

INTEREST AND THE CHURCH'S DOCTRINE ON USURY

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“To properly understand the Church’s teaching, one must define usury as the prohibition of gain from a loan sought directly by a lender without a just title.” Coulter 1999.

M.G. Hayes’ article “Keynes’s liquidity preference and the usury doctrine: their connection and continuing policy relevance,” which appeared in the December 2017 issue of the *Review of Social Economy*, in the end promotes Keynes’ own “policy of cheap money and ... the creation of financial institutions oriented towards long-term equity investment and the promotion of full employment.” Toward that end Hayes employs the strict doctrine of usury to examine two contemporary financial institutions: deposit insurance and the nature of foreign exchange reserves. Our comments leave aside his specific arguments regarding those two institutions and drill into the issue of usury and how well he uses it compared to Dempsey, Divine, and Church doctrine.

HAYES ON USURY

Hayes clearly laments financial developments over the last three centuries and calls for a return to the practice of condemning all “*lending at interest today [that] represents usury as it was understood between the 5th and the 15 centuries*” (his emphasis). His argument rests in part on his assertion that the teaching of the Church on usury has remained unchanged since Pope Benedict XIV’ 1745 encyclical *Vix Pervenit*. Hayes then turns away from the strict *Scholastic* argument in support of the usury doctrine and, citing P.S.Mills,¹ to the damage done to economic affairs when *lucrum cessans* (compensation for loss of profit) became acceptable and evolved into lending at interest based on the concept of opportunity cost.

We have no problem with Mills’ contribution or Hayes’ use of it regarding the role of *lucrum cessans* opening the door to deposit banking by weakening the usury doctrine. All the same, we do have a problem with his claim that the Church teaching on usury has remained unchanged

¹ Hayes refers to Mills’ 1989 paper “Interest on Interest: The Old Testament Ban on Interest and its Implications for Today,” as an “unpublished PhD dissertation” at Cambridge University when in fact it is available online (cf. Mills 1989a). Additionally this paper is not Mills’ dissertation. His dissertation is titled “Keynes’ Belief that the Money Rate of Interest ‘Rules the Roost’” (cf. Mills 1989b).

since *Vix Pervenit*, and with his putting to one side the contributions of the American Jesuits Dempsey and Divine on usury as a “matter for another paper.”

It is fitting that Hayes’ points to Clary’s well-crafted article on Dempsey and institutional usury in which she uses Federal Reserve interest payments on required reserves as an *example* of institutional usury. But Hayes leaves behind the subtle suggestion that Dempsey had nothing more to say about the institutional usury associated with the private creation of credit, and how that exclusion might have some bearing on his insistence that the Church’s today teaching on usurious practices has not changed since 1745.

As to the role of the encyclical *Vix Pervenit* in contemporary Church doctrine on usury, Hayes is only partially correct. Canon 1543 of the 1917 *Codex Juris Canonici* takes into account the lending of a fungible thing and explicitly allows that “it is not in itself illicit to contract for legal interest, unless this be manifestly excessive ...” (quoted in Divine 1959, p.115).

CALL TO ACTION

Before digging into the arguments advanced by social economists Dempsey and Divine it is important to call attention to the instructions in Pius XI’s encyclical *Quadragesimo Anno* for the reconstruction of social order in the midst of the Great Depression.

It is your duty, Venerable Brethren, and of your clergy to search diligently for these lay apostles both of workers and employers, to select them with prudence, and to train and instruct them properly. A difficult task, certainly, is thus imposed on priests, and to meet it, all who are growing up in the hope of the Church, must be duly prepared by an intensive study of the social question (Pius XI 1931, §142).²

Jesuit economist Joseph Becker, a somewhat younger American associate of Dempsey and Divine, stated explicitly that he was motivated by the papal encyclicals to undertake the study of unemployment insurance (Becker 1991, p.50). It is probable and reasonable that Divine and Dempsey were similarly motivated especially since the two were the founding fathers of the Catholic Economic Association in 1941, and Becker an early member. In addressing the social question, these three Jesuits, along with others, have one very important strength. They are professional economists who have engaged in an intensive study of philosophy, theology, and Latin.

² When asked at a lunch for his friends at Castel Gandolfo in July 2000 if he was preparing another social encyclical, John Paul replied that he was not, but would be most pleased to receive comments on economic affairs from one of the Catholic social economists seated at the table. Earlier during that lunch, he admitted that he was not an economist. At John Paul’s request, there was no record kept of the discussion at lunch.

The German Jesuit social economist Oswald von Nell-Breuning put Pius XI's call for help into direct words: "the Chair of Peter is not a chair in economics" (quoted in Mueller 1984, p.65). Even though he seems to have lived in the shadow of his mentor Heinrich Pesch, von Nell-Breuning is noteworthy because he is reported to have drafted *Quadragesimo Anno* for Pius XI (Mueller 1964, p.132; see also Unsigned 1983, p.211), and explained it (von Nell-Breuning c1936).

RECENT ENCYCLICALS ON USURY

It is difficult to find in the encyclicals any words expressing support for lending at interest until Paul VI's encyclical *Populorum Progressio* where he addresses the issue of the needs of debtor nations and the generosity and wealth of donor nations.

Rates of interest and time for repayment of the loan could be so arranged as not to be too great a burden on *either party*, taking into account free gifts, interest-free or low-interest loans, and the time need for liquidating the debts (Paul VI 1967, §540; emphasis added).

John Paul II expresses agreement with Paul VI in his encyclical *Sollicitudo Rei Socialis* (cf. John Paul 1987, §19 and footnote 39).

Years later, however, in reflecting on the Psalms John Paul takes note of its 11 requirements, notably for our purposes, the duty "not to practice usury, a scourge that is also a reality in our time and has a stranglehold on many peoples' lives"³ (John Paul 2004, §3). This very same quote is used in the Church's condemnation of usury as expressed in *Compendium of the Social Doctrine of the Church* (2004, §341).⁴

Similar emphases are demonstrated in the encyclicals of Benedict XVI and Francis.

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 from these two areas (Benedict XVI 2009, §65).

Though his concerns are directed more to the environment than financial institutions Francis' emphasis on human need is clearly evident in the following from his 2015 encyclical *Laudatio sí*.

The culture of relativism is the same disorder which drives one person to take advantage of another, to treat others as mere objects, imposing forced labour on them or enslaving them to pay their debts (Francis 2015, §123).

³ Taken from a 2004 address to a general audience. A general audience address does not bear the same weight in Church doctrine as an encyclical.

⁴ The *Compendium* was prepared at the request of John Paul II.

The Church's current position on usury leans heavily toward protecting the needy borrower, deriving it appears from commutative justice that demands that the borrower and lender exchange things of equal value and *impose equal burdens on one another*. Thus, the Church is defending that principle by condemning the practice of some lenders to impose an *excessive* burden on the borrower.

But the papacy stops short of insisting that this doctrine applies, as Hayes contends, in "any payment for the use of money." As we have just seen, Paul VI and John Paul II have carved out exceptions between debtor and donor nations.

Two other caveats apply. First, by releasing a debtor nation from a strict interpretation of the usury doctrine and by emphasizing the needy borrower, the Church's doctrine can be construed as possibly carving out in silence an exception for the individual borrower who is not poor or exploited. Second, the Church appears to be setting aside the concerns of the individual lender as if only the borrower matters.

A LOAN OF *MUTUUM* AND THE SCHOLASTICS ON INTEREST

Any discussion of usury from the viewpoint of Catholic social economics must begin with a loan of *mutuum*. Dempsey (1958a, p.435) describes such a loan as a "transaction in which that which is mine becomes yours, even though it is a loan." Consistent with Dempsey, Divine (1959, p.214) explains the origin of *mutuum* as "*meum, tuum* – mine becomes thine"

Centuries ago, a loan of *mutuum* referred mainly to the lending of a consumable such as a bottle of wine, a sack of potatoes. In such cases the lender cannot demand in return more than the equivalent of what was handed over to the borrower and consumed because it would violate commutative justice which requires that both parties exchange things of equal value and impose equal burdens on one another. Usury occurs when a lender demands more than the equivalent of what was given over.

A loan of *mutuum* has continued down through the ages such that any person who borrows a pound of coffee from a neighbor and uses it has a duty to return an equivalent pound of coffee, no more, no less. And the lender has no right to demand more than a pound because the use of the coffee does not result in a gain that in justice can be claimed by the lender. As in the distant past, the lender today must have saved the coffee before it can be released to the borrower.

Lending of money is subject to *mutuum* when the money is used to purchase a consumption good. Charging interest, therefore, is usurious. However when the money is used to purchase a production good such as a plow or hammer where there is some gain when that good is used by the borrower, the lender has a claim for the return of the good itself or an equivalent and may have an additional claim to at least some of the gain. If that claim is valid, charging interest is not

usurious. Whether the loan is used for a consumption or production good, the money must be saved beforehand .

Clifford Besse, another American Jesuit economist, attributes the different treatment of loans for consumption purposes and those made for production purposes to the scholastics who were influenced by Aristotle's argument that "the net productivity of real capital is the primary source and cause of interest" (Besse 1965, p. 519). However in those days there were very few opportunities for production loans and therefore hardly any instances in which charging interest was justified. Scholastic thinking no longer applies today because due to changes in monetary and financial institutions there are many opportunities for production loans.

All the same, there is a difference between a loan for production purposes based on bank-created credit and a loan from grandmother to help her well-loved and most-dear granddaughter start a business. The one requires prior savings and sacrifice, the other requires neither savings nor sacrifice.

DIVINE ON USURY

Divine explains the conditions under which charging interest may be justified. Notice that need may supersede justice in the case of the needy borrower.

... from the point of view of *commutative* justice interest is morally justified as the market price of present income in terms of future income, and the market rate may be considered as the just and fair rate of interest. Furthermore, interest as a functional share of total income is warranted on grounds of *distributive* justice as a remuneration corresponding to the value of the contribution of the services of capital to the total product of the economic system. Thirdly, in view of the requirements of *social* justice:⁵ 1) an individual's right to interest in commutative justice may be superseded by an obligation to lend gratuitously to a needy borrower; 2) the State should afford whatever protection is required in the field of small lending for consumption where the forces of competition are less likely to operate on a wide scale; 3) economists are in quite general agreement that the government can, by judicious use of monetary and fiscal policies, assist in achieving and maintaining a high level of employment and a fairly stable rate of economic growth – which would connote an obligation on the part of the State to assist in the attainment of those goals, and though there is less agreement regarding the importance to be attached to them in the changing phase of the cycle and other ebbs and flows of the price level and the level of employment, it is, nevertheless, conceded that policies which influence the rate of interest are among

⁵ "Social justice" is a term that too often means different things to different users. Divine uses social justice as "co-terminous with general justice" and as synonymous with contributive justice (cf. Divine 1960, chapter 26, p. 6).

the important and sometimes necessary means of achieving those ends (Divine 1960, chapter 30, p. 35; emphasis added).⁶

Divine carries his argument further.

Should the loan entail any sacrifice or loss, however, the lender may charge compensation according to the *interesse* or amount of the loss. On the other hand, in the case of investment in an industrial or commercial enterprise (e.g. the contract of *societas* or partnership), since the investor retains the ownership of his capital (shares in the risks of the venture), he has a right in justice to share in the profits (Divine 1959, pp. 213-214).

DEMPSEY ON USURY

Dempsey (1958a, p.438) asserts that money itself has an extrinsic value which depends “upon the general existence of alternative investment opportunities, not on the availability of those opportunities to one individual” and then explains the role of an extrinsic title in a loan of *mutuum*. Put differently, in an economy where there are ample opportunities for *gains*.

... money [has] an extrinsic value and, without in any way jeopardizing the principle that usury is gain from a loan of *mutuum*, there exists an extrinsic title to compensation, that is a title extrinsic to the loan transaction considered in itself. In other words, the title to the gain is not the loan, but a different fact also true at the time and occasion of the loan (Dempsey 1958a, p.438).

There is another extrinsic title that derives from any actual *loss* sustained by the lender in the form of direct cost.

Emergent loss to the lender -- cost in any form -- is the basic title to interest. All other titles -- cessant gain, risk of capital (*periculum sortis*), delay (*mora*), and so on -- are but special cases of cost to the lender (Dempsey 1958b, p.410).

Dempsey then argues that an extrinsic title extends to “some practical opportunity for gain relinquished for lack of funds” (Dempsey 1958a, p. 438). This of course is opportunity cost that is embraced by virtually every contemporary orthodox economist. Even so, we are not convinced that the “loss” associated with not having sufficient funds is the basis for a valid extrinsic title. The lender suffers no out-of-pocket expense when, along with all other known and feasible options, a specific opportunity is selected because it offers promise for the greatest gain. In effect he made a hypothetical but no actual sacrifice of his money when he passed over the

⁶ See Divine (1959, pp.189-246) for much more on interest in the context of commutative, distributive, and contributive justice.

other options and therefore has no claim for compensation from loans not made. Lack of funds does not confer an extrinsic title to a loan never made. The lender has no more an extrinsic title based on opportunity cost than he has a title to any gain made from loans he has not made.

As with Divine, Dempsey's defense of lending at interest applies only to those who accumulated wealth by saving or inheritance (Dempsey 1958, p. 33). Dempsey supports the doctrine of usury in those instances where banks in a partial reserve system create money with no prior savings.

The usury element in inflation lies in the single fact that inflation creates gains not saved, and, therefore, do not have the extrinsic moral titles to compensation. Whenever money is lent that has not previously been saved, there is a gain from a loan of *mutuum* for which no moral title exists. Under inflationary conditions, particularly when prices are clearly rising – as ultimately they always do – those persons who receive interest payments on funds that have never been saved are receiving something to which they have no moral title (Dempsey 1958a, p.439).

With bank-created credit the borrower simply draws on a bank balance that the bank created specifically for that borrower. The only legal limit on the bank's ability to create credit is the total amount of its excess reserves. Charging interest on such loans is usury because no prior savings is required (Dempsey 1958a, p.440). The bank's depositors saved the money and those deposits belong to them and not the bank. Dempsey calls this kind of usury institutional usury.

LEGITIMACY OF INTEREST *PER SE*

Hayes' claim that "... Dempsey and Divine do not question the legitimacy of interest *per se* but are concerned with the creation of money by the banking system, which they judge to be inflationary and so inequitable" calls for revision.

Four chapters of Divine's *Interest* (1959, pp. 117-186) address the economic theory of capital and interest and the legitimacy of interest on a loan of *mutuum*. In the index to his book *mutuum* is cited 22 times. However, though he makes mention of deposit-banking and commercial credit (p.39), he does not examine that practice any further, referring the reader (p.209, fn 15) instead to Dempsey's work on institutional usury.

In his 32-page Chapter 19 Divine addresses bank-created credit and in his even longer Chapter 30 on the ethics of interest one finds no mention of Dempsey on institutional usury (Divine 1960). We conclude that Divine appears to be reluctant to challenge Dempsey's argument.

Dempsey too is concerned about the legitimacy of interest *per se* as evidenced in his doctoral dissertation *A Comparative Study in Interest Theories*. Hayes is correct in stating that Dempsey is concerned about bank-created credit but not in his assertion that Dempsey and Divine regard created credit as unjust because it is inflationary. For Dempsey, loans based on bank-created credit involve no prior savings or sacrifice and therefore interest on such loans is unjust. Wartime conditions where inflation is likely to occur only worsen the problem.

Additionally, when a bank-created loan of *mutuum* is repaid from the savings or earnings of the borrower, any person who has acquired a gain from those repayments has received usury. Savers who have sustained a loss through this loan process are entitled under commutative justice to compensation for the losses they suffered (Dempsey 1958a, pp.439-441).

It is not insignificant that Dempsey and Divine largely are in agreement on lending at interest given that they were students of two economists with radically different views: Joseph Schumpeter (Dempsey's PhD awarded in 1940) and Lionel Robbins (Divine's PhD awarded in 1938). In like manner, the German Jesuit economist Heinrich Pesch who preceded Dempsey and Divine by a generation shared a similar view (cf. Pesch 1999, p.289). Dempsey referred to Pesch's five-volume work *Lehrbuch der Nationalökonomie*, which was inspired by Leo XIII 1891 encyclical *Rerum Novarum*, as "the supreme intellectual achievement inspired by the encyclicals" (Dempsey 1958, p.70).⁷

CATHOLIC DOCTRINE, CATHOLIC SOCIAL TEACHING, CATHOLIC SOCIAL ECONOMICS

What then is the difference between Catholic doctrine, Catholic social teaching, and Catholic social economics? The more the Church turns for instruction to Catholic laymen and laywomen from various academic disciples, the more likely this difference becomes blurred in part because there are numerous Catholic lay voices, some better informed than others, and in part because the hierarchy may be wrong.

Divine (1948, p.117) and Dempsey (1958, pp.73-74) denounced much of the commentary by Catholics on social issues, and a third Jesuit Leo Brown, a labor arbitrator/mediator, held fast to the same critical evaluation (Gruenberg 1981, p.51).

Social justice is a term used by many Catholics but is loaded with ambiguity that originates from (1) labeling it at times as constructive justice, legal justice, or general justice, and (2) careless scholarly work. To illustrate, does social justice mean to demand **for** every individual what is necessary for the common good or **from** every individual? And if there is a distinction between social justice and social charity, what is it? (O'Boyle 2011, pp. 96-117). To point to just one example regarding the hierarchy, well-known and highly-regarded Catholic social economist Stephen Worland (2001) published a short but scathing article criticizing U.S. bishops for their stance on the just wage.

⁷ The entire *Lehrbuch* has been translated into English by Rupert Ederer (cf. Pesch 2002).

CONCLUDING REMARKS

Five comments follow. First, the Church's doctrine condemning usury has evolved over the past 500 years such that today there no longer is a *total* ban on lending at interest. Even so, the Church leans more on the need of the borrower than the emergent loss of the lender. This balancing of need and emergent loss reflects the Church's teaching on the sacred dignity of all persons including borrower and lender, the universal destination of the goods of the world, and the right of private property. Further it underscores the second requirement under commutative justice in which the lender and borrower are to *impose equal burdens on one another*.

Second, a handful of Jesuit social economists including notably Pesch, von Nell-Breuning, Dempsey, and Divine have been somewhat influential in bringing about that evolution. However, the linkage between them and the Church's doctrine on interest and usury is not clear cut because several voices, some not well-informed, have responded to Pius XI's call for action in 1931.

Among Jesuit universities today in the United States, only Fordham, Boston College, and Georgetown offer a doctoral degree program in economics. We found no evidence that their doctoral students are encouraged to reconcile mainstream economic thought and Catholic social teaching. Notre Dame University maintains a PhD in economics but terminated the program that offered students an opportunity to pursue Catholic social economics. To our knowledge no other Catholic university in America offers a doctoral program that encourages students to follow in the footsteps of Divine or Dempsey not to mention Becker, Brown, or Besse.

Third, 25 years after the founding of the Association the view espoused by Divine (conventional economics plus Christian ethics) prevailed over the view taken by Dempsey (solidarism or social Catholicism).⁸ Goetz Briefs, a solidarist affiliated with Georgetown University who had been a member of Pesch's study group in Germany and served as president of the Association in 1956, withdrew as a member lamenting the loss of solidarist influence in the Association (Waters 1990, pp.91-92). In 1970 the members voted to change the name to the Association for Social Economics and invited others not of the Catholic faith to become members (Waters 1990, p.98). Over the last 50 years, interest in Catholic social economics has fallen dramatically in the Association's twin publications: *Review of Social Economy* and *Forum for Social Economics*.

Fourth, a bank in a partial-reserve system extends credit simply by opening an account with a balance that allows the borrower to draw upon. Dempsey argued that bank-created credit is usurious because the bank does not save the money beforehand and therefore makes no sacrifice

⁸ For more on the differences between the two, see my working paper "The Dempsey Divine Divide" available at <http://mayoresearch.org/working-papers/>

for which it can claim an extrinsic title to any gain from the use of the loan. His argument is dismissed today by the routine acceptance of charging interest for every loan made.

Fifth, Hayes should reconsider developing his case for a Keynesian cheap-money system wherein financial institutions provide opportunities for long-term equity investments in part on the basis of the Church's *total* ban on interest on lending that he argues mistakenly has not changed at all for centuries. His argument would be improved by employing Dempsey's line of reasoning that charging interest on private created-credit is unjust because for the bank there are no prior savings or sacrifice.

Today, interest and usury are more than just matters of academic concern and inquiry. Just recently the U.S. House of Representatives passed HR 3299 *Protecting Consumer Access to Credit Act of 2017* by a vote of 245-171. This bill, which has been referred to the U.S. Senate, states that "the contractual doctrine of valid when made which, as applied to lending agreements, provides that a loan that is valid at inception cannot become usurious upon subsequent sale or transfer to another person" (U.S. HR 3299). This bill means that a loan originating in one state which is transferred or sold to a party in another state where the maximum rate of interest is lower is *not subject to that lower maximum rate*. In effect HR 3299 further chips away at the very concept of usury and its application in states that have legislated lower maximum rates.

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