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The *Executio Parata* of Cameral Obligations and Excommunication

Antonia Fiori

But what, in effect, did the obligation *in forma Camerae* consist of?

The cameral obligation started out as a specified series of clauses attached to a contract. The clauses, as a whole, constituted a “formula” to guarantee certain safeguards, above all celerity of execution. In addition, there was the special guarantee of access—either jointly or severally—to an execution against property, a personal execution (incarceration), even a spiritual execution (excommunication).³⁹ Taken together, these three forms of execution made the cameral obligation an *unicum* within the larger category of executive instruments of the early modern age, to which it belonged due to the so-called *executio parata* (a forced execution of debt characterized by particular celerity).⁴⁰

The formula of *executio parata* rendered the contracts enforceable titles particularly secure for the creditor. In case of noncompliance, it was not necessary to have the credit confirmed by an ordinary civil proceeding; in other words, it was not necessary to verify the situation actually existed between the parties, which was not considered controversial. The possibility of opposing the execution by presenting exceptions or appeals was thus drastically reduced by the debtor’s declared renunciation of the right to do so.

In the Papal States, the cameral obligation was the true cornerstone of the process of execution. It established the “first and most frequent and most privileged” procedure, to quote the great jurist Giovanni Battista De Luca.⁴¹

Generally speaking, and taking into account that modifications were introduced over time, the cameral obligation required the debtor to:

- obligate himself and his heirs, and bind and mortgage all his and his heirs’ assets and property, present and future;
- submit to any jurisdiction, and principally to the specific one of the A.C.;
- consent in advance to excommunication and to personal execution (incarceration) up to the full settlement of the credit;
- renounce resisting the execution in any way;
- swear to observe and not revoke what is stated in the instrument.

The other executive instruments used in the medieval period and early modern age (such as the *guarentigia*, *strumento sigillato* or *confessionato*, *penes acta* obligation, etc.), although in different ways very similar to the cameral obligation, were effective “only” with regard to the patrimony and personal freedom of the debtor.⁴² Transforming the defaulting debtors into excommunicated sinners was an additional and very powerful weapon: it signified not only striking them deep down in their faith, but also destroying their social life. The major excommunication, in fact, separated the debtor from the communion of the church and from the faithful, who were obliged to avoid him. For example, if the debtor was a merchant, the social and commercial consequences could be very serious. According to the *stylus* of the Curia, bishops, archbishops, patriarchs, and cardinals could not be excommunicated without express mandate of the pope.

Excommunication for debts was a widespread practice in many European countries, at least until the 16th century.⁴³ Outside the Papal States, it could be imposed exclusively in the ambit of ecclesiastical jurisdiction, but it struck the secular population extremely frequently.

Juridically, it was based on two conditions. Above all, it was based on the widespread use of confirming contracts and transactions by way of sworn clauses—that is, containing the promise of execution and the sworn commitment not to revoke the contract itself. As for *res spiritualis*, the oath transferred the contractual material from the competence of civil judges to that of the ecclesiastical judges, regardless of the purpose of the contract.⁴⁴ The situation was opposed by the nascent national states in the early modern age, but by the mid-15th century, the celebrated French jurist Guy Pape could affirm that the oath was used in all instruments of obligation (“in omnibus instrumentis obligatoriis adhibetur iuramentum.”⁴⁵)

Therefore, once they were subject to ecclesiastical jurisdiction, the debtors could face excommunication due to their contumacy, understood as *contemptus*: that is “contempt, scorn, defiance, obstinacy, presumptuousness.”⁴⁶ The failed compliance of an order to fulfill was in fact considered “contumacious” disobedience and, according to the rules of canon law, contumacy was the prime cause of excommunication.⁴⁷

The indissoluble relationship between cameral obligation and excommunication was furthermore linked to a disruption of the ordinary *iter* of execution, which allowed the debtor to be excommunicated immediately, and then to be prosecuted subsequently also with an execution against property and/or personal execution, jointly or severally, depending on the creditor’s preference. In other words, the execution against the debtor’s assets came last. Instead, the ordinary executive procedure began with the enforced expropriation of movable assets, then immovable assets, then the assets of the guarantors, to progress finally to the personal execution.

The Council of Trent radically changed the configuration of the cameral obligation, modifying its main characteristic. If excommunication previously took precedence over other forms of enforcement, the Tridentine decrees in the 25th session of the reform had established a criterion of moderation in imposing excommunication, stating that for civil cases it could intervene only in the case of difficulty of personal enforcement or foreclosure.⁴⁸ Therefore, it was now the imposing of excommunication that came after the execution against freedom and property.

In 1570 the constitution *Inter illa* of Pius V adopted the decree of the Council of Trent, and beginning with this disposition the cameral obligation entered the second phase of its history, the “modern” phase.⁴⁹