Letter from Newgate

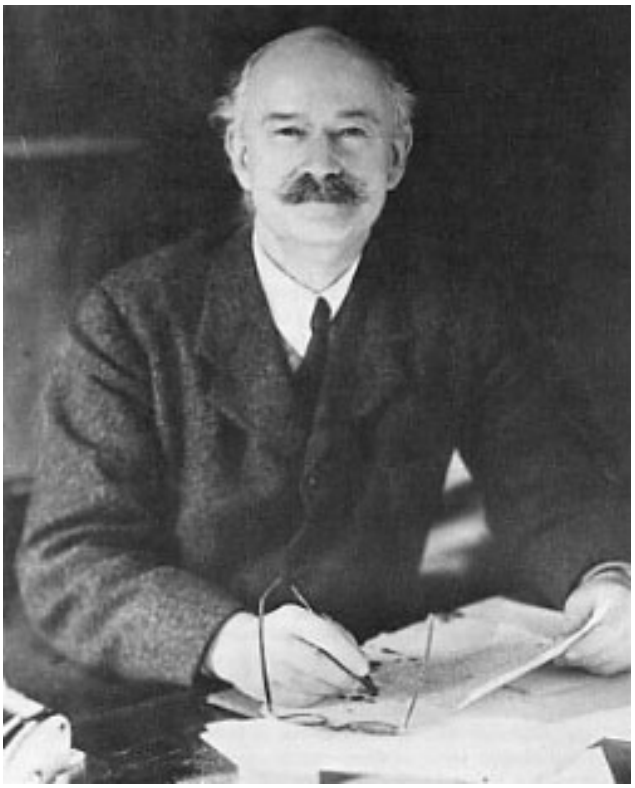
from an essay on the

Compromise of 1571

by

R. H. Tawney

Professor of Economic History at the London School of Economics
(1931 to 1949)



a cesc dispatch

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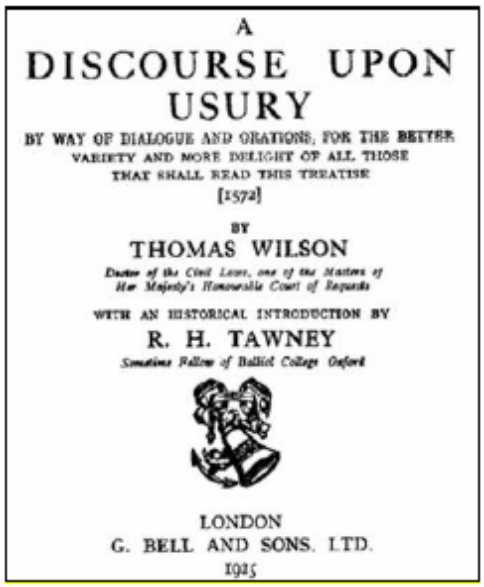
Letter from Newgate[1] by R.H. Tawney

When Sir Thomas Gresham[2] visited the Netherlands in the autumn of 1566, he found everything in confusion and had the utmost difficulty in raising money from the *Welsers* at fourteen percent…or indeed from any other source in the *Antwerp Money Market*. In the following years the economic conditions of the Netherlands went from bad to worse, and after about 1572 the *English Government* seems to have ceased to owe money there.

The drying up of what had been its main source of supplies for a generation made it doubly necessary to regularise relations with *The City of London*; and Gresham, whose political ideal was a *mariage de convenance* between *The State* and *Business*, and who constantly urged the desirability of raising loans in London, was not slow to point the moral. He had no illusions as to the disinterestedness of the *Mercantile Classes* and had more than once urged the *Government* to rap them on the knuckles.

But he viewed the *Problem of Credit* as a practical man to whom excessive interest was not bad morals but bad business, and he was uncompromisingly opposed to the policy of the *Laws against Usury*[3]. Throughout his financial career Gresham appears to have stipulated that those who subscribed on his inducement to *Public Loans* should be relieved of penalties under the *Usury Laws*. In 1560 he urged the repeal of the *Act of 1552*, and in 1568 - the year before Thomas Wilson wrote his *Discourse Upon Usury* - he returned to the charge, fortified by the fact that at the moment the *Government* was taking steps to raise one of its first large loans at home.

As early as 1563 the *House of Commons* had passed a bill to restore the law as to *Money-Lending* to the condition in which it had been from 1545 to 1552. It was the session in which Cecil[4] was carrying out some of the measures in his programme of conservative reconstruction: the proposal seemed to him, no doubt, a piece of dangerous individualism - a specimen of 'the licence grown by liberty of the gospel' which be deplored - and his opposition appears to have killed it.


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
THOMAS WILSON
Doctor of the Civil Laws, one of the Masters of Her Majesty's Honourable Court of Requests
WITH AN HISTORICAL INTRODUCTION BY
R. H. TAWNEY
Sometime Fellow of Balliol College Oxford
LONDON
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1925

But the economic experience of the next eight years compelled a reconsideration of traditional doctrines, and when the matter was next brought up, it was in a different atmosphere.

Two bills on the subject of usury were prepared in 1571. The first provided for the establishment of *Banks* in seven cities, London, York, Norwich, Coventry, West Chester, Bristol and Exeter, to be known as 'banks for the relief of common necessity', and to lend money against pledges at the rate of six percent. It passed its first reading in the *Commons* on April 19 but came to nothing.

The second bill followed the main lines of a memorandum[5] prepared prior to the repeal of the *Act of 1552* to suggest a compromise between the rigour of the 1552 law, the disposition of financial interests to *Profiteer* at the expense of *The Public* and *The State*, and the supposed concern of the *Government* to prevent *Speculation*. However for the 1571 Parliament all mention of the *Foreign Exchanges* was omitted from the memorandum and the bill passed into law. The *Commons Debate*, as reproduced by D'Ewes, revealed the *Plain Man's* revolt of the against the *Theorists,* who had triumphed twenty years before…and showed his determination that the law should not impose on business an Utopian morality.

In the *Commons* debate Thomas Wilson, with the mercilessness of the expert, began by asserting that he had studied the subject too thoroughly to discuss it with brevity, and his speech against the sanctioning of interest, which marshalled in a single phalanx Solon, Ezekiel, Augustine, the *Council of Nicea*, and English law books, compared *Usurers* to spiders, serpents and devils, and ended with a practical appeal to remember 'the doings of the *Fuggers* to the very beggaring of great and mighty Princes', did more than justice to the alarming candour of his prolocution.

[1] *The Compromise of 1571* by R. H. Tawney was first published as part of a 170-page introduction to the 1925 edition of Thomas Wilson's *A Discourse Upon Usury* first published in 1572 and influential in the parliamentary debates of *1571*. The full text is at *http://www.cesc.net/serifweb/scholars/tawney/*. The text is Tawney's with alterations and annotations by William Franklin.

[2] See *http://en.wikipedia.org/wiki/Thomas_Gresham*. Sir Thomas Gresham (1519-1579) was an English merchant and financier who worked for King Edward VI of England and for Edward's half-sisters, Queen Mary I and Queen Elizabeth I. Early in his career he was apprenticed for eight years to his merchant uncle Sir John Gresham.

[3] The *Doctrine of Usury* was one of the more contentious issues throughout Europe during *Tawney's Century*...though written out of many modern textbooks. [Ed]

[4] See *http://en.wikipedia.org/wiki/William_Cecil,_1st_Baron_Burghley*. William Cecil, 1st Baron Burghley (1521-1598), was an English statesman, the chief advisor of Queen Elizabeth I for most of her reign, twice Secretary of State (1550–1553 and 1558–1572) and Lord High Treasurer from 1572.

[5] In the 16th Century a *Government Memorandum* was similar to a 20th Century *Government White Paper*. [Ed]

The *House* was impressed - 'the matter…was for cunning men a fit theme to show their wit and skill upon' - but it was unconvinced, and only one member supported Wilson's plea for prohibiting interest altogether.

The remaining speakers greeted the proposals of the bill with the enthusiasm which Englishmen reserve for a compromise. The *Canon Law* was out of date and need not be taken seriously. The Bible was the word of God, but, apart from the fact that the *Divines* were not agreed as to its interpretation, it required to be read with common sense and was not a sound basis for parliamentary legislation.

Business was business; to denounce men for pursuing their own economic self-interest was frivolous; to prohibit interest would ruin the trade of the country. The practical course was to avoid the impolitic extremes of excessive righteousness, and to make a concession to human infirmity by drawing a distinction between moderate interest, which the law should sanction, and excessive interest or usury, which the law should forbid.

> "That all should be well is to be wished: that all should be done well is beyond hope. For we are no saints: we are not of perfection to follow the letter of the Gospel…We are not so straitened to the word of God that every transgression should surely be punished here…The mischief is of the excess not otherwise…It is biting and over sharp dealing which is disliked, and nothing else."

In its final form the *Act of 1571* was a less radical measure than might have been expected from the tone of the debate. It was calculated, indeed, to give hardly more satisfaction to the *Merchant* and *Common Lawyer* of Dr. Wilson than to their creator. Its principal provisions were three.

First, it repealed the *Act of 1552*, under which persons taking any interest whatever were to forfeit principal and interest and to be punished with fine and imprisonment. Secondly, it revived the *Act of 1545*, under which persons taking more than ten percent were to forfeit the treble value of their wares and profits and to be punished with imprisonment. In the third place, it established certain new rules, not contained in the revived *Act of 1545*, of which the most important was that all contracts to pay more than ten percent were to be void, and that all persons taking less than ten percent were to be liable to forfeit the interest demanded, however small.

What the statute endeavoured to effect, therefore, was something more complicated than is suggested by the common statement that it substituted for the complete prohibition of interest a maximum rate of ten per cent. It drew a distinction between interest above that rate and interest below it. The former was prohibited under heavy penalties, and an agreement to pay it was *ipso facto* void.

The latter was not made, as it had been under the *Act of 1552*, a criminal offence, but the *Creditor* was given no legal security for it, and the *Debtor* who chose to take *Legal Proceedings* to recover any interest promised could do so. He might, that is to say, pay interest up to ten percent. If he thought fit, as a *Borrower* anxious to keep on good terms with the *Money Market* very well might.

But if he decided to face the consequences of bringing an action against his *Creditor*, he need pay, according to the words of the *Act*, no more than the principal. Contemporary commentators upon the statute were at pains to emphasise that in prohibiting all interest above ten percent, it did not intend to secure the *Lender* any interest less than that rate which he might ask.

In 1595 the author of a careful study of legislation on the subject of usury wrote,

> ''There be many simple men, which, having no insight into the statute, are not ashamed to say that it alloweth ten in the hundred. Which, indeed, is a mere scandal and slander, for it upholdeth a kinde of punishment, by the loss of the least usury that is taken…
>
> "…When King Henry did tolerate 10 pound in the 100 many did abuse that libertie under colour of the law; and when King Edward VI had utterly taken away all usurie, this inconvenience came, few or none would lend because they might have no allowance, whereupon her Majestie to avoid this evill made this remissive clause…
>
> "…The Borrower hath this libertie by this branche for his owne benefit:
>
> 1. If he promise usury he need not pay unless he will.
> 2. If he pay usurie, he may recover it again if he be grieved.
> 3. If he be willing to pay usurie, he is at his own choice to complain."

It is evident that such a measure, though involving an important departure from the position assumed twenty years before, made a less sharp break with traditional doctrine than would have been involved in merely fixing a maximum rate of interest. But the spirit of *Tudor Social Policy* and the attitude of *Tudor Statesmen* is revealed less in statutes than in the activity, half administrative, half judicial, of the *Privy Council*. And the impression of conservatism is heightened if one turns from legislation to administration.

The reasons, apart from the necessities of *The State*, which led it to take an interest in questions of credit, lay on the surface. No *Government* can face with equanimity a state of things in which large numbers of respectable *Tradesmen* may be plunged into *Bankruptcy*. If the *Grasping Creditor* was not so prolific a cause of disturbance as

the *Enclosing Landlord*, he was at least, like the *Engrosser of Corn*, a bad neighbour who kept alive a smouldering discontent, which in times of economic crisis was liable to burst in flame.

> To the *Mercantilist Statesman*, concerned with the maintenance of *Public Order* and the encouragement of *Economic Efficiency* the supervision of credit transactions presented itself as precisely analogous to the prevention of depopulation, the control of food supplies, the regulation of the wage contract, and the other measures by which a *Paternal State* endeavoured to check the dislocation of customary economic relations.

In France the *Government of Henri IV* was hardly established before it declared a *Moratorium*, relieved *Debtors* of part of their liabilities, and reduced the rate of interest from 8⅓ to 6¼ percent. In England the problem was different in degree, but similar in kind; and from the zenith of the system of economic control under Elizabeth, to its last spasmodic movements on the eve of the *Long Parliament*, *Statute Law* was supplemented by periodical attempts on the part of the *Council* at once to increase its practical effectiveness and to supplement its deficiencies.

Its action in this matter was similar to that taken in cases between *Landlords* and *Tenants*, though even more irregular, and consisted partly of attempts to prevent the protection offered by *The Law* being made inoperative through the negligence of *Local Authorities*, partly of intervention to afford relief to individuals in cases of hardship when the *Ordinary Courts* offered no remedy. The administration of the *Act* was part of the regular routine of the *Justices of the Peace*, and presentments before quarter sessions show that it was not a dead letter. In the periodical attempts to galvanise the creaking local machinery, the *Government* called attention to the *Statute against Usury*, with those relating to *Tillage* and the *Engrossing of Corn*, as needing special attention.

Soon after the *Act of 1571* was passed, it appointed two *Special Commissioners* to investigate the execution, among others, of the *Statute against Usury*, who in 1578 reported that some £6600 was due to *The Crown* in fines from *Offenders* and similar commissions appear to have been issued from time to time down to the *Civil War*.

Apart from such general measures, which, like most of the social administration of the age, were spasmodic and haphazard, the matter was kept before the *Government* by the appeals which poured into it from individuals. *Petitions* for redress are addressed both to the *Council* and to individual *Councillors* from *Debtors* claiming to have been victimised by *Moneylenders*, from *Moneylenders* who complain that they have been mulcted in exorbitant penalties, from *Justices* who ask advice as to what action they are to take, from *Reformers* who desire the *Government* to take up some infallible recipe for better administration.

The *Master of the Rolls* corresponds with Sir Robert Cecil as to the dealings of a *Scrivener* who has exacted preposterous terms from his *Clients*. An *Alderman* of the *City of London* writes to him on the hard case of a 'poor young man…drawn into these bonds by his uncle's means as a sheep to the slaughter'. A *Trader* at Peterborough begs to be protected against the 'inconscionable dealing' of a *Merchant*, who threatens to deprive him of his 'whole means of living for himself, his wife, and his children'.

A *Correspondent* writes to Lord Burghley to expose the proceedings of a *Moneylender* who has been brought before the *Court of King's Bench* for taking the not inconsiderable sum of £1770 contrary to the *Statute against Usury*, and whose principal witness has perjured himself. A *Moneylender* condemned to a fine of £150[6] begs for pardon. The *Council* protested its unwillingness to interfere with the ordinary course of law. "We do not willingly meddle with matters of this sort concerning debts and suits between men."

But considerations of practical expediency would have overcome its reluctance, even if its members had shared the popular prejudice against the extortionate *Moneylender* less thoroughly than, in all probability, most of them did. Its general policy was to try to secure the settlement of disputes out of court through the good offices of a friend, an influential neighbour, or, when necessary, an *Arbitrator* appointed by itself.

The *Justices of Norfolk* are instructed to put pressure on a *Moneylender* who has taken 'very unjust and immoderate advantage by way of usury'. The *Bishop of Exeter* is advised to induce a *Usurer* in his diocese to show 'a more Christian and charytable consideration of these his neighbours'. Lord Evers has released two offenders imprisoned by the *High Commission* for the *Provence of York* for having 'taken usurie contrary to the lawes of God and of the realm' and is ordered at once to recommit them.

Apart from flagrant cases of this kind, it is evident that under Elizabeth the *Government* kept sufficiently in touch with the state of business to know when the difficulties of *Borrowers* threatened a crisis, and endeavoured to exercise a moderating influence by bringing the parties to accept a compromise. Relations between *Debtors* and *Creditors* were naturally most acute when loans were being called in and new accommodation refused.

> In times of unusual depression, action of this kind to prevent *Creditors* from pressing their claims to the hilt was so constant as to give the impression of something resembling an informal moratorium.

[6] Based on the calculator at *http://www.measuringworth.com/ppoweruk/,* £150 in 1571 had the same purchasing value as £35000 today, based on price inflation, and around half a million pounds, based on earnings. [Ed]