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**Contra malos divites et usurarios (1512)
by Stanisław Zaborowski:
the problem of usury and renaissance thought**

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***Contra malos divites et usurarios* (1512) by Stanisław Zaborowski: the problem of usury and renaissance thought**

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The treatise *Contra malos divites et usurarios* (inc. "Sanctus Paulus divinus nuncius")¹ was the first of the renowned Polish anti-usurious texts which was not written by a university professor, but by an official of the royal administration. In this aspect, the text can be juxtaposed with the treatises *de contractibus* from the 1st half of the 15th century, written by the professors of the Krakow University², canonists, as Stanislaw of Skarbimierz ('de Scarbimiria')³, and theologians, as Jacob of Paradies⁴. Some elements of their continuation are discernible in Zaborowski. Nevertheless, in several aspects he diverges significantly from the mentioned scholastic doctors, and presents the new, early modern approach.

¹ *Contra Malos Divites et Usurarios Tractatus*, Cracouie 1512 (expl. p. 22: "Impressum Cracouie opera Floriani in Platea Wisliciensis, quarto idis aprilis Anno salutis MCCCCCXII..."); the text was published as anonymous, but Zaborowski disclosed his authorship in the quotation of his earlier treatise: "et de hoc etiam dixi in *Tractatu de natura iurium et bonorum Regis*, qui incipit 'Gemitus et planctus pauperum plurimus etc.'" (ibid., 9); cf. S. Zaborowski, *Traktat w czterech częściach o naturze praw i dóbr królewskich oraz o naprawie królestwa i o kierowaniu państwem (Tractatus quadrifidus de natura iurium et bonorum Regis, et de reformatione Regni ac eius reipublicae regimine)* [bilingual edition], [ed.] H. Litwin, Kraków 2005; see K. Estreicher, *Bibliografia polska [Polish bibliography]*, t. 34, Kraków 1951, 55-57.

² See: M. Bukała, *Mendicant Friars and Medieval Notions and Ideas of Economic Life: Oeconomica Dominicana and Franciscana, and Particularities of Central Europe*, in: H. Specht, R. Andraschek-Holzer (Hgg.), *Bettelorden in Mitteleuropa: Geschichte, Kunst, Spiritualität. Referate der gleichnamigen Tagung vom 19. bis 22. März 2007 in St. Pölten*, St. Pölten 2008, 35-49, see 41-43; cf. M. Nuding, *Geschäft und Moral: Schriften de contractibus an mitteleuropäischen Universitäten im späten 14. und frühen 15. Jahrhundert*, in: F. P. Knapp, J. Miethke, M. Niesner (Hgg.), *Schriften im Umkreis mitteleuropäischer Universitäten um 1400. Lateinische und volkssprachige Texte aus Prag, Wien, Heidelberg: Unterschiede, Gemeinsamkeiten, Wechselbeziehungen*, Leiden-Boston 2004, 40-62.

³ Stanislaus de Scarbimiria, *De contractu reemptionis*, ed. B. Chmielowska, *Traité de Stanislas de Skarbimierz De contractu reemptionis retrouvé dans le manuscrit G.14838 [in fact in ms. 14836] de la Bibliothèque Universitaire de Gand*, in: *Mediaevalia Philosophica Polonorum*, 31 (1992), 119-146; see also: Ead., *Stanislas de Skarbimierz – le premier recteur de l'Université de Cracovie après renouveau de celle-ci*, in: *Mediaevalia Philosophica Polonorum*, 24 (1979), 73-112; R. M. Zawadzki, "Stanisław ze Skarbimierza", in: *Polski słownik biograficzny [Polish biographical dictionary]*, 40 (2003/2004), 766-780 (the locality 'Scarbimiria' is presently called 'Skalbmierz').

⁴ Jacobus de Paradisio, *Tractatus de contractibus reemptionis* (inc. "Post multiplicia"), ed. by D. Kuś, in: *Textus et studia historiam theologiae in Polonia excoltae spectantia*, 2 (1974), n. 2, 63-122. His treatise *De contractu revenditionis et reemptionis* (inc. "Fama referente") is so far unedited, for the manuscripts see: L. Meier, *Die Werke des Erfurter Kartäusers Jakob von Jüterbog in ihrer handschriftlichen Überlieferung*, Münster 1955, 33; D. Mertens, *Jacobus Carthusiensis. Untersuchungen zur Rezeption der Werke des Kartäusers Jacob von Paradies (1381-1465)*, Göttingen 1976 (*Veröffentlichungen des Max-Planck-Instituts für Geschichte* 50), 279; see also: S. Porębski, *Contribution à l'étude de Jacques de Paradyż*, in: *Mediaevalia Philosophica Polonorum*, 21 (1975), 115-121.

1. The author

Stanisław Zaborowski (1470/77-1530)⁵ was born in the province of Sieradz in the central Poland, in the moderately wealthy noble family, that possessed several villages, including Zaborów. He was a priest, but in a greater part of his active life he worked for the Treasury of the Kingdom. He was strongly devoted to the Roman Church and hostile to the new theological doctrines of early Reformation (despite his critical attitude to the ecclesiastical hierarchy, he dispraised, among other things, for the leniency with usurers). Zaborowski studied at the Krakow University and probably obtained the doctorate in law⁶. Nevertheless, he was not specialised in juridical issues — his works concerning the political and economic problems belong rather to *theologia practica*. Recalling Joseph Schumpeter's terms, he seems to be closer to 'Philosophers of Natural Law' than to 'Consultant Administrators'⁷. Moreover, Zaborowski wrote the treatise on the celibate of the clergy⁸ and manuals of the Polish orthography⁹ and of the Latin grammar¹⁰.

S. Zaborowski was *Regni Polonie thesauri Notarius* during the reign of King Alexander (†1506), and later on, in the times of Alexander's brother and successor, Sigismund I, Stanisław became *Custos thesauri Regni*. At the beginning of his career, he was linked to famous Jan Łaski (the older, †1531). In these years Łaski was a close King Alexander's adviser and the Bishop of Kujawy diocese (with the seat in Włocławek), and later on was Archbishop of Gniezno, i.e. Primate of Poland¹¹. Łaski indeed was an originator of the famous Alexander's Statute from 1504, the law which changed essentially the conditions of pledging estates of the royal domain. In the contracts made under the new Statute, the fruits of land had to be always counted into the principal¹².

Before *Contra malos divites et usurarios*, Zaborowski published his most renewed opus: *Tractatus quadrifidus de natura iurium et bonorum regis et de reformatione Regni ac eius regimine* (inc. "Gemitus et planctus pauperum plurimus", 1507)¹³. In

⁵ For Zaborowski's biography, see the introduction: H. Litwin, „Stanisława Zaborowskiego życie, sylwetka i traktat” [S. Zaborowski's life, figure and treatise], in the edition: Zaborowski, *Traktat w czterech częściach o naturze praw i dóbr królewskich...*, pp. V-LXXVIII; see also: L. Szczucki, *Filozofia i myśl społeczna XVI wieku* [Philosophy and social thought of the 16th century], Warszawa 1978 (in ser. „700 lat myśli polskiej” [700 years of the Polish thought]), 36.

⁶ Unfortunately, the archives of Law Faculty from this period have not been preserved.

⁷ Cf. J. Schumpeter, *History of Economic Analysis*, New York 1954, 115-122 and 159-167.

⁸ Id., *De celibatu christianorum et presertim sacerdotum ac virginium*, Cracouie 1529.

⁹ Id., *Orthographia seu modus recte scribendi et legendi polonicum idioma quam utilissimus*, Cracouie 1513; see: J. Balázs, *Der Einfluss des polnischen Humanismus auf die Ausbildung der polnischen und ungarischen Nationalgrammatik*, in: Gy. Székely et E. Fügedi [ed.], *La Renaissance et la Réformation en Pologne et en Hongrie (1450-1650)*, Budapest 1963 (*Studia Historica*, 53), 289-312.

¹⁰ S. Zaborowski, *Grammatices rudimenta seu forma octo partium orationis examen cum forma seu modo verba exponendi*, Cracouie 1518.

¹¹ Cf. W. Dworzaczek, „Łaski, Jan, h. Korab (1456-1531)”, in: *Polski słownik biograficzny*, 18 (1973), 229-337.

¹² Ed.: *Volumina legum*, [ed. by] J. Ohryzko, t. I, Petersburg 1859, 294-299; see also: A. Sucheni-Grabowska, A. Wyczański, *Les révisions des biens fonciers appartenant au domaine de la couronne en Pologne au cours des XVI-XVIII siècles. La source et son édition*, in: *Studia Historiae Oeconomicae* (Adam Mickiewicz University in Poznań), 7 (1972), 59-90; A. Sucheni-Grabowska, *Odbudowa domeny królewskiej w Polsce [Restoration of the royal domain in Poland]: 1504-1548*, Warszawa 2007 (2nd ed.), passim.

¹³ Ed.: Zaborowski, *Traktat w czterech częściach o naturze praw i dóbr królewskich...*

writing this opus, he must have been inspired by J. Łaski's projects of the fiscal reforms, consisting in the restoration of royal domain. These two Zaborowski's texts were essentially interconnected with each other, as *Tractatus de natura iurium et bonorum Regis* focuses especially on the royal land taken as a pledge by the great landlords who were creditors of the Polish kings.

2. Crucial features of the treatise

Contra malos divites et usurarios is a treatise on 'practical' (moral) theology, with the extensive references to canon law. The discourse is levelled firstly against the vice of avarice, which is considered the main root of usury, and other sins as well. Zaborowski firstly encourages his readers to avoid avarice and, in consequence, usury.

The citations of canonists and theologians are precise. The favourite Zaborowski's *auctoritas* is undoubtedly Saint Augustine. The fragments of his sermons concerning avarice, charity, and alms are quoted extensively¹⁴. Other texts are often cited in reference to the particular situations: *Pisanella* by Bartholomew of San Concordio, the 14th century Dominican¹⁵, with *Supplementum* by the 15th century Franciscan canonist, Niccolò da Osimo¹⁶; and one of the most renowned Italian confessional summas of the 15th century, *Summa Angelica* by Angelo Carletti¹⁷. The fragment of the analysed treatise is devoted to the special *casus* in which usury takes place¹⁸. Zaborowski discusses here such *casus* as: office (*officium*), pledge (*pignus*), coercion and compulsion (*coactio*)¹⁹ and gift (*libera donacio*). The *casus* of *coactio* is related to the issue of unrealised gain (*lucrum cessans*).

Zaborowski focuses especially on the problem of the borrower's estate held as a security by the lender. In accordance with the medieval anti-usurious textual tradition, the author reminds the rule that profit from a pledge should be counted into a principal²⁰. The possessor who holds an estate after having received fruits in amount exceeding a principal should be regarded as *possessor male fidei*, a thief (*fur*), and a robber (*predo*):

¹⁴ See below, n. 43.

¹⁵ See: T. Kaeppli, *Scriptores Ordinis Praedicatorum medii aevi*, 1, Romae 1970, 157-68.

¹⁶ Cf.: Nicolaus de Auximo, *Supplementum, quoniam Summa que Magistratia seu Pisanella vulgariter nuncupatur*, Mediolani 1479; see: „Nicolaus de Auximo”, in: *Franciscan Authors, 13th-18th Century: a Catalogue in Progress*, <<http://fr-authors.2-www.de>>, 2014; L. Pellegrini, „Niccolò da Osimo”, in: *Dizionario biografico degli Italiani*, 78 (2013); O. Langholm, *The Merchant in the Confessional: Trade and Price in the Pre-Reformation Penitential Handbooks*, Leiden-Boston 2003 (*Studies in Medieval and Reformation Thought*, 93), 138-145.

¹⁷ Cf.: Angelus de Clavasio, *Summa Angelica de casibus conscientialibus*, Venetiis 1578; S. Pezzella, „Carletti, Angelo”, in: *Dizionario biografico...*, 20 (1977); G. Todeschini, *Scienza economica francescana nella Summa di Angelo da Chivasso*, in: O. Capitani, R. Comba, M. C. De Matteis, G. Merlo [edd.], *Frate Angelo Carletti, osservante, nel V centenario della morte (1495-1995)*. Atti del convegno: Cuneo-Chivasso, 7-8 dicembre 1996, Cuneo 1998, 157-168; Langholm, *The Merchant in the Confessional...*, 158-174.

¹⁸ Zaborowski, *Contra malos divites et usurarios...*, 4-7.

¹⁹ See below, p. 10-12.

²⁰ This principle was extensively discussed already in the turn of the 12th and 13th century in the texts by Peter the Chanter and his disciples, cf.: J. W. Baldwin, *Masters, Princes and Merchants: The Social Views of Peter the Chanter and his Circle*, 1, Princeton (N.J.) 1970, 275-278; M. Bukała, *Risk and Medieval Negotium. Studies of the Attitude towards Entrepreneurship: from Peter the Chanter to Clarus Florentinus*, Spoleto 2014, 88-94.

Et dicitur tunc creditor male fidei, quando illi constat, quod illa res, quam tenet, sit pignori et yποτεce obligata, et quod ex fructibus seu usu illius rei sorti sit satisfactum, et ipsam ultra tenuerit lucrum sibi aquirendo. Talis est fur et predo et possessor male fidei, qui nullo tempore prescribere potest²¹.

This aspect, however, is referred especially to the public debt and to land of the royal domain. According to the author, the law which permits to transfer such land to the successors or other people must be cancelled, as it is illicit and it conduces to the condemnation of souls (“est illicitum in inferni laqueus multos aheu in perditionem deducens”)²².

3. Continuation of medieval concepts: *ius* and *potestas*

One of essential features of Zaborowski’s thought is the emphasis on primacy of law (the law of the Holy Scripture, the natural law and the positive law) over the religious or political authority, meaning the authority of the pope or the king. He cites here the 12th century decretal *Super eo*²³:

Nam papa non potest dispensare cum aliquo, etiam et iudeo, ut mutuet sub usuris – ut patet in c. *Super eo* de usuris; quam usura est malum in se, et ideo pro nullo bono potest licere – ut patet in dicto c. *Super eo*²⁴.

This reference to *Super eo* has been already mentioned in the earlier Zaborowski’s *Tractatus de natura iurium et bonorum regis*²⁵. In the decretal letter, Pope Alexander III wrote that he could not give a dispensation *in recipienda pecunia ad usuram* in any circumstances, even for the noble scope of redeeming of Christians from Muslim captivity. The words *in recipienda pecunia ad usuram* can be understood in double way: as borrowing with usury or as usurious lending. The first interpretation seems to be prevailing. Nevertheless, Zaborowski’s remarks about usury considered as *malum in se* indicate that he must have understood the decretal in a sense of usurious lending, which indeed could not be justified by any excuse. The author’s reasoning is comprehensible, although the used term *malum in se* is not very explicit (*nota bene*, it does not appear in the decretal): *malum in se* could be exceptionally justified, as e.g. the homicide in self-defence or the execution of a criminal (more explicit than *malum in se* was the term *malum secundum se*, understood as *privatio iustitiae* and traditionally referred, among others, to usury²⁶).

Zaborowski’s remarks about the limited papal authority in the contexts of usury can be compared to his statements in *Tractatus de natura iurium et bonorum regis* about

²¹ Zaborowski, *Contra malos divites et usurarios...*, 4.

²² Ibid.

²³ Cf. X 5.19.4

²⁴ Zaborowski, *Contra malos divites et usurarios...*, 4.

²⁵ Cf. Zaborowski, *De natura iurium et bonorum Regis...*, pars II, §12, 5, ed. cit., 150.

²⁶ See.: Guillelmus Altissiodorensis, *Summa aurea*, lib. III, tract. XLVIII. De usuris, cap. I, qu. II. Utrum dare ad usuram in omni casu sit peccatum, ed.: Magistri Guillelmi Altissiodorensis *Summa aurea*, ed. J. Ribailier, Grottaferrata 1980-, t. III, 2, 911-912: „Item, maius peccatum est occidere quam dare ad usuram; sed licet in casu sine peccato occidere et facere dolum; ergo licet in aliquo casu sine peccato dare ad usuram. (...) Ad tercio obiectum dicimus quod licet occidere peccatum sit in se, non tamen secundum se; sed dare ad usuram peccatum est in se et secundum se; et propter hoc non est simile.”; cf. *Summa fratris Alexandri*, lib. III, tit. De septimo praecepto, cap. IV., art. II [= n. 380], ad 3; ibid., lib. III, tit. De praeceptis beneficentiae, membrum II, cap. I [= n. 586], ad 3.

the limited power of king, who is not *dominus* of goods and rights (*bonorum et iurium*), but solely their *prepositus* and *administrator*.

Cum autem regna iure gentium ad se tuendum instituta sint, igitur bona Regni seu Regia illorum, a quibus vel pro quibus sunt instituta, esse censentur. Unde rex non dominus ipsorum sed administrator censendus est²⁷.

The treatise *Contra malos divites* also includes a strong criticism of a part of the clergy. The author writes about the prelates who tolerate usury with foolish leniency (*stulta paciencia*)²⁸, disregarding the principle that the restitution of usurious gain was an essential condition for the absolution in the sacrament of penance:

(...) qui sua stulta paciencia talia tolerant, quasi ne sciant se de hiis omnibus districtam rationem reddituros; quoniam enim tales absolvuntur, cum ipse usurarius nequamque penitentiam agere potest, nisi quicquid ultra sortem receperit restituat²⁹.

Especially bishops tolerating this sin provoked the author's wrath. He emphasizes on their special responsibility for rooting disgrace (*flagitia*) and for extirpating law regulations (*statuta*) and customs (*consuetudines*) which are contradictory with the Divine or the natural law (*contra ius divinum vel naturale*)³⁰.

In the criticism of the bishops and prelates, Zaborowski's approach can be considered a continuation of the ideas of moral revival of the Church *in capite et in membris*, which prevailed among the Polish canonists and theologians of the late 14th and 15th century³¹. Konstanty Grzybowski found this aspect in *Tractatus de natura iurium et bonorum regis* and showed that Zaborowski's concept of the king – regarded solely as *rector*, *prepositus* or *administrator* – steamed from the application of the 15th century canonistic notions to the problem of royal power. Grzybowski referred especially to such authors as Paul of Brudzewo (Włodkowic), Jacob of Szadek, Jakob of Paradies, and Thomas of Strzępin (Strzępiński)³². This aspect of Zaborowski's thought is sometimes overlooked. Some historians juxtapose our author with the 15th century conciliarists, because of his hostile attitude to religious

²⁷ Zaborowski, *Tractatus quadrifidus de natura iurium et bonorum regis...*, pars I, §3, 1, ed. cit., 8.

²⁸ Zaborowski, *Contra malos divites et usurarios...*, 4.

²⁹ Ibidem.

³⁰ Ibidem, 9.

³¹ See: P. W. Knoll, The University of Cracow and the Conciliar Movement, in: J. M. Kittelson, P. J. Transue (ed.), *Rebirth, Reform and Resilience. Universities in Transition 1300-1700*, Columbus (OH) 1984, 190-212; J. Drabina, Konziliarismus an der Krakauer Universität in der ersten Hälfte des XV. Jahrhunderts, in: Z. Włodek [ed.], *Société et église. Textes et discussions dans les universités d'Europe centrale pendant le moyen âge tardif. Actes du Colloque de Cracovie (14-16 juin 1993)*, Turnhout 1995, 117-131; T. Wunsch, Konziliarismus und Polen: Personen, Politik und Programme aus Polen zur Verfassungsfrage der Kirche in der Zeit der mittelalterlichen Reformkonzilien, Paderborn 1998, passim; see also: S. Swieżawski, Conséquences morales et politiques du conciliarisme médiéval, in: *Société et église...*, 1-20; F. Cheneval, Jean Falkenberg et Paul Vladimiri: critiques de Dante, *ibid.*, 101-115.

³² K. Grzybowski, Rozwój myśli państwowej na Uniwersytecie Krakowskim w pierwszej połowie w. XV [Evolution of the ideas of state in the Krakow University in the 1st half of the 15th century], in: K. Lepszy [ed.], *Dzieje Uniwersytetu Jagiellońskiego w latach 1364-1764 [History of Jagellonian University in years...]*, t. 1, 139-149, see: 145 and 148-149; for conciliarists concepts of the mentioned authors, see in works quoted in n. 31.

novelties³³. Admittedly, Zaborowski was a decisive defender of the religious doctrine of the Church, but it does not make him immediately an advocate of the ‘papal absolutism’. Undeniably our author adopted some conciliarist concepts and notions. That is more discernible in *Tractatus de natura iurium et bonorum regis* than in *Contra malos divites*, but Zaborowski’s idea of the primacy of the Divine (came down in Scripture) and the natural law over the political or ecclesiastic *potestas* also appears in the context of usury.

4. Novelty of the early modern approach: anti-usurious discourse

Despite the elements of continuation of the earlier texts, Zaborowski’s treatise diverges from the medieval thought in some significant aspects. Firstly, I would pay my attention to the distinctive features of argumentation: the argumentation ‘addressed’ more to will than to reason (a), the focus on the vice of avarice, more than on the sins against the Seventh Commandment (b); the emphasis on the virtue of charity, more than on the virtue of justice (c).

The argumentation ‘addressed’ more to the will than to the reason (a). In contrary to the medieval treatises, the text does not include the extensive anti-usurious argumentation referring to the reason and nature. The prohibition against usury is rather accepted as a paradigm. In this point the author differs from the medieval texts, which were usually focused on demonstrating the essential contradiction between usury and the natural law. In the new ‘modern’ approach, the prohibition against usury is based mainly on the sentence “Mutuum date nihil inde sperantes” (Luke 6, 35) from the *Sermon on the Mount*. The medieval anti-usurious rational arguments are either not regarded as a proof, either considered less important than the Biblical *auctoritas*. This tendency begun with the 14th century Franciscan texts. According to Odd Langholm: „There seems to have been a tendency among some of the fourteenth-century Franciscan theologians to acknowledge the impossibility of proving usury sinful by natural reason and to fall back on Christ’s command to lend without expecting any gain.”³⁴

Zaborowski’s discourse is aimed at convincing the readers to follow the anti-usurious principles in life. He notices that they often tend to underestimate gravity of the problem. The argumentation is founded firstly on the Holy Scripture, and it is mainly levelled against tolerance for usury: against leniency of clergymen, against ambiguous thesis of some writers and against civil laws permitting the plague (with particular focus on Poland). The author underlines the superiority of the canonical prohibitions over the permissive civil laws.

Zaborowski’s particular argumentation refers to the several special *casus*³⁵. He does not develop, however, neither the analysis of money, nor analysis of a loan. Admittedly, Aristotle’s remarks, from the *Nicomachean ethics* and the *Politics*, about usury being against nature are briefly reminded in two places³⁶. After the citation of

³³ Such juxtaposition has been presented by H. Litwin (in his introduction: „Stanisława Zaborowskiego życie...”, p. XXX), but I would argue against his view.

³⁴ Cf. O. Langholm, *Economics in the Medieval Schools. Wealth, Exchange, Value, Money & Usury According to the Paris Theological Tradition, 1200-1350*, Leiden - New York - Köln 1992, 523-530 (Studien und Texte zur Geistesgeschichte des Mittelalters, 29), 586; see below, n. 57.

³⁵ See above, in n. 18.

³⁶ Zaborowski, *Contra malos divites et usurarios...*, 9 and 12; cf. Aristotle, *Nicomachean ethics*, lib. IV, 1121b-1122a (but the author erroneously cites here Book V); Id., *Politics*, lib. I, 1258 b.

Aristotle, the author presents the chosen anti-usurious arguments based on the natural reasoning, but without further discussion of the issue: “quia quid facere gratis tenentur, id pro temporali faciunt lucro vendentes id quid non habent”³⁷. The mentioned arguments are not linked, in fact, to ‘Philosopher’. The first of them refers to the principle of the gratuitous character of loan (“quid facere gratis tenetur, id pro temporali faciunt lucro”), whereas the second (“vendes id quid non habent”) seems to allude to Thomas Aquinas’ argumentation about the selling of use of money³⁸ (nevertheless St. Thomas is not quoted in this place, although the question on usury from *Summa theologiae* is quoted elsewhere in Zaborowski’s treatise). The main scope of *Contra malos divites et usurarios*, however, was not to demonstrate the rightness of anti-usurious principles, but to convince readers to observe them in practice. In such argumentation the problem of avarice was of an essential importance.

The focus on the sin of avarice (b). The condemnation of avarice is the crucial point of Zaborowski’s text. The two biblical fragments are quoted in this context in many places: according to St. Paul, avarice is said to be the root of all evil (1 Timothy 6, 10), whereas in the parabola about a rich man who had a good harvest, this avaricious man’s forethought appeared to be stupidity (Luke 12, 16-21). Admittedly, the author also refers to the Seventh Commandment and reminds that usury is a theft. That, however, is addressed especially to the confessors and other clergymen who were lenient with usurers. Moreover, identifying usury with theft is closely related to the anti-avarice argumentation. Zaborowski firstly points out that every avaricious man deserves the eternal condemnation. Therefore, he argues, if even the avaricious who disposes his own property cannot attain the eternal salvation, the usurer, who always disposes something which belongs to others, deserves such punishment even more. Anti-avaricious reasoning constitutes here the point of departure.

In the majority of the medieval anti-usurious texts, the emphasis on anti-avaricious aspect was less strong, as they were preoccupied firstly with the problem of justice. Nevertheless, the example of such anti-avaricious discourse could be found before in the treatise *De peccato usurae* by Florentine Dominican, and Aquinas’ disciple, Remigius de Girolamis (1319†)³⁹. I mean especially the last part of his treatise, where usury is considered mainly as a result of avarice⁴⁰, and every sinner is said to be ‘usurer’ in a figurative sense⁴¹.

The emphasis on the virtue of charity (c). In the early modern approach to usury, the virtue of charity gets a greater importance, and the anti-charitable nature of usury is underlined even more than injustice of this sin, stressed so notably by the medieval authors. The priority of ‘charity arguments’ is already discernible in some late medieval anti-usurious treatises, e.g. in Gerald Odonis and Matthew of Krakow. Gerald rejected the traditional anti-usurious arguments and “was inclined to base his

³⁷ Zaborowski, *Contra malos divites et usurarios...*, 12.

³⁸ Cf. Thomas de Aquino, *Summa theologiae*, II^a-II^{ae}, qu. 78, art. 1, co, ed.: S. Thomae Aquinatis Opera omnia, ed. cit., II, 624: „si quis ergo seorsum vellet vendere vinum et seorsum vellet vendere usum vini, venderet eandem res bis, vel venderet id quod not est”.

³⁹ Ed.: O. Capitani, II *De peccato usurae* di Remigio de’ Girolami, in: Studi medievali, ser. 3a, 6 (1965), 2, 537-609 (introduction), 611- 662 (the text); see: O. Capitani, Cupidigia, avarizia, *bonum commune* in Dante Alighieri e in Remigio de’ Girolami, in: Idem., Da Dante a Bonifacio VIII, Roma 2007, 95-111.

⁴⁰ Remigius de Girolamis, *De peccato usurae*, cap. XXXV-XXXVI, ed. cit., 657-660;

⁴¹ Ibidem, cap. XXXVI, ed. cit., 659.

case against usury on Luke 6⁴²; whereas Matthew in Chapter 1 of his treatise on loan, demonstrates immorality of usury by the reasons of charity and compassion (*ratione caritatis et misericordie*)⁴³.

In Zaborowski the emphasis on 'charity arguments' is already more distinct. To convince the readers to follow the love of one's neighbour commandment, he quotes the extensive fragments of sermons by St. Augustine or sermons attributed to him⁴⁴. These fragments also refer to the evangelical parabola about a rich man who had a good harvest and include citations of the crucial sentences: "Dixit illi Deus: Stulte, hac nocte animam tuam repetunt a te, quae autem parasti, cujus erunt? (Luke 12, 20)"⁴⁵ ("But God said to him, 'You fool! This very night your life shall be required of you. To whom will all this piled-up wealth of yours go?'"⁴⁶).

5. Novelty of the early modern approach: discussed *casus*

The novelty of the approach is also reflected in the particular situations and *casus* discussed by Zaborowski. I would mention here the poor and the community, regarded as the main victims of usurers; and the focus on the problems of public debt and forced loan.

The main victims of usurers: the poor and the community. The emphasis on charity corresponds with the discussing usury in the context of lending to the poor. Another discussed context was granting loan to a king and taking a land of the royal domain as a pledge. Zaborowski does not limit the prohibition against usury to these two contexts, but he discusses the problem referring solely to these situations, and he omits, for example, the problem of mercantile credit.

Such approach diverges from the one which prevailed in the medieval texts. Medieval authors usually took into consideration, among others, the objections concerning loans of non-charitable character. For example, even Matthew of Krakow – although he especially stresses the disinterested and gratuitous character of loan⁴⁷ – dedicates the chapter of his treatise on loan to the discussion with a hypothetical

⁴² Langholm, *Economics in the Medieval Schools*...., 587, see also: pp. 508-535 (chapt. XX).

⁴³ Matheus de Cracovia, *De translacione rerum temporalium (De contractibus)*, pars II, tract. I, cap. 1, ed.: Mateusz z Krakowa, *O nabywaniu i przekazywaniu dóbr: podstawowe pojęcia, lichwa i etyka kupiecka* [On obtaining and transferring goods: fundamental notions, usury, and merchants' ethics], [ed. by] M. Bukala, Kęty 2011, 136-142; see also: M. Bukala, *De translacione rerum temporalium (de contractibus)* by Matthew of Krakow: Introduction to the Treatise on Loan, in: *Studia Antyczne i Mediewistyczne*, 11 [46] (2013), 233-242.

⁴⁴ Augustinus Hipponensis, *Sermones de scripturis*: LX. De verbis Evangelii Matth., cap. VI, 19-21, „Nolite vobis condere thesauros in terra, etc., exhortatorius ad faciendas eleemosynas”, 2; CLXXVIII. De verbis Apostoli, Tit., cap. I, 9 „Ut potens sit exhortari in doctrina sana, et contradicentes arguere. Contra rerum alienarum raptos”; Idem [?], *Sermones suppositi de scripturis*, LXXXVI. De verbis Evangelii Luc., cap. XII, 16-21 „Hominis cuiusdam divitis uberes attulit possessio fructus, etc.”; Idem, *Sermones de diversis*, CCCLV. De Vita et Moribus clericorum suorum (I); Idem [?], *Sermones suppositi de diversis*, CCCX. De eleemosynis, 2.

⁴⁵ *Biblia Sacra juxta Vulgatam Clementinam*, ed. electronica, Londini 2006: (<<http://vulsearch.sourceforge.net/html>>, 2014); cf.: Augustinus Hipponensis, *Sermones de scripturis*, CLXXVIII...; Idem [?], *Sermones suppositi de scripturis*, LXXXVI...; Idem [?], *Sermones suppositi de diversis*, CCCX...; Zaborowski, *Contra malos divites et usurarios*..., 12-14;

⁴⁶ *The New American Bible – Translated from Original Languages with Critical Use of all the Ancient Sources*, New York 1983, 1124; cf. 'Authorised Version' of King James Bible (Pure Cambridge edition): „But God said unto him, *Thou* fool, this night thy soul shall be required of thee: then whose shall those things be, which thou hast provided? (<www.kingjamesbibleonline.org>, 2014).

⁴⁷ Cf. above, n. 43.

opponent who claims that a loan must be granted *gratis* only to the poor. In response to these objections, Matthew underlines, that it must be offered *gratis* also in other cases, even if the borrower gains a double mercantile profit from such money⁴⁸. S. Zaborowski, however, discusses loan exclusively as a charitable act in favour of the poor or *res publica*. Contrary to the medieval authors, he does not discuss the *casus* of merchant-borrower, investing the ventured capital in his enterprise⁴⁹. This approach consisted in some limitation of the anti-usurious doctrine and in the undermining its medieval foundations. In the later history of thought this tendency led to the explicit limitation of the prohibition against usury to the charitable loans, especially in the protestant literature⁵⁰.

The described feature of Zaborowski's thought is reflected in the meaning of a word *industria*. In many medieval texts, beginning from William of Auxerre⁵¹, it appeared in the positive meaning, in the context of the entrepreneurial activity of a merchant-borrower. In our treatise, however, this meaning is absent. On the contrary, Zaborowski paraphrases St. Ambrose's sentences, in which this term has a pejorative meaning of the usurer's *industria*: "Cur affectas inopiam, sterilitatem et caristiam? Hanc vocas industriam, que est fraudis versucia; et quod vocas remedium, nequicie commentum est et latrocinium"⁵².

The problem of public debt and forced loan. One of the special *casus* concerns the lenders who were forced by the public authorities to grant loans. Such loans were enforced by Italian *commune* since the 13th century. *Credita* which made part of the public debt were a subject of sale on the secondary market. Such transactions, particularly in Florence, Venice and Genoa, were discussed in several theological treatises of the 14th and 15th century (which have been analysed in the historical studies, especially by Julius Kirshner and Larwin Armstrong)⁵³. The crucial question was if the coercion could justify the lenders' gain *ultra sortem*?

In the Kingdom of Poland such loans were not enforced formally. It cannot be excluded, however, that some of the rich landlords were induced by certain political compulsion to grant loans for the king. The king's creditors usually received some extra profits, e.g. from the estates granted for life (although according to the rule, such a life endowment was to be *panis bene meritum*) — these profits could be in

⁴⁸ Matheus de Cracovia, *De translacione rerum temporalium (De contractibus)*, pars II, tract. I, cap. 3, ed. cit.: 146-152.

⁴⁹ Cf. Bukala, *Risk and Medieval Negotium....*, passim.

⁵⁰ E.g. in John Calvin's concepts of usury, cf. J. Noonan, *The Scholastic Analysis of Usury*, Cambridge (MA) 1957, 365-367.

⁵¹ Cf. Bukala, *Risk and Medieval Negotium....*, 113-114.

⁵² Zaborowski, *Contra malos divites et usurarios...*, 11; cf. Ambrosius Mediolanensis, *De officiis ministrorum*, lib. III, cap. VI, n. 41

⁵³ See: J. Kirshner, Reading Bernardino's Sermon on the Public Debt, in: D. Maffei, P. Nardi [edd.], *Atti del simposio internazionale cateriniano-bernardiniano* (Siena, 17-20 aprile 1980), Siena 1982, 547-622; J. Kirshner, Storm over the *Monte Comune*: Genesis of the Moral Controversy over the Public Debt of Florence, in: *Archivum Fratrum Praedicatorum*, 53 (1983), 219-276 (with edition of Peter Strozzi's treatise); L. Armstrong, The politics of usury in *Trecento* Florence: the *Quaestio de Monte* of Francesco da Empoli, in: *Mediaeval Studies* 61 (1999), 1-44 (with edition of the *Questio*) (cf. Id., La politica dell'usura nella Firenze del primo rinascimento, in: G. Boschiero, B. Molina [edd.], *Politiche del credito. Investimento, consumo, solidarietà. 'Centro studi sui lombardi e sul credito nel medioevo'*: Atti del Congresso internazionale (Asti, 20-22 marzo 2003), Asti 2005, 68-83); Id., *Usury and Public Debt in Early Renaissance Florence: Lorenzo Ridolfi on the Monte Comune*, Toronto 2003 (Pontifical Institute of Medieval Studies: Studies and Texts, 144).

some way justified as the compensation for a forced loan. In other cases, usury consisted in receiving fruits from the land taken as a pledge without deducting them from the principal. Some of the king's creditors could tend to defend themselves from the charge of usury by the argument of *coactio*⁵⁴.

In resolving the question, Stanisław Zaborowski follows the synthetic outlook of Niccolò of Osimo⁵⁵, presented in *Supplementum Pisanellae* (by Bartholomew of San Concordio)⁵⁶. Contrary to Bartholomew, Niccolò presents a rigorous position, and refutes the justification of the lender's profit by *coactio*; and so does Stanisław. They support this view by several juridical citations: of the decretal *Super eo* from the title *De usuris* (which was quoted by Zaborowski also in the other context)⁵⁷, of the decretal *Sacris* (from the title *De his quae vi, metusue causa fiunt*)⁵⁸, and of the edict *Quod metus causa* from the *Digesta*⁵⁹. The coercion enforced by the public authorities is compared to the compulsion mentioned in *Super eo*, where someone needs money to redeem the captives. The edict *Quod metus causa* is cited to prove that the lender should not follow the provisions of public authorities in this case, and the duty of obedience cannot clear him from the charge of usury⁶⁰. Our author adds to these references the sentence by St. Augustine that one should be more afraid of the death of his soul, than the death of his body⁶¹.

Following Niccolò de Osimo⁶², Zaborowski explains that the lender's loss is dubious. He supports this position by the citation of Thomas Aquinas's sentence about the lender's compensation for the unrealised profit (not given in Niccolò's *Supplementum* in this place). According to Aquinas, the lender cannot demand such compensation, "because he must not sell that which he has not yet" and „may be prevented in many ways from having"⁶³ (if he were involved in his planned enterprise).

The presented position differed from the prevailing view of theologians, who often questioned fairness of the secondary buyer's gain, but usually recognised at least the first buyer's title for compensation. Such a rigorous view can be explained, however, by the particularities of Zaborowski's approach. In this context, one should remember

⁵⁴ For the medieval and early modern views on the problem of duress and economic compulsion, see: O. Langholm, *The Legacy of Scholasticism in Economic Thought. Antecedents of Choice and Power*, Cambridge 1998, passim; for the issue of compulsion and duress in general: W. Decock, *Theologians and Contract Law. The Moral Transformation of the *Ius Commune* (ca. 1500-1650)*, Leiden 2013, pp. 215-274; for the issue of compulsion in economic exchange: *ibidem*, pp. 507-604.

⁵⁵ See above, in n. 17.

⁵⁶ Nicolaus de Auximo, *Supplementum...*, ed. cit., [entry] „Usura, III^{tio}”.

⁵⁷ X 5.19.4; see above, n. 23-24.

⁵⁸ X 1.40.5.

⁵⁹ Digg. 4.2.1; for this edict see: Decock, *Theologians and Contract Law...*, p. 216-219

⁶⁰ The argument from *Quod metus causa* could be applied in opposite way as well: the lender is unjustly forced to grant a loan, and so his loss (*damnum emergens*) could be a title for interest; such reasoning was presented, among others, by Francis of Empoli, 14th century Franciscan, see the edition: L. Armstrong, *The politics of usury in Trecento Florence...*

⁶¹ Cf. Augustinus Hipponensis, *De civitate Dei*, lib. XIII, cap. 2.

⁶² Nicolaus de Auximo, *Supplementum...*, loc. cit.: „Non autem potest poni interesse certum pro incerto”.

⁶³ Thomas de Aquino, *Summa theologiae*, II^a-II^{ae}, qu. 78, art. 2, ad 1; transl.: *Summa theologica* by St. Thomas Aquinas, Translated by the Fathers of the English Dominican Province, 1947, <<http://sacred-texts.com/chr/aquinas/summa/index.htm>>, 2014; cf. ed.: S. Thomae Aquinatis Opera omnia, [ed. by] R. Busa, Stuttgart 1974-80, II, 624: „recompensationem vero damni quod consideratur in hoc quod de pecunia non lucratur, non potest in pactum deducere, quia non debet vendere id quod nondum habet et potest impediri multipliciter ab habendo”.

about the distinction between the king and the Kingdom (the latter often called *res publica*). The lenders, even being compelled in some way by the king, gained the usurious profit from the royal domain which was a substantial loss to the Kingdom. The author juxtaposed the magnates' loss, related to the political compulsion, with the loss to the Kingdom. Zaborowski focused more on the harm to the Kingdom, understood as harm to *res publica*. It consisted in the diminution of royal incomes from the domain and, in consequence, in increase of the taxes burdening the poor. Zaborowski refers to this problem in the first sentence of *Tractatus de natura iurium et bonorum regis*: "Gemitus et planctus pauperum plurimus magnis aggravatorum tributis ac regni vastatio me coegerunt, ut hunc tractatum in lucem ederem"⁶⁴.

Anti-usurious thought of Zaborowski made a part of his political vision. The crucial term used in this context was *respublica* (in Polish: *Rzeczpospolita*)⁶⁵. It was firstly a synonym of the modern term of state, and in the historical context signified *Regnum*. Secondly, it was a concept of political philosophy, and in this meaning *respublica* was an equivalent of the notion *bonum commune*, used by earlier political writers⁶⁶. Nevertheless, Zaborowski decisively preferred the term *respublica* to *bonum commune*⁶⁷. *Contra malos divites et usurarios* was particularly addressed to the holders of a royal land taken as a pledge. In an indirect way it concerned the issue of taxation, because profits collected by the pledgees reduced significantly the revenues of the Kingdom. Zaborowski tried to convince the lenders to the voluntary restitution of royal estates, arguing that fruits taken from over years usually surpassed the amount of loan, so their further collection was usury. In fact during the reign of Sigismund I, voluntary restitutions of royal land often took place, especially in last wills. Some historians linked the increasing number of restitutions with the dissemination of Zaborowski's thought. Anna Sucheni-Grabowska and Henryk Litwin wrote solely about his most renowned *Tractatus de natura iurium et bonorum regis*. They point out to Piotr Szafraniec's last will from 1508, which includes expressions strikingly similar to Zaborowski's concepts⁶⁸. This last will antedated the publication of *Contra malos divites et usurarios*, but the restitutions are observed in a longer period, so they must have been inspired by the treatise on usury too.

Contra malos divites et usurarios is closely related with *Tractatus de natura iurium et bonorum regis* (which is also quoted in *Contra malos divites*). Thanks to applying the conciliarist notions to the issue of royal power our author became one of the significant precursors of the 16th century 'nobles' democracy' ideas⁶⁹. They concern,

⁶⁴ Idem, *Tractatus quadrifidus de natura iurium et bonorum regis*, ed. cit., 2.

⁶⁵ For the meaning of the term *Respublica* in the 16th century Polish political thought, see: C. Backwis, Les Thèmes majeurs de la pensée politique polonaise au XVI^e siècle, in: L'Annuaire de l'Institut de Philologie et d'Histoire Orientales et Slaves, 14 (1957), 307-355; L. Szczucki, Filozofia i myśl społeczna..., passim.

⁶⁶ Cf. M. Kempshall, *The Common Good in Late Medieval Political Thought*, Oxford 1999, passim.

⁶⁷ The term *bonum commune* appears in *Tractatus de natura iurium et bonorum Regis*, but in the context of local communities and towns — pars II, §3, 3, ed. cit., 32: "Et ideo summe necessarium est, ut imprimis de bono communi singulariter uniuscunq[ue] villae civitatisve provideatur, in statum videlicet pristinum eorum redigendo iura, et ipsorum commodum sicut proprium intendendo, ac, in consortio virtuoso eos fovendo".

⁶⁸ Sucheni-Grabowska, *Odbudowa domeny królewskiej...*: 96, 274; Litwin, „Stanisława Zaborowskiego życie...”, LXV.

⁶⁹ Claude Backwis underlined Zaborowski's precursory role in the development of the 16th century ideas of 'nobles' democracy'. Nevertheless, in comparing Zaborowski to the later political writers, Backwis

first of all, the protection of moderately wealthy nobles and the vindication of property rights of the Crown, diminished by the richest landlords⁷⁰. Zaborowski's concepts from *Tractatus de natura iurium et bonorum regis* are said to be discernible in Andrzej Frycz-Modrzewski's famous opus *De Republica emendanda*⁷¹.

overlooked the influence of earlier theologians and canonists and the 15th century background, cf. C. Backwis, *Les Thèmes majeurs de la pensée politique polonaise...*

⁷⁰ Cf. Sucheni-Grabowska, Wyczański, *Les révisions des biens fonciers...*

⁷¹ A. Klinger, *Stanisława Zaborowskiego program naprawy Rzeczypospolitej* [S. Zaborowski's project of the reform of *Respublica*], Zielona Góra 1987, 139; Modrzewski does not quote our author explicitly in any place, but it could be explained by the essential differences in their religious views, cf.: Andreae Fricii Modrevii *Commentarioum de Republica emendanda Libri quinque*, ed. K. Kumaniecki, Varsoviae 1953; cf. transl.: *Von Verbesserung des gemeinen Nütz*, Fünf Bücher Andree Fricii Modrevii, Königlicher Maiestet zu Polen Secretarii, [übers v.] W. Wissenburg, Basel 1557 (based on the 2nd ed.: Basileae 1554).