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## Let's rein in 21st century loan sharks

By Jonathan P. Baird

While it would be easy to think payday lending is some new phenomenon, nothing could be further from the truth. Payday lending is the modern form of usury. Usury and its regulation have been the subject of civil and religious debate for literally thousands of years.

Usury is not a word you hear used very often now. It has a musty, 19th century quality. Usury can mean the price paid for the use of money. It can also simply mean excessive interest.

State usury laws refer to a body of law regulating the amount of interest charged by lenders. Most states have long had laws specifying the maximum legal interest rates at which loans can be made. For almost our entire history as a state, until 1999, New Hampshire has had such laws protecting consumers.

In January, the Legislature will take up House Bill 267, a bill placing an interest rate cap of 36 percent APR on payday and auto title loans. The bill is modeled on legislation passed by Congress in 2006 to protect our military service members who were being victimized by payday lenders. It would restore an interest rate cap which has been our state norm.

There is a long history dating back to before the American Revolution of the use of interest rate caps to protect against usury. In his excellent book, "Taming the Sharks," law professor Christopher Peterson recounts this history.

Originally, the colonies imported English law, which included an interest rate cap statute called the Statute of Anne. It imposed a maximum allowable interest rate of 5 percent per year. Most of the states initially imposed caps between 4 and 10 percent per year, although after independence most states set their maximum rate at 6 percent per year.

Early American society featured a very strong thrift ethic. Reckless borrowing for personal consumption was extremely frowned upon. The public had little sympathy for debtors. State law rigorously enforced debts and a sense of shame attached to personal debt. This was the era of debtors' prisons. Even though low interest rates were the norm, imprisonment for debt was very common. In Massachusetts in 1830, there were three to five times as many persons imprisoned for debt as for crime.

After the Civil War, attitudes toward personal debt loosened. A new lending practice developed called salary lending — the historic precursor of payday lending. The principle was the same. A debtor would borrow \$5 and repay \$6 at the end of the week.

While that might not sound too bad to modern ears, it led to chain debt, an early version of the repeat borrowing trap characteristic of payday loans. Manipulative lender practices like the imposition of staggering late fees and shady calculation of interest trapped debtors into endless payments.

Salary lending was characterized by lenders collecting the most money while reducing the overall debt owed as little as possible. If the debtor lost his job or suffered illness or could not pay for some other reason, interest compounded and debt swelled.

The salary lenders targeted employed and married working class white men, seeing them as good credit risks and likely to repay because of their steady employment histories. **1,000 percent interest**

The term "loan-sharking" did not originate with the 20th century Mafia. It actually comes from the period after the Civil War. In the Eastern cities, the salary lenders were infamous for charging interest rates over 1,000 percent annually.

The abuses and horror stories about this loan-sharking led to a series of governmental reforms and policy responses. Federal bankruptcy law reform allowing more discharge of debt, an increase in cooperative and charitable lending, and new small loan laws were all responses to the havoc created by usury.

The 20th century saw an explosion of credit and greatly expanded consumer debt. Old American stigmas about reckless borrowing disappeared and the credit card made its appearance.

In contrast to the New Deal period, when government took a wide range of regulatory, protective steps, government since the Reagan era has promoted deregulation, which opened the door to exploitation of the poor.

When interest rate caps were scrapped in our state in 1999, the legislative history shows that the Legislature expected interest rates to go up to only 20 to 25 percent. There was no expectation interest rates would soar into the stratospheric rates of the payday lenders where the sky is the limit.

Five hundred percent APR? No problem if you are a payday lender. It is a sign of our moral confusion that we do not readily see payday lending as a gross form of usury. There are reasons the Christian, Jewish and Islamic traditions have all rejected usury as pure, unchecked greed. I expect ethical atheists would too.

This is not some moderately priced consumer credit. While payday lenders and auto title lenders strive for acceptance and legitimacy, they are 21st-century loan sharks. This is the dark side of deregulation where the administrative state has failed and consumer protection has been junked.

The issues around payday lending are just the latest round in an American fight over predatory lending that has been longstanding. No strategy will completely stop the payday lenders. They are foxy and will try to work around legislation. Still, restoring an interest rate cap is the time-tested reform which has proven most effective in curbing abusive money lending.

Jonathan P. Baird of Wilnot is a lawyer for New Hampshire Legal Assistance and has lobbied in support of House Bill 267.