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TOWARD ISLAMO-CHRISTIAN BUSINESS ETHICS?

A Case Study
on the Prohibitions of *Riba* and Usury
and the Morality of Interest

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SHORT ABSTRACT

Islamic banking has attracted attention as a possible source of inspiration for ethical renewal in the finance industry. A frequently cited attribute of Islamic banking is the prohibition of *riba*, often identified with interest. This identification elicits comparisons with Christianity's usury ban and raises hopes of a shared Islamo-Christian contribution to secular business ethics through a reassessment of the morality of interest.

With hopes for wider appeal, this thesis focuses on Sunni and Roman Catholic sources of authority regarding the respective prohibitions. The religious texts underlying this study are from the Qur'an and Bible, the Hadith and the Fathers of the Church, Sunni jurisprudence and the Catholic magisterium.

Given the view that the audience of business ethicists comprises other philosophers and the general public, it is argued that the suitable approach for the field is based on secular reasoning. While recognizing the importance of secular argumentation in the business ethics, this thesis proposes and employs a framework that invites religions to lend greater acceptability to secular argumentation and to provide inspiration for secular discourse.

Part I of this thesis compares the significations of "interest" (Chapter 1), "*riba*" (Chapter 2), and "usury" (Chapter 3) as well as Islam's prohibition of *riba* (Chapter 4) and Christianity's prohibition of usury (Chapter 5). Since there is sufficient (though imperfect) overlap between these significations and prohibitions, Part II derives from rationales for the prohibitions of *riba* and usury lines of secular reasoning for analyzing the morality of interest. This analysis considers whether interest-based lending is immoral, presents moral risks, or its avoidance is supererogatory. This analysis takes into consideration the effects of interest-based lending (Chapter 6), considerations of virtue (Chapter 7), and the demands of justice (Chapter 8).

Beyond its own subject matter, this case study exemplifies possibilities and challenges of attempting Islamo-Christian contributions to secular business ethics more widely.

LONG ABSTRACT

A strong impetus for this study is the increased discussion of the (perceived) lack of ethics in the financial sector that was a byproduct of the Great Recession. In recent years, Muslims and Christians alike have suggested that Islamic banking may offer answers, or at least inspiration, for addressing perceived ethical deficiencies in finance. Expressed have been hopes of partnership between Muslims and Christians as well as Jews in bringing about reform. The basis for such a partnership is founded on the perception that these religions share a prohibition of interest.

This thesis responds to such hopes. On one level, this attempt is modest. It limits itself to examining two religions, namely Islam and Christianity, and focuses on authoritative sources recognized by two of those religion's largest denominations: Sunnism and Roman Catholicism. The modesty of this relatively narrow case study is meant to avoid from unwieldiness. On another level, however, this thesis cannot escape ambition. It considers whether Islamic and Christian teachings as religious teachings might gain traction in secular business ethics. Hence, the circumscription of the case study is at the service of a larger question: what are the possibilities and challenges for an Islamo-Christian business ethics?

Embedded in the heart of this study is the postulated convergence of three terms—"interest," "*riba*," and "usury"—and of the Islamic prohibition of *riba* and the Christian prohibition of usury. Scholarship has addressed separately *riba* and usury but most analyses comparing the prohibitions of *riba* and usury remain cursory. Yet to be realized is an in-depth comparison of the prohibitions of *riba* and usury, and of how these prohibitions might prod a reevaluation of the morality of interest within the scholarly field of business ethics. This thesis initiates the requisite level of analysis.

This analysis runs along two lines. The first line addresses the suggestion that Islam and Christianity share overlapping prohibitions related to interest. The second line addresses the suggestion that these injunctions have ethical applications beyond the confines of these religions. The bipartite structure of this thesis reflects these two lines of argumentation, which rely on a pair of corresponding frameworks.

The first framework considers Islamic and Christian systems of authority, or more precisely Sunni and Roman Catholic systems of authority. The sources of authority consulted from Sunnism are the Qur'an, the Sunnah as recorded in the Hadith, and the four main madhhabs of Sunni jurisprudence, or *fiqh*. The sources from Catholicism are Scripture, patristic tradition, and the magisterium. Since some of these sources carry meaning for groups besides Sunnis and Roman Catholics, it is hoped that this study, though narrow, may still have wider appeal. By turning to these two sets of authorities, this framework provides a basis for comparing the respective prohibitions, and a basis for determining whether there are sufficient commonalities in these stances for collaboration in business ethics.

The second framework presents ways that religions can attempt to contribute to business ethics. Over the course of the 1970s, the scholarly field of business ethics came to be dominated by philosophers, even though theologians and scholars of religious jurisprudence had for centuries considered moral questions related to the economy. Today, philosophers

still play leading roles in the field of business ethics and have been joined by scholars from law and the social sciences. For several decades now, religions' ability to contribute to the modern field of business ethics has fallen into question. The question rests on whether the audience and approach of business ethics excludes religious argumentation. Given the view that the audience of business ethicists comprises other philosophers and the general public, it is argued that the appropriate approach in the field is based on secular reasoning. While recognizing the importance of secular argumentation in the field, this second framework invites religions such Islam and Christianity (1) to lend greater acceptability to secular argumentation by personalizing it and (2) to provide inspiration for secular discourse.

Brought together, these two frameworks provide a basis for attempting an Islamo-Christian effort toward re-examination of the morality of interest within business ethics, a case study that aspires to test the fruitfulness of such attempts more generally.

Part I considers the signification of the terms "interest" (Chapter 1), "*riba*" (Chapter 2), and "usury" (Chapter 3), as well as the prohibitions of *riba* (Chapter 4) and usury (Chapter 5). Determining the significations of these three terms lays important groundwork for determining whether there is correspondence between the prohibitions and, if so, how closely prohibited *riba* and usury correspond to interest, the morality of which is considered in Part II.

In Chapters 1–3, etymology, usage and context, and definitions are used to uncover the significations of "interest," "*riba*," and "usury." Three elements surface as fundamental when comparing these terms, namely the kinds of quid pro quo (one value exchanged for another), the presence of credit, and the payment of an addition. Regarding these elements, the terms display substantial overlap, though their correspondence is imperfect. Nevertheless, the correspondences that persist allow for a basic shared signification.

The Islamic and Christian authorities surveyed in Chapters 4 and 5 align on many points in their respective prohibitions of *riba* and usury, but with some significant differences. Respectively, each prohibits the reception or exaction of *riba* and usury, while differing regarding borrowing or being accessory to such contracts. There is consonance in the estimation of *riba*'s and usury's gravity: the Islamic sources present *riba* as a grave offense, a perspective that finds a counterpart in the Christian sources. Additionally, some overlap may exist between exceptions to the respective bans.

Part II relies on alignments discovered in Part I: alignments, though partial and imperfect, between the significations of the terms "interest," "*riba*," and "usury"; and alignments, though also partial and imperfect, between the prohibitions of *riba* and usury. Relying on these alignments, Part II presents rationales used to support the prohibitions of *riba* and usury and adopts similar, secular lines of reasoning in considering the morality of interest. While the Qur'an, Hadith, and some Islamic jurisprudential thought, as well as the Bible, are invoked, most of the rationales' detail originates from patristic and magisterial resources.

Among the predominant rationales appearing in these sources are ones that resonate with premises familiar in secular ethics. The premises are as follows: (1) more desirable effects should be pursued over less desirable ones; (2) virtue should be sought and vice should be avoided; (3) each person should be given his or her due. These premises are, of course, related to one another. These premises are also associated with dominant schools of moral philosophy. The resonance between these premises and the rationales outlined above prompts the formulation of secular lines of reasoning for scrutinizing the morality of interest. A duty to pursue more desirable effects, or utility, resonates with the rationales against *riba* and usury based on their perceived effects. Arguments stemming from this resonance are taken up in Chapter 6. Concerns about greed, untruthfulness, and untrustworthiness resonate with virtue ethics. Arguments stemming from this resonance are taken up in Chapter 7. Finally, concerns about justice do not only resonate with a duty to give each his or her due but are, to some extent, conterminous with it. Arguments stemming from resonances with justice, specifically commutative and distributive justice, are taken up in Chapter 8.

The following pattern recurs in Chapters 6–8: First, a hypothesis is formulated against interest, based on the applicable premise expressed above; second, Islamic and Christian rationales that resonate with this hypothesis are discussed; third, similar lines of secular reasoning to those advanced in the rationales are examined.

Although the premises expressed above carry a sense of duty or obligation ("more desirable effects *should* be pursued . . ." etc.), some actions do not fall neatly into the categories of ethical or unethical. Some actions, for instance, carry moral risk. Such risk can be (1) epistemological or (2) ontological: there is risk of faulty moral judgment and there is risk that an action—though not necessarily unethical in itself—disposes an agent to (further) misconduct. Additionally, some moral theorists posit that some actions or omissions, though not morally obligatory, are nevertheless still praiseworthy. Such actions are described as "supererogatory."

Based on considerations of obligation, moral risk, and supererogation, Part II invokes rationales for the prohibitions of *riba* and usury not only to consider whether interest is ethical or unethical, whether moral obligations exist in relation to it, but also whether these rationales might lift secular moral reasoning beyond mere duty to reconsider whether eschewing interest might mitigate moral risk and be supererogatory.

Part II does not find the immorality of interest beyond reasonable doubt, yet neither does it roundly exonerate interest. Even though following the rationales for the bans on *riba* and usury do not inspire an analysis that finds interest always immoral, Part II does suggest that interest presents moral risks and its avoidance may be supererogatory. While these considerations are not decisive, such risks deserve serious consideration when deciding whether to lend or borrow at interest.

This lengthy case study has implications beyond *riba*, usury, and even interest. It showcases the difficulties and limitations, but also the potential of further Islamo-Christian contributions to secular business ethics. With the convergences here revealed—partial as they are and painstakingly uncovered—hopes for a broader Islamo-Christian partnership have reason to sprout anew. This is the hope cherished in the Second Vatican Council's *Nostra aetate*, the hope that Muslims and Christians might work "to preserve as well as to promote together for the benefit of all mankind social justice and moral welfare, as well as peace and freedom."[1]

In this thesis, the prodding of secular discourse through consideration of Islamic and Christian rationales raises this discourse beyond that of right and wrong to that of security and supererogation—security in the right, security from wrong, and going beyond the call of

[1] Second Vatican Council, *Nostra aetate* 3 (1965), accessed October 31, 2017, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_nostra-aetate_en.html

duty to achieve this security. Islamic and Christian teachings can serve as alerts in business ethics, as guardrails warning of moral precipices. While such a function is not unique to these religions nor religions in general, a systematic use of such guardrails will give Islamo-Christian contours to the moral discourse relying on them.

While the fruitfulness of developing an Islamo-Christian partnership is itself auspicious, partnerships between Islam and Christianity, both severally and jointly, and other religious traditions may also prove fruitful. An ever-expanding partnership holds even greater promise (with admittedly commensurate challenges). Enlisting other religious traditions would more widely personalize arguments and add more points of inspiration for secular analysis. This case study augurs well for such endeavors.

CONTENTS

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EDITION ABBREVIATIONS

CCCM	Corpus Christianorum Continuatio Mediaeualis.
CCSG	Corpus Christianorum Series Graeca
CCSL	Corpus Christianorum Series Latina
CSEL	Corpus Scriptorum Ecclesiasticorum Latinorum
LCL	Loeb Classical Library
LXX	Septuagint
MGNT	Morphological Greek New Testament
PG	Patrologia Graeca
PL	Patrologia Latina
RSV	Revised Standard Version
SC	Sources Chrétiennes

NOTE ON TRANSLITERATION

Words and phrases from Arabic, Greek, Hebrew, and Latin appear in this thesis. Since overly exacting transliterations may prove cumbersome for some readers, I have chosen transliterations that balance readers' comfort with consistency. Given this attempted balance, I have devised the following general guidelines.

Where a term has already been incorporated into the English language, I have chosen a recognized spelling that is widely used and reasonably accurate.

I have avoided most diacritical marks and ligatures, except where they appear in quotations and book titles, in which case they are retained as much as possible. Where the traditional phrases following the names of Muhammad (i.e., "peace be upon him") and Muhammad's companions (i.e., "Allah be pleased with him") have not been transliterated, they have been removed.

Introduction

Search for "Islamic banking" on YouTube, and chances are one of the first results will be a promotional video posted by Guidance Residential, an Islamic home-finance company based in the United States. The short video pitches the company's alternative to the traditional mortgage, noting that "lending and borrowing at interest is also in direct opposition to what all monotheistic faiths preach."[1] Doubtless pursuing a marketing angle, the video embodies the claim that the ban is shared by religions in addition to Islam. This claim finds support in the writings of scholar-proponents of Islamic banking, and—as we will see—to some extent in the Qur'an itself.[2]

A strong impetus for this study is the increased discussion of the (perceived) lack of ethics in the financial sector that was a byproduct of the Great Recession.[3] In recent years, Muslims and Christians alike have suggested that Islamic banking may offer answers, or at least inspiration, for addressing perceived ethical deficiencies in finance.[4] Indeed, a number of Western Islamic banks market themselves as providers of ethical financial products.[5] One

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[1] "How Does Islamic Home Finance Work? (2013)," Guidance Residential, posted on Mar 21, 2013, YouTube video, 0:40–0:46, accessed February 20, 2020, https://www.youtube.com/watch?v=DZeE3FPWza0.

[2] See Yahia Abdul-Rahman, *The Art of RF (Riba-Free) Islamic Banking and Finance: Tools and Techniques for Community-Based Banking*. Second Edition (Hoboken, NJ: Wiley, 2014), 15ff.; Muhammad Umer Chapra, *Morality and Justice in Islamic Economics and Finance* (Cheltenham, U.K.: Edward Elgar, 2014), 137.

[3] See, for example, the remarks of the then-Governor of the Bank of Canada Mark Carney, "Rebuilding Trust in Global Banking (speech, Western University, London, ON, February 25, 2013), accessed May 13, 2020, https://www.bis.org/review/r130226c.pdf.

[4] E.g., Scott Bader-Saye, "Disinterested Money: Islamic Banking, *Monti di Pietà*, and the Possibility of Moral Finance, *Journal of the Society of Christian Ethics* 33, no. 1 (2013): 119–138; Loretta Napoleoni and Claudia Segre, "*Dalla finanza islamica proposte e idee per l'Occidente in crisi*," *L'Osservatore Romano*, March 4, 2009; Wayne A. M. Visser and Alastair MacIntosh, "A Short Review of the Historical Critique of Usury," *Accounting, Business & Financial History* 8, no. 2 (1998): 175–189; Constant J. Mews and Ibrahim Abraham, "Usury and Just compensation: Religious and Financial Ethics in Historical Perspective," *Journal of Business Ethics* 72, no. 1 (2007): 1–15; Abdul-Rahman, 9, 12, 15, 20, 23–24.

[5] The U.K.'s Al Rayan Bank, for example, describes its services as ethical banking that is attractive to Muslims and non-Muslims alike:

American Islamic banker, Yahia Abdul-Rahman, goes beyond suggestions of mere inspiration to hopes of partnership between Muslims and Christians as well as Jews. He presents the financial arena as offering an opportunity for unity between these faith traditions based on a shared prohibition of interest.[6]

On one level, this thesis attempts a modest response to such ambitions. It limits itself to examining two religions, namely Islam and Christianity, and focuses on authoritative sources recognized by two of those religious traditions' denominations: Sunnism and Roman Catholicism. Other religions, including Judaism, as well as other denominations within Islam and Christianity, certainly have much to add to the conversation.[7] The modesty of relatively narrow case studies is meant as a preserve from unwieldiness. On another level, however, this thesis cannot escape ambition. It considers whether Islamic and Christian teachings as religious teachings might gain traction in secular business ethics. The aspiration for an Islamo-Christian partnership in addressing social issues resonates with a passage from *Nostra aetate*, the Second Vatican Council's Declaration on the Relation of the Church with Non-Christian Religions. *Nostra aetate* calls for Muslims and Christians "to work sincerely for mutual understanding and to preserve as well as to promote together for the benefit of all

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> It is not just Muslims who have come to appreciate the virtues of Islamic finance; non-Muslims have been attracted too by great products, great service and an ethical system which is good for society as a whole.
>
> The Islamic banking system is, at its heart, an ethical system where depositors entrust the bank to invest their savings in partnership, sharing any profits which are generated.

(accessed December 21, 2016, https://www.alrayanbank.co.uk/useful-info-tools/about-us/ethical-banking/).

Although these institutions' ethical status has been questioned (e.g., Walid Mansour, Khoutem Ben Jedidia, and Jihed Majdoub, "How Ethical Is Islamic Banking in the Light of the Objectives of Islamic Law?" *Journal of Religious Ethics* 43, no. 1 (2015): 51–77), what is of interest here is the claim to an ethics recognizable to the non-Muslim Western public.

[6] Abdul-Rahman, 15.

[7] See, for example, Susan L. Buckley, *Teachings on Usury in Judaism, Christianity and* Islam (Lewiston, NY: The Edwin Mellon Press, 2000); Ryan Calder, "God's Technicians: Religious Jurists and the Usury Ban in Judaism, Christianity, and Islam," *European Journal of Sociology* 57, no. 2 (2016): 207–257; Achraf Seyam and Eric Kotkin, "Accounting for Ribith/Riba-Usury in Jewish and Islamic Law," *International Research Journal of Applied Finance* 6, no. 3 (2015): 133–140.

mankind social justice and moral welfare, as well as peace and freedom."[8] Hence, the circumscription of the case studies is at the service of a larger question: What are the possibilities and challenges for an Islamo-Christian business ethics?

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Embedded in the heart of this study is the postulated convergence of three terms—"interest," "*riba*," and "usury"—and of the Islamic prohibition of *riba* and the Christian prohibition of usury. *Riba* and usury are each well represented in scholarly literature,[9] but most analysis comparing the prohibitions of *riba* and usury remains cursory.[10] Susan L. Buckley does offer a monograph concerning the *Teachings on Usury in Judaism, Christianity and Islam*, but the work largely comprises three parallel studies while offering some concluding thoughts on applying these teachings to modern economics.[11] Yet to be realized is an in-depth comparison of the prohibitions of *riba* and usury, and of how these prohibitions might prod a reevaluation of the morality of interest within the scholarly field of business ethics.[12] The project advocated by Abdul-Rahman, and the hopes for answers and inspiration expressed by others, require such an analysis for it to become more than mere proposals and wishes. This thesis initiates the requisite level of analysis.

This analysis forms along two lines. The first line addresses the suggestion that Islam and Christianity share related injunctions on interest. The second line addresses the suggestion that these injunctions have ethical applications beyond the confines of these

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[8] Second Vatican Council, *Nostra aetate* (1965), 3, accessed October 31, 2017, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_nostra-aetate_en.html.
[9] For the prohibition of *riba*, see, for example: Abdullah Saeed, *Islamic Banking and Interest: A Study of the Prohibition of Riba and Its Contemporary Interpretation*, 2nd ed. (Leiden: E. J. Brill, 1999); Nabil A. Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law: Riba, Gharar, and Islamic Banking*, 2nd ed. (London: Graham & Trotman, 1992). For the prohibition of usury, see, for example: Thomas Moser, "The Idea of Usury in Patristic Literature," in *Canon in the History of Economics: Critical Essays*, ed. Michalis Psalidopoulos (London: Routledge, 2000), 24–44; John T. Noonan Jr., *The Scholastic Analysis of Usury* (Cambridge, MA: Harvard University Press, 1957).
[10] E.g., Abdul-Rahman; Visser and Macintosh, 175–189.
[11] Buckley.
[12] Cf., Bader-Saye, 130 and 135.

religions. To some extent, the bipartite structure of this thesis reflects these two lines of argumentation.

The remainder of this introduction lays out two frameworks. The first framework considers systems of authority within Islam and Christianity, or more precisely within Sunnism and Roman Catholicism.[13] While Islam and Christianity, including Sunnism and Roman Catholicism, are not reducible to systems of authority, such systems play guiding roles for many of their adherents. I seek not to blend systems of authority nor to establish some hybrid system between them. The project is interfaith, not syncretistic. My goal for this first framework is to provide a basis for comparing prohibitions, and a basis for determining whether there are sufficient commonalities between these prohibitions for collaboration in business ethics. I am using the term “Islamo-Christian” to indicate discussions within this framework.

The second framework is itself bifurcated: it presents two ways for attempting to make religious contributions to business ethics, and expressly for discussing the morality of interest. While recognizing the importance of secular argumentation in the field, the framework invites religions to lend greater acceptability to secular argumentation and to provide inspiration for secular discourse. Brought together, these frameworks provide a basis for attempting an Islamo-Christian effort toward re-examination of the morality of interest within business ethics, a case study that aspires to test the fruitfulness of such attempts.

First Framework

The respective prohibitions on which the suggestion of an Islamo-Christian partnership relies derive from (largely) distinct authoritative sources. A preliminary step in

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[13] Sunni and Roman Catholic populations are enormous, both in absolute terms and as percentages of their respective religions. Pew Research estimates that there were between 1.41 billion and 1.46 billion Sunnis in 2010, which represented approximately 87–90% of all Muslims worldwide (Pew Research Center, “The Future of the Global Muslim Population: Projections for 2010–2030,” January 2011, 153). Pew Research also estimates that there were nearly 1.1 billion Catholics worldwide in 2010, which represented approximately half of all Christians at the time (Pew Research Center, “The Global Catholic Population,” February 13, 2013, accessed January 10, 2020, https://www.pewforum.org/2013/02/13/the-global-catholic-population/).

comparing the prohibitions, therefore, is to delineate the applicable, authoritative sources for each prohibition.

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Perhaps the most oft-noted feature of Islamic banking is the professed absence of interest in its financial products.[14] This feature stems from a dominant interpretation of Islam's prohibition of *riba*. Proponents of Islamic banking argue that interest and *riba* are equivalent or closely related. Because of the predominance of Sunni thought in Anglophone scholarship on *riba*, primary attention will be given to authorities recognized in Sunni Islam, though some Shi‘i sources are also mentioned. In applying the prohibition of *riba* to the modern economy, Sunni proponents of Islamic banking draw on three authorities: the Qur'an; the Hadith, or Sunnah; and Islamic jurisprudence, or *fiqh*. This thesis will likewise draw on these authorities.

The Qur'an, as the most authoritative text in Islam, provides the bedrock for the prohibition of *riba*.[15] It likewise provides a shared authority for the prohibition, an authority binding on Sunnis, Shi'ites, Ibadis, and Muslims of other denominations. Details regarding *riba* in the Qur'an are, however, often implicit at best, so traditions from the life of Muhammad, the Sunnah—as recorded in the Hadith—also play a directive role for proponents of Islamic banking. Second only to the Qur'an in authority, these traditions recalling Muhammad's words, actions, and omissions are essential to the Islamic prohibition of *riba*. Sunnism in its very name bears witness to its reliance on the Sunnah's authority. Each of the six canonical Sunni collections of individual traditions, or hadiths, treats of *riba*.

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[14] Cf. Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics, and Practice* (Cambridge: Cambridge University Press, 2006), 49.

[15] Unless otherwise noted, quotations from the Qur'an come from *The Study Quran: A New Translation and Commentary*, ed. Seyyed Hossein Nasr (New York: HarperOne, 2015). Other consulted translations: *The Qur'an*, trans. Alan Jones (Cambridge: Gibb Memorial Trust, 2007); *The Qur'an*, trans. M. A. S. Abdel Haleem (Oxford: Oxford University Press, 2005); *The Qur'an: With an English Paraphrase*, Trans. ‘Ali Quli Qara'i (Qum: Centre for Translation of the Holy Qur'an, 2003).

In this thesis, I draw upon each of "The Six Books," or "*Kutub al-Sittah*": Sahih al-Bukhari,[16] Sahih Muslim,[17] Jami‘ at-Tirmidhi,[18] Sunan Abu Dawud,[19] Sunan an-Nasa'i,[20] and Sunan Ibn Majah.[21]

Because of the threat posed by forged hadiths, a system was developed for establishing reliability based on a hadith's chain of transmission, or *isnad*, from Muhammad.[22] Although numerous categories of reliability were delineated within Hadith criticism, the three general classes of soundness used in this thesis are *sahih*, *hasan*, and *da'if*.[23] Hadiths in the uppermost class are considered "sound" or "authentic."[24] While not having as strong an *isnad* as *sahih* hadiths, hadiths deemed *hasan* or "fair" likewise offer "compelling proof in matters of law."[25] A hadith with a feebler *isnad* is deemed "*da'if*" or

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16 Sahih al-Bukhari, trans. Muhammad Muhsin Khan, vol. 1–9 (Riyadh: Darussalam, 1997). All subsequent references to Sahih al-Bukhari will be from this edition and will be cited by book, chapter, hadith number (should one be available; in parentheses), volume, and page number: e.g., Sahih al-Bukhari 8.73 (459), vol. 1, 291.

17 Sahih Muslim, trans. Nasiruddin al-Khattab, vol. 1–7 (Riyadh: Darussalam, 2007). All subsequent references to Sahih Muslim will be from this edition and will be cited by book, chapter, hadith number (should one be available), volume, and page number; the primary hadith numbers included for Sahih Muslim were set by the publisher; for ease of reference, I have also included in square brackets when available the hadith number set by Muhammad Fu'ad ‘Abd al-Baqi: e.g., Sahih Muslim 1.38 (262 [89]), vol. 1, 177.

18 Jami‘ at-Tirmidhi, trans. Abu Khaliyl, vol. 1–6 (Riyadh: Darussalam, 2007). All subsequent references to Jami‘ at-Tirmidhi will be from this edition and will be cited by book, chapter, hadith number (should one be available; in parentheses), volume, and page number: e.g., Jami‘at-Tirmidhi 44.9 (3087), vol. 4, 395–396.

19 Sunan Abu Dawud, trans. Yaser Qadhi, vol. 1–5 (Riyadh: Darussalam, 2008). All subsequent references to Sunan Abu Dawud will be from this edition and will be cited by book, chapter, hadith number (should one be available; in parentheses), volume, and page number: e.g., Sunan Abu Dawud 11.56 (1905), vol. 2, 424–433.

20 Sunan an-Nasa'i, trans. Nasiruddin al-Khattab, vol. 1–6 (Riyadh: Darussalam, 2007). All subsequent references to Sunan an-Nasa'i will be from this edition and will be cited by book, chapter, hadith number (should one be available; in parentheses), volume, and page number: e.g., Sunan an-Nasa'i 44.66 (4625), vol. 5, 327.

21 Sunan Ibn Majah, trans. Nasiruddin al-Khattab, vol. 1–5 (Riyadh: Darussalam, 2007). All subsequent references to Sunan Ibn Majah will be from this edition and will be cited by hadith number (should one be available; in parentheses), volume, and page number: Sunan Ibn Majah (2276), vol. 3, 300. As noted in preface to this edition, there has been dispute over whether other Hadith collections should instead be numbered among the six canonical hadiths (vol. 1, 51). A solution resolving the dispute was to expand the canon to nine collections by retaining Sunan Ibn Majah and adding al-Muwatta of Imam Malik ibn Anas, Sunan al-Darimi, and Musnad Ahmad ibn Hanbal (ibid.). Due to restraints of space, however, I restrict my use of hadiths primarily to Sunan Ibn Majah and the other five collections of the *Kutub al-Sittah*. Nevertheless, I will at times cite the al-Muwatta in instances when it helps to further discussion of a topic raised by a collection in the *Kutub al-Sittah*.

22 See Jonathan A. C. Brown, "The Methods and History of Hadith Criticism," in *Hadith: Muhammad's Legacy in the Medieval and Modern World* (Oxford: Oneworld Publications, 2009), 67–122.

23 See ibid., 100ff.

24 Ibid., 100.

25 Ibid., 101–102

"weak" and lacks the force of a *sahih* or *hasan* hadith. Disagreement on how *da'if* hadiths should influence action divide scholars.[26]

As implied in their names, all hadiths belonging to Sahih al-Bukhari and Sahih Muslim belong to the most reliable class of hadiths.[27] Of the two, Sahih al-Bukhari has greater prestige and precedence.[28] It has even been affirmed that "[the] work is the most authentic of all the other works in *Hadîth* literature put together."[29] Greater still, it has been designated as "the most authentic book after the Book of Allâh (i.e. Al-Qur'ân).'"[30] The remaining four collections contain some hadiths considered to be less reliable, some even deemed *da'if*.[31] Bearing in mind the lesser status of *da'if* hadiths, I mostly note them in comparisons with *sahih* and *hasan* hadiths.

Islamic jurisprudence also has powerful influences on Islamic banking. Not only do Islamic banks maintain boards of jurists to examine and certify their financial products as shari'a-compliant, scholarship on the prohibition of *riba* constantly relies on the authority of the foremost schools of jurisprudence, madhhabs. Given the Sunni focus of this thesis, the four main madhhabs of Sunni Islam—namely, the Hanafi, Maliki, Shafi'i, and Hanbali—are given primary consideration, though positions of other influential schools of Islamic jurisprudence are sometimes also noted.[32]

Regarding Islamic banking, a specific approach, or rather approaches to jurisprudence are operative. Modern approaches to the prohibition of *riba* have been variously categorized. Abdullah Saeed suggests that the division rests on a question of principle, on whether "the

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[26] Commentary on Sunan Ibn Majah (21), vol. 1, 88, n. b.
[27] For some discussion of dissent from the view that all hadiths in Sahih Muslim are indeed *sahih* and its reaffirmation, see Mohammad Yahya, "A Life Sketch of Imâm Muslim," in Sahih Muslim, trans. Nasiruddin al-Khattab, vol. 1 (Riyadh: Darussalam, 2007), 32–33.
[28] Mohammad Yahya notes a minority view, among some scholars of North Africa, that Sahih Muslim should take precedence over Sahih al-Bukhari (Yahya, 33).
[29] Introduction to Sahih al-Bukhari, vol. 1, 18.
[30] Ibid.
[31] See preface to Sunan Ibn Majah, vol. 1, 21.
[32] While the thought of some individual jurists is discussed, the treatment of the *fiqh* material in this thesis relies mostly on secondary literature.

emphasis [should] be on the rationale for the prohibition of *riba*, that is, injustice, or should it be on the legal form in which *riba* came to be formally conceptualised in Islamic law."[33] Saeed labels stress on the former as "Modernist" and stress on the latter as "neo-Revivalist."[34] Based on jurisprudence being the first science in Islam, it is unsurprising that Saeed identifies the neo-Revivalist with "the traditional interpretation with stress on the point that any interest is *riba*."[35] These approaches have also been characterized as "idealist" and "*maslaha*" or "liberal."[36] A continuum of approaches lie between these, including the "pragmatic" approach espoused by most Islamic bankers.[37] Rania Kamla and Rana Alsoufi sum up the three basic categories which they adopt from Saeed and Alexandre Caeiro:

> The idealist approach 'restricts Islamic banking to the contracts allowed in classical Islamic Law (*fiqh*) and considers bank interest a grave sin'. The pragmatic approach 'while it sees bank interest as forbidden, it seeks to circumvent it in innovative and sometimes unorthodox ways' (Caeiro, 2004, p. 352). The liberal approach 'emphasises that today's bank interest does not correspond to the pre-Islamic *ribā* and is not inherently evil' (Caeiro, 2004, p. 351; Saeed, 2011).[38]

Kamla and Alsoufi go on to note that even though "different schools of thought (Mālikī, Shāfiī, Hanbalī, Hanafī, and Shiī) have had varied interpretations of the meaning of *ribā* . . . the majority of contemporary Muslim scholars (*ulamā)* adhere to the idealist approach where bank interest is equated with *ribā*."[39] Caeiro seemingly grants the general predominance of the idealist approach, but observes a more moderate approach among Muslim scholars: "Conventional Muslim scholars (*'ulamā'*) lay between the idealists (the majority) and the

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33 Saeed, *Islamic Banking and Interest*, 41.
34 Ibid.
35 Ibid.
36 Alexandre Caeiro, "The Social Construction of *Sharī'a*: Bank Interest, Home Purchase, and Islamic Norms in the West." *Die Welt des Islams* 44, no. 3 (2004): 351–352; Rania Kamla and Rana Alsoufi, "Critical Muslim Intellectuals' Discourse and the Issue of 'Interest' (*Ribā*): Implications for Islamic Accounting and Banking," *Accounting Forum* 39, no. 2 (2015): 141; Abdullah Saeed, "Islamic Banking: Moving Towards a Pragmatic Approach?" *ISIM Newsletter* 3 (1999): 7.
37 Saeed, "Islamic Banking," 7. Cf. Caeiro, 351–352.
38 Kamla and Alsoufi, 141. Kamla and Alsoufi's categorization follows that of Caeiro, which itself depends on that of Saeed. See Caeiro, 351–552.
39 Kamla and Alsoufi, 141. Cf. El-Gamal, 50: "Most jurists have expanded the strict Qur'anic prohibition of pre-Islamic *riba* to cover all forms of interest-bearing loans."

pragmatists."[40] While pragmatic in execution, the Islamic banking industry nevertheless professes adherence to the idealist approach, a profession that lends legitimacy to the industry.[41] Indeed, it is common for proponents of Islamic banking to present the idealist approach as the only approach, or at least the only orthodox one.[42] It has even been described as "the *raison d'être* of Islamic banking."[43] Still, as Saeed observes, "although Islamic banking has its roots in the idealist literature, it has undergone a process of redefining the acceptable, made possible by the flexibility available in interpreting *shari'ah* texts, as well as by the need to keep pace with the present global environment."[44]

Since Islamic banking relies on a range of approaches to *riba* that span from pragmatist to idealist, the discussion of *riba* in this thesis will focus on approaches lying in the continuum between these two, with perhaps greater emphasis afforded approaches with an idealist tilt. Nevertheless, even with this emphasis, rationales for the prohibition of *riba* are not ignored. This balanced focus seems especially justified given that the practices of Islamic banks often draw criticism as insufficiently "Islamic," as not living up to the ideals expected by proponents of the industry.[45] This approach will hopefully also prove relevant for many Muslims.

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Admirers and proponents of Islamic banking point to the traditional Christian teaching on usury when highlighting compatibility with Islamic finance's approach to *riba*. Speaking about Western investors in general, Wayne A. M. Visser and Alastair MacIntosh

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[40] Caeiro, 352.
[41] Kamla and Alsoufi, 142: "Despite that Islamic banking lends its legitimacy from its claim to follow the idealistic approach to *ribā*, it has made use of the flexibility available in interpretation of *Sharīah* texts to operate in the current global economic setting with mainly interest-based products (at least in their economic substance) (El-Gamal, 2003; Kuran, 2006; Saeed, 2011)."
[42] See Kamla and Alsoufi, but also Abdul-Rahman.
[43] Saeed, *Islamic Banking and Interest*, 3.
[44] Saeed, "Islamic Banking," 7.
[45] See, for example, Luqman Zakariyah, "Ethical Considerations in 'Islamic' Marketing and Promotion: A Spotlight on the Islamic Bank of Britain," in *Handbook of Research on Islamic Business Ethics*, ed. Abbas J. Ali (Cheltenham, U.K.: Edward Elgar, 2015), 162–182.

suggest that Western investors, especially those who are conscientious, "might have, [sic] more to learn from Islam than is generally acknowledged."[46] However, they conclude that before this tutelage can commence, "society needs to be re-conscientized to the relevance of the age-old usury debate in modern times."[47] Scott Bader-Saye affirms that Islamic finance "coheres with Christian thinking through much of the church's history."[48] Proponents of Islamic banking lament Christianity's departure from its traditional teaching on usury and cheer echoes of that teaching. Abdul-Rahman recalls the quietening of anti-usury movements in the fifteenth century.[49] With approval, he draws attention to later reverberations of these movements, giving as an example England's return to the "immemorial Catholic position on usury" under the administration of the Protestant Protectorate.[50] Lacking Abdul-Rahman's optimism, Syed Hussain Ali Jafri and Lawrence S. Margolis portray Christianity as having progressively slid away from its pristine teaching and as having now long "rationalized the use of interest."[51] Although Roman Catholic teaching would certainly bear inclusion in any history of the supposed slide from the "immemorial Catholic position," at least portions of Roman Catholic teaching form the basis for perceived compatibility. For this reason, it seems most appropriate to compare this teaching on usury with the Sunni teaching on *riba* that underlies Islamic banking. Furthermore, a traditional approach to religious authority within Roman Catholicism presents a feasible basis for a comparative case study of the prohibitions of *riba* and usury.

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[46] Visser and MacIntosh, 187.
[47] Ibid.
[48] Bader-Saye, 132–133.
[49] Abdul-Rahman, 17.
[50] Ibid.
[51] Syed Hussain Ali Jafri and Lawrence S. Margolis, "The Treatment of Usury in the Holy Scriptures," *Thunderbird International Business Review* 41, no. 4 (1999): 373–375, 378. Some authors will place the beginnings of the undermining before the Reformation and as early as the end of the thirteenth century (e.g., Abdul Ghafar Ismail, Bayu Taufiq Possumah, and Mohd Akil Muhamed Ali, "What You Sell is What You Lend? Revealing Complexity of *Riba* in Loan Contract," *European Journal of Law and Economics* 45, no. 3 (2018): 593).

Authoritative teaching within Roman Catholicism is derived from Scripture, tradition, and the teaching office of the Church, known as the magisterium. The Second Vatican Council (1962–1965) spells out the interdependence of these three bases in its constitution on divine revelation *Dei verbum*:

> Sacred tradition, Sacred Scripture and the teaching authority of the Church, in accord with God's most wise design, are so linked and joined together that one cannot stand without the others, and that all together and each in its own way under the action of the one Holy Spirit contribute effectively to the salvation of souls.[52]

Citing the fourth session of the Council of Trent (1546), *Dei verbum* confirms the equality of tradition and Scripture as "flowing from the same divine wellspring" of the word of God, and therefore deserving to be "accepted and venerated with the same sense of loyalty and reverence."[53] Authoritative interpretation of the word of God as passed down through tradition and found in Scripture is given to Church's magisterium, which is conceived of as "not above the word of God, but [as] serv[ing] it."[54]

In this thesis, the Bible, comprising both the Old and New Testaments, forms the starting point for discussion of the prohibition of usury.[55] The early Christian Fathers, often portrayed as the conveyors of tradition, develop some of implicit tenets of Scripture's teaching on usury. Finally, given the varying levels of authority within magisterial teaching of the pope and other bishops, this thesis draws most heavily on pronouncements made to the entire Church, especially those issued by popes and Ecumenical Councils, which have universal jurisdiction. While specifics from these pronouncements may be trapped in details of bygone times, certain enduring principles are evidenced.

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[52] Second Vatican Council, *Dei verbum* (1965), 10, accessed December 20, 2019, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651118_dei-verbum_en.html.
[53] Ibid., 9 and n. 6.
[54] Ibid., 10.
[55] I mostly use the RSV for quotations of the Bible in English. The Vulgate, MGNT, RSV, and Septuagint are available at Blue Letter Bible (accessed June 04, 2020, https://www.blueletterbible.org). This website also proved useful for considering Hebrew terms in passages from the Old Testament.

Some of the Christian sources used in this thesis will clearly bear the strongest weight within Roman Catholicism, and little or no authority for non-Catholic Christians. Some sources will, however. Scripture, of course, is afforded high regard within Orthodox and Protestant communities. Furthermore, there has been an emerging consensus across Christian denominations on the relationship of Scripture and tradition.[56] Indeed, in 1963, essentially concurrent with the Vatican II's own debate on Scripture that would eventually give birth to *Dei Verbum*, two North American interdenominational conferences issued their own statements on the authority of Scripture, Christian tradition, and Church teaching.[57]

Bringing together six Christian denominations in Oberlin, Ohio,[58] the Consultation on Church Union agreed on a close relationship between Scripture and tradition:

> There are at least three relations to Scripture and Tradition (understood as the whole life of the Church) which deserve consideration. (1) Scripture is itself included in the Tradition. The reading of and listening to the Scriptures in worship and the authority of the Scriptures over the teaching of the Church are essential in the life of the Church. (2) The Scriptures are interpreted in the light of the Tradition. The Church does not itself set itself above the Scriptures; but the Church reads and listens to the Scriptures as a community of faith. (3) The Scriptures of supreme Guardian expression of the Tradition. That is what the Church intends by its acknowledgment of a canon of Scriptures.[59]

The Fourth World Conference on Faith and Order of the World Council of Churches, meeting in Montreal, also underscored the need to read Scripture in light of tradition, but also highlighted the Fathers of the Church in that endeavor:

> In the Orthodox Church the hermeneutical key is found in the mind of the Church, especially as expressed by the Fathers of the Church and in the Ecumenical Councils. In the Roman Catholic Church the key is found in the deposit of faith, of which the Church's *magisterium* is the guardian. In other traditions again the creeds, complemented by the confessional documents or by the definitions of Ecumenical Councils and the witness of the Fathers, are considered to give the right key to the understanding of Scripture. In none of these cases where the principle of

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[56] Avery Dulles, "Scripture: Recent Protestant and Catholic Views," *Theology Today* 37, no. 1 (1980): 25.
[57] R. Moss, "Beyond 'Two Source Theory' and 'Sola Scriptura': Ecumenical Perspectives on Scripture and Tradition." *Acta Theologica* 35, no. 2 (2015): 67, 73–74.
[58] The Christian Churches (the Disciples of Christ); the Episcopal Church; the Evangelical United Brethren; the Methodist Church; the United Church of Christ; and the United Presbyterian Church in the U.S.A.
[59] Consultation on Church Union, "Scripture, Tradition and the Guardians of Tradition," in *The Reports of the Four Meetings* (Cincinnati, OH: Forward Movement Publications, 1966), 25.

> interpretation is found elsewhere than in Scripture is the authority thought to be alien to the central concept of Holy Scripture. On the contrary, it is considered as providing just a key to the understanding of what is said in Scripture.
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> . . .
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> Modern biblical scholarship has already done much to bring the different churches together by conducting them towards the Tradition. . . . Should we not study more the Fathers of all periods of the Church and their interpretations of the Scriptures in the light of our ecumenical task?[60]

This statement by the World Council of Churches is just one instance, albeit an important instance, of a trend of turning to the Fathers of the Church in interpreting Scripture. Numerous Christian figures and assemblies have affirmed the relevance of the Fathers to modern Christianity and its social ethics.

On the whole, magisterial authorities cited in this thesis are unlikely to evoke much deference outside of Roman Catholicism. Yet some of these sources may prove relevant to, if not authoritative for, other Christian groups. Papal statements are probably the least likely elicit deference. Nevertheless, the Orthodox and Catholic hierarchies have recently affirmed in a joint statement that "a primacy of honour (*presbeia tes times*)" at least once existed for the Roman see, with succeeding places of honor be afforded to "the sees of Constantinople, Alexandria, Antioch and Jerusalem, in that specific order."[61] Accordingly, statements by popes from before the Great Schism (1054), which rent communion between the churches, may carry some value for today's Orthodox. Some of the councils recognized in Roman Catholicism as ecumenical certainly will.

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[60] Fourth World Conference on Faith and Order of the World Council of Churches, "Scripture, Tradition and Traditions," in *The Ecumenical Movement: An Anthology of Key Texts and Voices*, ed. Michael Kinnamon and Brian E. Cope (Geneva: WCC Publications, 1997), 53, 55; 141, 141–142.

[61] Joint International Commission for Theological Dialogue between the Roman Catholic Church and the Orthodox Church, *Synodality and Primacy During the First Millennium: Towards a Common Understanding in Service to the Unity of the Church* (2016), accessed January 7, 2020, https://www.patriarchate.org/dialogue-with-the-roman-catholic-church/-/asset_publisher/xPOzhhZ0zKIa/content/synodality-and-primacy-during-the-first-millennium-towards-a-common-understanding-in-service-to-the-unity-of-the-church-9-21-16-, http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/ch_orthodox_docs/rc_pc_chrstuni_doc_20160921_sinodality-primacy_en.html.

It is common among many Christian groups to recognize at least the first seven Ecumenical Councils (325–787): "[The] importance [of the first Seven Ecumenical Councils] to Christian belief and practice is evident in the fact that the Orthodox churches of the East and the main line Protestant churches of the West accept only these seven as truly ecumenical expressions of Christian faith."[62] The first of these councils, Nicaea I (325), provides an early conciliar ruling against usury, which will be considered repeatedly in this thesis. Furthermore, as Joseph F. Kelly explores, there is potential continued relevance of subsequent councils for Protestants:

> The next ten councils, all Western, Latin-speaking councils, occurred before the Protestant Reformation. To be sure, Protestants do not consider these councils to be in any way authoritative, but they do form part of the common history of Western Christians in the pre-Reformation period. Even the archetypal Catholic council, Trent, which met intermittently from 1545 to 1563, opened while some Protestant and Catholic leaders were still negotiating to prevent the split in the church from becoming permanent, and Protestant observers attended some sessions at Trent.[63]

The remaining councils surveyed in this thesis are from this pre-Tridentine period. While not considered binding by Protestants, these documents provide snapshots into the Western Church's teaching on usury over several hundred years.

From the above discussion, it becomes clear that Roman Catholicism's threefold system of authority, at least concerning usury, may bear fruit not only for Catholics, but to varying degrees for other Christians. If this suggestion proves persuasive, it could be hoped that the traditional teachings on usury would prove instructive in evaluating whether Islam and Christianity more broadly can partner in renewing ethics in the financial sector.

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To some extent, Roman Catholicism's threefold system of authority mirrors the authoritative structure being outlined for Sunni Islam. However, whereas tradition and

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[62] Leo D. Davis, preface to *The First Seven Ecumenical Councils (325-787): Their History and Theology* (Collegeville, MN: Liturgical Press, 1988).

[63] Joseph F. Kelly, *The Ecumenical Councils of the Catholic Church: A History* (Collegeville, MN: Liturgical Press, 2009), 1.

Scripture are coequal within Roman Catholicism, Sunnism (and Islam generally) gives clear priority to the Qur'an, while according the traditions of the Sunnah secondary authority. Furthermore, many dissimilarities differentiate Sunni jurisprudence from the Catholic magisterium, among them being the former's legal emphasis and the latter's doctrinal emphasis. Nevertheless, despite these dissimilarities, each must be consulted if the respective prohibitions of *riba* and usury are to be brought into conversation; each still bears enduring, authoritative weight in these matters.

Second Framework

Over the course of the 1970s, the scholarly field of business ethics came to be dominated by philosophers, even though theologians and scholars of religious jurisprudence had for centuries considered moral questions related to the economy.[64] Today, philosophers still play leading roles in the field of business ethics and have been joined by scholars from law and the social sciences. For several decades now, religions' ability to contribute to the modern field of business ethics has fallen into question.[65] The question rests on whether the audience and approach of business ethics excludes religious argumentation.[66]

Richard T. De George, among others and himself a philosopher, argues that the audience of business ethicists comprises other philosophers and the general public, and the approach is one based on secular reasoning.[67] Theology and religious studies are dismissed as

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[64] See Richard T. De George, "Theological Ethics and Business Ethics," *Journal of Business Ethics* 5, no. 6 (1986): 421. De George himself cites the following works: Donald G. Jones, *A Bibliography of Business Ethics: 1971–75* (1977), and Donald G. Jones and Helen Troy, *A Bibliography of Business Ethics: 1976–1980* (1982).

[65] E.g., De George, "Theological Ethics and Business Ethics"; Robert T. De George, "Replies and Reflections on Theology and Business Ethics," *Journal of Business Ethics* 5, no. 6 (1986): 521–524; Darlene Bay, Kim McKeage, and Jeffrey McKeage, "An Historical Perspective on the Interplay of Christian Thought and Business Ethics," *Business & Society* 49, no. 4 (2010): 652–676.

[66] See Dennis P. McCann, "Editorial Introduction," *Journal of Business Ethics* 5, no. 6 (1986): 417–419.

[67] De George, "Theological Ethics and Business Ethics," 424. De George articulated this position at a symposium held at De Paul University in the spring of 1984, the proceedings of which were published in the *Journal of Business Ethics* in 1986. At the symposium, several responses were made to De George's exclusion of religious argumentation from the field. See: Paul F. Camenisch, "On Monopoly in Business Ethics: Can Philosophy Do It All?" *Journal of Business Ethics* 5, no. 6 (1986): 433–443; Lester F. Goodchild, "Toward a Foundational Normative Method in Business Ethics," *Journal of Business Ethics* 5, no. 6 (1986): 485–499; David A. Krueger, "The Religious Nature of Practical Reason: A Way into the Debate," *Journal of Business Ethics* 5, no. 6 (1986): 511–519; Dennis P. McCann, "Umpire and Batsman: Is It Cricket to be Both?" *Journal*

contributing nothing logically unique to this field.[68] Although the scholarly field of business ethics now embraces lawyers and social scientists, at least to some extent, the field retains a secular (i.e., areligious) posture. Although cases for (re)incorporating religious and theological thought into the field continue to be made,[69] silence, if not hostility, toward religious contributions still characterize the field.[70]

There have been attempts to include religion in the field based on a Rawlsian framework. Georges Enderle, for example, advocates finding an "overlapping consensus"—or, as he prefers to call it, a "common ethical ground"—to which "all major religious and philosophical traditions" would lend support.[71] While advocating that religions support this consensus through their own resources, Enderle concludes (with specific reference to Christian environmental ethics) that a religion must "identify and justify the contents of . . . [its ethics] like any other approach."[72] In other words, religious positions are admissible into the field of business ethics so long as they are advocated with secular argumentation. While I agree that religions will do well to present arguments in a manner that finds common ground

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of Business Ethics 5, no. 6 (1986): 445–451; Thomas F. McMahon, "Creed, Cult, Code and Business Ethics," *Journal of Business Ethics* 5, no. 6 (1986): 453–463; David P. Schmidt, "Patterns of Argument in Business Ethics," *Journal of Business Ethics* 5, no. 6 (1986): 501–509; Oliver F. Williams, "Can Business Ethics Be Theological? What Athens Can Learn from Jerusalem," *Journal of Business Ethics* 5, no. 6 (1986): 473–484.

68 McCann, "Editorial Introduction," 418.

69 E.g., Timothy L. Fort, "Religion and Business Ethics: The Lessons from Political Morality," *Journal of Business Ethics* 16, no. 3 (1997): 263–273; Martin Calkins, "Recovering Religion's Prophetic Voice for Business Ethics," *Journal of Business Ethics* 23, no. 4 (2000): 339–352; Georges Enderle, "Whose Ethos for Public Goods in the Global Economy? An Exploration in International Business Ethics," *Business Ethics Quarterly* 10, no. 1 (2000) 131–144; Georges Enderle, "Do We Need Religious Resources for Business Ethics?" *Latin American Business Review* 4, no. 4 (2003): 89–94; Stephen J. Conroy and Tisha L. N. Emerson, "Business Ethics and Religion: Religiosity as a Predictor of Ethical Awareness among Students," *Journal of Business Ethics* 50, no. 4 (2004): 383–396; Georges Enderle, "Three Major Challenges for Business and Economic Ethics in the Next Ten Years: Wealth Creation, Human Rights, and Active Involvement of the World's Religions," *Business & Professional Ethics Journal* 30, no. 34 (2011): 231–252.

70 Georges Enderle, "Three Major Challenges for Business and Economic Ethics in the Next Ten Years: Wealth Creation, Human Rights, and Active Involvement of the World's Religions," *Business & Professional Ethics Journal* 30, nos. 3–4 (2011): 242.

71 Ibid., 243.

72 Georges Enderle, "In Search of a Common Ethical Ground: Corporate Environmental Responsibility from the Perspective of Christian Environmental Stewardship," *Journal of Business Ethics* 16, no. 3 (1997): 178.

within a pluralistic society,[73] this approach overlooks theology's potential to personalize and inspire business ethics.

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As its name suggests, Islamic banking defines itself in terms of religion, namely Islam. Jonathan A. J. Wilson notes the leading role played by Muslims, who "are raising the flag for the importance and role of guiding principles derived from religion."[74] Indeed, Islamic banking's eschewal of interest has a religious basis and is a chief attribute of its ethical profile.[75] If the religious teaching undergirding this rejection is to play a role in business ethics, it is necessary to establish how such teaching can in fact contribute to the field, given its method and audience. This imperative is still more evident should Islam partner with Christianity in promoting ethical renewal in the financial industry.

The methodology employed in this thesis relies on the acceptability of two proposals: First, religious teachings can complement secular arguments in business ethics by personalizing them and thereby allowing them to speak with greater appeal to certain portions of the public; second, rationales used to advance religious teaching can inspire secular lines of inquiry and even argumentation. The method adopted here provides a framework especially for Part II of this thesis as well as a fresh approach for employing religious teachings in business ethics.

With good reason philosophers and social scientists find business ethics an inviting space for research. In addition to the robust presence of interlocutors with similar methodologies, business ethicists can assume the general public, including business people,

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[73] Cf. ibid.
[74] Jonathan A. J. Wilson, "Brand Islam and the Marketing of Muslim Ethics to a Global Audience," in *Handbook of Research on Islamic Business Ethics*, ed. Abbas J. Ali (Cheltenham, U.K.: Edward Elgar, 2015), 157.
[75] Wilson appreciates the scrutiny attracted by this posture: "Bringing faith, the divine and the sacred, as well as the profane, so forthrightly into the marketing mix attracts greater scrutiny from all stakeholders, regardless of faith" (Wilson, "Brand Islam," 154).

as their audience.[76] Because this public is diverse, it makes sense to adopt an approach that speaks to what is common. There is merit in supposing that this public responds to arguments derived from premises based on experience and shared modes of obtaining knowledge.[77] This common attribute sets apart, at least in De George's mind, the audience of business ethicists (and of philosophers more generally) from that of theologians:

> Moral obligations may be grounded philosophically or theologically or in both ways. The philosopher expects, however, that primarily religious people will pay serious attention to the theologian. Since the philosopher wishes to address all people willing to reason, whatever their religious beliefs and independent of those beliefs, the philosopher assumes that the two are intentionally either addressing different audiences or addressing partially overlapping audiences in different ways.[78]

Audience and approach are for De George intertwined. Philosophers address fellow philosophers and the general public from a secular point of view and with arguments based on reason. Theologians, on the other hand, address fellow members of their fields (presumably) and primarily religious people from a religious point of view and with arguments based on religious belief. In De George's assessment, the respective audiences are separate or only partially overlapping and are addressed with argumentation suited to them.

The distinction at which De George grasps is that between interpersonal and personal argumentation. The philosopher Winfried Löffler explains that "interpersonal arguments rest only on premises which are expected to be mutually acceptable, whereas personal arguments may also draw from some premises which are not."[79] In this framework, philosophical and other forms of secular argumentation present themselves as interpersonal. Löffler writes that "by its very idea philosophy does not address only a certain community, be it a cultural, linguistic, religious, or another community."[80] Religious teachings, on the other hand, are

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[76] De George, "Theological Ethics and Business Ethics," 424.
[77] Cf. ibid., 424.
[78] Ibid., 424. With increased interdisciplinarity in the academy, however, the audience has undoubtedly expanded to include members of other disciplines, including law and the social sciences.
[79] Winfried Löffler, "Two Kinds of 'Christian Philosophy,'" *European Journal for Philosophy of Religion* 5, no. 2 (2013): 125–126.
[80] Ibid., 125.

personal, at least when addressing the general public.[81] Yet, personal argumentation (viz. religious teachings) can complement and influence interpersonal argumentation (viz. secular discourse).

There is no doubt that philosophy and the social sciences play important roles as accepted modes of ethical discourse, and of public discourse more generally. Although widely accepted, they are certainly not the only accepted modes of ethical discourse. Some people are open to modes of argumentation based on other premises. Ideology, tradition, emotions, expert opinion, and religion certainly provide premises for argumentation as well. Assuming that the public is generally open to arguments based on reason and experience, we are not prevented from acknowledging that portions of that public are also receptive to arguments based on religious belief, at times perhaps even more receptive. A growing literature in cognitive science indeed indicates an inborn disposition in humans to accept religious explanations.[82]

De George at times draws a stark division between the general public and religious persons.[83] Such portrayals seem to present a false dichotomy, dividing the public into believers and non-believers, where a spectrum (or even spectra) proves a more accurate model for assessing religious belief. Indeed, social scientists have developed a variety of indices for measuring the gradations of religious observance. Common among them are "frequency of worship attendance, frequency of prayer, belief in God and the self-described importance of religion in one's life."[84] Christian ethicist Nigel Biggar makes the following prescient observation: "The actual world is not always divided starkly into believers and unbelievers, into Church and World. More often than not, it comprises a mélange of

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[81] Theological argumentation can, of course, be viewed as interpersonal when addressed to a primarily religious audience.
[82] For an introduction to this research, see Roger Trigg and Justin L. Barrett, eds., *The Roots of Religion: Exploring the Cognitive Science of Religion*, (Burlington, VT: Ashgate, 2014).
[83] E.g., De George, "Theological Ethics and Business Ethics," 424.
[84] Pew Research Center, "One-in-Five U.S. Adults Were Raised in Interfaith Homes: A Closer Look at Religious Mixing in American Families," October 26, 2016, 11.

dogmatically certain believers, dogmatically certain unbelievers, and infinite gradations in between of more-or-less believers and more-or-less unbelievers."[85] He recognizes there to be a secular public, but for him this public is "secular in the sense of being plural and polyglot," and not necessarily areligious.[86]

Ultimately, De George recognizes that religious people form part of the public addressed in business ethics and that religion may very well influence the ethical deliberations of portions, and even significant portions, of that public. As quoted above, he confesses the philosopher's expectation "that primarily religious people will pay serious attention to the theologian."[87] He even acknowledges that "something like the Judeo-Christian tradition may infuse American life to such an extent that large numbers of the general population are responsive to discussions of moral issues in business from a strictly Christian or theological point of view."[88] Even with these concessions, De George's leading concern is "not the size of one's audience but the method of approach."[89] To place his position into the personal-interpersonal framework, theological arguments (and religious teachings more generally) remain personal arguments, unlikely to be found acceptable by the entirety of the general public, a public homogeneous in its openness to rational argument, heterogeneous in its heeding of religion.

This method of approach to a secular audience, this appeal to a shared capacity to reason and evaluate experience, stumbles into reductionism. It appeals merely to lowest common attributes, rather than appealing also to the beliefs held in infinite gradations between dogmatic belief and dogmatic unbelief. An exclusively areligious approach foregoes the ability to personalize arguments based on the religiosity of portions of the general public.

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[85] Nigel Biggar, *Behaving in Public: How to do Christian Ethics* (Cambridge: Eerdmans, 2011), 69.
[86] Ibid., 66.
[87] De George, "Theological Ethics and Business Ethics," 424.
[88] Ibid., 425.
[89] Ibid.

The additional appeal that religious authorities can provide is completely removed from the scale.

The pursuit of stronger appeal would suggest a hybrid approach to business ethics. Here Biggar's approach to Christian ethics provides a guide. On the one hand, Biggar rejects "*sheer* appeals to religious authority – be it the Bible or the Pope or the Qur'an."[90] On the other, he refuses to dismiss appeals to religious authority altogether, even when addressing a secular public.[91] He advocates interweaving religious tropes and themes into ethicists' argumentation.[92]

This may seem like merely gilding secular argumentation with religious rhetorical flourish, and perhaps to some extent it is. Yet, the invocation of Christian tropes and themes, for example, invites Christians to see how a particular conclusion is compatible with their faith. Simultaneously, theological references may carry some weight for non-Christian portions of the public as well. Biggar here provides an example:

> Suppose that a Christian ethicist is contributing to public discussion about how to deal with the violent legacy of a civil conflict. He urges the victims to display a measure of forgiveness by appealing to a duty of compassion. This he grounds in a certain duty of fairness, which conceives of the perpetrators as fellow creatures and fellow sinners. He then reinforces the rationality of forgiveness by invoking the theological hope that God will raise the murdered dead, and in that light acknowledges the empirical futility and counterproductiveness of vengeance.[93]

Biggar argues that even non-Christians may find value in this mode of argumentation from a Christian ethicist:

> Christian talk about common creatureliness and sinfulness will not necessarily baffle nonbelievers. What they recognize, however, will more likely be the anthropological elements than the theological ones. They will recognize human limits and wrongdoing rather than common human responsibility to God, common human receipt of God's mercy, or common human hope for God's recovery of the lost at the end of time. This does not imply that the strictly theological elements are otiose. Not at all: they serve to reinforce the rationality of the forgiveness of enemies.[94]

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[90] Biggar, 66–67.
[91] Ibid., 67.
[92] Ibid.
[93] Ibid., 68–69.
[94] Ibid., 69.

Biggar's approach to Christian ethics has the potential for allowing religious authorities to contribute to business ethics. Rather than replacing secular discourse in the field, religious teachings could be used to strengthen the appeal of philosophical argumentation to members of the public who are, at least to some extent, religiously minded.

One need not, however, consign religion in business ethics to a merely complementary role. It can also provide inspire lines of inquiry and of secular argumentation. While still reliant on secular premises derived from observation, reason, and experience, business ethics can develop along lines suggested by religious teachings. Positions based on religious authorities, as well as rationales supporting these positions, can prompt secular inquiry and offer potential lines of reasoning, while never directly entering any of the premises.[95] De George himself, perhaps unwittingly, creates an opening for such influence:

> If the premises of philosophers and of theologians are different, then the most a philosopher can hope to learn from a theologian's moral judgments is whether the two of them reach similar conclusions or make similar moral judgments. The philosopher, faced with a different answer to a moral problem from the theologian, might well pause and consider whether the conclusion of the theologian may be right. But he will have to rethink the whole issue in philosophical terms because his premises are not the theologian's.[96]

Here De George appears to allow for religious influence in business ethics. This influence is at the level of inspiration rather than proof, for the premises remain philosophical (or otherwise secular). If the philosopher's reconsideration of his or her position results in a conclusion at least approaching that of the theologian, it would be difficult to deny religious inspiration. Indeed, De George admits that "most of the philosophers who first entered the field [of business ethics] read the theological and business literature, since that is all there

[95] These categories of religious philosophy mirror what are often dubbed in Christian philosophical circles "Augustinian Christian Philosophy" and "Thomistic Christian Philosophy." Löffler acknowledges the anachronism of these labels, given that Augustine of Hippo and Thomas Aquinas did not give explicit consideration to the idea of "a Christian philosophy" (Löffler, 116). Löffler nevertheless defends the labels, citing each thinker's overall approach as providing an example of the form of Christian philosophy bearing his name (Löffler, 116). For present purposes, however, such labels will not suit. In addition to their anachronism, these labels would be malapropos for this introduction, which provides a framework for both Islamic and Christian influence in philosophy and secular reasoning more widely.
[96] De George, "Theological Ethics and Business Ethics," 424.

was."[97] This snippet from the history of the business ethics field harks back to a much earlier trend in philosophy.

Löffler recounts: "Historically, certain epochs in (Western) philosophy are simply not understandable without considering their factual religious background in Jewish, Christian, and Islamic faith."[98] He points out that "important philosophical ideas such as 'history', 'person', 'free will', 'human rights', 'law of nature', etc., have either only distant predecessors in Greco-Roman philosophy or none at all, but they were evidently inspired by their Judeo-Christian-Islamic theological roots."[99] This influence demonstrates how religious thought has inspired not only inquiry into specific ethical conclusions, but also the adoption of aspects of religious thinking that are amenable to a secular modus operandi. Rationales used to support religious teachings may also be worth adapting. Although these rationales are used to support conclusions derived from religious authority, they do not necessarily rely on religious premises. Indeed, they often rely on notions such as choosing the best consequences and ideas of human flourishing and of justice that provide bases for much of secular ethics. In their premises, then, these rationales could be reckoned philosophical. This possibility raises a question like that raised by De George: If the rationales advanced by religious authorities rely on philosophical premises, what distinguishes them from arguments advanced by business ethicists? I suggest that it is on the level of systematic inspiration.

Religious discourse can inspire business ethicists toward certain conclusions and provide them some lines of reasoning to consider. Now this influence could happen in either an occasional or systematic way. One business ethicist, perhaps even a non-religious one, might rethink her position after happening upon a religious conclusion or rationale that differs from her own. Another might more systematically tend toward positions close or

[97] Ibid., 422.
[98] Löffler, 113.
[99] Ibid.

identical to those that are part of a religious worldview.[100] Here it is important to stress that this ethicist's conclusions may not be identical to those of the religious tradition that inspires him. Instead, his argument might be for a conclusion approximating or tending toward a religious one, rather than for an identical conclusion. An argument might be advanced that humans should in general be afforded freedom.[101] The inspiration for this conclusion might be the Christian doctrine that humans have a certain dignity because they are God's children, made in his likeness. In defense of human freedom, the Second Vatican Council's pastoral declaration *Gaudium et spes* offers the rationale that freedom should be supported since "only in freedom can man direct himself toward goodness."[102] Such an argument would certainly be acceptable by a secular virtue ethicist.

To expand on an earlier point, even if a rationale deployed to support a religious teaching is not adopted fully, the secular argument derived from it may arrive at a moral judgment similar to what is held in the religious teaching. Cast in a Rawlsian terms, the result would be imperfect consensus. Imperfect consensus, however, does not necessarily bespeak opposition. A secular argument may not, for example, reach the conclusion that a religiously prohibited action or activity is impermissible under a secular ethic, but it may allow or even indicate that refraining from that action or activity would be supererogatory or at least permissible. Accordingly, a religious prohibition could take on the character of an ideal from a secular perspective, even without the prohibited action's being found unethical.

Systematic inspiration from religious authorities and rationales supporting their determinations would distinguish the contribution of a business ethicist from others in his field. Although individual arguments would be aimed at and accessible to other business

[100] Cf. ibid., 120. He would, of course, have to be particularly wary of confirmation bias, but so do all philosophers (and everyone else) to some extent.
[101] Cf. ibid., 121.
[102] Second Vatican Council, *Gaudium et spes* 17 (1965), accessed January 23, 2020, https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html.

ethicists, perhaps even the general public, when viewed as a whole, the contribution wrought from religious inspiration would be distinct. Religious authorities as guiding stars might very well influence areas of interest and the topics selected for consideration, as well as the conclusions reached.[103] Within finance, an ethicist inspired by Islam might, for example, take a special interest in questions surrounding inheritance, social justice, and property rights.[104] Such interests could easily stem from the goals of the shari‘a, the *Maqasid al-Shari‘a*. Whether or not this ethicist is Muslim, Islam would play the muse for her reflections, both in the selection of questions, suggesting potential conclusions, and even offering possible lines for secular argumentation.[105] It would be hard not to see a connection between Islam and her thought. Indeed, it would be disingenuous not to acknowledge its influence, even if only on the level of inspiration. Theology can thus play a guiding role in business ethics. This influence may not distinguish a single argument or conclusion from that of any other business ethicist, but when his or her work is viewed in its entirety, it will take on a hue that is distinctly Islamic, Christian, or of some other religious tradition. I cannot but help seeing this as a unique contribution.

For present purposes, it is important to note that this approach could have an Islamo-Christian variant. Among its potential benefits would be a wider set of religious authorities and arguments from which to draw inspiration for crafting secular discourse. A potential drawback of such an approach would be a less coherent set of conclusions than would be attainable from a single religious tradition. On the other hand, if a business ethicist seeks

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[103] Löffler recalls how a number of philosophers, including Franz Brentano (1838–1917) and Jacques Maritain (1882–1973), described Christian doctrine as being “from this viewpoint just a guiding star for the philosopher: it tells the philosopher where his reasoning could possibly go – just like sailors on the open seas use a guiding star to decide their course” (Löffler, 119). For the French-American philosopher Germain Grisez, the philosophy inspired by this guiding star is inseparable from it. Writing of the Christian philosopher of this variety, Grisez states that “it is not that his philosophy would not be the same if he were not a Christian; his philosophy simply would not be at all” (Germain G. Grisez, “The ‘Four Meanings’ of ‘Christian Philosophy,’” *Journal of Religion* 42, no. 2 (1962): 115).

[104] Cf. Löffler, 120.

[105] I realize, of course, that one’s professing a religion would make such a scenario more likely, but I also realize that it is possible to be inspired systematically by a religion without professing or adhering to it.

greater receptivity from her audience, then she could show how her secular conclusions are the same as or approach conclusions reached on the basis of religious authorities in more than one religion. Part II of this thesis employs Islamic and Christian inspiration in considering the ethics of interest. Not only does it rely on the prohibitions of *riba* and usury themselves and their relation to interest, but also on rationales advanced in support of those prohibitions.

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The section just concluded presented a framework for Islamo-Christian efforts to influence business ethics, which is the basis especially for Part II of this thesis. The first framework and Part I which follows from it are integral to that framework and Part II. Only if a sufficient correspondence in the significations of "interest," "*riba*," and "usury" and prohibitions of *riba* and usury is identified can employing the second framework in Part II be attempted. In fact, Part I could lend greater acceptability to secular arguments that follow in Part II. The prohibitions also provide a springboard for the presentation and analysis of potential secular arguments against interest. Accordingly, Parts I–II and the frameworks that underlie them are intimately connected. When taken together, the objective of these two frameworks is simple: to provide bases for two faiths to attempt ethical renewal in the financial sector and business more widely.

The following chapters are distributed as follows: Part I comprises five chapters addressing the significations of "interest," "*riba*," and "usury" and the prohibitions of *riba* and usury. The three chapters of Part II address the strength of arguments against the morality of interest. While guided by rationales for the religious prohibitions of *riba* and usury, and especially of the latter, these arguments follow lines that generally follow the contours of major schools of philosophical ethics.

Finally, by no means is it a foregone conclusion that the prohibitions or the rationales advanced in their support will prove successful in finding interest unethical; rather, this thesis provides a case study in the possibilities and difficulties for an Islamo-Christian partnership to influence (secular) business ethics. Abdul-Rahman may prove visionary in his perception that returning to shared, traditional financial principles presents "a wonderful window of historic proportions to cooperate together to bring to market a credible, efficient, fair, and equitable financing and banking system."[106] In any case, seeking common ground is commendable. A shared tradition here portends amicable dialogue between Muslims and Christians, a welcome opportunity for partnership amid creedal debate and violence. An aim of this study is to discern whether the foundations for this opportunity are substantive or merely a mirage.

[106] Abdul-Rahman, 15.

❖ PART I ❖

Introduction to Part I

In a video on the "Wisdom behind Prohibition of Riba (interest)," Almir Colan, a Director of the Australian Centre for Islamic Finance (AUSCIF), makes the common move of identifying *riba* with usury and interest.[1] This identification entails more than mere translation of terms. The equating of these terms also comes as a first step in reuniting what are perceived as estranged prohibitions and in affirming the relevance of these prohibitions to modern banking. If the terms are synonymous, comparing the prohibitions of *riba* and usury will be a straightforward matter. Similarly, should the terms and the prohibitions be concordant, the re-twinned prohibitions of *riba* and usury could then together speak to interest, their modern-day triplet. Reunion, however, is not straightforward.

Seeking common ground—as already affirmed—is a laudable pursuit; finding common ground, though, demands actual commonality and not mere semblance. In other words, there must be correspondence. Part I of this thesis tests correspondence: (1) correspondence between the *significations* of the terms "interest," "*riba*," and "usury"—and, more fundamentally, between the concepts and activities they represent; (2) correspondence between the *prohibitions* of *riba* and usury. These correspondences need not be exact to establish a basis for cooperation, but deviations do shrink common ground and thereby limit what Part II can accomplish.

An initial task for Part I is to establish correspondence in the significations of "interest" (Chapter 1), "*riba*" (Chapter 2), and "usury" (Chapters 3). The next task is to

[1] Almir Colan, "Wisdom behind Prohibition of Riba (interest) - Case study GFC | Almir Colan," posted on November 26, 2017, YouTube video, 18:21, accessed February 20, 2020 https://www.youtube.com/watch?v=CCb6uFBjkYY. See description beneath the video, which explicitly identifies *riba* with both interest and usury.

examine the prohibitions of *riba* and usury (Chapters 4 and 5, respectively). The conclusion to Part I compares both the significations and prohibitions and judges their correspondences.

As a propaedeutic to these tasks, however, two overarching topics invite discussion. The first is *signification*. Specifically, how the terms "signify" and "signification" are used in the first three chapters and subsequently throughout this thesis and what methodology is deployed for determining significations. The second topic comprises the relevant Islamic and Christian conceptions of *prohibition*.

Signification

The *Oxford English Dictionary* (*OED*) defines "signification" as "that which is signified by something; meaning, import, implication."[2] "Signify" is defined as "to have the meaning or import of; to mean, denote."[3] Traced back to its Latin forebear, "signification" derives from the noun "*significatio*." The verbal form of this word is "*significare*," which combines the noun "*signum*" ("sign," "indication") and the verb "*facere*" ("do," "create"). Based on this etymology, "signification" suggests the creation of a sign, a pointer to something else. Aristotle (c. 384–322 BC) discusses words as signs pointing to concepts and through them to realities:

> Words spoken are symbols or signs of affections or impressions of the soul; written words are the signs of words spoken. As writing, so also is speech not the same for all races of men. But the mental affections themselves, of which these words are primarily signs, are the same for the whole of mankind, as are also the objects of which those affections are representations or likenesses, images, copies.[4]

Although Aristotle's presumption that "mental affections" or concepts are universally shared may now seem quaint, of use for this current undertaking is that terms are signs of human concepts (and hopefully ultimately with realities represented by those concepts). By

[2] *Oxford English Dictionary*, s.v. "signification," accessed August 22, 2018, http://www.oed.com/view/Entry/179573?redirectedFrom=signification#eid.
[3] *Oxford English Dictionary*, s.v. "signify," accessed August 22, 2018, http://www.oed.com/view/Entry/179588?redirectedFrom=signify#eid.
[4] Aristotle, *De interpretatione* 1 (LCL 325.115), trans. Harold P. Cooke, in *Organon I* (Cambridge, MA: Harvard University Press, 1949).

investigating the significations of "interest," "*riba*," and "usury," we are also pursuing the concepts toward which these terms point.

This thesis uses three tools for determining a term's signification. These tools are etymology, usage and context, and definitions. Each tool exhibits distinct virtues and limitations in bringing a term's signification into the light. The combined application of these tools promises greater effectiveness than if used in isolation, since what each tool reveals can be distinct.

Etymology is a common, though admittedly limited, tool for unearthing a term's signification. Dictionaries often list etymologies along with definitions in lexical entries. Although etymologically the term "etymology" refers to the study of a term's "true sense" ("*etumos*" in Greek), etymology can lead one astray if leaned on too heavily. Terms often veer from their origins. "Marmalade," for example, borrows from the Portuguese "*marmelada*," which contains the word "*marmelo*," a quince. Today, "marmalade" usually refers to a jellied preserve of citrus (rather than quince) pulp and rinds. Despite this limitation, etymologies contribute to narratives surrounding words and phrases, somewhat like how genealogies contribute to the narratives of persons and peoples. Ancient and medieval authors often allude to etymologies, sometimes false etymologies, in their rhetoric. Such allusions suggest that etymology inform conceptions of a term and consequently also its signification.

Usage can polish clues provided by etymology. By "usage," I do not mean the standard or correct use of terms, but rather how they are used in the source materials.[5] Context often reveals a more exact signification of a term than a term's standard definition can uncover. If, for example, an author refers to a professor's lecturing in one of her institution's classrooms, it is likely that "institution" signifies a university, college, or some

[5] Cf. Sidney I. Landau, *Dictionaries: The Art and Craft of Lexicography*, 2nd ed. (Cambridge: Cambridge University Press, 2001), 217.

other establishment for higher education. Actual usage as a tool for revealing what is "really happening" will be familiar to behavioral scientists in their reliance on empirical observations over stated accounts of behavior.[6] Usage demonstrates its usefulness both in the absence of definitions and in interaction with them.

Nevertheless, definitions are valuable for quickly narrowing a term's signification. Dictionaries, as well as primary sources, provide these useful tools. Sometimes a definition conforms to the classical standard for an analytic definition, which "consists of a 'genus' word designating a superordinate class to which that which is defined belongs, and 'differentiae', which distinguish it from others in the same class."[7] "Stock market," for example, is defined in the *OED* as "a place where stocks or securities are bought and sold" and "the traffic in stocks and shares at such a place."[8] The genus is a place or the activity at this place and the factor differentiating this place from other places (and even other markets) is trade in stocks and securities.

Despite their usefulness, definitions do not eliminate the value of etymology and usage. For instance, sources used in this thesis seldom provide definitions of the terms they employ, so etymology and usage must be relied on to address whether the instantiation of that term conforms or diverges from its lexical definition. Even if a source provides a definition, usage in that same source may suggest a narrower or broader meaning. Furthermore, etymology may enrich understanding of the defined term through its kinship to other terms. To offer an example: Etymology informs readers that the adjective "feline" has something to do with cats.[9] A book may define "feline" as dealing strictly with cats themselves, as opposed to cat-like characteristics (e.g., an acrobat's feline gait). It may then discuss cats as playful

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[6] E.g., Malene Gram, "Self-Reporting vs. Observation: Some Cautionary Examples from Parent/Child Food Shopping Behaviour," *International Journal of Consumer Studies* 34, no. 4 (2010): 394–399.
[7] J. R. Ayto, "On Specific Meaning," in *Lexicography: Principles and Practices*, ed. R. R. K. Hartmann (London: Academic Press, 1983), 89.
[8] *Oxford English Dictionary*, s.v. "stock market," accessed March 25, 2019, http://www.oed.com/view/Entry/190645?redirectedFrom=stock+market&.
[9] From the Latin "*feles*."

pets or even as effective mouse exterminators. From this usage, it becomes quickly clear that "cat" has a far narrower signification than in the provided definition. What is meant are the cats typically kept by humans, and not bobcats, lions, or tigers.

In using these tools to reveal the significations of "interest, "*riba*," and "usury," some inconclusiveness is inevitable. First, each term has no single signification. At a minimum, nuances differ between sources and precision tends to sharpen with time. Second, some sources offer clues that allow only for imprecise conclusions about the terms they employ. Allowing for a broad set of significations is the most cautious course of interpretation in such cases. Finally, the haze of centuries obscures some past significations, which analysis can only somewhat dispel. Based on these limitations, hope of discovering perfect correspondence in signification between sources is, unfortunately, Panglossian. A more modest hope is to identify core elements of each term's signification. Toleration of some imprecision and tentativeness is necessary.

Prohibition

The *OED* defines "prohibit" as "to forbid (an action, event, commodity, etc.) by a command, statute, law, or other authority; to interdict." "Prohibit" and "prohibition" derive from the Latin verb "*prohibere*": to forbid, ban, stop, prevent, hinder, or restrain. With regards to positive law, prohibited activities are backed by temporal penalties, e.g., fines or imprisonment. Religious law is more complicated. Sometimes infraction of a religious law carries ante-mortem penalties; sometimes postmortem penalties; sometimes ante-mortem and post-mortem penalties. Despite the variation in penalties, common to Islamic and Christian (as well as Jewish) law is the goal of directing the spiritual lives of believers.[10] Prohibitions ostensibly aid the pursuit of such a goal by dissuading adherents from activities deleterious to

[10] Norman Doe, *Comparative Religious Law: Judaism, Christianity, Islam* (Cambridge: Cambridge University Press, 2018), 53.

spiritual vitality. Both Islam and Christianity situate prohibited activities within hierarchies of human action. These hierarchies share some commonalities without perfect correspondence.

In Islamic jurisprudence, all human actions fall under one or another of five general categories, with the familiar terms "halal" and "haram" appearing alongside lesser known categories. Some variation, however, appears in the naming of and distinctions between these five categories. Nevertheless, these distinctions notwithstanding, the hierarchies each demarcate gradations from positive obligation to prohibition. The categories are (1) *fard* or *wajib*, (2) *mustahab* or *mandub*, (3) *mubah* or halal, (4) *makruh*, and (5) haram.

An action categorized as *fard* or *wajib* is a positive obligation or duty. These terms are synonymous except in the Hanafi School.[11] Hanafis distinguish *fard* and *wajib* according to their source: the former is of divine institution and the latter is of legal institution. Whereas omission of *fard* is sinful, and merits punishment in the hereafter, omission of *wajib* may or may not be sinful.

Positive (or at least neutral), non-obligatory actions fall under one of two categories: *mustahab* or *mandub*; and *mubah* or halal. The terms "*mustahab*" and "*mandub*" designate recommended or desirable action.[12] "*Mubah*" and "halal" carry a neutral import and indicate permissible or lawful action.[13] Some scholars distinguish between these latter terms, the first indicating what is permitted and the second indicating what is lawful (not prohibited);[14] others consider halal as a genre of human action that comprises *fard*, *mandub*, and *mubah*.[15] With this broad categorization, the halal category covers positive obligations, desirable but

[11] Cyril Glassé, *The Concise Encyclopedia of Islam*, s.v. "Farḍ" (San Francisco: Harper & Row, Publishers, 1989), 122. The following account of *fard* is based on this entry.
[12] Ibid., s.v. "Mustaḥabb," 290.
[13] Ibid., s.v. "Mubāḥ," 278.
[14] E.g., Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (Oxford: Oxford University Press, 2009), 71–72.
[15] E.g., Renat I. Bekkin, "Islamic Insurance: National Features and Legal Regulation," *Arab Law Quarterly* 21, no. 2 (2007): 262.

non-obligatory actions, and those that are merely permissible and lawful, but neither praise- nor blameworthy.

Negative actions are also of two general grades. Merely objectionable action is *makruh*, the commission of which fails to merit punishment, though its omission does merit reward.[16] Although a negative form of action, some scholars consider it halal.[17] Later members of the Shafi school identify a milder form of *makruh* known as *khilaf al-awla*, simply indicating "diverging from the obvious."[18] In the shari'a, action deemed forbidden is "haram"; the term designates activities that are unlawful, prohibited, and sinful. Haram is forbidden *per se*, or, as the influential and controversial scholar Yusuf al-Qaradawi (b. 1926) writes, activity so deemed "remains *haram* no matter how good the intention, how honorable the purpose, or how lofty the aim may be. Not only is activity explicitly prohibited in the Qur'an and Hadith described as haram, but also activity that leads to or promotes the explicitly forbidden activity."[19] Al-Qaradawi offers the following example: "As Islam has prohibited sex outside of marriage, it has also prohibited anything that leads to it or makes it attractive, such as seductive clothing, private meetings and casual mixing between men and women, the depiction of nudity, and pornographic literature, obscene songs, and so on."[20] Providing occasion or assistance for others' pursuing forbidden activities is likewise haram. Participation in activities deemed haram is thought to merit retribution, though the gravity of such actions varies.

Qur'an 4.31 differentiates between two levels of transgressions: grave sins (*kaba'ir*) and evil deeds (*sayyi'at*).[21] This passage promises that "if you shun the grave sins that you

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[16] N. J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 84.
[17] Gregory Baum, *The Theology of Tariq Ramadan: A Catholic Perspective* (Toronto: Novalis Publishing, 2009), 98.
[18] H. A. R. Gibb and J. H. Kramers, eds., *Shorter Encyclopaedia of Islam*, s.v. "Sharīʻa" (Leiden: E. J. Brill, 1953), 526.
[19] Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam* (London: Dar Al Taqwa, 2011), 28. Cf. ibid, 36.
[20] Ibid., 28.
[21] See "Commentary," in *The Study Quran: A New Translation and Commentary* (New York: HarperCollins, 2015), 204–205.

are forbidden, We shall absolve you of your evil deeds and cause you to enter at a noble gate." Qur'an 18.49 and 54.53 likewise distinguish between wrongs both small and great.[22] We will have occasion in "Chapter 4: Prohibition of *Riba*" to discuss the degrees of wrongdoing as found in the Hadith.

Islam's hierarchical categorization of actions provides a context within which to understand the prohibition of *riba*. It also assists in comparing this prohibition with that of usury in Christianity, since the Christian tradition on usury also has a framework within which its prohibition of usury can be understood. It is to this framework that I now turn.

Although a clean fivefold hierarchy of human action is not found in the Christian tradition, similar categories are discernable. Some activities are obligatory, others are perhaps not obligatory but permissible and perhaps praiseworthy, and some are prohibited. Two examples of positive obligatory actions can be found in the Decalogue, which requires keeping holy the Sabbath and honoring one's parents. For those desirous of a more perfect way, Roman Catholicism distinguishes the Evangelical Counsels from strictly obligatory action. The Evangelical Counsels, or Counsels of Perfection, comprise the vows taken by members of Catholic religious orders, namely poverty, chastity, and obedience. Though not required of all Christians, namely the laity and secular priests, the Evangelical Counsels are presented as supererogatory, as beyond the call of duty, as a more perfect way to God. Most of the commandments of the Decalogue are prohibitions: you shall not make for yourself a graven image; you shall not kill; you shall not steal; and so on. Infraction of these prohibitions is deemed sinful.

[22] For a discussion of the debate about whether all sins are equal within Islam, see "Commentary," in *The Study Quran*, 204–205.

Christian teaching distinguishes between classes of sins based on their effect on the soul. 1 John 5:16–17 notes a dichotomy between deadly and non-deadly sins.[23] Eusebius Sophronius Hieronymus (c. 347–420), most commonly known as "Jerome," calls on this text in distinguishing between *peccata levia* and *peccata gravia*.[24] In line with this tradition, medieval theologians distinguished between mortal and venial sin.[25] The latter, as its name implies, was considered less grave. As noted by Thomas Aquinas, the word "venial" derives from "*venia*" meaning pardon.[26] Considered as a determinate genus of act, a venial sin is one whose object contains "a certain inordinateness, but which is not contrary to the love of God and one's neighbor."[27] Mortal sin, also known as grave or grievous sin, is an offense contrary to the love of God and neighbor.[28] Venial sin merits but temporal punishment; mortal sin, everlasting punishment.[29]

As in Islam, actions that lead to prohibited, sinful activity can themselves be sinful in this Christian framework but are not always so. Within this framework, leading others into sin, is known as "scandal." The New Testament is replete with references to placing a stumbling block (in Greek, *skandalon*) that leads to sin.[30] Several passages warn against and foretell of grave consequences for those responsible for such stumbling blocks.[31] Instead of

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[23] "If any one sees his brother committing what is not a mortal sin, he will ask, and God will give him life for those whose sin is not mortal. There is sin which is mortal; I do not say that one is to pray for that. All wrongdoing is sin, but there is sin which is not mortal."
[24] Jerome, *Adversus Jovinianum* 2.30 (PL 23.341–342), trans W. H. Fremantle, G. Lewis and W. G. Martley, in *Nicene and Post-Nicene Fathers*, Second Series, vol. 6, ed. Philip Schaff and Henry Wace (Buffalo, NY: Christian Literature Publishing Co., 1893), rev. and ed. Kevin Knight, accessed June 5, 2020, https://www.newadvent.org/fathers/30092.htm.
[25] Even today, Catholic theology continues to distinguish between mortal and venial sin. See *Catechism of the Catholic Church* 1854, accessed May 14, 2020, https://www.vatican.va/archive/ccc_css/archive/catechism/p3s1c1a8.htm.
[26] Thomas Aquinas, *Summa theologiae* 1-2.88.2, trans. Laurence Shapcote, ed. John Mortensen and Enrique Alarcón (Lander, WY: The Aquinas Institute for the Study of Sacred Doctrine, 2012). All further references to Aquinas, *Summa theologiae* will be from this edition and will be cited by part, question, and article (where applicable).
[27] Ibid.
[28] Ibid.
[29] Ibid. See also ibid., 1-2.87.3.
[30] Matthew 13:41–42, 16:23, 18:6–7; Luke 17:1–2; Romans 14:13, 16:17; Revelation 2:14.
[31] Matthew 13:41–42, 18:6–7; Luke 17:1–2; Romans 14:13, 16:17. "*Skandalon*" also is used in other senses within the New Testament: e.g., Romans 9:33; Romans 11:9; 1 Corinthians 1:23; Galatians 5:11; 1 Peter 2:8.

indicating a cause of public disgrace as "scandal" typically does, the Latin "*scandalum*" signifies a stumbling block, temptation, or cause of offense. This meaning adheres closely to the Greek from which it derives. The term appears frequently in the Septuagint[32] and is employed by several of the New Testament's authors.[33] The New Testament also frequently makes use of the verb "to scandalize" ("*scandalizare*").[34] Aquinas dedicates an entire question of his *Summa theologiae* to scandal.[35] He defines "scandal" as "something less rightly done or said, that occasions another's spiritual downfall."[36] He distinguish between "active scandal" by the person leading another into sin and "passive scandal" by the person so led.[37] Passive scandal is indistinguishable of its nature from whatever the sin that is committed. Active scandal, however, is its own sort of sin: "Active scandal is direct when a man intends, by his inordinate word or deed, to draw another into sin, and then it becomes a special kind of sin on account of the intention of a special kind of end."[38] Actions that may lead oneself into sin may not be of themselves sinful and prohibited, but they are discouraged.[39]

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The chapters of Part I take fundamental first steps toward re-examining the morality of interest. This introduction has set out parameters for testing correspondence between terms and between prohibitions. It has done so by addressing two concepts or themes fundamental to this thesis, and especially to Part I. An approach to uncovering the significations of

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[32] Leviticus 19:14; Joshua 23:13; 1 Samuel 18:21; Psalm 69:22 (68:23), 119(118):165; Isaiah 8:14.
[33] Matthew 13:41, 16:23, 18:7; Luke 17:1; Romans 9:33, 11:9, 14:13, 16:17; 1 Corinthians 1:23; Galatians 5:11; 1 Peter 2:8; 1 John 2:10; Revelation 2:14.
[34] Matthew 5:29–30, 11:6, 13:21, 13:57, 15:12, 17:27, 18:6, 18:8–9, 24:10, 26:31, 26:33; Mark 4:17, 6:3, 9:42–43, 9:45, 9:47, 14:27, 14:29; Luke 7:23, 17:2; John 6:61, 16:1; Romans 14:21; 1 Corinthians 8:13; 2 Corinthians 11:29.
[35] Aquinas, *Summa theologiae* 2-2.63.
[36] Ibid., 2-2.63.1.
[37] Ibid., 2-2.63.1.
[38] Ibid., 2-2.63.3.
[39] For an account of what is often termed "near occasions of sin," see John J. Piderit, *Sexual Morality: A Natural Law Approach to Intimate Relationships* (Oxford: Oxford University Press, 2011), 68–69, 223–224.

"interest," "*riba*" and "usury" emerged in examining the signification of "signification." Etymology, usage and context, and available definitions are tools that will help to reveal the significations of this thesis's core terms. Finally, this introduction to Part I reviews the signification of "prohibition" and how prohibitions fit into the relevant Islamic and Christian schemas of human action.

With this groundwork complete, we now delineate the signification of "interest," "*riba*," and "usury." Building on the latter two significations in particular, we then consider the prohibitions of *riba* and usury. The conclusion to Part I compares the significations of "interest, "*riba*" and "usury" as well as the prohibitions of *riba* and usury. In examining these bases for potential Islamo-Christian action regarding interest, Part I builds a springboard for re-examining the morality of interest along secular lines as well as personalizing that re-examination for Muslim and Christian adherents.

Chapter 1

Signification of "Interest"

"Is it in their interest to refinance at interest the property in which they have an interest?" As illustrated by the previous sentence, "interest" has multiple senses relevant to business and finance. The second instance—as in "at interest"—is what is most relevant here. "Interest" in this sense is ubiquitous: Central banks raise and lower interest rates; retail banks boast of low interest when lending and competitive interest rates on investment accounts. Despite its ubiquity and apparently simple lexical definitions, significations of the term in this sense are, appropriately, neither static nor simple. Of these, the significations most germane to this study are those common among the general public, including those in the business and financial communities. After all, they are the audience to whom business ethicists, as noted in the introduction to this thesis, should ultimately speak. Intertwined legal and economic significations for "interest" are also material, since they strongly influence the use of the term in business.[1] While the following account is by no means exhaustive, it isolates three core elements in significations of "interest" that allow for comparison among them as well as with the significations of "*riba*" and "usury." These three elements are: (1) the kinds of quid pro quo (one value exchanged for another); (2) the presence of credit; (3) the payment of an addition.

Etymology and Historical Background

"Interest" derives from the Latin "*interesse*." Whereas today "interest" is often associated with profits, "*interesse*" signifies a payment for the avoidance of loss,[2] a payment

[1] For instance, in advertising financial products, banks must state interest rates according to their jurisdiction's statutes and regulations.
[2] Noonan, *The Scholastic Analysis of Usury*, 106.

to ensure that creditors break even. The noun "*interesse*" is a medieval recoinage of a Roman legal term. Within Roman law, the phrase was "*quod interest*," which literally translates as "that which is between"—so "the difference."[3] This difference was "between the actual state of one who has made a contract injurious to himself and that which should be his state had the contract not taken place."[4] Invocation of *quod interest* was for addressing damages arising from the breach of contractual obligations.[5] The concept was not, however, used in the context of loans, though it was at times contrasted with usury.[6]

Two sorts of damages were covered by "*quod interest*":[7] (1) actual damage (*damnum*) and (2) lost profit (*lucrum*). The distinction between these sorts of damages would be captured in medieval thought with the terms "*damnum emergens*" and "*lucrum cessans*."[8] If, for example, Farmer 1 failed to deliver the agreed chickens to Farmer 2, the latter would likely suffer loss from having to purchase eggs from someone else (*damnum emergens*) as well as a loss of profits from the sale of surplus eggs (*lucrum cessans*). These losses would give the farmer title to recompense, "*quod interest*"—an addition to cover losses.

In medieval Christendom, jurists and theologians applied the notion of *quod interest* to lending. When applied to a loan, *damnum emergens* and *lucrum cessans* came to signify "extrinsic titles" to the payment of an addition to the principal. Thomas Moser notes how "the modern term 'interest' evolved from the medieval Latin word *interesse*, a payment for damages arising to the creditor from default or delay in repayment (the *quod interest* of

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[3] Cf. ibid.

[4] Patrick Cleary, *The Church and Usury: An Essay on Some Historical and Theological Aspects of Money-Lending* (Doctoral thesis, St. Patrick's College, Maynooth, 1914; reprint, Palmdale, CA: Christian Book Club of America, 2000), 91–92. Cf. Brian M. McCall, *The Church and the Usurers: Unprofitable Lending for the Modern Economy* (Ave Maria, FL: Sapientia Press of Ave Maria University, 2013), 68–72; Noonan, *The Scholastic Analysis of Usury*, 105–107.

[5] Noonan, *The Scholastic Analysis*, 105–106.

[6] E.g., *Digesta* 13.4.2.8 and 17.2.60, in *Corpus iuris civilis*, ed. Theodor Mommsen and Paul Krueger, vol. 1 (Berlin: Weidmannsche Buchhandlung, 1877), 176 and 226. Cf. Noonan, *The Scholastic Analysis*, 105–106.

[7] *Codex* 7.47.1.2. See Noonan, *The Scholastic Analysis*, 106.

[8] See Adolf Berger, "Encyclopedic Dictionary of Roman Law," s.v. "*Damnum emergens*," *Transactions of the American Philosophical Society* 43 (1953): 424.

Roman Law)."[9] John W. Baldwin similarly explains that "by the end of the Middle Ages *damnum emergens* (loss arising) and *lucrum cessans* (profit ceasing) were the two major ecclesiastical justifications for receiving more than the principal from a loan."[10] This "more," however, was an addition in the sense of repayment for a loss, either an actual loss or lost profits. As will be discussed in Chapter 3, a payment for the risk of default was debated as likewise a justification for the payment of *interesse*. If accepted, it would represent a payment for the *risk* of loss, and not loss itself. Thus, even here, "*interesse*" is tied to loss, not profit. Credit figures in the nature of a loan: whatever is lent now is to be restored in the future. To better understand *interesse* (as well as usury), the Roman loan contract known as a "*mutuum*" requires discussion.

A *mutuum* is a real contract, so named because under it "an obligation arises not from an agreement alone, though agreement is essential, but from the delivery of a *res corporalis* [a physical thing]."[11] The goods, the sorts of quid pro quo, subject to a *mutuum* were fungible, and could be weighed, numbered, or in some other way measured.[12] Like the *commodatum*, another real contract, the *mutuum* allowed the lending goods for another's use. Unlike the *commodatum*, however, the *mutuum* "was a loan for consumption, not simply for use, i.e. a loan of things, such as money, food, and drink, which can ordinarily be used only by being consumed."[13] The fungibles that could underly a *mutuum* were consequently all consumables. In his now classic *Introduction to Roman Law*, Barry Nicholas is careful to note: "'Consumption' must be understood in a wide sense. A brick or a nail can ordinarliy only be used in such a way that although it is not literally consumed, it cannot be returned."[14]

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[9] Moser, n. 2.
[10] John W. Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter and His Circle*, vol. 1 (Princeton, NJ: Princeton University Press, 1970), 285–286.
[11] Barry Nicholas, *An Introduction to Roman Law* (Oxford: Oxford University Press, 2008), 167. In Justinian's taxonomy, it is accompanied by three other real contracts, i.e., *commodatum*, *depositum*, and *pignus* (see ibid.).
[12] *Digesta* 12.1.2.1, 159.
[13] Nicholas, 167.
[14] Ibid., 167, n. 4.

Although all items that could underly a *mutuum* were fungible, not all fungibles are ordinarily consumed by those who borrow them. Nicholas offers mass-produced crockery as an example of fungibles not ordinarily consumed through their use, and notes that "modern mass-prodction has greatly enlarged this category of fungible, but it existed also in the ancient world."[15] The fungibles subject to a *mutuum* were thus distinct from other physical objects that could be lent.

Since goods that are both consumable and fungible were subject to it, a *mutuum* was seen as a transfer of ownership (*dominium*), along with the obligation "to return not the thing itself but its equivalent in quantity and quality."[16] In his *Etymologiae*, Isidore of Seville (c. 560–636) explains that "a *mutuum* (i.e. a kind of loan) is so called, because that which is given by me to you is turned 'from mine to yours' (*ex meo tuum*)."[17] Fabricated by classical Roman jurists,[18] this etymology was rehearsed by medieval jurisprudents and theologians.[19] Of course, ownership carries with it risks. Since a *mutuum* entailed a transfer of ownership, those risks were also transferred. When paired with the obligation of repayment, ownership based on *mutuum* presented borrowers with the possibility of having to repay the original owner without full enjoyment of what they had borrowed: "In *mutuum* the borrower was bound to return the equivalent of what he received, no matter what became of the thing itself. He was the owner, and the risk of loss or damage was on him."[20] In other real contracts, the amount of liability assumed by the recipient was not automatically so determined.[21]

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[15] Ibid.
[16] Ibid., 167.
[17] Isidore of Seville, *Etymologiae* 5.25.18 (PL 82.207), trans. Stephen A. Barney et al., in *The Etymologies of Isidore of Seville* (Cambridge: Cambridge University Press, 2006), 121: "*Mutuum appellatum est quia id, quod a me tibi datur, ex meo tuum fit*."
[18] Baldwin, *Masters Princes and Merchants*, vol. 1, 287. Cf. Noonan, *The Scholastic Analysis*, 39.
[19] E.g., Robert of Courson, *De usura*, ed. Georges Lefèvre (Lille: Université de Lille, 1902), 15; Thomas of Chobham, *Summa confessorum* 7.6.11.1, ed. F. Broomfield (Louvain: Éditions Nauwelaerts, 1968), 504–505. See also Odd Langholm, *Economics in the Medieval Schools: Wealth, Exchange, Value, Money and Usury according to the Paris Theological Tradition 1200–1350* (Leiden: E. J. Brill, 1992), 47–49 and 56; Noonan, *The Scholastic Analysis*, 39, 41–43.
[20] Nicholas, 169.
[21] See ibid., 169–170.

Although a *mutuum* demanded the return of a quantitative and qualitative equivalent of the loaned item, as noted above, it did not of itself specify that an addition be paid: the *mutuum* was in itself gratuitous. *Interesse* functioned less an addition to the returned fungible than as payment to secure the lender against loss. Noteworthy is that, while delay is present in a loan contract, it does not provide the reason for the payment of *interesse*. Instead, *interesse* is paid based on titles considered extrinsic to the loan itself, namely *damnum emergens* and *lucrum cessans*. Time certainly factors into the occurrence of actual losses and lost profits and thus contributes to reasons for *interesse*, but it is not the reason itself. As to be seen presently, this point is essential in distinguishing the term "*interesse*" from modern "interest." Two other elements of the signification of "*interesse*" are also apparent: (1) the context for *interesse* is an intertemporal, credit transaction—the Roman *mutuum*, of which (2) the underlying kinds of quid pro quo were consumable fungibles.

Lexical Definitions and General Usage

Traced from the reign of England's King Henry VIII (r. 1509–1547),[22] the modern signification of "interest" retains the context of a loan or other credit transaction and is even more tightly bound to intertemporality than is "*interesse*." The *OED* defines "interest" as "money paid for the use of money lent (the *principal*), or for forbearance of a debt, according to a fixed ratio (*rate per cent.*)."[23] For its part, Oxford University Press's *A Dictionary of Finance and Banking* offers this definition: "The charge made for borrowing a sum of money. The interest rate is the charge made, expressed as a percentage of the total sum loaned, for a stated period of time (usually one year)."[24] In both of these definitions, interest is paid for, by reason of, the loan itself. The first definition underscores both use and

[22] See *Oxford English Dictionary*, s.v. "interest," accessed December 11, 2019, https://ezproxy-prd.bodleian.ox.ac.uk:2360/view/Entry/97735?result=1&rskey=yJx3ii&.
[23] Ibid.
[24] *A Dictionary of Finance and Banking*, s.v. "interest," accessed January 17, 2020, https://ezproxy-prd.bodleian.ox.ac.uk:2518/view/10.1093/acref/9780199664931.001.0001/acref-9780199664931-e-1863?rskey=J2vjza&result=2603.

forbearance. "Use" has less to do with time than with right to employ the lent money. "Forbearance," however, directly associates the reason for paying interest with the delay in repayment of the principal. The second definition does not delineate the reason for the charge beyond that it is "for borrowing a sum of money." It would appear, however, that it is the *possession* of the money over time, rather than necessarily its use, that provides a reason for the payment of interest. The temporal aspect of this inference is supported by the explanation that an interest rate is given in relation to specified period. Time, though not the exclusive reason for interest, is nevertheless more integrally associated with "interest" than it is with "*interesse*."

Two other aspects are clear in these definitions: "interest" specifies an addition and the kind of quid pro quo is money. "Interest" is described as "money paid" and as a "charge made" in addition to the repayment of the loaned money. Like *interesse*, interest is an addition. The *OED* specifies that this addition comes in the form of money and that money is what is lent. Money is both the "quid" lent and the "quo" returned, both as repaid principal and as interest. Presumably, the "charge" specified in the second definition is also money. There is, however, an instance in which a "quid" other than money as currency can have interest charged on it. It appears in the case of installment and credit sales. Presumably these transactions are included in the *OED*'s noting that interest can also be charged "for forbearance of a debt." In installment and credit sales, some asset is transferred without immediate payment or at least full payment. Although installment and credit sales sometimes occur without an interest charge, in certain scenarios an interest charge is the norm.[25]

A prime instance is the typical mortgage contract: A house is purchased for a specified sum. The lender is a third party to the sale and fronts all or part of the money to

[25] For an overview of installment and credit sales and their differences, see Investopedia, "What are the Differences between Installment Sales and Credit Sales?" Jan 30, 2020, accessed June 5, 2020, https://www.investopedia.com/ask/answers/101314/what-are-differences-between-installment-sales-and-credit-sales.asp.

make the purchase, and the buyer then owes the lender the sum fronted plus interest. In this situation, although a house is transferred to the buyer-borrower and the house functions as collateral, the loan is fixed according to the sum of money lent and not the value of the house as such. Money thus remain the primary quid pro quo of the transaction. Other examples are less clear. For instance, a car dealership sells a vehicle on credit with itself as lender. No money has changed hands at the point of sale, but the buyer-borrower owes the car dealership a specified amount more than the cash price and this price is specified in terms of a sum of money. Even though money has not changed hands, the debt functions as if the car dealership had given itself the purchase money and then charged the buyer interest on that amount. Hence, money—even if only notional money and not cash—remains the essential quid pro quo of transactions in which interest is charged.

In sum, the three elements outlined so far take form in these definitions. First, the quid pro quos, the values exchanged, are (primarily) money. Second, the exchange occurs in an intertemporal, credit transaction. Finally, the money paid is an addition to the repayment of the principal, an addition (usually) calculated as a percentage of what was lent and not based on some extrinsic factor(s). These three elements—money, credit, and addition based on possession or use of the loaned funds—persist with changing nuances when considered in current usage.

An illustration of this persistence can be found in recent issues of financial periodicals, such as the *Wall Street Journal*. For example, most of the articles discussing interest in the relevant sense from the January 17, 2020 issue of the *Wall Street Journal* mention "interest rates," especially declining or already low interest *rates*.[26] An interest rate

[26] E.g., Amrith Ramkumar, "Google Parent Passes $1 Trillion Valuation, Joining Select Club," *Wall Street Journal*, Eastern edition, January 17, 2020; Greg Ip, "Capital Account: Economic Impact of Climate Change Is Here," *Wall Street Journal*, Eastern edition, January 17, 2020; Nick Timiraos, "Trump Readies Nominations for Fed Board," *Wall Street Journal*, Eastern edition, January 17, 2020; Amrith Ramkumar, "Stocks Continue Quiet Ride, But Slow Pace Unsettles Some," *Wall Street Journal*, Eastern edition, January 17, 2020; Justin Baer, "BNY Mellon Stock Drops on Costs Forecast," *Wall Street Journal*, Eastern edition, January 17, 2020; Frances

has two elements: a percentage of the principal and a specified length of time.[27] The amount of increase to be repaid is directly in proportion to the amount loaned and the duration of the loan. It is clear from these articles that money underlies the contracts and that the compensation owed to creditors is measured by time. Another article in this same issue alludes to the distinction between equity and credit. It quotes an executive from a mortgage company as stating that "his retiree customers are 'qualifying based on their pensions, Social Security, dividends and interest that they are withdrawing on now.'"[28] A dividend generally represents a percentage of a company's profits. Divided among equity shareholders, these profits contrast with interest which arises from a loan, a credit transaction. While dividends may be paid out at regular intervals, remuneration based on equity is linked to a company's, or underlying asset's, performance; conversely, interest, as commonly understood and discussed above, is based on the use or holding of lent funds over a period of time.

Although interest has been described as a payment based on the principal sum, interest can itself become part of that sum through compounding. It is common to distinguish between simple interest and compound interest. Whereas in the former "the charge is calculated on the sum loaned only," in the latter "the charge is calculated on the sum loaned plus any interest that has accrued in previous periods."[29] In other words, the interest from previous periods is subsumed into the principal. Time can powerfully amplify the total

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Yoon, "Property Bonds Add to Deluge from China," *Wall Street Journal*, Eastern edition, January 17, 2020; Justin Lahart, "Consumers' Glass Is Half Empty," *Wall Street Journal*, Eastern edition, January 17, 2020; Jon Sindreu, "Global Rebound Doesn't Hang on Trump's Trade Deal," *Wall Street Journal*, Eastern edition, January 17, 2020; Telis Demos, "Morgan Stanley Refuses to Rest on Its Laurels," *Wall Street Journal*, Eastern edition, January 17, 2020.

[27] See above the definition from *A Dictionary of Finance and Banking*.

[28] Katy McLaughlin, "Jumbo Jungle: Never Too Old to Borrow," *Wall Street Journal*, Eastern edition, January 17, 2020.

[29] *A Dictionary of Finance and Banking*, s.v. "interest," accessed January 17, 2020, https://ezproxy-prd.bodleian.ox.ac.uk:2518/view/10.1093/acref/9780199664931.001.0001/acref-9780199664931-e-1863?rskey=J2vjza&result=2603. An archaic synonym for compound interest is "anatocism," which derives from the Greek "*anatokismos*." This word combines the prefix "*ana-*" (again) with the verb "*tokizein*" (to lend at *tokos*). "*Tokos*" enters the discussion of the signification of "usury" in Chapter 3. See *Oxford English Dictionary*, s.v. "anatocism," accessed December 11, 2019, https://ezproxy-prd.bodleian.ox.ac.uk:2360/view/Entry/7163?redirectedFrom=anatocism&.

amount owed with interest of either sort, but especially compound interest. Table 1 illustrates differences between simple interest and compound interest with a monthly compounding interval. As illustrated by Table 1, compounding has an amplifying effect. The effect is modest at first and then grows more pronounced. The interest charged on the interest accrued in previous periods also exemplifies interest as a charge for forbearance, rather than for use of what has been lent. Whereas the $100,000 may be used to construct a building or purchase retail stock, repayment of the accrued interest is merely deferred.[30]

Table 1

	Simple Interest			**Compound Interest** (Monthly Interval)		
$100,000 loan at 10% per annum	Year Total	Running Total	Balance	Year Total	Running Total	Balance
Year 1	$10,000	$10,000	$110,000	$10,471	$10,471	$110,471
Year 2	$10,000	$20,000	$120,000	$11,568	$22,039	$122,039
Year 3	$10,000	$30,000	$130,000	$12,779	$34,818	$134,818
Year 4	$10,000	$40,000	$140,000	$14,117	$48,935	$148,935
Year 5	$10,000	$50,000	$150,000	$15,595	$64,531	$164,531
Year 6	$10,000	$60,000	$160,000	$17,229	$81,759	$181,759
Year 7	$10,000	$70,000	$170,000	$19,033	$100,792	$200,792
Year 8	$10,000	$80,000	$180,000	$21,026	$121,818	$221,818
Year 9	$10,000	$90,000	$190,000	$23,227	$145,045	$245,045
Year 10	$10,000	$100,000	$200,000	$25,659	$170,704	$270,704

Legal Definitions and Usage

English and American jurisprudence retains the broad outlines of the signification of "interest" detailed above. In his influential *Commentaries on the Laws of England*, the jurist William Blackstone (1723–1780) places his discussion of interest within a broader discussion of contracts.[31] He defines a contract as "an agreement, upon *sufficient consideration*."[32] He explains that "in all contracts, either express of implied, there must be something given in

[30] Of course, the principal need not be used for anything either: the original $100,000 loan could be left in a drawer or non-interest-bearing account. In such a case, interest could be understood as for either forbearance or the right to use the loaned funds, even if they remain unused.
[31] William Blackstone, *Commentaries on the Laws of England* 2.30 (Oxford: Clarendon Press, 1766), 442ff.
[32] Ibid., 444.

exchange, something that is mutual or reciprocal. This thing," he continues, "which is the price or motive of the contract, we call the consideration."[33] "Consideration" thus covers the same ground as "quid pro quo" in this thesis. In distinguishing between various kinds of "valuable consideration," Blackstone assigns money loans to the exchange of thing for thing, rather than to the exchange of service for services, or forbearance for forbearance, or some mixture of these kinds of consideration.[34] Money lending, for Blackstone, is a subspecies of contracts of hiring and borrowing.[35] These sorts of contracts are broader than the *mutuum* discussed above in that the hired or borrowed thing is not necessarily a consumable fungible, as illustrated by Blackstone's example of hired or borrowed horse.[36] Time factors into both hiring and borrowing, since "they are both contracts, whereby the possession and transient property is transferred for a particular time or use, on condition to restore the goods so hired or borrowed, as soon as the time is expired or use performed."[37] Properly speaking, interest falls under hiring rather than borrowing for Blackstone, since "hiring is always for a price, a stipend, or additional recompence; borrowing is merely gratuitous."[38]

Blackstone described "interest" as a "species of this price or reward."[39] He writes that "when money is lent on a contract to receive not only the principal sum again, but also an increase by way of compensation for the use; which is generally called *interest* by those who think it lawful, and *usury* by those who do not so."[40] In this formulation, "interest" is not merely neutral, but positive: acceptance of its lawfulness is imbedded in the term. Besides underscoring this positive import, Blackstone's statement also clearly delineates recurring elements of the signification of "interest." First, money is the named quid pro quo in

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[33] Ibid.
[34] See ibid., 444–445.
[35] See ibid., 453ff.
[36] Ibid., 453.
[37] Ibid.
[38] Ibid.
[39] Ibid., 554.
[40] Ibid., 455.

exchanges subject to interest. Second, the parties to the contract are related as lender and borrower. In other words, the sum of money transferred from one party to the other must be returned after a time. Third, there is an increase beyond the transferred sum, the use of which provides, at least part of, the motive for the increase. Unlike for *interesse*, the expressed basis for the addition is not some extrinsic factor but use of the loaned sum itself.

The elements of interest discernable in Blackstone's *Commentaries* are still evidenced in British legislation and by the country's regulatory bodies, though with some developments. Within the *Financial Services and Markets Act 2000*, interest arises on more than straightforward loan contracts. In one of its provisions, the act associates interest with the accepting of deposits. Among the defining characteristics of a deposit is that it is (1) "a sum of money," (2) "paid on terms . . . under which it will be repaid," (3) "with or without interest or a premium."[41] In this formulation, money is the named quid pro quo, and other forms of quid pro quo are explicitly excluded.[42] A kind of debt contract is specified with a perhaps indefinite duration, since the deposited money must be repaid "either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it."[43] Finally, interest (or a premium) can be paid in addition to repayment of the deposited money.[44] The sense of interest as an addition on a money loan contract is confirmed by the U.K.'s financial watchdog from 2001–2013, the Financial Services Authority (FSA). On its now-defunct Money Made Clear website, the FSA defines "interest"

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[41] *Financial Services and Markets Act 2000*, c. 8, accessed March 5, 2020, http://www.legislation.gov.uk/ukpga/2000/8.
[42] See ibid.: The deposited sum of money is "paid on terms . . . which are not referable to the provision of property (other than currency) or services or the giving of security."
[43] Ibid.
[44] The implicit legal distinction between "interest" and "premium" may allow for including depositing within Islamic banking, as will be discussed in the conclusion to Part I.

simply as "the charge made by lenders when you borrow their money."[45] A loan contract occasions the charge and the quid pro quo exchanged is money.

Subsequent legislation offers indications of likeminded understandings of "interest." The Financial Services Act 2012 places interest under its catchall term "charges" in conjunction with credit agreements. The act defines "charges" as those "charges payable, by way of interest or otherwise, in connection with the provision of credit under the regulated credit agreement, whether or not the agreement itself makes provision for them and whether or not the person to whom they are payable is a party to the regulated credit agreement or an authorised person."[46] According to this definition, "interest"—at least when categorized as charges—is a payable charge related to a credit transaction. The act recognizes the authority of the Financial Conduct Authority (FCA), the successor of the FSA, to "pay any interest on, any relevant borrowing."[47] This confirmation is also evident in a provision regarding the Treasury, in which the financial assistance provided by it is deemed recovered "where, in the case of a loan, the principal of the loan has been repaid and all interest due under the terms of the loan has been paid."[48] Here, once again, "interest" signifies a sum paid beyond the principal in what is evidently a money loan.

Although developing a broadly similar signification for "interest" as that found in recent British legislation, American law has added its own contours to the outlines delineated by Blackstone. The National Bank Act of 1864 (NBA) and its ensuing interpretation is vastly influential in U.S. finance, especially in its credit card industry. As unanimously upheld by the Supreme Court in *Marquette National Bank of Minneapolis v. First of Omaha Service*

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[45] "Money Made Clear," accessed March 5, 2020, https://web.archive.org/web/20080925193026/http://www.moneymadeclear.fsa.gov.uk/products/mortgages/mortgages_jargon_buster.html.

[46] *Financial Services Act 2012*, c. 21, accessed March 5, 2020, http://www.legislation.gov.uk/ukpga/2012/21/enacted.

[47] Ibid.

[48] Ibid.

Corp. in 1978, section 85 of the NBA, codified as 12 U.S.C. 85, allows national banks, as distinguished from state banks, to "take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located."[49] Kevin G. Toh summarizes the force of the ruling in *Marquette*: "The net result of the decision in Marquette is that national banks sitting in one state may 'export' the most favored lender rates allowed by the laws of that state to residents of other states."[50] The passage of the Depository Institutions Deregulation and Monetary Control Act (DIDA) in 1980 granted this "same privilege to FDIC-insured state banks."[51] Among the effects of these legislative and juridical moves was that credit card operations of many banks emigrated to jurisdictions with no or raised interest-rate ceilings.[52] Given the importance of the NBA and related law, the operative signification of "interest" plays an outsized role in American finance.

In 1996, the U.S. Comptroller of the Currency offered the following delineation of "interest" for purposes of 12 U.S.C. 85:

> The term ''interest'' as used in 12 U.S.C. 85 includes any payment compensating a creditor or prospective creditor for an extension of credit, making available of a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, not sufficient funds (NSF) fees, overlimit fees, annual fees, cash advance fees, and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports.[53]

Unpacking the implications of this regulation is aided by a unanimous ruling by the Supreme Court that upheld this delineation, specifically the classification of late fees as interest.

[49] 12 U.S.C. 85; *Marquette National Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S. 299 (1978).
[50] Kevin G. Toh, "Are Credit-Card Late Fees Interest: Delineating the Preemptive Reach of Section 85 of the National Bank Act of 1864 and Section 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980," *Michigan Law Review* 94, no. 5 (1996): 1295–1296.
[51] Ibid., 1296. Federal Deposit Insurance Corporation (FDIC) is a U.S. government agency that insures deposits.
[52] Toh, 1296.
[53] 12 C.F.R. 7.4001(a).

Writing for the court in *Smiley v. Citibank* (1996), Justice Antonin Scalia acknowledges the ambiguity of the underlying statute, but upholds the division between interest and non-interest payments found in the attending regulation:

> To be sure, in the broadest sense all payments connected in any way with the loan—including reimbursement of the lender's costs in processing the application, insuring the loan, and appraising the collateral—can be regarded as "compensating [the] creditor for [the] extension of credit." But it seems to us quite possible and rational to distinguish, as the regulation does, between those charges that are specifically assigned to such expenses and those that are assessed for simply making the loan, or for the borrower's default.[54]

Scalia acknowledges that all the charges specified could be considered interest under the regulation's definition. Yet, he accepts the regulation's distinction that "interest" signifies "[charges] assessed for simply making the loan, or for the borrower's default," but not "charges that are specifically assigned to [certain] expenses."[55] The signification of "interest" within the upheld regulation thus retains, sheds, and assumes salient features.

First, money presumable remains the primary exchange value, given that the regulation pertains to national banks. Similarly, as elsewhere, a credit transaction remains here an element of the signification of "interest." Yet, the signification lacks any bond with the amount of the loan and the duration of the loan period. Scalia repudiates the argument that "the late fees charged . . . do not constitute 'interest' because they 'do not vary based on the payment owed or the time period of delay.'"[56] In denying the necessity of applying such a reading to the NBA, Scalia cites entries in several nineteenth-century legal dictionaries as well as the Supreme Court's opinion in *Brown v. Hiatts*. In this case, decided in 1872, the court defined "interest" as "the compensation allowed by law, or fixed by the parties, for the use or forbearance of money, or as damages for its detention."[57] Accordingly, interest could, though, need not be charged as a rate of return based on the amount loaned. It could designate

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[54] *Smiley v. Citibank*, 517 U.S. 735 (1996).
[55] Ibid.
[56] Ibid.
[57] *Brown v. Hiatts*, 82 U.S. 177 (1872).

a fixed charge, though still related to use of money for a time. Furthermore, the extension of credit can be merely potential, as in the charges associated with opening a line of credit (whether it is used or not) as well as in annual fees and membership fees. Interest is here presented as compensation for the initial extension of this credit, the possibility of extension (as in the line of credit), and extension beyond the initial term. Equally important is what the regulation excludes from the signification of "interest."

The Comptroller of the Currency explicitly distinguishes from interest, but with possible exceptions, fees associated with costs ancillary to the extension of credit, including fees for appraisals, procurement of credit reports, and preparation or notarization of documents. This marks a stark difference from "*interesse*," under which these would likely have fallen under the rubric of *damnum emergens*. These are, after all, real costs incurred by banks. Furthermore, this regulation excludes from the signification of "interest" any payments collected explicitly for guaranteeing the loan. Certainly, banks may consider interest charges in general as covering these expenses, but levies explicitly covering these expenses do not fall under this signification of "interest." As these distinctions show, unlike "*interesse*," loss is not inherently bound to these legal significations for "interest."

Composition of Interest Rates according to Economists

In addition to the familiar simple and compound interest detailed above, economists distinguish between nominal and real interest rates.[58] This distinction, and subsidiary distinctions, in delineating the composition of interest rates opens a view into the signification(s) of "interest" within economic circles. When compared to the "real interest

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[58] Another usage of "nominal interest rate" is in its distinction from the "effective interest rate." In this usage, a nominal interest rate does not take compounding into account, whereas an effective interest rate does. For example, an interest rate might be stated as 24% per year (2% per month). This would be the nominal rate. If compounding occurs on a monthly basis, the effective rate would be 26.82% per year. A moral concern arising from the divergence between these two rates is discussed in Chapter 7.

rate," "nominal interest rate" refers to the observed rate of interest.[59] If, for example, a credit card states that the interest rate is 20%, this stated rate would be for economists the nominal interest rate. Conversely, the real interest rate adjusts for inflation. To take the credit card example, if the (expected) inflation rate were 2%, then the real interest rate would be 18%. This basic formulation is that of the American economist Irving Fisher (1867–1947).[60] Alexander Pierre Faure observes: "Essentially, Prof Fisher hypothesised that lenders demand a premium over the real rate of interest to compensate for the inflation-induced attrition of their monies lent."[61] According to this formulation, a payment for losses due to inflation is not actually interest, even though interest rates normally reflect the charge for these losses.

Inflation-indexed bonds (IIBs) provide a market reflection of the distinction between nominal and real interest rates. As their name suggests, IIBs isolate the (real) interest rate from variations in purchasing power or inflation.[62] For U.S. Treasury Inflation-Protected Securities (TIPS), for example: "[The] principal is adjusted by changes in the Consumer Price Index. With inflation (a rise in the index), the principal increases. With a deflation (a drop in the index), the principal decreases."[63] Although taxable, increases in the principal of TIPS are distinguished from interest.[64]

The concepts of nominal and real interest rates attempt to account for the reality that the stated rate does not necessarily reflect the true rate of addition to the lender's buying power. The portion of nominal interest that covers inflation is not an addition to the lender's buying power, but an antidote against loss of it. This portion of the interest payment that

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[59] Alexander Pierre Faure, "Interest Rates 3: Composition of Interest Rates," *SSRN Working Paper Series* (2014): 7.
[60] Faure, "Interest Rates 3," 7.
[61] Ibid.
[62] See *A Dictionary of Economics*, s.v. "index-linked," accessed January 22, 2020, https://ezproxy-prd.bodleian.ox.ac.uk:2518/view/10.1093/acref/9780199696321.001.0001/acref-9780199696321-e-1552?rskey=2XAyEO&result=4.
[63] "TIPS in Depth," accessed May 7, 2020, https://www.treasurydirect.gov/indiv/research/indepth/tips/res_tips.htm.
[64] See "TIPS: Tax Considerations," accessed January 22, 2020, https://www.treasurydirect.gov/indiv/research/indepth/tips/res_tips_tax.htm.

covers inflation perhaps better reflects earlier significations of interest, that is of "*quod interest*" and "*interesse*." It at least explicitly compensates for actual losses due to inflation—in medieval terms, *damnum emergens*.

Economists have added further complexity to the composition of nominal interest.[65] This further complexity adds greater nuance to an economic signification for "interest." Largely representing the move toward increased complexity, David Blake's delineations of four elements of a nominal interest rate: (1) real interest rate, (2) expected inflation rate, (3) liquidity premium, and (4) risk premium.[66] Faure explains that the real interest rate is "the rate of interest expected / demanded in a risk-free and inflation-free economic milieu."[67] Elements (3) and (4) would be subsumed in Fisher's understanding of "real interest." A liquidity premium reflects lenders' presumed preference to extend credit for less time rather than more time.[68] Finally, a risk premium comprises several kinds of risk experienced by creditors. Faure offers the following delineation:

> The *risk premium* (σ), made up of specific risk (aka unsystematic risk and diversifiable risk) and market risk. Specific risk has four dimensions: management risk, business / operating risk, financial risk and collateral risk. Market risk (also known as systematic risk and undiversifiable risk) is the risk of default of the issuer, the risk of changes in capital value (which increases with term to maturity), and reinvestment risk (the risk of reinvesting coupon payments at lower than expected rates).[69]

Costs associated with some of these risks are familiar from the signification of "*interesse*." For example, the dimensions of specific risk are related to real loses (*damnum emergens*) that a bank might experience over the course of a loan. Reinvestment risk is akin to the risk of lost profits (*lucrum cessans*), since it is a risk of not being able to invest as lucratively as expected. Furthermore, the risk of default was debated as a justification for deeming a

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[65] Faure, "Interest Rates 3," 8.
[66] Ibid.
[67] Ibid.
[68] Ibid.
[69] Ibid.

payment for credit as *interesse*. In sum, this greater complexity in the delineation of interest's composition highlights both similarity and dissimilarity with understandings of *interesse*: similarity because the risk of these costs are included in the signification of the "nominal interest rate," but dissimilarity because they are excluded from that of the "real interest rate."

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A single signification for "interest" will forever remain elusive. Although the Latin antecedent for "interest" contained a notion of recompense for specific sorts of losses, this is often no longer the case. Lexical definitions of interest associate the addition of interest with the use of money or the holding of money over time. The U.S. government, at least, allows for costs associated with lending to be compensated as interest, but not explicitly. Finally, although economists associate costs with "nominal interest," "real interest" has become an addition to loaned capital devoid of risks of loss of any sort. In comparing the significations of "interest" with those of "*riba*" and "usury," the term's multivalence will certainly nuance any conclusions drawn as to their possible correspondence.

Chapter 2

Signification of "Riba"

On December 23, 1999, the Supreme Court of Pakistan ordered the Islamization of the country's banking system. Although the decision was set aside in 2002 and the case was remanded to the lower Federal Shariat Court, the original judgment offers a definition of *riba* consonant with those common among supporters of Islamic banking. The judgment defined "*riba*" as "any amount, big or small, over the principal in a contract of loan or debt."[1] The judgment goes on to state that this designation held "regardless of whether the loan is taken for the purpose of consumption or for some productive activity."[2] This expansive definition of "*riba*" is said to encompass "all prevailing forms of interest, either in the banking transactions or in private transactions."[3] This definition squares with those of Abdul-Rahman and Chapra.

Abdul-Rahman defines "*riba*" as "the act of charging rent for the use of money."[4] Chapra defines "*riba*" thus:

> *Ribā* literally means increase, addition, expansion or growth. . . . In the *Sharī'ah*, *ribā* technically refers to the 'premium' that must be paid by the borrower to the lender along with the principal amount as a condition for the loan or for an extension in its maturity. In this sense, *ribā* has the same meaning and import as interest in accordance with the consensus of all the *fuqahā* (jurists) without exception.[5]

Considered through the elements delineated in the previous chapter, namely (1) kinds of quid pro quo, (2) credit, and (3) the payment of an addition, these definitions pieced together suggest the following: Abdul-Rahman's definition suggests that the tangible quid pro quo is

[1] Maulana Muhammad Taqi Usmani, *The Historic Judgment on Interest* (Karachi, Pakistan: Idaratul-Ma'arif, 2000), 159. Cf. Ibid., 160.
[2] Ibid., 159. Cf. Ibid., 160.
[3] Ibid., 160.
[4] Abdul-Rahman, 9.
[5] Muhammad Umer Chapra, *Towards a Just Monetary System: A Discussion of Money, Banking and Monetary Policy in the Light of Islamic Teachings* (Leicester, U.K.: Islamic Foundation, 1985), 56–57.

money, or at least its use. The other definitions remain indefinite on this point. The contract type is portrayed as a loan or some other form of credit transaction. Finally, "*riba*" designates either (a) an addition or premium, regardless of its extent, or (b) the act of charging this addition. So far, much appears like the signification of "interest," a link that the Pakistan's high court and Chapra highlight. Although "*riba*" is said to cover all forms of modern interest, "*riba*" should not necessarily be reduced to "interest." In contrast to a modern tendency to view these terms as coincident, the Qur'an, Hadith, and schools of *fiqh* suggest a varied set of significations for "*riba*."[6]

Qur'anic Signification of "*Riba*"

The notion of "*riba*" as an addition or premium can be traced back to the word's etymology. The noun "*riba*" derives from the triliteral Arabic root r-b-w (*ra'*-*ba*-*waw*) and occurs eight times in the Qur'an.[7] In addition to these eight occurrences, various other forms of the same root appear in the Qur'an: eight times in verbal form, twice in active-participial form, and twice in an additional substantive form.[8] These forms point toward a common, underlying import. Verbal forms can indicate increase in continuous quantities (as in "to swell" or "to grow"),[9] in discrete quantities (as in "to make numerous"),[10] in stature or maturity (as in "to bring up" or "to raise"),[11] and in wealth or reward.[12] Active-participial forms indicate "rising" and "exceeding."[13] One substantive form other than "*riba*" appears for this root in the Qur'an; *rabwatin* indicates "high ground" or "a hillock."[14] The common

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[6] Cf., Abdulkader Thomas, "What is *Riba*?" in *Interest in Islamic Economics: Understanding* Riba, ed. Abdulkader Thomas (New York: Routledge, 2006), 125–126.
[7] Qur'an 2.275 (thrice), 2.276, 2.278, 3.130, 4.161, and 30.39.
[8] In verbal form: Qur'an 2.276, 16.92, 17.24, 26.18, 22.5, 30.39 (twice), and 41.39; in active-participial form: Qur'an 13.17 and 69.10; in substantive form: Qur'an 2.265 and 23.50.
[9] See Qur'an 22.5 and 41.39.
[10] See Qur'an 16.92.
[11] See Qur'an 17.24 and 26.18.
[12] See Qur'an 2.276 and 30.39.
[13] See Qur'an 13.17 and 69.10 respectively.
[14] See Qur'an 2.265 and 23.50. In the former of these passages, the prefix "*bi*," which means "on," actually precedes the word. Thus, the form is "*birabwatin*," "on a hillock."

meaning that suggests itself for these forms is quantitative or qualitative increase.[15] In the Qur'an, "*riba*" seems to share this underlying meaning. Qur'an 30.39 twice employs verbal instantiations of the triliteral root r-b-w in discussing *riba*: "that which you give in *riba* that it might increase (*liyarbuwa*) through other people's wealth does not increase (*yarbu*) with God." Qur'an 2.276 seems to make a similar allusion in contrasting *riba* with acts of charity: "God blights *riba* and causes acts of charity to grow (*wayur'bi*)." It seems fair to conclude from these two passages that "*riba*" shares in the common meaning of increase, based on the seeming allusions to a common etymology with words that take this underlying meaning.[16]

Discussions of "*riba*" appear in just four of the Qur'an's 114 suras: 2.275–279, 3.130, 4.161, and 30.39. In this handful of verses (ayas), much remains obscure regarding the exact signification of "*riba*." Although the Qur'an offers no ready definition for "*riba*,"[17] usage and other textual clues hint at a signification more precise than indicated by the term's raw etymology. For instance, Qur'an 3.130 discusses the exaction of *riba* in terms of doubling and multiplying. This often is taken to indicate that "*riba*" in the Qur'an arises in the context of a loan or credit sale.[18] Specifically, classical exegesis suggests that this passage refers to a practice widespread in pre-Islamic Arabia.[19] Instead of a sum being specified from a loan's disbursement, a sum in addition to the principal was imposed as a penalty for late repayment.[20] Put another way, "*riba*" in this passage refers specifically to an addition contracted, not as a condition for issuance of a loan, but for its continuance beyond a due date. Mahmoud A. El-Gamal suggests a slightly different and more detailed understanding of pre-Islamic *riba* (*riba al-jahiliyya*) that accounts for both the "doubling" and the

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[15] Saeed, *Islamic Banking and Interest*, 20.
[16] Cf. Ibid.
[17] This same point is readily acknowledged in the literature. See, for example, Emad H. Khalil, "An Overview of the *Sharia'a* Prohibition of *Riba*," in *Interest in Islamic Economics: Understanding* Riba, ed. Abdulkader Thomas (New York: Routledge, 2006), 58.
[18] See, for example, El-Gamal, 50.
[19] Saeed, *Islamic Banking and Interest*, 23.
[20] Ibid.

"multiplying." He explains that pre-Islamic *riba* (*riba al-jahiliyya*) was "charged at the at the maturity of debts from interest-free loans or credit sales, and compounded at later maturity dates."[21] This passage thus suggests that "*riba*" in the Qur'an denotes a particular form of addition consequent on a loan or credit sale, an addition paid to extend the date of maturity and perhaps compounded with additional extensions. The wording also seems to imply that "*riba*" signifies an addition calculated as a percentage. From this implication, the kinds of quid pro quo may be inferable. Saleh distinguishes two kinds of loan contract within the shari'a: *'arriya* and *qard*.[22] In the former, a particular good is lent, used for a time by the borrower, and then returned to its owner;[23] in the latter, fungible commodities are lent for a time and their equivalents, rather than the items themselves, are returned.[24] If *riba* is consequent on a loan in Qur'an 3.130, then it would appear to be on a *qard*, since setting a rate of return on loaned goods is most obvious when those goods are fungible commodities rather than particular goods. If this inference is correct, then fungible commodities represent the kinds of quid pro quo subject to *riba*.

A passage in the Qur'an's fourth sura offers little insight into the signification of "*riba*" except by way of inference. Qur'an 4.161 denounces the Jews for infidelity to the prohibition of *riba* enjoined on them. They are said to have turned from God's way (Qur'an 4.160) and taken *riba*, "though they had been forbidden it" (Qur'an 4.161). Since elsewhere in the Qur'an no additional prohibition of *riba* is directed at the Jews, this verse likely refers to the prohibition found in the Jewish Scriptures and rabbinic teaching.[25] Furthermore, since no distinctions are drawn between the *riba* forbidden to the Jews and that described elsewhere in the Qur'an, this *aya* appear to envision a signification for "*riba*" consonant with

[21] El-Gamal, 50.
[22] Saleh, 44–45.
[23] Cf. ibid., 44.
[24] Cf. ibid., 45.
[25] Cf. "Commentary," in *The Study Quran: A New Translation and Commentary*, ed. Seyyed Hossein Nasr (New York: HarperOne, 2015), 264.

that found in Jewish sources and elsewhere in the Qur'an. As we will have chance to discuss in more detail in Chapter 3, the Hebrew term "*neshek*" seems to indicate an addition in credit transactions. If this signification is comprehended by the Qur'an, then reference to the *riba* forbidden to the Jews confirms a signification of "*riba*" as an addition arising from credit transactions.

There is some dispute, however, regarding whether all *riba* in the Qur'an should be considered as increase on credit transactions. Some exegetes have read Qur'an 30.39 as indicating a form of *riba* unrelated to credit. As quoted above, Qur'an 30.39 discusses that which is *given* in *riba* "that it might increase through other people's wealth." For some exegetes, "*riba*" in this statement signified a gift imparted with the expectation that a subsequent, better gift would at some point be reciprocated.[26] Saeed rejects this view, pointing to these exegetes' lack of examples of "*riba*" in signifying a gift anywhere else.[27] Be that as it may, "*riba*" in the view of these exegetes remains an arrangement in which an increase is expected in the future, even if no formal loan arrangement is thereby specified.

The Qur'an, thus, offers some indication of what "*riba*" signifies in its *ayas*. It appears to indicate increase in credit transactions, with the possibility of its extending to quasi-loans where the "gift" that is extended is given with the expectation of increase in the form of a better gift. Even with these indications, details about the signification of "*riba*" within the Qur'an remains hazy, a conclusion supported by some hadiths.

Hadith's Signification of "*Riba*"

Like the Qur'an, the Hadith offers no explicit definition of "*riba*."[28] Usage, however, reveals significations referring and comparable to, as well as dissimilar from, those suggested in the Qur'an's pages. Some hadiths associate "*riba*" with the Qur'anic prohibition of *riba*,

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[26] Usmani, 21; Saeed, *Islamic Banking and Interest*, 21.
[27] Saeed, *Islamic Banking and Interest*, 21.
[28] Cf. Thomas, 127.

thus suggesting a correspondence between the term's signification in the Qur'an and the Hadith. Other hadiths belie this suggestion. Even though some hadiths make explicit that *riba* occurs in loan contracts with an addition, others suggest that no addition is necessary for *riba* to occur in a loan contract. Still others suggest that *riba* can occur in non-credit transactions. "*Riba*" is thus a multivalent term in the Hadith.

A major development in the Hadith is the enumeration of kinds of quid pro quo.[29] Six fungibles repeatedly appear in *ribawi* transactions: gold, silver, wheat, barley, dates, salt. Although no canonical hadith declares the list comprehensive, these six fungible commodities play a directive role in whether a transaction is deemed "*riba*." In fact, they sometimes supplant, at least apparently, the elements of addition and credit. Indeed, within hadiths specifically mentioning at least one of these commodities, either the element of credit or addition need not appear for a transaction to contain *riba*. Before considering these hadiths more closely, it is worthwhile to consider transactions involving credit and the payment of an addition, but not one of the six fungibles. As will be noted, trading in a quid pro quo other than these six is considered *riba* only under specific circumstances.

Hadiths on trade in animals and slaves support the conclusion that the kinds of quid pro quo matter in designating a transaction as involving *riba*. A passage in Sunan al-Bukhari, for instance, explicitly precludes *riba* from exchange in animals, or at least in camels and sheep. Significantly, it even specifies that *riba* is not to be found in such exchanges where credit is extended and a numerical addition is made:

> And Ibn 'Umar bought a mount (riding camel) for four camels which he promised to deliver at Ar-Rabaḏẖa. Ibn 'Abbās said, "One camel may be better than two." Rāfi' bin Ḵẖadij once bought a camel for two camels and he delivered one instantly and said, "If Allāh will, I will bring you the other tomorrow without delay." And said Ibn Al-Musaiyab. "There is no *Ribā* (in animals) i.e., in selling one camel for two, or one sheep for two sheep on credit."

[29] Some modern Islamic commentators use the word "countervalue" to express what is exchanged. Because of this term's usual use in martial contexts, I have chosen to use "quid pro quo," though the former term appears in some quotations.

Ibn Sīrīn said, "There is no harm in selling one camel for two on credit."[30] The bartering of camels on credit, even when there is a numeric addition, does not contain *riba*. The reason for this seems to be kind of quid pro quo—animals.

A *sahih* hadith in Sunan Abu Dawud helps to further refine the sort of addition signified by "*riba*." In the hadith, Muhammad repays a borrowed young camel with a different camel "of high quality, in its seventh year."[31] Strikingly, camels in this transaction appear fungible: the exact camel is not returned. While no numeric addition is made (i.e., one camel is repaid for one camel lent), a qualitative addition is made. No mention is made of *riba* in this hadith, but Muhammad here offers insight into the distinction between (prohibited) *riba* and this sort of addition. Muhammad justifies this qualitative addition as exemplary: "the best of people are those who are best in paying off their debts."[32] One possibility, given the hadith from Sahih al-Bukhari quoted above, is that this transaction in Sunan Abu Dawud does not qualify as *riba* because the exchanged goods are camels, rather than one of the six kinds of quid pro quo subject to *riba*. While possible, the emphasis of this hadith is the addition, as Muhammad speaks in terms of a general rule about repayment of debts. Two characteristics about this repayment are noteworthy: first, that the addition is qualitative rather than quantitative; second, that this addition appears to be voluntary as in not contracted. Emphasis should be given to this second characteristic, since it is debtors' being "best in paying off their debts" that Muhammad praises. Since *riba* is forbidden in the Hadith, it appears that an unstipulated addition is not *riba*. A hadith in Sahih al-Bukhari supports this conclusion. It mentions Muhammad's repaying an unspecified debt and giving "an extra amount."[33] The obverse of this finding is, of course, that *riba* is a stipulated addition.

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[30] Sahih al-Bukhari 34.108, vol. 3, 238–239.
[31] Sunan Abu Dawud 22.11 (3346), vol. 4, 70. Cf. Sahih al-Bukhari 43.7 (2393), vol. 3, 331–332.
[32] Sunan Abu Dawud 22.11 (3346), vol. 4, 70.
[33] Sahih al-Bukhari 43.7 (2394), vol. 3, 332.

Although some hadiths in Sunan Ibn Majah forbid or disapprove of the exchange of animals on credit, they do not describe such transactions as involving *riba*. One *sahih* hadith explicitly forbids exchanging animals on credit;[34] a *da'if* hadith does not go so far, merely recounting that Muhammad said that "'there is nothing wrong with selling animals, one for two, hand to hand,' but he disliked selling them on credit."[35] The latter of these hadiths even permits a numeric premium to be paid, so long as credit is not involved.

Muhammad gives the impression that slaves are not a class of quid pro quo subject to *riba*, perhaps even in credit transactions with a numeric addition. In a *sahih* hadith in Sunan an-Nasa'i, Muhammad exchanges two black slaves for one slave whose racial background is undisclosed.[36] Similarly, a *sahih* hadith in Sunan Ibn Majah recounts his purchasing the slave (and his future wife) Safiyyah (c. 610 – c. 670) for seven slaves.[37] The acquisition of Safiyyah is also recounted in Sahih al-Bukhari in a chapter on "the sale of a slave (for a slave) and an animal for an animal on credit," though no transactional arrangements are discussed in the hadith itself.[38] Commentary, however, suggests that Safiyyah was purchased on credit.[39] *Riba* is not detected in any of these transactions. This argument from silence seems justified because these hadiths chronicle actions without the disapprobation that attends much of the Hadith's treatment of *riba*. Since numeric addition and credit are present in these transactions, it appears that slaves are not a class of quid pro quo subject to *riba*.

There is at least one example, however, in which a quid pro quo other than one of the six commodities gives rise to *riba* within the Hadith. A *sahih* hadith in Sunan an-Nasa'i describes a curious pre-purchase as *riba*. Muhammad says: "Paying in advance for the

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[34] Sunan Ibn Majah (2270), vol. 3, 297.
[35] Sunan Ibn Majah (2271), vol. 3, 297.
[36] Sunan an-Nasa'i 44.66 (4625), vol. 5, 327; 39.21 (4189), vol. 5, 126.
[37] Sunan Ibn Majah (2272), vol. 3, 298.
[38] Sahih al-Bukhari 34.108 (2228), vol. 3, 239.
[39] Commentary on Sahih al-Bukhari 34.108 (2228), vol. 3, 239, n. 1.

offspring of the offspring of a pregnant animal (*Ḥabal Al-Ḥabalah*) is *Ribâ*."[40] Apparently, such transactions were common before Muhammad:

> A man would be the owner of a pregnant she-camel. Someone would strike a deal with him, saying: 'When your pregnant she-camel gives birth, and then the calf becomes young, and pregnant, and consequently gives birth to offspring; that offspring, would be mine. I pay you this much price for that would-be offspring in advance.'[41]

This hadith presents a challenge for a signification of "*riba*" on multiple grounds, not least of which being the class of quid pro quo. Although the contract carries the element of delay like a credit transaction—the animal must complete its gestation, its offspring must mature, become pregnant (provided it is indeed female) and give birth—it differs from exchanges of the six commodities described as "*riba*" in that the sum (presumably currency of some sort) paid now differs in class from what is later received, namely an animal born of a specific animal's offspring now in utero. Moreover, though the sum given may have been paltry compared to the value of the animal if eventually acquired, the element of an addition is undiscussed.

The application of "*riba*" to the above contract is an outlier to the Hadith's main signification(s) of "*riba*." Indeed, a hadith in al-Muwatta distinguishes a similar, though less complex transaction, from those containing *riba*: "'There is no usury [*riba*] in animals. There are three things forbidden in animals: *al-madamin*, *al-malaqih* and *habal al-habala*. *Al-madamin* is the sale of what is in the wombs of female camels. *Al-malaqih* is the sale of the breeding qualities of camels.' (i.e., for stud)."[42] These hadiths on the exchange of animals and slaves reveal some hesitancy, perhaps even inconsistency, in applying the designation of

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[40] Sunan an-Nasa'i 44.67 (4626), vol. 5, 328. Cf. ibid,. 44.67–68 (4627–4629), vol. 5, 328–329. For a detailed discussion of purchases of unborn animals, see Mahdi Zahraa and Shafaai M. Mahmor, "The Validity of Contracts When the Goods Are Not Yet in Existence in the Islamic Law of Sale of Goods," *Arab Law Quarterly* 17, no. 4 (2002): 392–395.

[41] Comments after Sunan an-Nasa'i 44.67 (4626), vol. 5, 328. Cf. Sunan an-Nasa'i 44.68 (4629), vol. 5, 329. See also, Al-Muwatta 31.26 (62), trans. 'A'isha 'Abdarahman at-Tarjumana and Ya'qub Johnson (Norwich, U.K.: Diwan Press, 1982), 298. Subsequent references to Al-Muwatta will be from this edition and will be cited by book, chapter, hadith number (in parentheses), and page number: e.g., Al-Muwatta 31.26 (62), 298.

[42] Ibid., 31.26 (63), 298.

"*riba*" beyond money loans and the exchange of certain commodities, such as precious metals and foodstuffs.

Several hadiths suggest a signification for "*riba*" containing the elements associated with "*riba*" in the Qur'an, namely the payment of an addition on a loan. Some hadiths even make explicit reference to the Qur'an's teaching on *riba*. Sahih al-Bukhari, Sahih Muslim, and Sunan Ibn Majah preserve a hadith concerning *riba* that is credited to 'A'isha, the favorite wife of Muhammad. While the hadith acknowledges the passage about *riba* in Qur'an 2.175ff, it does so without any explanation of its content.[43] In Sahih al-Bukhari's versions of the hadith, upon receiving these verses in a revelation, Muhammad "went to the mosque and recited them in front of the people."[44] No version of this hadith offers any clues to the signification of "*riba*" other than acknowledging the Qur'anic teaching. Furthermore, this acknowledgement does not necessarily imply a grasp of the signification of "*riba*" in the Qur'an as can be seen in another hadith. Bukhari's version of it simply states: "The last Verse (in the Qur'ān) revealed to the Prophet was the Verse dealing with *Ribā* (usury)."[45] A *da'if* hadith in Sunan Ibn Majah gives slightly more detail, perhaps highlighting a uncertainty regarding Qur'anic *riba*. After stating that the verse on *riba* was the final one to be revealed, it adds that Muhammad "died before he had explained it to us."[46] While it is possible that uncertainty is limited to *riba*'s prohibition and not to the term's signification, what is clear is that Qur'anic verses are not plain.

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[43] While the versions of the hadith in Sahih al-Bukhari (459 and 4540) seem to include all of the ayas on usury in sura 2, the versions in Sahih Muslim (22.12 (4046 [1580]), vol. 4, 298) and Sunan Ibn Majah (3382), vol. 4, 382) could be read as indicating only the latter ayas of the sura on *riba*.
[44] Sahih al-Bukhari 8.73 (459), vol. 1, 291. Cf. Sahih al-Bukhari 65.49 (4540), vol. 6, 60. In Sahih Muslim and Sunan Ibn Majah, no mention is made of Muhammad's reciting the verses; rather, after receiving the verses, Muhammad simply "came out and recited them to the people, then he forbade dealing in wine" (Sahih Muslim 22.12 (4046 [1580]), vol. 4, 298; cf. Sunan Ibn Majah ((3382), vol. 4, 382).
[45] Sahih al-Bukhari 65.53 (4544), vol. 6, 61.
[46] Sunan Ibn Majah (2276), vol. 3, 300.

Other hadiths, though not explicitly referring to the Qur'an, point to a form of *riba* consonant with that suggested in the Qur'an. Several hadiths refer to "*riba* of the *jahiliyya*."[47] Derived from "*jahil*," "ignorant," "*jahiliyya*" refers to the time or age of "ignorance" before the preaching of Muhammad and the dawn of Islam.[48] As discussed under the Qur'anic signification of *riba*, this pre-Islamic *riba* is often described as a charge for extending the repayment deadline of a loan contract or credit sale.[49] A *hasan* hadith shared by Sunan Abu Dawud and Jami' at-Tirmidhi backs up this reading and suggests a signification for "*riba*" akin to that found in the Qur'an. Its phraseology even echoes Qur'an 2.279. In the hadith, Muhammad distinguishes between *riba* of the *jahiliyya*, which is abolished, and the repayment of the principal, which is upheld.[50] This distinction implies an underlying credit transaction—and the principal associated with it—and paid an addition. *Riba* before the advent of Muhammad may have been on account of delayed repayment, but included in that notion are the two elements that featured in *riba* and evidenced in the Qur'an: an underlying loan contract and a premium on top of repayment of the principal.

In the Hadith, *riba* often appears in transactions that involve credit, but are not simple loan contracts. Inconsistencies surround whether "*riba*" in such cases implies an addition. Sahih al-Bukhari and Sunan Ibn Majah contain a hadith that applies *riba* to currency exchanges, but this hadith limits this application to credit transactions. Sahih al-Bukhari reports a conversation in which someone questions the affirmation that "the selling of a Dinar for a Dinar, and a Dirham for a Dirham (is permissible)."[51] In response to the issue, a statement from Muhammad is recalled: "There is no *Ribā* (usury) (in money exchange)

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47 Sahih Muslim 15.19 (2950 [1218]), vol. 3, 343–352; Sunan Abu Dawud 11.56 (1905), vol. 2, 424–433; Sunan Abu Dawud 15.37 (2537), vol. 3, 26; Sunan Abu Dawud 22.5 (3334), vol. 4, 64; Jami' at-Tirmidhi 44.9 (3087), vol. 5, 395–396; Sunan Ibn Majah 3074, vol. 4, 220–228.
48 See Glassé, s.v. "al-Jāhiliyyah," 204.
49 See, for example, El-Gamal, 49–50.
50 Sunan Abu Dawud 22.5 (3334), vol. 4, 64; Jami' at-Tirmidhi 44.9 (3087), vol. 5, 395–396.
51 Sahih al-Bukhari 34.79 (2178, 2179), vol. 3, 216. The dinar was at the time a form of gold coin and weight measure for gold, whereas the dirham was a silver coin and a weight measure for silver.

except when it is not done from hand to hand (i.e., when there is delay in payment)."[52] In Ibn Majah's version of the hadith, Muhammad affirms that *riba* "is only in credit."[53] Both versions of the hadith limit "*riba,*" at least in the exchange of currency, to credit transactions. Although they highlight delay as an essential characteristic of *riba*, these hadiths do not necessarily exclude the payment of an addition as also essential. As the etymology of "*riba*" indicates increase but not delay, it makes sense the latter property would warrant an explicit affirmation but not the former.

In fact, in discussing trade in gold and silver, some hadiths place emphasis on delay and leave the possibility of an addition undiscussed. In a hadith in Sahih Muslim, Muhammad declares regarding exchanges of gold and silver: "whatever is to be paid for later is *Riba*."[54] Although its etymology still suggests increase, "*riba*" here does not clearly indicate the payment of an addition. Of course, it is possible that the practice of exchanging gold and silver on credit is called "*riba*" because of the possibility, likelihood, or known custom of paying an addition. Hadiths in Sunan Ibn Majah[55] and al-Muwatta[56] (the hadith collection of Imam Malik Ibn Anas (711–795)) state that delays in exchanging gold for silver constitute *riba*. Although no increase is specified, it is easy to imagine a premium hidden by the exchange of different commodities.

The delay factor is also highlighted in Sunan Ibn Majah, with the discussion extended to a number of other commodities besides gold and silver. In a *sahih* hadith, Muhammad asserts: "Exchanging gold for gold is usury [*riba*] unless it is done on the spot. (Exchanging) wheat for wheat is usury [*riba*], unless it is done on the spot. (Exchanging) barley for barley is usury [*riba*] unless it is done on the spot. (Exchanging) dates for dates is usury [*riba*],

[52] Sahih al-Bukhari 34.79 (2178, 2179), vol. 3, 216
[53] Sunan Ibn Majah (2257), vol. 3, 289.
[54] Sahih Muslim 22.16 (4071 [1589]), vol. 4, 308–309.
[55] Sunan Ibn Majah (2259), vol. 3, 291. Cf. Sunan Ibn Majah (2260), vol. 3, 291.
[56] Al-Muwatta 31.17 (38), 292.

unless it is done on the spot."[57] Once again, the credit or delay, rather than increase as such, appears to be the defining element of "*riba*." Also emerging, however, is the list of kinds quid pro quo. In a hadith in al-Muwatta, Muhammad says: "Gold for silver is usury [*riba*] except hand to hand. Wheat for wheat is usury [*riba*] except hand to hand. Dates for dates is usury [*riba*] except hand to hand. Barley for barley is usury [*riba*] except hand to hand."[58] The contracts involved seem to be currency exchanges (in the case of gold and silver) and barter (in the case of the foodstuffs). In each, the element of credit remains, and Imam Malik even likens the delay in the exchange of currency to a loan.[59] Credit transforms the exchanges of these kinds of goods into ones that contain *riba*. Consistent with the hadiths discussing just currency exchanges, the element addition is absent. Silence, however, does not necessarily denote its absence.

Some hadiths are explicit in specifying addition as among *riba*'s characteristics. In some of these hadiths, the element of addition needs not be accompanied by credit. Indeed, in several hadiths, inequality and delay appear as independent properties for establishing *riba*. Muhammad states in a hadith from Sahih al-Bukhari:

> The bartering of gold for gold, is *Ribā*, (usury), except if it is from hand to hand and equal in amount, and wheat grain for wheat grain is *Ribā* except if it is form hand to hand and equal in amount, and dates for dates is *Ribā*, except if it is from hand to hand and equal in amount; and barley for barley is *Ribā*, except if it is from hand to hand and equal in amount.[60]

The impression that either credit or an addition is sufficient for establishing *riba* is furthered by a hadith in Sunan Ibn Majah. In a *hasan* hadith, Muhammad's companion Abu Walid recounts the prophet's command: "Do not sell gold for gold unless it is like for like; there

[57] Sunan Ibn Majah (2253), vol. 3, 286.
[58] Al-Muwatta 31.17 (38), 292.
[59] Ibid.
[60] Sahih al-Bukhari 34.54 (2134), vol. 3, 198–199. Another hadith in Bukhari's collection lays out the same specifications, except that it has a different narrator (Ibn Shihab instead of Az-Zuhri): Sahih al-Bukhari 24.76 (2174), vol. 3, 214–215. Additionally, there is a hadith in which Muhammad stresses the elements of delay and inequality in amount without mentioning precious metals at all: "The selling of wheat for wheat is *riba* except if it is handed from hand to hand and equal in amount. Similarly the selling of barley for barley, is *riba* except if it is from hand to hand and equal in amount, and dates for dates is *riba* except if it is from hand to hand and equal in amount" (Sahih al-Bukhari 34. 74 (2170), vol. 3, 213).

should be no increase and no delay (between the two transactions).'"[61] The sale of unminted gold and silver for coined gold and silver (dinars and dirhams) occasioned the recounting. Apparently, the practice involves *riba* if there is a quantitative increase or occurs within a credit transaction.

A pair of hadiths in Sahih Muslim offers additional evidence that the presence of addition is sufficient for deeming as *riba* trade in one of the six commodities. In the first of the hadiths, Muhammad says: "Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, like for like, hand to hand. Whoever gives more or asks for more, he has engaged in *Ribâ*, and the taker and the giver are the same."[62] In the second, Muhammad does not even mention the precious metals: "Dates for dates, wheat for wheat, barley for barley, salt for salt, like for like, hand to hand. Whoever gives more or asks for more, he has engaged in *Ribâ*, except in cases where the types differ."[63] Once again, although delay is possible in transactions involving *riba*, the payment of an addition here remains the emphasis.[64] Furthermore, this second hadith makes explicit that *riba* occurs when one of the named commodities is exchanged for the same sort of commodity (i.e., dates for dates, wheat for wheat, etc.) and apparently not when the same commodities are exchanged between classes (e.g., dates for wheat).

Several hadiths swing the emphasis to an addition being paid in the transaction of one of the six commodities. A hadith found in al-Muwatta recounts how Muhammad orders the sale of a golden or silver vessel.[65] Apparently, in executing the exchange, the weight of the

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[61] Sunan Ibn Majah (18), vol. 1, 85–86.
[62] Sahih Muslim 22.15 (4064 [1584]), vol. 4, 306–307. Another version of this hadith only makes explicit mention of gold and silver (Sahih Muslim 22.14 (4054 [1584]), vol. 4, 301).
[63] Sahih Muslim 22.15 (4066 [1588]), vol. 4, 307. Muslim notes that another narrator of a similar hadith "did not say, 'hand to hand,'" which reinforces the impression that the presence or absence of delay is not an essential feature for *riba* to occur in a transaction (Sahih Muslim 22.15 (4067 [1588]), vol. 4, 307).
[64] This emphasis notwithstanding, another possible attribute of *riba* becomes apparent, that is the qualitative difference of not being "like for like." This same feature can be found in Sahih Muslim 22.15 (4068), vol. 4, 307–308. Cf. Sahih Muslim 22.15 (4069–4070), vol. 4, 308.
[65] Al-Muwatta 31.16 (28), 290–291.

coins and the vessel were unequal.[66] Credit appears to play no part in the transaction, yet Muhammad declares: "You have taken usury [*riba*]."[67] Two striking point emerge from this hadith. First, that addition can stand alone without credit as an element of *riba*. Second, that precious metals should be considered as commodities subject to *riba* even if wrought into a more specific good, such as a vessel. The interplay of addition and this expansive understanding of the commodities of gold and silver are here operative in the signification of "*riba*." As in the discussion of trading unminted gold and silver for minted gold and silver, the differences in quality—the workmanship put into the vessels or in the manufacture of the money—is unimportant. What matters is the quantitative increase of gold or silver.

Bukhari preserves a hadith with a commodity other than gold or silver, which similarly points to *riba* as a quantitative addition, regardless of whether credit is involved. In the hadith, the governor of Khaibar offers Muhammad superior local dates.[68] Muhammad asks whether all Khaibarian dates are like the ones on offer, to which the governor replies: "We barter one Sa of this (type of dates) for two Sas of dates of ours and two Sas of it for three of ours."[69] A "sa" was a unit of measure in volume. Muhammad declares that the practice is a kind of *riba*.[70] Muslim offers a similar hadith. In it, one of his companions brings to Muhammad dates of fine quality. Muhammad asks about their origin, to which the companion responds: "We had some poor-quality dates, so I sold two *Ṣâ'* of them for one *Ṣâ'*, as food for the Prophet."[71] Muhammad describes the transaction as "the essence of *Ribâ*."[72] Delay is absent from these discussions. Instead, quantity—specifically as measured in

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[66] Ibid., 291: "They either sold each three units of weight for four units of weight of coins or each four units of weight for three units of weight or coins."
[67] Ibid.
[68] Sahih al-Bukhari 34.89 (2201, 2202), vol. 3, 224–225. Cf. Sahih al-Bukhari 34.20 (2080), vol. 3, 172; 40.3 (2302, 2303), vol. 3, 281–282; 40.11 (2312), vol. 3, 289.
[69] Sahih al-Bukhari 34.89 (2201, 2202), vol. 3, 225.
[70] Sahih al-Bukhari 34.89 (2201, 2202), vol. 3, 225.
[71] Sahih Muslim 22.18 (4083 [1594]), vol. 4, 314. Cf. Sahih Muslim 22.18 (4084–4087 [1594–1595]), vol. 4, 314–317.
[72] Sahih Muslim 22.18 (4083 [1594]), vol. 4, 314.

volume in the form of sas— appears as the central property of at least one sort of *riba*.[73] Absent in either telling is delay or credit in the transaction. Instead, a quantitative increase in a commodity (dates) seems to constitute *riba*. Credit and qualitative differences do not appear as factors in the assessment.

Juridical Signification of "*Riba*"

Ever enveloped by debate,[74] the signification of "*riba*" achieves greater precision among the schools of *fiqh*. At the same time, this greater precision develops along differing lines, which can be understood along the lines of the now familiar elements of quid pro quo, credit, and the payment of an addition. Definitions summarizing the signification of "*riba*" in juridical literature showcase these elements.

In juridical literature, "*riba*" has come to be defined as "an increase in one of two homogenous equivalents being exchanged without this increase being accompanied by a return."[75] While this definition notes barely defined traded values and an addition of some kind, altogether missing is element of credit. This definition, however, captures the essentials of any sort of *riba* within the schools of *fiqh.* The element of credit is not altogether lost, however, in a more expansive statement summarizing juridical significations or "*riba*." The modern jurist Nabil A. Saleh provides an inclusive, albeit dense, definition of "*riba*" that captures the complexity of the term in the schools of *fiqh*:

> *Riba*, in its Sharia context, can be defined, as generally agreed, as an unlawful gain derived from the quantitative inequality of the counter-values [sic] in any transaction purporting to effect the exchange of two or more species of (*anwa'*, sing. *naw'*), which belong to the same genus (*jins*) and are governed by the same efficient cause (*'illa*, pl. *'ilal*). Deferred completion of the exchange of such species, or even of species that belong to different genera but are governed by the same *'illa*, is also *riba*,

[73] In still yet another telling of the story, Bukhari reports that Muhammad "said the same thing about dates sold by weight" (Sahih al-Bukhari 40.3 (2302, 2303), vol. 3, 282).
[74] Latifa M. Algaoud and Mervyn K. Lewis, "Islamic Critique of Conventional Financing," in *Handbook of Islamic Banking*, ed. Kabir Hassan and Mervyn Lewis (Cheltenham, U.K.: Edward Elgar Publishing, 2007), 43.
[75] Al-Rahman al-Jaziri, *'Alā al-Madhāhib al-Arba'ah*, in Muhammad Umer Chapra, *Towards a Just Monetary System: A Discussion of Money, Banking and Monetary Policy in the Light of Islamic Teachings* (Leicester, U.K.: Islamic Foundation, 1985), 240.

> whether or not the deferment is accompanied by an increase in any one of the exchanged countervalues.[76]

This definition underscores the (1) kinds of quid pro quo (countervalue) as the persistent element of *riba*. It also underscores a division of (2) credit and (3) addition that appears in differentiating the kinds of *riba* devised by the *fuqaha* (Islamic jurists).

The schools of *fiqh* differ in their systemizations of the kinds of quid pro quo subject to *riba.* In its discussions of *riba*, the Hadith mentions six kinds of fungibles: silver, gold, barley, dates, salt, and wheat. The schools take different approaches to how these six commodities should be accounted for. In particular, the debate centers on whether and how analogy should be used to extend the Hadith's account of *riba* to goods other than those specifically mentioned.

The Zahiri school of *fiqh*, with its distinctive rejection of analogy and reliance on the clear meaning of the Qur'an and Hadith, restricts the designation of "*riba*" to transactions involving the exchange of the six commodities.[77] Saleh explains that "the Zahiris, as a result of their dogmatic of rejection of analogy (*qiyas*) as a way of determining the law, assume that the prohibition of *riba* applies solely to the six articles quoted in the hadith (gold, silver, wheat, barley, dates and salt) and cannot be extended by way of analogy to other articles."[78] The four main schools of *fiqh*, however, accept the use of analogy or *qiyas*; in their discussions of *riba*, they took the six to be only examples of fungibles that could underlie transactions involving *riba*.[79]

Their differences, instead, are based on the *legal* rationale, the *'illa*, connecting the six commodities. Once an *'illa* is determined, the rules laid out by the Qur'an and Hadith can be applied to other things as well. It should be remembered that these descriptions of the positions of the different schools are generalizations. Ibn Rushd (Averroes) (1126–1198), for

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[76] Saleh, 16.
[77] Saeed, *Islamic Banking and Interest*, 34. Saeed himself cites Saleh, 15.
[78] Saleh, 18.
[79] El-Gamal, 51.

example, who was a Maliki jurist, adopted the Hanafi position.[80] For Hanafis, the *'illa* upon which they extend the designation of *riba* is that each quid pro quo is "weighable and measurable"[81] or, more specifically, the quid pro quo is among "fungible goods measured by weight or volume."[82] Wahba al-Zuhayli's description of the Hanafis' definition of *riba al-fadl* shows how they limit the measure to weight and volume. "The Hanafi jurists," he writes, "have defined surplus *riba*, which is a sale, as an increase of capital assets above the legal standards (being volume and or weight) in an exchange of like kinds."[83] The Hanbalis take a position similar to that of the Hanafis, but added currency as a separate category of quid pro quo from weighable and measurable commodities.[84] The Shafi'is and the Malikis take the *'illa* not to be measurement, but as "monetary commodities (gold and silver) and storable foodstuffs."[85] In al-Zuhayli's description of one form of *riba* (*riba al-fadl*) according to the Shafi'is, it "occurs only in two counter-values which are of exact like kind, such as a bucket of wheat for one and a half buckets of wheat, and a gram of gold for a gram and a half."[86] In other words, trading gold for silver or wheat for barley would not be subject to *riba*.

Juridical distinctions showcase the absence of addition or credit in some forms of *riba*. One categorization of *riba* is between *riba al-buyu*, which is said to involve trade, and *riba al-qarud* or *riba al-nasi'a*, which is said to involve loans.[87] A clearer way to understand this categorization, however, is based on simultaneity-nonsimultaneity and equality-inequality. *Riba al-buyu* is further divided between *riba al-fadl* and *riba al-nisa*. Latifa M. Algaoud and Mervyn K. Lewis explain that "*riba al-fadl* involves an exchange of unequal qualities or quantities of the commodity simultaneously, whilst *riba al-nisa* involves the non-

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[80] Ibid., 52.
[81] Saeed, *Islamic Banking and Interest*, 35.
[82] El-Gamal, 51.
[83] Wahba al-Zuhayli, "The Juridical Meaning of Riba," trans. Iman Abdul Rahim and Abdulkader Thomas, in *Interest in Islamic Economics: Understanding* Riba, ed. Abdulkader Thomas (New York: Routledge, 2006), 28
[84] Saeed, *Islamic Banking and Interest*, 35.
[85] El-Gamal, 51. Cf. Saeed, *Islamic Banking and Interest*, 35.
[86] Al-Zuhayli, 29.
[87] Algaoud and Lewis, 43.

simultaneous exchange of equal qualities and quantities of the same commodity."[88] In other words, the transaction in *riba al-fadl* is simultaneous and unequal whereas the exchange in *riba al-nisa* is nonsimultaneous and equal. In contrast, the transaction in *riba al-nasi'a* is both nonsimultaneous and unequal: It is a loan upon which a premium is paid for the use of another's wealth.[89]

Most *fuqaha'*, however, leave aside *riba al-nisa* and focus on *riba al-fadl* and *riba al-nasi'a*, which are sometimes termed in English as "surplus *riba*" and "credit *riba*."[90] Saeed explains that "the jurists divided *riba* into *riba al-nasī'a* and *riba al-faḍl*, that is, *riba* involving respectively a deferment of one countervalue [quid pro quo], and an excess in one countervalue [quid pro quo]."[91] Thus, each element (credit and premium) if present is sufficient for a transaction to include *riba* should the proper quid pro quo also be present.

The Hanafi scholar Shah Wali-Allah Dihlawi (1703–1762) perceives a hierarchy in the twofold division. For him, *riba al-nasi'a* is primary and *riba al-fadl* is subject to it: "Primary *ribā* is only on loans. The other *ribā* is called *ribā al-faḍl* . . . and is akin to primary *ribā*."[92]

There is wide agreement among the *fuqaha'* that "*riba al-nasi'a*" occurs in transactions involving delay. "*Nasi'a*" derives from the triliteral root n-s-y (*nun-sin-baw*). Considering this root, El-Gamal traces the etymology of "*nasi'a*" back to "the three-letter past-tense verb *nasiya*, which means to defer (also to forget)."[93] Given this etymology, El-Gamal concludes that "*riba al-nasi'a*" implies "that this type of *riba* occurs in time, i.e., through deferment of payment."[94] Saeed goes further and highlights the importance of the

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[88] Ibid.
[89] Ibid.
[90] E.g., al-Zuhayli, 26.
[91] Saeed, *Islamic Banking and Interest*, 35. Cf. Saleh, 16.
[92] Shah Wali-Allah Dihlawi, *Ḥujjat Allāh al-Bālighah*, in Muhammad Umer Chapra, *Towards a Just Monetary System: A Discussion of Money, Banking and Monetary Policy in the Light of Islamic Teachings* (Leicester, U.K.: Islamic Foundation, 1985), 245–246.
[93] El-Gamal, 201, n. 6.
[94] Ibid.

quid pro quo: "*Riba al-nasī'a* occurs when delivery of one countervalue is deferred in a sale transaction involving countervalues which are susceptible to *riba*."[95] This understanding of *riba al-nasi'a* leaves aside any need for there to be a premium expended in the transaction. Some scholars, though, retain a sense of premium in their discussions of *riba al-nasi'a*. Al-Rahman al-Jaziri (1882–1941), for example, writes that in *riba al-nasi'a* "the specified increase is in return for postponement of, or waiting for, the payment."[96]

"*Fadl*" derives from the triliteral root f-d-l (*fa'-dad-lam*), a root among whose senses are "excel," "surpass," and "gain."[97] El-Gamal explains that *riba al-fadl* signifies "trading goods of the same genus and kind in different quantities"[98] Saeed for his part elucidates that "*riba al-faḍl* occurs, when, in an on-the-spot (hand-to-hand) transaction, there is an excess in one of the countervalues that belong to the same genus (*jins*)."[99] It makes sense that this sort of *riba* is also known as "*riba al-Sunnah*," since some transactions described in the Hadith as involving *riba* do not involve credit.[100]

Another kind of *riba* sometimes discussed is *riba al-jahiliyya*. In addition to the differences based on the *'illa* (and *qiyas*), some scholars have adopted a tripartite classification of *riba*. Of these, the Hanafi scholar Abu Bakr al-Jassas[101] (d. c. 942) and the Hanbali scholar Ibn Qayyim al-Jawziyya[102] (1292–1350) distinguish three categories of *riba*: *riba al-jahiliyya* (*riba* of the *jahiliyya* or pre-Islamic *riba*), *riba al-nasi'a*, and *riba al-fadl*. Saleh explains that "this pre-Islamic *riba* (*riba al-jahiliyya*) was regarded as the one directly referred to in the Qur'an, while the other two categories, namely *riba al-fadl* and *riba al-*

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[95] Saeed, *Islamic Banking and Interest*, 35.
[96] Al-Rahman al-Jaziri, *'Alā al-Madhāhib al-Arba'ah*, 240–241.
[97] See *Quranic Root Dictionary*, s.v. "Fa-Dad-Lam," accessed January 14, 2020, http://www.studyquran.org/resources/Quranic_Root_Dictionary.pdf.
[98] El-Gamal, 50.
[99] Saeed, *Islamic Banking and Interest*, 35.
[100] Cf. El-Gamal, 50–51.
[101] Abu Bakr al-Jassas, *Aḥkām al-Qur'ān*, in Muhammad Umer Chapra, *Towards a Just Monetary System: A Discussion of Money, Banking and Monetary Policy in the Light of Islamic Teachings* (Leicester, U.K.: Islamic Foundation, 1985), 244–245.
[102] Saleh, 16.

nasi'a, were referred to in the Prophet's Tradition (Hadith)."[103] Saleh explains: "*Riba al-jahiliyya* or pre-Islamic *riba*, often manifested by the lender asking the borrower at maturity date if he will settle the debt or increase it. Increase normally occurred by charging interest on the debt initially accrued."[104] Based on this description, it would seem that *riba al-jahiliyya* lies somewhere between *riba al-fadl* and *riba al-nasi'a*, since both an addition is paid and there is delay. Ibn Qayyim goes even further and does not necessarily hold there to be clear demarcation in *riba*, at least between *riba al-jahiliyya* and *riba al-nasi'a*.[105] He writes that *riba al-nasi'a* "is what was engaged in during the *Jāhiliyyah*, like allowing the postponement of repayment of principal against an increase, and every time there was a postponement, there was an increase."[106] Ibn Qayyim distinguishes between "manifest *riba*" and "hidden *riba*."[107] He appears to identify *riba al-jahiliyya* and *riba al-nasi'a* with the former and *riba al-fadl* with the latter.[108] In his view, hidden *riba* leads to the manifest *riba*, so the former is *riba* in merely *riba* in a derivative sense.[109]

Instead of the addition of *riba al-jahiliyya*, some jurists of the Shafi'i School posited a *riba* of possession in addition to *riba al-fadl* and *riba al-nasi'a*.[110] Al-Zuhayli summarizes the Shafi'is' definition of *riba* of possession as "a sale with delay in taking possession of either or both of the counter-values; that is, that the sale of two different kinds, such as wheat and barley, be finalized without either of them being possessed in the same session of the contract."[111] What seems to distinguish *riba* of possession from *riba al-nasi'a* is the presumed additional payment made when the principal became due. Al-Zuhayli summarizes

[103] Ibid, 17.
[104] Ibid.
[105] Cf. Khalil, 61–62.
[106] Ibn Qayyim al-Jawziyya, *Alām al-Muwaqqi'īn*, in Muhammad Umer Chapra, *Towards a Just Monetary System: A Discussion of Money, Banking and Monetary Policy in the Light of Islamic Teachings* (Leicester, U.K.: Islamic Foundation, 1985), 245.
[107] Khalil, 61.
[108] Ibid., 61–62.
[109] Cf. ibid., 61.
[110] Al-Zuhayli, 29–30.
[111] Ibid., 30.

these Shafi'is' definition of *riba al-nasi'a* as "a sale with delay in payment; that is, a sale on credit, the payment being due at a future date, with an increase at the time the payment is due, without settling the price against the delay."[112] As described by Al-Zuhayli, these two kinds of activity would seem to be covered by the definition of *riba al-nasi'a* in which delay is the essential characteristic, whether or not there is an added payment.[113]

As we have seen, there is some variance in the categorization of *riba* in the common attempt to clarify and systematize the teachings of the Qur'an and Hadith. The various categorizations are effective in bringing the principles of addition and delay into relief. What is not always clear, however, and perhaps is the reason for the diversity in categorizations, is how these principles combine.

In reflecting on the treatment of credit sales by the schools of *fiqh*, Saleh remarks that "in a credit sale where the price is presented by currency, the exchange of the two countervalues can be deferred with or without gain, even though the object of the sale is a property susceptible to *riba* (*mal ribawi*), provided such an object is not currency."[114] A disagreement, however, arises between jurists over whether *riba* exists in a credit sale (*murabaha*) with a higher price than in a cash sale. Early jurists, including Al-Shafi'i (767–820) and Malik bin Anas (c. 711–795), seem to think that *riba* is present when "a higher price [was charged] for deferred payment and a lower price for cash payment.[115] Other (later) jurists, however, including the Shafi 'i Al-Baghawi (d. 1122) and the Hanbali Ibn Qayyim, find *riba* not to exist despite the markup.[116] Al-Baghawi even claims a universal agreement that there is no *riba* in a credit sale so long as the buyer and seller agree to either the cash or the credit price.[117] This position may, however, imply that *riba* would exist in a credit sale if

[112] Ibid.
[113] Cf. ibid.
[114] Saleh, 82.
[115] See Saeed, *Islamic Banking and Interest*, 78.
[116] Saeed, *Islamic Banking and Interest*, 79.
[117] Ibid.

a lower cash price were also explicitly set.[118] According to Ibn Qayyim, on the other hand, "when someone sell something for one hundred on deferred payment basis, or for fifty on cash payment basis, there is no *riba* in it."[119]

Intention and the substance of a contract appear as exceptions to in Maliki and Hanbali distinctions between credit sales and loans susceptible to *riba*. Whether there is a markup or not, suspicion of *riba* is present only when a credit sale is used as a device for seeking *riba* through what is in fact a loan contract.[120] One or both parties intend to contract a loan with *riba*, but disguise the substance of this contract with the contractual façade of a credit sale. Here the intended contractual substance rather than the legal form allows the contract to be susceptible to *riba*.

As is discussed in Chapter 4, a reason for distinguishing the markup in credit sales from *riba* by Shafi'is and Hanbalis was the permissibility of *bay' salam*.[121] *Bay' salam* presents a mirror image of a credit sale. Instead of goods presented now for money later, money is given now in exchange for goods later.[122] The logic runs that if *bay' salam* contains no *riba*, then neither must a credit sale. The logic behind the Hanafis' acceptance of credit sales modifies the signification of "*riba*" by refining the kinds of quid pro quo subject to it. Saleh explains that

> Hanafis for their part have divided weighable articles (currency was one of them) into two different categories: on the one hand currency, i.e. gold and silver weighable on a highly precise scale, and on the other hand all other weighable articles whose weight is obtainable by the use of a normal scale. The two categories are not deemed to share the same weighable quality (which is a Hanafi *'illa*).[123]

A substantive distinction appears to be the result of the qualitative distinction between the "quid" and the "quo": money (or weighable commodity) loans and credit sales are clearly

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[118] Ibid.
[119] Shawqi Isma'il Shihata, *Nazariyyat al Muhasabat al-Maliyya min Manzurin Islami* (Cairo: Al-Zahra' li al-I'lam al-'Arabi, 1987), 104, quoted in Saeed, *Islamic Banking and Interest*, 79.
[120] Saleh, 82.
[121] Ibid.
[122] Ibid.
[123] Ibid.

demarcated from each other. As found above, the kinds of quid pro quo exchanged are paramount. The increase within a credit transaction are of less importance than the kinds of things that are exchanged. Here a refinement appears. Not only are the kinds of quid pro quo weighable, they are weighable in the same manner.

Non-Sunni schools of *fiqh* likewise recognize a distinction between *riba* and a markup in credit sales. The Ibadis and the Ja‘faris accept a distinction that is in effect along lines similar to the Hanafi delineation: the credit exchange does not contain *riba* if (1) money is not exchanged for money, as in a currency exchange (*sarf*), and (2) the purchase of some other value is made with money.[124] It is tempting to infer from this delineation that a credit sale differs from a loan in that the "quid" given now is simply of a different genus than the "quo" later returned. Although this is true, the explanation is insufficient. The "quo" to be returned must be money and the "quid" extended must be something else. Nevertheless, again the kinds of quid pro quo are paramount.

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The Qur'an, Hadith, and *fiqh* yield richer and more varied significations for "*riba*" than those found in the definitions rehearsed at the beginning of this chapter. While money is indeed among the (1) kinds of quid pro quo contained in these significations, it is by no means the only exchange value mentioned. Furthermore, although loans are among the contracts subject to *riba*, sales contracts are as well, though strikingly credit sales may be excluded. While *riba al-jahiliyya*, *riba al-nasi'a*, and *riba al-nisa* contain the element of delay, *riba al-fadl* does not. Furthermore, while an addition is paid in *riba al-jahiliyya*, *riba al-nasi'a*, and *riba al-fadl*, none is paid in *riba al-nisa*. Not one kind of *riba* matches the signification of "*riba*" in Islamic banking; none offers a perfect precedent for the signification advocated by Chapra and other proponents of Islamic banking. Yet, the

[124] Ibid., 82–83.

signification of "*riba*" most aligned with those adopted by proponents of Islamic banking is that of *riba al-nasi'a*, especially regarding money loans.

Chapter 3

Signification of "Usury"

In 1745, during William Blackstone's lifetime, Pope Benedict XIV (r. 1740–1758) offered a signification for "usury" that epitomizes three elements of the term's signification as found in Scripture, patristic teaching, and magisterial statements. In *Vix pervenit*, an encyclical to the Italian episcopal hierarchy, Benedict XIV declares that "usury has its proper place and origin in a loan contract [*mutuum*]" and describes as usurious "any gain [*lucrum*] which exceeds the amount he gave."[1] Since the first statement locates usury in a *mutuum*, understood in the first statement is that (1) the kinds of quid pro quo, as discussed in Chapter 1, are consumable fungibles, including money, and (2) these values are traded within a credit transaction. The second statement indicates that "usury" signifies (3) an addition, a premium, on such contracts, or the taking of that addition. The encyclical goes on to distinguish usury from additions based on extrinsic titles that, while running parallel with a loan contract, justify demanding "something over and above the amount due on the contract."[2]

Signification of "Usury" in Scripture

Through considering etymology and usage, one can trace within Scripture outlines for a signification of "usury" as an addition paid in conjunction with a credit transaction involving consumable fungibles,

Usually translated into English as "interest" or "usury," the Hebrew noun "*neshek*" remains undefined in the Old Testament, in which this noun makes twelve appearances. "*Neshek*" derives from the triliteral Hebrew root n-sh-k (nun-shin-kaf), a root that indicates

[1] Pope Benedict XIV, *Vix pervenit* 3.3 (1745), in *The Papal Encyclicals*, comp. Claudia Carlen, vol. 1 (Wilmington, NC: McGrath, 1981), accessed March 11, 2020, Latin text: http://www.domus-ecclesiae.de/magisterium/vix-pervenit.html; English text: http://www.papalencyclicals.net/ben14/b14vixpe.htm.
[2] Ibid.

biting or stinging, and, in the context of transactions, some sort of charge. The verb "*nashak*" comes from the same root as "*neshek*." In the Old Testament, the term is most often translated as "to bite" and frequently is used with reference to a serpent.[3] Four times, however—in the space of two verses in Deuteronomy, in fact—the term refers to a transaction and can be translated as "to lend at usury."[4]

In the Greek version of the Old Testament known as the Septuagint, translators exchanged "*neshek*" for the term "*tokos*." Like "*neshek*," this term is multivalent, but its valences carry a different hue:

> The first definition is "childbirth," "parturition," or "bringing forth" by women or by animal. Included within this definition, τόκος can also mean the very thing that is brought forth, as in "offspring," a human or animal baby. A second definition of τόκος is "the produce of money." The produce—offspring or child—of money would be its own offspring, which one would rightly call "interest." The third definition of τόκος is simply "interest," and the fourth—and perhaps the most interesting of all—is "oppression."[5]

The fecundity indicated by the etymology of "*tokos*" suggests an increase or addition. As indicated by the second definition, this increase is associated with money as the relevant quid pro quo. "The observation that money breeds money," recounts John Noonan, "is founded on the use of *tokos* as the term for the return paid on a loan."[6] The Greek verbs "*ektokizo*" and "*ekdaneizo*" replace "*nashak*" in Deuteronomy, thrice and once respectively. The first comes from the same root as "*tokos,*" the latter, however, is related to words such as "*daneio*" ("give") and "*danos*" ("gift"), and is translated as "lend at interest." This latter term's etymology foreshadows the gratuitousness associated with the Latin "*mutuum*." Indeed, in the

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[3] With explicit references to serpents: Genesis 49:17; Proverbs 23:32; Ecclesiastes 10:8, 10:11; Jeremiah 8:17; Amos 9:3; Without explicit references to serpents: Micah 3:5; Habakkuk 2:7.
[4] Deuteronomy 23:19–20 (Deuteronomy 23:20–21 in the Septuagint).
[5] Brenda Llewellyn Ihssen, *They Who Give from Evil: The response of the Eastern Church to Moneylending in the Early Christian Era* (Eugene, OR: Pickwick Publications, 2012), 48.
[6] John T. Noonan, Jr., *A Church that Can and Cannot Change: The Development of Catholic Moral Teaching* (Notre Dame, IN: University of Notre Dame Press, 2005), 128.

standard Latin translation of the Bible known as the Vulgate, Deuteronomy discusses lending at usury in terms of a *mutuum*.[7]

Besides the term "*neshek*/*tokos*," the Hebrew terms "*tarbit*" (in the Septuagint, rendered "*plethos*" and "*pleonasmos*") and "*marbit*" (in the Septuagint, rendered "*pleonasmos*") also relate to usury.[8] Both translate into English as "increase." Scholars are divided over whether these terms should be considered as synonymous with *neshek*/*tokos* or as distinct.[9] In appraising the divide among scholars, Edward Neufeld is of the opinion that, even though there is likely a distinction between these terms, efforts to determine the exact distinctions are futile: "These two have some legal significance and most probably denote some different implications in the nature of the lending transaction or in the type of interest for the loans paid. The evidence in the Bible is, however, hardly enough to solve the question decisively and, therefore, the conclusions reached must rest on pure assumption."[10] As with *neshek*/*tokos*, Scripture does not define *tarbit*/*plethos*/*pleonasmos* or *marbit*/*pleonasmos*. Biblical usage, however, suggests that the premium or increase indicated by these terms' etymology derives from loans. The Old Testament—both in the Masoretic text and the Septuagint—uses verbs in conjunction with these nouns that suggest an addition arising from a loan. Several passages speak of the giving (*nathan*/*didomi*) of usury.[11] Explicit mention of usury appears in one passage in relation to lending (*lavah*/*ekdaneizo*).[12] In the Old Testament, usury (*neshek*/*tokos*)[13] and increase (*tarbit*/*pleonasmos*)[14] are both received through taking

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[7] See Deuteronomy 15:6–9. The term "*mutuum*" is also used in discussions of lending in Proverbs 22:7, Isaiah 24:2, Luke 6:34–35.
[8] For "*tarbit*"/"*plethos*"/"*pleonasmos,*" see Leviticus 25:36; Proverbs 28:8; Ezekiel 18:8, 18:13, 18:17, 22:12. For "*marbit*"/"*pleonasmos*" in the context of a transaction, see Leviticus 25:37 ("*marbit*" also appears in other contexts in 1 Samuel 2:33; 1 Chronicles 12:29; 2 Chronicles 9:6, 30:18).
[9] See Cleary, 9–14. For a discussion of proposed interpretations of *tarbit*, see Edward Neufeld, "The Prohibitions against Loans at Interest in Ancient Hebrew Laws," *Hebrew Union College Annual* 26 (1955): 355–357. Cf. Ihssen, *They Who Give from Evil*, 63.
[10] Neufeld, 356.
[11] Leviticus 25:37; Psalm 15:5 (14:5); Ezekiel 18:8, 18:13.
[12] Exodus 22:25. The Vulgate renders this passage as one's giving on loan (*mutuam dederis*).
[13] Leviticus 25:36; Ezekiel 18:17, 22:12.
[14] Ezekiel 18:8, 18:13, 18:17, 22:12.

(*laqach*/*lambano*), rather than as something earned or inherited, for instance. Taken together, these verbs suggest that usury is an addition expected or demanded for the granting of something else, namely for a loan.[15]

Old Testament usage also reveals something about the sorts of quid pro quo that underlie usurious loans. A passage in Deuteronomy indicates that any sort of quid pro quo, including money (*keceph*/*argurion*) and victuals (*'okel*/*broma*), can underlie such loans.[16] Thus, while not necessarily limiting usury to loans of money and food, the Old Testament sets a precedent for discussing usury in the context of the lending of fungibles, and especially consumables. This precedent harmonizes with usury's eventual firm link with the *mutuum* contract.

The New Testament's treatment of usury highlights the same elements of usury as does the Old Testament, while expanding the notion to payments made to depositors. The Parable of the Talents mentions usury as an incentive for putting (*ballo*) money (*argyrion*) to the bankers (*trapezites*) or for giving (*didomi*) money to the bank (*trapeza*).[17] Monetary values are exchanged in this transaction. In the Roman world, some money deposits functioned as quasi-loans to bankers: "For unsealed deposits [bankers] paid interest [usury] and were allowed to lend them to third parties."[18] An unsealed deposit appears in the Parable of the Talents, as indicated by the depositor's receiving or collecting usury.[19] As the Parable of the Talents makes clear, usury is an addition to the repayment of a principal sum, occurring within the context of a (quasi-)loan contract in which the values exchanged are money.

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[15] This reading is consonant with Talmudic interpretation. Haym Soloveitchik notes that "usury is defined in talmudic law as 'wages for waiting', that is, money paid for deferred repayment of a loan" (Haym Soloveitchik, "Usury, Jewish Law," in *Collected Essays*, vol. 1 (Oxford: Littman Library of Jewish Civilization, 2013), 41).
[16] Deuteronomy 23:19.
[17] Matthew 25:27 and Luke 19:23, respectively.
[18] Sitta von Reden, "Money and Finance," in *The Cambridge Companion to the Roman Economy*, ed. Walter Scheidel (Cambridge: Cambridge University Press, 2012), 281.
[19] Matthew 25:27 and Luke 19:23, respectively.

Signification of "Usury" in the Fathers

The signification of usury in patristic thought is the product of Scriptural exegesis. While likewise presenting usury as a premium on a loan, the Church Fathers develop this Biblical signification in a manner that reflects the Greco-Roman milieu in which they wrote. Etymological references as well as evidence of acquaintance with the legal status of usury in the empire reflect this milieu. For the Fathers, Scripture remained applicable to the economic arrangements of their own day.[20] Accordingly, context is important for understanding patristic interpretations of Scripture's treatment of usury.

When the Bible was translated into Latin for the Western Church, different terms were used to translate the Hebrew and Greek. These terms were influential for the understandings of usury in the Latin-speaking Church. The substitute for "*neshek*" and "*tokos*" in the Latin translation of the Bible known as the Vulgate is usually "*usura*."[21] This noun is formed from the Latin past participle "*usus*" of the deponent verb "*uti*" ("to use") together with substantivizing suffix "*-ura*."[22] Taken generally, "*usura*" would seem to refer to the use or enjoyment of something; taken more particularly, to the use of money. Perhaps forced, a link between *usura* and fecundity has been attempted. In his play *Amphitryon*, Plautus (c. 254–184 BC) twice describes Hercules's conception in terms of Jupiter's having taken "*usura*" of the body of Alcmena.[23] This attempt perhaps indicates a notion that *usura* should be understood as an increase, even though its etymology points more toward its derivation from the usage of money.

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[20] See Maloney, "The Teaching of the Fathers on Usury."
[21] "Usury" in modern English derives from the Anglo-Norman "*usurie*," which in turn derives from "*usuria*," a medieval Latin variation of usury.
[22] Interestingly, this same suffix is used to derive the substantive form "*natura*" (nature) from the past participle "*natus*" of the deponent verb "*nasci*" (to be born).
[23] Plautus, *Amphitryon* 107–109, 1135–1136 (LCL 60.20–21, 60.130–131), trans. Wolfgang de Melo (Cambridge, MA: Harvard University Press, 2011). See also *Amphitryon* 498 and 980–981 (LCL 60.58–59, 60.110–111), in which Alcmena is referred to as *uxor usuraria* and *usuraria uxor*, respectively. See Erich Segal, *Roman Laughter: The Comedy of Plautus*, 2nd edition (Oxford: Oxford University Press, 1987), 176–177.

In Deuteronomy 23:19, the Latin “*fenerare*” replaces “*nashak*”/“*ektokizo*.”[24] This verb is related to the Latin noun “*fenus*” (also spelt “*foenus*” and “*faenus*”), a term which lent credence to usury’s perceived fecundity. Noonan observes, “the Latin equivalent of *tokos* is *foenus*, plausibly supposed to be derived from *fetus*—a shamed stammer acknowledging something incongruous in money bearing money.”[25] Regardless of its true etymology, the term signifies an addition on a loan or to charge this addition on a loan. It is distinguishable from “*usura*” in that “*usura*,” at least properly speaking, signifies the rate at which “*fenus*” is charged.[26] Isidore of Seville recognizes this distinction in his encyclopedia of etymologies known as the *Etymologiae*. While recounting its etymology, Isidore defines “*usura*” as “the increment of interest [*fenoris*], so called from the ‘use of money’ (*usu aeris*) that is lent.”[27] Here we see the close relationship between “*usura*” and “*fenus*.” Also apparent are the prime predicates of “usury”: a rate at which an addition is paid (*incrementum*) and a loan. As will be seen in patristic usage more widely, in noting the supposed etymology of “*usura*,” Isidore makes clear that the prime quid pro quo subject to usury is money.

The distinction between “*usura*” and “*fenus*,” however, is not always observed. Even that paragon of Latin style Marcus Tullius Cicero (106–43 BC) sometimes uses them interchangeably.[28] Imprecise usage of these terms also appears in the Latin Vulgate and the writings of the Church Fathers. Indeed, the Vulgate also uses “*fenus*” to translate “*tarbit*”/“*pleonasmos*” in Proverbs 28:8.[29] Sliding between “*usura*” and “*fenus*,” admittedly sometimes with distinctions in signification, repeatedly occurs in patristic usage. Commodian (fl. 250), for example, discusses one party as lending at usury (*fenerare*) and the other as

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[24] In Deuteronomy 23:20, instead the verb “*commodore*” (“to lend”) is used in conjunction with “*usura*.”
[25] Noonan, *A Church that Can and Cannot Change*, 131.
[26] Charles T. Barlow, “Bankers, Moneylenders, and Interest Rates in the Roman Republic” (PhD dissertation, University of North Carolina at Chapel Hill, 1978), 171.
[27] Isidore of Seville, *Etymologiae* 5.25.15 (PL 82.207), 121.
[28] Barlow, 171.
[29] “*Amplius*” (“more”) translates “*tarbit*”/“*plethos*” in Leviticus 25:36, and “*tarbit*”/“*pleonasmos*” in Ezekiel 18:8, 18:13. “*Superabundantia*” (“superabundance”) translates “*tarbit*”/“*pleonasmos*” in Ezekiel 18:17 and 22:12. “*Superabundantia*” also translates “*marbit*”/“*pleonasmos*” in Leviticus 25:37.

pressed down by usuries (*usurae*).[30] Here the terms seem to indicate the same reality from the different perspective of the parties to the usurious contract. While repeating the Vulgate's usage of "*usura*" and "*fenus*" (as well as "*fenerare*") in one of his works,[31] Cyprian of Carthage (c. 200–258) appears to recognize the distinction between the two terms in his *De lapsis*. In this work, the bishop recounts how "*faenus*" grows with "increasing usuries [*usuris*]."[32] Tertullian (c. 155–c. 220), on the other hand, appears to adopt a more novel approach to the relationship between "*fenus*" and "*usura.*" He describes "*usura*" as the return on "*fenus*," which is apparently alternatively conceived of as the fruit of "*fenus*."[33] Here "*fenus*" appears to signify merely the loaned principal and not usury itself, since Tertullian posits that the Old-Testament prohibition of the *fructum fenoris* was to prepare for the [Gospel's] call to relinquish even the *fenus*.[34] It seems unwarranted to think of "*usura*" as an addition on the addition of *fenus* (i.e., compound usury), since Latin has other terms available to express this arrangement, including "*anatocismus*" and "*usura usurae*."[35] Even in the apparent multivalence of the terms "*usura*" and "*fenus*" in patristic usage, it remains clear that when taken together these terms signify an addition or increase.

Usage and defining commentary by the Fathers also reveals other elements of the signification of "usury." This usage manifests that usury arises in conjunction with a loan. Different nuances appear, however, regarding whether this increase is required, expected, or simply paid. Furthermore, money appears as the quid pro quo most often associated with

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[30] Commodian, *Instructiones* 65 (PL 5.251; CSEL 15.94–95), trans. Robert P. Maloney, in "The Teaching of the Fathers on Usury: An Historical Study on the Development of Christian Thinking," *Vigiliae Christianae* 27, no. 4 (1973): 245.
[31] Cyprian of Carthage, *Testimoniorum libri III ad Quirinum* 3.48 (PL 4.759; CCSL 3.137).
[32] Cyprian of Carthage, *De lapsis* 6 (PL 4.471; CCSL 3.224): "*usuris multiplicantibus faenus augere*." Translation mine.
[33] Tertullian, *Adversus Marcionem* 4.17 (PL 2.398–399; CCSL 1.585), trans. Peter Holmes, in *Ante-Nicene Fathers*, vol. 3, ed. Alexander Roberts, James Donaldson, and A. Cleveland Coxe (Buffalo, NY: Christian Literature Publishing Co., 1885), accessed April 6, 2020, http://www.newadvent.org/fathers/03124.htm.
[34] Ibid.
[35] Cf. Jacques Paul Migne, note to *Adversus Marcionem* 4.17 (PL 2.397–398), n. a.

usury. Nevertheless, as we discuss below, money is not the sole quid pro quo possible in a usurious contract.

Three fourth-century Latin Fathers, writing in the golden age of early Christian theology, offer insight into patristic signification of "usury" through their definitions and usage of the term. They bring into focus how levels of voluntariness may affect what constitutes a usurious premium. Ambrose of Milan (c. 340–397) is credited with authoring the first Christian definition of usury.[36] While reflecting on Scripture's teaching on usury, Ambrose presents a definition that resonates with that found in Roman law. It has, in fact, been proposed that Ambrose's legal background played a role in his offering the earliest Christian definition for "usury."[37] At one point in his book on usury, called *De Tobia*, Ambrose lists a couple of kinds of addition that can constitute usury, and concludes that "whatever is added to capital is usury."[38] This definition seems to include all exacted or contracted profits on a loan. He explicitly includes all hidden increases summoned by creditors from their clients.[39]

A refinement of Ambrose's definition of "usury," however, becomes apparent in his usage of the term. In his discussion of gift-giving in *De officiis ministrorum*, while counseling that the beneficiary of a loan or gift ought to repay the grantor, Ambrose advocates surpassing the original beneficence.[40] Although the advocated addition would seemingly fall under his definition of usury in *De Tobia*, Ambrose appears to recognize a distinction between these

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[36] Moser, 38.
[37] Ibid.
[38] Ambrose of Milan, *De Tobia* 14.49 (PL 14.778; CSEL 32/2.546), ed. and trans. Lois Miles Zucker (Washington, DC: The Catholic University of America, 1933), 64–65: "*quodcumque sorti accedit usura est*." Unless otherwise noted, subsequent references to Ambrose's *De officiis ministorum* will be from Zucker's edition and will be cited by book, paragraph, and page number; volume and column or page numbers from *Patrologia Latina* and *Corpus Christianorum Series Latina* are provided for ease of reference.

Moser observes that "this is exactly the definition that Charlemagne and Gratian were later to employ in their laws" (Moser, 38). As seen below, Pope Eugene III also quotes this definition.
[39] Ambrose of Milan, *De Tobia* 14.50 (PL 14.778; CSEL 32/2.546–547), 64–65
[40] Ambrose of Milan, *De officiis ministrorum* 1.160–161 (PL 16.70; CCSL 15.58–59), ed. and trans. Ivor J. Davidson, Vol. 1, *Oxford Early Christian Studies*, ed. Gillian Clark and Andrew Louth (Oxford: Oxford University Press, 2001), 210–211. Unless otherwise noted, all further references to Ambrose's *De officiis ministorum* will be from Davidson's edition and will be cited by book, paragraph, and page number; volume and column or page numbers from PL and CCSL are provided for ease of reference.

tokens of gratitude and usury. Nevertheless, Ambrose is not oblivious to their similarity. He notes that the tokens are given "as usury, so to speak."[41] Even so, as can be inferred from the phrasing of this passage, usury and such tokens of gratitude are distinct. This distinction is likewise discernable in *De Tobia*, where Ambrose warns of the dangers that these tokens of gratitude can pose. While they may present the simulacrum of a transaction, tokens of gratitude are nonetheless given "as is the custom of friendship."[42] Applied to his definition, this distinction refines Ambrose's conception of usury: it is for him, at least properly speaking, an addition of any sort *exacted* as recompense for a loan; excluded from this signification are additions freely bestowed. This distinction introduces greater nuance into what constitutes an addition in a usurious loan contract.

Augustine of Hippo (354–430) offers a more developed, and in some ways more nuanced, definition than does his mentor Ambrose. Augustine's definition brings out the notion of intent and perhaps hints at the kind of contract that underlies loans at usury in Roman law. In commenting on the Psalms, he writes: "If thou hast lent thy money on usury to man, that is, if thou hast given the loan of thy money to one, from whom thou dost expect to receive something more than thou hast given, not in money only, but anything, whether it be wheat, or wine, or oil, or whatever else you please, if you expect to receive more than you have given, you are an usurer."[43] Augustine reiterates the received notion that usury is any sort of addition compensating for the extension of a money loan. His definition revises Ambrose's emphasis in that the expectation of the addition, rather than its actual exaction or payment, constitutes usury. In one sense, this definition is more expansive than that of Ambrose. Here emphasis is that the hope or expectation of an addition on a loan is usury,

[41] Ibid., 1.161 (PL 16.70; CCSL 15.58), 210–211: "*ut tamquam fenerata*." Translation mine.
[42] Ambrose of Milan, *De Tobia* 23.90 (PL 14.792; CSEL 32/2.571), 100–101: "*ut habet usus amicitiae*." Cf. Cicero, *De amicitia* (*Laelius*) 9.31 (LCL 154.142–143), trans. William Armistead Falconer, ed. E. Capps, T. E. Page, and W. H. D. Rouse (London: William Heinemann, 1923).
[43] Augustine of Hippo, *Enarratio in Psalmum XXXVI* 3.6 (PL 36.386; CCSL 38.372), trans. J. E. Tweed, in *Nicene and Post-Nicene Fathers*, First Series, vol. 8, ed. Philip Schaff (Buffalo, NY: Christian Literature Publishing, 1888), 99. See also Augustine of Hippo, *Sermo LXXXVI* 5.5 (PL 38.525–526).

even if such a payment is not obligatory. Augustine's definition perhaps gives a firmer foundation for Ambrose's loophole for freewill gifts, which, so long as they are not expected, would not constitute usury under Augustine's schema, even if borrowers were to give such gifts as a form of recompense.

Jerome (c. 347–420) offers a less restricted understanding of what constitutes a usurious premium than do Ambrose or Augustine. Instead of limiting "usury" to the requirement or expectation of an addition, Jerome applies the term to the acceptance of an addition on a loan.[44] This signification for "usury" is expansive enough to include gifts bestowed by debtors to their creditors.[45]

As indicated by the perspectives of Ambrose, Augustine, and Jerome, there is a modicum of diversity in the patristic signification of the "usury." This diversity turns on whether the addition is required, expected, or merely accepted. Ambrose provides the core signification from which a consensus can be constructed: Each of the three Fathers would agree that a required premium, in any form, on account of a loan constitutes usury. This core signification likewise jibes with the usage of the period and with the signification discernable in Scripture.

Money is by far the most common quid pro quo associated with usury in the writings of the Latin Fathers.[46] Yet, the Church Fathers certainly would have recognized that usury can occur with other kinds of quid pro quo as well, as they would have found in Deuteronomy

[44] Jerome, *Commentariorum in Hiezechielem* 6.18 (PL 25.176–177; CCSL 75.239–240), trans. Thomas P. Scheck, in *St. Jerome: Commentary on Ezekiel* (New York: The Newman Press, 2017), 209–210. All further references to Jerome's *Commentariorum in Hiezechielem* will be from this and the Latin editions and will be cited by book, paragraph, and page number; volume and column numbers from *Patrologia Latina* and *Corpus Christianorum Series Latina* are provided for ease of reference: for example, Jerome, *Commentariorum in Hiezechielem* 6.18 (PL 25.176–177; CCSL 75.239–240), 209–210.

[45] Maloney, "The Teaching of the Fathers on Usury," 259.

[46] See, for example, Commodian, *Instructiones* 65 (PL 5.201–202; CSEL 15.94–95); Cyprian of Carthage, *Testimoniorum libri III ad Quirinum* 3.48 (PL 4.759; CCSL 3.137); Gregory of Tours, *Historia Francorum* 3.34 (PL 71.267), ed. Bruno Krusch and Wilhelm Levison, in *Libri historiarum X* (Hannover: Impensis Bibliopolii Hahniani, 1951), 130.

23:19.[47] Unpacking Ambrose's definition of "usury" one's finds that it does not solely concern money-based transactions. Remarks surrounding his definition and the full version of his definition make this explicit. He recounts how the premium on a money loan may not also be money but still be usury. He focuses on the thing offered as the addition, rather than on the principal, which he seems to assume is money. He recounts how usury in monetary loans to merchants sometimes manifests in the form of wares.[48] From this observation, he offers the remark containing his definition of usury: "Food too is usury and clothing is usury, and whatever is added to capital is usury."[49] Ambrose makes clear that an addition need not be monetary to constitute usury, but he does not here discuss whether the loaned principal need not be money. Other Fathers more explicitly address this possibility.

Jerome, in his exegesis of Ezekiel 18:13, notes how usury often relates to money in Scripture, but not always. He recalls that the Hebrew of Ezekiel 18:13 covers all forms of usury, but the Greek of the Septuagint only covers monetary transactions.[50] He further indicates money as the quid pro quo found in Psalm 15:5 (14:5). For Jerome, however, these verses do not restrict the designation of "usury" to monetary transactions. He reads "*tarbit*"/"*pleonasmos*"/"*amplius*" of Ezekiel 18:13 as answering those who would restrict usury to monetary transactions.[51] He writes:

> It is customary to exact usury [*usura*], or as the divine word calls it, "abundance [*abundantia*]," in respect to fields of grain and millet, in respect to wine, oil, and other kinds of products; for instance, it is customary for us to give ten pecks of in the winter time, and at harvest, we receive back fifteen, that is, an *increase* [*amplius*] in respect to a moderate share.[52]

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[47] See, for example, a direct quotation of Deuteronomy 23:19 in Cyprian of Carthage, *Testimoniorum libri III ad Quirinum* 3.48 (PL 4.759; CCSL 3.137); Ambrose of Milan, *De Tobia* 14.48 (PL 14.778; CSEL 32/2.546), 62–65.
[48] Ambrose of Milan, *De Tobia* 14.49 (PL 14.778; CSEL 32/2.546), 64–65.
[49] Ibid.
[50] Jerome, *Commentariorum in Hiezechielem* 6.18 (PL 25.176; CCSL 75.239–240), 209–210.
[51] Ibid. 6.18 (PL 25.176; CCSL 75.240), 210.
[52] Ibid.

Jerome clearly has in mind not only the values that constitutes the addition but also the values constituting the principal. What these examples have in common is that they are all commodities, specifically fungible consumables. He does not, however, limit the kinds of quid pro quo subject to usury to his examples, since he mentions “other kinds of products” as well. The products, however, would appear to fall under the same genus or class as those given in his examples, since these products are “*ceterarumque specierum*,” “and of other species,” and not “*ceterorumque generum*,” “and of other classes.” If this is Jerome’s meaning, it aligns with Augustine’s use of *mutuum* in reference to usury.

A striking feature of Augustine’s definition is the occurrence of usury in a *mutuum*. It should be noted that although the Latin Vulgate translation of the Bible and Augustine refer to usury with reference to a *mutuum*, neither explores the concept in depth. Nevertheless, the association of “usury” with a *mutuum* suggests a few characteristics for its signification: First, that usury attends a loan contract; second that the goods lent and returned (the exchange values) are consumable fungibles (as discussed in Chapter 1); third, since a *mutuum* merely required repayment of a quantitative and qualitative equivalent of the lent fungibles, usury was an addition that attended, rather than was inherent to, this contract. This third characteristic can be seen in that usury was secured through a contract known as a *stipulatio*, which ran alongside a *mutuum* or subsumed it.[53]

Signification of “Usury” in the Magisterium

Although the first papal and conciliar statements on usury do little to refine the term’s signification, these statements did consider cases that add greater clarity to the concept and confirmed the endurance of the element explored above. Several late-antique councils and synods discuss, but leave inexplicit, what constitutes the practice. Overall, however, these

[53] In noting the “relative unimportance of the real contracts,” Barry Nicholas remarks that “it would obviously be convenient to embody both the undertaking to repay the capital and the undertaking to repay the interest in the same *stipulatio*, and thereby enable both to be claimed in the same action” (Nicholas, 169).

discussions suggest a signification of “usury” consonant with Scriptural and patristic significations of “usury”: usury as an addition paid on a loan. The First Council of Nicaea’s canon on the subject exemplifies this trend.[54]

Better remembered for its response to the Arian heresy and its adoption of the eponymous Nicene Creed (later revised into the Niceno-Constantinopolitan Creed), the First Council of Nicaea (325) provides a window into the signification of “usury.” The council promulgated twenty canons, a form of ecclesiastical regulations. The seventeenth of these concerns usury. While leaving “usury” undefined, the canon applies Psalm 15:5 (14:5) to the contemporary understandings of usury, referring to clerics who “charge one percent [a month] on loans [*cum mutuum*]” or who are found “to receive interest [*tokos*] by contract or to transact the business in any other way or to charge [a flat rate of] fifty percent or in general to devise any other contrivance for the sake of dishonourable gain.”[55] The rates mentioned correspond to those expressed by Emperor Constantine I (r. 306–337) shortly before the council.[56] Constantine’s decree primarily regarded the lending via a *mutuum* of liquid and dry produce (*fruges humidae vel arentes*).[57] For every two portions of produce, an additional third part could be exacted of the debtor—so, a fifty-percent rate. Allusion to this decree suggests that the council fathers at Nicaea understood usury to arise in the context of a *mutuum* and that produce was among the kinds of quid pro quo subject to usury. Constantine also refers to money loans, on which the monthly rate of one percent, or twelve percent per annum, is affirmed. Furthermore, based on the references to the civil law, the council fathers clearly viewed the maximum civil rates as falling within their understanding of usury.[58] They did not,

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[54] McCall, 64.
[55] First Council of Nicaea, Canon 17, in *Decrees of the Ecumenical Councils*, Volume 1: Nicaea I to Lateran V, ed. Norman P. Tanner (London: Sheed & Ward; Washington, DC: Georgetown University Press, 1990), 14. Unless otherwise noted, all further citation from this canon will be from this edition and will be cited thus: First Council of Nicaea, Canon 17, 14.
[56] *Codex Theodosianus* 2.33.1, ed. Paul Kreuger (Berlin: Weidmann, 1923), 91; Moser, 35.
[57] *Codex Theodosianus* 2.33.1, 91.
[58] Ambrose also provides another late-antique example of referring to the maximum civil rate on loans and refers to such charges as usury (Robert Maloney, “The Teaching of the Fathers on Usury: An Historical Study

however, limit usury to these maximum rates, since they also mention dealing in usury at all or any other similar profit-making scheme.

Late-antique regional councils and synods likewise suggest usury to be a premium on a loan contract. The Council of Elvira (305 or 306) speaks of accepting usury (*usuras accipere*).[59] Like the Council of Nicaea, the Synod of Laodicea (fourth century) and the Council of Carthage (419) speak of receiving *usury*.[60] The Council of Carthage also suggests a distinction between the repayment of principal and usury.[61] Legislating for the entire Western Church,[62] the Council of Arles (314) is the most explicit, speaking of money being lent at usury.[63]

Six consecutive general councils, legislating for the whole church, and spanning from the mid-twelfth century into the fourteenth century, treat of usury. Since none of them define usury, it can be inferred that the understanding of the term was well known, an inference which the texts also support. In addition to this inference, the legislation from these councils supports an understanding of usury as an addition paid on a loan contract.

The thirteenth canon of the tenth general council, the Second Lateran Council (1139), appears to equate *foeneratores* and *usurarii*, and places their activities as being treated in "divine and human laws" as well as in both Scripture's Old and New Testaments.[64] The canon accordingly places usury within the context of both the scriptural signification of usury and of that found in Roman law. Accordingly, the signification used by the council fathers

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on the Development of Christian Thinking," *Vigiliae Christianae* 27, no. 4 (1973): 254. See Ambrose of Milan, *De Tobia* 12.42 (PL 14.775; CSEL 32/2.542), 58–59).

[59] Council of Elvira, Canon 20, in Alfred William Winterslow Dale, *The Synod of Elvira and Christian Life in the Fourth Century: A Historical Essay* (London: Macmillan and Co., 1882), 321.

[60] First Council of Nicaea, Canon 17, 14; Synod of Laodicea (4th century), Canon 4(5), in *Nicene and Post-Nicene Fathers*, Second Series, vol. 14, ed. Philip Schaff and Henry Wace (Edinburgh: T&T Clark, 1991), 126; Council of Carthage (419), Canon 5, in *Nicene and Post-Nicene Fathers*, Second Series, vol. 14, ed. Philip Schaff and Henry Wace (Edinburgh: T&T Clark, 1991), 445.

[61] Council of Carthage (419), Canon 16, 450

[62] Moser, 35.

[63] Council of Arles (314), Canon 13 (CCSL 148.40–41).

[64] Second Lateran Council, Canon 13, in *Decrees of the Ecumenical Councils*, Vol. 1: Nicaea I to Lateran V, ed. Norman P. Tanner (London: Sheed & Ward; Washington, DC: Georgetown University Press, 1990), 200. Unless otherwise noted, all further citation from this canon will be from this edition and will be cited thus: Second Lateran Council, Canon 13, 200.

seems, at least in their minds, to constitute a seamless garment with what came before. The Third Lateran Council (1179) does little to add to this picture, other than to place its own treatment in light of Scripture and to describe the practice of usury (*usuras exercere*) as a type of business (*negotium*), so established that many gave up other pursuits to practice it.[65]

The Fourth Lateran Council (1215) treats of usury twice in its constitutions, though only the first adds much to the signification of usury.[66] Constitution 67 reveals three attributes of usury through its discussion. First, usury is a form of extraction (*exactio usurarum*).[67] Second, usury is not of itself defined as excessive, since it speaks of the Jews as extorting "heavy and immoderate usury from Christians."[68] Finally, the economic reality rather than the exact contractual arrangement under which usury is paid is most consequential to what constitutes usury. This third attribute can be inferred from Constitution 67's specifying but one remedy for usury regardless of under what contractual arrangement it is secured (by the Jews).

The next three General Councils do not add much to the magisterial signification of usury, evidencing mostly continuity in usage with perhaps some slight variance. The first of these councils, the First Council of Lyons (1245), places the identification of usury squarely in the province of contracting and paying off debts, but uses the term *debitum* ("something owed") rather than the standard *mutuum*.[69] It does, however, imply that some debts did not

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[65] Third Lateran Council, Canon 25, in *Decrees of the Ecumenical Councils*, Vol. 1: Nicaea I to Lateran V, ed. Norman P. Tanner (London: Sheed & Ward; Washington, DC: Georgetown University Press, 1990), 223. Unless otherwise noted, all further citation from this canon will be from this edition and will be cited thus: Third Lateran Council, Canon 25, 223.

[66] Fourth Lateran Council, Constitution 67 and [71], in *Decrees of the Ecumenical Councils*, Vol. 1: Nicaea I to Lateran V, ed. Norman P. Tanner (London: Sheed & Ward; Washington, DC: Georgetown University Press, 1990), 265–266, 267–271. Unless otherwise noted, all further citation from this canon will be from this edition and will be cited thus: Fourth Lateran Council, Constitution 67, 265–266.

[67] Fourth Lateran Council, Constitution 67, 265–266.

[68] Fourth Lateran Council, Constitution 67, 265: "*Iudaei a christianis graves et immoderatas usuras extorserint*." Translation mine.

[69] First Council of Lyons, Canon 13, in *Decrees of the Ecumenical Councils*, Vol. 1: Nicaea I to Lateran V, ed. Norman P. Tanner (London: Sheed & Ward; Washington, DC: Georgetown University Press, 1990), 293–295. Unless otherwise noted, all further citations of this canon will be from this edition and will be cited thus: First Council of Lyons, Canon 13, 293–295.

incur usury.[70] The Second Council of Lyons (1274) freely interchanges forms of *usura* and *fenus* in its discussion of usury, following a trend seen in the patristic material.[71] It also speaks of usury as something which is received (*usurae quas receperant*).[72] The Council of Vienne (1311–1312) offers a similar vision of usury, speaking of the demanding and paying of usury and about returning it, both signaling its nature as a paid addition, rather than simply its expectation, as Augustine had defined it.[73] The council also witnesses to the fact that civil legality is not a factor in the term's signification.[74]

Papal statements take greater strides in developing the signification of usury than do the general councils. These strides are visible especially regarding what counts as a usurious addition, but also the kinds of quid pro quo subject to usury and the form of the underlying contract.

In a letter to the bishop of Padua, Pope Eugene III (r. 1145–1153) makes clear that usury occurs based on the economic reality of the exchange rather than the legal form of the contract.[75] The pontiff declares that it is usury for someone to profit from a held pledge and not subtract those profits from the repayment needed to redeem that pledge.[76] Although this contract would be considered a *pignus* rather than a *mutuum*, the economic substance of the contract is the same: an addition is paid beyond capital lent (presumably money) and then later repaid. The pope underscores this point by quoting Ambrose's definition of usury:

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[70] First Council of Lyons, Canon 13, 294.
[71] Second Council of Lyons, Constitution 26, in *Decrees of the Ecumenical Councils*, Vol. 1: Nicaea I to Lateran V, ed. Norman P. Tanner (London: Sheed & Ward; Washington, DC: Georgetown University Press, 1990), 328–329. Unless otherwise noted, subsequent references for Second Council of Lyons will be from this edition and will be cited thus: Second Council of Lyons, Constitution 26, 328–329.
[72] Second Council of Lyons, Constitution 27, 329. Tanner notes that this constitution is elsewhere listed as Constitution 25 (see Second Council of Lyons, Constitution 27, 329, n. 2).
[73] Council of Vienne, decree [29], in *Decrees of the Ecumenical Councils*, Vol. 1: Nicaea I to Lateran V, ed. Norman P. Tanner (London: Sheed & Ward; Washington, DC: Georgetown University Press, 1990), 384. Unless otherwise noted, subsequent citations of this canon will be from this edition and will be cited thus: Council of Vienne, decree [29], 384.
[74] Ibid.
[75] Pope Eugene III, *Epistolae et privilegia* 60 (PL 180.1567).
[76] Noonan, *Scholastic Analysis of Usury*, 18.

"whatever is added to capital is usury."[77] Of note is that the rate of usury here is not a percentage of the loaned amount over a fixed period, but rather based on the profit derived from the pledge.

Another contractual form that captured papal attention was the credit sale. This attention arose in a philosophical and juridical milieu inhabited by the belief that usury could occur in such sales.[78] The kinds of quid pro quo mentioned in papal statements on credit sales are all consumable fungibles.[79] Although there is a delay in the exchange of one of the parties' quid pro quo, the form of the contract is not a *mutuum*:[80] the same kind of fungible is not returned, but rather money is paid at a later date for some consumable received now or some consumable is later transferred for a money payment received now. The key variable, it seems, is whether doubt exists over the future price of the goods. As Noonan summarizes, "*venditio sub dubio* ["sale under doubt"] is sponsored as an exception to the usury law by two papal decretals, and all discussion of the case follows these two decisions and a third decretal limiting them."[81] While his discussion of credit sales in the context of usury suggest a perceived similarity, Pope Alexander III (r. 1159–1181) avoids calling the markup "usury" even when doubt about the future price is not present.[82] Pope Urban III (r. 1185–1187) and Pope Gregory IX (r. 1227–1241) imply, however, that without the presence of doubt about the future price of the wares (*merces*), the markup constitutes usury.[83] In this vein, Gregory IX considers both credit sales and pre-payment for wares, with similar reasoning:

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[77] Ambrose of Milan, *De Tobia* 14.49 (PL 14.778; CSEL 32/2.546), 64–65. The only difference is the Latin word translated as "whatever"—Ambrose: "*quodcumque*"; Pope Eugene: "*quidquid*."
[78] McCall, 99.
[79] Cf. McCall, 98, 102, 104; Noonan, *Scholastic Analysis of Usury*, 99.
[80] Cf. McCall, 98; Noonan, *Scholastic Analysis of Usury*, 19.
[81] Noonan, *Scholastic Analysis of Usury*, 90.
[82] Pope Alexander III, *In civitate tua*, in *Gregorian Decretals* 5.19.6, in *Corpus iuris canonici*, ed. Emil Friedberg and Aemilius Ludwig Richter, vol. 2 (Leipzig: Bernhard Tauchnitz, 1881), 813. Unless otherwise noted, subsequent references to material from *Gregorian Decretals* his edition and will be cited thus: Pope Alexander III, *In civitate tua*, in *Gregorian Decretals* 5.19.6, 813.
[83] See Pope Urban III, *Consuluit*, in *Gregorian Decretals* 5.19.10, 814; English translation in *Compendium of Creeds, Definitions, and Declarations on Matters of Faith and Morals* (764), ed. Peter Hünermann, Robert Fastiggi, and Anne Englund Nash (San Francisco: Ignatius Press, 2012), 249. Pope Gregory IX, *Naviganti*, in

> Likewise, he who gives ten *solidi* ⟨ = gold coins⟩ so that at another time he may have just as many measures of grain, wine, oil paid back to him, and, even though they are then worth more, it can be reasonably doubted whether at the time of payment they will be worth more or less: because of this he should not be considered a usurer.
>
> By reason of this doubt he also is excused who sells clothing, grain, wine, oil, or other wares so that at a set time he receives for them more than they are worth at that time, if, however, he had not intended to sell them at the time of the contract.[84]

In each of these cases, though the form of a *mutuum* is not present, the sorts of quid pro quo associated with a *mutuum* are: money and other consumable fungibles. Reasonable doubt over the future exchange value, however, precludes credit sales from being deemed usurious, even if there is a discrepancy between the spot price and the credit price. Considered another way, the addition in this scenario, the addition paid in a credit sale is not a premium, but rather an attempt to guard against foreseeable loss by seller and buyer. In this way, *venditio sub dubio* is akin to the addition to cover losses associated with *interesse*, as will be revisited shortly.

Some popes also considered whether a pre-agreed resale to the original owner at a different price constituted usury.[85] Popes Innocent III and Innocent IV saw the possibility of disguising usury under a pre-agreed resale to the original owner, but did not conclude that all such sales were inherently usurious.[86] Pope Innocent III considers two scenarios. In the first scenario, "the creditor agrees to resell to the original seller between the seventh and ninth years from the date of sale the lands and fields which he has bought, and to charge only about half-price in the resale."[87] In the second scenario, "the fruits are to be counted against the resale price . . . [and] the original seller is at the same time charged a higher price."[88] The pope judges both of these contractual arrangements usurious, but "the simple addition of the

Gregorian Decretals 5.19.19, 816; English translation in *Compendium of Creeds, Definitions, and Declarations on Matters of Faith and Morals* (828), ed. Peter Hünermann, Robert Fastiggi, and Anne Englund Nash (San Francisco: Ignatius Press, 2012), 275–276. See also McCall, 101–102; Noonan, *Scholastic Analysis of Usury*, 20.

84 Pope Gregory IX, *Naviganti*, in *Gregorian Decretals* 5.19.19, 816; 275–276.

85 See McCall, 102.

86 See Noonan, *Scholastic Analysis of Usury*, 95–96.

87 Noonan, *Scholastic Analysis of Usury*, 95–96.

88 Ibid., 96.

resale clause, whether in favor of seller or buyer, [was in]sufficient in the Pope's eyes to prove the contract usurious."[89] Instead, the intention to dodge the prohibition of usury is what makes these transactions usurious. Pope Innocent IV's view is largely consistent with that of his non-immediate predecessor.[90]

Another major development of the medieval churchmen was the distinction they made between usury and *interesse*. As discussed in Chapter 1, *interesse* grew from the notion of *quod interest* in Roman Law and was considered as compensation for loss rather than as a premium or profit. This distinction made clear that the premium or *lucrum* of *usura* was based on a title due to the loan itself, whereas payment known as *interesse* was due to titles extrinsic to the loan contract. Also mentioned in Chapter 1 was that two kinds of loss were formulated and contested during the Middle Ages as falling under *interesse*. The first, *damnum emergens*, covered actual or anticipated losses in making a loan; the latter, *lucrum cessans*, covered lost profits that would have been realized should the lender's funds been used elsewhere.

With his 1234 bull *Rex pacificus*, Pope Gregory IX issued his code of ecclesiastical law known commonly as the *Gregorian Decretals*, or the *Liber extra*.[91] Over the previous four years, the Dominican canonist Raymond of Penyafort (c. 1175–1275) stitched together the new code. Among the decretals contained in the *Gregorian Decretals* are some of the earliest admissions of *interesse*, which are limited and do not specifically deal with the basic loan contract. For example, the collection canonizes a permission for *interesse* granted by Pope Lucius III (r. 1181–1185).[92] The credit contract described by Lucius is not straightforward and the permission granted is for expenses arising after the contracting of the

[89] Ibid.
[90] Cf. ibid.
[91] See Brundage, 55.
[92] Pope Lucius III, "Eliensi Episcopo et Archidiacono Norvicensi," in *Gregorian Decretals* 3.22.02, 530; Pope Lucius III, "Cantuariensi Archiepiscopo," in *Gregorian Decretals* 3.22.03, 530–531.

loan, yet it is the first papal permission for *interesse* on a loan.[93] In a letter of Innocent III (r. 1198–1216) permission is given for usurpers of ecclesiastical property in returning that property to deduct expenses for its care.[94] Some medieval canonists, including Raymond of Penyafort, deduced from this decretal that lenders could take remuneration from profit-generating pledges for the care needed for maintaining them.[95] These papal decisions are apiece with theologians and canon lawyers, who up to mid-thirteenth century appear to deem only payments for actual injury as distinguishable from usury.[96]

The sixteenth century provides a watershed of magisterial pronouncements on *interesse*, with more direct application to loan contracts. These pronouncements arose in response to the live issue of the *montes pietatis* or mounts of piety, charitable organizations that functioned as pawnbrokers and lent money to the poor.[97] In the mid-fifteenth century, the first *mons pietatis* was founded by the papal governor in Perugia, Italy, to fill the vacuum left by the ban on Jews' lending at usury, since the poor still sought credit.[98] It gained papal approval in 1467.[99] The model proved popular. By the close of the fifteenth century, eighty *montes pietatis* had sprouted along the Italian peninsula.[100] Eventually, the *montes* began charging fees, which drew allegations of usury.[101] The ensuing controversy provided the context for further ecclesiastical definition of usury. In 1515, Pope Leo X (r. 1513–1521) responded to the controversy with a papal bull *Inter multiplices*, for which he gained conciliar

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[93] Noonan, *The Scholastic Analysis*, 107.
[94] Pope Innocent III, "*Episcopo Mauriensi et Praeposito Ulconensi*," in *Gregorian Decretals* 3.13.11, 515–516; Noonan, *The Scholastic Analysis*, 112.
[95] Noonan, *The Scholastic Analysis*, 112.
[96] See ibid., 109.
[97] See Buckley, 134. In laying out a vision for renewing the financial sector, Pope Benedict XVI (2005–2013) makes positive mention of these institutions in his social encyclical *Caritas in veritate* (2009) (65, accessed March 11, 2020, Latin text: http://www.vatican.va/content/benedict-xvi/la/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html; English text: http://www.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html). The mention is less clear in the English, which uses the term "pawnbroking."
[98] Buckley, 134.
[99] Ibid.
[100] Ibid., 134–135.
[101] Cf. ibid., 134.

backing from all but one father of the Fifth Lateran Council (1512–1517).[102] The bull offers a definition of usury championed by opponents of the *montes*: "That is the real meaning of usury: when, from its use, a thing which produces nothing is applied to the acquiring of gain and profit without any work, any expense or any risk."[103] Although the definition summarizes the opinion of opponents of the *montes pietatis*, the bull accepts this definition, or at least does not challenge it.[104] This definition is more nuanced than previous definitions.[105] "A thing which produces nothing" fits with the understanding of the kinds of quid pro quo in a *mutuum* (consumable fungibles).[106] The development is to be found elsewhere. The greater nuance appears to be with the description of the addition being paid without "any work, any expense or any risk." The addition is more clearly defined as one arising from the loan itself, with the suggestion that a gain—perhaps even coincident with a loan—can be derived without constituting usury if work, expense, or risk are present.[107] The bull finds the fees charged by the *montes* not usurious. It rules on the side of the proponents of the *montes*, who distinguish these payments from profits (*lucrum*) and argue that the payments are "for the compensation of the organisations — that is, to defray the expenses of those employed and of all the things necessarily pertaining to the upkeep of the said organisations."[108] In siding with the proponents of the *montes*, Pope Leo X and the Fifth Lateran Council make clear that charges for expenses do not qualify as usury, at least when lending is undertaken for charitable purposes.

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[102] Ibid., 135.
[103] Fifth Lateran Council, *Inter multiplices*, in *Decrees of the Ecumenical Councils*, vol. 1: Nicaea I to Lateran V, ed. Norman P. Tanner (London: Sheed & Ward; Washington, DC: Georgetown University Press, 1990), 626. Unless otherwise noted, all further citation from this canon will be from this edition and will be cited thus: Fifth Lateran Council, *Inter multiplices*, 626.
[104] Cf. Noonan, *The Scholastic Analysis*, 283.
[105] John Gilchrist, *The Church and Economic Activity in the Middle Ages* (London: Macmillan, 1969), 115.
[106] *Inter multiplices* speaks of the *montes* as making loans to the poor (*mutuum datur*) (Fifth Lateran Council, *Inter multiplices*, 626).
[107] Cf. Gilchrist, 115. Gilchrist italicizes these three elements in quoting the definition of usury found in *Inter multiplices*.
[108] Fifth Lateran Council, *Inter multiplices*, 626.

Questions surrounding the *montes* led to further papal definition of usury over the course of the sixteenth century.[109] Dispute long existed in theological and canonical discourse about whether payments for *lucrum cessan*s or lost profits could be considered *interesse* instead of usury in the context of a loan. Pope Innocent IV (r. 1243–1254) perhaps best epitomizes the hesitancy of the Church to accept the title. While implicitly recognizing the distinction in one instance,[110] he explicitly rejects "pure *lucrum cessans*" in another.[111] In the sixteenth century, the Holy See revisited the issue. Seeking to attract additional capital to lend to the poor, the *montes pietatis* began offering modest payments (four to six percent) to investors for the use of their money.[112] Three popes—Pope Paul III (r. 1534–1549), Pope Julius III (r. 1550–1555), and Pope Pius IV (r. 1559–1565)—each approved of these payments as *interesse*.[113] Circumscribed papal approval, however, perhaps limits the designation. Three criteria are set in each pope's brief to the *montes*: First, that remuneration could only be for funds redirected from an at-hand business opportunity; second, that remuneration would be less than could have been realized from the business opportunity; and third, that investors' principal intention was charity.[114] From these circumscriptions it can be inferred that these popes are not prepared to exclude from the signification of "usury" payments to cover lost profits which were merely suppositional.[115] The first criterion demanded that the business opportunity and the willingness to invest in it be actual. As if an assurance that the investor was sustaining a loss, the second criterion demanded that they must still anticipate some loss after the payment, though the difference may be miniscule.

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[109] Noonan, *The Scholastic Analysis*, 258.
[110] Ibid., 116.
[111] Ibid., 115, n. 67.
[112] Ibid., 258. Cf. Buckley, 135.
[113] Noonan, *The Scholastic Analysis*, 258. Noonan notes here that Pope Pius IV was advised, albeit unofficially, by fathers of the Council of Trent (1545–1563) in making this determination. Cf. Buckley, 135.
[114] Noonan, *The Scholastic Analysis*, 258.
[115] Cf. McCall, 79–80.

Finally, as if this assurance were insufficient, the popes remind the faithful that charity, which gives of oneself for others' good, must be the investors' primary guide.

None of these documents granted, however, that payments for the risk of default (i.e., loss of the principal) was distinguishable from usury. Nevertheless, there is dispute whether the Holy See eventually granted this title in the seventeenth century. In 1645, the Sacred Congregation for the Propagation of the Faith made what has been described as "the first ecclesiastical approbation of the risk title" as *interesse* and not usury.[116] The supposed approbation came in response to controversy regarding converts to Christianity in China.[117] The question behind the controversy touched on the signification of "usury" and whether compensation "because there was likelihood of flight by the debtor, or because there might be delay in repayment, or because repayment might have to be forced by recourse to the courts" should be treated as (forbidden) usury.[118] In other words, the question is whether such compensation can be classified under *interesse*. The Congregation distinguished between compensation made "by reason of the loan, immediately and precisely," from that received "by reason of a probably imminent danger . . . provided there is considered the equality and probability of the danger, and provided that there is kept a proportion between the danger and what is received."[119] The decision gained papal approval, in that Pope Innocent X (r. 1644–1655) threatened with excommunication any inobservance of the Congregation's decision.[120] There is therefore evidence of a magisterial distinction between usury and compensation for risking the principal. Such a conclusion remains inconclusive, however. Although Noonan affirms that "the decree and the papal enforcement are the most important approbation the risk title has yet received," he later admits that the Congregation's decision was "somewhat

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[116] Noonan, *The Scholastic Analysis*, 289.
[117] See ibid.
[118] See ibid.
[119] Congregation for the Propagation of the Faith, quoted in John T. Noonan, Jr., *The Scholastic Analysis of Usury* (Cambridge, MA: Harvard University Press, 1957), 289.
[120] Noonan, *The Scholastic Analysis*, 289.

ambiguous."[121] This ambiguity admits of various interpretations of the decision and whether payment for risk of loss should be considered usury. The Italian theologian and canonist Pietro Ballerini (1698–1769) argues that most of his contemporary theologians are mistaken in their reading of the Congregation's decision.[122] He distinguishes between charges to cover possible expenditures in recovering the principal from compensation for the risk of losing the principal.[123] The former he distinguishes from usury, the latter he does not. Alphonsus Liguori (1696–1787), on the other hand, appears to accept both charges as distinguishable from usury, so long as no guarantor or pledge has been offered.[124] Therefore, it remains unclear whether the magisterium actually distinguishes between usury and compensation for risking the principal.

The so-called "triple contract" presents another point of ambiguity in the magisterial signification of "usury." The triple contract is a seventeenth-century evolution of a business partnership known as a *societas*.[125] Brian M. McCall explains two features which distinguish the triple contract from a standard *societas*:

> In the first new feature, one partner agreed to exchange the percentage share of uncertain future profits of the partnership for a defined amount of guaranteed profit payments. It appears that a rate of 5% of the original capital became a common amount agreed to in lieu of a percentage of the profit.
> . . .
> In the second new feature, one partner insured the return of the other partner's original capital in exchange for a further reduction of the guaranteed profit.[126]

These features, plus that of business partnership, are themselves distinguishable from a *mutuum*, and they in combination came to be generally viewed as distinct from a *mutuum* with usury.[127] Pope Pius V (r. 1566–1572) privately approved of the triple contract as not

[121] Ibid., 289, 292.
[122] Ibid., 289–290.
[123] Ibid., 290.
[124] Ibid., 292.
[125] See McCall, 90ff.
[126] McCall, 90.
[127] McCall, 90–91; Noonan, *The Scholastic Analysis*, 229.

usurious.[128] In an official declaration, however, Pope Sixtus V (r. 1585–1590) proclaims triple contracts "to be thought illicit and usurious."[129] It would appear from this statement that Sixtus V could see through the façade of contractual niceties to the economic substance of a triple contract.[130] Nevertheless, it has been noted that the pope was privately less forthright in labelling the triple contract as usurious.[131] A century and a half later, Pope Benedict XIV (r. 1740–1758), in commenting on the bull, finds the triple contract "less congruous" with its intentions, but stops short of declaring the contract usurious.[132]

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As finally epitomized in *Vix pervenit*, "usury" comes to have an ever more nuanced definition. Its basic signification as a premium arising out of a loan is preserved, but the natures of the loan and the premium arising from it gain better specification. Given the nature of a *mutuum*, the underlying genus of quid pro quo comes to be consumable fungibles, especially money. The addition itself gains nuance as a true profit for lending, rather than just any payment or quasi-payment, such as a gift (with the prominent exception being Jerome), payment for losses, definite or at least probable. It is debatable whether payments for risk of default are ever distinguishable from usury, so there remains some ambiguity about the term's final signification within the magisterial corpus. Even with this uncertainty, three elements of the signification of "usury" are clear: (1) it (normally) arises in conjunction with a *mutuum* or at least some form of credit transaction, (2) the kinds of quid pro quo, or at least the kind of principal, are consumable fungibles, and (3) the addition that "usury" signifies is a true premium, a profit, on such contracts, and not recompense for some loss—an actual loss, lost profits, or perhaps even the risk of default. It is against this signification of "usury" that those of "interest" and "*riba*" are compared.

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[128] See Noonan, *The Scholastic Analysis*, 213.
[129] Noonan, *The Scholastic Analysis*, 220.
[130] Cf. ibid., 229.
[131] Ibid., 221.
[132] Ibid., 221.

Chapter 4

Prohibition of Riba

In October and November of 1999, the European Council for Fatwa and Research and the Fiqh Committee of the Shari‘a Scholars Association of North America each issued fatwas that, while advocating Islamic financing, outlined conditions under which conventional mortgages could lawfully be contracted. At the same time, in affirming the prohibition of *riba*, these fatwas were in line with scholarship in support of Islamic finance, which turns to the Qur’an, Hadith, and classical *fiqh* for authoritative support in finding *riba* a grave offense for all participants to the contract.[1] Where the fatwas proved controversial was in their use of certain juridical principles for carving out exceptions to the general rule.

The European Council positions its stance as consonant with that of Islamic tradition and of the wider Muslim community: “The Council confirms what the ummah has agreed upon of the prohibition of riba, that it is one of the seven destructive sins, that it is one of the major sins upon which war from Allah and His Messenger have been announced.”[2] This assertion resembles statements by Al-Rahman Al-Jaziri (1882–1941) in his tome on the four Sunni schools of *fiqh,* in which he argues that at least *riba al-nasi’a* “is indisputably one of the major sins. This is established by the Book of God, the *Sunnah* of the Prophet, and the consensus of the *ummah*.”[3] The Qur’an and Hadith certainly provide a basis for a ban on *riba*, but do so best when taken as a whole. These texts, along with the general positions within the schools of *fiqh*, provide a strong basis for the wide agreement among Islamic

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[1] See Chapra, *Towards a Just Monetary System*, 56.
[2] European Council for Fatwa and Research, “The Ruling on Buying Homes via Usurious Bank Mortgages for Muslims outside the Islamic Countries,” Resolution 2/4, in Salah al-Sawi, *A Polite Reconsideration of the Fatwa Permitting Interest-Based Mortgages Buying Homes in Western Societies*, trans. Usama Hasan (2001), 76, accessed October 2, 2017, https://unity1.files.wordpress.com/2009/06/analysis-of-fatwas-on-mortgages.pdf.
[3] Al-Rahman al-Jaziri, 241.

banking's supporters that (1) receiving or paying *riba* is prohibited and that (2) violation of the prohibition is a grievous offense. Yet, differences among the schools of the *fiqh* cast open a window to disharmony regarding (3) exceptions to the ban.

Prohibition of *Riba* in the Qur'an

The Qur'an bans *riba*. Within its pages, the practice is a grave offense, at least for Muslim and Jewish receivers of *riba*. The Qur'an's stance remains, nevertheless, open to uncertainty and debate. One reason for this is that some verses explicitly ban the activity, while others do not. To readers unfamiliar with Qur'anic scholarship, the unevenness could present confusion, given the traditional ordering of Qur'anic verses. The first appearance of *riba* in the Qur'an is in verses 2.275–2.280. When take in its entirety, the passage presents an emphatic prohibition of *riba*. Several points are easily teased from this passage: (1) *Riba* is explicitly forbidden (Qur'an 2.275, 2.278) and is sinful (Qur'an 2.276); punishment is the desert of exactors of *riba* (Qur'an 2.275) and no other participants are presented as guilty, but neither are they absolved. (2) Violation of the ban is a grave offense; indeed, Qur'an 2.275 strongly suggests that violators of the prohibition merit damnation: "Those who go back [to devouring *riba*], they are the inhabitants of the Fire, abiding therein." It should be noted, however, that repentance is offered as a means of avoiding punishment. It appears that reformed offenders are permitted still to demand their principal, but not any future *riba* added to it.[4] The medieval commentator Abu 'Abd Allah Muhammad ibn Ahmad al-Qurtubi (d. 1272) notes that although future *riba* was hereby cancelled, this cancellation did not require repayment of *riba* already collected.[5] In addition to damnation (or perhaps another way of stating it), Qur'an 2.279 threatens war from God and Muhammad if the call to renounce *riba*

[4] "Commentary," in *The Study Quran*, 121.
[5] Ibid.

is not heeded. Al-Jaziri presents a reading of this passage that underscores the gravity of the offense according to this passage:

> Can any reprimand be harsher than God equating the takers of *riba* with those who have risen in revolt against Him and are at war with Him and His Prophet? What will be the state of that feeble human being who fights with the Almighty and Overpowering God, Whom nothing on earth or in the Heaven can frustrate. There is no doubt that by resorting to *riba* such a person has adopted the course of self-destruction and deprivation.[6]

Repentance, however, secures for lenders their principal and the promise that they now "shall neither wrong nor be wronged." The securing of lenders' principal still seems to require that they remember to be charitable, for Qur'an 2.280 reads: "And if one is in difficult circumstances, let there be a respite until there is ease, and it is better for you to give [it] as charity, if you but knew."

Qur'an 3.130 likewise provides an unambiguous prohibition of *riba*: "O you who believe! Devour not usury, doubling and multiplying. And reverence God, that haply you may prosper." By way of contrast to the prosperity promised to believers who honor the prohibition, the next verse calls on its readers to protect themselves from flames kindled for the unbelievers. The passage thereby presents *riba* not only as illicit for Muslims, who will be rewarded for avoiding it, but also as grave, since it merits severe retribution. Of note is that while the punishment appears to be solely postmortem, reward for abiding by the prohibition ostensibly begins this side of the grave. Furthermore, mention of the unbelievers does not necessarily extend the prohibition to them because the passage may be contrasting the exaction of *riba* by unbelievers, destined for retribution, with the way of life that befits believers.

In contrast to Qur'an 2.275ff. and 3.130, Qur'an 4.161 issues no direct prohibition of *riba*, but acknowledges the ban on the practice within Judaism. It castigates the Jews for

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[6] Al-Rahman al-Jaziri, 241.

"taking *riba*, though they had been forbidden it, and for their consuming men's wealth falsely." Once again, it is the receivers of *riba* who are portrayed as accountable. The condemnation comes as part of a wider stricture that includes accusations of the Jews' "turning many from the way of God" (Qur'an 4.160). The passage thus recognizes a prohibition *riba* for Jews without necessarily applying it to Muslims or others.[7] In the 1999 judgment of the Supreme Court of Pakistan mentioned in Chapter 2, however, Justice Maulana Muhammad Taqi Usmani makes the inference that *riba* "was a sinful act for the Muslims also, otherwise they had no occasion to blame them [the Jews] for the practice."[8] Another inference from the passage is the gravity of the offense—for *riba*, along with other evils, merits "a painful punishment" prepared "for the disbelievers among them [the Jews]" (4.161). Whether this punishment is antemortem or postmortem remains unclear because no further details are provided. The Qur'an again and again speaks of one kind of sinner or another meriting a painful punishment. Sometimes the Qur'an suggests that this punishment is to be postponed to the afterlife;[9] at other times, the plane on which the retribution is exacted remains ambiguous;[10] at still other times, the plane appears to be temporal.[11]

Like Qur'an 4.161, Qur'an 30.39 lacks an explicit prohibition of *riba*, though its negative timbre often resounds in modern exegesis of the passage: "That which you give in usury [*riba*] that it might increase through other people's wealth does not increase with God. But that which you give in alms, desiring the Face of God—it is they who receive a manifold increase." Although Usmani discerns no prohibition in this aya, he recognizes that the passage indicates that "Riba does not carry a reward from Allah in the Hereafter."[12] He later concludes that, even though the passage includes no prohibition of *riba*, it offers "a subtle

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[7] See Usmani, 22.
[8] Usmani, 22. See also Fazlur Rahman, "Ribā and Interest," *Islamic Studies* 3, no. 1 (1964): 11.
[9] E.g., Qur'an 2.104, 2.174, 3.77, 3.91, 3.176–178, 3.188–191.
[10] E.g., Qur'an 2.8–10, 3.21–22.
[11] E.g., Qur'an 2.178.
[12] Usmani, 21.

indication to the fact that the practice is not favored by Allah."[13] El-Gamal exhibits less commitment to the passage's lacking a *riba* ban; he prefers to hedge his reading by stating that the passage gives no *explicit* prohibition of *riba*.[14] Qur'an 30.39 is clearly less emphatic in its condemnation of *riba*, without direct threat of damnation or other punishment. Within the hierarchy of actions outlined in the Introduction to Part I, *riba* in this passage could be merely *makruh*, since it apparently merits neither punishment nor reward.

Some commentators have latched onto Qur'an 30.39's apparent mildness and—though not necessarily viewing the aya as positive—read the passage as making one kind of *riba* lawful. Saeed recounts how Azhari (d. 980) and Ibn Manzur (d. 1311) adopt the interpretation of "*riba*" in this passage as signifying "gift" (as was discussed in Chapter 2) and conclude that this form of *riba* is lawful,[15] even though the verse is clearly negative in tone. Usually, however, exegetes turn to chronology to reconcile this aya with the clearly prohibitory passages. The basic idea is that passages that are chronologically posterior can abrogate those that are chronologically anterior when there is conflict.[16]

Another method for resolving the less prohibitive tenor of Qur'an 30.39 with the clearly prohibitive tone of such ayas as Qur'an 2.275ff. and 3.130 is through the Qur'an's chronology. The traditional ordering of the Qur'an's suras and ayas has long been considered not to reflect the chronological sequence of the texts.[17] Early reports regarding the Qur'an's composition give ample indication that the textual and chronological orders of the Qur'an are not the same. Directive for present purposes is that the chronological placement of Qur'an 30.39 in the period preceding Muhammad's migration from Mecca to Medina in 622, known as the Hijra, and the placement of the other texts to the period after the Hijra. Both traditional

[13] Ibid.
[14] El-Gamal, 49.
[15] Saeed, *Islamic Banking and Interest*, 21.
[16] I am grateful to Alexander Henley for pointing out this rule to me.
[17] See Theodor Nöldeke et al., *The History of the Qur'ān*, trans. Wolfgang H. Behn (Leiden: Brill, 2013), 47–53.

chronology and that of the German orientalists Theodor Nöldeke (1836–1930) and Friedrich Schwally (1863–1919) agree in this basic division.[18]

Fazlur Rahman offers a rationale for the perceived evolution in the Qur'an's stance toward *riba*. He argues that "when Islam became politically dominant after the Prophet's migration to Medina, *riba* was categorically prohibited."[19] Rahman sees a moral element already apparent in the Qur'an even before its juridical embodiment. He writes that the Qur'an here "passes only a moral stricture on *riba*; it does not yet declare it legally prohibited for Islam had not yet attained political power by which it could eradicate this evil."[20] Thus, Rahman highlights the ethical content of the passage by hinting at a distinction between moral stricture and legal prohibition, while at the same time indicating a rationale for evolution in the Qur'an's outlook toward *riba*.[21]

Prohibition of *Riba* in the Hadith

The Hadith's overall stance toward *riba* is proscriptive, though some individual hadiths lack any clear posture—positive or negative—toward *riba*. *Riba* is repeatedly forbidden, those who deal in it (whether as receiver, giver, or facilitator) are cursed and guilty of possibly one of the gravest of sins. In these hadiths, the taint of legal prohibition and moral turpitude colors *riba*. The Hadith crafts a composite, pejorative tableau of *riba*—a mosaic of prohibitory and otherwise negative hadiths from across the authoritative collections. Although not antithetical to each other, these hadiths do not individually contain all the elements that create this prohibitory image. The following selections come together to create this image, not without some apparently contradictory material.

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[18] See Nöldeke et al., 53.
[19] Rahman, 3.
[20] Ibid.
[21] Cf. Usmani, 25.

Many hadiths are ambiguous in their stance toward *riba*. Hadiths in Sahih al-Bukhari and Sahih Muslim that reference Qur'anic *riba*, for instance, simply mention the teaching in Qur'an 2.275–281 without detailing or even citing the prohibition contained therein.[22] A *hasan* hadith in Sunan Abu Dawud, however, in recounting Muhammad's Farewell Pilgrimage, makes explicit the prohibition: "All *Riba* of the *Jahiliyyah* is abolished; you will have your capital sums. Do not deal unjustly, and you will not be dealt with unjustly."[23] As discussed in Chapter 2, the *jahiliyya* is commonly read as referring to the period before the preaching of Muhammad. Paying *riba al-jahiliyya* is unjust, whereas *not* repaying the principal is also unjust. Discussion of moral argumentation is reserved to Part II, but of importance here is that, like in the Qur'an, *riba* is prohibited while the lender's title to the principal is maintained. Ambiguity about the content of the prohibition nevertheless remains. In Sunan Ibn Majah, the mention of the Qur'anic teaching seems even to presume limited knowledge of the prohibition it contains. In a hadith, Umar bin Khattab (c. 584–644), the second of the caliphs and companion of Muhammad, laments the lack of clarity about *riba* and lists it with two other topics that if Muhammad "had clarified them, that would have been dearer to me than the world and everything in it."[24] Another hadith in the same collection explains that Muhammad died before explaining the verse, but based on this reality it exhorts giving up *riba* and "doubtful things."[25] Both of these hadiths, however, are considered *da'if*, so lacking some of the weight of other hadiths. Nevertheless, they attest to some, perhaps later, uncertainty about *riba*'s prohibition.[26]

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[22] See Sahih al-Bukhari 8.73 (459), vol. 1, 291; 65.49 (4540), vol. 6, 60; 65.53 (4544), vol. 6, 61. See also Sahih Muslim 22.12 (4046–4047 [1580]), vol. 4, 298–299; Sunan Abu Dawud 22.64 (3490), vol. 4, 134–135; Sunan Ibn Majah (3382), vol. 4, 382.
[23] Sunan Abu Dawud 22.5 (3334), vol. 4, 64.
[24] Sunan Ibn Majah (2727), vol. 4, 23–24.
[25] Sunan Ibn Majah (2276), vol. 3, 300.
[26] Cf. Rahman, 12.

It should also be noted that "doubtful things" is not explained in any neighboring hadiths in Sunan Ibn Majah, but other hadith collections do discuss it in the context of business transactions. In a chapter entitled "Avoiding Doubtful Sources of Earning," Sunan An-Nasa'i contains a *sahih* hadith in which Muhammad states:

> That which is lawful is plain and that which is unlawful is plain, and between them are matters which are not as clear. I will strike a parable for you about that: Indeed Allâh, the Mighty and Sublime, has established a sanctuary, and the sanctuary of Allâh is that which He has forbidden. Whoever approaches the sanctuary is bound to transgress upon it.[27]

Sunan an-Nasa'i records another version of the hadith with a clearer explanation of the parable, which portrays "doubtful things" as a slippery slope toward transgressing prohibitions themselves. Muhammad explains that "whoever grazes around the sanctuary will soon transgress upon it, and whoever indulges in matters that are not clear, he will soon transgress beyond the limits."[28] Sahih Muslim, Sunan Abu Dawud, and Jami' at-Tirmidhi preserve this same *sahih* hadith.[29] That these passages are applicable to *riba* is evidenced by the chapters containing these hadiths likewise preserving hadiths on *riba*. Rahman explains the application of this imagery to *riba* as explaining Muhammad's extension of the designation of "*riba*" to non-credit transactions and the prohibition of *riba* ancillaries to the contract, such as the contract's writers and witnesses.[30]

Some hadiths do explicitly, and sometimes emphatically, prohibit *riba*. Sahih al-Bukhari contains a few versions of such a hadith. One version recounts how Muhammad "forbade the acceptance of the price of a dog or blood, and also forbade the profession of tattooing, getting tattooed and receiving or giving Riba, (usury), and cursed the picture-

[27] Sunan an-Nasa'i 44.2 (4458), vol. 5, 254–255.
[28] Sunan an-Nasa'i 44.2 (4458), vol. 5, 254–255. Cf. Sunan an-Nasa'i 51.50 (5713–5714), vol. 6, 363–364.
[29] Sahih Muslim 22.20 (4094 [1599]), vol. 4, 320; Sunan Abu Dawud 22.3 (3329), vol. 4, 61; Jami' at-Tirmidhi 12.1 (1205), vol. 3, 21. Cf. Sahih Muslim 22.20 (4095–4097 [1599]), vol. 4, 320–321. This discussion is also of a piece with the statement made by al-Qaradawi that is discussed below.
[30] Rahman, 15.

makers."[31] Muhammad here forbids both the receiving and giving of *riba*. Although expressed here as a profession, in another version he forbids simply "the one who takes (eats) Riba (usury) the one who gives Riba (usury)."[32] In another version, instead of explicitly forbidding both receiving and giving *riba*, Muhammad curses just "the eater of Riba" (along with "her who tattoos and her who gets tattooed . . . and the maker of pictures").[33] In a third version, both the taker and the giver of *riba* are cursed.[34] Sahih Muslim narrates a trio of hadiths in which the payer and receiver are also both responsible: "Whoever gives more or asks for more, he has engaged in *Riba*, and the taker and the giver are the same"[35] And again: "whoever gives more or asks for more, he has engaged in *Riba*, except in cases where the types differ."[36] And finally: "Whoever adds more or asks for more, that is *Riba*."[37] Each of these three hadiths affirms that both parties in a transaction deal in *riba*, but only the first of which declaring also their equality in guilt. As found in the footnotes, hadiths to similar effect as these appear in other collections.

In a hadith found in several collections, guilt extends even beyond the parties to a transaction.[38] Sahih Muslim contains two different versions of the hadith, the first of which contains some hesitancy in extending the prohibition beyond the contracting parties. In it, ‘Abdullah recounts that Muhammad cursed both the consumer and payer of *riba*. The narrator asks about "the one who writes it [the contract] down and the two who witness it" to

[31] Sahih al-Bukhari 34.25 (2086), vol. 3, 175.
[32] Sahih al-Bukhari 77.86 (5945), vol. 7, 437.
[33] Sahih al-Bukhari 34.113 (2238), vol. 3, 243.
[34] Sahih al-Bukhari 77.96 (5962), vol. 7, 443–444.
[35] Sahih Muslim 22.15 (4064 [1584]), vol. 4, 306–307. Cf. Sahih Muslim 22.14 (4054 [1584]), vol. 4, 301; Sunan an-Nasa’i 44.44 (4569), vol. 5, 303.
[36] Sahih Muslim 22.15 (4066 [1588]), vol. 4, 307.
[37] Sahih Muslim 22.15 (4068 [1588]), vol. 4, 308. Cf. Sunan Abu Dawud 22.12 (3349), vol. 4, 71; Jami‘ at-Tirmidhi 12.23 (1240), vol. 3, 50–51; Sunan an-Nasa’i 44.44 (4568), vol. 5, 302–303.
[38] Sahih Muslim 22.19 (4092–4093 [1597–1598]), vol. 4, 319; Sunan Abu Dawud 22.4 (3333), vol. 4, 63; Jami‘ at-Tirmidhi 12.2 (1206), vol. 3, 22; Sunan an-Nasa’i 48.25 (5105–5108), vol. 6, 76–78; Sunan Ibn Majah (2277), vol. 3, 300–301.

which the reply is "we only narrate what we heard."[39] In the following hadith, however, a broader condemnation becomes evident. Muhammad unequivocally curses the parties to the contract along with the aforementioned ancillaries, and the accursed are deemed "all the same."[40] The assuredness of this last hadith repeats itself in those found in the other collections, although they do not all attest to the apparent equality in guilt of lenders, borrowers, and their ancillaries. Taken together, the hadiths discussed above portray *riba* as prohibited and its receivers and givers (and those assisting in their contracts) as guilty and cursed. Other hadiths add to this image by emphasizing the gravity of *riba*. They do so in a variety of ways, including associating these transactions with incest and adultery, as discussed below.

The first hadith describes the exchange of a silver or gold vessel for unequal units of coin. Having learned of the transaction, Muhammad orders that the coins be returned, since *riba* has been taken.[41] The second hadith describes the exchange of receipts for yet-to-be-delivered goods. Muhammad describes the activity as *riba*, so a guard confiscates the receipts and restores them to their original possessors.[42] Yet, these hadiths rarely, if at all, appear in discussions of *riba* by proponents of Islamic banking. Although potential injustice is often cited as a rationale for the prohibition of *riba*, restitution does not appear to be required for what jurists term "*riba al-nasi'a*."

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[39] Sahih Muslim 22.19 (4092 [1597]), vol. 4, 319. Compare with a *hasan* hadith in Sunan an-Nasa'i only mentions the writer of the contract in addition to the principals (48.25 (5105), vol. 6, 76).
[40] Sahih Muslim 22.19 (4093 [1598]), vol. 4, 319.
[41] Al-Muwatta 31.16 (28), 290–291: "Yahya related to me from Malik that Yahya ibn Sa'id said, 'The Messenger of Allah, may Allah bless him and grant him peace, ordered the two Sa'ds to sell a vessel made of either gold or silver from the booty. They either sold each three units of weight for four units of weight of coins or each four units of weight for three units of weight or coins. The Messenger of Allah, may Allah bless him and grant him peace, said to them, 'You have taken usury, so return it.'"
[42] Al-Muwatta 31.16 (28), 290–291; 31.19 (44), 293: "Yahya related to me from Malik that he had heard that receipts were given to people in the time of Marwan ibn al-Hakam for the produce of the market at al-Jar. People bought and sold the receipts among themselves before they took delivery of the goods. Zayd Thabit and one of the Companions of the Messenger of Allah, may Allah bless him and grant him peace, went to Marwan ibn al-Hakam and said, 'Marwan! Do you make usury halal?' He said, 'I seek refuge with Allah! What is that?' He said, 'These receipts which people buy and sell before they take delivery of the goods.' Marwan therefore sent a guard to follow them and to take them from people's hands and return them to their owners."

With a *hasan* hadith, Sunan Ibn Majah provides additional evidence that the principal should be repaid, but also that compensation offered for a loan, but that this compensation should be immaterial. Upon returning from one of his campaigns, Muhammad repaid a loan and told the lender: "May Allâh bless your family and your wealth for you. The reward for lending is repayment and words of praise."[43] While not explicitly mentioning justice, the implication of this passage is that repayment of principal and the gratitude exhibited in speech is all that justice requires of borrowers. It would seem, however, that more may be repaid than was given, if greater repayment remains unstipulated.[44]

That *riba* is a grave offense is manifested in a number of ways in the Hadith. Strong suggestion that *riba* warrants punishment in the afterlife is found in Sahih al-Bukhari. Three versions of a hadith from the same narrator (Samura bin Jundab) recount a dream or night vision in which Muhammad encounters a person who has dealt in *riba*.[45] The person appears in a river of blood.[46] Another person stands on the riverbank and prevents exit from the river by throwing stones into the mouth of the dealer in *riba*. This encounter forms part of longer narratives in two of the hadiths.[47] In these narratives appear other transgressors, namely the impious, liars, and adulterers, the punishment of each recounted in graphic detail. These scenes of torment contrast with the sights enjoyed by Muhammad as his vision carries him to paradise.[48] Although no explicit prohibition appears in these three hadiths, they suggest that *riba* separates those dealing in it from paradise.

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[43] Sunan Ibn Majah, vol. 3, 2424, 387.
[44] Commentary on Sunan Ibn Majah, vol. 3, 2424, 387.
[45] Sahih al-Bukhari 23.93 (1386), vol. 2, 267–270; 34.24 (2085), vol. 3, 174; 91.48 (7047), vol. 9, 118–122.
[46] In Sahih al-Bukhari 91.48 (7047), the narrator is less certain of the river's composition, but thinks that Muhammad said that the river was "red like blood."
[47] I.e., Sahih al-Bukhari 23.93 (1386), vol. 2, 267–270; 91.48 (7047), vol. 9, 118–122.
[48] These hadiths bear some resemblance to other hadiths in Sahih al-Bukhari that tell of Muhammad's Night Journey to heaven, his Isra and Mi'raj, referred to in Qur'an 17.1 and 53.6–18 (For accounts of the Isra and Mi'raj in Sahih al-Bukhari, see 8.1 (349), vol. 1, 237–239; 59.6 (3207), vol. 4, 272–275; 59.7 (3239), vol. 4, 288; 60.22 (3393), vol. 4, 375; 60.24 (3396), vol. 4, 376; 60.43 (3430), vol. 4, 401; 60.48 (3437–3438), vol. 4, 406–407; 61.24 (3570), vol. 4, 466; 63.41–42 (3886–3888), vol. 5, 132–137; 65.3 (4709–4710), vol. 6, 186; 65.9 (4716), vol. 6, 192; 74.1 (5576), vol. 7, 280; 74.12 (5603), vol. 7, 291; 82.10 (6613), vol. 8, 324–325). Sahih al-Bukhari 23.93 (1386), 34.24 (2085), 91.48 (7047), however, recount the fate of the punished prior to

Sunan Ibn Majah narrates a pair of *hasan* hadiths that indicate that *riba* is of many degrees. In one hadith seventy degrees are indicated;[49] in a similar hadith, seventy-three degrees are indicated.[50] Neither offers a clear indication about what distinguishes each degree. The former of these hadiths, however, seems to imply that the degrees are of levels of gravity. In it, Muhammad is reported as stating that the least of these degrees of *riba* "is equivalent to a man having intercourse with his mother."[51] A comparison to ostensible grave sexual misconduct is also found in the less authoritative hadith collections Musnad Ahmad ibn Hanbal and Sunan al-Daraqutni. In one of hadith, Muhammad compares a relatively minor case of *riba* with recurrent fornication: "a dirham which a man knowingly receives in usury [*riba*] is more serious than thirty-six acts of fornication [or adultery (*zina*)]."[52] The hadith collection Shuab al-Iman recounts a version of this hadith that adds the comment that "Hell is more fitting for him whose flesh is nourished by what is unlawful."[53] Since a dirham was a silver coin of relatively little value,[54] the likening one dirham of *riba* to thirty-six acts of *zina* (a broad term for sexual misconduct in Islam) appears to be a strong statement of the gravity of the offense. This impression is strengthened by the Qur'an and Hadith's statements about *zina*. Qur'an 24.2 prescribes one hundred lashes for the offense of *zina*, both male and female. Sahih al-Bukhari records a hadith in which a Jew brings before Muhammad a Jewish man and woman guilty of unlawful sexual intercourse, and Muhammad orders that they be

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Muhammad's ascent on high. There is an obvious comparison to be made between these three hadiths, especially Sahih al-Bukhari 23.93 (1386) and 91.48 (7047), and the *Divine Comedy* of Dante Alighieri (c. 1265–1321). Indeed, an influence of the Isra and Mi'raj on the *Divine Comedy* has been suggested. See Miguel Asín Palacios, *Islam and the Divine Comedy*, trans. and abr. Harold Sunderland (London: Frank Cass & Co., 1968).

[49] Sunan Ibn Majah (2274), vol. 3, 299.

[50] Sunan Ibn Majah (2275), vol. 3, 299–300.

[51] Sunan Ibn Majah (2274), vol. 3, 299.

[52] Mishkat al-Masabih 12.6.3, trans. James Robson, vol. 2 (Lahore: Sh. Muhammad Ashraf, 1963), 605. See Ismail, Possumah, and Ali, 602.

[53] Mishkat al-Masabih 12.6.3, 605.

[54] The Arabic word "dirham" derives ultimately from the Greek "drachma" (see *OED*, s.v. "dirham"). Its purchasing power has been marked to just over 1kg of wheat or half the daily wage of a carpenter (Mansour Zarra-Nezhad, "A Brief History of Money in Islam and Estimating the Value of Dirham and Dīnār," *Review of Islamic Economics* 8, no. 2 (2004): 59 and 62).

stoned to death.[55] The passage may not be saying that the same punishments due to sexual misconduct are due to even relatively minor *riba*, but we can at least say that the comparison, even when accounting for hyperbole, underscores the perceived gravity of *riba*.

The association of *riba* with other grave offenses in the Hadith likewise demonstrates its seriousness as an offense in Islam. Jami‘ at-Tirmidhi and Sunan an-Nasa’i share versions of a *hasan* hadith that recounts how a Jew and his companion come to Muhammad asking for nine signs or commandments.[56] Curiously, Muhammad responds with ten commandments, among which is a prohibition of *riba*. Significantly, many of the other commandments find counterparts in the Decalogue: The hadiths prohibit idolatry (First/Second Commandment), breaking the Sabbath for the Jews in particular (Third/Fourth Commandment), murder (Fifth/Sixth Commandment), “unlawful intercourse” (Sixth/Seventh Commandment), theft (Seventh/Eighth Commandment), damaging “the reputation of one of power” or speaking falsely about the innocent before a ruler, resulting in either’s death (Eighth/Ninth Commandment),[57] falsely accusing a chaste woman (Eighth/Ninth Commandment), performing magic, and fleeing from the battlefield. From this list, it can be inferred that *riba* is not a peccadillo. Other hadiths, however, make this inference more explicit.

Several collections preserve a hadith that situates the devouring of *riba* among six other “deadly things,” including sorcery, murder, and fleeing from the battlefield.[58] Sahih al-

[55] Sahih al-Bukhari 23.60 (1329), vol. 2, 238.

[56] Jami‘ at-Tirmidhi 23.33 (2733), vol. 5, 115–116; Jami‘ at-Tirmidhi 44.17 (3144), vol. 5, 447; Sunan an-Nasa’i 37.18 (4083), vol. 5, 71–72. For reading of “signs” as “commandments,” see comment on Jami‘ at-Tirmidhi 44.17 (3144), vol. 5, 448.

[57] The two possibilities here reflect a discrepancy between Jami‘ at-Tirmidhi 23.33 (2733), on the one hand, and Jami‘ at-Tirmidhi 44.17 (3144) and Sunan an-Nasa’i 37.18 (4083), on the other.

[58] Sahih al-Bukhari 55.23 (2766), vol. 4, 34; Sahih al-Bukhari 86.44 (6857), vol. 8, 447; Sahih Muslim 1.38 (262 [89]), vol. 1, 177; Sunan Abu Dawud 17.10 (2874), vol. 3, 419–420; Sunan an-Nasa’i 30.12 (3701), Vol. 4, 379–380. In Sunan an-Nasa’i (23.1 (2440), vol. 3, 307), a *hasan* hadith mentions the “seven major sins,” but they are not listed.

Bukhari and Sahih Muslim report a hadith in which Muhammad warns the people to avoid "the seven great destructive sins" or "the seven destroyers."[59] Sahih al-Bukhari lists them as:

> (1) To join others in worship along with Allah; (2) To practise sorcery, (3) To kill the life which Allah has forbidden except for a just cause, (according to Islamic law); (4) To eat up Riba (usury); (5) To eat up an orphan's wealth; (6) To show one's back to the enemy and fleeing from the battlefield at the time of fighting, and (7) To accuse chaste women, who never even think of anything touching chastity and are good believers.[60]

Riba is thus included in this list of ostensibly grave offenses, as noted by Usmani in the introduction to this chapter. "*Riba*" does not, however, appear in Sahih Muslim's and Jami' at-Tirmidhi's listings of "major sins": idolatry, disobedience to parents, murder or suicide, and false speech or false testimony.[61] Among the major sins, the worst are idolatry, disobedience to parents, and "bearing false witness - or false speech."[62] And the worst of all is most likely false witness, if not false speech.[63] Taken in this context, *riba* remains a grave offense, though perhaps not reaching the zenith of wickedness as it is not also included in the list of major sins.[64]

Prohibition of *Riba* in *Fiqh*

While the schools of *fiqh* affirm the prohibition of *riba* found in the Qur'an and Hadith, and declare it to be haram, there is variation in how they thought the prohibition should be enforced. The general agreement is especially true regarding *riba al-nasi'a*. Al-Jaziri goes so far as to claim a univocal prohibition among the *fuqaha'*: "There is no

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[59] Sahih al-Bukhari 55.23 (2766), vol. 4, 34; Sahih Muslim 1.38 (262 [89]), vol. 1, 177. Cf. Sahih al-Bukhari 86.44 (6857), vol. 8, 447.

[60] Sahih al-Bukhari 55.23 (2766), vol. 4, 34. In Sahih Muslim, the same seven sins are listed, but *riba* is listed after taking an orphan's wealth.

[61] Sahih Muslim 1.38 (259–261 [87–88]), vol. 1, 176–177; Jami' at-Tirmidhi 12.3 (1207), vol. 3, 22–23. Cf. Sahih Muslim 1.38 (263–264 [90]), vol. 1, 177–178. Sahih Muslim 1.38 (88) lists murder among the four whereas Jami' at-Tirmidhi's *sahih* hadith lists suicide. One version of a hadith in Sahih al-Bukhari names calumny and failing to guard against being soiled with one's own urine as major sins (4.55 (216), vol. 1, 172), another version of the same hadith, however, deems both offenses as great while denying that they are major sins (78.46 (6052), vol. 8, 53).

[62] Sahih Muslim 1.38 (259 [87]), vol. 1, 176.

[63] Sahih Muslim 1.38 (261 [88]), vol. 1, 176–177.

[64] For an extended listing of major sins in Islam, see Shams ad-Din adh-Dhahabi, *The Major Sins*, trans. Aisha Abdurrahman Bewley, Kindle edition (London: Dar Al Taqwa, 2012).

difference among jurists about the prohibition of *riba al-nasi'ah*."[65] Other Islamic jurists paint a similar picture regarding *riba al-nasi'a* and *riba al-fadl*. Al-Zuhayli reports the Hanafi scholars as unanimous in forbidding *riba al-fadl*.[66] Ibn Qayyim portrays both *riba al-nasi'a* and *riba al-fadl* as haram, but with the prohibition of the latter being derived from the former, since it offers access to *riba al-nasi'a*.[67]

Despite the agreement that *riba*, no matter is variety, is prohibited, an important difference emerges in the approaches of the schools of *fiqh* to enforcement. Whereas the Hanbalis, Malikis, and Shaf'is hold that a contract containing *riba* cannot be enforced, the Hanafis hold that the repayment of the principal could be enforced even if not the payment of the agreed *riba*.[68]

Although sales contracts are clearly permissible within Islam (see Qur'an 2.275), the *fuqaha'* set restrictions for selling and buying, "in part to ensure that sales contracts are not used as ruses for *riba*."[69] Yet, these ostensible sales contracts present an instance of divergence between the schools of *fiqh* on the *riba* ban. Credit sales provide an example. Buckley groups "the Shafi'is, and later, Hanafis" as accepting these methods and the Hanbalis and Malikis as rejecting them.[70] Thus, while distinguishing a markup in credit sales from *riba*, as seen in Chapter 2, Hanbalis dissolve the distinction should a credit sale be used to circumvent to prohibition of *riba*.[71] It is significant that even though "the Maliki school of law, which more than any other Sunni school recognizes the validity of deferred contracts, considers credit sales as a valid and lawful transaction whether or not the price is inflated," it

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[65] Al-Rahman al-Jaziri, 241.
[66] Al-Zuhayli, 29.
[67] Ibn Qayyim al-Jawziyya, 145. See also, Khalil, 61–62. Cf. Al-Ghazali, *Ihya' 'Ulum al-Din*, quoted in S. M. Ghazanfar, "The Economic Thought of Abu Hamid Al-Ghazali and St. Thomas Aquinas: Some Comparative Parallels and Links," *History of Political Economy* 32, no. 4 (2000): 875. See S. M. Ghazanfar, "The Economic Thought of Abu Hamid Al-Ghazali and St. Thomas Aquinas: Some Comparative Parallels and Links," *History of Political Economy* 32, no. 4 (2000): 875–876.
[68] Buckley, 239–240.
[69] El-Gamal, 65, 66.
[70] Buckley, 243–244.
[71] Saleh, 82.

drops its support of these contracts should they be uses "as a stratagem or device in order to circumvent the prohibition of *riba*."[72] Buckley notes, however: "The recognition of these methods of evasion [by Shafi'is, and later, Hanafis] is not contrary to the strict enforcement of the prohibition in the *fiqh*. Their line of argument is based [in part] . . . on their positive estimation of the intention underlying the evasions."[73] A useful example of one of these contracts, especially for comparing with the magisterium's approach to the usury prohibition, is the "double contract of sale" (*bai al-ina*)[74] Buckley explains:

> The way in which it operates is that moneylenders sell to someone who wants to borrow money at interest, something against the total sum of the capital and interest which are to be due at a fixed date, and at the same time he buys the article back for the capital, which is at once handed over. This transaction was taken over in medieval Europe under the name of *mohatra*.[75]

This contract is clearly a ruse. To take an example: Party A (the lender) sells an item on credit to Party B for $1,100. Immediately, however, Party A buys back the same item for $1,000 cash, in effect creating a loan with 10% *riba*.[76] In addition to the divergence regarding contracts used to evade the prohibition of *riba*, Hanafi jurisprudence also provides a mechanism for an exception to the *riba* prohibition itself.

Within *fiqh*, circumstances can excuse engagement in prohibited activities if there is grave necessity (*darura*). This juridical principle derives from the Qur'an, which, in the context of the prohibition of certain consumables, permits their consumption in proportion to the gravity of the necessity.[77] This principle is uncontentious,[78] though dire necessity is often the bar set for invoking *darura*. In objecting to the European Council for Fatwa and Research's ruling, for example, some scholars have indicated that such necessity must "be

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[72] Ibid.
[73] Buckley, 244.
[74] See ibid.
[75] Ibid.
[76] Cf. ibid, n.97.
[77] Cf. Al-Qaradawi, 36–37.
[78] Shahrul Hussain, "*Ribā*-Based Mortgages in *Dār al-Harb*: An Issue of Modernist Application of Fiqh al-Aqalliyāt for Muslim Minorities," *Journal of Muslim Minority Affairs* 36, no. 3 (2016): 373.

actual, not expected; i.e. that it should really occur or it should be highly probable that a real danger exists for one's religion, life, intellect, progeny or wealth."[79] They add that such need should also be "desperate, such that the person fears losing his life or one of his limbs, or that he loses all benefit if he leaves the forbidden."[80] Such a standard would permit, for example, a Muslim to consume banned foodstuffs, such as pork or alcohol, should that be necessary to preserve his or her life.[81] Similarly, if taking or giving *riba* was all that could put death at bay, it would apparently be permitted. Paired with *darura* is the controversial principle of *haja* (need), which covers requirements without which hardship would be endured by Muslims.[82] The principle of *haja* states that "need is [of] the same status as dire exigency."[83] It is this principle that is at the heart of the European and American fatwas and the controversy that surrounds them.

Regarding *riba,* the European Council for Fatwa and Research and the Fiqh Committee of the Shari'a Scholars Association of North America invoked the principle of *haja* in outlining circumstances under which Western Muslims could take out interest-bearing mortgages. These fatwas should be understood within a larger trend within modern Islamic jurisprudence.[84] In the 1990s, Yusuf al-Qaradawi (already mentioned in the Introduction to Part I) and Taha Jabir al-Alwani (1935–2016) developed a methodology (*fiqh al-aqalliyyat*) that attempts "to address the needs of Muslims living as minorities in majority non-Muslim

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[79] Muhammad Fu'ad al-Barazi and Suhaib Hasan 'Abdul Ghaffar, "A Scholarly Disagreement with the Resolution pertaining to Buying Houses via Usurious Loans," in Salah al-Sawi, *A Polite Reconsideration of the Fatwa Permitting Interest-Based Mortgages Buying Homes in Western Societies*, trans. Usama Hasan (2001), 79, accessed October 2, 2017, https://unity1.files.wordpress.com/2009/06/analysis-of-fatwas-on-mortgages.pdf.
[80] Ibid.
[81] Cf. Hussain, 372.
[82] Salah al-Sawi, *A Polite Reconsideration of the Fatwa Permitting Interest-Based Mortgages Buying Homes in Western Societies*, trans. Usama Hasan (2001), 32, accessed October 2, 2017, https://unity1.files.wordpress.com/2009/06/analysis-of-fatwas-on-mortgages.pdf.
[83] Hussain, 372.
[84] Cf. ibid., 364–365.

countries."[85] Al-Qaradawi was a key figure for both fatwas. He is the founding president of the European Council and approved of the American fatwa.

The European and American fatwas circumscribe their exception with many requirements and caveats. Both affirm the prohibition of *riba* and encourage the use of Islamic finance, making clear that the exception was on condition that Islamic alternatives are unavailable. They also limit any use of mortgages to the financing of a principal residence.[86] The fatwas diverge, however, in their use of *haja*. The European fatwa allows the need to be either personal or general, whereas the American fatwa requires that the need be general. Under the European fatwa, the needs of individual buyers and their families are sufficient for invoking the principle and permitting entering a mortgage contract. Under the American fatwa, the need must exist "for the generality of those settled outside the Islamic lands to resist social, economic, moral and religious corruption, and to achieve the benefits entailed by protecting the religion and Islamic personality."[87] The European fatwa is innovative in that it introduces "the principle that individual needs can be regarded as necessities."[88] The American fatwa is not without precedent, given that the Kuwaiti Public Council for Fatwa had in 1985 allowed the taking out of mortgages on the basis of communal need.[89]

These fatwas aroused strong criticism. This criticism, however, further limited, but did not abandon, all exceptions to the prohibition. The disapproval targeted at a central premise for the fatwas, the premise that *haja* can be treated as *darura*.[90] Instead of completely

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[85] Ibid., 364–365.
[86] The North American fatwa explicitly excludes the use of mortgages for investments in real estate (Fiqh Committee of the Shari'a Scholars Association of North America, "Buying Houses via Bank Mortgages," Resolution 2, in Salah al-Sawi, *A Polite Reconsideration of the Fatwa Permitting Interest-Based Mortgages Buying Homes in Western Societies*, trans. Usama Hasan (2001), 68, accessed October 2, 2017, https://unity1.files.wordpress.com/2009/06/analysis-of-fatwas-on-mortgages.pdf.)
[87] Fiqh Committee of the Shari'a Scholars Association of North America, 68.
[88] Uriya Shavit, *Shari'a and Muslim Minorities: The Wasaṭi and Salafi Approaches to Fiqh al-Aqalliyyat al-Muslima* (Oxford: Oxford University Press, 2015), 142.
[89] Ibid., 143.
[90] Hussain, 373.

rejecting the principle, critics have questioned its universality.[91] Abdallah Ibn Bayyah (b. 1935), for example, "rejected the notion that needs qualify as necessities in all cases and emphasized that *ḥāja* only affects weak, general prohibitions."[92] The ban on *riba* is not, in Ibn Bayyah's estimation, a weak or general one.[93] Salah al-Sawi (b. 1954) similarly argues that the principles of *darura* and *haja* excuse at different levels: *Darura* permits violation of the shari'a; *haja* only excuses violations of rules derived in the shari'a via analogy (*qiyas*).[94] Thus, *riba* could be paid in the case of *darura*, but not *haja*. Al-Qaradawi himself adhered to this view prior to 1999 when he approved of the European and American fatwas.[95]

The European Council offered a second justification for the exception based on a position of the Hanafi school permitting *riba* between Muslims and non-Muslims in *Dar al-Harb*.[96] *Dar al-Harb* is one of the classes of locale widespread within Islamic jurisprudence.[97] Classical *fiqh* divides the world into two "houses": *Dar al-Islam* (House of Islam) and *Dar al-Harb* (House of War). The *fuqaha* have from classical times debated the exact signification of these terms.[98] Whereas Hanafis, Malikis, and Hanbalis have underscored the importance of the "manifestation" of shari'a for marking a locale as *Dar al-Islam*, Shafi'is stressed residency of Muslims.[99] In modern times, interpretations of the former position have ranged from *Dar al-Islam*'s signifying locales under the shari'a and Islamic sovereignty[100] to locales where prayer and the *adhan* (call to prayer) are possible.[101] Conversely, the dominance of the shari'a is absent in *Dar al-Harb*.[102] As the name suggests,

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91 Shavit, 148.
92 Ibid., 148.
93 Ibid., 148–149.
94 Hussain, 373.
95 Shavit, 141–142, 147. Al-Qaradawi ascribed this volte-face to "the tenderness and confidence that comes with age" (ibid., 142).
96 See European Council for Fatwa and Research, 77–78.
97 See Saleh, 39ff.
98 See Hussain, 365–367.
99 Hussain, 366.
100 Saleh, 39.
101 Hussain, 366.
102 Cf. ibid., 367.

such a locale is "actually or potentially a seat of war for Muslims."[103] Modern jurisprudence often adds a further locale designated as *Dar al-Sulh* (House of Treaty), *Dar al-'Ahd* (House of Truce), or *Dar al-Amn* (House of Safety). These designations recognize the treaties and other agreements between modern states, which eschew the notion of viewing each other as belligerents.[104] Pivotal to the present discussion, however, is that within Hanafi thought *Dar al-Harb* comprises all locales that are not *Dar al-Islam*, and thus includes what others designate otherwise.[105] The European Council accepts this two-part division, preferring to designate locales as inside or outside *Dar al-Islam*.[106]

Among the Sunni schools of *fiqh*, the Hanafis are unique in permitting Muslims to exact *riba* from non-Muslims in *Dar al-Harb*, though they are joined in this position by members of the Shi'a Ja'fari School.[107] In the Hanbali, Maliki, and Shafi'i Schools, no exception to the *riba* ban exists for Muslims contracting with non-Muslims, regardless of where they are located.[108] The European Council assumed the Hanafi position and argues that it permits both receiving and giving *riba*, invoking an authoritative book on international law by Muhammad al-Shaybani (c. 750–805), a disciple of the founder of the school (Abu Hanifa).[109] The European Council also invoked "the unconditional statements of the early 'ulama' of the madhhab [school of thought within Islamic jurisprudence]."[110]

Two lines of criticism are made against justifying mortgages based on the Hanafi exception. The first is that the Hanafi School permits Muslims in *Dar al-Harb* to accept *riba* but not to give it.[111] It has been noted that the European Council provides no references to back its claim and that an attempt to locate potential references in Hanafi texts was

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[103] Saleh, 39.
[104] Cf. ibid., 40.
[105] European Council for Fatwa and Research, 77.
[106] Ibid. See Hussain, 373.
[107] Saleh, 41.
[108] Ibid. This position is shared by the Ibadis, who are neither Sunni or Shi'a (Ibid.).
[109] European Council for Fatwa and Research, 78.
[110] Ibid.
[111] Shavit, 148; Hussain, 373.

unsuccessful.[112] The second line of criticism is that either *Dar al-Harb* no longer exists or that modern Europe cannot be classified as such.[113]

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Proponents of Islamic banking find ample material from the Qur'an, Hadith, and schools of *fiqh* for their claim that all *riba* is forbidden in Islam. The Qur'an certainly forbids *riba* as a grievous and damnable offense for lenders, despite the minority view that Qur'an 30.39 permits borrowers to offer gifts to lenders. The Hadith confirms the general prohibition, the gravity of breaking it, and suggest its meriting punishment in the afterlife. The Hadith also makes explicit that the prohibition extends to borrowers and ancillaries to *ribawi* contracts (contracts containing *riba*). Support for Islamic banking thus necessarily rests also on the Hadith. The schools of *fiqh* likewise offer support of the prohibition. There is some division, however, on instances of circumvention as well as on principles that have proved useful for eking out exceptions to the general prohibition. Life-and-death situations provide an uncontentious exception to the ban under the principle of *darura*. What remains controversial is whether lesser need, either personal or communal, can absolve Muslims from adhering to the prohibition under the principle of *haja*. Even if this exception is recognized, it may now prove moot, given the ever-greater availability of Islamic banking in the West. No less controversial a position is that Muslims can pay *riba* to (or even receive *riba* from) non-Muslims outside of *Dar al-Islam*. Since the exception is predicated on belligerence, its acceptance does not portent well for cooperation with Christians in liberal and pluralistic societies.

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[112] Hussain, 373.
[113] Ibid., 374; Shavit, 148.

Chapter 5

Prohibition of Usury

In 1819, an Irish priest named Jeremiah O'Callaghan (1780–1861) began his years-long dispute over the rampant usury he perceived in his local church. He recounts that he had "announced one Sunday in the church that the practice of usury always was, and is still, condemned by the Law of God and the Catholic Church."[1] The previous year, O'Callaghan had written to his bishop affirming "the industrious application of nine long years has not yet enabled me to discover that the advocates of usury, whether called interest, increase, or otherwise, are consistent with Scripture or Tradition."[2] Years of industry had not allowed O'Callaghan to dislodge the conclusion that usury was authoritatively banned.

Scripture provides the foundation of both patristic and magisterial stances toward usury. The Fathers affirm that usury had been prohibited to the Israelites and determine that the prohibition still applies to Christians, perhaps even more so than to the Jews. Consonant with the Fathers' emphatic condemnation of usury, the Church's magisterium affirms, sometimes only implicitly, the sustained force of the prohibition and strongly suggests that usury is a grave offense.

Scripture, patristic exegesis, and magisterial teaching present (1) the receiving of usury as directly prohibited, but not necessarily its payment. These authorities concur in deeming (2) infraction of the prohibition as a grievous offense. They present some unevenness in (3) making an exception to the prohibition.

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[1] Jeremiah O'Callaghan, *Usury: Funds, and Banking, Monopoly, Forestalling, Traffick, Gallican Liberties, Graves, Anatomy*, 5th edition (New York: 1856), 18.
[2] Ibid., 13–14.

Prohibition of Usury in Scripture

Although taking a predominantly negative stance toward usury, Scripture's condemnation of the practice is not a monolith: the Old Testament offers an uneven condemnation of usury and the New Testament offers no explicit prohibition of usury. Taken together, however, these texts offer a basis for considering the prohibition of usury as ever broadening and eventually admitting fewer or even no exceptions.

Of the five books at the beginning of the Old Testament, known as the Pentateuch, three contain prohibitions of usury. Each prohibition is limited, however. Exodus 22:25 merely prohibits exacting usury from the poor among "my people." Leviticus 25:35–37 prohibits taking usury from a destitute "brother." Deuteronomy 23:19–20 goes a step further and prohibits lending at usury to a brother without mention of the brother's economic status. Although each clearly prohibits usury, none makes the ban universal, at least explicitly. An obvious reading of Exodus 22:25 is that its prohibition of usury applies to the ancient Israelites, who are forbidden from exacting usury from fellow Israelites who are poor. Similarly, Leviticus 25:35–37 and Deuteronomy 23:19–20 ban exacting usury from a "brother," and, given the former verse, especially if he is destitute. Deuteronomy 23:19–20 even *permits* exacting usury from a "foreigner." This Deuteronomic exception presents a challenge for Christian exegetes, some of whom view the exception as defunct, others as still in force.

Later in origin, Psalm 15 (14) and Ezekiel 18 appear to tighten the prohibitions of usury found in the Pentateuch and to offer a more universal ban or, at least, one with wider application. According to Psalm 15 (14), blamelessness is the attribute requisite of the man who would sojourn in the Lord's tent, reside on his holy hill, and "never be moved." Usury is blameworthy, as suggested by the psalm's description of this man as not lending at usury. Among the attributes of a righteousness life in Ezekiel 18 is abstention from usury. The negative flipside is found in Ezekiel 18:10–13, in which the portrait of unrighteousness features among other transgressions usurious lending.

The depictions of usury in Psalm 15 (14) and Ezekiel 18, in addition to indicating disapproval, also indicate its gravity. Indeed, Psalm 15 (14) and Ezekiel 18 provide foundations for derivative affirmations of usury's seriousness. The first of these foundations is usury's inclusion in a catalogue of other ostensibly grave offenses. In Psalm 15 (14), usury appears alongside trespasses such as slander, evil against friend and neighbor, and accepting bribes against innocent persons. Ezekiel 18's catalogue appears no less weighty. It lists usury along with sins such as adultery, extortion, robbery, and idolatry. Slightly obscuring the palpable seriousness of usury is, perhaps, the inclusion of having sexual intercourse with a menstruating woman (Ezekiel 18:6).[3] Even if this activity is discounted as merely ritual impurity, usury cannot be likewise discounted. Whereas *refraining* from sexual intercourse with a menstruating woman is listed among righteous activities in Ezekiel 18:5–6, *participating* in such activity is not listed among the grave offenses of the unrighteous in Ezekiel 18:10–13. Refraining from usury, however, does appear among the characteristics of the righteous and lending at usury falls among the activities of the unrighteous.

Beyond usury's association with presumably grave offenses, the divergent consequences of refraining from or lending at usury clearly indicate the sin's gravity. Psalm 15 (14) presents a positive vision for the righteous man, who refrains from usury, as a sojourner in God's tent, a dweller on his holy hill, and as a man unmovable. Personal righteousness, including refraining from usury, is the attribute depicted in Ezekiel 18 as guaranteeing life. Conversely, Ezekiel 18 also presents unrighteousness, including lending at

[3] Leviticus 15:19–33 associates intercourse with a menstruating woman with ritual uncleanliness. The man who has intercourse with the menstruating woman is considered unclean for seven days (Leviticus 15:24). This "trespass," therefore, does not seem to have the moral weight as the ones that Basil and Ambrose latch onto (see below).

usury, as lethal to the soul.[4] These accounts together give the impression that refraining from usury contributes to reward in the hereafter, whereas lending at usury merits eternal death.

The Parable of the Talents (Matthew 25:14–30 and Luke 19:12–27) offers the one explicit mention of usury in the New Testament.[5] In both versions of the parable, a master goes on journey and entrusts servants with his property. Upon his return, an accounting transpires. While two of the servants make a profit for their master, another fails to invest the master's money. The master chastises this servant and suggests that he should have lent the money to bankers (*trapezites*) or deposited it in the bank (*trapeza*) so that he would receive usury (*tokos*) upon his return (Matthew 25:27 and Luke 19:23).[6] The parable seems to approve of usurious lending, if offering any assessment of the practice.[7] However, as Robert P. Maloney summarizes Biblical scholarship on the parable:

> The central issue of the parable is the dramatic day of reckoning, and in particular the position of the slothful servant whose complacency is sternly rebuked. The details of the story are all subordinated to this climatic scene and actually vary considerably in the two versions. Receiving interest, a common practice in the Graeco-Roman world, is simply incorporated into the parable, without any statement either for or against its morality.[8]

Luke's version of the parable supports this exegesis, since it concludes with an element that seem antithetical to Jesus command to love one's enemies in Luke 6:27–36. At the close of the parable, the master orders the execution of his enemies who had resisted his assuming the kingship that had occasioned his journey (Luke 19:27). Just as the parable does not offer guidance on how to treat enemies, so too it offers no clear guidance on the morality of usury.

What is more, the Lukan passage on love of enemies contains a teaching on lending, if not explicitly on usury. Luke 6:34–35 states: "And if you lend to those from whom you hope to receive, what credit is that to you? Even sinners lend to sinners, to receive as much

[4] Ezekiel 18:13.
[5] Maloney, "The Teaching of the Fathers on Usury," 241; Moser, 32.
[6] On the *trapezites*, see William Linn Westermann, "Warehousing and Trapezite Banking in Antiquity," *Journal of Economic and Business History* 3, no. 1 (1930): 30–54.
[7] Moser, 32–33.
[8] Maloney, "The Teaching of the Fathers on Usury," 241–242.

again. But love your enemies, and do good, and lend, expecting nothing in return; and your reward will be great, and you will be sons of the Most High; for he is kind to the ungrateful and the selfish." This passage is at best ambiguous, but on the face of it would seem that it counsels against expecting any addition or even the return of the principal.[9] As discussed below, this passage features in patristic and papal affirmations of the usury ban.

Prohibition of Usury in the Fathers

Perhaps in response to the challenge posed by Marcionism's rejection of the Old Testament, the first extant Christian writings on usury come from the second century.[10] The Fathers present a united front in maintaining that the Old Testament's prohibition of usury is not abrogated for Christians, and perhaps even applies to persons beyond the Christian fold. As will be seen, individual Fathers do, however, differ on which Scriptural passages establish and generalize the prohibition. Furthermore, within the patristic corpus, blame for engaging in usury is most often applied principally, if not solely, to lenders. The Fathers also show remarkable unanimity in viewing usury as a grave offense. At the same time, however, relatively little reflection is afforded the Deuteronomic exception.

Clement of Alexandria (c. 150–c. 215) reads Leviticus 25 and Deuteronomy 23 as containing a universal prohibition of usury, which has not tumbled into obsolescence. The framework he sets for the Law of Moses in general allows him to make this deduction. In his *Stromateis*, Clement presents the Mosaic Law as the wellspring of all ethics, even as contained in Greek philosophy.[11] This wellspring for Clement, therefore, remains relevant

[9] See, for example, Noonan, *The Scholastic Analysis*, 32, 64, 116. Cf. Moser, 35.
[10] See Moser, 33. The response to Marcionism was not the Church's first grappling with the relevance of the Old Testament and its requirements. As recorded in Acts 15, the Council of Jerusalem—while not requiring circumcision—insisted that gentile converts "abstain from what has been sacrificed to idols and from blood and from what is strangled and from unchastity" (Act 15:29; cf. Acts 15:20).
[11] Clement of Alexandria, *Stromata* 2.18 (PG 8.1015–1016), trans. William Wilson, in *Ante-Nicene Fathers*, vol. 2, ed. Alexander Roberts, James Donaldson, and A. Cleveland Coxe (Buffalo, NY: Christian Literature Publishing, 1885), 366.

and applicable not only to Jews, but to Christians and all of humanity.[12] Given his framework, it is little wonder that Clement extends the brotherhood described in Leviticus 25:35–37 and Deuteronomy 23:19–20 to “not only him who is born of the same parents, but also one of the same race and sentiments, and a participator in the same word [*logos*].”[13] Under this inclusive reading of “brother,” Clement understands the prohibition as still in force in deeming “it right not to take usury for money” from family, compatriots, and—if “*logos*” is understood to indicate Christ—fellow Christians.[14] His reading of Scripture highlights the prohibition as directed primarily, if not exclusively, at lenders who take usury.

Tertullian (b. c. 155) reads the Old Testament’s prohibitions of usury as foreshadowing evangelical charity. Maloney explains:

> Comparing Lk. 6,34 with Ez. 18,8, he [Tertullian] states that the purpose of the law laid down by Ezekiel was to prepare for the gospel, to lead men to the perfect discipline of Christ. The Old Testament prohibited interest (*fructus foenoris*) in order that men might more easily form the habit of losing the principal itself (*ipsum foenus*), according to Our Lord’s words in Lk. 6.34.[15]

While not reiterating the prohibitions of usury found in the Old Testament, the New Testament, according to Tertullian, fulfills them.[16] “Tertullian was the first,” observes Moser, “to establish a connection between the interest prohibition and a specific passage in the New Testament, namely Luke 6:34. But it should be noticed that he quite rightly did not claim that the New Testament contained an interest prohibition.”[17] For Tertullian, this passage from Luke is even more radical than the mere prohibition of usury, since it contains “a call to renounce even the principal.”[18] In this reading of Luke 6:34, Tertullian is joined by Basil,[19] Ambrose,[20] Chrysostom,[21] and Jerome.[22]

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[12] Cf. Maloney, “The Teaching of the Fathers on Usury,” 243–244; Moser, 34.
[13] Clement of Alexandria, *Stromata* 2.18 (PG 8.1023–1024), 366.
[14] Ibid. Clement fails to account for the exception in Deuteronomy 23:19–20, neither indicating who is meant by “foreigners” and whether it is permissible to exact usury from them
[15] Maloney, “The Teaching of the Fathers on Usury,” 244.
[16] Tertullian, *Adversus Marcionem* 4.17 (PL 2.398–401; CCSL 1.585–588).
[17] Moser, 35.
[18] Maloney, “The Teaching of the Fathers on Usury,” 242, n.12. See Tertullian, *Adversus Marcionem* 4.17 (PL 2.398–401; CCSL 1.585–588).

Basil of Caesarea (329–379) and his brother Gregory of Nyssa (c. 335–c. 394) clearly show that the ban on usury found in Deuteronomy and Leviticus still applies to Christians; yet, they do not necessarily see the prohibition contained therein as universally applicable. For Basil, Mosaic Law forbids the demanding of usury from "brothers" and "neighbors."[23] It appears that these terms include members of the Christian community and that the ban remains in effect given that this reading is contained in a homily meant to dissuade congregants from the practice. Gregory of Nyssa is of one mind with Basil in presenting the Old Testament's ban on usury as unabrogated for Christians: Christ the Judge will bring these texts in testament against usurers.[24] From the Nyssen's references to "brother" elsewhere in his *Contra usurarios*, he clearly reads the term inclusively to encompass more than merely blood relations, though it is unclear how universal he views the prohibition.[25]

John Chrysostom (347–407) holds Christians to the same, if not a higher, standard than the Jews, whom he presents as disposed to materialism. He states:

> Hence from the very beginning he laid down this law on the Jews with their rather materialistic mentality, namely, "You shall not lend money with interest to your brother or your neighbor." So what sort of excuse could they claim who prove even more savage than the Jews, who despite the Lord's favor and wonderful love, are found to be inferior to those under the law and in fact even worse?[26]

A perhaps significant broadening of the prohibition is found in Chrysostom's inclusion of "neighbors" in addition to "brothers."[27]

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[19] Basil of Caesarea *Homilia II in Psalmum XIV* 5 (PG 29.277–280), trans. Agnes Clare Way, in *Exegetical Homilies* (Washington, DC: Catholic University of America Press, 1963), 190.
[20] Ambrose of Milan, *De Tobia* 16.54 (PL 14.780–781; CSEL 32/2.550), 68–71.
[21] John Chrysostom, *Homilia LVI in Matthaeum* (PG 58.558), trans. George Prevost, in *Nicene and Post-Nicene Fathers*, First Series, vol. 10, ed. Philip Schaff (Buffalo, NY: Christian Literature Publishing, 1888), 349–351.
[22] Jerome, *Commentariorum in Hiezechielem* 6.18 (PL 25.176; CCSL 75.240), 210.
[23] Basil of Caesarea, *Homilia II in Psalmum XIV* 1 (PG 29.265–266), 181.
[24] Gregory of Nyssa, *Contra usurarios* (PG 46.441–446), trans. Casimir McCambley, in *Greek Orthodox Theological Review* 36, no. 3–4 (1991): 298–299.
[25] Ibid., (PG 46.439–440 and 46.445–446), 297 and 298.
[26] John Chrysostom, *Homilia XLI in Genesin* 2 (PG 53.376–377), trans. Robert C. Hill, in *Homilies on Genesis 18-45* (Washington, DC: Catholic University of America Press, 1990), 403–404.
[27] Cf. Robert C. Hill, trans., notes to *Homilies on Genesis 18-45* (Washington, DC: Catholic University of America Press, 1990), 404, n. 9.

Ambrose of Milan reiterates the common patristic exegesis of the Pentateuch's prohibition of usury as still applicable to Christians, perhaps even more so than to the Israelites to whom it first applied. Ambrose faults usurers for ignoring this divine instruction that Christ did not annul.[28] For Ambrose, Christ's words in Matthew 5:17 are operative here: "I am come not to destroy the law but to fulfill it."[29] The ancient prohibition has durability for Ambrose and counteracts a serious evil.[30] Ambrose's construal of "brother" is inclusive, though perhaps not perhaps embracing the whole of humanity. For him, "every people which, first, is in the faith, then under Roman law, is your brother."[31] This reading appears more restrictive than an earlier passage of *De Tobia* in which Ambrose states that "your brother is your sharer in nature and your co-heir in grace."[32] Some ambiguity remains, therefore, about the inclusivity of Ambrose's interpretation of "brother." It is clear, however, that Ambrose applies the ban to his day and context. Furthermore, he perceives the twofold aspect of the Israelites as compatriots and coreligionists as transferable to the late-antique, Christian context. Unlike the Israelites, however, the twofold aspect is not coterminous in the new context. It is not clear whether the potential borrower must be *both* Christian *and* Roman to be considered a brother, and thus exempt from the exaction of usury, or simply one or the other.

Ambrose, unlike many of the Fathers, specifically considers attempts to circumvent the usury prohibition. Reading the prohibition of usury contained in Deuteronomy and taking a business loan as an example, Ambrose insists that the prohibition extends to payments other than just money.[33] In passages already discussed in Chapter 3, monetary loans to businesspersons (*negotiatores*) are presented involving usury even when the addition is not

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[28] Ambrose of Milan, *De Tobia* 14.46 (PL 14.777; CSEL 32/2.545), 62–63.
[29] Ibid.
[30] Ibid., (PL 14.777; CSEL 32/2.544), 60–61.
[31] Ibid., 15.51 (PL 14.779; CSEL 32/2.548), 66–67.
[32] Ibid. 14.48 (PL 14.778; CSEL 32/2.546), 64–65.
[33] Ibid., 14.48 (PL 14.778; CSEL 32/2.546), 62–63.

money but wares (*merces*).[34] Even though these wares given as usury may not be the fungible commodities subject to a *mutuum*, such payments are for Ambrose "fraud and circumvention of the Law, not its observance."[35] Ambrose's definition of usury appears in this context: "Food too is usury and clothing is usury, and whatever is added to capital is usury. Whatever name you wish to put upon it, it is usury."[36] Given Ambrose's example of business loans, it is also clear that he considers the Old Testament as forbidding usury not merely in loans for consumption but also for commerce.

Much of the patristic literature thus far discussed is directed at usurers, those lending at usury. Like Basil of Caesarea, Ambrose of Milan, however, offers some basis for comparing the blameworthiness of lenders and borrowers, though not other ancillaries to the contract. He contemplates a distinction between the divine perspective toward usurers and that toward borrowers. Inspired by Proverbs 29:13, Ambrose declares that God is a witness to the attributes of the usurer and the borrower, and notes the divine condemnation of their actions. Ambrose, nonetheless, portrays the debtor more sympathetically, contrasting the unfairness and greed of the creditor with the injury and stupidity of the debtor.[37] Although the actions of each are condemned, the usurer's appear more grievous. This appearance conforms to the overall impression given by *De Tobia*, in which usurers are portrayed as rapacious and borrowers as pitiable and, at worst, foolish. Ambrose does blame borrowers for the hurt they may exact on those who stand as surety for them should they default, but this is not a direct condemnation of their borrowing at usury as such.[38] *De Tobia*, it should be remembered, however, is not systematic, and does not clearly delineate to what extent blame should be distributed.

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[34] Ibid., 14.49 (PL 14.778; CSEL 32/2.546), 64–65.
[35] Ibid.
[36] Ibid.
[37] Ibid., 7.25 (PL 14.767–768; CSEL 32/2.530–531), 40–43. Cf. Basil of Caesarea, *Homilia II in Psalmum XIV* 2 (PG 29.267–270), 183–184.
[38] Ambrose of Milan, *De Tobia* 23.89 (PL 14.792; CSEL 32/2.570–571), 98–101.

Unlike Basil of Caesarea, Gregory of Nyssa, and John Chrysostom, Jerome gives no indication that he reads “brother” beyond the confines of consanguinity.[39] However, the ban on usury contained in Deuteronomy and Leviticus, while still binding upon Christians, is not the whole story for Jerome. He believes that Psalm 15 (14) and Ezekiel 18 universalize the prohibition beyond ties of consanguinity and forbids usury in all its manifestations.[40] For Jerome, these prophetic texts expand the usury prohibition to loans between non-relatives, thereby rendering the prohibition universal. Jerome is careful to note that in the Septuagint, Psalm 15 (14) merely prohibits usury in the form of money, whereas the Hebrew version prohibits any sort of usury.[41] Even without the Hebrew version of Psalm 15 (14), however, Jerome is able to conclude that all usury is prohibited to all based on Ezekiel 18.[42] Thus, while acknowledging the Deuteronomic exception and discrepancy between different versions of Psalm 15 (14), Jerome arrives at the same conclusion as other Fathers via a more rigorous route.

One might think that the Fathers would have found the Parable of the Talents a challenge to their stance on the continued force of the usury ban. Such, however, was not the case. Patristic exegesis of the Parable of the Talents repeatedly treats it as a *parable* with spiritual significance and not as containing investing advice.[43] The talents, for Cyril of Alexandria (375–444), represent divine gifts.[44] For other Fathers, however, the parable is pertinent to considering the licitness of usury. Gregory of Nazianzus recognizes usury in the parable, but does not read it as favorable toward the practice. On the contrary, he sees the master in the parable as exemplifying the negative attributes of usurers: like him, lenders

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[39] Jerome, *Commentariorum in Hiezechielem* 6.18 (PL 25.176; CCSL 75.239–240), 210.
[40] Ibid.
[41] Ibid.
[42] Ibid. (PL 25.176; CCSL 75.240).
[43] Cf. Maloney, “The Teaching of the Fathers on Usury,” 241–242. See, for example, John Chrysostom, *Homilia LXXVIII in Matthaeum* 2–3 (PG 58.712–715) trans. George Prevost and rev. M. B. Riddle, in *Nicene and Post-Nicene Fathers*, First Series, vol. 10, ed. Philip Schaff (Buffalo, NY: Christian Literature Publishing Co., 1888), rev. and ed. Kevin Knight, accessed May 22, 2020, http://www.newadvent.org/fathers/200178.htm; Cyril of Alexandria, *Commentarius in Lucam* 19.13 (PG 72.870).
[44] Cyril of Alexandria, *Commentarius in Lucam* 19.13 (PG 72.870).

"defiled the land with usury and interest, both gathering where he had not sowed and reaping where he had not scattered."[45] For John Chrysostom, the parable also has a spiritual sense: it encourages the pursuit of spiritual usury in return for God's bountifulness.[46] Ambrose of Milan's exegesis of the Parable of the Talents complements that of John Chrysostom. For Ambrose, a contrast clearly divides the "good usury" of eternal reward from temporal usury—the disgrace of lenders and the oppressor of borrowers.[47] We return to rationales drawn out by the Fathers from the Parable of the Talents in Part II.

There are two passages from late early-Christian literature "which would seem to condone the taking of interest on loans of a commercial nature."[48] The first is from Gregory of Tours (c. 538–594) and the second is from Pope Gregory I (Gregory the Great) (r. 590–604), the latter of which is addressed below in the paragraphs on magisterial teaching.

Gregory of Tours has more than once been cited as an example of a patristic source bearing witness to the legitimacy of usury.[49] In a passage in his *Historia Francorum*, Gregory recounts how Desideratus, the bishop of Verdun, had nothing of his own with which to relieve the destitution of his city's inhabitants.[50] The reputation of King Theudebert I for generosity led Desideratus to petition the king for assistance in the form of a loan. From the hoped-for gains of the city's businesses, Desideratus promised the king that his money will be returned with "legitimate usury" (*usurae legitimae*).[51] Theudebert responded favorably to Desideratus's entreaties and lent seven thousand gold coins, which Desideratus distributed

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[45] Gregory of Nazianzus, *Oratio XVI* 18 (PG 35.957–958), trans. Charles Gordon Browne and James Edward Swallow, in *Nicene and Post-Nicene Fathers*, Second Series, volume 7, ed. Philip Schaff and Henry Wace. (Buffalo, NY: Christian Literature Publishing Co., 1894), 253.
[46] John Chrysostom, *Homilia XLI in Genesin* 1–2 (PG 53.375–377), 401–404.
[47] Ambrose of Milan, *De Tobia* 19.65 (PL 14.785; CSEL 32/2.558), 80–81. Cf. Ambrose of Milan, *De Nabuthae* 14.60 (PL 14.750), ed. and trans. Martin R. P. McGuire (Washington, DC: The Catholic University of America, 1927), 88–91.
[48] Thomas F. Divine, *Interest: An Historical and Analytical Study in Economics and Modern Ethics* (Milwaukee, WI: Marquette University Press, 1959), 31–32.
[49] See, e.g., Cleary, 57; Divine, 31–32; Henry R. Percival, "Excursus on Usury," in *Nicene and Post-Nicene Fathers*, Second Series, vol.14, *The Seven Ecumenical Councils*, ed. Phillip Schaff and Henry Wallace (Buffalo, NY: Christian Literature Publishing, 1894), 38.
[50] Gregory of Tours, *Historia Francorum* 3.34 (PL 71.266). The following account is from this passage.
[51] Ibid.

among the people. According to Gregory, the loan proved efficacious in permanently enriching the populace through investment of the money in business. When the owed money (*debita pecunia*) was offered to Theudebert, he refused the repayment, content that his generosity had been effective. Gregory concludes with the message that the king made the people rich without demanding anything in return.

Although Gregory seems to affirm the lawfulness of usury, such an affirmation does not necessarily run contrary to affirming Scripture's prohibition of the same. Gregory could be merely stating that if the king lends to them, they will pay the civilly established rate of return. As seen in the writings of the other Fathers, exacting rather than paying usury is the focus in their exegesis. Furthermore, Theudebert does not in fact demand usury or even the return of the principal, so the story in the end seems to conform with the ideal of Luke 6:34–36 rather than oppose the general patristic stance. Finally, even if Gregory were here implicitly affirming the liceity of charging usury, it falls outside of the realm in which patristic consensus matters, that is, within Scriptural exegesis on matters of faith and morals.

Besides showing remarkable uniformity in finding usury to be prohibited, the Fathers also find it a grave offense. In his catechetical lectures, known as the *Catecheses*, Cyril of Jerusalem (c. 313–386) instructs catechumens to resist the devil and guard against a variety of activities.[52] Cyril exhorts catechumens refrain from practices such as divination and sorcery, and participation in pagan and Jewish rituals.[53] In this list, usury, paired with greed, receives special mention: "Stand aloof from every form of intemperance, being neither a glutton nor a lover of pleasure, and, above all, from covetousness and usury."[54] Usury's inclusion in the list of transgressions could be credited purely to its prevalence, but the distinction it holds regarding at least sins of intemperance, if not indicating usury to be the

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[52] Cyril of Jerusalem, *Catecheses* 4.37 (PG 33.501–504), trans. Leo P. McCauley, in *The Works of Cyril of Jerusalem*, vol. 1 (Washington, DC: The Catholic University of America Press, 1969), 137–138.
[53] Ibid., (PG 33.501–502), 137.
[54] Ibid.

gravest sin, at any rate indicates the particular need to resist it. Cyril's exhortation is consistent with roughly contemporary exegesis of the Bible's teaching on usury.

In reading Psalm 15 (14) and Ezekiel 18, the Fathers exhibit a broad consensus that these passages not only forbid usurious lending but also indicate the depths of its sinfulness. Within the patristic exegesis, Psalm 15 (14) receives the most references and is the most widely used in condemning usury. The Fathers who reference it include Cyprian,[55] Athanasius,[56] Hilary of Poitiers,[57] Basil,[58] Gregory of Nyssa,[59] Ambrose,[60] Jerome,[61] and Augustine.[62] Although its use is not quite as well spread, Ezekiel 18:8–9 receives explicit reference concerning usury in the work of many Fathers, including Clement of Alexandria,[63] Tertullian,[64] Cyprian,[65] Basil,[66] Ambrose,[67] and Jerome.[68]

Athanasius (c. 296–373)[69] and Hilary of Poitiers (c. 310–c. 367)[70] each find usury damnable in their respective considerations of Psalm 15 (14). Although not directly citing either Ezekiel 18 or Psalm 15 (14), Gregory of Nyssa and John Chrysostom portray usurers as meriting great torment after death. Gregory sees the "inheritance of eternal punishment" as

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[55] Cyprian of Carthage, *Testimoniorum libri III ad Quirinum* 3.48 (PL 4.759; CCSL 3.137).
[56] Athanasius, *Expositio in Psalmum XIV* 2–5 (PG 27.99–100).
[57] Hilary of Poitiers, *Tractatus in XIV Psalmum* 15 (PL 9.307; CCSL 75.90).
[58] Basil of Caesarea, *Homilia II in Psalmum XIV* 1 (PG 29.263–266), 181–183.
[59] Gregory of Nyssa, *Contra usurarios* (PG 46.448–450), 300.
[60] Ambrose of Milan, *Epistola XIX ad Vigilium* 4 (PL 16.983), trans. Mary Melchior Beyenka, in *Letters 1–91* (Washington, DC: The Catholic University of America Press, 1954), 175; *De Tobia* 15.52 (PL 14.779; CSEL 32/2.548–549), 66–69.
[61] Jerome, *Commentariorum in Hiezechielem* 6.18 (PL 25.176; CCSL 75.240), 210.
[62] Augustine of Hippo, *Enarratio in Psalmum XXXVI* 3.6 (PL 36.386; CCSL 38.372), 99; *Enarratio in Psalmum CXXVIII* 6 (PL 37.1692; CSEL 95/3.238; CCSL 40.1884); *De baptismo contra Donatistas* 4.9.12 (PL 43.161–162; CSEL 51.236–237); *Sermo XXXVIII* 8 (PL 38.239–240; CCSL 41.483–484).
[63] Clement of Alexandria, *Paedegogus* 1.10 (PG 8.363–364), trans. Simon P. Wood, in *Christ the Educator* (Washington, DC: The Catholic University of America Press, 1954), 84; cf. Clement of Alexandria, *Stromata* 2.22 (PG 8.1083–1084), 376.
[64] Tertullian, *Adversus Marcionem* 4.17 (PL 2.398–401; CCSL 1.585–588).
[65] Cyprian of Carthage, *Testimoniorum libri III ad Quirinum* 3.48 (PL 4.759; CCSL 3.137).
[66] Basil of Caesarea, *Homilia II in Psalmum XIV* 1 (PG 29.265–266), 181.
[67] Ambrose of Milan, *De Tobia* 15.52 (PL 14.779; CSEL 32/2.548–549), 66–69.
[68] Jerome, *Commentariorum in Hiezechielem* 6.18 (PL 25.176–177; CCSL 75.239–240), 209–210.
[69] Athanasius, *Expositio in Psalmum XIV* 2–5 (PG 27.99–100). See Maloney, "The Teaching of the Fathers on Usury," 246.
[70] Hilary of Poitiers, *Tractatus in XIV Psalmum* 15 (PL 9.307; CCSL 75.90).

the culmination of “pains and hunger” experienced by usurers in this life.[71] The eternal punishment envisioned by Gregory makes any pleasure experienced on earth but a trifle, since “a poisonous serpent later brings harm upon your soul.”[72] The price of usury is heaven and its recompense is “eternal distress.”[73] John Chrysostom contrasts “the unquenchable fire” kindled by usurers with “the good things to come” should they repent and practice “godliness with contentment.”[74]

Basil of Caesarea and Ambrose of Milan find significant Ezekiel’s association of usury with serious offenses. For them, the association indicated usury’s gravity.[75] In Basil’s reading, Ezekiel is placing usury “among the greatest of evils.”[76] Later in the passage, Basil confirms that usury belongs to a grave class of sins when he states that usury “involves the greatest inhumanity.”[77] Ambrose is even more emphatic than Basil in drawing a connection between the other sins of Ezekiel’s catalogue and usury’s gravity. He latches onto the gravest sin in the catalogue, idolatry, and uses it rhetorically as the sin with which to compare usury. He writes: “See how [Ezekiel] joins the usurer with the idolater, as if to make the offense equal.”[78] Ambrose certainly does not actually affirm that usury and idolatry are equally grave offenses. His rhetoric does, however, underscore how great an offense usury is according to his reading of Ezekiel.

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[71] Gregory of Nyssa, *Contra usurarios* (PG 46.451–452), 301.
[72] Ibid. (PG 46.435–436; GNO 9.196), 295.
[73] Ibid. Gregory of Nyssa’s well attested universalism leads to the conclusion that the damnation envisioned here would be less than permanent. Cf. Brenda Llewellyn Ihssen, “Basil and Gregory’s Sermons on Usury: Credit Where Credit is Due,” *Journal of Early Christian Studies* 16, no. 3 (2008): 412. For an in-depth discussion of Gregory’s universalism, see Morwenna Ludlow, *Universal Salvation: Eschatology in the Thought of Gregory of Nyssa and Karl Rahner* (Oxford: Oxford University Press, 2000), 21–112.
[74] John Chrysostom, *Homilia LVI in Matthaeum* (PG 58.558), 351.
[75] See Leo P. McCauley, trans., *Catecheses*, in *The Works of Cyril of Jerusalem*, vol. 1 (Washington, DC: The Catholic University of America Press, 1968), 137, n. 52. Cf. Robert P. Maloney, “The Teaching of the Fathers on Usury: An Historical Study on the Development of Christian Thinking,” *Vigiliae Christianae* 27, no. 4 (1973): 246.
[76] Basil of Caesarea, *Homilia II in Psalmum XIV* 1 (PG 29.265–266), 181.
[77] Ibid., 182.
[78] Ambrose of Milan, *De Tobia* 15.52 (PL 14.780; CSEL 32/2.549), 68–69. Translation is my own and compared with that of Zucker.

Ambrose of Milan presents a reading of Ezekiel comparable to that offered well over a century earlier by Clement of Alexandria. Indeed, Clement initiated the known patristic treatment of usury in reciting Ezekiel 18:4–9.[79] As "a prophetic description of the Christian life,"[80] the passage lays out for Clement a guide for evading loss of the soul's life and for gaining beatitude.[81] Ambrose reads Ezekiel 18 as confirming the assessment that usury damns those who take it even on this side of death.[82] This assessment is part of wider statement that even sinners as they live are, in a sense, dead; the faithless even now abide in a living hell.[83]

Although the Fathers agree that usury is in general prohibited and grave, two Fathers grapple with the exception to the usury ban found in Deuteronomy 23. Jerome acknowledges the exception but quickly dispenses with it through his reading of Ezekiel as superseding and eliminating that exception.[84] Ambrose is unique among the Fathers in his detailed exegesis of the exception to the usury prohibition found in Deuteronomy 23:19–20.[85] Ambrose takes the "foreigner" from whom usury may be exacted to signify the "enemy," and consequently for him the loophole pertains to warfare.[86] Specifically, Ambrose understands the enemies described in Deuteronomy 23:19–20 to be those who threatened ancient Israel.[87] The exception gave the Israelites a tool for overcoming weakness against otherwise more powerful enemies.[88] Ambrose presents a pithy formula embodying his exegesis of

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[79] Clement of Alexandria, *Paedagogus* 1.10 (PG 8.363–364), 84. See Moser, 33; Maloney, "The Teaching of the Fathers on Usury," 243.
[80] Maloney, "The Teaching of the Fathers on Usury," 243. Cf. Moser, 34.
[81] Clement of Alexandria, *Paedagogus* 1.10 (PG 8.363–364), 84. See Maloney, "The Teaching of the Fathers on Usury," 243.
[82] Ambrose of Milan, *De bono mortis* 12.56 (PL 14.566) trans. Michael P. McHugh, in *Seven Exegetical Works*, (Washington, DC: The Catholic University Press, 1972), 111–112. Ambrose also mentions the death of the usurer in *De Tobia* (15.52 (PL 14.779–780; CSEL 32/2.548–549), 66–69) but focuses there on the connection between usury and idolatry, as discussed above.
[83] Ambrose of Milan, *De bono mortis* 12.56 (PL 14.566), 111–112.
[84] Jerome, *Commentariorum in Hiezechielem* 6.18 (PL 25.176; CCSL 75.239–240), 210.
[85] See Maloney, "The Teaching of the Fathers on Usury," 254.
[86] Ambrose of Milan, *De Tobia* 15.51–52 (PL 14.779–780; CSEL 32/2.547–549), 66–69.
[87] Ibid. 15.51 (PL 14.779; CSEL 32/2.547), 66–67.
[88] Ibid. Cf. Luke Bretherton, "'Love Your Enemies': Usury, Citizenship and the Friend-Enemy Distinction," *Modern Theology* 27, no. 3 (2011): 367.

Deuteronomy 23:19–20: "Where there is a right of war, there also is the right of usury."[89] In the discussion preceding this formula, however, Ambrose indicates that the what is immediately to follow does not bring to bear the Gospel's weightier demands.[90] Later, Ambrose incorporates these demands into his discussion. Specifically, he considers the teaching of Luke 6:34–36. Ambrose holds Christians to a higher standard than sinners, who expect a return when they lend. Instead of weighing what their enemies deserve or expecting a return from them, Christians are to love their enemies.[91] The rule of love supersedes the wartime exception granted in Deuteronomy.

It should be noted, however, that the call to love one's enemies is not necessarily universal in Ambrose's thought, and not even necessarily directed at all Christians. Ambrose follows Cicero in distinguishing between middle duties (*media officia*) and perfect duties (*perfecta officia*).[92] As he is wont to do, Ambrose infuses a Christian hue into the distinction. The Decalogue provides a baseline for Ambrose of Milan, yet it does not offer the perfection that Jesus invites his followers to embrace. The perfect duties supplement observance of the Decalogue and make up for whatever is lacking in it. The perfect duties can be seen as a response to the call to be perfect as the Father in Heaven is perfect (see Matthew 5:48). Ambrose classifies the love of enemies (*inimici*) as a perfect duty. Through this classification, and indicating that the love of enemies requires abstention from taking of usury, it would appear that the evangelical call to perfection supersedes any exception to the prohibition of usury. Yet, the third book of Ambrose's *De officiis ministrorum* problematizes such a reading. In it, Ambrose observes that few people practice the perfect duties, but middle duties, or "common duties," can be expected of the many.[93] If the love of enemies and not demanding usury from them are perfect duties and can only be expected of the few, it appears

[89] Ambrose of Milan, *De Tobia* 15.51 (PL 14.779; CSEL 32/2.548), 66–67.
[90] Ibid.
[91] Ibid., 16.54 (PL 14.780; CSEL 32/2.550), 70–71.
[92] Ambrose of Milan, *De officiis ministrorum* 1.36–37 (PL 16.34; CCSL 15.13–14), 136–139.
[93] Ibid., 3.10 (PL 16.148; CCSL 15.156), 358–359.

that Ambrose may merely be shrinking the loophole that he finds in the Deuteronomy, and not necessarily closing it.

Prohibition of Usury in Magisterial Teaching

Magisterial pronouncements are of one voice with the patristic tradition in portraying the usury ban as still in effect, especially for Christians. In the main, lenders remain the primary targets of these pronouncements, though persons who succor usurers are also subject to penalties. Nevertheless, the magisterium keeps relatively silent about debtors who pay usury. Often less directly than the Fathers, the magisterium also attests to usury's gravity, as suggested by the penalties it stipulates. Some of these penalties apply only to the clergy (deposition) whereas others apply also to the faithful more broadly (excommunication) and communities (interdict) and some even to non-Christians, namely Jews.

Ecumenical councils and popes repeatedly cast the prohibition of usury as divinely revealed. They frequently invoke the authority of the Old and New Testaments in formulating denunciations of usury. The First Council of Nicaea quotes Psalm 15 (14) in condemning clerics who practice usury.[94] It is sometimes noted that Nicaea I only prohibits clerics from exacting usury.[95] The attention to clerics may be a product of circumstance with little or no doctrinal significance (see also Chapter 3):

> The mildness of the Council of Nicaea towards interest [usury] taking seems to lie in the fact that the Roman Emperor Constantine (274-337) presided over the Council (as already over the Council of Arles AD 314). Constantine, a month before the opening of the Council, had declared a law that allowed as legal maximums interest of 12 per cent per annum (*centesima*) on money and 50 per cent per annum (*hemiolia*) on loans in kind (Codex Theodosianus 2, 33, 1).[96]

Yet, even though Nicaea I limits penalties to clerics, it does so based on Psalm 15 (14), which speaks of the just man, and not just the honorable cleric.

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[94] First Council of Nicaea, Canon 17, 14.
[95] See, for example, Cleary, 46.
[96] Moser, 35.

After a centuries-long hiatus from addressing the issue, medieval and early-modern ecumenical councils forcefully condemn usurers generally. While the details of the condemnations may be contextually specific, a theological residuum of disapprobation of usury cannot be dismissed as mere positive law. Elements of these pronouncements are meant to be perennial. Indeed, the Second Lateran Council aligns its condemnation of usurers with the denunciations of usury found in "divine and human laws, denounced by Scripture in the old and new Testaments."[97] Lateran II denounces as "despicable and blameworthy . . . the ferocious greed of usurers."[98] In noting that "nearly everywhere the crime of usury has become so firmly rooted that many, omitting other business, practise usury," the Third Lateran Council notes that usurious lending is practiced "as if it were permitted, and in no way observe how it is forbidden in both the Old and New Testament."[99] The context of widespread usury by businesspeople frames Lateran III's pronouncement. The "notorious usurers" ("*usurarii manifesti*"), for whom the council sets temporal penalties (discussed below), are "commonly understood to mean men who had been convicted in a court of taking usury, or who were 'notorious by fact' by publically setting themselves up to lend at profit."[100] Although temporal penalties are restricted to convicted or public usurers, this limitation in no way restricts Scripture's general prohibition of usury to just this group.[101] The same conclusion is applicable to the Second Council of Lyons's affirmation of Lateran III's penalties for "notorious usurers."[102] Acknowledging the thorny issues surrounding the Fourth Lateran Council's condemnation of Jewish moneylenders in the context of the Crusades, we can similarly discern a magisterial application of the usury prohibition to a

[97] Second Lateran Council, Canon 13, 200.
[98] Ibid. As stressed by Noonan, "this is the first explicit decree of universal prohibition passed by a body of bishops having the absolute authority of an infallible ecumenical council" (Noonan, *The Scholastic Analysis*, 18).
[99] Third Lateran Council, Canon 25, 223.
[100] Noonan, *The Scholastic Analysis*, 34.
[101] Third Lateran Council, Canon 25, 223.
[102] Second Council of Lyons, Constitution 26 and 27, 328–330.

specific situation while tracing perhaps a more universal point. The council, in applying the prohibition of usury to both Christians and Jews, perhaps suggests that the Deuteronomic exception is defunct: Jewish moneylenders (and others) are not permitted to lend at usury even to persons outside of their group, namely Christians.[103] Indeed, Benjamin N. Nelson reads the Crusades as occasioning a "definitive rejection of Ambrose's formula":

> With the beginning of the Crusades, alert churchmen were pained to discover that Ambrose's resolution opened the door to unwelcome economic and religious developments. They decided to throw off the double burden which his awkward defense of the Deuteronomic proviso had saddled upon Christianity by resorting to new exegetical strategies more in harmony with the economic interests of the Church and the universalist teaching of Christ.[104]

That the usury ban is not context specific is likewise suggested by the Council of Vienne, which denounces "communities in certain places [which] . . . in violation of both divine and human law, approve of usury."[105] Although arguably falling shy of pronouncing defenses of usury as heretical, Vienne nonetheless decrees that defenders of usury receive the same treatment as heretics.[106]

The ecumenical councils seldom indicate whether borrowing at usury is also banned. Canon 13 of the First Council of Lyons is an exception. The canon regards indebted churches.[107] The canon permits churches already in debt to settle usurious loans.[108] While strictly forbidding new engagement of debt "which may be a source of trouble," Lyons I admits of exception for "evident necessity" and even "reasonable advantage."[109] If available, non-usurious loans are to be contracted, but if not, borrowing at usury becomes permissible.[110] Lyons I forbids without exception contracting such loans "in fairs or public

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[103] Fourth Lateran Council, Constitution 67 and [71], 265–266, 267–271. Cf. Benjamin Nelson, *The Idea of Usury: From Tribal Brotherhood to Universal Otherhood*, 2nd revised edition (Chicago: University of Chicago Press, 1969), 3ff.; Noonan, *The Scholastic Analysis*, 101–102.
[104] Nelson, 5–6.
[105] Council of Vienne, Decree [29], 384.
[106] Ibid., 384–385.
[107] First Council of Lyons, Canon 13, 293–295.
[108] Ibid., 294.
[109] Ibid.
[110] Ibid.

markets."[111] Gilchrist explains that this stipulation presumably referred to contracting with manifest usurers so as "to avoid excessive rates and public scandal."[112] Thus, scandal—that is, leading prospective lenders into sin—may indirectly extend the prohibition of usury to borrowers.

In sum, evidence from the conciliar magisterium strongly upholds Scripture's prohibition of usury, especially for lenders, though also indirectly and sometimes for borrowers. This evidence presents the Church's teaching on usury as finding expression in specific contexts while retaining enduring force through its roots in the faith, especially as contained in the Old and New Testaments.

Papal statements, for the most part, are similarly clear and emphatic in their condemnations of lending at usury. In the foundational encyclical of modern Catholic social teaching, *Rerum novarum* (1891), Pope Leo XIII (r. 1878–1903) reaffirms the prohibition of usury, which "more than once [has been] condemned by the Church."[113] A vast understatement, the declaration reflects not only the teaching of the Fathers and ecumenical councils, but his own predecessors of the Roman See.

Papal condemnations of usury are evidenced from the fifth century and gain momentum in the middle ages with echoes into the twenty-first century. Pope Leo I (r. 440–461), known as Leo the Great, brings the weight of Psalm 15 (14) into his condemnation of usury.[114] In a letter to the bishops in various regions of Italy, Leo makes clear that the prohibition applies to the laity and clergy alike.[115] Subsequent papal ink implicitly reaffirms

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111 First Council of Lyons, Canon 13, 294.
112 Gilchrist, 108.
113 Pope Leo XIII, *Rerum novarum* 3 (1891), accessed March 11, 2020, Latin text: http://w2.vatican.va/content/leo-xiii/la/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html; English text: http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html.
114 Pope Leo I, *Sermo XVII* 3 (PL 54.181–182), trans. Jane Patricia Freeland and Agnes Josephine Conway, in *Sermons* (Washington, DC: Catholic University of America Press, 1996), 65–66.
115 Pope Leo I, *Epistula IV* 3 (PL 54.613), trans. Edmund Hunt, in *Letters* (New York: Fathers of the Church, 1957), 25–26. See H. J. Schroeder, "Comment" on Council of Nicaea, Canon 17, in *Disciplinary Decrees of the*

the prohibition in considering whether various contracts involve usury, but some statements make explicit that usury remains a crime[116] as well as illicit and sinful.[117] At the Synod of Tours (1163), Pope Alexander III approves of the abhorrence with which clerics and members of religious orders view usury, but chastises them and warns of sanctions for making a profit off of the pledges they hold as security.[118] With evident approval, Pope Leo X recounts the position that the "crime of usury" is "a clearly defined evil, since our Lord, according to Luke the evangelist, has bound us by a clear command that we ought not to expect any addition to the capital sum when we grant a loan."[119] The Holy Office under Popes Alexander VII (1655–1667) and Innocent XI (1676–1689)[120] resisted Jansenist positions that seemed to undermine the usury prohibitions. Among the condemned propositions is that "it is lawful for a lender to require something beyond the principal, if he obliges himself not to demand the principal for a certain time."[121] The Holy Office under Innocent XI also rejects the *mohatran* contract discussed in Chapter 4, wherein a credit sale was used to obfuscate a debt contract with the payment of an addition.[122]

The catalyst for papal distinctions between usury and *interesse* is the affirmation of the usury prohibition. Whereas usury is banned, *interesse*—at least in some cases —is permitted. In Chapter 3, we saw the mixed approval of *interesse* by Popes Paul III, Julius III,

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General Councils: Text, Translation, and Commentary, ed. H. J. Schroeder (London: B. Herder Book Co., 1937), 48.

[116] E.g., Pope Eugene III, *Epistolae et privilegia* 60 (PL 180.1567).

[117] E.g., Pope Benedict XIV, *Vix pervenit* 3.3 (1745), in *The Papal Encyclicals*, comp. Claudia Carlen, vol. 1 (Wilmington, NC: McGrath, 1981), accessed March 11, 2020, Latin text: http://www.domus-ecclesiae.de/magisterium/vix-pervenit.html; English text: http://www.papalencyclicals.net/ben14/b14vixpe.htm.

[118] Pope Alexander III in Synod of Tours (1163), in *Gregorian Decretals* 5.19.1, in *Corpus iuris canonici*, ed. Emil Friedberg and Aemilius Ludwig Richter, volume 2, (Leipzig: Bernhard Tauchnitz, 1881), 811; English translation in *Compendium of Creeds, Definitions, and Declarations on Matters of Faith and Morals* (747), ed. Peter Hünermann, Robert Fastiggi, and Anne Englund Nash (San Francisco: Ignatius Press, 2012), 244–245.

[119] Buckley, 135.

[120] See Noonan, *The Scholastic Analysis*, 355.

[121] Holy Office, *Errors of a Doctrine of Moral Laxity* (1666), English translation quoted in English translation quoted in John T. Noonan, Jr., 355. *The Scholastic Analysis of Usury*. Cambridge, MA: Harvard University Press, 1957.

[122] See ibid.

and Pius IV.[123] While popes respond to questions of what "usury" and "*interesse*" each signify, the need for the distinction underscores a sometimes tacit understanding that to be usurious is to be prohibited. Pope Benedict XIV's encyclical *Vix pervenit*, while maintaining the distinction between usury and *interesse*, recognizes that excessive returns based on titles to *interesse*, while perhaps not falling "under the precise rubric of usury," may still be objectionable.[124] Of course, it should be noted, that the authoritative weight of *Vix pervenit* is not straightforward. Noonan notes that the encyclical is not *ex cathedra*, a pronouncement grounded explicitly in the pope's apostolic authority.[125] At the same time, however, while the encyclical itself is addressed merely to the Italian clergy, the Holy Office extended it to the Church universally in 1835.[126]

While social encyclicals of the twentieth and twenty-first centuries do not openly reaffirm the usury ban, Pope Benedict XVI (2005–2013) faintly echoes it in *Caritas in veritate* (2009).[127] Amid the wake of the financial crash, the pope teaches that "the more vulnerable sectors of the population . . . should be protected from the risk of usury [*usura*] and from despair. The weakest members of society," he continues, "should be helped to defend themselves against usury [*usura*]."[128] While not the robust condemnation voiced (albeit sometimes implicitly) by his predecessors, some of their concerns reverberate in the lines of *Caritas in* veritate, concerns that are addressed in Part II.

An interplay of liceity and categorization is likewise manifest in papal statements on credit sales. In considering the liceity of credit sales, Pope Urban III takes guidance from Luke 6:35 and offers as a premise in his reasoning that "every type of usury and excessive

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[123] Noonan, *The Scholastic Analysis*, 258. Noonan notes here that Pope Pius IV was advised, albeit unofficially, by fathers of the Council of Trent (1545–1563) in making this determination. Cf. Buckley, 135.
[124] Pope Benedict XIV, *Vix pervenit* 3.3.
[125] Noonan, *The Scholastic Analysis*, 357.
[126] Ibid.
[127] Pope Benedict XVI, *Caritas in veritate* 65.
[128] Ibid.

profit is prohibited by law."[129] Pope Gregory IX's reflection is framed by the accepted notion that usury is prohibited, and it is because of this status that it matters whether parties to different transactions should be considered usurers or not.[130] As recently as the 1917 Code of Canon Law, the tacit acceptance of the usury prohibition and the distinction between usury and *interesse* seems to underlie the discussion, even though neither is mentioned by name. Prepared under the papacies of Popes Pius X (r. 1903–1914) and Benedict XV (r. 1914–1922), but promulgated by the latter, the code is seen by some as clarifying which payments on a loan should be considered forbidden usury.[131] The canon states:

> When a fungible is given to another in such wise that it becomes his and is later to be returned only *in kind*, no profit may be derived by reason of the contract itself; but in such a loan it is not *per se* unlawful to make an agreement for the legal rate of interest [*lucrum legale*] (unless it is evident that the legal rate is exorbitant), or even for a higher rate, provided there be a just and proportionate reason.[132]

The standard commentary on this canon[133] states:

> While upholding the traditional teaching of the Church that in a loan for consumption (*mutuum*) there is not just cause for profit by reason of the contract itself, the present canon states implicitly that in modern times there is always present in such a loan some just reason for demanding the legal rate of interest and explicitly allows an even greater rate of interest provided there be just and proportionate reasons for demanding it. The canon, however, studiously avoids determining what these just reasons are.[134]

Although the canon may imply that a legal rate of profit on a loan (translated as "interest" above) is presumed licit,[135] this profit would presumably fall under the rubrics of one or more of the titles for *interesse*.[136] Unfortunately for clarity, the canon avoids the terms "*usura*" and "*interesse*." Nevertheless, unless this canon marks a departure from previous magisterial

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[129] Pope Urban III, *Consuluit*, 814; 249.
[130] Pope Gregory IX, *Naviganti*, 816; 275–276. Cf. McCall, 101–102; Noonan, *Scholastic Analysis of Usury*, 20.
[131] Noonan, *The Scholastic Analysis*, 391.
[132] Pope Benedict XV, *Codex iuris canonici* (1917) 3.6.29, c. 1543, accessed June 4, 2020, http://www.intratext.com/IXT/LAT0813/_P4V.HTM; English translation in *Canon Law: A Text and Commentary* by T. Lincoln Bouscaren and Adam C. Ellis (Milwaukee, WI: Bruce Publishing Company, 1946), 786. See Noonan, *The Scholastic Analysis*, 391
[133] See Noonan, *The Scholastic Analysis*, 391.
[134] T. Lincoln Bouscaren and Adam C. Ellis, commentary in *Canon Law: A Text and Commentary* (Milwaukee, WI: Bruce Publishing Company, 1946), 787. See Noonan, *The Scholastic Analysis*, 391.
[135] Bouscaren and Ellis, 787.
[136] Cf. Noonan, *The Scholastic Analysis*, 391.

teaching, the most coherent reading of the canon is that usury remains prohibited, even if some legal rates of modern interest are *interesse* and licit.[137] That *paying* usury is not in itself forbidden is suggested in the current Code of Canon Law, promulgated in 1983 by Pope John Paul II (r. 1978–2005). This new code appears to authorize ecclesiastical administrators to pay not just legal rates of interest, but potentially even what it deems usury (*foenus vel mutui vel hypothecae*).[138]

At least two popes seem to deviate from the papal consensus on the usury prohibition. As noted above, a passage from Pope Gregory I is offered as diverging from the prohibition of usury. Prima facie, however, the passage bears at best minimal magisterial significance. Contained in a letter to the subdeacon Anthelm,[139] who throughout Gregory's pontificate managed the papal estates in Campania,[140] the passage attempts no formal statement of doctrine. Furthermore, while the pope does not directly condemn the usury apparently paid to a certain Felix nor demand its restitution, neither does he attempt to legitimize it. On the contrary, Gregory charges Anthelm to appeal to Felix and "see that in this matter, as is fitting of a Christian and a noble man, he should be kind rather than inflexible, compassionate rather than strict, and should not expect profit from another's loss, but be content having received the principal of his loan [*recepta pretii sit sorte contentus*]."[141] Gregory's statement does not speak to the legitimacy of the contract which was set at a twenty-five percent markup, nor to the two and a half percent actually paid. The pope neither condones nor reprimands either. If anything, he speaks to the legitimacy of being repaid the principal. Gregory goes on to echo the advice of his patristic forebears: "whatever [Felix] might concede to the poor man,

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[137] Cf. ibid.
[138] Pope John Paul II, *Codex iuris canonici* 5.2 (1983), c. 1284, accessed March 11, 2020, Latin text: http://www.vatican.va/archive/cod-iuris-canonici/latin/documents/cic_liberV_la.html; English text: http://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib5-cann1254-1310_en.html#TITLE_II.
[139] Pope Gregory I, *Registri Epistolarum* 9.38 (PL 77.972–973), trans. John R. C. Martyn, in *The Letters of Gregory the Great*, vol. 2 (Toronto: Pontifical Institute of Mediaeval Studies, 2004), 608.
[140] John R. C. Martyn, introduction to *The Letters of Gregory the Great*, vol. 1 (Toronto: Pontifical Institute of Medieval Studies, 2004), 100.
[141] Pope Gregory I, *Registri Epistolarum* 9.38 (PL 77.973), 608.

almighty God might pay back to him with an increased return [*multiplicata restitutio*], just as he promised."[142] This advice is concordant with Gregory's own reading of the Parable of the Talents, in which Gregory contrasts the burial of the one servant's talent—read as the dedication of one's abilities to mundane concerns—with the other servants' pursuit of spiritual profit (*lucrum spiritale*).[143] While not condemning usury in the letter or commentary, neither does Pope Gregory I condone it.

In similar fashion, a statement in 1950 by Pope Pius XII (1939–1958) was offered in a less than magisterial setting—in the context of remarks to the Bank of Rome's employees and directors.[144] In these remarks, the pontiff distances himself from an "unhealthy conception" ("*una concezione non sana*") contrary to the freedom expressed in Galatians 5:1: "For freedom Christ has set us free."[145] The pope rejects the notion that the banking system is "stained by its nature by guilt" ("*per natura sua macchiato di colpa*").[146] As Noonan summarizes Pius's remarks:

> Banking can be, and has been, abused, but he finds no inherent iniquities in the system. . . . His approval, he emphasizes, is intended not only for employees of a bank, but for "the financier in the proper sense of the word [*per il finanziere nel senso proprio della parola*]." He stresses that it is the banking *system* which he approves. A banking system has always been necessary to society; it is the heart of the economic organism.[147]

While "financier" may designate a person who lends to receive an increase, Pius XII does not directly speak to the usury prohibition here. Furthermore, as Noonan's assesses, these "remarks are by no means of dogmatic force, but they have more authority than those of a

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[142] Ibid.
[143] Pope Gregory I, *XL Homiliarum in Evangelia* 9.1 (PL 76.1107; CCSL 141.58–60).
[144] Cf. Noonan, *The Scholastic Analysis*, 392.
[145] Pope Pius XII, "Discorso di Sua Santità Pio XII Ai Dirigenti e al Personale Del Banco Di Roma" (June 18, 1950), accessed March 14, 2020, http://w2.vatican.va/content/pius-xii/it/speeches/1950/documents/hf_p-xii_spe_19500618_banco-roma.html.
[146] Ibid.
[147] Noonan, *The Scholastic Analysis*, 392.

private individual."[148] Even so, the remarks are certainly in contrast to the long series of magisterial condemnations of usury, and the gravity with which it was treated.

For the most part, indications of usury's gravity by the magisterium are indirect. Conciliar pronouncements never explicitly condemn usury as mortal sin, though some suggest this classification. Pope Leo I, however, offers a clear and explicit statement that portrays usury as mortally sinful. Leo turns to Psalm 15 (14) in finding usury damnable.[149] For Leo, usury diminishes the wealth of the mind and extinguishes the life of the soul.[150] In the afterlife, the soul's death ripens into loss of God's dwelling.[151] With a sense of *contrapasso* worthy of Dante, Leo judges it fitting that the harvest of usury should be eternal penury, since temporal wealth was gained through another's loss.[152] The Second Council of Lyons suggests that usury is a damnable offense by speaking of "the abyss of usury, which devours souls."[153] The Council of Vienne is less explicit, merely considering communities' reported approval of usury as being "to the divine displeasure."[154] Despite the obliqueness of many such statements, the severe sanctions levied by ecumenical councils bespeak the magisterium's considering usury a grave offense.

Among these severe sanctions is deposition from ecclesiastical office. Nicaea I threatens the clergy with this penalty.[155] Another severe penalty for usury is excommunication, which has been considered the gravest sanction at the Church's disposal.[156] Removal from the community by excommunication means, among other things,

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[148] Ibid.
[149] Pope Leo I, *Sermo XVII* 3 (PL 54.181), 65–66.
[150] Ibid.
[151] Ibid. (PL 54.182), 65–66.
[152] Ibid.
[153] Second Council of Lyons, Constitution 26, 328.
[154] Council of Vienne, Decree [29], 384.
[155] First Council of Nicaea, Canon 17, 14.
[156] Richard H. Helmholz, "Excommunication as a Legal Sanction: The Attitudes of the Medieval Canonists," *Zeitschrift der Savigny-Gesellschaft für Rechtsgeschichte, Kanonistische Abteilung* 68, no. 1 (1982): 204; Richard H. Helmholz, "Excommunication in Twelfth Century England," *Journal of Law and* Religion 11, no. 1 (1994–1995): 235.

exclusion from the Church's sacraments and other rites.[157] It is, therefore, significant that excommunication is the penalty repeatedly set for usury. First regional gatherings and then ecumenical councils apply the penalty to lending at usury. The fourth-century Council of Arles excludes clerics who practice usury from taking communion.[158] The Synod of Pavia (850) applies the sanction to the laity.[159] The Third Lateran Council applies the penalty of excommunication to "notorious usurers" (discussed above).[160] The Second[161] and Third[162] Lateran Councils add the further penalty that Christian burial be denied should notorious usurers who fail to repent. Lateran II stipulates that usurers "be held infamous throughout their whole lives."[163] It also deprives them of "every comfort of the church" and commands all clerics and abbots to refrain from receiving usurers "unless they do so with extreme caution."[164] Lateran III legislates that clerics who receive notorious usurers or provide them with Christian burial "should be compelled to give back what he has received, and let him remain suspended from the performance of his office until he has made satisfaction according to the judgment of his own bishop."[165]

While adding specificity to how notorious usurers prove their repentance, the Second Council of Lyons also highlights the gravity of even succoring notorious usurers.[166] It insists that "although notorious usurers give orders in their wills that restitution be made for their usurious gains, either in express terms or in general, ecclesiastical burial is nevertheless to be refused until full restitution has been made as far as the usurer's means allow, or until a

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[157] Cf. Helmholz, "Excommunication in Twelfth Century England," 235. An exception was made, however, for matrimony. See Helmholz, "Excommunication as a Legal Sanction," 211.
[158] Council of Arles (314). Canon 13 (CCSL 148.40–41).
[159] Noonan, *The Scholastic Analysis of Usury*, 16. Interestingly, this would have been after the civil ban of usury in the West by Charlemagne in 789.
[160] Third Lateran Council, Canon 25, 223. Cf. Noonan, *The Scholastic Analysis of Usury*, 34.
[161] Second Lateran Council, Canon 13, 200. See Nelson, 9.
[162] Noonan, *The Scholastic Analysis of Usury*, 19. See Third Lateran Council, Canon 25, 223.
[163] Second Lateran Council, Canon 13, 200.
[164] Ibid.
[165] Third Lateran Council, Canon 25, 223.
[166] Second Council of Lyons, Constitution 27, 329–330.

pledge has been given of fitting restitution."[167] Clerics who aid usurers are themselves threatened with the same "penalty promulgated against usurers at the [third] Lateran council"— excommunication and denial of Christian burial.[168] Another penalty levied against usury was interdict, which was a penalty closely associated with excommunication: "By the thirteenth century the interdict and excommunication were the chief spiritual sanctions of the Western Church. By this time the two were sharply differentiated in ecclesiastical doctrine. An interdict might affect an entire community for the faults of one or more of its members."[169] Lyons II threatens with interdict not usurers directly, but communities, including colleges, that sheltered them: "If they remain obdurate throughout a month, their territories shall lie henceforth under ecclesiastical interdict as long as the usurers remain there."[170] This sanction seems to imply that playing accomplice to usury is likewise a grave offense.

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Jeremiah O'Callaghan had a strong basis for holding that Christianity, and Catholicism in particular, forbids usury as a damnable sin. Scripture, patristic exegesis, and magisterial pronouncements provide ample precedent for this conclusion. These same sources make lenders their primary, if not sole, target of condemnation. Although borrowers and other ancillaries are sometimes condemned, it appears that their offense is scandal by aiding usurers. The gravity of usury is clearly attested to by these sources, with the sins with which they associate usury, the ecclesiastical penalties prescribed for usurers and, to a lesser extent, their ancillaries, and consequences it has on the soul and the resulting prospects for the afterlife. Based on these authorities, it is easy to conclude with the Christian theologian Gerard of Siena (d. 1336) that "it appears that the evil the usurer incurs by means of a

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167 Ibid., 329.
168 Ibid., 330.
169 Peter D. Clarke, *The Interdict in the Thirteenth Century: A Question of Collective Guilt* (Oxford: Oxford University Press, 2007), 1.
170 Second Council of Lyons, Constitution 26, 329.

usurious contract is the greatest possible sin."[171] Nevertheless, it must be considered whether usury is the same thing as the interest charged by O'Callaghan's parishioners. The 1917 Code of Canon law, for instance, would suggest that it may be more akin to *interesse* than usury.

[171] Gerard of Siena, *Questio de usura* 3, in Lawrin Armstrong, *The Idea of a Moral Economy: Gerard of Siena on Usury, Restitution, and Prescription* (Toronto: University of Toronto Press, 2016), 104–105.

Conclusion to Part I

Discourse on Islamic banking often presents "interest," "*riba*," and "usury" as synonymous. They are not. Neither are the prohibitions of *riba* and usury identical. Nevertheless, the significations of the terms "interest," "*riba*," and "usury" share many commonalities, as do the prohibitions of *riba* and usury—commonalities robust enough that rationales for the prohibitions of *riba* and usury provide a springboard for reexamining the morality of interest.

Significations in Comparison

Three elements emerged as key in comparing the significations of "interest," "*riba*," and "usury": (1) the kinds of quid pro quo, (2) the presence of credit, and (3) the payment of an addition. In relation to each element, substantial convergence exists between "interest," "*riba*," and "usury," but also some divergence. The convergence begins in that these elements factor into the significations of each term. Indeed, "interest," "*riba*," and "usury" each *can* relate to some of the same kinds of quid pro quo, involve credit, and carry a notion of additional payment. At the same time, however, the lists of quid pro quos are not identical for each term, one of the terms does not always include credit in its signification, and the sense of an addition is not uniform and uniformly present across terms. Nevertheless, while imperfect, the correspondences that persist allow for a shared signification.

QUID PRO QUO

A core commonality between "interest," "*riba*," and "usury" is that the quid pro quos are fungible. This largely holds except perhaps for the *riba* described in the *sahih* hadith in Sunan an-Nasai dealing with "paying in advance for the offspring of the offspring of a pregnant animal."[1] For the most part, however, the focus is fungibles. Both Islamic and Christian authorities mention money and foodstuffs among these fungibles. We will recall that the Hadith mentions six fungibles (silver, gold, barley, dates, salt, and wheat) as values subject to *riba*. Deuteronomy 23:19 similarly discusses usury with reference to money and victuals, but leaves open the sorts of quid pro quo to include "anything that is lent for interest [*nashak*]." In systematizing the respective teachings on *riba* and usury, Islamic and Christian authorities delineate the kinds of quid pro quo in varying ways. Most schools of *fiqh*, through the use of analogy or *qiyas*, considered the six fungibles mentioned in the Hadith as exempla of broader categories.[2] For some, the fungibles were "weighable and measurable" (Hanafis and Ibn Rushd)[3] or, more specifically, "fungible goods measured by weight or volume";[4] for others, currency itself was specifically mentioned as a fungible subject to *riba* (Hanbalis);[5] for still others, fungibles were simply currency and storable foodstuffs (Shafis and Malikis).[6] These named categories of fungibles bear resemblance to those underlying the *mutuum* contract in Roman law, a contract adopted into the Church's discussion of usury. The kinds of quid pro quo used in a *mutuum* were fungible, subject to weighing, numbering, or other sorts of measurement.[7] These characteristics align with those given by the schools of *fiqh* for fungibles subject to *riba*, with the *mutuum*'s being broader than those set by the Shafi and the Maliki schools. The fungibles used in a *mutuum* are more restricted than those systematized by the Hanafi and Hanbali schools when it is recalled that the fungibles used in a *mutuum* are also consumables, broadly understood.[8] Not all sorts of quid pro quo that can underly *riba* are necessarily consumables.

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[1] Sunan an-Nasai, vol. 5, 4626, 328. Cf. ibid., vol. 5, 4627–4628, 328–329; ibid., vol. 5, 4629, 329.
[2] See El-Gamal, 51.
[3] Saeed, *Islamic Banking and Interest*, 35.
[4] El-Gamal, 51.
[5] Saeed, *Islamic Banking and Interest*, 35.
[6] El-Gamal, 51. Cf. Saeed, *Islamic Banking and Interest*, 35.
[7] See *Digesta* 12.1.2.1, 159.
[8] Nicholas, 167.

In today's financialized economy, the differences between the kinds of quid pro quo subject to interest, *riba*, and usury are of lesser importance. Although other fungibles are possible, today the most important quid pro quo is money. Money provides a common denominator between the terms. Going forward, discussion will center on money—or goods as measured by money—in considerations of interest, of *riba*, and of usury.

CREDIT

A loan *can* provide the context for interest, *riba*, or usury. Unlike interest and usury, however, *riba* can also arise from non-credit transactions. "*Riba al-fadl*" occurs in spot transactions as discussed in Chapter 2. It presents a major difference between *riba*, on the one hand, and interest and usury, on the other. "*Riba*," in this regard at least, is a more expansive term than either "interest" or "usury." Other sorts of *riba* (i.e., *riba al-nasi'a* and *riba al-jahiliyya*, and *riba al-nisa*), like interest and usury, arises from credit transactions. Even when restricting comparison to credit *riba*, the contracts underlying interest, *riba*, and usury still retain some distinctions.

Installment and credit sales provide an important context in which differences between interest, *riba*, and usury come to light. These differences are especially apparent between interest and *riba*:

> Even the most conservative contemporary jurists do not consider all forms of what economists and regulators call interest to be forbidden *riba*. A simple examination of *riba*-free Islamic financial methods such as mark-up credit sales (*murabaha*) and lease (*ijara*) financing shows that those modes of financing are not "interest-free." Indeed, truth-in-lending regulations in the United States force Islamic and conventional financiers to report the implicit interest rates they charge their customers in such financial arrangements. Thus, the practice of Islamic finance itself illustrates the fact that some forms of interest (e.g., in credit sales and leases) should not be considered forbidden *riba*.[9]

If the exchanged quid pro quos are not subject to *riba*, then the markup in a credit transaction does not constitute *riba*, even though the same contract is deemed to contain interest. In

[9] El-Gamal, 51–52.

examining credit sales, Catholic magisterial statements fear credit sales may harbor disguised usury, regardless of whether the underlying "quid" or "quo" is subject to usury.[10] What seems to be the magisterium's chief determinant regarding whether credit sales contain usury, as with straightforward money loans, is the entitlements on which additional payment is based. In short, while credit sales with a markup contain interest, they may not contain *riba* or usury. At the same time, however, whereas some credit sales are not thought to contain *riba* because the underlying kinds of quid pro quo are not subject to *riba*, even if the underlying kinds of quid pro quo are not typically subject to usury, the contract may be suspect for disguised usury.

ADDITION

"Interest," "*riba*," and "usury" share a notion of addition in their respective significations. Of the two kinds of credit "*riba*," however, only *riba al-nasi'a* (as opposed to *riba al-nisa*) retains this element. Accordingly, in considering how the element of addition or increase differs between "interest," "usury," and "*riba*," it is *riba al-nasi'a* that is here given primary consideration.

Among the three terms, the etymology of "*riba*" gives the clearest indication of increase or addition, and especially of quantitative or qualitative increase.[11] "*Usura*," from which "usury" derives, suggests use or enjoyment, which alludes more to the type of contract than to increase or addition. However, biblical Hebrew and Greek terms related to usury capture this sense of addition or increase. The Hebrew "*tarbit*" and "*marbit*" as well as the Greek "*tokos*," "*plethos*," and "*pleanasmos*" all capture this sense. As discussed, however, Plautus implies a certain fecundity to "*usura*" in his description of Jupiter's impregnation of Alcmena, even though the term's etymology does not itself carry this sense. While still doubtful, "*foenus*" is a more likely parallel for the etymology of "*riba*," as is Greek's "*tokos*."

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[10] See Chapter 3.
[11] See Saeed, *Islamic Banking and Interest*, 20.

"Interest," for its part, carries a sense of addition in its etymology, but the sense is one of reimbursement rather than actual increase, since the Latin "*quod interest*" and "*interesse*" suggests something that makes up the difference between two amounts. Despite these differences in etymology, these terms all appear have come to share the notion of some sort of addition. Nevertheless, the terms differ to some extent regarding the nature of this addition.

The discussion of gifts offers a prime example of disagreement about whether gifts—true gifts—constitute *riba* and usury. On the one hand, some exegetes interpret Qur'an 30.39 as evidencing "gift *riba*."[12] On the other hand, Muhammad does not seem to think that a voluntary over-repayment of a debt—admittedly of animals and not one of the six fungibles—constitutes *riba*.[13] Similar disagreement about gifts and usury appears in the Fathers. On the one hand, Jerome would classify gifts from debtors to lenders as usury,[14] Ambrose would distinguish such gifts (at least truly freewill ones) from usury.[15]

A distinguishing factor between "interest," "*riba*," and "usury" is what is considered an entitlement to the addition designated by the respective terms. In the case of "usury" (at least in magisterial interpretation), a *via negativa* is perhaps a more appropriate approach, as additions justified on certain bases do *not* fall under its signification. Specifically, additions to which lenders are entitled based on actual costs (*damnum emergens*) or opportunity costs (*lucrum cessans*) are excluded from the signification of "usury," and fall instead under the signification of "*interesse*." There is debate whether additional sums paid to cover risk of default also fall under the signification of "*interesse*" rather than that of "usury."[16] The significations of "interest" and "*riba*," on the other hand, would include additions paid to cover some of the costs associated with these titles. Additions paid to cover inflation provide a useful example.

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[12] Usmani, 21; Saeed, *Islamic Banking and Interest*, 21.
[13] Sunan Abu Dawud, vol. 4, 3346, 70.
[14] Maloney, "The Teaching of the Fathers on Usury," 259.
[15] Ambrose of Milan, *De officiis ministrorum* 1.160–161 (PL 16.70; CCSL 15.58–59), 210–211.
[16] Cf. Noonan, *The Scholastic Analysis*, 128–131, 281–293.

At least notionally, the rate at which interest or *riba* is paid includes compensation for the cost of inflation. Economists exclude compensation for inflation from their signification for “real interest rates.” Nevertheless, the rate of interest observed in the marketplace—the “nominal interest rate”—retains the notion of the addition being paid in part as compensation for lenders’ losses due to inflation. Since inflation appears as an actual cost of lending, it seems probable that payments to cover inflation fall under “*interesse*” under the title of *damnum emergens.* In this regard, the addition signified by “usury” is comparable to the addition expressed by the real interest rate. Regarding compensation for (the risk of) lost profits and of default, “*riba*” and “interest” both include such charges in their significations; “usury,” regarding the first at least, does not.

Besides perhaps for covering the risk of default, the addition shared by the significations of “interest,” “*riba*,” and “usury” is payment for waiting, as such.[17] It is a profit realized beyond any monetary expenses or risk of expenses associated with a loan. This portion of the increase covered by “interest” and “*riba*” is also covered by “usury.” Should such profits and remuneration for credit risk be present, then the addition paid on a monetary loan could be designated as “interest,” “*riba*,” or “usury.”

Prohibitions in Comparison

The Islamic and Christian authorities surveyed in Chapters 4 and 5 align on many points in their respective prohibitions of *riba* and usury, but with some significant differences. Respectively, each prohibits the reception or exaction of *riba* and usury. Differences are revealed regarding the ancillaries to a contract involving *riba* or usury. There is clear consonance in the estimation of *riba*’s and usury’s gravity: the Islamic sources present *riba* as a grave offense, a perspective that finds a counterpart in the Christian sources. There is even evidence of some overlap between the traditions regarding exceptions.

[17] Obviously, some expenses are incurred by waiting, such as inflation.

The Islamic and Christian traditions considered in Chapters 4 and 5 both offer abundant precedent for their general prohibition of loans with *riba* or usury respectively. If one rejects the view that Qur'an 30.39 and the Hadith permit borrowers to offer gifts to lenders, there does seem to be a potential point of disagreement with at least Ambrose of Milan, who certainly permits and encourages true gifts from borrowers, but condemns the pretense of gift-giving to obfuscate usury. Even if this difference is accepted, it is marginal. The core is preserved in that contracted *riba* or usury are both in general forbidden.

A major difference between the prohibition of *riba* and the prohibition of usury is regarding the application of the respective prohibition to the parties of a loan contract. Although the Qur'an focuses on the receiver of *riba*, the Hadith contains a broader application of the prohibition. In the Hadith, Muhammad clearly forbids and curses both the payee and payer of *riba*. Even their guilt is accounted as equal.[18] Ancillaries to the contract do not emerge unscathed since they too are subject to Muhammad's curse.[19] The Hadith thus offers strong precedent for viewing all parties as equal offenders.

The Bible, patristic tradition, and magisterial statements do not apply the prohibition of usury directly to borrowers and those accessory to a contract involving usury. While accessories to usury are sometimes roundly condemned, these Christian sources take a kindlier stance toward borrowers and their participation in usurious contracts. Although certainly not encouraging would-be borrowers to contract loans at usury and then pay it out, they do not directly condemn borrowers for the sin of usury. The authoritative sources may impute to borrowers the sin of scandal, though this is not made explicit. The Bible, like the Qur'an with *riba*, focuses on the receiver of usury. When we turn to the patristic corpus, would-be borrowers are in most instances encouraged not to borrow at usury for pragmatic reasons: it may bring their ruin. If anything, their sin is that of imprudence, as exemplified in

[18] Sahih Muslim 22.15 (4064 [1584]), vol. 4, 306–307.
[19] Sunan Ibn Majah (2277), vol. 3, 300–301.

Ambrose of Milan's *De Tobia*. Ambrose contemplates a distinction between in the divine perspective toward usurers and that toward borrowers. Inspired by Proverbs 29:13, Ambrose declares that God is a witness to the attributes of the usurer and the borrower, and notes the divine condemnation of their actions. Ambrose, nonetheless, portrays the debtor more sympathetically, contrasting the unfairness and greed of the creditor with the injury and stupidity of the debtor.[20] Although each's actions are condemned, the usurer's appear more grievous. This appearance conforms to the overall impression given by *De Tobia*, in which usurers are portrayed as rapacious and borrowers as pitiable and at worst foolish. The penalties threatened in magisterial documents for those who aid usurers do suggest that aid to usurers is scandalous, though not amounting to the sin of usury itself. The doctrine of scandal in some respects allows the prohibition of usury to better approximate that of *riba*.

Also bringing the prohibitions closer is the exception to the usury ban based on need. It should be again first acknowledged that the exceptions granted by the European Council for Fatwa and Research and the Fiqh Committee of the Shari'a Scholars Association of North America were met with contestation by fellow supporters of Islamic banking; there is no universal agreement that such exceptions should exist among proponents of the industry. Furthermore, the two fatwas argue on different bases: The North American fatwa requires that there be a general need among the Muslim community to battle various forms of corruption; the European fatwa, on the other hand, permits even individual need as sufficient justification. Whereas the former finds precedent in a 1985 Kuwaiti fatwa, the latter presents an innovation. With these caveats in mind, however, it can be acknowledged that these fatwas bring the prohibitions closer in that the circumscribed toleration of paying *riba* to some extent approximates the less harsh stance toward borrowers portrayed in the Christian sources.

[20] Ambrose of Milan, *De Tobia* 7.25 (PL 14.767–768; CSEL 32/2.530–531), 40–43. Cf. Basil of Caesarea, *Homilia II in Psalmum XIV* 2 (PG 29.267–270), 183–186.

A low-resolution view of the gravity assigned to *riba* and usury produces near identical images with one major and practical exception. Both *riba* and usury are associated with the gravest of sins and classified as such. Correspondingly, they are both considered damnable offenses, meriting hellfire and the loss of heaven. A difference on temporal policy, however, appears even in a low-resolution view. Whereas the Islamic tradition is lenient and almost silent regarding any temporal punishment for *riba*, the magisterium developed stiff penalties for at least the most egregious usurers, including its strictest canonical penalty of excommunication. When questions of temporal punishment are left aside, a higher-resolution look at the prohibitions of *riba* and usury displays differences, differences which prove to be mostly inconsequential.

Association provides key evidence for the gravity of *riba* and usury. The Hadith and the Bible associate the respective practices with sins clearly thought grave. Interestingly, each is associated with sexual sins, perhaps alluding to the etymological connection of *riba* and usury (*tokos*) to generation and growth. Recall that the Hadith makes an explicit comparison between minor cases of *riba* with incest between a mother and son and with serial adultery.[21] Regarding usury, the Bible leaves more to be inferred. Psalm 15 (14), for instance, decries usury along with slander, evil against friend and neighbor, and accepting bribes against innocent persons. Ezekiel 18 mentions *riba* alongside adultery and other sins, while not spelling out their respective positions on a scale of gravity. Among the other sins listed in Ezekiel 18, however, is idolatry, which Ambrose of Milan presents as consequential. For him, this association of the usurer with the idolater establishes at least rhetorical equality, if not strict equality, between the offenses.[22] Also reading Ezekiel 18, Basil judges usury as "among the greatest of evils" and as involving "greatest inhumanity."[23] Association in Psalm 15 (14) and Ezekiel plays a more implicit role in signaling the gravity of usury than it does in

[21] Sunan Ibn Majah (2274), vol. 3, 299; Mishkat al-Masabih 12.6.3, 605.
[22] Ambrose of Milan, *De Tobia* 15.52 (PL 14.780; CSEL 32/2.549), 68–69.
[23] Basil of Caesarea, *Homilia II in Psalmum XIV* 1 (PG 29.265–266), 181, 182.

signaling the gravity of *riba* in the above hadiths, but association as indicating gravity can be easily inferred, as evidenced in Ambrose's and Basil's exegesis of Ezekiel 18.

A common placement of *riba* and usury as meriting damnation finds clear support in the sources considered in Chapters 4 and 5. Qur'an 2.275 and 3.131 each portray violation of the prohibition of *riba* as a damnable offense. Although not necessarily promising hellfire, Qur'an 1.161 also threatens "a painful punishment" for disbelieving Jews who charge *riba*. The threat of damnation echoes in the Hadith. There is a corresponding threat of damnation in the Scripture and patristic exegesis of it. Pope Leo I, for example, discusses how Psalm 15 (14) threatens usurers with the loss of God's dwelling in the afterlife and eternal penury for gaining temporal wealth through another's loss.[24] Without explicit Scriptural reference, Gregory of Nyssa and John Chrysostom both envision damnation as the desert of usurers.[25]

These examples highlight the gravity accorded to *riba* and usury are grave offenses. Obscuring this close agreement, however, is the divergence between Islamic and Christian stances on temporal punishment for violating the respective ban. Given the severity with which *riba* is condemned in the Qur'an and the Hadith, it is surprising that few temporal consequences are set for violation of its prohibition. The absence of penalties is especially unexpected given the temporal punishments for the grave offenses with which it is associated. Although the Bible itself offers no temporal consequences, the magisterium does set temporal consequences for violating the prohibition of usury. There is some variety in the severity of these sanctions and to whom they applied. Included in these sanctions is the most severe sanction, excommunication, as well as deposition of clerical usurers, refusal of Christian burial to notorious usurers, and interdict for communities harboring usurers.

The prohibition of *riba* and usury both admit of exceptions regarding warfare. Nevertheless, it should be noted that the exception for *riba* is not universally accepted.

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[24] Pope Leo I, *Sermo XVII* 3 (PL 54.181–182), 65–66.

[25] Gregory of Nyssa, *Contra usurarios* (PG 46.436, 46.452), 295, 301; John Chrysostom, *Homilia LVI in Matthaeum* (PG 58.558), 351.

Neither Hanbalis, nor Malikis, nor Shafis admit of an exception in the case of war.[26] Only the Hanafis among the Sunni schools of *fiqh* permit this exception, though the Shi'a Ja'faris join them in permitting *riba* to be exacted from non-Muslims in *Dar al-Harb*.[27] The applicability of this exception is debatable given the criticism that *Dar al-Harb* may no longer exist, or at least modern Europe cannot be classified as such.[30]

Ambrose of Milan is in some ways similar to the Hanafis and Ja'faris in the exception he makes for taking usury under the condition of warfare. In his reading of Deuteronomy 23:19–20, he specifies that "where there is a right of war, there also is the right of usury."[31] Yet, Ambrose understands this right granted to the ancient Israelites to be dissolved or at least limited by the Gospel, specifically Luke 6:34–36. The rule of love contained therein appears to supersede the exception granted in Deuteronomy. Still, since this ideal may only be expected of the few, it is unclear whether Ambrose saw the exception as valid for Christians to invoke. Even if acknowledged, however, this exception—as applied to either usury or *riba*—is troubling if applied in peaceful commerce, unless contracting parties are to regard each other as actual or potential enemies.

A further point of divergence regards the need for restitution. Within the Islamic and Christian sources surveyed, there is not the same clear insistence that *riba* be repaid as there is for usury. Indeed, as noted in Chapter 4, repentance for exacting *riba* does not seem to require repayment of *riba* at all. Hadiths that do instruct its repayment are few and are in the context of money exchanges, rather than standard credit transactions.[32] In the final chapter of Part II, the significance of this difference plays out most evidently, as it highlights the Christian emphasis on usury as a violation of commutative justice.

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[26] Saleh, 41. This position is shared by the Ibadis, who are neither Sunni nor Shi'a (ibid.).
[27] Ibid.
[30] Hussain, 374; Shavit, 148.
[31] Ambrose of Milan, *De Tobia* 15.51 (PL 14.779; CSEL 32/2.548), 66–67.
[32] See, for example, Sunan Ibn Majah (18), vol. 1, 85–86.

Three terms. Two prohibitions. Among the terms and between the prohibitions, there are commonalities, but not ones so great as to justify the close identifications advanced by many proponents of Islamic banking.

Although "money loan" and "addition" can be predicated of "interest," "*riba*," and "usury," these predicates do not signify the same thing when applied to each term. Furthermore, in the case of "*riba*," *riba al-fadl* is not in relation to a loan contract, so "loan" is not predicable of all forms of *riba*. Today, money is the primary kind of quid pro quo in interest-bearing transactions. A circumscribed set of quid pro quo, including not just money are subject to *riba*. Similarly, the kind of quid pro quo found in usurious contracts include money, but also other fungible consumables subject to weight, number, or other method of measurement. An interest rate covers costs of administration, inflation (as embodied in a nominal interest rate), opportunity costs, and the risk of default. *Riba* could also include these same costs. Charges to cover actual costs sustained by lenders (*damnum emergens*) or lost profits (*lucrum cessans*), and perhaps even the very risk of default, are not considered usury.

Even with these differences in signification, "interest," "*riba*," and "usury" remain sibling terms. Included in each signification (excluding *riba al-fadl*) are monetary loans, credit transactions in which money constitutes the "quid" lent for the returned "quo." Indeed, these terms share a sense that the underlying contract gives lenders entitlement to the addition, an addition paid for the very postponement of repayment, as well as perhaps to cover the risk of default.

Although the significations of "*riba*" and "usury" differ in some respects, their respective prohibitions are largely compatible. Stepping back from granularity, we can see the simple, but radical, shared stance: general prohibition. Although Islamic and Christian authorities tread different paths regarding the application of their respective prohibitions to other parties to the loan contract, they both—whether directly or indirectly—extend it to borrowers and other parties to the contract, at least under some circumstances. Additionally, Islamic and Christian authorities are clear that violation of their respective prohibition is a grave and even a damnable offense, regardless of their diverging postures toward backing their prohibition with temporal punishment.

Some of these differences would prove consequential if policy change (backed by temporal consequences) were the aim of an Islamo-Christian effort regarding interest. Yet, Part II primarily regards ethics and not policy. Accordingly, in moving forward it seems sufficient that authoritative sources in both religious traditions prohibit in general the respective practice and consider it a grave offense. It is rationales for these stances that light the way for our discussion of the morality of interest in Part II.

❖ PART II ❖

Introduction to Part II

Gerard of Siena writes: "It appears completely beyond question that a usurious contract is by its very nature wicked and bound up with vice. But I do not think it altogether easy to assign a clear reason for this."[1] Despite these perceived difficulties, several rationales for the prohibition of usury—as well as, to a lesser extent, the prohibition of *riba*—have been advanced. In considering these rationales, Part II relies on alignments discovered in Part I: alignments, though partial and imperfect, between the significations of the terms "interest," "*riba*," and "usury"; and alignments, though also partial and imperfect, between the prohibitions of *riba* and usury. Relying on these alignments, Part II presents rationales used to support the prohibitions of *riba* and usury and adopts similar, secular lines of reasoning in considering the morality of interest.

In the sources considered in this thesis, the rationales for the usury prohibition on the whole bear greater frequency, diversity, and sophistication than those for the *riba* prohibition. The Bible's treatment of usury and the Qur'an's treatment of *riba* imbue their discussions with a moral tone, while not spelling out the moral bases for their respective prohibitions. Consequently, the rationales found in these texts are mostly implicit. The Hadith's treatment of *riba* similarly carries a moral tone. Unlike the Fathers' condemnations of usury, however, the Hadith does not elucidate and expand implicit rationales for the prohibition of *riba*. While the magisterium often assumes a moral tone in legislating against usurers, the schools of *fiqh* make questions of law rather than ethics predominant in their pronouncements against *riba*.

[1] Gerard of Siena, 66–67.

Saeed captures the divergence between the treatment of *riba* found in the Qur'an and the Sunnah (as contained in the Hadith) and that found in Islamic law:

> The context of the *riba*-related verses again and again indicated that the Qur'ān was dealing with the issue of *riba* from a moral perspective not a legal one. The *sunna* also dealt with the issue of *riba* from this moral standpoint. However, in Islamic law, in determining what is *riba* and what is not, Muslim jurists focused mainly on whether a particular loan transaction had an element of increase over and above the principal, or whether certain qualities existed in a particular commodity likely to be identified with *riba*. . . . Thus, the issue of *riba* in Islamic law became merely a 'legal' issue concerned with the outward 'form', having no place whatsoever for the moral framework within which the Qur'ān and *sunna* appear to have dealt with the issue.[2]

It is not that Islamic jurists deny that rationales with moral import are possible for the prohibition of *riba*, but rather that it is of lesser or no importance compared to the authority of the Qur'an. This disposition is exemplified in the words of the Shafi'i Qur'anic commentator Fakhr al-Din al-Razi (1149–1209), who himself suggested possible ethical reasons for the prohibition: "The prohibition of *riba* is proved by a text [of the Qur'ān]. It is not necessary for mankind to know the rationale of duties. Therefore, the prohibition of *riba* must be regarded as definitely known even though we do not know the rationale for its prohibition."[3] Nevertheless, some Islamic jurists do offer rationales for the prohibition of *riba*, as will be seen.

Based on the differences in specificity and focus, Part II draws more heavily on Christian, non-Scriptural material. The Qur'an, Hadith, and some Islamic jurisprudents, as well as the Bible, are invoked, but most of the rationales' detail originates from patristic and magisterial resources. On occasion, to lessen the consequent asymmetry, I also draw on modern proponents of Islamic banking who have developed rationales for the prohibition of *riba*. I also at points dip into the wider Christian theological discourse on usury to supplement the rationales found in patristic and magisterial material.

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[2] Saeed, *Islamic Banking and Interest*, 40.

[3] Fakhr al-Din al-Razi, *Tafsīr al-Kabīr* 7, quoted in Abdullah Saeed, *Islamic Banking and Interest: A Study of the Prohibition of Riba and Its Contemporary Interpretation*, 2nd edition (Leiden: E. J. Brill, 1999), 27.

Kinds of Rationales and Lines of Moral Reasoning

Perhaps the most common of the rationales for the prohibitions of *riba* and usury—raised implicitly or explicitly—centers on borrowers' neediness. The expressed perception is that *riba* and usury each (further) damage borrowers' economic well-being. Usury is also perceived as having deleterious effects on borrowers' psychological health. In some critiques, bad effects extend beyond just borrowers to society more widely. The moral degeneration of lenders and borrowers is also of concern. The prospect of gain is perceived to cultivate acquisitive tendencies in lenders. The perception is that avarice or greed drive lenders in their pursuit of gain, and this pursuit grows and compounds the vice. A further perception of usury is that usury cultivates untruthfulness and untrustworthiness: lenders obfuscate their greed; borrowers breach their contracts. Injustice and exploitation are likewise among the indictments faced by *riba* and usury. There is a sense that they are contrary to fair distribution. Furthermore, usury is likened to theft and robbery, which demand restitution. Although the Islamic and Christian authorities do not perfectly align in the explicitness and specificity of the rationales they employ, they are aligned in advancing rationales for their respective prohibition that carry moral resonance. The moral resonance of these rationales offers a bridge to secular moral analysis.

Indeed, the rationales outlined above resonate with fundamental premises within secular moral thought. The premises are as follows:

1. More desirable effects should be pursued over less desirable ones;
2. Virtue should be sought and vice should be avoided;
3. Each person should be given his or her due.

These premises are, of course, related to one another. They are also related to one or more of dominant schools of moral philosophy, especially consequentialism, virtue ethics, and deontology. The resonance between these premises and the rationales outlined above prompts the formulation of secular lines of reasoning to scrutinize the morality of interest. A duty to pursue more desirable effects, or utility, resonates with the rationales against *riba* and usury based on their perceived effects. Arguments stemming from this resonance are taken up in Chapter 6. Concerns about greed, untruthfulness, and untrustworthiness resonate with virtue ethics. Arguments stemming from this resonance are taken up in Chapter 7. Finally, concerns about justice do not only resonate with a duty to give each his or her due but are, to some extent, conterminous with it. Arguments stemming from this resonance and contermination are taken up in Chapter 8.

The following pattern recurs in Chapters 6–8: first, a hypothesis is formulated against interest, based on the applicable premise expressed above; second, the Islamic and Christian rationales that resonate with this hypothesis are discussed; third, similar lines of secular reasoning to those advanced in the rationales are examined.

The premises expressed above carry a sense of duty or obligation ("more desirable effects *should* be pursued . . ." etc.). The performance of action deemed ethically obligatory is considered praiseworthy or at least not blameworthy. Omission of such a duty, however, is blameworthy and unethical. Conversely, violation of a negative duty (a thou-shall-not), is likewise blameworthy, though refraining from a negative obligation would not normally merit praise. Some actions do not fall neatly into the categories of ethical or unethical.

Some actions, for instance, carry moral risk. Such risk can be (1) epistemological or (2) ontological: there is risk of faulty moral judgment and there is risk that an action—though not necessarily unethical in itself—disposes an agent to (further) misconduct. Without either kind of moral risk being decisive, it can be argued that both kinds should factor in choosing a course of action when "there is a non-negligible possibility of wrongdoing."[4]

[4] Dan Moller, "Abortion and Moral Risk," *Philosophy* 86, no. 3 (2011): 434. Moller applies this line of reasoning to epistemic moral risk, but his reasoning holds for ontological moral risk as well. Although Moller applies the notion of moral risk to the controversial case of abortion, he clearly sees it as applicable to other cases as well (elsewhere in the article, Moller notes the principle's applicability to vegetarianism).

Additionally, some moral theorists posit that some actions or omissions, though not morally obligatory, are nevertheless still praiseworthy. Such actions are described as "supererogatory." Three characteristics are usually attributed to such action: "An act is supererogatory if and only if (1) the performance of the act fulfils no moral duty or obligation, (2) the performance of the act is, nevertheless, morally praiseworthy, and (3) the omission of the act is not morally blameworthy."[5] In other words, supererogation encompasses positive discretionary actions, actions that "go beyond the call of duty."[6]

Based on considerations of obligation, moral risk, and supererogation, Part II invokes rationales for the prohibitions of *riba* and usury not only to consider whether interest is ethical or unethical, whether moral obligations exist in relation to it, but also whether these rationales might instead lift secular moral reasoning beyond mere duty to reconsider whether eschewing interest might mitigate moral risk and be supererogatory. In all such considerations, the question remains: Is a move away from interest-based finance praiseworthy according to secular lights? Or is it merely a failed, religion-induced attempt to gain moral mileage from prohibitions based purely on religious authority?

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[5] Gregory Mellema, "Supererogation and Business Ethics," *Journal of Applied Philosophy* 8, no. 2 (1991): 191.
[6] Cf. ibid., 191.

Chapter 6

Interest and Its Effects

Hippocrates in his *Epidemics* advises physicians to "declare the past, diagnose the present, foretell the future; practise these acts. As to diseases, make a habit of two things—to help, or at least to do no harm."[1] A similar sentiment, in a very different context, is expressed by the founder of the Scouting movement, Robert Baden-Powell: "Try and leave this world a little better than you found it."[2] This quotation has been adapted to further maxims such as "leave the campsite better than you found it" or "leave people better than you found them." Sentiments resembling those expressed by Hippocrates and Baden-Powell permeate several rationales for the prohibitions of *riba* and usury. Such rationales fault the transacting parties for not leaving things better or even for leaving them worse than before the transaction.

Consequences feature heavily especially in rationales for the usury ban. They also feature in rationales for the *riba* ban as found in Al-Ghazali's thought and the 1999 judgment of the Supreme Court of Pakistan, as well as in the thought of modern proponents of Islamic banking. Some of these ill effects are economic; others are social; still others are psychological. Some of these effects are experienced by borrowers, some by their associates and families, some by society more widely, and some even by lenders. This shifting focus on effects and those affected resonates with various kinds of consequentialism.

A central concept within consequentialist ethics is *utility*. "Utility" signifies the desirable effect, the effect to be sought. The term, however, is slippery. Acknowledging the debate over whether utility is objective or subjective,[3] and can be understood "as pleasure, as

[1] Hippocrates, *Epidemics* 1.2.11 (LCL 147.164–165), trans. W. H. S. Jones (Cambridge, MA: Harvard University Press, 1923).
[2] Robert Baden-Powell, "Last Message," accessed May 12, 2020, https://www.scout.org/node/19215.
[3] See Chris Heathwood, "Subjective Theories of Well-Being," in *The Cambridge Companion to*

happiness, as the satisfaction of preferences, as the satisfaction of desires, or as well-being,"[4] this chapter employs the term "utility" in connection with outcomes taken to be desirable, particularly those in contrast to the four disutilities identified in rationales for the prohibitions of *riba* and usury.

With shifting audiences, these rationales also swing their focus regarding who experiences the effects of *riba* or usury. Some rationales petition lenders to consider the effects on borrowers, others advise borrowers (and even lenders) to consider the effects on themselves and their associates, still others entreat religious and civil leaders to consider the effects on society. These differences resonate with diverse forms of consequentialism that arise in relationship to *whose* utility should be sought.

Among the schools of consequentialism, utilitarianism is best known and boasts the most eminent pedigree. Associated with it are several celebrated philosophers, including Jeremy Bentham (1748–1832), John Stuart Mill (1806–1873), Henry Sidgwick (1838–1900), and, more recently, Peter Singer (b. 1946). With only altruism going beyond it, utilitarianism lies at the impartial end of consequentialism, and has been described as "*universalistic* consequentialism."[5] It demands that utility be sought for the greatest number of people, including the self. Ethical egoism, by contrast, is less well-known and little respected,[6] and is associated with thinkers such as Ayn Rand (1905–1982). Ethical egoism lies at the most partial end of consequentialism, and has been described as "*individualistic* consequentialism."[7] It demands that human agents seek their own utility. Between the poles

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Utilitarianism, ed. Ben Eggleston and Dale E. Miller (Cambridge, U.K.: Cambridge University Press, 2014), 199–219; Ben Bradley, "Objective Theories of Well-Being," in *The Cambridge Companion to Utilitarianism*, ed. Ben Eggleston and Dale E. Miller (Cambridge, U.K.: Cambridge University Press, 2014), 220–238.

[4] Keith Burgess-Jackson, "Taking Egoism Seriously," *Ethical Theory and Moral Practice* 16, no. 3 (2013): 533.

[5] Ibid., 532.

[6] For an account of the disrespect leveled at ethical egoism, see ibid., 530–532.

[7] Burgess-Jackson, 532.

of utilitarianism and ethical egoism lies a spectrum of possible forms of consequentialism.[8] Keith Burgess-Jackson observes:

> There are many possible partialist ethical theories. One can hold that the right thing to do is to maximize the utility of one's compatriots, one's coreligionists, one's racial or ethnic group, one's community, one's tribe, or one's family. . . . Nationalism, racialism, communalism, tribalism, and familialism (as they might be called) lie at different points between these poles.[9]

Effects-based rationales for the prohibitions of *riba* and usury resonate with not just one kind of consequentialism. Some arguments strike a more utilitarian or even altruistic tone; others, a more egoistic one; still others, a group-based one.

Given that effects-based rationales used to support the prohibitions of *riba* and usury resonate with various strands of consequentialism, this chapter takes an inclusive approach to consequentialism. Instead, the analysis shifts toward different forms of consequentialism based on their resonance with analog rationales for the *riba* and usury bans.

Across these rationales, the end state wrought by *riba* and usury is viewed as less desirable, or likely to be less desirable, than the beginning state. Sometime the rationale also compares these consequences with those of other options, and judges the former less desirable than the latter. The focus on end states versus beginning states aligns with a non-dominant variant of consequentialism that takes *satisficing* utility as the standard for ethics rather than *maximization*. Common among utilitarians, as well as most other consequentialists, is the norm that utility should be *maximized*, that among the available options the one resulting in the *greatest* utility should be chosen.[10] Since it is a duty to choose the best option, there is no room for supererogation in consequentialism based on utility maximization.[11] Satisficing accommodates supererogation.[12] In choosing between options,

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[8] Ibid.
[9] Ibid., 532–533.
[10] Cf. Richard B. Miller, "Actual Rule Utilitarianism," *The Journal of Philosophy* 106, no. 1 (2009): 7.
[11] See, for example, Burgess-Jackson, 531.
[12] For example, Jason Rogers, "In Defense of a Version of Satisficing Consequentialism," *Utilitas* 22, no. 2 (2010): 199ff.

persons should select an option that offers an improvement from their present state; they are not required to choose the option that offers the greatest possible improvement. Adopting a satisficing perspective toward rules, Richard B. Miller explains: "To promote happiness a rule does not have to be ideal. It merely has to make life better than it would be otherwise."[13]

A similar—but even less demanding—standard is found in the non-worseness claim or principle. Often appearing in the context of sweatshops and price-gouging, the non-worseness claim states: "where A has a right not to transact with B, and where transacting with B is not worse for B than not transacting with B at all, then it cannot be seriously wrong for A to engage in this transaction, even if its terms are judged to be unfair by some external standard."[14] While attempts to justify this claim from a deontological framework have been made, its truth from a consequentialist perspective is presumed.[15] From a consequentialist perspective, the non-worseness principle offers a useful baseline test for whether interest is unethical. Other, more strenuous, considerations will be applied in subsequent chapters, but if interest should fail this first test, its conviction for immorality seems certain. Accordingly, in this chapter, so long as one chooses an option that has some net benefit or at least does not result in a worse state of affairs, such a choice is not found immoral. Additionally, choosing an option above these baselines is supererogatory.

Following from effects-based rationales for the *riba* and usury bans, the morality of interest can be questioned on at least four counts: (1) Does interest make debtors financial worse off than if they had not borrowed? (2) Does interest have deleterious psychological effects? (3) Does interest-based lending lead to the misallocation of resources? (4) Does it lead to war?

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[13] Miller, "Actual Rule Utilitarianism," 22. See Dale E. Miller, "Rule Utilitarianism," in *The Cambridge Companion to Utilitarianism*, ed. Ben Eggleston and Dale E. Miller (Cambridge, U.K.: Cambridge University Press, 2014), 154.

[14] Matt Zwolinski, "The Ethics of Price Gouging," *Business Ethics Quarterly* 18, no. 3 (2008): 357.

[15] Ibid.

Interest and Four Potential Effects

Hypothesis: Interest is unethical because of its consequences.

ISLAMIC AND CHRISTIAN RATIONALES

Although proponents of Islamic banking make sophisticated consequentialist arguments against interest,[16] neither the Qur'an nor Hadith make open use of this rationale for the *riba* prohibition. However, within Islamic jurisprudence there is precedent for this line of reasoning. Conversely, consequences feature heavily in rationales for the usury prohibition in Scripture, the writings of the Fathers, and in magisterial statements.

Islamic and Christian sources offer an uneven set of consequence-based rationales: when Islamic sources advance such rationales for the *riba* prohibition, they often focus on societal effects rather than effects on individual debtors; Christian sources, on the other hand, often place greater emphasis on the believed effects of usury on individual debtors. Ezekiel 18:7 perhaps sets the precedent for Christianity's greater emphasis with its concern about the oppression of the individual debtor.[17] Nonetheless, some rationales for the usury prohibition are based on its supposed consequences on society. As we will see, rationales from the Christian tradition paradoxically monopolize resonances with both altruistic and egoistic forms consequentialism, whereas rationales from both the Islamic and Christian traditions resonate with more arguments with a more utilitarian bent.

Within the Qur'an, there is a vague suggestion that *riba* has undesirable effects. Qur'an 2.276 underscores that "God blights usury [*riba*] and causes acts of charity to grow. And God loves not any sinful ingrate." Not only does charity create better results than *riba*;

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[16] See, for instance, Muhammad Umer Chapra. "The Case Against Interest: Is It Compelling?" *Thunderbird International Business Review* 49, no. 2 (2007): 161–186.

[17] Moser contrasts this disposition with that of Book 8 of Plato's *Republic*: "Plato's condemnation of interest taking is therefore based on the consideration of its supposed effects. But unlike Ezekiel, he is not concerned with an effect upon the individual debtor, but with an effect upon the society as a whole" (Moser, 28).

riba, if it has any effect whatsoever, has unwanted effects: it is blighted. Unapparent is whether blight and growth should be understood as occurring on the temporal plane. Qur'an 30.39 makes a similar contrast between *riba* and charity as found in Qur'an 2.276, but seems to situate the contrast on the eternal plane: "That which you give in usury [*riba*] that it might increase through other people's wealth does not increase with God. But that which you give in alms, desiring the Face of God—it is they who receive a manifold increase." In this passage, the judgment of the effects of *riba* versus charity regards whether punishment or reward is due lenders, not whether temporal harm occurs.

The Hadith lacks even such hints of a rationale based on consequences. However, the Shafi'i scholar Al-Ghazali (c. 1058–1111) as well as in modern times the Supreme Court of Pakistan remedy these deficiencies to some extent. Al-Ghazali supports the prohibition of *riba* by observing its deleterious effects on production, effects ultimately detrimental to human well-being:

> Riba (interest), is prohibited because it prevents people from undertaking real economic activities. This is because when a person having money is allowed to earn more money on the basis of interest, either in spot or in deferred transactions, it becomes easy for him to earn without bothering himself to take pains in real economic activities. This leads to hampering the real interests of the humanity, because the interests of the humanity cannot be safeguarded without real trade skills, industry and construction.[18]

The 1999 landmark judgment in the Supreme Court of Pakistan (already mentioned in Chapter 4) makes the point that, in conventional financial systems based on interest, since

> funds are provided on the basis of strong collateral and the end-use of the funds does not constitute the main criterion for financing, it encourages people to live beyond their means. The rich people do not borrow for productive projects only, but also for conspicuous consumption.
>
> Similarly, governments borrow money not only for genuine development programs, but also for their lavish expenditure and for projects motivated by their political ambitions rather than being based on sound economic assessment.[19]

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[18] Al-Ghazali, *Ihya' 'Ulum al-Din*, quoted in Maulana Muhammad Taqi Usmani, *The Historic Judgment on Interest* (Karachi: Idaratul-Ma'arif, 2000), 97.

[19] Usmani, 103.

Such lack of discipline perceived by Al-Ghazali and the Supreme Court of Pakistan echoes in the thought of modern proponents of Islamic banking. Yusuf M. Sidani, for example, voices the concern that "*riba* prevents people from giving their attention to other economically valid ways of earning money, such as working in construction or trade.[20]

Adding to this concern about allocation of resources, Muhammad Umer Chapra contends that the servicing of national debt prevents states, especially in developing countries, but also in developed ones, from allotting resources in a manner that helps fulfill basic needs.[21] He argues that, when states in developing countries dedicate over fifty percent of their budgets to servicing of debt, there are inadequate resources remaining for the provision of healthcare, education, and development in rural and urban communities.[22] Chapra presents this lack of available resources as most detrimental to those in the lower classes, this lack maintaining poverty and increasing disparities in income and wealth.[23]

As returned to in Chapter 8, the Old Testament on more than one occasion suggests that usury contributes to neediness. A recurrent theme is that that borrowers are impoverished and should not have usury exacted from them (e.g., Exodus 22:25–27, Leviticus 25:35–37, Deuteronomy 23:19). A potential implication of this theme is that usury deteriorates borrowers' (already dire) condition. Such an implication tends toward partiality toward borrowers: lenders should act so as not to worsen borrowers' situation. Nehemiah 5:7–8 seems to imply that among usury's bad effects is the selling of debtors into slavery. Such themes permeate and expand within patristic discourse on usury.

As a group, the Fathers present a usury as perpetrating ill effects broadly. These ill effects are individual and social, financial and psychological, and threatening the tranquility

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[20] Yusuf M. Sidani, "The Ethics of Islamic Accounting," in *Handbook of Research on Islamic Business* Ethics, ed. Abbas J. Ali (Cheltenham, U.K.: Edward Elgar, 2015), 265.
[21] Muhammad Umer Chapra, *Morality and Justice in Islamic Economics and Finance* (Cheltenham, U.K.: Edward Elgar, 2014), 152–153.
[22] Ibid., 152.
[23] Ibid.

of nations. These effects are by no means disjointed; rather, for the most part debtors' worsened financial position has knock-on effects of psychological damage, and the breakdown of social tranquility. Commodian presents a clear, straightforward example of this trend. For him, usury impoverishes debtors who are then subject to psychological distress.[24] Subsequent Fathers identify similarly interlocking, undesirable effects of usury, though their analysis of the causal chain can be less straightforward.

Basil Caesarea identifies usury's potential to diminish borrowers' well-being. While tacitly accepting that usurious loans benefit some debtors, Basil questions whether such benefit outweighs the harm caused.[25] Basil even considers the optimistic possibility that some borrowers are enriched through usurious loans.[26] In his calculation, however, usury is responsible for more suicides among debtors than enrichments.[27] On balance, usury results in greater harm than benefit. With perhaps an allusion to Exodus 22:25, Basil describes usurers as strangling debtors, a metaphor that proves more literal when debtors kill themselves by asphyxiation.[28] Usury cast borrowers into (greater) impoverishment, downstream from which lies beggary; begging engulfs borrowers with shame, which overflows into their committing suicide.[29] Physiological distress features potently in Basil's account of the usury prohibition. At one point, he entertains the notion that the practice's very name hints at psychological distress: "Perhaps, it is called '*tokos*' (parturition) because of the anguish and distress which it is accustomed to produce in the souls of the borrowers. As travail comes to the one who is giving birth, so the appointed day comes to the debtor."[30] Here it is the loan's maturity, or due date, that distresses borrowers rather than the prospect impoverishment directly (though,

[24] Commodian, *Instructiones* 65 (PL 5.251; CSEL 15.94–95). See Maloney, "The Teaching of the Fathers on Usury," 245.
[25] Basil of Caesarea, *Homilia II in Psalmum XIV* 4 (PG 29.277–278), 189.
[26] Ibid.
[27] Ibid.
[28] Ibid., 2, 5 (PG 29.271–272, 279–280), 185, 190. Cf. Gregory of Nyssa, *Contra usurarios* (PG 46.447–448), 299–300.
[29] Basil of Caesarea, *Homilia II in Psalmum XIV* 4 (PG 29.277–278), 189.
[30] Ibid., 3 (PG 29.273–274), 187.

of course, the due date could be a stand-in for the impoverishment foreseen to result from that day). Due dates, however, are generally a provision of loan contracts and not just ones at usury, so it is unclear how well this rationale holds as one against usury as such. Certainly, the additional payment of usury might add to the distress as the due date approaches, but it cannot be faulted as the sole, let alone primary, cause of distress. Similarly, Basil's presentation of debtors as suffering from constant anxiety cannot be primarily attributed to usury, as such:[31] debt, with its obligation to repay, can itself be distressing. Of course, the chances of default might increase given the requirement to pay usury in addition to the principal.

Gregory of Nyssa presents usury as the sire of a variety of undesirable consequences, for rich and poor, for borrowers, society, and even lenders. Although rich debtors are not his focus, the Nyssen sees usury as potentially harmful to them.[32] He advises lenders not to "seek usury, force poverty upon those who are rich."[33] Gregory also makes the important acknowledgement that usurious loans can reprieve some needy persons.[34] Nonetheless, he concludes that usury eventually increases need.[35] For him, "the practice of usury secures a pledge of poverty";[36] it increases the need of the poor and impoverishes the rich. In addition to harming individual debtors, usury for Gregory also generates undesirable social effects because it contributes to widespread poverty.[37] "If usury does not abound," writes Gregory, "then a multitude of destitute persons would cease to exist [as poor]."[38] This argument

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[31] Ibid., 3–4 (PG 29.273–276), 186–188. Cf. Ambrose of Milan, *De Tobia* 7.26 (PL 14.768–769; CSEL 32/2.531–533), 42–45; 21.81 (PL 14.790; CSEL 32/2.566–567), 94–95.
[32] Gregory of Nyssa, *Contra usurarios* (PG 46.433–452), 294–302.
[33] Ibid., (PG 46.441), 298.
[34] Ibid., (PG 46.435–438), 295. Cf. Gregory of Nyssa, *Homilia IV in Ecclesiasten* (PG 44.673–674), English translation in *Homilies on Ecclesiastes: An English Version with Supporting Studies*, ed. Stuart George Hall (Berlin: W. de Gruyter, 1993), 79–80. For Gregory, the desire of prospective borrowers for a usurious loan is insufficient to justify the practice, since in his view interest will eventually cause of impoverishment.
[35] Gregory of Nyssa, *Contra usurarios* (PG 46.435–438), 295. Cf. Gregory of Nyssa, *Homilia IV in Ecclesiasten* (PG 44.673–674), 79–80.
[36] Gregory of Nyssa, *Contra usurarios* (PG 46.435–436), 295.
[37] Cf. Maloney, "The Teaching of the Fathers on Usury," 250.
[38] Gregory of Nyssa, *Contra usurarios* (PG 46.445), 298.

envisages usury as a significant contributor to indigence through the many borrowers it impoverishes. Its elimination would reduce instances of poverty. Gregory extends the identification of psychological distress beyond impoverished debtors to usurers, whose loans arouse disquiet in their minds.[39] Usurers fear that natural disasters may hinder the repayment of debts, thus entangling the fortunes of their debtors with their own. Accordingly, the activities, livelihood, and well-being of their debtors weigh on creditors' minds; news of their debtors' misfortune becomes their nightmare.[40] Gregory appeals to lenders' self-interest, to their care for their own mental tranquility: "Do not allow, oh man, anxiety to disturb you nor the desire for gain. Do not seek monetary interest [*tokos*] nor let the accumulation of money corrupt you."[41] Mental distress does not on its own stand as an argument against usury. The mental distress indicated by Gregory is tied up with the moral corruption wrought by greed, which is to be discussed in Chapter 7.

In *De Tobia*, Ambrose presents usury as universally disadvantageous to borrowers, since "no one employs the usurer except for loss."[42] Since Ambrose admits in an earlier passage that some borrowers are not harmed by the usury,[43] it appears that Ambrose is here being inconsistent, using hyperbole, or merely emphasizing that no matter a debtor's wealth, there is an-all-but-certain risk of (further) impoverishment by usury. The certainty with which he predicts undesirable effects recurs in *De Tobia*: "You are rich: do not take a loan. You are poor: do not take a loan. You are rich: you suffer no necessity of begging. You are poor: consider the difficulty of paying. Wealth is diminished by interest, poverty is not lightened by interest; for never is evil corrected by evil nor is a wound healed by a wound, but is made worse by an ulcer."[44] This inevitability of diminished financial well-being is somewhat

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[39] Cf. Maloney, "The Teaching of the Fathers on Usury," 250.
[40] Gregory of Nyssa, *Contra usurarios* (PG 46.439–442), 297.
[41] Ibid., (PG 46.441–442), 297.
[42] Ambrose of Milan, *De Tobia* 13.44 (PL 14.776; CSEL 32/2.543), 60–61.
[43] Ibid., 7.28 (PL 14.769; CSEL 32/2.533–534), 44–47.
[44] Ibid. 21.82 (PL 14.780; CSEL 32/2.567), 94.

tempered in Ambrose's linking it to psychological detriment. Responding to a debtor's internal monologue, Ambrose writes:

> "Many," he says, "having borrowed for the time, have both taken council [sic] for their needs and have returned the money." And how many have strangled themselves because of the interest? You think of the former, you do not count the latter. You remember that some escaped, you do not remember the ones who have perished. You enter into account the money returned, you do not compute the nooses sought, which many, too self-respecting to face disgrace, too weak to face injustice, in seeking their own destruction have preferred to the shame of so odious an indictment, fearing dishonor in life more than the torment of death.[45]

Like Basil, Ambrose in *De Tobia* admits that some debtors meet their needs by taking out loans and then repay the money with usury, but weighs this against the suicides arising from usury.[46] On balance, the number of suicides outweighs the benefit accruing to some borrowers. In one of his letters, however, Ambrose is wont to make even the admission that some borrowers are not harmed through usury and doubts borrowers can ever repay more than they have received.[47]

Not only detrimental to the financial and psychological well-being of individual borrowers, usury also in Ambrose's estimation threatens society's tranquility. Ambrose writes: "Nations have often failed because of usury and this has been the cause of public calamity."[48] In *De Tobia*, Ambrose indicates that the social unrest sprung from usury can cascade into warfare.[49] Ambrose recounts the Huns' reputation for bellicosity, a disposition which he attributes, at least in part, to usury.[50] In Ambrose's account, a proclivity for gambling sapped the Huns of their plunder; usurers would then offer loans to these unlucky gamblers, only to compound their losses; the Huns would afterward return to warfare to

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[45] Ibid., 7.28 (PL 14.769; CSEL 32/2.533–534), 44–47.
[46] For Ambrose's reliance on Basil and others in *De Tobia*, see Lois Miles Zucker, introduction to *De Tobia*, edited and translated by Lois Miles Zucker (Washington, DC: The Catholic University of America, 1933), 6–12.
[47] Ambrose of Milan, *Epistola XIX ad Vigilium* 4 (PL 16.984), 175.
[48] Ibid., 5 (PL 16.984), 175.
[49] Ambrose of Milan, *De Tobia* 11.39 (PL 14.773–774; CSEL 32/2.540), 54–57.
[50] Ibid. (PL 14.774; CSEL 32/2.540), 56–57.

replenish their treasure.[51] Material reversals thus rekindled the Huns' bellicosity. Ambrose is perhaps less concerned about the Huns internal tranquility than about the consequences their warring might ultimately have for inhabitants of the Roman empire. In commenting on the Gospel of Luke, Ambrose outlines a chain of events in which the Goths' invasion of a Roman province resulted from the Huns' attack on the Alans, who had then attacked the Goths.[52] Ambrose wrote this commentary about the same time as he wrote about the Huns being spurred to war by usury.[53] Perhaps he saw usury as playing a role in the invasion by the Goths. This speculation aside, a safe conclusion is that Ambrose saw the impoverishment resulting from usury as triggering warfare.

Among the Fathers, John Chrysostom is most explicit in setting the effects of usury on debtors as Scripture's own rationale for the prohibition.[54] He rests his analysis on a distinction between temporal usury and spiritual usury.[55] Chrysostom contrasts the former with the latter, thereby indicating why the former is condemned and the latter is commended:

> In spiritual things, to be sure, he himself promises he will look for interest. Why? Because this spiritual interest [*tokos*] is the opposite of material wealth. You see, in the former case the debtor is brought suddenly to extreme penury, whereas in this case, whenever the debtor gives evidence of deep gratitude, he enjoys more generous reward from above than the interest [*tokos*] he pays.[56]

Material detriment, namely rapidly increased poverty, is the primary meaning indicated by "great harm" in this passage.[57] The rapidity with which the downfall occurs perhaps highlights the value which Chrysostom places on stability. The detriment occasioned by usury is intensified because of the rapidity with which it befalls borrowers.

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[51] Ibid.
[52] Otto Maenchen-Helfen, *The World of the Huns: Studies in Their History and Culture* (Oakland, CA: University of California Press, 1992), 20.
[53] For dating of *De* Tobia, see Zucker, introduction to *De Tobia*, 2–5.
[54] Cf. Maloney, "The Teaching of the Fathers on Usury," 257.
[55] John Chrysostom, *Homilia XLI in Genesin* 1–2 (PG 53.375–377), 401–404.
[56] Ibid. 2 (PG 53.377), 403–404.
[57] Ibid., 403.

The general councils show an awareness of usury's deleterious effects and sometimes rely on these effects as a rationale for legislating against usury. The Third Lateran Council identifies a macro-level challenge posed by usury, since "nearly everywhere" people omit other business and practice usury instead.[58] The council does not, however, develop this observation into a rationale for the prohibition or the measures it takes. Subsequent general councils more strongly link their measures to the perceived ill effects of usury, especially those pertaining to Christians and society more generally. The Fourth Lateran Council rests its stance against Jewish moneylenders on the observation that "they are exhausting the resources of Christians."[59] The First Council of Lyons takes action on detecting that "the abyss of usury has almost destroyed many churches."[60] The Second Council of Lyons sees this destruction as ranging more widely, and the action it takes against usurers arises from a wish "to close up the abyss of usury, which devours souls and swallows up property."[61] The Council of Vienne sees the approval of usury by certain communities as "to the divine displeasure and injury of the neighbor."[62]

A minority tradition within Christianity—consonant with the observation made by the Third Lateran Council—depicts usury as directing resources away from productive enterprise. Pope Innocent IV (1243–1254) is a key authority in this tradition.[63] He is chiefly concerned about the detrimental effect that legalizing usury would have on agriculture. Noonan summarizes and evaluates Innocent's concern: "If usury were permitted, all rich persons would rather put their money safely in a usurious loan than invest in agriculture. Only the poor would be left to do the farming and then they would not possess the animals

[58] Third Lateran Council, Canon 25, 223.
[59] Fourth Lateran Council, Constitution 67, 265.
[60] First Council of Lyons, Canon 13, 293.
[61] Second Council of Lyons, Constitution 26, 328.
[62] Council of Vienne, Decree [29], 384.
[63] See Noonan, *The Scholastic Analysis*, 49.

and tools with which to farm. Famine would result."[64] Innocent's concern can be distilled into a broader rule: usury can divert investment away from the production of necessities, which in turn can have deleterious effects on the populous. Pope Benedict XIV (1740–1758) offers a comparable argument, but presents economic woe as a consequence of injustice: "Christian minds should not think that gainful commerce can flourish by usuries or other similar injustices. On the contrary We learn from divine Revelation that justice raises up nations; sin, however, makes nations miserable."[65]

SECULAR MORAL ANALYSIS

Following upon the approach to consequences seen in the rationales, the following analysis takes a similarly broad approach. Not only are several forms of well-being considered, but also different persons and groups. The following analysis also assumes a minimalist standard under which interest-bearing loans need to improve, or satisfice, well-being, and, if not that, at least they must have result in a state of affairs that is worse than before the transaction. Still, comparisons with alternatives are made. By examining these alternatives, the possibility of supererogation is not ignored, even if interest is not found unethical under these minimalistic standards.

Financial Well-Being

In seeking loans at interest, borrowers expect to improve their well-being through the transaction. Whether their hope of improvement is well founded depends on several factors. The exact terms of the contract, such as the rate of interest, are of course among these factors. The purpose of the loan is also among them. Consumption loans for profligacy, for example, may score short-term psychological benefits, but have clearly foreseeable drawbacks for

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[64] Noonan, *The Scholastic Analysis*, 49.

[65] Pope Benedict XIV, 4. By linking his argument to usury's supposed injustice, Benedict XIV precludes his overall argument from being subject to empirical analysis. Even if usury in fact uplifts nations on balance, he can turn to the arguments about the practices injustice to individual debtors.

financial well-being (and potentially for psychological well-being as well, as discussed below).

If interest makes debtors financially worse off, payday loans should provide a stark example of this deterioration in financial well-being. Meant to provide short-term relief for meeting immediate needs until the next income payment, payday loans provide a concrete example of debt contracts offered to financially vulnerable customers.[66] Drawing legal scrutiny in recent years,[67] payday loans are widely thought to ensnare borrowers and plunge them into "debt spirals."[68] Because of the high rates of interest, this supposition has some weight. Easy to imagine is that through high interest rates, borrowers increase their need and are more likely to need subsequent loans to meet future need.

Empirical studies are divided over the effects of payday loans on borrowers' well-being. Younghee Lim and coauthors review the "deep chasm between the two camps of empirical studies, with one camp concluding that payday loans improve consumer well-being and the other concluding that payday loans destroy consumer well-being."[69] Populating the first camp are studies that find payday loans to be "welfare improving by smoothing income and expenditure shocks;" populating the second camp are studies that find such loans to be "welfare deteriorating by exacerbating financial distress."[70]

Among the positive findings is a randomized study by Dean Karlan and Jonathan Zinman, who find a lack of "any evidence that the net effects of expanded access to expensive consumer credit are negative."[71] Instead, they conclude that "consumers who borrowed at 200% in our experiment benefited from doing so, at least relative to their outside

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[66] Kelly D. Edmiston, "Could Restrictions on Payday Lending Hurt Consumers?" *Economic Review - Federal Reserve Bank of Kansas City* (2011): 63, 68.
[67] Neil Bhutta, "Payday Loans and Consumer Financial Health," *Journal of Banking & Finance* 47 (2014): 230.
[68] Edmiston, 63–64, 67.
[69] Younghee Lim et al., "Payday Loan Use and Consumer Well-Being: What Consumers and Social Workers Need to Know About Payday Loans," *Journal of Poverty* 18, no. 4 (2014): 391.
[70] Ibid., 387.
[71] Dean Karlan and Jonathan Zinman, "Expanding Credit Access: Using Randomized Supply Decisions to Estimate the Impacts," *The Review of Financial Studies* 23, no. 1 (2010): 461. See Younghee Lim et al., 387.

options."[72] Other findings in support of payday loans detailed by Lim and coauthors include that prohibitions of payday loans[73] and upper rate limits[74] are associated with decreases in financial well-being.[75] Still other studies conclude that "payday loans helped alleviate problems for people in financial distress caused by a natural disaster" as well as that "the existence of payday loans helped the participants to absorb expenditure shocks," so long as they did not have an excessive number of payday loans.[76] Complementing these studies are findings that the majority of those who take out payday loans use them effectively for short-term distress alleviation.[77] Even customers whose reliance on payday loans extends over a longer period may actually need the time to right their capsized finances.[78] Admittedly, however, long-term dependence on financing meant to be short-term, such as payday loans, may instead sink a borrower's financial situation rather than right it.[79] This conclusion is suggested by a survey that found that over nine out of ten payday loan customers strongly agreed (53.9%) or somewhat agreed (38.2%) that "payday advance companies provide a useful service to consumers."[80]

Among the negative findings reviewed by Younghee Lim and coauthors are that "payday loans exacerbate borrowers' financial distress by creating the need for repeat loans."[81] Brian T. Melzer finds strong support for

> the conclusion that loan access increases households' difficulty in paying mortgage, rent and utilities bills. Loan access also appears to increase the likelihood of delaying needed medical care, dental care and prescription drug purchases, though empirical

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[72] Karlan and Zinman, 461.
[73] Donald P. Morgan and Michael R. Strain, "Payday Holiday: How Households Fare after Payday Credit Bans," *Federal Reserve Bank of New York Staff Reports*, no. 309 (2007, rev. 2008), accessed June 3, 2020, https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr309.pdf.
[74] Jonathan Zinman, "Restricting Consumer Credit Access: Household Survey Evidence on Effects around the Oregon Rate Cap," *Journal of Banking & Finance* 34, no. 3 (2010): 546–556.
[75] See Lim et al., 387, 390.
[76] Lim et al., 390.
[77] Edward C. Lawrence and Gregory Elliehausen, "Comparative Analysis of Payday Loan Customers," *Contemporary Economic Policy* 26, no. 2 (2008): 315.
[78] Ibid.
[79] Ibid.
[80] Ibid., 313. Cf., ibid., 312.
[81] Younghee Lim et al., 390.

> support for these conclusions is somewhat weaker. Contrary to the view that improving credit access facilitates important expenditures, the empirical results suggest that, for some low-income households, the debt service burden imposed by borrowing inhibits their ability to pay important bills.[82]

Other studies find an association between obtaining of payday loans and filing for bankruptcy.[83] Paige Marta Skiba and Jeremy Tobacman, for instance, find that "access to payday loans causes a significant increase in personal bankruptcy rates."[84] While acknowledging that other forces also drive borrowers to bankruptcy, Skiba and Tobacman "find evidence for a complementary force, which to our knowledge is novel in this literature: payday loans increase bankruptcy rates by worsening borrowers' cash flow positions."[85] Salient among their findings is that access to payday loans strongly increases the chances of bankruptcy, even though the average principal for payday loans remains relatively low ($300).[86]

The gulf between the positive and negative findings may in part be consequent on differences in research design.[87] Still, it is possible to conclude, when considering holistically this mixed body of evidence, that "it appears that payday loans could benefit some consumers, while harming others."[88] From this conclusion emerges the related conclusion that payday loans carry risk—despite the benefit potential for some borrowers, others may be negatively affected.[89]

A theoretical example from business finance complements the above findings. The following extended example illustrates how interest does not necessarily violate the non-

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[82] Brian T. Melzer, "The Real Costs of Credit Access: Evidence from the Payday Lending Market," *The Quarterly Journal of Economics* 126, no. 1 (2011): 550. See Younghee Lim et al., 390.
[83] Younghee Lim et al., 390–391.
[84] Paige Marta Skiba and Jeremy Tobacman, "Do Payday Loans Cause Bankruptcy?" *The Journal of Law & Economics* 62, no. 3 (2019): 486. For an account of an earlier version of Skiba and Tobacman's paper, see Younghee Lim et al., 390–391.
[85] Skiba and Tobacman, 486.
[86] Ibid.
[87] Younghee Lim et al., 391.
[88] Ibid., 392.
[89] Cf. Lawrence and Elliehausen, 315.

worseness principle and is likely to satisfice utility. Simultaneously, however, when compared with a similar equity-based contract, loans at interest are risk violating the non-worseness principle in more scenarios.

A business looks to secure $100,000 in funding. Expected profits for the venture are $40,000. Given that any increase would satisfice financial well-being, any rate of interest below 40% would allow the business to improve its financial well-being after paying the interest. The rate of interest for this example, however, will be 10%. If the expected $40,000 profit is realized, then the business would retain $30,000 after paying $10,000 in interest. A comparable contract from the point of financial well-being would be an equity investment of $100,000 by a silent partner at 25% of profits (25% of an expected $40,000 in profits equals $10,000). As with the business loan at 10% interest, the business would retain $30,000 of its profits. These baseline contracts diverge, however, in financial well-being if the expected profits are exceeded or not met.

If the venture exceeds expectations, making $50,000 in profits, the business would retain $40,000 in profits after paying $10,000 in interest to the lender, whose financial well-being would remain the same as if the only the expected return were achieved. Under the partnership contract, however, the business would retain $37,500 and pay its silent partner $12,500. Both would realize an increase in financial well-being, though the business would increase its financial well-being at a lower rate than under the loan contract.

Conversely, if instead of realizing $40,000 in profits, the venture realizes only $10,000 in profits. After paying the lender $10,000 in interest, the business would fail to increase its financial well-being. Under the partnership contract, however, the business would retain $7,500 and pay its silent partner $2,500. Both would realize an increase in financial well-being.

Finally, if the venture were to break even or experience a loss, the business would experience a hit to financial well-being. First, to take a less dire scenario: The venture makes no profit but recaptures the $100,000 invested. Under the loan contract, the business would repay the lender and add $10,000 in interest. The business's financial well-being has diminished by $10,000. On the other hand, if the venture were financed through an equity investment, the business would repay the silent partner and neither would increase its financial well-being nor decrease it. In a worse scenario, the venture would not recapture the full investment. If through the debt contract, the business could experience up to a $110,000 loss and the lender would experience a $10,000 increase in financial well-being. Under the equity contract, the business would experience neither loss nor gain in financial well-being whereas the silent partner would experience up to a $100,000 loss.

Considered all together, although the interest-bearing loan and the equity contract are expected to equally increase the business's financial well-being, deviation from expectations yield different outcomes (see Table 2). If the venture performs better than expected, the business's financial well-being will increase at a higher rate than under the loan contract. On the other hand, if the venture does worse than expected, the business will do worse under the loan contract, perhaps even experiencing a diminution in well-being. Conversely, the business improves its financial well-being in more scenarios under the equity contract (see Table 2). Furthermore, under an equity contract, in none of the five scenarios does the business decrease its financial well-being. At worst, the business will experience no gain in financial well-being, while suffering no loss.

Table 2

Outcome of Venture	Contract type		Lender/ Investor	Business	Outcomes compared
Scenario 1: As Expected	Interest-bearing loan of $100,000 at 10%	Scenario 1a	$10,000	$30,000	Gain-Gain
	Equity investment of $100,000 at 25% of profits	Scenario 1b	$10,000	$30,000	Gain-Gain
Scenario 2: Better than Expected	Interest-bearing loan of $100,000 at 10%	Scenario 2a	$10,000	$40,000	Gain-Gain
	Equity investment of $100,000 at 25% of profits	Scenario 2b	$12,500	$37,500	Gain-Gain
Scenario 3: Less than expected (profit)	Interest-bearing loan of $100,000 at 10%	Scenario 3a	$10,000	$0	Gain-No gain
	Equity investment of $100,000 at 25% of profits	Scenario 3b	$2,500	$7,500	Gain-Gain
Scenario 4: Breakeven	Interest-bearing loan of $100,000 at 10%	Scenario 4a	$10,000	-$10,000	Gain-Loss
	Equity investment of $100,000 at 25% of profits	Scenario 4b	$0	$0	No gain-No gain
Scenario 5: Loss	Interest-bearing loan of $100,000 at 10%	Scenario 5a	$10,000	From -$1 to -$110,000	Gain-Loss
	Equity investment of $100,000 at 25% of profits	Scenario 5b	From -$1 to -$100,000	$0	Loss-No gain

Improvement of financial well-being appear more certain for the investor under the loan contract than under the equity contract. The equity contract does, however, offer the possibility of the greater increase in economic well-being. Under the loan contract, the lender gains in every scenario, unless the business defaults. Under the equity contract, the investor gains in each scenario except when the venture breaks even or suffers a loss. Additionally, if the venture exceeds expectations, the investor realizes a greater increase in financial well-being than he or she would as a lender. In breaking even, the investor realizes neither loss nor gain. If the venture suffers a loss, however, the investor experiences the full loss to financial well-being. Thus, although the loan and equity contracts are expected to satisfice by increasing the investor's well-being, the loan contract meets this threshold in more scenarios. In other words, if the lender takes an egoistic approach to the non-worseness principle, there is greater risk of violating it by taking investing in an equity contract.

However, when the financial well-being of the investor/lender and business are taken together, the equity contract has more scenarios in which both parties realize an increase in financial well-being. It also allows both to increase their well-being should the venture outperform expectations. In meeting or exceeding expectations, both the loan contract and the equity contract facilitate an increase in financial well-being for both parties. If the venture realizes profits below expectations, but does not suffer a loss, only under the equity contract do both parties always experience an increase in financial well-being. If the venture breaks even, neither the investor or the business would experience a loss or gain in financial well-being under the equity contract. This contrasts with the loan contract in which the lender would experience an increase in financial well-being and the business would experience a loss. If the venture suffers a loss, under the debt contract, the lender may realize a gain if the business does not default. The business on the other hand suffers a loss. Under the equity contract, the investor would suffer a loss and the business would experience neither gain nor loss. The equity contract, thus, offers some advantages for both parties realizing increases in financial well-being. First, there are slightly more scenarios in which both experience increased financial well-being. Whereas the investor gives up the possibility of gains should the venture break even or suffer losses, both the investor and the business would experience increases in financial well-being no matter how slight the profit made in the venture. Second, if the venture outperforms expectations, both parties would experience additional gains to financial well-being. Third, the greatest possible loss under the equity contract is less than the greatest possible loss under the loan contract (see Scenario 5 in Table 2). Fourth (and perhaps also a drawback under some views), neither party can experience an increase in financial well-being while the other party experiences a loss; no outcomes are gain-loss or loss-gain.

In this extended example, in the expected outcome of the business venture, both parties would realize equal gains under either the loan or equity contract. Under the equity contract, however, one party (the lender) is financially worse off only in Scenario 5; under the equivalent loan contract, one party (the borrower) is financially worse off in both Scenario 4 and Scenario 5. Conversely, both parties realize gains in Scenarios 1–3 while both experiencing no-gain in Scenario 4. Based on these considerations, the equity contract seems to be the less morally risky and supererogatory option from the perspective of both parties. Nevertheless, the loan contract remains an acceptable option because it is expected to allow both parties to realize not only an equivalent financial state but actually an improved one.

Psychological Well-Being

Following upon rationales for the usury prohibition discussed above, we now consider whether loans at interest have adverse effects on borrowers and lenders psychological well-being. Although the evidence is inconclusive, it suggests that indebtedness increases the risk of negative psychological outcomes. Lenders, however, do not seem to be at greater risk.

A study by Sarah Bridges and Richard Disney suggests that respondents' perception of financial difficulties, including indebtedness, is strongly associated with depression.[90] In Bridges and Disney's analysis, actual indebtedness affects psychological outcomes indirectly.[91] They posit that actual indebtedness contributes to depression through the mediation of respondents' own assessments of their financial situations.[92] Dawn E. Alley and her coauthors link depressive symptoms to default.[93] Indebtedness has also been linked to anxiety and anger.[94]

Some studies have found a greater occurrence of suicidal intent among indebted persons.[95] Other studies have found a debt as a frequent factor in suicidal ideation.[96] With

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[90] Sarah Bridges and Richard Disney, "Debt and Depression," *Journal of Health Economics* 29, no. 3 (2010): 388–403.
[91] Ibid., 389.
[92] Ibid.
[93] Elina Turunen and Heikki Hiilamo, "Health Effects of Indebtedness: A Systematic Review," *BMC Public Health* 14, no. 489 (2014): 4; Dawn E. Alley et al., "Mortgage Delinquency and Changes in Access to Health Resources and Depressive Symptoms in a Nationally Representative Cohort of Americans Older than 50 Years," *American Journal of Public Health* 101, no. 12 (2011): 2293–2298.
[94] Turunen and Hiilamo, 4; Patricia Drentea and John R. Reynolds, "Neither a Borrower nor a Lender Be: The Relative Importance of Debt and SES for Mental Health Among Older Adults," *Journal of Aging and Health* 24, no. 4 (2012): 673–695.
[95] Turunen and Hiilamo, 5; Simon Hatcher, "Debt and Deliberate Self-Poisoning," *British Journal of Psychiatry* 164, no. 1 (1994): 111–114.
[96] Turunen and Hiilamo, 5; H. Meltzer et al., "Personal Debt and Suicidal Ideation," *Psychological Medicine* 41, no. 4 (2011): 771–778; J. Hintikka et al., "Debt and Suicidal Behaviour in the Finnish General Population," *Acta Psychiatrica Scandinavica* 98, no. 6 (1998): 493–496.

strong links to suicidal ideation, hopelessness has been suggested in one study as partially mediating between debt and suicidal ideation: debt increasing feelings of hopelessness that lead to suicidal thoughts.[97] The study's authors note, however, that "although a significant indirect effect supportive of mediation does not prove the pattern of causation, the inverse relationship that suicidal ideation increases the likelihood of debt through hopelessness, although plausible, is counter-intuitive."[98] The possibility of this counterintuitive pattern of causation is also recognized more generally: that suicidal ideation could lead to further indebtedness.[99]

For the purposes of this chapter, the weakness of the above studies on indebtedness and psychological distress is twofold. First, for the most part, these studies merely establish an association between indebtedness, or perceived indebtedness, and psychological distress, without demonstrating the direction of causality. Second, they do not distinguish between any anxiety associated with repayment of principal and payment of interest. It seems probable that interest might aggravate depression linked to indebtedness without being the sole cause of the depression. Yet, for a strong case against interest-bearing loans based on psychological outcomes, there would need to be sufficient evidence that borrowing at interest causes psychological distress. Nevertheless, there is a clear risk that indebtedness increases the likelihood of poor psychological outcomes. There appears to be a non-negligible possibility that taking on debt will increase a person's chances of anxiety and depression, and perhaps even the chances of contending with suicidal ideation. Avoiding this risk, either for oneself as a would-be borrower or for another as a would-be lender, could be a supererogatory course of action.

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[97] See Meltzer et al., 776–777. See also, ibid, 773–774.
[98] See Meltzer et al., 777.
[99] Turunen and Hiilamo, 5; Judi Kidger et al., "The Association between Bankruptcy and Hospital-Presenting Attempted Suicide: A Record Linkage Study," *Suicide and Life-Threatening Behavior* 41, no. 6 (2011): 676–684; Meltzer et al., 776.

Although current scholarship does not allow for conclusive statements on interest's effects on lenders' psychological well-being, it does offer some indications that those working in the financial industry are less likely to suffer from psychological ill-health than those in some other occupations.

Few studies compare psychological well-being, or the lack thereof, among different occupations.[100] Among the studies that do, even fewer offer comparisons of financial professionals, as such, with other occupations. Among the studies that do offer such comparisons, however, the clearest example is a 2011 study of U.K. workers, a study which suggests that business, finance, and associate professionals scored below the average rate for common mental disorders.[101] Although articles on suicides in the financial sector regularly appear in popular media,[102] suicide rates among finance professionals remain relatively low. Among Japanese men in 2010, for example, the incidence of suicide in financial industry was lower than in ten other industries, sometimes far lower.[103] Men working in mining were over seventeen times more likely to commit suicide; in fisheries as well as in electricity and gas, over four times more likely; in agriculture, over three times more likely. Men working in amusement services, accommodations and dining services, compound services, construction, government, and transport were all more likely to commit suicide than those in finance.[104] Although other factors are undoubtedly at play, this evidence suggests that someone moving

[100] Stephen Alfred Stansfeld et al., "Occupation and Mental Health in a National UK Survey," *Social Psychiatry and Psychiatric Epidemiology* 46, no. 2 (2011): 102.
[101] Ibid., 105.
[102] E.g., Jason Huang, "The Great Depression: Mental Health in the Financial Services Sector," *Medium*, June 28, 2018, accessed May 25, 2020, https://medium.com/aiko-ai/the-great-depression-mental-health-in-the-financial-services-sector-ce646209fa74; Jen Wieczner, "Is There a Suicide Contagion on Wall Street?" *Fortune*, February 27, 2014, accessed May 25, 2020, http://fortune.com/2014/02/27/is-there-a-suicide-contagion-on-wall-street/; Christopher Harress, "Suicide Among Bankers Appears to be on the Rise Again as Pressures to Get Banks and Businesses Back in the Black Takes Its Toll," *International Business Times*, September 4, 2013, accessed May 25, 2020, https://www.ibtimes.com/suicide-among-bankers-appears-be-rise-again-pressures-get-banks-businesses-back-black-1402450.
[103] Koji Wada et al., "Occupational Differences in Suicide Mortality among Japanese Men of Working Age," *Journal of Affective Disorders* 190 (2016): 318.
[104] Ibid.

from another industry into finance would not be psychologically worse off than before making the move. In fact, they could improve their outcomes.

Allocation of Resources

Considerations of the allocation of resources can be addressed through the lens of distributive justice, a lens used in Chapter 8. Here, allocation and misallocation are considered in relation to state objectives. Specifically, under consideration is whether interest bearing loans help or hurt the production of basic goods and whether sovereign debt helps or hurts a state's ability to provide basic goods and services to the population it serves.[105] Given this basis for analysis, a (relatively) universal form of consequentialism is assumed both for allocation for the *production* of basic goods and services, such as food and basic healthcare, and for the distribution for the *consumption* of such goods and services. In considering allocation of resources, the unit of analysis could be local, national, regional, or global.

The concern voiced by Al-Ghazali against *riba* and Pope Innocent IV against usury, the concern that these practices drive resources away from production may have history on its side. Noonan notes that "Innocent's argument, it might be added, may seem naïve or exaggerated at first, but the experiences of agricultural communities, such as ancient Greece and China throughout most of its history, offer considerable corroboration."[106] Even with this corroboration, it remains to be asked whether modern interest harmfully diverts resources from the production of necessities.

Presupposed in the suggestion that interest may divert resources away from production of necessities is that these resources were already dedicated to receiving a return rather than consumption. It should be acknowledged, however, that destinations for such resources are not limited to investment in loans and production of necessities: they can be

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[105] Admittedly, this basis for analysis is not designed to capture whether basic goods are provided by other means than state intervention. Instead, it limits itself to how loans at interest affect a state's ability to provide such goods and services.
[106] Noonan, *The Scholastic Analysis*, 49.

used for the production luxuries, for gambling, engaging in speculation, and so on. It is evident from these examples that even if such resources are not lent at interest they may be funneled to activities other than the production of necessities. Furthermore, loans at interest are used to produce necessities, including agricultural products, homes, public infrastructure, medications, and medical services. A study of the Etinan area of Nigeria, for example, found credit as an important factor in increasing agricultural production:

> Agricultural credit enhances productivity and promotes standard of living by breaking vicious cycle of poverty of small scale farmers. Modernizations of agriculture through the use of improved technologies require some considerable amount of capital investment. Small farmers especially in the developing countries like ours cannot generate enough of this credit from their own savings. This study thus showed that microcredit has the long term potential to boost agricultural production.[107]

So, eschewing interest could even contribute to loses of investment in production basic goods, such as those produced on farms. Of course, the ability to secure a return through lending for consumption may support borrowers' purchasing luxuries they could not otherwise afford. Therefore, there is a risk that the promise of interest will siphon resources from production of necessities to consumption of luxuries (and their production to meet this demand). Similarly, however, the promise of interest could redirect resources from production of necessities to their consumption, which, albeit indirectly, would thereby fund production. Therefore, the concern that interest may divert funding away from the production of necessities has the most weight when limited to lending for the consumption of luxuries.

The question about allocation regarding state provision of basic goods behaves similarly in some respects to questions considered above regarding the financial well-being of individuals and businesses. Instead of an individual or business, the debtor is a sovereign. Although the sovereign is presumably also concerned with the preservation of its own power,

[107] G. E. Ekwere and I. D. Edem, "Effects of Agricultural Credit Facility on the Agricultural Production and Rural Development," *International Journal of Environment* 3, no. 2 (2014): 202–203. For a corroborating case study of India, see V. Balakrishnama Naidu, A. Siva Sankar, and P. Surya Kumar, "Impact of Agricultural Credit on Agricultural Production and Productivity," *Asia-Pacific Journal of Social Sciences* 5, no. 1 (2013): 173–179.

it also represents itself as concerned with the betterment of its disadvantaged. Accordingly, instead of considering whether the sovereign is enriched or made more secure through interest-bearing loans, I consider whether such debt allows resources to be satisfactorily allocated to the disadvantaged.

Arguing that the payment of interest redirects resources away from poverty alleviation bears some resemblance to the argument that loans fail to increase borrowers' financial well-being, though concerning public, rather than private, debt. Servicing sovereign debt certainly contributed to austerity and reduced investment during the Latin American debt crisis, which began in the 1980s.[108] Yet, the literature suggests that it was rising interest rates, rather than interest itself, which was to blame.[109] Furthermore, sometimes sovereigns engage debt to prevent the impoverishment of vulnerable individuals, the prime example being to cover unfunded obligations, such as pensions for retired civil employees.[110] Borrowing is also sometimes used to avoid exacerbating recession: "Governments often also borrow during economic recessions in response to unplanned declines in tax revenues and recession-related increases in expenditures. The alternative to borrowing is to cut expenditures or raise taxes in response to the revenue shortfall, which would aggravate the recession."[111] Granting that servicing debt may limit other expenditures, it must be asked whether credit would have been extended without the promise of interest. Pensioners as well as the public during a recession

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[108] Claudio Katz and Vincent Mahler, "Three Views of the Latin American Debt Crisis," *Cooperation and Conflict* 27, no. 2 (1992): 199–204. On the effect of debt servicing on social services in Moldova, see J. E. Stiglitz, "Ethics, Market and Government Failure, and Globalization: Perspectives on Debt and Finance," in *Sovereign Debt at the Crossroads: Challenges and Proposals for Resolving the Third World Debt Crisis*, ed. Chris Jochnick and Fraser A. Preston (Oxford: Oxford University Press, 2006), 164–165.

[109] See, for example, Joseph Hanlon, "Defining 'Illegitimate Debt': When Creditors Should Be Liable for Improper Loans," in *Sovereign Debt at the Crossroads: Challenges and Proposals for Resolving the Third World Debt Crisis*, ed. Chris Jochnick and Fraser A. Preston (Oxford: Oxford University Press, 2006), 114–115, 118–120; Stiglitz, 165–166.

[110] Barry Herman, "The Players and the Game of Sovereign Debt," *Ethics & International Affairs* 21, no. 1 (2007): 12.

[111] Ibid., 11. Cf. Hany H. Makhlouf, "The Causes and Consequences of Sovereign Debt," *International Journal of Business, Humanities and Technology* 4, no. 6 (2014): 5.

would presumably face economic detriment without the credit extended to governments.[112] Lack of funding through sovereign debt could also mean forgoing investment in a nation's future. Indeed, most kinds of sovereign debt are not for unfunded obligations.[113] In addition to the use of debt for short-term and medium-term expenditure smoothing, it is also used to fund long-term projects.[114] From these considerations, it seems clear that sovereign debt can and does, if not used in excess, help to satisfy a government's funding objectives. It seems that they can expect to be better off than if they had not taken the funding at all. At the same time, however, recent debt crises have bolstered the prospect of less risky options for governments

Unlike companies, governments do not have shareholders who hold equity stakes in their endeavors.[115] Hence it is not possible make a direct comparison between a debt investment and an equity investment as above. In recent years, however, equity-like financing has been theorized and been sparingly implemented for sovereign debtors.[116] One such theorization is the perpetual GDP-linked bond. In advocating these instruments, Nobel-laureate economist Robert J. Shiller explains that perpetual GDP-linked bonds function similarly to equity shares; instead of with dividends based on a corporation's profits, investors are paid based on the country's GDP.[117] With returns based on the performance of a country's economy, GDP-linked bonds "have the potential to reduce the human impact of risks of economic crisis, both real crises caused by changes in technology and environment, and events better described as financial crises."[118] If governments were to issue GDP-linked

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[112] Cf. Herman, 13.
[113] Herman, 12.
[114] Ibid., 10.
[115] Stephen Kim Park and Tim R. Staples, "Towards Sovereign Equity," *Stanford Journal of Law, Business & Finance* 21, no. 2 (2016): 242–243.
[116] Recent implementations of equity-like sovereign financing can be found in the restructurings of Argentine and Greek debt (see ibid., 243).
[117] Robert J. Shiller, introduction to *Sovereign GDP-Linked Bonds: Rationale and Design*, ed. James Benford, Jonathan D. Ostry, and Robert Shiller (London: CPR Press, 2018), 8.
[118] Ibid.

bonds or similar equity-like investment, they might avoid some of the risk inherent in borrowing, for as Nobel laureate and economist Joseph Stiglitz remarks: "Whenever there is lending, there is the risk that the borrower will not be able to repay what is borrowed or can only do so with enormous hardship."[119]

Warfare

As discussed above, Ambrose of Milan suggests that usury had caused the Huns to wage war. In Ambrose's example, usury led to outbreak of conflict to the extent that it contributed (along with gambling itself) to the impoverishment of the Huns, which in turn drove them to seek more plunder. Usurious loans permitted the gamblers to continue gaming and compound their losses, both at the game table and through the payment of usury. In short, usury alone was not liable for the losses, though permitting them to be compounded.

Following from this rationale for barring usury, it can be asked whether interest today likewise drives warfare or at least contributes to the likelihood of its outbreak or prolongation. Current research on the question is divided: some findings suggest that (interest-bearing) debt may act as a permissive cause of war; others suggest that it imposes a restraint on conflict.[120] Although provisional observations are possible, inadequate data prevents any definitive conclusions.

Prominent figures of the eighteenth and nineteenth centuries, including David Hume (1711–1776), Immanuel Kant (1724–1804), and David Ricardo (1772–1823), associated debt and war.[121] Zane M. Kelly notes: "Ricardo posited that reliance on taxes to fund wars would ultimately deter belligerent governments. Not only do taxes suppress consumption, they should make wars shorter and less intense by reducing governments' available resources."[122]

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[119] Stiglitz, 164.
[120] See Zane M. Kelly, "Sovereign Debt and Military Conflict," in *Sovereign Debt: From Safety to Default*, ed. Robert W. Kolb (Hoboken, NJ: Wiley, 2011), 63–69.
[121] Zane M. Kelly, "Sovereign Debt and Military Conflict," in *Sovereign Debt: From Safety to Default*, ed. Robert W. Kolb (Hoboken, NJ: Wiley, 2011), 63.
[122] Ibid.

In this view, interest serves as an incentive for lending to (potential) belligerents. Funds raised through debt then permit the belligerents to supplement other sources, including taxes and seigniorage.[123] Interest in this scenario is not a direct cause of war, but rather an indirect, ancillary (permissive) cause of conflict without which it would be more difficult to raise war funds. Kelly finds support for such theories in recent history. He offers as examples the reliance on debt in financing the First World War (1914–1918) as well as Tsarist efforts in the Russo-Japanese War (1904–1905).[124]

Conversely, debt also factors in arguments positing that economic integration is a disincentive for war.[125] With regards to debt, it has been argued that "debtors are less likely to engage in conflict in the first place."[126] Kelly outlines several mechanisms for how debt can serve as a disincentive.[127] One such mechanism is that creditors hold coercive leverage over states indebted to them.[128] The assumption underlying this mechanism is that borrowers prefer the stability of peace to the uncertainties of war.[129] A common example given for this mechanism in action is the leverage exercised by the United States toward the United Kingdom during the Suez Crisis.[130] As the U.K.'s creditor, the United States was able to exert pressure on the British to withdraw from the conflict.[131] This example may, however, only show that coercive leverage contributes to peace under certain circumstances. China has yet to be able to exert such pressure on the United States, even though it holds a substantial stake in the U.S. bond market.[132]

[123] Cf. ibid., 64.
[124] Kelly, "Sovereign Debt and Military Conflict," 64.
[125] E.g., Margit Bussmann, "Foreign Direct Investment and Militarized International Conflict," *Journal of Peace Research* 47, no. 2 (2010): 143–153.
[126] Kelly, "Sovereign Debt and Military Conflict," 65.
[127] Ibid.
[128] Ibid.
[129] Cf. ibid.
[130] See ibid., 67.
[131] Kelly, "Sovereign Debt and Military Conflict," 67
[132] Ibid. Cf. Daniel W. Drezner, "Bad Debts: Assessing China's Financial Influence in Great Power Politics," *International Security* 34, no. 2 (2009): 7–45.

Other mechanisms that may constrain governments to pursue war is via the "guns-versus-butter trade-off."[133] Appeals to this mechanism give a positive spin to interest as a constraint on discretionary spending. While reductions in discretionary spending through debt repayment may reallocate resources away from domestic programs, it may also reduce fund for waging war.[134] This mechanism works only post-facto: debt accrued from past conflicts may prevent a government from engaging in further conflict. The interest that was used attract lenders to make the loans in the first place and permitted past conflicts later makes amends by preventing future wars. This is the opposite result of what was proposed by Ambrose of Milan, for whom the need to service debts and restore depleted coffers drove the impoverished Huns back the battlefield.

In short, the evidence remains mixed and inconclusive about whether debt on balance promotes or prevents war.[135] Given this uncertainty, especially given the historical precedent for debt-backed wars, there is a real risk that interest provides an incentive for investors to finance wars that governments could not otherwise afford. Payment of principal and interest on already secured debts may, however, provide a check to further belligerence.

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If the principle of non-worseness is accepted as a baseline, lending and borrowing at interest are not necessarily unethical from consequentialist perspectives. Nevertheless, risk—perhaps even sever risk—of violating the non-worseness principle persist. In other words, there is sometimes a robust possibility that the outcome will be worse than not taking out a loan. Additionally, there is evidence that some alternatives, should they be available, are less likely to yield a worse outcome the interest-bearing option. This could make choosing one of the alternatives supererogatory relative to choosing the interest-bearing option.

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[133] Kelly, "Sovereign Debt and Military Conflict," 66–67.
[134] Ibid., 66–67.
[135] Ibid., 67.

These conclusions are limited based on the inconclusiveness of available research. Until further studies dispel this inconclusiveness, one would best refrain from making final conclusions other than that this lack of conclusiveness itself adds to the moral risk posed by interest. Additionally, even if the non-worseness claim does not convict interest of as an immoral because of its consequences, it leaves open the possibility of its being intertwined with vice. Matt Zwolinski makes a similar admission about exploiters:

> Nonworseness is not a claim about moral character. It is a claim about the rightness and wrongness of acts. And just as we can maintain that it is possible to do the right act for the wrong reason, we can say here that mutually beneficial exploiters are performing a better act than neglecters, even if the reasons for which they act reveal a worse moral character.[136]

Exploitation is a prominent topic in Chapter 8. Before turning to that topic and related topics, let us first consider in Chapter 7 whether interest is motivated by or fosters a vicious character.

[136] Zwolinski, 375, n. 31. See also ibid., 366ff.

Chapter 7

Interest and Virtue

Jean-Jacques Rousseau (1712–1778) deems commercial societies as toxic to virtue and nourishing vice.[1] In particular, as Virgil Henry Storr and Ginny Seung Choi observe, "Rousseau reasoned that we should expect to observe high levels of deceit and greed in commercial societies."[2] For Rousseau, these vices emerged after humans developed market societies.[3] The division of labor made rich and poor alike dependent on one another, and therefore, reasons Rousseau, drove each person to "seek constantly to interest others in his lot and make them see an advantage, either real or apparent, for themselves in working for his benefit; all of which makes him devious and artful with some, imperious and hard towards others."[4] In addition, Rousseau presents market conditions as spawning greed:

> A devouring ambition, the burning ambition passion to enlarge one's relative fortune, not so much from real need as to put oneself ahead of others, inspires in all men a dark propensity to injure one another, a secret jealousy which is all the more dangerous in that it often assumes the mask of benevolence in order to do its deeds in greater safety.[5]

In Rousseau's analysis, greed and deceitfulness are intertwined vices sprung from the division of labor as well as the attending establishment of private property.[6] Unlike pre-market humans, who were equally inept in virtue and vice, market humans are prone to greed and deceitfulness, as well as other vices.[7]

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[1] For an account of this dim view of commercial societies, see Virgil Henry Storr and Ginny Seung Choi, *Do Markets Corrupt Our Morals?* (Cham, Switzerland: Palgrave Macmillan, 2019), 24–27.
[2] Storr and Choi, 24.
[3] Jean-Jacques Rousseau, *A Discourse on Inequality*, trans. Maurice Cranston (New York: Penguin Random House, 1984), 119.
[4] Ibid.
[5] Ibid,
[6] See ibid.
[7] Storr and Choi, 25.

Concern about markets in general as inculcating vice, and greed and deceitfulness in particular, is not unique to Rousseau. His verdict on the morality of markets provides but a single entry, albeit a significant one, in a genealogy of disquiet about the moral effects of commerce. As catalogued by Storr and Choi,[8] among the critics of markets for their supposed corrupting effects are such giants as Aristotle, Thomas Aquinas, and Karl Marx, as well as more contemporary critics such as Armin Falk and Nora Szech,[9] Alasdair MacIntyre,[10] Alvin E. Roth,[11] Michael J. Sandel,[12] and Andrei Shleifer.[13]

Rationales for the prohibition of *riba* and usury provide the basis for indictments of interest along lines similar to those leveled against markets in general: the charges become that interest-based lending (1) is motivated by vice and (2) (further) corrupts morals. More specifically, the charges are that interest-bearing loans (1) emerge from greed and deceitfulness, while concurrently (2) eroding (a) moderation, (b) truthfulness, and (c) trustworthiness. The subprime mortgage crisis in the United States brought the relevance of these three virtues to the fore.[14]

Although virtues dispose their possessors to appropriate action, "virtue ethics is commonly referred [to] as an ethics of being, as different from an ethics of doing."[15] In contrast to Chapter 6, the current discussion is not directly concerned with the consequences of interest-bearing loans other than on the character of the parties to such contracts. As defined by business ethicist Miguel Alzola, "roughly, a virtue is a deep-seated trait of

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[8] Storr and Choi, 3–4.
[9] Armin Falk and Nora Szech, "Morals and Markets," *Science* 340, no. 6133 (2013): 707–711.
[10] Alasdair MacIntyre, "The Irrelevance of Ethics," in Virtue and Economy: Essays on Morality and Markets, ed. Andrius Bielskis and Kelvin Knight (Farnham, Surrey, U.K.: Ashgate, 2015), 7–21.
[11] Alvin E. Roth, "Repugnance as a Constraint on Markets," *Journal of Economic Perspectives* 21, no. 3 (2007): 37–58.
[12] Michael J. Sandel, *What Money Can't Buy: The Moral Limits of Markets* (London: Penguin, 2013).
[13] Andrei Shleifer, "Does Competition Destroy Ethical Behavior?" *American Economic Review* 94, no. 2 (2004): 414–418.
[14] See Richard Avramenko and Richard Boyd, "Subprime Virtues: The Moral Dimensions of American Housing and Mortgage Policy," *Perspectives on Politics* 11, no. 1 (2013): 111–131.
[15] Miguel Alzola, "The Possibility of Virtue," *Business Ethics Quarterly* 22, no. 2 (2012): 379.

character that provides (normative) reasons for action together with appropriate motivations for choosing, feeling, desiring, and reacting well across a range of situations."[16] Virtue ethicists hold that "human beings do not get on well without [the virtues]."[17] They should, therefore, pursue virtue to reach their full potential as human beings. The application of a virtue-ethics approach to lending and borrowing at interest probes whether loans at interest are compatible with the habits associated with human flourishing, *eudemonia*. Or, more precisely, whether such loans are fitted for habits that undermine human flourishing, namely the vices.

A common defense of interest-based lending is that it exists beyond this realm of virtue and vice, since it merely offers a tool for lenders and borrowers to further a variety of aims—some good, some bad. Interest is amoral, disposed neither to virtue nor to vice. Defenders of markets commonly lift the same shield against allegations of marketplace immorality:[18]

> Markets are simply tools that like almost all other tools can be used for good or for ill. Many tools can be used for moral or immoral ends. A knife can be used to cut fruit and to commit murder. A hammer can be used by a carpenter to build a house and can also be used by an aggressor to assault someone. A radio can be used to transmit vital information about evacuation routes during a major storm and can be used to direct armed militia intent on genocide. In each of these cases, it would be a mistake to condone or condemn the tool for the praiseworthy or blameworthy purposes that it was used to advance. Neither its positive nor its negative uses redound to the moral status of the tool. Any positive or negative moral outcomes that result from their use should be attributed to the user and the user's moral or immoral purposes.[19]

Yet, even if we accept that the market—or interest-based lending—is "just a tool, every tool is better suited for some purposes than others."[20] Like markets, interest-based loans "might still be open to the charge that they are tools that are likely to be used by immoral people to

[16] Ibid., 380.
[17] Philippa Foot, *Virtues and Vices and Other Essays in Moral Philosophy* (Oxford: Oxford University Press, 2002), 2.
[18] See Storr and Choi, 51–52, 60–64.
[19] Storr and Choi, 51.
[20] See ibid., 52.

do immoral acts in pursuit of immoral ends."[21] It can also be asked whether engagement with interest-based lending cultivates viciousness. Considering markets more generally, Storr and Choi contend: "The more that you use a particular tool, the more adept you become at wielding it. Markets might be properly viewed as tools and might still be open to the charge that they cultivate certain immoral skills and that certain other moral traits might atrophy because they are unlikely to be exercised."[22] The same can be asked about interest: (1) Is it an apt tool for already vicious individuals in obtaining their ends? (2) Is it apt for inculcating viciousness?

Interest and the Vices of Greed, Deceitfulness, and Untrustworthiness

Hypothesis: Lending at interest arises from and cultivates vice.

ISLAMIC AND CHRISTIAN RATIONALES

The Christian authorities surveyed in this thesis provide an extended precedent for considering lending in relationship to vice. The prohibition of usury is regularly defended and explained in terms of the vices exercised through usurious lending. Principal among these vices is greed. Through lending, usurers feed this hungry beast only to energize further insatiable ravenousness. Like Rousseau, Christian teaching presents greed as birthing deceitfulness—self-deceit and deceit toward others. Usury is also entangled with untrustworthy borrowers who default on their loans. While these rationales for the prohibition of usury find but implicit correspondence in the Islamic sources, denunciations of the vices of greed, deceitfulness, and untrustworthiness more generally are certainly evident in Islamic teaching.

Although the Bible's prohibition and condemnation of usury offers little material for considering usury as motivated by and inculcating vice, several Church Fathers as well as

[21] Storr and Choi, 52.
[22] Ibid.

some popes and councils tend toward this position. Scripture certainly provides them with ample material for condemning the vices they associate with usury. Promise-keeping, for instance, is among Scripture's recurrent themes, especially in the Old Testament. That God keeps his promises is regularly affirmed.[23] Similarly, the Bible repeatedly condemns greed.[24]

In reading Scripture, the Fathers often denounce the viciousness they perceive as motivating usurious lending and the viciousness they perceive it as inculcating. Cyprian of Carthage portrays usury as driven by immoderate desire.[25] He identifies a trend among the Church's hierarchy to seek abundant wealth.[26] One way that the episcopate pursued its immoderate ambitions was through the compounding of usuries (anatocism).[27] For Cyprian, this compounding of usury is apt in exposing the insatiability of the clergy's desires: even a simple rate of return is insufficient to satiate their lust for gain. Whereas Cyprian focuses on usurers' immoderation of desire, the Christian author Lactantius (c. 250–c. 325) focuses on predatoriness of such desires. With a description that echoes Psalm 15 (14), Lactantius styles "the man who sincerely seeks God and strives after truth"[28] as refusing to lend at usury, which he describes as profiting from the unfortunate.[29] Lactantius implies that usury is undesirable, at least in part, because usurers seek to profit from the tribulation of others. A passage in Lactantius's *Institutiones divinae* even more strongly suggests this view. He portrays the usurer as aiming "to acquire loot from another's necessity."[30] Apparently

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[23] E.g., 2 Samuel 22:31, 1 Kings 8:20, 2 Chronicles 6:10, Nehemiah 9:8, Psalm 18:30, Psalm 105:42, Act 7:17.
[24] E.g., Job 20:20, Psalm 52:7, Habakkuk 2:5, Mark 7:21–23, Luke 12:15, Romans 1:29, 1 Corinthians 5:10–11, Ephesians 5:3, Colossians 3:5–6, 2 Peter 2:3.
[25] Cyprian of Carthage, *De lapsis* 6 (PL 4.469–471; CCSL 3.223–224).
[26] Ibid.
[27] Ibid.: These bishops sought "to seize estates though insidious deceits and to increase interest by multiplying usuries [*fundos insidiosis fraudibus rapere, usuris multiplicantibus foenus augere*]." Translation is my own.
[28] Maloney, "The Teaching of the Fathers on Usury," 246.
[29] Lactantius, *Epitome divinarum institutionum* 64 (PL 6.1076), trans. William Fletcher, in *Ante-Nicene Fathers*, volume 7, ed. Alexander Roberts, James Donaldson, and A. Cleveland Coxe (Buffalo, NY: Christian Literature Publishing Co., 1886), rev. and ed. Kevin Knight, accessed June 3, 2020, https://www.newadvent.org/fathers/0702.htm. Unless otherwise noted, all further citations of this work are from these editions.
[30] Lactantius, *Institutiones divinae* 6.18 (PL 6.699): "*ut ex alterius necessitate praedetur*." Translation is my own.

envisaging Ezekiel's "just man," this passage, through Lactantius's word choice, suggests that usury aims at despoiling the poor. In each passage, usurers intend to exploit their relative advantage over debtors, an intention which Lactantius finds vicious.[31]

Commodian portrays usurers as self-deceivers, a trait explicitly intertwined with greed later in the patristic tradition. In recounting attempts by lenders to justify or at least excuse their charging usury, Commodian judges these attempts as self-deceiving: "If you lend at interest, taking twenty-four percent, you want to give alms that you might expiate evil with that which is also evil. The Almighty absolutely rejects such works as these. . . . O wicked one, you deceive yourself, but no one else."[32] While the evils Commodian associates with usury include the psychological distress experienced by borrowers, as noted in Chapter 6, he also perceives usurers as masking such evils through their almsgiving. Faux charity is blameworthy. It is not a virtue, but rather vicious self-deception that fails to expiate for usury's ill effects. Usurers thus inflict on themselves the evil of self-deception.

In his homily on Psalm 15 (14), Basil of Caesarea binds together deception and greed. According to Basil, lenders are wont to grow deceitful in attracting customers.[33] Basil presents lenders as wooing potential borrowers by gaining their trust. Yet, any trust enkindled is based on pretense. Lenders feign neediness, even averring their own pursuit of usurious loans for themselves;[34] this feigned neediness is simply a ruse to gain a profitable borrower. Usurers are in fact insatiably greedy: "Dogs, when they have received something, are pacified, but the money-lender, on receiving something, is further provoked. He does not stop railing, but demands more."[35] Subterfuge is at the core of lenders' overarching narrative that

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[31] Cf. Moser, 37.
[32] Commodian, *Instructiones* 65 (PL 5.251; CSEL 15.94–95), trans. Robert P. Maloney, in "The Teaching of the Fathers on Usury: An Historical Study on the Development of Christian Thinking," *Vigiliae Christianae* 27, no. 4 (1973): 245.
[33] Basil of Caesarea, *Homilia II in Psalmum XIV* 1 (PG 29.165–166), 181–182. For Basil on usury and greed, see also Basil of Caesarea, *Epistola CLXXXVIII* 14 (PG 32.681–682; LCL 243.44–45), trans. Roy J. Deferrari, in *Letters 186–248*, ed. Jeffrey Henderson, vol. 3 (Cambridge, MA: Harvard University Press, 1930).
[34] Basil of Caesarea, *Homilia II in Psalmum XIV* 1 (PG 29.165–166), 182.
[35] Ibid., 2 (PG 29.269–270), 185.

they are self-sacrificial and want to assist prospective borrowers. Basil thus warns them: "Woe to you who say that the bitter is sweet and the sweet bitter, and who call inhumanity by the name of humanity."[36] Basil chides the usurer for gaining "the guilt of perjury as the evil gains of his inhumanity."[37] Basil does not make any explicit claim that Scripture forbids usury because of the deceitfulness it occasions; rather, his argument bolsters the reasonableness of the Scriptural prohibition by appealing to the preservation of character, by warning against the threat posed to lenders' honesty.

Not only do usurers fall into deceitfulness in pursuit of their greed, but borrowers are also susceptible to vice in Basil's analysis. Even though Basil cites the cruel punishments for default in his case against usury, he also warns against the vice that leads to default. He presents falsity as chief among the moral and spiritual evils that usury occasions in borrowers. Basil writes: "Borrowing is the beginning of falsity; an opportunity for ingratitude, for senseless pride, for perjury. The words of a man when he is borrowing are of one kind, those when payment is being demanded are of another."[38] Basil's argument could, of course, be made of any sort of loan, though perhaps especially of usurious loans, since repayment is made more difficult by the addition of usury to the principal.

Gregory of Nyssa amplifies charges of insatiable desire voiced by Cyprian. Gregory of Nyssa meanwhile follows in the footsteps of Cyprian in making insatiable greed a recurrent theme in *Contra usurarios*. Epitomizing this theme is the description of one usurer as "intent upon accumulating more and more money."[39] As quoted in Chapter 6, Gregory

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[36] Ibid., 5 (PG 29.279–280), 191. As the translator suggests, Basil may be alluding to Isaiah 5:20: "Woe to you that call evil good, and good evil: that put darkness for light, and light for darkness: that put bitter for sweet, and sweet for bitter."
[37] Ibid.
[38] Ibid., 2 (PG 29.269–270), 184–185.
[39] Gregory of Nyssa, *Contra usurarios* (PG 46.449), 300.

advises lenders "not [to] seek monetary interest [*tokos*] nor let the accumulation of money corrupt you."[40]

Ambrose of Milan paints perhaps the most complete portrait of the viciousness of usury. Like Basil, he presents usurers as deceitful in their marketing. Ambrose more than once outlines the fabrications deployed by usurers to entrap borrowers.[41] Ambrose's rhetoric equates the practice of usury with deception: "What do the usurers do? They deceive those who are indebted."[42] Ambrose presents this dissimulation as continuing to occur even after the loan is finalized and the debtors find themselves unable to pay: "The usurer pretends he is worried about your ruin, but he gladly grants it."[43] The motivation underlying this content at the debtor's ruin seems to be motivated by greed. In *De Tobia*, Ambrose repeatedly refers to usurers' insatiable greed.[44] Feigning sympathy, usurers ensnare debtors to fill their coffers.[45] For Ambrose, the exploitative mentality is inhumane. In *De officiis ministrorum*, Ambrose identifies this mentality in usurers' posture toward debtors: "Look at it this way: if a person has needed your help to begin with because he did not have enough himself to repay a debt, is it not wicked if, under the guise of humanity, you go on to demand a larger sum from him yourself, when he did not have enough to clear off even the smaller amount?"[46] Greed, deceitfulness, and exploitative intent are thus clearly interwoven in Ambrose's assessment of what drives lenders to seek usury: Greed motivates lenders to seek ever-expanding profits through usury; to attract borrowers to feed this desire, they feign selfless kindness; needy

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[40] Ibid. (PG 46.441–442), 297.
[41] Ambrose of Milan, *De Tobia* 3.9–11 (PL 14.763; CSEL 32/2.522), 28–31; 6.23 (PL 14.767; CSEL 32/2.529), 38–41; cf. 15.53 (PL 14.780; CSEL 32/2.549–550), 68–69.
[42] Ibid., 23.89 (PL 14.792; CSEL 32/2.570), 98–101.
[43] Ibid., 7.26 (PL 14.768; CSEL 32/2.532), 42–43.
[44] See ibid., 3.9 (PL 14.763; CSEL 32/2.522), 28–29; 5.18–19 (PL 14.765–766; CSEL 32/2.527–528), 36–37; 7.25 (PL 14.768; CSEL 32/2.530–531), 40–42; 8.31 (PL 14.770; CSEL 32/2.535), 46–49; 13.44 (PL 14.776; CSEL 32/2.543), 58–61; 14.47 (PL 14.777; CSEL 32/2.545), 62–63; 15.53 (PL 14.780; CSEL 32/2.549–550), 68–69; 18.60 (PL 14.785; CSEL 32/2.554–555), 74–77; 23.88 (PL 14.792; CSEL 32/2.569–570), 98–99. Cf. Augustine of Hippo, *Sermo LXXXVI* 5.5 (PL 38.526).
[45] Ambrose of Milan, *De Tobia* 7.25 (PL 14.768; CSEL 32/2.530–531), 40–43.
[46] Ambrose of Milan, *De officiis ministrorum* 3.20 (PL 16.151; CCSL 15.), 364–367.

borrowers are especially attracted by their overtures and, in their greed, usurers through lending are able to despoil borrowers.

Although Ambrose rails most vociferously against the depravity of usurers, like Basil he is also concerned that usury occasions fraudulence among borrowers. He presents usury as occasioning default, a broken promise which he describes as fraud and as destroying the borrower's trustworthiness.[47] Advising prospective borrowers to consider their future income, the Milanese bishop worries that unabundant lands will fail to produce sufficient yields to cover usury.[48] Bolted into Ambrose's argument is the shamefulness he posits of debt itself and of beggary:

> Finally, do you not consider the humility and sense of shame of the man who begs? Before you receive it, you kiss the hands of the haughty usurer, you lower your voice lest too clear a tone of your voice may offend his ears, lest too many should hear you beseeching him. Poverty is not a crime, there is no infamy in indigence, but to be in debt is shameful, and not to pay, shameless. You will beg for delay when you begin to be summoned at the time of payment agreed on. In place of money you will bring vexation, you will dispute about the time, you will build up excuses, and although you have promised all, in order that you may not seem altogether to cheat, you will give back barely half. Of a friend you will make an enemy, in place of honor you will bring upon yourself disgrace, in place of blessing, a curse. Consider how these things injure reputation, recognize how at variance they are with the upright man.[49]

In this account, defaulters tear away the vesture of trustworthiness that clings to a good man (*vir bonus*): they appear completely to cheat (*uniuersum fraudare*) their creditors, exchange honor for disgrace (*contumelia*), and damage reputation (*opinio*). Ambrose all but convicts defaulters of fraud and untrustworthiness; he does clearly hold that choosing to borrow, especially at usury, places a person in a situation in which they are liable to default and thus be disgraced as untrustworthy.

For his part, John Chrysostom reasons that the usury prohibition guards usurers against the multiplication of their sins.[50] Chief among the "great harms" suffered by usurers

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[47] Ambrose of Milan, *De Tobia* 21.80 (PL 14.827; CSEL 32/2.566), 92–93, 95.
[48] Ibid., 21.80 (PL 14.827; CSEL 32/2.566), 94–95.
[49] Ibid., 21.81 (PL 14.828; CSEL 32/2.566–567), 94–95.
[50] John Chrysostom, *Homilia XLI in Genesin* 2 (PG 53.376–377), 403.

appears to be greed. Chrysostom warns that the usurer “heaps up for himself a multitude of sins along with the surplus of his wealth.”[51] An innate acquisitive spirit seems to imbue usury and at least one class of usurers in Chrysostom’s assessment. With anti-Jewish overtones characteristic of Chrysostom, he explains the usury ban in Deuteronomy 23:19 as a response to Jews’ “rather materialistic mentality.”[52] Christians who likewise engage in usury are described as “even more savage than the Jews” because of their predatory activities, which bring debtors “suddenly to extreme penury.”[53] The character of usurers is thus closely aligned with the financial consequences they wreak upon debtors.

The teaching of popes and ecumenical councils are consonant with that of the Fathers in finding usury vicious. While deceitfulness likewise is associated with usury in magisterial statements surveyed, greed appears as a spur, if not *the* spur, for usurious lending. At the same time, however, engagement in usury is presented as also cultivating greed in lenders, who come to be characterized by it.

Magisterial teachings from the patristic era condemn the greed of usurers as well as their deceitfulness. The First Council of Nicaea, for instance, blames greed in its judgment of the clergy: “Many enrolled [among the clergy] have been induced by greed and avarice to forget the sacred text, ‘who does not put out his money at interest’, and to charge one percent [a month] on loans.”[54]

Pope Leo I, in a sermon from 444, portrays lenders as greedy and themselves deceived by usurious profit.[55] Greed is unquestionably a prime driver toward usury in Leo’s evaluation. For Leo, greed lures individuals to the sin of usury: lovers of money and desirers of immoderate enrichment appear particularly disposed to its charm.[56] He advises pursuit of

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[51] Ibid., (PG 53.377), 403.
[52] Ibid.
[53] Ibid., 403–404.
[54] First Council of Nicaea, Canon 17, 14.
[55] Pope Leo I, *Sermo XVII* (PL 54.180–182), 63–66.
[56] Ibid., 2 (PL 54.181), 64–65.

the true profit in the hereafter and warns against falling "into the traps of impossible debts through deceitful benefits."[57] Later in the sermon, the pontiff's warnings become more direct. Referencing Psalm 15 (14), he states that usurers "are shown to be strangers to the 'tent' of God and foreign to his 'holy mountain' if they seize a deceitful profit for their money by usury, and, while they want to be rich through another's loss, they are worthy to be punished by eternal penury."[58] The injustice perceived by Pope Leo is taken up in Chapter 8, but noteworthy now is the contrast between usury's present lucrativeness to creditors and its eternal losses to the same.

In an assessment by the Second Lateran Council, usurers are characterized by inexhaustible avidity. Lateran II condemns "that practice accounted despicable and blameworthy by divine and human laws, denounced by Scripture in the old and new Testaments, namely, the ferocious greed of usurers [*insatiabilem foeneratorum rapacitatem*]."[59] Although Scripture leaves unclear why usury is prohibited, Lateran II interprets its intentions as to quash the inherent avarice of usurers.

The Church's attempts to suppress greed, however, seem to have occasioned further deceitfulness on the part of moneylenders. Although above assessments cast usury as itself entwined with deceitfulness, the Council of Vienne takes a more nuanced stance in its association of usury with this vice. Vienne recognizes that, at least some of, the deceitfulness associated with the practice emanates not from usury itself, but from usury's *prohibition*. Decree 29 of the Council of Vienne narrates how moneylenders used fraud to evade the charge of usury: "money-lenders for the most part enter into usurious contracts so frequently with secrecy and guile that they can be convicted only with difficulty."[60] Pope Urban III had already made clear that confessors should consider even the intention to exact usury as

[57] Ibid.
[58] Ibid., 3 (PL 54.182), 65–66.
[59] Second Lateran Council, Canon 13, 200.
[60] Council of Vienne, Decree [29], 384.

sinful.[61] Otherwise licit contractual arrangements were being used to circumvent the usury prohibition, a practice dubbed *in fraudem usurarum* by medieval canon lawyers.[62] While by no means exonerating usurers of deceitfulness, the Council of Vienne tacitly admits that the prohibition failed to eradicate the fraudulent behavior of moneylenders even in jurisdictions that forbade it, but instead these restrictions offered additional opportunities for deceit. The council does not openly claim that usurers operate out of avarice or predatory intentions, though the moneylenders certainly hoped to profit from usury. Thus, the profit motive itself, whether immoderate or not, was sufficient reason to engage in fraudulent behavior to circumvent the usury prohibition.

Although usury is seldom named in more recent magisterial teachings, concern about vice, and greed in particular, appears alongside mentions of it. Sometimes vice appears as inherent to the art of usury, at other times vice appears as merely a risk of engagement in the craft. Evidence of the first stance appears in the social encyclical *Rerum novarum* (1891), which began modern Catholic social teaching. In *Rerum novarum*, Pope Leo XIII finds greed to be a—or even *the*—motive behind usury:

> By degrees it has come to pass that working men have been surrendered, isolated and helpless, to the hardheartedness of employers and the greed of unchecked competition. The mischief has been increased by rapacious usury, which, although more than once condemned by the Church, is nevertheless, under a different guise, but with like injustice, still practiced by covetous and grasping men.[63]

Obscurity surrounds what Leo XIII tried to convey by usury "under a different guise."[64] Whatever its meaning, he clearly views usurers as greedy, either led to usury by greed or their greed cultivated by usurious lending, or perhaps both.

In sum, patristic and magisterial teaching present usury as pervaded with vice. In usurious lending, greed and deceitfulness are the primary vices associated with creditors, and

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[61] Baldwin, 273.
[62] Ibid.
[63] Pope Leo XIII, *Rerum novarum* (1891), no. 3. Cf. ibid, no. 20.
[64] Noonan, *The Scholastic Analysis*, 389.

untrustworthiness or fraud with debtors. While at times these vices appear as inherent to usury, at other times they appear as merely a risk, albeit perhaps an extreme risk, of dealing in usurious credit. Usurers are encouraged not merely to hedge against these risks, but completely avoid them. They will thereby not only preserve their characters from vitiation, but gain eternal reward.

As already mentioned, the Islamic authorities surveyed in this thesis offer no detailed portrait of *riba* as entangled with vice. Indications are present, nonetheless, that seekers of *riba* are vicious, though perhaps not inherently so. Be that as it may, the Islamic sources are clear in their denunciation of the same vices that Christian sources identify with usury.

Greed is treated as a serious offense in the Qur'an, which offers vivid depictions of the torments merited by greed. Decrying the rapacity of "many of the rabbis and monks," Qur'an 9.34–35 assures hoarders of gold and silver that "their foreheads, their sides, and their backs will be branded" by these metals heated in hellfire. Qur'an 70.15–18 foretells "a churning fire, ripping away the scalp, calling to those who turned their backs and fled, who amassed and hoarded." Qur'an 104.1–2 breathes "woe unto every slandering backbiter who amasses wealth and tallies it, supposing that his wealth makes him immortal. Nay! He shall surely be cast into the crushing Fire." While never explicitly linking *riba* with greed, the Qur'an does implicitly militate against an acquisitive, ungrateful spirit animating *riba*, a spirit that runs contrary to charity. Recall that Qur'an 2.276 contrasts God's disfavor toward *riba* with his blessing on charity. This contrast seems to denote a predatory intent in the pursuit of *riba*.[65] The verse continues by characterizing the seeker of *riba* as a "sinful ingrate." Ingratitude furthers the impression that seekers of *riba* are dissatisfied with their wealth and seek to enrich themselves at the poor's expense. While not underscoring the immoderation of greed, this verse hints at its insatiability: no matter the wealth of the persons lending at *riba*,

[65] Cf. Buckley, 228; Saeed, 20.

they are dissatisfied with their current wealth. This implicit assault on greed continues in Qur'an 2.280. This aya militates against acquisitiveness and self-seeking, and challenges lenders to show forbearance toward suffering debtors: "And if one is in difficult circumstances, let there be a respite until there is ease, and it is better for you to give [it] as charity, if you but knew."

While laying responsibility for the sin of *riba* primarily on lenders, the Qur'an by no means absolves borrowers from repaying debts. Indeed, even though the main target of the Qur'anic prohibition of *riba* are lenders (see Chapter 4) and the duties of lenders are underscored, elsewhere the Qur'an requires the restoration of trusts, which could be seen as akin to lending.[66] Qur'an 2.279 even implies that foregone *riba* secures lenders in recovering their principal: in promising repentant lenders their principal, the aya assures them that they "shall neither wrong nor be wronged." This aya thereby gives an implicit condemnation of defaulting borrowers, who wrong those who have lent to them.[67] The acquisitiveness of seeking *riba* could be seen as contributing to their breach of trust. When taken together, these verses implicitly portray the pursuit of *riba* as driven by greed and contributing to borrowers' default.

Although the Qur'an does not explicitly associate *riba* with the deceitfulness, an association has been perceived via *gharar*. In commenting on Qur'an 2.275–281, the *Study Quran* notes that "the rules about *ribā* . . . are always understood in terms of risk, which in Arabic is called *gharar*, a word semantically linked to 'deception' (*ghurūr*)."[68] This reading is consonant with the Qur'an's clear condemnation of deceitfulness. Qur'an 83.1–4, for instance, warns: "Woe unto the defrauders, who, when they take measure from people, demand [it] in full, and when they measure for them or weigh for them, they stint."

[66] See Qur'an 4.58 and 8.27. See also Qur'an 23.8 and 70.32 for praise of those who are faithful in restoring trusts.
[67] See commentary, *The Study Quran*, 121.
[68] Commentary, *The Study Quran*, 120.

In the Hadith, vice is likewise implicitly associated with *riba*. For instance, the hadith recounting Muhammad's dream in which a "*riba*-eater" is trapped in a river of blood can be read as connecting *riba* with greed.[69] The *riba*-eater is unable to exit the river since someone standing on the riverbank throws stones into his mouth whenever he tries. A notion of *contrapasso* would suggest that insatiable greed once fed by *riba* is now forever fed by rocks. The Hadith's decrials of what the Islamic jurists term *riba al-fadl* (*riba* in simultaneous and unequal exchange) perhaps offers Hadith's strongest, though still implicit, association of *riba* with vice. The prohibition of *riba al-fadl* appears as an attempt to stop deceitful circumvention of the *riba* prohibition more generally.[70]

The Hadith mirrors the Qur'an's challenge to creditors to forebear delays in repayment, but also the implied acknowledgment that debtors should repay and that *riba* may contribute to failures to do so. According to the reading offered in Chapter 4, Sunan Abu Dawud suggests that non-repayment is precluded when lenders forgo *riba*.[71] Considered from the borrowers' perspective, this passage implies that *riba* may contribute to their inability to repay even the principal.

El-Gamal identifies in Islamic jurisprudence an implicit goal of guarding against vice. Concerning *riba* and *gharar*, El-Gamal suggests that "Islamic jurisprudence introduces injunctions that aim also to protect individuals from their own greed and myopia."[72] He broadens this rule further, while offering borrowers as an example of its implications: "Individuals engage in myopically excessive borrowing behavior if left to their own devices. Adherence to religious law can serve as an effective precommitment mechanism to ensure

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[69] Sahih al-Bukhari 23.93 (1386), vol. 2, 267–270; 34.24 (2085), vol. 3, 174; 91.48 (7047), vol. 9, 118–122.
[70] Cf. El-Gamal, 51, 69.
[71] Sunan Abu Dawud 22.5 (3334), vol. 4, 64.
[72] El-Gamal, 48.

individuals do not abuse the availability of credit to their own detriment."[73] An implication of such pre-commitment is that the prohibition of *riba* wards off an avenue for untrustworthiness.

As noted in Chapter 4, the Hanbali Ibn Qayyim presents the prohibition of *riba al-fadl* as stemming from the prohibition of *riba al-nasi'a*, to which the former provides access.[74] For Ibn Qayyim, exchange of the six commodities for the same commodities can give rise to covert *riba*.[75] Such a concern accords with the Council of Vienne's admission that prohibition spurs usurers' (increased) guile. Deceitfulness, then, does not simply arise from *riba* itself, but rather from the desire to circumvent its prohibition. This desire, of course, may itself stem from greed, and if not greed, at least from a desire to derive some benefit, though no such conclusion is explicit in these texts.

SECULAR MORAL ANALYSIS

Three vices come into relief in the above discussion: greed, deceitfulness, and untrustworthiness. Greed is likely the vice still most often associated with banking and has often been credited for the financial crisis that brought on the Great Recession.[76] Aristotle believed that retail trade and usury were forms of wealth-getting that had a propensity for increasing wealth without limit.[77] Storr and Choi describe greed as "a vice that develops when prudence alone is not checked by or balanced with other virtues."[78] It is prudence devoid of moderation. The prudent person seeks material goods for living a good life.

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[73] Ibid., 54. Cf. Salah El-Sheikh, "Islamic Economics and Finance, Then and Now: A *Fiqhī*-conomic Perspective on Its Doctrines and Debates," *International Journal of Economics, Management & Accounting* 19, no. 1 (2011): 98–99.
[74] Ibn Qayyim, 245. See also, Khalil, 61–62, and Saleh, 35.
[75] See Saleh, 35.
[76] E.g., Raymond D. Smith, "The Role of Greed in the Ongoing Global Financial Crisis," *Journal of Human Values* 16, no. 2 (2010): 187–194.
[77] Aristotle, *Politics* 1.9–11, trans. Benjamin Jowett, in *The Complete Works of Aristotle*, ed. Jonathan Barnes (Princeton, NJ: Princeton University Press, 1984).
[78] Storr and Choi, 163, n. 17.

Moderation balances this pursuit and checks the passions for acquiring material wealth without limit.

Greed can also be the source of additional vices. Following the above rationales, here we consider deceitfulness and untrustworthiness. A truthful person is one who consistently tells the truth, a person who is honest. A deceitful person, on the contrary, is disposed to dishonesty and deception. Self-deceit can result from blinding oneself to the avarice embedded in one's intentions. Deceitfulness can also manifest itself in attempts to mask one's greed from others. In both cases, the vice aims at blocking inhibitions that might check the greedy person's acquisitiveness.

Recognizing that some accounts of trustworthiness rely on explanations "without recourse to 'internal' commitments, including moral ones," I here refer to the moral character described by Thomas Simpson as "a credible form of internal commitment to trustworthiness."[79] Simpson explains: "If someone possesses it, they are disposed to act in a trustworthy way, with some degree of counter-factual stability. Moral character can motivate trustworthiness without any 'external' inducements, of future sanction or reward."[80] At the same time, however, I am not oblivious to the power of external inducements, the incentive structures that dispose people to trustworthy or untrustworthy behavior. Indeed, greed can be related to untrustworthiness in at least one obvious way. A greedy person may, in the pursuit of excess, engage in reckless risk-taking, with the knowledge that bad luck will supersede commitments to keeping promises.

Relying on the tool metaphor outlined near the beginning of this chapter, we consider below whether the interest-based lending is a tool (1) apt for pursuing vicious goals (e.g.,

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[79] Thomas Simpson, "Trustworthiness and Moral Character," *Ethical Theory and Moral Practice* 16, no. 3 (2013): 544, 553.
[80] Ibid., 553.

immoderate wealth acquisition) and (2) whether wielding this tool (further) corrupts the wielder's moral character, regardless of his or her intentions when first employing it.

Greed

Empirical evidence provides, at best, a mixed picture of interest-based lending as an apt tool for wealth acquisition. As affirmed near the beginning of this chapter, acquiring wealth can be an instantiation of prudence. If, however, a deep-seated desire to acquire wealth without moderation is considered greed, then the prospect of acquiring wealth is foundational, albeit insufficient, for greed. Accordingly, part of evaluating the aptness of interest-bearing lending for greed are the prospects of acquiring wealth through its employ. Without a strong prospect of acquiring wealth through it, interest would be a poor tool for greedy pursuits. Conversely, should it be a particularly effective tool for wealth acquisition, then it would seem a strong candidate for immoderate acquisition, for greed. A complete assessment of what constitutes the desire for "immoderate" acquisition is beyond the ambitions of this chapter, though it is not unrelated to the discussion of what is enough or sufficient as addressed in Chapter 8's discussion of distributive justice. However, assessing interest-based lending as a tool for wealth acquisition itself demands considering more than one indicator. For example, even if the banking industry on average rewards equity holders with unremarkable returns, it could be that certain functions within the industry do present opportunities for acquiring immoderate wealth. By considering some very broad aggregate measures, let us for now satisfy ourselves with considering how well the tool of interest-based lending works for acquiring wealth in comparison to other (legal) means of wealth acquisition.

When compared to other industries, banking's return on equity (ROE) is overall unremarkable. In 2019, U.S. money centers and regional banks had an average ROE of 12.80% and 12.05%, respectively; these returns scored below the ROE (13.63%) of the total

U.S. market.[81] Even if the ROE is adjusted for research and development costs (R&D), the total U.S. adjusted ROE (12.25%) sits between that for money centers (still 12.80%) and regional banks (still 12.05%). European banking boasts an average ROE far below that of the total market. In 2019, European money centers and regional banks had an average ROE of only 6.95% and 6.11%, respectively; these returns scored far below the ROE (9.93%) of the total European market, even when ROE is adjusted for R&D (9.24%).[82] Emerging markets are a point of contrast to the banking industry's ROE in the U.S. and Europe. In 2019, money centers and regional banks in emerging markets had an average ROE of 13.39% and 18.48%, respectively; these returns outperformed the ROE (10.23%) of the total for emerging markets, especially when ROE is adjusted for R&D (9.92%). The contrast is especially interesting when it is noted that many Islamic banks are included in the average ROE for money centers and regional banks in emerging markets. Globally, however, the ROE of money centers and regional banks only slightly outperforms the total market. In 2019, money centers and regional banks around the world had an average ROE of 10.94% and 10.91%, respectively; these returns only slightly outperformed the global market's ROE (10.69%), even when the ROE is adjusted for R&D (10.06%). Overall, the ROE for money centers and regional banks is not out of the ordinary, though notably above average returns are seen in emerging markets. These 2019 numbers suggest that banking as a whole does not present equity holders with an out-of-the-ordinary opportunity for acquiring wealth. Indeed, the ROE of the European market as a whole shows superior returns than existed on average for equity holders in Europe's banking industry. Yet, as made clear from comparative performances in emerging markets, the banking industry can provide an ROE far beyond what the whole market provides. Accordingly, looking to ROE offers a mixed result, a result that fails prove

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[81] Data in this paragraph comes from Damodaran Online, "Data: Archives," accessed February 1, 2021, http://people.stern.nyu.edu/adamodar/New_Home_Page/dataarchived.html.
[82] Average ROE for money centers and regional banks remained the same for the U.S., Europe, emerging markets, and globally even when adjusting for R&D.

banking is an adept tool for wealth acquisition, while leaving open this possibility in some markets.

When considering types of investments (rather than comparative ROE across industries), interest-based, debt investments sometimes seem less conducive to increasing wealth than equity investments.[84] Empirical evidence suggests that stocks are often a better tool for increasing wealth than bonds. This evidence is valuable in considering whether interest-based lending is an apt tool for greed, since stocks represent ownership or equity stakes in a company while bonds represent a debt claim. Stocks on average outperform bonds.[85] Between 1926 and 2008, large company stock had higher average and maximum returns than corporate bonds.[86] Corporate bonds did see higher minimum returns on investment periods from one to five years, ten years, and fifteen years between 1926 and 2008. On investment periods of twenty, twenty-five, and thirty years, however, large company stock on the S&P index showed higher minimum returns. Furthermore, over the eighty-two-year period from 1926 to 2008, the S&P outperformed corporate bonds in 64% of one-year periods.[87]

A similar pattern emerges for the S&P versus U.S. Treasury bonds.[88] Between 1928 and 2018, the highest annual return on the S&P index was 52.56% including dividends

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[84] Of course, greater returns on equity investments can be associated with greater risk assumed by investors. If equity investments are riskier than debt-based investments, then equity investors will expect higher compensation. Discussion of how interest offsets creditors' risks and of associated ethical challenges appears in Chapter 8.

[85] Robert J. Angell and Charles W. Cole, "Stock Returns versus Bond Returns: Actual Historical Data 1926–2008," *Southern Business Review* 35, no. 1 (2010): 49.

[86] Angell and Cole, 49–50. Angell and Cole take their data on LCS from the S&P 90 (for years before 1957) and the S&P 500 with reinvestment of dividends (for years 1957–2008). Their data on CB is taken from Citigroup Long-Term High Grade Corporate Bond Index.

[87] Angell and Cole, 51. Angell and Cole constructed 985 one-year investment periods in their study. Each month began a new investment period. For example, the first one-year investment period ran from January 1926 through December 1926, the second from February 1926 through January 1927, the 984th from December 2007 through November 2008, and the 985th period from January 2008 through December 2008. For Angell and Cole's explanation of the periods, see pages 49–50 of their article.

[88] The following data comparing returns on the S&P and U.S. Treasurys was found at Damodaran Online, "Data: Current," accessed November 27, 2019, http://people.stern.nyu.edu/adamodar/New_Home_Page/datacurrent.html#returns.

(1954) whereas the highest annual return on three-month Treasury bills (T-bills) was 14.30% (1981) and on ten-year Treasury notes (T-notes) was 32.81% (1982). If $100 were invested in the S&P at the beginning of 1928, the sum would have grown to $382,850 at the close of 2018. In contrast, during the same period, a $100 investment in the three-month T-bill would have yielded $2,063; a $100 investment in ten-year T-note, $7,308. Put another way, the investment in the S&P would have had almost 195 times the return on three-month T-bill and over fifty-three times the return on ten-year T-note. Of course, an investment in the S&P had a worse annual return in some years. In fact, the greatest annual loss suffered by the S&P during the period was for 1931 with a -43.84% return. In contrast, in 1931 three-month T-bills made a 2.31% return and ten-year T-notes made a -2.56% return. The worst returns suffered by three-month T-bills and ten-year T-notes were 0.03% (1940 and 2011) and -11.12% (2009), respectively—far higher returns than the S&P's lowest. Of the ninety-one years from 1928 through 2018, the S&P outperformed three-month T-bills and ten-year T-notes for fifty-five of those years (60.44%). From 1999 through 2018, the S&P performed similarly, outstripping these Treasurys for thirteen of those years (65%).

The performance of the S&P versus both corporate and U.S. Treasury bonds suggests that interest-based lending may not always be the optimal tool for increasing wealth for investors, an attribute essential to greed. Most of the time, the S&P posted greater returns than bonds. Conversely, bonds were more secure investments with higher minimum returns. Although bonds did outperform the S&P a not insignificant amount of the time, the returns in these periods were lower than returns on the S&P at its best. Admittedly, bonds would have increased wealth at a higher rate in some periods. Long-term investment in the S&P has, however, generally had far greater returns than either corporate bonds or U.S. Treasury bonds. This evidence suggests that a greedy investor would find the S&P a more attractive means of increasing wealth in most periods and in the long run. Even when better returns could be secured through bonds in the short term, it would be a stretch to consider the returns optimal for greed, since the historical data suggests that these returns will never be as great as those possible for the S&P. The gestalt created, then, is that corporate and U.S. Treasury bonds are more conducive to safeguarding and perhaps slowly increasing wealth, characteristics more associated with prudence tempered by moderation than with greed.

Besides looking at whether lending at interest may offer enticements to greedy investors, it is also worth considering whether banks offer salaries that may entice greedy employees and/or cultivate greed. Of course, bank employees as such are not lending their own money, but their salaries derive in part from interest.

Although entry-level positions in conventional banks can pay well, other industries and non-banking jobs often have higher average salaries. In 2019, the highest entry-level median annual base salary in the U.S. was for data scientists ($95,000).[89] The second and third highest entry-level salaries were for software engineers ($90,000) and product managers ($89,000). Of course, some of these positions would have been at banks and other financial institutions, but the majority seem to have been at an array of other firms.[90] The fourth highest entry-level salary was for investment banking analysts ($85,000). An assortment of other high-paying, entry-level jobs were mostly in engineering and software development. Also in 2019, banking's starting wages in the U.K. were above the median for the graduate market.[91] The annual median starting salaries in banking and finance were £32,500, while the median for all sectors was £30,000. Several sectors came in higher than banking and finance, including consulting (£45,000) and law (£45,000), oil and energy (£38,500) as well as retail

[89] The figures for U.S. entry-level jobs come from Glassdoor, "25 Highest Paying Entry Level Jobs," posted May 15, 2019, accessed February 24, 2020, https://www.glassdoor.com/blog/highest-paying-entry-level-jobs-19/.
[90] Glassdoor, accessed February 24, 2020, https://www.glassdoor.com/Job/data-scientist-jobs-SRCH_KO0,14.htm?radius=25&jobType=entrylevel&countryRedirect=true.
[91] The figures for the remainder of this paragraph come from *The Graduate Market in 2019* (London: High Fliers Research, 2019), 19, accessed June 5, 2020, https://www.highfliers.co.uk/download/2019/graduate_market/GMReport19.pdf.

(£35,000). Investment banking, however, had the highest median starting salary at £47,000. Although starting wages in the U.S. and U.K. banking industries might be attractive to a greedy individual as a means of accumulating wealth, these salaries do not strikingly depart from the median wages of other high-earning entry-level positions. Entry-level salaries alone do not present banking as the optimal destination for greedy individuals. If the salaries associated with the entry-level banking positions are considered high enough as to be conducive to immoderation, then it seems those for persons entering the workforce in data science, law, and engineering should also be so considered.

But perhaps it is not the entry-level pay scale, but later-career remuneration that attracts the banking workforce. Or, perhaps, banking itself teaches greed. Certainly, financial incentives for employment in banking—and finance industry more broadly—can seem high. Yet, the pay levels are less remarkable when compared with other industries. Bankers and others in the financial industry are by no means the highest paid employees, at least on average.

In October of 2019, the average earnings for financial activities in the United States stood at $1,362.25 per week and $36.23 per hour.[92] Financial workers were among the highest paid on average. Only two others had both higher weekly and hourly averages. People who worked for utilities took in on average $1,752.20 per week and $41.62 per hour, while those in the information industry took in on average $1,537.17 per week and $42.23 per hour. Although workers in the mining and logging industries topped those in finance with $1,625.39 per week in average earnings, their average hourly earnings were lower at $35.03 per hour. Workers in health and education came in at $913.11 per week and $27.67 per hour on average, while those in leisure and hospitality came in at lowest averages of $430.60 per

[92] The U.S. earning figures in this paragraph come from the U.S. Bureau of Labor Statistics, "Graphics for Economic News Releases," accessed December 7, 2019, https://www.bls.gov/charts/employment-situation/employment-and-average-weekly-earnings-by-industry-bubble.htm, https://www.bls.gov/charts/employer-costs-for-employee-compensation/costs-by-industry.htm.

week and $16.69 per hour. The averages across industries were $969.39 per week and $28.18 per hour. The average finance worker thus made $392.86 per week and $8.05 per hour more than the average across industries. A similar pattern was present in the United Kingdom.[93] The average weekly earnings for financial and insurance activities, including bonuses and arrears, was £1,073 in July of 2019. Although these wages seem high when compared with those of people working in education (£460) and health and social work (£452), for instance, workers in the mining and quarrying industries out earned those employed in finance and insurance, workers in the former industries averaging weekly earnings of £1,111.[94]

For 2019, compensation for CEOs of firms in the financial industry appears unremarkable compared with other industries.[95] A sample of 200 publicly traded U.S. companies whose revenues met or exceeded $1 billion indicated a median annual compensation package of just over $18.6 million in 2018. The median for financial companies was slightly under $20.4 million. Of the twenty-seven financial companies in the sample, the CEOs of fifteen (55.6%) of those companies made more than the median across industries. For comparison, fifteen of the twenty-eight (53.6%) CEOs of healthcare companies and twenty of the thirty-one (64.5%) CEOs of technology companies made above this median. The average compensation package for the 200 companies was approximately $34.4 million while that for financial companies was significantly lower at slightly over $20.2 million. When Elon Musk's outsized compensation from Tesla (nearly $2.3 billion) is removed from the sample, the average across the remaining 199 companies still comes in at

[93] The U.K. earning figures in this paragraph are from the U.K. Office of National Statistics, accessed December 7, 2019, https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/averageweeklyearningsbyindustryearn03, https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datalist?filter=datasets.

[94] People in farming, forestry, and fishing on average made £402 and the lowest paid workers, those in accommodation and food services, on average made only £260 per week.

[95] The following figures on CEO compensation are from "Equilar | New York Times 200 Highest-Paid CEOs," accessed December 7, 2019, https://www.equilar.com/reports/table-equilar-200-new-york-times-highest-paid-ceos-2019.html.

nearly $23.1 million—more than $3 million above the average for financial companies. Meanwhile, the average compensation for healthcare CEOs was over $20.7 million and for technology CEOs was approximately $31.0 million. I leave to others the discussion of whether CEO compensation at such high levels are conducive to greed.[96] The numbers put forward here do not suggest that finance presents enticements for already greedy persons or instills greed that outstrip other industries. While over half of finance CEOs made more than the median for large companies, their average packages were below those across all industries, on par with healthcare CEOs, and less than three fourths of the average for technology CEOs.

While not absolving the industry of greed, the considerations above of themselves fail to suggest that lending at interest necessarily cultivates or is driven by greed. Yet, like all profitable industries and highly paid careers, banking presents risks for persons prone to greed.

Deceitfulness

Bankers' reputation for honesty and ethics more widely is mixed.[97] This mixed reputation may in part be due to the nature of interest itself. As suggested by truth-in-lending laws, legislators are concerned that the full cost of borrowing is difficult to represent. Interest does provide a hurdle for truthfulness, since the costs of borrowing are not always obvious. This lack of overtness could be conducive to deceit and permit lenders to conceal greed. At the same time, however, interest, as the price of borrowing, conveys the implicit truth that lending comes at a cost.

Some examples will illustrate how the cost of borrowing is not always easy to represent. For simplicity, take a daily interest rate of 1% on a payday loan. It may not appear

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[96] E.g., Michael Potts, "CEO Compensation and Virtue Ethics," in *The Ethics of Executive Compensation*, ed. Robert W. Kolb (Oxford: Blackwell Publishing, 2006), 101–115.
[97] See Gallup, "Honesty/Ethics in Professions," accessed March 21, 2020, https://news.gallup.com/poll/1654/honesty-ethics-professions.aspx.

as an extraordinary high rate to the unschooled eye. Easy multiplication, however, reveals that should the loan be carried for a year, the rate is 365%. At this Annual Percentage Rate (APR), a loan of $100 would become $465 ($100 principal plus $365 interest) after one year. Interest is often compounded, however. The "effective interest rate" is an annual rate that depends on the interval of the compounding period. If the interest were compounded semiannually, the effective rate on our payday loan would be 698.06%; compounded quarterly, it would be 1,237.84%; monthly, 2,321.01%; daily, 3,678.34%. Thus, our loan at 1% interest per day could accrue interest from $365 to $3,678.34 over the course of a year, depending on whether the interest is simple or compound, and if compound, how often compounding occurs. Furthermore, some loans require fees, such as annual fees and late fees, which add further complexity to the cost of borrowing. This complexity can make it difficult to appreciate fully the costs of borrowing when entering into a loan agreement. This complexity thereby provides opportunities for lenders to conceal the true cost of lending.

Twentieth-century legislative efforts attempted to address these concerns. In 1968, U.S. President Lyndon B. Johnson signed into law the Truth in Lending Act (TILA). The law attempts to standardize the disclosure of costs associated with consumer credit. Comparable legislation has subsequently been enacted by other Western governments.[98] In spite of these efforts, however, concern about truthfulness in lending remains. Questions continue to arise on how well truth-in-lending laws ensure sufficient disclosures for borrowers.[99] The number of amendments to truth-in-lending laws suggests that this difficulty may be inherent to interest itself. If so, lending at interest therefore offers lenders opportunities to obfuscate the truth. Disclosure laws certainly overcome some of the inherent difficulties in telling the truth

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[98] E.g., Cost of Borrowing (Banks) Regulations (SOR/2001-101) under Canada's federal Bank Act (S.C. 1991, c. 46); the European Union's Council Directive 87/102/EEC (December 22, 1986), Parliament and Council Directive 2008/48/EC (April 23, 2008), and Commission Directive 2011/90/EU (November 14, 2011).

[99] See Laurence Attuel-Mendès and Arvind Ashta, "The Truth, but Not Always the Whole Truth, in Lending Laws," *Cost Management* 27, no. 2 (2013), 6–18; Shyam B. Bhandari, "Some Ethical Issues in Computation and Disclosure of Interest Rate and Cost of Credit," *Journal of Business Ethics* 16, no. 5 (1997): 531–535.

about the costs of lending, but since difficulties remain, so possibly an environment ripe for deceit.

Considered from another angle, however, interest—as the price of borrowing—conveys the implicit message that lending is costly, for the lender. This point is related to that made by some market economists, who view prices as "an 'informationally efficient' summary of more detailed knowledge," including rising demand as well as shrinking supply.[100] Although supply and demand certainly affect interest rates, I contend that interest rates also convey the costs that constitute an interest rate, as explained in Chapter 1—costs such as inflation, opportunity costs, loan servicing, and insurance against the risk of default. Interest-free loans are seldom, if ever, truly free. Lenders' money loses value if inflation is present, and lenders also incur costs in extending and servicing loans. Such costs are implicit in an interest rate. Borrowers need not know exact fluctuations in the inflation rate to respond to changes perceptible in the interest rate. The same can be said of other costs, including lenders' opportunity costs. Borrowers have implicit knowledge of these costs based on interest rates. Despite difficulties in conveying the true cost of borrowing, as well as the shortcomings of attempts to resolve these difficulties, interest does not of necessity depend on or promote untruthfulness. To the contrary, while admittedly providing occasions for deceit, loans at interest—unlike interest-free loans—implicitly convey the basic truth that interest comes at a cost.

Concerns about deceitfulness could perhaps be minimized if truth-in-lending laws focused not just on the costs of *borrowing* but also the costs of *lending*. Under current regimes, borrowers can come to some level of comprehension of what a loan costs them, but not necessarily how much that loan costs lenders. Implicit in the interest rate is that the loan

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[100] Don Lavoie, "The Market as a Procedure for Discovery and Conveyance of Inarticulate Knowledge," *Comparative Economic* Studies 28 (1986): 7. See also Israel M. Kirzner, "Prices, the Communication of Knowledge, and the Discovery Process," in *The Political Economy of Freedom: Essays in Honor of F. A. Hayek*, ed. K. R. Leube and A. H. Zlabinger (Munich: Philosophia Verlag, 1984), 139–151.

costs lenders something, whether actual costs or opportunity costs (see discussions of *damnum emergens* and *lucrum cessans* in Chapters 1 and 3). Also, based on rates of interest tracking borrowers' creditworthiness, as approximated in credit scores, borrowers can achieve some knowledge of the insurance against default implicit in an interest rate. Yet, since these costs are not explicit, they allow borrowers (and observers) to conjecture over whether they are being overcharged. Lenders for their part might use this uncertainty to seek immoderate gains. A problem, of course, with suggestions of disclosing the costs of lending is its onerousness. Such a requirement could demand more of lenders than other providers of other goods and services, who generally are not required to disclose their costs. Nevertheless, providing such information could provide a praiseworthy precaution against deceitfulness.

Untrustworthiness

The term "credit" has been used at least since the sixteenth century to indicate a borrower's trustworthiness in loan repayment.[101] Default and bankruptcy sever any trust the lender placed in the borrower. Whether the borrower was trustworthy in the first place may even be open the scrutiny.

Yet, as John Dobson and Ken Riener's model suggests, "the existence of trustworthy agents in financial markets is not merely desirable from an economic perspective, but actually is *essential* if debt markets are not to fail. Specifically," they continue, "if lenders do not belief [sic] that some non-trivial cohort of trustworthy agents exists, then lenders cease to lend and debt markets cease to function. Also, the greater the proportion of honest agents, the greater is the overall level of economic activity."[102] Any observed promise-breaking on the

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[101] See *OED*, s.v. "credit, n.," II.9: "Trust or confidence in a customer's ability and intention to pay at some future time, shown by allowing money or goods to be taken or services to be used without immediate payment." Cf. David Graeber, *Debt: The First 5,000 Years*, updated and expanded edition (Brooklyn, NY: Melville House, 2014), 328.

[102] John Dobson and Ken Riener, "The Rationality of Honesty in Debt Markets," *Managerial Finance* 22, no. 4 (1996): 21.

part of borrowers is parasitic on the trustworthiness of (most) borrowers.[103] Succinctly, though a market in interest-bearing loans could exist without borrowers ever defaulting, it could not exist if all borrowers defaulted. Furthermore, since default is a possibility under all debt transactions, it is therefore not unique to interest-bearing lending. Untrustworthiness may be observable in interest-bearing lending, but it is not unique to it and does not on this level of examination seem to depend on it.

Indeed, reductions in interest rates appear, at least in one significant context, to encourage lending to riskier borrowers and lead to more defaults. There is evidence that when regulators lower real interest rates (for instance amid financial crises), banks contract with riskier customers, whose presence in the borrower pool leads to higher likelihood of defaults.[104] With the Brazilian economy as their case study, José Angelo Divino and his coauthors advise:

> These findings do not imply that Central Banks should raise interest rates during financial crises. They simple [sic] suggest that reductions in the basic interest rate should not be followed by credit expansion which eases credit history analysis of potential borrowers. Carefully analysing the borrowers' credit risk would avoid undesirable increases in the individuals' probability of default.[105]

This advice signals that the combination of lowered interest rates with expanded credit leads to higher instances of default. The lowering of interest rates may lead to credit expansion, which then leads to higher probabilities of default, but if neither central banks nor the commercial banks that lend from them charged interest, then it is unlikely that this credit expansion would occur. On the contrary, a credit drought would likely ensue, one consequence of which being the elimination of the possibility of default. This is by no means a desirable scenario, but it suggests that probability of default, and the levels of

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[103] Ibid.
[104] José Angelo Divino, Edna Souza Lima, and Jaime Orrillo, "Interest Rates and Default in Unsecured Loan Markets," *Quantitative Finance* 13, no. 12 (2013): 1926.
[105] Ibid.

untrustworthiness that it may represent, have stronger ties to the availability of credit than to rates of interest.[106]

Considered from another angle, however, interest has default built into its mechanism. As discussed in Chapter 1, a portion of interest is notionally charged as insurance against default of the borrower, thus presuming that some borrowers will indeed default. Theoretically, this portion of interest makes sense only because some borrowers default or can default. The portion of interest that covers the risk of default could rely, at least in part, on the vice of untrustworthiness. Yet, default can occur through little or no fault on the part of the borrower. Therefore, interest to cover default, while accounting for untrustworthiness, does not necessarily rely on it. Put another way, default can occur without this vice, so interest to cover default does not of necessity imply this vice.

Nevertheless, interest arguably introduces into the loan contract an excuse, if not an incentive, for default. If interest is viewed as in part an insurance premium against default, borrowers may have reason to believe that a moral obligation to repay as promised dissolves with financial distress. Suggestive of such a conclusion is that a lower rate of default occurs under Islamic financing contracts than under conventional ones.[107] Even if some *riba*-free loans still involve what regulator would consider interest, in such cases the charges are not conceived of or presented by Islamic banks as payment for default risk.[108] A confounding variable, however, is that religious people may default less in general.[109] Thus the difference

[106] It should be noted, of course, that even if a borrower defaults, it does not necessarily mean that she lacks the virtue of trustworthiness. Unforeseeable circumstances, such as accidents and illness, may render a borrower unable to fulfill her obligations.
[107] Lieven Baele, Moazzam Farooq, and Steven Ongena, "Of Religion and Redemption: Evidence from Default on Islamic Loans," *Journal of Banking & Finance* 44, no. 1 (2014): 141–159; Aniss Boumediene, "Is Credit Risk Really Higher in Islamic Banks? *Journal of Credit Risk* 7, no. 3 (2011): 97–129; Janice C. Y. How, Melina Abdul Karim, and Peter Verhoeven, "Islamic Financing and Bank Risks: The Case of Malaysia," *Thunderbird International Business Review* 47, no. 1 (2005): 75–94.
[108] Islamic bankers are cognizant that they must cover the risk of default, but since they cover this risk indirectly and do not justify any charges based on insurance against default, it would be difficult for borrowers to justify default by citing the Islamic bank's charging something deemed as interest.
[109] Wen He and Maggie (Rong) Hu, "Religion and Bank Loan Terms," *Journal of Banking & Finance* 64 (2016): 205–215.

in default rates between Islamic financing and conventional loans may merely be a higher instance of religiosity among its customers. This heightened religiosity may even encourage greater trustworthiness among the customer pool more generally since, as the model developed by John Dobson and Ken Riener suggests, trustworthy borrowers "will tend to induce at least some of the opportunistic agents to act virtuously."[110] In other words, trustworthiness breeds trustworthiness among borrowers. Further studies would do well to control for religiosity in making comparisons between default rates on Islamic and conventional financing. Only then can a more conclusive argument be made about whether interest promotes default or default merely has a higher instance in conventional finance due to more untrustworthy borrowers' being present.

Two further confounding variables are credit scores and bankruptcy. A person's credit score offers incentives for developing trustworthiness. A history of repaying debts is one factor in improving a person's credit score. A better credit score can lead to qualifying for lower interest rates, thereby offering borrowers an incentive for repayment. The threat of a damaged credit score offers a disincentive to any opportunism represented by default. Even if borrowers are tempted to justify default based on a notion that the principal is "insured" by interest qua insurance premium, the credit-score mechanism will punish them for acting upon this justification. With a damaged credit score, defaulters will find future credit less available and costlier. So, even if interest does inherently contain a justification for default, this incentive may be counterbalanced by the disincentive inherent in the credit-score system.

The other confounding variable is the possibility of bankruptcy. While modern bankruptcy laws have ended some of the ills associated with interest and debt, they have perhaps also augmented the occasions for default. The history of bankruptcy law in the United States offers a useful illustration. The Bankruptcy Reform Act of 1978, which

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[110] Dobson and Riener, 21.

superseded the amended Bankruptcy Act of 1898, has been characterized as marking the beginning of the current U.S. bankruptcy system, a system that "attempts to set aside moral judgment and balances the interests of debtors, creditors, and society at large."[111] In 2005, concerns about bankruptcy abuse were addressed by further legislation, specifically the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA).[112] Concern remains, however, about whether these legislative efforts have yielded adverse incentives; incentives that, if not promoting default, are insufficient to dissuade borrowers from it and to adhere to the terms of loan contracts.[113]

Although the system is "characterized by forgiveness of debts and rehabilitation of the debtor,"[114] it may have unintended, negative effects on the morals of debtors, or at least on those of corporate debtors. Economists describe as a "moral hazard" the lack of incentive to protect against some risk when the burden of that risk is borne by someone else. Some economists fear that a moral hazard arises out of the U.S.'s bankruptcy system:[115]

> [These economists] worry that debtor-friendly provisions encourage risky behavior that may harm corporate shareholders, creditors, and other stakeholders. Some notice that corporate CEOs manage to capture much of the upside with compensation tied to company stock. Most executives benefit even when the stock rises due to overall market conditions and not the company's performance relative to peers. However, the critics notice that few penalties exist for failure. For these observers, the bankruptcy system further enables the problems with CEO accountability.[116]

In this analysis, the provisions of the U.S. bankruptcy system may incentivize activities that lead eventually to default, to promise-breaking. When incentives are tied to maximizing share value and lack robust consequences for failure, it is small wonder that CEOs would risk default and bankruptcy in exchange for rising stock prices. If this characterization is correct,

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[111] Branch and Taub, 512.
[112] Public Law 109–8, accessed May 25, 2020, https://www.congress.gov/109/plaws/publ8/PLAW-109publ8.pdf.
[113] A recent working paper suggests that BAPCPA has been effective in reducing bankruptcy filings, while reducing some interest rates. See Tal Gross et. al, "The Economic Consequences of Bankruptcy Reform," Working Paper 26254 (Cambridge, MA: National Bureau of Economic Research, 2019).
[114] Branch and Taub, 512.
[115] Ibid., 517.
[116] Ibid., 517–518.

then greed could be intertwined with (some) debtors' untrustworthiness. More specifically, greed may lead these debtors to grow untrustworthy.

To argue that interest itself leads to higher rates of default is fraught with uncertainties. Although financial commentators continue to express concern that rises in interest rates would trigger higher rates of default,[117] empirical verification that any interest increases levels of default is not forthcoming. Bankruptcy laws may be the actual culprit for increases in default. Furthermore, even if interest itself also exacerbates the occurrences of default, it is not clear whether such increases represent increases in the vice of untrustworthiness. The borrower may simply be unable to pay through no fault of her own and because interest-bearing debt may make it harder to repay.

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Charges that interest arises from and cultivates vices fails to win a conviction. The Islamic and especially the Christian rationales give forceful cases that *riba* and usury are vicious. When these indictments of greed, deceitfulness, and untrustworthiness are transferred to lending at interest today, however, the evidence is insufficiently conclusive. Interest may be acquitted, but it is by no means exonerated, especially for individuals prone to these vices.

On the indictment of greed, lending at interest returns a not proven verdict. The average ROE for money centers and regional banks, except in emerging markets, are unremarkable. Overall, the returns on corporate and government bonds suggest caution and moderation when compared with stocks. Bankers' salaries certainly soar high enough to thrill, if not satisfy, an acquisitive spirit, but the same can be said of other professions.

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[117] E.g., Laura Noonan, "Higher Interest Rates Point to More Bank Profits," *Financial Times*, March 13, 2017, accessed June 5, 2020, https://www.ft.com/content/f84dbae4-e713-11e6-967b-c88452263daf; Nav Athwal, "Should P2P Lenders Be Concerned about Rising Rates?" *Forbes*, June 3, 2016, accessed May 25, 2020, https://www.forbes.com/sites/navathwal/2016/06/03/should-p2p-lenders-be-concerned-about-rising-rates/#675e67926b07.

Indeed, compensation for CEOs of top financial institutions is a fraction of their counterparts' in some technology companies. For some talent sets, at least, industries other than banking offer greater scope for wealth accumulation, which desired in excess is fundamental to greed.

The history of truth-in-lending laws attest to the challenges posed to truth-telling by lending. Yet, interest, like all prices, conveys implicit information about lending—that loans come at a cost to lenders. While borrowers may have an excuse for defaulting because of interest (as an insurance premium), credit-score systems counteract at least part of this conceivable inducement.

In short, although associating some moral vices with interest-based lending raises some concerns, a preliminary review presents insufficient evidence that interest-based lending is inherently vicious. Nevertheless, the Christian, and to a lesser extent Islamic, rationales flag vices of which lenders and borrowers should be alert. For the person disposed to these vices, avoidance of (or at least a cautious approach to) interest-based lending could constitute a "pre-commitment mechanism" to check vicious intentions and avoid the cultivation of vice. Avoiding lending or borrowing at interest could even be supererogatory. Lending without interest is congruent with a desire to avoid any taint of or temptation to greed. By lending without charge, one can preclude deceit while conveying that waiving the lender's costs is a gift to the borrower. If borrowers do not borrow at interest, or at least at interest charged in part as insurance against default, then they may feel greater obligation to fulfill their promise to repay the principal.

Chapter 8

Interest and Justice

In May 2019, Senator Bernie Sanders (I-Vermont) and Representative Alexandria Ocasio-Cortez (D-New York) introduced the Loan Shark Prevention Act. The legislation would cap interest on consumer credit at fifteen percent per annum. Writing in support of the bill, Sanders outlines how many Americans lack the savings to cover emergency expenses, such as for the repair of a broken-down car or for the medical bills of a sick child.[1] These people's relative penury could force them to turn to credit cards, by which "they get ripped off," according to Sanders.[2] Admittedly, Sanders takes aim not at interest as such, but merely interest rates he perceives as excessive. Nevertheless, for him, financial institutions, namely credit card issuers and payday lenders, are stealing from customers through the interest they charge. In other words, the price of borrowing above a certain rate is unjust.

From Islamic and Christian rationales, this chapter probes the basis for a position more radical than that of Sanders. It asks whether all interest is unjust. It also asks less sweeping questions about whether certain rates of interest, some forms of interest, or portions of some interest payments are unjust. Also considered is whether relinquishing interest is supererogatory. As framework for this analysis, two kinds of justice are to be distinguished.

Justice is multifaceted. These facets are contested, as is the term's signification. Nevertheless, some common ground emerges among theorists, who "agree that justice consists in giving each person his or her due, or treating like cases alike."[3] This chapter

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[1] Bernie Sanders, "Banks have been ripping off Americans for Too Long. I have a Plan to end It," *CNN Business*, May 17, 2019, accessed May 25, 2020, https://edition.cnn.com/2019/05/17/perspectives/bernie-sanders-loan-shark-prevention-act/index.html.
[2] Ibid.
[3] Serena Olsaretti, "Introduction: The Idea of Distributive Justice," in *The Oxford Handbook of Distributive Justice*, ed. Serena Olsaretti (Oxford: Oxford University Press, 2018), 2.

makes use of two of those facets: distributive and commutative justice, facets traceable to Aristotle's *Nicomachean Ethics*.[4] While each facet will be discussed in more detail in the second part of this chapter, a couple of broad points can be made here.

As its name implies, distributive justice concerns fair distribution. Since 1971, when John Rawls published *A Theory of Justice*, distribution has played an outsized role in theorizing within political philosophy.[5] Today, justice discourse often centers around questions of fair distribution, which is sometimes identified with justice itself.[6]

Different times and persons extend a smorgasbord of ethical footings on which to base just distribution. Aristotle narrates how free birth, wealth, and virtue have won support as footings for just distribution.[7] Today, effort, equality, need, productivity, sacrifice, and scarcity win strongest support.[8] Distributive justice does not necessarily enjoin parity or arithmetical exactitude in distribution, but correspondence based on ratios.[9] The equality it offers may address unequal claims and claimants. Jack and Jill may both have claims to the pail of water, but their claims may be unequal.[10] The principle upon which division is made can yield divergent results. An efforts-based approach may say that Jill is owed more water than Jack because of her greater effort. A needs-based approach may say that Jack, who breaks his crown, is owed more because of his greater need. An equality-based approach may divide the water equally based on notions of human equality. Under each approach,

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[4] E.g, Hussein Hassan, "Contracts in Islamic Law: The Principles of Commutative Justice and Liberality," *Journal of Islamic Studies* 13, no. 3 (2002): 263–265.
[5] Olsaretti, 1.
[6] Ibid.
[7] Aristotle, *Nicomachean Ethics* 5.3, in *The Complete Works of Aristotle*, vol. 2, ed. Jonathan Barnes (Princeton, NJ: Princeton University Press, 1984), 1785.
[8] Divine, 196.
[9] Cf. Ibid., 195.
[10] "Jack and Jill," the traditional English nursery rhyme, runs:

Jack and Jill
Went up the hill
To fetch a pail of water;
Jack fell down
And broke his crown,
And Jill came tumbling after.

distribution is based on a ratio. If Jack's and Jill's claims are deemed unequal, then the share of the water distributed should correspond to his or her claim. The charge of distributive *injustice* would similarly adhere to unequal distribution to equal claimants and to equal distribution to unequal claimants.[11] Uniting the diverse understandings of distributive justice, is the consensus that "distributive justice is justice in the distribution of benefits and burdens to individuals, or consists in the balancing of the competing claims persons make on the benefits that are up for distribution."[12]

Commutative justice is the facet of justice governing equity in interpersonal transfer. Today, often relegated to legal discussions,[13] commutative justice appears in some writings as justice's only proper form.[14] Whereas distributive justice aims at proportional equity based on ratios between things and persons, commutative justice demands "an exact arithmetical equality of thing for thing, of value for value, of *quid pro quo*."[15] It demands perfect reciprocity. It is no respecter of persons, as such, but of things.

This demand for equality also applies with regards to involuntary transfers. Theft requires restitution. Divine notes that "if the transfer has been forced, exacted against the will of the owner, as in robbery or theft, justice demands restitution or compensation to the full value of the property taken."[16] Theft altogether lacks reciprocity; it is a transfer of value from one person or entity to another without the return of any other goods, equal or otherwise.

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[11] Divine, 195.
[12] Olsaretti, 2.
[13] Gretchen Larsen and Rob Lawson, "Consumer Rights: An Assessment of Justice," *Journal of Business Ethics* 112, no. 3 (2013): 519.
[14] Divine, 197–198.
[15] Ibid., 197. Cf. Antoine R. Cuny de la Verryère, *Finance catholique: Au fondement de la finance éthique et solidaire* (Cormelles-le-Royal: EMS, 2013), 67: "*La justice commutative pose notamment une obligation générale de restitution du bien au profit de celui à qui celui-ci appartient. La justice distributive pose l'interdiction de «l'acception de personnes», qui est l'élévation aux dignités civiles ou ecclésiastiques d'un individu sans une raison fondée sur son mérite ou sur le bien public, mais uniquement parce qu'il est riche ou qu'il est un parent.*" This description of distributive justice illustrates how certain attributes (i.e., wealth and parenthood) are sometimes no longer considered as "merits."
[16] Divine, 199.

Rationales for the *riba* and usury prohibitions include appeals to forms of justice that resonate with distributive and commutative justice, at least in some of their forms. Although distributive and commutative justice can be distinguished, the forms of justice invoked in support of the bans are not always neatly distinguished. At the same time, however, when, for example, Christian sources liken usury to theft preying on the unfortunate, their account perhaps draws to the surface the unity of justice under its distributive and commutative aspects. Conscious of this unity and aiming to avoid repetition, I do not attempt to disentangle and then assign Islamic and Christian rationales to either justice's commutative or distributive facet. Instead, I present the rationales while noting the facets therein contained. Yet, for the sake of conceptual clarity, I treat of distributive and commutative justice sequentially in conducting the secular moral analysis.

Interest and Distributive and Commutative Justice

Hypothesis: Loans at interest violate distributive and commutative justice.

ISLAMIC AND CHRISTIAN RATIONALES

In articulating rationales for the prohibition of *riba*, proponents of Islamic finance frequently include justice as a rationale, and sometimes as the primary one, for the prohibition of *riba*.[17] Hassan, for example, stresses a commutative interpretation of justice in stating that "the main reason for the prohibition . . . [is] the concern to ensure that equality is maintained in commutative dealings."[18] However, the restitution frequently invoked for resolving commutative injustices is often missing from guidelines for repentance of exacting *riba*, as outlined in Qur'an 2.275ff. In keeping with this passage, Chapra makes no mention of restitution in outlining steps for transitioning from an interest-based economy.[19] El-Gamal

[17] See Chapra, *Towards a Just Monetary* System, 55; Raza Mir and Muqtedar Khan, "Islamic Finance and Social Justice: A Reappraisal," in *Handbook of Research on Islamic Business Ethics*, ed. Abbas J. Ali (Cheltenham, U.K.: Edward Elgar, 2015), 241; Saeed, *Islamic Banking and Interest*, 32–33. Cf. Saleh, 15.
[18] Hassan, 290.
[19] See Chapra, *Towards a Just Monetary* System, 228–231.

voices a broad notion of justice in explaining the prohibition of *riba*, a prohibition which for him "aims substantively to protect individuals from getting excessively indebted, as well as paying or receiving unfair compensation for receipt or extension of credit."[20]

The Qur'an, Hadith, and *fiqh* material discussed in this thesis provide often inexplicit justice-based rationales for the prohibition of *riba*. While not declaring *riba* to be unjust as such, the Qur'an and Hadith offer indications to this effect.

Qur'an 30.39 suggests that *riba* is theft-like, since the loan is given "that it might increase through other people's wealth." An understandable reading of this passage is that "the prohibition is explicitly [based] on the inequality of the benefits."[21] *Riba*, however, is apparently distinct from theft in that the Qur'anic punishment for theft is not specified for *riba*. By contrast, Qur'an 5.38 prescribes amputation of thieves' hands.[22] This punishment is reiterated in the Hadith, though in many hadiths it is restricted to thefts above a certain amount.[23] Some Islamic authorities require restitution for minor or even all thefts.[24] This remedy, however, is not applied to *riba* in the Qur'an. As seen in al-Qurtubi's reading of Qur'an 2.275ff., repentant creditors are promised their principal, but no demand is made for restitution of *riba* that has already been paid.[25] At the same time, however, this reading is unsurprising, since the Qur'an is sometimes thought not to speak to crimes demanding restitution.[26]

A *hasan* hadith in Sunan Abu Dawud implies that at least pre-Islamic *riba* was unjust: "All *Ribā* of the *Jāhiliyyah* is abolished; you will have your capital sums. Do not deal

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[20] El-Gamal, 55.
[21] Hassan, 288.
[22] Qur'an 5.38: "As for the male thief and the female thief, cut off their hands as a recompense for what they have earned, as an exemplary punishment from God. Truly God is Mighty, Wise."
[23] See Sahih al-Bukhari 86.7 (6783), vol. 8, 407; 86.11–14 (6787–6801), vol. 8, 409–414. Sahih Muslim 29.1–2 (4398–4413 [1684–1689]), vol. 4, 454–460.
[24] "Commentary," in *The Study Quran*, 295–296: Al-Shafi'i extended this prescription to all thieves, including those who had undergone amputation.
[25] "Commentary," in *The Study Quran*, 121.
[26] Abd El-Rehim Mohamed Al-Kashif, "Shari'ah's Normative Framework as to Financial Crime and Abuse," *Journal of Financial Crime* 16, no. 1 (2009): 87.

unjustly, and you will not be dealt with unjustly."[27] Apparently, justice for creditors requires the repayment of their capital and justice for borrowers requires that they not be charged *riba*. As in the Qur'an, the promise of the repayment of principal is not accompanied by a requirement that already collected *riba* be repaid. Indeed, the Hadith is silent regarding any need for restitution of *riba* in straightforward loan contracts. Certain hadiths, however, do insist on repayment of what jurists would title *riba al-nisa* and *riba al-fadl*.[28]

Among the juridical explanations for the prohibition of *riba al-nasi'a* is the potential exploitation of poor debtors.[29] Indeed, the Shafi'i Qur'anic commentator al-Razi and the Hanbali scholar Ibn Qayyim are taken to support the view that "the *raison d'être* for the prohibition is injustice."[30] Fourth in al-Razi's enumeration of the reasons for the *riba* prohibition "is that the lender mostly would be rich, and the borrower poor. Allowing the contract of *riba* involves enabling the rich to exact an extra amount from the weak poor."[31] Ibn Qayyim believed that because most borrowers in the pre-Islamic period were destitute, they would have to defer repayment and incur a *riba* charge.[32] El-Gamal criticizes this sort of rationale because exploitation can also occur through contracts licit in Islam: a quid pro quo not subject to *riba* can have a market value of $100 can be sold on credit for $1,000 "without violating the rules of *riba* as envisioned by the jurists."[33] Instead, El-Gamal suggests looking to one of the juridical rationales for the prohibition of *riba al-fadl* to understand the prohibition of *riba* more broadly.[34] This rationale asserts that *riba al-fadl* contains excessive risk (*gharar*) of inequality (rather than inequality as such), given that "neither party knows whether the trade is beneficial or harmful to them."[35] El-Gamal leans on Ibn Rushd's use of

[27] Sunan Abu Dawud, vol. 4, 3334, 4.
[28] Sunan Ibn Majah (18), vol. 1, 85–86. Al-Muwatta 31.16 (28), 290–291; 31.19 (44), 293.
[29] El-Gamal, 50.
[30] Saeed, *Islamic Banking and Interest*, 41.
[31] Al-Razi, *Tafsīr al-Kabīr* 7, 41.
[32] Saeed, *Islamic Banking and Interest*, 41.
[33] El-Gamal, 50.
[34] Ibid., 51.
[35] Ibid.

this rationale in “his central analysis of *riba*” as including “uncertainty regarding equity in exchange.”[36] Ibn Rushd explains:

> It is thus apparent from the law that what is targeted by the prohibition of *riba* is the excessive inequity it entails. In this regard, equity in certain transactions is achieved through equality. Since the attainment of equality in exchange of items of different kinds is difficult, we use their values in monetary terms. Thus, equity may be ensured through proportionality of value for goods that are not measured by weight and volume. Thus, the ratio of exchanged quantities will be determined by the ratio of the values of the different types of goods traded.
> . . .
> As for [fungible] goods measured by volume or weight, equity requires equality, since they are relatively homogenous, and thus have similar benefits. Since it is not necessary for a person owning one of those goods to exchange it for goods of the same type, justice in this case is achieved by equating volume or weight, since the benefits are very similar.[37]

In this analysis, equality in the exchange of goods is essential, and volume and weight stand as proxies for equality of benefit or value in the exchange of goods that can be measured by them.[38] In applying this rationale to *riba* that includes deferment, there is uncertainty about whether payments in addition to the principal result in an equal exchange.

Conversely, as acknowledged by the Maliki jurist Al-Qarafi (1228–1285), the mere repayment of principal results an unequal transaction. El-Gamal explains:

> The classical prohibition of *riba* in finance refers to the unbundled sale of credit, wherein it is difficult to mark the interest rate to market. In this regard, the simplest form of an unbundled credit sale is an interest-bearing loan. Indeed, if loans were viewed as commutative financial contracts (i.e., if repayment of the loan were viewed as compensation for the lent amount), then even interest-free lending would have been deemed forbidden *riba*.[39]

However, as summarized by El-Gamal, Al-Qarafi argues in his work on legal theory *Al-Furuq* that “lending is exempted from the rules of *riba* because of its charitable nature.

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[36] Ibid.
[37] Ibn Rushd, *Bidayat Al-Mujtahid wa Nihayat Al-Muqtasid,* quoted in Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics, and Practice* (Cambridge: Cambridge University Press, 2006), 52–53.
[38] El-Gamal explains that “Of course, lacking the tools of calculus, which were only developed six centuries later, [Ibn Rushd] could not speak of marginal utilities and hence spoke only of ‘benefits.’ However, the economic idea is still the same: Equity dictates equality of amount when trading fungibles of the same genus, and equality of value when trading nonfungibles or goods of different genera” (El-Gamal, 202, n. 17).
[39] El-Gamal, 57.

Religiously, one who extends a loan does not seek repayment as the compensation, but rather seeks to give the time value of lent money, or usufruct of lent property, in charity."[40] Al-Ghazali makes a similar concession: "Selling a dirham with equal amount of it with late payment is also not allowed. This can be done only by a generous person who is trying to be benevolent. In the case of a loan, an act of generosity such as this conveys the person gratitude here and reward in the Hereafter."[41] As opposed to some modern proponents of Islamic finance,[42] in this analysis, money does have a time value. In a gratuitous loan, that value is donated to borrowers. The problem embodied in the *riba* prohibition is that it difficult to determine how that time value should be determined. As El-Gamal notes, individuals' time preferences exhibit inconsistency.[43]

El-Gamal argues that equality can be established through bundling implicit credit contracts with other economic activities. Indeed, he summarizes the *riba* prohibition as a ban on "trading in unbundled credit."[44] He argues that "in the case of legitimate credit sales or lease-to-purchase financing secured by real estate, vehicles, equipment, and the like, marking-to-market rental value of the financed instrument can help individuals and lenders determine whether or not the implicit loan is justifiable."[45]

That usury violates justice threads through authoritative Christian discourse on the usury prohibition. The Christian tradition offers multiple authoritative examples of usury's condemnation being based, at least in part, on the neediness of borrowers. The Old Testament, patristic tradition, and Church councils each suggest that part of the problem with usury is borrowers' poverty. That usury is thought to involve an unequal exchange is likewise

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[40] Ibid.
[41] Al-Ghazali, *Ihya' 'Ulum al-Din*, quoted in Ghazanfar, 875.
[42] E.g., Abdel H. Bashir, "Ethical Norms and Enforcement Mechanism in Profit-Sharing Arrangements," *The Mid-Atlantic Journal of Business* 34, no. 3 (1998): 260; Salman Ahmed Sheikh, "Thesis of Religion: Normative Basis of Islamic Economics," *Journal of Islamic Banking and Finance* 28, no. 4 (2011): 33–34; Sidani, 265.
[43] El-Gamal, 55–56. Time preference receives further attention below.
[44] Ibid., 62.
[45] Ibid., 63. Earlier in the same work, however, El-Gamal allows for rates of interest on credit sales and rent-to-own contracts to be marked to conventional interest rates (ibid., 54).

discernable, especially discernable in the likening of usurers to thieves, a theme found both the patristic sources and magisterial pronouncements.

Although at least one commentator views Scripture as lacking the notion that usury is "unjust by its very own nature,"[46] several passages from the Old Testament suggest that usury contributes to neediness and inequality in exchange. Three books of the Hebrew Bible, while not declaring that usury is prohibited because of borrowers' neediness, portray borrowers as unable to meet their needs. Exodus 22:25–27 discusses lending and usury in the context of poor Israelites. While not specifying that usury contributes to their poverty or fails to relieve it, the passage does specify that garments taken in pledge must be returned before sunset because they are poor borrowers' only covering. Leviticus 25:35–37 renders its prohibition in the context of a brother's inability to maintain himself.[47] Not only does the passage forbid usury, it demands that the impoverished brother be maintained and not given food at profit. Given this context, usurious lending is apparently seen as failing to alleviate impoverishment. Deuteronomy 23:19 names money and foodstuffs as among the kinds of exchange values subject to usury. The naming of foodstuffs possibly suggests that usury is especially destructive when exacted on loans of life-sustaining commodities. Nehemiah 5:7–12 offers the strongest indication that usury is an unfair transaction. The prophet demands not only the cessation of the practice, but also that any usury be returned. This remedy is often associated with theft and restoring commutative justice.

In the Fathers' writings on usury, meeting needs rather than equality in exchange is stressed. This emphasis contrasts with later Christian authorities, which stress justice's commutative aspect. The commutative aspect is not, however, entirely absent from the patristic analysis of usury. They associate usury with theft, which can offend both

[46] Moser, 28.
[47] For readings of "brother" in this passage and Deuteronomy 23:19–20, see Chapter 5.

commutative and distributive justice: the former based on the inequality of the values exchanged (or value going just one way), with the attending reduction in one party's wealth and the increase of the other's; the latter based on destitution resulting from this transfer of wealth.

Several prominent writers from the patristic period indicate that usury is unjust: Lactantius, Gregory of Nazianzus, Gregory of Nyssa, Ambrose, Augustine, and, in his way, Jerome. It is not that other Fathers deny this designation, but rather that they offer no philosophical case for the prohibition or they simply offer another rationale for the prohibition.

Although Lactantius appears to view apparent injustice as entwined with the prohibition of usury, he never declares it to be Scripture's own rationale for the prohibition. Nevertheless, this broad conception of justice appears to be conceived with reference to the just man of Ezekiel 18.[48] Lactantius deems usury unjust because the exchange is thought unequal and gains are pursued from needy borrowers.[49] Lactantius' conception of perfect justice has been compared to that of Plato because it "suggests that he had . . . some social consequences in mind."[50]

Lactantius does indeed consider injustice as closely aligned with ill effects, as can be seen when he reasons that usury is unjust "because if it did not occur, nothing bad would follow."[51] Injustice bears the fruit of ill effects, which in turn demonstrate the injustice of the activity that bore them. Within this wide-ranging understanding of justice, Lactantius presents usury as unjust because it fails to satisfy the poor's need (*necessitas*), on which it also preys, and constitutes an unequal exchange. He writes in his *Institutiones divinae*:

> If he shall have lent any money, he will not receive interest [*usura*], that the benefit may be unimpaired which succours necessity, and that he may entirely abstain from

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[48] Moser, 36.
[49] Ibid., 37.
[50] Ibid., 36.
[51] Lactantius, *Institutiones Divinae* 6.11 (PL 6.676): "*quia si non fiat, nihil mali sequitur*." My translation.

> the property of another. For in this kind of duty he ought to be content with that which is his own; since it is his duty in other respects not to be sparing of his property, in order that he may do good; but to receive more than he has given is unjust. And he who does this lies in wait in some manner, that he may gain booty from the necessity of another.
>
> But the just man will omit no opportunity of doing anything mercifully; but he will also so act that without any loss to himself, that which he lends may be reckoned among his good works. He must not receive a gift from a poor man; so that if he himself has afforded anything, it may be good, inasmuch as it is gratuitous.[52]

In this passage, equality in exchange and borrowers' necessity come to the foreground. Whereas usury damages the benefit of alleviating necessities, it is also usurpation of another's property. Both elements are also apparent in Lactantius' *Epitome divinarum institutionum*, where he condemns usury right after his condemnation of theft and then highlights that usury profits from others' ill-fortune.[53]

In one of his letters, Basil of Caesarea labels usury as "unjust gain."[54] Unlike some other Fathers, Basil does not mandate restitution of taking usury, but nonetheless insists that, before a man may be ordained, he must expend any such ill-gotten profits on the poor.[55]

Like Lactantius, Gregory of Nazianzus portrays usurers as intent on exploiting the poor. The substance of Gregory's idea is that usurers profit from the poverty of the destitute: "Another has defiled the land with usury and interest, both gathering where he had not sowed and reaping where he had not scattered, farming not the land, but the necessity of the needy."[56] The Nazianzen appears to find it obvious that to profit from another's need is wrong. In alluding to the Parable of the Talents (i.e., "gathering where he had not sowed and reaping where he had not scattered"), Gregory of Nazianzus tries to give a Scriptural hue to his perception of usury as being driven by an exploitative purpose.

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[52] Ibid., 6.18 (PL 6.698–699), trans. William Fletcher, in *Ante-Nicene Fathers*, volume 7, ed. Alexander Roberts, James Donaldson, and A. Cleveland Coxe (Buffalo, NY: Christian Literature Publishing Co., 1886), rev. and ed. Kevin Knight, accessed June 3, 2020, https://www.newadvent.org/fathers/07016.htm.
[53] Lactantius, *Epitome divinarum institutionum* 64 (PL 6.1076). Cf., Moser, 37.
[54] Basil of Caesarea, *Epistola CLXXXVIII* 14 (PG 32.681–682; LCL 243.44–45).
[55] Ibid.
[56] Gregory of Nazianzus, *Oratio XVI* 18 (PG 35.957–958), 253.

Gregory of Nyssa, Ambrose of Milan, and Augustine of Hippo associate usury with theft. Theft is a strong theme within *Contra usurarios*. Gregory entreats usurers to "forsake the habits of a petty thief."[57] Ambrose classifies usurers' actions with those performed by robbers and tyrants.[58] Augustine likens usurers to thieves.[59] Although these Fathers associate usury with theft, they do little to explain how it constitutes an unjustified taking of another person's property. This association seems to indicate that usury infringes commutative justice, but these Fathers are often ambivalent and seem to have a more expansive sense of justice in mind. Although often less than clear in their articulations, they seem to present usury as not only a form of unequal exchange, but also as a means of depriving borrowers of life's necessities.

Gregory of Nyssa provides a good example of this ambivalence. Although he seems to envision usury as being exacted from both rich and poor borrowers, the Nyssen trains his focus on usury's contribution to the poverty of borrowers instead of on there being inequality in what is exchanged. Nonetheless, Gregory's demand that usury be restored offers an indication that usury violates commutative justice. Gregory writes that the usurer should "restore to your brother what you have wickedly stolen and be compassionate."[60] Even here, however, his focus remains the debtors' sorry condition, a condition under which they have presumably been forced to borrow. They deserve, in his estimation, compassion. Later in the work Gregory offers a rich statement of reasons for not lending at usury, an extract of which was quoted in Chapter 5 and Chapter 7. In stating that one should not be "greedy to persons

[57] Gregory of Nyssa, *Contra usurarios* (PG 46.436), 295.
[58] Ambrose of Milan, *De Tobia* 4.12 (PL 14.764; CSEL 32/2.524), 32–33. Cf. Ibid. 14.46 (PL 14.777; CSEL 32/2.544), 60–63.
[59] See Maloney, "The Teaching of the Fathers on Usury," 260.
[60] Gregory of Nyssa, *Contra usurarios* (PG 46.445), 298. Cf. Ihssen, "Basil and Gregory's Sermons on Usury," 415–417.

asking for money [through usury],"[61] Gregory forefronts the neediness of borrowers, while recognizing inequality in usurious transactions.

Like Lactantius, Ambrose applies a holistic standard of justice to usury—the practice violates equality in exchange and preys on borrowers' necessity. These two aspects of justice are perceptible in a passage from *De Tobia*: "What is more unjust than you who are not even thus contented with the payment of the capital? What is more unjust than you who give money and make life and patrimony liable?"[62] Ambrose's first question implies that repayment of the principal is just but not demand for something more, which would insert inequality into the exchange. A nearby passage confirms this reading. In it, Ambrose chides usurers for giving less and exacting more.[63] Borrowers meanwhile lack nourishment but must pay usury.[64] Ambrose's second question likewise underscores the injustice of threatening livelihoods, not to mention family possessions. He numbers this trespass as among usury's gravest atrocities. In neither passage does Ambrose present injustice as the rationale for Scripture's prohibition of usury, though he does make that claim in lines between these passages. Referring to Psalm 55 (54), Ambrose claims that King David deplored the injustice of usury.[65] Ambrose presents usurers as funding Judas's treachery, and like these most infamous of usurers, "wicked also those who give that they may destroy an innocent man."[66] Once again, usury's wickedness is not only that it destroys, or rather kills (*interficere*), the innocent, but also that of an unequal transfer, for "what the proscription of tyrants or the violence of robbers is wont to do, this the wickedness alone of the usurer is accustomed to inflict."[67] As these passages from *De Tobia* indicate, Ambrose of Milan offers a rationale for

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[61] Ibid. (PG 46.443), 298.
[62] Ambrose of Milan, *De Tobia* 4.13 (PL 14.764; CSEL 32/2.524–525), 32–33.
[63] Ibid. 3.11 (PL 14.763; CSEL 32/2.523), 30–31: "*minus datis et plus exigitis*."
[64] Ibid. 3.11 (PL 14.763; CSEL 32/2.523), 30–31.
[65] Ibid. 4.12 (PL 14.763; CSEL 32/2.524), 30–31.
[66] Ibid. 4.12 (PL 14.763; CSEL 32/2.524), 30–31.
[67] Ibid. 4.12 (PL 14.763; CSEL 32/2.524), 32–33.

the prohibition of usury that points to justice that meets necessities and demands equality in exchange.

Like Ambrose, and as previously stated, Augustine likens usurers to thieves.[68] Equality in exchange and need likewise figure in his reasoning.[69] Augustine combines a demand for restitution of usury with a recognition that rich lenders oppress the poor.[70] In this analysis, usury is holistically unjust because not only is the transfer unequal and akin to theft but it also extracts from the poor's necessity. Undoubtedly inspired by Scripture's prohibition of usury, Augustine does not, however, claim that injustice is the reason for the ban, though he surely offers the rationale in support of it.

Jerome extends the argument based on necessity even to situations where necessity no longer exists. Jerome relates the following scenario: A man borrows a peck (*modium*) of seed for planting and reaps a harvest of ten pecks; the lender of the seed reasons that he should receive an additional half peck as compensation (leaving the grower with eight and a half pecks).[71] Jerome does not entertain that this arrangement could be perhaps considered a business partnership. Instead, he depicts the grower as needy at the time of borrowing and pronounces the exacted half peck to be usurious and as exploitative of the grower's (previous) need: "Did he give to one as having or as not having? If as having, certainly he ought not to have given, but he gave as one not having; therefore, why is he exacting more as if from one as having?"[72] Jerome's strict interpretation of Scripture's prohibition of usury has been characterized as absolutist.[73] He cannot fathom an exception to the prohibition or the prohibition not applying in such a scenario. Although his reasoning does not respond to the change in circumstances (that the grower after harvest now has far more seed than was

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[68] See Maloney, "The Teaching of the Fathers on Usury," 260.
[69] Augustine of Hippo, *Sermo LXXXVI* 5.5 (PL 38.525–526).
[70] Augustine of Hippo, *Epistola CLIII* 6.25 (PL 33.664–665).
[71] Jerome, *Commentariorum in Hiezechielem* 6.18 (PL 25.176; CCSL 75.240), 210.
[72] Ibid., (PL 25.177; CCSL 75.240). Translation is mine.
[73] Maloney, "The Teaching of the Fathers on Usury," 259.

borrowed), the basis of this reasoning resembles that of the patristic writers discussed above. Jerome finds it wrong to demand the increase of usury from someone in need.

In short, Lactantius, Gregory of Nyssa, Ambrose, and Augustine agree that usury contravenes justice, with differing emphasis on the neediness of the borrower or inequality in the exchange. Jerome joins them in the former, though with doubtful persuasiveness. Magisterial teaching likewise notes these two facets of justice, though with greater discussion of the latter facet.

The Fourth Lateran Council (1215) concludes its stipulation to protect crusaders from usury with a warning of stern penalties for "prelates of churches who are negligent in showing justice [*iustitia*] to crusaders and their families."[74] To obtain justice for the crusaders, not only does Lateran IV order lenders to desist from exacting usury, it also stipulates that creditors be compelled to repay any usury they nevertheless exact.[75] Lateran IV also orders that the usury due to Jewish moneylenders be canceled and that, while on crusade, the crusaders "shall not be embarrassed with the inconvenience of paying interest [*usurae*]."[76] Although this passage may merely be a case of positive law or an attractive proposition to draw recruits, it may also show a tendency to view usury as potentially encumbering crusaders in their mission. Instead of being needy merely to live as in the patristic material, indebted crusaders are needy of resources to pursue the crusade.

In discussing the *montes pietatis*, Pope Leo X in *Inter multiplices* recounts how some "masters and doctors add that in these credit organisations neither commutative nor distributive justice is observed."[77] Although he ultimately sides with the *montes*, he commends these theologians and jurists for their "zeal for justice . . . which desires to prevent

[74] Fourth Lateran Council, Constitution [71], 269.
[75] Ibid.,
[76] Ibid.
[77] Fifth Lateran Council, *Inter multiplices*, 626.

the opening up of the chasm of usury."[78] Nevertheless, he also commends the other party of theologians and jurists which supported the *montes* out of "love of piety and truth . . . which wishes to aid the poor.."[79] Pope Leo X defends the *montes*:

> We declare and define, with the approval of the sacred council, that the above-mentioned credit organisations, established by states and hitherto approved and confirmed by the authority of the apostolic see, do not introduce any kind of evil or provide any incentive to sin if they receive, in addition to the capital, a moderate sum for their expenses and by way of compensation, provided it is intended exclusively to defray the expenses of those employed and of other things pertaining (as mentioned) to the upkeep of the organisations, and provided that no profit is made therefrom. They ought not, indeed, to be condemned in any way. Rather, such a type of lending is meritorious and should be praised and approved. It certainly should not be considered as usurious; . . . It would, however, be much more perfect and more holy if such credit organisations were completely gratuitous.[80]

Apparent in this statement is that fees to cover expenses are not to be categorized as unjust usury, as the opponents of the *montes* had argued. The injustice of usury, then, would seem to be in profits made beyond expenses. Yet, only actual losses (*damnum emergens*) are accounted for, not lost profits (*lucrum cessans*).

As discussed in Chapter 3, the popes eventually accepted a title to *interesse* based on *lucrum cessans*, but with three provisos: First, payment for lost profits could only be for an at-hand business opportunity; second, the payment must be for less than the projected lost profits from the business opportunity; and third, charity must be the chief intention in making the loan.[81] Analyzed, these three provisos retain the magisterial concern for distributive and commutative justice. The first proviso demands that the loss of profit be likely, as the business opportunity must be in fact present. The second proviso recognizes the ease with which investors-turned-lenders can over project lost profits and demands that they err on the side of underpayment in seeking *interesse* for *lucrum cessans*. Finally, the third proviso includes a recognition of the sorry circumstances of borrowers. If charity must be lenders'

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[78] Ibid., 627.
[79] Ibid.
[80] Ibid.
[81] Noonan, *The Scholastic Analysis*, 258.

primary intent, then it seems fair to deduce that they should be cognizant of whether demanding payment for lost profits would undermine the assistance they give to borrowers.

As acknowledged in Chapter 3, it is unclear whether the Congregation for the Propagation of the Faith's determination on lending by Chinese converts (approved by Pope Innocent X) distinguished between usury and payments covering the risk of default or merely between usury and probable expenses in recovering principal. Nevertheless, commutative justice in lending was still tacitly affirmed. Recall that the Congregation required that the payment be made "by reason of a probably imminent danger . . . provided there is considered the equality and probability of the danger, and provided that there is kept a proportion between the danger and what is received."[82] The requirement of equality and proportionality signals a need for correspondence between the risk incurred by lenders and the charge paid by borrowers. If, as argued by Alphonsus Liguori (1696–1787), the permitted payments are for risk of default and for the probable expenses in recovering principal, commutative justice still plays a role.[83] In Alphonsus's view, it would be usurious to make these charges if a guarantor or pledge has been offered, since these could be used to cover those risks. Furthermore, the view is that such payments are only commutatively just if they are to cover costs rather than yield profits.

In his encyclical *Caritas in veritate* (2009), Pope Benedict XVI asserts that right intention is fundamental to ethical finance and worries that usury can be exploitative, though refraining from an affirmation of whether it is inherently so:

> Above all, the intention to do good must not be considered incompatible with the effective capacity to produce goods. Financiers must rediscover the genuinely ethical foundation of their activity, so as not to abuse the sophisticated instruments which can serve to betray the interests of savers.
> …
> The more vulnerable sectors of the population . . . should be protected from the risk of usury and from despair. The weakest members of society should be helped to defend

[82] Congregation for the Propagation of the Faith, 289.
[83] Noonan, *The Scholastic Analysis*, 292.

> themselves against usury, just as poor peoples should be helped to derive real benefit from micro-credit, in order to discourage the exploitation that is possible in these two areas.[84]

Although Benedict praises micro-credit in these same paragraphs for having "its roots in the thinking and activity of the civil humanists," namely those who formed the *montes pietatis*, he pairs their efforts with those of usurers as potentially exploitative. While making explicit mention of "the sophisticated instruments which can serve to betray the interests of savers," Benedict implicitly recognizes that lending instruments can similarly serve to betray the interests of borrowers. If this reading is correct, Benedict believes that usury, as well as micro-credit, are susceptible to exploitation of the weak and exploitative intent, but not necessarily inherently exploitative.

SECULAR MORAL ANALYSIS

Distributive Justice

Guided by the religious sources used in this thesis, the following takes a needs-based approach to distributive justice. Need was the primary distributive criterion during Muhammad's lifetime, though other criteria, including equality, subsequently arose as concerns within the Muslim world.[85] Although many Muslim scholars concern themselves with social justice and income inequality,[86] it is claimed that

> notwithstanding the differences in opinions with reference to what constitutes basic needs, the Muslim economists are in consensus that the main objective of distributive justice is the guaranteeing of basic need fulfilment to all. They unanimously agree that the other two goals of distribution include achieving equity in personal income and eliminating extreme inequalities.[87]

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[84] Pope Benedict XVI, *Caritas in veritate* (2009), no. 65.
[85] Shafinah Rahim and Mustafa Omar Mohammed, "Operationalizing Distributive Justice from the Perspective of Islamic Economics," *International Journal of Economics, Management and Accounting* 26, no. 2 (2018): 427.
[86] E.g., Ozan Maraşlı, "Interest and Social Justice: The Impact of Real Interest Rate on Income Inequality," *İslam Ekonomisi ve Finansı Dergisi* 2, no. 1 (2016): 77–118; Mir and Khan, 241.
[87] Rahim and Mohammed, 427. Cf. Munawar Iqbal, introduction to *Distributive Justice and Need Fulfilment in and Islamic Economy*, ed. Munawar Iqbal (Leicester: The Islamic Foundation, 1988), 16–17.

This assessment clearly indicates that need-fulfillment is paramount in Islamic economics, even above considerations of inequality. Recall that dire need, *darura*, can exempt Muslims from the *riba* prohibition. Also, within the Church's tradition, contribution and need take pride of place as criteria for distribution.[88] Additionally, a needs-based approach meshes well with the sufficiency opposed to greed. Indeed, this approach to distributive justice would be considered "sufficientarian," as it posits that "everyone should have enough," contrasting with an egalitarianism that posits that "everyone should have the same."[89]

The "enough" of sufficientarian versions of distributive justice is approachable through what constitutes a "need." Needs entail a three-way relationship between (a) a person or other subject, (b) the thing needed, and (c) the purpose for which the thing is needed: (a) Jack needs (b) water (c) to quench his thirst.[90] Should Jack have the water needed to quench is thirst, he can be said to have enough water. Although any purpose could be said to entail necessities—for example, getting movie tickets necessitates having enough money—not all purposes are needs in the same way. Some are essential for mere human existence, others for living a more fulfilled life, and still others for fulfilling desires that go beyond either of these. If I do not have food and water for staying alive, I will be unable to meet other needs such as education for a job, and without income from my job I may lack requisite funds for little luxuries that add greater comfort and facility to human existence.[91]

While there is broad support in ethics literature that *basic needs* can lay the foundation for needs-based distributive justice,[92] there is some diversity in the content of these basic needs and how they are to be identified. A survey of the literature, however,

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[88] See, for example, *Catechism of the Catholic Church* 2411.
[89] Gillian Brock, "Sufficiency and Needs-Based Approaches," in *The Oxford Handbook of Distributive Justice*, ed. Serena Olsaretti (Oxford: Oxford University Press, 2018), 88.
[90] This is an adaption of the three-place relation articulated by David Schmidtz, *Elements of Justice Elements of Justice* (Cambridge, U.K.: Cambridge University Press, 2006), 165. I developed the example in consultation with Brock, 99.
[91] Cf. Schmidtz, 164.
[92] Brock, 99.

suggests some common themes. Basic needs are those which are essential to staying alive and for human agency.[93] In philosopher David Braybrooke's influential account, necessities for social functioning are basic needs.[94] As the basis for his account, he identifies four basic social roles: citizen, householder, parent, and worker—basic needs are those that are indispensable to mind or body in fulfilling these roles.[95] Some needs require a certain minimum fulfillment on daily or near daily basis, such as those for clothing, food, shelter, and water; others only with appropriate frequency in certain periods, such as sexual needs.[96] Len Doyal and Ian Gough offer a complementary and likewise influential schema for basic needs. As summarized by Gillian Brock, this schema recognizes needs as "universalizable preconditions that enable non-impaired participation in any form of (human) life."[97] Like Braybrooke, Doyal and Gough recognize these needs to be both physical and psychological. Physical health and the mental competence that constitutes autonomy are primary basic needs.[98] For Doyal and Gough, in support of these are numerous other needs, including not only food, clothing, and shelter but also such needs as physical and economic security and appropriate education.[99] In short, these influential accounts of needs lead to a vision of distributive justice in which not only the bare necessities of survival carry normative weight; psychological needs and basic social needs can too.[100]

A needs-based approach to distribution does not of itself specify the appropriate mechanism for distribution. Essential, however, is that the distribution should take place. In some accounts, distribution is direct; in others, indirect.[101] I can contribute to meeting a destitute woman's need for food and drink by offering her food and drink directly, giving her

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[93] See ibid., 100.
[94] See ibid., 99.
[95] David Braybrooke, *Meeting Needs* (Princeton, NJ: Princeton University Press, 1987), 48ff. See Brock, 99.
[96] See Braybrooke, 50.
[97] Brock, 100.
[98] Ibid.
[99] Ibid.
[100] Cf. ibid.
[101] Cf. ibid., 101.

the money to purchase them, directing her to a soup kitchen, or, more long-term, getting her a job so she can provide these for herself.[102] Her needs may also be met socially, through civil or governmental institutions. It is beyond the ambition of this thesis to investigate whether lenders (*qua* lenders) are under any moral obligation to provide for the basic needs of those who borrow from them. Up for consideration instead is whether interest necessarily thwarts borrowers in fulfilling their basic needs.

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An analysis of the distributive (in)justice of interest cannot but cover some of the same ground as Chapter 6, since distribution and effects concern end states. Given this common ground, the analysis here is somewhat abbreviated. Still, this section takes a narrower focus than Chapter 6. It asks not merely whether well-being is diminished through interest-bearing transactions, but rather whether borrowers sink into a state in which their basic needs are unmet or they become trapped in such a state. As shown in Chapter 6, interest does not always lead to states worse than before the loan. Sometimes the state of borrowers is even improved. From this conclusion, it can be deduced that interest-bearing loans do not always violate distributive justice, since improvement in one's finances may lend facility to meeting one's basic needs. Indeed, the elimination of interest could not of itself guarantee just distribution and the fulfillment of need.[103] Nevertheless, neither do these admissions prove that no loan at interest defies distributive justice.

Take for example a hypothetical medical loan. Brad owes $15,000 after surgery for a broken collarbone. The loan is extended over three years with an APR of 13%. His monthly payment comes to around $505.41, that is $88.74 more per month than if he only had to repay the principal in thirty-six equal payments of $416.67. $88.74 a month, or just under

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[102] Cf. ibid.
[103] Cf., Rafiq Ahmad, concluding remarks in response to Ali Ahmad Rushdi, "The Effects of the Elimination of *Ribā* on Income Distribution," in *Distributive Justice and Need Fulfilment in and Islamic Economy*, ed. Munawar Iqbal (Leicester, U.K.: The Islamic Foundation, 1988), 249.

$3,195 over the three years, may contribute to any financial hardship experienced by Brad, but the medical costs and the debt to cover them are likely to be primarily responsible. Such an amount of interest may be what shoves Brad into the breadline, a man now unable to meet his basic needs. Alternatively, the amount of interest may instead merely intensify this inability.

A similar analysis is applicable to the homeowner who can no longer pay the mortgage bill or to the entrepreneur who defaults on a business loan: The interest could contribute to the inability to meet basic needs (and if the entrepreneur is also an employer, also those of her employees). And yet, this inability could also be credited to the necessity to repay debt itself. In loan contracts, interest does not have a monopoly on contributing to destitution, though it can intensify other factors. The entrepreneur would still be required to repay a loan and that payment could bankrupt her even without the addition of interest. Furthermore, in Western countries many safeguards have been put in place to protect borrowers. We have outlined positives and negatives of bankruptcy in earlier chapters.[104]

Sovereign debtors have likewise found ways in recent years to protect social services from the effects of interest payments. Alun Thomas admits in an IMF working paper that "declines in debt-service costs among low-income countries help to raise health and education expenditures significantly."[105] At the same time, however, Thomas finds that "perhaps even more importantly, low-income countries have managed to fully insulate social expenditures from the effects of fiscal tightening over the past two decades, thereby protecting social expenditures from the effects of budgetary consolidation."[106] If these

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[104] The flipside of this, of course, is distributive justice for lenders. Default and late payments can cause banks to lay off employees, possibly making it difficult for them to cover their basic needs. Interest as insurance against default is considered under the heading of commutative justice.

[105] Alun Thomas, "Do Debt-Service Savings and Grants Boost Social Expenditures?" (IMF Working Paper Series, Policy Development and Review Department, International Monetary Fund, 2006), 17, accessed June 2, 2020, https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Do-Debt-Service-Savings-and-Grants-Boost-Social-Expenditures-19272.

[106] Ibid.

assessments are correct, decreases in interest payments may help low-income countries increase distributive justice through welfare programs. Yet, these increases should not be overestimated, for, as Thomas cautions, "although debt-service savings generate increased expenditures on health and education, the effects are small in relation to the expenditure amounts needed for those countries . . .; indeed, the required increase in resources dwarfs the effects of debt-service savings and higher grants estimated in this paper."[107]

From the foregoing examples, it appears that relinquishing or lessening interest can lead to greater distributive justice for some borrowers. At the same time, however, other particulars, such as high medical expenses or a country's low-income, can have a greater impact in lessening distributive justice than the elimination of interest.

Commutative Justice

In outlining his theory of exploitation, the political philosopher Hillel Steiner offers a matrix for interpersonal transfers that provides a useful basis for examining interest's relation to commutative justice.[108] The matrix initially rests on a pair of binaries: unilateral/bilateral, voluntary/involuntary.[109] These binaries allow Steiner to distinguish three kinds of interpersonal transfers, namely, donation, exchange, and theft (see Table 3).[110] A donation is unilateral and voluntary; an exchange is bilateral and voluntary; theft is unilateral and involuntary.

Complexity is added to the matrix, however, with the addition of a third binary: equal/unequal (but having a value greater than zero).[111] This binary allows for the inclusion of a category between donation and exchange, termed by Steiner (and others) as a benefit.[112]

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[107] Ibid.
[108] This matrix is laid out in Hillel Steiner, "A Liberal Theory of Exploitation," *Ethics* 94, no. 2 (1984): 225–228.
[109] See ibid., 225–226.
[110] Steiner, 225.
[111] Ibid., 226.
[112] Ibid., 226.

Steiner offers the example of a charity banquet, helpfully sometimes also known as a "benefit dinner." With plates priced above their value, the benefit—material benefit at least—is unequal in this quasi-exchange, quasi-donation.[113] Steiner represents a benefit as bilateral and voluntary, like an exchange, but with the things exchanged being unequal (see Table 3). Another way to look at a benefit, however, is as a complex transfer, part exchange and part donation: the exchange is to the level of the value of the plate, whatever is paid above this is a donation.[114] Thus, benefit can also be viewed as being voluntary and containing unilateral and bilateral elements.

Steiner finds the three binaries (unilateral/bilateral, voluntary/involuntary, equal/unequal) as insufficient for distinguishing exploitation from other kinds of interpersonal transfer. Significantly for our purposes, he places exploitation between exchange and theft. For him, exploitation is like exchange, and unlike theft, in that the transfers are bilateral and voluntary.[115] Exploitation is unlike exchange in that the interpersonal transfer is considered unequal (see Table 3). Lack of voluntariness might seem to align exploitation and theft. Steiner, however, rejects such suggestions. He questions whether the lesser amount transferred by one party is really comparable to a "thief's token," as in some trifle left behind to parody an exchange.[116] Steiner qualifies this stance in comparing benefit and exploitation. He contrasts the voluntariness of exploitation with that of benefit. In the case of benefit, the benefactor would typically be unwilling to receive equal value from the benefiter if it were offered (which would turn the transfer into a mere exchange).[117] In exploitation, however, the exploited would be willing to receive equal value

[113] Ibid.
[114] Cf. ibid. As an indication of this perspective, sometimes a portion—but not the whole—of the ticket price can be written-off income tax filings as a donation. Charities sometimes even note this write-off amount on the tickets themselves.
[115] Steiner, 226.
[116] Ibid., 227.
[117] Ibid.

from the exploiter if it were offered (which would likewise turn the transfer into an exchange).[118] Exploitation is, therefore, accepted by the exploited party since an exchange is not forthcoming. Steiner thus, at least tacitly, admits that the degree of voluntariness present in exploitation is distinct from that associated with an exchange or benefit. Exploitation is not as involuntary as theft, but neither is it as voluntary as an exchange or benefit.

Table 3[119]

	Donation	**Benefit**	**Exchange**	**Exploitation**	**Theft**
voluntary/involuntary	voluntary	voluntary	voluntary	voluntary	involuntary
unilateral/bilateral	unilateral	bilateral	bilateral	bilateral	unilateral
equal/unequal	–	unequal	equal	unequal	–

Even if with a focus on inequality in exploitation, and thus its commutative injustice, one cannot escape considering voluntariness altogether. Steiner is coy about what approach is to be taken for establishing a "shared scale of value" upon which the equality or inequality of a transfer can be judged.[120] Two prominent shared scales of value, however, present themselves for such assessments. The first is determined by the market price; the second is determined by costs.

Aristotle represents a version of this first, now dominant approach. Legal and political philosopher Mark Reiff highlights some salient features of Aristotle's approach. Reiff notes: "For Aristotle, value was to be determined by need or want, although this is usually translated less precisely as 'demand.'"[121] Reiff clarifies that,

> while Aristotle thought value was to be determined by need or want, he accordingly did not mean idiosyncratic need or want, but rather common need or want. . . . Rather than turn on the whims and desires of any particular individual, it turned on the wants and needs of the general public or, to put it in more modern terms, the needs and wants of the "reasonable" man, a hypothetical construct designed to represent the

[118] Ibid.

[119] Steiner offers several figures to help explain his matrix. While benefitting from them, Table 3 takes a more streamlined approach.

[120] See, for example, Steiner., 224.

[121] Mark R. Reiff, *Exploitation and Economic Justice in the Liberal Capitalist State* (Oxford: Oxford University Press, 2013), 74.

> needs and wants of the market as a whole, needs and wants that were in some sense normal, natural, typical, and on that basis justifiable.[122]

Among the strengths of this first approach is its ability to establish a common value for goods and services based on the aggregate of voluntary choices. As buyers or sellers, participants in a market for some good or service establish how valuable that good or service is to the participants on average. A weakness of this approach is where an exchange value has not yet been established or where there is reason to believe that the market price does not represent voluntary choices of market participants. To employ another example from the healthcare sector: A group of people need some life-saving drug. A company holds a patent to this drug and is willing to sell the drug to this group of people. Given the need for the drug to sustain life and the monopoly power held by the pharmaceutical company over the drug, the voluntariness of the purchasers of the drug is subject to question. Since the shared scale of valuation rests on the aggregate of these participants' consent, when the voluntariness of the parties on one side of the transaction is questionable, so too is the shared scale of value based on this aggregate.[123]

Cost-based approaches to value avoid—or at least relocate—questions of voluntariness in their formulations. In considering costs, two approaches to cost are common for establishing value:

> Accountants and economists have long had different views as to what counts as a "cost" of production and therefore what the profit (or loss) generated by an act of production might be. For example, accountants typically do not include the opportunity cost of capital (what could be earned if the capital required for production were instead employed in some other equally risky investment); . . . In other words, accountants are generally more concerned about historical cost—what is the sum total of out-of-pocket expenses and income actually generated by an activity, whereas economists have a much more prospective outlook.[124]

[122] Ibid.
[123] Cf. ibid, 74ff.
[124] Reiff, 109–110.

These costs bear resemblance to those known as *damnum emergens* and *lucrum cessans*: one set is actual costs (of production) and the other are the cost of a bypassed opportunity or profit. The views on cost of accountants and economists are dependent on market valuation (unless prices are otherwise imposed). The actual costs of production, including materials and labor, can themselves be established through market processes based on consent. Returns on other opportunities can also be determined by these same processes. As with *damnum emergens* and *lucrum cessans*, these approaches to costs can to some extent be united. In considering the value of a good or service, the business can establish a sales price at which it will break even and consider what its profit will be should the good or service fetch what a similarly risky investment fetches. Based on the return on the other investment, the company can estimate, if not the market value of its own good or service, at least what the market value would have been had it made the other investment instead. By using these actual costs and opportunity costs as baselines, the company can establish a price for its good or service that compensates for these costs.

It may appear as a weakness that this approach to value does not establish what customers as a group are voluntarily willing to pay for some particular good or service. Yet, as in the example of the market for a life-saving drug, the voluntariness requisite for establishing this valuation may be absent in markets for some goods or services. In such cases, this second approach at least limits a valuation to what a company's actual costs and lost profits are, and not whatever can be exacted from customers because of their need and thereby weakened bargaining power.

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Since an interest-bearing loan is (at least partly) a bilateral transaction, it is clearly not a donation.[125] For the same reason, it cannot be classified as theft. Neither can interest be considered a benefit, since borrowers would presumably prefer otherwise identical interest-free loans should they be available. Exchange and exploitation are the remaining options. Within Steiner's framework of interpersonal transfers, if interest-bearing loans are exchanges, then there is an equality between the "quid" and "quo"; if such loans are instances of exploitation, then the "quid" and the "quo" are unequal.

Conventional finance is founded on the concept of the time value of money.[126] Implicit in this concept is a moral footing for conventional finance based on commutative justice; overthrow of this footing threatens the very morality of conventional finance.[127] The concept is that present money is more desirable than the same amount in future. This preference for present money over the same amount at a future date is sometimes attributed to the interest that can be gained in the meantime.[128] Many empirical studies have indicated a preference for present goods over the same amount of future goods, though with some anomalies.[129] At the same time, however, the explanation that money has a time value because of interest emanates the aura of circularity: because one can charge interest, present money has greater value than the same amount in the future, therefore it is just to charge interest. A more charitable, as well as more nuanced reading, is that interest measures the preference for present money over future money. The market rate of interest in this

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[125] Reiff makes a similar observation in stating that "in cases of transactions between employer and employee, merchant and customer, manufacturer and supplier, lender and borrower, professional and client, and the like, there should be a heavy presumption against donative intent, and the burden of proving otherwise should be difficult although not impossible to meet" (Reiff, 81).

[126] Robert W. Kolb, "Ethical Implications of Finance," in *Finance Ethics: Critical Issues in Theory and Practice*, ed. John R. Boatright (Hoboken, NJ: John Wiley & Sons, 2010), 26, 27. Cf., Sheikh, 33.

[127] Cf. Kolb, 27.

[128] E.g., *Oxford Dictionary of Business and Management*, 6th edition, s.v. "time value of money" (Oxford: Oxford University Press, 2016).

[129] For a review of such studies, see Shane Frederick, George Loewenstein, and Ted O'Donoghue, "Time Discounting and Time Preference: A Critical Review," *Journal of Economic Literature* 40, no. 2 (2002): 351–401.

conception makes present money equal to future money. Hence, it is the time preference itself that gives greater value to present money which give lenders' a title to interest, rather than ability to charge interest as such.

A common financial view is that "interest rates are devoid of moral significance, and any interest rate that emerges from the interplay of supply and demand in markets free of deception and coercion is entirely unproblematic."[130] In other words, the return of interest on a loan represents an equal valuation of the principal loaned now and the principal and interest paid later. If 8% interest is the exchange value for a $10,000 loan, then the transaction is commutatively just and not exploitation. Problems arise for this account when there appears to be a defect in voluntariness within some debt markets. While defending the time value of money (apparently as determined by the market) as the moral foundation of modern finance, Kolb admits that "many finance academics and practitioners would concede that some practices of charging interest can be excessive and abusive, especially when the borrower is poor or naïve."[131] This squares with Thomas Aquinas' reply to the objection that usury is licit since it is given freely. Aquinas (1225–1274) reasons that "he who gives usury does not give it voluntarily simply, but under a certain necessity, in so far as he needs to borrow money which the owner is unwilling to lend without usury."[132] This reasoning captures something intuitive about debt finance for distressed borrowers—their unenviable position compromises their voluntariness in entering the transaction. Their inability to meet their basic needs taints their consent to borrow at interest. The voluntariness with which these impoverished borrowers enter the contract is overshadowed by the direness of their condition. Physical coercion may be absent, but such borrowers certainly enter the transaction with more bounded consent than other borrowers. There is a palpable risk that the interest to which

[130] Kolb, 27.
[131] Ibid.
[132] Thomas Aquinas, *Summa Theologiae* 2.2.78.1.

these borrowers in general consent does not carry the same level of voluntariness as is present under other conditions. It is not that they choose to pay this rate of interest over other options, rather it is that they choose paying this rate of interest over not meeting basic necessities. Other groups of borrowers, however, are not constrained by the drive to secure basic necessities, but rather by the available options in achieving other less desperate objectives.

For example, businesses that choose to finance ventures through loans at interest rather than selling an equity stake are not subject to the necessity noted by Aquinas. They choose an interest-bearing loan not for mere survival, but because the loan at interest seems more beneficial than the sale of equity. This preference for a loan at interest over selling an equity stake seems to adhere to the standard for choosing between options generally accepted as voluntary. Accordingly, consent in such a scenario would not seem to undermine the voluntariness requisite for establishing an exchange value. Interest-bearing loans in such scenarios are not plagued by the questionable voluntariness that marks loans to persons in dire need. Thus, while loans to the needy risk being exploitative and commutatively unjust, loans to entities not so plagued seem to be exchange and commutatively just.

Can, however, loans to the needy overcome the risk of being commutatively unjust by setting rates based on costs? In other words, can the value of a loan be set based on costs? Here the four elements of the nominal interest rate (see Chapter 1) bear repeating: costs associated with servicing the loan, inflation (under nominal interest), opportunity costs, and risk of default. In examining each of these elements associated with nominal interest, the question is whether these costs can be used for setting the value of a loan.

Besides repayment of the principal, perhaps the easiest cost to justify is for expenses incurred in servicing the loan. It seems commutatively just that lenders should recoup incurred costs, otherwise the transfers would be unequal. Yet, interest as a percentage of the amount loaned risks not serving this function well. Servicing a loan of $100 or $100,000 to be repaid over the same period in equal instalments is likely to have only marginally different costs associated with them. Reciprocity seems more likely to be achieved through a flat-rate charge. Flat annual fees for credit cards, for instance, would seem likely to be commutatively just interest.[133] This additional sum would neatly coincide with payment for *damnum emergens*, since the addition covers actual costs.

Another cost incurred by lenders arises from inflation, which erodes purchasing power and constitutes a loss over time. Lending $100 today to receive a $100 in a year's time would constitute a loss for lenders if inflation has occurred. Mere repayment of the principal does not cover this cost to lenders.[134] Unless interest-free loans are offered as a benefit, they constitute a commutative injustice toward lenders, provided there is inflation. The portion of interest charged to cover inflation thus appears to be commutatively just, as it restores to lenders the (approximate) buying power they held when they made the loan. Indeed, not to pay such interest, unless a benefit to the borrower is intended, appears to be commutatively unjust to lenders. Since the loss to buying power is experienced as a percentage, so too should the interest; it should also be paid in proportion to that loss as a percentage rather than as a flat rate. Arguably, to ensure that interest rates are commutatively just in this regard, the rate would be linked to the actual inflation rate, as occurs in index-linked bonds. Inflation, as discussed in Part I, would likely count as *damnum emergens* and the amount paid to cover inflation would be considered *interesse* rather than usury.

Concluding that interest as repayment for inflation is commutatively just is problematized, however, if lenders' other options are considered. Besides spending the money and consuming the value it presently represents, a lender could merely hold the

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[133] N.b., annual fees are considered interest under U.S. regulations (see Chapter 1).

[134] Conversely, should there be deflation, the lender could realize an increase in buying power even if just the principal was repaid.

money in reserve. If the lender chooses this option, inflation would consume the money's buying power even if no loan were made. Inflation seems a weak justification for having the lost value restored if the money was not going to be spent until after the agreed repayment date anyway. Another option, however, would be to invest the money in an equity investment. Having this option available means the lender faces an opportunity cost if it lends instead of making the equity investment.

Indeed, a reason given for the preference for present money is the possibility of making a profit with it through investments.[135] Not pursuing such investments represents an opportunity cost, which the Christian tradition categorizes as *lucrum cessans*. Although investments vary in risk, none has complete certainty of profit. A title to interest linked at best to the estimate of relinquished profits risks runny afoul of commutative justice should the estimate of the cost be faulty. This concern mirrors that of El-Gamal expressed above: the concern that the rate set for interest-bearing loans risks being unequal to the actual profits forgone by lenders. Some may find this risk acceptable. For those who do not, however, more secure arrangements are possible. Interest could be indexed to returns on specific equity investments, such as stocks, so that the return on the loan would reflect actual lost profits. For example, a bank could offer a loan indexed to the S&P 500. Since the return on the S&P 500 can be volatile (for 2017 the total return was 21.83%, but in 2018 it returned a loss of -4.38%), the bank might even specify a five-year average of total returns (from 2014 through 2018, the average annual total return was 8.869%). By linking the interest rate to actual forgone profits (or losses), modern lenders could better ensure an equality between the profits lost than they can under mere estimates. It should be noted, however, that it would not be reasonable to collect separately for inflation and opportunity costs, since any rise in the price

[135] See Kolb, 26.

of an equity stake reflects inflation. However, the costs of lending as an additional service charge might be justified.

A possible contention even to this solution is that opportunity costs are not the sort of expense that ought to be remunerated. Salman Ahmed Sheikh, for instance, argues that one cannot charge a university for lost wages if one leaves employment to begin a PhD program.[136] He presents this as analogous to charging interest when lending out one's capital—the profits that would be received from other investment cannot be demanded.[137] This argument is faulty, however. Presumably opportunity costs enter the applicant's evaluation of whether to enter the PhD program. Universities recognize that applicants make such calculations and offer other incentives such as stipends, prestige, and promises of intellectual development and higher wages as compensation. If these incentives fail to entice applicants, then enrolment would cease. Similarly, if Firm A courts a star employee from Firm B, that employee's opportunity costs in moving firms will be figure into the pay and benefits that are offered. Firm A would certainly not dare to court the employee without addressing the opportunity costs of the move. Given these considerations, this analogy, if anything, suggests that borrowers should compensate lenders for their opportunity costs. Whether courting potential students, employees, or lenders' capital, one can be expected to offer compensation for opportunity costs.

Finally, it can be said that lending is costly to lenders since present money is more secure than money to be returned in the future. Borrowers may default or lenders may incur costs in seeking repayment. In obtaining a payment to cover these risks, lenders are notionally requiring borrowers to take out an insurance policy, wherein interest, or a portion thereof, functions as an insurance premium. Here Alphonsus Liguori's proviso on guarantors

[136] Sheikh, 32–33.
[137] Ibid., 33.

and pledges provides a useful starting point. It at first seems contrary to commutative justice to charge an insurance premium if the lender retains a pledge or right to an asset, such as through a mortgage, to cover for default. This is even more true when borrowers are required to take out independent mortgage insurance, which protects mortgagees (i.e., lenders in a mortgage) against non-payment. In the former scenario, however, it must be acknowledged that pledges and collateral, though ostensibly valuable, are not always readily saleable nor necessarily equal in value to the amount lent.[138] Putting these examples aside, however, it can be asked whether in other situations whether interest to cover for default represents compensation for a cost.

First, it helpful to recognize the character of interest as an insurance premium. Unlike a pledge or pawn, which is returned after repayment of the loan, interest as an insurance premium is not repaid. Interest as an insurance premium is distinct from other forms of insurance in that if the particular event takes places that triggers payment of the insurance cover, it is also the payee of the insurance premium that receives the cover rather than payer or some third party on the payer's behalf. This anomaly is less unusual when understood as compensation for lenders' expenses in running a business in which some borrowers default. A similar argument is advanced by the thirteenth-century Dominican friar Giles of Lessines.[139] He argues that in making a credit sale, the seller may charge an addition "on account of the loss he sees threaten him from delay in recovering payment or on account of the trouble which he fears will probably happen to him in seeking recovery of the debt, because of malice or impotence of the debtor."[140] Here, the argument's focus is the institution rather than the particular transaction. Lending institutions know approximately how many debtors will default and what the cost will be for recouping some of those debts. These costs

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[138] Cf. Noonan, *The Scholastic Analysis*, 129.
[139] See Noonan, *The Scholastic Analysis*, 130.
[140] Giles of Lessines, *De usuris*, quoted in John T. Noonan, Jr., *The Scholastic Analysis of Usury* (Cambridge, MA: Harvard University Press, 1957), 130.

are part of the operational expenses incurred by a lending institution and can be passed on to borrowers.

Maybe a more secure way for a lending institution to show a commitment to commutative justice would be for lenders to require borrowers to take out a third-party insurance policy.[141] Such an arrangement would remove the suspicion that lenders are disguising rent-seeking—i.e., seeking unearned profit—under the pretense of covering cost associated with defaults. This could perhaps also be achieved by borrowers' paying into an escrow-like account from which the bank could draw to cover defaults or expenses associated with recovering principal only when such costs are incurred. As with third-party insurance, the premiums charged would be assessed based on estimates of these costs for the pool of borrowers.

From the above, it appears that lenders can avoid the moral risks associated with lending to needy borrowers by establishing the amount of interest based not on what borrowers will pay, but on the costs associated with lending. However, to safeguard against charging merely notional costs, lenders would need to peg these costs to expenses actually incurred and rates of return present elsewhere in the market.

It could be supererogatory not to charge interest at all or a rate below what is justifiable in maintaining equality of transfers. Such loans would in effect be a benefit rather than an exchange. Interest-free loans would dovetail with El-Gamal's admission that lenders are indeed taking a loss or providing a benefit in lending without *riba*. Likewise, interest-free loans would resonate with Pope Leo X's position expressed in *Inter multiplices* that gratuitous loans to the poor are still more praiseworthy than loans that charge legitimate *interesse*.

[141] Considering the morality of insurance is beyond the ambitions of this thesis. For discussion of medieval Christian considerations of insurance ethics, especially as related to the usury prohibition, see Noonan, 202ff. For an overview of modern literature dedicated to insurance ethics, see Aaron Doyle, "Introduction: Insurance and Business Ethics," *Journal of Business Ethics* 103, no. s1. (2011): 1–5.

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Distributive and commutative justice supports lenders' limiting the interest they charge at least in some situations. Discovering the just limit for an interest rate when lending to such borrowers is no easy calculation, nor can such a rate be universalized as a standard rate. The borrower's financial situation and a society's safety nets could greatly influence whether the loan is distributively just or unjust. The weakened position of some debtors could make them vulnerable to consenting to a rate of interest they would not accept if they were not trying to meet their basic needs. By taking a cost-based approach to the elements of an interest rate in such situations, we can see that interest as presently constituted is also at risk of being exploitative and commutatively unjust. The portion of an interest payment that is used to cover the costs of servicing a loan seems more likely to conform with reciprocity if the interest is expressed as a flat rate rather than as a percentage. A rate of interest equal to inflation conforms to reciprocity if the lender intended to spend the money for consumption rather than save or invest it. If equity investment was the alternative, then a rate of interest equal to return of the forgone equity investment would be reciprocal. Finally, the lender could certainly go beyond the requirements of justice and allow lesser payments than what justice would require.

At the same time, however, it may be a greater distributive and commutative injustice if relinquishing interest leads to hoarding rather than lending to those in need; it would be better to lend to the poor at interest that recoups costs than not at all. Policymakers should keep this in mind as well. Indeed, if history is any guide, policymakers should perhaps tolerate even distributive and commutative injustices to avoid even greater injustices:

> There has always been a difference between the moral right against exploitation and the legal right—the point at which the moral right will be enforced using the power of the state. Even when the just price was seen as the market price, and any deviation from that price was considered morally wrong and therefore morally prohibited, only extreme deviations were legally prohibited, and only these extreme deviations could provide a basis for legal relief. In a perfectionist society like the one that Marx

> envisioned, all departures from perfection are to be strictly prohibited and compliance is to be enforced by the state, at least initially. But in a liberal society, some degree of moral deviation is always tolerated—the question is simply where to draw the line.[142]

The fifteen percent of the Loan Shark Prevention Act, discussed in the introduction to this chapter, may or may not have found the correct legal line, but it is certainly unlikely to have found a rate limit that is universally distributively and commutatively just. Regardless of legal limits, banks would do well to reimagine how they structure interest for poor borrowers. Considerations of distributive and commutative justice, and especially the latter, can offer guidelines for determining whether interest should be charged as a flat fee or as a percentage as well as a rubric for setting rates based on the various costs of lending.

[142] Reiff, 78–79.

Conclusion to Part II

Part II opened with a quotation from the Christian theologian Gerard of Siena, who writes: "It appears completely beyond question that a usurious contract is by its very nature wicked and bound up with vice. But I do not think it altogether easy to assign a clear reason for this."[1] Part II does not find the immorality of interest beyond reasonable doubt, yet neither does it roundly exonerate interest. Interest poses moral risk. Furthermore, abstention from interest-based lending may be supererogatory. The moral risk posed by interest becomes apparent in each of the three approaches to secular moral reasoning employed in Part II, as does the possibility of its avoidance being supererogatory.

Chapter 6 finds that there is a risk that interest-based loans, at least in some circumstances, contribute to outcomes less desirable than through other funding alternatives. This risk is twofold. First, since there is some uncertainty about the relative outcomes of alternatives to interest-based loans, especially one additional research has been conducted. Second, there is a risk that either the lender or the borrower has misjudged the likelihood of a desirable outcome in individual cases. Of course, there is also a risk that some borrowers will achieve less advantageous outcomes should interest-based loans become unavailable.

Chapter 6 also found that it might be supererogatory to seek interest-free alternatives, should they be available. From the perspective of ethical egoism, needy borrowers who first seek charitable donations or interest-free loans would be praiseworthy, even though they are not morally bound to seek these alternatives. Under certain circumstances, it was shown that an equity contract has the possibility of *both* parties realizing financial well-being greater

[1] Gerard of Siena, 66–67.

than what is possible under a loan at interest. Yet, since in the example the increase in financial well-being is expected equal under either the debt or equity contract, choosing the latter option was merely supererogatory. Sometimes, as noted above, abstaining from interest-based financing is a more secure way to avoid deleterious effects. While such effects are not the expected outcome, taking the risk of these effects into account and eschewing interest may be praiseworthy, if not obligatory.

Although the evidence presented in Chapter 7 is inconclusive regarding whether interest (inherently) arises from and cultivates vice, there are indications that it may present risks especially for individuals disposed to these vices. While investors and employees may find other options more profitable, greed may still be fed by the strength of returns and compensation in an industry based partly on interest. Truth-in-lending laws testify to how difficult it can be to convey the full cost of borrowing when lending at interest. This difficulty poses risks for honesty and opportunities for deceitfulness. Nevertheless, interest does implicitly convey the fact that lending is costly to lenders. Interest as partly an insurance premium to cover costs incurred by defaults may induce untrustworthiness on the part of borrowers, since it may provide an excuse for not adhering to the terms of the contract.

Given these moral risks, abstaining from lending or borrowing at interest could be supererogatory. One may not be morally obliged to avoid temptation, but caution may be praiseworthy. For some, lending without charge may be effective strategy for checking greedy and deceitful tendencies. By not borrowing at interest, or at least not at interest considered as insurance in case of default, would-be borrowers avoid presenting themselves with a ready-made excuse for not honoring promises of repayment.

As seen in Chapter 8, it is no simple task to set a rate of interest that is distributively and commutatively just. Outside of business loans, market rates may easily run afoul of justice's demands. Considerations such as a society's safety nets and the specifics of debtors' situations seem inextricable for determining whether a rate of interest complies with distributive justice. Should an individual borrower or class of borrowers suffer distributive injustice (approached from a needs-based perspective), the voluntariness of their consent in a transaction may be defective. If such a defect is recognized, then the commutative justice of the loan contract may be in jeopardy. From a cost-based perspective, should interest be dissected as compensation for specific costs, it becomes apparent that charging interest as a percentage of what is lent risks violating commutative justice.[2]

Caution in avoiding the risk of injustice could be viewed as supererogatory. Due to the risk of injustice that interest poses, not charging interest or charging interest at rates clearly below what perfect reciprocity allows, avoids the risk of injustice while practicing generosity toward borrowers. Placed within Steiner's terminology, instead of trying to maintain an (equal) *exchange* demanded by commutative justice and to avoid the commutative injustice of *exploitation*, the lender maintains justice by going beyond it, by making the loan contract a *benefit*: a voluntary unequal exchange. By benefiting borrowers in greater measure than is required by commutative justice, lenders perform a supererogatory act which also precludes the risk of injustice.

Rationales for the prohibitions of *riba* and usury help to foreground moral risks and supererogatory solutions for avoiding them. Avoiding (or at least taking caution when contracting with interest) may constitute a "pre-commitment device" for mitigating such risks.[3] Making use of this device could be viewed as supererogatory, as beyond being merely ethical, but also as a safeguard of one's ethics. Diminishing the risk of immorality appears supererogatory while also to some extent necessary for acting ethically, at least over the longer term. The Islamic and Christian traditions each capture this interconnection between

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[2] As indicated in Chapter 8, this conclusion does not necessarily mean that distributive and commutative justice demand that interest be banned nor that a specific limit to rates of interest be set.

[3] See Chapter 7 for El-Gamal's discussion of religious of the *riba* ban as "pre-commitment mechanism" against over borrowing.

supererogation and safeguarding. The Hadith warns, as we have seen, against "grazing too close to the sanctuary" lest one trespass upon it, that is upon what is forbidden. The Christian tradition provides the idea of the *skandalon*, a stumbling block, scandal. An action not necessarily sinful but disposing another to sin. A similar notion is that of a "near occasion of sin." When Roman Catholics make an act of contrition after confessing their sins to a priest, they affirm their resolve not only to avoid sin but even circumstances that "incite or entice one to sin."[4]

In short, even though the rationales for the bans on *riba* and usury do not inspire an analysis that finds interest necessarily immoral, Part II does suggest that interest presents moral risks and its avoidance may be supererogatory. Interest's ethical status remains uncertain in some respects and interest may increase the likelihood of immoral behavior. While these considerations are not decisive, such risks deserve serious consideration when deciding whether to lend or borrow at interest.[5] Abstaining from interest-based loans presents a supererogatory option that avoids these risks.

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This lengthy case study has implications beyond *riba*, usury, and even interest. It showcases the difficulties and limitations, but also the potential of further Islamo-Christian contributions to secular business ethics. Neither Islam nor Christianity is a monolith. "Denomination" labels just one of the subsets partitioning these religions. Nevertheless, divisions within Islam and Christianity are not impermeable. This thesis has trained its focus on authorities recognized within Sunnism and Roman Catholicism, yet these authorities do not solely have meaning for members of these denominations, but also other groups within Islam and Christianity. Development in Islamic and Christian teachings present further

[4] J. Delany, "Occasions of Sin," in *The Catholic Encyclopedia* (New York: Robert Appleton Company, 1911), accessed April 23, 2020, http://www.newadvent.org/cathen/11196a.htm. See also Piderit, 68–69, 223–224.
[5] Cf. Moller, 425ff.

challenges: the valences of terms shift nuance over time and between sources. Mapping correspondences and divergences is a painstaking, protracted labor. As seen in this thesis, this labor is helped by broadly shared frameworks (e.g., categorizations of actions). Nevertheless, granular analysis finds these frameworks to differ and thereby adding a further obstacle to comparisons. Despite these obstacles, this thesis has uncovered convergences. With these convergences, hopes of a broader Islamo-Christian partnership sprout new leaves. This is the hope cherished in Vatican II's *Nostra aetate*, the hope that Muslims and Christians might work "to preserve as well as to promote together for the benefit of all mankind social justice and moral welfare, as well as peace and freedom."[6]

For this hope to develop to bountiful maturity, however, the discourse must expand. While secular discourse may not replicate Islamic or Christian conclusions, such discourse provides a more common ground for discussion within business ethics. It is also the form of discourse which at present dominates business ethics as a scholarly field. Yet, as argued in the introduction to this thesis, this more-common ground need not be barren of religious argumentation. The Islamic and Christian argumentation in Part I personalizes secular analysis in Part II; it alerts persons on the spectrum of (Islamic or Christian) belief and unbelief that their respective traditions take firm stances against *riba* and usury. Such persons are prompted to pay attention to ethical determinations made in secular analysis. These prompts may be especially effective when secular conclusions share common tendencies with those of the Islamic or Christian authorities. They hint at and lend an authoritative impetus for asking: "If *riba* or usury is prohibited, is there an analog in secular ethics?" "If the signification of 'interest' is comparable to that of '*riba*' and 'usury,' should I receive and pay interest?" "Is interest ethical?"

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[6] Second Vatican Council, *Nostra aetate* (1965), 3.

As displayed in Part II, conclusions reached through secular moral analysis are not always identical to those reached on religious grounds, though they may share similar tendencies. Nor need they be identical for Islam and Christianity to contribute to secular moral analysis. The bans on *riba* and usury have inspired this reexamination of the morality of interest on secular grounds. In Part II, rationales used in support of these prohibitions even offer lines of reasoning amenable to secular discourse. The conclusion that interest carries moral risk may not amount to a secular analog of prohibitions of *riba* and usury, but neither does it bespeak opposition; rather, this conclusion reveals a shared tendency. Religious disquiet with *riba* and usury echoes in interest's moral riskiness. By repurposing the rationales supporting the prohibitions of *riba* and usury, the risk posed by interest advances to the fore.

In this thesis, this prodding of secular discourse raises it beyond that of right and wrong to that of security and supererogation—security in the right, security from wrong, and going beyond the call of duty to achieve this security. Islamic and Christian teachings can serve as alerts in business ethics, warning of moral precipices and signaling opportunities to climb beyond mere duty. While such a function is not unique to these religions nor religions in general, a systematic use of such guardrails will give Islamo-Christian contours to the moral discourse relying on them.

In the introduction to this thesis, we contemplated the opportunity of an Islamo-Christian partnership in pursuing ethical renewal in the financial industry. As in any partnership, the partners and their worldviews are distinct. Their differences can limit the scope of their partnership, yet the partners' commonalities as well as their differences can also fertilize the partnership and encourage its fecundity. This case study shows that even though the prohibitions of *riba* and usury are fraternal rather than identical, the rationales used for each prohibition can work together in a common cause of reevaluating the morality of interest. Differences in teaching on other matters should not deter future collaboration in promoting moral renewal within the financial and business sectors.

While the fruitfulness of developing an Islamo-Christian partnership is itself auspicious, partnerships between Islam and Christianity, both severally and jointly, and other religious traditions may also prove fruitful. An ever-expanding partnership holds even greater promise (with admittedly commensurate challenges). Enlisting other religious traditions would more widely personalize arguments and add more points of inspiration for secular analysis. This case study augurs well for such endeavors.