

Early  
Economic Thought  
in Spain,  
1177–1740

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Marjorie Grice-Hutchinson



LIBERTY FUND *Indianapolis*

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Printed in the United States of America

20 19 18 17 16 15 C 10 9 8 7 6 5 4 3 2 1  
20 19 18 17 16 15 P 10 9 8 7 6 5 4 3 2 1

Library of Congress Cataloging-in-Publication Data

Names: Grice-Hutchinson, Marjorie, 1908–2003.

Title: Early economic thought in Spain, 1177–1740 / Marjorie  
Grice-Hutchinson.

Description: Reprint of 1st edition. | Indianapolis : Liberty Fund  
Inc., 2015. | Includes index.

Identifiers: LCCN 2015035396 | ISBN 9780865978010 (hardback) |  
ISBN 9781614872771 (epub) | ISBN 9781614876533 (mobi)

Subjects: LCSH: Economics—Spain—History. | BISAC: BUSINESS &  
ECONOMICS / Economic History. | BUSINESS & ECONOMICS /  
Education. | BUSINESS & ECONOMICS / Inflation. | HISTORY /  
Europe / Spain & Portugal.

Classification: LCC HB17.A2 G74 2015 | DDC 330.0946/0903—dc23  
LC record available at <http://lcn.loc.gov/2015035396>

LIBERTY FUND, INC.

8335 Allison Pointe Trail, Suite 300  
Indianapolis, Indiana 46250-1684

*This edition is dedicated to the memory of  
Leonard Liggio.*

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## FOREWORD

In the course of the last twenty years there has been a certain quickening of interest in the history of economic thought in Spain. Not only have the old economists been consulted as witnesses to the economic facts of their time, but their doctrines have been examined and found to be of interest for their own sake. A considerable number of long-forgotten texts have been brought to light, and some judged worthy of re-publication. I hope that this collection of essays may help to draw attention to the work done in this field, and perhaps suggest some lines of approach that invite further exploration.

My first two chapters are concerned with the medieval period. In them I have tried to see how far, if at all, Professor Américo Castro's main theme, the interpenetration of the Christian, Hebrew, and Islamic cultures in the Iberian Peninsula and their joint contribution to the making of modern Spain, may be applicable to our subject. The chapter on usury doctrine and business practice (the two things must be considered together) offers conclusions that I put forward tentatively, in the hope that others may be led to support or disprove them. With my second chapter we come onto firmer ground. The economic doctrines of Plato and Aristotle were first transmitted to western Europe by way of Spain, and I have tried to show in some detail the part played by scholars of the three religions in this achievement.

The second half of this book deals with the so-called age of mercantilism, which, in the field of economic thought, lasted in Spain from about the middle of the sixteenth century until well into the eighteenth. Coming into this period we find ourselves caught up in current controversy. Like the people of Spain in the age of mercantilism, we live in a time of inflation. Our economists, like theirs, are concerned with its causes and consequences, and some of them look back to the Spanish price revolution in search of a solution to our own problems. The monetarists among them point to the work of Professor Earl J. Hamilton, and ascribe the rise in the Spanish price

level to the influx of gold and silver that reached Spain from the New World. The anti-monetarists adduce more recent researches in the field of Spanish economic history which have sought to modify Hamilton's conclusions.<sup>1</sup>

Before we form our own opinion we should do well to listen to the old Spanish economists, who were often shrewd observers and who felt the effects of the inflation at first hand. Broadly speaking, we shall find that the scholastic writers based their teaching on the quantity theory of money, and that the political economists, though they mostly attributed the increase in prices to monetary expansion of one kind or another, also brought forward other reasons for the inflation and subsequent economic decay of Spain. My third chapter will deal with the monetary theory of the Spanish late-scholastics (that being, I think, the most interesting feature of their work), and my fourth with the views of the political economists and "projectors."

I have to thank Mr. Marrack I. Goulding for his advice on the transliteration of Arabic words.

NOTE

1. *Inflation: Causes, Consequences, Cures*, a debate between Lord Robbins, Samuel Brittan, A. W. Coats, Milton Friedman, Peter Jay, and David Laidler, with addenda by F. A. Hayek and Peter Jay (Institute of Economic Affairs, London, 1974), pp. 14, 15, and 22.



The Middle Ages

# I

## *In Concealment of Usury*

### INTRODUCTION

To be told that Africa begins at the Pyrenees is apt to irritate Spaniards. Yet if by Africa we mean Islamic Africa there is some truth in the cliché. For over seven hundred years, from 711 to 1492, a gradually shrinking portion of the Iberian Peninsula was under Moslem rule. And, as Ibn Khaldun says, referring to the glorious Andalusian civilization of his forebears, when once the dye is well taken the cloth keeps its color forever. Even the least observant of modern travelers, when he comes into Spain, is forced to consider, perhaps for the first time, the civilization of Spanish Islam.

This civilization was of eastern origin. Hence, by an accident of history, North Africa and Spain, the most westerly regions in their respective continents, shared throughout most of the Middle Ages an oriental culture. They formed a single bloc, the Maghreb or Moslem West, which balanced the other two blocs, of eastern and western Christianity, that made up the civilized world familiar to the medieval European. The theme song of Spanish history during this period is that of the winning of Spain from the Maghreb and its return to the Christian West.

The oriental element in the life of medieval Spain was intensified by the presence of the Jews who lived under both Moslem and Christian protection. There were times when the Jews, here too, were persecuted. But, in the main, it was a golden age for Jewry. Some Jews were rich and powerful, moving between the Islamic and Christian princes whom they served as physicians, translators, diplomats, financial advisers, and tax-gatherers. Others led humble lives as shopkeepers and artisans. They were a pious, clever, frugal, hard-working people, clinging to the traditions that held them together, and devoting to the study of their sacred books the hours that were not spent in business.

As the Reconquest progressed and political power passed more and more into Christian hands, the cultural and commercial life of the newly acquired territories was still dependent on an urban middle class that included many families of Moslem and Jewish origin. The Spanish Christians had mostly been forced to adopt other ideals—those of soldiers and colonizers. In a famous book of laws Alphonso X of Castile lays down the duties of his subjects. Apart from fulfilling their obligations toward God and their king they must “understand the land . . . and cultivate it well, not despising it and finding fault, because land that is useless for one crop will always serve for another,” and, if need arises, they must “break rocks, cut down forests, level the ground, and rid the country of wild beasts.”<sup>1</sup> Though Alphonso himself was a lover of learning and Christian Spain had never lacked for scholars, yet, in those pioneering days, the labors he prescribes must often have interrupted the work of the library.

Speculation about economic matters had reached a more advanced stage among Jews and Moslems than among Christians. In all three peoples a great part of such studies had centered round the problem of usury. The subject held an extraordinary fascination for countless thinkers over a period of some two thousand years. The vast body of teaching on usury that has come down to us reflects the religious spirit of the Semitic peoples and those who followed in their faith. We may contrast this spirit with the rationalistic standpoint of the Greeks, whose contribution to economic thought I shall consider in my second chapter. Our immediate task will be to find out what Moslems, Jews, and Christians thought about usury in medieval Spain and how they reconciled, or failed to reconcile, accepted doctrine with their personal convictions and interests.

The tenet, common to the three religions of Spain, that usury is one of the gravest of sins has its source in the Old Testament. We need not labor the point in the case of Judaism and Christianity. But it is sometimes forgotten that Muhammad, who saw himself as the successor of the Hebrew prophets and of Christ, and as the renewer and purifier of a common faith in the One God, took over a hatred of usury from the Mosaic law.

Our three religions went through the stages that are common to many bodies of doctrine. In all three, the original and revolutionary

teaching of their founders came to pass through a period of so-called "tradition," in which it was handed down from generation to generation, undergoing some development but not entirely losing its early freshness and glow. And, in all three, there came a time when the first inspiration had faded, when prophets and saints gave way to scholars, when the broad lines of doctrine had been laid down, and when debate became a matter for professionals who used a language and method of their own: in short, a time of scholasticism.

The three religions thus followed parallel paths, but at long intervals from each other. Hence we find discussed among Christians, as late as the seventeenth century, typically scholastic problems that had been thrashed out among Jews and Moslems long before. That of usury (by which I shall mean in this chapter any interest, however small, that is charged on a loan) provides an instructive example. In order to examine it we shall have to go far back into the past, and consider writings that at first sight may seem to bear little relation to the Spain of comparatively recent times.

#### USURY AMONG THE JEWS

##### *The Bible and Talmud*

The chief biblical sources of Jewish teaching on usury are the following:

1. Psalms XV: 5. He that putteth not out his money to usury [shall abide in the tabernacle of the Lord].
2. Exodus XXII: 25. If thou lend money to any of my people that is poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him usury.
3. Leviticus XXV: 35-7. And if thy brother be waxen poor, and fallen into decay with thee, then thou shalt relieve him; yea, though he be a stranger, or a sojourner, that he may live with thee. Take thou no usury of him, or increase; but fear thy God, that thy brother may live with thee. Thou shalt not give him thy money upon usury, nor lend him thy victuals for increase.
4. Deuteronomy XXIII: 19-20. Thou shalt not lend upon usury to thy brother; usury of money, usury of victuals,

usury of anything that is lent upon usury. Unto a stranger thou mayest lend upon usury, but unto thy brother thou shalt not lend upon usury.

5. Ezekiel XXIII: 8–9. He that hath not given forth upon usury, neither hath taken any increase . . . he is just, he shall surely live, saith the Lord God.
6. Ezekiel XXII: 12. Thou hast taken usury and increase, and thou hast greedily gained of thy neighbors by extortion, and hast forgotten me, saith the Lord God.

It will be noticed that (2) and (3) seek to protect only the Jew who has fallen on hard times, whereas (4) forbids altogether the practice of usury between Israelites.

These texts formed part of the scriptures that were studied by generation after generation of pious Jews, and with especial care by the rabbis, who applied their conclusions in their legal decisions. There came into being, side by side with the Pentateuch, an oral law, which was probably set down in writing about the year AD 200. This compilation is known as the *Mishna* (“instruction” or commentary on the Tora or revealed law), which in turn became the subject of fresh interpretation. The resulting new commentary, the *Gemara*, together with the *Mishna*, make up the Talmud, which was completed about the year 500.

The word *mishna*, besides meaning the traditional doctrine of the Jews, denotes among other things a single tenet. Each section of the Talmud is made up of an introductory *mishna*, followed by a *gemara* or commentary, in which are set forth the often conflicting opinions of the leading rabbis on the subject dealt with in the *mishna*. The method is essentially the same as that which was later to be adopted by the Christian scholastics.

The rabbinical or Jewish doctrine of usury may conveniently be studied in that tractate of the Talmud which is known as the *Baba Mezi'a* or *Middle Gate*. The relevant passages are based on the biblical injunctions against usury. They are of considerable interest insofar as they reflect the efforts of the early rabbis to reconcile the needs of commerce with the Mosaic law.

A *mishna* posited on Leviticus XXV: 36, “Take thou no usury of him, nor increase,” seeks to distinguish between legitimate and

usurious profit.<sup>2</sup> In the *gemara* that follows are summarized the commentaries of the leading rabbis or “sages.” Some interpreted the *mishna* as approving dealings in futures, but only where the future price was not known in advance. A man might therefore contract to buy or sell goods for future delivery at whatever price might be current when payment fell due. This ruling was not universally accepted, but it was generally agreed that lending money or goods for a stipulated bigger return is biblically forbidden, whereas buying ahead, if forbidden at all, is only forbidden by the rabbis. The distinction was of great practical significance, since “Pentateuchal” or “direct” usury was held to be reclaimable through the Jewish courts, whereas merely “rabbinical” or “indirect” usury, the result of luck or good judgment in business affairs, could not be so reclaimed.

Among the various ways in which a lender may try to charge usury, the same *gemara* describes a device that was to be used throughout Europe until quite recent times. This was the double contract of sale, otherwise known as the *mohatra* or *barata* contract:

Some things are [essentially] permitted, yet forbidden as [constituting] an evasion of usury. How so? If A. requested B. “Lend me a *maneh*,” to which he replied, “I have no *maneh*, but wheat to the value thereof, which I will give you,” and thereupon he gave him a *maneh*’s worth of wheat [calculated on the current price] and repurchased it for 24 *selas*; now, this is essentially permitted, yet may not be done on account of evasion of usury.

A *maneh* was equal to 100 *zuz* and a *sela* to 4 *zuz*; hence, 24 *selas* equalled 96 *zuz*. Thus, in the above case, B, the creditor, sells or pretends to sell wheat on credit to A, the debtor, who contracts to repay, in cash or in kind, 100 *zuz* in return for 96.

In order to make the matter quite clear, our *gemara* provides a second example of the same evasatory device:

A. said to B., “Lend me 30 *denarii*,” to which he replied, “I have not 30 *denarii*, but wheat for the same, which I can give you.” He then gave him 30 *denarii*’s worth of wheat [calculated at the current price] and repurchased it for a golden dinar.

A gold *dinar* was worth 25 *denarii*. The debtor thus receives 25 *denarii* in cash immediately and owes 30 repayable at some future date.

I would now ask the reader to compare the two last-quoted texts with the following passage taken from a sermon preached at Bury St. Edmunds about the year 1595 by the Rev. Miles Mosse or Moses, a Protestant divine who was minister at Norwich and pastor of Combes in Suffolk:

I come to a man, and desire him to lend me an hundred pound upon usury. He answereth, he hath not so much ready money by him, but to do me a pleasure he will lend me an hundred pounds worth of plate to sell, and so to make money: the plate perhaps being hardly worth the money. I am no sooner gone out of the door, but the usurer provideth a broker to meet me, and to buy his plate of me again. Now for ready money perhaps I sell the plate for four score pound. The broker carrieth back the plate to the owner, and from him bringeth four score pound in ready money to the borrower. The borrower must pay the lender an hundred pound for his plate at the day appointed, and ten pound for the usury in the mean season. So in fine, the poor man payeth loan after thirty pound in the hundred, and yet must think himself befriended of the merchant. Thus and a thousand ways more is usury committed under pretence and color of buying and selling.<sup>3</sup>

It is clear that the fictitious sale as described in the Talmud and by Mosse is one and the same device. As late as 1656, the intellectual world was reminded of the then moribund *mohatra* contract by Pascal, who, in the wittiest of his *Provincial Letters*, used it as a stick to beat the Jesuits with.<sup>4</sup> The *mohatra* seems to have flourished with especial vigor in Spain. We shall see later something of its history there.

Returning to our *gemara* on usury, we note that attention is paid to the subject of money-changing. A case is cited which suggests that money-changing was already being used among the Jews as a cover for money-lending. This popular way of evading the usury laws

continued to occupy Jewish, Moslem, and Christian writers on usury until the end of the seventeenth century.

Various other evasatory devices are mentioned in the Talmud. One is the enjoyment by the money-lender of the fruits of property given as a pledge or sold conditionally as cover for a loan. "If a man lends to his neighbour," runs a *mishna*, "he must not live rent-free in his court, nor at a low rent, because that constitutes usury."<sup>5</sup> What we should regard as interest on a mortgage was, however, permissible, because in Jewish law a mortgage was regarded as a temporary sale, and a man may naturally enjoy the fruits of his own property.

The Talmud forbids an Israelite to accept from another an "iron flock" (i.e. sheep that cannot come to harm, or an investment that carries no risk for the investor), because that is nothing but a loan at usury. Such an investment may be accepted from Gentiles. It was also generally agreed that a Jew might borrow from and lend to Gentiles at usury. An Israelite may lend a Gentile's money at usury to another Israelite with the knowledge of the Gentile but not of the Jewish borrower.<sup>6</sup>

Another class of transactions that sometimes served as a cover for usury involved the transfer of money from place to place. In talmudic times (and, indeed, for long afterwards) money was transported in sealed purses containing gold or silver coins whose weight and number were indicated on the outside. This dangerous and cumbersome procedure was supplemented by various forms of transfer of debt, and more especially by the Jewish *diokne* or Moslem *suftaja*, defined by Moslem lawyers as "a loan of money made in order to avoid the risk of transport."<sup>7</sup>

The talmudic sages generally resisted the transfer of money by means of such instruments of credit. There were several reasons for this. Firstly, the banker's charge for issuing the document might be construed as usurious gain on a loan. Secondly, according to biblical law one could not acquire title to a non-existent thing; and a debt was non-existent since in theory a loan was freely expendable. Finally, the transfer of money from place to place often entailed an exchange of currency, and we have seen that money-changing was in itself suspect.

*The Responsa*

In the early Middle Ages the great centers of Jewish learning were still in the east, at Sura and Pumbedith in Mesopotamia. The ever-increasing number of Jews who lived outside these centers continued to appeal to the heads of the eastern academies for the interpretation of obscure passages in the Talmud, in order to reconcile talmudic principles with the conditions of life that prevailed in the different countries where they had settled. Queries on doubtful points of Jewish law were sent by the scattered Jewish communities to the eastern academies, and in due course, sometimes after a delay of several years, the answers came back in the form of the so-called “*responsa*.” Thanks to recent work based on this and other material, we now have a wonderfully complete and vivid picture of Jewish life in the Islamic countries of the Mediterranean, including Spain and Italy, as it existed between the tenth and the thirteenth centuries.<sup>8</sup>

From the tenth century onward the eastern centers of Jewish learning declined, and important rabbinical schools arose in Europe and North Africa. The first Spanish school was founded at Cordova in 948. As time went on the Spanish rabbis came to play an increasingly important part in guiding the conscience of Jewry, at first from Moslem and later from Christian Spain. The first noteworthy collections of *responsa* that relate wholly or largely to Spain are those of Isaac ben Jacob, of Fez, better known as Alfasi, who came to Spain in 1104 and directed the academy at Lucena; of his disciple and successor, Joseph ben Migash and of the Cordovan philosopher and rabbi, Moses ben Maimon, known as Maimonides (1135–1204).

To a later period belong the *responsa* of the celebrated talmudic scholar, Asher ben Yehiel of Cologne (1250–1327), who came to Spain in 1303 and settled in Toledo; of his son, Jacob ben Asher (d. 1340), whose *Turim* remained the standard code of Jewish law up to the sixteenth century; and of Solomon ben Abraham ben Adret (d. 1310), head of the academy at Gerona. The difficulties of the Jewish communities of Spain, who had to adapt themselves to a way of life for which the Talmud made no provision, are reflected in the copious volumes of the *responsa* (Adret’s contain over three thousand cases and Asher’s about one thousand). The flow of *responsa* continued up to the eve of the expulsion of the Jews from Spain in 1492.

Except for a short-lived attempt at the beginning of the twelfth century to put the clock back by rejecting casuistry and returning to a biblical simplicity of doctrine, the authority of the Talmud stood unchallenged in Spain. Commentaries and abridgments were poured out by learned rabbis as long as the Jews dwelled in the Peninsula; and after their expulsion talmudic law, together with the doctrines of the Spanish rabbis, were summarized by R. José Caro of Toledo (1481–1575), whose *Shulhan' Aruk* replaced Asher's *Turim* and still constitutes a standard textbook of Jewish law.

### *The Medieval Rabbis and Credit*

When the medieval rabbis came to consider the ethics of business life the problem of usury was often in their minds. To exact usury in defiance of the biblical precepts was, as the Talmud taught, tantamount to a rejection of God and the highest degree of wickedness. Yet usury flourished on every side. To control the writhings of the monster was a matter of spiritual life and death, and the rabbis did not shrink from the struggle. Their chief weapons were the traditional taboos, to which they clung tenaciously. But here and there they were forced to give ground. They never openly relaxed the principles of the prohibition; but in course of time they tended to sanction contracts that had formerly been suspect, and to look leniently on those that had become customary in business life.

This tendency is illustrated by the attitude of the Maghrebian rabbis toward credit instruments, which, as we have seen, the talmudic sages had disapproved of. By the eleventh century the use of this form of paper money had become so common that the rabbis were forced to reconsider their position. In a query addressed to the head of the academy at Baghdad, a Kairuwan rabbi of the early eleventh century remarked that: "It has been the custom among the inhabitants of Kairuwan from the days of their forefathers until today to issue letters of authorization permitting the recipient to receive money in countries across the sea." Another *responsum* of the same period confirms that in this matter doctrine followed established custom. We read that "there exists nothing in the fundamentals of our law to permit the dispatch of a *suftaja* . . . but since we have seen people making use of it, we have begun accepting it as a basis for our judgments,

lest the commercial transactions of the people be nullified.” Isaac Alfasi, whose *responsa* reflect Spanish conditions at the beginning of the twelfth century, likewise approves this “contemporary practice among merchants” in the Maghreb.<sup>9</sup>

By the thirteenth and fourteenth centuries the use of negotiable instruments had become commonplace. Asher (1250–1327) sanctions them without question: “If A. sends money to B. and C., and notes in his bill ‘payable to bearer by B. and C.’ payment must be made accordingly.” So also Joseph Caro: “If in any bill no name is mentioned but the direction is to ‘pay bearer,’ then whoever presents the bill receives payment.”<sup>10</sup>

### *Maimonides on Usury*

The greatest of the medieval rabbis, and the only one whose name is familiar to the Christian West, is the Spanish Jew, Maimonides. Born at Cordova in 1135, he came of a family distinguished by its learning. The conquest of Cordova in 1148 by the puritanical Moslem sect of the Almohades, followed by the persecution of the Jewish and Christian inhabitants of the conquered territories, forced the family of Maimonides to leave their home and wander through Andalusia until at last, in 1160, they left Spain for Fez. Here again they met persecution, and fled into Egypt, where they were finally able to settle. Maimonides, now a man of 30, was at last able to make full use of his gifts. He became court physician to the sultan, founded a school of philosophy at Fustat, and was appointed chief judge of the Jewish communities in Egypt, where he died in 1204.

Maimonides’ vast literary production covers a wide range of topics that extend from the most elevated metaphysical problems to the proper treatment for hemorrhoids. Our wonder at his versatility is deepened when we remember the busy life he led as a physician. Yet Maimonides’ writings bear no mark of haste. They are all order and serenity, all clarity and good sense. Most of his books were written in Arabic and translated immediately into Hebrew by members of the Tibbonides family of Andalusian Jews who had established themselves at Lunel. His code of Jewish law, however, was written in Hebrew for the benefit of his fellow Israelites. It was chiefly through

this work, which was completed about 1180, that the medieval Catholic Church derived its knowledge of the Synagogue.

The *Code* is based on a large number of sources, including the Bible, the Mishna, the Talmud, the geonic literature, and the opinions of the Spanish rabbis whom Maimonides regarded as his teachers. While most of the laws formulated in the *Code* are drawn from the Mishna and its main auxiliary, the Babylonian Gemara, Maimonides follows his own judgment in the choice of the treatises that make up each of the fourteen books of the *Code*, and also in the arrangement of the topics within a given treatise. He thus clarifies and systematizes whole collections of laws that in the Talmud were submerged and scattered.

The subject of usury is discussed in the thirteenth book of the *Code*, the *Book of the Civil Laws*, and also touched upon in the twelfth, the *Book of Acquisition*. Maimonides keeps broadly to the principles laid down by Jewish tradition, but in certain cases permits some relaxation of traditional doctrine. His teaching may be summarized as follows.

To lend or borrow money at usury is forbidden between Israelites. In doing so the lender transgresses no less than six negative commandments, and the borrower two. Nevertheless, even though they are breaking all these commandments, the parties are not subject to punishment by flogging, because usury is restorable. Direct usury, which is forbidden by the Pentateuch, may be recovered by the debtor through the court. Indirect or quasi-usury, which is forbidden only by rabbinical law, may not legally be reclaimed by the creditor, but neither is it recoverable by the borrower if he has paid it already.<sup>11</sup>

It is obligatory for a Jew to make a gratuitous loan to a poor fellow Jew. Repayment of the principal may not be exacted from a poor Jewish debtor, but it can and must be reclaimed from a Gentile. It is permissible for a Jew to borrow at usury from a Gentile or an alien resident, and to lend to him at usury. The Sages forbade Israelites to lend to Gentiles at directly stipulated interest, except insofar as this may be necessary for the Israelite in order to earn a livelihood, because they feared that the Jewish lender might be corrupted by the misdeeds of the Gentile borrower if he were to consort with him frequently. This consideration does not apply in the case of an Israelite

who borrows from a Gentile because he is more likely to avoid his creditor than to consort with him. A scholar, who is unlikely to be corrupted by association with a Gentile, may lend to him at usury merely in order to make a profit.<sup>12</sup>

Maimonides classes so many kinds of transactions as only quasi-usurious, permissible though reprehensible, that the ancient Jewish prohibition of usury is considerably whittled away. Forbidden indeed, but only quasi-usury, is the letting of money at hire, “the letting of dinar being unlike the letting of a utensil since in the latter case the same utensil is returned, while in the former the dinars are spent and others returned in their place.”<sup>13</sup> Mere quasi-usury, too, is involved in the evasatory device by which A (the lender) is given a field as a pledge by B (the borrower), and lets it back to him, the rent being concealed interest on the loan;<sup>14</sup> and in the investment of money in a business on condition that the investor shares in the profit but not in any possible loss—the “iron flock” of Jewish tradition.<sup>15</sup> As for the double contract of sale half-condemned by the sages, this “is not even quasi-usury,” and the full amount lent is recoverable at law.<sup>16</sup>

The later Spanish rabbis adhered to the doctrine of the Talmud and of Maimonides. They still taught that usury between Jews was to be condemned, and between a Jew and a Gentile condoned if not actively encouraged. But there was always an unpleasant stigma attached to the nation of direct, “biting” usury as well as the risk that the borrower might try by legal means to cancel the debt. It fell to the parties concerned in a loan transaction to arrange matters in such a way that if inquiry were made they could at worst be found guilty only of indirect or quasi-usury.

By this time, the later Middle Ages, there were many well-recognized ways of doing so. For instance, if a Jew wanted to lend to another Jew he could employ a Gentile as intermediary, so that usury did not pass directly between his co-religionist and himself.<sup>17</sup> He could make a contract in which the usury would appear in the form of a penalty for (prearranged) failure to return the loan by a certain date.<sup>18</sup> He could resort to one of the numerous subterfuges connected with the use of houses and land as pledges.<sup>19</sup> He could enter into a fictitious contract of sale, of which there were by this