The lending of money or commodities such as grain in return for interest has been documented as early as 3000 B.C. The practice seems to have caused controversy in many societies. In part, the charging of interest was condemned on moral and religious grounds; it was considered ungodly and uncharitable for one man to profit from the need of another. In hard times, a borrower could lose all his property and be sold into slavery to pay his debts. The evils caused by usury were very real, and money lending was at times banned outright. For example, under the laws of the Old Testament, one Jew was forbidden to lend at interest to another.

The complete abolition of money lending at interest is not, however, a realistic solution to the problems that lending can cause or exacerbate. If one person has money or some commodity that another needs, the self-interest of the lender and the desire of the would-be borrower align powerfully. Loan contracts are, after all, consensual agreements, even if not always even-handed ones. Nor do loans at interest invariably spell doom for the borrower. They can and do benefit both parties in most cases, especially in commercial transactions.

Not surprisingly, early commercial societies were tolerant of money lending, although they frequently limited the permissible interest rates. Conversely, societies that nominally prohibited loans at interest created exceptions, particularly for commercial lending. To give one example, while the Old Testament condemned usurers and forbade one Jew from collecting interest from another, it allowed the collection of interest from foreigners.

Medieval Europe, under the powerful influence of the Catholic church, followed a similar path. The church repeatedly condemned the assessment of “usury” (i.e., interest), but Jews, who were generally not permitted to own land and often were not admitted to craft guilds, were permitted to operate pawnshops. As trade gradually increased through the centuries, Christian merchants developed various schemes to avoid the prohibitions, such as assignments of rents, “investments,” and the use of bills of exchange. In 1515, the Fifth Lateran Council, in effect, legitimized the lending of money with interest. In England, it was not until 1545 that Parliament legalized charging interest in the modern sense. This statute was repealed during the reign of Queen Mary, only to be reenacted in 1570 under Queen Elizabeth. Although interest was legalized, the rate remained capped at or below ten percent.

In 1713, the Statute of Anne was enacted, voiding all contracts for interest at more than five percent. The Statute of Anne applied to both direct loans and to forbearances, or creditors’ agreements to postpone collection of a preexisting debt in exchange for interest payments. The Statute of Anne has remained the basic template for Anglo-American usury laws, although the rate ceiling chosen varies.

In 1787, the English philosopher Jeremy Bentham published an influential essay, Letters in Defense of Usury, in which he argued that usury ceilings limited the credit available to those who could not offer security, violated the principle of freedom of contract, and therefore should be abolished. According to Bentham’s view, interest rates should be governed by free market rules of supply and demand. This utilitarian reframing of the debate over usury contributed to the repeal of English usury statutes in 1854 and continues to influence the debate over credit regulation.

Footnotes

1.2.1 Early Attitudes Toward Interest

In medieval terms the word “usury,” derived from the Latin “usera,” equated with what we would call “interest” today. The prohibition of usury was essentially a prohibition of charging for the use of money. However, common law distinguished reimbursement for a loss associated with a loan from charges for the use of money and permitted the former while forbidding the latter. This legal compensation for loss was known as “interesse” from the Latin “intereo” meaning “to be lost.” Thus legal charges associated with a loan appear to have evolved to the modern notion of interest rates.

For a discussion of Mormon and Christian scriptural views of usury, see Steven M. Graves & Christopher L. Peterson, Unprofitable Lending: Modern Credit Regulation and the Lost Theory of Usury, 30 Cardozo L. Rev. 549 (2008) (discussing in detail the thinking of the Catholic church during the middle ages on usury).


25 (22) 37 Hen. 8, C. 9 (1545). The statute was entitled “An Act Against Usury,” doublespeak apparently having preceded George Orwell by several centuries. See also Commonwealth v. Donoghue, 63 S.W.2d 3 (Ky. Ct. App. 1933) (discussing the development of English usury law).


Source URL: https://library.nclc.org/ccr/010201-0

Links