THESIS

A HISTORY OF INTEREST

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ABSTRACT

A HISTORY OF INTEREST

A History of Interest uses methods inspired by the work of Michel Foucault to uncover institutional aspects of credit and debt. It explores three hypotheses and covers the period 1290-1914. During this period, Anglo-American society went from a system of debt conscription and usury restrictions in the Middle Ages to a system of voluntary bankruptcy and credit reporting by the late 19th century. This thesis explains how that transition occurred. Situating these changes in Foucault's notion of disciplinary writing, it also suggests what that transition means for the modern world.

Keywords: Foucault, Interest, Usury, Debt Peonage, Debtor's Prison, Bankruptcy, Credit Reporting

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TABLE OF CONTENTS

CHAPTER 1

MODERN VIEWS ON THE HISTORY OF INTEREST

Overview

This chapter is primarily a literature review. The objective here is twofold—defining the scope of the project and grounding a few hypotheses about the topic. In order to define the scope of the project, the genealogical method requires that we identify a few events for structure. As in Foucault's works, these events need to be concrete, but not necessarily directly connected to the topic. Instead, they need to be likely to provide a good amount of primary source data. We can then ascribe pieces of evidence to these events. This chapter seeks to find a few events supported by recent research over the course of the period.

One challenge in addressing this topic is the time scale. 1290 to 1914 is quite a distance- too large to examine moment by moment, to small to tell us much about human nature. This is why Foucault's method seemed apt: he deals with similar problems over similar scales. The key is finding a few events that help explain change. These events are concrete-- they can be dated exactly, existed in a certain place, and contemporaries would have known about it. The major task, then, is to explain the events through evidence within a few years of each. This task is mostly achieved in later chapters, while this chapter focuses on finding major dates. In general, we are looking for a few events that might have intriguing causes and cause definite effects on the history of interest. This chapter finds seven.

The second objective of this chapter is to provide hypotheses about the topic that are supported by recent research. Few researchers, however, approach the transformation that is our focus. It's not that it's gone unnoticed- but the object of the research is somewhat different. Rather than trying to explain the

discrepancy between a medieval view of interest and a modern one, they may be interested, for example, in the emergence of capitalism or the ways the medieval Catholic Church used its position to extract monopoly rents. These questions are not the focus of this thesis, but the answers to them provide some direction for it.

Since there is not a large body of work directly related to the questions posed by this thesis, it is necessary to infer some hypotheses about the history of interest from other research. For simplicity, this chapter will define three hypotheses. These will each be the topic of one chapter for the thesis, and a comparison of the events within each chapter will be the heart of the analysis.

Usury Doctrines

Little has been done directly on the history of interest, except for one major work focusing less on causes and more on evidence about rates (see (Homer 1991). However, usury doctrines play a major role in explaining the rise of capitalism for some thinkers (see Appleby 1978; Homer 1991; Lewison 1999). These thinkers all draw on the work of R. H. Tawney in his Religion and the Rise of Capitalism (Tawney 1962). Tawney himself draws largely on Max Weber's theory of capitalism, expanding on the notion that capitalism required a certain work ethic as the condition of its development. In Weber's view, capitalism arose from particular historical circumstances, rather than as the result of expanding trade relations or a deterministic class struggle. Instead, capitalism was an ideological offshoot of the Protestant Reformation—especially Calvinism (Weber 1958). This review will not dwell further on Weber's argument, but its broad outlines are valuable for

understanding Tawney's view of the usury doctrines.

Tawney's major project is to analyze the "causes, as well as the consequences, of the religious mentality which he [Weber] analysed" (Tawney 1962 p.9). There are two major aspects of this project that are worth discussing in this chapter. First, Tawney is concerned with the content of the usury doctrines since they indicate, for him, the spirit of their age. Second, and critically for us, he is concerned with a particular theory of how they change. This aspect will be considered in the next section.

Tawney identifies the usury doctrines with the central piece of a larger doctrine of economic ethics (Tawney 1962 p. 27). These doctrines are ensconced in a certain vision of society in which economic classes are pre-ordained by God at birth. Although there is inequality between classes, each class is expected to behave with certain standards of justice towards the others. For the merchant class, this means a need to maintain 'just prices' (Tawney 1962 p. 39).

Just price theory is not exactly a theory of value, and so it has little to do with notions like market prices or natural prices. Instead, it is a theory of market ethics based on the principle of reciprocity via the Golden Rule. Notions of ownership, need, and the distinction between 'fungible' and 'non-fungible' goods (Roover 1967) define this principle. The notion of 'fungible goods' is similar to the notions of rival goods and use value. A good would be considered 'fungible' if in using it, one depletes it. Essentially, this distinction puts money and rival goods into the same category. Without trying to draw a bright line between what is and is not a just price, something many church doctors spend enormous effort explaining, this

review will merely explain why usury is *not* a just price.

Since money is a fungible good, when one person uses it, it is depleted. Hence, viewing money as a good rather than as a medium of exchange, the usury doctrines considered money sterile (Schumpeter 1954). From this perspective, usury was wrong because it expected a return on money that was already gone. To use an analogy, it would be like giving someone an apple to eat, but expecting them to reciprocate by giving two apples in return. Hence, the just price theory gives no weight to investment as a counterbalance to risk (Wren 2000). For Tawney, this theory has a dampening effect on the development of capitalism, despite (or perhaps because of) certain admirable qualities.

Tawney's approach to usury doctrines is not universal. Several authors argue that there were hidden motives behind usury doctrines. Notably, (Ekelund, Hebert, and Tollison 1989) argues that rent seeking may have been the real strength of usury doctrines. Thus, by modeling the Catholic Church as a monopoly, usury doctrines would be a borrowing constraint. This constraint could then be manipulated to make the interest rate a shadow price. Alternatively, the church could be seen as a public benefactor, and thus usury doctrines could be seen as a kind of social insurance (Glaeser and Scheinkman 1998). Ekelund has found better empirical support. Evidence from one English bank in 1714 suggests that usury laws were actually quite distortionary (Temin and Voth 2008). However, the institutions of the medieval church are, in many ways, the soil from which the modern world grew. That is to say, the Catholic Church was committed to neither profit maximization nor utility maximization, but rather had flexible objectives which

varied greatly with local conditions. Hence, applying models of modern institutions to medieval ones has limited value at best.

What, then, can we hypothesize about the place of usury doctrines in the history of interest? There are two points to consider: that usury doctrines are moral arguments and that they target the poor. The latter point is treated further down. On the one hand, the doctrine is cast in terms of an ethical principle. Thus, it has a normative emphasis, dividing the usurer from the just merchant. In that sense, we may look for the effects this distinction has-- especially on those who were outcast by it.

Who were these outcasts? At first, the Jewish population was. After the Second Lateran Council in 1139, all Christians were barred from usury. The Jewish philosopher, Maimonides, disagreed with the hard line the church took on usury. He argued that the scriptural passages dealing with usury only applied to 'your brothers'. Hence, Jews should not lend to each other, nor should Christians lend to each other, but Jews could lend to Christians and vice versa. At the time, Jews in most countries were barred from major guilds, and thus had fewer opportunities. Therefore, working as a moneylender was attractive for many Jews throughout Europe (Roover 1967).

Unfortunately, the opportunity quickly became a way to stereotype the Jewish population as greedy and immoral. This new stereotype probably contributed to the fury of anti-Semitism throughout Europe at the time. Of course, it was not the only cause. Blood libel and other cruel myths about Judaism contributed to hostilities against Jews. Significantly for this thesis, Jews were

exiled from England in 1290. This event will be the first in the thesis, since before 1290, usury is a major target of criticism; afterwards, all moneylenders are non-Jewish.

On the other hand, the usury doctrines clearly targeted the poor. Since just price theory viewed money as a commodity, and was based on a particular interpretation of reciprocity, money was treated as sterile. Therefore, lending was roundly condemned as usury. Were the church doctors simply unable to recognize the inadequacy of this attitude? It seems likely that, at least some of them, appreciated the potential of credit to stimulate investment. Johannes Nider, a fifteenth century monk, may have been among them.

Nider maintained the view that money is sterile, but also made the point that bankers should be rewarded for taking risk, and knew that supply and demand drove foreign exchange markets (Wren 2000). Why, then, did Nider maintain that money was sterile? It seems unlikely that he simply misunderstood that credit could drive investment. Perhaps it was the moral emphasis of these arguments that kept Nider from challenging the assumption that money was sterile. From this perspective, the usury doctrines look less like a misunderstanding of money than extreme risk aversion by theologians on behalf of the poor. After all, if loans are completely consumed, and no substitutions can be made, treating loaned money as a rival good makes some sense. Of course, the borrower thus conceived would be almost pathologically compulsive—but theologians were far more interested in social justice than economic efficiency.

From doctrine to law

Tawney argued that the Protestant Reformation, especially in the writings of Calvin and Luther, changed attitudes about usury. His perspective was dominant for some time, and is still casually accepted by many authors, but has been increasingly challenged.

The essence of Tawney's argument is that Calvin and Luther, following merchant uprisings against the Catholic Church, compromised their position on usury. To that point, everyone agrees. Both Calvin and Luther condemned usury before equivocating on it. However, Tawney seems to assume that these utterances were widely adopted by Lutherens and Calvinists. Of course, Tawney never stated his argument in this way, but his critics point it out as an implicit assumption.

Those who support Tawney's argument point less to the condemnation of usury as such (clearly usury was condemned for some time after Calvin and Luther, even in Protestant countries), than to the fact that attitudes about economic ideology changed dramatically during the seventeenth century. The best proponent of this approach is Joyce Appleby in Economic Thought and Ideology in Seventeenth Century England (Appleby 1978). She points out that, although arguments concerning usury appear throughout the seventeenth century, they lose any religious and moral emphasis after the Restoration. To the extent that the English Restoration is a step in the direction of Protestant consistency, this would support the assumption that the de-emphasis of usury doctrines is a Protestant phenomenon.

Critics of Tawney point out two problems with the assumption that usury

prohibitions were abandoned because of the Reformation. First, they note that there are several "escape hatches" (Roover 1967) built in to the system. This means that, far from being absolute prohibitions, Catholic thinkers themselves began eroding the doctrine. Instead of a sudden break with traditional notions, usury doctrines should be seen as a response to a twelfth century credit glut that slowly erodes until the mid-Nineteenth century when utilitarian thinkers like Bentham and Mill finally convince policy makers to repeal usury laws (Mews and Abraham 2007; Persky 2007). These critics point out that usury laws were not repealed in England until 1854, and argue that widespread acceptance of Bentham's argument against these laws is the major reason for the repeal. It is at least clear that Bentham's correspondence with Adam Smith in 1790 about usury laws influences J.S. Mill, and that this influence helps inform policy makers.

From the perspective of the genealogical method, it may not be terribly important whether Calvin or Bentham had better arguments for eliminating usury. Instead, we will take certain events that supporters of each claim find significant, and treat those points as useful for our analysis. Following Appleby, the Restoration of Charles II in 1660 should be one such event. She argues that the treatment of interest de-emphasizes morality. Perhaps usury laws are enforced less stringently after this time.

Also, the debate between Bentham and Smith in 1790, which some argue was the reason for repealing usury laws in 1854, will be considered alongside the establishment of the US Constitution a few years earlier. The reasons for choosing this event will be considered in a later section.

Beyond usury doctrines: early modern finance

Usury doctrines are part of our story during this period, but not all of it. Finance in the late middle ages was on the rise. Some argue that the end of the crusades created pressure and opportunities for trade ventures by European merchants (Cantor 1993). It was this pressure that built the credit glut of the twelfth century, and necessitated the usury doctrines in the first place (Mews and Abraham 2007). As time went by, the usury doctrines eroded, though it took time for unrestricted credit to emerge. Meanwhile, several innovations allowed the flow of trade goods without directly subverting usury doctrines.

It should be noted that several forms of credit were largely ignored by usury doctrines. Apparently the only form of consumer credit available in the middle ages was the pawnshop. This may be because certain "non-fungible goods" were involved in the transaction, so they did not clearly fit the definition of usury. Otherwise, there were forced state loans that resemble a modern municipal bond, "censuses" that worked like mortgages and annuities on agricultural land (except that they were paid in actual goods), and deposit banking. Furthermore, partnerships and associations sometimes had many silent partners who were effectively making a loan, though they had rights similar to equity holders today. Most controversially, there were bills of exchange which required a "gift" equal to a certain percentage of the bill (Homer 1991).

The bill of exchange was the main financial product of the famous Medici bank. In fact, most exceptions to the usury doctrines were addressed to this

instrument, since it clearly facilitated trade. The bill of exchange was similar to the modern draft, but was only ever in the form of an exchange contract. Also, there was some complicated semantic footwork that helped circumvent usury laws. Interest was charged as a "gift" or hidden in an augmented exchange rate, and the bills could not be discounted (Homer 1991).

It was this instrument that seems to have softened attitudes towards usury, whether one subscribes to Tawney's view or his critics'. If Tawney is correct, then Luther and Calvin altered their view of usury to accommodate certain merchants who supported them. Presumably, these merchants were engaged in foreign trade and were interested in freer credit markets for that reason. If Tawney's critics are correct, then the "escape hatches" de Roover points out exist to encourage productive activities, like trade. Of course, this latter view assumes that usury doctrines were a reaction to credit markets that overheated in the twelfth century because of trade. Hence, the main difference between the two is that the critics think trade is the effective agent of change, whereas Tawney and his school think policy is the driver.

In either case, the bill of exchange was there to facilitate trade, which through one process or the other facilitates further change. Since most authors mention the Medici in connection with this issue, we will use the failure of the Medici's London branch in 1478 as an event to target the influence of trade on the history of interest. In itself, this failure was probably no more significant than the failure of any large bank since new financiers emerged to fill the vacuum. Trade is also the subject of several seventeenth century works, so this event should

offer good background information.

The end of usury

By the end of the nineteenth century, usury restrictions in the United States had lost their teeth, though many states still have them on the books to this day. These are mostly token measures, however. Tawney's critics see the major reaction against usury restrictions coming just shortly before the turn of the nineteenth century, in a debate between Adam Smith and Jeremy Bentham.

In 1787, Bentham wrote Defense of Usury in reaction to Smith's Wealth of Nations. In fact, Bentham's work was a collection of letters to Smith. It is unclear what Smith thought of them. In the letters, Bentham maintains that, to be internally consistent, Smith should have conceded that restrictions on credit markets were, at least, morally neutral compared to other markets. Therefore, if other markets needed no restrictions, credit markets should also be free.

Smith apparently did not agree. In the Wealth of Nations, Smith argues that usury is an "extortion", and that countries should set a maximum level of interest just above the lowest market rate—which he expected would be around 8-10%. After Bentham's Defense of Usury, however, Smith published another edition of Wealth of Nations without changing the passages on usury, and sent Bentham a copy. He also sent a copy of his Theory of Moral Sentiments, perhaps to encourage more debate on the subject (Persky 2007). Unfortunately, Smith died in 1790 without having engaged Bentham's challenge directly.

A young J.S. Mill probably drew his strong views on usury from Bentham.

Mill, who as an adolescent edited all of Bentham's works, was influential in his turn on English policy makers. His Principles of Political Economy (1848) was the standard work on economics during the remainder of the 19th century (Mill 1965). Four years after its publication, Britain repealed its usury laws.

In the United States, this repeal was never truly completed. One study, (Benmelech and Moskowitz 2010), finds that usury restrictions in US States during the 19th Century, when binding, reduced the supply of loanable funds, and hence investment, thereby reducing output. They also find that the binding nature of these laws essentially disappeared in the early 1860s. The exact date varies, but around the outbreak of the Civil War most US States denuded their usury laws. This Civil War will serve as another event, both for the apparent trend towards freer credit and because it is near a major transition in bankruptcy law (as we will see shortly).

Debt Peonage and Debtor's Prison

While usury put the moral onus on the lender, default was treated quite differently. In 1285, the Statute of Merchants became England's first bankruptcy law. It only applied to merchants, and required 'body execution', which meant that the body of the debtor had to be produced in court for proceedings to begin. All assets could be seized by the court and awarded to the creditor. If this did not satisfy the debt, the debtor could be imprisoned until he or she paid the debt (Tabb 1995). Of course, while in prison, the debtor could not work. This meant that, barring some other creditor coming forward, debtor's prison carried a life sentence.

But who was bringing suit? Usury restrictions gave no legal standing to

those who charged interest on loans. Therefore, creditors could not, at least openly, be charging interest. Nonetheless, several loans were extended without *explicit* interest. *Implicitly*, however, there were several means of charging interest. The most common form was debt peonage—a kind of indentured servitude that might be offered if the principal were not repaid in an acceptable manner. Naturally, the lender who offered this agreement needed to be willing to substitute labor for money—hardly a standard need. The most common lenders were the nobility, who used labor for building projects and militia quotas (Anderson 2004).

Thus, a borrower could expect that, if his ennobled creditor needed labor, he or she need not be certain of repayment in money. It was far more likely that the creditor would want to be paid in labor. However, should the ungrateful borrower choose to leave the master's service, the Court of Marshalsea would send him or her to debtor's prison.

The Court of Marshalsea was, until the English Civil War, the main court that adjudicated cases of default. Chartered in 1301, the court operated within the "verge", that is, 12 miles around the monarch's person. Thus, it was an ambulatory court that required some influence with the king's retinue to access (Greene 1976). Since this court was not always accessible, and since there were strong incentives to put defaulters to work, few people went to debtor's prison during the middle ages. Those who did were inconvenient to their creditors beyond their unwillingness to repay a loan. Those who saw the inside of a debtor's prison probably could have avoided it. Only an unwillingness to continue working under debt peonage, or a creditor's extreme prejudice, would make insolvency proceedings viable.

Those who went to debtor's prison before the English Civil War were confined in the Marshalsea prison (though they could also be imprisoned at King's Bench or Fleet prisons if the Marshalsea was full). The Marshalsea also housed political prisoners. Here debtors, pirates, and traitors lived together. One pirate-turned-spy, William Herle, gives a glimpse into prison life through his letters.

Herle was convicted several times for piracy. After his conviction in 1571, he was sent to Marshalsea prison. There, he petitioned Lord Burghley to become a prison spy. At that time, Spain was agitating against Elizabeth I in favor of Mary, Queen of Scots. Many pro-Spanish traitors, debtors among them, were housed in Marshalsea and continued plotting. Herle was apparently crucial in uncovering what came to be known as the Ridolfi plot. His many letters to Lord Burghley are a narrative of prison life during the early 1570s.

These letters show that the prison had fairly lax security. It was apparently quite common for all sorts of goods and communications to pass through prisoners' hands. Guards were easy to bribe, though they were also liberal with the switch. It can be inferred from Herle's letters that the prisoners established a strict hierarchy, centered at his time around a particularly unsavory traitor (Adams 2009).

From Prison to Voluntary Restructuring

The Marshalsea of 1571 described in Herle's letters provides a revealing contrast with the New Gaol of New York in the 1790s. The New Gaol was New

York's main debtor's prison. Like debtors at the Marshalsea, debtors at the New Gaol had little hope of release. Unlike the rather authoritarian hierarchy of the Marshalsea, prisoners at the New Gaol established a written constitution.

Sadly, the constitution itself is lost. However, there are several documents that survive and can hint at what it said. Perhaps more importantly for our purposes, these documents also give insight into the social standing of its authors. Although the major conflicts among the debtors in the New Gaol were about hygiene, their proceedings were fit for a constitutional convention.

A few vignettes from these proceedings are sufficient for our purposes. The framers of this constitution wanted "to Prevent its becoming an Engine of private Oppression" (Mann 1994, 187), and so designed elaborate checks and balances. Common consent was required for the prisoners' court's jurisdiction, and procedural arguments were both valid and meticulously kept. When the Middle Hall, the first to adopt a constitution, offered the Lower Hall the opportunity to join it, the Lower Hall responded, "that Each Hall has the power of institueting regulations for its own Government" (Mann 1994, 190).

These proceedings, mostly about bedpans, refer to and affirm the same principles as the *American Constitution* and the *Declaration of Independence*. At the very least, these prisoners were paying close attention to the debates of their day. Moreover, as merchants, they were active beneficiaries of the American Revolution. The behavior of these prisoners is strikingly different from those of the Marshalsea prison, where gangsterism was the organizing principle. Why the difference?

Just before William Herle served his sentence and just after the debtors at

the New Gaol served theirs, several changes in bankruptcy law occurred. These changes, while not a sufficient explanation for the contrast, help demonstrate the changing status of merchants in the Anglo-American world. In 1542, and again in 1570, major changes to the bankruptcy laws were made. These changes were generally made for the benefit of creditors. They tightened enforcement, gave broad powers to liquidate assets to the courts, and even allowed corporal punishment for bankrupts. In 1623, the death penalty was added, although at most five executions happened in the successive three hundred years. The 1623 law also added distribution for the benefit of the debtor, if he or she passed a test of compliance. This distribution process was enhanced in 1705 (Tabb 1995).

In 1732, the Statute of George III allowed a debtor to retain some property withholdings. This law was the foundation for the first American bankruptcy law in 1800. According to Tabb, this law was the 1732 British law nearly verbatim with one section borrowed from the Massachusetts statute. The American legal tradition, then, represents a fairly smooth transition from the British tradition. Perhaps the most striking feature, from the standpoint of the eventual evolution of this law was the distribution process.

The distribution process may also indicate something about the status afforded debtors. Namely, the shame associated with debt was ameliorated by 1732. William Blackstone, a British jurist, argued that the right of the creditor was the focus in the past, but that trade largely replaced those concerns (Blackstone 1979).

The 1800 American bankruptcy law was repealed in 1803. From 1803 to 1841, bankruptcy was under the purview of the states. Massachusetts remained

the leading innovator in bankruptcy law, and the 1841 statute was modeled on their 1838 statute. This law, for the first time, established the principle of voluntary bankruptcy (Tabb 1995). This principle, combined with distribution, would be the backbone of modern bankruptcy proceedings. It is notable, however, that the evolution took over 200 years to complete. The 1841 law was repealed in 1843, and another passed in 1867. The major innovation of the 1867 law was that distribution became automatic, rather than at the discretion of the court. This law reached its susnset in 1878, and was not renewed. However, federal courts took over enforcement for the benefit of national railroads whose large capital outlays sometimes lead to insolvency. In 1898, bankruptcy was again national law, and has remained so ever since.

Until 1898, national bankruptcy laws were only temporary relief measures and all of them had sunset clauses. Most were repealed before the sunset became effective. The ad hoc nature of these laws—almost like bandages applied after major financial crises—makes it curious that bankruptcy proceedings are so common today. Voluntary bankruptcy, however, is the legacy of the debtor's prison. One goal of this thesis will be to examine that evolution. Another will be to explain the transition into free credit markets from usury restrictions.

The Birth of the Credit Report

The establishment of voluntary restructuring under bankruptcy in 1841 lead to new, and more creative forms of default. Meanwhile, debtor's prisons

were abolished and usury restrictions lost their force. These developments meant that, not only was credit available to all and sundry, but that debtors faced no downside to default. It would be left to lenders to decide who was worthy of their credit.

Into this vacuum stepped Lewis Tappan, himself a bankrupt merchant, to establish the Mercantile Agency in 1841. Tappan's agency was not "a system of espionage", he explained; rather it humbly sought "information respecting the standing, responsibility, &c., of country merchants" (Lauer 2008). His was the first credit reporting agency in the United States.

The Mercantile Agency used a brute force approach to collect information. They did not employ public records or financial statements. Instead, they collected stories and impressions related by various merchants. By the time the firm became R.G. Dun & Co. in 1859, it had collected around 70,000 pages of these accounts.

By 1849, competitors joined the new industry, among them John Bradstreet. Bradstreet & Co. would remain in business until it merged with R.G. Dun & Co. in 1933. In the meantime, several firms copied (or simply plagiarized) the market leaders (Madison 1974).

Enough firms were in the market by 1896 to form the National Association of Credit Men (NACM). This trade association began introducing industry standards. Among these were less subjective methods for categorizing creditworthiness. They could hardly have been otherwise. Although even Tappan himself introduced categories (A1+ meant "pecuniary strength", etc.), there were no criteria underlying the ranking beyond the personal reckoning of employees (Lauer

2008).

Unfortunately for our purposes, there are few scholarly articles about the emergence of credit reporting. This means there are no established hypotheses about its development. Lauer argues that the industry exemplifies the kind of surveillance characteristic of the 19th century. He also anticipates the need for a Foucauldian analysis in this area, categorizing credit reporting as "disciplinary writing". Madison provides an excellent timeline of the industry's early development, but does not go far into interpretation. Both Lauer and Madison seem to accept Tappan's own explanation for his firm: that it merely replaced the long-established custom of using local reputations to determine creditworthiness. This is not, at first glance, a bad hypothesis. Benjamin Franklin wrote:

> The most trifling actions that affect a man's credit are to be regarded. The sound of your hammer at five in the morning, or eight at night, heard by the creditor, makes him easy six months longer; but if he sees you at the billiard-table, or hears your voice at a tavern, when you should be at work, he sends for his money the next day (Lauer 2008; Weber 1958).[1]

Of course, Franklin here is writing a piece of advice that he thought might be practical. His proverbs were meant as much for lenders as for borrowers-- so we cannot assume he is merely describing the way things had always been.

However, there is scant evidence that such a gossip-enforced credit market existed before the 18th century. Although ecclesiastical courts heard a large volume of defamation suits (Outhwaite 2006), there is no evidence that lenders used this information. Other mechanisms for establishing creditworthiness, such as prior

[1] It may not be insignificant that Lauer quotes *Weber* quoting Franklin here. Weber may be the true source of the notion that credit reporting is intrinsic to commercial behavior. Tawney, for his part, would agree with that notion.

default and capital intensity, were sometimes recorded, but again there is no evidence that anyone used the information to limit risk.

The Medici bank which, as the largest lender of its time, should have used the best standards available, did not have a clear system for checking credit. They did place restrictions on how much they were willing to loan, and also had minimums. These minimums certainly discouraged those who had little capital, and restrictions limited exposure should a lender default. They were also weary about lending to popes or monarchs who could default with greater impunity than merchants. None of this resembles a credit check, though. These standards were merely precautionary. They did not rely on personal information.

If notions of creditworthiness were not to be found in the 15th century, when did they emerge? Lewis Tappan was convinced that credit reporting merely enhanced a long honored tradition. Nor did Tappan's critics challenge the notion that character correlates with the ability to repay a loan.

Nonetheless, something must have comforted lenders enough for them to offer loans throughout our period. Before the Medici at least, usury restrictions were probably severe enough to discourage trivial loans. This severity limited access to only the most confident borrowers. Meanwhile, the prospects of debtor's prison and debt peonage made the cost of default extremely high. Borrowers who were less sure of their ability to repay a loan may have been discouraged from participating.

This limited access explains why lenders were confident enough to make loans, but doesn't explain why credit reporting was the institution that emerged.

For this explanation, we turn to the end of debt peonage. In the United States, debt peonage was always in the form of indentured servitude. This form allowed many Europeans to immigrate during the colonial period. It became unpopular after Bacon's Rebellion in 1676. However, some states allowed indentured servitude as a remedy for default. This enforcement was fairly rare, and could only be exercised when other options were depleted. This means that, after 1676, debt peonage was a less likely outcome of default. The practice ended entirely with passage of the 13th Amendment to the Constitution. Credit reporting, then, somehow emerged to fill the gap left by debt peonage by giving greater security to lenders.

1841 saw the first credit reporting agency. By that time, usury laws barely mattered, and were clearly on their way out. Debt peonage, via indentured servitude, was an extreme and unpopular remedy for default. Finally, bankruptcy laws included voluntary restructuring for the first time that year. Credit had changed, and information about borrowers was suddenly more valuable. Lewis Tappan was happy to supply it.

Hypotheses and events

The main objective of this literature review is to provide some preliminary hypotheses about the history of interest, and point out some nearby events that can provide structure to the genealogical method used by this thesis. This is not a simple task. Other than Homer and Sylla, authors are not focused on the history of interest itself. This means there are no readily available hypotheses in the literature. However, three different narratives seem to emerge from a careful review of the

literature.

The first hypothesis may be titled the 'class consciousness' approach. Authors who subscribe to it would recognize that, by using a moral framework to explain interest, usury doctrines effectively created an outcast class that slowly conflated itself with the rising bourgeois class as it became necessary to trade. Although scholars would disagree about when this conflation occurs (the Tawney school would see it as early as Calvin, his critics as late as Bentham), it clearly occurs. Furthermore, debtors seemed to take an active role in this transition. The bankrupts of the New Gaol are quite suggestive of this hypothesis. This hypothesis relies on a teleology of class, which requires the materialist assumption that the base is always the only agent of effective change.

The second hypothesis may be titled the 'market forces' approach. This hypothesis states that as trade, and economic development more generally, occur there is increasing pressure for freer credit. This pressure exerts itself on both church and state. Both Tawney and his critics acknowledge this pressure, but for Tawney the pressure is realized in the Reformation; whereas for his critics, it is realized earlier, during the debate over the bill of exchange (de Roover's "escape hatches"). Finally, freer credit is achieved. Meanwhile, fairly harsh punishments for default are replaced with bankruptcy laws that facilitate trade. This was Blackstone's explanation, and may therefore be suggestive of the way that British policy makers thought about the phenomenon. The market forces approach would view credit reporting as a natural consequence of freer credit. It will not handle the issue directly. This approach is a teleology of knowledge-- it relies on the

assumption that institutional arrangements are designed, but markets forces are always given. If past institutions seem primitive, it is merely because economic theory was not sufficiently advanced.

The third hypothesis is the 'social stability' approach. Here, the narrative is a bit subtler. The church placed usury doctrines in the context of protecting the poor, but their effects were in many ways the opposite. Since debt peonage was one consequence of usury restrictions, the net effect was to enhance the power of the nobility at the expense of the poor. This order eroded, however, through some other route (via the 'class consciousness' or 'market forces' argument). This hypothesis seems to resolve the debate between Tawney's school and his critics, though neither would likely be satisfied with it. It is a teleology of natural law, assuming that legal institutions always attempt to balance the rights of parties. This is the oldest teleological notion, and consequently the most criticized. This criticism is not our object here, though. Each hypothesis is employed, not as a methodological dictate, but as a tool that can help uncover useful information.

These three hypotheses will serve as the subject of the next three chapters. Within these chapters, however, the genealogical method requires that we use a few events for structure. Many of these were mentioned in passing throughout this review, but they are worth restating here for clarity. Some of them are related directly to interest, others are not. The major issue is whether there should be good primary source material around each event. Please refer to the appendix on method for the discussion about selection criteria.

The Edict of Expulsion (1290) banished all Jews from England. Although

Jewish people were often blamed for flouting usury laws, the main reason for this act was racial prejudice. In reality, Jewish lenders were only prevalent from 1139 until 1275, when the Statute of the Jewry made it illegal for Jews to lend at interest. However, there should be several accusations of usury around this time that may give us insights into the enforcement practices at this early date. Also, the Statute of Merchants (1285) and the charter for the Court of Marshalsea (1301) are nearby.

The failure of the London branch of the Medici bank (1478) was mostly a matter of bad management. Both Cosimo de' Medici, the bank's eponymous owner, and his London manager, Simone Nori, died in the 1460s. Gherardo Canigiani was promoted to head the London branch. This was a disastrous choice since Nori offered large loans to various claimants to the English throne, flouting Medici policy. The Wars of the Roses, at that time in full bloom, made these loans especially risky since Lancastrian claimants repudiated Yorkian debts, and vice versa. By the time these bad loans came to the attention of the *maggiore*, it was too late. Angleo Tani, an experienced partner at the bank, tried in vain to make the bank solvent, but only succeeded in prolonging its decline by a few years. Distracted by the Pazzi conspiracy of 1478, Lorenzo "il Magnifico" de' Medici declined to put good money after bad, and wrote off his debts in London (De Roover 1963). The Medici bank sits at a crucial juncture in financial history—it was deeply subject to usury restrictions, but also facilitated most of the international trade at the time. Thus, its failure should help describe how international finance worked during this early period. Furthermore, its deep connections in Italy should help explain how European politics impacted British policy.

The coronation of Elizabeth I (1558) sits about halfway between two major changes to the bankruptcy law (1542 and 1570). Furthermore, Elizabeth I's reign sees several important developments in English trade policy that lay the groundwork for later economic expansion. Queen Elizabeth I ushered in a period of stability after the religious tumult that her father's and sister's reigns visited on Britain. Henry VIII, who converted to Protestantism, reorganized the ecclesiastical courts that enforced usury restrictions. He modeled new regulations on usury largely on the Catholic canon law that these replaced. Despite a brief return to Catholicism under Queen Mary, Anglicanism became the official religion of the English monarch. Several ministers in the Church of England revisited the usury question during Elizabeth I's reign, concluding overwhelmingly in favor of restrictions. This discussion, however, should reveal certain tensions and beliefs that uncover the changing landscape around interest.

The restoration of Charles II (1660) is near other benchmarks in the history of interest. After the English Civil War, which ended with the execution of King Charles I in 1649, Parliament ran the British state. The Protectorate, as it was called, was composed of Puritan politicians who had many connections with the merchant class. After its failure, the son of Britain's least fortunate monarch, Charles II, was invited to take the thrown. He accepted, but the threat of another civil war always hung over his head. On several occasions, Charles II acceded to Parliament. During this time, trade became a more enticing possibility, and merchants petitioned Parliament for certain reforms. Appelby, one of Tawney's later supporters, argues that the debate over usury shifted from moral to economic concerns

during this time. Examining that debate should reveal how new thinking about trade enters into the history of interest.

The adoption of the US Constitution (1787) provides our first window into the American experience. The United States, after its divorce from the British Empire, operated under the Articles of Confederation. This first constitution was thought too weak, so the Annapolis Convention petitioned Congress for a new constitutional convention. The Constitution, which emerged from this convention, includes the 'bankruptcy clause', stating that Congress has authority "to establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States". It did not exercise this authority until 1800. In the meantime, Alexander Hamilton as Secretary of the Treasury defied expectations by guaranteeing the national debt. This guarantee and other laws passed at this time built the framework for credit markets and bankruptcy laws that would prevail into the 19th century. Analyzing these debates should demonstrate how interest was treated during the late 18th century.

Around the outbreak of the American Civil War (1860), usury laws were denuded. Advances in industrial technology had enhanced possibilities in production just before the war. Both the Union in the north and the Confederacy in the south rushed to borrow money to finance terrible new weapons based on these technologies. After the war, large industrial firms, notably railroads, leveraged their assets at an unprecedented level. By 1869, the first intercontinental railroad connected the Atlantic and Pacific Oceans. Usury restrictions were subject to de-emphasis and bankruptcy law was ascendant.

The United States' entry into World War I (1914) is our last event. By this time, the US was an emerging economic and military power. Its experience in the Civil War gave its commanders a unique tactical edge. Unlike European armies, the American military was well acquainted with trench warfare. Underpinning American muscle was an expanding industrial base. Manufacturing and transportation in the US rivaled even the largest European states. This industrial base was built with finance. In 1841, national bankruptcy law finally allowed voluntary restructuring, and in 1898 the feature was enhanced. Coupled with relative freedom in credit markets, this meant that American firms were more aggressive, and more flexible, than many of their European counterparts. Here we see a familiar world, but its effective features emerged from something whose aims were altogether different. Comparing descriptions near World War I with the past should, at least, reveal the distance travelled.

Proceeding along the lines of the genealogical method, the next three chapters will each consider one hypothesis, using evidence nearby these seven events. This is not a linear process, and it is to be expected that we jump from one event to the next in an attempt to define the trajectory of our history. The structure is not temporal, it is topical. The picture that emerges from this analysis is the subject of the final chapter. There, we attempt to define the causes of change in the history of interest, providing a final argument on what the nature of this history is. This process also points to certain opportunities for future research.

CHAPTER 2

THE CLASS CONSCIOUSNESS HYPOTHESIS

Overview

This chapter attempts to trace the history of interest under the assumption that it is mainly a history of rising class consciousness. Here, we would expect to find that major transitions occur because of certain conflicts around who controls access to credit, and how institutions in these markets connect to various groups.

In general, we are looking for ways in which certain arrangements benefitted some while excluding others. Following the genealogical method, we will seek discontinuities throughout our timeframe. Since the method tends to focus on making strong contrasts, one event to another, the narrative should not be viewed chronologically. Rather, it should be viewed topically. This creates a certain tradeoff between simplicity (chronological) and depth (topical). While we make some effort at ameliorating the loss of simplicity, it cannot be wholly avoided.

The first section will explain who employed usury doctrines and to what end. It refers to debtor's prison and debt peonage as part of this arrangement. Then, in the second section, we analyze how debt peonage and debtor's prison began to unravel. The third section shows how this disintegration gave rise to notions of creditworthiness, and how that notion was refined. Finally, we consider how accurate this hypothesis is and what narrative it offers. This narrative will be re-examined in the final chapter, when it can be compared with the narratives of chapters 3 and 4.

In Chapter 1, we referred to Tawney and his critics. This chapter sheds light on that debate. Since Tawney drew inspiration from Weber's notion that Calvinism influenced the development of capitalism, we will consider certain religious

commentaries. In particular, Tawney argued that Calvin and Luther took exception to usury doctrines, and that these doctrines somehow upheld feudalism. We will not attempt to examine notions like feudalism or Calvinism here, but will rather examine discourses from those involved-- kings and ministers, or serfs and prisoners, to name a few. Furthermore, we seek some material causes for changes in religious commentaries. Such arguments were not admissible for Tawney, who sought to confirm that the superstructure could impact the economic base. While later chapters remain agnostic to this concern, here we adopt the assumption that material causes are the only effective ones.

Debt conscription to central banking

Among the few surviving images of medieval English Jews is a cartoon from 1233. In it, one man holds an unbalanced scale. Opposite the man with the scale are a woman and a man wearing a helmet. The crest of the helmet is spiked, resembling a chisel used to scrape the edge of a coin. A devil stands between these two, touching their noses. Devils are all around, while in the center, a crowned figure with two faces presides over everyone (Exchequer 17 Hen III).

The target of this cartoon, Isaac of Norwich, is the crowned figure in the center. Among other projects, he financed Norwich cathedral. This depiction of Isaac as 'two-faced' and presiding over a community of devilish lenders could hardly be clearer. Appearing on an official tax record, called a tallage roll, its cruel message is also clear. Isaac was rich, and his profession was immoral. Tax collectors were meant to assume that his coin would be debased, that his scales were rigged, and that his factors were instructed to lie. Therefore, the tax collector should overcharge him.

Medieval anti-Semitism was complex. Usury attached to it as yet another stereotype, and thereby amplified it. It was not, however, the cause of anti-Semitism. For England's warrior class, the increasingly wealthy Jewish minority was seen as a political threat.

In 1290, Edward I enacted the Edict of Expulsion. Afterwards, no Jewish people lived openly in England until 1656. The edict was the last in a series of anti-Semitic statutes. For at least 100 years, sporadic pogroms forced Jews to live in the countryside, while laws barring them from land ownership forced them to work in the city. Small communities lived together on the outskirts of towns, offering crafts like glass blowing and carpentry. The only really profitable activity they were allowed, though, was money lending. The Second Lateran Council, as we mentioned earlier, barred Christians from this occupation in 1139. That council did not prohibit Jews from lending, though the Fourth Lateran Council (1215) did. Nor did Mitzvah (Jewish law) prohibit lending at interest to Gentiles. The Jewish philosopher Maimonides, for example, argued that interest should be charged within strict limits to Gentiles, but affirmed that Jews could generally lend with clear conscience.

This meant that some Jewish lenders became extremely wealthy. In London, a well-constructed mikveh[2] and home foundation from the 12th century proves that at least one Jewish household built a grand home (Anonymous Mid-13th century). Their wealth was insecure, though. King John taxed their estates at 100%. Despite this, he was the most tolerant of the Angevin kings. Edward I, who came to the throne after returning from a long crusade, sought several commercial and social reforms. These were modeled

[2] A bath for ritual ablutions.

on laws he and his retinue observed abroad, especially in France, Rome, and the Byzantine Empire.

In 1275, Edward I enacted the Law of the Jewry, requiring all Jews to wear yellow sashes. It also required them to find occupations other than usury after 15 years. In 1285, Edward I enacted the Statute of Merchants, which was the precursor to bankruptcy law. After the Edict of Expulsion, he chartered the Court of Marshalsea in 1301 to remedy cases of default with debtor's prison.

The aim of these reforms was neither religious nor strictly commercial. They were military reforms. By making usury illegal for the Jewish minority that was exempt from doctrinal restrictions, and ultimately expelling that minority, the reforms only allowed lending without interest. This meant that debt peonage could be used as a kind of military conscription.

A large collection of indenture of military retainer survives from the 15th century (Exchequer 1428). These documents tell us how military conscription worked through debt peonage in the middle ages. Each ennobled landowner was required to support military actions undertaken by the king. They could either participate directly, or offer a quota of archers to the effort. These documents list the number of archers supplied from certain districts, and include a certificate of exemption for those who had met the quota. Essentially, they show that these nobles transferred debt peons to the king, who would use them for military service.

England used its artillery division to substitute for cavalry, thereby ensuring competitiveness with more populous nations. This system would not have been possible if interest could be charged on loans since the aim of lending was different. For

ennobled lenders, the aim was labor via debt peonage. For moneylenders, the aim was capital accumulation. Hence, usury restrictions allowed ennobled lenders to extend their offerings at the expense of moneylenders.

By the 16th century, cannons became the greater measure of artillery power. This meant that the system of military conscription via debt peonage was no longer as significant. As the English Reformation found stability during the reign of Elizabeth I, usury doctrines were again a matter of debate.

In 1570, a minister named Richard Porder gave a sermon against usury. He advocated a broader definition of usury than Catholic theologians had professed. He concludes that "when there is sold any victuall, wares, or merchandize for dayes of payment, and in respect of the time contracted and given, for the payment there be taken anye more, that more which is taken in consideration of the lone: is overplus and forbidden usurie, and that seller is an usurer." This argument does not seem to stem from the notion that money is sterile, but advocates instead the principle that any earnings on loans whatsoever were usury, even payments in kind. This recognition extends also to the "selling of time". Porder identified who these usurers were. They were "not only money men, Merchant men, and Citizens, be Usurers: but also Noblemen, Courtiers, Gentlemen, Oratiers, Farmers, Plowmen, and Artificiers." He jokes, "I would the Clergie were free. (Porder 1570)"

Porder's sermon tells us two things. First, it tells us that usury was up for debate. This had not been the case until Elizabeth I's reign introduced some political stability. Although larger questions of religious doctrine were major points of debate for Reformation theologians before this, the finer points had yet to be challenged. Porder

was not alone in his challenge. Nicholas Sander wrote *A Briefe Treatise of Usurie* that covered similar points, but took a more conservative view of usury (Sander 1568). By 1576, the queen responded to these arguments with a promise to enforce existing law more stringently (Elizabeth I 1576). The definition was not broadened.

The other thing Porder's sermon tells us is who was now involved in usury. He seems to think it is normal, if regrettable, for "money men, Merchant men, and Citizens" to charge interest. His focus, though, is the landowning and upper class. It is the "Noblemen, Courtiers, Gentlemen, Oratiers, Farmers, Plowmen, and Artificers" who were now involved. These groups who, as we saw, participated in lending without interest in the hope of acquiring labor, were now more concerned with getting a return on these loans in money.

One hundred years later, after the Restoration, usury was still a matter of debate. By that point the emphasis had changed. Theologians like Christopher Jelinger wrote long explications of certain positions, reciting every argument made against usury in ancient times, and performing exegeses of every scriptural passage ever thought to touch on usury (Jelinger 1679). Drawing from these the conclusion that usury was always sinful, but also that certain exceptions had always applied, Jelinger's work did little to change the debate. However, his conservatism meant that those who might have wanted to challenge the doctrine at a more fundamental level were silenced.

There were certainly strong motives for challenging the doctrine. Josiah Child, head of the East India Company, joined the debate in his *New Discourse of Trade* (1669). He was careful to emphasize his experience over his understanding of theology. He asks, "suppose the Borrower makes 12 per cent of my Money, is it a sin in me to take 6 per

cent of him?" Child hedges here saying, "between them two there may be no commutative Injustice, according to my weak Judgement, while each retains a mutual Benefit." He concludes, "if the rate given and taken exceed the Rate of our Neighbor Nations, these fatal National Evil Consequences will ensue to our Common Country." After this preface, Child is able to frame the issue in purely commercial terms.

Child argued that the prevailing rate of interest was too high. However, his more general arguments could have been applied in circumstances where interest rates were artificially low. Child came close to drawing this link, for example, by offering a number of objections that could be leveled against the position that interest rates should remain high. Among these are arguments about capital flight, land values, and liquidity. Rather than making a general argument against these objections, though, he frames his answer in terms of present conditions (Child 1698). This allowed him to advance arguments against usury doctrines without disagreeing about them openly.

Child's tentative approach and Jelinger's strong objections typify the debate over usury in the 17th century. There were many commercial interests aligned against the doctrine, but they would have to compete with the entrenched opinions of clergymen. Nonetheless, as trade expanded and governments put greater emphasis on commerce, these voices would grow quieter. One moderating force was central banking, introduced in 1694.

Chartered to handle the state's finances, and its money supply, the Bank of England was modeled on Dutch and Swedish central banks. By that time, the quantity theory of money was not generally accepted, so the bank did not target price levels. Instead, it targeted interest rates since thinkers like Child and Thomas Mun cited

lower interest rates as drivers of foreign trade via exchange rates. It was generally reckoned that keeping interest rates close to those of rival nations was the most desirable outcome.

One of the banks first acts was to lower interest rates to around 5%. It offered bills of exchange at 4.5%, 5% on pawns (reckoned at 100%), and raised the money supply by "twelve hundred thousand pounds" (1.2 million pounds). These actions were justified, in part, by stifling usurers. To address the fear that lenders would rush to collect early, the bank offered 5% on mortgages, "whereby their Usurious Designs were not only frustrated, but the Borrowers would be freed from the additional Interest that rose from Procuration and Continuance-Money. (Anonymous 1696)" Usury was rarely discussed after central banking began. Although usury laws would still set rate ceilings, they were less effective, perhaps only in certain markets for consumer credit. Meanwhile, debtor's prisons were still a major feature of credit markets.

Prisons and peonage to ritual gossip

> "Thousands of Their Fellowes in like condition, have perished round about them for want of Bread; And except Your Honors shall be pleased to give them timely Relief, such of Your Petitioners as are not dead, must inavoidablly, and in short time perish also; and several of them by unjust, and oppressive Actions."
>
> -Petition to Parliament, 1649 (Parliament 1649)

The petitioners of 1649 did not get relief. Nor was sympathy forthcoming when, a year later, they begged for the "Norman Yoke of cruel bondage" to be lifted (Parliament 1649). Debtor's prison was a death sentence, and Parliament approved.

Debtor's prison was not an absolute death sentence, though. Prison security

was lax. In 1698, when 1366 debtors should have been in jail, only "sixty odd" could be found. All one needed was "to give the Marshal or Warden a piece of Money and he shall have his Liberty". So those who still had means could escape, while those who had none were left to rot. This prison offered justice, after all, to creditors. And since "the life of Trade is much more in the Security, and incouragement of the Creditor to give Credit, than for the Debtor to ask it", this justice supported commerce as well (Warden 1698).

The English Civil War reflects realignment-- away from the clerical class, towards the merchant class. The Puritans, many of whom adopted their radical religion during merchant voyages, now ran the state. The debtor's prison was part of the architecture supporting their state. Its value to commerce was indisputable, as was the value of commerce itself. Pleas for Christian charity were no longer convincing. Appeals to commerce were. Although the Restoration would soon moderate this influence, it would never reverse it.

Debtor's prison was also a hellish fate, as one satire illustrates. In *The Man of Destiny's Hard Fortune* (1678), Squire Ketch is imagined as a debt prisoner. Ketch was by all accounts an extremely sadistic executioner. His botched executions shocked Restoration crowds, and an abundance of pamphlets celebrated some imagined downfall for him. He often appeared as a manifestation of Satan. The association stuck. Charles Dickens would allude to it 200 years later in *David Copperfield*.

Ketch's reputation served King Charles II, whose father was executed. An unpopular executioner was good politics for an insecure monarch. As propaganda, *The Man of Destiny* tells us something about how royalists thought about these prisoners. After extolling his many unpleasant accomplishments he asks, "is it not a thousand

pities a person of such Quality and Endowments should wither in a loathsome hole amongst Bankrupts and Tatterdemallions, converse with louzy Pump-suckers, or be made free of the Worshipful Company of Peggmakers, when there are so many notable brave Fellows abroad that need and deserve his most intimate acquaintance? (Ketch 1679)"

First, we see bankrupts juxtaposed with 'Tatterdemalions', that is, street urchins who wear tattered clothing. Then 'louzy Pump-suckers', meaning lice-infested sewer workers. Finally, Ketch suffers the '*Worshipful* Company of Peggmakers' (e.g., clothing pin makers), their worshipful attitude apparently due to Ketch's superior class. These are Ketch's companions in debtor's prison, as imagined by the anonymous royalist author. The description does not attempt to hide its contempt for these merchants. They are not respectable, not yet.

This caricature of Restoration era debt prisoners contrasts sharply with the 18th century debtors at New York's New Gaol whom we visited in Chapter 1. Unlike the starving ragamuffins at Marshalsea, these prisoners constituted an intricate system of jurisprudence to assure good hygiene and the rule of law. Many of the prisoners had participated in the American Revolutionary War, and some went on to be prominent New Yorkers after their release. They were citizens, not subjects, and they knew it.

One prominent debtor, imprisoned in 1798, was Robert Morris. As the superintendent of finance during the Revolution, he was creditor to the United States' fledgling government. A few losses were enough to make him insolvent, however, and his creditors sued. Morris spent seven months in his house to avoid repayment, but was eventually forced to offer his person as security on the debt. After being discharged from prison, Morris went on to become the wealthiest person in the United States.

Some debtors still spent their lives imprisoned, and few of those who left recovered as well as Morris. However, Morris was among the class who built the Revolution (Mann 2002). The fact that he and his ilk served a term meant that something had changed. This change took place over a century before. Attitudes towards debt, and the punishment for debt, began to change.

Many American colonists lived their lives as debt peons, most of them before Bacon's Rebellion in 1676. Indenture was the contractual device for debt peonage. Unlike medieval indenture, used to conscript armies and laborers from among the insolvent, colonial indenture was typically consensual. The legal structure of the instrument was essentially the same.

Indentured servants were intensively employed in the labor hungry American south as field hands. They were mostly young, mostly men, and all (or almost all) white. In exchange for several years work, indentured servants got passage to the colony, shelter, and food. Very few earned a wage, so any other needs could only be met by contracting another loan. This meant that most indentured servants became life-long debt slaves.

In 1676, Nathaniel Bacon enlisted several hundred indentured servants to combat Indian raids near his plantation in the Virginia colony. The governor did not approve, so Bacon wrote a declaration against the governor and proceeded to attack nearby tribes. Although Bacon died from dysentery before it was over, the rebellion lasted until the British navy arrived a few months later. The incident convinced many states to eliminate indentured servitude[3].

[3] Bacon's Rebellion is most often remembered for two reasons: 1). As a model of the Declaration of Independence and revolutionary rallying cry; and, 2). The fact that debt slaves (mostly of European

After Bacon's Rebellion, ministers like Cotton Mather extolled their congregations to beware of contracting large debts. Cotton Mather upbraided those who "bring Debts upon themselves, in such a manner, and in such a measure, that a Folly nothing short of Criminal, is to be charged upon them (Mann 2002)." Mather's sermons, unlike those of British ministers a generation before, placed blame on the debtor-- not the usurer. Underlying this rhetoric was the fear that debt would wither the soul, thereby disintegrating the family and causing social unrest. Mather was careful, however, to distinguish between debt and insolvency saying "People must not be in Debt to one another any further than what is unavoidable" but insolvency "is not only Being in Debt, but also Lying in Debt. (Mann 2002)"

Leading up to the American Revolution, then, there is a new attitude towards debt. Suddenly, it is thought to be dangerous, not only to the individual, but to the established order in general. The defaulter is now reckoned a sinner, not just delinquent on payments. Neither the Catholic, nor the Anglican, theologians classed debt as sinful in itself. Instead, they viewed the debtor as needy. The only distinction between the debtor and the beggar is the former's pride in promising to repay his or her creditor. This added pride justifies the intervention of temporal law, but does not require repentance. Nor is default considered sinful, so long as the defaulter intended to repay the loan when contracting the debt, and provided he or she accepts whatever the law proscribes. In effect, the state can punish default, but not the church. All matters of default were outside the jurisdiction of ecclesiastical courts.

descent) were rare afterwards, while captive slaves (mostly of African descent) remained ubiquitous. The most important fact for our purposes is that debt peonage wanes here.

When Mather and others class debt (and especially default) as sinful, though, a new logic applies. Now, a repentant sinner is worthy of praise and should not be punished. Since only God knows if the repentance is genuine, the community must find some way to countenance claims of repentance. This task may be accomplished through temporal law, but is more often achieved through ritual. Different communities will have different rituals, more or less formal, more or less severe, to certify the claim. So, these rituals can replace the role of temporal law when expedient.

Shortly after Mather and his contemporaries define a role for debt in the spiritual realm, lenders begin applying behavioral standards to borrowers. We will examine the development of this new ritual in the section on creditworthiness. Here, we still need to examine a subsidiary movement, which emerges to attack the debtor's prison as an institution.

Like the petitioners of 1649, colonial petitioners objected to prison conditions. Unlike them, however, they also feared for prisoners' souls. This added fear meant that humanitarian concerns elided with theological ones. In New York, the Society for the Relief of Distressed Debtors (soon renamed the Humane Society) advocated for prison reform. They objected that "the sufferings of cold and hunger, and the consequent hazard of his life, infringes that fundamental axiom in legislation that the punishment of an offence should always be in proportion to the degree of it. (Mann 2002)" The latter implication, that debtor's prison was disproportionately harsh, was only justifiable on the ground that some of those imprisoned were repentant sinners. In 1788, two members worried that prisoners could, "become useless, if not pernicious, members of society, from the great danger they are in of acquiring habits of intemperance. (Mann 2002)"

This is a spiritual, rather than an humanitarian, concern. So debtor's prison is, "not the school of virtue. Many have entered them with innocence, few have quitted them without contamination. (Mann 2002)"

There was, in fact, plenty of intemperance to be had in debtor's prison. Alcohol was sold (albeit at a premium), and prisons were "swarming with women of loose character. (Mann 2002)" But this was nothing new. We find exactly the same opportunities at Marshalsea in 1571, while William Herle is employed as a spy. Far from raising alarm, the prison economy offered opportunities for Lord Burghley to spy on inmates.

By the 1760s, though, the moral condition of debtor's prisons mattered. Other societies like the Humane Society of New York sprung up in Philadelphia, Newark, and elsewhere. Although, at this stage, there was no movement to eliminate the debtor's prison, these movements succeeded in efforts at prison reform.

In 1787, shortly before the Constitution was adopted, New York opened the New Gaol. Although many still lingered in debtor's prison, they did so with a greater measure of sympathy from the outside world. Inside, they acted with the dignity of newly minted American citizens. In the 1790s, the prisoners passed their own constitution. The prisoners also organized on their own behalf. Twenty-five issues of the *Forlorn Hope*, a pamphlet published by prisoners, appeared in 1800. The prisoners argued that their punishment was cruel and out-dated.

They did not go unheard. Their argument joined with other American voices calling for reform of inherited British criminal law. Several states closed debtor's prisons throughout the early 19th century. By 1833, the United States abolished federal debt

prisons. All but six states had abandoned the practice by 1860.

Bankruptcy procedures moved largely in tandem with these developments, but had a more uneven development. In 1800, as we mentioned in Chapter 1, the newly formed United States passed its first bankruptcy law. There were many precursors in the American colonies, which roughly followed the British model. States inherited these laws from the colonies, so the states always had a bankruptcy procedure.

National bankruptcy laws, however, were constantly controversial. Typically passed in response to financial crises, these measures rarely lasted three years. By 1841, the law allowed voluntary bankruptcy, an innovation from Massachusetts' 1838 statute. From the vantage point of the starving prisoners at Marshalsea, this was a great distance to travel.

Gossip into industry

When Lewis Tappan started his Mercantile Agency in 1841, he had his critics. One op-ed in the *New York Times* argues against the morality of the system. It says, "Let us look at the source of all the information collected. The sub-agent, typically a village lawyer, makes it his duty to pry into the affairs of every dealer in the vicinity, all which he duly reports, together with all the current scandal of the place. And all this for gain." The issue this critic had was mostly about the invasion of privacy alongside some shock that such things were done for gain. The question was "Whether a self-constituted band of spies over the entire mercantile community, be compatible with Christian morality or good citizenship. (T. 1851)" The other problem was whether the system even worked. The critic points out that slander could easily infect the reputation of a successful businessman, and that these agencies had no way to prevent that.

Of course, this had long been the case. After all, Lewis Tappan modeled his agency on the kinds of community gossip already prevalent in his time. And it was profitable. Tappan's own firm had hundreds of subscribers, and his competitors had thousands more among them. Some people defended the service against critics. Also in the *New York Times*, one merchant writes, "The business and conduction of 'Mercantile Agencies' instead of being stigmatized as incompatible with good morals and citizenship, should be looked up to as disseminators of light-- one of that system of necessary luminaries for the prosecution of good business." This author concludes "We want more light, and a more stringent scale of credits for the moral as well as temporal good of all concerned. (Anonymous 1851)"

Such debates, focusing still on the moral question, were common in the 19th century. On the one side were those who feared prying eyes, on the other were those who found such prying quite profitable. Several law suits over the next century would define what could and could not be included in credit reports, while at the same time the industry began to regulate itself through its trade association, the National Association of Credit Men.

The question of morality in this business, though, is a striking feature. Both sides claimed superiority. On the side of the critics was the immorality of voyeurism. On the creditmens' side lay the apparent fact that gossip had gone on from time immemorial. In fact, this ritual was far newer than most credit reporters suspected. Their business was an innovation all around.

Before the 18th century, there are no defamation suits about default. Afterwards, these suits abound. Sometimes, libelous creditors would air grievances about debtors

in local newspapers, while others employed more traditional slanders. If such things were thought worth saying, or were thought to damage one's reputation before the 18th century, we would find them in the records of the ecclesiastical courts which handled such cases. Instead, we find only defamation suits about promiscuity and the legitimacy of issue. These were the questions of reputation that mattered, since marriages and inheritances depended on the outcome of such cases. Default was a fact, not something predicated on one's past. It could be punished, no doubt, but its cause was thought to be either misfortune or shortsighted greed-- not one's character. This was the innovation of community gossip, formalized into a working business model by Lewis Tappan.

We argued that this gossip was a ritual, earlier. This point may need clarification. Durkheim identifies two types of ritual generally employed by societies of all kinds. There are positive rituals which redeem or bind the community together, and there are negative rituals that exclude certain members for various reasons. Most rituals mix the two-- a negative element to discourage behavior, and a positive one to encourage reform. Such rituals may be very conspicuously religious, in cases where the community shares the same beliefs in general. In societies with very diverse religious beliefs, rituals may refer to secular principles instead.

In this case, gossip about creditworthiness would be a negative ritual since its purpose is to exclude certain borrowers from credit. Groups like the Humane Society emerged to provide positive ritual redemption. Although the ritual began with the harsh exclusion from Congregationalist communities, it spread to other groups with more secular concerns.

At first, such rituals could be practiced in communities with similar

Congregationalist churches. These were abundant in the American colonies, and ritual gossip was one of their most enduring features. It was these churches that set the standard for what it meant to be creditworthy. Their standard valued thrift, hard work, and quick repayment of loans. These notions were then applied to borrowers. Although it would take until 1841 to formalize this ritual, the major features were all present before that time. Lenders would tell others whether their neighbors had repaid or not, and would take notice of neighbors' work habits.

Although there is evidence that ritual gossip existed from about the beginning of the 18th century, it is curious that it only became a business in 1841. Some had tried, but only with limited success. In 1829, an English lawyer came to the US to discover what he could about his firm's borrowers. Even before this, in 1807-1809, some lawyers offered information about cases in the public record having to do with default. None of these firms lasted long enough to spark an industry, nor was their only profit from credit information.

The reason 1841 was the ideal year for the birth of this industry had more to do with other developments. After Andrew Jackson withdrew from the Second Bank of the United States in 1833, the Panic of 1837 gripped the country. This crisis offered the American Whig party an opportunity to campaign for a new central bank, and easier bankruptcy laws. Although President Tyler vetoed the bank, igniting a violent riot on the White House lawn, he was happy to see the bankruptcy bill enacted.

This meant that interest rates would be more volatile, since no central bank could coordinate the monetary policy. The passage of the bankruptcy bill meant default was easier to achieve since one could choose to restructure debt. The Mercantile Agency

thus collected information that lenders could use under greater uncertainty.

Their methods were far from accurate, however. Both critics and admirers of the system would make that point. Not only was it unclear whether the information being supplied could be trusted, based as it was on the statements of irate locals against one another. It was also unclear whether the information actually had relevance to the likelihood that loans would be repaid. Nonetheless, the information was all that was available, and to that extent it sold. However, by the 1890s, voluntary bankruptcy became quite standard legal procedure and usury laws no longer had any effect. Debtor's prison was all but illegal, and debt peonage was illegal. Meanwhile, credit reporting became an established industry. Where Tappan only sought information about firms' creditworthiness, new firms competed over information about individuals.

J. E. R. Chilton founded one such firm in 1897. Chilton's firm would eventually become Equifax, one of the largest owners of individual credit information. Around the same time, credit reporting firms in New York came together to found the National Association of Credit Men. The standards this association would adopt and refine moved the industry far from its origins in community gossip. They would apply standards first to the reporting itself, and then to the kinds of information supplied. Credit reports moved steadily away from local opinions about habits into quantitative measures.

By the early 20th century, credit markets were largely free. Credit reporting had replaced harsh punishments for default and restrictions on lenders. Furthermore, quantitative methods for determining creditworthiness had begun to replace looser methods based on gossip and opinions. Over the course of time, these methods would be refined to determine exactly which measurable factors caused a debtor to default.

Credit reporting would no longer be controversial, it would be common. Modern credit markets were born.

Conclusion

This chapter analyzed the hypothesis that the history of interest is a history of emerging class consciousness. It assumes institutions like usury restrictions and debtor's prisons dissolved due to conflicts among groups with vested economic interests.

The narrative seems to be as follows. In 1290, certain opportunities for the warrior class to erect a system of military conscription were embodied by the reforms of Edward I. These resulted in the expulsion of English Jews and systematic punishment for default. This system worked largely in the favor of the warrior class through the 15th century. By the 16th century, the major purpose behind these reforms began to dissolve after the introduction of the cannon and other technologies. Around the time of the Restoration, these institutions were challenged by the rising merchant class. Usury restrictions softened into the regulation of interest rates by central banking, while debt peonage became unpopular as a means of extracting labor. As a result, the moral emphasis shifted from creditors to debtors in the American colonies. This made debtor's prison a suspect institution, and so it too eroded after the American Constitution came into force. In place of prison, debtors were provided with opportunities to reform themselves under the protection of bankruptcy laws. Meanwhile, credit reporting emerged to reassure creditors, first as gossip then as business. Once this industry became firmly established, it was refined to ensure maximum efficiency.

This approach sees little difference between the 13th and 16th centuries. It is only after this time that major changes inscribe themselves into our history. Indeed, it is a

narrative of rising class consciousness in which merchants eventually prevail. To that extent, Tawney is vindicated. This chapter would tend to support Tawney's notion that the major inflection point in this trajectory occurs around the 17th century and is related to the Protestant Reformation.

However, Tawney's central notion, that relaxed usury doctrines were the major cause of the transformation, is not well supported here. Instead, we find that changes in the doctrines had little impact. Although both Calvin and Luther were open to softening these doctrines, their adherents were not. Christopher Jelinger, who cites both thinkers with great admiration, took particular exception to them on this point in the 17th century. Anglican ministers of the 16th century advocated widening, rather than loosening, the scope of the doctrines. What was more significant to the abatement of usury restrictions was the establishment of central banking and the new emphasis on the moral culpability of debtors.

This emphasis, based on certain fears about how indentured servitude could cause instability as it had in Bacon's rebellion, eventually destroyed both debt peonage and debtor's prison. Although the mechanism for this transformation was indeed shaped by certain rituals common in Protestant churches, credit reporting ultimately abandoned its roots in ritualized gossip to become private industry.

Although this chapter finds certain ways in which bankruptcy laws shaped credit markets, it does not find much evidence that this mattered until the mid-19th century. Even then, these laws seem to have only just managed to convince creditors that they needed more information to have profitable businesses.

In the next chapter, we will take another approach by emphasizing the role

private, rather than class, motives played in the history of interest.

CHAPTER 3

THE MARKET FORCES HYPOTHESIS

Overview

The last chapter assumed that the history of interest is largely a history of rising class consciousness. Its focus took in certain aspects of social context to explain the trajectory. The present chapter largely ignores social context, assuming instead that market forces are independent of cultural arrangements. Although in one sense the class consciousness hypothesis accomplishes this by assuming that the economic base is ultimately responsible for changes in the superstructure, it does not oppose notions about free and restricted markets.

In place of social context, this chapter considers theoretical context. Since we assume that markets always tend towards a kind of equilibrium here, exigencies of the market could be blamed largely on failures to recognize how markets work. Without adequate theories about markets, economic policymakers would lack the tools to evaluate plans. Thus, outcomes like debt conscription may merely have been accidents of poor analysis. This hypothesis, as we saw in the first chapter, is quite common. Many authors seem to believe that primitive analytical tools were the cause of primitive economic policies.

Following the genealogical method, we again take a topical rather than chronological approach. Here, the aim is to compare thinkers who desired similar outcomes across time, rather than trying to find common themes among analysts of a certain period. This approach should reveal contrasts in the analytic technology, and thus provide a strong foundation for the market forces hypothesis.

This approach should also shed light on the debate between Tawney and his critics, described in Chapter 1. The last chapter tended to support Tawney's

critics because it found little evidence that weaker usury restrictions arose from changing attitudes about usury doctrines. Rather, the advent of central banking in 1694 was thought to have quieted calls against usury by adjusting interest rates. This is a plausible explanation. However, central banking did not arise from nowhere. It had its origins in the commercial discussions of the seventeenth century. These discussions were deeply influenced by Protestant notions, and so in some indirect way, Tawney's central argument may still be justifiable.

This debate will also consider Raymond de Roover's argument against Tawney-- that usury doctrines contained certain 'escape hatches' from the outset which allowed some merchants to borrow at interest. He argues that as trade expanded, these escape hatches were more widely used, but no serious challenge to usury doctrines emerged until the 1790s when Jeremy Bentham argued against them. We will also consider J. S. Mill's contribution which drew upon Bentham's objections.

A world without interest

> "Therefore if either the price exceed the quantity of the thing's worth, or, conversely, the thing exceed the price, there is no longer the equality of justice: and consequently, to sell a thing for more than its worth, or to buy it for less than its worth, is in itself unjust and unlawful."
>
> -Thomas Aquinas, *Summa Theologica*

Just price theory, on which usury doctrines were initially based, operated within a different framework than later economic analysts would provide. St. Thomas' quotation hints at that difference. No classical, or for that matter mercantilist, thinker would argue that it is "unjust and unlawful" to buy a thing

for "less than its worth." To the contrary. Later analysts would take it for granted that buyers want to buy low and sellers want to sell high.

Perhaps this difference in perspective explains why interest changed. It should be noted that, although Thomism became the dominant philosophy in the middle ages, it was more limited on commercial matters than some. From the 611 questions in the *Summa*, Aquinas devotes only two to commercial matters. Other doctors would go into much greater detail on these matters after St. Thomas. However, the *Summa* was an introductory text for advanced topics. Canon lawyers studied it in a survey course, and archdeacons presiding over ecclesiastical courts typically had a copy for reference at hand. So, although it does not give much treatment to commercial matters, its conclusions were widely known in the middle ages and in many ways constitute the core notions of that period.

Both questions are broken into four articles. Question 77, "Of cheating, which is committed in buying and selling", outlines just price theory. Question 78, "Of the sin of usury", describes usury doctrines. For our purposes, only the first and fourth articles of question 77 are significant. The first article asks "Whether it is lawful to sell a thing for more than its worth?" Aquinas observes that "whatever is established for the common advantage, should not be more of a burden to one party than to another, and consequently all contracts between them (i.e., buyer and seller) should observe equality of thing and thing". From this premise, he argues that a just price will be the one that satisfies the needs of both parties.

Although this sounds deceptively like a market price, and some modern authors wrongly equate the two notions, it is really a moral argument against

value. The quotation at the top of this section, also from article 1 of question 77, makes that clear. Aquinas hopes that sellers will offer the lowest price they can afford, and buyers will offer the highest price they are willing to pay. Since in Aquinas' scheme, anyone who doesn't do what they ought to do suffers the consequences alone, he does not venture into what would happen if people behaved differently. It is up to others to behave in accordance with the moral order. In effect, Aquinas pre-empts investment as a justification for interest, and thus there is no way for markets to create value in exchange. That is, for Aquinas investment is not a valid justification for allowing interest since just markets don't create value.

Article 4 of question 77 asks, "Whether in trading, it is lawful to sell a thing at a higher price than what was paid for it?" Aquinas concludes that, as long as the increased price is based on "the reward of his labor", a merchant can sell a thing at a higher price than what was paid for it. In particular, this reward would arise "either because he has bettered the thing, or because the value of the thing has changed with the change of place or time, or on account of the danger he incurs in transferring the thing from one place to another, or again in having it carried by another."

This article provides a rough theory of value. It is mostly a labor theory of value, though it does not develop that notion in any rigorous way. It also refers to "the danger he incurs" as justification for higher prices. This anticipates notions about risk, but again doesn't venture far with it. Other doctors would examine the issue in somewhat greater detail, but this notion would not be fully available until the seventeenth century. Without it, just price theory holds little place for

interest.

Question 78 deals with usury. The first article is "Whether it is a sin to take usury for money lent?" Here he notes that, "silver made into coins does not differ from silver made into a vessel." This appears to be a dilemma, since one can typically lend a silver vessel but not a silver coin. However, Aquinas argues that it is the intended use of the thing that matters, rather than the substance of the thing used. One cannot lend silver vessels when the "use of silver vessels may be an exchange, and such use may not be lawfully sold", and likewise silver money may be lent "for show, or to be used as security."

This article tells us that Aquinas did not regard money as a commodity. He recognized it as a means of exchange, and we shall see in the next article, as a unit of account. The major point in this article is that lending anything for exchange is forbidden usury, while lending for other purposes is not. This definition assumes that anything used for exchange is annihilated in that exchange. Since higher prices are mainly justified by costs of labor in this view, charging interest on a loan would be akin to stealing. That is, since investment is considered immoral and since the reward of labor is what justifies price, taking interest on a loan would steal the added amount of labor necessary to repay the interest.

The second article asks, "Whether it is lawful to ask for any other kind of consideration for money lent?" In general, Aquinas argues that one could "accept a gratuity" beyond repayment of the principal, since it might be offered anyway. Otherwise, the only reward should be "love of the lender, and so forth." One can repay the principal, but no more, with goods or services "because both can be

priced at a money value, as may be seen in the case of those who offer for hire the labor which they exercise by work or by tongue."

The awkwardness of this explanation for money as a unit of account is noteworthy. It indicates that pricing labor was an uncommon practice. Only journeymen and minstrels typically sought wages. So, while one could repay only the principal with labor in theory, in practice there was no way to discover market wages. This meant that debt peonage could effectively extract interest by under-pricing labor, but moneylenders could only extract interest with a gratuity. The Medici would benefit from this latter exception by implicitly demanding such gifts. They had to be careful, though. If this gratuity were explicitly required, they could be charged with usury. These, then, are de Roover's escape hatches-- labor could repay the principal, and gratuities could be offered.

The third article asks, "Whether a man is bound to restore whatever profits he has made out of profits gotten by usury?" Aquinas concludes that "the lender is not bound to restore any more than he received" of fungible goods (essentially rival goods plus money), but is "bound to restore... the fruits accruing to him" from assets as well as the assets themselves. The fourth article asks "Whether it is lawful to borrow money under a condition of usury?" Aquinas argues that it is "provided the borrower have a good end in view."

The law was generally harsher than Aquinas towards usury, typically requiring four times the amount lent for compensation. The law also treated default. Since Aquinas saw usury as the sin, this issue does not arise for him except to say "He that suffers injury does not sin." In his conception, only the borrower suffers

injury since he or she is the victim of usury. None of the Catholic theologians would consider default a sin distinct from breaking a promise. That meant temporal courts could remedy it via contract law, but ecclesiastical courts would not claim jurisdiction (Thomas 1955).

Aquinas' squeamishness about interest arose in part from an underdeveloped theory of value. Its assumptions that things used in exchange were annihilated, and that price changes had only a few legitimate causes, made interest seem both unfair and dangerous. The fact that Aquinas did not consider what would happen if most buyers wanted the lowest price, and most sellers wanted the highest price meant that no theory of investment could justify interest. Notions like risk and inflation had some analogs in the thirteenth century, but were not objects of analysis in themselves. Such notions remained largely unexamined until the 17th century. Without such justifications, interest seemed unproductive at best, and destabilizing at worst.

Aquinas envisioned a world without interest of any kind. This vision allowed lending as a kind of charity, or something done among friends. In commerce, though, he only saw danger. There were exceptions, but these were limited. Debt conscription and international banking would test that limit by the 15th century. Offering labor to repay debts and allowing gratuities would become the small openings of de Roover's escape hatches. To the extent that Aquinas saw this coming, he condemned it. Undeveloped labor markets and strong incentives for trade, though, would make his objections impossible to enforce. Aquinas' dream of a world without interest would never be realized. Nor would it disappear. The

same dream would recur for centuries with some variations. Karl Marx would share this dream, but not its underlying logic.

Unlike Aquinas, who could assume that simple legal remedies and proper moral education would eliminate interest, Marx found that interest was much more deeply engrained in commercial life than that. Interest could not be dislodged without radically reorganizing society. In the meantime, he sought to understand how interest worked within the capitalist economy. Although he draws on a different set of principles, his normative conclusions were strikingly similar.

Aquinas never handled investment as a justification for interest because he denied the moral validity of its cause-- buying low and selling high. Since the cause was unjust, so was the result. There seemed no reason to go further. Marx had a similar normative view of investment, but was pessimistic that one could prevent people from buying low and selling high simply by telling them not to do so. Moreover, Marx saw the results of buying low and selling high, capital accumulation and exploitation, as exigencies of capitalism. That is, they affect non-participants as well. So, even if one tried to follow Aquinas by buying high and selling low, one could not escape the effects of others buying low and selling high.

For Marx, surplus value is the origin of interest. This was not a new idea. David Ricardo had roughly similar ideas on which Marx built. Focusing on the example of agricultural production, Ricardo assumed that prices would be determined by the quantity of labor necessary to produce something, while prices vary "as more or less labor becomes necessary to their production." Marx would take this distinction and break it into 'constant capital' and 'variable capital'

respectively, while denoting the amount of labor embodied in any one commodity 'socially necessary labor'. If neither workers nor manufacturers pay rent, Ricardo concludes, "the whole value of their commodities is divided into two portions only: one constitutes the profits of stock, the other the wages of labor" (Ricardo 1911).

Since this whole value depends on socially necessary labor, variations in the rate of profit and the wage rate will be proportional to variations in productivity. Whichever rate is higher, the rate of profit or the wage rate, is also the rate of interest since at this level, lending (i.e., saving) and employing (i.e., investing) money, offer the same return.

Ricardo's argument, which finds saving equal to investment simply on the basis of variations in productivity, doesn't go quite far enough. Marx began with this notion, but developed his theory of surplus value somewhat further. His simplification of Ricardo's distinction between constant and variable capital, specifically, is the starting point. Then, he adds in 'surplus value', which is what the commodity sells for above socially necessary labor.

This surplus value arises from exchange value. Since there may be "buying in order to sell", meaning money trades for commodities trades for money (M-C-M'), there must be more money at the end of the exchange for the process to make sense. That is, buying in order to sell will only happen if it is profitable. This is called the 'consumption share of capital'. Likewise, "selling in order to buy" (C-M-C'), requires greater use-value at the end. That is, the commodity one buys with the revenue from selling another commodity must be more useful to the buyer. This is the consumption share of labor, but Marx argues it ultimately accrues to capitalists,

as we shall see. In either case, there is greater value for sellers (M-C-M') and buyers (C-M-C') at the end of any given exchange. The total increase in value is the exchange value, and variation in the exchange value is the surplus value.

This variation occurs because different exchanges will give rise to different exchange values. So, a cheaply produced but extremely useful commodity may create a lot of exchange value while an expensively produced but less useful commodity will create less exchange value. If these commodities require equal amounts of socially necessary labor in production, and sell for the same price, the first commodity would create less surplus value than the second one.

While Ricardo equated the variable capital to interest, Marx would equate the variable capital plus the surplus value to it. The rate of interest would then arise from this total since one would again employ (invest) money in production or lend (save) money at the same rate.

This explanation, taking only commodities into account, lacks the really crucial feature, though. It is rarely commodities, but labor, that consumers sell in order to buy things. So both aspects of exchange value ultimately derive from labor, and therefore surplus value also arises from labor. Taking interest, then, is not merely an alternative to investment. It is a way to avoid laboring oneself. Marx says, "During the second period of the labor-process, that in which his labor is no longer necessary labor, the workman, it is true, labors, expends labor-power; but his labor, being no longer necessary labor, he creates no value for himself. He creates surplus-value, which for a capitalist, has all the charms of a creation of something out of nothing." So, to the extent that labor produces surplus value, it creates value for

the capitalist alone.

More specifically, since buyers sell labor to obtain commodities at a certain wage, they ultimately transfer labor into capital for the benefit of the capitalist. This happens because their work results in capital accumulation, both constant and variable. To that extent, surplus value is not merely the capital share and the labor share. It is the capital share plus the value of capital accumulation. So the mass of surplus value, which really just means this total, is ultimately the basis of interest.

While the "character of creditor, or of debtor, results here from simple circulation", the form of that circulation "stamps buyer and seller with this new die" that "the opposition is not nearly so pleasant, and is far more capable of crystalization." The normative problem with interest is exploitation. Since interest arises partly from surplus value, it effectively redistributes labor from borrowers to lenders. The part of the rate of interest derived from surplus value is called the "rate of exploitation" (Marx 1955). This rate plays a crucial role in Marx's theory of business cycles, but this theory is beyond the scope of our history. The crucial point is that Marx, like Aquinas, thought interest was akin to stealing people's labor.

Aquinas revealed a world in harmony with the logic of Christianity, Marx revealed a world in harmony with the logic of opposition; Aquinas justified everything, Marx undermined everything; both condemned interest, neither would compromise. For both, interest was akin to stealing.

Marx, however, had the benefit of experience. Although neither liked interest, Aquinas could only vaguely see the problem with surplus value. To that extent, his solution was simply to reverse the normal incentives-- buy high and sell low.

While this approach may seem empirically untenable, for Aquinas it solved the problem. If the cause of interest was unjust, it was sufficient to find a way for the virtuous individual not to participate. There was no need to explain how sinful behavior worked itself out empirically.

For Marx, this would be an absurd solution. He had no hope that anyone would buy high and sell low. Instead, he sought to analyze investment. This project led him to the theory of surplus value, which gave rise to his theory of interest. Although we do not venture further than interest here, this theory was also the central piece of his explanation of crises. Not only was interest a form of stealing, it was also one of the reasons he thought capitalism could not survive. This connection requires more careful analysis than we have space to consider here, but it is worth mentioning that John Maynard Keynes would make similar conclusions-- that interest and recession share common roots. We will take his analysis up in the fourth section of this chapter. For now, we turn to some thinkers with less extreme normative suggestions than Aquinas and Marx.

The Regulation of Interest

> "When the law prohibits interest altogether, it does not prevent it."
>
> Adam Smith, *Wealth of Nations*

Adam Smith supported regulated interest. He argued that, "In countries where interest is permitted... this rate ought always to be somewhat above the lowest market price, or the price which is commonly paid for the use of money by those who can give the most undoubted security." That is, he supported a

ceiling on interest rates.

This position abandoned hope for a world without interest. In light of Smith's analysis, such hopes seemed in vain. The best that could be achieved was a world in which interest was not too high. If any ministers were left who wanted to defend usury doctrines, they would have to contend with Smith. Unlike Josiah Child, who could advance a few arguments that hinted at reasons usury restrictions might impair trade and avoid theological discussions by claiming ignorance, Smith was a moral philosopher, well versed in such things. Any detractors would have to meet him on his own ground. None did. Smith, moral philosopher that he was, did not like usury. He just thought there was little to be done. In one instance, he wrote that "this prohibition, however, like all others of the same kind, is said to have produced no effect, and probably rather increased than diminished the evil of usury" (Smith 1976).

Smith, probably quite genuinely, opposed interest. It was an evil. He saw no way around it, though. As an evil, usury paled in comparison to the wonders the market could create. Here, finally, was a steady "invisible hand" to guide an economy where the sovereign's iron fist seemed increasingly to have lost its grip. Smith had shown that the world rested on firm foundations, a view that might reassure those who had followed the discussions about commerce of the preceding 150 years.

Those discussions tended to stay away from direct arguments about interest. Josiah Child was the only one who stated the problem clearly, and he did so extremely tentatively. Interest was there, though. Hidden in exchange rates, a

subject sufficiently arcane to discourage the uninitiated, usury was secretly under attack.

Thomas Mun noticed that "the moneys of Widows, Orphans, Lawyers, Gentlemen and others, are employed in the course of Forraign Trade, which themselves have no skill to perform." Here, Mun is referring both to monies of stockholders, who were not charging interest, and lenders, who were. The reference to widows and orphans hints at that fact. They were among the few who, under a particular trust device, were allowed to profit from interest. Also, he noticed that interest and trade "rise and fall together" (Appleby 1978). To the extent that his proposals encouraged expanding trade by letting exchange rates be, Mun implicitly promoted letting interest rates be. This argument was published only posthumously, and no wonder. His opinion justifies usury, albeit obscurely.

The notion of letting exchange rates be what they may came in part from a debate between Gerald de Malynes and Edward Misselden in the 1620s. This debate began to define, if not undermine, the perceived role of the sovereign in the market. Malynes argued that too many pounds sterling were being exchanged for foreign currencies. That is, the exchange rate was too high. Viewing money as a commodity, Malynes believed that one ounce of gold in pounds should always equal one ounce of gold in foreign currencies. The only reason this would not be the case, he believed, was if merchants had been duped by outsiders. As a remedy, he suggested that the sovereign enforce a 1:1 exchange rate at all ports, and devised a system to do so.

Edward Misselden attacked this argument in *The Circle of Commerce*, in which he proposed a balance of trade among commodities. This recognized that

gold coin was not itself the value of trade. It was the value "in money, in merchandize, in both, in either" that mattered, not just the gold. So, if merchants could profit from exchanging more English gold for less foreign gold, they should do it. The sovereign's regulations would just get in the way. This was not a normal thing to think.

Far more common was the assumption Martin Luther made in 1524, that "the best and safest way would be for the temporal authorities to appoint over this matter wise and honest men who would appraise the cost of all sorts of wares and fix accordingly the outside price". Since people were too involved in "drinking and dancing" for this to work, however, the next best solution was a market price (Luther 1897). So, for Luther, price regulation was the best means to run the economy. This was infeasible, however, so market prices would mostly have to do. For usury, however, regulation was the answer. Luther, like Smith, wanted interest to be regulated because he thought it was impossible, if desirable, to do otherwise. He did not envision a world without interest, but saw usury as an evil to be avoided by the individual and curtailed by the state.

Luther's argument, then, is not that usury was somehow acceptable. This was roughly Tawney's interpretation of Luther. In fact, Luther saw interest as a necessary evil. Its ill effects could only be regulated, not abrogated. This was due to the fact that princes participated in usury. Tawney would have us believe that Luther was merely pandering for the support of merchants and princes. This seems unlikely. For their part, "princes and merchants, one thief with another, He (i.e., God) will melt them together like lead and brass, as when a city burns, so that

there shall be neither princes nor merchants anymore." If this is pandering, it isn't very obviously so. Luther simply doubted, like Adam Smith after him, that usury could be prevented.

The major difference is that Smith followed the debates of the seventeenth century. He did not think fixing prices was the best solution-- quite the contrary. Expanding on Misselden and Mun, Smith thought the sovereign should generally stay out of the market. That was the only way to ensure fair prices. On this one point, though, he balked. The only price Smith argues should be regulated is the interest rate. This apparent inconsistency opened the door for Jeremy Bentham to attack usury doctrines directly in 1787. It would be the first such attack in history. We will cover his objections in the next section.

Freedom and interest

> "No man of ripe years and of sound mind, acting freely, and with his eyes open, ought to be hindered with a view to his advantage, from making such a bargain, in the way of obtaining money, as he thinks fit: nor, (what is a necessary consequence) any body hindered from supplying him, upon any terms he thinks proper to accede to."
>
> -Jeremy Bentham, *Defense of Usury*

Bentham wrote *Defense of Usury* in 1787 as a series of letters to Adam Smith. The work would be published in 1816, and again in 1818, after Bentham achieved some prominence in English intellectual circles. It was an early work, but an enthusiastic one. For Bentham, usury restrictions were a reflection of anachronistic political principles based on misplaced notions of justice.

The quotation at the top of this section is the principle Bentham defends throughout his treatise. He argues that usury is merely a pejorative term, problematized by political rhetoric. But he sees no real problem at all. He examines arguments about protecting borrowers who may be subject to prodigality, indigence, or simplicity but finds little reason to assume the majority of them actually are spendthrifts, bankrupts, or incompetents. From this perspective, he goes on to attack the leading defenders of usury restrictions, including the jurist William Blackstone, for their inconsistency on the matter.

Bentham's arguments against usury are inspired by Smith's economics, but there is more that is original in them. For Bentham, freedom is the key political principle. He wanted England, if not humanity, to abandon whatever coercions and restrictions were not strictly necessary. Usury was one example of the kind of hindrance he despised. Smith had more limited objectives. He merely wanted to explain how the system worked, and perhaps clarify ways in which it could be made to work more effectively.

Considered on its own, there isn't much economic analysis in Bentham's *Defense*. He proposes that interest is "exchanging present money for future", but does not go any deeper than that (Bentham 1818). He shows that free markets are consistent with Smith's notions, but takes those notions entirely for granted. His is a political analysis, not an economic one.

The economic analysis of usury restrictions would have to wait for J. S. Mill, who certainly read Bentham's work on usury, and adopted roughly the same political philosophy. Bentham did not add much to Ricardo's scheme, apparently

seeing interest as merely the result of "the spontaneous play of supply and demand" in capital markets. His analysis of usury restrictions focused on the consequences of price ceilings. These created "a third section of lenders", beyond those who charge interest at the legal maximum and those who choose not to lend because there are restrictions. This group "will not be averse to join in a violation of the law", but would charge a premium on the market rate "equivalent for the risk of non-payment and of legal penalties". So, the immediate consequence of usury restrictions would merely be an increase in interest rates. Meanwhile, since most transactions could not be examined by outside authorities, they allowed borrowers to default simply by "invoking legal penalties on those who have helped them in their need" (Mill 1965). Building on Bentham, Mill sees strong reasons for the repeal of usury restrictions. And indeed, Great Britain repealed usury restrictions shortly after these arguments were published. Although the United States would never formally remove them, their enforcement would steadily decline around the same time. Usury restrictions would no longer be effective price ceilings.

Economic policymakers would increasingly frown on restricting access to credit. Bentham's dream became a reality, and no man (or woman for that matter) would be hindered in freely contracting a loan. This meant governments could borrow unencumbered by their own restrictions. During the American Civil War and again during World War I, they would avail themselves of the opportunity at unprecedented levels. During the 1920s, stock could be purchased on margin, that is, using borrowed money. This meant that financial markets swelled with speculators who borrowed to invest. In 1929, this speculation precipitated the

Great Depression.

By that time, interest was only hazily understood. Most economic analysts recognized that interest rates governed time preference in saving, and argued that supply and demand in capital markets determined the interest rate. Ricardo's contention that saving and investment were identical was usually observed, but rarely explained. Meanwhile, it became clear that money influenced interest rates. While some analysts attempted to show fluctuations in interest rates were mainly monetary phenomena, only Keynes managed to explain all the connections.

Writing in the midst of the Great Depression, Keynes sought to explain the main causes of recession, and offer a coherent framework for treating them. In this sense, Keynes was like Marx, whose analysis of interest arose from the need to explain business cycles. Keynes, like Marx, took an analysis of investment seriously. Their biases, though, were quite different. While Marx focused mainly on exchange value, and then argued that capital accumulation would cause the consumer's share of surplus value to accrue to capitalists, Keynes focused on income, and argued that the entrepreneur's share of investment ultimately contributes to aggregate demand. That is, Marx saw interest as a means for capitalists to exploit laborers, while Keynes saw interest as an incentive for entrepreneurs to benefit society. This perspective puts Keynes in the same category as Bentham and Mill for our purposes. He did not object that interest was somehow akin to stealing-- quite the contrary. Interest allows investment to occur, and investment is part of aggregate demand. Marx's theory explained that capitalism would ultimately fail. Keynes' theory explained how to save capitalism from itself.

Keynes' explanation of interest begins with income. Arguing that income for firms is their output of finished goods net of the user cost of capital, he shows that when there are no supplementary costs (due to unexpected inventories), aggregate income will equal aggregate output. When this happens, savings is identical to investment, just like Ricardo argued. However, if there are excess inventories, supplementary costs will eat away aggregate income. This type of income, termed aggregate net income, means that saving (based on aggregate income) may not equal investment (based on aggregate net income). This disequilibrium will force interest rates to fall enough to reflect supplementary costs. This process works conversely as well. If inventories are unexpectedly depleted, supplementary costs will actually be profits, and interest rates will rise.

From this simple model of firms, Keynes goes on to explain his 'general theory' of interest rates from the perspective of consumers. First, he notes that time preference models of interest are addenda to his explanation of the marginal propensity to consume. This means that time preference for money is reflected in the proportion of income spent by consumers now. However, "there is a further choice that awaits him, namely, in what form will he hold command over future consumption which he has reserved, whether out of his current income or from previous savings". This choice is the consumer's liquidity preference, and it determines interest rates.

Keynes explains that interest should not be conceived as "a reward for waiting" to consume, but rather "as a reward for not-hoarding" money for current liquidity. So, consumers make a two-part choice. First they decide how

much income to spend, then they decide how much money it will take to enact their plans. Time preference and liquidity preference have very different causes. Time preference is based on expectations about future income, while liquidity preference is based on three conditions: 1) the transactions motive which is "the need of cash for the current transaction of personal and business exchanges", 2) the precautionary motive which is "the desire for security as to the future cash equivalent of a certain proportion of total resources", and 3) the speculative motive which is "the object of securing profit from knowing better than the market what the future will bring forth" (Keynes 1936). Liquidity preference determines interest rates because it places a certain value on money. Indeed, many of Keynes followers would later call liquidity preference demand for money.

Although Mill barely analyzed interest, his arguments on the consequences of price ceilings helped end usury restrictions. This meant that financial markets were unencumbered, but quite volatile. So, while Bentham's principled opposition to usury restrictions meant there was no turning back, it would take some time to understand how to manage interest. Keynes analysis would lay the groundwork for that management. He would be the first to explain interest, and still end up supporting it.

Conclusion

While analysts throughout time had different normative perspectives on interest, their analytic perspectives always informed policy. Thomas Aquinas

clearly opposed interest of any kind, but his analysis facilitated both Edward I's debt conscription policies and the Medici's international banking efforts. These policies were essentially based on loopholes, or 'escape hatches' as de Roover calls them, in the doctrines. While it is hard to imagine Aquinas supporting either Edward I or the Medici, his analysis could not preclude their policies.

Usury restrictions, more or less based on the kind of analysis Aquinas used, prevailed until the Reformation. Afterwards, there is some skepticism that the restrictions were really working. Martin Luther, for his part, would argue that price ceilings were the best means of economic management. This would support Tawney's claim that the Reformation was the key event in ending usury restrictions. Henry VIII enacted one such ceiling at 10%, and similar policies would prevail in England until 1852.

However, Tawney fails to consider how strident opposition to usury remained after the Reformation. Writers like Josiah Child, Thomas Mun, and Edward Misselden, all of whom we may infer from their writings opposed usury restrictions, had to be either tentative or obscure when addressing that issue. Usury doctrines would be staunchly defended until 1694 when the Bank of England made passions about interest rate less severe.

It would not be until 1787 that usury doctrines were openly opposed. At that point, interest was not well understood. J. S. Mill would see usury restrictions only as a price ceiling in capital markets. Marx would shortly address the complexities of the issue, but his suggestions tended to frighten policy makers rather than inform them.

It would take until 1936 for most economic analysts to understand how interest works. By that time, the Great Depression necessitated such considerations. Keynes managed to explain the issues clearly, and for the first time, to support policies that allowed interest from that perspective.

CHAPTER 4

THE SOCIAL STABILITY HYPOTHESIS

Overview

The last chapter assumed that certain market forces must be understood for economic policies to meet their intended goals. Although this certainly helps, markets are not nearly so simple as that hypothesis would have us believe.

Here, we take forces that may interfere with markets more seriously. Rather than proposing a teleology either of class or knowledge, here we consider a teleology of justice. This means that law has a bias towards balancing the concerns of various groups. Social stability is therefore the aim of changes to the law. While this may not always happen at first, successful laws will at least approximate justice.

This notion is, of course, only true for those whom lawmakers choose to consider. It is certainly the case that certain legal systems exclude groups. In 1290, the legal system excluded Jewish people in England, just as it excluded African slaves until 1865 in the United States. To that extent, law is not a balance for everyone in society. However, it can be seen as an attempt to balance the concerns of citizens.

This chapter considers attempts at balance between borrowers and lenders. Again, we follow Foucault's method going topically rather than chronologically. This should reveal both how balance was achieved, and how it was disturbed.

We will also take up the debate between Tawney and his critics. Here, we move into an area that Tawney did not address. Instead of asking what notions forced changes on the law, we look at laws themselves.

In particular, we will consider de Roover's arguments that there were always 'escape hatches' in usury doctrines, and the argument that Jeremy

Bentham's work on usury was effective. Tawney did not venture into legal institutions, so we cannot meet him on his own ground. However, this chapter should help evaluate the arguments of his critics.

Debt Conscription and International Finance

The contract that facilitated debt peonage was the indenture of retainer. This device could be used for all sorts of debt agreements, including land tenure. A few land agreements survive from the 14th century (Lancaster 4 Edw. III). However, market values for most real assets could be determined. This meant that the value of the principal, which was all that could be repaid in theory, could be imputed more accurately on such assets. The vast majority of surviving indenture agreements are for labor. Since it was seldom possible to evaluate wages accurately, these agreements probably underpriced labor.

Typically, a copy for both parties would be drawn up on the same sheet, and cut with a jagged edge so that courts could verify that the two matched. This process allowed creditors to sell their copy to other parties. Debt peons became transferrable assets as a result. Since most surviving indenture agreements from the 13th to 16th centuries came into the possession of military captains, debt conscription was clearly a major function of such agreements.

This indenture for military retainer begins to wane around the late fifteenth century. For some reason, the system of debt conscription Edward I built began to fall apart. Here we see the full effect of international finance. International banks, offering bills of exchange, began operating in England around this time. These

bills of exchange were simply exchange drafts used, typically, for international trade. Although a succession of Italian banks tried to conduct business in England during the fourteenth century, none got the kind of access the Medici managed by the beginning of the fifteenth century.

The Medici bank was Florentine, and the Medici family effectively ruled Florence. This meant the bank was directly involved in all the political affairs of fifteenth century Italy. It had to be. International finance at this time wasn't merely risky because default was possible. Usury restrictions made international finance murky legal territory. Careful oversight of bankers by the clergy ensured compliance with usury restrictions. Since the most trustworthy and educated members of the clergy lived in Italy, that location was the most convenient for international financiers. Roman approval guaranteed the approval of all ecclesiastical courts.

Italy was also convenient for other reasons. Starting in the late twelfth century, Italy became a major center of learning. As the old monasteries and universities in the Eastern Roman Empire fell increasingly to Ottoman conquests, Rome, Venice, and Florence became destinations for scholars and their books. This meant an influx of knowledge, from ancient Roman law and Greek philosophy to Vedic arithmetic and Arabic algebra, arrived on Italian shores. For Aquinas, the Roman law and Classical philosophy was the major influence. For the Medici bank, it was the Vedic arithmetic and Arabic algebra.

Before the 12th century, Europe used Roman numerals-- an awkward system for representing numerical concepts. There was no notion of zero, let alone negative numbers, making basic arithmetic difficult to represent on paper. Vedic

arithmetic, however, used a base 10 system and zero from the earliest times. This system spread first to the Muslim world, and through them to the Italians. Among other things, this system would allow double entry bookkeeping.

The Medici lived in the center of this new learning, and Cosimo de' Medici studied the new mathematics from an early age. His father, Giovanni, founded the bank. Under his guidance, the Medici bank would gain a sterling local reputation. It was Cosimo, though, who would turn it into an international giant.

Double entry bookkeeping was one of the secrets of Medici success. The system allowed the Medici to keep clear accounting records. This meant debits and credits were clearly, and accurately, understood. To structure their international bank, the Medici used a simple set of contracts. The simplicity of the arrangements made bank management an incredibly complicated task.

These contracts were a series of interlocking equity partnerships. The *maggiore*, essentially the senior partner, owned the majority stake in the main partnership. This *maggiore* was always the head of the Medici family. The junior partner in the main partnership was the general manager. This partnership owned a majority stake in each branch of the Medici bank, with one junior partner managing each branch. Branch managers typically hired factors at a given wage, although some had subsidiary partnerships at various times.

This structure centralized control. The *maggiore* always had the final say. However, each partnership was officially a separate business. This meant they could refuse to honor the pledges of other branches when terms were unfavorable. This complication was intentional. When terms were favorable, the branch made

a small profit by honoring the pledge of other branches. When terms were unfavorable, the receiving branch could refuse to honor the pledge until the *maggiore* could validate it. This meant that the holder of the bill of exchange would have to wait at least four months to get an answer from Florence. So the holder had two choices: Either wait four or more months, by which time the terms may become more favorable to the bank, or offer a small 'gift' to convince the branch manager to change his mind.

This was not usury. It met Aquinas' definition precisely-- gratuities were freely offered. From a modern perspective, though, it is easy to equate these gratuities with interest. Clearly, the size of an acceptable gratuity depended on exchange rates, since these determined how favorable terms were for the bank. The more unfavorable the terms, the larger the gift had to be. The lowest acceptable 'gift' would be equal to the prevailing interest rate.

Although this structure guaranteed compliance with usury restrictions by ensuring that gifts would be freely offered, it also allowed other conflicts among branches. Since branches were independent, they were expected to make loans without consultation. Some principles had to be observed. Loans to powerful figures, like popes and kings, were generally discouraged. Sovereign default had caused the failure of many Italian banks, and Cosimo de' Medici knew it. Some loans to kings were unavoidable. Although papal support guaranteed ecclesiastical courts would not interfere, kings controlled commerce in their own realms. This meant they could choose to expel anyone who displeased them. It also meant they could grant privileges, such as licensing, to whomever they chose.

Cosimo de' Medici typically chose to forego privileges in exchange for loans unless absolutely forced to do so. During his tenure as *maggiore*, the Medici did not suffer from sovereign default. Shortly after his death, his well-trusted London manager, Simone Nori, fell ill and resigned. Gherardo Canigiani was promoted in 1466. Given the complicated situation in England, Canigiani would be a disastrous choice. He would prove unable, or unwilling, to enforce Medici policy.

The Wars of the Roses, a succession battle between two factions of the royal House of Plantagenet, began in 1455. Rival claimants to the throne alternately received large loans from the Medici, and repudiated predecessors' debts. This had been a problem for the ailing Nori, but Canigiani would do the most damage. He would offer loans to various politicians in return for *personal* favors, rather than ones purely for the benefit of the bank. King Edward IV owed the London branch over 10,500 pounds. Although he would lose the throne and later be restored, his losses forced him to amortize the debt by forgiving tariffs to the bank. This would not be enough. Other borrowers, killed by the war and the plague, brought the total loss to 51,533 florins (50,000 pounds). The London branch closed in 1478, hoping to prevent further losses.

Canigiani, forced out of the bank too late, received a title and land in England for his gracious loans to Edward IV. His treachery, or ineptitude, would hasten the bank's general decline. The Medici bank would exist until 1494, but only traded wool in London (De Roover 1963). Its core business was lost there. Meanwhile in Bavaria, the Fuggers began a bank in 1487 modeled very much on the Medici bank. It would acquire most of the Medici's remaining assets, and expand across

Europe within a decade. Despite their distance from Rome, the Fuggers won support from the papacy by agreeing to administer collection of remittances of indulgences. Ironically these would go to the first Medici pope, Leo X[4], who built the Vatican with revenue from the indulgences.

Debt conscription using indenture began to decline as international banking started to compete in the market for loanable funds. There was no way around it. Debt conscription could not survive in the presence of international finance, and international finance could not be stopped. Despite becoming almost useless for conscription, indenture contracts could still be drawn for labor.

Starting in the late 16th century, indenture contracts begin to take on another function. Most surviving copies came into the possession of plantation owners in the American south. These agreements were typically between English or Dutch financiers and young immigrants who wanted loans to go to the new world (Solicitors 1600). Taken aboard transport ships along with the immigrants, the indenture agreement would first be sold to slave traders in large blocks, and then to plantation owners who wanted field hands.

Although each contract ended after a specified period, it was easy to get new loans under indenture agreements. Many indentured servants found that they needed extension loans just to make ends meet. This meant that indentured servants often lived as debt peons for life. In this sense, indentured servitude was slavery. Like slaves, indentured servants could be sold and had an obligation to

[4] Leo X did not begin construction on the Vatican, his predecessor did. Nor did he quite finish it during his reign. But he issued the indulgences that would finance it, and this would provoke Martin Luther to publish his 95 theses. Leo X would then attempt to suppress Luther, to disastrous effect.

work for their benefactor. Such benefactors were often masters of captive slaves as well.

Unlike slavery, however, indentured servants claimed all the same privileges as citizens of their respective states. So while they worked under the same conditions as slaves, they had opportunities that captive slaves did not. Many were literate, so they could do skilled labor that captive slaves generally could not because they were not allowed to learn to read. Indentured servants, to the contrary, were encouraged to learn to read the Bible by ministers. This meant that indenture contracts typically sold for higher prices than captive slaves.

These debt slaves, then, were not deprived of human dignity like captive slaves were. They were thought to be just as capable as any citizen. This perhaps explains why Bacon's Rebellion in 1676 frightened colonial governments into limiting indentured servitude, but not captive slavery. The uprising proved that indentured servants could organize, and fight, just as well as British soldiers could.

From 1676 until the 13th Amendment passed in 1865, indentured servitude was rarely used. Some states occasionally adopted it as a last resort for default, but this was an uncommon remedy. The constitutional prescription against "involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted" merely enshrined established custom.

Bankruptcy and Usury

> "Therefore it is usually said, that once a bankrupt, and always a bankrupt: by which is meant, that a plain and direct act of bankruptcy once committed cannot be purged, or explained away, by any subsequent

> conduct, as a dubious equivocal act may be; but that, if a commission is afterwards awarded, the commission and property of the assignees shall have a relation, or reference back to the first and original act of bankruptcy."
>
> -William Blackstone, *Commentaries on the Laws of England* (Blackstone 1979)

By 1766, when Blackstone wrote his *Commentaries*, usury restrictions and bankruptcy proceedings were long established in English law. The former was established for the protection of borrowers, the latter for the protection of lenders, and both ultimately serving the advancement of trade.

The bankrupt, then, was always a bankrupt, but the usurer was also always a usurer. There were just borrowers and just lenders who kept within strict legal limits, and there were those who crossed the line. Blackstone argued "to demand an exorbitant price is equally contrary to conscience for the loan of a horse or the loan of a sum of money. But a reasonable equivalent for the temporary inconvenience, which the owner may feel by the want of it, and for the hazard of losing it entirely, is not more immoral in one case than it is in the other."

Jeremy Bentham lambasted Blackstone's argument for balanced treatment in *Defense of Usury*. He replaced Blackstone's successive commentaries on usury with an extended metaphor about horses. Bentham takes the point that prices of horses are similar to interest (as a price of money) much further, applying what he learned from Adam Smith to the analogy. By doing so, Bentham misses Blackstone's main point.

Blackstone argues "if the compensation allowed by law does not exceed the proportion of the *hazard run* or *felt by the loan,* its allowance is neither repugnant to the revealed law, nor to the natural law: but if it exceeds these bounds, it is then

an oppressive *usury*: and though the municipal laws may give it impunity, they never can make it just. (Blackstone 1979)"

Bentham inserted his metaphor into this passage to read, "if the compensation allowed by law does not exceed the proportion of the *inconvenience which it is to the seller of the horse to part with it,* or the *want which the buyer has of it,* its allowance is neither repugnant to the revealed law, nor to the natural law: but if it exceeds these bounds, it is then an oppressive *jockey-ship:* and though the municipal laws may give it impunity, they never can make it just. (Bentham 1818)"

The comparison is intriguing in a few respects. Blackstone looks at 'hazard run or felt by the loan' as the reason for lending. This seems more like a concept of risk than Bentham's 'inconvenience which it is to the seller of the horse to part with it or want which the buyer has of it'. This is not an analogous concept of risk, but a concept of supply and demand. Blackstone sees risk as the justification of interest rates, Bentham thinks it is supply and demand in capital markets.

Blackstone probably had default in mind as the main 'hazard run or felt by the loan'. He is not talking about what crosses the line into usury, but what defines the line. Crossing the line is "the inconvenience to individual lenders, can never be estimated by laws; the rate of general interest must depend therefore upon the usual or general inconvenience." Blackstone argued that the legal maximum interest rate, the rate of general interest, would depend on how many lenders there were in the market. Blackstone believed this fair rate of interest could be calculated by "a person well skilled in political arithmetic. (Blackstone 1979)"

Where Blackstone thought this criterion was sufficient to limit lenders,

Bentham thought no limits were necessary. However, Blackstone did not argue that markets balanced the concerns of borrowers and lenders. He believed this balance could only be achieved by legal remedies. Bentham believed these concerns were already balanced, if only usury restrictions wouldn't get in the way. Despite ignoring default, Bentham ultimately succeeded in convincing policy makers to eliminate usury restrictions. He did not consider bankruptcy. For Blackstone, this remedy was crucial. While usury restrictions divided just from unjust lenders, bankruptcy divided just from unjust borrowers.

Blackstone's quotation at the top of this section means that an 'act of bankruptcy' cannot be expunged. That is, what constitutes the 'bankrupt' is not the actuality of insolvency or default, but whether one tried to avoid his or her creditors.

Blackstone identifies eleven 'acts of bankruptcy'. These include "Keeping in his own house, privately, so as not to be seen or spoken with by his creditors, except for just and necessary cause; which is likewise construed to be an intention to defraud his creditors, by avoiding the process of law" and "Lying in prison for two months, or more, upon arrest or other detention for debt, without finding bail, in order to attain his liberty. For the inability to procure bail argues a strong deficiency in his credit, owing either to his suspected poverty, or ill character; and his neglect to do it, if able, can arise only from a fraudulent intention: in either of which cases it is high time for his creditors to look to themselves, and compel a distribution of his effects. (Blackstone 1979)"

These acts of bankruptcy identified, beyond any doubt, an intention to defraud creditors. Default was not among the acts of bankruptcy. The mere act of

failing to pay one's creditors could not impugn the debtor's legal character. Of course, if one was insolvent, one had little choice but to commit an act of bankruptcy. Being in debtor's prison would lead to an act of bankruptcy after two months. Avoiding arrest by keeping house, fleeing the country, or even getting arrested "without just or lawful cause" would mark one out as a bankrupt. Escaping debtor's prison likewise meant one could not pay bail, and therefore was a bankrupt.

So, it was not the act of default, but these acts of bankruptcy that mattered. This process embodies the same notions of sin as had Aquinas' philosophy. The character flaw was not being unable to pay, but being unwilling to face the consequences of being unable to pay. Although 'bankruptcy' itself did not begin until 1542, other remedies for default began much earlier. These embody some of the principles of the medieval philosophy.

The Statute of Merchants in 1285 was in fact Edward I's second attempt at remedy for default. The first attempt, in 1283, was the Statute of Acton Burnell. Since "merchants, which heretofore have lent their goods to divers persons, be greatly impoverished, because there is no speedy law provided for them to have recovery of their debts at the day of payment assigned; and by reason hereof many merchants do refrain to come into this Realm with their merchandises, to the damage as well of the merchants, as of the whole realm" the statute was enacted.

The Statute of Acton Burnell did not include remedies similar to acts of bankruptcy. The debtor could be taken to prison and all his or her goods sold. If these seemed to go for an unfairly low price "he may blame himself that before

the day of the debt coming due he had it in his power to have sold his moveable goods, and to have levied the money with his own hand, and yet he would not".

This statute proved ineffective since "merchants after complained unto the King, that sheriffs misinterpreted his statutes, and sometimes by malice and false interpretation delayed the execution of the statute." Apparently, sheriffs were unwilling to liquidate assets of debtors upon the request of creditors. The Statute of Merchants sought to clarify enforcement. It provided that only lay people (e.g., non-clergy) could be imprisoned for debt, that the remedies did not extend to Jews, that heirs could not be imprisoned for debts they did not contract, and that debtors should be imprisoned before the liquidation process began. This allayed the concerns of sheriffs so well that by 1311 "many persons, other than known merchants, do feel themselves much aggrieved and fined by the Statute of Merchants (Britain 1283, 1285)", so its remedies were scaled back. Only merchants were subject to the Statute of Merchants after 1311.

In 1353, the Statute of the Staple was enacted. It mostly established certain staple towns for the sale of export goods. This would annoy the Medici, who would be forced for a time to contract wool exports only at Calais. It would also begin to regulate debt in new ways. The Statute of the Staple set up courts in each staple town that adjudicated debt contracts. This allowed new bonds (called 'statute staples') to be administered there.

Statute staples provided for quicker remedies to default than statute merchants did. Rather than waiting for a fair, merchants could find a standing court to administer liquidation processes. This meant more suits were brought

against defaulters. Since the Statute of the Merchants barely provided any relief for debtors, staple courts began administering tests to determine whether debtors were insolvent. These were enshrined in the first bankruptcy law of 1542 as 'acts of bankruptcy'.

Over the ensuing centuries, bankruptcy law changed from a remedy for creditors only to a remedy for debtors also. But acts of bankruptcy remained. In the 1867 law, the number of acts of bankruptcy grew to 19, discarding some like "keeping house" or "lying in prison". Their character changed as well. Rather than being 'once a bankrupt, always a bankrupt', acts of bankruptcy were now a legal test of whether assets were fraudulently divested in order to exclude them from the liquidation process. The bankrupt was freed. Acts of bankruptcy were no longer irrevocable offences that constituted a legal reputation. Instead, they became more like accounting rules; something to help the court determine which assets could be used to repay debts.

Credit Reporting

This shift away from a legal reputation was accompanied, as we've seen in other chapters, by the rise of the credit report. Courts no longer determined who was and was not a trustworthy debtor-- that was a matter for private industry. Rules regulating this industry evolved over the course of the 19th century. They would outline what could and could not be considered. This evolution meant that acts of bankruptcy had little purpose in regulating the character of debtors. That information would be available to everyone.

From its inception, credit reporting was controversial. In 1848, an Ohio merchant named John Beardsley sued Lewis Tappan's Mercantile Agency for libel. His case would last until 1871 and go all the way to the Supreme Court.

Beardsley had been a reasonably successful man, but a rumor reached New York that his wife was about to divorce him and sue for alimony. It was reported that, "their store would probably be closed at once if the suit was brought". The rumor, available to anyone for $50, reached Beardsley as well. He sued the Mercantile Agency and Cleveland's Commercial (who sent the report to New York).

Mrs. Beardsley did sue, she just didn't do so immediately. She brought her suit four months after Mr. Beardsley sued Lewis Tappan for libel. As it turned out, Tappan had generously hired Mrs. Beardsley's attorney. The discovery of this fact, however, created a procedural error which allowed an appeal to the Supreme Court.

Justice Miller delivered the opinion of the court. "In short," he wrote, "no one can read that record and believe it without being convinced that Tappan, having slandered Beardsley, and being called into account for it, entered into a still more disgraceful conspiracy to establish the truth of what he had said by using the name of Beardsley's wife in a suit against him for divorce without her authority, and without any shadow of justice. (Miller 1871)" The court thus ruled in favor of the defense (Tappan) because of the procedural error. They reversed the decision of the lower court, and allowed a retrial. It was never pursued.

This was a close call for credit reporting. It meant that their business could be construed as libelous. The need for standards became clear. In 1882, federal courts ruled that credit reports were privileged communications. Judge Morris

wrote the court's opinion that "If it is permissible for one merchant to inquire of another for his own benefit as to the standing of another merchant, I cannot see how any distinction can be made where one expends money and another receives money for the information, and makes it his business to get the information. (Miller 1871)"

This ruling meant that, as long as credit reporting agencies kept their information between themselves and their customers, they could write whatever they wanted because privileged communications are inadmissible in court. They went one step further to ensure compliance. By copyrighting their materials, they could both protect it from competitors and pre-empt libel suits. In 1896, courts upheld the validity of these copyrights.

Later in 1897, the National Association of Credit Men (NACM) formed for the benefit of the industry. It would adopt a new approach to credit reporting. That year, the president of NACM, James G. Cannon, would ask, "What features should be specially treated in mercantile agency reports to render them of the most service to the dispenser of credit, and in what ratio and order should these points be given consideration?" Cannon wanted to move the industry from "the dissimilarity, lack of order, abstract character, and disregard oftentimes of the most important points which the credit man must know in order to make an intelligent and proper decision. (Correspondent 1897)"

Cannon wanted, in short, to find the characteristics that *actually* made a difference to the profitability of 'dispensers of credit', rather than those *thought* to make a difference. Cotton Mather's condemnation of default would not remain the basis of the industry. Cannon argued that "the credit structure has been

reared upon faith and supposition, rather than upon tangible property and financial strength. (Correspondent 1897)" The austerity of Protestant values was not enough for Cannon. He wanted to discover what actually mattered to creditors-- what kind of debtor would repay.

The NACM published a manual that outlined best practices after Cannon encouraged this discussion. It also lobbied on behalf of credit reporting agencies. Two important early efforts were fictitious name laws and false financial statement legislation.

Fictitious name laws require that firms with more than one factor, and not using their own name[5], register their business with the appropriate local authority. These are state laws, and typically require county or state registration. Although these laws are convenient for tax enforcement, the NACM also saw a benefit. Having each business publicly registered to a person meant that credit reports could refer directly to individual people. While the industry initially focused on the creditworthiness of firms, these laws opened up new territory. The NACM began lobbying for their adoption in 1900 (NACM 2011).

These laws would allow consumer credit, based on individuals, to flourish. Retail Credit Company, a few years ahead of these efforts in 1897, would become the market leader. By 1920, it operated in all 50 states and Canada. The success of this venture enrolled almost everyone into the books of the credit men.

Fictitious name laws were not the only lobbying effort NACM undertook. In 1904, they led a campaign to change false financial statement legislation (NACM

[5] That is, the given name of one or more people employed by the firm

2011). This legislation requires borrowers to report finances accurately to lenders. Since lenders use this information to determine how risky a loan may be, and charge interest accordingly, there is some room for moral hazard.

Borrowers may choose to exaggerate their income to get a lower interest rate, or even just to get access to loans. This was the problem NACM wanted to address, so they lobbied to make punishments for false financial statements harsher. In particular, they wanted any false financial statement to disqualify borrowers from getting voluntary bankruptcy. They succeeded. To the extent that voluntary bankruptcy encouraged Lewis Tappan to start his firm in 1841, the NACM had now rebalanced the scales in favor of creditors.

Conclusion

This chapter examined the history of interest assuming that law balances concerns among citizens, aiming for social stability. After Edward I enacted the Statute of Merchants and the Edict of Expulsion, the law balanced concerns between borrowers and lenders by creating a range of options for lenders to punish debtors. These were unsatisfactory for borrowers, who eventually won some support from staple courts. Meanwhile, international finance undermined the system of debt conscription Edward I built. By 1542, the old system was replaced by new bankruptcy laws. These established clear 'acts of bankruptcy'. Bankruptcy law would continue to serve the concerns of lenders, while usury laws would serve the concerns of borrowers until the late eighteenth century.

When usury laws came under attack, bankruptcy laws also had to change.

Instead of being a remedy for creditors, voluntary bankruptcy would offer some refuge to borrowers as well. Meanwhile, the credit reporting industry arose to offer greater comfort to lenders. While initially based on the kinds of gossip common in American towns since Bacon's Rebellion, libel suits prevented credit reporters from making this model possible. Instead, the NACM was formed, in part, to make the process less arbitrary. This objective also meant the credit reporting industry could expand into new territory by lobbying on its own behalf. In the process, the modern credit reporting agency was born by the early 20th century.

Tawney's critics argued that the 'escape hatches' involved in usury doctrines were always there, rather than being products of the Protestant Reformation. The Medici bank, and later the Fuggers bank, are clear examples of this. The Medici made profits following usury doctrines quite closely. For them, interest was offered as a gratuity. Although one may argue that they exploited a loophole, it was a long-established one.

Meanwhile, it seems quite likely that Bentham's (perhaps unfair) treatment of Blackstone's balance between borrowers and lenders had an effect. By ignoring default, Bentham managed to make interest appear no different from the price of horses. This probably hastened the end of usury restrictions, just as Tawney's critics argue. It also caused bankruptcy laws and credit reporting to fill the vacuum left by those restrictions.

CHAPTER 5

THE ARCHIVAL HYPOTHESIS

Overview

This final chapter attempts to find a new hypothesis about the history of interest. While the preceding three chapters examined views justified by the current literature, here we attempt to find something based on new findings throughout the thesis.

This chapter applies several of Foucault's notions to achieve that goal. First, we outline the method of the previous chapters and then compare the main topics covered under each hypothesis. Then, we apply the summary to the events identified in chapter 1. This creates a particular narrative of the history of interest. This narrative suggests a certain interpretation based on Foucault's philosophy. This is the new hypothesis. The conclusion suggests a very broad characterization of our findings.

Hypotheses

The three hypotheses emerged from the literature review in chapter 1. Each had a certain teleological bias. Chapter 2 took the view that the history of interest could be explained with the emergence of class consciousness. This view assumed that the history would develop based on material changes, which would be reflected by class conflicts.

Chapter 3 challenged this bias. Taking the view that market forces were in fact responsible for historical change, that chapter had a bias towards a teleology of knowledge. The degree to which policymakers understood market forces determined how well policies would work.

Chapter 4 took the view that social stability was the aim of policy. It considered a teleology of justice. While not everyone in society was always included, lawmakers ultimately sought justice for citizens. This explains the history of interest as an attempt to balance concerns of borrowers and lenders.

Here, we attempt to synthesize these approaches. Rather than try to decide which teleological argument is best, we treat the hypotheses like digging tools in archeology-- laying them aside and seeing what has been uncovered. All had something worthwhile. To the extent that their biases exclude one another, none can be considered perfectly accurate. In order to accomplish this synthesis, we begin with a topical comparison of each chapter. For simplicity, the name of each hypothesis is abbreviated in the next section.

Table 1:

Chapter	**Hypothesis**	**Teleological bias**
Chapter 2	CCH- Class Consciousness Hypothesis	Class conflict
Chapter 3	MFH- Market Forces Hypothesis	Knowledge
Chapter 4	SSH- Social Stability Hypothesis	Justice

Usury

Why did usury restrictions begin, and what caused them to fade away? The Class Consciousness Hypothesis (CCH) began with the policies of Edward I. Since that teleology requires some material foundation as the cause of historical changes, the fact that Jewish people had few profitable opportunities aside from money lending suggested that they occupied this niche. However, this does not explain

why *Christians* banned the practice. The Market Forces Hypothesis (MFH) suggested that philosophy drove the change. Strictly speaking, this would be insufficient ground for CCH since it indicates someone like Thomas Aquinas thought usury was wrong independent of changes in the economic base. Although some authors reviewed in chapter 1 propose that a credit glut in the early 12th century created pressure for doctrinal change, we do not go that far back here.

This is creates a problem, either in ascribing specialization to the Jewish minority as money lenders or in ascribing independence to thinkers like Aquinas. Future research wanting to validate CCH would have to prove that something like the credit glut of the 12th century impacted Aquinas' theology. Validating MFH would require proving that Aquinas somehow challenged contemporaneous thinking on usury quite radically.

These insufficiencies aside, the facts that Jewish people engaged in money lending before 1290 and that Christian thinkers condemned it are useful starting points. The Social Stability Hypothesis (SSH) shows how these facts, combined with Edward I's commercial reforms, created a system of debtor's prisons, debt peonage, and debt conscription. This link will be considered below.

The end of usury restrictions applies more to the debate between Tawney and his critics. Each hypothesis attempted uncovered something about that debate. CCH argued that usury restrictions ended largely because the Bank of England reduced concern over usury. This is certainly a material cause, but it conflicts with other arguments. MFH argued that the debate between Adam Smith and Jeremy Bentham caused the change. While SSH uses Bentham and Blackstone to make a

similar argument, it seems likely that these are merely different aspects of the cause.

No single cause can be offered for the end of usury restrictions. It took a few hundred years for the early cracks in that philosophical edifice to reduce it to rubble. When the disintegration happened, though, it happened quickly. From this perspective, Tawney's intuition is correct-- early changes had an effect. He was wrong, however, in attributing the whole transition to a few writings from the sixteenth century. Tawney's critics were more correct in attributing the whole change to Bentham, but it seems that de Roover's argument that some 'escape hatches' were always present in usury doctrines was too strong. They absolutely were-- and in such a way that they cannot be said to have *caused* the end of usury restrictions. They were more like sluices than like cracks in the structure. They were intentional and regulated economic behavior. They were not accidents that destabilized the system.

Debtor's Prisons and Debt Peonage

The MFH suggest two such 'sluices' from Aquinas' philosophy. The first is that debts could be repaid with labor. While Aquinas clearly wanted only the principal to be repaid by that method, there was no way to determine market wages. The SSH explains how Edward I chose to manipulate this sluice. His commercial reforms first enhanced punishments for default. This meant lenders could easily threaten harsh punishments for default. After expelling Jewish people who were allowed to lend at interest, these reforms made it more likely that debts would be contracted in labor. The CCH explained how this system of debt conscription

underpinned English military might.

The second sluice the MFH found was that 'gratuities' could be offered to lenders. The SSH explains how the Medici used this sluice. By making it incredibly inconvenient *not* to offer a gratuity, they were effectively able to offer loans at interest. This meant money lenders again competed with ennobled lenders. The system of debt conscription fell apart as a result.

The main reforms that facilitated debt conscription, debt peonage and debtor's prisons, remained intact. Their function merely changed. The SSH explains that debt peonage mostly took the form of indentured servitude during the sixteenth century. These indentured servants worked for many of the same masters as captive slaves. However, they had more privileges than captive slaves. The CCH explains that Bacon's Rebellion in 1676 frightened colonists. Making debt seem dangerous, the rebellion indicated that debt might be sinful. This would cause ritual gossip about debt to emerge, which we consider further down. After the rebellion, debt peonage would become quite rare.

Debtor's prison would take somewhat longer to disappear. The CCH argues that while the notion that debt was somehow sinful engaged colonial Americans, the parallel notion that some sinners were redeemable created sympathy. This meant groups like the Humane Society could advocate on debt prisoners' behalf. After the American Revolution, such movements succeeded. The New Gaol in New York provided a place for debtors to demonstrate their virtue. As movements against arbitrary punishment emerged, these debtors could advocate on their own behalf. Debtor's prisons were abolished as a result.

Bankruptcy

The SSH explains that, as debt conscription ended, Henry VIII enacted the first bankruptcy law in 1542. Although this law was ultimately based on Edward I's commercial reforms and the Statute of Staples (which was a reaction to those reforms), it really reconstituted the balance between borrowers and lenders. Henry VIII also allowed a maximum rate of interest. This balance between usury restrictions and bankruptcy would remain largely intact into the eighteenth century. Despite haphazard implementation in the United States, bankruptcy remains intact today.

The SSH argues that after usury restrictions crumbled away in the mid-nineteenth century, bankruptcy law attempted to balance the concerns of borrowers and lenders by offering voluntary bankruptcy. The CCH sees this development largely in the context of merchants fighting for representation. Meanwhile, credit reporting began to move from gossip to industry. This transition is treated in the next section, but the two are intimately linked.

The SSH points out that the National Association of Credit Men (NACM) lobbied for pro-creditor changes to bankruptcy law. In particular, the NACM helped ensure that false financial statements would invalidate voluntary bankruptcy claims. The credit reporting industry thus created a counterbalance to those merchants fighting for representation.

Credit Reporting

The CCH argues that ritualized gossip about credit was the foundation for

Lewis Tappan's Mercantile Agency. Tappan acknowledged as much. Although he did not search for the cause of that gossip, Tappan believed that default was a moral problem. The SSH explains the libel case of Tappan v. Beardsley. Tappan comes off quite badly there, but he genuinely believed that his work would improve the moral character of American business. His goal was to bring the kind of moral restraint Congregationalist churches had long enforced to the whole country.

The CCH argues that ritualized gossip, and the Mercantile Agency that came in its wake, assumed that character was in fact related to creditworthiness. The success of the agency implies that Tappan's customers believed it too.

The SSH shows how this assumption came to be challenged by the NACM. By 1871, when Tappan v. Beardsley was settled, it became increasingly clear that credit reporting was vulnerable to charges of libel. The firms operating at that time began to find ways to improve the legal standing of their businesses. First, they got courts to recognize credit reports as privileged communications. This meant the report itself could not be cited in libel suits. They went a step further and began copyrighting their reports. This not only limited competition, it ensured that they could not be blamed if a third party distributed reports without permission.

The need for industry standards and solidarity in lobbying made the industry come together under the NACM. Their first president, Robert Cannon, was a positivist. He did not care about improving the moral standards of the business community. He cared about selling a quality product. This meant credit reports had to be based on factors that actually contributed to default.

Meanwhile, the NACM's lobbying efforts expanded the industry. By 1900,

fictitious name laws ensured a niche for consumer credit reports. This niche was quickly filled by Retail Credit Company. By the outbreak of World War I, credit reporting was well on its way to becoming ubiquitous.

Eventualization

Now that we have summarized the major topics that emerged in this thesis, we need to interpret the narrative. This is the role of Foucault's 'eventualization process'.

Chapter 1 identifies seven 'events' for this purpose. While more events could easily be included, the main idea is to build a temporal structure to explain the trajectory. The preceding chapters purposely avoid chronology. There is good reason for this. Foucault's method takes large swaths of time. While 'digging' for evidence, the goal is to find strong comparisons and contrasts. Excessive focus on the subsidiary causes and coincidences in chronological order muddies the argument. We want to sift through and find the important bits. This means the final narrative can be focused on the discourse-object (interest) alone.

The eventualization process is the structure of the Foucauldian narrative. The reasoning behind this structure is handled in the appendix on method. It is probably worthwhile to summarize the main points here as well.

Each event is the result of other events. However, we can explain how a few events relate to one another. First, there is a "discursive change". This means the event alters the way in which certain relations work. Discursive changes begin to exhibit certain "continuities in discourse" immediately, as local relations adapt

to them. Once enough local relations adopt the discursive change, "refinements in discourse" occur. This simply means that the ways in which discursive changes are used to certain effect improves. Finally, there are "applications in practice" in which local relations fully integrate the process. These applications can be the foundation for new events, and the cycle continues. So it is a four stage cycle: event-> discursive change (greater continuities in discourse)-> refinements in discourse-> application in practice-> event.

The first event we chose was the Edict of Expulsion in 1290. As Edward I returned from crusade in 1274, he and his ministers brought new ideas into England. First, Edward I enacted the Law of the Jewry in 1276, forcing Jewish people to wear yellow sashes and requiring a phase-out of money lending. This law likely brought undue attention to the Jewish population, already hated by many. As Edward I's wars with Wales and Scotland drained the national treasury, he increasingly took the privilege of taxing Jewish estates at 100%. This practice apparently stopped working-- either because Jewish lenders complied with the law, or because the major estates were already gone.

In 1285, Edward I enacted the Statute of Merchants. This created primitive liquidation procedures and provided for debtor's prisons. Although remedies in this act would seldom be used, its harsh terms could be an effective threat. This meant that lenders who complied with usury restrictions could punish defaulters. Shortly after executing 600 Jewish people for allegedly debasing the currency, Edward I enacted the Edict of Expulsion in 1290. Jews did not live openly in England for several hundred years afterwards.

Since Jewish people were the only people allowed to lend money at interest, certain discursive changes occur around lending practices. We begin to see indenture of retainer used to create debt peons. This procedure, backed by the threat of debtor's prison, could flout usury doctrines because labor markets lacked information about wages. Hence, the value of labor could not be determined easily, while the value of other assets could. This meant that payment in labor was the most attractive prospect for lenders.

As labor for loans becomes established practice, we begin to see transfers of debt peons for the sake of military quotas. This is a refinement in discourse. Lending is an attractive opportunity for ennobled creditors who don't wish to serve in campaigns themselves.

As this opportunity becomes widespread by the 15th century, it is an application in practice. The English army, famous for its country archers, was built on debt peonage. It is this army that was responsible for English muscle throughout the 15th and 16th centuries.

Meanwhile, another event occurs-- the failure of the London branch of the Medici bank in 1478. Coming from Italy, where translations of Middle Eastern and Indian mathematical texts were available, the bank was an early adopter of double entry bookkeeping. This allowed it to run much larger operations, with a better sense of profitability, than others. Meanwhile, legal advice concerning the "gratuities" exception to usury doctrines was better in Italy than elsewhere, since Catholic theologians with the best reputations practiced there. This meant that the Medici were ideally suited to thrive in international finance. However, their

partnership structure created adverse incentives for dishonest branch managers to waste resources for personal gain. Bad oversight, and bad timing caused the failure of the London branch.

The Medici's success spawned a large industry, which is greater continuity in discourse. With the Medici out of the way, a whole contingent of international banks following their example, took over business in England. These competitors created a place for money lending. As a sector of the market for loanable funds, it competed with ennobled lenders who sought debt peonage for conscription and cheap labor.

Although some complained about the foreign lenders, the Wars of the Roses were too distracting to do much about it. Debt conscripts were less easy to find on all sides, so although there were fewer debt conscripts due to competition, that war could do without them. Hence, the refinements in discourse took place elsewhere in Europe, as banking practices improved.

After the Wars of the Roses, the Tudor dynasty came to discover Italian and German bankers had destroyed their military conscription program with finance. Nor was there anything England could do about it. These banks, and these banks only, had the approval of the ecclesiastical courts who feared the evils of usury. The application in practice was again a European affair.

Meanwhile, Henry VIII's inability to produce a male heir meant another succession crisis like the Wars of the Roses loomed on the horizon. His solution would be to leave the Catholic church and join the Protestants. Although many would die in ensuing battles about the monarch's religion, the Tudor dynasty would survive.

The coronation in 1558 of Elizabeth I, Henry VIII's daughter, is our third event. While her younger brother's and older sister's reigns are both remembered for being bloody and short, hers is remembered as peaceful and long. This meant England finally had enough stability to engage the outside world.

Henry VIII's reign saw bankruptcy rebuilt in 1542, and the ecclesiastical courts rearranged in obedience to the monarchy. Thus, English rulers would be independent of European restrictions. These changes were insecure until Elizabeth I's reign. Although some ministers worried openly about foreign financiers, the existing laws were reaffirmed.

This reaffirmation is a refinement in discourse. As the country settled with the law, its enforcement grew uncontroversial. Bankruptcy law would remain in place in England up to the present. Meanwhile, opportunities for trade began to assert themselves. By the 1620s, several discussions about how to improve trade emerge.

Despite those discussions, the established order remained largely intact until the English Civil War. As Puritan leaders came to power, everything was again up for discussion. Our fourth event, the Restoration of Charles II in 1660, created an uneasy balance between the Parliament and the monarchy.

Although discussions about improving commerce appeared earlier, it was not until the Restoration that these arguments began to make an impact. Thomas Mun's *England's Treasure by Foreign Trade* and Josiah Child's *A New Discourse of Trade* were published, the former posthumously. These and other treatises did not openly challenge usury doctrines, but did hint at the possibility. The power of

Anglican bishops, like Christopher Jelinger, may have discouraged credible commentators from making clear arguments against usury restrictions.

Nonetheless, these tracts created refinements in discourse. A deeper understanding of commerce, and how England could benefit from it would continue. These discourses would inspire Adam Smith, eventually, to write *Wealth of Nations*. In the meantime, the Bank of England was chartered in 1694, and it was based very much on notions about commerce like those Mun and Child had. This is an application in practice. Although central banking would quiet discourses about usury for a time, nobody would openly challenge usury restrictions until the late eighteenth century.

After Adam Smith published his *Wealth of Nations*, Jeremy Bentham responded with an open criticism of usury doctrines. That same year, the US Constitution was adopted, our fifth event. Although it would be a few decades before Bentham's arguments on usury reached American shores, another discursive change was working its way into the new political landscape.

In tandem with wider criticisms of British legal practice, debtor's prison became unpopular. At first, humanitarian concerns raised by groups like New York's Humane Society moved debtors into better conditions, such as the New Gaol. This refinement in discourse established a foundation for ending debtor's prison entirely. In part through their own efforts, debt prisoners were freed. This application in practice meant that the punishment dating back to Edward I finally disappeared.

As the nineteenth century began, notions about usury were openly debated. Bentham's arguments, and those of his student J. S. Mill, resonated with

various groups. Usury restrictions were increasingly denuded. Meanwhile, debtors began to make themselves heard. These discursive changes began the process of altering law. Bankruptcy laws changed in 1841 to include voluntary bankruptcy for the first time. Then, Lewis Tappan began his Mercantile Agency.

By the outbreak of the American Civil War, out sixth event, creditors found themselves with fewer means of forcing debtors to repay. Although credit reporting began in 1841, the industry only started to flourish after the war. Bankruptcy law continued to give concessions to debtors in the 1867 law. A few years later, credit reporting won a crucial victory in Tappan v. Beardsley. These applications in practice meant credit reporting and voluntary bankruptcy would remain.

Libel suits still threatened the industry, moving into the late 19th century. The industry won support in cases about privileged information and copyright. These victories constitute greater continuities in discourse.

In 1897 and 1898, major refinements in discourse brought the industry together. The NACM began creating industry standards. These would move credit reporting from somewhat arbitrary notions of creditworthiness to more solid ground. The bankruptcy law of 1898 would make that branch of law permanent in the United States. Meanwhile, the NACM advocated for fictitious name laws and false financial statement legislation. This meant that as World War I began, consumer credit reporting was both possible and lucrative. Although we do not cover ground much past the war, the Great Depression was just over the horizon. John Maynard Keynes would make sense of interest in 1936. By that time, the modern institutional structure supporting interest was firmly established. The table

below summarizes this section for reference.

Table 2:

Event	**Discursive Change (Greater Continuity in Discourse)**	**Refinements in Discourse**	**Application in Practice**
1290, Edict of Expulsion	Indenture contracts applied to labor	Transfers of debt peons to military	Debt conscription, debtor's prisons
1478, London Medici bank fails	Fuggers, others, establish banks; compete with debt conscription	Improvements in international finance (Europe)	Finance approved by Catholic church (Europe)
1558, Coronation of Elizabeth I	Stability makes commercial reforms survive	Trade, commerce become target of policy	Indentured servitude, joint stock companies
1660, Restoration of Charles II	Focus on commerce, balance between Parliament and monarch	New ideas about trade, ways to move forward	Bank of England
1787, Adoption of US Constitution	Question British law, immorality of default	Humane society, New Gaol	End of debtor's prison
1860, Outbreak of American Civil war	Protection of debtors, ritual gossip, usury restrictions end	Mercantile Agency, bankruptcy laws	Credit reporting, voluntary bankruptcy
1914, Outbreak of WWI	Libel suits challenge, industry expands, bankruptcy made permanent law	NACM standards, fictitious name law, false financial statement legislation	Consumer credit reporting, permanent bankruptcy in US

The Matrix of Disciplinary Writing

Chapter 1 mentioned Lauer's 2008 article on credit reporting. There, Lauer anticipates the need for a Foucauldian study on interest in the literature. He suggests that credit reporting is an example of Foucault's "disciplinary writing".

Foucault uses the term 'disciplinary writing' in *Discipline and Punish* to

describe institutions common to prisons, schools, and the military whose aim is behavioral reform. These are typically formal guidelines backed by threats. Although the threat may or may not be published, it will be an effective threat. That is, it will be something within the authority of the threat maker.

Foucault analyzes very intricate examples in *Discipline and Punish*. The following example is entirely original, but may help clarify the main idea. Say a teacher makes the rule that students can't cut in line. If they do, they will be punished. The punishment may be the same every time (e.g., 5 minutes less recess), or may be up to the teacher. Of course, teachers are also subject to disciplinary writing (by principals or school districts perhaps), so not all threats are effective. In this case, corporal punishment may not be an effective threat in certain school districts where it is not allowed.

For something to pass as 'disciplinary writing' it should 1) have formal guidelines, 2) aim at reforming its audience, and 3) be backed by effective threats,. Does credit reporting pass this test?

Certainly, it has formal guidelines. This was not always the case, since before the NACM introduced some rigor into the process, mercantile agencies merely collected information about borrowers that would sell. Far from rigorous, the process was nearly random, and depended upon whatever information gatherers thought might be relevant. However, when the NACM introduced industry standards, it created a set of guidelines that determine what a credit score includes. Although agencies clearly use different formulae to determine credit scores, since the range of scores varies among them, these are merely ordinal

differences. The same information is used in approximately the same proportions across agencies. Therefore, credit reporting can be said to have formal guidelines.

The second criterion, reform, does not fit as well. When credit reporting was merely gossip, reform was clearly the goal. It was probably Lewis Tappan's goal as well. Once the NACM created industry standards, though, reform was not the aim. It was profit. Although something of ritualized gossip may remain, the credit reporting industry does not target reform anymore.

Credit reporting by itself is not backed by effective threats, either. Although certain behaviors will result in changes to credit scores, these scores do not in themselves threaten anything. They merely represent the opinion of the credit reporting agency based on whatever information it has. This opinion is based on very rigorously tested formulae, but it is still just an opinion.

So credit reporting by itself is not a kind of disciplinary writing. It does have one component of disciplinary writing, though. Furthermore, its origins lie in a movement to reform the business community. This indicates that Lauer's intuition is correct.

Credit reporting is merely one component of disciplinary writing. The institutions surrounding it, that is, the set of institutions supporting interest, are disciplinary writing.

The second criterion, aim at reform, is more properly the realm of bankruptcy law. Voluntary bankruptcy aims at pre-emptive reform. The label 'voluntary' would seem to contradict this notion since one apparently chooses to undergo the process oneself. However, there are strict guidelines to qualify. If

someone has produced a false financial statement, for example, they are disqualified from voluntary bankruptcy. This is the real attempt to reform debtors. Available only to those who have committed to reform already, these laws embody and enforce notions of moral behavior.

Finally, there is the threat criterion. This does not come from the law or the credit reporting agencies. It comes from lenders. They use the information provided by credit reports to determine whether or not to make a loan. If the loan isn't repaid, they can send the agency a negative report. The threat does not come directly from the agency. It is more properly in the connection between the agency and the lender. Lenders can also threaten to initiate involuntary bankruptcy. This threat is really the connection between the court and the lender.

So disciplinary writing is involved, but not merely in credit reporting. It is the matrix of credit reports, bankruptcy procedures, and loan agreements. The following table summarizes this definition:

Table 3:

Disciplinary Writing	Formal Guidelines?	Aims at Reform?	Effective Threat?
Credit Report	Yes	No	No
Bankruptcy Procedure	No	Yes	No
Loan Agreement	No	No	Yes

Conclusion: The Archive

Foucault sometimes likes to look at three broad periods in his analyses. These are the medieval, classical, and modern. He ties these to different 'archives' in *The Order of Things*. This approach explains how various discourses are related. Each archive is also conceived as a certain era-- a way of explaining how the major orders discovered in the analysis can be themselves ordered.

This history discovers three roughly separate eras. First, there is the medieval one. That era is characterized by condemnation of usury. The rules of formation there required strict adherence to usury doctrines. New ideas had to incorporate these rules to be acceptable. Meanwhile, the strategies of power were mostly concerned with ways to enhance military power. Edward I's reforms accomplished this task cunningly. The Medici emerge at the end of this era, still following its rules, but subtly shifting the strategies of power. Early modern finance would force local relations to adapt in a new environment. Debt conscription would no longer be possible. Trade and commerce had to become central concerns.

Once the changes are fully wrought, the early modern era (which Foucault would call classical) emerges. Its concern is no longer strict adherence to doctrine. Instead, careful observance is paid to the law. Enhancing commercial power through the state becomes the main concern. As analysts discover better ways to achieve this goal, they undermine the state's centrality to the process. After Adam Smith, nobody could believe that the intervention of the crown could enhance commerce.

These analysts moved us into the modern era. Challenging old laws with abandon, they began building new rules of formation. Usury restrictions, debt peonage, and debtor's prison were to be replaced with a matrix of disciplinary

writing. This system is the basis of modern strategies of power around interest.

Those who employ these strategies are, as ever, the borrowers and lenders who participate in the market for loanable funds. In the final analysis, the only historical constant is that local relations participate in strategies of power. This is a Foucauldian hypothesis, but it is hardly teleological. It would seem that, to whatever extent our other hypotheses can claim accuracy, we may expect certain features to remain present in all institutional arrangements around interest.

A thorough understanding of these features depends entirely on how history comes about. This thesis drew three perspectives from a careful review of the literature. Although many authors seem to rely on the kind of notions found in the CCH, MFH, and SSH, only passing reference (if any) is made to any specific teleological bias. Tawney, who does not fit into any of the three categories, draws from a fourth perspective: the ideal types pioneered by Weber. Nobody else reviewed in chapter 1 seems to rely on this approach. Future researchers may want to consider an approach based on ideal types since Tawney finds little support throughout the thesis. However, this approach is seldom considered in recent literature. A chapter devoted entirely to Tawney seemed frivolous here.

Since (to my knowledge), no one else has attempted to cover the history of interest before[6], there is much that is original here. The identification of each hypothesis is mine alone, as is the application of Foucault's method. Any oversights in this regard are also, of course, my own.

[6] Homer and Sylla wrote the *History of Interest Rates*, but theirs is a description of evidence, rather than an explanation of the consequences of interest. When undertaking interpretation, they fall mostly under the MFH.

The appendix considers a particular interpretation of Foucault's method, and explains how I have attempted to apply it here. This is drawn from my own interpretation of Foucault's method, as he described it himself.

APPENDIX 1

METHODS

Overview

The research methods for A History of Interest are based closely on the works of Michel Foucault. Writing in the late 1960s and 1970s, Foucault addressed his non-methodological works to certain legal institutions. Perhaps his most famous work, Discipline and Punish, dealt with the advent of the modern penitentiary. Other works, such as The History of Madness and The History of Sexuality (his

first and last respectively), dealt with the ways in which psychoanalytic notions arose and implicated themselves in the courtroom. Along those lines, The Order of Things explains the development of western scientific notions (including modern economic theory), and how these notions become linked to law and law enforcement.

Since this thesis was conceived out of a certain curiosity about how the medieval notion of usury relates to modern experiences of free credit markets, rather long time scales are involved. Foucault's method seemed uniquely suited to this purpose. His works manage a grand sweep of history, while still performing a rigorous analysis. This appendix summarizes Foucault's own description of his method, and then explains how this thesis will employ that method.

Description of methods

Since Foucault never adopted a consistent label for his method, it is alternately called 'archeological' and 'genealogical'. Foucault tended to prefer the term 'archeological' earlier in his career, and adopted the term 'genealogical' later. This equivocation about labeling indicates that the two major aspects of his method have similar significance. The two aspects intersect on several levels. However, these terms emphasize solutions to different problems in the history of ideas. We take each in its turn.

The term 'archeological' describes an approach to what Foucault terms the 'archive'. This term essentially describes a number of ideas Foucault develops about how 'discourse' and 'strategies of power', terms we will explain shortly,

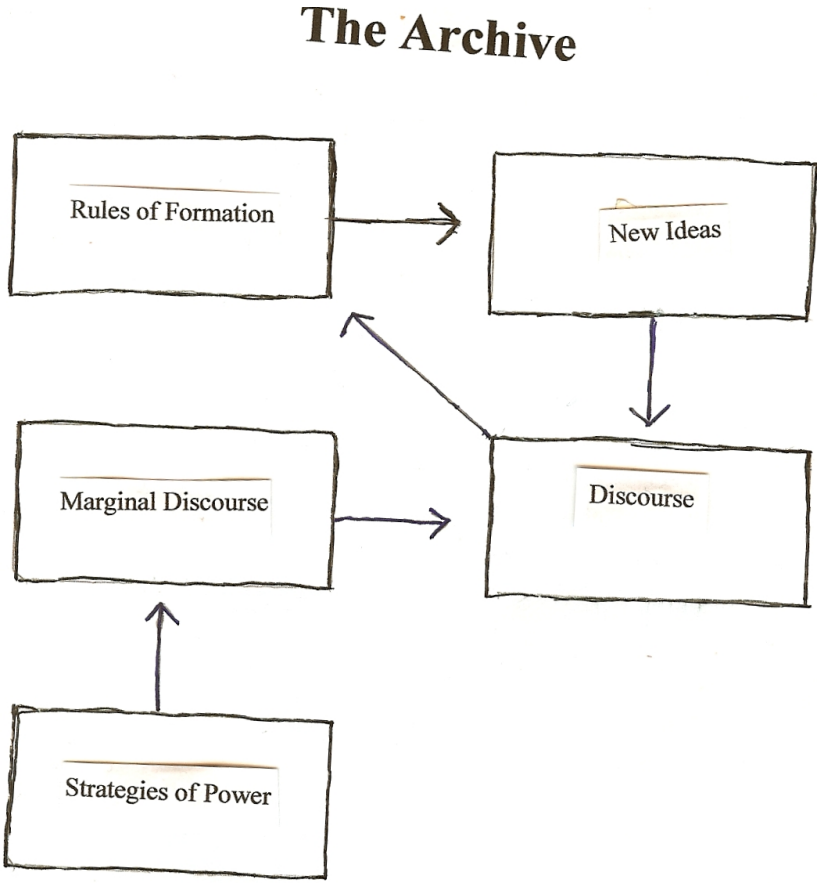
combine to create 'rules of formation'. These 'rules of formation' are what society can legitimately use to create new ideas—for example, a modern scientist may draw on certain established notions to build an entirely new theory. Foucault argues that all societies rely on rules of formation for the production of new knowledge. These rules may be more or less explicit, but they are built through 'discourse'.

For Foucault, 'discourse' has two major constituents. The first of these are the new ideas developed through established 'rules of formation'. Hence, there is a cycle in which new ideas can alter discourse, which in turn can change the rules of formation, and produce yet more new ideas. The second major constituent of discourse is called 'marginal discourse'. This is the "spontaneous philosophy of those who did not philosophize"(Foucault 2010, 137). Unlike new ideas, which are forged through well-established rules of formation, marginal discourse is directed by 'strategies of power'.

These 'strategies of power' are the envelope of tactics used successfully by local relations. These local relations are concrete relationships, such as borrower-lender, or teacher-student. Their various disputes and attempts at cooperation are called tactics. For example, if a borrower and a lender have a dispute, they may either seek some form of arbitration or come to an arrangement amongst themselves. Their best choices are limited by strategies, however. Since expectations about outcomes depend largely on context, the choice between arbitration and personal arrangement, in our example, would come down to what others in similar situations have done successfully. Time is also a factor. For our example, a personal arrangement might have made more sense before

arbitration could be considered impartial to both parties. Thus, strategies of power are forged by local relations over time. This focus on 'local relations' makes the archeological method somewhat atomistic because small units in society have a cumulative effect on which strategies of power are viable (Foucault 1988, 92-102).

These elements combine to form the archive, and are the subject of the archeological aspect of the method. Hence, Foucault builds an analysis based on the notions of rules of formation, discourse, new ideas, marginal discourse, and strategies of power. The archive is a residual structure. It tells us what the process of historical change leaves behind for us to examine. There, the pressures and proclivities that end up governing the trajectory of history record themselves. The following diagram summarizes this description:



Foucault at one point explains what is and is not meant by archeology. He finds four objectives for research in the history of ideas. First, there is the attribution of innovation. This attribution answers the question: who or what causes change in this field? He explains that his method is not interested in thoughts, themes, or concealed preoccupations. Rather, he is interested in discourse itself as a monument to historical change. The second objective is the analysis of contradiction which aims to explain why something is, or seems to be, different in the past from today. Foucault tells us he is not interested in rediscovering "the continuous, insensible transition on a gentle slope", but is rather concerned with defining discourse "in its specificity" and finding "what rules its operation" (Foucault

2010, 138-139). Third, the archaeological method is concerned with comparative descriptions. Unlike some who look at the writings of particular authors as a sort of sovereign field of order that imposes itself on knowledge, Foucault is interested in the rules that run through these *oeuvres*. Finally, the archaeological method targets the mapping of transformations. We are not interested in recovering what was thought at some supposed origin of an idea, but are rather describing a 'discourse-object' (which in our case is interest) as it becomes something.

Foucault also describes his method as the solution to three problems he finds with other research into the history of ideas. He argues that notions about change, causality, and agency have been based too much on historical constants that themselves have recent origins. So, for example, the ideas of class conflict or the spirit of an age may be taken for granted by the historian of ideas. This is not to say that such constants are not at work. Rather, Foucault wants to abandon the *assumption* that they are and replace it with a more agnostic approach. He calls this solution 'orders of culture'.

His solution has three orders. First, 'ordering codes' may be seen as roughly similar to marginal discourse. These are the ways in which a non-philosophical or non-scientific mind orders certain types of discourse. This stage of order is prior to 'pure experiences of order'. These pure experiences of order occur when common orders are overthrown or fundamentally challenged. This notion may be compared with Kuhn's notion of 'paradigm shifts' in which theories undergo radical change in a short period. The major difference is that Kuhn typically ascribes paradigm shifts to an individual *oeuvre,* while Foucault would focus on rules of formation

underlying that *oeuvre*. The concept 'pure experiences of order' is replaced with 'the event', as we shall see shortly. Finally, there are 'reflections on order itself'. He later renames this notion more simply 'new ideas' (Foucault 1994, ix-xiv, 3-16). Those who are intimately familiar with the other stages of order engage in reflections on order itself. Their work is mostly of a philosophical or scientific tone. This description of the archaeological method leaves out the connections between the stages, but is probably the simplest overview of the solution Foucault wants to achieve.

Foucault's later work refers to his method as 'genealogical' rather than 'archaeological'. This shift has caused some controversy, which we will ignore here entirely. After all, Foucault himself did not like debates about an author's *oeuvre* but sought to understand the rules that governed them. Therefore, we treat the shift as a refinement of earlier aspects of his method, or the most mature explanation of the method. This seems reasonable since, throughout his career, Foucault insisted that the label did not matter. See for example (Foucault 2000, 223-226). The major difference is that genealogy allows us to move from *this* archive to *these* archives. Foucault's earlier work did this, but what underlies these transitions was not explained until late in his career.

Influence is the basis for transition. So, while in some given archive there are certain rules of formation that have been roughly established, when we transition from one to another archive only some influence of the earlier one remains. This influence may be more or less strong, but the key is that something fundamental to discourse has changed. In his last work, Foucault proposes four rules of his

method. Despite calling them rules, he explains that these are not meant as "methodological imperatives" but rather as "cautionary prescriptions" (Foucault 1988, 98). The first three correspond to earlier concepts, while the fourth is newer.

The first rule is the 'Rule of Immanence'. It means that one should target practices rather than theories or constructions. Thus, we cannot use some philosophical trend that mattered at the time, like Calvinism or Thomism, as a substitute for what people were actually doing. This would not, by any means, preclude major thinkers like John Calvin or Thomas Aquinas from the analysis. We just shouldn't assume that their prescriptions were prior to practice.

Second, the 'Rule of Continual Variation' rejects reliance on singular explanations. So, to use the earlier example, constructs like the 'spirit of an age' or 'class conflict' cannot be assumed as the basis for change. These explanations may turn out to matter, but must be examined rather than proposed. Foucault deals with these issues by building a hypothesis using some explanation like these, and then criticizing it using contemporaneous evidence (both marginal discourses and new ideas).

Third, the 'Rule of Double Conditioning' requires that we keep the analysis relevant to local relations. Thus, arguments made about some historical object, like usury, should be relevant to the time and place under consideration. This does not preclude recent research, but simply means that we can only use it to build hypotheses about these times rather than as authorities on the times.

The last rule is the 'Rule of the Tactical Polyvalence of Discourse'. This label loses some poetry in translation. The mathematical language is meant to

conjure the image of a three dimensional shape whose edges change over time. This imagery can be compared to the electron cloud around an atom, or planets in orbit around a star. Instead of planets or electrons, though, the nodes are local subjects and connections between them are certain types of power relationships. In a late lecture on method, Foucault describes "building a polygon" around an object of discourse with the tactics of power as the nodes (Foucault 2000, 226-229). In that same lecture, Foucault provides three components of this rule: 1). The polymorphism of elements in relation, 2). the polymorphism of relations described, and 3). the polymorphism of domains of reference. The word 'polymorphism' means that the 'polygon' around some object of discourse is subject to change. Here we are meant to imagine that these aspects of the rule dissolve some local relationships while establishing new ones.

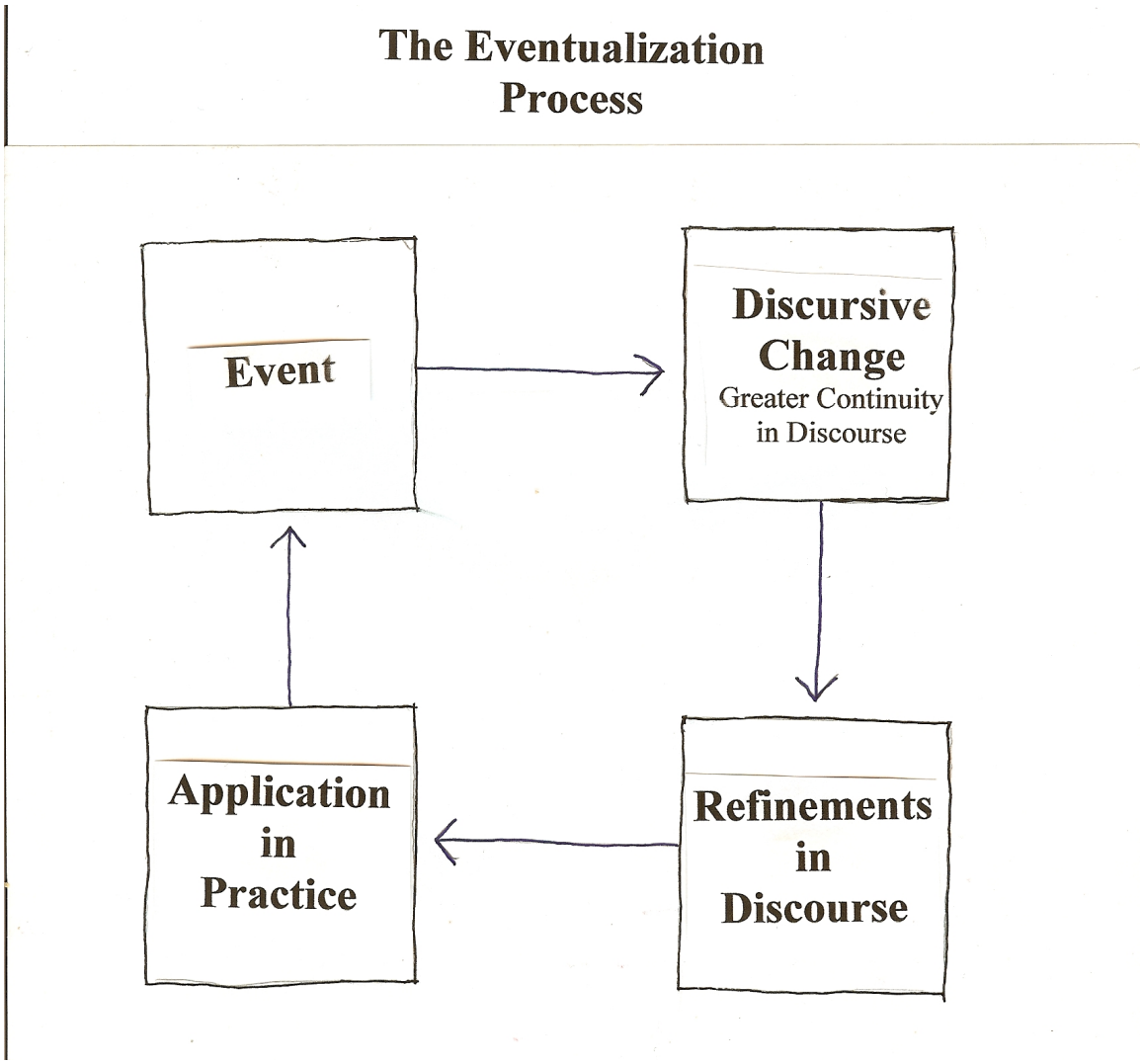
The 'polymorphism of elements in relation' are elements that immediately effect some event. Examples of elements include pedagogical practices, effects of armies, philosophy, and firearms. This menagerie of things and ideas are all capable of providing new options in power relations. So an invading army, for example, can provide alternatives for subjects to use in some power relation.

The 'polymorphism of relations described' are the actual tactics deployed in a situation. This part of the rule means that some of the elements in relation will actually be used by local subjects. So, for example, an invading army may provide an opportunity to force a certain outcome, but the actual use of this option is a 'relation described'.

The 'polymorphism of domains of reference' are technical mutations in relations. This is similar to the idea of progress, but Foucault wants to avoid the teleological associations of that word. Here he means that technology, both of the physical and

ideal sort, can change the context (domain of reference) in which power relations form. For example, an invading army may develop a secret weapon that alters the way war can be used in power relations.

These three aspects of the 'Rule of the Tactical Polyvalence of Discourse' describe the 'eventualization process'. Foucault proposes that changes occur due to events. These events cause major alterations, called 'discursive change', in the pattern of local relations. As local relations adjust to the event, there is greater 'continuity in discourse'. These adjustments cause 'refinements in discourse', which means that the discourse is fully absorbed. As this refinement occurs, there are new 'applications in practice', which lead in turn to new events. Thus, eventualization is a cycle of historical change. So, to apply our earlier example, the event may be the invasion of some army that has developed a secret weapon. Other armies may adopt this secret weapon, which would constitute a discursive change. As the technology becomes common, there is greater continuity in discourse. As this continuity in discourse occurs, the weapon will be used more often, which is an application in practice. Armies that apply the weapon in practice may cause new events to occur in their wake. The following diagram summarizes this process:



Application of methods

This eventualization process is the structure underlying sudden historical changes. For any given discourse object, interest in our case, several events will be relevant. Finding them is mostly a matter of discerning when major changes seem to have occurred. The technical criterion for choosing an event is the Rule of the Tactical Polyvalence of Discourse. If some historical event seems to meet this rule, it is a candidate. Of course, the event should be relevant to our discourse object as well. This does not mean that it will be directly related to it—we are very likely to find that

major changes in the history of interest occur around apparently unrelated events—but it does mean that the event needs to be nearby major shifts.

These events serve as the structure for the main analysis. Primary sources, both 'new ideas' and 'marginal discourses', written near each event can then be used for comparisons. These sources help us excavate the discourse object. This excavation process is accomplished by criticizing and rebuilding certain hypotheses about the discourse object. These hypotheses should be based on prevailing opinion about the discourse object's history.

Once events and hypotheses have been identified, the analysis proceeds following the other three rules. The following table summarizes the Rules:

Table 4:

Rule of Immanence	Rule of Continual Variation	Rule of Double Conditioning	Rule of the Tactical Polyvalence of Discourse
One should target practices, not theories or constructions (i.e., 'Calvinism')	Reject notions like 'ideal types', 'spirits of the age', or 'historical constants'	Keep the analysis relevant to local relations	1. Polymorphism of elements in relation 2. Polymorphism of relations described 3. Polymorphism of domains of reference

Following the Rule of Immanence means that we cannot confuse the writings of a major thinker with actual practices. So, for example, it might be tempting to take Thomas Aquinas' reasoning about usury as the actual source of usury restrictions. Instead, we should recognize that Aquinas builds his theory with the help of certain rules of formation. These rules partially reflect strategies of power, but also contain something new in them. Two simplistic assumptions this rule rejects are

that, 1). New ideas are entirely new, and; 2). Theories about a discourse object reflect widespread opinion about it. Neither is generally true. Foucault would place most thinkers in the eventualization process under Refinements in Discourse. Their role is largely to make sense of change and also to justify certain prevailing opinions.

The Rule of Continual Variation states that we should avoid singular explanations. This really means not taking certain modern notions for granted. So for example, if it seems like a common economic theory explains some change, we need to examine the assumptions of the theory and be critical of applying it in this case. At first, this process may seem like we canonically abandon any clear explanations. In fact, it is a way to force us to paint a more complete picture before accepting a reasonable simplification. Since many simplifications could seem reasonable at first, this criticism helps ensure that the better simplification prevails. Simplification is the purpose of Chapter 5 in this thesis.

Finally, the Rule of Double Conditioning forces us to limit the analysis to local relations. This limitation has two conditions—space and time. First, space is limited to a defined area. Foucault always used France. In our case, the space is Britain before 1776 and the United States afterwards. This leap across the ocean is necessary since the United States had no medieval history itself, and was not close to events as a colony. Although the medieval roots of interest in the United States can, at some extreme, be said to lie everywhere, British developments probably have the largest impact. Marginal discourses should come from the correct locale. Writings of major thinkers, such as Thomas Aquinas or Karl Marx, whose new ideas were widely available in the appropriate locale even though they didn't

live there, are acceptable since they influenced local discourse.

The second purpose of the Rule of Double Conditioning is to limit the timescale of the analysis. This means that we should not speculate about events too close to our own time, and that modern thinkers should not be used as evidence about past events. The latter argument means that recent research should be used to construct hypotheses about the discourse object rather than directly as evidence. The former argument means that we should refrain from explaining current events with this method. Since Foucault, writing in the 1960s, never went past 1900 we will not consider sources produced after 1936.

After exploring justifiable hypotheses with the archaeological or genealogical method, we conclude by advocating the best hypothesis. This conclusion will very likely build an entirely new hypothesis that corrects any problems we find with the others. This process provides ample opportunities for future research since the hypothesis may itself be challenged with the method.

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