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Abstract: In the mid-1990s, a new industry emerged offering relatively small loans at excessively high interest rates to borrowers struggling to make ends meet. Today, this industry sells the idea that payday and auto title loans can be a short-term fix for immediate emergency needs. In reality, these loans can result in long-term debt, and are regularly used to pay recurring expenses. The high cost of these loans routinely leads to a series of repeat borrowing or a cycle of paying only fees and interest without reducing the amount owed.

According to the Center for Public Justice (CPJ), “the principle of public justice recognizes that much of what contributes to human flourishing is not government’s task.” It also recognizes that “much of what contributes to human flourishing is government’s task. Government is authorized by God to promote what is good for human flourishing. This is often referred to as securing the common good—promoting the well-being of an entire society in right relationship with the larger world that God made.” To effectively make this a reality, Christian citizens, people of different faiths and of no faith background must work towards and advocate for legislative change on the local and national level.

In this final article of the Predatory Payday Lending series, Contributing Editor, Stephen Reeves outlines how the predatory payday lending industry grew in a time of declining morals, how people of faith and faith-based organizations responded, the responsibility of the government in relation to the issue, and what work remains ahead to help people flourish, promote public justice, and combat predatory payday lending.
In the mid-1990s, a new industry emerged offering relatively small loans at excessively high interest rates to borrowers struggling to make ends meet. Today, this industry sells the idea that payday and auto title loans can be a short-term fix for immediate emergency needs. In reality, these loans can result in long-term debt, and are regularly used to pay recurring expenses. The high cost of these loans routinely leads to a series of repeat borrowing or a cycle of paying only fees and interest without reducing the amount owed. The typical payday loan interest rates of 391 – 700 percent represent an anomaly in financial practices in the US. In just a few short decades, small-dollar lending has ballooned into a multi-billion-dollar industry, aided by a systematic and deliberate dismantling, or creative avoidance of traditional usury laws.

The Center for Public Justice (CPJ) notes that “the principle of public justice recognizes that much of what contributes to human flourishing is not government’s task. This limits the scope of government’s work to promoting policies and practices that uphold the ability of other institutions and associations to make their full contributions to human flourishing.” The principle of public justice is often precisely what compels some citizens, churches, and other faith-based organizations to respond to predatory payday lenders.

But there’s another component to public justice, that “much of what contributes to human flourishing is government’s task. Government is authorized by God to promote what is good for human flourishing. This is often referred to as securing the common good –promoting the well-being of an entire society in right relationship with the larger world that God made.” To effectively make this a reality, Christian citizens, people of different faiths and of no faith background advocate for legislative change on the local and national level.

A Loss of Ethics

The immorality of usury has not changed over time. The power imbalance of those with money to lend, and those desperate for it, makes lending ripe for abuse. The Old Testament, Hammurabi, Plato, Aristotle, Dante, and Scottish economist Adam Smith, who is known as the Father of Capitalism, all condemn usury.

As long as there have been people desperate for money, there have also been individuals willing to exploit that desperation for profit. For centuries, greed was restrained by laws or practices prohibiting excessive interest rates. But somehow, the payday lending industry is allowed to
entangle people in debt traps, by selling products that would have been illegal under early usury laws.

A common moral understanding informed the usury laws that were established in the US. Early US states had strict usury rate caps of around 8 percent. In the early 1900s, many states adopted uniform small lending law that included a 36 percent rate cap for small loans. It was not until the late 20th century that more lenient financial regulations regarding usury began to allow significantly higher rates.

This fundamental moral shift in lending regulations led borrowers who were drowning in debt to their faith community or to nonprofit ministries seeking help. The response from the faith community has been a model of responsible citizenship and faithful political engagement. In this way, these individuals and organizations are caring for the entire political community.

In some respects, the church contributed to the current situation, or at least failed to prevent the problem. A law review article from Catholic University empirically found what one might notice anecdotally, that despite clear Christian teachings, payday lending is worse in states where churches are prevalent and Christians exercise significant political influence. While this complex reality has multiple causes, including political party alignment, perhaps the church has failed to emphasize what constitutes responsible and ethical business practices. Congregants who could comfortably divorce their Monday through Friday lives from Sunday teachings might fail to apply a lens of Christian teaching to usury. The church has some remedial work to do in this area.

Listening Deeply

As payday lending expanded across the country, many people of faith listened intently to those who came seeking help. Churches and faith-based ministries, like Catholic Charities, went beyond offering a handout. Instead, they sought to determine the root cause of the person’s need. While the presenting problem was often inability to make rent or pay a utility bill, families were often unable to afford those bills because they were making seemingly endless payments on payday loans.

An exercise in deep listening is what the Faith for Just Lending coalition did when they polled faith leaders about their experience helping borrowers. Faith for Just Lending is a coalition of faith-based institutions working to end predatory payday lending. This coalition includes the Center for Public Justice (CPJ), Catholic Charities USA, and Cooperative Baptist Fellowship among others. While the circumstances leading a borrower to a payday lender varied, the shame of needing money was compounded by the shame of finding oneself trapped in a deceptive loan. The resulting stress only compounded their crisis. Listening deeply to those directly impacted by
payday loans informed the advocacy commitments of people of faith and contributed to the passion with which they pursue systemic reform.

Direct Assistance for Immediate Need

As those drowning in debt came seeking help, churches and ministries responded immediately. The University Hope lending program and Exodus Lending both offer programs to help people who have been victims of predatory payday lending. The programs most often offer rescue loans—a way out of the debt trap after borrowers have already paid back far more than they borrowed and are at the end of their financial rope.

As successful as these programs are for those who find them, individual solutions from charitable organizations are not likely to overcome a multi-billion-dollar industry. A public justice perspective realizes that while individuals and the institutions of civil society—churches, faith-based organizations, schools, etc. -- have roles to play, the government has the responsibility to enact laws to promote flourishing. In the case of predatory lending, this means prohibiting deceptive and unfair products in the marketplace. Systemic change is required and can be achieved if the government adequately address the problems created by lax consumer protections by enacting laws and regulations that returns moral guardrails to the marketplace.

Advocacy

The scope and depth of predatory lending led people of faith to engage lawmakers early in their response to the crisis in their communities. In doing so, they found allies and formed active and effective coalitions. Some coalitions included partners beyond the faith community like civil rights organizations and traditional consumer advocates. Others were interfaith groups, including Jewish ministries and Muslim faith leaders. Coalitions of organizations, including Faith for Just Lending, represent the full spectrum of Christian faith and practice in America. These groups transcend typical lines of division; members are mainline protestant, Catholic and evangelical, theologically and politically conservative and liberal, and represent communities that are majority Anglo, African American and Latino. They are united in their understanding of scripture and Christian morality regarding exploitation of the poor as well as the experience of their churches and ministries.

Faith-based coalitions have employed a wide range of advocacy tools and greatly increased the visibility of the fight for reform. These advocates have walked the halls of congress, lobbied in state legislatures, collected signatures for ballot referendums and pressed city councils for local action. At the local, state and federal level people of faith have practiced comprehensive, exceptional faith-informed advocacy all while centering and elevating the voices and stories of those impacted by predatory payday loans.
While progress has been made in numerous states and at the local level unfortunately, advocates at the federal level have learned that prevailing against injustice is not assured, especially when those profiting from the status quo have all the money and motivation to oppose reform.

National Progress Delayed

The Consumer Financial Protection Bureau, or CFPB, was created by the Dodd-Frank Financial Reform Act of 2010. It serves to “provide a single point of accountability for enforcing federal consumer financial laws and protecting consumers in the financial marketplace.” It has explicit responsibility and authority to enforce current law and prescribe new rules for the small-dollar lending marketplace in order to “identify and prevent unfair, deceptive, and abusive acts and practices.” This mandate includes authority to regulate small-dollar lending nationwide.

Since 2013, the CFPB has published five reports regarding payday and auto title lending. Their research largely confirms what advocates have long claimed—the small-dollar lending industry as it exists today is built not just on expensive short-term loans for “risky” borrowers, but instead on loans which seem designed to generate repeat borrowing effectively trapping borrowers in a cycle of debt—a cycle that constitutes failure for the customer, but results in increased profitability for the lender.

The Faith for Just Lending coalition was founded in 2015, and the membership agreed to work together to urge the bureau [CFPB] to adopt the strongest small-dollar lending rule possible. In October 2017, after years of research, several published drafts and outlines, and millions of public comments, the CFPB issued a rule designed to rein in the abusive practices of payday and auto title lenders. Intended to take effect in August of 2019, the rule established an ability to repay standard that would ensure loans could be paid back and not result in a debt trap for vulnerable borrowers.

The rule required lenders to assess a borrower’s ability to repay a loan and meet their other financial obligations and living expenses without needing to reborrow. The CFPB concluded that it is an unfair and abusive practice for a lender to make a loan without reasonably determining that the consumer will have the ability to repay the loan according to its terms, i.e., without the need to reborrow for 30 days following the loan’s due date. These Mandatory Underwriting Provisions required lenders to verify net income, major financial obligations and basic living expenses.

In November of 2017, Richard Cordray resigned as the first director of the CFPB and Mick Mulvaney was named acting director. In January of 2018, acting director Mulvaney expressed his intent to reconsider the payday lending rule finalized just months before. In December of 2018, the Senate confirmed Kathy Kraninger as the new director of the CFPB and on February 6,
2019, the CFPB announced a notice of proposed rulemaking in order to rescind the ability to repay standard in the rule.

Under the new leadership, the CFPB has proposed to repeal all of the ability to repay provisions of the rule and does not propose anything to replace them. A public comment period on the proposal to rescind the provisions closed in May of 2019 and once again thousands of people of faith made comments, this time asking the CFPB to allow the original rule to take effect. The bureau is currently reviewing the comments and a final decision is pending.

Committed to Advocacy

Faithful advocates have not stopped working for reform. As this Public Justice Review series illustrates, people of faith continue to urge local city councils and state governments to ensure fair products for the most vulnerable borrowers.

Additionally, Congress has an opportunity to act regardless of what the CFPB does. The CFPB is prohibited from setting a national rate cap but Congress can, and return the entire country to at 36 percent APR limit. As a matter of fact, Congress has already done so for active duty members of the military through the Military Lending Act of 2006. Perhaps now is the time for congress to act on behalf of all citizens.

A Persistent Presence and Counter Cultural Witness

From direct services, to city councils to state houses to the CFPB and Congress, faithful advocates are committed to the long-haul. Raising the voices and concerns of those without political power and influence, those who are so often ignored or silenced, is not easy work. Advocating for justice does not lend itself to quick resolution. In a pluralist society, it is quite difficult and time intensive to achieve broad issue agreement. But as seen in the move to reform the predatory payday lending industry, there is a growing consensus that something more needs to be done.

The politically, theologically, racially, and culturally diverse coalitions that were established in local communities, at the state level, and nationally are a model for principled public justice. Besides the hundreds, and even thousands, of people helped by individuals, churches, and organizations advocating for predatory payday lending reform or working directly with victims, the awareness raised because of the work is impactful. Identifying the individual and collective efforts offer hope that lawmakers and concerned citizens will soon make reform a priority and creates an environment where businesses can thrive but vulnerable citizens are also protected.
To respond to the author of this article, please email PJR@cpjustice.org. The articles in Public Justice Review do not represent a consensus of positions on questions of public policy. We do not expect our readers will agree with all the arguments they find here, but we believe that within the broad tradition of what we call public justice we can do more by providing a forum for the debate and exchange of Christians, within those bounds, to work out public policy faithful to God and in service of our neighbors. We do not necessarily share the views expressed, but we do accept responsibility for giving them a chance to appear.