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Usury and Just Compensation: Religious and Financial Ethics in Historical Perspective

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ABSTRACT. Usury is a concept often associated more with religiously based financial ethics, whether Christian or Islamic, than with the secular world of contemporary finance. The problem is compounded by a tendency to interpret *riba*, prohibited within Islam, as both usury and interest, without adequately distinguishing these concepts. This paper argues that in Christian tradition usury has always evoked the notion of money demanded in excess of what is owed on a loan, disrupting a relationship of equality between people, whereas interest was seen as referring to just compensation to the lender. Although it is often claimed that hostility towards 'usury' has been in retreat in the West since the protestant Reformation, we would argue that the crucial break came not with Calvin, but with Jeremy Bentham, whose critique of the arguments of Adam Smith, upholding the reasonableness of the laws against usury, led to the abolition of the usury laws in England in 1854. There has to be a role for law, whether Islamic or secular, in regulating financial relationships. We argue that by retrieving the necessary distinction between demanding usury as illegitimate predatory lending and interest as legitimate compensation, we can discover common ground behind the driving principles of financial ethics within both Islamic and Christian tradition that may still be of relevance today. By re-examining past ethical discussions of the distinction between usury and just compensation, we argue that the world's religious traditions can make significant contributions to contemporary debate.

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Introduction

Usury is no longer a concept frequently invoked in contemporary discussion of financial ethics. The term evokes a vague notion of 'charging excessive interest' that is difficult to clarify philosophically and is even more difficult to enshrine in legislation. If one accepts as ethically correct the principle of charging interest on a loan, namely demanding money over and above the principal of a loan, how can one establish what constitutes 'excessive interest'? In the contemporary world of mainstream finance, the practice of charging interest is considered so normal, that it is presumed to be driven by market forces, and not to have an ethical dimension. The great exception to this in recent decades has been the emergence of a movement known as Islamic finance, initially developed in the 1970s as an alternative to conventional Western finance, and based on the prohibition of *riba* – often translated as interest, but perhaps closer to the medieval Christian notion of usury. In Western eyes, this practice of prohibiting *riba* may seem arcane and irrational, and based simply on the authority of a religious text, rather than as a concept potentially relevant to discussion of contemporary financial ethics. Paradoxically, recent scholarly investigation into the precise meaning of *riba*, shown by Saeed (1999) to be much contested within different schools of Islamic thought, highlights that its prohibition is part of a wider ethical framework concerned with preserving justice and equity in financial relationships, very similar to contemporary concern with predatory lending. With difficulties in meeting

personal and household debt, the ethics of imposing compound interest on families with little capacity to escape debt bondage must become an issue. A recent study has shown that credit card debt is an increasingly common occurrence in the U.S., for at least 29% of lower and middle income households, according to a recent study (Center for Responsible Lending/Demos, 2005, 29). Legislators are confronted with the problem, however, that interest rates are widely believed to respond to market forces, and thus be no longer responsive to the sphere of ethical or legal discussion. We argue, however, that there is an increasing ethical, political and legal debate on the topic of predatory lending and just compensation, and today, as in the past, ethical arguments grounded in religious traditions are making significant contributions.

Contemporary difficulty with the notion of usury is not helped by the vagueness of most dictionary definitions of the term. The *Oxford Shorter Dictionary on Historical Principles* (1992, 2443) reports the older meaning of usury as 'the fact or practice of lending money at interest', but also observes 'in later use, the practice of charging excessive or illegal rates of interest for money on loan'. The *Macquarie Dictionary* (1997, 2331) distinguishes between two modern meanings (an exorbitant amount or rate of interest, especially in excess of the legal rate, and the lending, or practice of lending money at an exorbitant rate of interest), and an archaic meaning (the fact or practice of lending money at interest), as well as mentioning an obsolete meaning, that of interest paid for the use of money. It is commonly claimed usury has been in gradual retreat since the 16th century, and that there has been a gradual recognition of the legitimacy of charging interest (Lewis and Algaoud, 2001, 203–206). Yet, as Kerridge observes (2002, 1) in his important study of usury and interest during the Reformation period, most dictionary definitions of usury are inaccurate because they blur the crucial distinction between usury as an immoral practice (demanding more than the principal of a loan), and interest (a lender's right to legitimate compensation). In the words of 2002 an Elizabethan chancery document, supplied by Kerridge (2003, xiv): 'Usury and trewe interest be things as contrary as falshod is to truth'. In that study, Kerridge is concerned to refute the widely held notion, popularized in 1926 by Tawney in *Religion and the Rise of Capitalism* (1984), that the prohibition on usury was dispensed with by the Reformation. In the United Kingdom, laws against usury were not abolished until 1854, while they still prevail in many jurisdictions of many other European countries and of the United States. The distinction that Kerridge draws between usury and interest in the early modern period may help elucidate a core ethical distinction between predatory lending and legitimate compensation, blurred by the subsequent tendency to merge the notions of usury and interest. Rather than treating usury as simply a product of medieval religious ethics, we would argue that it relates to issues of equity and fairness in financial relationships, of continuing concern in our society. We suggest that contemporary debates belie the notion that usury is a dead issue, and that there may, in fact, be more potential for common ground with the principles underpinning Islamic finance than is often realized.

The ancient world

There is evidence of interest being charged (with rates of 20% and more) on loans of silver and barley as early as the third millennium BCE in the civilization of Sumer. Failure to pay these debts created situations of bondage to wealthy landowners, prompting the Babylonian monarch to issue occasional annulment of debt servitude (Van de Mierop, 2005, 28). This testimony to the charging of sometimes high rates of interest provides a context for understanding the strict prohibition of usury, transmitted in the Torah, based on the notion that rich and poor alike are created equally in the image of God. In the Book of Leviticus (25:35–37), any charging of interest is considered as *neshekh* in Hebrew, sometimes translated as biting usury or fenory, and thus morally wrong.

> If your brother who is living with you falls on evil days and is unable to support himself with you, you must support him as you would a stranger or a guest. And he must continue to live with you. Do not make him work for you, do not take interest from him; fear your God, and let your brother live with you. You are not to lend him money at interest, or give him food to make a profit out of it.

The Torah includes a number of passages protesting against a practice that disrupted relationships between rich and poor.. According to Exodus 22:25: 'If you lend money to any of my people, to any poor man among you, you must not play the usurer with him; you must not demand interest from him'. The prophet Ezekiel (18:4–8), referred to as Hizqeel in the *Qur'an* (21:85), declares that 'The upright man ... oppresses no one, returns pledges, never steals, gives his own bread to the hungry, his clothes to the naked. ... He never charges usury on loans, takes not interest' (The modern English translation is imprecise in not distinguishing usury from interest). Paradoxically, Jewish teaching became most well known in the Christian world not through its prohibition on exploiting one's neighbour, but through a compromise measure (Deuteronomy 22:21), allowing Jews to charge interest to foreigners – although Jews still had to observe other ethical injunctions in dealing with non-Jews (Nelson, 1969). While this concession is often interpreted as a double-standard, it can also be understood as enabling Jewish money-lenders to gain legitimate compensation in their dealings with an outside world, in which charging interest was a normal procedure.

By contrast, usury was not a significant issue in the legal systems of ancient Greece. In the *Nicomachean Ethics* (1952, 1113a), Aristotle argued that money was simply an instrument of measure, relating the value of two goods to each other, but did not mention usury. In the *Politics*, he condemns all manner of acquisitive or retail exchange, unlike that which is purely economic, or concerned with the management of a household. Usury he considers to be the worst kind of exchange because money, intended to be used for exchange of goods, here becomes an end in itself (Aristotle, 1952, 1258b). Like the *Ethics*, the *Politics* did not become known in the Latin West until the 13th century, and then in a translation which rendered retail exchange very specifically as *campsoria*, meaning money-changing (Noonan, 1957, 46–47). Aristotle's distaste for usury did not have any significant effect on financial practice within the ancient world.

The Fathers of the early Church only occasionally complained about usury, concerning themselves with financial matters insofar as they impacted on personal religiosity (Maloney, 1972, 1973). Within a worldview that emphasized the vast distance between the imperfection of this world and the heavenly kingdom to come, there was little interest in formulating ethical guidelines for the financial sphere. Only if wealth, luxury or economic inequality was seen to endanger one's eternal soul did the early Church intervene (Viner, 1978, 15–19). Within a political structure perceived as incorrigibly corrupt, there was no driving pressure to formulate an ethics of commercial life. Equally, in the economically depressed conditions of late antiquity and early medieval Europe, the practice of money lending was not a major problem.

The medieval world

It is a crude misconception to claim that in the Christian middle ages, 'money-making was viewed as morally suspect', as argued in a study (Vogel, 1991, 48–50) that rightly calls attention to the need for historical perspective in discussion of business ethics. A small but distinguished group of medievalists, in particular Noonan (1957) and Langholm (1998), have devoted themselves to exploring the ethical dimension of writing about usury between the late 12th and 16th centuries. Usury first emerges as a significant concern of preachers and theorists in the late 12th and 13th centuries, sometimes described as a period of 'commercial revolution' (Baldwin, 1970; Piron, 2005). Recent research is demonstrating, however, that the dramatic growth of public denunciation of usury was itself the consequence of a speculative credit boom in the 12th century, fuelled not just by Christian expansion into Islamic Spain, but by the discovery of silver mines in Germany and elsewhere (Mainoni, 2005, 131). Money-lenders, both Jewish and Christian, initially saw no difficulty in charging high rates of interest, permitted under civil law (Hunt and Murray, 1999, 23–30, 63–67). The discussions of usury developed in the 13th century by Franciscan and Dominican friars, themselves committed to ideals of poverty, deserve to be interpreted not as 'moralizing condemnation of money-making', but as the consequence of growing awareness of the need in society to regulate financial transactions, set at often crippling rates of interest. Canonists and theologians sought to distinguish what constituted unlawful

usury from legitimate compensation incurred by the lender. Their discussions of usury, far more sophisticated than the rather crude comments made by Aristotle in the *Politics*, had no equivalent in the ancient world.

The critique of usury by Franciscan and Dominican preachers in the 13th century was itself a reaction to often crippling interest rates being charged in urban centres (Mainoni, 2005). The ideal of poverty, given great impulse by the preaching of Francis of Assisi, himself the son of a merchant, was itself a reaction to unregulated pursuit of profit. As Little (1971, 1978) argued, mendicant friars tended to focus on the Pauline theme that avarice was the root of all evils (I Tim. 6:10) rather than the more popular monastic adage that pride was the mother of the vices, in reaction to the increasingly commercial focus of urban society in the 13th century.[1] This emphasis on avarice provided the moral basis for their condemnation of usury. At the same time, preachers and theologians gradually realized that while usury, understood as payment demanded in excess, over and above the principal, was always wrong, a lender could justifiably demand legitimate financial compensation for any loss incurred. Thus, Aquinas acknowledged that there could be limited legitimate compensation for loss to capital (*damnum emergens)* accruing not from the beginning of a loan (Noonan, 1957, 115–117). Kaye (2005) has argued that Aquinas transformed earlier discussion of usury by emphasizing the inequality within relationships tainted by usury, disturbing natural justice. Usury was initially seen as wrong because it involved forcing a borrower to pay money against his will (Langholm, 1998, 67–69). Theorists developed the notion in the 13th century that financial transactions did incur a duty of reciprocity, legitimizing compensation for loss, even if usury was always wrong (Piron, 2005). The vitality of scholastic debate about usury lay in its reflection on how one can prevent exploitation of the poor, whilst recognizing the legitimate interest of the person with money to lend. The notion of interest derives from this sense of legitimate compensation to maintain equity within a financial relationship.

While usury, understood as charging a fixed rate of interest, was firmly prohibited by law, there was no restriction on lending money at risk, in the expectation of benefit to be made both by the lender and the borrower. The prohibition on usury effectively served to promote 'venture capital' lending on the expectation of a return on investment. The term *risk* comes from an Arabic word, *rizq*, used in the *Qur'an* (29:7): 'seek your reward from God', from which it may also have come to mean 'good fortune' (Kedar, 1969; Lemaître, 2004, 17–19; Piron, 2004, 62–70). It first appears in Latin (as *resicum* or *risicum*) only in 1156, in a specifically commercial context – in a document from Genoa, recording a financial transaction undertaken by an agent called Jordan, working for an unnamed businessman: 'I, Jordan, accept 110 pounds 8 solidi which I must take to do business at Valence at your risk' (Piron, 2004, 64). This businessman is prepared to entrust a very considerable sum to his agent Jordan as an investment in the town of Valence, and then to Alexandria, in the hope that it will bring financial reward to them (according to a fixed proportion). If the venture fails, the provider of capital, not Jordan, must bear the risk.

As Piron points out (2004, 70–76), a loan made at one's own risk was quite different from charging a fixed rate of interest on a loan, which would constitute usury. In the traditional understanding of a loan (*mutuum*), goods were transferred from one person to another. From a Christian perspective, if one rented out these goods in return for payment, one's capacity to make a profit was based not on trusting some business venture to God, but on one's capacity to coerce another individual to make a payment over and beyond a loan. In a sense risk in this commercial context is a possible benefit that God may or may not confer, whereas responsibility belongs to the individual. The commercial deal recorded in 1156 invoked the terminology of 'risk' in order to specify the particular character of an investment that could not in itself be guaranteed. The practice of undertaking an investment at the lender's own 'risk' (a concept for which Latin had to rely on Arabic) was itself encouraged by the prohibition on exacting *riba*, as a fixed rate of interest, within the Islamic world. As in the Islamic system, the passive investor agrees to take a risk, because of the evident benefit to both parties, although the risk is limited to the sum that he or she personally lends.

The practice of charging interest (perhaps four pennies per month per pound, or 20%) was often admitted under civil law.[2] From an ecclesiastical perspective, however, such practice was seen as

immoral. Using bills of exchange to transfer credit, merchant banks provided capital for business ventures and governments alike, lending money against some agreed financial reward for the lender. As Piron argues in his study of the writing of the Franciscan theorist, Petrus Olivi, this fixed reward may be estimated as a future gain, but it did not constitute an interest charge, as it represented recompense for an effective loss of earning by the lender (Piron, 2004). Olivi thus develops a notion that capital can generate a probability for growth. Strictly speaking this is not money generating money in itself, but capital providing a possibility for growth.

By the 14th century, we see the formation of a small number of international merchant banks, always family based, and operating as trans-national companies based in Italy, but with salaried employees over the whole of Europe. They exposed themselves to enormous risk when Edward III defaulted on his debts, resulting in economic collapse of businesses across Europe. Moralists were quick to see this as divine punishment on bankers using shady business practices under the pretext of observing Christian morality (Hunt and Murray, 1999, 102–117). What had effectively happened, however, was that the traditional provider of venture capital, taking modest risks to develop the capacities of individuals, had become an impersonal super-company, in which all sense of equality between lender and borrower had been lost. Preachers thought that the big banks had been behaving as if they were God, and were punished accordingly.

This was the background in which a more astute form of merchant banking emerged in northern Italy during the 15th century, most famously through the Medici family. Howard (1995) has written extensively on the preaching of Antoninus, archbishop of Florence at the time of the Medici family. In his preaching, Archbishop Antoninus was particularly interested in the ethics of the relationship between lender and borrower. While one could always accuse these merchant bankers of trying to take advantage of every loophole in Christian canon law to avoid the impression of giving usury, these merchants were always anxious to avoid the impression that they were guilty of that heinous crime. If they had been guilty of taking money from the poor through usury, the way they could salve their conscience was to give something back to their city, through building some church or hospital. It has to be said that guilt over the possibility that moneylenders had been guilty of usury was a powerful stimulus to philanthropy and thus to the cultural movement we call the Renaissance.

The official prohibition on lending money at interest encouraged financial investment, but it discriminated against the poor, who were forced to turn to moneylenders – whom we might today call loan-sharks – who would charge interest rates of at least 35%. Prohibition effectively created a black market in money lending. What was needed was a legitimate lending body that could serve the poor. Although a few thinkers floated the idea in the late 13th century, it was not until 1462 that a financial system developed in Italy, called the *Mons Pietatis* (Mount of Piety), through Franciscan inspiration (Noonan, 1957, 303; Menning, 1993). It was effectively a public pawnshop whereby poor people could pawn some possession in return for paying a modest fixed fee (6%), interpreted as a payment for paid workers of that institution, managing the goods entrusted to the care of the *Mons*. Wealthier citizens were encouraged to lend money to the *Mons* in return for a fixed rate of return. Financed initially by charitable loans, the *Mons Pietatis* was subsequently financed by loans earning a fixed rate of interest, interpreted not as usury, but rather as reward for a pious deed, made to a charitable foundation. While some criticized these new credit unions as legitimizing usury, the new system was a runaway success not just in Italy, but in Europe as a whole. Instead of an individual moneylender gaining personal wealth from the poor, the *Mons Pietatis* provided a loan from the collective capital of the community. It was recognized that the Mount was helping protect the poor from exploitative loan sharks, and thus fully in the spirit of Judaeo–Christian teaching condemning usury as morally wrong. As a reform of the European financial system, this was a very important development that would last well into the 20th century and provided an important precedent for subsequent experiments in providing alternatives to conventional banking. Needless to say, the *Mons Pietatis* system was initially resisted by the powerful Lombard merchants as well as some elements in the Church – particularly, the Dominicans, rivals to the Franciscans – who viewed the *Mons Pietatis* with suspicion as potentially dangerous competition. The

Mons Pietatis never gained a foothold in England, where the Lombard merchants were particularly well entrenched.

The birth of the modern world

Ever since Weber (1920) provocatively argued that there was an 'elective affinity' between the protestant ethic (in particular Calvinism) and the rise of capitalism, it has become a truism to claim that protestantism ushered in a more permissive attitude towards capital accumulation, thus supposedly laying the foundations for modernity. Tawney took this argument further in *Religion and the Rise of Capitalism* (1926), in which he argued that the Reformation encouraged a capitalist work ethic, very different from the catholic middle ages (which he tended to romanticize as an age concerned with social justice). Calvin certainly did dispense with some of the casuistry of earlier arguments against usury, and declared that the only rule to follow in commercial transactions was to follow the golden rule: that interest payments are sinful only when they hurt a neighbour, and that charity and equity must establish when a loan is exploitative (Noonan, 1957, 365). Calvin was effectively allowing the burgers of Geneva to charge modest interest on loans, so long as they remained within the moral constraints of the 'Godly Republic'.[3] There is a certain element of truth to Weber's insight that there was an 'elective affinity' between Protestantism and the development of capitalism. Weber did not say that Protestants were simply driven by desire for capital. Rather, he was saying that Calvinists pursued business practice with an intensely moral concern. As Kerridge (2002, 30–33) points out, however, Calvin still maintain an intensely moral abhorrence of usury.

While reformers like Calvin maintained hostility towards usury, their recognition of the need for legitimate commercial compensation did encourage a shift in focus away from the need to protect vulnerable consumers toward supporting the demands of a nascent bourgeoisie, needing capital to fuel economic expansion (Troeltsch, 1959). In England, a law of 1571 prohibited usury, but effectively created a legal ceiling of 10% interest (reduced to 8% in 1624, to 6% in 1651), understood as legitimate compensation for a lender, but in terms necessarily protected by law (Homer and Sylla, 1991, 126). As in the 15th-century *Mons Pietatis*, it was recognized that there could be a legitimate running cost to cover the costs of a lender. Actual interest rates rose far above these legal limits, however. Excessive rates forced poor people into a situation of debt, and effectively into prison, if they could not pay debts.[4]

There was no shortage of treatises written about the ills of usury and the practice of charging more than legitimate interest during the great period of the expansion of European capitalism in the 16th to 18th centuries. Criticism was more directed at failure of legal measures to control usury, than at the principle of usury itself. One such publication is *A Brief Survey of the Growth of Usury in England and the Mischiefs attending it* (Anon., 1671, 3), which laments that of late 'Usury entred like a floud on a breach, and with continual success carries all before it'. Yet even a century later, in 1776, Adam Smith in *The Wealth of Nations* (1976, 106) still condemned the evils of usury, and observed that observance of a legal rate of interest did not impede the growth England's prosperity since the time of Henry VIII. Smith was not familiar with medieval discussions of usury, and did not draw on explicitly religious arguments to justify his thesis that enlightened self-interest could provide the best avenue to shared prosperity. Yet while he questioned the need for protective tariffs and monopolies, he still argued that it was necessary to limit interest to the legal rate, but considered that it should be only slightly above the lowest market rate: 'The lowest ordinary rate of interest must, in the same manner, be something more than sufficient to compensate the occasional losses to which lending, even with tolerable prudence, is exposed. Were it not more, charity or friendship could be the only motives for lending' (Smith, 1976, 113). If the legal rate were to go much above this rate, 'Sober people, who will give for the use of money no more than a part of what they are likely to make by the use of it, would not venture into the competition' (Smith, 1976, 357). Paganelli (2003) has convincingly argued that far from being an inconsistency within Smith's thinking, as sometimes claimed, his defence of usury laws needs to be situated within his overall moral philosophy, shaped by a profoundly classical sense of virtue being shaped by the mean. Smith, who composed his *Theory on Moral Sentiments* (1759)

before turning to economics, was heir to an intensely moral tradition, shaped as much by the precepts of Calvin as the virtue ethics of ancient philosophy. He still recognized that a healthy capitalist environment demanded government regulation to ensure that credit would be available for those who could make best use of it.

By contrast, Jeremy Bentham introduced a crucial shift in attitude in a series of letters addressed to Adam Smith in March 1787 and published as his *Defence of Usury* (Bentham, 1952, 124–187). Bentham had been provoked by reports that the government was about to reduce the interest rate from 6% to 5%. He based his argument that governments should not establish interest rates on the grounds that not all 'projectors' (speculators) were necessarily imprudent, and that 'the projecting spirit' had necessarily been to the advantage of the country: 'Nor let it be forgotten, that, on the side of the individual in this strange competition, there is the most perfect and minute knowledge and information, which interest, the whole interest of a man's reputation and fortune, can ensure; on the side of the legislator, the most perfect ignorance' (Bentham, 1952, 178). Bentham puts aside Adam Smith's concerns about the dangers of speculation, and betrays no concern to protect the poorer elements of society against usury: 'May I flatter myself with having succeeded at last in my endeavours, to recommend to the same powerful protection, two other highly useful and equally persecuted sets of men, usurers and projectors' (Bentham, 1952, 185). His utilitarian arguments against any regulation of interest rates provoked criticism in the early nineteenth century (Anon., 1825; Grahame, 1817), but they finally succeeding with the abolition of usury laws in 1854. By attempting to revalorize the notion of 'usury' Bentham wanted to rupture a tradition linking finance to ethics, for which he had little sympathy.

Within the decade following the abolition of these usury laws, as London was emerging as the world's financial capital, Karl Marx was writing *Capital* in the reading room of London's Museum of Natural History. As he understood, these debates about small-scale interpersonal money lending merely prefigured and were ultimately consumed within the emergent industrial financial loans industry (Marx, 1976, 738). Marx denounced usury and financial loans in language similar to that of the great Hebrew prophets and Christian preachers during the medieval and early modern periods, but now with a more sophisticated economic theory. Declaring that 'there is no natural rate of interest' (Marx, 1976, 738),[5] he criticized the destructive role of usury in feudal Europe as being just as exploitative as the feudal relations of production itself, but not nearly as productive. Usury, Marx thundered (1976, 731), 'does not change the mode of production, but clings on to it like a parasite and impoverishes it. It sucks it dry, emasculates it and forces reproduction to proceed under ever more pitiable conditions'. In his own time, Marx viewed money lending and the development of the debt and credit system, fundamental in European economic expansion, as allowing Capitalists to unjustly extend their control over others, far in excess of the capital they actually owned. Indeed, in a foreshadowing of the financializing of the means of production – which would only fully emerge in the latter 20th century – property in Marx's time became merely a useful tool for acquiring more loans. Thus, 'the actual capital that someone possesses... now becomes simply the basis for a superstructure of credit' (Marx, 1976, 570).

One indirect consequence of these arguments was to provoke a resurgence of interest within the catholic Church in its traditional teachings about social justice, in particular its condemnation of usury, clearly invoked by Pope Leo XIII in his encyclical *Rerum novarum* (1891). Paradoxically, however, usury, denounced for centuries within Christian tradition, is never explicitly mentioned in the encyclical, *Centesimus annus*, released by John Paul II (1991). While the excesses of capitalism and communism are condemned in his encyclical, little attention is given to the condemnation of usury, so deeply rooted in Biblical tradition.

Contemporary concerns

Whilst it may have elicited a wry smile from Marx, had someone suggested it to him, many will no doubt be surprised to find that to this very day, despite the acquisition and mobility of capital being so fundamental to personal and national wealth, many countries still have laws against usury, excessive interest or predatory loans. There are still usury

laws in almost every US state (with Nevada a predictable exception). In California, for example, Article XV(1) of the State Constitution limits interest rates on money loans to 10%. Yet since the 19th century, there has been strong pressure from banks to abandon these laws,[6] and there are numerous ways for lending institutions to avoid the state laws. In Australia, the most significant legal case concerning usury laws occurred in 1833 in the (then) colony of New South Wales. The New South Wales Supreme Court in the case of *Macdonald v Levy* decided not to enforce English Usury Laws (which then restricted interest rates to 6%) in Australia. The Court declared that the exorbitant lending rates that prevailed were an accepted part of life in the far-flung British colony, where the demand for credit far outstripped supply. Thus, by their behaviour, the colonists had repudiated any presumption that the English laws should apply (Kercher, 2000).

Britain would soon follow in the footsteps of its colony. During the course of the 19th century, traditional British religious hostility towards usury was pushed aside by the desire of banks for deregulation, leading to the abolition of the UK's Usury Laws in 1854. Unsurprisingly, an upsurge in exploitative loan schemes ensued. Only gradually were there counter measures like the *Money-Lenders Act* (1900) and the *Consumer Credit Act* (1974). In 1997 the British Labour Party acceded to widespread concerns and pledged to 'crack down on loan sharks' and considered statutory limits on credit interest rates (Palmer, 2002, 18). Its 2003 White Paper, *The Consumer Credit Market in the 21st Century*, pursued far less ambition goals, however. Echoing a reality that we shall expand upon further, below, the Blair government acknowledged the unfortunate reality that '[f]or many, [credit] is the lifeline that enables them to deal with the emergencies that arise'. Unfortunately, the report continued, this desperation leads to a financial environment where 'there are also consumers that are preyed upon by loan sharks, whose activities often exploit the socially deprived sections of our community' (Hewitt, 2003, 3). The legislative amendments emerging from this review process, however, focussed merely on informing consumers about credit and loan schemes.

Equally, in Continental Europe, usury continues to be a live legal and moral issue. In France, article 313(3) of the *Consumer Code* states that:

> [a] conventional loan constitutes a usurious loan when it is granted at a rate that exceeds, at the time it is granted, at least one-third of the average effective rate applied during the prior quarter of the year by credit institutions for loans of the same nature with similar risks...

The severity of the penalties – which can include fines or even prison – have lead many French corporations to seek financing in foreign markets (Cafritz and Tene, 2002, 32). In Italy, too, despite heavy regulation, it is estimated that in the last decade 100,000 Italian businesses (Regnier and Penner, 2001, 36) and 300,000 families (The Economist, 1996, 71) were indebted to loan sharks – popularly known as '*strozzini*', literally, 'stranglers' (Regnier and Penner, 2001, 36). This reminds us that the mere prohibition on high-interest, high-risk loans will not eliminate the need and desire for such products. If interest rates are kept low, then financial institutions will not necessarily extend these low rates to high-risk (that is, low income) customers, they may well freeze them out of the legitimate loans market altogether, leaving them to the mercy of 'loan sharks' and 'stranglers'. Usury is an issue that must be tackled systematically, as part of a wealth creation and redistribution policy that reduces the need for high-risk, high-interest loans.

The reality of economic life in the United States clearly establishes this. It is, once again, the poor who are especially vulnerable to predatory interest rates issued by so-called 'sub-prime lenders',[7] the most common form of 'loan shark' in the personal debt-ridden United States. In the 2004 United States Presidential election, Democratic candidate John Kerry proposed federal laws to ban what he called 'abusive' lending practices, particularly 'payday loans'; high-interest, short-term loans that target people struggling to make ends meet (MacDonald, 2004, 17) – those whom Marx (1982, 419) might say are 'at a loss what to do, in other words, momentarily unsound financially'. But before these momentarily financially unsound Americans turn to payday loans, many will first exhaust their credit

cards. The amount of interest that credit card transactions attract – usurious or otherwise – is certainly an important issue, but equally important is the *type* of debts that credit cards and loans-at-interest are used to cover. A recent study by the Centre for Responsible Lending and the Demos organization (2005, 9–12) revealed that not only is the overwhelming bulk of America's burgeoning $US800 billion credit card debt incurred by the middle class (proving that it is not just the poor who are shouldering America's growing debt) but that 70% of middle class Americans are relying on their credit cards as a 'safety net' to pay for basic living expenses and health care – the very expenses that, in social democracies, State-subsidized 'safety nets' were formulated to take care of.

As the contemporary American situation illustrates, issues of debt and usury are impossible to separate from broader economic trends and injustices. We would like to suggest that it is not merely the rate of interest that is charged that may, or may not, make a financial product usurious or predatory, but also the circumstances surrounding the loan – to whom it is made, and what it is made for. As the Franciscan-inspired founders of the *Mons Pietatis* system understood, exploitative lending practices merely exacerbate the inequalities already present in society. There is, however, an amusing sting in the tail of America's debt spiral: the attempts by the current United States administration to preach the virtues of its high-debt, low-savings economy overseas. Recently, United States Treasury Secretary John Snow toured China, advocating what he called 'financial modernization' – suggesting, in the words of the *New York Times*, that China 'take lessons from the United States on how to spend more, borrow more and save less' (Andrews, 2005, C1).

It is not just the United States that is caught in a personal debt spiral, however. At a time of record foreign private debt and outright hostility to banks, one of Australia's largest banks, the ANZ, has been advocating a crackdown on the type of predatory lending that gives its industry such a bad image (Wade, 2005). The problem, however, is that it is just as hard to define exactly what constitutes predatory lending as it is to define exactly what constitutes usury; it is very much a term of art, not to mention ethics, clearly in need of legal clarification. Thus, for the ANZ Bank, 'predatory lending' relates to small, upstart financial institutions aggressively targeting customers that it and other large banks would overlook (Wade, 2005). However, for Australia's Financial Services Ombudsman, it is credit card debt that is the real cause of concern and the locus of Australia's growing household debt. Complaints about credit cards increased fivefold between 2000 and 2005, with potentially predatory unsolicited offers from lenders to increase credit limits, without adequate inquiries into customers' abilities to service those debts a main concern (Wade, 2005).

Despite these differing interpretations of 'usury' or 'predatory lending', unambiguous examples do occur from time to time. A recent example concerned the activities of another large Australian bank, the Commonwealth Bank, in the far north of Australia and rural South Australia. The Commonwealth Bank, through third party brokers earning between $Aus500 ($US375) and $Aus1000 ($US750) commission (Oldfield, 2006), issued up to 400 loans (Moncrief, 2006), primarily car loans, for as much as $Aus25,000 ($US18,750) to impoverished, welfare-dependent members of the Cape York and Port Augusta indigenous communities earning as little as $Aus200 ($US150) a week (Macey, 2005). According to a Cape York Councillor, members of his community were literally 'going hungry' trying to make their monthly payments (Ong, 2006). The Bank continued to insist that it was committed to providing credit and the same opportunities to rural customers as metropolitan customers, 'as far as practical' but, echoing our concerns of usury being just as much about to whom and for what a loan is made than just the rate of interest charged, a spokesperson admitted that '[t]he scale of poverty in some of these remote places is difficult to comprehend when you live in the city' (Oldfield, 2006). Either to counter the negative publicity from this incident, or as a profound policy shift (or perhaps both) the Commonwealth Bank, which estimates that the bad debts have cost it 'a few million dollars' (Larkin, 2006) has launched a financial literacy program in the affected communities (Moncrief, 2006), which is perhaps a program that the rest of Australia could benefit from as well.

Fortunately, such blatantly careless and exploitative lending practices are few and far between, at least in the 'developed' world, and it is significant that this incident was isolated to the borderland of an

affluent country and the reality of its impoverished margins. Unfortunately, feel-good stories of individual victories against exorbitant interest and the vested interests of conventional finance are also few-and-far between. But one example, that of a Canadian businessman, Mr Garland, is worth relating. Mr Garland objected to his local gas company charging a 5% penalty on any bill paid even one day late. Mr Garland paid his bill one day late and incurred the 5% penalty. He challenged the validity of this practice, however, arguing that the 5% penalty for a payment one day late amounted to an annual compound interest rate of 1825%, far above the legal maximum of 60%. He was denied a hearing by every court in his province, but eventually received a 6-to-1 verdict in his favour from the Canadian Supreme Court on October 30, 1998. (Rogers et al., 1999, 14).[8]

One cannot rely on rare breakthroughs of financially savvy and determined individuals like our Mr Garland to regulate financial practice, however. Rather, what is needed is an alternative ethical and financial vision of the relationship between borrower and lender. We suggest that religious traditions and ethical perspectives have played, and will continue to play, an important role in this. The religious traditions of the West are also playing an increasingly active role in articulating their ethical values in the increasingly diverse field of investment products. In the United States alone there are some 275 faith-based investment agencies and financial activist organizations affiliated through the Interfaith Centre on Corporate Responsibility (ICCR) with shared assets of over $US100 billion (ICCR, 2003) and mutual funds running the gambit of religious and ethical traditions are now commonplace in the financial marketplace. With a few notable exceptions, however, issues of usury and reconsideration of the borrower–lender relationship have yet to be major concerns for contemporary religious financial ethicists, unlike those of the past we have discussed.

Islamic investment schemes are perhaps the most prominent religion-based financial products, and they are somewhat of an exception, being very much concerned with usury (Gittens, 2002). The Dow Jones Islamic Market Index, with market capitalization of over $US12 trillion as of October 31 2005, tracks *shari'a*-compliant companies according to a strict interpretation of Islamic law. In a clear attempt to entice both conservative and progressive Muslims, the DJIM Index takes an approach to Islamic law that is thoroughly conservative (companies involved in cinema and music are excluded, for example, despite the abundant popularity of these products amongst Muslims in even very strict Islamic societies!) but it is also concerned with peace, with investments in arms manufacturers and defense companies avoided, for example. Importantly, strict prohibitions apply to investments in 'conventional' financial and insurance corporations, for whom the practice of lending at interest is essential. Of course, nowadays companies of all persuasions derive profits from lending at interest and a blanket prohibition on investing in companies that engage in this common practice is somewhat impractical, so Islamic funds managers, in consultation with their *shari'a* advisors have derived various ways to deal with this. The Dow Jones Islam Fund, for instance, whose motto is 'Markets Fluctuate... Principles Don't' monitors the profit that companies it invests in derive from interest 'and other 'impure' income from business activities contrary to the core values of Islam' and informs investors, so that they may increase their charitable donations accordingly (Dow Jones Islamic Fund, no date), a practice that directly parallels that charitable gifts of the money lenders of Medieval Italy.

Despite its uneasy relationship with conventional financial organizations, there is an undeniable desire amongst the Islamic finance industry for the legitimacy that comes with big name recognition, as well as a growing market for Islamic financial products, so the increasing trend for large conventional banks (Citibank, HSBC, UBS, Deutsch Bank, etc.) to offer *shari'a*-compliant banking and investment products or even establishing Islamic institutions of their own is only going to continue, with the ethical discussions on usury and just compensation at the fore. This is especially so given the fact that while the large conventional banks are investigating Islamic Finance, Islamic banks are starting to engage in the everyday financial services that have been hitherto the reserve of conventional finance in the west. To the casual observer, there is little that is obviously different between, say, a personal loan offered by a conventional bank and a personal loan offer by, for example, the Islamic Bank of Britain, which offers '*halal* (Islamically permissible) personal finance' loans of up to £UK20,000 ($US37,000) at 7.9% (Islamic

Bank of Britain, 2006). What does make this loan different from an conventional loan is the way the 7.9% is applied, for it is not interest as it is conventionally understood, rather, the 7.9% is the lender's mark-up in the *murabaha* loan scheme whereby the lender will pay for whatever it is the loan is for (a car, a wedding, education, etc.) then the borrower will repay the bank the principle and the 7.9% mark-up as just compensation for the risk incurred by the bank. From an accounting viewpoint, there may be nothing to distinguish a *murabaha* loan from a conventional one, the borrower repays the principle plus 7.9%, but the *murabaha* avoids the payment of interest, strictly interpreted, and, it is suggested, maintains Islamic finance's concern with relationships and the partnership of borrower and lender (Gittens, 2002), through a rate of just compensation determined by the borrower and lender, rather than one left to the impersonal vagaries of the market or even the predatory instincts of the lender.

Various Christian traditions are also creating investment products governed by ethical concerns, from a variety of ethical perspectives, but none have yet felt the need to avoid or re-examine notions of usury or financial partnerships the way Islamic financial organizations have. The Ave Maria Fund is perhaps the most explicitly religious Christian mutual fund, articulating a strong conservative Catholic ethos and divesting from any company that is involved in abortion, pornography or any other company whose policies 'undermine the Sacrament of Marriage' (Ave Maria Fund, 2006, 3). The fund made headlines for its high profile sell-off of stocks in H&R Block, Kimberly-Clark and Eli Lily & Co, when those companies extended benefits to the unmarried partners of employees (Keenan, 2003, IN1). The Ave Maria Fund is a fine example of the diversity in so-called 'Socially Responsible Investments' (SRI) industry[9] (Dunn, 2004) even if Ave Maria Investment Advisor George Schwartz avoids the 'SRI' tag, preferring 'Morally Responsible Investment'. 'SRI funds are generally interested in criteria such as environmental impact or the number of women on the board', Schwartz says, opining, 'most of the SRI funds are tree huggers' (Baue, 2003).

Meanwhile, the Catholic Aquinas Fund adds certain progressive social concerns to its support of Catholic family values. Thus, alongside petitioning and boycotting companies that are involved in abortion or contraception, racism, sexism and weapons of mass destruction are avoided (Aquinas Fund, 2005; Felton, 2001). The most progressive of these religious 'tree huggers' as George Schwartz would say, is perhaps the Mennonite Mutual Aid (MMA) Praxis Mutual Fund, based on the principles of non-violence and environmental stewardship of the Peace Churches. Promoting social justice, environmental protection and corporate responsibility, one might expect a somewhat hesitant approach to conventional finance. However, neither the Aquinas Fund nor the MMA Praxis Fund appears overly concerned with investing in conventional financial companies, with both investing in JP Morgan and the Bank of America among other conventional finance companies. However, the aforementioned ICCR is active in pressuring both corporations and government on issues of corporate governance and financial ethics including predatory lending, primarily through shareholder activism (ICCR, 2003). What appears apparent, however, is that Christian financial corporations and ethicists have yet to provide a systematic approach to financial relationships and ethics for the modern economy that re-imagines and rearticulates core religious teachings on finance. Islamic financial institutions have spent over three decades developing financial products modelled for the modern economy that, never the less, incorporate and reference long-established religious ethics and prohibitions. With 'usury' and 'predatory lending' live issues, personal debt spiralling in the western world and religiously inspired investment expanding, it would appear that the time is right to revisit the traditional Christian teachings on usury and just compensation.

Conclusion

As this paper suggests, understanding the history of the relationship between religion, finance and ethics is necessary for an understanding of their present relationships. Our discussion can only provide a foundation for an exploration that must continue. We have hopefully shown that there is far more in common in the ethical precepts of the great monotheistic traditions than there are conflicts. Further, we believe that religious traditions and ethical doctrines and inquiries have much to

contribute to the outstanding fiscal policy questions of our time. One of the great contributions of Muslim finance is that it can force non-Muslims to realize that the underlying ethical principles that drive Islamic prohibition of *riba* are profoundly related to traditional Christian condemnation of usury. This is an important insight in a time when religious conflict and difference is emphasized at the expense of commonality and shared insight.

Words, as we have seen, change their meaning over the course of time. Different legal systems might choose different core texts to define their guiding principles. What was called 'usury' in the past abides as 'predatory lending' today, while 'usury' is ironically seen as an arcane notion with no place in modern financial discourse. Yet in all these systems, we see a tension between those who urge that the law should protect the community as a whole, in particular those less privileged, and those who want to promote a deregulation of the law in the interests of prosperity. The reality of predatory loans, whether for poor individuals, or for third-world governments, strangled by interest debt, is something that we cannot deny. The concept of usury, presented by generations of preachers as a blight on society, is perhaps still a very useful one. We all have to work out ways of making just compensation for the legitimate costs incurred in any loan. Financial institutions might well benefit from consulting with specialists in ethics about the validity of their commercial practice (Loomis, 2006), just as Islamic financial institutions consult their own legal and ethical authorities for advice on how to operate. Whether we are Christian, Jewish, Muslim or secular in the way we describe the world, we need to recognize that we all share a common concern with the ethical foundation of any financial relationship.

Notes

[1] Although avarice and vice seem to have neatly converged in the present day, through the shameless mutual fund, Vice Fund (see below, n. 9).

[2] Shatzmiller (1990, 53–54) observes that in the 12th century in England, there was a legal rate of two pennies per week per pound (43.3%), while in Aragon and Montpellier in the 13th century it was around 20%.

[3] The theocracy that ruled Geneva at the time has startling similarities to contemporary Islamic theocracies, where freedom of expression and conscience are unheard of. Tawney (1984/1926, 115) narrates that in the 'Godly Republic', 'Manners and morals were regulated, because it [was] through the minutiae of conduct that the enemy of mankind finds his way into the soul; the traitors of the Kingdom might be revealed by pointed shoes or gold ear-rings...'

[4] The terrible legacy of debtors' prisons in Europe was sufficient to compel its specific prohibition as article 11 of the leading international human rights instrument, the *International Covenant on Civil and Political Rights* (UN Doc. A/6316 (1966)).

[5] Marx (1973, 850) argues against M. K. Arnd and what Marx labels his 'forest-primeval [*waldursprüngliche*] rate of interest' which is the 'rate at which the amount of timber in the European forests increases with their annual new growth'. Arnd suggests that this is as close to a 'natural' rate of interest as can be imagined.

[6] Only on 1 September 2005 did Texas abolish Usury laws (which restrict rates of interest to 18%), allowing Texas banks complete freedom to charge what they like. (Osuri, 2005, 1).

[7] Hallock (2004, 42) reports information from the *Home Mortgage Disclosure Act*, released by the US Department of Housing and Urban Development (HUD), that from 1993 to 2000 the number of subprime mortgages increased from 16,000 to 306,000. Subprime home equity loans increased from 66,000 to 658,000.

[8] The case is reported at [1998] 3 SCR 112.

[9] Partly in reaction to the increased popularity of these socially responsible investment products, the mutual fund, Vice Fund was established in 2002. Seeking to invest in companies involved in activities 'often considered socially irresponsible', they invest solely in alcohol, tobacco, and gambling corporations, as well as arms manufactures (Ezell, 2005; Vice Fund, 2005, 2).

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