνήθη κωμέρκια).

³⁰ H. Monnier (“L’Éπιβολή,” in *Études de droit byzantin* [London, 1974] = *Nouvelle revue historique du droit français et étranger* 19 [1895]: 87–89) thus argues that these were compulsory loans to the most important shipowners of Constantinople. See also idem, *Les Nouvelles de Léon le Sage* (Bordeaux–Paris, 1923), 148. However, on this question see also the justifiable objections of A. Christophilopoulou

duced by Nikephoros I was revoked very soon after his death, possibly as early as the reign of Michael I Rangabe (811–813).³¹

With the rise to power of the Macedonian dynasty, however, an express and general prohibition on the charging of interest was introduced. In the last year of his reign (885 or 886), Basil I, the founder of the Macedonian dynasty, issued a legislative text (and not, as was formerly believed, a draft law) called the *Eisagoge* (or *Epanagoge*)³² including a provision that forbade, in general, the receipt of interest by any persons except orphans and minors.³³

However, the economic situation generated pressure for recognition of the legality of interest, and Leo VI the Wise, successor to Basil I, was obliged to lift the ban on it that had been enforced by the *Eisagoge*. In his Novel 83, he recognized the weakness of human nature and the economic problems the prohibition on interest had created, allowing its payment once more at an annual rate of 4% (= 4.2%).³⁴

(“Οικονομική,” 428): “Such an offer [of compulsory loans] would be a unique phenomenon in world economic history.” Cf. also G. Cassimatis, “La dixième vexation de l’empereur Nicéphore,” *Byzantion* 7 (1931): 149–60; E. Francès, “L’empereur Nicéphore Ier et le commerce maritime byzantin,” *BSI* 27 (1966): 41–47.

The view of Christophilopoulou to the effect that this was actually a measure to benefit shipping (op. cit., 430, and eadem, *Βυζαντινή Ίστορία* [Athens, 1981], 2.1:171), while perfectly reasonable, does not provide a satisfactory explanation of why the measure was seen as a “vexation,” since if the loans granted at 16.66% interest were not compulsory, there was no reason why the interested parties should have accepted them.

³¹ Cassimatis, *Intérêts*, 118 n. 2. The author believes that no express abolition took place, but that in practice the collection of interest was tolerated once more. See also Monnier, “L’Επιβολή,” 89 n. 4.

³² Cf. Sp. Troianos, *Οἱ πηγές τοῦ βυζαντινοῦ δικαίου* (Athens, 1986), 100–105; P. Pieler (Papagianni and Troianos) “Νομική Φιλολογία,” in H. Hunger, *Βυζαντινὴ Λογοτεχνία* (Athens, 1994), 3:336–40 and n. 107, following the view of A. Schmink (*Studien zu mittelbyzantinischen Rechtsbüchern* [Frankfurt, 1986], 14–15, 62–65, 71–76) on the chronological relationship between the *Eisagoge* (*Epanagoge*) and the *Procheiros Nomos*. This text also adopts that view. For the view current in earlier literature that the *Procheiros Nomos* came first, see Zachariae von Lingenthal, *Geschichte*, 22; Cassimatis, *Intérêts*, 117; G. Petropoulos, *Ίστορία καὶ Εἰσηγήσεις τοῦ Ρωμαϊκοῦ Δικαίου*, 2d ed. (Athens, 1963), 256–57; H. J. Scheltema, “Byzantine Law,” in *Cambridge Medieval History*, ed. J. M. Hussey (Cambridge, 1967), 4.2:67; and, more recently, N. Van der Wal and J. H. A. Lekin, *Historiae Juris Graecoromani delineatio* (Groningen, 1985), 78–81, and Laiou, “Exchange and Trade,” 734–35.

³³ *Eisagoge* 28.2 (Zepos, *Jus*, 2:320–21): “and driving out the very name of usury from the city and having abolished interest, as said above, we only allow it to be paid to orphans and minors” (καὶ αὐτὸ τοῦ τόκου τὸ ὄνομα τῆς πολιτείας ἀπελαύνοντες . . . τοὺς μέντοι τόκους ὡς προεῖρηται περιελόντες ἐπὶ μόνων τῶν ὀρφανῶν καὶ ἀνηλίκων συγχωροῦμεν αὐτούς καταβάλλεσθαι). See Cassimatis, *Intérêts*, 117; Maridakis, *Ἀστικόν*, 224. According to a scholion on this provision, interest was permitted but, whereas in all other cases it had to be specially agreed, where orphans and minors were involved it was always due, that is, whether or not a special agreement had been made (Maridakis, op. cit., 224 n. 7). As Cassimatis (op. cit., 117 n. 2) rightly points out, the scholiast of the *Eisagoge* presents his personal views on the question of interest as if they were provisions of legislation. According to the same scholiast, the interest involved in the case under examination is that at the rate of 12% per year (Cassimatis, op. cit., 117 n. 2).

³⁴ Leo’s Novel 83 (*Les Nouvelles de Léon VI le Sage*, ed. P. Noailles and A. Dain [Paris, 1944]). Of course, because the provision establishes a link with the nomisma and the keration, the interest rate is not literally 4% but 4.2%. See K. Pitsakis, *Κωνσταντίνου Ἀρμενοπούλου Πρόχειρον Νόμων ἢ Ἐξάβιβλος* (Athens, 1971), 203–4 n. 2.

Yet even this revocation of the ban failed to solve the problem, given that—perhaps under the influence of the church—Leo VI changed his mind again and in the *Procheiros Nomos*, issued in 907,³⁵ described the charging of interest as “unworthy of a Christian state” and banned it completely, without exceptions, laying down furthermore that any interest paid was to be applied to the principal of the debt.³⁶

This subsequent reintroduction of the ban on interest and, what is more, in a form still more extreme than that of the *Eisagoge*, abolished the regulations of Novel 83. Indeed, it is believed that the ban of the *Procheiros Nomos* is the reason why Harmenopoulos, when compiling his *Hexabiblos* 450 years later, states that the prohibition of interest was the work of Leo the Wise, completely overlooking the earlier Novel 83 of the same emperor.³⁷

However, in 928, only a few years after the *Procheiros Nomos*, a novel of Romanos I Lekapenos concerning the right of *protimesis* imposed “lawful interest”³⁸ upon those who delayed in their exercise of that right as something to be paid to the purchaser without the right of first refusal together with the sum he had paid and any expenses he might have incurred. This is an indirect indication that Romanos did not regard the charging of interest as in any way reprehensible.

In the eleventh century, information about the level of interest rates is to be found in two provisions of the *Peira* of Eustathios Rhomaios. One follows Justinianic law, whereas the text of the other contains a reference to the interest payable to orphans,³⁹

³⁵ For the fact that Novel 83 was earlier than the *Procheiros Nomos* 16.14, see Schminck, *Studien*, 81 and 89–90 n. 214; Pieler (Papagianni and Troianos), in Hunger, *Βυζαντινή Λογοτεχνία*, 3:343 n. 133. For the fact that the novels of Leo VI the Wise had been codified (probably in 892 but with 898 as a *terminus ante quem*), see Pieler (Papagianni and Troianos), *op. cit.*, 342 n. 121, and 343. In other words, the novels had been codified approximately ten years before the issuing of the *Procheiros Nomos*. For the dating of the *Procheiros Nomos* to 907, see Schminck, “Das Prooimion des Prochiron,” *Studien*, 91–102; Troianos, *Οι πηγές*, 103–5; Pieler (Papagianni and Troianos), *op. cit.*, 343–44 n. 134. See also N. Oikonomides, “Leo VI’s Legislation of 907 Forbidding Fourth Marriages,” *DOP* 30 (1976): 173–93. Cf., however, Laiou, “Exchange and Trade,” 734–35.

³⁶ *Procheiros Nomos* 16.14. It should be noted, however, that the *Eisagoge* (28.4, Zepos, *Jus*, 2:322) already contained this provision, which Zachariae von Lingenthal thought should be deleted (see Zepos, *Jus*, 2:322 n. 4; cf. Maridakis, *Ἀστικόν*, 224 n. 7; Cassimatis, *Intérêts*, p. 117 n. 2).

³⁷ Cf. *Hexabiblos* 3.7.24, where the section from the *Procheiros Nomos* is given under the heading “Novel of Emperor Leo prohibiting interest,” which, in the light of recent knowledge, should no longer be regarded as entirely inaccurate. See also note 56 below.

³⁸ See this provision by Romanos I Lekapenos in N. Svoronos, *Les Nouvelles des empereurs macédoniens concernant la terre et les stratiotes* (Athens, 1994), 1st version, 5, p. 66: “paying back to them the purchase price with the lawful interest and the necessary expenses” (ἀναπληροῦντες αὐτοῖς τὸ ἀνήκον τίμημα μετὰ τοῦ νομίμου τόκου καὶ τῶν ἀναγκαίων ἀναλωμάτων); 2d version, 5, p. 67. For the fact that the first version is the authentic text, see *ibid.*, 57. For the dating to 928 (and not 922), see *ibid.*, 33 and 59. The date of 922 was accepted by Zachariae von Lingenthal, *Geschichte*, 238, who was followed by, among others, Maridakis, *Ἀστικόν*, 224 n. 11, and Petropoulos, *Ἱστορία*, 262. See also the critique by L. Burgmann of the Svoronos edition in *Rechtshistorisches Journal* 13 (1995): 455–79.

³⁹ *Peira* 19.62, in Zepos, *Jus*, 4:80 and 69–70. However, it has been rightly observed that this rate of interest for orphans (*trientes usurae*) of 4% (= 4.2%) was provided for under Justinianic legislation for the *illustres* (later *protospatharioi*). Cf. *CI* 4.32.26.2; Zachariae von Lingenthal, *Geschichte*, 309; Cassimatis, *Intérêts*, 50 n. 3; and Laiou, “God and Mammon,” 279 n. 48.

one also encountered later, in the *Hexabiblos* of Harmenopoulos.⁴⁰ Before leaving the *Peira*, we should note an inaccuracy of G. Ostrogorsky's, to which A. E. Laiou has drawn attention. The point in question is the calculation of interest with reference to the *nomisma*, on the one hand, and the year, on the other. Correctly calculated, the *besses centesimae usurae* amounted to 11.11%. Although Ostrogorsky initially accepted this figure, he later seems to have calculated the rate as 11.71%, which Laiou correctly considers erroneous. However, the difference may be no more than a printer's error.⁴¹

The problem of interest was dealt with by the three greatest interpreters of Byzantine canon law—John Zonaras, Alexios Aristenos, and Theodore Balsamon—who were active principally in the twelfth century.⁴² However, the prohibition of interest that they advocated referred only to the clergy and differed from the corresponding views of the Christian West in having much narrower applicability.⁴³

The situation outlined above did not alter over the period from the early thirteenth century to the ultimate fall of Byzantium in 1453. Where maritime loans were concerned, a notarial instrument referring to such a loan and drawn up in Constantinople in 1363 or 1364 sets the interest rate at 16.66% per voyage (the debtor was to repay 14 hyperpyra against the 12 he had received as a loan).⁴⁴

It is interesting, in this context, to note that no mention whatever is made of interest in maritime loans from Chandax in which one or both of the contracting parties was Greek, such as the contract of 25 August 1352.⁴⁵ This would seem to indicate that fear

⁴⁰ *Hexabiblos* 3.7.10: "that the interest to orphans is a third of the *hekatoste*, that is, 4 *nomismata*" (ὅτι ὁ ὀρφανικός τόκος ἀπὸ τρίτης ἑκατοστῆς ἐστίν, ἤγουν νομίσματα δ'). Cf., however, *Hexabiblos* 3.7.23, where there is no mention of "interest to orphans." For the position of the *Eisagoge* on the same matter, see note 33 above.

⁴¹ Zachariae von Lingenthal, *Geschichte*, 311; G. Ostrogorsky, "Löhne und Preise," *BZ* 32 (1932): 308 n. 3; G. Ostrogorsky, *Histoire de l'état byzantin* (Paris, 1956), 219 n. 1. The figure of 11.71% is also used by N. Oikonomides, *Hommes d'affaires grecs et latins à Constantinople, XIIIe–XVe siècles* (Montreal, 1979), 55 n. 55. See Laiou, "God and Mammon," 279 n. 48.

⁴² For these three canonists, see Troianos, *Oi πηγές*, 146–51.

⁴³ See Laiou, "God and Mammon," 261–96 *passim*, but in particular 295–96, where attention is drawn to the efforts made by Patriarch Loukas Chrysoberges and Emperor Manuel I Komnenos to establish clear dividing lines between the clergy, on the one hand, and on the other merchants, bankers, and those practicing other professions, even on a freelance basis, such as doctors.

⁴⁴ Cf. Oikonomides, *Hommes d'affaires*, 59 n. 69; D. Gofas, "Θαλασσοδάνεια, Σερμαγιές, Βλησίδια," in *Ἀνάλεκτα Ναυτικού Δικαίου* 1 (1988), 290 n. 12 = *Μελέτες*, 397 n. 12, with references. See also note 53 below.

⁴⁵ A. Lombardo, *Zacharia de Fredo, Notario in Candia (1352–1357)* (Venice, 1968), no. 40 (25 August 1352): a maritime loan granted by John Kornaropoulos, resident of the *Burgo* of Chandax, to George Simenakes, son of the late Emmanuel Simenakes, and Michaletos Veryvos, son of the late Nicholas Veryvos, known as Sympragos, both residents of Chandax. The loan amounts to 52 hyperpyra "in circulation in Crete" (for this concept, the first reference that springs to mind is D. Gofas, "Ἐνας πρόδρομος τῆς συναλλαγματικῆς, ἐκδομένος ἀπὸ Ἑλληνα ἔμπορο τὸ 1300," in *Μελέτες*, 285 n. 18 = "Un précurseur de la lettre de change émis par un commerçant grec en 1300," in *Estudios de historia del derecho europeo: Homenaje al Profesor G. Martínez Diez* (Madrid, 1994), 1:301 n. 18). For another maritime loan, to the same George Simenakes, with his mother-in-law Eudocia, widow of George Tourkopoulos, as guarantor (*plecia*), granted by the Venetian (?) lady Marina Caravello, for 33 Cretan hyperpyra (balance and supplement of an earlier debt by Simenakes, of 17 September 1351, in the same

of the Catholic church made the Greeks wary of what they put down in writing on such matters, especially when the notary they used was a Venetian and when they operated within parts of the former Byzantine world that were under Venetian rule.

A short treatise by Nicholas Kabasilas “On Usury” addressed to Empress Anna of Savoy, the mother of John V Palaiologos, dating from approximately the same period, that of the civil war between John V and John Kantakouzenos, has survived.⁴⁶ In this treatise, probably written around 1347,⁴⁷ Kabasilas describes the appalling state of poverty afflicting the inhabitants of the last surviving lands of what had once been the powerful Byzantine Empire and proposes to the empress that interest, which by a rather tenuous line of argument he regards as tantamount to a deposit (*parakata-theke*),⁴⁸ should be deducted from the total sum owed. Indeed, Kabasilas suggests that debtors who found themselves in such difficult circumstances might even be released from the obligation to repay the principal of the loan,⁴⁹ invoking a circumstantial and forgotten piece of legislation introduced by Emperor Andronikos III Palaiologos (1321–28), husband of Anna of Savoy, and recommending that it be revived. The treatise gives no indication of the level of interest on the claims to which Kabasilas refers, but the state of impoverishment to which the debtors had been reduced would seem to suggest that rates were well above the permitted maximum.

However, evidence of the level of interest on ordinary loans is to be found in two decisions issued by the patriarchal court of Constantinople in the early fifteenth century. In the first, issued under Patriarch Matthew I (1397–1410) in 1400, the debt bore interest at 15%, that is, 45 hyperpyra for one year on a principal of 300 hyperpyra.⁵⁰ In the second, issued in 1399 just a few months before the first, the interest was 3 hyperpyra on a principal of 27 for five months, that is, 26.6%. The second instance may well have been one of usury.⁵¹

As for the absence of any mention of the level of the rate of interest in the case of a maritime loan judged by the patriarchal court,⁵² this should, I believe, be sought in the reasons explaining the similar phenomena in the maritime loan contracts drawn

currency, for 40 Cretan hyperpyra), see Lombardo, *Fredo*, no. 42 (26 August 1352). In neither case is any mention made of interest.

⁴⁶ R. Guiland, “Le traité inédit ‘Sur l’usure’ de Nicolas Cabasilas,” in *Eis Mνήmyn Σπυρίδωνος Λάμπρου* (Athens, 1935), 269–73 and 274–77 (text).

⁴⁷ See Guiland, “Cabasilas,” 263–71, with a summary of the contents of the treatise. For the date, in particular, see 272.

⁴⁸ Cf. *ibid.*, 275, lines 25–40 of the treatise by Kabasilas.

⁴⁹ *Ibid.*, 373.

⁵⁰ MM 2: no. 568, pp. 380–81 (= *Les registres des actes du patriarcat de Constantinople*, ed. V. Grumel, V. Laurent, J. Darrouzès, 2 vols. in 8 pts. (Paris, 1932–79), 1.6: no. 3125. Cf. N. Matsis, “Ο τόκος ἐν τῇ νομολογίᾳ τοῦ Πατριαρχείου Κωνσταντινουπόλεως κατὰ τοὺς ΙΔ’ καὶ ΙΕ’ αἰῶνας,” *ΕΕΒΣ* 38 (1971): 83; E. Papagianni, Ἡ νομολογία τῶν ἐκκλησιαστικῶν δικαστηρίων τῆς βυζαντινῆς καὶ μεταβυζαντινῆς περιόδου σὲ θέματα περιουσιακοῦ δικαίου (Athens, 1992), 1:48 nn. 31–32, and 97 n. 6.

⁵¹ MM 2: no. 530, pp. 313–14 (= *Regestes*, 1.6: no. 3080). Cf. Matsis, “Τόκος,” 83; Papagianni, *Νομολογία*, 48 nn. 30 and 33.

⁵² MM 2: no. 680, p. 560, of the year 1401.

up by Greeks in the Venetian-ruled areas: given that vessels very often called at Venetian-controlled ports, the contracting parties would avoid mentioning forbidden interest so as to protect themselves against the intervention of the Catholic church or of the Venetian authorities acting under pressure from it.⁵³

I conclude this discussion with a brief mention of the two principal compendia of Byzantine law produced during the fourteenth century: the *Syntagma* of Matthew Blastares (1335)⁵⁴ and the *Hexabiblos* of Constantine Harmenopoulos (1345). As has been demonstrated by Spyros Troianos, the direct source of the provisions of the former work that are of interest here is the Code of Justinian.⁵⁵ In the case of the *Hexabiblos* of Harmenopoulos, it is interesting to note that one provision, reproducing the *Procheiros Nomos* verbatim, describes interest as having been abolished in its entirety,⁵⁶ while others, following the *Basilics* and the legislation of Justinian, accept it and set the permissible rates.⁵⁷

⁵³ Cf. Gofas, “Εμπορικές επιχειρήσεις Ἑλλήνων τῆς Κρήτης γύρω στό 1300,” in *Μελέτες*, 258–60. By way of contrast, in the Byzantine maritime loan of 1363 or 1364 from Constantinople, interest is specifically mentioned: 14 “nomismata” (i.e., hyperpyra) were to be repaid on a maritime loan of 12 “nomismata.” This interest of 2 nomismata was agreed for a single voyage and not by the year. The maritime interest for this voyage was thus 16.66%.

⁵⁴ Troianos, *Οἱ πηγές*, 166.

⁵⁵ Sp. Troianos, “Περὶ τὰς νομικὰς πηγὰς τοῦ Ματθαίου Βλαστάρη,” *ΕΕΒΣ* 44 (1979–80): 321. More specifically, the source for T7 475.26–476.12 is *CI* 4.32.26 (cf. also *Bas.* 23.3.74), while for T7 476/16–18, the source is *CI* 4.32.26.4.

⁵⁶ Heading to book 3, title 7.24 (“concerning interest”) of the *Hexabiblos* (cf. above, note 37). See also Pitsakis, *Ἐξάβιβλος*, 203–4 n. 2. However, recent findings would seem to justify the heading, which Pitsakis, *ibid.*, describes as “inaccurate.”

⁵⁷ E.g., *Hexabiblos*, book 3, title 7, paras. 10, 18, 21–22 and, in particular, 243. For the question of this deliberate contradiction, see Pitsakis, *Ἐξάβιβλος*, 203–4 n. 1.