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### Christianity and Bankruptcy

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## Christianity and Bankruptcy

David Skeel<sup>1</sup>

The term “bankruptcy” is nowhere to be found in the Bible. It seems to have first emerged in the late sixteenth century, as a concoction of “banca” and “rotta,” which together mean “broken bench.”<sup>2</sup> According to a common historical account, lenders in late medieval Italy set up benches in the market square—the equivalent of hanging out a shingle—and made their loans on their benches. If a lender defaulted, his bench was broken, thus preventing him from continuing to do business. Default ended his lending career.<sup>3</sup>

Although these developments came long after Christ, debt and the consequences of default have always been with us. They are a major theme both in the Hebrew Bible and in the New Testament. In Israel, as in the ancient Near East generally, a debtor who defaulted on his obligations was often sold into slavery or servitude. Biblical law moderated the harshness of this system by prohibiting Israelites from charging interest on loans to one another, thus diminishing the risk of default, and by requiring that slaves be released after seven years of service. Jesus alluded to the lending laws at least once,<sup>4</sup> and he frequently used economic illustrations in his

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<sup>1</sup> S. Samuel Arsht Professor of Corporate Law, University of Pennsylvania Law School. Thanks to Daniel Crane, Sam Gregg, Jonathan Master, Jesse Schupack, Robert Thrasher, and Alvin Velazquez for helpful comments, and to Robert Thrasher for excellent research help.

<sup>2</sup> See, for example, Vern Countryman, “Bankruptcy and the Individual Debtor - And a Modest Proposal to Return to the Seventeenth Century,” *Cath. U. L. Rev.* 32 (1982-1983), 809.

<sup>3</sup> *Id.*

<sup>4</sup> In Luke 6:35, Jesus says “love your enemies, and do good, and lend, expecting nothing in return, and your reward will be great.” All Bible quotations are from the Revised Standard Version.

teaching, linking forgiveness of sins to debt relief both in the Lord's Prayer and in one of his parables.<sup>5</sup>

Banca rotta was neither the first word nor the last in the evolution of bankruptcy in the centuries after Christ. Under Roman law, a debtor who defaulted could be dismembered and his body parts delivered to creditors, although scholars are skeptical whether this punishment was ever seriously enforced.<sup>6</sup> In the eighteenth and nineteenth centuries, debtors who defaulted on their obligations could be thrown into a debtors' prison, with release only when the debtor repaid his obligations. The risk of imprisonment for debt was very real.<sup>7</sup> Robert Morris, one of the financiers of the American Revolution, spent time in debtors' prison,<sup>8</sup> as did Charles Dickens's father. Dickens's father's imprisonment in London's notorious Marshalsea prison inspired Dickens's novel *Little Dorrit*.<sup>9</sup>

Although I will touch on these developments briefly, since they shed light on historical understandings of the biblical passages on debt and financial distress, I will focus in this chapter on modern bankruptcy law, especially American bankruptcy law. The past century has seen a significant expansion of personal bankruptcy law, the emergence of corporate bankruptcy, and most recently a debate over whether over-indebted countries should have access to bankruptcy relief. I will consider the extent to which each of these developments could be seen as reflecting Christian principles, and what a more fully Christian vision of bankruptcy law might look like.

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<sup>5</sup> Matthew 18: 21-35 (Parable of the Unforgiving Servant).

<sup>6</sup> See, for example, Alan N. Resnick and Henry J. Sommer, eds., *Collier on Bankruptcy*, 16th Ed., 20.01[1] (2009 update).

<sup>7</sup> The classic work is Bruce Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge: Harvard, 2002).

<sup>8</sup> *Ibid.*, p. 100-102.

<sup>9</sup> Dickens's father's experience is recounted in the editor's introduction to *Little Dorrit*. Charles Dickens, *Little Dorrit* (Helen Small and Stephen Wall, eds.; New York: Penguin Classics, 2004)(1857).

## The Biblical Context

Other than sex, almost no other feature of daily life figures so prominently in Scripture as debt. The Mosaic law, the prophets, the Psalms, Proverbs, and Jesus himself all devote considerable attention to lending and debt. Moses exhorts God's people to lend freely, and without charging interest, to a brother in need.<sup>10</sup> Ezekiel includes two separate references to lending and debt in his description of righteous behavior: a righteous man "restores to the debtor his pledge" and "does not lend at interest or take any profit."<sup>11</sup> Jesus refers to debt in the Lord's Prayer and in several of his parables.<sup>12</sup> Ever since Adam and Eve were expelled from Eden, debt and the consequences of default have been a familiar feature of economic life.

Nearly all of the Old Testament's debt passages either impose restrictions on its scope or call for adherence to those restrictions. The restrictions are important, and interpretations of their implications have shaped lending laws for centuries. But a crucial implication of the debt restrictions is too often neglected: the frequent reference to debt necessarily implies that debt is beneficial, despite its risks. Overall, debt must be good. If debt were always undesirable, the Mosaic law could simply have banished it. The law could have instructed God's people to make gifts to struggling members of their community, while forbidding any repayment obligation. But that's not what the law did, even within the community of God's people. The debt passages seem to envision that a righteous person will make interest-free loans to his struggling neighbor.

It is not hard to imagine why this might be so. The debtor might need funds today that she is likely to be capable of repaying later. Historically, farmers have often been in this

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<sup>10</sup> For example, Deuteronomy 15: 8-10; 23: 19-20. See also Nehemiah 5: 1-13 (condemning the nobles and officials for charging interest and urging loans without interest).

<sup>11</sup> Ezekiel 18: 7, 8.

<sup>12</sup> Matthew 6: 9-13 (Lord's Prayer).

position. They do not have sufficient funds to buy the necessary seeds, fertilizer and equipment at the outset of the growing period, but they expect to be able to repay the funds when the harvest comes in. If debt were not an option, a farmer who did not already have large amounts of funds, and who was unable to wheedle gifts from those around her, might be stranded. Loans are a very attractive alternative. Loans can ensure that the debtor has funds when she needs them and has a productive use for them, which is especially important if the debtor's business is volatile or seasonal. Debt thus gives the borrower access to funds at times when she has good use for them but would not be able to repay, and enables her to repay at a later time, or in increments that she is able to repay. Borrowing the money rather than relying solely on gifts may also be preferable from the perspective of the debtor's dignity.<sup>13</sup>

In contrast to the benefits of debt, which it leaves implicit, the Bible is quite explicit about the risk of defaulting on one's obligations. In Israel, and in the ancient world generally, a debtor who was unable to repay what he owed might be forced into some form of indentured servitude—that is, slavery.<sup>14</sup> Debt was like two other ubiquitous features both of the ancient and modern worlds, sex and fire. Each is good in its proper domain, but dangerous if misused.

The most prominent Biblical constraint on lending transactions is the prohibition on charging interest.<sup>15</sup> The anti-usury rule is referred to dozens of times in the Old Testament,<sup>16</sup> and had a long, at times fraught, history in the centuries after the Biblical canon was complete. The prohibition on usury was construed in many Jewish communities as barring interest on loans

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<sup>13</sup> For a popular book making this point, see Steve Corbett & Brian Fikkert, *When Helping Hurts: Alleviating Poverty Without Hurting the Poor. . . and Yourself* (Chicago: Moody Publishers, 2009).

<sup>14</sup> See, for example, Michael LeFebvre, "Theology and Economics in the Biblical Year of Jubilee," *Reformed Presbyterian Theological Journal*, 1.2 (Spring 2015), 13-32, at p. 20.

<sup>15</sup> For additional perspective on the treatment of usury in the Bible, see Stephen M. Bainbridge, *Christianity and Corporate Purpose*, this volume.

<sup>16</sup> See, for example, Exodus 22:25; Leviticus 25: 35-37; Deuteronomy 23: 19-20.

to fellow Jews, but not on loans to outsiders.<sup>17</sup> In Catholic canon law, the distinction between appropriate compensation for a loan and usury underwent a long evolution.<sup>18</sup> Although usury prohibitions do not guarantee that debtors will never default on their loans, they make default less likely. Like strict restrictions on sexual intimacy or the use of fire, they mitigate risk. The most obvious objectives of the prohibition are preventing predatory lending, and reducing the burden of a debtor's repayment obligations. The most obvious cost of a strict prohibition is that lenders may be less willing to lend if they cannot ask for interest on the loan. This may be why the Biblical writers extol lenders who are willing to lend money without charging interest.<sup>19</sup>

In addition to prohibiting usury, Biblical law restricted loan transactions in another important way. Biblical law limited the use of certain kinds of collateral for what we would now call secured loans. Even if the debtor agreed to pledge his grinding stone to the lender as security for repayment of a loan, the Bible prohibited this.<sup>20</sup> The Bible imposed a more nuanced restriction when a debtor pledged his cloak as collateral. Although lenders were allowed to take the cloak as collateral, they were required to give the cloak back to the debtor before sunset.<sup>21</sup>

These limitations on the collateral a debtor could pledge are similar to what we now call "exemptions." Modern law often restricts the right of creditors to seize a debtor's house or the tools of her trade if the debtor defaults on her obligations, much as Biblical law prohibited the

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<sup>17</sup> Some theologians contend that it applied only to loans to the poor, not to ordinary business loans. See, for example, LeFebvre, pp. 23-24.

<sup>18</sup> The classic modern study construed the church has having changed its theology of usury. John T. Noonan, Jr., *The Scholastic Analysis of Usury* (Cambridge: Harvard University Press, 1957). For an argument that the current theology is consistent with its antecedents. Brian M. McCall, *The Church and the Usurers: Unprofitable Lending for the Modern Economy* (Ave Maria, FL: Sapientia Press, 2013).

<sup>19</sup> See, for example, Ezekiel 18:8.

<sup>20</sup> Deuteronomy 24:6.

<sup>21</sup> Exodus 22: 26-27.

pledge of a grindstone and required lenders to return the debtor's cloak at the end of each day.<sup>22</sup> These Biblical restrictions are both narrower and broader than exemptions in contemporary law. They cover only a limited number of assets, whereas the range of modern exemptions is broader. But the Biblical restrictions were absolute. Under modern American bankruptcy law, debtors generally are not prevented from pledging otherwise exempt assets; the assets are only exempt if they have not been pledged to a particular creditor.<sup>23</sup>

The Biblical constraints on lending would have significantly reduced the risk of default. A debtor who does not need to pay interest on a loan, and whose grinding stone and cloak cannot be taken, is less likely to fall into financial distress than he would in the absence of these strictures. But default is still quite possible. If a debtor's crop was destroyed or his business suffered a setback, he might be unable to pay even a no-interest loan. Even if debt is restricted and every lender obeys these restrictions, some debtors will inevitably default.

Biblical law anticipates and responds to the consequences of default—which in the ancient world often meant slavery—with two sets of debt relief provisions. The first called for the release of a Jewish slave after he had served for seven years. Any obligations the debtor had incurred would be forgiven and the slave owner was required to set the slave free.<sup>24</sup> The forty-ninth year brought an even more sweeping release. God's people were instructed to blow a trumpet after counting “seven weeks of years, seven times seven years,” and to “proclaim liberty throughout all the land to all of its inhabitants” for the coming year.<sup>25</sup> For the Jubilee year, they

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<sup>22</sup> For a similar point, see Paul B. Rasor, “Biblical Roots of Modern Consumer Credit Law,” *J.L. & Relig.* 10 (1993) 157, 179-80. In the United States, debtors are permitted to choose either the exemptions provided by federal bankruptcy law, or the exemptions provided by the debtor's state of residence, although the state is permitted to require its debtors to use the state law exemptions. State exemptions vary considerably. These rather convoluted rules are set forth in section 522 of the Bankruptcy Code. 11 U.S.C. § 522.

<sup>23</sup> See generally 11 U.S.C. § 522(f)(removing most judicial liens, but not liens arising from consensual pledges, from property to the extent of a debtor's exemption.

<sup>24</sup> Deuteronomy 15: 1-2.

<sup>25</sup> Leviticus 25: 8, 10.

were to leave their land fallow, to return to their family homestead, and to release every slave and financial obligation. Their debts were entirely erased.

The most striking feature of debt relief in the Hebrew Bible is that it is unconditional. The debt release contained a partial exception: a debtor who had sold himself or was sold into slavery for debt received his relief only after serving for seven years.<sup>26</sup> But the release after seven years was unconditional, as was the release for ordinary debts and the release in the Jubilee.

One concern with generous access to debt relief is that it may reduce lenders' willingness to lend. The seven year release and Jubilee rules in the Hebrew Bible anticipate this effect. With the seven year release, Israelites are admonished not to stop lending to and otherwise helping poor fellow Israelites when the seven year release was near.<sup>27</sup> With land transactions, by contrast, the Jubilee instructions not only permit—they instruct--, and buyers and sellers to take the number of years until the Jubilee into account.<sup>28</sup>

Modern bankruptcy laws often limit relief to debtors who especially need relief and are in some sense worthy of the assistance they receive. In American law, this inclination is captured in the statement, memorialized in an early twentieth century Supreme Court decision, that bankruptcy is intended for “honest but unfortunate” debtors.<sup>29</sup> Biblical law is not indifferent to the risk of debtor misbehavior. The Psalms describe a debtor who “borrows but does not pay back” as “wicked,”<sup>30</sup> and a debtor who shirks his financial obligations would be seen as violating two of the Ten Commandments, the prohibition against stealing and (because he had

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<sup>26</sup> Deuteronomy 15: 12-13.

<sup>27</sup> Deuteronomy 15: 9-10.

<sup>28</sup> Leviticus 25: 15-16.

<sup>29</sup> Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934).

<sup>30</sup> Psalm 37:21.

promised by contract to repay) against false witness. These are serious offenses. But they are not the focus of the Biblical relief laws. Those laws do not distinguish between worthy and unworthy debtors; they call for forgiveness of everyone's debts.

Jesus devoted as much attention to debt and financial distress as the Hebrew Bible did. Indeed, debt figures even more prominently in his parables and other teachings than marital fidelity. In the Lord's Prayer, Jesus instructed his disciples to ask God to "forgive our debts, as we forgive our debtors."<sup>31</sup> The importance of debt forgiveness recurs elsewhere in Jesus's teachings as well. In one parable, a servant who is unable to pay his obligations begs his master to give him more time to pay his debt; moved by the plea, the master agrees to forgive the debt altogether.<sup>32</sup> When the servant is asked by a fellow servant for more time to pay a much smaller debt, however, the first servant refuses, insisting that his own debtor pay everything he owes. The first servant is condemned for his lack of mercy, and in the parable the master rescinds his promise to forgive the servant's debts and throws him in prison.

Because Jesus is using debt to make a spiritual point about our need for forgiveness and about forgiving others, these passages need to be handled carefully in an essay about financial distress. They are not necessarily a blueprint for legislation, both because the economic implications are often secondary and Jesus is speaking primarily to his followers, not speaking directly about secular law. Yet it would be odd if these teachings had no relevance. Here and elsewhere, Jesus seems to imply that charging interest for a loan is legitimate.<sup>33</sup> Jesus also assumes that his hearers will understand debt and its potentially ruinous consequences. On multiple occasions, in several different contexts, he praises those who respond favorably to pleas

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<sup>31</sup> Matthew: 6: 9-13.

<sup>32</sup> Matthew 18: 21-35.

<sup>33</sup> See, for example, Luke 19: 11-27 (interest on bank deposit in Parable of the Ten Minas).

for forgiveness of debt or condemns those who insist on strict adherence to the terms of a credit contract. This seems to have implications for a Christian understanding of financial distress.

### **An Essay Upon Projects: Of Bankrupts**

A famous signpost on the road to modern bankruptcy law was a political tract called *An Essay upon Projects* published in 1697 by Daniel DeFoe, who later wrote *Robinson Crusoe* and several other classic early English novels.<sup>34</sup> In *An Essay upon Projects*, DeFoe, who was a Protestant dissenter from the established Anglican church, outlines a variety of proposals for social reform. In a chapter called “Of Bankrupts,” DeFoe lamented that while most English laws were “temper’d with Mercy, Lenity, and Freedom,” the bankruptcy law had “something in it of Barbarity.”<sup>35</sup> DeFoe proposed an alternative approach that would, he believed, leave both debtors and their creditors better off.

The English bankruptcy law of the time authorized creditors of a debtor to obtain a judgment if creditors failed to repay them. The debtor could be put in prison for the failure to satisfy the judgment, and while the debtor was in prison, the creditors were entitled to any money he earned, until the debts were repaid. DeFoe insisted that the law “tend[ed] wholly to the Destruction of the Debtor, and yet very little to the Advantage of the Creditor.”<sup>36</sup> Although dishonest debtors might evade their creditors, he argued, the law gave honest debtors no incentive to work. They could not earn a living if they were locked up in prison, and any assets they obtained outside of prison could immediately be seized by creditors. This did not seem to

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<sup>34</sup> Daniel DeFoe, *An Essay upon Projects* (Joyce D. Kennedy, Michael Seidel, and Maximillian E. Novak, eds.; New York: AMS Press, Inc., 1999)(1697).

<sup>35</sup> *Ibid.*, p.75.

<sup>36</sup> *Ibid.*

be in anyone's interests, since it humiliated the debtor and did nothing to improve the creditors' prospects for recovery.

What was needed, according to DeFoe, was a law that would provide suitable treatment for four types of people, the "Honest Debtor," the "Knavish, Designing, or Idle, Extravagant Debtor," the "moderate Creditor," and the "Rigorous Severe Creditor." Under the framework that DeFoe proposed, the debtor would file a petition stating that:

*[Y]our Petitioner being unable to carry on his Business, by reason of great Losses and Decay of Trade, and being ready and willing to make a full and entire discovery of his whole Estate, and to deliver up the same to your Honors upon Oath, as the Law directs for the satisfaction of his Creditors, and having to that purpose entred his Name in the Books of your Office ... Your Petitioner humbly prays the Protection of this Honorable Court.*<sup>37</sup>

The debtor would thus turn over all of his assets to the court. If the debtor made a "fair and just Surrender of all his Estate and Effects," Defoe goes on to suggest, 5% of the value of his assets would be returned to the debtor, and his obligations would be erased—"discharged," in bankruptcy parlance.<sup>38</sup> The other 95% of the value of the debtor's assets would be "fairly and equally divided among the Creditors." If the debtor hid some of his assets from his creditors, by contrast, he would be punished with life in prison.

The author of "Of Bankrupts" was not exactly a dispassionate observer of the insolvency laws of the time. A few years earlier, DeFoe had been arrested for failing to pay debts he had incurred as a merchant, and he spent a short time in prison as a result. He took a keen interest in

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<sup>37</sup> Ibid., p. 83 (italics removed).

<sup>38</sup> Ibid., p. 84.

the treatment of debtors throughout his life, and was in precarious financial straits at various points, in part because of his criticism of the established church.<sup>39</sup>

In one respect, DeFoe's proposed bankruptcy law reflected the realities of his time. His reference to the "Decay of Trade" suffered by a debtor assumes that the debtor would be a merchant or trader, rather than an ordinary citizen. The insolvency laws of the time made the same assumption, and this would hold true for another two centuries. The earliest English (and the first American) bankruptcy laws applied only to merchants and traders. In other respects, however, DeFoe's framework called for a radically different conception of bankruptcy. In DeFoe's era, creditors were the ones who invoked the laws, not debtors, and a debtor's obligations were not discharged even if the debtor turned over all of his assets to the court. If the assets were not sufficient to pay the debtor's creditors in full, the debtor was still liable for the unpaid amount. DeFoe's proposal that the debtor himself file the petition, that he receive a 5% living stipend, and that his obligations be fully discharged if he turned over all of his assets to the court called for strikingly new approach to the regulation of financial distress.

Although many of the social reform proposals in *An Essay on Projects* are justifiably forgotten, DeFoe's bankruptcy proposal was remarkably prescient, at least from the long view of history. Less than a decade after DeFoe wrote the Essay, England enacted insolvency reforms that provided for a complete discharge of the debtor's obligations for the first time in England's history.<sup>40</sup> Only creditors could invoke the law, but if they did, and the debtor's assets were turned over to the court, the debtor received a discharge. Truly voluntary bankruptcy—a bankruptcy law that the debtor could invoke—would not come for another century and a half.

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<sup>39</sup> Ibid. p. xix-xx (editors' introduction).

<sup>40</sup> A 1705 reform, the Statute of Anne, provided the first discharge. See, for example, Lawrence Shepard, "Personal Failures and the Bankruptcy Reform Act of 1978," *J.L. & Econ.* 27 (1984), 419, 421-22.

After enacting a short-lived bankruptcy law based on then-current English law in 1800, American lawmakers passed the law permitting voluntary bankruptcy filings in 1841.<sup>41</sup> The Bankruptcy Act of 1841 was remarkably similar to the framework that DeFoe had proposed, although it was as short-lived as its predecessor.

## Christianity and U.S. Bankruptcy Law

The American approach to bankruptcy, which emerged in halting steps during the nineteenth century,<sup>42</sup> is closely linked to the concept of a “fresh start” for struggling debtors. Under American bankruptcy law, a debtor who is overwhelmed by her debts can file a bankruptcy petition, discharge all of her debts, and receive a fresh start. Although the debtor is required to turn over her property to the court, she is permitted to retain property that is defined as “exempt” in her state, such as tools of trade or some of the value of her house. For Protestant evangelicals especially, this narrative sounds as if it came straight from the pages of the New Testament. The Bible teaches that each of us is a sinner who has rebelled against God and is utterly hopeless on our own.<sup>43</sup> We are “dead in [our] trespasses and sins.” Yet if we seek forgiveness in Christ, we are offered a categorical absolution from all of our past mistakes.<sup>44</sup>

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<sup>41</sup> See, for example, Charles Jordan Tabb, “The History of the Bankruptcy Laws in the United States,” *Am. Bankr. Inst. L. Rev.* 3 (1995), 5, 17.

<sup>42</sup> During this same period, states also began to abolish debtors’ prisons, and the Thirteenth Amendment barred involuntary servitude for debt after the Civil War. Recent patterns of imprisonment for nonpayment of criminal fees and costs have been widely condemned as creating new debtors’ prisons. For an excellent analysis of the history and current developments, see Christopher D. Hampson, “The New American Debtors’ Prisons,” *Am. J. Crim. L.* 44 (2016) 1.

<sup>43</sup> Ephesians 2: 1.

<sup>44</sup> An influential recent study of American bankruptcy law, one of whose authors is now a prominent politician, was entitled *As We Forgive Our Debtors*. Teresa A. Sullivan, Elizabeth Warren and Jay Lawrence Westbrook, *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* (New York: Oxford University Press, 1989).

Bankruptcy and the Christian story both promise a new beginning. One is temporal, the other spiritual, but the trajectory of the narratives is the same.

It is important to recognize how sharply the American fresh start differs from other countries' insolvency laws. Until very recently, many countries did not provide for a discharge at all. In countries that did offer a discharge for financially distressed debtors, the discharge often required the debtor first to make payments for a period of years, and it could be denied for misbehavior or a failure to pay.<sup>45</sup> Even in England, the source of America's earliest insolvency regulation and the home of Daniel DeFoe, many debtors are not given a discharge.

America is of course known as far more religious, and far more Christian, than most other similarly developed nations. This, and the deep similarities between the bankruptcy fresh start and the Christian narrative, suggest an obvious hypothesis: perhaps Christian influence shaped the emergence of the fresh start principle in American bankruptcy. It did, but in much more subtle and complex fashion than the parallel narratives might seem to suggest.

Early on, many Christian pastors seem to have been more likely to preach about a debtor's moral obligation to repay his debts than to call for debt forgiveness.<sup>46</sup> To be sure, attitudes toward debt were shifting during the eighteenth century. According to the leading historian of the bankruptcy and insolvency laws of this era, the widespread belief that financial obligations were an absolute moral obligation began giving way to broader acceptance of commercial life as entailing calculated risks.<sup>47</sup> The latter perspective—that risks were inevitable in commercial life—suggested that default was not necessarily a moral failure. But this view

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<sup>45</sup> For discussion of the European approach to consumer insolvency and bankruptcy law, see, for example, Iain Ramsay, "Comparative Consumer Bankruptcy," *U. Ill. L. Rev.* 2007 (2007) 241, 250-51.

<sup>46</sup> Mann, *Republic of Debtors*, pp. 36-44 (recounting writings of Samuel Moody and Cotton Mather in the early eighteenth century);

<sup>47</sup> *Ibid.*, p. 77.

was initially confined to commercial life. There does not seem to have been a Christian consensus that debtors who are overwhelmed by debt should be given a fresh start.

The next complexity is that explicit appeals to Christianity largely disappeared from the legislative debates over bankruptcy during the period when the fresh start concept emerged. Although legislators made occasional references to the Bible and more frequent claims about the morality or immorality of proposed bankruptcy legislation, there is little evidence of any effort to articulate a Christian perspective on the appropriate contours of bankruptcy law. Instead, the fresh start and American bankruptcy more generally emerged from a remarkable *pas de deux* between lawmakers in the Northeast, who saw bankruptcy as essential to the quest to create a commercial economy, and lawmakers in the South and West, who feared that creditors would use any federal bankruptcy law to displace farmers from their farms when the farmer had a bad crop or other misfortune. Throughout the nineteenth century, advocates for creditors were the ones who lobbied for a federal bankruptcy law and advocates for debtors the ones who resisted.<sup>48</sup>

Despite the absence of overt links between Christianity and the American fresh start, Christianity seems to have played an indirect role. Evangelicalism was strongest in the South and West.<sup>49</sup> These were the regions that tended to oppose bankruptcy legislation, rather than to support it, which seems to call into question any link between Christianity and bankruptcy.<sup>50</sup> But this resistance had a profound effect on the terms of the laws that were enacted. In their effort to overcome opposition, bankruptcy advocates added the features we now associate with

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<sup>48</sup> See, for example, David A. Skeel, Jr., *Debt's Dominion: A History of Bankruptcy Law in America* (Princeton: Princeton University Press, 2001), pp. 26-28.

<sup>49</sup> This is vividly evident in the map of the 1896 election, which featured the leading evangelical of the era, William Jennings Bryan, as Democratic nominee. Bryan won every Southern state and most of the West, but lost the Northeast and Midwest. The electoral map can be found at [https://www.270towin.com/1896\\_Election/](https://www.270towin.com/1896_Election/).

<sup>50</sup> The advocates of “bimetallism”—basing the nation’s currency on silver as well as gold—also tended to come from these regions. Inclusion of silver in the currency tended to devalue the dollar and make it easier to pay debts, and thus was itself a form of debt relief.

the fresh start. They permitted debtors to file for bankruptcy voluntarily as of 1841, allowed them to exempt any property that would be exempt under state law in 1867, and made it more difficult for creditors to throw a debtor into bankruptcy involuntarily in 1898.<sup>51</sup>

My claim that Christianity shaped the distinctive American approach to bankruptcy should not be pressed too strongly. My evidence comes from correlation rather than direct testimony by Christians calling for generous bankruptcy relief. Moreover, then as now, many Christians questioned the morality of bankruptcy, emphasizing the Biblical warning that the “wicked [person] borrows but does not pay back.”<sup>52</sup> Although these complications are significant, the circumstantial evidence of Christian influence remains striking. And even if it could be shown that Christianity played no role at all, the framework that emerged is remarkably consistent with Christian principles.

Some might question—and some do—whether the American fresh start truly is consistent with the Biblical pattern of debt and relief from financial distress. I have already hinted at the long tradition of emphasizing the Biblical call to make good on our promises, financial and otherwise.<sup>53</sup> The contention that bankruptcy is never appropriate still is widely held, including by some evangelical consumer finance experts.<sup>54</sup> In my view, this position cannot easily be

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<sup>51</sup> See, for example, Skeel, *Debt's Dominion*, pp. 24-43.

<sup>52</sup> Psalm 37: 21.

<sup>53</sup> In addition to Psalm 37: 21, Christian critics of bankruptcy also point to the command in Romans 13: 7 and 8 to “[p]ay to all what is owed to them” and “[o]we no one anything, except to love one another.” See also 2 Kings 4 (Elisha miraculously provides oil to indebted widow, and tells her to sell the oil and use the proceeds to repay her debts, rather than calling for debt forgiveness).

<sup>54</sup> Larry Burkett, a leading evangelical financial counsellor, taught that using bankruptcy to “start afresh ... reflects a lack of trust and a deceitful attitude,” and is thus inherently sinful. Larry Burkett, *How to Manage Your Money* (Chicago: Moody Press, 1971), p. 27. Similarly, Howard Dayton says that Christians generally should not file for bankruptcy, and if there is no other realistic option, they should try to repay what they owe after bankruptcy. Howard Dayton, *Your Money Counts: The Biblical Guide to Earning, Spending, Saving, Investing, Giving, and Getting Out of Debt* (Carol Stream, IL: Tyndale House Publishers, 2011), pp. 44-45.

reconciled with elaborate provision for debt relief in the Jubilee passages of the Hebrew Bible.<sup>55</sup> To be sure, the Jubilee was closely linked to Israel's unique relationship with the Promised Land, and thus looks quite different through the lens of the New Testament. But there is little reason to believe that Christ's fulfillment of the old covenant rendered Jubilee principles obsolete. To the contrary, Jesus called for creditors to forgive the debts of their financially overwhelmed debtors in several of his most familiar teachings.<sup>56</sup>

These same teachings also call another potential objection into question. According to this objection, even if Jubilee principles are still relevant, the Jubilee did not give debtors the right to ask for relief, as American bankruptcy law does. The relief was available only because it was commanded at regular intervals. Once again, Jesus's teachings provide a perspective that looks remarkably like the American fresh start. Jesus condemned the ungrateful servant who asked for forbearance from his creditor—and master—while refusing to show mercy on the debtor who asked the ungrateful servant for relief.<sup>57</sup> The parable suggests that it is appropriate for a debtor who is incapable of repaying his obligations to ask for relief.

Although American bankruptcy law is remarkably congruent with Christian principles,<sup>58</sup> several of its features deviate in important respects. The first is a set of provisions, often referred to as “exceptions to the discharge,” that forbid the debtor from erasing debts she incurred as a result of morally problematic behavior.<sup>59</sup> A century ago, debtors could not discharge debts for

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<sup>55</sup> For a similar conclusion, see John R. Sutherland, “The Ethics of Bankruptcy: A Biblical Perspective,” *Journal of Bus. Ethics* 7 (1988) 917-927. Sutherland bases his conclusions on the Hebrew Bible passages on debt, and for some reason does not give any consideration to New Testament teaching.

<sup>56</sup> See, e.g., Matthew 18: 21-35 (Parable of the Unforgiving Servant).

<sup>57</sup> Matthew 18: 35.

<sup>58</sup> Another, more technical feature of American bankruptcy law that accords with Christian principles is the debtor's right to choose whether to seek an immediate discharge (under Chapter 7) or to propose a three to five year payment plan (under Chapter 13). A debtor who is genuinely incapable of repaying can choose Chapter 7, whereas those who are able to pay some of what they owe can choose Chapter 13. The process is messier in practice, but the basic framework is quite defensible from a Christian perspective.

<sup>59</sup> The exceptions to the discharge are found in section 523(a) of the Bankruptcy Code. 11 U.S.C. § 523(a).

“criminal conversation”—that era’s delicate term for adultery.<sup>60</sup> In addition to debts that arise through fraud or willful and malicious injury to persons or property, which have long been excepted from the discharge, today’s list includes damages caused by drunk driving.<sup>61</sup> The desire to punish these behaviors is understandable and in many cases justifiable. What is far less clear is whether prohibiting a debtor from discharging these debts is consistent with fresh start principles. In one respect it might be. If the prohibited behavior is evidence that the debtor has hidden assets or is otherwise capable of repaying what she owes, delaying or withholding the discharge is the right response. But why should the fresh start be withheld from debtors who are not hiding assets and who are not capable of repaying what they owe? By withholding the fresh start, American bankruptcy law conflates the penal role of the secular law with the fresh start that bankruptcy is meant to provide. A more consistent approach would be to put the debtor in jail or otherwise punish her misbehavior as warranted, but to permit her to discharge her debts in bankruptcy.

I need to acknowledge that I am calling into question, at least in a limited sense, a central theme of American bankruptcy law—that it is designed for the “honest but unfortunate debtor.” The concern for a debtor’s honesty is a legacy of early bankruptcy history. Making sure the debtor isn’t hiding assets remains relevant today, although it is more difficult for a dishonest debtor to evade detection. Whether a debtor is “unfortunate” and fell into bankruptcy due to events beyond her control and did not act rashly or ill-advisedly, by contrast, should not be the concern of bankruptcy law, at least from a Christian perspective. Jesus did not teach that only those who were essentially well-intentioned should be forgiven. To the contrary, he called

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<sup>60</sup> See *Tinker v. Colwell*, 193 U.S. 473 (1904), which upheld the denial of the discharge of a \$50,000 judgment against the debtor for criminal conversation.

<sup>61</sup> The drunk driving exception is section 523(a)(9). 11 U.S.C. § 523(a)(9).

for forgiveness—and offers forgiveness—for everyone who earnestly repents. This principle also seems relevant to bankruptcy.<sup>62</sup>

I do not mean to suggest that Christian teachings on debt should simply be incorporated into secular bankruptcy law. Jesus teachings on these issues are intended primarily for interactions among his followers. But the logic translates to secular bankruptcy law in this context. If a debtor is trying to manipulate the bankruptcy process—and is acting in bad faith—she should not be given the bankruptcy fresh start. But if she is acting in good faith, her need for a fresh start may be as great if her obligations are problematic as it would be if the obligations were less problematic.

The nature of forgiveness brings us to a second shortcoming of the American bankruptcy system. Nowhere does American bankruptcy law provide an opening for debtors to apologize and seek the forgiveness of their creditors. In Jesus’s teachings centered on relief from debt, debtors seek the forbearance or forgiveness of their creditors. In the parable of the Ungrateful Servant, for instance, the ungrateful servant and his debtor each beg for more time to repay what they owe, and the Lord’s Prayer uses terms that translate either as debt forgiveness or forgiveness of sin. These teachings suggest that repentance is the essential prerequisite for forgiveness. Once again, their logic seems relevant to bankruptcy. To be sure, they do not translate neatly into the context of secular bankruptcy law. The debtors in Jesus’s teachings usually have one main creditor, and the creditor is an individual lender. Contemporary debtors may have numerous creditors, many of which are institutions such as credit card companies that the debtor has never dealt with face-to-face. Yet even if the debtor apologizes to a representative

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<sup>62</sup> Bill Stuntz made a similar argument some years ago, describing bankruptcy as a “form of legal amnesty.” William J. Stuntz, “Law and the Christian Story,” *First Things* (Dec. 1997), pp. 1, 2.

of the institution whom she has not previously met, the apology would still play a valuable role in the debtor's reconciliation process.<sup>63</sup>

Here, I am implicitly taking a position on a much debated issue, whether acknowledging our wrongdoing is a prerequisite to being forgiven. Some writers argue that repentance—acknowledging our failure or misdeed—is not required. From a Christian perspective, these writers seem to me mistaken, as repentance lies at the heart of Jesus's teachings on how we can be reconciled with God.<sup>64</sup> Even if repentance, in the form of an apology, were not essential to forgiveness, it still can make possible a more complete healing and reconciliation than would be possible in its absence.

The most serious concern with introducing apology into the bankruptcy process is that debtors will feel coerced to apologize, and that creditors will feel compelled to accept the apology. These concerns significantly complicate reconciliation whenever the reconciliation has legal consequences.<sup>65</sup> The reality of current bankruptcy law magnifies these concerns. There is considerable evidence that debtors are pressured to comply with the expectations of particular bankruptcy courts—expectations that vary dramatically from court to court—on key issues such as whether to seek an immediate discharge or to propose to pay creditors a portion of what they are owed.<sup>66</sup> Jurisdictions that pressure debtors to repay some of their obligations would be likely also to signal that they expect debtors to apologize. Apology might quickly become the norm in

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<sup>63</sup> My former colleague and now Judge, Stephanos Bibas, has advocated extensively for incorporating apology into the criminal justice system. See Stephanos Bibas, *The Machinery of Criminal Justice* (New York: Oxford University Press, 2015).

<sup>64</sup> For a careful philosophical defense of the view in the text, see Nicholas Wolterstorff, *Justice in Love* (Grand Rapids, MI: Eerdmans Publishing Company, 2011), p. 173.

<sup>65</sup> Martha Minow has written extensively and eloquently about these issues. See, for example, Martha Minow, *When Should the Law Forgive?* (New York: W.W. Norton & Company, Inc., 2019); Martha Minow, Martha L. Minow, "Forgiveness, Law, and Justice," *Calif. L. Rev.* 103 (2015) 1615; Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998).

<sup>66</sup> Jean Braucher drew attention to the divergence of cultures in her work. Jean Braucher, "Lawyers and Consumer Bankruptcy: One Code, Many Cultures," *Am. Bankr. L.J.* 67 (1993), 526.

these courts. Some debtors might apologize not from genuine repentance, but because their lawyer nudged them to do so.

Despite these concerns—and despite the fact that we would never know for sure whether any particular apology is feigned or real-- apology remains essential. Most of us insist that our children apologize when they hurt someone else, hoping that they will experience at an early age the restorative powers of apology and forgiveness. Not every apology is sincere, but some are, and sincere apology makes true forgiveness possible. Although debtors should not be forced to apologize, and the presence or absence of an apology should not affect the debtor’s legal treatment, a bankruptcy framework that more fully reflected Christian principles would give them an opportunity to do so.

### **The “No Bankruptcy” Alternative**

Although the American fresh start is remarkably congruent with Christian principles, the Bible does not provide a single blueprint for secular regulation of financial distress. It is quite possible that other approaches also fit the Biblical pattern. One obvious candidate would be to limit debt or banish it altogether, thus making bankruptcy unnecessary. As I have already noted, this perspective has strong support in some Christian circles.

One set of “no bankruptcy” advocates—including some Christian financial counsellors—tend to emphasize the obligations of an individual believer. The Bible calls us to make our yes, yes and our no, no, the reasoning goes, and condemns those who borrow and do not repay. Each of us should therefore avoid debt unless we are certain we can repay it. If we borrow money to buy a house, for instance, we should borrow much less than the value of the house, so that the

lender would be fully repaid even if we were unable to make the payments. These financial counsellors strongly discourage Christian believers who do fall into financial distress from filing for bankruptcy.<sup>67</sup>

One very practical difficulty with the financial counsellors' call for Christians to control their financial destiny is that it may be impossible to avoid major financial obligations, even if a Christian believer is extremely careful not to borrow money. If she loses her job, she may need to borrow money for basic living expenses, or she may incur debt as a result of a medical crisis that is not covered by insurance. In countries with a broader safety net than the United States, these risks would be much less likely to materialize. In the United States, by contrast, they affect a substantial number of people.

For Christian believers who do find themselves in financial crisis, the admonition to forgo bankruptcy is very hard to defend in Biblical terms. The Hebrew Bible and New Testament both seem to contemplate that debt will sometimes be forgiven. It is possible that debt relief for those who are incapable of repaying was an accommodation to the conditions of the time, much as the acceptance of polygamy and slavery were.<sup>68</sup> But there is little evidence that debt relief was a temporary accommodation, particularly given that Jesus incorporated it into his pronouncements about the forgiveness of sin that lies at the very heart of the Christian faith.

A second set of “no bankruptcy” advocates, Christian finance scholars (or, more precisely, a small number of Christian finance scholars) focus on the Biblical restrictions on debt and the virtues of these restrictions for Christian community. According to this view, the Old Testament calls for Israelites to lend money to anyone who was in need, and not to charge

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<sup>67</sup> See, for example, Burkett, *ibid.*, p. 27.

<sup>68</sup> For extensive discussion of polygamy and slavery, which are permitted but implicitly discouraged in the Bible, see Christopher J.H. Wright, *Old Testament Ethics for the People of God* (Downer's Grove, IL: IVP Academic, 2004).

interest on the loans, were designed to promote dignity and strengthen communal bonds. “[I]f one cannot lend at interest,” as one scholar puts it, “the options are either to make an outright gift, to lend interest-free, to rent/lease property, or to make an equity-based investment. The ban on interest pushes the lender toward sharing risk with the borrower.”<sup>69</sup>

Here, too, the call for permitting only interest-free loans is both practically and Biblically problematic. Practically, it would significantly constrain access to financing. Lenders often prefer to lend money rather than to take an equity interest in the debtor’s project, and thus serve as a joint-venturer with the debtor. A loan ordinarily provides more certainty and requires less direct commitment to the debtor’s enterprise. To be sure, the distinctions are malleable, and equity interests can often be structured in a way that gives them many of the same characteristics as debt. But forbidding traditional debt, even when this is the preferred form of investment, creates unnecessary and unjustifiable costs, thus reducing access to credit. There also is no guarantee that the equity instrument will promote community. If the parties structure the “investment” like a loan, it will not provide any more community solidarity than a traditional loan.

Biblically, the ban on interest was always limited to loans by one Israelite to another.<sup>70</sup> This suggests that if the members of a church lend money to one another, they should not charge interest. But there is no Biblical basis for extending this principle to lending in every context. As noted earlier, Jesus implied that lending at interest is appropriate when he told a parable about

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<sup>69</sup> Jonathan Burnside, *God, Justice, and Society: Aspects of Law and Legality in the Bible* (Oxford: Oxford University Press, 2011), p. 227. Some Catholic scholars advocate a more nuanced view. Under this view, derived from Catholic natural law theory, lenders would be permitted to charge interest on loans, but the permissible interest would be limited by usury principles. See McCall, *ibid.* Although I am skeptical of these approaches on prudential grounds, I believe they are Biblically defensible.

<sup>70</sup> Indeed, some interpret the lending restrictions to apply only to loans to needy Israelites, not to business loans, as noted earlier.

a servant who is criticized for failing to find a productive use for money entrusted to him by his master.<sup>71</sup> The parable suggests that, at the very least, the servant should have deposited the money in a bank (thus, loaning it to the bank) so that it could earn interest.

Rather than avoiding either traditional debt or bankruptcy in all cases, a more consistently Biblical perspective would balance the obligation for Christian debtors to repay what they owe with the promise of debt forgiveness for those who are genuinely unable to repay. From this perspective, bankruptcy is appropriate only for those for whom repayment is no longer plausible. Even those who have seemingly crushing debts may nevertheless be capable of repaying. But if it becomes clear that the debtor is genuinely unable to repay, it is entirely appropriate for her to discharge the obligations in bankruptcy.

### **Delayed Bankruptcy Relief**

The insolvency laws of European countries often provide for a conditional or delayed discharge of the debtor's obligations, rather than an immediate fresh start as in the United States. In England, a governmental officer examines a debtor who has requested bankruptcy relief, and then determines whether to grant unconditional relief, deny relief, or condition relief on the debtor's payment of some of its obligations over a period of years.<sup>72</sup> Other countries impose a mandatory payment period as a prerequisite for a discharge for all debtors.<sup>73</sup>

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<sup>71</sup> Luke 19: 11-27.

<sup>72</sup> Douglass G. Boshkoff, "Limited, Conditional, and Suspended Discharges in Anglo-American Bankruptcy Proceedings," *U. Pa. L. Rev.* 131 (1982), 69.

<sup>73</sup> See, for example, Ramsay, "Comparative Consumer Bankruptcy," pp. 250-51 .

The European approaches, with their less fulsome access to bankruptcy relief, do not map as neatly onto a narrative of debt forgiveness as the American fresh start. Whereas the American fresh start offers the kind of debt forgiveness Jesus seems to gesture toward in his parables, the European approach is forgiveness “if.” Yet the differences are not quite so stark as they initially seem. Even under the American approach, bankruptcy is only appropriate if the debtor is genuinely unable to repay her debts. Just as with the European approach, bankruptcy relief is therefore conditional. It’s just that the condition is left to the debtor’s conscience, rather than to a governmental official.<sup>74</sup>

Both approaches have limitations. Under an American-style fresh start, a few debtors may abuse the system by seeking bankruptcy relief when they do not actually need it. A debtor also might innocently misgauge her capacity to repay, thinking she can’t when in actuality she can. Under a conditional discharge, the governmental official may mistakenly conclude that the debtor is capable of repaying when she cannot, or that she is not capable of repaying when she is.

In my view, the American fresh start more robustly embodies a Christian vision of bankruptcy relief than a conditional bankruptcy discharge. But the European approach also can be defended as consistent with Christian principles.<sup>75</sup> Indeed, it can be seen as mirroring the Hebrew Bible approach, where debtors who had been sold into slavery were released only after having served for seven years.<sup>76</sup>

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<sup>74</sup> Moreover, debtors’ access to immediate fresh start in the U.S. has been limited slightly by a 2005 amendment that foreclosed Chapter 7 to debtors that fail a new means test that is designed to determine whether they are capable of repaying some of what they owe. 11 U.S.C. § 707(b)(2). Only a small number of debtors fail the mean test, but a few do.

<sup>75</sup> For an analysis concluding English insolvency law accords with natural law principles, see John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), pp. 188-93

<sup>76</sup> Deuteronomy 15: 12-13.

## Corporate Bankruptcy from a Christian Perspective

Corporations and business entities raise different questions from a Christian perspective than the financial distress of an individual. The question is how a collective should be treated in the event of financial distress. Although the implications for individuals—such as shareholders or employees of a corporation—are important, they are at a one-step remove.

The significance of this distinction is perhaps best seen with the question whether financially distressed corporations should be entitled to a fresh start. In the United States, a mechanism for restructuring troubled corporations emerged at roughly the same time as the fresh start for consumer debtors. The first corporations that benefited from this mechanism—which became known as equity receivership—were railroads. But the receivership strategy was subsequently used by other corporations as well, and is reflected in current Chapter 11.<sup>77</sup> Like the fresh start, the American corporate bankruptcy framework can be seen as providing a second chance for financially distressed businesses.

The equity receivership was a remarkable achievement, and it has bequeathed an effective mechanism for resolving the financial distress of private corporations. It does not, however, have any special claim of fidelity to Christian principles. The Bible's jubilee and debt relief passages are concerned with the dignity of individuals, not with the question whether a particular business shuts down or continues. A bankruptcy law that attempts to reorganize troubled businesses is not inherently superior from a Christian perspective to a law that requires them to be liquidated or sold to the highest bidder.

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<sup>77</sup> The history is discussed in Skeel, *ibid.*

Although Christian principles do not dictate any particular approach to corporate bankruptcy, they do offer insight into particular features of the approach that is selected. An issue that has become increasingly salient in the largest American bankruptcy cases is the overall fairness of the process to ordinary individuals who are affected by it. The terms of a reorganization are negotiated by the lawyers representing each of the major constituencies, with little input by the people who will be most directly affected by the outcome. Biblical principles of justice, which call for evenhandedness and universal access to justice, suggest that the absence of voice even in cases where ordinary individuals have a great deal at stake, is problematic. In several recent cases, bankruptcy judges have attempted to provide opportunities for affected individuals to voice their concerns.<sup>78</sup> It is possible that these initiatives influenced the outcomes in the cases; even if they did not, the opportunity to be heard enhances the perceived fairness of the bankruptcy process.

### **Sovereign Debt Crises**

Biblical bankruptcy principles have been voiced quite explicitly in recent decades in a very surprising context—the financial distress not of individuals or even corporations, but countries. Countries in financial distress seem to have little in common with the individual debtors with whom the jubilee and debt relief passages are concerned. Yet there are surprising similarities between the two.

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<sup>78</sup> For discussion of the bankruptcy judge's efforts to include ordinary citizens and individual retirees in the Detroit bankruptcy, see Melissa B. Jacoby, "Federalism Form and Function in the Detroit Bankruptcy," *Yale J. on Reg.* 33 (2016) 55, 94.

The application of Biblical principles of debt relief to countries can be traced to the work of a nongovernmental organization called Jubilee in the 1990s. The founders of Jubilee sought to galvanize support for debt relief for debt-burdened countries in Africa and elsewhere by linking the Bible's call for debt relief every forty-nine years to the coming of a new millennium in 2000.<sup>79</sup> The Jubilee movement proved highly effective, especially in the United Kingdom. Jubilee and related organizations continue to actively call for debt relief for financially distressed countries and territories such as Greece and Puerto Rico.<sup>80</sup>

The relevance of the Jubilee passages, which were designed for individuals and families, to the financial obligations of sovereign countries is often asserted and rarely explained. It might easily be dismissed as a clever rhetorical move. After all, if Jubilee principles are not relevant for corporations, they seem even less fitting for countries. Yet this is one place where transitivity does not apply. Consumer and sovereign debtors are remarkably similar—and quite different than corporations-- in two important respects. First, they are subject to very similar decision making biases. Ordinary individuals tend to focus heavily on the benefits of current purchases, and to underestimate the long-term costs. Credit card companies take advantage of this bias by charging stiff fees and high interest rates to consumers who fail to pay their bill in full or miss a payment. A country's political decision makers have a very similar bias, though for somewhat different reasons. They are tempted to borrow money to finance current projects, because they enjoy the benefits of the spending in the short-run, but do not have to bear the costs until later. In each case, these decision making biases can increase the risk of financial distress. Second, unlike with corporations, which can be liquidated when they default if they are no longer viable,

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<sup>79</sup> See, for example, LeFebvre, *ibid.*, p. 14 n.4.

<sup>80</sup> Others, such as Bono, leader singer of the band U-2, have also invoked Biblical principles in their advocacy for debt relief and aid for developing countries.

individuals and countries cannot be liquidated, no matter how hopeless their plight.<sup>81</sup> This distinction is far starker today than in the past. Historically, individuals could be enslaved or executed if they failed to pay their obligations, and countries might face “gunboat diplomacy,” but these alternatives are no longer viewed as legitimate.

Consumer and sovereign debtors also differ in highly significant ways, of course. As long as their taxing authority has not completely atrophied, sovereign debtors have a continuing source of revenue. A financially distressed consumer, by contrast, may not have access to any source of income. But both can be overwhelmed by debt, and with potentially severe humanitarian consequences, in the absence of a debt relief option.<sup>82</sup> Sovereign bankruptcy may be impractical in many contexts; but to the extent it is administratively feasible, it can be defended as consistent with Christian principles.

In some of the recent debt crises, advocates for the financially distressed nation have pointed to odious debt doctrine as justifying debt relief. Under odious debt doctrine (which has not yet been endorsed as a feature of international law), a country whose citizens did not benefit from money borrowed by a corrupt former regime can disavow the ostensible obligations.<sup>83</sup> The logic of odious debt doctrine is quite different than debt relief or bankruptcy. Odious debt doctrine declares an obligation to be illegitimate; the debtor is not responsible for paying it. Bankruptcy, by contrast, provides relief from obligations that are fully legitimate, but which the debtor is unable to pay.

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<sup>81</sup> For discussion of the similarities between individual debtors and U.S. states in these terms, see David A. Skeel, Jr., “States of Bankruptcy,” *U. Chi. L. Rev.* 79 (2012) 677, 687-89. It is also harder to change the decision maker with an individual or country than with a corporation.

<sup>82</sup> Note too that the Bible often analogizes nations to people, and emphasizes the distinct personalities that nations have.

<sup>83</sup> For an overview and history, see Lee C. Buchheit, G. Mitu Gulati, and Robert B. Thompson, “The Dilemma of Odious Debts,” *Duke Law Journal* 56 (2007), 1201-1262.

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Unlike the poor, bankruptcy has not always been with us. But it is an increasingly central feature of commercial life around the world. In my view, personal bankruptcy relief is consistent with Christian principles, although no current bankruptcy system fully honors those principles. Perhaps more surprisingly, sovereign debt relief or bankruptcy is—or would be-- consistent with Christian principles too.