

ESSAY

Looking Back in Time: Sixteenth Century Wherefores and Therefores As Part of the Continuum of Western Legal Thought

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Surrounded with the conveniences of a word processor, form book, and facsimile machine, the modern-day attorney might be tempted to equate the advent of sophisticated commercial transactions with the advent of the electronic age. Just as form follows function, it seems only logical to assume that the use of lengthy, carefully-drafted agreements is reflective of successive generations of sharper, more knowledgeable business clients. Curiously, however, the lesson that history teaches us is different. Looking back in time to the year 1511 at a proposal for the sale of alum between the City of Venice and a banker from Rome, one observes much of the same commercial awareness as encountered in today's marketplace. Although the Renaissance merchant and his legal advisor are centuries removed from today's high-tech, fast-paced business environment, their thought processes show the same business acumen of their twentieth-century counterparts.

To accomplish this glimpse back in time, Part I of this Essay will examine the historical setting and the events that were taking place. Next, Part II and III will describe the parties to the alum agreement, in particular the deal maker, Agostino Chigi, and the leaders of the city of Venice.¹ Some of the details of the agreement itself will then be

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1. See FELIX GILBERT, *THE POPE, HIS BANKER, AND VENICE* (1980).

presented through Professor Jensen's translation² of a Venetian manuscript containing the proposal. Next, Part IV will outline the course of events that followed Chigi's initial proposal. The Essay concludes by discussing the benefit that pre-modern legal documents can provide the contemporary practitioner. For the attorney, the wording of the Venetian manuscript is noteworthy because of its similarity to modern-day agreements. For the legal scholar, the political and economic events surrounding the manuscript illustrate the interplay of social history and Western legal thought.³

I. THE HISTORICAL SETTING

During the latter centuries of the Middle Ages from 1100 to 1500, Europe underwent great social and economic change. Improvements in water power, mining, and navigation, the crusades, and the proliferation of credit and banking, were but a few of the factors involved in remoulding western culture. As trade moved from the Mediterranean through northern Italy to the rest of Europe, the growth of cities and merchant classes signaled the rise of capitalism and the departure from less complex barter systems. The expansion of commerce could be seen in many ways—from bookkeeping with easier-to-use indo-arabic numbers in place of roman numerals⁴ to the increasing popularity of trade fairs and even pawnbrokering. As goods from Italy moved northward,⁵ European merchants also acquired new phrases such as *disagio*

2. ARCHIVES OF STATE OF VENICE, LIBRI COMMEMORIALI, XIX, nos. 197, 201-204, 238 (Richard C. Jensen trans.) [hereinafter *Archives*].

3. See generally JOHN H. MERRYMAN & DAVID S. CLARK, *COMPARATIVE LAW: WESTERN EUROPEAN AND LATIN AMERICAN LEGAL SYSTEMS* (1978) (providing an overview of Western legal thought and what the authors term the sub-traditions of civil law (Roman civil law, canon law, commercial law, the revolution, and legal science), and how this continental body of law was received into English common law).

4. The use of indo-arabic numbers, along with the decimal system, was introduced to Europe between the twelfth and fourteenth centuries and its advantages led to its acceptance in mathematics and accounting. See JOEL MOKYR, *THE LEVER OF RICHES* 74 (1990). However, there was opposition to the "new math" as a replacement for roman numerals. JOHN D. BARROW, *PI IN THE SKY* 93 (1992). The use of arabic numbers in contracts and official documents was prohibited by a law passed in Florence in 1299. *Id.* On the one hand, roman numerals could be written to avoid alteration; for example, the number "two" was written as "IJ" so that an additional "I" could not be added at the end. *Id.* In contrast, arabic numbers, where an "0" could be inserted or added to increase a figure, or a "6" or "9" could be changed to "0," created an opportunity for fraud. *Id.* at 99.

5. See generally FRANK J. SWETZ, *CAPITALISM & ARITHMETIC* 7-8 (David Eugene Smith trans., 1987). The flow of market information along well-defined trade routes between cities is suggested with the following word problem from a text dated 1489 referring to towns located in Germany and Austria:

A man went to a money changer in Vienna with 30 Nürnberg pence and asked that they be exchanged for Viennese money. Since the money changer was ignorant of their value, he proceeded thus: 7 pence of Vienna are worth 9 pence of Linz, and 8 of Linz are

(discount) and *netto* (net price).⁶ Merchants even had words for tight credit (*strettezza*) and easy credit (*larghezza*).⁷ To simplify transactions, bankers in the fourteenth and fifteenth centuries developed a "bill of exchange," which authorized agents, in lieu of transferring actual stock, to supply the bearer with goods or an equivalent sum of money on the strength of the bearer's endorsement.⁸

By the early 1500's, Venice was one of the richest cities in Europe—a seaport and trade capital known for silks, furs, cotton, wool, spices, the coinage of gold and copper, and even the local production of cement and ceramics.⁹ But political conflict accompanied Venice's economic growth, and by 1509 Venice was at war with the League of Cambrai, an opposing alliance comprised of France, Germany, England,

worth 11 of Passau, and 12 of Passau are worth 13 of Wilsshof, and 15 of Wilsshof are worth 10 of Regensburg, and 8 of Regensburg are worth 18 of Neumarkt, and 5 of Neumarkt are worth 4 of Nürnberg. Then . . . 13 28/429 [is the] value of the Nürnberg money in pence in Vienna.

2 DAVID E. SMITH, *HISTORY OF MATHEMATICS* 573-74 (Dover Publications 1958) (1923). Trade between more distant cities was apparently well-enough established that a custom had developed in Italian cities as to days of grace for the payment of drafts: drafts between Venice and Rome were payable ten days after sight; between Venice and London, three months after date; between Venice and Lyons, by the next quarterly fair. *Id.* at 578.

6. See SWETZ, *supra* note 5, at 10-11. The Swetz volume contains a translation of the *Treviso Arithmetic*, an accounting and mathematics primer published in 1478 and used by "reckoning masters" to instruct merchant apprentices in techniques involving weights and measures, distances, currency ratios, and partnership accounting. *Id.* at 37, 18.

7. See SIDNEY HOMER & RICHARD SYLLA, *A HISTORY OF INTEREST RATES* 77-79 (1991).

8. See HOMER & SYLLA, *supra* note 7, at 77. The bill of exchange was signed on the back, or "dorsum,"—hence our word "endorsement." This credit instrument would be later described by Blackstone in his commentaries on the common law in 1766:

A Bill of Exchange is a security, originally invented among merchants in different countries, for the more easy remittance of money from the one to the other, which has since spread itself into almost all pecuniary transactions. . . . If A lives in Jamaica, and owes B who lives in England 1000 pounds, now if C be going from England to Jamaica, he may pay B this 1000 pounds, and take a bill of exchange drawn by B in England upon A in Jamaica, and receive it when he comes thither. Thus does B receive his debt, at any distance of place, by transferring it to C; who carries over his money in paper credit, without danger of robbery or loss. This method is said to have been brought into general use by the Jews and Lombards, when banished for their usury and other vices; in order the more easily to draw their effects out of France and England, into those countries in which they had chosen to reside.

2 WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 466 (University of Chicago Press 1979) (1766).

9. See SWETZ, *supra* note 5, at 7-10. Venice's fostering of commercial progress was shown in ways beyond her actual trade and manufacturing activities. For example, in 1474, Venice enacted a patent system to grant monopolies as an incentive to improve industry and manufacturing. See MOKYR, *supra* note 4, at 79. The preamble to this ordinance "noted that if 'provisions were made for the works and devices discovered by men of great genius, so that others who may see them could not build them and take the inventor's honor away, more men would apply their genius . . . and build devices of great utility to our commonwealth.'" *Id.* This enactment is strikingly parallel to the patent clause of the United States Constitution. See U.S. CONST. art I, § 8, cl. 8.

Spain, and the Pope.¹⁰ Valuable trade routes were at stake, as were territorial claims to the "terra firma," the land adjoining the seaport area where Venice was located.¹¹ As the War of the League of Cambrai continued, Venice faced a tremendous shortage of capital to support its armies.¹² Thus, as the war entered a new campaign in the early part of 1511, the need for money dominated Venetian thinking.¹³

II. ENTER AGOSTINO CHIGI AND HIS PROPOSAL

Within this factual setting, Venice was especially interested in the March 1511 arrival of Agostino Chigi, a banker from Rome reputed to be one of the richest merchants in the world. Through years of hard work and shrewd dealing, Chigi had established a financial empire based on his exclusive rights to administer the papal monopoly of alum mines¹⁴ at Tolfa, north of Rome.¹⁵ At the high point of his career, Chigi was a partner in companies trading in silk and cloth, a financial advisor to Rome, a grain merchant, and a banker who loaned money to mercenaries, cardinals, and even popes.¹⁶

Chigi's desire to gain a lucrative and exclusive alum market in Venice while cutting off the flow of alum arriving there from competing "infidel" Turkish sources, matched Venice's corresponding need to fund its military campaign.¹⁷ Chigi submitted a proposal to the Venetian government whereby: (a) He would loan Venice, interest-free, the sum of 40,000 ducats in two installments of 20,000 ducats and agree to provide large quantities of alum to Venice, repayable in installments over a six-year term; (b) Venice would pledge some of her crown jewels and provide the personal guarantees of fifty Venetian citizens to secure

10. See GILBERT, *supra* note 1, at 1.

11. See *id.* at 17-20.

12. See *id.*

13. See *id.*

14. Alum, a mineral salt, was essential for glass manufacturing and the dying of cloth. GILBERT, *supra* note 1, at 37.

15. GILBERT, *supra* note 1, at 37, 65-78.

16. *Id.* at 78. One of Chigi's pursuits was "tax farming," a profitable, albeit risky, form of money lending for bankers who would purchase the right to collect taxes on various commodities such as salt, meat, wine, etc., on behalf of Rome. At the beginning of a fiscal year, the banker qua tax farmer paid a sum to the papal treasurer for which he was compensated from the tax revenue at a later time. The banker paid this sum with the hope that the tax revenue would be greater than what he paid out at the beginning of the year. As in Chigi's case, the same banker might also be called on to loan money to the Pope as a precondition for favorable treatment in obtaining the tax farming contract from the Church. *Id.* at 65-66. It might be noted that tax farming and its attendant hazards were not unique to Italy. In France, tax farmers were so efficient in their collections that they became the most hated persons in the kingdom. During the French Revolution, twenty-four "farmers general" were executed. WILL & ARIEL DURANT, *THE AGE OF LOUIS XIV* 19 (1963).

17. GILBERT, *supra* note 1, at 17-20, 41-42.

repayment of the loan; (c) Venice would designate a merchant, pre-selected by Chigi, who would be given the exclusive right to repurchase the alum from the Venetian government and resell it at a price set by Chigi; and (d) Venice would not allow other alum to be sold in its markets.¹⁸

Written in Latin and Italian, the legalistic phrasing and the structure of Chigi's proposal demonstrate a sophisticated application of basic commercial law notions such as: identification of goods and specification of the place of delivery, preferential treatment of payments, security (collateral) interests, agency, and mutual assent.

Present-day commercial law, such as the Uniform Commercial Code, uses concepts by which goods are identified for sale by price and commercial unit for delivery at the seller's place of business or place of destination. One can see these same legal abstractions in Chigi's proposal for the sale of:

seven thousand miara [units] of alum of Tolpha, good and salable at the precise weight of Venice, as it is accustomed to be sold . . . brought here in Venice in magazines entirely at Chigi's own expense . . . at the price . . . of eighteen ducats of gold per miara . . . net to the aforesaid vendor.¹⁹

Chigi secured a guarantee of the expected installment payments in two ways: (1) Chigi's proposal required that any ducats being held for payment to Chigi would be immune from attachment and could not be "sequestered, detained, or in any manner, impeded" while they were in Venetian territory,²⁰ and (2) the City had to agree to pledge certain crown jewels worth 30,000 ducats, which Chigi would restore to the City—"two-thirds . . . at the time of the penultimate payment and the remaining third at the time of the last payment."²¹ Significantly, the jewels themselves were identified with the same particularity called for in any present-day secured transaction. One piece was described as:

A gorget of jeweled gold with its mesh in the manner of chain mail on which there are, first, rubies, six, table-cut of fine cutting, good in color and clear, and twenty-four diamonds, table-cut level with

18. GILBERT, *supra* note 1, at 40-41.

19. ARCHIVES, *supra* note 2, at 5. "Miara" refers to a thousand weight unit used in Venice and Constantinople. The "ducat," a gold coin named after the doge (duke) of Venice, supplanted the fiorino of Florence as the standard of value by the end of the thirteenth century. SWETZ, *supra* note 5, at 270. Although weights and measures varied from city to city, Venetian weights and measures became a general standard for trade. *See Id.* at 279.

20. ARCHIVES, *supra* note 2, at 8.

21. *Id.*

facets and of diverse fashion; twelve oriental pearls, the diamonds in the midst of them, combined weight in all 155 ounces.²²

Chigi next drew on principles of agency law to establish further controls over the delivery of the alum and his receipt of any required payments. For this, the proposal described creation of two "offices"—one to receive the alum, and the other to remit payments. The designation of these offices as agents for Chigi's benefit included broad, unconditional language:

[T]he said offices should be obligated and held to receive alum and make payment of the sums according as has been said above . . . such that all things as far as assignment and deputation of the aforesaid offices may be held here as expressed.²³

Finally, the language used to describe the clear, unmistakable assent of the City and the fifty guarantors to the proposal is also noteworthy for its legalistic detail. The following excerpt is just a portion of the entire undertaking and rivals the "boilerplate" from any modern-day loan agreement:

Therefore the aforesaid Magnificent and Distinguished Mandators . . . obligate and hypothecate themselves, their heirs and successors and any one possessing their goods, all and single, and the goods, movable and immovable, present and future, of themselves and their successors and heirs . . . and expressly consent that they and their heirs can and should be forced, compelled, constrained, warned, excommunicated, oppressed, subdued and assigned to the secular arm, arrested, seized, imprisoned and detained at one and the same time or in diverse times . . . up to the full and entire observance of all and single things contained in the present public instrument.²⁴

Needless to say, the proposal was designed to evidence the City's binding obligation to Chigi's offer. The question that remained was whether the Venetians would formally accept the proposal and implement its terms.

III. VENICE'S CONCERNS

Notwithstanding the economic and military pressures facing Venice, the City had serious reservations about Chigi's offer.²⁵ First, acceptance of this potentially onerous proposal was a serious compro-

22. *Id.* at 28.

23. *Id.* at 30.

24. *Id.* at 9-10.

25. GILBERT, *supra* note 1, at 41.

mise of the City's wealth and prestige.²⁶ Turning to a non-Venetian banker for financial assistance could be seen as a sign of weakness.²⁷ Second, the demand for the crown jewels as security put at risk a valuable asset and symbol of Venetian greatness.²⁸ Third, there was an overriding concern that the provision providing for the acquisition and resale of the alum was an attempt to circumvent the Church's prohibition against usury.²⁹ Specifically, Chigi's proposal stipulated that Venice would buy alum from Chigi at eighteen ducats with a resale price from Venice to the agent of only seventeen ducats.³⁰ At the same time, the agent's price to the public was set at twenty ducats. With these stipulations, greater quantities of alum had to be sold to generate the repayment funds, and the built-in profit margin provided interest on the 20,000 ducat loan.³¹

The City was also concerned about Chigi's "forum selection" clause in the proposal stating that, in the event of dispute, all issues were to be decided in Rome before the "Rota."³² The Rota was an ecclesiastical court—a venue which provided Chigi both a spiritual and a tactical advantage in the event of default by the Venetians.³³

IV. THE LOAN AND ITS AFTERMATH

While the parties continued to negotiate the final terms, Chigi made the 20,000 ducat loan and, in turn, received the jewels as security.³⁴ However, the provisions providing for the repurchase and resale of the alum were withdrawn and replaced with an understanding that the Venetians would have a six month option to decide whether they wanted to merely repay the 20,000 ducat loan or carry out the agreement in full.³⁵ There was also an interim stipulation that Chigi could

26. *Id.*

27. *Id.* at 41-42.

28. *Id.* at 42.

29. *Id.* at 41. Scripture and canon law formed the basis of the Church's prohibition against usury. Although the prohibition was not uniformly enforced, the ban on usury as not formally lifted by the Roman Church until 1917. See WILL DURANT, *THE AGE OF FAITH* 630-31 (1950). Regarding Venice's acceptance of the Chigi proposal itself, Venetian reluctance to enter into any type of commercial entanglement with Rome had historical basis. Since its founding in 425 A.D., Venice struggled to maintain independence from papal hegemony and Rome's attempt to control Venice's trade routes and markets in Constantinople and the eastern Mediterranean. For example, The League of Cambrai was formed when Pope Julius dispatched emissaries to League members with a proposal to divide up the Venetian Empire, reserving to Rome certain valuable territories. See JOHN JULIUS NORWICH, *A HISTORY OF VENICE* 390-402 (1989).

30. GILBERT, *supra* note 1, at 50-51.

31. *Id.* at 51.

32. See *id.* at 50-51.

33. *Id.* at 41.

34. *Id.*

35. *Id.* at 60.

sell alum in Venice and as long as the resale price did not exceed twenty ducats, Venice would not allow alum from other sources to be sold in her markets.³⁶

Due to internal disagreements and conflicts among the League members over the next few years, Venice managed to survive as the war continued on with inconsistent results. Eventually, through a series of treaties, the fighting came to an end in 1516, with Venice reclaiming the "terra firma,"³⁷ all without Venice's entering into a final agreement with Chigi.

By 1519, the issue at hand was the repayment of the 20,000 ducat loan and the return of the pledged jewelry,³⁸ but again complications arose. Chigi demanded a payment of 10,000 ducats as security against possible losses for payments due as to any alum that had already been delivered during the course of negotiations.³⁹ In the meantime, the Venetian government had conditionally tendered 20,000 ducats to a Cardinal, in repayment of the loan, with instructions to deliver the ducats to Chigi upon his redelivery of the jewelry.⁴⁰ Chigi, upset that he was getting no interest on the loan, refused to surrender the jewelry and retaliated against the Venetian government's delay by asking the Church to excommunicate the fifty Venetians who had given pledges of security.⁴¹ Fortunately for these citizens, the Pope declared his willingness to stay any such excommunications pending resolution of the repayment of money and the redelivery of the jewelry.⁴²

At a time when the parties seemed close to agreement, Chigi died in April 1520.⁴³ The matter then fell to the executors of Chigi's estate, who eventually reached a compromise with the Venetian government by which the fifty Venetians were absolved from excommunication, the jewels were restored to the Venetians, and Chigi's heirs received the 20,000 ducats, along with an additional payment of 2,000 ducats to terminate the alum proposal.⁴⁴

36. *Id.* at 59-60.

37. NORWICH, *supra* note 29, at 431-32.

38. See GILBERT, *supra* note 1, at 103-09.

39. *Id.* at 104.

40. See *id.*

41. *Id.* at 105-07.

42. GILBERT, *supra* note 1, at 105-06.

43. *Id.* at 109.

44. *Id.* at 109-10.

V. CONCLUSION

In his review of Kelly's "The Human Measure,"⁴⁵ Professor Whitman observes that although pre-modern legal writings lie locked away in "numbingly tedious," difficult Latin texts, they deserve to be read because these manuscripts provide a type of "archeology" that enable modern lawyers to appreciate both "what" and "how" medieval legal scholars thought.⁴⁶ Clearly, even seemingly isolated events in Venice in the year 1511 fall properly within that continuum of Western legal thought and our understanding of legal concepts still in use today. The Chigi document provides insights at many levels of abstraction. The document itself was written in a "dead" language by Italian notaries (i.e., lawyers) applying concepts and usages far removed from our culture and contemporary settings. Yet, we discover that a translation of the document presents wording, syntax, and structure that "fits" comfortably with our own logic and verbalization. The apparent motives and objectives of the parties seem to result in a written document that reinforces our belief that an underlying source of law rests on man's universal desire to rationally define wants and needs and provide for their realization. Perhaps above all, the Chigi manuscript reaffirms our perception that the law's growth and adaptation to new situations is achieved through a synthetic process that transcends geography and time, but is always held together by man the thinker.

45. DONALD R. KELLY, *THE HUMAN MEASURE* (1990).

46. James Q. Whitman, *Law and the Pre-Modern Mind*, 44 *STAN. L. REV.* 205, 205-08 (1991).