

## Usury and the Paretian Objection

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**Abstract:** This paper has the following goals: 1) to prove that the contract of usury suffers from a self-contradiction, both from the viewpoint of the lender and the borrower; 2) to demonstrate the self-contradictory nature of the contract of usury by means of the Fisher model of the intertemporal choice; 3) to prove that both the lender and the borrower pronounce the consent to the basic contract involuntarily because the former as well as the latter is acting under the indirect coercion; 4) to respond to Paretian objection that the Pareto improvement implies the mutual voluntariness, which is why there is no justification for the state to not enforce the contracts of usury. The author contends that from a subjective viewpoint, the contract of usury is a complex of two contracts which contradict each other: the basic contract and the super-contract. From the lender's perspective, the basic contract is a loan and the super-contract is a sale of the loan. Since the lender negates his will to give a loan by the sale of the loan, the lender's consent to the contract of usury as whole is self-contradictory. From the borrower's perspective, the basic contract is a gift to the lender and the super-contract is a sale of this gift for a loan. Since the borrower negates his will to give a gift by the sale of the gift, the borrower's consent to the contract of usury as a whole is self-contradictory. Next, the author contends that from an objective viewpoint, the contract of usury is an example of a non-equal "exchange", i. e. a complex of an exchange (loan) and a transfer (usurious interest). Since the borrower does not give the transfer voluntarily, the lender violates the commutative justice by the contract of usury. To the Paretian objection that since both the lender and the borrower move onto a higher indifference curve thanks to the contract of usury, it must be a voluntary exchange, the author responds that the Pareto improvement does not imply the mutual voluntariness. The way how both the lender and the borrower move onto a higher indifference curve is not a voluntary exchange. There is no way to move onto a higher indifference curve in the contract of usury through a voluntary exchange. The contract of usury is neither an exchange, nor voluntary. It is not an exchange because it violates the equality in exchange. It is not voluntary, either, because it suffers from a double self-contradiction and voluntariness cannot be predicated to a self-contradictory (i. e. non-being) act of will. The author concludes that the state cannot and must not enforce the contracts of usury. It cannot because these contracts suffer from a double self-contradiction. It must not, either, because these contracts violate the commutative justice and it is the purpose of the state to protect the justice.

**Keywords:** usury, loan, transfer, exchange, Pareto improvement, Fisher model, commutative justice, indirect coercion.

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## Introduction

It can be proved that the contract of usury is invalid from the very beginning because of the contradiction in the will of the lender; that the contract of usury is unenforceable; and that the contract of usury violates the commutative justice<sup>2</sup> (see Máslo, 2018, 2019a, 2019b, 2022). In spite of the above said, one crucial objection remains: the borrower gets **better off** thanks to this contract which is why he enters into this contract **voluntarily**. The lender gets also better off thanks to this contract, though, and he also enters into the contract voluntarily. Now, if both the borrower and the lender enter into the contract voluntarily, it can be argued that the state should not declare the unenforceability of the contract of usury, in spite of its self-contradictory character and injustice.

Máslo (2022) argues that the state can take four possible stands on the usury: 1) to prosecute the usurers, 2) to declare the unenforceability of the contract of usury, 3) to tolerate private enforcement of the contract of usury, 4) to enforce the contract of usury. Tolerance of private enforcement and direct enforcement is contrary to the purpose of the state, the common good<sup>3</sup>. Prosecution of usurers, as well as a mere declaration of unenforceability faces the Paretian objection: since both the lender and the borrower move onto a higher indifference curve thanks to the contract of usury, it must be a voluntary exchange; why should the state not support the enforcement of a freely-entered-into contract of exchange between the lender and the borrower, then? A contract of exchange which both contractors freely enter into makes both of them better off. Removal of the state support of the enforcement of such a contract will make at least one of the contractors worse off in the short run and both of them worse off in the long run. The result will be that the borrower will not suffer injustice, that is true, but he will not get the loan, either, which the borrower perceives as even a worse outcome.

As concerns the question whether the state should prosecute the usurers or merely declare the unenforceability, Máslo (2019b) leaves the question open. Máslo (2022) argues on this point that prosecution of the usurers might lead to a greater evil than that which was to be prevented. Avoiding the question of the state prosecution of the usurers, in this paper I am addressing the economists, primarily, whom I intend to convince about the obligation of the state to declare the unenforceability of the contract of usury. For this purpose, I will make an effort to “translate” the arguments of Máslo (2018), Máslo (2019a), Máslo (2019b) and Máslo (2022) into the language of economics. In this paper, I want to 1) prove that the contract of usury suffers from a self-contradiction, both from the viewpoint of the lender and the borrower; 2) demonstrate the self-contradictory nature of the contract of usury by means of the Fisher model of the inter-temporal choice<sup>4</sup>; 3) prove that both the lender and the borrower pronounce the consent to the basic contract involuntarily because the former as well as the latter is acting under the indirect coercion; 4) respond to the Paretian objection that the Pareto improvement implies the mutual voluntariness, which is why there is no justification for the state to not enforce the contracts of usury.

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<sup>2</sup> Commutative justice is a principle introduced by Aristotle in the 5th book of his *Nicomachean Ethics*. This concept was later borrowed and named by St. Thomas Aquinas (see St. Thomas Aquinas: *Sententia libri ethicorum. Liber V; Summa*, II-II, q. 61, a. 1, 2). This principle of justice regulates the relation of one individual to another individual. Dempsey (1943, p. 135) expresses this principle of justice by the words “to render to each that which is his, according to an equality”.

<sup>3</sup> To the concept of the common good see e. g. Vřešťál (1916, II-II, XII, 32), Vašek (1933, pp. 213-218).

<sup>4</sup> Fisher (1930, Part III).

## The Concept of Usury

Usury in the classical Aristotelian-Thomistic sense of the word means a loan (*mutuum*), where the lender (creditor), after the loan period is over, requires not only the principal but also the interest.<sup>5</sup> It is not a usury if such an interest can lean on a legitimate title. Such an extrinsic title can be 1) emergent loss, 2) lost profit, 3) risk of the principal, 4) contractual penalty for delay, 5) legally permitted interest. Each of these extrinsic titles may be abused as a pretext for the usury. However, every such a try can be unmasked and identified as a concealed usury (see Máslo, 2018). Generally speaking, though, an extrinsic title is a circumstance which is accidental for the loan, not necessary. It is an additional damage or additional cost which accompanies a loan and which justifies the lender to charge the borrower a just compensation for this additional damage or cost. In such a case, we can talk about an interest. Usury emerges at the moment when such an extra payment (usurious interest) is being required either under the pretext of a non-existent extrinsic title, or on the grounds of the loan itself. Several economic theories are trying to justify the usurious interest on the grounds of the loan itself: 1) The extra payment is a rental payment for renting the money. 2) The extra payment is a compensation of the lender for his waiting<sup>6</sup>. 3) The extra payment is a compensation of the lender for his giving up liquidity.<sup>7</sup> 4) The extra payment is a compensation of the lender for his consent to give a loan.

Ad 1) To rent a good, the right to use needs to be separable from the right of disposition. Who rents a good, he keeps the right of disposition and assigns just the right to use to the other contractor. Money is such a kind of a good in which it is not possible to separate the right of disposition from the right to use. The reason is that the good gets alienated automatically by use and alienation makes it impossible for the right of disposition to remain in the first subject. Only the ultimate owner – that who has the right of disposition to the good – can rent this good to another contractor. In case of a loan, though, the lender gives up the current right of disposition and right to use in exchange for the future right to use and right of disposition. As a result, the lender cannot make a claim to the rental payment for the good because during the loan period when the borrower is using the good, the lender does not have a right of disposition to the good. As a result, the usurious interest cannot be justified as a rental payment for using the money.<sup>8</sup> For a detailed argument see Máslo (2019a).

Ad 2) In case of a loan, the principal is being assigned for a certain loan period. If the lender gave the principal without the loan period, it would be an absurd contract in which the lender would be giving the principal with his right hand and taking it back with his left hand. So, the loan period belongs to the essence of the loan as much as the principal. Which means that if the lender requires a compensation for giving the loan period (i. e. for the waiting), he wants a compensation for something that is essential for the loan, as a matter of fact. That is, the lender requires a compensation for the loan itself. As a result of which, the problem boils down to a compensation for a consent to the loan. See ad 4). For a detailed argument see Máslo (2018).

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<sup>5</sup> For a detailed introduction to the problem in the Czech language see Máslo (2018, 2019a, 2019b), in English see McCall (2008, 2013). For a short presentation of the problem see McCall (2010a, 2010b). For the position of the Catholic Church see Benedict XIV's encyclical *Vix Pervenit* (1745).

<sup>6</sup> This argument can be found in Fisher (1930, chapter 3, p. 52)

<sup>7</sup> This argument comes from Keynes (1936, chapter 15).

<sup>8</sup> The core of this argument can be found in *Summa Theologiae*, II-II, q. 78, a. 1, co.

Ad 3) A high liquidity is a characteristic of money. So, giving up the liquidity follows directly from giving up the principal. Now, again, it's the loan period during which the lender is missing the advantages following from the liquidity of the lent money. The loan period belongs to the essence of the loan equally as the principal does. To make a claim to an extra compensation for giving up liquidity for a certain period of time is the same as to make a claim to an extra compensation for the consent to the loan itself. As a result of which, the problem boils down to a compensation for giving the loan period. See ad 2). For a detailed argument see Máslo (2018).

Ad 4) If the lender wants a compensation for his consent to the loan, let us ask: what is it that the lender consents to? What is the loan? By all accounts, the loan is a contract in which the lender gives up 100 today in exchange for 100 in a year's time. The extra payment of 10 is then the price of the lender's consent to the contract "100 for 100". If the lender wants 10 for his consent to "100 for 100", then, the lender wants to exchange 100 for 110, not 100 for 100. I. e. the lender does not consent to the contract "100 for 100". If the lender does not consent to "100 for 100", though, he cannot sell his consent because he does not have a consent to sell. If the lender does not have a consent to sell, what does he charge the borrower the extra payment of 10 for? Obviously, the lender is contradicting himself on this point. He wants to give a loan and, at the same time, he does not want to give a loan. Within the basic contract of loan, the lender says he wants to give 100 for 100. Within the super-contract of loan, though, the lender says he does not want to give 100 for 100. Since the lender is cancelling his consent to the loan, given within the basic contract, by the sale of the consent within the super-contract, the contract of usury is a complex of mutually contradicting contracts and, as a result, represents a self-contradiction in the will of the lender. A self-contradiction in the will of any contractual party renders the contract invalid from the very beginning. An invalid contract is by nature unenforceable. For a detailed argument see Máslo (2018).

## **Self-contradiction in the Will of the Borrower**

At the 0% interest rate, the lender exchanges the current right of disposition and right to use to one dollar for the future right of disposition and right to use to one dollar. The borrower, on the other hand, exchanges the future right of disposition and right to use to one dollar for the current right of disposition and right to use to one dollar. At the 5% interest rate, 1 dollar today is being exchanged for 1.05 dollar in a year's time. If the lender could lean his claim to the 0.05 dollar on a title of acquisition, such a loan would be an exchange. As long as the lender cannot lean his claim on any title of acquisition, the 0.05 dollar represents a transfer from the borrower to the lender. I contend there is no such title of acquisition, which is why the 0.05 dollar represents a transfer from the borrower to the lender. The borrower does not want to pay such a transfer, though.

The opponent can raise an objection: if the borrower does not want to pay such a transfer of 0.05 dollar, why does he pay it, then? Is he being forced or cheated? Well, he's not being forced. Let us assume, next, that he is not being cheated, either. Let us assume that both the lender and the borrower grasp that a sale of a consent is impossible and that a sale of consent to the loan by the lender is tantamount to a sale of a round square. Let us assume that the lender and the borrower agree on a following convention: the lender will give 1 dollar to the borrower for one year's time and says "blah blah blah" in the process and the borrower will pay back 1 dollar plus 0.05 dollar to the lender after one year for listening to the sound "blah blah blah". The lender's title of acquisition is here the sound "blah blah blah". The borrower consents to a payment of 0.05 dollar for listening to this sound after one year, provided that he will also acquire 1 dollar for a year's time on top of the sound. As a matter of fact, the borrower is selling his consent to a gift of 0.05 dollar in exchange for the lender's consent to a loan of 1 dollar.

Now, a sale of a gift is cancelling the essence of a gift, of course, which is that it is for free. If the borrower wants the lender's consent to an unrelated contract in exchange for the borrower's gift to the lender, the borrower is showing by this that he does not want to give a gift to the lender. The contract of usury is thus invalid not only for the self-contradiction in the will of the lender but also for the self-contradiction in the will of the borrower who declares that he wants to give a gift (in the basic contract of gift) and, at the same time, he does not want to give a gift (because he is selling his consent to the basic contract of gift for the loan within the super-contract of exchange).

## Direct and Indirect Coercion

From the objective point of view, a payment can be 1) equal payment in exchange, 2) voluntary transfer (=gift), 3) involuntary transfer. The usurious interest, as we have proven, is not and cannot be an equal payment in exchange. It is a transfer, as a result. A transfer which the borrower does not want to pay, though, which means it is not a gift. It is an involuntary transfer, then. An involuntary transfer can be acquired by a fraud, direct coercion or indirect coercion. If we exclude the fraud and direct coercion, the indirect coercion remains. The indirect coercion consists in the following: a contractual party A makes a contractual party B's consent to an unrelated contract (e. g. a transfer) a condition of the contractual party A's consent to the basic contract. The indirect coercion is thus a kind of a **pseudo-exchange**. I'm buying the other contractual party's consent to a contract. Let us assume that the borrower **grasps** that the super-contract of exchange is a pseudo-exchange and that the usurious interest is a transfer. In that case, the borrower grasps that he cannot buy the lender's consent to the exchange (loan), as a result of which the purchasing price is not an equal payment in exchange but a transfer.

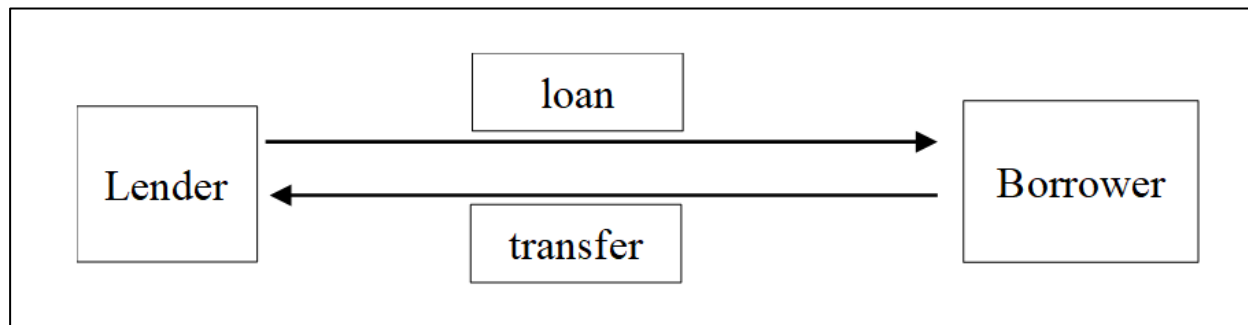


Figure 1. Contract of Usury. Source: Own Scheme.

A condition of voluntariness is that what I do, I do consciously and without coercion (direct or indirect). A man facing a choice “money or life” will also choose to pay because he prefers the combination “living and without money” (B) to the combination “dead and without money” (C), even though he prefers the combination “living and with money” (A) to the combination “living and without money” (B) but the combination A is unachievable. If the subject does not do anything, he will end up in the combination C. If he pays, he can move up to B which makes him better off. Similarly, as a borrower who does not do anything will remain in the worst combination C (without the loan at 0%). However, if he pays the usurious interest, he can shift up to the middle combination (with the loan at 5%). Even though the combination (with the loan at 0%) would be even better but this combination is unachievable to him. Sure, the victim of a theft is exposed to a direct coercion while the borrower in a contract of usury is exposed only to an indirect coercion. Even the indirect coercion is an obstacle to voluntariness, though. That the subject gets better off through his action is given by exactly the coercion which

determines the initial situation as the worst one, so that if the subject does what he is (indirectly) coerced to, he will get better off. Coercion is a conscious and purposeful action of a subject which wants to make the other subject do something that the other subject would not choose to do without this coercion and which the coercing subject does not have a right to.

Now, an objection can be raised: if the lender makes a repayment of the principal a condition of his consent to the loan, is this action a coercion? No, it is not. A loan means a principal now in exchange for the principal in the future. So, if the lender wants to get his principal paid back, he says by this that he does not want to give a gift but a loan. Since the lender has a right to a repayment of the principal, there is no coercion included here. A coercion would be included if, for example, a subject were blackmailing the lender to give him a loan. Nobody has a right to a loan (at least not on the grounds of justice). If a subject is acting under coercion, he is not acting voluntarily, then, even if he gets better off with respect to the initial situation. **The direct coercion** means that I abstain from an illegal action in exchange for the counterpart's consent to an unrelated contract. The consent of the counterpart to this unrelated contract is thus directly coerced. The counterpart does not wish this illegal action of mine. That is why there is no self-contradiction in the counterpart's act of will. The counterpart's manifested consent is an internal dissent. **The indirect coercion** means that I consent to a contract (basic contract) in exchange to the counterpart's consent to an unrelated contract (super-contract). The consent of the counterpart to this unrelated contract is thus indirectly coerced. The contract (basic contract) which I use as an instrument of coercion is desired by the counterpart.

If the borrower grasps that the payment of the usurious interest is a transfer and not an exchange, then he acts under indirect coercion. He gives the transfer just to acquire the lender's consent to the loan but he would not give it under different circumstances. Since the borrower grasps that this payment is a transfer and not an exchange, he also grasps that the lender does not have a right to this transfer which is why he gives this transfer involuntarily. The borrower's consent to the contract of usury is a self-contradiction in this case because it consists of a consent to the basic contract of gift and a consent to a super-contract of exchange in which the borrower negates his consent to the basic contract of gift. A self-contradictory act of will is not just a defective act of will. It is not an act of will at all, it is nothing.<sup>9</sup> How can "nothing" be voluntary? Since voluntariness cannot be predicated to a self-contradictory act of will, the borrower's self-contradictory (i. e. non-being) consent to the contract of usury cannot be considered voluntary.

We can consider another scenario, though: a borrower **does not grasp** that the payment of the usurious interest is a transfer and, on the contrary, he thinks that it is an exchange. The borrower, misbelieving that he is buying a loan, is giving a transfer which he falsely considers an equal payment in exchange for the service of loan. In which case he acts in ignorance which constitutes an obstacle of voluntariness (comp. Máslo, 2022, p. 21, 22, 24, 26, 27; Chafuen, 2003, p. 91). Now, the borrower's consent to the basic contract of gift is involuntary due to the presence of ignorance. However, we infer the involuntariness of the consent to the contract of usury from the self-contradictory nature of this consent. Is the **ignorant** borrower's consent to

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<sup>9</sup> It is not just that a self-contradictory act of will is a non-existent entity. A non-existent entity is devoid of real existence but as a being still existing virtually. E. g. a unicorn is devoid of real existence but it is still "thinkable" because it is determined through its essence. A contradictory being is not determined through "its" essence. A contradictory being is not thinkable. It is a pure nothingness. Exactly the contradictory nature of it makes it literally unthinkable. That is why, as a matter of fact, a contradictory being cannot be called a "being" because it is not a "being". To be absolutely correct, we need to say that to the extent to which we talk about contradiction and nothing, "contradiction" and "nothing" need to "be" "somehow". Yes, they "are" an object of our thinking as concepts. To the extent to which we reflect upon them as concepts, we can call them "beings." We call them "rational beings". However, in no other sense they can be called beings. For a detailed exposition of the impossibility of "essence of nothing" see Fuchs (1996).

the contract of usury as a whole self-contradictory, then, or is it not? The ignorant borrower wants to give a payment which is objectively a transfer which the borrower subjectively and falsely considers an equal payment in exchange, though. He gives a transfer, objectively, though. Does he give it voluntarily or involuntarily?

Well, if the borrower grasped that he gives a transfer and if he rejected to manifest his consent to the contract of usury, then he expresses his consent in ignorance involuntarily because against his interests. If the borrower grasped that he gives a transfer and, in spite of that, he would still decide to give his self-contradictory and invalid consent to the contract of usury anyway, then, if he gives his consent to the contract of usury in ignorance about the true nature of this contract, his consent will not be self-contradictory only thanks to his ignorance (!). The non-contradiction of the borrower's consent is thus based on his principal ignorance. This ignorance is involuntary, though. The borrower does not want to be in ignorance. Which means he implicitly does not want his consent to be non-contradictory. The non-contradiction of a consent means unambiguity of this consent. So, the borrower does not want to give an unambiguous, non-contradictory consent. In other words, he does not consent to the contract of usury. So, the involuntariness follows from the ignorance of the borrower, here.

Since the contract of usury is **objectively** a complex of an exchange (loan) and a transfer (usurious interest) and the borrower does not want to give the transfer, the borrower does not consent to the contract of usury. There is no self-contradiction in his position now. If the borrower manifests his consent, he is acting in ignorance and, as a result, involuntarily. The involuntariness of the ignorant borrower does not follow from the contradiction in the ignorant borrower's position (unlike the grasping borrower) but from the ignorance about the nature of the contract of usury. As long as the borrower's subjective perception of the contract of usury is in agreement with the objective nature of this contract, the self-contradiction in the borrower's will emerges, due to which the borrower's consent to the contract of usury is involuntary. As long as the borrower subjectively and falsely perceives the contract of usury as an equal exchange, then, the borrower does not consent to the contract of usury in its objective nature which consists in a transfer payment.

## Usury and the Reciprocity of Indirect Coercion

An opponent can raise an objection: what if an applicant for a loan addresses the potential lender as the first one and the lender will just say he will give a loan for a transfer? The initiative is on the side of the borrower, not the lender, in this case. How can the lender force the borrower to anything, then? Well, who addresses whom as the first one is not relevant. What is relevant is who makes the consent of the counterpart a condition of his own consent to the basic contract.

What if a subject makes the counterpart's consent to the loan a condition of his own consent to the contract of gift, then? Is it not the borrower who exerts the pressure on the lender? Yes, it is. The borrower promises a gift but he makes a loan a condition of this gift. The lender: I will give you a loan if you give me a transfer. The borrower: I will give you a transfer if you give me loan. If the borrower makes the lender's consent to the loan a condition of his own consent to the gift, then the borrower sells his gift for a loan. By selling the gift, the borrower is negating the essence of a gift which is that it is for free. Does the lender give the loan to the borrower voluntarily, in this case? First of all, the lender does not give the loan. He sells the loan. By which he negates his consent to the loan. May we look at the contract of usury as a sale of the loan for the transfer, or as a sale of the transfer for a loan, in both cases a self-contradiction in the will of at least one of the contractual parties emerges. If the lender sells the loan for the

transfer, he exerts the indirect coercion on the borrower: the lender makes the consent of the borrower to an unrelated contract (transfer) a condition of his own consent to the loan.

The lender who, under different circumstances, would not consent to the loan and who only consents to it because he is getting a transfer for it does not give his consent voluntarily. He gives his consent to the loan but he does not consent to it, in principle. He just manifests his consent externally. The borrower who, under different circumstances, would not consent to the transfer and who only consents to it because he is getting a loan for it does not give his consent voluntarily. He gives his consent to the transfer but he does not consent to it, in principle. He just manifests his consent externally. Neither the lender, nor the borrower gives his consent to the basic contract of the contract of usury voluntarily. The basic contract for the lender is the loan. The basic contract for the borrower is the transfer.

A principal dissent means involuntariness of the given consent. This involuntariness can be given by a fraud, direct coercion or indirect coercion. If the lender is not willing to give the loan without the transfer and the borrower is not willing to give the transfer without the loan, then, neither the lender, nor the borrower gives his voluntary consent to the loan or the transfer, respectively. Both the lender and the borrower manifests his consent to the contract of usury but this consent is a self-contradiction. The lender wants to give a loan (as far as he wants to give it for free) and, at the same time, he does not want to give a loan (as far as he wants to sell it). The borrower wants to give a transfer (as far as he wants to give it for free) and, at the same time, he does want to give a transfer (as far as he wants to “sell” it for the loan).

If the consent is a self-contradiction, it is as if the speaker did not say anything. The subject does not make a commitment to anything. If such as self-contradictory consent is voluntary or involuntary, is a **pseudo-problem**. A self-contradictory consent is nothing. Voluntariness cannot be predicated to “nothing”. Both the lender and the borrower commit an indirect coercion against each other. Only the lender commits the injustice against the borrower, though, because the injustice is given by a transfer which cannot lean on a title of gift. Now, such a transfer flows from the borrower to the lender.

## An Indirect Coercion as A Cause of Involuntary Action

Why does the borrower manifest his consent to the transfer he does not consent to, in principle? Because he wants to get the loan. Why does the lender manifest his consent to the loan he does not consent to, in principle? Because he wants to get the transfer. As a result, the borrower gives his involuntary consent to the transfer because this transfer is the lender’s condition of the loan. The lender, then, gives his involuntary consent to the loan because this loan is the borrower’s condition of the transfer. If the lender were willing to give the loan without the transfer, the borrower would not pay the transfer. If, then, the borrower were willing to give the transfer without the loan, the lender would not give the loan. Sure, the lender offers this loan automatically because he does not suppose that anyone would be willing to give him the transfer without the loan. After all, if someone wanted to give him the transfer without the loan, he could do it anyway. Sure, then, the borrower offers the transfer automatically because he does not suppose that anyone would be willing to give him the loan without the transfer. After all, if someone wanted to give him the loan without the transfer, he could do it anyway.

Why does the borrower manifest his consent to the transfer he does not consent to, in principle? Because it is either a condition of the lender, or the borrower supposes that it is a condition of the lender. An indirect coercion is thus exerted on the borrower or the borrower supposes this



indirect coercion and acts accordingly. Why, then, does the lender manifest his consent to the loan he does not consent to, in principle? Because it is either a condition of the borrower, or the lender supposes that it is a condition of the borrower. An indirect coercion is thus exerted on the lender or the lender supposes this indirect coercion and acts accordingly.

Let us assume a subject who is being exposed to a **direct** coercion. He faces two options: “money or life”. That means that the best option A (alive with money) is not available to him and he is forced to choose between option B (alive without money) and C (dead without money). His preferences are such that A is better than B, B is better than C, A is better than C. Now, let us assume a subject exposed to an **indirect** coercion. He wants to take a loan and the best option A (loan for 0 %) is not available to him. He only can choose between the option B (loan for 5 %) and C (no loan for 0 %). His preferences are such that A is better than B, B is better than C, A is better than C.

Now, what makes the difference between the direct and indirect coercion? The difference is that, in case of the direct coercion, the subject has a right to be in option A (e. g. he has a right to not be robbed), which is why when he chooses option B as his second-best option, he does not choose it voluntarily. In case of the indirect coercion, the subject does not have a right to be in option A (e. g. he has no right to get a loan), which is why when he chooses option B as his second-best option, he is acting voluntarily. However, at the moment when the lender expresses his consent to the loan, the borrower does have a right to get the loan (!), on the grounds of the contract of loan. In that case, though, if the subject chooses the option B (loan for transfer), he does not act voluntarily because he has right to be in option A (loan for free) on the grounds of the contract of loan. The problem is that the lender is giving his consent to the loan and, at the same time, is not giving his consent to the loan (because he is selling it). As far as the lender is selling his consent, he does not consent to the loan. Without consenting, he has no consent to sell, though. The lender’s position is thus a self-contradiction. He consents and does not consent, at the same time. He does not say anything, simply.

Above, it was proved that since the contract of usury is not an exchange and since the borrower does not want to give a gift to the lender, it follows that he borrower is giving an involuntary transfer to the lender, as a result of coercion. However, since both the lender and the borrower contradicts himself within the contract of usury, they both say some “blah blah blah” which is accompanied by a transfer from the borrower to the lender. No lender can lay claim to a transfer on the grounds of the borrower’s “blah blah blah”. The question is whether any borrower can lay claim to a (free) loan in relation to the lender on the grounds of the lender’s “blah blah blah”. The lender says that he wants and, at the same time, does not want to give a (free) loan. He does not say anything, in effect. Nobody has a right to get a (free) loan just because the other subject does not say anything.

Now, if the borrower does not have a right to get a (free) loan, then, if the borrower chooses the option “loan for transfer”, he makes this choice voluntarily, i. e. without coercion. However, even though the borrower has no right to get a (free) loan, he has no obligation to give a transfer to the lender, either. So, if the borrower gives a transfer and, at the same time, he does not want to give a gift to the lender, it is not voluntary, which means he acts under coercion (the lender will not give him the loan otherwise). The borrower does not have a right to a (free) loan but the lender does not have a right to a transfer, either. The lender does not have an obligation to give a loan. If he gives the loan and, at the same time, he does not want to, he acts under coercion (the borrower will not give him a transfer otherwise).

## The Paretian Improvement Does Not Imply Mutual Voluntariness

With no extrinsic titles present, the interest rate on a loan cannot be different from 0 %. The laissez-faire opponent raises a following argument, though: At 0% interest rate, the borrower wants to be in point A; as far as there is nobody around willing to give a loan at 0 %, the borrower is forced to stay without a loan in point C. An increase in the interest rate to 5 % will increase the willingness of other subjects to supply their savings, so that the borrower will achieve a loan. Yes, his utility in point B will be lower as compared to a free loan in A but it will still be higher as compared to no loan in point C.

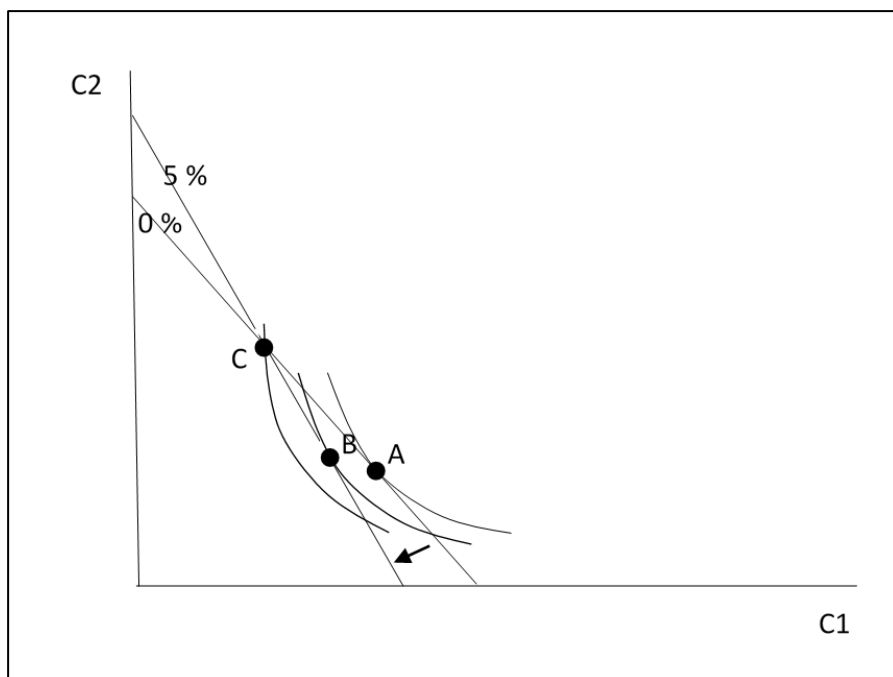


Figure 2. The Contract of Usury in Fisher's Model from the Viewpoint of the Borrower. Source: Own Graph.

A possibility to increase my current consumption at cost of the future consumption may be compared to the time machine which transfers resources from the future to the present. As long as the interest rate is 0 %, the time machine is functioning without costs. A higher-than-0% interest rate means that operation of the time machine is costly. Now, let us imagine that another subject owns such a time machine and he is willing to rent this time machine to me for 5 % of the transferred value. As long as I value one dollar now more than 1.05 dollar in a year's time, I will be better off if I transfer a part of my future resources into present. As a result, I will get onto a higher indifference curve.

A loan is not a time machine, though. The subject does not acquire future resources but the current resources. There is no inter-temporal transfer, actually. In spite of that, the argument remains that if the subject values one dollar today more than 1.05 dollar in the future, he will get better off if he, by some means, acquires this 1 dollar today in exchange for 1.05 dollar in a year's time. Such a contract may be **objectively** unjust but because the subject gets better off as a result, the injustice of this contract is irrelevant. The subject who grasps this injustice understands that this 0.05 dollar is a transfer. A transfer which he gives just because he wants to get 1 dollar today in exchange for 1 dollar in a year's time. Since 1 dollar now in exchange for 1 dollar in a year's time cannot be acquired without the necessary time having passed, the subject grasps that the counterpart does not have a right to this 0.05 dollar. Since the subject

does not want to subsidize the counterpart, he does not want to give this coerced transfer. He does not consent to it. He gives it but not voluntarily. He would give it voluntarily if he wanted to give it even if it were not the counterpart's condition of the loan. If the subject does not give the transfer voluntarily, it cannot be argued that he will get better off and move onto a higher indifference curve, in effect.

However, the opponent will raise an objection: the subject prefers the combination B (loan at 5 %) to combination C (no loan at 0 %), which means that he will get better off by moving from C to B, in the end.

The lender prefers the combination A (to get a free transfer) to combination B (transfer for loan) but the combination B is still better than the combination C (no transfer and no loan) or D (no transfer and a loan at 0 %). The lender finds himself in C, i. e. in his endowment point, where he neither gives a loan, nor acquires a transfer. The lender would ideally want to get the free transfer 0.05 in the future which would bring him to point A. Since the borrower is not willing to give him a transfer otherwise than in exchange for a loan, the lender will end up in point B.

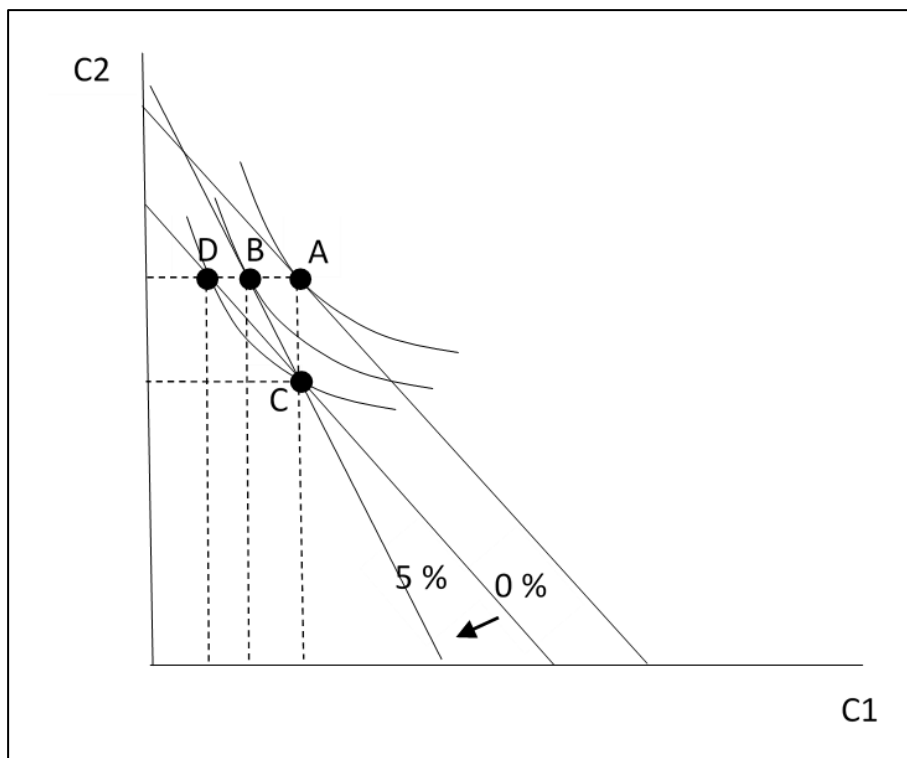


Figure 3. The Contract of Usury in Fisher's Model from the Viewpoint of the Lender. Source: Own Graph.

With the given budget constraint, there are only two ways how a subject can move onto a higher indifference curve: voluntary exchange and transfer. If the exchange is imposed on the subject against his will, he cannot get better off by this involuntary exchange. If he could, he would do it without the coercion. If goods X, Y are desirable for the subject, then, the subject can also get better off as a result of a received transfer. The borrower in the contract of usury moves from a lower indifference curve (combination C) onto a higher one (combination A) through a **voluntary exchange**. Next, the borrower moves from combination A onto a lower indifference curve (combination B) through an **involuntary transfer**. The combination B lies on a lower IC than the combination A, but still on a higher IC than the combination C. The opponent's trick consists in that he presents the shift from C to A to B as a shift from C to B which makes the

borrower better off and, that is why it must be a **voluntary exchange**. The problem is that the shift from C to B is not an **exchange** because the equality in exchange is violated here. In reality, the shift from C to B is an exchange with a subsequent **transfer**.

The indirect coercion consists in that the shift from A to B is a condition of the shift from C to A. The subject is promised that he will be allowed to move from C to A if (and only if) he will consent to a shift from A to B. This is the contradiction I keep pointing out repeatedly. In fact, if the subject ends up in point B, he cannot end up in point A. Which means that the counterpart is promising something impossible to him. Of course, if we conceive the contract of usury as shift from C to B, we can camouflage the contradiction. However, the contradiction will not disappear because the contract of usury will never be an exchange. The contradiction does not emerge only if the borrower falsely considers the contract of usury an exchange. In that case, the borrower's position is non-contradictory but only thanks to the ignorance about the true nature of the contract of usury. Thanks to this ignorance, then, the borrower's consent to the contract of usury is involuntary. The graphical representation of this involuntariness in Fisher's model will be identical. It is true, then, that combination B is better for the borrower than combination C. But the way in which the borrower gets from C to B is not a voluntary exchange. There is no way to get from C to B through a voluntary exchange.

The lender in the contract of usury moves from a lower IC (combination C) onto a higher IC (combination A) through a received **transfer**. Next, the lender moves onto a lower IC (combination B) through an **involuntary exchange**. The combination B is on a lower IC than the combination A but still on higher IC than the initial combination C. The opponent's trick consists in that he presents the shift from C to A to B as a shift from C to B which makes the lender better off, in effect, which means it must be a **voluntary exchange**. The problem is that the shift from C to B is not an **exchange** because the equality in exchange is violated here. In reality, the shift from C to B is an exchange with a preceding **transfer**.

The indirect coercion consists in that the shift from A to B is a condition of the shift from C to A. This is the contradiction I keep pointing out repeatedly. In fact, if the subject ends up in point B, he cannot end up in point A. Which means that the counterpart is promising something impossible to him. Of course, if we conceive the contract of usury as shift from C to B, we can camouflage the contradiction. However, the contradiction will not disappear because the contract of usury will never be an exchange. It is true, then, that combination B is better for the borrower than combination C. But the way in which the lender gets from C to B is not a voluntary exchange. There is no way to get from C to B through a voluntary exchange.

One thing is what the subject manifests to want. Another thing is what the subject really wants. The lender manifests that he wants and, at the same time, does not want to give a loan. Since he says a contradiction, it is as if he were saying nothing. He does not want to give a loan, actually, because what he wants is a transfer from the borrower. Since he does not want to give a loan, he is giving it involuntarily. He acts under indirect coercion from the borrower. The borrower manifest that he wants and, at the same time, does not want to give a transfer. Since he says a contradiction, it is as if he were saying nothing. He does not want to give a transfer, actually, because what he wants is a loan from the lender. Since he does not want to give a transfer, he is giving it involuntarily. He acts under indirect coercion from the lender. To the Paretian objection that the contract of usury is a voluntary exchange I respond that the **Pareto improvement does not imply the mutual voluntariness**. The way how both the lender and the borrower move onto a higher indifference curve is not a voluntary exchange. In fact, the contract of usury is **neither an exchange, nor voluntary**. It is not an exchange because it violates the equality in exchange. It is not voluntary, either, because it suffers from a double self-contradiction and voluntariness cannot be predicated to a self-contradictory (i. e. non-

being) act of will. I leave the question of state prohibition of the usury open. In this paper, I limit myself to the statement that the state **cannot and must not** enforce the contracts of usury. It cannot because the contracts of usury suffer from a double self-contradiction. It must not because the contracts of usury violate the commutative justice and the purpose of the state is to protect the justice.

## Summary

**From a subjective viewpoint**, the contract of usury is a complex of two contracts which contradict each other: the basic contract and the super-contract. From the lender's perspective, the basic contract is a loan and the super-contract is a sale of the loan. Since the lender negates his will to give a loan by the sale of the loan, the lender's consent to the contract of usury as whole is self-contradictory. From the borrower's perspective, the basic contract is a gift to the lender and the super-contract is a sale of this gift for a loan. Since the borrower negates his will to give a gift by the sale of the gift, the borrower's consent to the contract of usury as a whole is self-contradictory. Since voluntariness cannot be predicated to a self-contradictory (and, in effect, non-being) act of will, neither the borrower's consent, nor the lender's consent to the contract of usury can be considered voluntary.

**From an objective viewpoint**, the contract of usury is an example of a non-equal "exchange", i. e. a complex of an exchange (loan) and a transfer (usurious interest). Since the borrower does not give the transfer voluntarily, the lender violates the commutative justice by the contract of usury. At the same time, it is irrelevant whether the borrower grasps or does not grasp that he is giving a transfer. If he grasps that, his consent to the contract of usury is self-contradictory. He wants to give a gift, in fact, and he wants to sell the gift for a loan, at the same time, by which he negates his will to give a gift. If he does not grasp that he gives a transfer, his consent to the contract of usury is being given in a false conviction that this contract is an equal exchange, and this ignorance about the true nature of the contract implies that the borrower gives his consent to the contract of usury involuntarily. He does not want to give a transfer, in fact, because he thinks that the contract of usury is an equal exchange.

The lender does not consent to the loan. He just wants the transfer from the borrower. At the same time, the borrower does not consent to the transfer. He just wants the loan at 0 %. He does not want to buy it for the transfer. What makes the lender give the loan to the borrower, involuntarily? The indirect coercion by the borrower who makes the loan a condition of his consent to the transfer. What makes the borrower give the transfer to the lender, involuntarily? The indirect coercion by the lender who makes the transfer a condition of his consent to the loan. So, the indirect coercion is reciprocal. The lender and the borrower exert an indirect coercion on each other, mutually. Only the lender commits an injustice in relation to the borrower, though, because the commutative injustice is given by the transfer that cannot lean on a title of gift. Such a transfer flows from the borrower to the lender.

The Paretian objection is an argument that since both the borrower and the lender move onto a higher indifference curve thanks to the contract of usury, this contract must be a voluntary exchange. I respond to this objection that the contract of usury is neither an exchange, nor voluntary. It is not an exchange because it violates the equality in exchange. It is an exchange accompanied by a transfer. An exchange which the lender does not want, accompanied by a transfer which the borrower does not want. If the lender wanted to make an exchange (loan), he would make it even without the transfer. If the borrower wanted to give a transfer, he would give it to the lender even without the loan. The seeming paradox that a Pareto improvement is reached through a contract which suffers from a double self-contradiction has a following

solution. A shift onto a higher indifference curve is not possible in a different way than at cost of a simultaneous shift onto a lower indifference curve. The borrower moves onto a higher indifference curve thanks to the loan but he has to consent to a backward move onto a somewhat lower indifference curve as a result of an involuntary transfer to the lender. The lender moves onto a lower indifference curve due to the involuntary loan to the borrower and, subsequently, he is compensated by a shift onto a much more higher indifference curve thanks to the transfer from the borrower.

It is true that both the lender and the borrower move onto a higher indifference curve thanks to the contract of usury which means a Pareto improvement. Pareto improvement does not imply the mutual voluntariness, though. The way how both the lender and the borrower move onto a higher indifference curve is not a voluntary exchange, in fact. There is no way to move onto a higher indifference curve in the contract of usury through a voluntary exchange, actually. The contract of usury is neither an exchange, nor voluntary. It is not an exchange because it violates the equality in exchange. It is not voluntary, either, because it suffers from a double self-contradiction and voluntariness cannot be predicated to a self-contradictory (i. e. non-being) act of will. I leave the question of the state prohibition of usury open and I limit myself in this paper only to the statement that the state cannot and must not enforce the contracts of usury. It cannot because these contracts suffer from a double self-contradiction. It must not, either, because these contracts violate the commutative justice and it is the purpose of the state to protect the justice.

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