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## Is Greed Good? A Catholic Perspective on Modern Usury

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# Is Greed Good? A Catholic Perspective on Modern Usury

*William M. Woodyard\** & *Chad G. Marzen\*\**

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*“For whoever wishes to save his life will lose it, but whoever loses his life for my sake will find it. What profit would there be for one to gain the whole world and forfeit his life?”*<sup>1</sup>

## I. INTRODUCTION

Charles Dickens’s *A Christmas Carol* stands through time as one of the classic stories of the Christmas season. As the story begins, Ebenezer Scrooge encounters the ghost of his deceased partner, Jacob Marley, whose body was draped with the chain of “cash-boxes, keys, padlocks, ledgers, deeds, and heavy purses wrought in steel.”<sup>2</sup> As his ghostly encounter with Marley came to a close, Ebenezer Scrooge approached the window of his bedroom where he encountered the ghosts of usurers, the ghosts “moaning as they went” and all wearing chains such as the ghost of Jacob Marley wore.<sup>3</sup> After his encounters with Jacob Marley, the ghosts of usurers, and the ghosts of Christmas past, present, and future, Ebenezer Scrooge resolved to disavow his prior life of monetary consumption without compassion or justice as well as his usurious ways.<sup>4</sup> The Christmas spirit transformed him.

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1. *Matthew* 16:25–26 (New American).

2. CHARLES DICKENS, *A CHRISTMAS CAROL* 30 (Margaret K. McElderry 1995) (1843).

3. *Id.* at 39. Dickens describes the scene with the “ghosts of usurers” as follows:

The air was filled with phantoms, wandering hither and thither in restless haste, and moaning as they went. Every one of them wore chains like Marley’s Ghost; some few (they might be guilty governments) were linked together; none were free. Many had been personally known to Scrooge in their lives. He had been quite familiar with one old ghost, in a white waistcoat, with a monstrous iron safe attached to its ankle, who cried piteously at being unable to assist a wretched woman with an infant, whom it saw below upon a doorstep. The misery with them all was, clearly, that they sought to interfere, for good, in human matters, and had lost the power forever.

*Id.* at 39–40.

4. *Id.* at 88. Dickens described Ebenezer Scrooge’s transformation as follows:

Scrooge was better than his word. He did it all, and infinitely more; and to Tiny Tim, who did not die, he was a second father. He became as good a friend, as good a master, and as good a man, as the good old city knew, or another other good old city, town, or borough, in the good old world. Some people laughed to see the alteration in him, but he let them laugh, and little heeded them. For he was wise enough to know that nothing ever happened on this globe, for good, at which some people did not have their fill of laughter in the outset; and knowing that such as these would be blind anyway, he thought it quite as well that they should wrinkle up their eyes in grins as have the malady in less attractive forms. His own heart laughed, and that was quite enough for him.

*Id.* at 143–44.

Decades later, Gordon Gekko rose to prominence in the movie *Wall Street* as a corporate raider and insider trader.<sup>5</sup> In his infamous speech before the stockholders of Teldar Paper, Gekko stated, “Greed, for lack of a better word, is good. Greed is right.”<sup>6</sup> But is greed truly good?

The issue of greed and avarice in society is certainly not unique to the realm of literature and film; it is an all too significant issue in today’s complex world. Some financial products and financial schemes, like the Ponzi scheme,<sup>7</sup> have been present since the time of Charles Dickens but are all too familiar in contemporary news stories. Bernard Madoff, a former chairman of the NASDAQ stock market, pled guilty in 2009 of defrauding investors of approximately \$64.8 billion in a Ponzi scheme of epic proportions.<sup>8</sup> The “real-estate bubble” and fraud in the real estate market in the early 2000s, with subprime loans being bundled into AAA-rated securities, threatened the structure of the entire American economy.<sup>9</sup> In insurance, the life-

5. *WALL STREET* (20th Century Fox 1987).

6. *Id.*

7. Thomas R. Cox, Robert J. Morad & Clarence L. Pozza, Jr., *A Review of Recent Investor Issues in the Madoff, Stanford and Forte Ponzi Scheme Cases*, 10 J. Bus. & Sec. L. 113, 116 (2010) (“A Ponzi scheme is a deception in which a person or entity (‘Ponzi schemer’) solicits and receives money (or its equivalent) from certain investors which the Ponzi schemer pays out to other investors in order to create a misperception of returns on the investment and/or return of the principal invested.”).

8. Felicia Smith, *Madoff Ponzi Scheme Exposes “The Myth of the Sophisticated Investor,”* 40 U. BALT. L. REV. 215, 218–19 (2010) (“In 2009, Bernard L. Madoff (Madoff), a former Chairman of the NASDAQ Stock Market and principal of Bernard L. Madoff Investment Securities, LLC, pled guilty to defrauding investors of an estimated \$64.8 billion (an estimate that included gains from apparently bogus ‘investment returns’). Among Madoff’s investors were hedge fund managers, charities, pension funds, retirees, celebrities, and self-described ‘average Americans.’ Those with the greatest exposure to Madoff had invested amounts ranging from millions to billions of dollars.”).

9. See John E. Campbell & Oliver Beatty, *Huch v. Charter Communications, Inc.: Consumer Prey, Corporate Predators, and a Call for the Death of the Voluntary Payment Doctrine Defense*, 46 VAL. U. L. REV. 501, 524 (2012). Campbell and Beatty describe the fraud in the real-estate market and securitization of subprime loans as follows:

The fraud in the subprime market was almost too pervasive to recount. While Wall Street companies invented derivatives and figured out ways to turn bundles of subprime loans into AAA rated securities, consumers were in the cross-hairs at the ground level. Perpetrators committed an almost endless string of frauds to fuel Wall Street’s need for more subprime paper. Appraisers over-appraised homes; talking heads promised a housing market that would never decline; “liars loans” in which no documents are required to get a loan became the norm; pre-payment penalties were imbedded in almost every loan; adjustable rates that could only go up (exploding ARMS) were buried in fine print, and companies like Countrywide and Ameriquest

settlement industry has helped fuel the rise of stranger-originated life insurance, in which life insurance is not purchased as an estate-planning tool but rather as a financial benefit.<sup>10</sup> And the practice of payday lending, in which a consumer may be potentially exposed to unsecured loans with APRs of 300% to 1000%,<sup>11</sup> although regulated, still exists in many states.<sup>12</sup>

One financial practice still exists today that occurred in biblical times—the practice of usury. Historically, usury was referred to as the lending of money with any interest.<sup>13</sup> In the contemporary legal environment, usury laws are laws that establish a maximum rate of lawful interest for which a lender and borrower of money may contract.<sup>14</sup> At the time of the founding of the United States, each of the original thirteen colonies had laws in effect that capped the simple nominal annual interest rate at no more than 8%.<sup>15</sup> Today, however, state usury laws have been curtailed,<sup>16</sup> and the principle of *lex specialis derogat legi generali*<sup>17</sup> applies toward commercial transactions such as

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sponsored Super Bowls and other events while building a true house of cards grounded upon subprime loans.

*Id.* (footnotes omitted).

10. Susan Lorde Martin, *Betting on the Lives of Strangers: Life Settlements, STOLI and Securitization*, 13 U. PA. J. BUS. L. 173, 187 (2010) (“The business of life settlements has evolved from having investors purchase existing life insurance policies from insureds who no longer need the insurance to protect their families in the event of their deaths, to an arrangement in which a life insurance agent or a life settlement broker persuades a senior citizen (preferably one with a net worth of at least \$5 million) to take out a life insurance policy, not for the purpose of protecting his or her family, but for a current financial benefit.” (footnotes omitted)).

11. Michelle Hodson et al., *An Update on Emerging Issues in Banking: Payday Lending*, FDIC.GOV (Jan. 29, 2003), <http://www.fdic.gov/bank/analytical/fyi/2003/012903fyi.html>.

12. Blake T. Williams, *The Dimensions of the Shark Tank: The Appropriate Regulation of Payday Lending in South Carolina*, 62 S.C. L. REV. 623, 629 (2011).

13. BLACK’S LAW DICTIONARY 1685 (9th ed. 2009).

14. RICHARD A. MANN & BARRY S. ROBERTS, SMITH & ROBERSON’S BUSINESS LAW 234 (15th ed. 2012).

15. Christopher L. Peterson, *Usury Law, Payday Loans, and Statutory Sleight of Hand: Salience Distortion in American Credit Pricing Limits*, 92 MINN. L. REV. 1110, 1117 (2008) (“While the thirteen original American states were divided on many legal issues . . . they unanimously adopted usury laws capping interest rates. Early American usury laws were all written in clear terms, specifying a maximum simple nominal annual interest rate.”).

16. MANN & ROBERTS, *supra* note 14, at 234 (“Though, historically, every State had a usury law, a recent trend has been to limit or relax usury statutes.”).

17. Laura M. Olson, *Practical Challenges of Implementing the Complementarity Between International Humanitarian and Human Rights Law—Demonstrated by the Procedural Regulation of Internment in Non-International Armed Conflict*, 40 CASE W. RES. J. INT’L L. 437, 446 (2009) (“Lex specialis derogat legi generali is a tool of interpretation and conflict resolution. When

payday loans and title loans since specific state statutes regulating these transactions prevail in conflicts of interpretation over a statute of general applicability, such as a state usury law.

In the wake of the decline of state usury laws, consumers today may face annual credit card interest rates of 20% to 30%, or perhaps even more.<sup>18</sup> Payday loan consumers may face annual rates of 300% to 1000%.<sup>19</sup> Certainly, the “Founding Fathers” of the United States would cringe at the modern thought of annual interest rates on any type of loan being 1000% or more.

Could any interest rate that high ever be considered *just*? There are many perspectives in the debate over usury laws from those in the financial industry, consumer advocates, and of course, political leaders. In an influential article in the May 2004 issue of *First Things*, the noted Catholic writer George Weigel strongly argued for the relevance of Catholic international-relations theory in the realm of contemporary foreign affairs, and suggested that the Catholic tradition offers three key insights on moral responsibility—an understanding of power, the universal common good, and peace.<sup>20</sup> The Catholic legal tradition offers significant contributions in other areas as well, including commercial law.

As in to the realm of foreign affairs, the Catholic legal tradition offers key insights into the realm of justice, usury, and contract.<sup>21</sup> A

applied narrowly, it is employed only ‘to resolve a genuine conflict between two norms,’ thus, ‘in the event of conflict, the more special norm prevails over the more general norm.’” (citations omitted)).

18. Kathy Chu & Byron Acohido, *Why Banks Are Boosting Credit Card Interest Rates and Fees*, USA TODAY (Nov. 14, 2008, 3:00 PM), [http://www.usatoday.com/money/industries/banking/2008-11-09-bank-credit-card-interest-rates\\_N.htm](http://www.usatoday.com/money/industries/banking/2008-11-09-bank-credit-card-interest-rates_N.htm).

19. Hodson et al., *supra* note 11.

20. George Weigel, *World Order: What Catholics Forgot*, FIRST THINGS, May 2004, at 31, 31–32.

21. See Daniel K. Finn, *The Unjust Contract: A Moral Evaluation*, in THE TRUE WEALTH OF NATIONS: CATHOLIC SOCIAL THOUGHT AND ECONOMIC LIFE 143, 147 (Daniel K. Finn ed., 2010). Finn notes that there are three separate types of justice in the classic Catholic view: commutative, distributive, and general. He explains each as follows:

Commutative justice orders the relation of individuals to one another as individuals, and in this sense it is the most intuitively obvious form of justice for most people today. If I borrow something from you, I have an obligation to return it; if you enter into a contract to do something for me, you have an obligation to do it. Distributive justice relates to the proper order between the community and its individual members. In distributive justice the person or persons charged with responsibility for the community must render to each citizen that which is due. General or legal justice concerns the relation of the individual member to the social whole. This

Catholic view of justice requires that parties to a contract are not merely negotiating to obtain the most advantageous terms, but are parties situated in a larger community who have responsibilities to work toward the universal common good.<sup>22</sup> Pope Benedict XVI's 2009 encyclical *Caritas in Veritate* reaffirms these obligations, but also strongly emphasizes the necessity and duty in today's economic world for all to safeguard the weaker, vulnerable parties in business and society.<sup>23</sup> The duty to safeguard the weak and vulnerable in society manifests itself prominently in Catholic social teaching and the preferential option for the poor.<sup>24</sup>

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dimension of justice identifies the obligation of each person to contribute to the community, often described as a contribution to the common good.

*Id.*

22. Vincent D. Rougeau, *Just Contracts and Catholic Social Teaching: A Perspective from Anglo-American Law*, in *THE TRUE WEALTH OF NATIONS*, *supra* note 21, at 117, 136.

23. Pope Benedict XVI, Encyclical Letter, *Caritas in Veritate*, at para. 65 (June 29, 2009) [hereinafter *Caritas in Veritate*], available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/encyclicals/documents/hf\\_ben-xvi\\_enc\\_20090629\\_caritas-in-veritate\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate_en.html).

For a comprehensive and detailed discussion of the role of *Caritas in Veritate* and modern economic and legal thought, see John M. Breen, *Love, Truth, and the Economy: A Reflection on Benedict XVI's Caritas in Veritate*, 33 *HARV. J.L. & PUB. POL'Y* 987 (2010).

24. Catholic social teaching and the "preferential option for the poor" are two key concepts in modern Catholic thought. Catholic social teaching is described by the United States Conference of Catholic Bishops in the following terms:

Catholic social teaching is a central and essential element of our faith. Its roots are in the Hebrew prophets who announced God's special love for the poor and called God's people to a covenant of love and justice. It is a teaching founded on the life and words of Jesus Christ, who came "to bring glad tidings to the poor . . . liberty to captives . . . recovery of sight to the blind," and who identified himself with "the least of these," the hungry and the stranger. Catholic social teaching is built on a commitment to the poor. This commitment arises from our experiences of Christ in the eucharist.

*Catholic Social Teaching*, U.S. CONF. CATH. BISHOPS, <http://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching> (last visited Jan. 19, 2013) (citations omitted).

The preferential "option for the poor" implies "the obligation to evaluate social and economic activity from the viewpoint of the poor and the powerless." This obligation arises from the radical command to love one's neighbor as one's self. The prime purpose of this special commitment to the poor is to enable them to become active participants in the life of society. It is to enable all persons to share in and contribute to the common good.

MARVIN L. KRIER MICH, *THE CHALLENGE AND SPIRITUALITY OF CATHOLIC SOCIAL TEACHING* 125 (2011). See generally Pope Benedict XVI, Encyclical Letter, *Deus Caritas Est* (Dec. 25, 2005) [hereinafter *Deus Caritas Est*], available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/encyclicals/documents/hf\\_ben-xvi\\_enc\\_20051225\\_deus-caritas-est\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20051225_deus-caritas-est_en.html).

In today's economic world, just as it has done in the past, the practice of usury often threatens the most weak and vulnerable in society. Unlike the past, in today's world commercial transactions have become global, complex, and sophisticated. *Caritas in Veritate* and the writings of Pope Benedict XVI address the contemporary role of the Catholic legal tradition in the modern economic world and call for capitalism, finance, and economics to lead not only to improved wealth creation, but also development of financial institutions where "the humanitarian dimension predominates" and usury is eliminated.<sup>25</sup>

In this Article, we contend that the Catholic legal tradition is relevant in the usury debate, just as it is in foreign affairs, as a universal ethical participant to the discussion concerning modern commercial transactions. The Catholic legal tradition is relevant as it presents a challenge to the "greed is good, greed is right" philosophy of the fictional Gordon Gekko.<sup>26</sup> While the Catholic legal tradition has historically disallowed usury, the parameters of what constitutes usury in Catholic thought have shifted from the biblical era to modernity. Sections II, III, and IV of this Article discuss this transformation and where usury stands in contemporary Catholic legal thought.

Sections V, VI, and VII of this Article discuss the status of usury laws today and how contemporary Catholic legal thought contributes to the debate over usury laws in modern commercial transactions in two distinct situations—payday lending and title-loan lending.

We contend that the purposes and intention of the Catholic legal tradition in the usury debate can be upheld by vigorous enforcement and adherence to the unconscionability doctrine of contract law.<sup>27</sup>

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As the years went by and the Church spread further afield, the exercise of charity became established as one of her essential activities, along with the administration of the sacraments and the proclamation of the word: love for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to her as the ministry of the sacraments and preaching of the Gospel.

*Id.* at para. 22.

25. *Caritas in Veritate*, *supra* note 23.

26. Flavia Krause-Jackson, *Vatican Slams 'Greed is Good' Wall Street Mantra (Update2)*, BLOOMBERG (Jul. 28, 2009, 9:57 AM), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aQl9pmfRaeAQ> (noting that Vatican Secretary of State Tarcisio Bertone stated that the "greed market has substituted free market" in a speech before Italian legislators).

27. Frank P. Darr, *Unconscionability and Price Fairness*, 30 Hous. L. Rev. 1819, 1820 (1994) ("Substantive unconscionability looks to the fairness of the term being challenged. Procedural unconscionability addresses the fairness of the contracting process. Generally, courts



The duty to safeguard the weak and vulnerable parties in business in today's economic environment, as expressed by the writings of Pope Benedict XVI, can be better upheld by careful application of the unconscionability doctrine in cases involving payday loans and title loans.

In addition, in the spirit of Pope Benedict XVI's encyclical *Cari-tas in Veritate*, we maintain that the essence of the Catholic legal tradition offers two strong economic alternatives to usury in today's economic environment—community credit unions and microcredit lending programs.

## II. BIBLICAL INJUNCTIONS AGAINST USURY

The Christian and Hebrew Bibles contain numerous prohibitions against usury. The Old Testament contains the following injunctions:

If you lend money to one of your poor neighbors among my people, you shall not act like an extortioner toward him by demanding interest from him;<sup>28</sup>

Do not exact interest from your countryman either in money or in kind, but out of fear of God let him live with you;<sup>29</sup>

You are to lend him neither money at interest nor food at a profit;<sup>30</sup>

You shall not demand interest from your countrymen on a loan of money or of food or of anything else on which interest is usually demanded;<sup>31</sup>

You may demand interest from a foreigner, but not from your countryman, so that the LORD, your God, may bless you in all your undertakings on the land you are to enter and occupy;<sup>32</sup>

After some deliberation, I called the nobles and magistrates to account, saying to them, "You are exacting interest from your own kinsmen!"<sup>33</sup>

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require the party asserting the unconscionability defense to show both substantive and procedural unconscionability.").

28. *Exodus* 22:24.

29. *Leviticus* 25:36.

30. *Id.* at 37.

31. *Deuteronomy* 23:20.

32. *Id.* at 21.

33. *Nehemiah* 5:7.

I myself, my kinsmen, and my attendants have lent the people money and grain without charge. Let us put an end to this usury! I ask that you return to them this very day their fields, their vineyards, their olive groves, and their houses, together with the interest on the money, the grain, the wine, and the oil you have lent them;<sup>34</sup>

Who keeps an oath despite the cost, lends no money at interest, accepts no bribe against the innocent. Whoever acts like this shall never be shaken;<sup>35</sup>

He who increases his wealth by interest and overcharge gathers it for him who is kind to the poor;<sup>36</sup>

Layman and priest alike, servant and master, The maid as her mistress, the buyer as the seller, The lender as the borrower, the creditor as the debtor;<sup>37</sup>

Woe to me, mother, that you gave me birth! A man of strife and contention to all the land! I neither borrow nor lend, yet all curse me;<sup>38</sup>

If he does not lend at interest nor exact usury; if he holds off from evildoing, judges fairly between a man and his opponent; if he lives by my statutes and is careful to observe my ordinances, that man is virtuous—he shall surely live, says the Lord GOD;<sup>39</sup>

But if he begets a son who is a thief, a murderer, or who does any of these things (though the father does none of them), a son who eats on the mountains, defiles the wife of his neighbor, oppresses the poor and needy, commits robbery, does not give back a pledge, raises his eyes to idols, does abominable things, lends at interest and exacts usury—this son certainly shall not live. Because he practiced all these abominations, he shall surely die; his death shall be his own fault;<sup>40</sup>

On the other hand, if a man begets a son who, seeing all the sins his father commits, yet fears and does not imitate him; a son who does not eat on the mountains, or raise his eyes to the idols of the house of Israel, or defile his neighbor's wife; who does not oppress any-

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34. *Id.* at 10–11.

35. *Psalms* 15:5.

36. *Proverbs* 28:8.

37. *Isaiah* 24:2.

38. *Jeremiah* 15:10.

39. *Ezekiel* 18:8–9.

40. *Id.* at 10–13.

one, or exact a pledge, or commit robbery; who gives his food to the hungry and clothes the naked; who holds off from evildoing, accepts no interest or usury, but keeps my ordinances and lives by my statutes—this one shall not die for the sins of his father, but shall surely live;<sup>41</sup> and,

There are those in you who take bribes to shed blood. You exact interest and usury; you despoil your neighbors violently; and me you have forgotten, says the Lord GOD.<sup>42</sup>

While the New Testament does not contain an absolute prohibition against usury, there is a reference to interest in the *Parable of the Talents*, also known as the *Parable of the Ten Gold Coins*.<sup>43</sup> The third servant publicly rebukes his Master upon his return as follows:

Then the other servant came and said, “Sir, here is your gold coin; I kept it stored away in a handkerchief, for I was afraid of you, because you are a demanding person; you take up what you did not lay down and you harvest what you did not plant.”<sup>44</sup>

The Master replied to the third servant:

With your own words I shall condemn you, you wicked servant. You knew I was a demanding person, taking up what I did not lay down and harvesting what I did not plant; why did you not put my money in a bank? Then on my return I would have collected it with interest.<sup>45</sup>

Noted theologian William R. Herzog II interprets the *Parable of the Talents* as the absentee landlord punishing the third servant for publicly criticizing his master as a demanding person—a person who takes up what he did not lay down and harvests what he did not plant.<sup>46</sup>

Clearly, the Old Testament prohibits the use of usury. Despite this clear prohibition, the definition of what particular financial practices constituted “usury” remained a matter of some debate among early Catholic theologians. Catholic doctrine concerning the charg-

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41. *Id.* at 18:14–17.

42. *Id.* at 22:12.

43. *Luke* 19:11–26.

44. *Id.* at 20–21.

45. *Id.* at 22–23.

46. WILLIAM R. HERZOG II, *PARABLES AS SUBVERSIVE SPEECH: JESUS AS PEDAGOGUE OF THE OPPRESSED* 154–55 (1994).

ing of interest on loans would evolve as the global economy was transformed with the rise of capitalism, commercial lending, and merchant banks.

### III. DEVELOPMENT OF CATHOLIC THOUGHT CONCERNING USURY

The early biblical injunctions against usury found expression in several of the foundational documents of the Church. The Council of Nicaea, the first ecumenical council of the Church, was held in AD 325<sup>47</sup> and promulgated the Nicene Creed to mainly counteract the heresy of Arianism.<sup>48</sup> While the Council was held primarily to address the Arianism controversy, the Council prohibited clergy from lending money *at any interest* in Canon 17.<sup>49</sup> While clergy were prohibited from lending any money with interest, it is important to note that the text of Canon 17 did not apply to the laity in general.<sup>50</sup>

An influential commentator on the history of usury, Judge John T. Noonan, Jr. observed that in the early Medieval period, from AD 750 to 1050, a general prohibition against usury began to take a firm hold in the law of the lands of the Holy Roman Empire.<sup>51</sup> Noonan also remarked that during this time, usury was referred to in church documents as a form of avarice or uncharitableness rather than as a sin against justice.<sup>52</sup> Two major church councils in the twelfth century also strongly condemned usury as a violation of both human and divine law, as well as a violation of justice. The Second Lateran Council in AD 1139 branded usurers as “infamous” and required that

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47. *The First Council of Nicaea*, NEW ADVENT, <http://www.newadvent.org/cathen/11044a.htm> (last visited Jan. 7, 2013).

48. *Arianism*, NEW ADVENT, <http://www.newadvent.org/cathen/01707c.htm> (last visited Jan. 7, 2013).

49. First Council of Nicaea, *Canon 17*, in 1 DECREE OF THE ECUMENICAL COUNCILS 14 (Norman P. Tanner, ed., 1990). The text of the canon states:

Since many enrolled [among the clergy] have been induced by greed and avarice to forget the sacred text, “who does not put out his money at interest,” and to charge one per cent [a month] on loans, this holy and great synod judges that if any are found after this decision to receive interest by contract or to transact the business in any other way or to charge [a flat rate of] fifty per cent or in general to devise any other contrivance for the sake of dishonourable gain, they shall be deposed from the clergy and their names struck from the roll.

*Id.* (alteration in original) (footnote omitted).

50. *Id.*

51. JOHN T. NOONAN, JR., *THE SCHOLASTIC ANALYSIS OF USURY* 16 (1957).

52. *Id.* at 17.

any infamous usurer be denied a Christian burial unless they repented.<sup>53</sup> Forty years later, in AD 1179, the Third Lateran Council reaffirmed medieval teaching on usury to date and even referred to the practice of usury as a “crime.”<sup>54</sup>

Several years later, during his papacy (AD 1185–1187), Pope Urban III cited the divine prohibition on usury<sup>55</sup> contained in Luke 6: 34–35.<sup>56</sup> Noonan contends that this development began a period of time where medieval Catholic thought prohibited the gain of *any interest* on a loan, where only gratuitous loans were permissible.<sup>57</sup>

Saint Thomas Aquinas, one of the greatest scholars of the Scholastic period,<sup>58</sup> considered usury as profit on a loan,<sup>59</sup> and the scho-

53. 1 DECREES OF THE ECUMENICAL COUNCILS, *supra* note 49, at 200. The text of Canon 13 states:

Furthermore, we condemn that practice accounted despicable and blameworthy by divine and human laws, denounced by Scripture in the old and new Testaments, namely, the ferocious greed of usurers; and we sever them from every comfort of the church, forbidding any archbishop or bishop, or an abbot of any order whatever or anyone in clerical orders, to dare to receive usurers, unless they do so with extreme caution; but let them be held infamous throughout their whole lives and, unless they repent, be deprived of a christian burial.

*Id.*

54. *Id.* at 223. The text of Canon 25 states:

Nearly everywhere the crime of usury has become so firmly rooted that many, omitting other business, practise usury as if it were permitted, and in no way observe how it is forbidden in both the Old and New Testament. We therefore declare that notorious usurers should not be admitted to communion of the altar or receive christian burial if they die in this sin. Whoever receives them or gives them christian burial should be compelled to give back what he has received, and let him remain suspended from the performance of his office until he has made satisfaction according to the judgment of his own bishop.

*Id.*

55. NOONAN, *supra* note 51, at 19–20 (“In a letter which becomes the decretal *Consuluit*, [Urban III] cites the words of Christ, ‘Lend freely, hoping nothing thereby’ The immense importance of this citation can hardly be exaggerated. Here, for the first time in the entire tradition, a specific command of Christ is authoritatively interpreted by a pope as prohibiting usury.” (citation omitted)).

56. Luke 6:34–35 (“If you lend money to those from whom you expect repayment, what credit [is] that to you? Even sinners lend to sinners, and get back the same amount. But rather, love your enemies and do good to them, and lend expecting nothing back; then your reward will be great and you will be children of the Most High, for he himself is kind to the ungrateful and the wicked.” (alteration in original)).

57. NOONAN, *supra* note 51, at 20.

58. See, e.g., New Advent, *Scholasticism*, in CATHOLIC ENCYCLOPEDIA (The Catholic Encyclopedia on CD-ROM, 2009), available at <http://www.newadvent.org/cathen/13548a.htm> (last visited Nov. 1, 2012).

lastic scholars affirmed the doctrine that a loan had to be made with the intention that no money beyond the sum loaned would be received in return.<sup>60</sup> Noonan remarks that until the sixteenth century, the medieval Church's position on usury was that the intention to gain a profit from lending was sinful.<sup>61</sup>

However, the rise of capitalism prior to and during the Renaissance period not only led to a rebirth in cultural antiquity, but also the birth of a new commercial era of increased economic growth and production of goods and services.<sup>62</sup> The term "commercial revolution" has been utilized by scholars<sup>63</sup> to describe the period from the tenth century through the Renaissance of increased agricultural productivity, emerging regional markets, and growth of industry.<sup>64</sup> This period also saw the emergence of Italian cities (such as Flor-

59. NOONAN, *supra* note 51, at 53. Thomas Aquinas writes:

In those things whose use is their consumption, the use is not other than the thing itself; whence to whomever is conceded the use of such things, is conceded the ownership of those things, and conversely. When therefore, someone lends money under this agreement that the money be integrally restored to him, and further for the use of the money wishes to have a definite price, it is manifest that he sells separately the use of the money and the very substance of money. The use of money, however, as it is said, is not other than its substance: whence either he sells that which is not, or he sells the same thing twice, to wit, the money itself, whose use is its consumption; and this is manifestly against the nature of natural justice.

*Id.* at 53–54 (quoting Thomas Aquinas, *De Malo*, Q.13 art. 4c).

60. NOONAN, *supra* note 51, at 33.

61. *Id.* at 20.

62. HARRY MISKIMIN, *THE ECONOMY OF LATER RENAISSANCE EUROPE, 1460–1600*, at 46 (1977).

63. See, e.g., RICHARD GOLDTHWAITE, *THE ECONOMY OF RENAISSANCE FLORENCE 3* (2009) ("The intensification and expansion of Italian trading activity throughout the Mediterranean and western Europe has given rise to the rubric 'commercial revolution' to cover the period of early trade-led growth of the European economy, from the tenth to the fourteenth century.").

64. *Id.* at 5–6 ("In exchange for what they bought in the Levant, western merchants had to sell what they could obtain from the relatively backward economy of Europe, mostly raw materials such as furs, timber, metals, and slaves but also agricultural products and, increasingly, some manufactured goods made from these raw materials, such as arms and, especially, wool cloth. The quantity of these bulky, low-priced goods needed to balance the luxury imports from the East, however, was immense, and the considerable labor and organizational input required to produce them and get them to distant markets was a major stimulus to economic growth and development in all the major sectors, from agriculture in Italy to the textile industry in the Low Countries, from maritime shipping and commerce in Venice, Genoa, and Pisa to international banking in Lucca, Siena, and Florence.").

ence) as major international centers of commerce, banking, and government finance.<sup>65</sup>

Along with the overall rise of capitalism and commerce came new methods of lending in banking. The rise of commercial activity led to the development of practices that came into tension with, if not explicitly violated, the usury doctrine.<sup>66</sup> Bills of exchange<sup>67</sup> were developed to make transactions easier for merchants who would otherwise be required to haul bullion or other valuables to a distant city in order to purchase goods.<sup>68</sup> Over time, bills of exchange were trans-

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65. *Id.* at 37 (“The strength of Florence in international commerce and finance was in its network abroad. Firms were scattered all about the western Mediterranean and northern Europe, in hinterland towns as well as the major ports of trade, and although they were autonomous businesses, these firms worked through one another and thus tied themselves into a comprehensive international network that was more extensive than that of merchants of any other city down to the sixteenth century. Throughout their network Florentines operated in three spheres: commerce, banking, and, to isolate one aspect of banking that took its own distinct course, government finance. These spheres were interdependent, with commerce being the principal dynamic that drove the system, since activity in the other spheres arose from efforts to utilize favorable balances and to direct payments through the network. Banking was largely an extension of commerce, given the merchant’s involvement in international exchange and transfer.”).

66. *Id.* at 410 (“[A] problem inherent in the history of banking during this period is the constraint imposed on economic activity by the usury doctrine, which subjected the extension of credit to moral imperatives. Thirteenth-century notarial contracts for loans never mention interest, whereas contemporaneous accounts are usually explicit about it. But beginning in the early fourteenth century the usury restriction began to raise problems about the charging of interest. The growth of the economy and the development of instruments for utilizing capital for business enterprises generated practices that patently went against the doctrine and by the same token aroused a more vigorous defense of the doctrine.”).

67. See Kurt Eggert, *Held up in Due Course: Codification and the Victory of Form over Intent in Negotiable Instrument Law*, 35 CREIGHTON L. REV. 363, 378–79 (2005) (“Most commonly during their early use, bills of exchange had four parties. The original maker of the bill (the ‘payer’), who wished to pay a sum of money to the intended recipient of the money (the ‘ultimate recipient’ or ‘payee’), would pay that sum of money to a third party (the ‘drawer’ of the bill), often a local exchanger, who would draw a bill for that amount. The bill was made out as an instruction to a fourth party (the ‘drawee’), often an exchanger near the ultimate recipient, to pay to the ultimate recipient the set sum of money. Then the payer could send the payee the bill, the payee would take the bill to the drawee, and the drawee would, if he accepted the bill, pay the sum of money to the payee. Later, the drawee and drawer had to settle up, most likely in the course of settling a multitude of debts among many parties, some debts going one way, some the other.” (footnote omitted)).

68. *Id.* at 377–78 (“Bills of exchange were developed to solve a basic problem, how to transport capital from one place to another or from one country to another, without having to undertake the dangerous task of hauling bullion or other valuables, risking theft. The most basic example of this use is that of a merchant who wished to travel to a distant city and buy goods without having to carry the money needed for the purchase.”).

formed into a principal instrument by which a merchant could make money on the credit extended<sup>69</sup> and, thus, evade the Catholic Church's proscription of loans that directly charged interest.<sup>70</sup> In addition, pawnbroking became more prevalent to provide the lower economic classes in society access to short-term credit.<sup>71</sup> Some individuals opened pawn banks, in which loans were extended in exchange for the security of a pawn, while interest rates of twenty to thirty percent were charged to the borrower.<sup>72</sup> Furthermore, some bankers even covered up interest charges on their books, recording the amount the borrower owed when the loan was due and not the amount actually received by the banker.<sup>73</sup> Finally, one scholar has even, controversially, suggested that the presence of the Catholic sacrament of penance and purgatory relieved entrepreneurs' anxiety concerning the morality of commercial practices of the time.<sup>74</sup> To stay in divine favor, the banker could also conceivably purchase private chapels and make charitable donations to welfare and religious institutions.<sup>75</sup>

The rise of commercial activity before and during the Renaissance period led to a reformulation of official Catholic doctrine and to the formulation of a distinction between a theory of usury and theory of interest.<sup>76</sup> During the Renaissance period, most theologians gradually accepted the right of a creditor to obtain interest from the beginning of a loan in a situation where the borrower was in perpetual delay in repayment of the loan.<sup>77</sup> Changes in the very nature of commercial institutions also led to revisions in usury theory in the Catholic tradition. Noncharitable lending institutions had to find money in order to pay for their services and for the salaries of their employees, and the charging of interest on loans gradually became accepted by theologians.<sup>78</sup> In addition, theologians also started to accept the belief that a title to interest was theologically permissible to

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69. GOLDTHWAITE, *supra* note 63, at 217.

70. *Id.* at 217–18.

71. *Id.* at 419.

72. *Id.*

73. *Id.* at 411.

74. *Id.* at 584.

75. *Id.* at 584–85.

76. NOONAN, *supra* note 51, at 100.

77. *Id.* at 132.

78. *Id.* at 309–10.



a lender because of the inherent risk of lending, as expenses are typically incurred directly and indirectly by the loan.<sup>79</sup>

All of these new developments in commerce were considered by the Fifth Lateran Council of 1515. The Fifth Lateran Council formally defined usury as “when, from its use, a thing which produces nothing is applied to the acquiring of gain and profit without any work, any expense or any risk.”<sup>80</sup> Thus, usury was not defined as taking interest on a loan, but rather the acquiring of gain and profit in the situation where one did not undertake any effort or incur any expense or risk. Since most banks and commercial entities undertook some amount of risk in lending money in the era of Renaissance commerce, this development largely legitimized the lending of money with interest in Catholic teaching.

In 1745, Pope Benedict XIV formally enunciated the permissibility of charging lawful interest on loans in the papal encyclical *Vix Pervenit*:

[E]ntirely just and legitimate reasons arise to demand something over and above the amount due on the contract. Nor is it denied that it is very often possible for someone, by means of contracts differing entirely from loans, to spend and invest money legitimately either to provide oneself with an annual income or to engage in legitimate trade and business. From these types of contracts honest gain may be made.<sup>81</sup>

The fact that official Catholic doctrine permitted the charging of interest on loans did not give all lenders carte blanche to charge excessive rates of interest. In *Vix Pervenit*, Pope Benedict XIV placed the constraints of equality, justice, and fairness on lending with interest.<sup>82</sup> “In essence, only contracts with interest that were made in the

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79. *Id.* at 361.

80. Fifth Lateran Council, *Session 10, 4 May 1515, On the Reform of Credit Organisations*, in 1 DECREE OF THE ECUMENICAL COUNCILS, *supra* note 49, at 625–26.

81. Pope Benedict XIV, Encyclical Letter, *Vix Pervenit*, at para. 3-III (Nov. 1, 1745) [hereinafter *Vix Pervenit*], available at <http://www.papalencyclicals.net/Ben14/b14vixpe.htm>.

82. *Id.* at para. 3-IV (“[I]f equality is not maintained, whatever is received over and above what is fair is a real injustice. Even though it may not fall under the precise rubric of usury (since all reciprocity, both open and hidden, is absent), restitution is obligated.”).

spirit of upholding the common good avoided the usury prohibition.”<sup>83</sup>

Through the eighteenth century to the present age, numerous advances in commerce and technology have been made. The complexity of financial instruments in the commercial realm today, particularly in lending, often challenges the key tenets of Catholic teaching concerning usury. The shift in Catholic doctrine concerning usury, and the resulting emphasis on justice, fairness, and equity concerning interest in the loan transaction, animates much of contemporary Catholic thought concerning the modern economy.

### III. USURY, THE MODERN ECONOMY, AND CONTEMPORARY CATHOLIC THOUGHT

His Holiness Pope Benedict XVI espoused his view concerning the contemporary responsibilities of individuals to work towards a more humane, just, and peaceful world in his 2006 book *Values in a Time of Upheaval*.<sup>84</sup> Then-Cardinal Ratzinger wrote:

In the generation to which I belong, the dimension beyond death and of eternal life has been pushed to the margins, even in the Church’s preaching. The suspicion that Christians neglect life here on earth because they constantly dream only of the life to come, came to infect believing Christians themselves, including those who preached God’s Word. We were told that Christians shared only half-heartedly in constructing the world, which could have been better and more humane long ago if only Christians had not practiced “flight from the world.” Eternity can wait. The task now is to make the world a better place to live.

Well, these ideologies have not made it better and more humane. It is precisely the one who spends his days exercising responsibility for eternal life who gives these days their full weight. We see this in the parable of the talents: the Lord does not summons us to a comfortable existence but to trade with our talents. It is also true that one who is aware of eternal life is liberated from the rapacious greed that wants to enjoy everything to the full here and now, since he knows that the present age is the time for work and the great feast comes afterwards. The fields of death before which we stand

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83. *Id.* (“If everything is done correctly and weighed in the scales of justice, these same legitimate contracts suffice to provide a standard and a principle for engaging in commerce and fruitful business for the common good”).

84. JOSEPH RATZINGER, *VALUES IN A TIME OF UPHEAVAL* (Brian McNeil, trans., 2006).

admonish us to remember death and to lead our life aright in the face of eternity.<sup>85</sup>

In this passage, Pope Benedict calls for individuals to eschew the philosophy that people need only be concerned with their own individual works in the world without worry about the world beyond the present time. Instead, he calls for individuals to conduct their work in recognition of the world to come. Such remembrance of eternal life, according to the Pope, liberates individuals from the excesses of greed and avarice that have become all too common in today's economic world.

However, the contemporary call of Pope Benedict for individuals to be cognizant of the eternal world to come does not abdicate the affirmative duty of persons to continue to make efforts to create an atmosphere for the true and just development of all peoples. The key Catholic document today that animates the response of Catholicism to the modern economic world is Pope Benedict XVI's 2009 encyclical *Caritas in Veritate*. The Pope stated the following with regard to the responsibility of individuals and financial entities in today's modern economy:

Finance, therefore—through the renewed structures and operating methods that have to be designed after its misuse, which wreaked such havoc on the real economy—now needs to go back to being an instrument directed towards improved wealth creation and development. Insofar as they are instruments, the entire economy and finance, not just certain sectors, must be used in an ethical way so as to create suitable conditions for human development and for the development of peoples. It is certainly useful, and in some circumstances imperative, to launch financial initiatives in which the humanitarian dimension predominates. However, this must not obscure the fact that the entire financial system has to be aimed at sustaining true development. Above all, the intention to do good must not be considered incompatible with the effective capacity to produce goods. Financiers must rediscover the genuinely ethical foundation of their activity, so as not to abuse the sophisticated instruments which can serve to betray the interests of savers. Right intention, transparency, and the search for positive results are mutually compatible and must never be detached from one another. If love is wise, it can find ways of working in accordance with provi-

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85. *Id.* at 118–19 (citation omitted).

dent and just expediency, as is illustrated in a significant way by much of the experience with credit unions.

Both the regulation of the financial sector, so as to safeguard weaker parties and discourage scandalous speculation, and experimentation with new forms of finance, designed to support development projects, are positive experiences that should be further explored and encouraged, highlighting the responsibility of the investor. Furthermore, the experience of micro-finance, which has its roots in the thinking and activity of the civil humanists—I am thinking especially of the birth of pawnbroking—should be strengthened and fine-tuned. This is all the more necessary in these days when financial difficulties can become severe for many of the more vulnerable sectors of the population, who should be protected from the risk of usury and from despair. The weakest members of society should be helped to defend themselves against usury, just as poor peoples should be helped to derive real benefit from micro-credit, in order to discourage the exploitation that is possible in these two areas. Since rich countries are also experiencing new forms of poverty, micro-finance can give practical assistance by launching new initiatives and opening up new sectors for the benefit of the weaker elements in society, even at a time of general economic downturn.<sup>86</sup>

Several themes animate these two critical paragraphs of *Caritas in Veritate*. First, in today's modern economic world, regulation of the financial industry is essential to protect the weakest and most vulnerable in society. It is, in essence, a reaffirmation of contemporary Catholic teaching of the preferential option for the poor, which dictates that the greatest of care must be taken for the most vulnerable in society.<sup>87</sup> Archbishop Oscar Romero, one of the great Catholic theologians and martyrs of the twentieth century, discussed the preferential option for the poor in the following terms:

The world of the poor teaches us about what the nature of Christian love is, a love that certainly seeks peace, but also unmask false pacifism—the pacifism of resignation and inactivity. It is a love that should certainly be freely offered, but that seeks to be effective in history. The world of the poor teaches us that the sublimity of Christian love ought to be mediated through the overriding necessity of justice for the majority. It ought not to turn away from honor-

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86. *Caritas in Veritate*, *supra* note 23, at para. 65 (emphasis omitted).

87. *Deus Caritas Est*, *supra* note 24.

able conflict. The world of the poor teaches us that liberation will arrive only when the poor are not simply on the receiving end of handouts from governments or from the church, but when they themselves are the masters of, and protagonists in, their own struggle and liberation . . . .<sup>88</sup>

Furthermore, the Pope also significantly recognized in *Caritas in Veritate* the positive potential of community credit unions and micro-finance programs to combat usury and the exploitation of the most vulnerable in today's society.<sup>89</sup> Such programs have the potential for the weakest and most vulnerable in society to become, in the words of Archbishop Romero, "masters" and "protagonists" of their own stories.<sup>90</sup> Finally, reaffirming centuries of Catholic tradition, usury was strongly condemned as exploitation.<sup>91</sup>

As discussed further below in Section VIII, community credit unions and microlending programs are effective moral economic alternatives to modern usury. Despite the strong historical aversion to usury among many in the United States, payday loans and title loans pose a great contemporary challenge as modern forms of usury.

#### IV. BACKGROUND OF STATE USURY LAWS

Criticism of excessive interest rates did not come only from the realm of theologians—the prohibition against usury was also firmly embedded in the common law. The Statute of Anne, a law which dates back to 1710 England, capped the permissible annual nominal interest rate at no more than 5%.<sup>92</sup> Each of the original thirteen colonies capped the annual nominal interest rate at 8%.<sup>93</sup> Historically, every state has had a usury law in place.<sup>94</sup> That is still generally the case today, as most states place a limitation on the maximum interest rate that can be charged on a general loan. As Table 1 (Appendix) illustrates, states vary widely with regard to the maximum annual rate of usury—ranging from 5% in Iowa and Wisconsin to 24% in the

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88. OSCAR ROMERO, VOICE OF THE VOICELESS: THE FOUR PASTORAL LETTERS AND OTHER STATEMENTS 184 (Michael J. Walsh, trans., 1985).

89. *Caritas in Veritate*, *supra* note 23, at para. 65.

90. ROMERO, *supra* note 88.

91. *Caritas in Veritate*, *supra* note 23, at para. 65.

92. Peterson, *supra* note 15, at 1116.

93. *Id.* at 1117–18.

94. MANN & ROBERTS, *supra* note 14.

District of Columbia.<sup>95</sup> Some states have no general usury limit, including Idaho, Nevada, New Hampshire, New Mexico, and South Dakota.<sup>96</sup> If a violation of a usury statute occurs, states vary in treating the violation, some states may void the entire underlying contract,<sup>97</sup> and others render the contract voidable only to the extent the interest is specified beyond the lawful rate.<sup>98</sup>

The United States Supreme Court, however, delivered a blow to the strength of state usury laws with its decision in *Marquette National Bank v. First of Omaha Service Corp.* in 1978.<sup>99</sup> In *Marquette National Bank*, the Supreme Court addressed the question of whether the National Bank Act allowed a national bank based in one state to charge its out-of-state credit card customers a higher rate on unpaid credit card balances than the out-of-state customers would be charged by a national bank based in their home state.<sup>100</sup> In the case, a Nebraska-based bank's subsidiary issued credit cards in Minnesota, which charged rates on unpaid balances in excess of Minnesota's usury laws.<sup>101</sup> The Supreme Court held that the National Bank Act permitted the charging of the higher interest rate.<sup>102</sup>

Significantly, the Court rejected the argument of the Minnesota-chartered national banking association that the "exportation" of interest rates would impair a state's ability to enforce its domestic usury statute.<sup>103</sup> In fact, the Court contended that the impairment of a state's ability to enforce a usury statute had "always been implicit" with the National Bank Act, "since citizens of one State were free to visit a neighboring State to receive credit at foreign interest rates."<sup>104</sup>

The effects of *Marquette National Bank* were wide and far-reaching. One scholar has described it as the "gunshot starting a frenzied race-to-the-bottom in American usury law."<sup>105</sup>

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95. See *infra* Table 1 (Appendix).

96. *Id.*

97. JOHN EDWARD MURRAY, JR., *MURRAY ON CONTRACTS* 592 (5th ed. 2011).

98. *Id.*

99. *Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299 (1978).

100. *Id.* at 301.

101. *Id.* at 299.

102. *Id.* at 301.

103. *Id.* at 318.

104. *Id.*

105. Peterson, *supra* note 15, at 1121.

Banks essentially were left to largely ignore state usury caps with credit cards as state usury laws were preempted. In 1996, in *Smiley v. Citibank*, the United State Supreme Court upheld Office of the Comptroller of the Currency regulations, which also preempted state laws concerning credit-card late fees.<sup>106</sup> In essence, *Marquette National Bank* left a landscape where no effective cap on annual interest was in place for national banks to charge on credit cards and other loans.

In addition, usury statutes in many states exempt certain types of loans and lenders from their proscriptions on interest. Many states exclude loans to corporations and partnerships from the usury limitations.<sup>107</sup> Furthermore, lenders such as title-loan lenders are typically exempted from state usury laws as well.<sup>108</sup> With Court decisions and exemptions, all that largely remain of state usury laws are the hollow shell of what the Founding Fathers would have intended.

All of these developments, particularly the decisions of the Supreme Court in *Marquette National Bank* and *Smiley*, led to the rise of a new industry of lending — the payday loan industry.

#### V. CATHOLIC LEGAL THOUGHT, USURY, AND PAYDAY LENDING

In the wake of *Marquette National Bank* and general deregulation of the banking industry in the 1980s, the payday loan industry started to flourish.<sup>109</sup> Following *Marquette National Bank*, national banks could export the usury law of their home state nationwide.<sup>110</sup> This loophole in the law permitted payday lenders to partner with the national banks operating in states with the least restrictive usury laws. Moreover, a number of states implemented specific payday loan stat-

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106. *Smiley v. Citibank*, 517 U.S. 735 (1996).

107. MANN & ROBERTS, *supra* note 14.

108. *Id.*

109. See Aimee Minnich, *Rational Regulation of Payday Lending*, 16 KAN. J.L. & PUB. POL'Y 84, 86 (2006).

110. Tasha Winebarger, Comment, *The Beginning of the End: The Demise of Bank Partnerships with Payday Lenders*, 7 N.C. BANKING INST. 317, 320–321 (2003) (“Once affiliated with these banks, payday lenders may charge their customers any interest rate allowed in the state of the bank, even if the customers reside in states having restrictive usury statutes. Thus, payday lenders circumvent state usury laws by forming partnerships with banks holding national charters.”).

utes, which trumped general usury laws in applicability, and some states didn't regulate the industry at all.<sup>111</sup>

*A. How a Payday Loan Works*

The typical payday loan is only a fourteen-day cash loan and the borrower writes a check to the payday lender for the amount borrowed, plus the finance charge, until payday arrives.<sup>112</sup> When payday arrives, the borrower has the option of either redeeming the check for cash, allowing the check to be deposited, or paying the finance charge and rolling the loan over to the next pay period, with an additional fee incurred.<sup>113</sup> Annual percentage rates for this two-week credit range typically from 300% to over 700%.<sup>114</sup> Unfortunately, this traps many borrowers in a debt trap where the amount of interest owed far outweighs the original amount of the loan. For example, consider the story of Dequae Woods, a single mother from Missouri. She reportedly paid over \$1800 in interest on a loan that originally was for only \$450.<sup>115</sup> Stories like Ms. Woods's are relatively common. According to a 2007 study conducted by the Center for Responsible Lending, 24% of payday loans go to borrowers with twenty-one or more transactions per year.<sup>116</sup> Borrowers then may fall into a "debt trap" where they procure another payday loan to try to pay off the previous loan, and the cycle continues.

The dangers of falling into a "debt trap" are not the only potential downfalls for a payday loan borrower. The National Consumer Law Center has contended that the use of payday loans increases the chances of a borrower losing a bank account,<sup>117</sup> increases bankruptcy

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111. *Id.* at 319.

112. NAT'L CONSUMER LAW CTR., STOPPING THE PAYDAY LOAN TRAP: ALTERNATIVES THAT WORK, ONE'S THAT DON'T 4 (Lauren K Saunders et al., eds., 2010), [http://www.nclc.org/images/pdf/high\\_cost\\_small\\_loans/payday\\_loans/report-stopping-payday-trap.pdf](http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/report-stopping-payday-trap.pdf).

113. *Id.*

114. *Id.*

115. *Missouri Court Rules Against Payday Lender*, COLUMBIA MISSOURIAN (Jan. 1, 2009), <http://www.columbiamissourian.com/stories/2009/01/01/mo-court-rules-against-kan-payday-lender>.

116. URIAH KING & LESLIE PARRISH, CTR. FOR RESPONSIBLE LENDING, SPRINGING THE DEBT TRAP: RATE CAPS ARE ONLY PROVEN PAYDAY LENDING REFORM 3 (2007), <http://www.responsiblelending.org/payday-lending/research-analysis/springing-the-debt-trap.pdf>.

117. NAT'L CONSUMER LAW CTR., *supra* note 112, at 5, 56 n.14 ("One study found that an increase in the number of payday loan outlets in a county is associated with an 11% increase



filings,<sup>118</sup> and causes financial hardships for families.<sup>119</sup> In addition, payday lenders have targeted not only civilian families, but military ones as well. Military personnel and their families were targeted not only because of the steady paychecks they receive,<sup>120</sup> but because many service members are young and unaware of the extreme financial risks of the loans.<sup>121</sup> A 2005 estimate by the Center for Responsible Lending found that active-duty military personnel were three times more likely than civilians to procure a payday loan.<sup>122</sup> With many calls for payday lending reform,<sup>123</sup> a number of states and

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in involuntary bank account closures, even when other variables such as income and poverty rate are taken into account.” (citing Dennis Campbell, Asis Martinez Jerez, & Peter Tufano, *Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures* (June 6, 2008) (unpublished manuscript)).

118. *Id.* at 5, 56 n.15 (“In a large Texas study, researchers found that payday borrowers were about 88% more likely to file for Chapter 13 bankruptcy in the next two years than the rest of the Texas population.” (citing Paige Marta Skiba & Jeremy Tobacman, *Do Payday Loans Cause Bankruptcy?* (Nov. 9, 2009) (unpublished manuscript), <http://www.law.vanderbilt.edu/faculty/facultypersonal-sites/paige-skiba/publication/download.aspx?id=2221>)).

119. *Id.* at 5, 57 n.17 (“A University of Chicago Business School doctoral student compared households in states with and without access to payday loans over a five year period and found that access to payday loans increases the chances a family will face hardship, have difficulty paying bills, and have to delay medical care, dental care, and prescription drug purchases.” (citing Brian T. Melzer, *The Real Costs of Credit Access: Evidence from the Payday Lending Market* (Nov. 15, 2007) (unpublished PhD dissertation, University of Chicago))).

120. See Shane Mendenhall, Note, *Payday Loans: The Effects of Predatory Lending on Society and the Need for More State and Federal Regulation*, 32 OKLA. CITY U. L. REV. 299, 323 (2007); Paul Fain, *Payday Lenders Are on the Prowl!*, INCHARGE, <http://www.incharge.org/military-money/story/payday-lenders-are-on-the-prowl> (last visited Jan. 28, 2013).

121. See Mendenhall, *supra* note 120, at 323 (“Payday lenders also target military personnel because many service members are young and financially inexperienced people unaware of the true costs of these loans. . . . Often, these people are receiving their first significant paycheck and are without the guidance or assistance of family. The military culture also stresses financial responsibility and even has policies explicitly stating that service members are to pay their just debts.” (footnotes omitted) (citing MARK MUECKE, CONSUMERS UNION, *PAYDAY LENDERS BURDEN WORKING FAMILIES AND THE U.S. ARMED FORCES* 4 (2003), <http://www.consumersunion.org/pdf/payday-703.pdf>)); see also U.S. DEP’T OF DEFENSE, *REPORT ON PREDATORY LENDING PRACTICES DIRECTED AT MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS* 10 (2006), [http://www.defenselink.mil/pubs/pdfs/report\\_to\\_congress\\_final.pdf](http://www.defenselink.mil/pubs/pdfs/report_to_congress_final.pdf)).

122. OZLEM TANIK, CTR. FOR RESPONSIBLE LENDING, *PAYDAY LENDERS TARGET THE MILITARY* 1 (2005), <http://www.responsiblelending.org/payday-lending/research-analysis/ip011-PaydayMilitary-0905.pdf>.

123. Numerous law review articles have been written calling for various proposals of reform of the payday-lending industry. For articles published in the past 10 years and not cited elsewhere in this Article, see Carmen Butler, *Mayday Payday: Can Corporate Social Responsibility Save Payday Lenders?*, 3 RUTGERS J. L. & URB. POL’Y 119 (2006); Paul Chessin, *Borrowing from*

Congress took action in the wake of the growing number of stories of the payday loan debt trap to curb the most egregious lending abuses.

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*Peter to Pay Paul: A Statistical Analysis of Colorado's Deferred Deposit Loan Act*, 83 DENV. U. L. REV. 387 (2005); Chad Cicconi, *A Role for Payday Lenders*, 123 BANKING L.J. 235 (2006); Paulina E. Davis, *Racism, Capitalism, and Predatory Lending: How the U.S. Government's Failure to Regulate the Disproportionate Negative Effects of Payday Lending in Black Communities Violates the International Convention on the Elimination of All Forms of Racial Discrimination*, 4 HUM. RTS. & GLOBALIZATION L. REV. 61 (2010); Steven L. Graves & Christopher M. Peterson, *Predatory Lending and the Military: The Law and Geography of "Payday" Loans in Military Towns*, 66 OHIO ST. L.J. 653 (2005); Patrick L. Hayes, *A Noose Around the Neck: Preventing Abusive Payday Lending Practices and Promoting Lower Cost Alternatives*, 35 WM. MITCHELL L. REV. 1134 (2008); Aaron Huckstep, *Payday Lending: Do Outrageous Prices Mean Outrageous Profits?*, 12 FORDHAM J. CORP. & FIN. L. 203 (2007); Creola Johnson, *The Magic of Group Identity: How Predatory Lenders Use Minorities to Target Communities of Color*, 17 GEO. J. ON POVERTY L. & POL'Y 165 (2010); Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending?*, 87 MINN. L. REV. 1 (2002); Michael Kenneth, *Payday Lending: Can "Reputable" Banks End Cycles of Debt?*, 42 U.S.F. L. REV. 659 (2007); Megan S. Knize, *Payday Lending in Louisiana, Mississippi, and Arkansas: Toward Effective Protections for Borrowers*, 69 LA. L. REV. 317 (2008); Ronald Mann & Jim Hawkins, *Not Just Until Payday*, 54 UCLA L. REV. 855 (2006); Nathalie Martin, *1000% Interest—Good While Supplies Last: A Study of Payday Loan Practices and Solutions*, 52 ARIZ. L. REV. 563 (2010); Nathalie Martin & Koo Im Tong, *Double Down-and-Out: The Connection Between Payday Loans and Bankruptcy*, 39 SW L. REV. 785 (2009); Michael A. Satz, *How the Payday Predator Hides Among Us: The Predatory Nature of the Payday Loan Industry, and its Use of Consumer Arbitration to Further Discriminatory Lending Practices*, 20 TEMP. POL. & CIV. RTS. L. REV. 123 (2010); Mary Spector, *Taming the Beast: Payday Loans, Regulatory Efforts, and Unintended Consequences*, 57 DEPAUL L. REV. 961 (2007); Blake T. Williams, *The Dimensions of the Shark Tank: The Appropriate Regulations of Payday Lending in South Carolina*, 62 S.C. L. REV. 623 (2010); Michael Bertics, Note, *Fixing Payday Lending: The Potential of Greater Bank Involvement*, 9 N.C. BANKING INST. 133 (2005); Pearl Chin, Note, *Payday Loans: The Case for Federal Legislation*, 2004 U. ILL. L. REV. 723 (2004); Benjamin D. Faller, Note, *Payday Loan Solutions: Slaying the Hydra (and Keeping it Dead)*, 59 CASE W. RES. L. REV. 125 (2008); Karen E. Francis, Note, *Rollover, Rollover: A Behavioral Law and Economics Analysis of the Payday-Loan Industry*, 88 TEX. L. REV. 611 (2009); Diane Hellwig, Note, *Exposing the Loansharks in Sheep's Clothing: Why Re-Regulating the Consumer Credit Market Makes Economic Sense*, 80 NOTRE DAME L. REV. 1567 (2004); Katherine Houren, Note, *Achieving the American Dream in Debt? Why the USA Patriot Act Puts Undocumented Immigrants at Risk for Abuse by the Payday Loan Industry*, 15 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 561 (2008); Katie Jory, Note, *Mandatory Arbitration Clauses in Payday Lending Loans: How the Federal Courts Protect Unfair Lending Practices in the Name of Anti-Protectionism*, 24 OHIO ST. J. ON DISP. RESOL. 315 (2008); Christopher Konneker, Comment, *How the Poor Are Getting Poorer: The Proliferation of Payday Loans in Texas via State Charter Renting*, 14 SCHOLAR 489 (2011); Kelly Noyes, Comment, *Get Cash Until Payday! The Payday-Loan Problem in Wisconsin*, 2006 WIS. L. REV. 1627 (2006); Peter Rigsby, Note, *Regulating the Payday Loan Industry: Has Michigan Made a Step in the Right Direction?*, 11 T.M. COOLEY J. PRAC. & CLINICAL L. 417 (2009); Richard J. Thomas, Note, *Rolling Over Borrowers: Preventing Excessive Refinancing and Other Necessary Changes in the Payday Loan Industry*, 48 WM. & MARY L. REV. 2401 (2006); Elizabeth Willoughby, Note, *Bankwest v. Baker: Is it a Mayday for Payday Lenders in Rent-a-Charter Arrangements?*, 9 N.C. BANKING INST. 269 (2005); Thomas Wilson, Note, *The Availability of Statutory Damages Under TILA to Remedy the Sharp Practice of Payday Lenders*, 7 N.C. BANKING INST. 339 (2003); Allison S. Woolston, Note, *Neither Borrower Nor Lender Be: The Future of Payday Lending in Arizona*, 52 ARIZ. L. REV. 853 (2010).

*B. The Federal Government and States' Response with Payday Regulation*

In response to the increasing number of stories where lenders were constantly churning one payday loan for another, the federal government took action to curb the most egregious practices. In March 2005, the Federal Deposit Insurance Corporation issued new regulations, which prohibited any lender from issuing any new payday loans to a borrower who had payday loans outstanding from any lender for a total of more than 3 months in the previous 12 months.<sup>124</sup> In essence, the regulations prohibit any payday lender from “renewing” a payday loan with another loan more than six times.<sup>125</sup> Congress also moved to curb the most egregious practices of payday lenders in 2006 with statutory protections for service members, including capping the annual interest rate on a payday loan to 36%.<sup>126</sup> In addition, Congress also passed legislation requiring payday lenders make adequate disclosures of the annual percentage rate of the loan, strengthen disclosures already mandated under the Truth in Lending Act, and offer a “clear description of the payment obligations.”<sup>127</sup>

States are also following the lead of the federal government in curtailing the excesses of the payday loan industry. Some states subject payday loans to a 36% APR interest rate cap<sup>128</sup> and a number of others, including Arkansas, Arizona, the District of Columbia, Georgia, and North Carolina, have prohibited them outright.<sup>129</sup>

Critics of the payday lending system today have focused efforts at the state level at promoting legislation to place a 36% APR interest rate cap on payday loans.<sup>130</sup> This proposal has the strong endorsement of groups that represent the interests of borrowers, including

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124. CTR. FOR RESPONSIBLE LENDING, ANALYSIS OF FDIC'S REVISED EXAMINATION GUIDANCE FOR PAYDAY LENDING PROGRAMS (Mar. 14, 2005), [http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/pa-FDIC\\_Revised\\_Payday\\_Guidelines-0305.pdf](http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/pa-FDIC_Revised_Payday_Guidelines-0305.pdf).

125. *Id.*

126. 10 U.S.C. § 987(b) (2012).

127. Dawn Goulet, *Protecting Our Protectors: The Defense Department's New Rules to Prevent Predatory Lending to Military Personnel*, 20 LOY. CONSUMER L. REV. 81, 90 (2007).

128. NAT'L CONSUMER LAW CTR., *supra* note 112, at 11.

129. *Payday Lending Statutes*, NAT'L CONF. ON ST. LEGISLATURES, <http://www.ncsl.org/issues-research/banking/payday-lending-state-statutes.aspx> (last updated July 11, 2012).

130. NAT'L CONSUMER LAW CTR., *supra* note 112, at 10.

the National Consumer Law Center.<sup>131</sup> Legislation was proposed this year in several states, including Kentucky, Mississippi, Missouri, and Wisconsin to adopt the 36% cap.<sup>132</sup> One of the most prominent entities supporting such legislation in the various states is the Catholic Church.

### *C. The Catholic Response to Payday Lending*

Of all forms of modern commercial lending, few (if any) come under as much criticism from the lens of the Catholic tradition as payday lending. The Catholic Church has also been one of the most vocal advocates for payday lending reform and for a 36% APR annual interest rate cap on payday loans. For example, the Catholic Conferences of Texas,<sup>133</sup> Kentucky,<sup>134</sup> Ohio,<sup>135</sup> and Iowa<sup>136</sup> have recently lobbied on behalf of such legislation.

While Catholic prelates have strongly supported such legislation, direct connections between payday lending and usury have been made. For example, the Catholic Conference of Ohio has a separate webpage entitled *Payday Lending*.<sup>137</sup> The website including a section entitled *Catholic Teaching on Usury* quotes from the Compendium of the Social Doctrine of the Church, which equates the excesses of usu-

131. *Id.* at 11–12 (“The 36% rate cap also works on a practical level for the loans we are evaluating. For a loan that meets the criteria we propose for an affordable small loan—a 90-day minimum \$300 installment loan carrying a 36% APR with fees—the borrower would have to pay about \$48 every two weeks, including interest and a portion of the principal. That is virtually the same as the \$45 fee that payday borrowers commonly now pay every two weeks to carry over a payday loan without making progress on the principal. Even \$48 is a lot for someone living paycheck to paycheck, as most payday borrowers are. But the payments are realistic, unlike the repayment schedule of a payday loan. For a borrower with a \$35,000 annual income, \$48 would account for less than 4% of after tax income every two weeks, an amount that is conceivably within budget”).

132. *Payday Lending 2012 Legislation*, NAT’L CONF. ON ST. LEGISLATURES, <http://www.ncsl.org/issues-research/banking/payday-lending-2012-legislation.aspx> (last updated July 11, 2012).

133. *Religious Leaders Call for Reform in Payday Lending Regulation*, TEX. CATH. CONF. (Mar. 21, 2011), <http://www.txcatholic.org/index.php/news/1066-religious-leaders-call-for-reform-in-payday-lending-regulation>.

134. *Conference Supports Cap on Payday Loans*, CATH. CONF. KY. (Jan. 29, 2012), <http://ccky.org/2012/01/conference-supports-cap-on-payday-loans>.

135. *Payday Lending*, CATH. CONF. OHIO, <http://www.ohiocathconf.org/i/EJ/payday.htm> (last visited Jan. 28, 2013).

136. *Iowa Catholic Conference Urges Legal Limits on Payday Loan Interest*, CATH. NEWS AGENCY (Jan. 6, 2010, 6:53 AM), [http://www.catholicnewsagency.com/news/iowa\\_catholic\\_conference\\_urges\\_legal\\_limits\\_on\\_payday\\_loan\\_interest](http://www.catholicnewsagency.com/news/iowa_catholic_conference_urges_legal_limits_on_payday_loan_interest).

137. *Payday Lending*, *supra* note 135.

ry to homicide. The Compendium states: “*Although the quest for equitable profit is acceptable in economic and financial activity, recourse to usury is to be morally condemned: “Those whose usurious and avaricious dealings lead to the hunger and death of their brethren in the human family indirectly commit homicide, which is imputable to them.”*”<sup>138</sup>

The excessive rates of over 36% APR of today’s modern payday lending lie contrary to the ideals of the Catholic tradition. This is especially true in the wake of the Church’s efforts in supporting legislation to cap APR interest rates on payday loans and Pope Benedict XVI’s call to protect the weak and vulnerable parties in society in *Caritas in Veritate*. Another form of modern financial usury, title-loan lending, also generally falls into this same category.

## VI. CATHOLIC LEGAL THOUGHT, USURY, AND TITLE-LOAN LENDING

### *A. How a Title Loan Works*

The legacy of the *Marquette National Bank* and *Smiley* decisions of the United States Supreme Court have also led to the growth of the title-loan industry. Title loans, also known as car-title loans, are loans in which a borrower places the title to their auto vehicle as collateral for a loan.<sup>139</sup> The loan amounts may range anywhere from a few hundred dollars to several thousand dollars.<sup>140</sup> While interest rates for title loans vary from state to state, in some jurisdictions a borrower may be charged a 300% annual interest rate on the loan.<sup>141</sup> Advocates of the title-loan industry contend that in today’s difficult economic climate, short-term title loans are a necessary form of credit for borrowers with bad credit scores or struggling small business

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138. PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH, at para. 341 (2005) (citing CATECHISM OF THE CATHOLIC CHURCH 2269), available at [http://www.vatican.va/roman\\_curia/pontifical\\_councils/justpeace/documents/rc\\_pc\\_justpeace\\_doc\\_20060526\\_compendio-dott-soc\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html).

139. *What are Car Title Loans?*, CTR. RESPONSIBLE LENDING, <http://www.responsiblelending.org/other-consumer-loans/car-title-loans/tools-resources/what-are-car-title-loans.html> (last visited Jan. 28, 2013).

140. Sue Kirchhoff, *Some Consumers Run into Big Problems with Auto Title Lending*, USA TODAY (Dec. 26, 2006), [http://www.usatoday.com/money/perfi/general/2006-12-26-title-loans-usat\\_x.htm](http://www.usatoday.com/money/perfi/general/2006-12-26-title-loans-usat_x.htm).

141. *Id.*

owners.<sup>142</sup> Recent data from 2011 in at least one state, Virginia, shows the industry is booming. Nearly 380 car title lending locations in Virginia in 2011 offered out nearly 128,500 loans worth approximately \$125 million dollars.<sup>143</sup>

However, these loans can sometimes trap borrowers in a terrible cycle of debt, which can result in the loss of one of the most significant assets often essential for economic well-being: a vehicle.<sup>144</sup> For instance, Alicia and Clinton Lummus of Conyers, Georgia, took out a \$525 loan in March 2006 after injuries allegedly prevented them from working.<sup>145</sup> They reportedly placed a \$14,000 automobile as collateral for the loan.<sup>146</sup> After paying \$132 for eight months, they reportedly did not make the monthly payment for the ninth month.<sup>147</sup> The lender reportedly repossessed the vehicle—and in some jurisdictions, if a title-loan lender repossesses an automobile, they may keep the positive difference between the sale of the vehicle to another entity and the outstanding balance on the loan.<sup>148</sup> Supporters of the payday-loan and title-loan industries contend that these loans provide necessary access to short-term credit for consumers,<sup>149</sup> and that the majority of consumers are “middle class” Americans and not the very poor.<sup>150</sup>

A number of commentators, however, have scrutinized aspects of the title-loan lending industry because of the triple-digit interest rates incurred by borrowers and that many borrowers have to “rollover” a previous title loan into a “new” title loan and incur an additional loan fee.<sup>151</sup> Recent empirical research has refuted the claim of

142. Michael Felberbaum, *New Data Shows Car Title Loans Big Business in VA*, BUS. WK. (Jul. 6, 2012), <http://www.businessweek.com/ap/2012-07-06/new-data-shows-car-title-loans-big-business-in-va>.

143. *Id.*

144. *Car Title Loans*, AMS. FAIRNESS LENDING (Sept. 20, 2007), <http://americansforfairnessinlending.wordpress.com/2007/09/20/car-title-loans>.

145. Kirchhoff, *supra* note 140.

146. *Id.*

147. *Id.*

148. *Id.*

149. *About CFSFA*, CMTY. FIN. SERVS. ASS'N AM., <http://cfsaa.com/about-cfsa.aspx> (last visited Dec. 29, 2012).

150. Nathalie Martin & Ernesto Longa, *High-Interest Loans and Class: Do Payday and Title Loans Really Serve the Middle Class?*, 24 LOY. CONSUMER L. REV. 524, 529–30 (2012).

151. See Lynn Drysdale & Kathleen E. Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and its Challenge to Current Thinking About the Role of Usury Laws in Today's Society*, 51 S.C. L. REV. 589 (2000); Jean Ann Fox, *Fringe Bankers: Eco-*

the title-loan industry that lenders rarely repossess the vehicles of borrowers who take out the loans.<sup>152</sup> In a 2012 *Missouri Law Review* article, Professor Nathalie Martin and Ozymandias Adams concluded that as many as 71% of title-loan borrowers in New Mexico had their vehicles repossessed.<sup>153</sup> With calls for title-loan-lending reform coming from not only consumer groups but also legal scholars, a number of states have implemented title-loan-lending reform in the past several years.

*B. The Response of States with Title-Loan-Lending Regulation*

Title-loan-lending regulation varies widely among jurisdictions. A number of states explicitly prohibit title-loan lending.<sup>154</sup> However, there are approximately sixteen states that allow title loans to be placed in excess of a 100% APR interest rate,<sup>155</sup> and four others that allow car title lending via a legislative loophole.<sup>156</sup> Finally, several other states authorize title lending, but at lower rates.<sup>157</sup>

Florida is one such state that allows title-loan lending at lower rates. Chapter 687 of the Florida statutes regulates lending practices in the state generally, and its intention is to protect borrowers from

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*nomic Predators or a New Financial Services Model?*, 30 W. NEW ENG. L. REV. 135 (2007); *Jim Hawkins, Credit on Wheels: The Law and Business of Auto-Title Lending*, 69 WASH. & LEE L. REV. 535, 604 (2012) (concluding that “states should enact laws specifically directed at title lending that preserve the equity borrowers have in their vehicles”); Leah A. Plunkett & Ana Lucía Hurtado, *Small-Dollar Loans, Big Problems: How States Protect Consumers from Abuses and How the Federal Government Can Help*, 44 SUFFOLK U. L. REV. 31 (2011); Jessie Lundberg, Comment, *Big Interest Rates Under the Big Sky: The Case for Payday and Title Lending Reform in Montana*, 68 MONT. L. REV. 181 (2007).

152. Nathalie Martin & Ozymandias Adams, *Grand Theft Auto Loans: Repossession and Demographic Realities in Title Lending*, 77 MO. L. REV. 41 (2012).

153. *Id.* at 45.

154. *Car Title Lending by State*, CTR. RESPONSIBLE LENDING, <http://www.responsiblelending.org/other-consumer-loans/car-title-loans/tools-resources/car-title-lending-by-state.html> (last visited Jan. 7, 2012). States that currently prohibit title-loan lending include Arkansas, Colorado, Connecticut, Indiana, Maine, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Vermont, Washington, West Virginia, and Wyoming.

155. *Id.* These states include Alabama, Arizona, Delaware, Georgia, Idaho, Illinois, Louisiana, Mississippi, Missouri, Nevada, New Mexico, South Dakota, Tennessee, Utah, Virginia, and Wisconsin.

156. *Id.* These four states include California, Kansas, South Carolina, and Texas.

157. *Id.* These states include Florida, Iowa, Kentucky, Minnesota, Montana, New Hampshire, Oregon, and Vermont.

“paying unfair and excessive interest to overreaching creditors.”<sup>158</sup> There is a “tiered” system of interest rates on title loans in Florida. No title-loan lender is permitted to charge an annual interest rate of over 30% on the first \$2000 of the principal loan amount, 24% on the part of the principal loan amount between \$2000 and \$3000, and 18% on the part of the principal loan amount exceeding \$3000.<sup>159</sup>

The strongest aspect of Florida’s law is the provision stating that intentional violations of the title-loan statute may result in *criminal* liability. If a title-loan lender intentionally violates the interest rate provisions and charges interest at an annual rate exceeding 45%, that lender could be guilty of a third degree felony.<sup>160</sup> In addition, repeated violations of the title-loan provisions could form the basis of a state criminal racketeering prosecution.<sup>161</sup> These criminal sanctions serve as strong deterrents to the worst aspects of modern usury and loansharking.<sup>162</sup>

Despite the absence of extensive regulation of the title-loan industry in many states, the recent trend is for states to implement more regulation to curb the excesses of the industry. Some states where the industry was once active, such as Wisconsin, have recently prohibited the practice.<sup>163</sup> Between 2007 and 2010, at least six states implemented new regulation of the industry.<sup>164</sup> As in the case of payday loans, Catholic leaders have called for greater regulation of the title-loan industry.

### *C. The Catholic Response to Title-Loan Lending*

In a response similar to that taken towards payday loans, Catholic bishops have actively lobbied for title-loan-lending reform at the state level. In particular, Bishop Joe Vásquez of the Diocese of Austin, Texas has been a prominent leader in the movement to reform

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158. Fla. Op. Att’y Gen., Title Loan Transactions 99-38 (1999).

159. FLA. STAT. § 537.011(1) (2012).

160. *Id.* § 687.071(3).

161. Fla. Op. Att’y Gen., *supra* note 158.

162. Christopher L. Peterson, *Only Until Payday: A Primer on Utah’s Growing Deferred Deposits Loan Industry*, 15 UTAH B.J. 16 (2002) (“The term ‘loanshark’ originated toward the end of the nineteenth century to describe lenders who sold credit secured by borrowers’ future wages.”).

163. Sudeep Reddy, *States to Protect Borrowers Who Turn to Cars for Cash*, WALL ST. J. (Jul. 19, 2010), <http://online.wsj.com/article/SB10001424052748704746804575367250783943906.html>.

164. *Id.*



title-loan lending in Texas. In testimony before the Texas Legislature in 2011, he called for the body to reform a Texas loophole that allows title-loan lenders to be classified as a “credit service organization” rather than as a lender.<sup>165</sup> The loophole allows Texas title-loan “credit service organizations” to charge triple-digit interest rates.

In his testimony, Bishop Vásquez emphasized that Catholic social teaching requires three key things: first, “respect for the dignity of persons”; second, “preferential concern for the poor and vulnerable”; and finally, “pursuit of the common good.”<sup>166</sup> Bishop Vásquez noted that title-loan lenders were doing “more harm than good for persons in need of short-term cash loans”<sup>167</sup> and that nearly 20% of the individuals who utilized financial assistance programs through Catholic charities in his Diocese in 2010 had used payday and title loans.<sup>168</sup> He expressed the concern that the Catholic Church’s charitable dollars were unfortunately providing *de facto* funding for lenders, rather than aid genuinely aimed at helping the poor achieve self-sufficiency.<sup>169</sup>

Just as with payday loans, auto-title loans with triple digit rates of interest impede the opportunities for individuals to gain economic self-sufficiency. One of the key themes of *Caritas in Veritate* is the call of Pope Benedict XVI for financial instruments to be used in an “ethical way so as to create suitable conditions for human development and for the development of peoples.”<sup>170</sup> Title-loan lending at triple digit rates of interest, however, only impedes authentic human development. In the wake of payday lending and title-loan lending at excessive rates of interest, Catholic legal thought challenges these forms of modern usury today.

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165. Tex. Catholic Conference, Testimony of Bishop Joe Vásquez Before the Senate Business and Commerce Committee (Feb. 22, 2011), <http://www.senate.state.tx.us/75r/Senate/commit/c510/handouts11/0223-BishopJoeVasquez.pdf>.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Caritas in Veritate*, *supra* note 23, at para. 145.

## VII. THE ROLE OF CATHOLIC LEGAL THOUGHT IN CHALLENGING MODERN USURY

### *A. The Unconscionability Doctrine*

This article has thus far focused on federal and state efforts to curb the excesses of modern usury. But in today's complex world, where redress to the courts is available in this country, the purposes and intention of the Catholic legal tradition in the usury debate today can best be upheld in the courts by vigorous enforcement and adherence to the unconscionability doctrine of contract law. The unconscionability doctrine best exemplifies the tenets of Catholic social and economic thought in three significant areas: the focus of unconscionability and Catholic economic thought on per-se rates of interest, the significance of the disclosure of key material terms, and finally, the importance of meaningful choice in a bargain and thus, allowing a more vulnerable party a meaningful alternative to usury.

#### *1. A background of the unconscionability doctrine*

The past fifty years of contract law have seen a recognition by the courts that certain contractual bargains are grossly unfair and/or shocking to the dictates of conscience.<sup>171</sup> The doctrine of unconscionability has become a mechanism by which the courts can merge equitable considerations into the law and prevent specific performance of unconscionable contracts.<sup>172</sup> In essence, the doctrine seeks to prevent two things—oppression and unfair surprise.<sup>173</sup> The unconscionability doctrine has been applied not only to standard contracts of adhesion, but also to transactions where the parties theoretically have the ability to discuss the terms of the agreement.<sup>174</sup> The classic articulation of the doctrine was pronounced by the United

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171. Rougeau, *supra* note 22, at 129–30.

172. JOSEPH M. PERILLO, CALAMARI AND PERILLO ON CONTRACTS 384–85 (5th ed. 2003).

173. *Id.* at 388.

174. Perillo lists a number of situations in which the unconscionability doctrine has been applied:

cases involving a contract to construct asphalt plants, home improvement contracts, equipment leases, real estate brokerage contracts, hiring a hall for a Bar Mitzvah, a contract opening a checking account, an apartment house lease, a release, a contract for a motion picture idea, an arbitration provision in a contract of employment, a security transaction, a filling station lease, the settlement of a will contest dispute, and, coming full circle to its equitable origins, to a problem relating to a spendthrift trust.

*Id.* at 385–86.

States District Court of Appeals of the District of Columbia in the *Williams v. Walker-Thomas* case, which invalidated several contracts for household items purchased by two individuals between 1957 and 1962 on the basis of unconscionability.<sup>175</sup>

Significantly, the court described unconscionability in the following terms:

Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party. Whether a meaningful choice is present in a particular case can only be determined by consideration of all the circumstances surrounding the transaction. In many cases the meaningfulness of the choice is negated by a gross inequality of bargaining power. The manner in which the contract was entered is also relevant to this consideration. Did each party to the contract, considering his obvious education or lack of it, have a reasonable opportunity to understand the terms of the contract, or were the important terms hidden in a maze of fine print and minimized by deceptive sales practices? Ordinarily, one who signs an agreement without full knowledge of its terms might be held to assume the risk that he has entered a one-sided bargain. But when a party of little bargaining power, and hence little real choice, signs a commercially unreasonable contract with little or no knowledge of its terms, it is hardly likely that his consent, or even an objective manifestation of his consent, was ever given to all the terms. In such a case the usual rule that the terms of the agreement are not to be questioned should be abandoned and the court should consider whether the terms of the contract are so unfair that enforcement should be withheld.<sup>176</sup>

Modern unconscionability doctrine categorizes unconscionability into two forms—procedural and substantive unconscionability.<sup>177</sup> Substantive unconscionability refers to the actual terms and provisions of a contract<sup>178</sup> and whether they are substantively oppressive as

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175. *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965).

176. *Id.* at 449–50.

177. For an extensive discussion of the unconscionability doctrine today and its application in court cases, see Larry A. DiMatteo & Bruce Louis Rich, *A Consent Theory of Unconscionability: An Empirical Study of Law in Action*, 33 FLA. ST. U. L. REV. 1067 (2006).

178. MANN & ROBERTS, *supra* note 14, at 236 (“Substantive unconscionability, which involves the actual terms of the contract, consists of oppressive or grossly unfair provisions, such as an exorbitant price or an unfair exclusion or limitation of contractual remedies.”).

a matter of law.<sup>179</sup> In contrast, procedural unconscionability, or “bargain naughtiness,” refers to the surprise element<sup>180</sup> and the procedural facts surrounding the transaction.<sup>181</sup> Jurisdictions are split as to whether evidence of both procedural and substantive unconscionability are required to rescind a contract, although courts have rescinded a contract on the basis of substantive unconscionability alone.<sup>182</sup>

In essence, similar to the goals of Catholic social teaching, the purpose of the unconscionability doctrine is to protect the weakest and most vulnerable in society. It is currently an open legal question as to whether excessive interest rates are per se substantively unconscionable.<sup>183</sup>

## 2. Annual interest rates and per se unconscionability

First, Catholic social teaching and *Caritas in Veritate* emphasize not only the need for protection of the most weak and vulnerable in society, but respect for the universal common good and a commitment to security and justice for all to obtain authentic integral human development.<sup>184</sup> With regard to modern usury, particularly payday lending, the main concern of Catholic social teaching is not only that payday lending has recognized harmful social effects, but prevents the proper economic development of the human person. The presence of the “debt trap” certainly prohibits this development and excessive rates of interest contribute to the debt cycle.

The unconscionability doctrine can serve a role in preventing lenders from charging egregious interest rates. The position of many Catholic conferences with regards to APRs is that a rate in excess of thirty-six percent APR is usurious and unconscionable.<sup>185</sup> In *Carboni*

179. PERILLO, *supra* note 172, at 381.

180. *Id.*

181. MANN & ROBERTS, *supra* note 14, at 236 (“Procedural unconscionability involves scrutiny for the presence of ‘bargaining naughtiness.’ In other words, was the negotiation process fair, or were there procedural irregularities, such as burying important terms of the agreement in fine print or obscuring the true meaning of the contract with impenetrable legal jargon.”).

182. PERILLO, *supra* note 172, at 381.

183. *See, e.g.,* Payday Loan Store of Wis., Inc. v. Mount, No. 2010AP2298, 2011 WL 2577365 (Wis. Ct. App. June 30, 2011). The Wisconsin Supreme Court will soon decide the question whether an annual interest rate in excess of 1000% per annum for a short-term loan is per se unconscionable under the Wisconsin Consumer Act.

184. *See Caritas in Veritate, supra* note 23, at para. 67.

185. *See supra* notes 133–36.

*v. Arrospide*, a California appellate court found that a 200% interest rate on a secured \$99,000 loan was substantively unconscionable.<sup>186</sup> The court acknowledged the difficulty that courts find with regard to the point at which unconscionability is reached<sup>187</sup>—thirty-six percent, which is suggested by the Center for Responsible Lending and many Catholic organizations, serves as a reasonable point, especially considering the court in *Carboni* reduced the permissible rate of interest for collection from 200% to 24%.<sup>188</sup>

### 3. Disclosure of key terms and unconscionability

In today's contract world, disclosure of key terms to both parties is an essential requirement of a proper meeting of the minds. Before any advent of the unconscionability doctrine, Catholic social teaching emphasized the importance of disclosing key contractual terms. In the 1745 encyclical *Vix Pervenit*, Pope Benedict XIV wrote that banks and lenders must make certain disclosures in their lending agreements. Pope Benedict XIV stated that, within the contract, lenders "should explain the conditions and what gain they expect from their money. This will not only greatly help to avoid concern and anxiety, but will also confirm the contract in the realm of public business."<sup>189</sup>

Similar to the requirements of Catholic social teaching, disclosure of key terms is essential in the unconscionability inquiry. In a number of situations, a party may not receive full disclosure of key material terms or facts, or a party may take advantage of another party in a more vulnerable position. For instance, in *Frostifresh v. Reynoso*, a Spanish-speaking person was persuaded to pay \$1145.88 for a \$348 appliance on an installment contract.<sup>190</sup> The New York Court of Appeals held the contract to be unconscionable.<sup>191</sup> In a more recent case involving payday lending, the Missouri Court of Appeals held that a class action waiver provision in a payday loan contract was both procedurally and substantively unconscionable.<sup>192</sup> Part of the

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186. *Carboni v. Arrospide*, 2 Cal. Rptr. 2d 845, 850 (Ct. App. 1991).

187. *Id.* at 848 ("Although it is a simple matter to say that at some point an interest rate becomes unconscionable, it is more difficult to determine when that point is reached.").

188. *See id.* at 847.

189. *Vix Pervenit*, *supra* note 81, at 9.

190. *Frostifresh v. Reynoso*, 281 N.Y.S.2d 964 (App. Div. 1967).

191. *Id.*

192. *Woods v. QC Fin. Servs., Inc.*, 280 S.W.3d 90, 96, 98 (Mo. Ct. App. 2008).

court's ruling hinged on disclosure of key terms—the payday loan contract was in such fine print that even an optical scanner was unable to make out some of the characters.<sup>193</sup>

#### *4. The absence of meaningful choice and unconscionability*

Finally, Catholic social teaching also requires that a just contract is one in which all opportunities for lawful gain are investigated. In *Vix Pervenit*, Pope Benedict XIV wrote that in some circumstances “no other true and just contract may be possible except for a loan. Whoever therefore wishes to follow his conscience must first diligently inquire if, along with the loan, another category exists by means of which the gain he seeks may be lawfully attained.”<sup>194</sup> Thus, the option of rational choice of financial products must be made available to borrowers.

Catholic social teaching and the unconscionability doctrine similarly protect economic choice in the free market economy. Contract law is not lacking of examples where a court has invalidated a contractual provision—or an entire contract—when the terms were offered on a “take it or leave it” basis, offering no meaningful choice for one of the contractual parties.<sup>195</sup> Thus, the unconscionability doctrine of contract law protects the very essence of economic choice by invalidating agreements that lack a meaningful choice for participants in the marketplace.

#### *B. Conclusion—Catholic Social Teaching and the Unconscionability Doctrine*

Catholic social teaching and the prevention of modern usury is best reflected today by vigorous adherence and application of the unconscionability doctrine. Pursuant to Catholic social teaching, an interest rate in excess of a thirty-six percent APR is *per se* unconscionable.<sup>196</sup> In addition, Catholic social teaching demands disclosure of key material contractual terms and the opportunity for meaningful

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193. *Id.* at 96 (“Respondent’s expert testified that the spacing of the lines in the clause were so close that words from adjacent lines touched and an optical scanner was unable to make out the characters. The clause contains more than 1,300 words made to fit onto one page. When presented in a double-spaced, 12 point Times New Roman font, which is how this opinion is presented, the clause is six pages long.”).

194. *Vix Pervenit*, *supra* note 81, at para. 3-V.

195. See PERILLO, *supra* note 172, at 390 (citing cases).

196. See *supra* notes 133–36.

choice of lending options, both of which are protected by the unconscionability doctrine.<sup>197</sup> In a time when there is tension between some aspects of traditional contract law and Catholic social teaching, the unconscionability doctrine serves to protect all participants in the marketplace. Along with the unconscionability doctrine, community credit unions and microcredit programs today also present strong economic choices for participants in the economy to avoid the debt traps of modern usury.

#### VIII. COMMUNITY CREDIT UNIONS AND MICROFINANCE PROGRAMS AS ALTERNATIVES TO MODERN USURY

Catholic legal and intellectual thought today is not only critical of the excesses of modern usury with payday loans and title loans, it also offers alternatives for moral participation in the modern economy: community credit unions and microfinance programs. In *Caritas in Veritate*, Pope Benedict XVI stated that credit unions are a contemporary illustration of institutions grounded with an “ethical foundation” that have the right intention and transparency.<sup>198</sup>

Credit unions are defined particularly as cooperative financial institutions that are primarily “based on thrift that are directed at fulfilling human and social needs.”<sup>199</sup> Significantly, credit unions also have a democratic form and a not-for-profit ownership structure.<sup>200</sup> Microfinance programs are also similar to credit unions in that the programs are intended to provide financial services (such as lending) “to the poor on a sustainable basis.”<sup>201</sup>

The mission of community development credit unions, in particular, is to serve low and moderate-income individuals and families.<sup>202</sup> They generally offer low interest loans to members, often without a credit history requirement, and provide members with financial edu-

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197. *Cf. Vix Pervenit*, *supra* note 81, at para. 3-V.

198. *Caritas in Veritate*, *supra* note 23, at para. 65.

199. CHARLES FERGUSON & DONAL McKILLOP, *THE STRATEGIC DEVELOPMENT OF CREDIT UNIONS* 15 (1997).

200. See Reed White, Comment, *If It Quacks Like a Duck: In Light of Today's Financial Environment, Should Credit Unions Continue to Enjoy Tax Exemptions?*, 28 GA. ST. U. L. REV. 1367, 1379 (2012).

201. Bernd Balkenhol, *Efficiency and Sustainability in Microfinance*, in *MICROFINANCE AND PUBLIC POLICY* 3, 3 (Bernd Balkenhol, ed., 2007).

202. *What Is a CDCU?*, CMTY. DEV. CREDIT UNION FED'N, <http://www.cdpu.coop/i4a/pages/index.cfm?pageid=261> (last visited Jan. 28, 2013).

cation and counseling.<sup>203</sup> In a world of payday and title-loan lenders, community development credit unions offer a real alternative for low- and moderate-income borrowers who may otherwise be caught in the payday or title-loan debt trap.

With their provision of low interest rates, it is not surprising that Pope Benedict XVI applauds the work of credit unions and micro-finance programs in today's economy.<sup>204</sup> One particular loan program in Belleville, Illinois, began as a collaboration between St. Vincent de Paul conferences and the Catholic and Community Credit Union and serves as a great illustration of the spirit of *Caritas in Veritate*. The founders of the loan program reached out to St. Vincent de Paul conferences and the Catholic and Community Credit Union for donations and guidance in program implementation.<sup>205</sup> If a potential borrower's application for a loan is approved, the borrower is given a \$300 loan from the \$15,000 fund of the program and is only charged a 3% interest rate on the loan.<sup>206</sup> Borrowers participate in a budgeting class, where they are taught money-saving techniques, and once they complete the class they receive a \$5 grocery store gift card.<sup>207</sup> The program is a unique one among the approximately 257 faith-affiliated credit unions as of 2009, of which approximately fifty-eight are Catholic-affiliated.<sup>208</sup>

Along with involvement in the debates over payday and title-loan-lending reform, Catholic social activism is making a positive difference for borrowers through community credit unions and micro-finance lending programs.

## IX. CONCLUSION

In an era of increasing financial complexity, the Catholic legal and intellectual tradition offers not only a symbolic moral witness to the policy debates concerning lending, but a voice that offers real solutions to the problem of modern usury. The duty of those in the economic world to safeguard the weaker, more vulnerable parties in society as articulated by Pope Benedict XVI in *Caritas in Veritate* can

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203. *Id.*

204. *Caritas in Veritate*, *supra* note 23, at para. 65.

205. Tom Gallagher, *An Alternative to Payday Loans for the Working Poor*, NAT'L CATH. REP. (Aug. 14, 2009), <http://ncronline.org/news/justice/alternative-payday-loans-working-poor>.

206. *Id.*

207. *Id.*

208. *Id.*



best find its expression in vigorous adherence to the unconscionability doctrine of contract law. In addition, the Catholic legal and intellectual tradition promotes microcredit lending programs and community credit unions as strong economic alternatives to modern usury.

In conclusion, perhaps one of the greatest contributions of the Catholic legal and intellectual tradition to the discussion concerning modern usury lies in the nature of the tradition itself as a tradition that emphasizes the universal common good in commerce. The tradition is reflected in the words of a popular song: “Whatsoever you do for the least of My people That you do unto Me.”<sup>209</sup> Modern law and policy concerning usury can and should reflect this ideal.

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209. *Whatsoever You Do*, OUR LADY OF SORROWS CHURCH, [http://www.ourladyofsorrows.us/Music\\_Lyrics/Lyrics/Whatsoever\\_You\\_Do.pdf](http://www.ourladyofsorrows.us/Music_Lyrics/Lyrics/Whatsoever_You_Do.pdf) (last visited Dec. 29, 2012); see also *Matthew* 25: 40.

TABLE 1 (APPENDIX): CURRENT STATE USURY LIMITS<sup>210</sup>

State	Usury-Limit Statute	Current Usury Limit
Alabama	ALA. CODE § 8-8-1	8%
Alaska	ALASKA STAT. § 45.45.010	10.5%
Arizona	ARIZ. REV. STAT. ANN. § 44-1201	10%
Arkansas	ARK. CONST. AMEND. 89, § 3	17% (consumer loans); 5% above the Federal Reserve Bank Discount Rate (non-consumer loans)
California	CAL. CONST. ART. 15, § 1	10% (consumer loans); 5% above the Federal Reserve Bank of San Francisco Discount Rate (non-consumer loans)
Colorado	COLO. REV. STAT. § 5-12-101	8%
Connecticut	CONN. GEN. STAT. § 37-1	12%
Delaware	DEL. CODE ANN. tit. 6, § 2301	5% above the Federal Reserve Bank Discount Rate
District of Columbia	D.C. CODE § 28-3301	24%
Florida	FLA. STAT. § 687.02	18% (loans smaller than \$500,000); 25% (loans greater than \$500,000)
Georgia	GA. CODE ANN. § 7-4-2	16% (loans \$3000 or less); 60% (loans between \$3000 and \$250,000)
Hawaii	HAW. REV. STAT. § 478-2	10%
Idaho	<i>No usury statute found</i>	<i>N/A</i>
Illinois	815 ILL. COMP. STAT. 205/4	9%
Indiana	IND. CODE § 24-4.5-3-201	21% (loans \$50,000 or less); no maximum rate (loans over \$50,000)
Iowa	IOWA CODE § 535.2	5%
Kansas	KAN. STAT. ANN. § 16-207	15%
Kentucky	KY. REV. STAT. ANN. § 360.010(1)	Rate for loans under \$15,000 is the lesser of either 19% or 4% above the Federal Reserve Bank Discount Rate; there is no maximum rate for loans over \$15,000
Louisiana	LA. REV. STAT. ANN. § 9:3503	12%
Maine	<i>No usury statute found</i>	<i>N/A</i>
Maryland	MD. CODE ANN., COM. LAW § 12-103	8%

210. The information in this table was compiled after a Westlaw search of all applicable state usury limits. A search was conducted after review of the following website, which should receive due credit: *Usury Laws by State*, LOANBACK (Mar. 2, 2011), <http://www.loanback.com/category/usury-laws-by-state>.

State	Usury-Limit Statute	Current Usury Limit
Massachusetts	MASS. GEN. LAWS ANN. ch. 271, § 49	20%
Michigan	MICH. COMP. LAWS ANN. § 438.31	7%
Minnesota	MINN. STAT. ANN. § 334.03	8%
Mississippi	MISS. CODE ANN. § 75-17-1	Rate is the greater of either 10% or 5% above the Federal Reserve Bank Discount Rate
Missouri	MO. ANN. STAT. § 408.030	Rate is the greater of 10%, or 3% above long-term U.S. government bond yields
Montana	MONT. CODE ANN. § 31-1-107	Rate is the greater of 15% or "6 percentage points per year above the prime rate published by the federal reserve system in its statistical release H.15 Selected Interest Rates for bank prime loans dated 3 business days prior to the execution of the agreement"
Nebraska	NEB. REV. STAT. § 45-101.03	16%
Nevada	<i>No usury statute found</i>	<i>N/A</i>
New Hampshire	<i>No usury statute found</i>	<i>N/A</i>
New Jersey	N.J. STAT. ANN. § 31:1-1	16%
New Mexico	<i>No usury statute found</i>	<i>N/A</i>
New York	N.Y. GEN. OBLIG. LAW § 5-501	16%
North Carolina	N.C. GEN. STAT. § 24-1.1	Rate for loans under \$25,000 is the greater of either 16% or 6% above the 6 month U.S. Treasury bills rate. There is no maximum rate for loans over \$25,000
North Dakota	N.D. CENT. CODE § 47-14-05	Rate for loans under \$35,000 5.5% above the 6 month U.S. Treasury bills rate. There is no maximum rate for loans over \$35,000
Ohio	OHIO REV. CODE ANN. § 1343.01	Rate for loans under \$100,000 is 8%. There is no maximum rate for loans over \$100,000
Oklahoma	OKLA. STAT. ANN. tit. 14A, § 3-201	10%
Oregon	OR. REV. STAT. § 82.010	Rate for loans under \$50,000 is the greater of either 12% or 5% above the Federal Reserve Discount Rate
Pennsylvania	41 PA. CONS. STAT. ANN. § 201	Rate for loans under \$50,000 is 6%. There is no maximum rate for loans over \$50,000

State	Usury-Limit Statute	Current Usury Limit
Rhode Island	R.I. GEN. LAWS § 6-26-2	Rate is either the greater of 21% or 9% above “the domestic prime rate as published in the Money Rates section of The Wall Street Journal on the last business day of each month preceding the later of the date of the debtor’s agreement or the date on which the interest is redetermined in accordance with the terms of the debtor’s agreement”
South Carolina	S.C. CODE ANN. § 34-31-20	8.75%
South Dakota	<i>No usury statute found</i>	<i>N/A</i>
Tennessee	TENN. CODE ANN. § 47-14-103	Rate is either the lesser of either 24% or 4% of the Federal Reserve Bank Prime Rate
Texas	TEX. FIN. CODE ANN. § 302.001	10%
Utah	UTAH CODE ANN. § 15-1-1	10% (but parties can contract for a different rate, higher or lower)
Vermont	VT. STAT. ANN. tit. 9, § 41a	12%
Virginia	VA. CODE ANN. § 6.2-303	12%
Washington	WASH. REV. CODE ANN. § 19.52.020	Rate is either the greater of 12% or 4% above “the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the later of (i) the establishment of the interest rate by written agreement permitting an adjustment in the interest rate, or (ii) any adjustment in the interest rate in the case of a written agreement permitting an adjustment in the interest rate”
West Virginia	W. VA. CODE ANN. § 47-6-5	8%
Wisconsin	WIS. STAT. ANN. § 138.04	5%
Wyoming	WYO. STAT. ANN. § 40-14-106	7%

