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Sentio me grauatum de malo ablato
**Compensation for the Sin of Ill-gotten Gain in the Wills
of Kotor (Cattaro) Citizens 1326–1337**

Abstract: The focus of the paper is on bequests *pro male ablatis* in the wills of Kotor citizens drawn up between 1326 and 1337 against the backdrop of their own time and the dynamic relationship between Christian ethics and mercantile and banking practices. The concept of bequests *pro male ablatis* has been analysed as part of the well-developed practice, strongly influenced by confessors, of making testamentary gifts *pro remedio animae* and preparing for a good death.

Keywords: wills, *male ablata*, Kotor (Cattaro), legacies *ad pias causas*, usury, sin, confessors

The surviving fourteenth-century court and notarial records produced by the chancery of the commune of Kotor contain a body of documents from a period of eleven successive years, from 1326 to 1337,¹ which includes seventy-four wills. Among diverse bequests *ad pias causas* there frequently occurs a distinctive type of bequest veiled under the impersonal formula *pro male ablatis*. What exactly did the term *male ablatus* (*maltolto*, taken or acquired in a wrong way) refer to? The basic meaning of this testamentary formula was either restitution of ill-gotten gains, the gains acquired while conducting commercial or banking activities, or compensation for such gains in the form of gifts *ad pias causas*.² The legacies *pro male ablatis* were usually meant as restitution of usurious gains, but they could also concern

* valentina.zivkovic@bi.sanu.ac.rs

¹ *Kotorski spomenici* [Monumenta Catarensia]. *Prva knjiga kotorskih notara od god. 1326–1335*, ed. A. Mayer (Zagreb 1951) [hereafter: MC I]; *Kotorski spomenici. Druga knjiga kotorskih notara od god. 1329, 1332–1337*, ed. A. Mayer (Zagreb 1981) [hereafter: MC II].

² Literature on the restitution of *maltolto*, *male ablata*, is relatively scant and the phenomenon is usually only cursorily mentioned in discussions focused on usury. It has as a rule been perceived as a mechanism used by the Church in its bid to moralise the economy which was out of its control and governed by the logic of making profit. The last ten years or so have seen the publication of a few studies focused on *male ablata* both in theological writings and in testamentary practice, e.g. G. Ceccarelli, “L’usura nella trattatistica teologica sulle restituzioni dei male ablata (XIII–XIV secolo)”, in *Credito e usura fra teologia, diritto e amministrazione. Linguaggi a confronto (sec. XII–XVI)*, eds. D. Quaglioni, G. Todeschini & G. M. Varanini (École française de Rome, 2005), 3–23; M. Giansante, “Male ablata. La restituzione delle usure nei testamenti bolognesi fra XIII

various forms of embezzlement, extortion, corrupt behaviour, appropriation of somebody else's property and other ways of acquiring gains which were considered immoral, such as gambling, especially in illicit secret places.³ The Church preached that the acquisition of such gains necessitated restitution either by repaying them to the victim directly or by leaving charitable and various devotional bequests. In the process of drawing up the last will and testament in general, and the legacies *ad pias causas* in particular, the main role was played by confessors. They were well trained and equipped to encourage the dying to remember if they had made profit in a sinful way, and to advise them how to avoid the torments of purgatory and prepare for a "good death". Confessors, as testators' spiritual guides, relied on the literature on the last rites which became exceptionally popular at the time the practice of drawing up wills was taking root in all strata of society. As far as the restitution of ill-gotten gains through legacies *pro male ablatis* is concerned, especially well trained were Franciscan and Dominican confessors.⁴ The restitution of *moltolto* had a complex social dimension. As evidenced by many late medieval wills (especially in Italian cities), *peccatum usurae* was what people would usually think of at their deathbed. Usury was classified as a *peccatum cupiditatis* and considered a *culpa contra caritatem Dei*. Faced with such a position of the Church, few would have dared not to leave something in the way of compensation for *moltolto*, proportionately to their involvement in the sin.⁵ The dying person's fear of what lay ahead was fertile soil, and the late medieval Church was its sovereign sower. Viewed in that context, legacies *pro male ablatis* clearly reflect the overall effort of the Church to moralise the economy and to retain religious control over secular life, time and commerce. The mechanism was also clear: absolution and

e XIV secolo", *Rivista Internazionale di Diritto Comune* 22 (2011), 183–216 (with an overview of earlier literature where *male ablata* is discussed or mentioned).

³ G. Ceccarelli, *Il gioco e il peccato. Economia e rischio nel Tardo Medioevo* (Bologna: Il Mulino, 2003); S. Florence Fabijanec, "Ludus zardorum: Moral and Legal Frameworks of Gambling along Adriatic in the Middle Ages", in *At the Edge of the Law: Socially Unacceptable and Illegal Behaviour in the Middle Ages and Early Modern Period*, eds. J. Gerhard and S. Miljan (Krems: Medium Aevum Quotidianum, 2012), 31–49.

⁴ At every confession, if it was obvious that a sin, such as the misappropriation of somebody else's property, theft or usury, had been committed, the confessor advised the sinner to bequeath a portion of his possessions *pro male ablatis*, cf. Ceccarelli, "Lusura", 9; G. Todeschini, *I mercanti e il tempio. La società Cristiana e il circolo virtuoso della ricchezza fra Medioevo ed età moderna* (Bologna: Il Mulino, 2002), 135–140.

⁵ Ceccarelli, "Lusura", 10, 16.

reconciliation with God was only possible if all accounts were settled and if what had been dishonestly taken was returned.⁶

As may be seen from this introduction, the practice of making bequests *pro male ablatiis* was a complex phenomenon the understanding of which requires examination of different aspects of late medieval secular and religious life. We shall first take a look at a few general questions surrounding the phenomenon in order to be able to undertake a more detailed analysis of this practice in Kotor in the first half of the fourteenth century. One of those general questions concerns the relationship between the medieval economy and Christian ethics because it demonstrates the virtual inevitability of falling into sin in business dealings. An attempt to analyse the psychological, emotional state of a dying person is the last but important link in understanding the relationship between society, which laid down moral norms, and individuals, who sought to rise up to them. An emotion perceptible in the wills under study is the fear of death, or the fear of dying without having cleaned up the “balance sheet” and of the punishment that lay in store if ill-gotten gains were not given back through charitable bequests and devotional programmes. In the part of the paper discussing bequests *pro male ablatiis* in Kotor documents, this formula is seen primarily as a response to a sense of conscience awakened by the confessor. Issues deserving particular attention are the vocabulary used to formulate a legacy *pro male ablatiis*, its place in the structure of legacies *ad pias causas*, as well as references to confessors and the amount of money bequeathed.

In the late middle ages, mercantile and banking dealings were in fundamental contradiction to the doctrine of the Church. According to Christian ethics and decrees, the loan-taker was to repay only the loan, anything demanded beyond the principal was considered as usury, and the dictum of the Church was: *Usura solum in mutuo cadit*. It was irrelevant if the profit thus made was small or big or if the loan was given to a well-to-do businessman to invest in trade or to a poor person to eke out a living. Scholastic writers and ecclesiastical rhetoric denounced all forms of usury, looking upon it as one of the worst social evils.⁷ From the eleventh century in particular this question became the focus of intense scrutiny. After the decrees

⁶ B. N. Nelson, “The Usurer and the Merchant Prince: Italian Businessmen and the Ecclesiastical Law of Restitution, 1100–1550”, *The Journal of Economic History* 7, Supplement: Economic Growth: A Symposium (1947), 104–122; R. C. Trexler, “The Bishop’s Portion: Generic Pious Legacies in the Late Middle Ages in Italy”, *Traditio* 28 (1972), 424–425; M. Bacci, *Investimenti per l’aldilà. Arte e raccomandazione dell’anima nel medioevo* (Rome and Bari: Laterza, 2003).

⁷ On scholastic (ethico-economic) tracts on usury between the mid-thirteenth century and the first quarter of the fourteenth see T. P. McLaughlin, “The Teaching of the Canonists on Usury (XII, XIII and XIV Centuries)”, *Medieval Studies* I (1939), 81–147; II

of the Third Lateran Council in 1179, the Church threatened all who profited from lending money with excommunication and refusal of a Christian burial. The Second Council of Lyon in 1274 condemned usury, and denied usurers the last sacrament, assistance at their wills and a consecrated burial. At the Council of Vienne in 1331/2 punishment for those who died in the sin of usury included a ban on hearing their confession, giving them absolution and Christian burial, invalidation of their wills, and excommunication for rulers and magistrates of the states or communities which permitted usury.⁸ An absolute ban on the practice of making any profit from lending money is especially advocated by William of Auxerre (1160–1229), famous for his remark that the usurer sells time.⁹ In his *Tract on Usury*, a Franciscan, Alexander Lombard (d. 1314), argues that the Church condemns usury but encourages money changers, being of the view that *cambium* is not *mutuum*, but *permutatio pecunie*, which is not usury. Antoninus of Florence (1389–1459), in his *Summa theological moralis*, discusses *turpe lucrum* (greedy profit, filthy profit) or ill-gotten gain – any gain accruing from any illicit contract or from sinful and unlawful activities prohibited by either divine or human law or by both (such as prostitution, monopoly, gambling, tournaments, histrionics, simony...).¹⁰ While the official position of the Church on usury was exceptionally harsh, Franciscans and Dominicans tended to take as legitimate a number of activities and transactions that could be defined as usurious, and in doing so frequently resorted to casuistry.¹¹ Some Franciscan

(1940), 1–22; J. T. Noonan, Jr., *The Scholastic Analysis of Usury* (Cambridge 1957); Caccarelli, “Lusura”, 4–7, and passim.

⁸ C. M. Bellitto, *The General Councils: A History of the Twenty-one General Councils from Nicaea to Vatican II* (Paulist Press 2002), 57–64; Nelson, “The Usurer and the Merchant Prince”, 104–122; A. Kirschenbaum, “Jewish and Christian Theories of Usury in the Middle Ages”, *The Jewish Quarterly Review*, N.S. 75/3 (University of Pennsylvania Press, 1985), 270–289; C. G. Reed & C. T. Bekar, “Religious prohibitions against usury”, *Explorations in Economic History* 40 (2003) 347–368.

⁹ G. Todeschini, *Il prezzo della salvezza. Lessici medievali del pensiero economico* (Rome 1994), 13–113. The most exhaustive bibliography on the subject furnished with a list of the archives which keep the relevant documentary material and a list of theological writings on usury is given by N. L. Barile, *Credito usura, prestito a interesse, Reti Medievali* (2010): <http://www.rmojs.unina.it/index.php/rm/article/view/9/6>

¹⁰ R. de Roover, “The scholastics, usury, and foreign exchange”, *The Business History Review* 41/3 (Autumn 1967), 263.

¹¹ Especially prominent was the Franciscan Alexander of Hales (1185–1245), who interpreted these practices in terms of social utility. Tracts on usury were written by the Dominicans Giles of Lessines (d. ca 1304) and John of Freiburg (d. 1314), see B. H. Rosenwein & L. K. Little, “Social Meaning in the Monastic and Mendicant Spiritualities”, *Past & Present* 63 (May 1974), 4–32.

theologians, on the other hand, took a rigid position on usury, expanding the concept to include *indirectum mutuuum*, which could encompass a whole range of contracts. The prominent thirteenth-century Franciscan theologian Peter John Olivi (1248–1298) was of the view that the profit made on the basis of a legally valid contract but corrupted by the intention of making profit should also be subject to restitution.¹²

The need for reinterpretation brought about by the rise of commerce had an impact on activities such as money lending, crediting, investing, the setting of buying and selling prices, etc. An important question is the extent to which the official doctrine of the Church on profit-making and usury was actually accepted by merchants and businessmen. Analysing late medieval commercial and banking contracts, many economic historians challenge the view that the Church had much influence on commercial dealings. Some sources, on the other hand, seem to suggest that it did.¹³

At the time the surviving fourteenth-century court and notarial records were drawn up, Kotor played a prominent role as a commercial, diplomatic and cultural centre within the medieval Serbian state under the Nemanjić dynasty (from 1185 to 1371), and borrowing money, usually for business purposes, was practised by local businessmen on a daily basis. That everyone could take a loan if the value of their property could cover the amount of the loan is shown by the contracts preserved in the notarial records. However, even though charging interest on loans was prohibited, it was collected in various concealed ways.¹⁴ The term interest (*lucrum*) was

¹² Ceccarelli, “Lusura”, 10.

¹³ On this see R. de Roover, “The Cambium Maritimum Contract According to the Genoese Notarial Records of the Twelfth and Thirteenth Centuries”, *Explorations in Economic History* 7/1 (1970), 15–33.

¹⁴ Many agreed debt repayment contracts hid usurious profits, especially as far as merchant partnerships were concerned. St Bernardino of Siena (1380–1444), a fierce decrifier of usury, argued that it could be concealed in various types of contracts: *emptio venditio*, *locatio*, *societas*, *contractus commissions*, cf. R. de Roover, *San Bernardino of Siena and Sant’Antonino of Florence: Two Great Economic Thinkers of the Middle Ages* (Boston: Kress Library of Business and Economics, 1967), 30. A partnership was not a loan but a different contract, as the Venetian and Ragusan *colleganza* (one partner supplied all the capital and the other only his personal services). There was the danger, however, that an interest-bearing loan might be concealed under the colour of another form of contract. The scholastics called such a disguised loan a contract *in fraudem usurarum*. They distinguished between *overt* usury, which was charged openly on a loan, and *palliate* usury, which was cloaked in the garb of another contract. Usury could be hidden in an *emptio venditio* (purchase-sale) by simply charging a higher price on credit sales than on cash transactions. Mental usury, although it rested only on the hope of gain, thus become as grievous a sin as contractual usury: De Roover, “The scholastics, usury, and foreign exchange”, 260–263.

used rarely. It occurs in a notarial document of 1336 in which *Micho Buchia* confirms that *Luca Sisioye* paid interest on the loan.¹⁵ In practice, loans were normally given at an interest rate of 12–15 per cent. On the other hand, usurious interest rates were usually 25 per cent, and up to as much as 100 per cent.¹⁶ Hence every case of moneylending was suspected to be a violation of moral principles. The Statute of the commune of Kotor contains a number of rules regulating contractual relations, i.e. the obligations of the parties involved in lending and borrowing. Particular attention was paid to regulating the then widespread form of doing business, the founding of merchant associations (chap. 301 and 302). For a document concerning a debt to be valid it had to be drawn up before the judge, the notary and the auditor (chap. 45). The chapter titled *De instrument credentiae qualiter fieri debeat* (chap. 287) specifies the duty of the notary to include in such a document the notification that the failure to repay the debt by the due date (which was a rule rather than an exception) entails the penalty of *sint in pena de quinque in sex per annum super me et omnia bona mea*, i.e. six perpers for every five perpers a year, which was a penalty rate of 20 per cent.¹⁷

Apart from commercial dealings, hazardous moneylending and more or less overt usury, the danger of falling into the sin of making ill-gotten gains included games of chance. According to the Dominican Raymond of Penyafort, games of chance are a cardinal sin because they involve other sins, such as avarice, theft, usury, lie, blasphemy, corruption etc. The prevailing view on this point was that the torments of purgatory could be avoided if such a gain was returned through almsgiving.¹⁸ After Kotor came under

¹⁵ *Ego Micho Buchie confiteor michi esse satisfactum a Luca Sisioye de lucro totius temporis preteriti usque ad diem hodiernum illius carte notarii, quam habeo super ipsum Lucam et Triphonem Gusse, videlicet de parte dicti Luce tantum capitale dicte carte cum lucro venturo, saluo ab hodie in antea* (MC II, 1630).

¹⁶ I. Voje, *Kreditna trgovina u srednjovjekovnom Dubrovniku* (Sarajevo: ANU BiH, 1976).

¹⁷ *Statuta civitatis Cathari*, vol. 1, ed. J. Antović (Kotor: Državni arhiv Crne Gore, 2009), 29, 159, 166; A. Mayer, “Catarenisia”, *Zbornik Historijskog instituta JAZU* 1 (1954), 95–109; S. Ćirković, “Kamate”, in *Leksikon srpskog srednjeg veka*, eds. S. Ćirković and R. Mihaljčić (Belgrade: Knowledge, 1999) 273–274. On banking practices in Dubrovnik and Bosnia, cf. E. Kurtović, *Iz historije bankarstva Bosne i Dubrovnika u srednjem vijeku* (Belgrade: Istorijski institute, 2010).

¹⁸ The possibility of compensating for this sin by giving for charity was discussed by Saint Augustine and Thomas of Aquinas. However, both the Franciscan and many other theologians considered games of chance as dishonourable, *non honestum*, but legitimate and therefore not requiring amends to be made through restitution or charity giving. But Franciscan opinions on this issue diverged (Peter John Olivi), most of all as a result of different socio-cultural environments: while games of chance are mostly legal in Mediterranean areas, in northern Europe they are not. On the other hand, from the end

the suzerainty of the Venetian Republic in 1420 (until 1797), its Statute was amended with the chapter titled “On those who gamble or organise games in their houses or in taverns” (*De laudentibus ad azarium, & tenentibus ludos in domo, vel tabernis*), stipulating that “as of now”, “no one must dare gamble in caves and other secret places, where things are lost and gained, with the exception of playing dice in an honest game played in public and openly, by day, beneath the loggias and in three squares”.¹⁹

Dishonest gain was a sin that could be expiated by making bequests. Ill-gotten gain usually gave rise to restitution either in the form of donations to charities or to the person aggrieved. A thus defined practice of testamentary restitution enabled redistribution of wealth. The basic idea of restitution by way of the *male ablata* clause was to compensate the victims of usury or their heirs, which could be done in the cases when usury was overtly practised. But it was frequently unfeasible.²⁰ Bequests for pious and charitable purposes could be restitution of ill-gotten gain only if the identity of the aggrieved persons was impossible to establish reliably or if it was *lucra incerta*, i.e. if money was lent under the contracts which gave grounds to suspect the lender’s intention to charge interest. In such cases legacies *pro male ablatiis incertis* were usually intended for the poor, while the purpose of the act of donating was to compensate for the sin committed. This type of legacies could also take the form of works of charity or spiritual compensa-

of the fourteenth century the Franciscans, notably Bernardino of Siena and James of the Marches, become increasingly hard on games of chance, seeing them as a way for Satan to creep into a community and separate it from God, see Ceccarelli, *Il gioco e il peccato*.

¹⁹ “Likewise, the innkeepers and other persons who have allowed gambling in their houses or taverns shall be fined 10 perpers each time they act to the contrary”: *Statuta civitatis Cathari*, ordinances passed at the time of Antonius Abocolis, honorabilis Comitatus & Capitanei Cathari (1421), chap. V, p. 349. It was not much different in Dubrovnik, where games of chance were legal but confined to prescribed areas, see Z. Janeković-Römer, “Post tertiam campanam’ – noćni život Dubrovnika u srednjem vijeku”, *Anali Zavoda za povijesne znanosti HAZU u Dubrovniku* 32 (1994), 8–9; G. Ravančić, *Život u krčmama srednjovjekovnog Dubrovnika* (Zagreb: Dom i svijet, 2001), 82.

²⁰ In the thirteenth century the manner of restitution and compensation for *male ablata* was mostly discussed by Franciscan theologians, e.g. Manfredi da Tortona, *Summula de restitutione male ablatorum* (about 1250) and Pietro di Giovanni Olivi (Peter John Olivi), *De emptionibus et venditionibus, de usuris, de restitutionibus*, see G. Ceccarelli, “Concezioni economiche dell’Occidente cristiano alla fine del medioevo: fonti e materiali inediti”, in *Religione e istituzioni religiose nell’economia Europea 1000–1800*, Atti della Quarantesima Settimana di Studi 26/30 aprile 2009, ed. F. Ammannati (Florence: Firenze University Press, 2012), 271–280.

tion in the form of funds for the saying of masses or for a pilgrimage for the salvation of the testator's soul.²¹

Testamentary gifts *pro male ablatis* were the testator's way of repenting and an opportunity to exert a posthumous influence on the economic and social order disturbed by his lifetime greed. Legacies of this type were usually intended for the destitute strata of society. Bequests *pro male ablatis* intended for pious and charitable causes required mediation of a cleric as the executor of the will.²²

The Kotor wills drawn up between 1326 and 1337 provide a sample which has been systematically analysed. They only involve pecuniary bequests *pro male ablatis incertis*, which vary from humble to generous and are invariably donated for pious causes. Even though we are dealing with only eleven years of the first half of the fourteenth century, the practice under study was widespread during the entire late medieval and early modern period. This is why attention should be drawn to a different, late sixteenth-century source which may shed a more penetrating light on the significance of *male ablata* for the Kotor believers and on the attitude of the Bishopric of Kotor to the established form of testamentary restitution. It is an episode from the *Vita della reverenda serva di Dio la madre suor Ossanna da Cattaro, dell'ordine di San Domenico* penned by the Florentine Dominican Serafino Razzi in 1558 and published in Florence in 1592. The hagiography pays much attention to edifying stories about ties between the living and the dead, i.e. about the role that masses and prayers offered by the living play in delivering the souls of the dead from purgatory. The Blessed Osanna (1493–1565) had visions of the souls of Kotor citizens in purgatory imploring her to tell their living family members to pray and donate for the salvation of their souls. *Male ablata* is referred to in a story of a deceased patrician from an old and distinguished Kotor family. *Ieronimo Bisanti*, an “honourable and pious man, having received all the holy sacraments as befitting a good Catholic Christian, very contrite for his sins and after a good confession, passed to another life. He left many legacies to almshouses and to needy people, but they were less than mediocre” (*Ieronimo Bisanti, padre di Marino Bisanti, honesto, e religioso huomo, hauendo riceuti tutti i santi sacramenti, sec-*

²¹ On *male ablata* as a way of making amends for the sin of usury using the example of medieval wills from Bologna where the victims of usury were known and compensated, see Giansante, “Male ablata”, 183–216. On *male ablata incerta* as a matter of conscience demanding purification, see R. C. Trexler, *Church and Community, 1200–1600: Studies in the History of Florence and New Spain* (Rome: Edizioni di storia e letteratura, 1987), 274–276, 323; M. Ascheri, *The Laws of Late Medieval Italy (1000–1500): Foundations for a European Legal System* (Brill, 2013), 288.

²² Ceccarelli, “L'usura”, 21.

ondo che appartiene à vn buono, e cattolico christiano, assai bene contrito de suoi peccati, e bene confessato, sene passò all'altra vita, lasciando molti legati à luoghi pii, & à persone bisognose, delle sue facultà, le quali erano piu che mediocri). Thus his wife turns to the Blessed Osanna for help, imploring her to pray for his soul. While praying, Osanna "rises in spirit" and has the vision of the man's soul suffering the most severe punishment in purgatory. She asks him why his punishment is so harsh and he replies: "Wonder not, sister and mother Osanna, I was a merchant and, in keeping with common malpractice, I used to buy cheaply on markets and fairs and sell dearly, I didn't run the business in accordance with Christian mercy" (*non ti marauigliare, rispose, madre suora Ossanna di questo: pero che essendo io stato mercante, secondo il commune abbuso, io ancora nelle fiere, e mercati, comperando al vil prezzo, e vendendo al rigoroso, non eseritai cotale negozio, secondo la christiana pietà*). He adds that his charitable gifts for the poor are not his own property but restitution of ill-gotten gains (*incerta*) and that they are not enough to deliver him from the torments of purgatory (*E quelle cose che nel testamento mio, alle chiese ho lasciate, & à I poueri, per non essere istate mie proprie facultà, ma restituzioni d'altrui beni incerti, non hanno quella efficacia, che altramente ha uerebbono per liberarmi da questi cruciati*). He therefore beseeches Osanna to convey his appeal to his wife to bequeath a fourth of her dowry to the poor and to pay for masses for his soul. His supplication has been met, and soon afterwards his soul appears to Osanna saying that he can now leave purgatory to enjoy heavenly bliss (*me ne vado à godere i riposti beni del paradiso*).²³ The sin of the merchant was so severe that the restitution of *male ablata incerta* was not enough for him to be spared from the torments of purgatory. He should have made more and more generous bequests for charitable and pious purposes.

From the legal standpoint, this topic is addressed by a statutory regulation which was in force in the period under study. The chapter "On the distribution of the property of the husband when his time comes" (CLXXXII) begins with the explanation of its purpose: "In a wish that this statutory regulation may help not only the living but also the dying, we decree..." The husband leaving a wife behind is allowed to bequeath up to a fourth of his property (real and personal) for his soul, but what follows is of key relevance to our subject: "...or more than a fourth if he should swear that

²³ Vita della reverenda serva di Dio, Suor Ossanna da Cattaro, dell'ordine di San Domenico, Scritta da fra Serafino Razzi, dell'istesso Ordine, e Provincia Romana (Firenze 1592), 40–41, <http://books.google.rs/books?id=szJSAAAACAAJ&cots=Xb5-Mo63-S&dq=Viita%20della%20reverenda%20serva%20odi%20Dio%20ola%20madre%20suor%20Ossana%20oda%20Cattaro&lr&chl=sr&pg=PP6#v=twopage&q&f=false>; *Analisti. Hroničari. Biografi*, vol. 10 of *Književnost Crne Gore od XII do XIX vijeka*, ed. M. Milošević (Cetinje: Obod, 1996), 102–129.

his property comes from dishonest gains” (*quātum iurauerit habuisse de malo ablato*).²⁴ This is an exceptionally important piece of information in that it sheds light on the relationship between the Church and Christian ethics on the one hand and profit-making on the other. It should be noted that confessors’ manuals specified what should be seen as *male ablata*; it seems certain therefore that the confessors would have reminded the dying testators to remember if they had ever made any dishonest gain and to repent for their sins. Judging by the statutory regulation cited above, the dying person’s affirmative answer might mean more funds for charity channelled to churches, hospices, vulnerable social groups.

Legacies *pro male ablatis* occur in twenty of seventy-four surviving wills drawn up in Kotor between 1326 and 1337. Sometimes the testators, if they are not certain whether they have made some profit in an unacceptable way, specify that their legacies are *pro male ablatis incertis* or *pro male ablatis si quos habui*.²⁵ Quite often the term *male ablata* is not even mentioned in the will, but rather the testator expresses his or her trust in the *epitropos*

²⁴ *Statuta civitatis Cathari*, 108. For the sake of comparison, the corresponding chapter of the Statute of Ragusa (Dubrovnik) stipulates nothing of the kind. On what a dying person can leave for his soul, see *Statut grada Dubrovnika: sastavljen godine 1272*, eds. A. Šoljić, Z. Šundrica & I. Veselić (Dubrovnik: Državni arhiv u Dubrovniku, 2002), chap. XVII, 254–255.

²⁵ The question of *male ablata* in Kotor has not been the subject of study. L. Blehova Čelebić, *Žene srednjovjekovnog Kotora* (Podgorica: CID, 2002), 137, parenthetically mentions legacies *per mal ablato*, *per mal toleto*, but misconstrues their purpose: for the inflicted injustices. Recently, a few Croatian historians who base their research on wills have taken a look at this type of bequests in Ragusa (Dubrovnik): Z. Janeković-Römer, “Na razmedji ovog i onog svijeta. Prožimanje pojavnog i transcendentnog u dubrovačkim oporukama kasnoga srednjeg vijeka”, *Otium* 2/3-4 (1994), 3–16: “Long years of doing business made the merchants suspect they might have forgotten an injustice they might have done in their lifetime. They settled their doubts by handing over to the treasurer of St Mary’s a sum, sometimes quite generous, with the remark that it was ‘pro male ablates certis et incertis, pro maltoletto’.” G. Ravančić, *Vrijeme umiranja. Crna smrt u Dubrovniku 1348–1349* (Zagreb: Hrvatski institut za povijest, 2010), 107, gives a brief overview of the legacies *pro male ablatis*, *pro maltoletto*, defining them as atonement for the evil deeds done during a plague epidemic in Dubrovnik, and concludes that the Black Death must have made people think of their wrongdoings given that 21% of the wills drawn up then contain this type of legacies as opposed to 6.5% in previous periods. Z. Ladić, in his extensive study on testamentary legacies *ad pias causas* in Dalmatian communes (Zadar, Trogir, Dubrovnik and Kotor), *Last Will: Passport to Heaven. Urban last wills from late medieval Dalmatia* (Zagreb: Srednja Europa, 2012), 261, n. 735, mentions a generous bequest *pro maltolecto* stipulated in the joint will of a married couple from Ragusa: “This practice of using pious bequests for settling misdeeds performed during the lifetime was widespread at that time. Usually, this kind of monetary bequest was executed in two ways: the first that the testator made a strict plan for the distribu-

to distribute the charitable legacies according to his own good judgement and for the salvation of the testator's soul. Such examples have not been taken into account in this study. The last sentence in a will (in which *male ablata* is not mentioned) reflects the way of thinking and the belief in the connection of the dead and the living through prayer and works of charity. The testators placed trust in the executors of their wills to distribute legacies *pro remedio animae* as specified in their wills. A *Proslaus* ends his very short will with the expectation that the executors should oversee the legacies for the salvation of his soul because in that way they contribute to their own salvation: *Etiam facio meos epitropos Bogdanum Brato et matrem meam, quod teneant menti mortem meam, quod si moriar, quidquid ipsi fecerint de anima mea, deus faciat de suis.*²⁶

The amount of money bequeathed *pro male ablatis* varies greatly. Understandably enough, the smallest sum (two perpers) was left by *presbiter Marcius*,²⁷ and the largest (200 perpers), by two big merchants, *Nycolaus Glauacti* and *Matheus Iacobi*.²⁸ Nycolaus Glauacti left two hundred perpers *pro male ablatis* to his wife unless she remarried within a year after his death (*exire de domo et refutare lectum*), in which case the executors of his will should distribute the money according to their own good judgement.²⁹

The place in the will where the testator remembers to leave something *pro male ablatis* varies from one case to another. The ailing *Paulus Nycole Dabronis*, afraid that the illness will take him soon (*jacens infirmus, timens, ne mors me subito aggrediatur*), draws up his will and, bequeathing *in primis* (at the very beginning) funds for saying masses for the salvation of his soul, adds: *Item volo, quod dentur perperi triginta pro laborerio sancti Triphonus, qui sint pro male ablatis, si quos habui.*³⁰

tion of the money and the second when the decision about its distribution was left to the executors of the will."

²⁶ MC I, 74 (7/9/1326).

²⁷ MC II, 886 (16/5/1334).

²⁸ MC I, 338 (20/6/1327); MC II, 1726 (30/4/1336).

²⁹ *Item relinquo uxori mee Drage de bonis meis pro male ablatis ducentos perperos, tali conditione, quod si post mortem meam infra annum ipsa uoleris exire de domo et refutare lectum, nichil habeat de dictis ducetis perperis, sed dentur ad prouidentiam epitroporum meorum, ubi eis melius visum fuerit* (MC I, 338). Namely, after the husband's death his widow had a year to decide if she would remarry. If she decided not to give up the marriage bed, which meant that she chose to remain living in her husband's house, she was allowed to dispose of his entire property. However, she was prohibited by the law from ruining and destroying her late husband's property, or else she had to compensate for the damage from her dowry. The Statute also regulated the situations when the widow did not want to keep her late husband's bed, cf. *Statvta civitatis Cathari*, chap. 194, 196, 115–117.

³⁰ MC I, 54 (27/8/1326).

A different type of bequests *pro male ablati*s is found in the will of *Basilius Mathei* which is quite distinctive in more than one respect by comparison to the other wills.³¹ Namely, Basilius admits that he feels that he has committed the sin of *male ablata* and therefore bequeaths one hundred perpers for a good man to take a journey (meaning to make a pilgrimage); should that not happen, the money is to be given to two poor girls so that they could get married (*Item sentio me habere de malo ablato perperos centum, quos volo, ut detis alicui bono homini, qui ire voluerit ad passagium, uel maritatis pro ipsis centum perperis duas orfanas, si passagium non fuerit*).³²

A larger amount of money *pro male ablati*s figures in the will of *Francius condam Marcii Basili*i. *Item volo, quod pro male ablati*s dentur perperi centum et quinquaginta.³³ The sequence of his bequests is enlightening for understanding the care for the soul as the motivation for making devotional legacies. Namely, the bequest *pro male ablati*s comes immediately after the bequest of funds for one thousand masses to be sung after his death. Quite atypical of the Kotor wills under study, in which the testators usually bequeath money *ad pias causas* at the very beginning of the will, Francius first looks back at his many trade dealings and debts. *In primis* he reports that he was in a merchant partnership (*societate*) with a Ragusan (*Iunio Milocasi de Ragusio*). It may be assumed that he had trading interests in Serbia. Francius also speaks of the *cere collate* that he owns and trades in, possibly in Prizren where Kotor citizens had a building for processing beeswax constructed on the land owned by the Bishopric of Prizren of the Serbian Archbishopric. In 1326 King Stefan Uroš III of Serbia granted the building to the Bishopric which was free to dispose of it at will, but was granted a monopoly on the straining of beeswax.³⁴

³¹ The content of the will and the mention in it of the excommunication of the clergy seems to suggest that it refers to a punishment incurred by the city before the well-known interdict caused by the appointment of Sergius Bolića as bishop of Kotor, cf. V. Živković, “Pretnje kaznom izopštenja u Kotoru (XIII–XV vek)”, *Istorijski časopis LX* (2011), 123–138.

³² MC I, 438 (22/10/1327).

³³ MC I, 732 (28/9/1331).

³⁴ “And the Cattarans had a house for wax making built on a market place, on the church land, and my kingship gave it to the church to have it forever, and the incumbent bishop to give it to whomever he pleases. Should anyone keep anything, he shall pay 500 perpers, and wax shall not be processed in any other place, nor shall another house be built in the city.” Cf. S. Mišić, “Hrisovulja kralja Stefana Uroša III Prizrenskoj episkopiji”, *Stari srpski arhiv* 8 (2009), 22; M. Blagojević, “Grad i župa – medje gradskog društva”, in *Socijalna struktura srpskih gradskih naselja (XII–XVIII vek)*, eds. J. Kalić & M. Čolović (Smederevo: Muzej u Smederevu, and Belgrade: Filozofski fakultet, 1992), 81–82. On Ragusan (Dubrovnik) families and their businesses in Serbia, see I. Manken,

Marinus Junii Boliçe makes several charitable bequests because ill-gotten gains weigh heavily on his conscience: *Nam quicquid suprascriptum est, totum michi sentio de male ablatis*. He bequeaths funds for repair works on the church of the Franciscan monastery in Kotor, and to the churches of St Mary of Ratac (*sancte Marie de Rotecçe*), St Mary in Ulcinj (*sancte Marie de Dulcigno*), St Mary on Gurdić in Kotor (*sancte Marie de Gurgite*) and, finally, to the Kotor cathedral of St Tryphon. The same motivation leads him to bequeath funds to *presbiter Vita*, abbot of the monastery of St Mary on Gurdić, and the Franciscan *Laurus de Catharo*, to pray for his soul (*ut roget deum pro me*). With the weight of *male ablata* on his conscience, he also leaves money to two vulnerable social groups: *pro maritandis duabus orphanis* and *pro pauperibus*.³⁵ Similar bequests figure in the will of *Johannes Marini Glauacti*, who emphasises that it is an *incerta*; hence restitution through charitable bequests is quite expected and in conformity with the prescribed ways of laying out a testamentary programme for the salvation of the soul: *Item volo, quod pro incertis male ablatis dentur perperi quadringenti viduis et orphanis non habentibus et egenis*.³⁶

To be singled out at the end of this overview of the selected examples of Kotor wills is the legacy *pro male ablatis* that *Matheus condam Triphonis Iacobi* bequeaths *in primis* (at the beginning of the will). It is the largest sum of all found in the wills under study: 200 perpers. He too specifies that it is the *incerta* category: *In primis volo et ordino, quod dentur de bonis meis pro male ablatis incertis perperi ducenti pro animabus illorum, quorum fuerunt, quos vere iuro in conscientia mea habuisse de alieno*.³⁷

The last question that will be discussed here may also be seen as a conclusion emerging from the overview of the practice and mentions of legacies *pro male ablatis* in Kotor wills between 1326 and 1337. It concerns the role of confessors and their influence on the testators. A fact of vital interest is that in almost all wills that contain legacies *pro male ablatis* the confessor, who is usually also the *epitropos*, is either referred to by name or as *pater meus spiritualis* without being named. There are only four wills in

Dubrovački patricijat u XIV veku (Belgrade: SANU, 1960); R. Čuk, *Srbija i Venecija u XIII i XIV veku* (Belgrade: Prosveta, 1986), as well as her “Kolonije u srpskim srednjovekovnim gradovima”, in *Socijalna struktura srpskih gradskih naselja (XII–XVIII vek)*, 85–95.

³⁵ MC I, 802 (3/11/1331).

³⁶ MC II, 1042 (15/4/1336). On bequests *ad pias causas* by the Glauacti brothers see V. Živković, “On the trail of a painting bequeathed to St. George’s abbey on the islet near Perast. The testaments of Nycolaus and Johannes Glauacti (of 1327 and 1336)”, *Zograf* 38 (2014), 113–121.

³⁷ MC II, 1726 (30/4/1336).

which confessors are not mentioned at all.³⁸ The persons most frequently encountered in the role of confessor are Fra *Vita Ćutii* and the presbyter *Junius Chramoli*.³⁹

Fra Vita figures as *epitropos* in several wills that contain legacies *pro male ablatis*: those of *Marinus Junii Bolića*; *Obratus Gambe*; *Nycola, frater condam magistri Thomassi*, who calls him *patrino meo*. The same goes for the will of *Dome, uxor Martini de Panći*, where Fra Vita figures as *epitropos* and confessor, and he also served as confessor to *Dome, relicta condam Nuce de Gonni*. The testators bequeath money to him *ut roget deum pro me* and gifts to the church of *sancte Marie de Gurgite* where he served as abbot more often than to other confessors.⁴⁰ Even though Bogdan's will makes no mention of a confessor, the analysis of the type and sequence of his bequests seems to suggest that Fra Vita, *abbas sancte Marie de ponte*, was by his side, advising him on the path of salvation. Thus Bogdan *in primis* bequeaths a vineyard in Kostanjica (*Castanića*) to the church of *sancte Marie de ponte siue de Gurgite*, and specifies that his motive is the feeling of remorse over ill-gotten gains. It should be noted that the written will (*cedula scripta*) was submitted to the judge and the notary by the *discreti viri presbiteri Vita, abbas sancte Marie de ponte, et Marinus, eius ecclesie cappellanus*.⁴¹

Presbyter *Junius Chramoli* is another name that figures as confessor in several wills. The will of *Dompce, uxor Mathei Saranni*, is especially interesting insofar as the order of her bequests clearly reveals her confessor's influence.⁴² Namely, legacies *pro male ablata* are followed by a gift to the confessor, *dompnus Junius Chraoli*, who submitted her will to the judge and the notary. The will of *Mare, uxor condam Marini de Gamba*, is similar in this respect.⁴³ Her first pecuniary bequest goes to *presbytero Junio, patrino meo*,

³⁸ The wills of: *Paulus Nycole Dabronis*, *Nycolaus condam Marini Glauacti*, *Johannes Marini Glauacti* and *Matheus condam Triphonis Iacobi*, see MC I, 54 (27/8/1326); 338 (20/6/1327); MC II, 1042 (15/4/1336); 1726 (30/4/1336).

³⁹ Apart from these two confessors, the names are also known of: *Iohannes Capaci*, *Domagna Jaser*, *Iacobus de Milolo*, *Ricardo*, *Basilius*, *Franciscus* (*frater minorum et lector*), *Pascalus Bellossi*, *Marinus*, cf. MC I, 192, 338, 365, 438, 626, 628, 732, 1233; MC II 1435, 1604. References to the *summae* for use by confessors in Kotor do not occur until the fifteenth-century documentary sources. One of them was in the vernacular language, cf. L. Blehova-Ćelebić, *Hrišćanstvo u Boki 1200–1500: Kotorski distrikt* (Podgorica: Narodni muzej Crne Gore & Istorijски institut Crne Gore, 2006), 173–174, 307.

⁴⁰ MC I, 802 (3/11/1331); MC II, 10 (8/6/1332); 394 (30/6/1333); 646 (11/11/1334); 1142 (24/7/1335).

⁴¹ MC I, 225 (3/12/1326).

⁴² MC II, 23 (16/6/1332).

⁴³ MC II, 129 (8/10/1332).

and the second *pro malo ablato*. The same priest is the *epitropos* of the wills of *Scime, filius quondam Sabe*,⁴⁴ *presbyter Iacobus Mildo*,⁴⁵ and the presbyter *Marcus*, who made a small bequest of two perpers *pro male ablatis*.⁴⁶

Those were the clerics who provided guidance to Kotor citizens through their last days, advising them on how to prepare themselves for the path of salvation through various devotional and, especially, charitable gifts. Testators placed their hopes in the intercession of the living and, therefore, in addition to all the recommended legacies, left personal gifts to their confessors to pray for the salvation of their souls. In this carefully elaborated system of delivering from sin, settling the accounts and reconciling with God at deathbed, the category *male ablata* held an exceptionally important place.

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⁴⁴ MC I, 260 (31/12/1326).

⁴⁵ MC II, 1204 (18/8/1335).

⁴⁶ MC II, 886 (16/5/1334).

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