

# philippine studies

Ateneo de Manila University · Loyola Heights, Quezon City · 1108 Philippines

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## Usury in the Philippines Today

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*Philippine Studies* vol. 3, no. 2 (1955): 136–156

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# *Usury in the Philippines Today*

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G. W. HEALY

Usury is not a common problem in a nation enjoying a healthy economy. Usury can only thrive in a nation where many of the people do not receive an income proportionate to their needs as human beings. Without people in great need to take advantage of, the usurer soon has no clients. Usury is not so much a disease as a symptom of a serious disorder in the economic life of a people. As a good doctor does not concentrate directly on lowering a fever but on curing the disease which is causing the fever, so a good government should not spend its time merely pursuing the usurer, but rather it should strike at the economic evils which beget usury.

In the Philippines the usurer has been a part of the local scene for centuries. He came into existence with the iniquitous tenancy system, and has survived to this day, thriving in the climate of poverty generated by that system. The usurer has defied every effort of the government to suppress him and, apparently, will outlive any government that does not solve the land-tenancy problem. History has proven that it is useless to attack usury directly; it thrives in every country of the Far East, in the very countries that have failed to solve the problem of land tenure. And the problem becomes more and more acute with the rising birthrate, prolonged span of life, and the ominous threat of Communism offering its sugar-coated poisonous solution to the age-old problem.

The present administration under President Magsaysay is coming to grips with the tenancy problem, a task of almost incredible difficulty. While we await the solution of this, the main problem, it will be worth our while to focus our attention on the present-day practice of usury in the Philippines in order that the evil may appear for what it is, and that we may be reminded of the legal and moral doctrine governing the taking of interest for a loan, lest good people learn to condone or imitate an abuse which has become so widespread. Also the more we appreciate the evil, the more credit will we give to those who succeed in restoring the nation to economic health.

The Supreme Court of the Philippines has defined usury as "contracting for or receiving something in excess of the amount allowed by law for the loan or forbearance of money, goods or chattels. It is the taking of more money for the use of money, goods or chattels or credits than the law allows" (50 Phil. 558). This, of course, is a legal definition and incorporates the state's positive prohibition. But usury in the common meaning of the word, i.e. "the taking excessive interest" would be wrong even if the law were silent on the matter, for usury is a violation of the virtue of justice—a virtue all are bound to observe because of the natural law. Besides being a violation of strict commutative justice, involving restitution, usury can also be a violation of social justice when the common good suffers harm; and it is always a violation of charity. In this article we will attempt to show that all of these virtues are being seriously violated by the present usurious practices in the Philippines. We will treat first of the civil law concerning usury in the Philippines. We will then treat of the actual practices in the Philippines today and the social and economic evils consequent upon these practices. Thirdly we will treat of the doctrine of the moralists in this matter of usury, applying the traditional doctrine to the actual situation in the Philippines today. Finally we will mention the various solutions which might be offered to this problem.

## THE CIVIL LAW ON USURY

The Civil Code of the Philippines, Art. 1175, tells us that "usurious transactions shall be governed by special laws," and Art. 1961 determines that "usurious contracts shall be governed by the Usury Law and other special laws, so far as they are not inconsistent with this Code." This special law governing usury is the Usury Act, No. 2655 as amended by Acts Nos. 3291, 3998, 4070, and Commonwealth Act No. 399.

Section 1 of the Usury Law sets the legal rate of interest at 6% per year when there is nothing stipulated in the contract as to the rate of interest. Beyond this 6% annual interest in the absence of stipulation, the Law sets a maximum interest which the parties may voluntarily agree upon. This maximum is 12% annually if the loan is secured by a mortgage on real estate (Section 2, Usury Law) and 14% annually if the loan is not secured (Section 3, Usury Law). This same Section makes an exception to the 14% annual maximum in regard to the transactions of Building and Loan Associations. For them the maximum allowed by law for "loan or forbearance of money, goods, or credits, or for dues on shares of stock, shall not be higher than twelve per centum per annum," scil., 12% annual interest.

Section 4 of the Usury Law sets a special legal rate of interest for pawnbrokers or pawnbrokers' agents. This legal maximum is 2½% per month when the sum lent is less than one hundred pesos; 2% per month when the sum lent is one hundred pesos or more, but not exceeding five hundred pesos; and 14% annually when it is more than the amount last mentioned. In the Law it is stipulated that a pawnbroker or his agent will be considered as such for the benefits of this act, only if he be duly licensed and has an establishment open to the public.

It is unlawful for a pawnbroker or pawnbroker's agent to divide the pawn offered by a person into two or more fractions in order to collect greater interest than that permitted by Section 4 of the Usury Act. It shall also be unlawful for a pawnbroker or his agent to require the one pawn-

ing to pay an additional charge as insurance premium for the safekeeping and conservation of the article pawned.

Section 5 provides that compound interest shall not be considered to exist in a contract unless it is agreed upon beforehand. Without such agreement there will be no question of compound interest unless the debt is judicially claimed. In this latter case the compound interest is computed at 6% annually. This same Section provides that "no person or corporation shall require interest to be paid in advance for a period of more than one year."

Section 7 voids all stipulations and covenants which demand more interest than is provided for by the preceding sections. The remedies provided for in law are: (1) civil action to recover the whole usurious interest (Section 6); and (2) criminal action (Section 10). This criminal action provides for a fine of not less than fifty pesos and not more than five hundred pesos, or imprisonment according to the discretion of the court. This is in addition to the obligation to return the excessive interest, which may be recovered by the debtor with interest from the date of payment. The victim of usury is given two years to bring action against the person or corporation charging the excessive interest. After two years, prescription will prevent him from taking legal action.

With regard to loans whose payment is to be made in agricultural products or seeds, there is a special provision of the Usury Law stipulating that "such products or seeds shall be appraised at the time when the obligation falls due at the current local market price" (Section 8). The same Section provides "that unless otherwise stated in a document written in a language or dialect intelligible to the debtor and subscribed in the presence of not less than two witnesses, a contract advancing money to be repaid later in agricultural products or seeds or any other kind of commodities shall be understood to be a loan." Thus the agreement falls under the Usury Act and prevents the creditor from circumventing the law by treating the loan as some other form of contract.

If a borrower has agreed beforehand to pay legal interest but has stipulated that he will pay a higher sum if he should fail to fulfill his obligation at the time specified, the additional sum will be considered a penalty and not disguised usury. The same will be true if he agrees to pay a higher rate of interest from the date of his default. Apart from such penalties the court will not merely consider the form of the contract but will make every effort to determine the real intent of the parties.

The form of the contract is not conclusive. The cardinal inquiry is, did the parties resort to the transaction for the purpose of disguising usury in violation of the law? The law will not permit a usurious loan to hide itself behind a legal form. Parole evidence is admissible to show that a written document though legal in form was in fact a device to cover usury. If, from the construction of the whole transaction, it becomes apparent that there exists a corrupt intention to violate the Usury Law, the court should and will permit no scheme, however ingenious, to becloud the crime of usury. (39 Phil. 552.)

The Civil Code provides that, there being no stipulation to the contrary, damage done by delay in paying a sum of money will be considered as indemnified by the interest agreed upon and in the absence of stipulation by the legal rate of 6% annual interest (Art. 2209). If the parties have agreed upon a penalty clause, the penalty thus stipulated takes the place of the indemnity for damage and the payment of interest (Art. 1226). Although the Usury Law provides that the maximum rates permitted by law shall include "commissions, premiums, fines and penalties" (Sections 2, 3, 6), still a penalty clause providing for liquidated damages does not fall within the ambit of these provisions of the Usury Law. The penalty, however, may be reduced by the courts, especially if there has been partial or irregular performance, or even annulled if said penalty is iniquitous or unconscionable as being against public morals and policy (Art. 1229).

Thus far the Usury Law of the Philippines. But there is a special law to govern loans and other relations between landholders and tenants. This special law is entitled the Agricultural Tenancy Act of the Philippines (Republic Act No.

1199). This Law, which was enacted under President Mag-saysay on August 30, 1954, besides being all embracing, is expected to cure the defects, plug the loopholes and supply the omissions of the previous Philippines Rice-Share Tenancy Act. We are here interested only in the question of rates of interest to be charged on loans of the landholder to the tenant.

This new Agricultural Tenancy Act reduces the rate of interest allowed on loans made by the landholder to the tenant. The previous Tenancy Act had allowed 10% interest per calendar year on loans and advances obtained by the tenant from the landholder, and 12% interest on outstanding debts found to exist at the accounting at the end of each agricultural year. The new Tenancy Act of 1954 reduces these rates of interest to 8% and 10% respectively. These rates are applicable to either system of agricultural tenancy, be it share or leasehold, and are not dependent on the presence or absence of security. The new Tenancy Act says nothing about loans between tenants and a third party not his landlord. Such loans would fall directly under the Usury Law.

#### USURY IN PRACTICE

Commenting on the Usury Law the Department of Labor in a Fact Finding Survey of Agrarian Problems in the Philippines in 1936, stated that "This law is a blessing... if it can be enforced rigidly. In spite of the law, excessive interest has been an everyday occurrence, so that the law is ineffective and the evil that the law wants to eradicate still contributes to the social unrest of the agricultural laborers in the rural districts."<sup>1</sup> In an address in 1938 President Quezon bewailed the prevalence of usury in spite of the law.

As he works from sunrise to sundown, his employer gets richer while he (the common tao) remains poor. He is the easy prey of the heartless usurer because usury is still rampant everywhere despite legislative enactments intended to suppress it.<sup>2</sup>

An economic survey made in 1952 revealed that usury has survived to our day and is considered one of the major causes of agrarian unrest in the Philippines.

Interest paid by tenants on borrowed money is grossly onerous. Annual rates of 100% are common and rates of 200% and even higher are not unusual. The majority of small farmers borrow regularly from year to year.<sup>3</sup>

A more concentrated survey published in 1954 showed that the picture has not changed substantially at the time of writing.<sup>4</sup>

To appreciate the place that usury plays in the Philippine scene today we must pause for a moment and recall the overall economic picture. The Philippines has an agricultural economy.

In the Philippines agriculture furnishes a livelihood to nearly three-fourths of the population and accounts for about three-fifths of the national income.<sup>5</sup>

Industrialization still plays but a minor part in the economy of the country. Among the industrial workers and urban residents we would find cases of usury, when they borrow to meet expenses which their meager salary cannot provide for. But there is not a set pattern in this usury as there is among the agrarian population. So if we concentrate on the problem of usury among the farmers, we will be treating of the more wide-spread abuse affecting the lives of the vast majority of farmers, the backbone of the nation. Usury among the urban population is more likely to be recognized for the evil it is, but tradition and usage may have dulled the appreciation of usury as it is practiced in the provinces.

The reader who is unfamiliar with the lot of the ordinary farmer in the Philippines may well wonder why the farmer should allow himself to be victimized by the usurer. The answer to this question lies in understanding the economic status of the ordinary farmer in the Philippines. The picture is not a happy one, and helps us to understand more readily the advances that Communism made in this part of the world.

The smallness of the farms acts to limit potential gross income. As a national average, the tillable land area per farm is three hectares. Farms containing less than two hectares

of tillable land, constituting more than one-half the total farms, occupy less than one-fifth the tillable land area. Tenant frequency is high, averaging about 35% for the nation as a whole and soaring to 75% in those areas where unrest is greatest. Farm rentals are oppressive. Most tenants pay 50% of the gross product (after planting and harvest costs) as rent. Net family incomes derived from farm operations are woefully inadequate for a decent standard of living. Farm family income from outside sources is insignificant.<sup>6</sup> Given this situation, the average farmer naturally has to borrow to meet not only emergencies but the ordinary necessities of life. He is forced to borrow, in other words, as a normal condition of his way of life. When he borrows, he often has to pay as much as 100% or 200% per annum as interest.<sup>7</sup> Not having the means to pay his debt and the interest in cash, more and more of his harvest share goes to the landlord, or he pays by rendering more services to the landlord, and he becomes practically a slave unable to free himself from the vicious circle in which he is entrapped.

The Philippine farmer is between two grindstones. On top is the landlord, who often exacts an unjust share of the crop in spite of ineffective legal restrictions to the contrary. Beneath is the deplorably low productivity of the land he works. The farmer can not see any avenue of escape. He has no credit except at usurer's rates.<sup>8</sup>

In 1952 the Special Technical and Economic Mission of the Mutual Security Agency of the United States, reporting on Philippine Land Tenure, estimated that the average farmer of 1952 under rather ideal conditions would net ₱545 if he was an owner-operator. The same survey estimated his annual cost of living to be ₱1,087. The tenant farmer was estimated to earn ₱365.70 per year while his annual family expenses would run to ₱626. Given this discrepancy we see that the modern farmer and his family have to borrow money in order to live. A 1954 survey showed that nearly four-fifths of the farmers who borrowed used one-half or more of the loan for family expenses.<sup>9</sup> The most common way for the farmer to raise money is to sell his crops to a buyer prior to

harvest at prices grossly inferior to prices which would otherwise have been paid had sale been accomplished at the time of harvest. Losses to farmers resulting from this practice are rarely regarded as interest charged on what are in reality short-term loans. This is, of course, a violation of section 8 of the Usury Law.<sup>10</sup> At harvest time he hands over his crop, which then has a far greater value, in return for the previous loan. The difference between the loan and the value of the crop at the time the loan is repaid amounts sometimes to 100% or 200% interest per annum.<sup>11</sup>

Usury in the rural areas is practiced in various ways. One common way arises from the characteristic feature of the tenancy system, namely, that the tenant has no funds and usually no rice for his family at the beginning of the contract. He is given cash in advance by his landlord. This sum, varying from ₱25 to ₱125, usually is non-interest bearing and may be returned in money or in kind at the termination of the contract. In addition, the tenant is given a ration of palay or unhusked rice for himself and his family. Whatever palay is received up to the time of planting is usually paid back without interest, but the advances made after the planting has begun are subject to high interest and the door is opened to various usurious practices. Thus the tenant is completely in the hands of the landlord, who has to support him until the harvest time and the division of the crop between the landlord and the tenant. Often the debt is so great that he remains in debt even after the crop has been divided and his share has been turned over to the landlord in payment of his loans. And so the vicious circle continues, for now he is not able to draw on his own supply of rice but must ask the landlord for new cash and palay advances.<sup>12</sup>

The landlord finds it to his advantage to have his tenant thus indebted to him, since he may use this indebtedness to exact all kinds of extra work from him and the tenant is not free to leave. Thus the tenant is bound to the land and practically a slave to the landlord.

The various credit practices now in use in agricultural areas may be reduced to the following categories. The farmer may borrow one cavan of palay (unhusked rice) for which he returns two at harvest time (*takipan*). Or he may borrow two cavans and repay three (*talindua*); or he may borrow three and return four when the crop is harvested (*terciahan*).<sup>13</sup> The farmer may also borrow ₱100 from a money lender at 10% or 20% interest. He agrees to repay this money in palay but the amount will be determined by the price at the time of harvest. Since the market price of palay at harvest is usually much lower, even as low as one-half what it is in the lean months before harvest, the farmer because of the shortness of the loan is forced to dispose of his palay when the price is lowest. The money-lender will hold and sell that same palay for ₱200 or more before the next crop is harvested. Many loans, it should be noted, are for periods of only three or four months.

In some provinces we also find the involuntary loan (*pasunod*). Under this arrangement, the landlord forces the tenant to accept, for example, a loan of 5 cavans per hectare, for which a payment of 10 cavans is demanded at harvest time.<sup>14</sup> Landlords have also been known to force their tenants into violations of the usury and tenancy law if the tenants wish to obtain credit. When the new Rice Share Tenancy Law was enacted new legal agreements with the tenants were instituted. After the first year, when the tenants needed loans, credit was withheld until the tenant finally agreed to the old 50-50 sharing agreement, thus circumventing the law.<sup>15</sup>

As the farmer is often illiterate, completely unaware of law and unorganized, it is easy to take advantage of him. There are generally no written agreements between tenants and landlords or moneylenders, and so the farmer finds himself in a very disadvantageous position when he comes to settle his accounts.<sup>16</sup> Sometimes the farmer will state that he is not charged any interest on loans, not realizing that the difference between the value of the palay borrowed and the amount repaid is exorbitant interest.<sup>17</sup>

Another means of exploiting the tenants or farm-laborers is the adoption of the "cantina-system." This is common in some provinces and consists in the owner running a store wherein are sold goods and merchandise which constitute the daily necessities of the tenants. Every tenant or farm-laborer on the estate or hacienda is expected to buy from the said store, not infrequently at excessive prices. And, inasmuch as most of the transactions are carried on under the credit system, in addition to the excessive prices, the tenants are charged with excessive rates of interest on their accounts. On the day when they should receive their salaries, often there is nothing left to collect, but they are in debt to their employer. The longer they stay on the hacienda, the more debt they incur.<sup>18</sup>

Another ingenious means used by some unscrupulous owners to overburden their tenants is to force their transportation facilities upon them. From the field to the warehouse, and from the warehouse to the market, although his own wooden wagon would suffice at practically no cost, the tenant must use his employer's transportation facilities at excessive cost. Over his head hangs the ever-present threat of dismissal from the land if he fails to comply with these regulations. After giving so many years of his life to the land and knowing how difficult it will be to find another employer the poor farmer submits.<sup>19</sup> To the credit of the landlord it should be noted that the Central Survey published in 1954 showed that the moneylenders generally charged higher interest on loans than the landlords. This, of course, is not high praise.

Another example, which the author knows of from personal experience, should perhaps be mentioned for what it is worth. A farmer needed about ₱250 in cash. Having no security except his land, he entered into an agreement whereby the one who advanced him the money would have the use of the land until the entire sum was paid. To this date the debtor has not been able to pay the whole sum in cash and the creditor has already gathered three harvests, each one easily worth ₱200.

## THE MORAL ASPECT

In common parlance and legal usage today usury means the taking of *excessive* interest; but originally usury was the taking of *any* interest for the use of a fungible, namely, something that was consumed in its use. This kind of transaction is unjust, because gain is sought for a thing which is not, in itself, fruitful, without any labor, expense or risk on the part of the lender. There is nothing in such a loan in itself to justify the lender receiving more than the exact amount which he loaned. But there may be other reasons, titles extrinsic to the contract of loan, which justify the lender in demanding back more than the sum loaned. In other words, he may licitly charge interest when such titles are present. Today it is admitted by all that such titles are always present when money is lent. Anyone who understands the distinction between the intrinsic nature of the loan and the extrinsic titles to the interest will understand the Church's position in this matter of interest over the centuries.

The extrinsic titles which are admitted to be present today in the loan of money and which justify the taking of interest are the following: Actual loss sustained by the lender on account of the loan; the foregoing of profit that would certainly have accrued if the lender had not parted with the thing; real and unusual risk incurred by the lender; the penalty agreed upon by the lender and borrower in case of default; and the legal interest in the case of money lent. These are extrinsic, not flowing from the nature of a loan, but rather arising on the occasion of a loan.

These titles can be easily justified. The loss sustained, the profit foregone, the risk incurred, have a tangible value; and justice decrees that compensation be made for them. The penalty clause is allowed by custom in all contracts to insure performance. The legal rate of interest is justified because governments, for the common good, to encourage trade, may presume that today at least one of the other extrinsic titles is present to justify interest. Finally governments may consider money today as though it were not really a fungible

consumed in use, because of its peculiar fruitfulness in business.

Whoever goes beyond the right given to him by these extrinsic titles is guilty of usury (even in the original meaning of the word), sins against justice (since he is taking something to which he has no title or claim), and is bound to restitution for the excessive amount.

But just how much may one charge in interest without violating justice? Where the legal rate is imposed as obligatory on all (as in the Philippines), then that rate binds in conscience. The common good demands that the State have the right to settle this rate and, if it judges it necessary, impose it upon all as obligatory. If the legal rate were judged to be unjust, then it would have to be changed by due process of law. As far back as 1645 the Church, through a Roman Congregation, allowed Chinese Christians under certain circumstances to take 30% for money lent in accordance with Chinese law.

In a case where there was an extraordinary risk involved, one not foreseen by the law, would it be allowed in conscience to take more than the legal rate of interest? If the risk of loss or the actual privation of profit to the lender were extraordinary, we would have to allow a higher interest since the law is meant to include only ordinary cases. But before we can judge a particular case to be an extraordinary one in the Philippines, we must make a very important observation: the legal rate of interest in the Philippines is one of the highest in the world.<sup>20</sup> For normal conditions of life even the most generous moralists do not mention a rate of interest as high as that allowed by law in the Philippines. One outstanding European moralist, in discussing a case proposed wherein a person charged 10% interest, declared that this rate of interest was unjust and could only be allowed if there was a great danger of loss. He added that even if it would be allowed from the point of view of justice, the creditor would still usually seriously violate

charity in charging 10% interest.<sup>21</sup> Another eminent modern moralist in Rome, when discussing legal rates of interest, cites an old Roman legal rate of interest of 12%. But he immediately adds that today legal rates are set at a much lower percentage.<sup>22</sup> Therefore, it would seem that the Philippine Law on Usury has already taken into consideration the unusual risk which may be present in making a loan in the Philippines. In fact this is precisely what a legal rate of interest should do. It should not be set arbitrarily but should be based on the normal conditions of the country, the ordinary danger of loss and of profit foregone, keeping in mind the common good. When this is done the interest may be considered just even though it be high, as it was in China in the example mentioned above, where the legal rate was 30% annual interest. In considering the rates of interest for normal conditions in most countries today the moralists set the rate as somewhere between 4% and 8%. To justify anything beyond this they demand some extraordinary circumstance; but they all make the exception for the poor man who is borrowing in necessity; in his case charity forbids any increase in the rate of interest. The money lender is not bound to undergo a great risk to help this poor borrower; but he is not allowed to charge him more than the legal rate.

It may be interesting to note in passing that some modern nations allow both the legal and the conventional rate of interest, while others have no fixed legal rate, allowing conventional agreements between the parties. Germany is an example of a nation which allows both a conventional and legal rate but stipulates that the two together must not surpass 12%.<sup>23</sup>

Just what is the danger of loss in making a loan in the Philippines? This is very difficult to estimate because of the lack of sufficient accurate data on which to base a conclusion. But the Central Luzon Survey will throw some light on this point which is so important in any discussion of the amount of interest that may legitimately be charged according to strict justice.

The survey showed that, in the sample, nearly three-fifths of the loans were repaid in full at the end of the crop year. Another one-seventh, or 15%, were repaid in part. More than one fourth, or 26%, were unpaid. A larger proportion of the loans under ₱100 were fully repaid than of those over that amount. As the amount of the loan increased the likelihood of only partial repayment increased.<sup>24</sup>

The survey analyzed the characteristics of the farmers in the sample and discovered that the ability to repay was associated with at least three variables: total palay production, operator's labor earnings, and age of the farmer.<sup>25</sup> Those who repaid loans had produced twice as much palay as those who paid nothing on indebtedness incurred during the crop year. Those who earned ₱305 borrowed nothing, while those who earned ₱287 repaid in full. Those who earned ₱217 repaid in part, while those who earned ₱100 liquidated no part of their loan. The farmers who produced the most, earned the most, and liquidated their loans, were 39 years old on the average. As the average age increased the amount of the debt liquidated decreased.

This limited survey would seem to redound very much to the credit of the farmer, for it indicates that he paid back the loan to the best of his ability. It promises well for the future as more and more technical know-how is made available to the farmer to help him enrich his land and his harvest. One further observation should be made in this matter of risk involved in making a loan: The farmer tends to pay off the debts of the current year before paying off his old debts. The practice of compounding interest year after year discourages and sometimes makes impossible the paying of past debts. Some landlords even cancel outstanding obligations after three years.<sup>26</sup> The farmer probably pays the debts of the current year in order that he may keep his credit with this particular creditor, the more easily to borrow from him in the next year.

The limited survey does show the high risk involved in lending money to at least some farmers. If we were only

considering justice, it might justify *to some extent* the high interest the creditor charges since it is his way of covering losses from borrowers who fail to repay their loans. But charity would usually forbid that more than the legal rate be charged since where the risk is greatest it is usually a poor farmer borrowing to meet the necessities of life. When it is a question of the extreme need of our neighbor, a question of life or death, we are all bound to help him by providing the ordinary necessities of life without any compensation whatsoever.

If someone were borrowing money to invest it, to increase his wealth, and in lending him money one incurred a very unusual risk, it would seem that it would not in itself be a violation of strict justice if one demanded more interest than the legal rate. However, the civil law would not honor such a contract.

Another point that must be considered in treating of the moral law and interest, is the question of social justice. Social justice is a virtue which binds all, as members of society, to work for the common good. Whenever we begin to do harm to society by our actions or omissions we are sinning against the virtue of social justice. When, then, a money-lender charges a rate of interest that reduces the borrower to destitution or makes him a veritable slave, the lender has dealt a serious blow not only to the individual but also to society. When this becomes the accepted practice among money-lenders, then society is sick indeed. Democracy, the Four Freedoms, Liberty, Christianity itself, are at stake when the vast majority of the people are at the mercy of unscrupulous moneylenders. In such a situation the Government has failed the people if it does not devote itself tirelessly to rectifying a situation that cries to Heaven for vengeance. The nation can be no stronger than its weakest segment. When the majority of the population, the farmers of this agricultural country, are unable to reach even a bare subsistence level of existence without being enslaved to the moneylenders, social jus-

tice is but a word in the Constitution, a mockery that becomes a rallying cry for the hollow promises of Communism.

A recent article in a local magazine urged the upward revision of the rate of interest to be charged on small loans. The author argues that the present rate of interest is so low that moneylenders are not interested in small loans and reserve their money for those who wish to borrow substantial sums. This results in the small borrower turning to loan sharks who charge exorbitant rates of interest.

In the Philippines, the business of making small loans is not profitable enough so that money lenders are tempted to resort to subterfuge, which practice results in extortionate charges commonly 20% a month or 240% a year.<sup>27</sup>

The author points out that in the United States the legal rate of interest was raised to 3½% per month on unpaid balances of small loans. This was done after a long study of the situation and the new rate of interest attracted legitimate financial concerns to engage in making small loans and thus did away substantially with the loan shark. This small loan business has been called a social necessity, and the author concludes that the Philippines should revise its Usury Law to allow more interest on such loans and thus encourage private capital to enter this field of business in the legal way.

As regards the tenant and the landowner, President Magsaysay has already answered this suggestion by lowering the rate of interest. As regards other small loans, we wonder if social justice, not to mention social charity, would be served by increasing the rate of interest on small loans when the vast majority of the people hardly enjoy a subsistence level income. It seems that the common good would be better served by the Government providing these small loans at even reduced rates of interest. This solution has, of course, its own difficulties, but seems more in accordance with the social amelioration program of the Government when faced with a situation where people have to borrow to meet the necessities of life. To argue from the situation in the United States is to forget that the average American,

though he may from time to time need money for emergencies, has an income which will allow a little saving so that he can gradually pay off his loan and interest without depriving himself or his family of the necessities of life or without taking out another loan.

The author who suggests this upward revision of the rates of interest does not note that the Usury Law already provides a special rate of interest for small loans from pawnbrokers, allowing  $2\frac{1}{2}\%$  per month when the sum lent is less than one hundred pesos;  $2\%$  per month when the sum lent is one hundred pesos or more, but not exceeding five hundred pesos. Perhaps the author did not consider this of practical value because the borrower does not always possess something worth pawning.

#### POSSIBLE SOLUTIONS TO THE USURY PROBLEM

The fact that the ordinary farmer is forced to borrow money to keep alive seems to be the key to the problem of usury in the Philippines. The farmer must be liberated from such economic misery. He constitutes such a large proportion of the population that his plight poses a threat to democracy in this part of the world. President Magsaysay is aware of this problem. His revision of the Tenancy Act is a proof of his awareness and enlightened interest. His barrio program and land reform policies are striking at the roots of the problem. To face the specific and immediate need of the farmer to have access to money at low rates of interest, he has also enacted legislation creating rural banks, and the Agricultural Credit and Cooperative Financing Administration is designed to meet the credit needs of the farmers. The limitation of funds and personnel and the ignorance and illiteracy of many farmers will cause these facilities to develop slowly. A private organization, the Federation of Free Farmers, which is slowly organizing the farmers is an example of the type of organization that is needed to bridge the gulf between the farmer and the government, to eliminate or, at least, minimize the inevitable red tape of bureaucracy, to make the farmer aware of his legal rights.

The Government lending money to the farmers finds itself at a disadvantage due to the ignorance of the farmer.

The average farmer, always hard pressed financially, has been more lax in paying his obligations to the Government than to the landlord or moneylender.<sup>28</sup>

This situation will change as trust in and respect for the Government mounts and the education of the farmer increases. When his poverty has prevented him and his children from getting a decent education we can not expect him to appreciate fully his relation and obligation to his government which has done so little to ameliorate his misery over the centuries.

Since there was no mention made of it in any of the surveys or articles, we wonder whether it would not be wise to expand the work of the Monte de Piedad, a bank founded expressly for the purpose of making loans available to the poor at the lowest possible rate of interest. It would seem, on the face of it, that the situation in the Philippines is exactly what was envisaged by the Franciscan founder of these banks in 1474. Being a private concern, it would in itself be preferable to any government agency, on the principle of subsidiarity.

#### SUMMARY

The rate of interest allowed in the Philippines is 12% on secured loans and 14% on unsecured loans when the parties agree. In the absence of any agreement the rate of interest is 6%. These are legal rates and obligatory before the law and in conscience. They are unusually high legal rates and include the ordinary risk involved in making a loan in the Philippines. Anyone who would charge more would have to prove that there was an extraordinary risk involved in a particular case. Even if such a proof existed the law would not honor such an agreement.

Charity forbids anyone from charging a poor person more than the legal rate when he borrows from necessity.

Charity may even demand that the creditor lower the rate or waive his right to interest. If this would cause a serious inconvenience to the creditor he would not have to make the loan; but if he did make the loan and charged interest, he would be sinning against charity, though not against justice.

Social justice demands that the condition of the farmer be radically changed to liberate him from the need of borrowing to meet the necessities of life. In the meantime, while such changes are being introduced, changes that are of necessity painfully slow, private individuals should enter the field of short-term small loans at low rates of interest. In the absence of such private enterprises the Government has an obligation to supply the need of the farmers. Charity and social justice forbid any raising of the legal rates of interest, rather they postulate the lowering of said rates as President Magsaysay has already done for all loans between farmers and their landholders, setting the maximum legal rates of 8% per calendar year on loans and advances obtained by the tenants from his landholder, and 10% interest on outstanding debts found to exist at the end of each agricultural year.

Although we have concentrated on the farmer the same principles apply to rates of interest to be charged on a loan made to any urban resident or industrial worker.

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<sup>1</sup> Quoted in *Philippine Land Tenure Reform*, Mutual Security Agency (Manila, 1952), p. G 49, from *Fact Finding Survey of Agrarian Problems in the Philippines*, Department of Labor (1936), ms.

<sup>2</sup> *Messages of the President*, Vol. 3, Part I, p. 223.

<sup>3</sup> *Philippine Land Tenure Reform*, Mutual Security Agency (Manila, 1952), p. V.

<sup>4</sup> G. Rivera and R. T. McMillan, *An Economic and Social Survey of Rural Households in Central Luzon*. Joint Research Project of PHIL-CUSA and USA Operations Mission to Philippines (1954), Part VII, pp. 100-105.

<sup>5</sup> *Philippine Land Tenure Reform*, MSA (Manila), 1952, p. V.

<sup>6</sup> *loc. cit.*

<sup>7</sup> *loc. cit.*

- <sup>8</sup> *ibid.*, p. D 1.
- <sup>9</sup> *An Economic and Social Survey of Rural Households in Central Luzon*, p. 102.
- <sup>10</sup> *Philippine Land Tenure Reform*, p. 12.
- <sup>11</sup> *loc. cit.*
- <sup>12</sup> *ibid.*, p. C 8.
- <sup>13</sup> *An Economic and Social Survey of Rural Households in Central Luzon*, p. 104.
- <sup>14</sup> *loc. cit.*
- <sup>15</sup> *loc. cit.*
- <sup>16</sup> *Philippine Land Tenure Reform*, p. C 14.
- <sup>17</sup> *An Economic and Social Survey of Rural Households in Central Luzon*, p. 102.
- <sup>18</sup> *Philippine Land Tenure Reform*, p. C 16.
- <sup>19</sup> *ibid.*, pp. C 20, C 21.
- <sup>20</sup> Juan Ylla, O.P., *Cuestiones Eclesiásticas* (Manila, 1940), p. 238.
- <sup>21</sup> E. Genicot, S.J.—J. Salsmans, S.J., *Casus Conscientiae* (Ed. 8, Brussels, 1947), no. 363
- <sup>22</sup> F. Hurth, S.J.—P. M. Abellan, S.J., *De Praeceptis* (Rome, 1948), p. 244.
- <sup>23</sup> L. Fanfani, O.P., *Cursus Theologiae Moralis*, II (Rome, 1950) p. 617.
- <sup>24</sup> *An Economic and Social Survey of Rural Households in Central Luzon*, p. 103.
- <sup>25</sup> *loc. cit.*
- <sup>26</sup> *loc. cit.*
- <sup>27</sup> Raf. S. Dedal, "The Urgent Need of Revising Our Usury Laws," *Insurance and Finance*, II (Jan.-Mar. 1954), p. 30
- <sup>28</sup> *An Economic and Social Survey of Rural Households in Central Luzon*, p. 105.