

BANKRUPTCY AND THE BIBLE

By Charles R. Chesnutt

In Roman times, when poverty was rampant and deadly, the legal system viewed insolvency not as a "circumstance" but as a crime. Creditors in pre-Christian Rome held great power over their debtors. For instance, a creditor could force the entire estate of a debtor to be sold to one person who would then pay a certain percentage of the debts to the other creditors.¹

When such a sale took place, the debtor still owed whatever debts remained after the sale; he was still required to pay all his creditors or face other consequences. Since all of his belongings had been sold, he and his family were left with nothing to live on while the debtor attempted to earn enough money to pay the remaining debts. He could be reduced to starvation and be forced to borrow again. Nothing could release him from these debts short of payment, and if he did not pay them, then he could be exiled, imprisoned, enslaved or executed.² At one time in Roman history, the debtor who was executed was cut into pieces and then the pieces divided up among his creditors.³ At a later time in Roman history the debtor was protected from physical abuse, but he was never discharged from his debts. He took them to his grave.⁴ He was never free of them.

All of these measures had one thing in common: they all placed the value of the debt far above the value of the debtor.

Under these Roman laws, the rich were given the power of life and death over the poor. It is, of course, easy to criticize the poor and to fault them for borrowing money that they could not repay. But many of the poor starved. What does one do when one must borrow or starve, or see his children starve? The honest poor man does exactly what the honest rich man would do if he had no money to buy food. He borrows; he

does not steal.

The society in which such laws had sway was a society of great cruelty. It is ironic to reflect upon the fact that although such heavy consequences were inflicted for failure to repay, the consequences themselves must have often rendered it impossible for a debtor to repay. Imprisonment, destitution and corporal punishment do not serve to create any income to repay debts; it stifles life and eliminates income.

The situation had not significantly changed by the time of the middle ages, which ushered in the infamous debtor's prison in England where the debtor would remain in prison until someone else paid his debts for him.⁵ The debtor was effectively held hostage until his relatives or friends would pay his debts. If he had no relatives or friends, he would live in prison until the day he died. He would never be free of his debts. If he had left a wife and children outside the prison, they might be forced to borrow money in order to eat, and the cycle of debt for the family would begin again, except this time without a father.

What the system of laws like these actually accomplished, aside from providing for useless and corpulent misery for a debtor, was to make it practically impossible for the debtor to ever extricate himself from his debts. The laws were self-defeating. Since the laws often made it impossible for the debt to be repaid, everyone lost, the creditors, the debtors, and also the society, which lost what may have been a productive wage earner and taxpayer. Even if he could escape prison, once a man became a debtor, he could easily remain one for the rest of his life.

It was never God's intention to create a society where indebtedness was a crime. If we look toward the roots and legal structure of the

Jewish society set forth in the Old Testament, we see a picture exactly the opposite from that of the remainder of the world. We see a society where loans were kept to a minimum by force of law, and gratuity and charity, by force of law, were kept to a maximum. To accomplish this end, God did not outlaw borrowing and lending, but instead He provided that loans would eventually become gifts, and thereby limited loans only to those in need. He permitted the loan to take place, and the consequent legal obligation to repay to arise, but He limited the legal obligation to repay to a maximum of only seven years. Every seventh year all lenders were to release their debtors from all their debts. Every seventh year, the debtors were discharged from all their loans and were no longer legally obligated to repay them. The debtor was free of all loans, and by force of law the creditor had made a gift:

"At the end of every seven years thou shalt make a release. And this is the manner of the release: every creditor who lends ought unto his neighbor, shall release it; he shall not exact it of his neighbor, or of his brother, because it is called the Lord's release." Deut. 15:1,2.

This has approximately the same effect as a discharge in bankruptcy today:

"A discharge in a case under this title . . . operates as an injunction against the commencement or continuation or an action, the employment of process, or an act, to collect, recover or offset any such debt . . ." 11 USC Sec. 524(a)(2).

To underscore God's demands for munificence, the scripture also provides that when the potential creditor was asked to lend money to the poor, he was forbidden to consider the fact that his debtor might soon be released from his obligation to repay because the seventh

year was approaching! Indeed, the creditor was chastened if he withheld his bounty from a poor debtor even if he knew that he would never get it back:

"Beware that there be not a thought in thy wicked heart, saying, The seventh year, the year of release, is at hand; and thine eye be evil against thy poor brother, and thou givest him nought; and he cry unto the Lord against thee, and it be sin unto thee." Deut. 15:9.

The concept is repeated in the New Testament:

"Give to him that asketh thee, and from him that would borrow of thee turn not away." Mt. 5:42.

Under God's plan it was the creditor who was given the onerous commandment to lend and to give, not the debtor who was punished because he could not repay. There was a stark contrast between God's approach and the early laws of the Romans and the English. The approach in the Bible was precisely the opposite of the world view prevailing at the time.

In the view of the world today, as well as at that time it is the debt, and the paying of it, which is of paramount importance. The debt is far more important than the debtor. Creditors are not in the least concerned with the hardship they cause to debtors when they collect, nor are they concerned with what the debtor must do in order to pay the debt. The debtor is irrelevant; it is the debt that is important.

In scripture it is exactly the opposite; in scripture, it is the debtor who is far more important than the debt. And it is forgiveness of debt and charity and giving that is stressed and required, not repayment. In scripture, the person is more important than the money.

Today, with the introduction of interest and interest upon interest, and then penalties for

failure to timely pay the principle and the interest on the principle, and interest on the penalties, much of the world is effectively obtaining payment without lending. God on the other hand was requiring lending without repayment and the exacting of any interest from a fellow Israelite was solidly against Old Testament law.⁶

It was not until 1705 that the British bankruptcy statute of Queen Anne provided for an opportunity for a debtor in Britain to be released from his debts.⁷ It was probably the world's first discharge in bankruptcy in bankruptcy since the statutes of Moses. The common ground between the bankruptcy statutes of Moses (Deut. 15) and that of Queen Anne and modern bankruptcy law is release from debt. The release from debt means that at one point in time, the debtor can become free of his debts even if he cannot pay them. This benign concept forms the core of the belief that a person should, in this life, possess the legal and moral ability to start over, no matter how much he owes. In Deuteronomy 15 and Leviticus 25, God not only permitted the release of debt but He also made release from debt an obligatory and a continuously recurring phenomenon. The release of debt found in Deuteronomy and Leviticus carries generally the same result as the release of debt provided in modern bankruptcy laws. The release of debt in modern bankruptcy laws is called a "Discharge of debt." In both cases it is a release and a discharge from debt.

There are other similarities between the laws of today and the biblical laws. For instance, under modern United States bankruptcy laws the debtor cannot obtain a release more often than once every six years, 11 USC Sec. 727 (a) (8); Moses provided for seven years, Dt. 15:1. Modern bankruptcy law provides for a discharge of certain debts, but not all, 11 USC Sec. 523; the biblical bankruptcy was also limited, but in different areas, Dt. 15:2, Lv. 25. Today, after a

bankruptcy has been filed and after a discharge is obtained, the debtor is protected from any legal process to collect his debts (11 USC Sec. 362, 524); the same was true for Old Testament debtors whose creditors could not "exact" their debts (Dt. 15:2, Lv. 25:17).

There are several significant differences between the Deuteronomy 15 release of debt and the release afforded by modern bankruptcy laws. One of the differences is that the Deuteronomy 15 release did not require the debtor to give up any of his assets before he was released, nor did it require him not to be able to repay. The Old Testament release did not require the debtor to be destitute or to surrender anything of value in order to obtain a release from debt. This is not the case with a bankruptcy proceeding in the United States today. In a modern bankruptcy, the debtor is required to relinquish all that he owns, except for necessities of life, in exchange for the release of his debts. Under the United States bankruptcy laws, the instant that the debtor files bankruptcy, the trustee in bankruptcy effectively owns all of the debtor's possessions and the trustee is charged with selling them to pay the creditors.⁸ Of course, certain well defined assets of the debtor are exempt from this process; these are the assets which have been defined as being necessary for the debtor to continue with life.⁹

An honest bankruptcy obtained under the United States Bankruptcy Code is certainly not necessarily unrighteous in the sight of God. The bankruptcy proceeding in the bible was far easier to obtain than the bankruptcy of today. In the release of debts found in the Bible there was no requirement that any assets be sold to pay creditors. There is such a requirement in current bankruptcy laws. In the biblical bankruptcy there was no requirement for any type of administrative or court proceeding, as there is with current bankruptcy laws. There were no lawyers, no fees, no judges or trustees; but instead, by pure fiat of

law, at a particular time there was simply a blanket discharge of all loans, no matter how much property a debtor had. Therefore, within the scope of its application, the bankruptcy process in Deuteronomy and Leviticus was far more liberal and debtor oriented than the one provided for in the United States Bankruptcy Code.

It is righteous to forgive, and God's grace and His demand for forgiveness does not expand to the point of reaching the dollar and then stop there. The principle of God's forgiveness includes forgiveness of debt (Dt. 15:1,2; Luke 16:1-13), the forgiveness of lawsuits (1 Cor. 6:7, "Why not rather be defrauded?"), and the unlimited forgiveness of all wrongs (Mt. 18:21,22).

If God saw nothing unrighteous with a very debtor-oriented release in the Old Testament, it is difficult to believe that He would consider a more conservative and more difficult release of debt to be unrighteous under today's laws. God invented the discharge of debts. God is a God of forgiveness and he wants His people to be forgiving people, and this includes financial forgiveness as well as moral forgiveness (Luke 16:1-13). A legal bankruptcy of today can therefore be fully in accord with scripture.

There is no limit to the forgiveness that God offers through His Son Jesus Christ who paid for the sin of the world on the cross (Jn. 1:29; Rom. 5:8). We are called to be like Him (Jn. 17:23; Mt. 5:48) and to trust what He accomplished on the cross so that we may be saved. After a release from debt takes place, it is possible, even for a debtor with insurmountable debts, to owe nothing to anyone (Rom. 13:8) and to be at peace with God.

In one area, the bankruptcy in Deuteronomy was more limited than modern bankruptcy. In the Old Testament law, not all debts were released. It depended upon how the debts arose. The release of debt in Deuteronomy 15 was addressed to "the creditor who lends anything..." Thus, the Old Testament bankruptcy laws applied to debts that arose from the lending of something, and not necessarily to debts that arose for other reasons. For example, the Deuteronomy passage makes no provision for the release of debts that were owed for wages. In the Old Testament, a wage owed by an employer to an employee was probably a non-dischargeable debt; wages were not even to be kept by the employer overnight and the failure to pay wages is likened to robbery (Lev. 19:13). See also Mal. 3:5, James 5:4. Thus, although today's bankruptcy laws may permit the discharge of debts owed for wages, scripture would probably see the discharge of those debts as unrighteous. Another example might be a debt incurred by fraud, even if it was a loan. See Psalm 37:16, 21.

Of course, the bankruptcy of the Old Testament, or, more accurately, the discharge of the Old Testament, was written for the agrarian society of Old Testament times and not for the modern world's system of commerce. In order to approximate the provisions of the Bible in today's world, issues that did not exist in Old Testament times must be addressed and they must be addressed in the form of modern statutory law. But that statutory law should follow the underlying principles of honor and righteousness and truth and charity as we find throughout the scriptures.

Bankruptcy is a Calculated Risk for Lenders

The Old Testament lenders were certainly well aware of the law that limited their right to

collect. This is clearly indicated in Deuteronomy 15:9. The same is true today.

One has only to read a mortgage or a lien used by any bank or professional lender to understand how deeply concerned creditors are of collecting what is owed to them. Banks are extremely careful to protect their security. The risk of bankruptcies being filed by borrowers is clearly anticipated by lenders and understood as a calculated expense of business. Banks and other commercial creditors lend money and extend credit with the express purpose of making more money. They are willing to lend money because they gain more money off of interest than they lose to insolvencies and bankruptcies. They lend money to make money. The success of the borrower's enterprise or the borrower's income is a calculated risk that the bank takes when it advances a business or a personal loan. The bank will make money if the enterprise succeeds and the loan is paid back, and the bank will lose if the enterprise doesn't succeed or the loan is not paid back.

Therefore, when the bank makes a loan it makes an investment. To ensure that it does not lose its investment, the bank may take a larger ownership in the borrower's enterprise than the borrower himself. This is normally taken in the form of a lien or a mortgage against the borrower's property. Some security devices of banks give them their share of the profits and none of the risks - other than bankruptcy.

Since the loan that the bank makes is an investment for the bank as well as for the borrower and both the bank and the borrower are, or should be, well aware of the intrinsic risks. The bank and the borrower are, in a sense, united in a joint effort for the purpose of

profit for both. In one sense, where there is a business loan, the bank almost becomes the unofficial "partner" of the borrower.

The same is true for the bank or credit card company that lends money or extends credit for consumer purchases rather than business purposes. These lenders are lending money and extending credit for the purpose of making as much money as possible and they are doing it with the understanding that some of the people who borrow from them will go bankrupt. They take the calculated risk that most borrowers will be able to pay back what they have borrowed. In one sense, they are "partners" with the borrowers and they are relying on the hope that most borrowers will be able to manage their affairs and income and pay back the lender much more money than the lender has lent out.

These "partnerships" rise and fall together. If one such "partnership" happens to fall, there is no biblical reason for the borrower in that partnership to isolate all the loss to him and to fail to apportion the lender's loss to the lender in accordance with applicable bankruptcy law. In fact, by the time bankruptcy is considered the lender has probably already absorbed the loss by writing off the loan.

Therefore, unless there is a specific biblical provision to the contrary, utilization of today's bankruptcy statutes is neither unexpected nor unscriptural nor necessarily unwise. Except where there is a biblical provision to the contrary, the United States Bankruptcy Code provides a breadth of application that permits a bankruptcy in accordance with scriptural principles.

Money Management

The Old Testament lending laws not only show us God's principles that should underlie all debtor-creditor relations, but they also demonstrate righteous principles that should

govern money management.

It is obvious that a society that released all loans every seven years was a society where few loans were made. And when

consumer loans were made, they were made only under the most compelling of circumstances or else they were made to borrowers who were very trustworthy and able to pay back their loans.

It is true that Deuteronomy 15:7-9 required the lender not to even consider the upcoming year of release and to lend to the poor even though he knew that the debt would soon be released. But this applied only to borrowers who were poor and in true need of help.¹⁰ It did not apply to borrowers who were not really in need.¹¹ Lenders were not required to lend to people who did not need it. Therefore, the lenders of the Old Testament were probably very careful to determine if a prospective borrower was really in need before considering themselves bound under the Law of Moses to make a loan that would eventually become a gift. The effect of these laws was to require the motivation for consumer lending to be charity rather than profit. By the utilization of the year of release and the command against exacting interest¹², God structured the law of Israel in such a way that living on credit was practically impossible to those who did not need it to survive; and to those who needed it, it became charity.

God's provision for the protection of the creditors whose debts were released was not to permanently hold the debtor to the debt, but to make the risk of lending abundantly clear to the lenders, so the lenders would be fully aware of the risks that they were undertaking. Precisely the same is true today. Every commercial and consumer lender knows of the risk of bankruptcy. The major difference

between the Old Testament lending and to day's methods is that today the release from debt is not automatic and there are no laws to prevent the charging of interest. The result is that massive profits can be generated by the use of eighteen and twenty percent interest rates in consumer credit transactions. These profits override the risk of bankruptcy and those who pay back their loans at these interest rates are in effect not only paying back their own loans but also the loans of the bankrupt borrowers as well - and a large profit to the usurious lenders.

Since the scripture is clear that God's original idea was to curtail lending, and especially consumer lending, it follows that His original idea was also to curtail borrowing. This fact speaks volumes to today's consumer credit lifestyles. From the scriptures it is clear that God never meant us to live on other people's money, but to live on our own. Consumer borrowing as a way of life and consumer lending as a business have no basis in scripture. Living on credit cards and time payment plans and long easy terms are devices that were never intended to exist for the chosen people in biblical times. And these devices are a snare today. When misused, they are nothing more that the means of producing an illusion of wealth, a fiction, a belief that one can own or does own those things which, in reality, he does not really own and cannot obtain. Consumer borrowing is the ultimate in financial temptation: wealth without money. It is appearance without reality: it is a demon in the garb of an angel.

A Legitimate Purpose for Borrowing

Although interest and lending for profit was generally not permitted in Israel, what was permitted was for Israel to extend commercial credit at interest to the gentiles and heathen.¹³ It is foundational in Old Testament scripture

that Israel should prevail over the gentiles and the heathen nations.¹⁴ One of the ways that Israel was to prevail over the gentiles was through commercial and consumer lending at interest by Israel to the gentile people and

nations. In Deuteronomy 28, God set before the people of Israel blessings and curses. One of the blessings that were offered was that God would bless the labor of Israel so that Israel should lend to the Gentiles and not borrow from them. By doing so, Israel would be the "head and not the tail" and "above only and not beneath."¹⁵

On the other hand, if Israel did not obey the commandments of God, they would suffer severe curses, one of which was to be the opposite of the blessing. The stranger in the land would lend and the children of Israel would borrow; the stranger would become "very high" and the children of Israel "very low"; the stranger would become the "head" and the children of Israel the "tail."¹⁶ The

curse of God was to make His people borrowers. This is one of God's purposes for borrowing; it is His curse. But from the perspective of the money lender, the other purpose of borrowing was charity.

It is through lending at interest that one can gain domination over another: the borrower becomes the lender's slave:

". . . the borrower is servant of the lender." Prov. 22:7

One of God's purposes in the release of debt was to provide an escape from the civil bondage of debt and to provide freedom and a new start.

Bankruptcy and the New Testament Message

There is a striking resemblance between a discharge of debt in bankruptcy and a discharge of sin by Christ. When Jesus Christ was crucified on the cross, He died for the sins of the world. That means that when He died he paid the penalty for all sin. You and everyone else must ultimately make a choice. You must choose whether you will let Christ's death pay for your sins or not. The trouble with choosing to let Christ's death pay for your sins is that by making that choice you admit that you have sinned and that you need forgiveness. For some people, this is not so easy because pride gets in the way. However, once pride is ignored and the need is admitted, you make a conscious decision to trust in what Christ has done on the cross for the forgiveness of your sins. This is when you become a Christian. When this happens, you no longer have to pay for your sins. Instead, you have appropriated the payment made by Jesus Christ rather than trying to make your own payment. Your sins have been

discharged and you have been spiritually healed. This is called salvation. The meaning of the biblical word for salvation is "healing." It comes from the word for salve, which is a healing ointment.

When you file a bankruptcy, you must come to a point where you must finally admit that you cannot pay your debts. For some people, this is not easy, because pride gets in the way. However, once pride is ignored and the need is admitted, you make a conscious decision to file bankruptcy and publicly admit how much you really owe and admit that you can't pay it. Once this is done and your bankruptcy is finished, then it is as if all of your debts (all of your dischargeable debts) have been paid and you are free to begin again. This too can be very healing.

It is for this reason that we believe in what we do here, and we believe that an honest bankruptcy based upon honest needs is all right with God. After all, He invented it.

Conclusion

A bankruptcy is an effective means to deliver a debtor from the servitude of impossible debt and to break the cycle of borrowing. It will not, however, cure the debtor of the habit of living on borrowed money. Only the debtor himself can deliver the permanent cure. Bankruptcy, especially if it occurs because of consumer borrowing, is something that should happen no more than once in a lifetime, if

then. It should be a means to change and to adjust one's self to a way of life based upon the reality of ownership rather than the fiction of borrowing. It should be used in conjunction with a change of direction. A bankruptcy should be the beginning of something and the end of something. It should be the end of an overwhelming debt burden and the beginning of a new way of life.

¹ Alexander L. Paskay, Trustees and Receivers in Bankruptcy, Matthew Bender (1968), p. 3; Dalhuisen, J.H., Compositions in Bankruptcy, Sijthoff-Leyden (1968), p. 6; Dalhuisen, J., Roman Law of Creditors Remedies, in ABA Section of International Law, European Bankruptcy Laws, 4-5 (1974).

² Alexander L. Paskay, Trustees and Receivers in Bankruptcy, Matthew Bender (1968), p. 3; Dalhuisen, J., Roman Law of Creditors Remedies, in ABA Section of International Law, European Bankruptcy Laws, p. 3 (1974)

³ Id.; Nadler, The Humaneness of the Bankruptcy Law, 60 Com.L.J. 149 (1955)

⁴ Id.; Code of Justinian, Dig. 2, 4, 25, 48, 19, 1 Nov. 4, 3.

⁵ Paskay, Alexander L., Trustees and Receivers in Bankruptcy, Matthew Bender 1968; 11 Edward 1 (1283)

⁶ Dt. "Unto thy brother, thou shalt not lend upon usury." Dt. 23:20.

⁷ Id.; Anne, Chapter 17.

⁸ 11 USC Sec. 541, 363

⁹ 11 USC Sec. 522

¹⁰ "If there be among ou a poor man of one of thy bretheren . . . thou shalt open thy hand wide unto him . . . beware that there be not a thought in thy wicked heart, saying, The seventh year, the year of release, is at hand; and thine eye be evil against thy brother and thou givest

him nothing; and he cry out unto the Lord against thee and it be sin unto thee." Dt. 15:7-9.

¹¹ Additionally, Leviticus 25:35-37 required loans without interest to those in need.

¹² "Unto a stranger thou mayest lend upon usury, but unto thy brother thou shalt not lend upon usury, that the Lord thy God may bless thee in all that thou settest thine hand to do in the land to which thou goest to possess it." Dt. 23:20.

¹³ "Unto a stranger thou mayest lend upon usury, but unto thy brother thou shalt not lend upon usury . . ." Dt. 23:20.

¹⁴ "And it shall come to pass, if thou shalt harken diligently unto the voice of the Lord thy God, to observe and to do all his commandments which I command thee this day, that the Lord thy God will set thee on high above all nations of the earth." Dt. 28:1.

¹⁵ "The Lord shall open unto thee his good treasure, the heavens to give the rain unto thy land, in its season, and to bless all the work of thine hand; and thou shalt lend unto many nations, and thou shalt not borrow. And the Lord shall make thee the head, and not the tail; and thou shalt be above only, and thou shalt not be beneath, if thou hearken unto the dommqndments of the Lord thy God, which I command thee this day, to observe and to do them." Dt. 28:12,13.

¹⁶ "But it shall come to pass that if thou shall not harken to the voice of the Lord thy God, to observe and to do all his commandments . . . the stranger who is within thee shall get up above thee very high, and thou shalt come

down very low. He shall lend to thee, and thou shalt not lend to him; he shall be the head, and thou shalt be the tail." Dt. 28:15,43,44.