

## **IS IT A SIN TO FILE BANKRUPTCY?**

I frequently have thoughtful clients express their feelings of shame and remorse because they feel guilty over their burdening debt load. They feel trapped because they are overwhelmed between the pincers of their moral crisis. On one hand they want to pay their obligations because they want to keep their word to their creditors; they feel that by considering a bankruptcy case they have betrayed the values instilled by their parents and grandparents. They have been taught that filing bankruptcy is a sin and God is displeased at them. On the other hand they have typically tried for years to work out their bills. They have called the credit card companies to negotiate lower interest and have been disregarded. They have borrowed from Peter to pay Paul. They have attempted to juggle debt and take on new, higher interest debt to pay delinquent debt to stay current. They find it ever harder to service the debt they have. They then find the bill collectors are mean and rude and there is not enough money to go around to work out settlements with creditors. In addition, many clients have been ripped off by internet debt settlement and bill consolidation firms or those TV 800 number agencies who have taken their money and have given no help. There are arguments over money problems and creditors are calling at work. The clients feel overwhelmed and trapped. They can't sleep and their health is deteriorating. They are trapped between idealism and reality. They yearn to pay their bills but they know bankruptcy is inevitable and they feel sick about it.

Let's be honest. Bankruptcy is controversial because it is the friction point between two important public policy clashes. On one hand all of us want each other to honor contracts and pay our creditors. When we work, we want to be paid. When we make a sale, we want to be paid. When we entrust our money we want it to be returned according to our agreement. Yet, life happens. Sometimes we bite off more than we can chew. We have death, job interruptions, divorce, illness, and poor choices. We have credit card companies hitting us with increased payments and interest rates. We find ourselves unable to pay according to our initial plans.

When we come to bankruptcy court we come where we have the clash. The gears in the economic machine get stopped. The creditors want to be paid, the debtors can't afford to pay. What are we going to do? Are we going to kill the debtor? Cut off his hand? Sell him into slavery? Put him in jail? Bankruptcy attempts to find a balancing point between those two competing realities. Creditors deserve to be paid but the Debtor just does not have the money to do so. Not only is there the conflict between the debtor and the creditors, there is competition between creditors over how big a portion each creditor should get. Bankruptcy prioritizes who should get paid first, if there is any money available, and it insures that the pain is evenly shared. Bankruptcy court is the only court designed to modify or wipe out many contracts in a way that helps the honest but unfortunate debtor. As we will see below, it is ordained by God.

You may wonder what does this have to do with God? Let's go back in time and look at that.

God once created a government based upon a theocracy. That is, God was the head of the Government. In the Bible, God set up some financial rules that are quite different from the way we do things today. For example, it was illegal for one Jew to charge another Jew interest (Leviticus 25:36-37, Deuteronomy 24:19). Long-term debt was illegal also (Deuteronomy 15:1-11). In fact, Leviticus Chapter 25, and restated in Deuteronomy Chapter 15, was a prototype of Bankruptcy law. Here is how it worked.

Unlike now days, in the Old Testament when a Jew was in debt, first there would be no interest accruing and the borrower would only pay on the debt for up to seven years because once every seven years the debt was canceled. After seven cycles of seven, on the 50<sup>th</sup> year there was the Year of Jubilee, slaves were set free and the farms that had been sold were returned to the original land holders' families. Imagine if you incurred debt on the day after Jubilee, you would repay until the next year of cancellation seven years later. If you got in debt three years after the cancellation you would have to repay for four years, and so forth. The crucial point to understand is there were many ways one could become in debt. One could injure his neighbor's property or animals and be indebted (Leviticus 24:21). One could have a fouled business transaction and be indebted (Leviticus 25:39). In any event, God himself created a law for debt cancellation! In addition to the cancellation of debt every seven years, following the seventh cycle of seven years, there was a year of Jubilee (Leviticus 25:54). During the year of Jubilee there was no planting or harvesting. It was a time of enjoying the Lord's provision. One would harvest after the 6<sup>th</sup> year and the Lord would provide a bountiful harvest to support him for three years: the Sabbath 7<sup>th</sup> year; the year of Jubilee 8<sup>th</sup> year; plus the whole next crop planting 9<sup>th</sup> year (Leviticus 25:18-22). As stated above, on the Jubilee there was a reversion of land back to the original family. Imagine a grandchild would reclaim the farm his grandfather had sold up to fifty years ago! There were no corporations accumulating and hoarding wealth in perpetuity. Land was returned to the original family!

My how times have changed!

Centuries after Moses had received the Law from God on Mount Sinai, the Jews had grossly deviated from God's divine plan. They had started charging interest to each other (Ezekiel 22:12). They had begun oppressing the poor by repossessing the clothes from each other in the event of loan defaults (Amos 2:8).

God saw this type of behavior and called it wicked. God sent prophets such as Isaiah, Jeremiah, Ezekiel, Amos, and Hosea and warned the northern Kingdom of Israel and the Southern Kingdom of Judah. In fact, at one point God said that Jerusalem was more wicked than Sodom and Gomorrah because, among other things, they had been oppressing the poor by their lending practices (Ezekiel 22:12).

Ultimately, God judged Israel and then Judah and allowed each kingdom to be punished and taken into captivity. First the Assyrians took the Northern Kingdom of Israel into captivity (2 Kings 17:5-7). Later Babylonia took the Southern Kingdom of Judah into exile in Mesopotamia (2 Kings 25:1-22). The conquering King

Nebuchadnezzar of Babylonia did not take 100% of the people to exile. He destroyed the Temple in Jerusalem where the law had been kept, and he left some of the people, a remnant, behind in the land (2 Kings 25:22). I suppose he didn't want to erode his tax base, so some people were left behind to tend fields and olive trees, and keep out the wild animals. The Assyrians who had taken Israel captive fell to Babylonia (Ezekiel 32:22-23). The Babylonians were later conquered by the Medes and Persians (Daniel 5:31).

Approximately 70 years after the fall of Jerusalem, the Jews were ruled by Artaxerxes, King of Persia (Nehemiah 2:1). He had been served by a good Jewish prophet named Nehemiah. Nehemiah had been reading some of the ancient scrolls of his Jewish ancestors and learned of the destruction of Jerusalem. Artaxerxes gave his permission and the money for Nehemiah to go with a contingent and rebuild Jerusalem (Nehemiah 2:4-10). When Nehemiah got there he found not only was the city in disarray with its fortified walls destroyed, but he also found a disfunctioning social structure of the Jewish remnant who had been left behind 70 years earlier by Nebuchadnezzar.

In Nehemiah, we see many ugly circumstances (Nehemiah 3:13; 5:1-13). The people were in dire straits and had borrowed heavily to get food during a famine and pay high taxes. We know from secular sources that there was a shortage of food, resulting in a 50% rise in prices.

In those tough economic times of famine, taxes, and inflation, families in Israel would borrow. Upon default, if the borrower could not repay the loan, foreclosures happened and the borrower's children, wife, or the borrower himself, could go into slavery as a bondservant. Ironically, if those Israelites had been slaves in Mesopotamia, at least the families would have remained together, yet due to the oppression of the Jewish bill collectors in Jerusalem, the families could be torn apart at slave market sales.

Nehemiah saw this and was outraged. He arrived on the scene and heard the complaint of the people. The Scripture reads:

“Now there was a great outcry of the people and of their wives against their Jewish brothers. For there were those who said, “We, our sons and our daughters are many; therefore let us get grain that we may eat and live.” There were others who said, “We are mortgaging our fields, our vineyards and our houses that we might get grain because of the famine.” Also there were those who said, “We have borrowed money for the king's tax on our fields and our vineyards. “Now our flesh is like the flesh of our brothers, our children like their children. Yet behold, we are forcing our sons and our daughters to be slaves, and some of our daughters are forced into bondage already, and we are helpless because our fields and vineyards belong to others.” Then I was very angry when I had heard their outcry and these words.” (Neh. 5:1-6)

These Jewish borrowers were enslaved by the other Jewish Noblemen and officials. Their fields and vineyards had been foreclosed. Their children were sold into slavery and were exploited. The safety valve God had given to Moses at Mt. Sinai, namely the Jubilee and cancellation of debt, had been abandoned. We read that Nehemiah became furious! He was not mad at the poor persons in debt. He was outraged towards the bankers who were heavy handed:

“Then I was very angry when I had heard their outcry and these words. I consulted with myself and contended with the nobles and the rulers and said to them, “You are exacting usury, each from his brother!” Therefore, I held a great assembly against them. I said to them, “We according to our ability have redeemed our Jewish brothers who were sold to the nations; now would you even sell your brothers that they may be sold to us?” Then they were silent and could not find a word to say. Again I said, “The thing which you are doing is not good; should you not walk in the fear of our God because of the reproach of the nations, our enemies? “And likewise I, my brothers and my servants are lending them money and grain. Please, let us leave off this usury. “Please, give back to them this very day their fields, their vineyards, their olive groves and their houses, also the hundredth part of the money and of the grain, the new wine and the oil that you are exacting from them.” (Neh. 5:6-11)

We see Nehemiah himself had gone to the slave market and with his own money bought those children to return them to the parents. He called a community-wide meeting and scolded the officials and publicly proclaimed the bankers were the sinners for oppressing the poor. He blasted them for their foreclosures and for charging interest. And what was the high rate of interest (usury) that was being charged? It was only ONE PERCENT interest, “the hundredth part of the money, grain, new wine, and oil (Nehemiah 5:11).

Can you put that into perspective for today? The prophet Nehemiah was outraged at the lenders, **not** those in debt. He blistered the bankers for charging 1% interest and for conducting foreclosures! Today you are being hit with late charges, over the limit fees, default interest rate interest charges, electronic payment fees, collection fees, attorney fees, etc. and yet you are beating yourself up? Would Nehemiah have dressed you down or your creditors? Read these scriptures again and form your own conclusions.

**Yeah, that was in the Bible, but today it’s different... or is it really different?**

Someone may have a hard time with recognizing there are Biblical principles involved and then translating those concepts into modern American life. I’ve even heard respected Biblical teachers say “Yeah, you can bankrupt on the debt but you still owe it.” They try to say that in virtually all circumstances a debt cannot be discharged in bankruptcy by a Christian. These well-intentioned

Biblical teachers will attempt to “prove” bankruptcy is always wrong by quoting a scripture such as Psalms 37:21:

“The wicked borrow and do not repay, but the righteous give generously.”

This scripture does contrast a wicked versus a righteous heart: contrasting exploitation versus generosity.

Let’s look closely at Psalms 37 to see if it supports the proposition that Bankruptcy is wrong. The pattern emerging from the analysis of the entire Psalm is not to condemn one who has the inability to repay; instead this Psalm looks to one who “schemes” (Ps. 37:7) or “plots against the righteous” (Ps. 37:12). In other words, the Psalmist looks at those who intentionally rip-off others. There is no indication that those who are ensnared by debt cannot obtain relief. The Psalmist contrasts evil plotters and schemers with the righteous. He does not contrast those who have the inability to pay with the righteous. Therefore the scripture often cited for the proposition that those who do not repay are wicked, should more accurately be understood to say that those who plot and scheme to defraud others are wicked.

### **We as Christians are the first to support the government:**

“...render to Caesar the things that are Caesar’s; and to God the things that are God’s.” (Mt. 22:21) We stand for law and order. That being the case, some pastors will assert that it is sinful to modify a contract and leave a debt unpaid in Bankruptcy Court. Let’s look at that issue, by looking at the founding of our country.

We typically think of the beginning of our country as July 4, 1776, with the Declaration of Independence. It was on that date that thirteen colonies, from Maine to Georgia, banded together to revolt against a common Sovereign, Great Britain. There was, with the Declaration, the beginning of the beginning, but those colonies were not unified.

Let’s look at a timeline to put matters into perspective:

These several critical dates in the birth of the United States that are relevant to our consideration:

July 1, 1776 – Declaration of Independence

December 12, 1776 – Third Continental Congress convenes

November 11, 1777 – Articles of Confederation proposed

March 1, 1781 – Articles of Confederation – ratified

February 2, 1783 – English declare hostilities ended

April 11, 1783 – America declares hostilities ended

January 14, 1784 – Treaty of Paris, Revolutionary War officially ends

May 25, 1787 – Constitutional Convention opens in Philadelphia

September 17, 1787 – Final Draft of Constitution

June 21, 1788 – Constitution ratified

May 4, 1788 – The United States Constitution goes into effect.

At first the thirteen Colonies were independent from each other, but during the course of the Revolutionary War they joined together under the Articles of Confederation. As Colonies they each acted in their self-interest. Under the Articles there were aspects where each colony cooperated with each other but there was still self-interest that made it difficult for consolidated effort to be made.

For example, the Continental Congress depended on the Colonies to raise their respective militias to be brought forward for the Revolutionary War. Also, the Continental paper dollar was considered worthless when it was not backed by gold reserves.

After the war, trade was tough. Imagine if you were a tobacco farmer in North Carolina and you wanted to sell your crop and buy a plow. You might load your wagon, go into Virginia, and pay a toll and tariff as you went from colony to colony. You might pass from Virginia to Maryland, to Pennsylvania, New Jersey, then New York. In New York you could sell your crop but there was no simple national currency. You might go to New York to buy a bank bond, and travel to Philadelphia to cash the bond, and then double back to Valley Forge to buy a plow. Then you would be taxed and tariffed all the way back to North Carolina. This example is a hypothetical, but it illustrates a type of problem that one might see under the Articles of Confederation. This was no way to form a Nation so the push was on to have a central Federal government that was controlled by the Constitution.

Under the terms of the Constitution, the states delegated some of their rights to the central federal government. From the time of the Declaration of Independence to 11 ½ years later when the Constitution went into effect, those 13 little independent British Colonies were transformed into group of states with a central government, the United States government.

By each state agreeing to be bound by the Constitution, each state agreed to yield rights from itself to the new federal government. So in other words, the states agreed, among other things, that their state contract law could be modified by federal Bankruptcy law. In the Constitution Article 1, Section 8 enumerates the Powers of Congress. Included in the enumerated powers of Congress was the power of Congress to create uniform Bankruptcy laws. This is crucial for the reader to comprehend. When the Constitution was ratified it transformed the nature of contracts. Before ratification a contract was a property right to be interpreted under each State's law. However, after ratification the right of the holder of the contract had a contract that could be modified

under Federal Bankruptcy Law (U.S. Constitution, Article I, Section 8, Clause 4). Following ratification of the Constitution, over 200 years now, each party of a contract understands that the terms of a contract may be modified if the bankruptcy conditions set by Congress in the bankruptcy code are satisfied. For example, for years Heilig-Meyers Furniture Company was a creditor in Bankruptcy Court. Eventually, Heilig-Meyers became a debtor. Each party to a contract might be a creditor in a case then a debtor in a later bankruptcy case. In either event, each party to the contract negotiates the contract with that understanding.

Imagine if a bank opened a credit card operation in South Dakota where it is a responsible corporate citizen. The legislature in South Dakota might pass favorable legislation for that bank which authorized it to issue very favorable credit card terms, but those terms might not be well received in Tennessee. Under the state law of South Dakota, a lender might be allowed to raise a credit card interest rate so that the borrower might owe 30% interest. The borrower might struggle to pay off that card at 30% interest. He might find himself in my office saying he cannot afford the credit card. He might ask me whether there is there any law that would allow him to pay less than the full principal balance plus 30% interest. I then might say, yes. There is a special court set up that triggers special laws to modify interest rates and modify the amount of principal to be repaid. That is the United States Bankruptcy Court. That court allows federal law to modify state law contracts. That federal law is authorized by the U.S. Constitution.

You may be a bit bewildered at how this is possible. Let me give you an example. Let's suppose that you and I met in the tallest building in your downtown area and we decided to leave and rendezvous 30 miles away. You agreed to drive on the surface streets and abide to the speed limits and traffic rules under State law. You might average 30 miles per hour and you would reach your destination in an hour. I, on the other hand, might choose to take advantage of Federal law and take the Interstate. I might average 60 miles per hour and get there in 30 minutes. You take twice as long as me. Have either one of us done anything wrong? You drive at 30; I drive at 60. You use State law; I use Federal law. Each law was available to each of us, yet we have entirely different outcomes. Neither has done anything wrong. We have simply made separate choices.

What is the difference between speed limits and contractual interest rates? In either circumstance, Federal law might dictate a more advantageous outcome.

You might respond there is a moral difference because in the interest rate example there is a "promise" to pay whatever the interest rate may be. I submit that is irrelevant.

I might "promise" the speed limit is 30 mph but yet under special circumstances it could be criminal for you to drive the speed limit. There can be a change of circumstances that arise that render you unable to drive the 30 mph speed limit. For example you would have to slow down or stop for: adverse weather; auto accidents; road construction; a parade; a funeral; natural disaster; police intervention and directions; active school zones; or a traffic snarl. Even though I "promised" you could drive the

speed limit, you might encounter an extraordinary circumstance that mandated you do something else. In fact the State controlled surface streets might be so bogged down that you might change your mind and go onto the Federal interstate and breeze along to your destination. You may then marvel at yourself and ask what took you so long to get around to helping yourself!

In a similar fashion when circumstances arise in the course of human events, you may have encountered extraordinary circumstances that mandate you no longer use State law but you use Federal law instead. Circumstances might mandate you use Federal Bankruptcy law to modify your legal obligations initially defined under State law.

By the powers granted to Congress it has the authority to enact Bankruptcy law that supersedes State contract law. You have the right to apply to the Bankruptcy court to see if you qualify for Federal law relief under the Bankruptcy Code.

The Bible contemplates such an outcome. We are ordered to abide by the law:

“Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves. For rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and he will commend you. For he is God's servant to do you good. But if you do wrong, be afraid, for he does not bear the sword for nothing. He is God's servant, an agent of wrath to bring punishment on the wrongdoer.” (Romans 13:1-4)

This passage is explicit. It is the Sovereign God himself who establishes the law making authorities. (Rom. 13:1). Anyone who resists those authorities resists God's ordinances (Rom. 13:2). For that resistance they receive condemnation from God (Id). God has given those laws for your **Good**. (Rom. 13:4) Therefore when a Federal Bankruptcy Judge considers your petition for Bankruptcy relief and deems you worthy of that grace, the Court is God's servant, “a minister of God”. (Rom 13:4) Your duty as a Christian is to accept God's grace.

The Sovereign God has provided a way for you to cope with these bills in this place and time of history, by a legal means. It is up to you to accept this opportunity He has given to you. God has provided through the Bankruptcy court a balance point between the justice that creditors want and the mercy that debtors need. The balance between justice and mercy is what He requires of each of us:

“He has showed you, O man, what is good. And what does the Lord require of you? To act justly and love mercy and to walk humbly with your God.” (Micah 6:8)

In summary, it does not seem that it is accurate to assume that to file Bankruptcy is a sin. God created a government for the Jews in which financial oppression was disallowed. In the Bible, when His people violated those principles, He judged those people and allowed the Jews to be taken into slavery. Instead of trusting in God, the Jews trusted in their business model and turned away from His principles to their own.

The United States has a Constitution where each state has granted some of its rights to the Federal government. Among those rights is the power of the Federal government to create Bankruptcy law. Bankruptcy law is given by God for our good.

God gives us government to produce ordinances for our good. To resist those ordinances is to resist God. Our call is to simultaneously do justice, and show mercy, while walking humbly before God. Anything short of that is sin. Filing Bankruptcy is not sin. It is God's mechanism to maintain civil order while balancing justice and mercy.

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