



THE BIBLICAL JUBILEE AND MODERN STATE INSOLVENCY



**“THIS IS A KAIROS FOR A GLOBAL REFORM PROCESS,
WHICH WOULD BUILD UPON THE BASIC PRINCIPLES
OF THE BIBLICAL JUBILEE CONCEPT.”**

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WHICH WOULD BUILD UPON THE BASIC PRINCIPLES

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The Sabbath and Jubilee Year concepts outlined in Deuteronomy 15 and Leviticus 25 of the Old Testament and referred to by Jesus in his first preaching in Nazareth (Luke 4) turn out to be astonishingly relevant to macroeconomic issues present in late capitalism.

These two Old Testament texts limit the rights of creditors to collect legally valid claims from their debtors in the agrarian society of ancient Israel.

In A.D. 2010, we are at the end of a lengthy period during which time the unfettered liberty of capital to move in search of rent, along with the protection of creditor rights at all costs, have been the order of the day. This so called neoliberal model, ruling supreme from the early 1980s until the 2008 outbreak of the global financial crisis, promised broad-based global growth and a ‘trickling down’ of the benefits, even to the marginal sectors of society. While it displayed quite some successes in both of these regards, it is apparent today with the effects of the present crisis and the deepening polarisation both within and between societies, that there are intrinsic downsides to this economic and social model.

The Sabbath and Jubilee Year laws written around 3000 years ago were some of the most important ways God ensured relationships between families and communities were protected. They had far-reaching implications for how society should operate. The fundamental aim of the laws was to prevent a situation of present debt distress from becoming one of permanent dependence, where one (poorer) part of the Israelite society was dependent on another (richer) part.

- Every seventh day in Israel was a Sabbath. On this day, no one was to work, neither was anyone to force another person to work, even a slave or foreigner (Exodus 20. 8-11).
- Every seventh year was a Sabbath year, in which the land was to rest and there was to be no sowing or reaping. Debts were to be cancelled, and anyone who had sold themselves into slavery to pay a debt or because of poverty was to be freed (Deuteronomy 15.1-11 and Leviticus 25. 1-7).
- Every seventh Sabbath year, meaning the fiftieth year, was a Jubilee year. Not only was land to rest, debts to be cancelled and slaves to be freed, but the equal distribution of land that God has given the Israelites when they first entered the promised land was to be restored. That is, in every lifetime, families who had lost their ancestral property would again have access to it, restoring to them the means of production (land largely standing for what financial capital is in our capitalist society today) and giving them a chance at economic independence.

So the Sabbath year and Jubilee year were to encourage justice and to limit debt and poverty by preventing the wealthy from accruing large amounts of land and oppressing the poor.

The ancient concepts contain principles, which are particularly important for us to note in the context of today's laws regarding debt relief:

- This restoration was independent of the political or economic circumstances of the time and it didn't depend on agreement from the wealthy or the ruling sectors. It was based on the law of God, as God is the sole and ultimate owner of the land.

- The ultimate aim was to secure the debtor's survival in dignity, which was to prevail over any claims of a creditor.
- Good behaviour on the part of the debtor was not a precondition to debt relief and land restoration, nor could any eventual mispending of resources have been a reason to exclude a person from enjoying relief. One qualified for the debt relief as a citizen (of Israel) and not as *homo-oeconomicus*.

For us today, the way in which the laws mandated debt relief at regular periods of time among the people of God provides a picture of how debtor-creditor relations can be designed and governed in a civilised manner. It is, however, important to note that the laws do not rule out lending or borrowing. Where there was need and where they had resources to do so, the wealthy were called upon to support their poorer neighbour with loans. In fact, Leviticus contains detailed rules about how lending should be rewarded when land was taken as collateral during the remaining period until the next Jubilee year. This is different to the part of the law, which called for people to support their fellow Israelites through charity (Esther 9,22).

Unfortunately, the application of these rules in Israelite society was at best scarce. There are some records of land being allowed to lie fallow every seventh year, but there is little or no evidence that the Jubilee year was ever fully observed. Jeremiah lamented the failure of the Israelites to obey the Jubilee year (Jeremiah 34. 8-17), and Isaiah spoke out against those 'who add house to house and join field to field' (Isaiah 5.8). Some authors in post-exile Israel in fact interpret the exile as the accumulated Sabbath years, which the Israelites had failed to obey.

Nor did these principles prevail in any form in the political history of societies built on Judeo-Christian culture, in Europe or elsewhere. Just the opposite: Roman law allowed for the factual elimination of the debtor, and medieval Europe knew the institution of the debtor's prison. Aside from the being entirely inhumane, both were, in economic terms, extremely inefficient approaches to recovering debt. In no way did these archaic ways to deal with debt accomplish what was the intrinsic aim of the Old Testament laws, namely the avoidance of the perpetual dividing of societies into rich lenders and poor debtors.

For efficiency's sake, and for the sake of equitable republican statehood, the capitalist, rule-of-law based societies that were emerging in England and Europe needed to overcome these antiquated instruments. Modern insolvency laws for corporate business and individuals were created, and they contained within them important elements of the Jubilee year concept.

According to modern day insolvency:

- The individual debtor must be left with enough resources to ensure survival and dignity, and it is forbidden that creditors have access to the debtor's basic resources.
- Corporate debtors enjoy creditor protection as much as there is a minimal chance of keeping a business going through debt restructuring.
- Debt relief is provided whenever it is necessary, which in a way translates the "once-in-a-lifetime" framework of the static agrarian society into the more dynamic reality of modern capitalism.
- These rules of insolvency are mandated by law so that neither a government nor creditor can interfere with the process or decide not to accept it.
- As much as religious authorities were given authority to hold the secular rulers to the application of Sabbath and Jubilee laws, the judiciary rather than government holds the power to apply modern insolvency laws. Access to an impartial judgment regarding insolvency is a legal right, and has nothing to do with charity or benevolence on the part of the creditor.

The application of these insolvency principles from the time of the French Revolution onwards has contributed strongly to the temperance of an otherwise ruthless capitalist system, and has helped to secure relative social coherence and peace within societies governed by the rule of (insolvency) law.

However, insolvency law does not apply to all debtor-creditor relationships. Notoriously exempt from the insolvency process are sovereign debtors. Rather than experiencing some form of legal protection, indebted states have been subject to what resemble medieval practices of debt collection:

- Creditors reserve the right to ultimately decide whether or not debt relief will be granted, through institutions like the Paris Club. Therefore it is a far from impartial process, and has been extensively influenced by political interests of all or some creditors. For example, debt relief has been provided where debt collection

was manifestly impossible or where the debtor country government represented an important ally, but has been denied to others who meet neither criterion, regardless of the human cost and the cost to economic independence of continuing to bleed the country's financial resources.

- Debt collection techniques, from the gunboats of the 19th century to the structural adjustment programs of the IMF in the 1980s, have given little or no regard to protection of basic human rights.
- Debt relief is provided (or denied) on the basis of analyses by the World Bank and the IMF – both regularly important creditors of the indebted sovereign, themselves – and therefore under to much of a conflict of interest to provide a truly impartial assessment.

This practice has been justified by the creditors on the basis that, different from ancient Israel or any other nation state, no international insolvency court exists at which an impartial and human rights based process could be applied. However for many years leading academics, UN bodies and international NGOs have studied and documented the way in which the existing domestic law system of protection could be used to create an international arbitration process.

Translating the principles at the heart of the Jubilee year – protection from long term indebtedness and the right to economic independence - into the modern world of financial relations, churches, debt campaigns and NGOs at large have called for a fundamental overhaul of management of sovereign debt and the treatment of indebted states. Establishment of an international sovereign insolvency framework has become the emblematic call of the global jubilee movement thus providing an institutional framework for the still valid call for the immediate cancellation of unsustainable and illegitimate debt.

So how far have we come in this process in A.D. 2010?

The bankruptcy of states has been with us practically throughout the entire period of modern economic history. Some Latin American countries have been in partial default on their obligations for the bigger part of their history. These defaults have been met with all kinds of messy "solutions", from protracted non-payment, to gunboat collection, to enforced payments conditional on structural adjustment, at the expense of both the most vulnerable sectors of society and the state's long term economic independence.

In the wake of the global financial crisis, more countries are at risk of default than were through the last decade, when economic growth rates tended to be high, and existing debt problems were in part accommodated by creditors conceding debt relief to the poorest countries via the HIPC/MDRI initiatives. Today a broad variety of countries from The Gambia to Iceland and from Greece to Argentina are at the brink of disorderly default.

At the same time, this is a Kairos for a global reform process, which would build upon the basic principles of the biblical Jubilee concept. Global reform of any sort is extremely difficult to bring about. It usually happens during the small window of opportunity when both the political will of some key actors and the sentiment among the populace at large come together. For too long, calls for an international insolvency framework have been the (sole) privilege of churches and development NGOs. Recently, these calls have resonated with some important governments in the North like Norway, Germany and the Netherlands, along with some major UN process and organisations including the FfD process and UNCTAD. The critical mass and the momentum necessary for global reform are beginning to appear. But as we learnt from the failed process towards a new framework in the hands of the IMF after the 2001-2003 Argentinean crisis, the window of opportunity which this global financial crisis has provided will not stay on for long. As the protracted fall-out of the financial crisis and the growing calls for reform coincide, it seems that we have a time-frame of two to four years in which to act.

So, the time to act is now!

Jubilee Australia emerged out of the successful international Jubilee 2000 Drop the Debt Campaign. Today, Jubilee plays a unique role in Australia, digging to the roots of poverty and injustice worldwide, exposing and challenging unjust Australian laws and practices that hurt the poor and marginalised, and speaking up for policies which reflect the spirit of Jubilee. Our work is driven by our relationships with civil society groups and peoples movements in the Global South who are on the front line in the struggle against extreme poverty and environmental degradation, and who call for economic transformation and global justice, not just charity.

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