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Debt, Usury and the Ongoing Crises of Capitalism

Just over ten years since the start of the global financial crisis, many advanced capitalist societies are witnessing the rise of private debt to levels previously seen in 2008, and in some cases (most notably Australia, see Keen, 2017:67) to levels higher than at any point during the crisis. This has led to a renewed sense of unease among key figures of the central banking community, as a new crisis, fuelled (like the previous one) by indebtedness and the threat of mass default, appears to be edging closer. In the summer of 2017, as unsecured consumer credit in the UK topped £200bn for the first time since 2008, Alex Brazier, the Bank of England's executive director for financial stability, warned the banking and finance sectors that 'Lending standards can go from responsible to reckless very quickly….Lenders have not entered, but they may be dicing with, the spiral of complacency' (see Elliott, 2017). This was soon followed by a statement by the UK's Financial Conduct Authority, which warned that consumer credit had risen just over 10% in a year, with 8.3 million people in the UK classified as having 'problem debts'. While this situation is nothing new, there are worrying times ahead as consumer credit provision is pushing its historical upper limits, and cheap lines of credit look set to end with likely rises in interest rates in the short to medium term. This situation presents a very real problem for the operation and stability of advanced capitalist societies across the globe for, given that the growth of consumer capitalism has only been possible through the mass provision of private and corporate credit from the 1980s onwards, it is unclear will happen when further debt creation is no longer an option, assuming there are actual limits to this process.

There are two prominent responses to this situation in the post-crisis literature: one, building on the work of Hyman Minsky, is that crisis is endogenous to financialised capitalism, and that governments, in attending to the immediate pressures of a present crisis, have a tendency to introduce measures to stabilise the economy in the short-term but which sow the seeds of another crisis further down the line (see, for example, Keen, 2017; Minsky, 1986). In this view, crises are recurrent features of capitalism that follow on from each other and are likely to become ever more acute without any foreseeable endpoint, for capitalism is seen to be a generative system: if more debt is needed, among other things, then a way will be found to create it. A second, more alarming view, is advanced by Wolfgang Streeck (2014). This is that government responses to the ongoing debt crisis have bought time, and in so doing have postponed the collapse of an unsustainable capitalist system to a date that *will* one day arrive. In the meantime, we are destined to live through a period of what Streeck calls 'deep *indeterminacy*'; one in which 'too many frailties have become simultaneously acute while too many remedies have been exhausted or destroyed' (2016:12-13). In this view, capitalism is finished, but it is unclear how its death will play out, or what (if anything) might come afterwards.

While seemingly mutually exclusive, both these positions have their points of appeal, for on one hand, financialised capitalism has proved to be extraordinarily resilient in the face of crisis, largely because the neoliberal state (or what Minsky calls 'big government') has acted as the guarantor of financial markets in the last instance (as predicted, remarkably, by Foucault in his 1978/9 biopolitics lectures, see Gane, 2014), while, on the other, there is something distinct and deeply worrying about the current situation, defined as it is by 'declining growth, growing inequality, and rising debt – public, private and overall' (Streeck, 2016:17). This chapter will argue, however, against both these positions, that a crisis-bound future is not inevitable, as there are alternatives, and at the very least governmental means through which the structural debt crisis can be tackled. It will do so by looking more closely at the history of government regulation of personal debt in particular (mainly in the UK and US), and will work with a concept that was once central to debates within classical liberal thought but today is largely neglected (with important exceptions, see, for example, Sayer, 2015): *usury*, which in its initial meaning, referred to the freedom to charge interest on money created as credit. The question of usury divided key figures within the liberal tradition over whether there should be a free market in the provision of credit (one that can and should operate outside of the reach of the powers of government) or rather government policing of the social and moral limits of debt, and these divisions resurface in a contemporary the current post-crisis period in debate over whether the short-term loan market should be free to meet the demands of credit supply (the libertarian position) or should be regulated by government agencies to ensure that it works within limits (more of a neoliberal stance). The concept of usury, it will be argued, is a useful device for questioning the role of state and government in relation to private debt, and, in its original meaning opens the possibility of an alternative politics of debt that centres not on regulating the rate of interest charged on credit (the libertarian and neoliberal positions above), but rather the freedom of banks and other institutions (payday lenders are one key example) to lend money at a price.

In taking an historical approach, however, it will not be assumed that debt itself is something timeless and unchanging. In *Never Let a Serious Crisis Go To Waste*, Philip Mirowski argues that David Graeber makes exactly this mistake in his book *Debt: The First 5,000 Years*, and that as a result he shares common ground with figures such as Kenneth Rogoff and Carmen Reinhart – who most would assume would sit on the opposite side of the political spectrum to Graeber – because together they accept the 'key notion of the populist right and the neoclassical orthodoxy, that "nothing is substantially different between then and now"' and the belief that 'markets are timeless entities with timeless laws' (Mirowski, 2013:17). Contrary to such an approach, debt as a form of governance has changed markedly from the 1970s onwards, let alone from the mid-18th Century when debates over usury flourished. It has been well documented, for example, that debt is now financialized to its core (Lazzarato, 2011; 2015), and something that has changed in quality from an amount to be redeemed at a particular point in the future to a quantity that will be serviced and in all likelihood rolled-over indefinitely; what Lisa Adkins rightly describes as a movement 'from a logic of repayment to a logic of payment' (2017:2). This means that debt now has a different rhythm or temporality, and as something that is often never likely to be redeemed and as such becomes a new 'apparatus of capture' (Lazzarato, 2015:43) that is constitutive of new forms of neoliberal subjectivity that define and govern our very existence (Brown, 2015). These are all relatively recent developments that have accelerated through the post-crisis period.

Why, then, return to classical debates about usury in order to think again about the governance of private debt in the present? This chapter treats debt as *the* main structural problem for the continued operation and stability of financialized capitalism, and as debt has become more important since the rise of consumer credit in the mid-20th Century so has the question of usury. For as private debt has grown exponentially, small increases in the rates of interest charged on credit now have a geared effect because the quantity of debt is so much greater in relation to individual and household income (which, for most, has been depressed since the recent financial crisis). Put simply, with the leveraging of private debt to unprecedented levels, interest rates become ever more important as small shifts can potentially lead to the inability to pay *on mass,* and with this the start of 'new' crisis that to large extent is a continuation of the one before. This means that the question of usury has become increasingly important with the rise and acceleration of contemporary finance capitalism. But, as stated above, the concept of usury, historically, has both a descriptive and critical usage, and can be used to raise important questions about the underlying politics of debt, including whether government or state should play an active role in limiting the market in credit provision (and if so what this role should), and whether the governmental regulation is, in fact, the answer. For these reasons, this chapter will, in the first instance, look more closely at this concept.

Usury: A Brief History

The concept of usury has a long and complex history. Geoffrey Ingham (2004:206) finds an initial expression of this concept in Aristotle's *Politics*, in which it is argued that 'usury is most reasonably hated, because its gain comes from money itself and not from that for the sake of which money was invented. For money was brought into existence for the purpose of exchange, but interest increases the amount of the money itself' (Aristotle, 1999:17). This idea of usury as the making of money through the provision of credit at a rate of interest also has a long religious history (see Graeber 2011: 9-13 for an overview). Burton traces the religious prohibition of usury to the Old Testament, in particular to Deuteronomy, in which 'Hebrews were told not to lend to their brethren at interest', and Ezekiel, who took a stronger line and argued for the execution of individuals who engaged in usury' (2008:8; for a detailed analysis of Deuteronomy and the role of usury in ancient Hebrew culture, see Nelson, 1969). A comparable idea of usury can be found in the Islamic term *riba*, which in its earliest sense refers to 'the increase of money in consideration for an extension of the term of maturity of a loan', and is prohibited in the *Qu-ran* through four revelations (Ahmad, 2010:54). Not all religions, however, share this view. Graeber observes, for example, that in 'mediaeval Hindu law codes, not only were interest-bearing loans permissible (the main stipulation was that interest should never exceed principal), but it was often emphasized that a debtor who did not pay would be reborn as a slave in the household of his creditor – or in late codes, reborn as his horse or ox' (2011:11). A similarly tolerant attitude towards lenders, he adds, can be found in Buddhism, but that seemingly across all world religions moral sympathies tend to lie with debtors rather than credits. Indeed, he observes that 'Looking over world literature, it is almost impossible to find a sympathetic representation of a moneylender – or anyway, a professional moneylender, which means by definition one who charges interest' (2011:10).

In the case of the England, a biblical view of usury predominated until the mid-16th Century, at which point the power to govern creditor-debtor relations began to pass from the church to parliament. This transition was underpinned by the passing of key parliamentary acts that, in turn, formalised the previously moral prohibition of lending at interest, most notably: *The Act Against Usury* (1552); *From An Act Against Usury* (1571) and; *An Act for Restraining the Taking of Excessive Usury* (1600). Through the course of these acts, the meaning of usury changed, for it no longer referred simply to the practice of charging interest on credit, but to a legally acceptable rate of interest beyond which the arrangement became usurious. Burton cites the 1571 Act, in particular, as a turning point as allowed interest rates of up to 10 per cent to be charged on loans; anything more and the lender would be forced to forfeit the principal amount. As a consequence, she argues, 'there was a prevalent view that not all usury was against God's law. Interest rates at 10 per cent came to be considered legal and normal' (Burton, 2008:9). Thomas Wilson, who was Secretary of State from 1577-81, considers the 1571 Act in detail in his *A Discourse Upon Usury* (which was edited and republished by R. H. Tawney in 1925), notes, however, that the loopholes in this statute were 'not inconsiderable' and that there were still means through which unscrupulous lenders could legally charge more than 10 per cent on loans. One of these, which is of contemporary significance, was that creditors could compress the timeframe for the repayment loans in order to make debtors more prone to default. Wilson explains: 'the lender could get more than ten per cent for his money by stipulating for repayment with a time too short to be practicable, and then charging as a penalty the payment which he could not legally exact as interest' (1925:169).The legislation that followed through the 17th Century centred on the regulation of the rate of interest that could be charged on a loan, most notably the Usury Act of 1660, which had the full title 'An Act for Restraining the Taking of Excessive Usury'. But 1571 Act the remained of significance as it played an important role in the emergence of the modern banking system; indeed, following this Act seven banks were established as a result of the first bill on usury in 1571 – in London, York, Norwich, Coventry, West Chester, Bristol, and Exeter – that became known as 'banks for the relief of common necessity' (Wilson, 1925:159). The rationalization of the banking system gathered pace following the founding of the Bank of England in 1694, and in 1714 the Statute of Usury capped interest rates at five per cent, which became the benchmark for subsequent anti-usury legislation in the US (see Schoon, 2015:578). But through the 19th Century, in particular, usury laws were fiercely contested and were repealed in the UK in 1854, only to be replaced in turn by the Moneylenders Act of 1900, which provided the basic regulatory framework for the governance of consumer credit through much of the 20th Century.

The question of usury, while largely neglected within contemporary economic thought, was central to debates within classical liberal economics. Adam Smith is a key early figure here, and his position, given that he is celebrated by many on the political Right as a champion of the free market, is surprising: that there should be usury laws to regulate the rate of interest that can be charged on loans. This position, which has been subjected to close scrutiny within Smith scholarship (see Jadlow, 1977; Levy, 1987), is most clearly advanced in *The Wealth of Nations* [1776], where he writes that it should be permissible to charge interest on credit, for ‘as something can everywhere be made by the use of money, something ought everywhere to be paid for the use of it’ (1999:456). He argues that attempts to prohibit the charging of interest have been counter-productive as ‘they increase the evil of usury’ by forcing debtors to underwrite the risks carried by creditors who may incur penalties for their actions. But Smith’s answer is not to create a free market for the provision of credit. Quite the contrary, he declares that there should be a legal rate of interest which ‘ought to be somewhat above, ought not to be much above the lowest market rate’ (1999:457). Smith’s justification for setting the maximum rate at this level is that if interest rates are set too high – he gives the example of eight or ten per cent – then only the riskiest debtors (‘prodigals and projectors’) would be likely to enter into credit agreements on these terms. And if this were the case

> Sober people, who will give for the use of money no more than a part of what they are likely to make by the use of it, would not enter into the competition. A great part of the capital of the country would thus be kept out of the hands which were most likely to make a profitable and advantageous use of it, and thrown into those which were most likely to waste and destroy it. Where the legal rate of interest, on the contrary, is fixed but a very little above the lowest market rate, sober people are preferred, as borrowers to prodigals and projectors (1999:457).

The key point of this passage is that usury laws should be embraced because they encourage safe investment by channeling money to the most industrious and responsible debtors. This argument has been questioned by, among others, David Levy, who asks whether aversion to investment risk is necessarily a good thing, and whether it benefits a society as a whole or simply the individuals involved (see 1987:397-8). Levy questions the economic rationality of debtors and creditors in Smith’s account in relation to their perceptions of risk-taking, and draws the conclusion that while it is not clear, for Smith, whether ‘prodigals and projectors’ should be excludes from credit agreements by usury laws, ‘in his writings there is a whiff of the doctrine of socially responsible investment. In this case, where law can improve social well-being, Smith favors it’ (1987:400). Indeed, contrary to Smith’s commitment to *laissez-faire* economics on other matters, his core argument for the purposes of the present chapter is that usury laws can promote the creation of responsible and serviceable credit arrangements that work for the wider social good.

Smith’s position was soon after was subjected to a fierce attack by Jeremy Bentham, who in a series of letters written from White Russia in 1787 (from where he also wrote his famous letters on the Panopticon) made a vocal case for a ‘Defence of Usury’ (see 2016:45-113), by which he meant a defence of the practice of lending money at any agreed rate of interest rather than the introduction of laws to moderate this practice. Bentham’s argument is one that might be expected to be found in the work of Smith: that there should be an unregulated free market in the provision of credit; one that is largely immune to interference by the state. The first of his letters makes exactly this argument: ‘*no man of ripe years and of sound mind, acting freely, and with his eyes open, ought to be hindered…from making such a bargain, in the way of obtaining money, as he thinks fit, nor,* (what is a necessary consequence) *any body hindered from supplying him, upon any terms he thinks proper to accede to*’ (2016:47, italics original). From this starting point, Bentham subsequently criticizes Smith’s argument for usury laws on a point by point basis. Bentham’s overriding response to Smith is that it is illogical to believe in the merits of free market exchange in general but to restrict such exchange when it concerns money in the form of credit. And from here a number of practical criticisms of usury laws follow, some of which are technical and question the existence of 'natural' or proper rates of interest (implying that the interest rate ceiling imposed by usury laws is largely arbitrary), and others are directed more at the powers of government, and concern who, exactly, should be deemed competent to make the judgement of what counts as usury. Bentham also takes issue with Smith's argument that usury laws benefit society as a whole by ensuring that money is lent to the safest investors or consumers rather than to 'prodigals and projectors'. Bentham argues that there is no evidence to show that this is the case, and responds that usury laws will not to stop the actions of 'prodigals', who are likely to turn to the informal economy to borrow money, and risk restricting the actions of 'enterprising' borrowers, or, to use a more contemporary term, entrepreneurs who are seen to be key agents of economic growth.

Many of Bentham's arguments continue to inform debates about the governance of debt in the present, and Peter Johnson (2009) is right to that 'It is hard to exaggerate the importance of this work', not least because it 'institutionalises greed and gives it the intellectual form it has today'. For throughout his 'Defence of Usury', Bentham's overriding concern is to protect the interests of creditors rather than debtors. He writes, for example, that

> in the case of borrowing money, it is the borrower always who…is on the safe side: any imprudence he may have committed with regard to the rate of interest, may be corrected at any time: if I find I have given too high an interest to one man, I have no more to do than to borrow of another at a lower rate, and pay off the first: if I cannot find any body to lend me at a lower, there cannot be a more certain proof that the first was in reality not too high (2016:61).

This position, which willfully neglects the precarious position of borrowers in the absence of their protection of the law, is in keeping with many of the central tenets of classical laissez-faire liberalism, as both creditors and debtors are treated as rational self-interested economic actors that are participants in a market that (without the interference of government) can find its own solutions. But Bentham opposes usury laws on both economic and moral grounds, as he argues that usury laws have undesired effects such as preventing the most vulnerable (and thereby the risk borrowers) from obtaining credit they need, and as a consequence forcing them to use other routes to obtain money by selling goods or property at unreasonable prices in order to subsist. For Bentham, there is a double standard here, for 'Those who cannot borrow may get what they want, so long as they have anything to sell. But while, out of loving-kindness, or whatsoever other motive, the law precludes a man from *borrowing* upon terms which it deems too disadvantageous, it does not preclude him from *selling*, upon any terms, howsoever disadvantageous' (2016:62). The answer to this problem, he argues, is consistency: there should be no discrimination between a free market for the exchange of property and one for the exchange of money, and on this basis there should be no laws to prohibit usury.

Interestingly, John Stuart Mill, the key figure in British political economy through the latter half 19th Century and a figure famously reviled by Hayek's mentor, Ludwig von Mises, for corrupting classical liberalism with socialist ideals (see Gane, 2014), later reinforced many of Bentham's views. In *Principles of Political Economy,* which was first published six years before the abolition of British usury laws in 1854, Mill writes that

> In more improved countries, legislation no longer discountenances the receipt of an equivalent for money lent; but it has everywhere interfered with the free agency of the lender and borrower, by fixing a legal limit to the rate of interest, and making the receipt of more than the appointed maximum a penal offence. This restriction, though approved by Adam Smith, has been condemned by all enlightened persons since the triumphant onslaught made upon it by Bentham in his *Letters on Usury*, which may still be referred to as the best extant writing on the subject (1994:307).

The irony here is that on the question of usury Mill is closer to the classical liberal cause, as espoused by Bentham, than is Smith (who is so often cited as a touchstone of contemporary neoliberal economics). Indeed, Mill sides with Bentham in arguing that usury laws tend only to protect one partner in credit agreements – the borrower – and that there is no evidence to show that such laws reduce interest rates on loans below that which could be achieved through 'the spontaneous play of supply and demand' (1994:308). He adds that such laws force not only Smith's 'prodigals and projectors' to borrow money at higher rates from disreputable lenders, but effectively 'all persons who are in any pecuniary difficulties, however temporary their necessities may be' (1994:310). Again, the argument is that usury laws do not resolve the problems of exorbitant lending and excessive risk-taking, but in fact increase the vulnerabilities of both creditors (as the law is said to protect only borrowers) and impoverished debtors, who are forced to enter informal agreements with moneylenders that operate outside of the law. The answer, for Mill, as for Bentham, is for there to exist a free market in the provision of credit; one that should be regulated in limited ways by the state, if at all. Indeed, in later editions of *Principles of Political Economy*, Mill gives his full support for the repeal of English usury laws, and writes in the seventh edition of 1871 that they have now been 'happily abolished' (1994:310).

The Regulation of Credit Pre- and Post-Crisis

While the above arguments from Bentham and the Mill might seem to belong in the 18th and 19th Centuries respectively, they have been revisited many times since in order to justify the roll-back of usury laws and governmental regulation of credit markets more generally. Indeed, it is worth noting that the majority of existing literature on usury (most of which is centred in the discipline of economics) treats the regulation of the interest charged on credit as a regressive step. This literature is, in some cases, historical in outlook. Temin and Voth, for example, treat usury laws as a key instance of the tendency for government regulation to shackle the progress of the financial revolution that took place in England through the late-17th to mid-18th Century, and, on this basis, draw the conclusion that the consequences of usury laws were 'almost entirely negative' (2012:84). Elsewhere, the arguments of Bentham and Mill have been repackaged many times over in order to justify the deregulation of credit markets that took place through 1970s and 80s, particular in the UK and US. Christopher DeMuth, the then President of the American Enterprise Institute, for example, makes an extended case against credit card interest rate regulation in a 1986 paper that argues for free competition between credit providers on the grounds that this will bring interest rates below those stipulated by usury laws and therefore be beneficial to consumers, adding that usury laws can only be damaging to the economy as they result in an 'artificial contraction in the supply of credit' (1986:201). Such arguments, which are neoliberal to the core as they view the market or more specifically market-based competition as a social good, have taken on a renewed significance in the post-crisis situation, in which the supply of credit – of all kinds – has become an immediate priority. This situation is important for the purposes of the present chapter as it provides a stark example of what can happen when the free market arguments of Bentham and Mill are pushed to an extreme, and when the state, through a period of exception during which anything seemingly becomes possible in the name of crisis, absolves itself of responsibility for the governance of personal credit.

One of the most striking developments that accompanied the unfolding of the crisis was the rapid growth of the short-term credit market or what is known colloquially as 'payday lending', for as unemployment soared and traditional lines of credit tightened, a large number of households were forced to find other means of raising money, in many cases just to cover basic living costs (see Kollewe, 2017) or to service the costs of existing debts. While pay-day lending is nothing new, in the period from 2008 to 2015 its market value more than trebled in value in the UK (Szilagyiova, 2015), and now (late-2017) has a total worth of over £2.5bn. This situation is by no means unique to the UK. In the US, while there are regulations that outlaw payday lending in some states (many of which have a religious history), in 2012 an estimated 12 million adults used payday loans each year, mainly to cover the costs of 'ordinary living expenses', including recurring expenses such as 'utilities, credit card bills, rent or mortgage payments, or food' (Pew Institute, 2012). With the expansion of pay-day lending came many stories of usury in its modern sense (the charging of excessive rates of interest), particularly in cases where the recipients of loans were unable to services their debts. In the US, for example, it became headline news that in Missouri, a state with more payday lenders than McDonalds restaurants, one client of a payday lender ended up owing a sum that was 36 times the $100 she originally borrowed (see Kendzior, 2015). In the UK, it was commonplace to see television adverts advertising short-term loans at well over 1,000% APR, and in one case that made headline news a borrower was charged at an extraordinary rate of 16,734,509% APR (see Jones, 2013). The morality of such credit arrangements was brought sharply into public focus in the UK when in 2013 a teenager - Kane Sparham-Price - committed suicide after a prominent payday loans company emptied his bank account in order to take payments to satisfy the terms of a short-term credit agreement. The coroner, in his report on this suicide, made a strong case for tighter regulation of such loans: 'Whilst I accept that the various payday lenders are legally entitled to 'clear out' someone's bank account if money is owing to them, it struck me that there ought to be a statutory minimum amount which must be left in an account (say £10) to avoid absolute destitution…' (quoted by Khomami, 2015). This call for regulation was echoed elsewhere by a wide range of political and third sector organizations, including trade unions, charities, religious groups, and even Occupy.

The regulation of contemporary credit markets, however, has a complex history. If we take the global financial crisis as the central point of focus, then, as Pettifor argues (2017:49-53), a line of continuity can be drawn from the deregulation of credit markets in the 1970s through to the bursting of the credit bubble in 2007-, and the emergence of a new bubble subsequently as the memory of causes of the financial crisis has slowly faded. This said, however, the regulation of credit, and in particular short-term credit, is not straightforward and policies and practices vary widely across different nation-states and political and religious cultures. In the UK, regulation of the credit industry, at least in its modern form, can be traced to the Moneylenders Act of the early 20th Century, which centred on whether interest charged on loans was excessive and the terms of credit agreements 'harsh and unconscionable', and later to the 1974 Consumer Credit Act, which was a landmark attempt to protect consumers from extortionate credit agreements by ensuring, among other things, that demands for early payment could not be made and that basic information about credit arrangements, such as the Annual Percentage Rate, be communicated to customers in writing. As in the US, however, the 1980s witnessed the wider deregulation of the banking sector, starting with the abolition of exchange controls and ending with the mass provision of new forms of consumer credit that largely outmaneuvered the regulatory framework that had previously been put in place. Private debt grew exponentially through this period, seemingly never to return to previous levels: in 1980 the ratio of household debt to GDP stood at 30%, by the early 1990s this had risen to 60%, and at the point of the crisis hit nearly 100%. While minor amendments were made to the Consumer Credit Act in 2006, a more serious attempt to impose a tighter regulatory framework on the credit industry emerged in response the financial crisis. In April 2014, responsibility for the regulation of consumer credit passed from the Office of Fair Trading (OFT) to the Financial Conduct Authority (FCA). This regulatory body, in turn, introduced a new consumer credit 'sourcebook' (CONC) that led to the capping of interest on payday loans at 0.8% per day, and the imposition of new rules on the rolling over of debts and ability for payday lending companies to take payments from their customers, in some cases without warning, through the use of 'continuous payment authority' (CPA). Similar regulations were applied to the credit card industry, and the FCA moved to prohibit certain surcharges on credit card transactions and encouraged card providers to do more to provide 'further assistance' to customers in 'persistent debt' (see https://www.fca.org.uk/news/press-releases/fca-proposes-new-rules-help-customers-persistent-debt-credit-cards). While these measures tempered some of the excesses of the credit industry, a number of key advisory bodies, most notably Citizens Advice, argued that they did not go far enough as many borrowers continue to struggle to with the conditions of their payday loans (https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Payday%20Loan%20Report%202.pdf), while credit card companies still actively target customers who are struggling with existing debts (see Partington, 2017).

In the US, rules on high-cost short-term credit (HCSTC) agreements (which include payday loans), many of which date back to the attempt to tackle usury at the outset of the 20th Century through the Uniform Small Loan Law, vary considerably from state to state. Today, payday lending is outlawed in some states, while others place limits on APR, fees charged and the rollover of credit arrangements. Other forms of credit – such as credit cards and mortgages – have an equally complex history. Johnna Montgomerie (2006) traces the deregulation of the credit card industry to the collapse of the Bretton Woods agreement at the outset of the 1970s, and to a succession of laws that followed which, first, opened up inter-state credit card use, and later the creation of asset-backed securities that enabled the credit industry 'to expand virtually unabated' (2006:312). A key development came in 1978, when a Supreme Court ruling (*Marquette National Bank v. First of Omaha Service Corporation*) broke with previous usury laws by declaring that limits on credit card interest rates could now be determined by the state in which the card provider was located rather than that of the consumer. As Zinman explains: 'the *Marquette* decision gave banks the authority to "export" the bankcard interest rates permitted by their home state to customers in other states' (2003:8). For this reason, a number of major credit card companies based themselves in states such as South Dakota, Nevada or Delaware, where a cap on interest rates did not apply. This deregulation of credit markets continued apace through the 1980s and 90s, starting with the Depository Institutions Deregulation and Monetary Control Act signed by President Carter in 1980, which among other things gave banks greater freedoms to determine their interest rates. This push for a free market in credit provision was maintained through to the global financial crisis in 2007-, following which there was an attempt to re-regulate of credit markets, particularly through the 2009 Credit Card Accountability Responsibility and Disclosure Act, which introduced a range of new consumer protections for credit card holders (see https://www.creditcards.com/credit-card-news/help/card-act-12-consumer-protections-6000.php), and the more sweeping 2010 Dodd-Frank Act, which established a Bureau of Consumer Protection and sought to tackle 'predatory' mortgage lending. Following the election of Donald Trump, however, much of this new regulatory framework (the success of which has been hotly contested) looks set to be rolled-back, particularly after the passing of Financial Choice Act by Congress in June, 2017, which, as the name of the act implies, seeks to give consumers and credit providers greater 'choice' outside of the powers of 'Washington bureaucrats'. This struggle over the governance of credit continues to rumble on, with those on the political Left and neoliberal Right calling for tighter regulation and those on the libertarian Right seeking the further roll-back of such regulation in the name of consumer choice and freedom. The question this leaves us is whether regulation is indeed the answer?

Where Now?

The question of usury divided key figures within the classical liberal canon, with Smith, on one hand, arguing for government regulation of interest that can be charged on loans, and Bentham and Mill, on the other, declaring that there should exist a free market in the creation of credit; one that should be largely exempt from governmental interference. While the question of usury was central to debates within classical liberal economics and political economy, it almost completely disappeared from view following the death of John Stuart Mill (and at the same time political economy) in 1873. With the emergence of neo-classical economics in the latter stage of the 19th Century, such political concerns largely evaporated, and for the most part the concept of usury barely featured in the social sciences of the Twentieth Century (a notable exception is Nelson, 1969). It is only following the 2007-financial crisis that the concept and practise of modern usury returned with a vengeance, most notably in the form of payday lending, which, as shown above, serves as an important reminder of the human costs that can result from the de-regulation of credit markets, and, more particularly, from the absence of government-enforced limits on the rates at which interest (and fees) can charged on loans. Indeed, while, as noted at the outset of this chapter, the nature of debt has changed since the mid-19th Century, the immediate post-crisis situation illustrates the potential consequences of following Bentham and Mill on the question of usury, of the continuing influence of their ideas within policy and industry circles. Indeed, as regulation of payday lending has tightened in the UK since 2014, there have been warnings from organizations such as the Consumer Finance Association that could come straight from the pages of Bentham and Mill, in particular that in the absence of such credit, debtors ‘risk of falling into the hands of illegal lenders’ (see Peachey, 2015). In this sense, while the nature of debt has changed since the 19th Century, many of the arguments that seek to legitimate it have not.

The simple option to call for the further regulation of the conditions of debt as an answer. But in addressing the question of regulation, one of the key points to be drawn from the above section is that this cannot be done in the abstract, for regulatory frameworks are both place-specific and subject to subtle but important policy changes across time. The recent move, for example, by the Trump administration to ‘empower’ the consumer and credit industry by emphasizing the value of individual choice is in keeping with a libertarian commitment to the withdrawal of the state from intervening in the workings of the so-called free market, and is quite different from attempts to place limits on the workings of credit markets through the Dodd-Frank Act in the US and consumer credit laws introduced by the FCA in the UK. The push for such laws in the immediate post-crisis situation, while often well-intended, were in keeping with a neoliberal (rather than libertarian) response to the crisis as they positioned the state to improve the operation of credit markets rather than call into question, more fundamentally, the role of debt as a key mechanism of power within a broader landscape of advanced financialized capitalism. In this sense, although for different reasons to those suggested by Bentham and Mill, it might be argued that the regulation of credit is part of the problem, rather than as a potential solution to the ongoing debt crisis. In a key piece on neoliberalism and the crisis, Martjin Konings develops this line of argument: ‘the current Crisis is not a product of politics and regulation having let the market spin out of control, but precisely a product of contradictions internal to the operation of power and control, of financial power having gone beyond its own conditions of possibility (2010:29)’. A key part of the problem is that the state itself has changed since the heyday of classical liberalism, for, as Foucault observed in his lectures on biopolitics, under conditions of neoliberalism it has been re-programmed to serve the interests of ‘the market’ while itself becoming marketised to its core. In keeping with this view, Konings rightly argues that the common belief that neoliberalism is characterized by deregulation is myth, for instead it is rather it has introduced regulatory policies that have worked in service of the market and to the benefit of elite groups. Indeed, in the wake of the recent crisis, it is clear that heightened regulation of credit markets has neither solved the acute problems of mass indebtedness (as argued above) nor addressed the stark social inequalities generated by financialized capitalism. Quite the contrary: debt remains *the* key apparatus of capture for the many, while guaranteeing the unprecedented social and political power of the few.

This does not mean, however, that financialized capitalism is without its problems. For neither libertarian arguments for the further deregulation of credit markets on the grounds of empowering individual choice, nor neoliberal attempts to improve the working of credit market by introducing enhanced regulatory frameworks offer any way out of the ongoing structural debt crisis. Moreover, high-profile cases that illustrate the human and social costs of this ongoing crisis (such as the case of Kane Sparham-Price discussed above) disturb neoliberal and libertarian positions alike because, first, they draw public attention to the underlying morality of the debt economy and to the human and social costs of mass indebtedness (even if regulation itself does not solve this problem it is often framed to address such concerns); second, because such cases demonstrate the problem of treating markets, in this case credit markets, as entities that can be governed through forces of competition that, to some extent, can themselves be the drivers of regulation; and third, they raise the related question of whether the limits set by new regulatory frameworks can be established and enforced in any progressive way by state agencies that themselves are increasing market-oriented in basis.

The important point raised by Konings is that there is nothing inevitable about having to choose between the existence of freer credit markets, on one hand, or tighter regulation of the loan industry on the other, or between the cyclical crises of capitalism (Minsky) and 'death from a thousand cuts' (Streeck, 2014:13) for that matter. For while regulation might look like the preferable option, there are other alternatives. One is concealed within the history of idea of usury itself: that the problem lies not in agreeing a legitimate rate at which interest on credit may be charged, but rather, and more fundamentally, that it is legally and morally acceptable to charge interest at all. This presumption, which unites Smith with his critics Bentham and Mill, is questioned by the recent writings of, among others, Andrew Sayer, Mary Mellor and Ann Pettifor. In a key chapter of his book *Why We Can't Afford the Rich*, entitled 'Interest…for What? *Or* We Need to Talk About Usury' (2015), Sayer, for example, argues that there is merit in returning to pre-modern critiques of usury (as the practice of charging interest on credit), for while it is 'common to think that charging interest on loans is only fair, and also a good way of encouraging people to lend…in many ways it's economically dysfunctional, and arguably socially unjust…' (2015:59). One of the attractions of such ideas of usury, he adds, is that they do not privilege the interests of the creditor (as in the classical liberal texts considered above), but instead treat debt as a form of power relation that is fundamentally unequal in basis as enables the creditors to profit from borrowers' poverty (see 2015:66).

Sayer's attack is targeted primarily at a banking system that is able to create money freely and loan it at interest purely for the purpose of profit-making (see 2015:73-6). This practice is placed under close critical scrutiny by Mary Mellor in her recent work *Debt or Democracy*, which questions why the power of money creation lies with central banks rather than with 'states more generally', and why, given that the money created by central banks is 'debt free at the point of its creation', public money is then circulated in the form of debt (see 2015:3-4). These concerns are shared by Pettifor, who, in *The Production of Money: How to Break the Power of Bankers* (2017), argues that usury has become normalized in Western societies within which 'monetary systems have been weakened by the parasitic grasp of finance capital' (2017:44), and that what is needed, by way of response, is a new politics of money (and with this also of debt) that seeks further democratic control over the money supply by restoring many of the governmental powers that have been lost through processes of deregulation. Here, she takes a position against thinkers such as Sayer and Mellor by arguing that money by definition cannot be debt-free (see 2017:111). Indeed, rather than making a wholesale case against debt *per se*, her aim is a more moderate one, namely: 'The creation of a socially just monetary system – one that promotes widespread prosperity by acting a servant, not master of society and the economy; a monetary system that enables us all – including the public sector – to do, and be what we can be' (2017:112). The first step towards this goal, she adds, is to promote a better public understanding of what money is, how it is created, and how the modern financial system works more generally.

While it is not possible to discuss what Pettifor aptly calls the 'price of money' in any detail here, the above positions are useful as they demonstrate the ongoing significance of the concept of usury, and beyond this the lines of political contestation that remain open and which offer potential alternatives to the theories of crisis offered by Minsky and his followers on one hand, and Streeck on the other. For regardless of their individual conclusions, Sayer, Mellor and Pettifor are right to argue for a new politics of money and debt; one that is informed by attention to historical debates such as those over the right to charge interest on credit, and concerned with larger-scale questions about the role played by banks, as well as smaller-scale private agencies such payday lenders, in creating money to satisfy and fuel a profit motive. The current chapter has sought to contribute to this endeavour, if only in a minor way, by using the concept of usury to think about the role of government in regulating the supply and conditions of private debt, and to argue that regulation, ultimately, is not enough. Indeed, new ideas, politics and practices are urgently needed to tackle the debt crisis as regulation can only temper the extremities of financialized capitalism rather than tackle the root causes of the crises it produces. The argument of the present chapter is that the question of usury, and more specifically of the right to charge interest on credit, is an important starting point for a politics that seeks to move beyond the tightening or loosening of a regulatory framework.

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