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PREDATORY PAYDAY LENDING: A PUBLIC JUSTICE PROBLEM

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Combating Predatory Payday Lending: The Faith Community Responds

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Abstract: In Minnesota, like thirty-three other states, payday lenders can legally offer short-term, small-dollar loans to customers. Payday loans are marketed as helpful and useful tools to address unexpected financial needs. The loans, however, are made based on the lender's ability to collect, and not the borrower's ability to repay, so payday loans almost always create a debt trap. Organizations like Exodus Lending and the Center for Responsible Lending, along with coalitions including Minnesotans for Fair Lending and Faith for Just Lending, recognize that predatory payday lending is a community problem and a public justice issue. In this article, Executive Director of Exodus Lending Sara Nelson-Pallmeyer shares public justice principles, policy wins and the stories of those impacted by payday lending, and how concerned Christian citizens ought consider a public justice perspective regarding payday lending in their own community. public justice response.

Payday loans are small dollar (usually about $200 to $400) unsecured loans that are typically due in full on the borrower's next payday (or day of income), hence the name "payday" loan. In addition to paying off the loan in full in such a short time period, the borrower must pay a hefty fee to the lender (approximately $15 per $100 borrowed). In order to obtain a payday loan, a consumer usually needs an open bank account, a steady source of income (this may be earned or unearned, through sources such as Social Security or Disability) and identification.

Payday loans are marketed as a helpful and quick financial fix. The loans, however, are made based on the lender's ability to collect, and not the borrower's ability to repay, so payday loans almost always create a debt trap. Borrowers typically take out a second loan to repay the first one, a third one to repay the second one, a fourth one to repay the third one, and so on. In fact, the business model of payday lenders is that their profits depend on borrowers getting trapped in this vicious cycle. Exodus Lending[1] was created to help Minnesotans who have been caught in the debt trap caused by predatory payday loans.

Payday loans are loan products legally available in thirty four-states (including in Minnesota, where I live) and lead to financial problems that further cripple the consumer's already fragile financial situations. In my role as Executive Director at Exodus lending, when I am asked how these loans are permitted, I am forced to admit that they are allowed because our state and federal governments allow them to exist. Our legislative bodies have sanctioned them.

A single mother, Melissa, connected with Exodus Lending a few years ago. "Things looked bright as I started out on my own again," she said. "Then I received my first financial surprise, a $200 reduction in household income. Due to this and other surprise expenses, I fell behind on all of my bills, including rent, and the late fees started to mount." I did something I swore I'd never do again; I took out a payday loan. I had previously taken them out in my early twenties and was able to break the cycle. I had no idea, however, that this would spiral as much as it did. I took out $480 and was expected to pay back around $552, which included $72 in interest and fees. This seemed doable."

Melissa thought that she could pay it back right away. However, the fees and the mounting bills got out of control. She took out another loan to pay off previous loans, but ended up just paying back the interest and fees without touching the principal. Her debt only grew. She was trapped.

Melissa's story is not unique. Exodus Lending's analysis of Minnesota Department of Commerce data shows that in 2018, more than 48,000 Minnesotans borrowed an average of seven loans each, with 59 percent taking out at least five loans and more than ten percent of Minnesotans taking out twenty loans.

As Diane Standaert, Director of State Policy for the Center for Responsible Lending[2], testified to the Minnesota legislature on February 26, 2019, "It is this debt trap which is the core of the business model. In Minnesota and nationally, the average payday loan borrower is stuck in ten loans a year and borrowers are typically trapped in these loans without a break. Additionally, seventy-five percent of all payday loan fees come from borrowers stuck in more than ten loans a year. On the flip side, only two percent of loans go to borrowers who take just one loan out and do not come back for a year."

According to Daniel Brook, in his Harper's article "Usury Country: Welcome to the Birthplace of Payday Lending[3]" W. Allan Jones opened the first payday loan store in the United States, called Check Cashing, Incorporated, in 1991. Before long, there were thousands of payday lenders, including some large chains. Citing 2018 research[4] from California State University Northridge, CNBC reported[5] an amazing fact: there were approximately 23,000 payday lenders across the United States (twice as many as McDonald's restaurants).

According to Ron Elwood[6], an attorney at the Legal Services Advocacy Project in Minnesota, the meteoric rise of the payday lending industry is attributed to many factors, including deregulation (or lax regulation) of financial services, the abandonment of small loan lending by finance companies, the failure of mainstream lenders to provide access to short-term, small-amount loans (and the resulting rise of the so-called "fringe" financial industry), the rise in the number of borrowers with impaired credit, imperfect market conditions, and the influence of campaign contributions and high-powered lobbyists on state legislatures.

The concept of public Justice, as understood by the Center for Public Justice (CPJ), recognizes that government, institutions of civil society (churches, communities, faith-based organizations), and citizens all have distinct roles to play in major public justice issues. Christian citizens understand that their role in society has been commanded by God. The responsibilities of Christians was set forth throughout Scripture.

The need to borrow and lend money is inherent in society, but even in the Bible concerns about unjust lenders even necessitated rebuke. Consider the following verses:

"If you lend money to one of my people among you who is needy, do not treat it like a business deal; charge no interest." (Exodus 22:25).

"If any of your fellow Israelites become poor and are unable to support themselves among you, help them as you would a foreigner and stranger, so they can continue to live among you. Do not take interest or any profit from them, but fear your God, so that they may continue to live among you. You must not lend them money at interest or sell them food at a profit." (Leviticus 25:35-37).

In a capitalistic society, charging interest is understandable, but usurious rates should never be acceptable. A public justice perspective understands that one of government's roles is to ensure a suitable climate for business to thrive. According to a 2016 report by the Pew Charitable Trust[7], Americans paid nearly $9 billion in payday loan fees. Payday lenders in Minnesota collect an average annual percentage rate (APR) of 217 percent, according to the Minnesota Department of Commerce data. Finally, a 2014 Minnesotans for Fair Lending report[8] found payday lenders had drained over $82 million in fees from Minnesotans between 1999 and 2012.

Government officials and ordinary citizens can distinguish between fair business practices and exploitative ones. In many instances, the payday lending industry falls into the category of exploitative business practices. It is also the government's role to protect citizens from predatory business practices.

Putting Faith Into Practice

Exodus Lending began after members of Holy Trinity Lutheran Church in South Minneapolis became concerned about, or were themselves, victims of predatory lending practices in their neighborhood. They joined with other persons of faith (groups like the Joint Religious Legislative Coalition[9], Jewish Community Action[10] and ISAIAH Minnesota[11]), as well as community groups such as the National Association of Social Workers, Minnesota Chapter[12] and Prepare + Prosper[13]. Together, they developed a loosely-knit coalition called Minnesotans for Fair Lending[14]. The members of the coalition were concerned about this predatory industry, and in 2014 worked to support legislation that would limit the activities of payday lenders. That legislative effort came close, but ultimately failed because of heavy lobbying by the payday lending industry, including PayDay America CEO and owner, Brad Rixmann. Rixmann also owns PayDay America's sister company, Pawn America. According to the Star Tribune[15], Rixmann has protected the payday loan business model with upward of a half-million dollars in political donations. Donations were given primarily to Republicans in the state legislature, but Democrats were recipients of approximately twenty-five percent of the donations in 2014.

After the legislature failed to implement change, the members at Holy Trinity, along with other supporters in the community, continued working on the issue. Rooted in Christian values of justice and human dignity, and the belief that financial struggles are not always the result of poor individual choices, the group made the decision to form Exodus Lending.

Exodus Lending recognized that financial struggles are sometimes the consequence of unjust systems and practices. While continuing to pursue changes in public policy, Exodus Lending started a loan program to help individuals escape from what is known as the payday loan debt trap.

While we at Exodus Lending are glad to help Minnesotans, ultimately what is needed is a federal public policy solution. The U.S. Department of Defense and the United States Congress realized this and took action in 2006. The 2006 Military Lending Act[16] was an amendment added to the 2007 National Defense Authorization Act of 2007, and was signed into law by President George W. Bush. The act placed a 36 percent APR rate cap on consumer loans to active-duty military members and their families. This military rate cap includes all fees and charges on payday loans, regardless of size and length of the loan.

<u>Legislation to Address Payday Lending</u>

To date, sixteen states and the District of Columbia have put interest rate caps or other severe restrictions in place to prevent payday lenders from operating within their borders. An interest rate cap of 36 percent has proven sufficient to curb excesses in payday lending. It is one of the most effective protections against the harms of the payday loan debt trap.

According to Diane Standaert, collectively, these protections reach nearly 100 million individuals and save residents of these states over $2 billion a year in fees that would otherwise be drained from low-income consumers. It should be noted that many of these state laws were enacted with overwhelming voter approval. For example, in Colorado, South Dakota, and Montana in recent elections, over 70 percent of voters in each state voted to lower the cost of payday loans to 36 percent APR.

As far as federal efforts, in 2017 the Consumer Financial Protection Bureau[17] (CFPB) finalized a rule aimed at stopping payday debt traps by requiring lenders to determine upfront whether consumers have the ability to repay their loans. It would also put a limit on the number of loans that could be rolled over[18]. The rule would ensure that borrowers would be able to afford to repay their loans without having to reborrow immediately, which is too often the case now. This rule was scheduled to take effect in August of 2019.

Unfortunately, under its current leadership the CFPB has backed away[19] from this regulation and has indicated it has no plans to enforce other helpful restrictions.

Payday lenders consistently justify their lending practices citing the need for short-term loans. It is important to point out that no state that passed restrictions on payday lending has ever reversed those restrictions. Indeed, people who live in states with tight restrictions on payday lending are not living with more financial hardship than those in states that allow payday loans.

One possible alternative to payday lending is postal banking[20]. Mehrsa Baradaran, professor at the University of Georgia, and author of *How the Other Half Banks*, has been working on a proposal that would allow low-income Americans to do their banking – from paying their bills to getting small loans– at their local post office. This alternative would limit the need for payday lending stores, as the post office would ideally be able to service the needs of the customers. Many people are not aware of it, but postal banking was available in the United States from 1911 until 1966. This not-so-new concept was re-introduced in April 2018, when Sen. Kirsten Gillibrand introduced S. 2755, the Postal Banking Act[21] in the 115th Congress. As restrictions on payday and other forms of predatory lending are enacted, alternatives like this one may become more viable.

<u>Public Justice and Payday Lending</u>

Economic justice is at the heart of Exodus Lending's work. Everyone in our society is created in God's image and deserves to be treated justly and fairly. This is true in all aspects of our lives, including the financial world. When companies take advantage of a person's financial vulnerability, the government and the institutions of civil society have a duty to act. Christian citizens have a role to play in exercising authority by taking part in and improving our government and our laws so that all can be beneficiaries of God's good will. When governments allow companies to exploit the vulnerable, not only does it suggest that economic justice[22], "uphold a just legal framework for recognizing, protecting, and encouraging the full range of human responsibilities" is not a reality, it also violates Christian principles and Biblical teachings. By focusing on public justice principles, the government, concerned Christian citizens and the institutions of civil society can simultaneously allow companies to flourish while at the same time ensure that consumers are not exploited and are also allowed to flourish in their lives. In instances like these, justice is actually realized.

A participant of Exodus Lending's programs shared the impact of this important work:

My narrative has shifted because of empowering voices from organizations like Exodus Lending that fully embrace the truth that as a community we are only as strong as our weakest neighbor. Together, we can lift and empower our neighbors, and thus build a stronger community filled with possibilities and hope.

1. https://exoduslending.org/
2. https://www.responsiblelending.org/
3. https://harpers.org/archive/2009/04/usury-country/2/
4. http://www.csun.edu/~sg4002/research/mcdonalds_by_state.htm
5.https://www.cnbc.com/2018/08/01/1-in-3-college-age-americans-consider-payday-loans.html
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10. https://www.jewishcommunityaction.org/
11. https://isaiahmn.org/
12. https://www.nasw-heartland.org/page/0MNChptrMain
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22. https://cpjustice.org/index.php/public/page/content/economic_justice

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