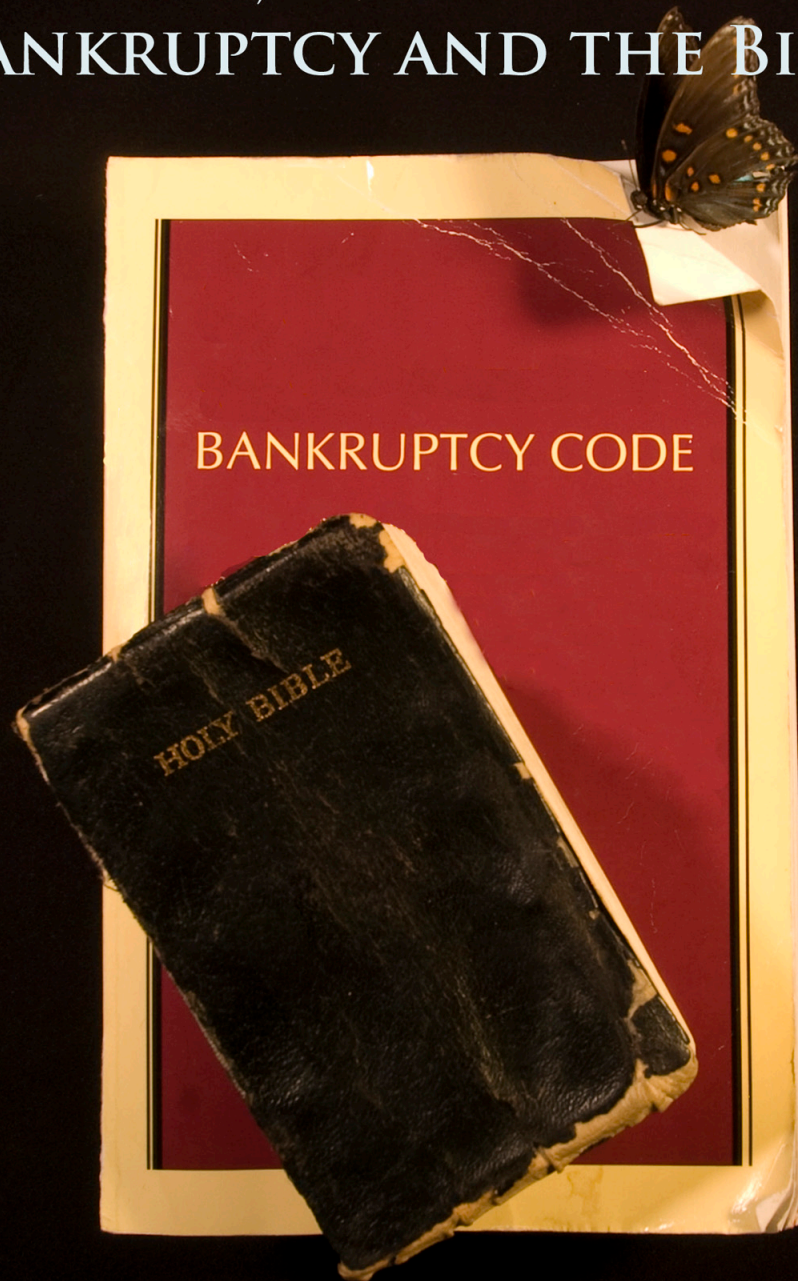


NEW LIFE, BANKRUPTCY AND THE BIBLE



SOCIAL HISTORY OF DEBT

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. But, since all of his belongings had been sold, he and his family were left with nothing to live on while he 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 could be executed and cut into pieces. The pieces were then divided up among his creditors.³ Money had the power of life and death. 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 and his legacy to his children went to his creditors.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? What does one do when there is not enough to purchase penicillin for one's child? The honest poor man does exactly what the honest rich man would do if he had no money to buy food. He borrows.

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, when 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; they prevent payment.

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 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 as 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. It was the equivalent of today's discharge of debt in bankruptcy:

"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.

Compare this to the United States Bankruptcy Code:

"A discharge in a case under this title . . . operates as an injunction against the commencement or continuation of 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 money that is important.

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

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

But over the years, the monied interests in Jerusalem created exceptions to the rule and eventually the 7 year law was completely ignored, and the concept of discharging debt fell into darkness for centuries.

Then came a woman of conscience. She was, perhaps, not a handsome woman and a little heavy. But she had a mind of her own.

Queen Anne

It was on March 8, 1702 that this relatively young woman of 37 succeeded to the crown of England. Her name was Anne. She had little to do with her elevation to the throne. In fact, many would say that she was somewhat of an accident. She was the unlikely heir to her predecessors in title, William and Mary, when they died without issue.

Her history, like the history of most monarchs, is decorated with

golden moments and scepters and power and kingdoms. Anne's wins and losses, such as the War of the Spanish Succession and the Act of Union were renowned when they occurred, but they are largely forgotten now. They may be found in history books and or written upon on plastic squares in English museums. But references to her true legacy are buried still deeper.

One day in 1705, Anne Stuart decided to be a little radical. On that day she enacted a law that provided an opportunity for honest debtors to cooperate in a bankruptcy process that resulted in the discharge of their debts. The concept was that if the debtor would give up all that he had, except for minimal assets, these assets would then be divided among his creditors. And in exchange for his cooperation, his debts would be forgiven, or "discharged."

So, with the scratch of a five letter signature, "Anne R," she made it possible for honest and cooperative debtors in England to discharge the debts that they could not pay and thereby avoid debtor's prison entirely. In doing so, she set in motion the mechanism for release from debt by force of law for the first time in more than 2500 years. She gave new life and new hope to the financial slaves of England.

All of the magnificent things that she was party to and all of her gold and all of her power and all of her glory as Queen of England has now faded into classrooms. And her renown has resolved itself into students' questions that begin with "Which Queen Anne?" But her true legacy has never died .

Her true legacy is written into Title 11 of the United States Code, in the Constitution of the United States, in the laws of England, of Germany, of Italy, of France, of all of the Americas and in various forms over the face of the free world. It proclaims freedom for those who cannot pay.⁷ She was one person, who decided perhaps to do something just because it was right, and that one act changed the Western world.

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 concept forms the core of the conviction that a person should, in his lifetime, possess the legal and moral ability to start over, no matter how much he owes.

A COMPARISON WITH SCRIPTURE

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 today's bankruptcy laws. The release of debt in bankruptcy is called a "discharge of debt." The result is the same, either in Deuteronomy or in Title 11.

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 eight 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).

However, 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 (depending on the state he lives in) 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 not 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. 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 papers to file, no judge and no trustee. 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 lenient and debtor oriented than the one provided for in the United States Bankruptcy Code.

It is righteous to forgive, and God's command that we forgive does not extend to the point of reaching the dollar and then stop there. The principle of God's forgiveness includes forgiveness of debt as well (Dt. 15:1,2; Luke 16:1-13), the forgiveness of lawsuits between Christians (1 Cor. 6:7, "Why not rather be defrauded?"), and the 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 experience salvation (healing).

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 statu-

tory 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 bank-

ruptcy 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.

Unfortunately, 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 than 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.

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 was to be a borrower.

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 MESSAGE OF THE NEW TESTAMENT

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 paid the penalty for the sins of the world. That means that His death provides the means for forgiveness.

So, everyone else must ultimately make a choice. One must choose whether or not to appropriate and take advantage of Christ's sacrifice. One must either do it or not; there is no middle ground.

The trouble with choosing to let Christ's death pay for sins is that by making that choice we must admit that sin does exist, that we are guilty of it, that we can't pay for it and we are in need of forgiveness in order to be free. For some people, this is not so easy because pride gets in the way. But for those who make the decision for Christ and follow through with it, they are rewarded with a peace and freedom that is inexpressible and beyond the comprehension of anyone who has never experienced it. But those who reject Christ continue to live with the weight of sin and separation from God.

The same is true with regard to the release of debt. The debtor must admit the extent of his debt, that he can never pay it and he must look beyond himself for relief. Those who do this are rewarded with the forgiveness of debt.

CONCLUSION

An examination of scripture and the history of debt yields the inescapable conclusion that an honest bankruptcy discharge based upon real need is no sin.

It is often the only 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.

By,

Charles R. Chesnutt, Sr.

Notes

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; Dalhuisin, 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; Dalhuisin, 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 4 and 5 Anne, cap. 4 "... to prevent Frauds frequently committed by Bankrupts;" see also Ashton, John, *Social Life in the Reign of Queen Anne*, Spottswode and Co., New-Street Square and Parliament Street, London, cir. 1720, p. 435

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

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.

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 commandments 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 shalt 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.