Swallowing the Camel: Biblical Fidelity, Same-Sex Marriage, and the Love of Money

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As the Episcopal Church begins local discernment on the question of whether to bless same-sex relationships, evaluation of the theological strength of the arguments for and against is ongoing. I examine the case against same-sex blessings and marriage made by the Traditionalist component of a task force appointed by the House of Bishops in their report. That case's weakness, in terms of the asserted scriptural authority and basis in philosophic reason set forth by the Traditionalists themselves, is contrasted with the much stronger case on both grounds in favor of the biblical prohibition of usury, given by the Traditionalist report as an example of a scriptural command that was appropriately discarded by the church. The Traditionalists demonstrate a much greater willingness to put aside scripture, reason, and tradition in the case of usury, which is endemic in the culture at large, while holding fast to the prohibition against same-sex marriage, which is much less strongly rooted in each category. This in turn suggests that defenders of this prohibition may be unwittingly defending obedience to scripture when it imposes a lesser challenge to the culture in which defenders are invested, and imposes costs which they only feel in the abstract.

Introduction

At its 2012 General Convention, the Episcopal Church adopted a liturgy for the blessing of same-sex couples entering into marriage, which could be used within dioceses whose bishops approve its use. In such local discernment, dioceses can look to a number of resources in addressing the theological issues surrounding recognition of same-sex

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marriage, including an important exchange fostered by the House of Bishops itself.

This exchange, published in the Winter 2011 issue of the *Anglican Theological Review*, consists principally of a paper from the self-styled "Traditionalists" on the task force appointed by the Theology Committee of the House of Bishops to examine the issue, in which they explained and justified "the opposition we express in this paper to same-sex marriage," which its authors describe as "the dominant position of worldwide Anglicanism,"[1] and a paper by the "Liberals" arguing for recognition of same-sex marriage. Each sub-task force then comments upon the principal paper advanced by the other, and a series of short "Anglican and Ecumenical Responses" follow.

The Traditionalist paper stresses the importance of fidelity to scripture—not in a fundamentalist way, but to the whole tenor of scripture, and finds in the few pieces of scripture that touch upon homosexuality (in some way) and marriage a point of contact with natural law theory. But the paper acknowledges the prospect that there are "moral issues where subsequent reflection and experience led to genuine change in the church's teaching" ("View," 20). The paper gives three examples, two of which are noncontroversial, and the third, which prompts this article: chattel slavery, the subordination of women, and the prohibition of usury ("View," 11, 20). The inconsistency of the Traditionalist paper's rather easy dismissal of the prohibition against usury with the methodology used to defend the prohibition against same-sex relationships illuminates the extent to which hermeneutics can be used to marginalize the more central teaching while bringing the peripheral to the fore.

Comparing the biblical texts relied upon by the Traditionalists to defend the prohibition against same-sex marriage and those dismissed by them supporting the prohibition of usury reveals that the prohibition against usury is far more deeply embedded in scripture. Likewise, the criterion of reason, adverted by the Traditionalists in support of the latter while dismissing the former, again shows the Traditionalists relying on a simply incorrect argument to delegitimize the prohibition against usury, while accepting more strained arguments against same-sex marriage.

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[1] John E. Goldingay, Grant R. LeMarquand, George R. Sumner, and Daniel A. Westberg, "Same-Sex Marriage and Anglican Theology: A View from the Traditionalists," *Anglican Theological Review* 93, no. 1 (Winter 2011): 2. Hereafter, subsequent references for "View" will be included in the text.

The straining at the gnat of same-sex marriage while swallowing the camel of usury is indicative of more than a poor choice of examples. The Traditionalists could have made the same points with one of the other two examples; while the countenancing of slavery is now so squarely rejected within Christianity writ large as to constitute a straw man, women's ordination, for instance, is not entirely agreed upon yet even within Anglicanism, and divides Anglicanism from Roman Catholicism even in the era of Pope Francis.[2]

More compellingly, none of the responses to the Traditionalist paper pointed out the inconsistencies between the paper's handling of scripture and reason in the context of usury and that in the context of same-sex relationships. To put it differently, none of the responses found any notable inadequacy in the treatment of the prohibition of usury in the Traditionalist paper. This suggests that the relegation of the prohibition against usury to the scrap-heap of history has been internalized sufficiently among theologians that it is deemed unremarkable, and the surprisingly skimpy basis upon which it was here defended simply went unnoticed.

Meanwhile, the Anglican Communion and some of its constituent churches have been, quite literally, tearing themselves apart over recognition of the value of same-sex relationships, a subject afforded comparatively little attention in scripture.[3] That a broad spectrum of writers across the theological spectrum have internalized a willingness to sideline or diminish scriptural prohibitions, which are more in number and more related to the core teachings of Jesus, is evidence of, at a minimum, comfort with social structures that have long privileged Christianity—especially mainline American Protestantism—and discomfort with the challenge Jesus posed to such constructs in his own day, and in ours. Likewise, the willingness to raise the much more attenuated case against same-sex relationships to the level of core doctrine, while seemingly unrelated, reflects the same willingness to use the Bible to reify cultural mores hallowed by tradition. That both occur in the same article, however, bespeaks a straining at

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[2] See, for example, *Evangelii Gaudium*: *Apostolic Exhortation of the Holy Father Francis to the Bishops, Clergy, Consecrated Persons and Lay Faithful on the Proclamation of the Gospel in Today's World* (Vatican City: Vatican Press, 2013), §104: "The reservation of the priesthood to males, as a sign of Christ the Spouse who gives himself in the Eucharist, is not a question open to discussion, but it can prove especially divisive if sacramental power is too closely identified with power in general."

[3] Stephen Bates, *A Church at War: Anglicans and Homosexuality* (London: I. B. Tauris & Co., 2004).

gnats while swallowing camels, which subverts the very hermeneutic principles relied upon.

By comparing the handling of these two prohibitions in the Traditionalist paper, we see not only the weaknesses in the arguments against same-sex relationships; we equally see the weaknesses in the dismissal of the prohibition against usury. Moreover, this dismissal can reasonably be argued to have imposed significant costs upon society as a whole, let alone Christians. An examination of the real-world consequences of usury in our modern age suggests that the abolition of this prohibition, unlike that defended in the Traditionalist paper, has caused both human woe and theological distortion. That the former is as uncontroversial as the latter is controversial suggests that Christians of all stripes bear responsibility for domesticating the core teaching of Jesus, watering it down so that its radical challenge to our times can be tidied away.

Hard Cases Make Bad Lore: Embracing Usury, Standing Firm on Marriage

A comparison of the parallel arguments respecting the two prohibitions demonstrates the weak underpinnings of the Traditionalist paper's dismissal of the prohibition against usury. Both prohibitions are evaluated primarily in light of scripture and reason, as the Traditionalists acknowledge that both are firmly rooted in tradition. Despite this, the Traditionalist paper briefly dismisses the prohibition of usury on the grounds of scripture and reason:

> The prohibition of usury, for example, was held for centuries, and came to be seriously questioned both on the adequacy of the interpretation of the few scriptural texts that were thought relevant, and of the philosophical understanding provided by Aristotle on the nature of money. In that case, the evidence to decide the issue comes from reason and Scripture, and not from tradition. In other words, the challenge to change the canon law on usury could not be answered simply by appealing to the many centuries when the prohibition was accepted. ("View," 11)

A comparison of the textual and reason-based arguments applied to both prohibitions in the Traditionalist paper demonstrates that the prohibition against usury is given a far more hostile scrutiny than is the prohibition against same-sex marriage.

Marriage and the Texts

The Traditionalist paper rests upon each of the three legs of the famous "three-legged stool": scripture, tradition (in the form of natural law theory), and reason (in the form of scientific knowledge concerning homosexuality). The Traditionalists themselves acknowledge that "Anglican conservatives are distinguished by treating the Bible as uniquely authoritative for basic Christian belief and practice," and that their "strong reluctance to set aside what we consider Scripture's direct meaning may well be the single most important factor in the opposition of Anglican conservatives to the acceptance of same-sex marriage" ("View," 12).

The Traditionalists divide their texts into two classes. Most directly applicable, of course, are the passages known to liberals as the "clobber passages" (a use acknowledged by the Traditionalists, describing the passages' use as "a club with which to beat people in same-sex relationships" ["View," 16]), each of which is examined separately and in relationship with each other: Leviticus 18:22 and 20:13; Romans 1:18–32; 1 Corinthians 6:9–11 and 1 Timothy 1:10 ("View," 26–28). The Traditionalists cite Genesis 19:4–11 (the story of Sodom and Gomorrah), but note that other, persuasive explanations of that text have been adduced, and do not rely on it in their exposition ("View," 15). Indeed, they go on to acknowledge that, viewing the New Testament passages alone, "taking the passages individually, there is some plausibility in the critical reinterpretation (except, we would say, in the case of Romans 1 where the liberal case is specious)" ("View," 16).

The Traditionalists also cite several passages from the Old Testament describing marriage, and New Testament passages congruent, in their opinion, with them, as setting out marriage as "between male and female," "connected to children and fruitfulness," "emotional and institutional," and "permanent": Genesis 1:27–28; Genesis 2:24; and Mark 10:2–9 / Matthew 19 ("View," 24–25). Subsequently, the Traditionalists add one more text, Ephesians 5:31–32 ("View," 29). In sum, in support of their view, the Traditionalists rely on five texts they construe as direct prohibitions of homosexual conduct, and five supporting texts addressing the nature of marriage.

Usury and the Texts

More modern texts, and secular law, define usury as charging excessive or unjust interest. However, in the ancient world, and throughout much of the Christian tradition prior to the modern era,

usury meant simply "to take money as a price for money lent," that is, to charge interest in any amount upon a loan.[4]

The Traditionalist paper does not adumbrate the relevant scriptural passages, referring only to "the few scriptural texts that were thought relevant." However, an analysis of scripture relative to usury along the same lines as employed by the Traditionalist paper yields dramatically more than the five direct prohibitions and five supporting passages. Direct prohibitions and/or condemnations of usury appear in no fewer than sixteen scriptural texts: Exodus 22:25–27, Leviticus 25:35–37, Deuteronomy 23:19, Psalm 15:5, Psalm 55:11 (54:11 in the Vulgate), Proverbs 22:11, Proverbs 28:8, Ezekiel 18:8, Ezekiel 18:13, Ezekiel 18:17, Ezekiel 22:12, Nehemiah 5:7, Nehemiah 5:10–11, Jeremiah 15:10, Matthew 5:42, and Luke 6:35.[5] The texts are quite unequivocal, although several restrict the prohibition to forbid usury only vis à vis one's "neighbor," which provided a means through which usury as a commercial proposition wriggled its arm free from the straightjacket of scripture; however, as followers of Jesus, Christians have no warrant for a restrictive reading of the term "neighbor," as evidenced by the parable of the Good Samaritan.[6]

Supporting passages situating the prohibition against usury at the heart of the Christian ethic are, quite simply, legion. First, there are those texts which enjoin works of mercy and generosity not only to fellow members of the community, but to the "stranger" (such as Deuteronomy 24:19, Exodus 22:22, Zechariah 7:10–11, Ezekiel 18:7,

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[4] Thomas Aquinas, *Summa Theologica*, trans. Fathers of the English Dominican Province (New York: Benziger Bros., 1947), vol. 2, Part II–II, q. 78, 1518.

[5] This list does not purport to be exhaustive, and is based in part on that compiled by Jeremiah O'Callaghan in *Usury: Funds and Banking* (New York: John Doyle, 1834), 72–74. See also M. Douglas Meeks, "The Peril of Usury in the Christian Tradition," *Interpretation: A Journal of Belief and Theology* 65, no. 2 (2012): 128, 130–135. The translation of Psalm 55:11 referred to is that of the Douay-Rheims translation of the Latin Vulgate, and its reading of the word translated as "oppression" in the NRSV as "usury" forms the basis for Thomas Aquinas's analysis in his *Commentary on the Psalms* (trans. H. McDonald, Gregory Sadler, *et al*., 2012), archived at http://www4.desales.edu/~philtheo/loughlin/ATP/).

[6] Aquinas, *Summa Theologica*, II-II, q. 78, art. 1, 1519 makes this very argument, which is consistent with the early Christian authorities, as demonstrated by the barrage of glosses cited by O'Callaghan in addressing this proposed limitation. O'Callaghan, *Usury*, at 75–77. See also Meeks, "The Peril of Usury," 133–134; David Graeber, *Debt: The First Five Thousand Years* (Brooklyn, N.Y.: Melville House, 2011), 283–287.

Galatians 2:10, Galatians 6:2, James 1:7, Matthew 25:35, Psalm 41:1, Psalm 82:3, and Proverbs 19:17).

Second, the New Testament, particularly in the gospels, makes clear that money and the pursuit of gain are a formidable obstacle to living a Christian life, as evidenced by the "rich young ruler" whom Jesus loves, but whom he counsels, "Go, sell what you own, and give the money to the poor, and you will have treasure in heaven; then come, follow me" (Mark 10:21). This passage is immediately followed by the jarring statement, "How hard it will be for those who have wealth to enter the kingdom of God!" for "it is easier for a camel to go through the eye of a needle than for someone who is rich to enter the kingdom of God" (Mark 10:23, 25). The only touch of relief in this seemingly flat declaration is that "for God all things are possible" (Mark 10:27).

Finally, the examples we are given of the life of ministry and discipleship in the apostles' life with Jesus, their first mission, and their practice in the early church show that the pursuit of gain was simply not a component of their ministry (Luke 8:3, Luke 10:7–8, Acts 4:32–37, Acts 5:1–10). Even Paul, who worked himself and commanded that all members of the churches he founded be productive, accepted and expected sustenance on his missionary journeys; moreover, his work ethic presumed that the community shared all things, and was clearly framed as preventing abuse of the community as a whole by unproductive members (Acts 19:9 and 20:34, 2 Thessalonians 3:6–13).[7]

In short, the direct prohibitions of usury occur in triple the number of texts deemed by the Traditionalists to create an affirmative obligation to compel obedience to the ban on same-sex relationships and to authoritatively preclude faithful same-sex marital unions. Moreover, the prohibition fits snugly within a core network of values mandated by, on even a superficial inquiry, a fairly dense series of scriptural texts, and connected intimately to Jesus' preaching, apostolic practice, and the teachings of their successors for over a millennium.

Tradition and Reason

The Traditionalist paper relies both on scientific evidence relating to homosexuality, and on "the tradition" interpreting "the theory

[7] See O'Callaghan, *Usury*, at 74–75; Herbert A. Applebaum, *The Concept of Work: Ancient, Medieval, and Modern* (Albany, N.Y.: State University of New York Press, 1992), 183–185.

of natural law, developed in classical philosophy and in patristic and scholastic theology," which is defined in the main text as an exercise of reason ("View," 36).

Notably, the scientific data, even as characterized by the Traditionalists, is not particularly helpful to their analysis, as it suggests at most some level of plasticity in orientation, but that nature and nurture both play a role. While this interpretation of the data is subject to question, the Traditionalists do not assert that a same-sex orientation is chosen or subject to change in any significant number of cases, let alone something easily shed.

Similarly, the Traditionalists have already conceded that the tradition unequivocally supports the prohibition against usury, a contention amply supported by scholarship both new and old.[8] The Traditionalists contend that reason cuts against the prohibition of usury, in the form of "the philosophical understanding provided by Aristotle" of the fungible nature of money as a medium of exchange ("View," 11). This argument has been made by others, attempting to reconcile the more modern definition of usury with scripture, and concluding that Thomas Aquinas, Aristotle, and the tradition "tell us nothing of the morality of interest under conditions" such as those of the modern nation state and banking system.[9] However, Aristotle's general statement about the nature of money has been used in the Traditionalist paper to elide his quite clear writings on usury:

> The most hated sort [of "wealth-getting"], and with the greatest reason, is usury, which makes a gain out of money itself, and not from the natural object of it. For money was intended to be used in exchange, but not to increase at interest. And this term interest, which means the birth of money from money, is applied to the breeding of money because the offspring resembles the parent. Wherefore of all modes of getting wealth this is the most unnatural.[10]

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[8] See Meeks, "The Peril of Usury," 135–138; and O'Callaghan, *Usury,* 81–125.

[9] B. W. Dempsey, S.J., "Money, Price and Credit," in Aquinas, *Summa Theologica*, vol. 3, 3366–3375.

[10] Aristotle, *Politics,* trans. Benjamin Jowett, in *The Basic Works of Aristotle,* ed. Richard McKeon (New York: Random House, 1941), Book I, chap. 10, 1258b, 1141; Aristotle, *Nicomachean Ethics*, trans. W. D. Ross, in McKeon, *Basic Works*, Book. IV, chap. 2, 1121b, 988. As David Graeber notes, "*The Nicomachean Ethics* is equally damning" (*Debt*, 440, n. 123, citing Odd Inge Langholm, *The Aristotelian Analysis of Usury* [Oslo: Universitetsforlaget, 1984]).

Usury is both unnatural and unjust, as natural law thinkers from Aristotle through Aquinas and beyond held: unnatural, in that it treats an artificial, inert thing as bearing fruit, at the expense of the borrower, who is thus charged for something which does not in truth exist, in addition to the value of the money lent. This gives rise to three related but distinct arguments against usury arising from commutative justice:

> (1) money is not a productive asset; (2) money is a fixed medium of exchange and can only be sold for its fixed price; and (3) the ownership of money means nothing more than the right to use the money to buy things so one cannot charge separately for the use and ownership of money. It is unjust for the lender to charge the borrower usury as the very nature of money makes usury an unjust exchange.[11]

Moreover, usury offends against distributive justice; "Usury is unjust in its redistribution of wealth. Usury injures the poor."[12]

The Traditionalists' own choice of a standard of reason, "the philosophical understanding provided by Aristotle" on the subject of usury, unequivocally supports the prohibition. Despite this, the Traditionalists adopt a contrary reading fostered by, frankly, evading their main source. Again, the disjuncture in approach is arresting.

Straining at Gnats, Swallowing Camels

One approach not addressed in the Traditionalist paper is the simple expedient of looking at the effect of the rules at issue, that is, whether the following of the course recommended has brought results which are consistent with the values of Christianity. Pragmatically, the question would be whether the prohibition of same-sex relationships and marriage are beneficial, spiritually or socially, and whether the rescission of the rule against usury has been beneficial or harmful. While this approach may seem rather more attuned to common sense than to the doing of God's will, it in fact has theological warrant. Thus, the Rabbi Gamaliel advised the Council to allow the apostles to teach without hindrance and let the results be seen, "because if this plan

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[11] Brian M. McCall, "Unprofitable Lending: Modern Credit Regulation and the Lost Theory of Usury," *Cardozo Law Review* 30, no. 2 (2008): 550, 566.

[12] McCall, "Unprofitable Lending," 559.

or this undertaking is of human origin, it will fail; but if it is of God, you will not be able to overthrow them" (Acts 5:38–39). Similarly, Paul explains that "the fruit of the Spirit is love, joy, peace, patience, kindness, generosity, faithfulness, gentleness, and self-control" (Gal. 5:22–23). So weighing the effect of theological belief over time should be welcome both as an exercise of pragmatic reason and of theological inquiry.

The Traditionalist paper does not identify any concrete harm, other than subversion or undermining theological models or constructs, averted by the prohibition against same-sex relationships. The paper also frankly "recognize[s] the extra burden and challenge involved" in mandating "as pastoral provisions for homosexuals the options of sublimation, abstinence, and therapeutic change, where appropriate," options that are "limited, to be sure" ("View," 48). However, the only concrete instance of a harmful effect of repealing the prohibition identified in the Traditionalist paper is the concern that "instituting same-sex marriage would potentially discourage homosexual Christians who are quietly pursuing their call to Christian discipleship within the traditional sexual boundaries," and who may feel betrayed ("View," 50).

By contrast, the effects of loosening, and then effectively abolishing, the prohibition against usury are much more concrete, quantifiable, and widespread. Indeed, the elimination of the prohibition against usury has not only led to significant adverse effects for those who are caught up in excessive interest, depriving them of substantial assets to pay trifling debts, it has in the context of home mortgages led to practices that have undermined property title by blurring the lines of who has the right to collect money lent—and to foreclose, in the event of default.

Historically, the Reformation saw the beginning of the end of the classical prohibition against usury. Originally a strong supporter of it, Martin Luther came to defend interest-bearing loans by 1524, and, by 1650, "almost all Protestant denominations had come to agree with [John Calvin's] position that a reasonable rate of interest (usually five per cent) was not sinful, provided the lenders act in good conscience, do not make lending their exclusive business, and do not exploit the poor."[13] While not completely jettisoning the prohibition,

[13] Graeber, *Debt*, 321–322; see also David W. Jones, *Reforming the Morality of Usury: A Study of Differences that Separated the Protestant Reformers* (Lanham, Md.: University Press of America, 2004), 4–5.

the Protestant consensus and statutes promulgated in line with that consensus did not treat it as a rule—that is, a "clear prescription that exists prior to its application and that determines appropriate conduct," or a bright line prohibition.[14]

Instead, the prohibition against usury became more akin to what is known in jurisprudence as a "standard," a more flexible guideline "which leaves to individuals, subject to correction by a court, the task of weighing up and striking a reasonable balance between the social claims which arise in various unanticipatable forms."[15] While this distinction is not airtight, it captures an essential truth: where rules can sometimes be arbitrary or overly rigid, standards can become a means of paying lip service to the values they purport to serve, while consistently finding those values inapplicable to any given instance.[16] In short, standards are subject to manipulation in a way that rules are not. They make for disparity in results. And, indeed, where the prohibition against usury took the form of a standard and not a rule, whether in the ancient or modern world, interest rates fluctuated widely.[17]

Ultimately, a decision by the Supreme Court of the United States found that the usury law of the home state of the bank applies when a state does business across state lines, leading Delaware and South Dakota to eliminate their usury laws and to export their rates across the United States.[18] As a result, "the new synthesized usury rule became: any bank can charge any interest rate it wants anywhere it wants."[19]

In the current era, an increasing number of scholars are looking again to usury law as a means of reducing if not eliminating the financial blight caused by "record credit card debt, rising consumer bankruptcy, predatory payday loans, and the collapse of the subprime

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[14] Richard H. Fallon, Jr., "'The Rule of Law' as a Concept in Constitutional Discourse," *Columbia Law Review* 97 (1997): 1, 14, n. 58.

[15] H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961), 128.

[16] John F. Wirenius, "Actions as Words, Words as Actions: Sexual Harassment Law, the First Amendment and Verbal Acts," *Whittier Law Review* 28 (2007): 905, 908–916.

[17] See, for example, Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776), ed. W. B. Todd (Indianapolis, Ind.: Liberty Classics, 1981), vol. I, chap. ix, 106–115; Christopher L. Peterson, "Usury Law, Payday Loans, and Statutory Sleight of Hand: Salience Distortion in American Credit Pricing Limits," *Minnesota Law Review* 92 (2008): 1110, 1116–1122.

[18] *Marquette National Bank v. First of Omaha Service Corp.*, 439 U.S. 299 (1978); see also Peterson, "Usury Law," 1121–1122.

[19] Peterson, "Usury Law," 1122.

mortgage market."[20] The problem, even independent of the economic crisis from 2008 through the present, was significant; as Brian McCall summarizes:

> Along with the increasing debt levels, individual financial failure as measured by bankruptcy filings also increased from in excess of 200,000 filings in 1980 to over 1.4 million filings in 2006. Studies have suggested a statistically significant positive correlation between increasing debt levels (and particular revolving, i.e. credit card debt and home mortgage debt) and consumer bankruptcy filings. This growing mountain of debt and increase in consumer bankruptcy filings has been paralleled by two phenomena: (1) a growing laxity in usury laws and (2) legal scholarship calling for new approaches to credit regulation.[21]

Instead, in 2005, toward the end of the period analyzed by McCall, Congress passed the "first major bankruptcy reform legislation in nearly three decades," the Bankruptcy Abuse Prevention and Consumer Protection Act, widely known as BAPCPA, which, despite its name, created a myriad of technical procedural requirements, leading legal academics to conclude that "the statute's real effect would be to increase costs and reduce the bankruptcy access of all debtors, especially the worst off."[22] While the results of BAPCPA have been somewhat more mixed than predicted, the costs imposed by compliance with the procedural requirements of BAPCPA have resulted in a higher number of unrepresented filers, "despite the fact that these cases are not succeeding."[23] In other words, BAPCPA exacerbated if not created an "affordability paradox," making relief from debt harder to obtain for those most in need at the same time as that need was exploding.

As long ago as 1963, Bruce Morgan, a Presbyterian minister, pointed out the disparity between the idealized, pre-Civil War image

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[20] McCall, "Unprofitable Lending," 551; see also Peterson, "Usury Law," 1111–1113 (summarizing scholarship documenting "explosion" and the harmful effects of "payday loans" prior to advocating revival of enforceable usury laws).

[21] McCall, "Unprofitable Lending," 553–554.

[22] Angela Littwin, "The Affordability Paradox: How Consumer Bankruptcy's Greatest Weakness May Account for its Surprising Success," *William and Mary Law Review* 52 (2011): 1933, 1936. BAPCPA was enacted as Pub. L. 109–8, 119 Stat. 23 (April 20, 2005).

[23] Littwin, "The Affordability Paradox," 1938, 1970–1979.

of our economy as a "free, private, individual enterprise system," in which "it is the buyers, the consumers, who exercise sovereignty," and the "supramarket" economy that in fact has existed since at least the late nineteenth century.[24] As Morgan notes, the "classical" economic ideal of local, individualized free transactions among parties of relatively equal bargaining power was long ago shouldered aside in reality (to the extent it ever existed at all) by both "a growing role for government in economic affairs, but even more significantly, [by] the growing influence of 'private governments' or nonstate supramarket organizations of economic power."[25] In the half-century since he wrote, the increased dominance of the seller over the purchaser in being able to unilaterally dictate the terms of transactions without any flexibility has become the norm in American consumer transactions:

> Despite [recent] claims of new consumer power, the underpinnings of mass adhesion contracting in the Twenty First Century remain intact. Mass suppliers still have economic incentives to rely on standardized methods of contracting including modifying conditions in mass contracts at their discretion after the date of purchase. Even if they make concessions to a few aggressive customers, suppliers still use contracts to subjugate the vast majority of their customers, including by excluding class actions.[26]

In consumer credit transactions, in particular, these inflexible, supplier-dictated adhesion contracts are the norm, and are famously opaque; as now-Senator Elizabeth Warren, a scholar of bankruptcy law and consumer credit, described them:

> Consumers cannot compare financial products because the financial products have become too complicated. In the early 1980s, the average credit card contract was about a page long. Today, it is more than 30 pages. It would take hours to parse these contracts, and even then, I'm not sure what the customer would know. I am a contract law professor, and I cannot understand some of the fine print. Even people who try to understand their contracts and do

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[24] Bruce Morgan, *Christians, the Church, and Property: Ethics and the Economy in a Supramarket World* (Philadelphia, Pa.: Westminster Press 1963), 12–13.

[25] Morgan, *Christians, the Church, and Property*, 17.

[26] Leon E. Trakman, "Adhesion Contracts and the Twenty First Century Consumer," *UNSW Law Research Paper No. 2007–67* (November 21, 2007), 20; http://ssrn.com/abstract=1366567.

> their best to live up to their side of the bargain fall into traps and get stuck with well-hidden risks.[27]

These risks apply as well to mortgages.[28] The consumer's inability to understand the terms and conditions of the loans that they were offered by lenders, who swiftly securitized the loans and transferred them, has been a major factor in the default on mortgages, itself the catalyst which gave rise to the current financial crisis:

> Well-documented causes include the collapse of the housing bubble fueled by low interest rates, easy and available credit, negligible regulation, and toxic mortgages. Securitization stimulated the conditions leading to the collapse due to the enormous volume of money it pumped into the production of subprime mortgage loans, its failure to adequately police the quality of the underlying mortgage loans, and its inability to accurately assess the ensuing heightened risks.[29]

The harm caused by the subprime mortgage crisis in the United States alone is grotesque: "As of the beginning of 2011, over twenty-six million Americans had no job, could not find full-time work, or had given up looking for work. Almost four million families had lost their homes to foreclosure. Nearly $11 trillion in household wealth had vanished, including retirement accounts and life savings."[30] Disastrous though this was, a more recondite form of damage caused in the securitization process became evident in the cascading series of foreclosures: the chain of title to the properties at issue in foreclosure cases had been fundamentally subverted in the swift succession of electronic transfers culminating with the assignment by some entity purporting to hold the mortgage into a trust. Because the securitized mortgages were not transferred in accordance with the laws of the

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[27] Elizabeth Warren, "Regulatory Restructuring: Enhancing Consumer Financial Products Regulation," Testimony to the House Financial Services Committee, June 24, 2009, 2; http://archives.financialservices.house.gov/media/file/hearings/111/warren_testimony.pdf.

[28] Warren, "Regulatory Restructuring," 3.

[29] Elizabeth Renuart, "Property Title Trouble in Non-Judicial Foreclosure States: The Ibanez Time Bomb?," *William and Mary Business Law Review* 4 (2013): 117–118; http://ssrn.com/abstract=1968504; Donald MacKenzie, "The Credit Crisis as a Problem in the Sociology of Knowledge," *American Journal of Sociology* 116, no. 6 (May 2011): 1778–1840.

[30] Renuart, "Property Title Trouble," 117.

fifty states in which the properties were situated, the identity of the entity with the right to receive payment on a mortgage, and, if necessary to foreclose, has been, quite literally, lost in the shuffle. Worse, due to the loss or destruction of original loan files, this information often is not susceptible of retrieval. As Elizabeth Renuart explains, "The sloppiness and outright fraud exhibited by parties to the securitization deals contributed to a breakdown in the transfer of the mortgage loans from one entity to the next along the route, resulting in serious concerns about who possesses the authority to foreclose in the event of a homeowner default."[31] While these revelations took place in the context of foreclosure actions, no reason exists to believe that loans that are ostensibly in good standing, with payments being made in a timely manner to the servicer, are in any better shape.

The assessment of interest, fees, and often capriciously computed and unverified collection costs can have the effect of depriving the debtor of her entire interest in a home over a trivial amount, as evidenced by the auctioning of overdue tax liens to private entities for collections. Following a ten-month investigation of a local governmental program in which private investors help the city recover unpaid taxes by foreclosing on their homes when families cannot pay their property taxes, *The Washington Post* reported in 2013:

- Of the nearly 200 homeowners who lost their properties in recent years, one in three had liens of less than $1,000.
- More than half of the foreclosures were in the city's two poorest wards, 7 and 8, where dozens of owners were forced to leave their homes just months before purchasers sold them. One foreclosed on a brick house near the Maryland border with a $287 lien and sold it less than eight weeks later for $129,000.
- More than 40 houses were taken by companies whose representatives were caught breaking laws in other states to win liens.
- Instead of stepping in, the D.C. tax office created more problems by selling nearly 1,900 liens by mistake in the past six years—even after owners paid their taxes—forcing unsuspecting families into legal battles that have lasted for years. One 64-year-old woman spent two years fighting to save her home in Northwest after the tax office erroneously charged her $8.61 in interest.[32]

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[31] Renuart, "Property Title Trouble," 119.

[32] Michael Sallah, Debbie Cenziper and Steven Rich, "Left With Nothing," *The Washington Post*, September 8, 2013; http://www.washingtonpost.com/sf/investigative/2013/09/08/left-with-nothing/.

As the *Post* noted, "Tax lien purchasers defend the industry, saying that most people who buy liens are local investors just trying to earn interest—not take homes—and that the law gives owners six months to repay their debts before a foreclosure case can be filed."[33]

The costs imposed by the elimination of the prohibition against usury are clearly significant, and have been exacerbated in recent years:

> From the late 1940s to 1975, productivity and wages soared together in the United States, creating a middle-class society. But wages flattened from 1975 on while productivity kept soaring. The rich got richer in the 1980s and 1990s while everyone else fell behind, taking on debt to keep from drowning. During that period, nearly every manufacturing-oriented society outperformed the U.S. in income growth *and* did so with more equitable distributions of income. Then the global integration of two radically different models of growth—debt financed consumption and production-oriented export and saving—created a wildly unstable world economy featuring asset bubbles and huge trade imbalances. In the U.S., credit card debt increased seven-fold (adjusted for inflation) from 1975 to 2008, and outstanding household debt exploded from 47 percent of the GDP to 100 percent in 2005.[34]

Moreover, collateral effects cannot be so easily quantified. One such example of collateral damage is the exaltation of the free market, that shibboleth Morgan referred to at the same time he noted that its existence is more a myth than a reality. The wealth generated by what would now be called highly leveraged transactions gave birth to a sort of market triumphalism that has, in boom times, led to the glorification of the market as a good in itself, indeed as a value by which other values are measured.

Thus, Bruce Morgan's vision of a supramarket economy, in which the very assumptions of a "free market" are eroded as government and non-governmental private actors stealthily gain power over increasingly passive "consumers," is succeeded by Michael Sandel's insight that "we have drifted from having a market economy to being

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[33] Sallah, Cenziper, and Rich, "Left With Nothing."

[34] Gary Dorrien, *Economy, Difference, Empire: Social Ethics for Social Justice* (New York: Columbia University Press, 2010), 150.

a market society."[35] The difference, as articulated by Sandel, is that "a market economy is a tool—a valuable and effective tool—for organizing productive activity. A market society is a way of life in which market values seep into every aspect of human endeavor. It's a place where social relations are made over in the image of the market."[36] In our nascent market society, Sandel posits, "the logic of buying and selling no longer applies to material goods alone, but increasingly governs the whole of life."[37]

Even before the emergence of the market society, the intertwining of economic success as an indicator of moral virtue and even status among the "elect"—that is, the saved—within Christian communities has undermined biblical teachings about wealth and money. The pioneering work of sociologist Max Weber describing this phenomenon has been challenged in some of its particulars—such as his assumption that this belief did not arise prior to the Reformation—but, as Rodney Stark, a modern critic, has approvingly written, "Although the Protestant ethic thesis is wrong, it is entirely legitimate to link capitalism to a Christian ethic."[38] Stark convincingly locates this link in thirteenth-century theological permission for antecedents of proto-capitalist practices, beginning with lending money at interest, absent the unique soteriological component Weber locates in Protestantism, especially Calvinism—that success in one's worldly calling was a means of verifying one's status as among the elect or the damned. However, both agree that institutional Christianity became in many places and circumstances an apologist for market capitalism. Such apologists exist today, across denominational lines.[39]

In our own day, the criticism that is often made of the church in addressing questions of economic justice is whether it has nothing more to offer than palliative care to the casualties of the market. This criticism gains salience from the role, often unlovely, played by

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[35] Michael J. Sandel, *What Money Can't Buy: The Moral Limits of Markets* (New York: Farrar, Straus & Giroux, 2012), 10.

[36] Sandel, *What Money Can't Buy*, 10–11.

[37] Sandel, *What Money Can't Buy*, 6.

[38] Rodney Stark, *The Victory of Reason: How Christianity Led to Freedom, Capitalism, and Western Success* (New York: Random House, 1997), 62; Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (1920–1921), trans. Talcott Pearson (New York: Charles Scribner's Sons, 1958).

[39] See, for example, Robert A. Sirico, *Defending the Free Market: The Moral Case for a Free Economy* (Washington, D.C.: Regnery Publishing, Inc., 2012); Stark, *The Victory of Reason*.

ecclesial institutions in the market itself. To give a prominent Anglican example, the Church of England invested £40 million in the purchase by Tishman Speyer of New York's Stuyvesant Town and Peter Cooper Village.[40] These complexes were middle-class apartments subsidized by tax incentives, with the effect that the tenants were protected by rent stabilization, despite which Tishman Speyer's "offering circular for the sale [of Stuyvesant Town] suggested that the complex could be converted from 75 percent rent regulated units now to only 30 percent rent regulated by 2018."[41] This purchase put the Church of England in the ethically fraught position of having heavily invested in what has been termed "predatory equity," an investment "purchased by owners whose business model requires driving out rent stabilized tenants."[42] The efforts to raise rents while benefitting from tax incentives was later deemed as contrary to law; yet despite this negative experience, the Church of England "has more than doubled the amount of cash its multi-billion pound endowment has invested in hedge funds" from 2009 through the end of January 2012.[43]

Pope Francis boldly calls out the sacralizing of money and the market as a new "golden calf,"[44] and has vigorously denounced market triumphalism as inconsistent with the gospel message:

> 53. Today we also have to say "thou shalt not" to an economy of exclusion and inequality. Such an economy kills. How can it be that it is not a news item when an elderly homeless person dies of exposure, but it is news when the stock market loses two points? This is a case of exclusion. Can we continue to stand by when food is thrown away while people are starving? This is a case of inequality. Today everything comes under the laws of competition and the survival of the fittest, where the powerful feed upon the

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[40] Andrew Clark, "Stuyvesant Town Gamble Costs Church of England £40 Million," *The Guardian*, January 25, 2010, 23; Steven Wishnia, "Stuy-Town Win Could Have Ripple Effect," *The Indypendent*, Issue 143 (November 19, 2009), http://www.indypendent.org/2009/11/19/stuy-town-win-could-have-ripple-effect.

[41] Brad Lander, "Stuyvesant Town, Queens West, and the Debate Over Jane Jacobs and Robert Moses," *The Gotham Gazette*, November 6, 2006, http://www.gothamgazette.com/article/fea/20061106/202/2016.

[42] Wishnia, "Stuy-Town Win Could Have Ripple Effect."

[43] *Roberts v. Tishman Speyer Props., LLP*, 13 N.Y.3d 270 (2009); "Church of England Doubles Investment with Under-fire Hedge Funds," *The Scotsman*, February 5, 2012, http://www.scotsman.com/news/uk/church_of_england_doubles_investment_with_under_fire_hedge_funds_1_2097649.

[44] *Evangelii Gaudium*, §55.

> powerless. As a consequence, masses of people find themselves excluded and marginalized: without work, without possibilities, without any means of escape.
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> Human beings are themselves considered consumer goods to be used and then discarded. We have created a "throw away" culture which is now spreading. It is no longer simply about exploitation and oppression, but something new. Exclusion ultimately has to do with what it means to be a part of the society in which we live; those excluded are no longer society's underside or its fringes or its disenfranchised—they are no longer even a part of it. The excluded are not the "exploited" but the outcast, the "leftovers".
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> 54. In this context, some people continue to defend trickle-down theories which assume that economic growth, encouraged by a free market, will inevitably succeed in bringing about greater justice and inclusiveness in the world. This opinion, which has never been confirmed by the facts, expresses a crude and naïve trust in the goodness of those wielding economic power and in the sacralized workings of the prevailing economic system. Meanwhile, the excluded are still waiting. To sustain a lifestyle which excludes others, or to sustain enthusiasm for that selfish ideal, a globalization of indifference has developed. Almost without being aware of it, we end up being incapable of feeling compassion at the outcry of the poor, weeping for other people's pain, and feeling a need to help them, as though all this were someone else's responsibility and not our own. The culture of prosperity deadens us; we are thrilled if the market offers us something new to purchase. In the meantime all those lives stunted for lack of opportunity seem a mere spectacle; they fail to move us.[45]

In the early twentieth century, Bishop Charles Gore described the passive acceptance of laissez-faire economics as the "silent acquiescence of the Christian world in the radical betrayal of its ethical foundation."[46] He wrote, of course, in an era in which laissez-faire economics was predominant, and had been afforded constitutional status within the United States.[47] However, the decreasing percent-

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[45] *Evangeili Gaudium*, §§53–54.

[46] Charles Gore, *Belief in God*, in *The Reconstruction of Belief*, vol. 1 (London: John Murray, 1926), 22; see also John F. Wirenius, "'Not Charity But Justice': Charles Gore, Workers, and the Way," *Journal of Catholic Legal Studies* 50 (2011): 279, 294.

[47] See *Lochner v. New York*, 198 U.S. 45 (1908) (state maximum hour laws void as violating the "liberty of contract"); *Hammer v. Dagenhart*, 247 U.S. 251 (1918) (void-

age of employees who have union representation, and the advocacy of a revival of that once-discredited constitutionalized laissez-faire, suggest that these concerns are not exclusively primarily of historical interest.[48]

The fact that all sides in the exchange regarding same-sex marriage can accede to the dismissal of these explicit gospel concerns, while warring over a teaching that is, at best, peripheral, may be in part a reflection of the extent of cultural disjuncture that would result from the embrace of biblical teaching regarding usury. Acknowledging the problem leaves the Christian estranged from the ethos of much of the modern economy with no clear course as to how to inhabit that economy without becoming complicit in it. If Bishop Gore and Pope Francis are right, then the Christian is enmeshed in a relationship with a social order which is, while comfortable for many of us, extremely problematic morally. The consequences of such doctrine—untangling ourselves from that relationship, rethinking the conditions of our market society, and envisioning and creating one more in accord with biblical, traditional, and philosophical ethical precepts which we hold dear while also holding them in abeyance—all this is, to put it with extreme understatement, quite difficult. The prohibition against usury creates a dissonance with no obvious means of resolution—or none, at any rate, that is not extremely costly.

Reevaluating the prohibition against usury and the web of scripture and tradition in which it is enmeshed requires us all alike—Liberal as well as Traditionalist—to confront the uneasy compromises we all make, such as the work conditions in which our various electronic devices are made, including the Apple computer on which I write these very words.[49] By contrast, the prohibition against same-

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ing federal statute prohibiting transportation in interstate commerce goods made at factories using excessive child labor).

[48] Cynthia L. Estlund, "The Death of Labor Law?," *Annual Review of Law & Social Science* 2 (December 2006): 105; see also Kenneth Glenn Dau-Schmidt, "The Changing Face of Collective Representation: The Future of Collective Bargaining," *Chicago-Kent Law Review* 82 (2007): 903. For a return of Lochnerism, see Janice Rogers Brown, "'A Whiter Shade of Pale': Sense and Nonsense—The Pursuit of Perfection in Law and Politics," speech to the Federalist Society of the University of Chicago, April 20, 2000; http://ejournalofpoliticalscience.org/janicerogersbrown.html.

[49] Connie Guglielmo, "Apple's Supplier Labor Practices in China Scrutinized After Foxconn, Pegatron Reviews," *Forbes*, December 12, 2013; http://www.forbes.com/sites/connieguglielmo/2013/12/12/apples-labor-practices-in-china-scrutinized-after-foxconn-pegatron-reviewed/.

sex relationships affects only a discrete minority directly, and is consonant with the culture many of us were born into. We should perhaps beware of easy paths to righteousness, and especially of those paths that lay burdens upon others while not laying them upon ourselves. Perhaps it is better to enter the "strait gate," to pluck the beam from our own eye, and to take the harder and far more costly path to a difficult fidelity that will interrogate and question our own biases and privilege, and the social order that makes them possible.