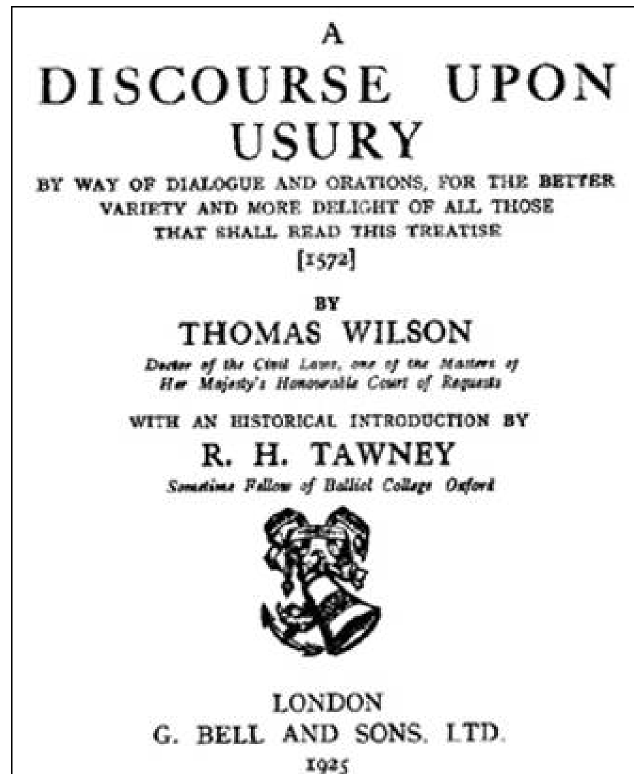
The Harrying of the Usurer

from

The Historical Introduction to A Discourse Upon Usury

by

R. H. Tawney


A

DISCOURSE UPON USURY

BY WAY OF DIALOGUE AND ORATIONS, FOR THE BETTER VARIETY AND MORE DELIGHT OF ALL THOSE THAT SHALL READ THIS TREATISE

[1572]

BY

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The Harrying of the Usurer by R. H. Tawney

When one turns from the dialectics of doctors to the sentiments of their congregations, one enters a world in which theory was less precise, if prejudice was not less tenacious. The opinion of the practical man on questions of economic conduct was in the sixteenth century in a condition of even more than its customary confusion. A century before he had practised extortion and been told that it was wrong: for it was contrary to the law of God. A century later he was to practise it and be told that it was right: for it was in accordance with the law of nature.

In this matter, as in others of greater moment, the generation for which Wilson wrote was unblessed by these ample certitudes. It walked in an obscurity where the glittering armour of theologians…'made a little glooming light, most like a shade'.

In practice, since new class interests and novel ideas had arisen but had not yet submerged their predecessors, every shade of attitude, from that of the pious burgess who classed usury with adultery,[1] to the latitudinarianism of the cosmopolitan financier, to whom the confusion of business with morals was a vulgar delusion, was represented in the economic ethics of the age.

The State wavered uneasily between these two extremes. Tradition, a natural conservatism, a belief in its own mission as the guardian of 'good order' in economic matters, gave it an initial bias to the first; the pressure of a city interest growing in wealth and political influence, its own clamorous financial necessities, the mere logic of economic development, pushed et strongly towards the second. Hence, its treatment of financial capitalism was vacillating and inconsistent, and, to understand the legal development, it is necessary to relate it to the economic interests of which it was the expression.

That the sentiment of even the most had no objection to income derived from investment in land or from trading profits, provided they were 'reasonable', went without saying. For the majority of men in most parts of the country were small land-holders or petty profit makers; and the legal recognition of the legitimacy of their gains had been, not an arbitrary distinction invented by theorists, but the admission of plain economic facts.

Beyond these there remained, however, a wide range of economic transactions whose character was more ambiguous. Neither to scientific nor to popular opinion did usury carry in the *Middle Ages* and in the sixteenth century the specialised sense of excessive interest on a loan of money which the word bears to-day.

Like the modern profiteer, the *Usurer* was apt to be so unpopular a character, that almost any unpopular character might be called by the average man a *Usurer*, and any bargain from which one party obviously gained more advantage than the other and pressed his economic opportunity to the hilt was regarded as usurious. The description which best expresses the popular sentiment was that contained in the indictment brought by the pious burgesses of Hereford against an unpopular divine:

> "Dr. Bennett is a great taker of advantages."[2]

Of such takers of advantages the *Money-Lender* was apt, however, in the circumstances of the age, to be the most conspicuous example. Against him were arrayed the peasantry and the humbler bourgeoisie, whose conception of social expediency was the defence of customary relations against innovation, and who regarded the growth of this new power with something of the same jealous hostility as they opposed to the economic radicalism of the enclosing landlord.

At bottom it was an instinctive movement of self-protection. Men dreaded the professional 'money master" because it was so easy to slip into dependence on the fatal luxury of loans. Free play for the capitalist seemed to threaten the loss of independence by the small producer who tilled the nation's fields and wove its cloth.

When they rationalised their apprehensions, they naturally used the conventional conceptions of the age. The body politic is an organism in which each class should perform its function; the *Usurer*, like the middleman, is 'an unnecessary member of the commonwealth'.[3] Men should labour in their vocation according to their station; the *Usurer* is a parasite who grows rich 'without labour, cost, or hazard'.[4]

Decent men, without being righteous overmuch, carry on their business with some regard to their neighbours and to the public interest; usury Is a form of chicanery benefiting only 'a small number of insatiable persons'.[5] The path down which the *Money-Lender* beguiles his victims may seem at first to be strewn with roses. But at the end of it lies - incredible nightmare - a regime of universal capitalism in which peasant and small master will

[1] E.E.T.S., *Coventry Leet Book*, p. 544.
[2] *S.P.D. Eliz*., CCLXXXVI, 19 and 20.
[3] *S.P.D. Eliz*., LXXV, no. 54.
[4] *Usury is Injury* (1640).
[5] *S.P.D. Eliz*., CX, no. 51.

have been merged in a property-less proletariat, and:

> "…the riches of the cytie of London, and in effect of all this realme, shalbe in that tyme in the handes of a fewe men havinge unmercifull hartes."[6]

Such outbursts were the natural protest of a laborious generation against a class which seemed to flourish on unearned increment wrung from their neighbours' necessities, outraged the decencies of social intercourse by an inhuman concentration on the pursuit of economic gain, and awoke among conservative persons somewhat the same uneasy suspicion of sharp practice as was aroused three centuries later by the dubious innovation of *Joint-Stock Finance*.

What is more significant was the action by which *Municipal Authorities*, *Middle-class Philanthropists* and the *State* attempted to cope with the situation. If the modern reader is disposed to agree with Bentham that the objection to usury was the revolt of the thriftless against the thrifty, let him turn to the proceedings of the commonplace people - *Jurymen, Municipal Councillors, Churchwardens, Testators* - who cannot be suspected, like the *Ecclesiastics*, either of repeating the conventional rhetoric of the pulpit, or of cultivating any professional squeamishness as to the arts by which men grow rich.

With the new financial and commercial conditions which had developed before the end of the fifteenth century, city opinion was no longer what it had been in the days when the authorities of London fined and imprisoned *Usurers* and *Brokers*.

But the danger Gat the 'honest householder' would become 'the bondslave of the money master' was still felt to be the Achilles' heel of the small business world of *Shopkeepers* and *Petty Traders* who formed the magistracy in the average borough, and in England, as at the same time in the Low Countries, they deployed an arsenal of expedient against it.

Usury is declared a scandalous vice which disqualifies those who practise it from municipal office. It is forbidden under stringent penalties, and proceedings are taken against the *Usurer*. The victim is advanced money from the *Town Exchequer* with which to recover his pledges.[7] The *Municipal Officers* are instructed to sell unreclaimed goods deposited as security, and to divide the sum realised between the *Debtor* and *Creditor* in such a way that the latter should receive no more than he had lent without any allowance for interest, and the former anything which they fetched in excess of that figure.[8]

In the counties, *Usurers* appear to be presented with alacrity by juries.[9] Protests are addressed to the *Privy Council* against a *Landowner* who oppresses his neighbours by usury and extortion[10], against the misgovernment of municipal authorities who have reduced their fellow citizens to such distress that they are obliged to 'raise money on pawns',[11] against the proposal to saddle a town with a minister who is notorious for taking 'id. in the shilling'.[12]

The Government is asked to enforce and to extend the statutes against usury.[13] *Social reformers*, affirming with the exaggeration natural in the advocates of a panacea that:

> "…that which most grieveth and annoyeth the common people is this abominable sin of usury,"

bombard it with projects for superseding the private *Money-Lender* by *Public Banks*.

A bill[14] establishing 'banks for the relief of common necessity' was actually introduced into the *House of Commons* in April, 1571. But no more was heard of it, and, apart from that abortive measure, the Government turned a deaf ear to proposals for *State Banks*. Perpetually in debt, and with its credit such that, in Wilson's day, it paid fourteen per cent. for loans, how could it raise the capital ?

But the idea of the *mont de piété* was much in the air; with the establishment of a *mont* at Ypres in l 534, it had been popularised in the Low Countries, which were the economic schoolmaster of sixteenth century England.

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6 *S.P.D. Eliz*., LXXV, 54.
7 *Records of Borough of Leicester*, vol III, pp. 253-60.
8 Maitland Club, *Borough Records of Glasgow*, p. 9.
9 Bund, *Kalendar of Worcester Session Rolls*, 1591-1643, pt II, pp. 616-7. Atkinson, *Quarter Sessions Records of the North Riding of Yorkshire*, vol I, pp. 46, 112, 209, 225. Somerset Record Society, *Quarter Sessions Records*, vol. XXIV. pp. 117 and 124.
10 *S.P.D. Eliz*., CLV, 65.
11 *Hist. MSS. Com., MSS. of the Marquis of Salisbury*, pt. IV, pp. 208-210: the town in question was Newcastle.
12 *S.P.D. Eliz*., CCLXXVI, 19 and 20.
13 *S.P.D. Eliz*., CCLXXVI, 19 and 20. Add. XXVII, 39 and XXXIII, 94.
14 D'Ewes, *Journal*, p. 178. See below p. 159.

And in England itself, though the *State* took little interest in the matter, local and corporate enterprise made some attempt to turn the flank of the *Usurer* by providing facilities for borrowing elsewhere on reasonable terms. Monastic[15] charity, the importance of which seems stall to be uncertain, had come to an end when Wilson was a boy, nor do the credit facilities afforded by *Guilds*, which occasionally had expanded on a scale almost large enough to be described as co-operatlve banking, appear to have survived the sharp class divisions which the fifteenth century saw develop within them.

But the right to borrow from 'the common box'[16] was stall a privilege jealously guarded by guild members, and certain groups of craftsmen, as has been shown above,[17] took up the project of raising corporate funds as a means of emancipating themselves from dependence on the capitalist.

Well into the seventeenth century, continuing an immemorial practice which owed nothing to foreign precedents, parishes maintained a church stock, from which they advanced cows, sheep, hives of bees, trade utensils and money to *Parishioners*, taking security, and charging a low rate of interest.[18]

Occasionally a borough took more elaborate measures than mere prohibition to squeeze out the *Usurer*. At the little town of Berwick-on-Tweed a storm of indignation arose towards the end of the sixteenth century against the alleged malpractices of the local *Money-Lenders*. Many poor citizens, it is complained, are driven by distress into dealing in pawn- tickets, and, as a consequence, are plundered by 'extreme *Usurers* and *Extortioners*'. The mayor ought to take the matter up, and to appoint 'two honest and credible men' to act as *Brokers* through whom alone loans shall be negotiated.

Accordingly, in 1598 an order was issued prohibiting all pawnbroking except through two official agents, who were to give security to the town for the articles deposited with them as pledges, and to keep a *Register of Borrowers* and their debts. Five years later, a short entry m the *Municipal Register of Oaths and Proclamations* gives us a glimpse of this public pawnshop at work.

In spite of all precautions, the private capitalist had reappeared. On April 30, 1603, one Robert Bincks was brought before the magistrates on the charge of exercising the trade of a pawnbroker, in contravention of the order that only two persons appointed by the town should be permitted to advance money. Amid general execration of his exactions, he was ordered to surrender to the town the pledges which he held, and was turned of with an allowance of ten per cent. upon them. The story closes with the triumphant re-establishment of the *Municipal Monopoly*.[19]

Such experiments in the control or expropriation of the *Money-Lender* were, of course, exceptional. What was more characteristic of the sixteenth century was the attempt to achieve the same result by private charity, or, as an incident in the administration of that new social instrument, the *Poor Law*.

The last wishes of the pious benefactor are not always a monument to his wisdom. But since he is apt, like Poins, to be 'a blessed fellow to think as every man thinks', they usually reject the prevalent estimate of the sore points in the social system and the particular types of philanthropy which are the fashion of the age.

There is no doubt what form of charitable bequest appealed most to the *Elizabethan Capitalist* who desired to dispose of his fortune for the good of his soul and the bereft of posterity. It was the establishment of a fund to endow the *Deserving Tradesman*. Legacies of:

> "£20 to the use of poor artificers, to be lent them *gratis* from year to year"

or:

> "…for the better advancement and preferment of the young thriving burgesses that have trades and occupations yet want stock to set up on or exercise the same…at £5 a man for 6 whole years, freely and without payment of interesting."

or:

> "£60 for granting loans to carriers plying between London and Kendal."[20]

Such bequests were as common in the sixteenth century as the endowment of altar lights had been in the *Middle Ages*, or that of hospitals is to-day.

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[15] *See* Savine, *English Monasteries on the Eve of Dissolution*, pp 228-242. (Vinogradoff, *Oxford Studies in Social and Legal History*, vol. I). But the figures (2½ per cent. Of the gross income) relate only to charity administered under trusts, and appear to exclude voluntary almsgiving).

[16] Turner, *Oxford Records*, p. 8, and *Lincoln Cathedral Statutes*, pt. II, pp. 616-7. For a guild which appears to have acted as a bank, see *Hist. MSS. Com., MSS. of the Borough of Kings Lynn*, p. 228.

[17] See *Financing of Capitalist Industry* by R.H. Tawney.

[18] Numerous examples are given by Addy, *Church and Manor*, ch, XV.

[19] *Hist. MSS. Com., Report of Manuscripts in various collections*, vol. I, pp. 3, 4, and 25.

[20] *Hist. MSS. Com., MSS. of the Corporation of Kendal*, pp. 3, 7, and 549; *Nottingham Borough Records*, vol. V, p. 150.

By the latter part of the century the futility of merely disciplinary measures against *Pauperism* had been widely realised, and measures to prevent distress from arising were beginning to be the fashion. *City Companies*, *Municipal Corporations* and *Parochial Authorities* came to the assistance of *Private Philanthropy* by establishing 'lending charities'[21] - the *Haberdashers' Company* alone administered a fund of £2,500 - which had the advantage, at a time when the old-fashioned almsgiving, both for religious and for social reasons, was a little blown upon, of helping those who helped themselves.

In each case the motive was the same. It was to enable the young artisan or tradesman - the favourite victim of the *Money-Lender* - to acquire the indispensable 'stock' without which he could not set up in business. Half a century later, when the *Goldsmith Banker* was coming to his own, the establishment of free loans was, as we have already seen, still being urged by a *Puritan Social Reformer* under *The Commonwealth*.[22]

The suspicion of the sharp practice of Mr. Badman, expressed in all this public regulation and private philanthropy, survived in the social strata least touched by the new currents of commercial enterprise long after it had ceased to influence *Public Policy*.

But, when the sixteenth century began, it was the theory, at least, on which the treatment of credit transactions by the *State* was founded, and it continued for several generations to command sympathy in high places.

In its mixture of social jealousy at the rise of a new aristocracy, reluctant admiration at its success in making money, and genuine indignation at its indecent rapacity, the attitude of the *Governing Classes* towards the *Financier* was not unlike that of the *Tory Landowners* of the early nineteenth century towards the *Cotton Men* of the day.

While the impecunious *Squire* grumbled at the *Money-Lender* as an *Extortioner*, the *Administrator* protests at the manner in which the *Capitalist* sacrificed public interests to the desire for profit, sneered at him as one of a class which evaded public burdens and did no good to the country, and was not sorry to show his opinion of the humbler members of the trade by fining them at quarter sessions or even sweeping '*Rogues* and *Usurers*' - a singular combination - into the same gaol.[23]

The *Government* itself was torn by confecting interests. On the one hand, its necessities compelled it to court the *Financiers* and to offer them such terms for loans as they demanded. On the other hand, itself an unrepentant *Borrower*, it had no love for *Creditors*; it had a naive confidence in the economic efficacy of statutes and proclamations; and it inherited a whole body of assumptions as to social expediency which caused it to look askance at a class whose sole *raison d'être* was a single-minded pursuit of pecuniary gain.

In an age of religious and social convulsions it had its own reasons of public policy for attempt to enforce customary standards of social conduct and obligation as an antidote for what Burghley called 'the licence grown by the liberty of the Gospel'.[24]

In his matter of credit, as in its attempts to protect the peasant against the depopulating landlord and the weaver against the clothier who 'engrossed' looms, both tradition and interest united it with the small producer in agriculture and industry in resistance to economic Innovation.

If, in short, official practice was opportunist, official theory was conservative. The warnings against 'usurie both plain and coloured'[25] with which Dudley, a poacher too late turned gamekeeper, solaced his imprisonment, continued to fall with unction from tie lips of statesmen well into the seventeenth century.

An enlightened absolutism might have chosen one of several courses other than absolute prohibition of interest or complete freedom of contract. It might have taken up one or other of the projects submitted to it for the establishment of *National Banks*, or have allowed interest in dealing between *Merchants*, while forbidding it in non-commercial transactions, or have adopted the policy afterwards proposed by Bacon of fixing one rate for loans which were in the nature of investments, and another, and a lower rate, for loans to meet the necessities of the *Peasant* and the *Craftsman* whose difficulties had given the attack on usury its point.

The compromise which was finally adopted was cruder than either of these suggestions and is discussed below. During the greater part of the first three-quarters of the century no compromise, other than by evasion of the law, was contemplated. The truth was that the economic paternalism of the *Tudors* was not of a kind to appreciate subtleties. It was possible because, in the main, it was popular, and it was popular because of its lack of originality. Its system of 'controls' drew its materials from the practice of village and borough, preserved

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[21] Leonard, *The Early History of English Poor Relief*, pp. 232-5, gives many examples.
[22] See *The Peasant and Small Master* by R.H. Tawney (Cooke, *Unum Necessarium or the Poor Man's Case*).
[23] Ellis, *Original Letters*, first series, vol. II, Letter ccxii.
[24] *Hist. MSS. Com., MSS of the Marquis of Salisbury*, pt. I, pp. 162-3.
[25] *The Tree of Commonwealth.*

much, while it changed little, and was put in motion, if at all, by the pressure, almost the passion, for regulation of the classes affected by it.

If was quite in accordance with the policy applied to other sides of economic life, therefore, that, during the greater part of the sixteenth century, the treatment of credit transactions by statute law should have consisted, except during one short interval, in the re-enactment of medieval precedents.

In the fourteenth and fifteenth centuries there had been petitions against usury, which evoked ordinances prohibiting it. The *Government* of Henry VII had the same motive for dealing with usury as with enclosure; both could be exploited by the discontented and were a menace to public order; and the just comprehensive legislation on the subject consisted of the statutes of 1487 and 1495.[26]

Neither made any innovation on the existing state of the law. The first, after prohibiting 'dry exchange', forbad all interest under penalty of £100 for every transaction, and laid down that, since it was principally in boroughs that, as would be expected, these undesirable practices were carried on, cases of usury should be tried not by *Borough Magistrates* but by the *Chancellor* and the *County Justices*, who, as *Landowners*, had no love for the exacting mortgagee.

The second was designed to meet faculties caused by the ambiguity of the preceding Act, which it repealed. It renewed the prohibition of all usury of any kind, defined usury as:

> "…the act of taking for the same loan anything more besides or above the money lent, by way of contract of covenant at the time of the same loan, saving lawful penalties for the non-payment of the money lent..."

And forbad expressly two devices by which the law had been evaded, namely the selling of wares and repurchasing of them within four months at a lower price, and loans advanced on the security of land on condition that part of the revenue of the land should be made over to the *Lender*. Both Acts reserved the jurisdiction of the *Ecclesiastical Courts*.

Nor, down to 157I, was any substantial breach made in this policy of meeting new problems with medieval weapons. It is true that in the last year but one of Henry VIII, when the *Government* must have been at its wits' end to raise loans, an Act[27] was passed which, while repeating the prohibition of usury under the guise of fictitious sales, sanctioned interest provided that it did not exceed ten per cent.

But the concession stood only for seven years. It is possible that the return to the more rigorous policy was connected with the prominence in the reign of Edward VI of the group of reformers who had urged the ill-fated Somerset to take up the land question, and who, by their insistence on the need for social reconstruction, had earned among their enemies the nickname of 'the Commonwealth men'.

Protestants like Latimer, Ponet, Bucer, Lever and Crowley had no more mercy for the *Money-Lender* than had been shown by Cardinal Morton when he harangued parliament on the subject half a century before, and they had all written or spoken against usury. Crowley urged in a sermon:

> "The most parte, I am sure, of this most godly assemblie and parliament, do knowe that the occasion of the acte that passed here concerning usurie was the unsaciable desyre of the *Usurers*, whoe could not be contented with usurie, unless it were unreasonable muche.
>
> To restrayne this gredy desyne of theyrs, therefore, it was commanded and agreed upon, and by the authoritie of parliament decreed, that none should take above x li a year for the lone of an c li.
>
> Alas that ever any Christian nimbly should bee so voyde of God's Holy Spirit, that thei should allow for lawfull any thynge that God's worde forbedeth. Be not abashed (most worthy counsaylours) to call this act into question against."

The social doctrine rehearsed by Edward VI, with their emphasis on the need of controlling the operations of *Merchants* and *Financiers*, reflected the conventional distrust of the *Monied Interest*; the *Clergy* were demanding that *Usurers* should be punished, as in the past, by the canon law[28]; and there appear to have been some popular protests[29] against the qualified indulgence shown to the *Money-Lender* in the *Act of 1545*.

The *Gentry*, it is true, under the leadership of Warwick, had made short work of Somerset and his land policy. But, in defending property, they had no intention of undertaking a crusade to protect the moneybags of

[26] 3 Hen. VII, c. 5, and II Hen. VII, c. 8.
[27] 37 Hen. VIII, c. 9.
[28] Cardwell, *Synodalia II*, p. 436.
[29] E.E.T.S. *A supplication of the poore Commons*.

Financiers who squeezed them and the *Peasants* impartially, and their victory had been followed by measures of economic control intended to prevent social disturbance.

Stringent legislation as to prices was passed in 1552[30], and in June, 1551, in the hope of preventing them rising further, exchange transactions had been prohibited. The *Act*[31] *of 1552* as to usury was probably regarded as part of the same policy. It repealed the *Act of 1545*, and forbad the taking of any interest whatever, under pain of imprisonment and fine, in addition to the forfeiture of principal and interest. Henceforward a pious nation was to live up to the declaration of its parliament that:

> "…all usury is by the word of God utterly prohibited, my a vice most odious and detestable, as in divers places of *Holy Scripture* is evident to be seen."

The statute of 1552 did no more than re-enact principles which had been accepted for centuries, and which had been applied in the legislation of Henry V11. But since the end of the fifteenth century there had been a revolution in the social and economic life of England, and indeed of Europe, which was bringing the *Capitalist Classes* to their own, and it was no longer as easy as it had been to put a hook in their jaws.

The methods by which the prohibition of usury could be evaded - payment for fictitious consideration, loans in the shape of wares priced at double their market value, stipulation for repayment of the principal under heavy penalties at an impossibly early date, loans in the guise of a share in a *Trading Partnership* in which the *Borrower* agreed to bear all losses - such devices had been the commonplace of economic literature since the thirteenth century, and there was general agreement that the first effect of the *Act of 1552* was to give a new impetus to them.

But malpractices of this kind, though they supplied a convenient loop-hole through which, when the parties were in agreement, they could combine to circumvent the law, obviously had their limitations. For they left intact, or even intensified, the stigma of illegality which marked interest as at once disreputable and precarious.

As long as the law drew a distinction between the gains of finance and those of commerce and industry, the professional *Money-Lender*, unless sufficiently powerful to set it at defiance, was apt to possess neither complete legal security nor social respectability.

He was regarded by public opinion as a man of furtive expedients who derived his income from the intimidation or cajolery of necessitous clients, and was exposed to the practical inconvenience, which cases before the courts shew to have been considerable, that the *Debtor* who chose to repudiate his agreement, could invoke the law against the *Creditor* who attempted to enforce it.

What meets us, therefore, after the middle of the century is an attempt, not merely to stultify the law in practice but to reverse the whole body of legal doctrine on which this virtual outlawry of the *Capitalist* had rested. In one country after another the rapidly growing *Financial Interests* revolt against a system which penalises the most profitable employment of their capital.

The laws against usury are criticised, not merely in detail, but in principle. In England, by the third quarter of the century, though the *Usurer* retained the character of a popular bugbear, and though the *State* continued, both by statute and administrative orders, to control his operations as it controlled in theory every other department of economic life, the undiscriminating prohibition of all interest whatever had given place to a system of regulation which recognised the legitimacy of some payment for the use of capital by the very penalties which it imposed on exactions which were thought to be exorbitant.

The struggle was transferred from the plane of morality to that of expediency. The question wag no longer whether interest was right or wrong, but whether the rate of interest legally sanctioned was at any given moment reasonable or excessive.

Public Policy and the Money-Lender
other essays by R. H. Tawney

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[30] 5 and 6 Edward VI, c. 14.
[31] 5 and 6 Edward VI, c. 20.