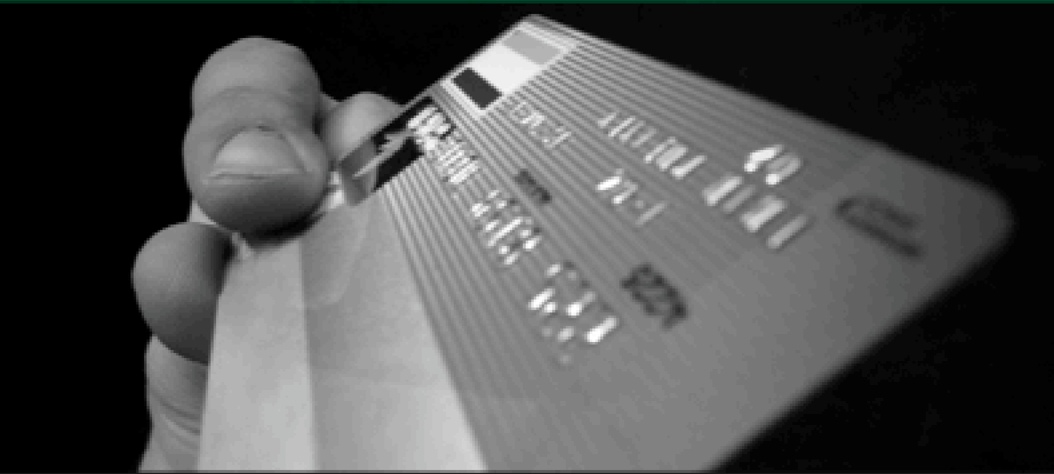

A REFORMED UNDERSTANDING OF

USURY

FOR THE TWENTY-FIRST CENTURY

Approved by the 217th General Assembly
of the Presbyterian Church (U.S.A.)

2006

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Presbyterian Church (U.S.A.)

Developed by

The Advisory Committee on Social Witness Policy of the General Assembly Council

Published by

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A Report on "A Reformed Understanding of Usury for the Twenty-First Century"

RECOMMENDATIONS

The Advisory Committee on Social Witness Policy (ACSWP) recommends that the 217th General Assembly (2006) of the Presbyterian Church (U.S.A.) approve the following:

That entities of the General Assembly, advocacy committees, governing bodies, congregations, and individual members of the Presbyterian Church (U.S.A.):

1. **Support efforts to provide more effective and less costly financial services to people who are now forced to utilize high-cost alternative financial resources by:**

    a. **partnering with and supporting legitimate, ethical nonprofit organizations that provide both educational and financial services to those not eligible for mainstream services, including participation in the development of community credit unions;**

    b. **partnering with local community organizations that serve the poor to help them learn about resources in the community that will provide them better opportunities for both saving and borrowing;**

    c. **supporting faith-based investor groups as they seek to change discriminatory lending practices; and**

d. becoming knowledgeable about policy recommendations that may help those without lower-cost banking services achieve them.

2. Support and implement education for financial literacy by:

a. learning what organizations, educational materials, and resources are available in their community and on the web;

b. developing or securing appropriate educational materials (with respect to age, culture, and language) and/or educational sessions for children, teenagers, college students, young adults, adults, and seniors that demystify the world of savings, credit, and lending and encourage savings and frugal use of credit cards and loans;

c. urging local and state boards of education to make financial literacy a part of the middle and high school curriculum;

d. encouraging Presbyterian-related colleges, universities, and seminaries to continue to offer education in financial management and to discourage credit card promotion on campus; and

e. encouraging Presbyterian publications to include articles on financial literacy as part of total stewardship of God-given resources.

3. Support and implement church-wide education on the ethics of lending by:

a. utilizing this resolution, including its rationale, as a resource to help congregational members consider how Christian faith and ethics provide guidance in the area of banking and lending;

b. inviting members of communities and congregations knowledgeable about banking and

lending to help congregational members understand the facts of predatory lending in their communities;

c. encouraging the Presbyterian Publishing Corporation and the General Assembly Council (Congregational Ministries Division) to develop curricular resources to help members understand their Christian responsibilities with respect to lending practices;

d. learning about state and federal laws, public policy recommendations, and pending legislation related to usury through web sites such as the Washington Office of the Presbyterian Church (U.S.A.) (http://www.pcusa.org/washington) and the Center for Responsible Lending (www.responsiblelending.org); and

e. becoming a part of a presbytery's or congregation's public policy advocacy group to learn how to impact legislative changes.

4. Advocate for the change of state and federal policies and legislation that allow lenders to take advantage of either the naïveté or financial plight of borrowers by developing local study/action groups (Presbyterian and ecumenical) with a focus on questionable lending practices.

5. Advocate for federal and state policies

a. that offer incentives to mainstream financial institutions to make their services available to the population typically underserved and forced into exorbitantly expensive alternative financial services; and

b. that regulate the consumer credit counseling industry.

6. Communicate this policy to others by

a. directing the Stated Clerk to publish this "A Reformed Understanding of Usury for the Twenty-First Century" in its entirety on the PC(USA) website, making available a copy for each presbytery, synod, and requesting session, and further notifying the church of its availability online;

b. directing the Stated Clerk to write to federal and state legislatures sharing the principles of this report; and

c. sharing this report with ecumenical partners and other faith groups.

RATIONALE

Introduction

This report and its recommendations are in response to the following referral: *2004 Referral: Item 10-09. On Preparing a Policy Statement on Usury in the United States—From the Presbytery of Utah* (*Minutes*, 2004, Part I, pp. 60, 798–99).

The 216th General Assembly (2004)'s referred Item 10-09, an overture from the Presbytery of Utah as amended (*Minutes*, 2004, Part I, pp. 60, 798–99), to the Advisory Committee on Social Witness Policy to investigate the question of usury in the United States and to prepare a resolution for the 217th General Assembly (2006) that would achieve the following:

> 1. More clearly define the sin of usury for the 21st century.
>
> 2. Suggest parameters (for example, a certain APR or a quadrupling of the amount of the original loan within a short period of time) beyond which Presbyterians could agree that the sin of usury was taking place.
>
> 3. Encourage Presbyterians to become aware of usury laws in their states and to advocate for stricter limits and enforcement when necessary to protect the poor.
>
> 4. Develop ethical criteria consistent with the Reformed Tradition for evaluating usury laws and other legislation to address various forms of lending such as payday loans, sub-prime loans, predatory lending, and cash-back tax preparation arrangements. (*Minutes*, 2004, Part I, p. 798)

A resolution group was formed from across the church representing the church in age, sex, race, and geography. It included persons with backgrounds in administration, banking, biblical studies, theology, ethics, business practices, education, and finance. The Reverend Dr. Cam Murchison served as consultant. It examined the understandings of usury in Scripture, in church history generally, and in *The Book of Confessions* particularly, as well as in the recent history of the United States. It also identified ethical criteria consistent with this Reformed tradition for assessing laws and practices in relation to usury.

A Reformed Understanding of Usury for the Twenty-First Century

At the beginning of the twenty-first century, some of the core principles the church has tried to uphold in relation to money lending are the victims of a perverse reversal of moral logic. In too many contemporary lending practices, not only are the poor charged interest (against the theological and ethical wisdom of the church), but they are also charged more interest than those who live in more favorable economic circumstances. The Reformed tradition yields three primary questions that should be asked in evaluating the "usury quotient" of lending practices and legislation:

1. Does a practice or a law promote financial relationships that take advantage of the financial distress of those economically disadvantaged?
2. Is a practice or a law structured in a manner that balances the economic benefit for both the lender and the borrower?
3. Does a practice or a law lead to the conduct of financial transactions in a fair and just manner, e.g. characterized by truthfulness; nondiscrimination to the borrower; full (and understandable) disclosure; and the absence of coercion?

All three criteria are summed up in the rule of charity, the love of God and neighbor, which the reformers and the confessions judged should govern the question of usury.

Biblical/Theological Background

Biblical Considerations

Several Old Testament texts and one New Testament text have furnished the biblical focus for the church's concern with usury. Exodus 22:25 is likely the earliest when it focuses the concern in reference to the poor.

> If you lend money to my people, to the poor among you, you shall not deal with them as a creditor; you shall not exact interest from them. (NRSV)

A similar concern with charging interest that focuses on the condition of the one needing the loan is found in Leviticus 25:35–36:

> If any of your kin fall into difficulty and become dependent on you, you shall support them; they shall live with you as though resident aliens. Do not take interest in advance or otherwise make a profit from them, but fear your God; let them live with you. (NRSV)

Both of these prohibitions against charging interest on loans have in view the distressed economic plight of the borrower, and both make the same judgment that God's demands of covenant community preclude the practice of charging interest.

Another passage in Deuteronomy 23:19–20 distinguishes between charging interest on loans to fellow Israelites and foreigners:

> You shall not charge interest on loans to another Israelite, interest on money, interest on provisions, interest on anything that is lent. On loans to a foreigner you may charge interest, but on loans to another Israelite you may not charge interest, so that the LORD your God may bless you in all your undertakings in the land that you are about to enter and possess. (NRSV)

Even though the prohibition against charging interest on loans was limited to fellow Israelites, a universalizing tendency in Christian theology eventually extended the protection against charging interest to all with whom one had financial dealings.[1] The New Testament provided an explicit warrant for such a broadening of the claim in Luke 6:35:

> But love your enemies, do good, and lend, expecting nothing in return. Your reward will be great, and you will be children of the Most High; for he is kind to the ungrateful and the wicked. (NRSV)

Articulated in the context of loving enemies, the widening of the scope of Deuteronomy's restriction on charging interest was virtually inevitable in Christian consideration of the matter.[2]

Gradually, however, the church had to wrestle with the changing view of what can be accomplished with money on loan and began to modify the strict prohibition against all interest. From the time of Aristotle, whose influence on Christian thinking was great in this area as well as in many others, money was regarded as sterile and unproductive, so that it seemed a perversion of the natural order of things to charge for its use. With the early developments of capitalist economies, money came to be seen as highly productive and thus the charging of interest seemed less out of accord with the nature of things.

Reformation Developments

Working in this changing economic context, John Calvin came to believe that usury (charging interest on loans) was acceptable among the rich, but was explicitly constrained when it came to burdening and oppressing debtors. "Hence it follows that usury is not now unlawful, except insofar as it contravenes equity and brotherly union."[3] Albert Hyma adds that for Calvin (and Luther as well), it was always prohibited to charge interest to a poor person, always enjoined by Christ to do unto others as one wanted done to oneself, and always urged that "the desire for personal gain must … remain subordinate to that Christian spirit of brotherly love which seeks to aid the poor and the outcasts, for they are to receive all the property and profit which exceed one's moderate needs."[4]

Thus there appear to have been two limits on usury that continued once the charging of interest had become acceptable. One limit had to do with appropriate ceilings on the amount of interest charged, likely in accordance with some version of the golden rule and the spirit of equity and solidarity. The other limit had to do with the continuation of the prohibition of charging interest to the poor. Those who experienced the greatest amount of economic distress were to be afforded the greatest amount of protection in economic transactions. Loans were becoming categorized in two ways, those that were a matter of economic necessity for the poor and financially stressed (for which charging interest was not appropriate) and those that were a matter of mutual economic opportunity by which transaction both the borrower and lender might improve their economic circumstances (for which charging reasonable rates of interest was appropriate).

The Book of Confessions

The authoritative expression of the Reformed tradition for the Presbyterian Church (U.S.A.) is found in *The Book of Confessions*. It manifests this development in the understanding of usury at two particular places where the eighth commandment ("Thou shall not steal") is discussed. The Heidelberg Catechism includes in its listing of what God forbids in this commandment "… all wicked tricks and schemes by which we seek to get for ourselves our neighbor's goods, whether by force or under the pretext of right, such as false weights and measures, deceptive advertising or merchandising, counterfeit money, exorbitant interest, and any other means forbidden by God. He also forbids all greed and misuse and waste of his gifts" (4.110).

Typical of Reformed dealing with the commandments, the Heidelberg Catechism goes on to summarize not only what God forbids but also what God requires in this commandment. "That I work for the good of my neighbor wherever I can and may, deal with him as I would have others deal with me, and do my work well so that I may be able to help the poor in their need" (4.111).

The transition from the prohibition of all interest to the prohibition of exorbitant interest had thus been made in the Reformed theological community by 1562 when the Heidelberg Catechism was completed.[5] Such "exorbitant interest" was considered an unfair scheme by which a lender tried to extract a neighbor's goods for another's own use. So stealing is at issue even when one operates under the "pretext of right," as when one takes advantage of civil law that allows for one to charge interest at an excessive rate.

The other mention of usury in *The Book of Confessions* occurs in the Westminster Larger Catechism. Adopted in 1647, this catechism opens its consideration of the eighth commandment by reversing Heidelberg's sequence and naming first the "duties required" by the admonition not to steal. These duties include: "faithfulness, and justice in contracts and commerce … giving and lending freely, according to our abilities, and the necessities of others; moderation of our judgments, wills, and affections, concerning worldly goods; … frugality; and an endeavor by all just and lawful means to procure, preserve, and further the wealth and outward estate of others, as well as our own" (7.251).

Having stated the positive duties involved, the catechism turns in its next question to the sins that are forbidden by the same commandment. In addition to the explicit citation of "usury," these include: "fraudulent dealing … injustice and unfaithfulness in contracts … inordinate prizing and affecting worldly goods; distrustful and distracting cares and studies in getting, keeping, and using them; envying at the prosperity of others …" (7.252). While the Larger Catechism does not itself define what it means by "usury," the English parliament passed an act in 1571 that outlawed loans earning more than 10 percent interest (while still frowning on all loans charging interest) and another law in 1624 that simultaneously lowered the interest rate to a range of 5 to 9 percent on various kinds of loans (while explicitly legitimating these legal interest charges).[6] It is reasonable to conclude that the framers of the Westminster standards were fully cognizant of these laws. For Westminster "usury" meant excessive interest and what was excessive had been quantified with relative clarity by legal statutes.

The umbrella of moral concerns under which this exorbitant interest is discussed in both catechisms further suggests that the ethical permission to charge interest does not mean that any charges whatever are acceptable. Both catechisms make explicit reference to concern for the economic well-being of others, and Heidelberg explicitly mentions obligations to the poor. All of this recapitulates Scripture's tendency to prohibit any interest on loans with reference to the plight of the poor. It also echoes Calvin's own insistence that "God has joined and united us together so that we might have a community, for men should not be separate. ... It is too great a cruelty on our part if we see a poor and afflicted man and do not try to help him but rather turn away from him."[7]

Whether charging interest was acceptable depended upon whether it harmed the borrower. In the case of the poor, it seemed obvious that interest on a loan took advantage of their economic distress and thus caused harm. In the case of the loans to provide capital for productive enterprises with promise of return to the borrower (as well as to the lender), no advantage was taken, and thus no harm was caused. Three overlapping distinctions came to be made in dialogue with the scriptural sources pertaining to usury: Gifts to those in need where even the money given was not expected in return; loans to those in economic distress where the money given was to be repaid but without interest; and loans to those undertaking business enterprises in pursuit of economic gain where appropriate levels of interest may justly be charged.

A Brief History of Small-Loan Lending in the United States

To understand the story of "usury" in the American context, it is important to be cognizant of a particular part of lending history in the United States.[8] It is the history of small-loan lending designed for various domestic financial emergencies as contrasted with large-loan lending designed for both agricultural and home mortgage purposes. In the latter part of the 19th century in the United States, these large loans had a settled place in the lending system, with typical interest limits in the range of 6 percent. However, because of a variety of factors—including Victorian ideas of proper money management—small-loans were often viewed as evidence of financial irresponsibility. Thus large loans were productive, but small ones were stigmatized as evidence that the loan seeker was a spendthrift.

The Development of Illegal Lending

Since no concession was brooked for legally extending the allowable interest for smaller loans, the economics of the matter made almost inevitable the development of an unofficial, illegal lending system. Two factors collided: the need for workers in the emerging industrial economy to seek small loans in periods of temporary lay-offs (or other emergencies of household finance); and the relatively higher cost of providing such small loans by lending entities that did not have access to cheap capital but had to bear higher risks of default and had higher administrative costs per loan. This forced the lending activity underground and resulted in the almost mythological image of the "loan shark."

Reform Efforts

During the early decades of the 20th century, various reform efforts were undertaken to seek to redress the injustices that inevitably flowed from such unregulated and illegal practices. By 1932 a Uniform Small Loan Law had been adopted by twenty-five states that differentiated between allowable interest rates for larger and smaller loans. The fact that regulation rested with the states was an important part of the picture, since states tended to be cautious about allowing interest rates to rise too dramatically, even for the smaller loans that were more costly to administer and service. However, a 1978 Supreme Court decision effectively removed control of interest rates from the states by allowing banks doing business in a state with a higher rate of interest to issue loans to residents of another state (that might have a much lower legal interest rate limit) and collect the higher rate.[9]

Legal and Regulatory Developments

Although banks had not been associated with small-loan lending for most of the 20th century, focusing instead on the traditional, longer term loans, partnerships between the small-loan lenders and banking institutions made the bank's exemption available to these lending entities as well. For example, even though a number of states have caps on fees that check cashers may charge, some check cashers formed partnerships with national banks that are permitted to set non-interest charges according to "sound banking judgment."[10] Because the Office of the Comptroller of the Currency (OCC) takes the point of view that any state laws prohibiting such charges are preempted by the authority of these banks to do business, these partnerships meant that check cashers were able to avoid the state caps on fees. As in the 1978 Supreme Court ruling, this arrangement makes a privilege granted to banks available to the providers of alternative financial services (AFS), the small-loan lenders of yesteryear.

The transference of exemption from interest rate limits from the banks to AFS entities is even more transparent in the case of payday lending. The provisions of the National Bank Act have made it possible for a payday lender to arrange a loan between a bank and a borrower with the applicable interest rate ceiling (if there is one) being that of the home state of the bank—not the ceiling of the state in which the payday lender and the borrower are located. Often, however, the entire loan is immediately purchased from the bank by the payday lender with most risk removed from the bank. "In effect, the lender has 'rented' the bank's name for purposes of making a legal loan."[11]

Since the turn of the 21st century these "exporting" practices have been constrained in some important ways. While banking regulators first undertook to provide guidance that explained the risks involved in payday lending, their increasing concern about these risks led the OCC, the Office of Thrift Supervision (OTC), and Federal Reserve Board to terminate these partnerships. However, these decisions were not based so much on a determination to protect consumers but upon a concern for safe and sound business practices. Moreover, FDIC regulated depositories still are free to engage in these partnerships, so the opportunity continues to exist for payday lenders to "rent" exemption from their state's usury laws.[12]

An Understanding of Usury for the 21st Century

The earlier discussion of the biblical and theological background has yielded two features of the church's wrestling with the topic of usury that clearly have continuing relevance. In the first place, even as the church came to terms with the appropriateness of interest charges on loans for commerce, it continued to argue against charging interest to the poor. In the second place, where it did judge that interest on loans was justifiable, it still applied the principles of fairness and justice to the transactions with the result that maximum rates of interest were delineated and the character of the relationship between borrower and lender was defined. As we reconstitute an understanding of usury for the 21st century, we need to keep both things in view.

Questionable Lending Practices

Ironically, as shown by both the brief history of small-loan lending summarized above and the lending practices that have given rise to the General Assembly's call for this resolution, the picture we confront in the U.S. economy at the beginning of the 21st century should give us pause. The picture includes the following:[13]

- Payday lending that easily entraps people into continuing loans that are very difficult to retire. In some states these lenders have avoided limits imposed by standard usury laws by charging "fees" that are technically distinguished from "interest." In some states the communities surrounding military bases are the special target of these lenders. However, even on very small sums of money, say $300 carried for a full year, the fees can amount to $1,365 with the loan balance of $300 still unpaid at year's end. This is equivalent to an annual rate of 456 percent. Typically the loans are for a period extending to the next paycheck, two to four weeks. But frequently the borrower can only pay off the loan on payday by taking yet another loan until the next payday. The potential for an endless cycle is self-evident. By contrast, the same amount of money borrowed on a 15.5 percent credit card rate for the same period of time would cost a borrower something closer to $56.

- Check cashing. For many years, check cashers have been used by low-income individuals without bank accounts seeking to conduct basic financial transactions such as cashing checks, paying bills, and wiring funds. While check cashers offer essential services, the fees involved in converting paper checks into cash are high relative to an alternative world in which low-income households would be able to rely more on direct deposit into bank accounts. The industry reports that it processes 180 million checks totaling $55 billion annually, generating $1.5 billion in fees. Most of these checks are low-risk payroll or government benefit checks: 80 percent of checks cashed at surveyed check cashers in the 2000 Treasury study were payroll checks, while 16 percent were government benefit checks.

- Predatory mortgage lending typically takes place in the subprime market, targeting people with weak or blemished credit records. A typical predatory mortgage is a refinance of an existing loan with the difference that the new loan is packed with excessive or unnecessary fees and provides no tangible benefit to the borrower. A related problem is the inappropriate utilization of interest only or negative amortization loans. Unfortunately, many of these loans are perfectly legal, and too often they are targeted at the most vulnerable citizens. Often elderly homeowners have been enticed into sub-prime mortgages as a way of dealing with other financial needs, only to end by losing a home that they had owned for years. Predatory mortgage lending drains wealth from families, destroys the benefits of homeownership, and often leads to foreclosure. The Center for Responsible Lending estimates that predatory mortgage lending costs Americans more than $9.1 billion each year.

- Rent to Own enterprises may sell a $325 bed for $1,740 on an installment plan. Such businesses operate by blurring the lines between leasing a bed and buying one on credit, thus avoiding usury laws that cap interest rates and require businesses to disclose what they're charging. The store does not have to report how much it is charging in interest. If a borrower is late with a payment, there is no legal limit to how much interest the store can charge in finance charges, although the company usually repossesses the rental property. Under a typical rent-to-own contract, a consumer may pay as much as $2,200 over two years to purchase a $500 TV.

- Refund Anticipation Loans, (RALs) are short-term loans secured by taxpayers' expected tax refunds. Instead of waiting to receive tax refunds, RAL customers borrow against part or all of their expected tax refunds. Consumers pay three fees to get a RAL: a fee for commercial tax preparation, typically $120; a fee to the commercial preparer to process the RAL, sometimes called a "system administration," "application," or "document preparation" fee, with the average fee being about $30; and a loan fee to the lender, ranging from approximately $30 to more than $100 in 2004. The total amount of these fees can range from $180 to more than $250, and eat away at about 10 percent of the consumer's refund. The effective interest rate for RALs ranges from about 70 percent to more than 700 percent, or 94 percent to 1,837 percent if administrative fees are included. Commercial preparer and RAL lenders have been reporting lower annual percentage rates (APRs) by "unbundling" charges from the loan fees.

- Car Title Loans A typical car title loan has a triple-digit annual interest rate, requires repayment within one month, and is made for much less than the value of the car. Title loans are typically made without regard to borrowers' ability to repay. Because the loans are structured to be repaid as a single balloon payment after a very short term, borrowers frequently cannot pay the full amount due on the maturity date and instead find themselves extending or "rolling over" the loan repeatedly. In this way, many borrowers pay fees well in excess of the amount they originally borrowed. If the borrower fails to keep up with these recurring payments, the lender may summarily repossess the car, often stripping borrowers of their most valuable possession and only means of transportation.

- Credit Card Abuses are evident in an economy where credit cards have become a common form of currency for millions of Americans. It has been estimated that between 1989 and 2001 credit card debt in the U.S. almost tripled from $238 billion to $692 billion. While some cardholders use their credit for occasional purchases, working families of limited means have come to rely on "plastic" to weather economic downturns or to simply make ends meet. College students and other minors have also become attractive targets for the marketing of cards that contain hidden transfer charges, exorbitant late fees and exploding interest rates. In effect, the credit card industry has identified its ideal customers as those who no longer pay off their balances, but instead grow increasingly indebted to their creditors by making minimum monthly payments that are inadequate to reduce the credit balance. This has become a particular threat to middle class persons as well.

- Overdraft Loans (also called "bounce protection" plans) are offered by banks to low-income consumers. In exchange for covering account overdrafts up to a set dollar limit, banks charge bounced check fees, ranging from about $20 to $35 for each transaction. Some banks also charge a per day fee of $2 to $5 until the consumer's account has a positive balance. In addition to writing checks, customers can borrow against their bounce protection limit using their debit cards and by making ATM withdrawals. Through a loophole in Federal Reserve rules, institutions do not have to call these bounced check programs extensions of credit, and therefore don't disclose that they are charging people 1,000 percent interest on the loans.

Indeed, practices like these should cause us to wonder if the principles the church has tried to uphold are in danger. In a perverse reversal of moral logic, it appears that not only are the poor charged interest (against the earlier theological and ethical wisdom of the church), but they are also charged more interest that those who live in more favorable economic circumstances. Moreover, the people who experience the sharp edge of this reversal are disproportionately members of nondominant racial ethnic groups as well as of relatively less powerful social classes. The concerns usury raises in the twenty-first century cannot be separated from race and class.

Social Policy of the Presbyterian Church

There can be little doubt that concern with "usury" belongs squarely in the larger framework of the social policy of the Presbyterian Church (U.S.A.) as it has expressed concern for the poor. The principal small-loans that have focused concern on usury transpire in the domain of alternative financial services, services that by definition have been developed for those who do not participate in the financial mainstream. Whether all the participants in this system technically qualify as "poor," they do live closer to the margin of financial survival than most in the U.S. economy. *Hope for a Global Future: Toward Just and Sustainable Human Development*, approved by the 208th General Assembly (1996), and *Building Community Among Strangers*, approved by the 211th General Assembly (1999), provide an ample policy base for taking up the concern with usury, inasmuch as they both direct the attention of the church to the way in which debt affects the poor.

With respect to predatory lending, this policy concern has been pursued through the Mission Responsibility Through Investment Committee (MRTI) of the Presbyterian Church (U.S.A.), along with other faith-based investors at the Interfaith Center on Corporate Responsibility (ICCR) and Corporate Analytics. These agencies have sought dialogue with financial institutions on issues sub-prime loans, predatory lending practices, and other business practices that may be discriminatory such as pay day lending, cash advances, and pawn shop lending. Voluntary changes and/or stronger internal policies are sought. If unsuccessful, shareholder resolutions may be filed seeking the support of other investors. The MRTI also monitors regulations and legislation on usury and discriminatory financial practices.

Whether we look at Scripture and its understanding in the Reformed tradition, or at recent Presbyterian Church (U.S.A.) social policy and practice, we find the same consistent ethical appeal: that the economy ought not to be structured in a way that gives all the advantage to those already well situated financially. An adequate understanding of usury for the 21st century will not only focus narrowly on interest rates, but will also look broadly at the integrity of business practices surrounding lending. Both the Heidelberg Catechism and the Westminster Larger Catechism situated the topic of usury in what we would today call business practices. Speaking negatively of "wicked tricks and schemes" and positively of "justice in contracts and commerce" they suggest that a proper understanding of usury for this (or any other century) will attend to the business practices surrounding lending.

Ethical Criteria from the Reformed Tradition

Three interrelated criteria for evaluating the "usury quotient" of lending practices and legislation emerge in the form of questions that should be asked:

1. Does a practice or a law promote financial relationships that take advantage of the financial distress of those economically disadvantaged?

2. Is a practice or a law structured in a manner that balances the economic benefit of both the lender and the borrower?

3. Does a practice or a law lead to the conduct of financial transactions in a fair and just manner, e.g.. characterized by truthfulness; nondiscrimination to the borrower; full (and understandable) disclosure; noncoerciveness?

All three criteria are summed up in the rule of charity, the love of God and neighbor, which the reformers and the confessions judged should govern the question of usury.

Protection

The first criterion of protecting the poor obviously runs headlong into the fact that poorer people inevitably participate in the more expensive interest rate structure of the alternative financial services industry. The lessons of lending history amply show that attempts to limit the interest rate structure solely by legislation drive the practice underground but do not effectively constrain it. While there clearly need to be legal limits, it is unlikely that such limits will ever be low enough to satisfy this criterion that aims to protect the financially distressed. A more promising way to implement this ethical criterion is not to concentrate solely on legislating interest rates for the alternative financial services industry, but to develop and support efforts that enable the poor to participate in mainstream banking services.

For example, the variety of options that electronic technology may provide for enabling banking opportunities for the "unbanked" are discussed by Michael S. Barr in "Banking the Poor" in *Yale Journal on Regulation*, (Vol. 21:121, 2004).[14] Among the options are avoidance of check cashing costs by providing incentives for banks and businesses to use debit cards coupled with direct deposit. In addition, the possibilities for mainstream banking alternatives to payday loans, e.g. overdraft protection that is not predatory are detailed in Sheila Bair, "Low-Cost Payday Loan: Opportunities and Obstacles" in a report for the Annie E. Casey Foundation.[15] That same foundation also recounts the partnership between Northside Community Federal Credit Union and Northern Trust Bank in Chicago in providing a lower-cost payday alternative loan (PAL) to low-income borrowers that includes incentives to participate in financial literacy classes. The program is much friendlier financially to the borrowers with a loan ceiling of $500, a $10 application fee, and an APR of 16.5 percent, resulting in interest payments of about $25 over six months.[16]

Balance

The second criterion of balanced attention to the opportunities of borrowers and lenders focuses attention on transactions that are transparent about who is getting what from the lending arrangement. The goal is for the borrower to be as clear as the lender about the financial benefit received from the transaction. Here the focus is not simply on the poor, but upon all who participate in the lending arrangement, including the middle class. Obviously many forms of disclosure seek to implement this criterion. Still, there are ample illustrations of lenders finding ways to conceal information relevant to the borrower's interest. Many subprime loans fail to provide borrowers with full information in a way that can be understood. Because consumers may not be aware of all options available to them, even middle class borrowers sometimes end up with subprime loans though qualified for better ones. "Several researchers have shown that minority families are far more likely than white families to get stuck with subprime mortgages, even when the data are controlled for income and credit rating."[17]

The abuses associated with credit cards also bear scrutiny in light of this criterion. The fact that college students and other minors have also become attractive targets for the marketing of cards that contain hidden transfer charges, exorbitant late fees, and exploding interest rates raises questions about how balanced these transactions are with reference to the interests of the borrower as well as the lender. In effect, the credit card industry has identified its ideal customers as those who no longer pay off their balances, but instead grow increasingly indebted to their creditors by making inadequate minimum monthly payments, scarcely a lending practice that is balanced in its attention to the economic interests of the borrower.

Justice and Fairness

Finally, the "fair and just" criterion focuses on truthfulness, nondiscrimination, full (and understandable) disclosure, and noncoerciveness. An example of a practice that deserves special examination in the light of this criterion is binding mandatory arbitration (BMA). The BMA is a provision frequently inserted in subprime loans that requires a borrower to waive the right to the legal system to resolve any dispute with the lender that may arise after the loan is closed. The terms of the loan thus require the borrower to agree to an arbitration procedure that lacks the public scrutiny and procedural safeguards that the legal system is designed to guarantee. Such requirements may easily fail the tests of full disclosure and noncoerciveness. Borrowers naturally focus on the interest rates involved and are likely not to be made aware of a BMA provision until the loan is virtually closed. At that point in the process a vulnerable subprime borrower may assume she has no recourse but to hope for the best. Yet she may have been the coerced victim of nondisclosure. Fortunately government chartered investors have now acknowledged the coercion involved. Freddie Mac officially stopped purchasing loans that included mandatory arbitration provisions in August 2004, and Fannie Mae followed with a similar ban effective October 31, 2004.[18]

A particularly egregious example of a practice that hides fees is found in the case of overdraft protection programs. The predatory form of the practice is described by the Center for Responsible Lending:

> Institutions that operate fee-based overdraft loan programs extend credit by paying customers' checks, debit card transactions, or ATM withdrawals when customers have insufficient funds in their accounts. The institution pays the amount of the overdraft, often without the consent of the customer, and charges the customer a fee that ranges from $20 to $35. When the customer is overdrawing her account through an ATM withdrawal or debit purchase, generally the institution will neither notify the customer of this fact nor give her the option to cancel the transaction. When the customer's next deposit is made to her account, the institution debits the amount of the overdraft, plus the fee. As a result of the high fees and short repayment time, borrowers pay triple- and even quadruple-digit interest rates. For example, if the overdraft loan fee was calculated as an APR, a $22.50 fee for an $80 overdraft loan translates into a 1,467% APR for a loan paid back in a week and a 733% APR if the loan is repaid in two weeks.[19]

The third criterion with its tests of truthfulness, full disclosure, and noncoercion obliges heirs of the Reformed tradition to raise questions about such practices and to support legislation that will remedy them.

Economic Habits of Borrowers

There is one more way in which the understanding of "usury" needs to be re-engaged for the 21st century. *The Book of Confessions* not only links usury to the business practices of the lender but also to the economic habits of the borrower, indeed of the whole society of which the borrower is a part. Thus the Westminster Larger Catechism not only states the positive duty for "faithfulness and justice in contracts," but also the positive duty for "moderation of our judgments, wills, and affections, concerning worldly goods" and for "frugality" (7.251). Stating this latter concern in terms of what is forbidden by the eighth commandment, the catechism specifies "inordinate prizing and affecting worldly goods; distrustful and distracting cares and studies in getting, keeping, and using them; envying at the prosperity of others" (7.252). A proper concern with usury in the 21st century cannot rest content with the practices of lenders, but as in the 16th and 17th centuries, must reckon with the habits and behaviors of borrowers.

Throughout the history of reforming the small-loan industry in the U.S. recounted earlier, various efforts were made to provide not only relief from excessive interest but also to provide financial counseling that would make the resort to small loans for financial emergencies less frequent. Although such approaches may have been characterized as having "equal measures of sympathy and paternalism,"[20] the fact was that borrower behavior was also considered. Although a borrower's financial habits are decisively limited by the macroeconomic conditions in which they are exercised, they are not irrelevant to the borrower's financial well-being. Indeed, it might be that the emphasis that the personal finance industry developed in the first half of the 20th century on personal financial planning,[21] was a proper effort by lenders to take into account "procuring and preserving the outward estate" of the borrower.

In any event, some of those who have wrestled more recently with the dilemmas of the relatively poor who are forced to avail themselves of alternative financial services, have continued to see a role at least for encouraging savings that might obviate the need for recourse to payday lenders when financial emergencies arise. In addition to the incentives for financial literacy classes cited in the case of the Northside Community Federal Credit Union's PAL program, Michael S. Barr also argues that strategies to bring low-income persons into the financial services mainstream need to include initiatives designed to increase savings for short-term financial stability and to improve access to less expensive forms of credit where appropriate—"for example, with overdraft protection, account-secured loans, credit cards or loans with automatic withdrawals from pay directly deposited into accounts, but with significantly longer terms than payday loans."[22] He also describes America Saves, a program sponsored by the Consumer Federation of America, which combines financial education with low-income savings plans building on self-identified savings goals that could serve as a model for increasing savings among low- to moderate-income families. Barr also believes that nonprofit and faith-based organizations can play important roles in partnering with financial institutions to expand financial education to low-income households.[23]

As the church addresses this dimension of the usury question, it may have special theological and spiritual gifts to offer on this side of the equation. The very definition of what constitutes lives of true abundance is the native tongue of the church. To the extent that inordinate appetites contribute to some of the financial dilemmas people experience, there may be a special contribution for the church to make to defining (and resisting) usury in the 21st century.

Endnotes

1. Benjamin N. Nelson, *The idea of usury: from tribal brotherhood to universal otherhood* (Princeton: Princeton University Press, 1949)

2. Other texts that have figured in Christian discussions of the topic include Ezekiel 18:7–13 and Psalms 15:5.

3. Quoted in William J. Bouwsma, *John Calvin: A Sixteenth-Century Portrait* (New York: Oxford University Press, 1988), p. 198.

4. Albert Hyma, "The Economic Views of the Protestant Reformers," in *Protestantism and Capitalism*, ed. Green, p. 96.

5. This surmise is further supported by the presence of the reformer, Martin Bucer, in debates on usury at Cambridge in 1550. Bucer stressed that the biblical emphasis was on "biting" or iniquitous usury but distinguished between loans at interest of this sort and others that were not objectionable. Cf. Norman Jones, *God and the Moneylenders: Usury and Law in Early Modern England* (Oxford:Basil Blackwell, 1989) pp. 20–23.

6. Cf. Ibid. pp. 175 ff.

7. Quote in Bousma, Ibid., p. 201.

8. For a detailed treatment of this history, see Lendol Calder, *Financing the American Dream: A Cultural History of Consumer Credit*, (Princeton: Princeton University Press, 1999).

9. Elizabeth Warren and Amelia Warren Tyagi, *The Two-Income Trap: Why Middle-Class Parents Are Going Broke* (New York: Basic Books, 2003), pp. 128–29.

10. Michael S. Barr, "Banking the Poor" in *Yale Journal on Regulation*, (Vol. 21:121, 2004), p. 148

11. Ibid., p. 151.

12. Ibid., p. 161.

13. Information presented here is largely drawn from summary statements and articles available on the website of the Center for Responsible Lending, www.responsiblelending.org.

14. http://www.assetbuilding.org/AssetBuilding/Download_Docs/Doc_File_698_1.pdf.

15. http://www.aecf.org/publications/data/payday_loans.pdf.

16. http://www.aecf.org/publications/advocasey/winter2005/paycheck/paycheck3.htm.

17. Elizabeth Warren, *The Two Income Trap*, pp.135–36.

18. http://www.responsiblelending.org/pdfs/ip008-Case_Against_Arbitration-0205.pdf, p. 2.

19. http://www.responsiblelending.org/pdfs/ip009-High_Cost_Overdraft-0505.pdf

20. Lendol Calder, *Financing the American Dream*, p. 129.

21. Ibid., p. 153: “Through brochures, movies, exhibits, and one-to-one personal advice, licensed lenders now gave instruction in budgeting, investing, and debt-load management.”

22. http://www.assetbuilding.org/AssetBuilding/Download_Docs/Doc_File_698_1.pdf. p. 140.

23. Ibid., pp. 236–237. But for some cautions about the limits of such educational programs, see also this account of why financial literacy will not eliminate predatory lending: http://www.responsiblelending.org/pdfs/pb008-Financial_Literacy-0704.pdf.


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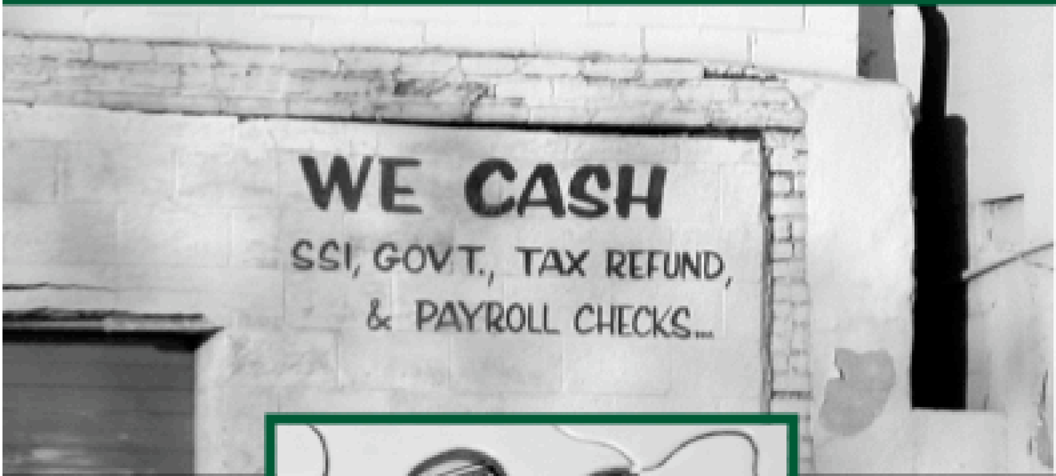

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