THE DEBTOR – CRIMINAL OR VICTIM?

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DEBT- HISTORICAL ORIGINS

The word *debt* originates from the French word *dette*, which in turn is derived from the Latin word *debitum*. From the perspective of Western history of law, the earliest accounts of debt can be traced to Mesopotamia as early as 1600 BC. According to Niall Ferguson, archaeological excavations in the ancient city of Sippar revealed a clay tablet with inscriptions in cuneiform writing, indicating that the owner of the clay tablet was in possession of a recognizance of debt, in terms of a ratified amount of grain due at the time of the next harvest.

THE ROMAN LAW

The earliest surviving piece of wordings of an *Act on debt* originates from the so-called Twelve Tables, constituting the first code of law by the Romans in 450 BC. The statutes of debt, which were captured by inscriptions on Table III, declare that a debt that is not repaid in due time after the announcement of a court order gives the creditor the right to arrest the debtor. After sixty days in custody, the case is returned to court, and if the debt is not then paid, the debtor can be <u>sold abroad as a slave or simply killed.</u>

THE IMPROVEMENT OF ROMAN LAW

Whereas Roman law, at its first stage, exerted extreme penalties for payment default to the debtor (subsequent reformulations of the Roman law improved the situation of debtor, by introducing the concept of

Pacta sunt servanda

THE MIDDLE AGES

The Middle Ages brought about a radically different perspective in Europe. According to the Catholic Church, moneylending and income from interest were considered manifestations of greed, usury and laziness, therefore appertaining to the seven deadly sins, and as such were seriously condemned. For example, if a moneylender (i.e., banker), before his own ultimate death, did not refund all the interest he had charged his debtors, he could not expect to be buried in consecrated ground (*Le Goff, 1990*). Interestingly, Islam condemns lending with interest even today.

TODAY

In the aftermath of market deregulations, there has been a massive growth in the number of households worldwide that have ended up unable to handle their financial obligations—recently labeled *over-indebtedness*. This means that the available income, for an extended period of time, is not sufficient to cover the costs of household credits and expenses. For example, in the European Union, at least 20 million people plus their family members are estimated to be over-indebted.

IS DEBT A RESULT OF MARKET OR PERSONAL FAILURE?

As the scope and distribution of debt-and-payment problems has increased in the United States and most European countries during the last decades, governments in many countries have established different regimes of debt-relief programs or debt-settlement procedures. In the United States, the Fresh Start Doctrine of the American consumer bankruptcy legislation allows honest but unfortunate debtors to be discharged of their debt burdens quite rapidly, while in most European countries there is an emphasis on a lifelong responsibility and punative measures for debt.

EXCLUSION IS PUNISHMENT

Overindebtedness can lead to five different ways of exclusion: *access* exclusion where a bank account is refused; *price* exclusion where people only gain access to financial products at prices they cannot afford; *condition* exclusion where the conditions attached to the financial products make them inappropriate to the need of people with debts; *self* exclusion where people withdraw from social and financial life because of fear, shame, disappointment, or resignation; and *social exclusion* where people are excluded from social life by creditor's sanctions (Korczak, 2004).