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# CREDIT AS A SOURCE OF DEBTS AND WEALTH

## Abstract

This article analyses how easily accessible financialised consumer credit changes the social character of money as such. It is clear that contemporary consumer credit markets entail dangers of increasing levels of over-indebtedness, as well as opportunities for the growing economic independence of citizens. Financialised consumer credit is characterised by three factors: complex regulation, the option of resale of debts, and high costs for the customer. My main argument is that the consequences of financialised consumer credit markets can be governed by arranging institutions properly. In other words, it is argued that financialised consumer credit is neither good nor bad in general, but that its social acceptability will be the outcome of a complex regulatory arrangement. To demonstrate the options of such an arrangement, this article investigates the market conditions in Germany and compares them to some features of Poland.

**Keywords**: financialisation, credit, market economy, law

Sociological and anthropological research on consumer credit has been very productive recently. Some influential studies emphasised the topical phenomenon of individual and household debt in a global long-term perspective [Graeber 2011; Peebles 2010; Gelpi and Julien-Labruyère 2000]. Policies of consumer bankruptcy and insolvency legislation, which deal with the problem of high levels of over-indebtedness, have been analysed on an internationally comparative level [Niemi, Ramsay and Whitford 2009; Kilborn 2007; Niemi-Kiesiläinen, Ramsay

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and Whitford 2003]. Regional areas of the most thriving scientific investigation were the nucleus of the global credit industry, the United States, and to a lesser degree the centre of European consumer credit, the United Kingdom, with a variety of guiding questions [Prasad 2012; Hyman 2011; Krippner 2011; 2005; Langley 2010; O'Conell 2009; Montgomerie 2006; Skeel Jr. 2001; Calder 1999]. These studies are of importance for research in other regions, too, because the financialised consumer credit industry is transnationally interconnected, and its centres remain in the United States and in Great Britain.

Most of these studies, however, focus either on the demand side or on the supply side of consumer credit markets, or on pre-market forms of consumer credit. In distinction to this, the article at hand claims to capture financialised consumer credit markets as *total social facts* in the meaning of Marcel Mauss [1966], i.e., it aims at grasping the extension of consumer credit markets as an actor-network in society. The mechanisms on the side of credit providers are completely different from the worries of borrowers, of course. Yet, exactly the incommensurability of these interests keeps the market alive as a social phenomenon.

Methodology and concept of this article were developed in an in-depth-analysis of the South African consumer credit market. The method is an institutional analysis based on economic sociology of law [Swedberg 2003; Weber 1978]. Its basic assumption is that hegemonic economic institutions in complex societies are *legally constituted* because they depend on widespread public legitimacy. Legality provides for protection of economic transactions against interference from outside, and legitimacy ensures continuance of a market. A historical sociology of consumer credit serves the purpose of illustrating the question of legitimacy [Berger and Luckmann 1991: 72–73]. Of course, consumer credit has always been a hub of semi-legal and illegal business. However, a fundamental characteristic of *financialised consumer credit* is its establishment as a market, i.e., as a generally accessible and observable institution of society. The access to consumer credit has turned from a morally deprecated financial strategy into a democratic claim [Burton 2008: 5]. This is why the set of institutions of a consumer credit market require generalised trust as well as legitimacy.

This article carefully examines the relevance of the topic and the validity of the concepts for Germany, and provides some illustrating information about Poland. However, the article cannot perform an economic sociology of law in detail but rather outlines a potential field of further research. The German market is comparatively robust, and the Polish consumer credit market showed growth rates slightly higher than the other accession states of the European Union of 2004.

Consumer credit has changed its character fundamentally since the 1980s. It turned from a private business contract between two parties – or sometimes, an informal agreement enforced by social power – into a governmentally provided consumer credit market, which is promoted and advertised. Yet, it remains a special market under governmental surveillance and is strictly regulated because it deals with a "fictitious commodity", i.e., with money itself [Polanyi 2001: 71–80]. With the term ‚fictitious commodities' Karl Polanyi referred to the commodification of land, labour and money in market societies, because these commodities cannot be produced in a greater amount should the demand for them increase. On the contrary, it is well known that money has to remain *scarce* to keep its purchasing power.

The transformation of loan contracts from private peer-to-peer agreements of two parties into a complex institutional arrangement means that society as such is always involved. This is inevitable as a differentiated society with increasingly specialised labour markets depends on the proper functioning of the basic commodity of consumer credit markets, i.e., money. After consumer credit had been exonerated from moral condemnation, other forms of control had to be put in place. In the course of financialisation of the economy personal trust was generalised and risks were spread, involving a number of economic participants into the relationship. Financialised consumer credit has a specific effect on the relation of vertical, horizontal and general trust, as will be shown in the third section. This transformation is based on a redistribution of risks in credit relations by the application of credit scoring, and a modification – and very often a limitation – of property rights due to the implementation of consumer bankruptcy and insolvency laws.

This article begins with an illustration of financialised consumer credit, as distinguished from bridging loans and instalment loans, and its relevance for Germany and Poland, illustrated by contrasting examples from other countries. The main components of a functioning consumer credit market are identified in this section.

The second section gives an historical overview of the idea of usury. It then distinguishes three forms of consumer credit: bridging loans, instalment credit and, finally, financialised consumer credit. The older treatments of consumer credit not only provide the background for contemporary legitimisation but also offer alternative perspectives on the topic.

In a third section, the transformation of personal into institutional trust and its relation to control is discussed, firstly, by reference to credit scoring, and secondly, by interpreting consumer bankruptcy and insolvency legislation as

a limitation of property rights. Additionally, higher levels of over-indebtedness, associated with thriving consumer credit markets, effected in a partial limitation of property rights and redirection of trusting relations.

The conclusion of the article reflects the often neglected opportunities deriving from consumer credit, and reflect on the options of rearrangements of the institutional settings.

## SOME CHARACTERISTICS OF FINANCIALISED CONSUMER CREDIT MARKETS

The availability of consumer credit has massively increased since the 1980s. Part of his development were changes especially in the form of risk assessment procedures, which turned from a personal check of trustworthiness into an institutionalised calculation of the customer's eligibility to repay a loan depending on his or her future economic prospects. This technology, named *credit scoring*, allows performing risk assessments even at a distance, and resulted in bargaining unsecured loans which can be requested without any personal interaction in the World Wide Web [see http://www.maxda.de and http://www.wonga.pl as examples] or within a few minutes at a bank branch. It will be discussed in detail in the third section, and the article begins with illustrating the effects of this change.

In distinction from older forms of personal lending, financialised consumer credit seems not to be scarce. It is openly advertised and integral part of many sales. Some loans are granted without a collateral, i.e., they are *unsecured loans*, which means that there is a high risk of capital loss and indebtedness attached to them.

In Germany, the market access barriers as well as the restrictions in regard to financial products are relatively high. The general approval of banks is controlled by the governmental supervisory body *BaFin* (*Bundesanstalt für Finanzdienstleistungsaufsicht*), and the current business is constantly checked by the central bank. Minimum requirement for founding a deposit bank in Germany is a capital injection as high as € 5 billion, and other capitalisation requirements add up to this. Interest rate restrictions derive from the Civil Code [*Bürgerliches Gesetzbuch*: 138] as well as from the Criminal Code [*Strafgesetzbuch*: 291]. Since 1967, the interest rate cap is controlled by the central bank. The maximum interest rate ceiling is defined as twice the average annual percentage rate of all consumer loans granted by commercial banks (*MFI-rate*), categorised along credit type and term, but not more than twelve percentage points over average rates [IFF and ZEW 2010: 63]. Actually, this resulted in maximum interest rates below 20 per

cent during recent years – at 15.2 per cent in August 2015 – and deterred some credit providers from entering the German market [Bundesbank 2015: 122].

After a strong market growth during the second half of the 1980s, and another short boom after German unification in 1990, the demand for consumer credit in Germany flatlined since the 1990s. The amount of outstanding credit grew slowly in comparison to other European countries and even declined after 2004. The share of consumer credit of the Gross Domestic Product decreased in some years since 1995, and there was a temporary contraction of the consumer credit market [Bundesbank 1993: 21–32; IFF and ZEW 2010: 195–197]. From to 2013 to 2014, there was no growth in private consumer credit at all. Nearly a quarter of all consumer credit was used for car financing, and almost half the amount of all loans served instalment purchases and improvement of housing. Higher income strata were overrepresented, but 37 per cent of all loans were granted to customers from the average income strata [Bankenfachverband 2015: 32–35]. Yet, even in Germany there exists a subprime credit market [Kredite ohne Schufa, e.g. http://www.certo-finanz.de], exploiting existing legal loopholes by replacing interest with fees [IFF and ZEW 2010: 202]. This sector of the market is difficult to gauge, though. To sum up, the consumer credit industry in Germany is relatively robust, almost without growth and the range of products remains comparatively small.

For instance, the payday lender Wonga operates in South Africa, Britain, Canada, Spain and Poland but not in Germany. Wonga.pl is an interesting example to demonstrate the options of financialised consumer credit. They promise their customers to perform to check the application for a small loan within 15 minutes. This means, a borrower asks for money, transfers some basic information that enables the company to identify the person free of doubt, and within 15 minutes the money will be transferred to the borrower's account. No customer has to enter a bank and meet a clerk, not even to talk personally to someone else on the phone. In Poland, Wonga offers loans up to 750 Złoty for a maximum repayment period of 60 days. The rates of Wonga.pl are modelled to be easy to calculate, but at the same time they mix up interest and fees to an inscrutable clutter. Wonga.pl is confronted with the Polish interest rate restriction of 400 per cent of the central bank's Lombard Rate [IFF and ZEW 2010: 63], i.e., ten per cent in August 2015. The company circumvents this restriction by declaring not to take interest at all but to charge a provision [*Prowizja*].

The loan offer starts with two simple questions. "How much money do you need? For how long?" Then a customer can move a slider bar from zł 50 up to zł 750, and another one to choose a time frame between 1 and 60 days as period of repayment (indeed, customers may borrow money for a single day). At the

time of research, first time customers received an appetiser: 10 Złoty regardless of the amount they borrow, for a maximum repayment period of two months. In August 2015, a regular offer was a loan of zł 1080 for twelve days, requiring a repayment of zł 1159,38, and this offer was free of interest but charged with a "brokerage". For the borrower, it is unimportant how the costs are named, of course, and I calculated an annual percentage rate of 126 per cent from this example[1].

Wherever they operate, Wonga exploits the margins. In the United Kingdom, there is no interest rate ceiling, only the legal principle of fairness of contracts [IFF and ZWE 2010: 52]. To their British customers Wonga offered a loan of £100, to repay with £110,40 after thirteen days. This resulted in an annual percentage rate of 1509 per cent. Remarkably, in Poland Wonga hid the costs of credit behind *Prowizja*, whereas in Britain they were obliged to publish them but need not restrict them. As a consequence, the annual percentage rate of 1509 per cent was openly shown on the website.

An inevitable concomitant of financialised consumer credit is over-indebtedness. Credit scoring is based on calculating the future income prospects of customers, but even most carefully estimated expectations are subject to unforeseen events like unemployment, illness and divorce. A common parameter for assessing the levels of indebtedness of a country's population is the debt-to-income ratio. It designates how much of the average monthly income of households has to be spent on debts. A deterring effect on this parameter derives from national cultures of mortgages and housing, though. In some countries, housing is used as a main strategy of private asset accumulation, and mortgages play an important role because houses are paid off with relatively cheap debts, and consumption is financed with mortgages. As a consequence, in some countries the debt-to-income-ratio indicates figures above 100 per cent (even above 200 per cent in the cases of Denmark, Ireland and The Netherlands). The subprime mortgage crisis of 2008 blurred these statistics once more. Nevertheless, the debt-to-income-ratio gives an idea of how important a role consumer credit plays in a country.

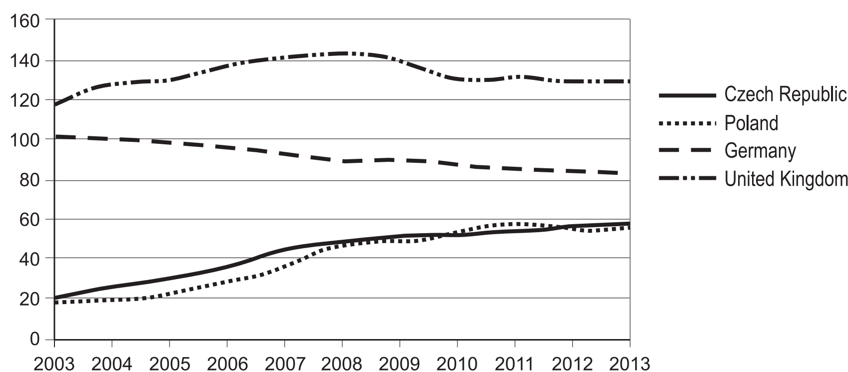
In the European context, the figures show a very uncommon development in Germany, with constantly declining debt-to-income-ratios since 2003. In the United Kingdom, the rates are relatively high and rising. Poland shows increasing levels of indebtedness, too. For the purpose of comparison, the Czech Republic as another accession state of 2004 is included, which has a comparatively high

[1] Credit costs divided by the principal, in relation to the repayment period factor. [(1159.38 – 1080) / 1080] x [24 / 1.4] x 100 = 126.

interest rate ceiling of four times the average [IFF and ZEW 2010: 39]. In Poland, like in the Czech Republic, roughly half the income is spent on servicing debts, in Germany it declined from 100 per cent to 80 per cent, and in the UK it is near 130 per cent.

Two insights are important here: First of all, there was no difference of market development between Poland and the Czech Republic despite a divergence in interest rate restrictions. This can be explained by the fact that credit scoring refers to *prospects* of future earnings of customers, and demand is governed by economic *expectations* of middle-class borrowers. That is to say, neither credit providers nor consumers tend to expand their demand for consumer credit as long as economic prospects are ambivalent. Another insight refers to the effect of institutional arrangements. The restriction on interest rates and credit products in Germany accustomed the middle income strata to get along with their earnings, but it seems to be more common to smooth consumption over time by using loans in the UK. Of course, these explanations would require more detailed research, and are only suggested here.

CHART: Debt-To-Income Ratio




Source: Eurostat

By the time of 2008, when Poland amended its bankruptcy laws, it provided the sixth biggest consumer credit market of the European Union, which had strongly grown since 2004. Main areas of growth were loans on current accounts and credit cards [IFF and ZWE 2010: 212]. That is to say, the growth of consumer credit in Poland was mainly caused by a demand for short term loans. Probably this development was carefully recognised by Wonga, because this represents their business field and they began to operate in Poland in 2012.

It is important to notice that non-financialised consumer credit still plays a very prominent role in Poland. More than half of the market share of household credit was caused by home loans, which were accessible to people without a bank account and contained a relatively low risk to credit providers. In 2010, the average size of home loans was € 385 with repayment periods of 6, 9 or 12 months and interest rates at the margins. There were two ways of debt collection: weekly visits by an agent of the credit provider or through a bank account. Cash payments to a credit provider required a "convenience fee" but entailed no extra costs in case of a default; with debit orders from a bank account it was just the other way around. In 2015, the biggest provider in this area – a company with headquarters in the UK – had 851,000 customers in Poland and Lithuania, and granted more than € 240 million of credit money to them [IFF and ZEW 2010: 212–214 and http://www.ipfin.co.uk].

This reference to the Polish market with its relatively high proportion of mortgages allows identifying some characteristics of financialised consumer credit. Important to keep in mind that older forms of credit – bridging loans and instalment loans – do not disappear, but they are rivalled by new products.

Financialised consumer credit can be characterised by six core factors [Schraten 2014a, 2014b; Hyman 2011; Langley 2010; Langenohl 2008; Burton 2008: 66–85; Montgomerie 2006; Dodd 2005; Shiller 2003; Martin 2002].

1. It is offered on a generally accessible market, and there is competition between credit providers in regard to products and market shares. The business is evaluated in regard to growth rates. This is remarkable as household's savings were held to be a precondition for a healthy economy since the times of Adam Smith, and *private debts* had been equated with *living beyond one's means*.

2. It is available without a collateral. This allows people without assets and fortunes to receive a loan. Precondition, however, is a prospect of income. Generally, this means a switch from past achievements towards future outlooks.

3. In distinction from bridging and instalment loans, which represent personal contracts between lender and borrower in a long-term relationship, financialised consumer loans are offered in a complex institutional framework, backed by financial markets on which debts are resold as asset-backed securities. The initial contract can change its forms, risk takers may enter and leave the deal.

4. This requires a complex regulatory framework because the sanctity of contracts no longer is sufficient to found a consumer credit relation. Banking supervision and international payment systems are among the most important factors of this framework.

5. Technology plays an important part in financialised consumer credit. This factor ranges from electronic funds transfer, cash withdrawal at an ATM, deposit orders for collecting the debts to credit scoring, which came of age only after decentralised electronic data collecting and processing emerged.

6. The pricing of credit is profit-maximising instead of risk-minimising. This means that high risk customers, e.g., with relatively low income, represent better customers than highly reliable payers because there is a higher interest rate attached to them. Additionally, defaults of repayment offer the option of increased earnings, instead of destroying trustworthiness as the foundation of the business relationship.

To understand and evaluate this fundamental changes from "old" to "new" credit [Burton 2008: 67] it is important to give a short historical sociology of consumer credit.

## FROM SECRET BUSINESS TO ADVERTISED CONSUMER CREDIT

The historical sociology of consumer credit is important for two reasons. First of all, regulation of consumer credit markets is debated on the background of economic ethics which are based on *longue durée* developments. In particular, interest rate caps are morally gauged and legally justified on the notion of *usury* [IFF and ZEW 2010: 25–27]. Secondly, older forms of credit – and the social mechanisms underlying them – still compete with financialised consumer credit, and it is of relevance to outline that different forms of consumer credit correlate with specific socio-economic conditions, especially concerning labour markets.

This section covers two interrelated topics. It starts with the topic of usury as a condemnation of taking interest, and it then explains three developmental stages of consumer credit, i.e., bridging loans, instalment loans and financialised loans.

## THE DISCOURSE ON USURY HAMPERS MONEY LENDING

Although financialised consumer credit markets are the result of a highly competitive banking business in an environment of flexible interest rates, restrictions based on the historical idea of usury are still valid in most European countries. Economically, they function as price controls and quite often they are discussed as part of consumer protection. Nevertheless, twenty-one member states of the European Union explicitly refer to the term "usury", and some justify restrictions of the interest rate in order to defend "good morals" [IFF and ZWE 2010: 38–45].

A review of the development of the idea of usury should not stick to the chronology of moral justifications but to that of legal orders because of the asynchrony of the two paths. The condemnation of taking interest on borrowed fungible goods and money made full sense in a subsistent economy without general growth[1]. In fact, taking care of borrowed things might have incurred costs rather than benefits under such circumstances, therefore demanding extra charges on lending could be seen as an offence to fairness. Nevertheless, the mismatch in the distribution of resources made lending a promising venture despite social deprecation. The foundations of governing money lending were already laid in the earliest fixed and published European laws, i.e., the Twelve Tables of the Roman Republic after 451 BCE. They provided a limitation of interest rates, although the quantification is still disputed among historians. However, money lending remained a matter of concern to a small elite of Romans only, but credit crises were common among them [Temin 2006: 136, 143–146; Andreau 1999: 9–29, 90–99].

The Roman law fragmented over time until a period of unification and systematisation set in after 438 CE, which remained of importance for legal argumentation as well as for moral justifications to the present day. The Justinian Code of Roman Law, compiled between 529 and 533, distinguished the *mutuum* from the *nauticum foenus* contract. The first referred to a temporary transfer of ownership to the borrower with the consequence that all gains deriving from the usage of the loan would belong to the borrower as well. The second referred to the concept of a loan contract that allowed stipulating a fixed interest rate beforehand. The name documented that its initial purpose was to finance large and long lasting seaborne mercantile ventures. In these cases interest was justified by the idea that the lender kept ownership of his property, he literally *took part* in the enterprise [Munro 2012: 159–160].

During the late middle-ages, however, another line of argument shaped the European discourse on usury. Its sources were much older – the Bible and Aristotle. Their views were amalgamated by Scholastic theologians like Albertus Magnus and St. Thomas Aquinas and initiated a struggle between religious condemnation and economic requirements [Noonan 1957]. Aristotle's argument became downright famous and still can be found in popular discussions, therefore it is worthwhile citing him: "Hence, usury is very justifiably detested, since it gets wealth from money itself, rather than from the very thing money was devised to facilitate. […] Hence, of all the kinds of wealth acquisition this one is the most unnatural" [*Politics 1.10.1258*$^{b}$, Aristotle 1998: 19]. This ancient line of argument supported already existing Christian tenets of the medieval times. The most influential commandment of the Bible also was the most ambiguous one,

because Deuteronomy 23: 19–20 made a distinction between prohibited demands from fellow Israelites and admissible claims of interest from foreigners. Despite other, more definite interdictions against usury [Exodus 22:25; Leviticus 25: 35–37; Ezekiel 18:13; Luke 6: 35; Matthew 21: 12–13; Mark 11:15], Scholastic debates focussed on the oldest commandment. Of main importance was that these debates transformed the formal distinction between legal and illegal forms of lending in Roman law into a moral one. From the thirteenth century on, interest on money lending – not on lent property, though – was said to be a deadly sin [Munro 2012: 160–161].

From here, money lending and taking interest was generally excoriated, and made it the business of social outcasts in Western societies[2]. However, exemptions from the rule had always been possible. The ideology hampered but could not prevent the practice of money lending. Sovereigns demanded money for war, agrarian societies needed credit after failed harvests, and even the Christian church made use of it in her business. Above of all, European economies regularly suffered from a shortage of specie, with the consequence that business had to be done on a credit base. Then, subsequently to the commercial organisation of production and the expansion of trade from the fifteenth century on, money markets appeared all over Europe [Braudel 1992: 51]. They were constantly counteracted on moral grounds by religious leaders but with decreasing success [Braudel 1992: 559–565]. The debates on usury – and possible exemptions from it – shaped discussions well into the twentieth century [Munro 2012; Calder 1999: 74–108; Postan 1973; Nelson 1969]. Of importance for the topic of personal loans was that moral scruples added up to the risk of money lending, so that credit was accessible only to people of unquestioned reputation [Burton 2008: 6–13; Fontaine 2001].

This conflict between two perceptions of credit as morally deprecated on the one hand and economically useful on the other was still to be found in the birthplace of the consumer credit industry just prior to its establishment, i.e., in the United States at the turn from the nineteenth to the twentieth century. With usury laws still in place, needy households had very limited options to borrow money: family and friends, illegal money lenders, pawnbrokers and mortgage lenders. The business of pawnshops was facilitated by the fact that they did not require elaborated contracts and complex debt collection methods because the pawn itself functioned as an object of agreement as well as a collateral. Addition-

[2] The history of non-monetary lending and its restriction is much older; see Graeber 2011; Gelpi and Julien-Labruyère 2000: 3–14.

ally, pawnbroking made it easy to hide illegal costs by simply underrating the pawn. The growth of pawnshops during the early industrial period signalled the need of the working class for credit providers [Calder 1999: 38, 42–58]. The few available providers of consumer credit before the widespread relaxation of usury laws were either short of money themselves, expensive or required some kind of collateral, and most of them could only be found in bigger cities.

The social revolution that came with the industrialisation changed the views on consumer credit fundamentally. In England, the Usury Repeals Act 28 of 1855 removed the fixed interest rate of 6 per cent, which had been valid in the British Empire since the Usury Act of 1660. Ten European countries followed with similar measures until 1867 [Calder 1999: 114, 330]. For example, in England the limitation of interest rates became the responsibility of courts (s. 2 Usury Repeals Act). In Prussia and the North German Confederation, a "law concerning contractual interest rate"[3] removed any legal limitation of interest rates in 1867, and transferred the oversight to controlling authorities of pawnshops. The new point of view that became prevalent in these times was exemplarily expressed by a judge of the Victorian times who had to deal with debtors regularly.

> The great mass of the working class are respectable, sober, and frugal. And almost all of them require credit. Why? Simply because very few of them can afford – out of their earnings – to save a fund of ready money. […] The evil involved is Poverty [sic], which is the inheritance of mankind. Credit is the corrective of that evil, as, in a civilised country, it enables a man who is without present means, to tide over, by aid of the capitalist, temporary vicissitudes, which in a savage state, would involve him in ruin and starvation [Johnes 1869: 4].

Judge Johnes, in the way of suggesting a rational allocation of money, referred to a paradox of early industrial development here. On the one hand, wage labour lifted the living conditions of many, and allowed them building an existence based on industrial commodities instead of subsistence. On the other hand, industrialisation made workers dependent on wages, and any interruption of earnings due to illness or unemployment left them without means. For the development of consumer credit this double movement was crucial. It enabled credit providers to calculate benefits from the prospect of future wages against the risk of lending to low- and middle-income customers. At the same time the inconsistency of economic development created a regular demand from those with an interruption of income [Calder 1999: 116–117]. Additionally, the state-

[3] Gesetz, betreffend die vertragsmäßigen Zinsen, Bundesgesetzblatt des Norddeutschen Bundes Band 1867, Nr. 11, S. 159–160, Fassung vom 14. November 1867, Bekanntmachung 19. November 1867.

ment of Judge Johnes gave proof of the meanwhile established social legitimacy of earning money with money. Aristotle's notion of money's infertility had been overcome by insights into the option of "money-breeding" (Marx 1987: 90) by charging interest on invested amounts of money. Part of the reversal of opinion in regard to consumer credit was that it became unusual to imprison debtors, because creditors were more interested in their productivity than in their punishment [Burton 2008: 14–19; Finn 1998].

## THE THREE FORMS OF CONSUMER CREDIT

The option to charge higher interest was a precondition for establishing legal consumer credit. In the beginning, the removal of interest rate caps made some pawnbrokers aware of the fact that there was money to be made by credit, and the business grew quickly [Calder 1999: 51–57].

Besides moral condemnation, lending small amounts of money was an expensive business to perform [Calder 1999: 115]. In distinction from banks, small lenders had no access to deposits and often had to borrow bigger amounts of money themselves. Checking the eligibility of potential customers required at least the same effort than for bigger business loans to companies. Many questions were asked, and given answers had to be approved. Additionally, the collection of debts was a time consuming and often fruitless endeavour [Calder 1999: 53; Hart 1990: 179–186]. For working class borrowers of the nineteenth and beginning twentieth century it was not uncommon to pay back only a few cents or pennies a week over a period of several years.

Finally, a prospering consumer credit industry came into being after the First World War [Hyman 2011: 10–44; Calder 1999: 211–261]. Its success depended on the combination of two different kinds of lending: small loan cash lending to the working class, and the instalment sale, which had developed as a specific kind of sales strategy especially to farmers and upper-middle-class households from the mid-nineteenth century on. Already in the nineteenth century, expensive harvesters and sewing machines were promoted by the option of instalment purchase. From the 1920s on, expensive consumer goods like cars, refrigerators and radios could be sold to contracted workers with a solid prospect of wages by demanding relatively small monthly payments. It massively increased the turnover of producers, and allowed the working class to enjoy consumer goods without having to save for years beforehand.

However, the consumer lending industry was not established by commercial banks but by loan societies in the first place. Loan societies did not receive their

capital from deposits but from stockholders' capital injections. In their business practice, many of them demanded a down-payment of a certain amount before granting the rest as a loan, sometimes up to half the price. Additionally, the money was directly passed on to the seller of the industrial good, and the commodity served as a collateral. This functioned as risk-reducing measure on the part of credit providers and established a long-lasting business relationship between lender and borrower. The instalment payment procedure was deliberately advertised as a kind of financial education by the business association. "The experience of repaying the loan taught him [the customer] the habit of putting aside money every month, so that after a loan was repaid, he started a savings account and became a stock holder in a loan association" [a business representative cited in Calder 1999: 143]. Another credit provider defined his business as follows: "The job of the industrial lender… is to get people out of debt and teach them to budget their earnings and save" [cited in Calder 1999: 144]. In other words, the purpose of instalment lending allegedly was to dispense with lending at all, and it still rested on the virtues of thriftiness and savings.

As a reaction to the financial crisis of 1929, instalment loan societies were accompanied by mortgage lenders [Hyman 2011: 45–97]. Housing and expensive consumer goods built the occasion for expanding the business to Western Europe after the Second World War, too [Gaillard 2012; Belvederesi-Koch 2012; O'Connell 2009: 88–130]. It is important to say that the lending business was heavily regulated and governmentally supervised. Commercial banks shunned the risks involved in consumer credit and entered the business only very reluctantly. In the early postwar period, there was better business to make with industrial credit. It was the proper place for a joke that went around in the United States of the 1920s, referring to the economic divide of the financial business: "A bank is a place for the poor man to put his money so that a rich man can get it when he wants" [Calder 1999: 146].

Housing was not only connected to the mortgage industry, but also to the construction sector of industrialised societies. Especially in the United States, balancing the access to mortgages was used to govern the business cycles of the construction industry and to direct economic development in boom and downturn periods. Due to a bunch of reasons, which cannot be discussed here in detail, this policy of a governed capitalism failed from the 1960s on, creating the double problem of a lack of investments and high inflation rates [Schraten 2015b; Krippner 2012; Hyman 2011: 220–280]. The core of the problem became known under the term of "stagflation", the term being a combination of "stagnation" of growth rates and "inflation", because it disabled the New Deal-policy of induc-

ing new growth by governmental capital injections during economic downturns. Under the new circumstances, increasing the money supply just aggravated the problem of inflation but did not trigger investments as all economic actors expected exactly this to happen, and adjusted their actions beforehand [Friedman 1968]. Krippner points out that there was no intentional program to solve the problem. Instead, the financialisation of the economy would be better understood as the unintended consequence of a number of reactions to the crisis of stagflation [Krippner 2012: 58].

Among the most important results of the crisis were the creation of a secondary market for mortgages from the 1960s on, and the transformation of a compartmentalised financial business into an integrated and internationally competing banking business. The first was intentionally created to increase the option of mortgage lending institutions to refinance themselves without depending on money injections from the government. It served as a model for securitisation of other financial products, which passed a number of relatively small cash flows to investors in the form of bonds [Leyshon and Thrift 2007]. The rationale of the principle lies in reselling debts at a price above the amount of the principal but below the total of repayments, creating a beneficial opportunity for credit providers and bond investors alike [Cumming 1987; Langley 2006]. The second measure, i.e., the removal of restrictions on the business of commercial banks, allowed mainstream banks to act as credit providers, tapping the resources of common savers. Important part was the cutback of interest rate restrictions, especially in regard to deposits of ordinary bank customers. It should be noted, that both measures granted a huge part of the population access to additional financial resources. Therefore, no public opposition could be expected by opening the market to middle-income citizens.

The most crucial governmental measure, however, consisted in the willingness to fight inflation at the cost of employment. From October 1979 on, the Federal Reserve Bank of the United States intended to keep the money supply stable by letting interest rates rise whenever capital demand increased. The effect was a volatile and relatively high interest rate. The consequences of these high interest rates lasted despite an abandonment of monetarist policies after 1982.

Policy makers had expected a contraction of the money supply as outcome of high interest rates. What they did not calculate was that non-U.S. capital was looking for worthwhile investment opportunities meanwhile. Capital from abroad started investing in bonds on U.S. financial markets, and the increased demand let the market prices rise. The Reagan administration, stripped off the possibility to finance the governmental budget by raising the supply of U.S. dollars, began to

issue bonds and provided for new securities to invest in [Krippner 2012: 58–120; Hyman 2011: 220–280]. This financial mechanism soon became popular in other countries, too.

The effects on ordinary citizens was twofold. On the one hand, financial markets offered new options to invest own earnings. On the other hand, commercial banks now offered new credit products to finance consumption in advance. The traditional landscape of finance had been clearly divided into investing companies and saving customers. From the 1980s on, ordinary citizens turned out to be savers and borrowers at the same time [Krippner 2012: 74–76]. Of course, there is no contradiction between serving long-term savings plans for the own retirement on the one hand, and taking out a loan to finance current consumption on the other.

In the course of the portrayed economic development, three different forms of lending appeared. In the beginning, missing economic stability created a demand for small loans by lower-income customers. It is important to mention that bridging loans were introduced with a beneficial intention in the beginning, and turned into a profit-oriented business later only [Calder 1999]. This line of development was repeated in the 1990s in the Third World; "micro-lending" was intended to have emancipating effects before it became the playground of a profit-oriented business [Bateman 2010]. As contract work and continually rising wages turned into a general economic expectation, instalment credit made a loan product of the property-owning class available to wage labourers. These loans were intended for consumption from the beginning, and they had a disciplining effect on financial management of the masses by offering them access to consumer goods in exchange for a long-term rationing of their income. It created persistent economic relationships between credit providers and borrowers [Langley 2010]. In the course of this development, the future turned from an unpredictable fate into a calculable time-frame. This laid the foundation for financialised credit, which basically extended the access to consumer credit by spreading the risks. In the course of this development the business principle of instalment banks, that is receiving interest for accepting the danger of a default of repayment, was extended, first, to commercial banks, and then to investors on financial markets. This improved the techniques of risk measurement and increased the available monetary resources [Burton 2008: 66–85].

This economic development was closely connected to the developments of communication and data processing technology, which facilitated financialisation on the one hand, but was supported by it on the other. This development had a deep impact on the handling of trust in credit relationships.

## THE TRANSFORMATION OF TRUST IN FINANCIALISED CONSUMER CREDIT MARKETS

The previous sections of this article gave some evidence to the idea that a contract between a credit provider and a customer has become a matter of strangers who do not even have to talk to each other. The economic relation starts with the initiation of a loan contract, often between a lender and a borrower who had no business relation before, and it ends with the final settlement of the deal. In this section it is argued that trust in credit agreements was transformed from a horizontal social relation between two parties into a complex of vertical *control* and generalised *confidence* and *trust*. However, this argument depends on the existence of legal options of debt relief for over-indebted borrowers. Consumer bankruptcy legislation containing such an option can be interpreted as a limitation of property rights, and as a measure to distribute the risks of consumer credit between credit providers, their customers and society in general. The argument was developed in a case in which such an option did not exist [Schraten 2014; 2015].

In order to make my contention, three different concepts have to be clarified. The first is the social quality of trust as an economic mode of action. The second is the concept of control in consumer credit, which is performed by making use of credit scoring and payment systems. The third is consumer bankruptcy legislation, which was implemented in many European countries since 1984 in order to cope with increasing levels of desperate over-indebtedness.

## TRUST AS AN ECONOMIC MODE OF ACTION

Trust is directly linked to risks. It designates the willingness to continue cooperation despite disappointments that derived from such a behaviour in the past, and therefore may happen in the future again. Ulrich Beck [1992] and Anthony Giddens [1990] had pointed out that risks are an inevitable concomitant of modern society. Much earlier, Frank Knight [1921] had suggested that risks represent the foundation of economic profit. According to his work, the willingness of an entrepreneur to take risks, that is to invest despite the possibility of a disappointment in the form of a loss of capital, provides the reason for others to pay him. In regard to consumer credit, this idea is supported by the historical example of the legal construction of the *nauticum foenus* contract in Ancient Rome. The possibility of *no return* of mercantile ships justified *high returns* in case of a successful endeavour, and legalised the taking of interest in an economy that prohibited it in other cases. Niklas Luhmann made the important distinction of

confidence from trust. Confidence is required in situations of unknown outcome, which cannot be avoided, whereas trust is avoidable at the cost of waiving an opportunity, which means that confidence refers to dangers and trust refers to risks. One has to be confident, but may eschew trust. Accordingly, dangers appear due to circumstances beyond one's own control whereas risk is a consequence of free will action [Luhmann 1990: 97–98]. In congruence with this, Keith Hart [1990] made the important observation that trust is limited to social interaction that takes place between the poles of kinship and contract. Kinship, which may be defined differently in distinct societies, is not debatable for the individual. Contracts, on the other hand, inevitably contain the claim for enforcement, and questioning their validity undermines the concept as such [Derrida 1990][4]. That is to say, kinship represents the *social* boundary of free will action, and contracts define its *formal* limitation. Social relations inside this sphere range from informal and close *friendship*, which can be seen a form of voluntary kinship, to formal and more loose *associations*, which can be seen as an agreement that lacks the claim of unconditional enforcement of contracts. The important consequence of Hart's insight is that trust in credit relationships may only refer to those aspects which cannot be covered by the contract itself. Those parts of an agreement which can be enforced by involving a legal system do not need trusting. That is to say that trust in credit relationships is limited to the non-contractual elements of the contract as outlined by Émile Durkheim [1997: 162–163]. This again has to be interpreted with Luhmann's distinction of confidence and trust. Inevitable dangers like economic downturns or financial crises can only be encountered with confidence; trust, on the contrary, refers to intentional misdoings of a borrower, i.e., *moral hazard* [Baker 1996]. This differentiation will allow allocating control, trust and confidence in financialised consumer credit relations.

## CONTROL IN FINANCIALISED CONSUMER CREDIT

Financialised consumer credit depends on two important infrastructural preconditions, i.e., credit scoring and payment systems. The former enables credit providers to perform risk assessment procedures with unknown customers, whereas the latter serves the control of settlements of a multitude of payments in a very short time. Together, these technologies prevent fraud in the consumer credit business. That is to say, they dispense with trusting.

[4] This is the reason why even the most mundane legal theorists defend a sanctity on contracts.

The basic situation credit scoring is applied to is that of a double contingency, which means that two actors have to settle their mutual actions without having options to control the behaviour of *alter ego* in advance [Luhmann 1995: 103–136]. This situation is complicated by an asymmetry of information, because a credit provider needs to know what a borrower knows, e.g., the purpose of his loan, realistic expectations of future earnings, his willingness to be diligent, and so on [Burton 2008: 48; Leyshon and Thrift 1999: 436]. A risk-averse strategy would consist in assuming moral hazard, i.e., to work under worst case scenario. However, as became clear from the discussion of confidence and trust in contemporary society, this would mean to eschew the option of profiting from consumer credit, an alternative not available to commercial banks competing for customers in a tough market environment. At this point credit scoring steps in. “Instead of trusting people, institutions develop technologies that seek to remove the uncertainties of human behaviour by calculating the risks to the point of almost complete control” [Burton 2008: 50].

Credit scoring aims at transforming unknown uncertainty into risks by attaching probabilities to possible outcomes. Its basic function consists in dividing the customer base into *good* and *bad* borrowers in advance and at a distance[5]. First attempts had already been made by mail order companies in the United States in the 1930s, but the technology became a productive tool only by applying computer technology, i.e., from the 1960s on. In Germany, the first credit scoring company was formed in 1927, but it became a thriving and competitive business only from the 1970s on, like in many other European countries [Frohman 2012; Leyshon and Thrift 1999: 444].

Credit scoring has become the business of specialised companies, commonly called *credit reference bureaux* or simply *credit bureaux*, which collect data about people from different sources: from banks, insurance companies, governmental agencies, courts. Besides those data delivered by customers themselves and gathered by credit providers, credit bureaux are looking for embarrassing information, i.e., information that a potential borrower would rather keep for himself, like former breaches of contract, delays of debt repayment and so on. It is this negative information about possible reasons for a default of repayments that allow credit bureaux to calculate a risk. Only the connection of positive prospects with negative possibilities enables a transformation of an unknown uncertainty into a risky future in the meaning of Frank Knight. From a customer’s perspective

[5] The refusal of a loan in case of being listed among potentially bad customers survived in the English language in the adjective blacklisted.

this means that a credit providers needs to know facts a customer would prefer to hide, because only then the credit provider will be able to offer an unsecured loan on rational grounds.

Between banks and credit bureaux there exists a kind of mutual interest. Credit bureaux depend on the pieces of information delivered by banks, and banks in turn aspire for credit scoring data calculated from a pool of information as big as possible in order to avoid unwanted credit risks. This is the reason why banks – usually cautious in regard to secrecy – are willing to provide data even for the good of their competitors [Burton 2008: 50–57; Leyshon and Trift 1999: 443–450]. In Germany, the willingness to share information with rivals for the sake of risk avoidance only arose after consumer credit had turned into a profitable business [Frohman 2012: 136].

Credit scoring is complemented by transnational payment systems, developed and encouraged by the Bank for International Settlement since the 1980s. These payment systems standardise the form in which electronic non-cash payments are registered and settled. For instance, it enables the connected banks to register an electronic fund transfers performed in a home banking session and a credit card payment a few minutes later on a different website at a central node of information in short time. Otherwise, the multitude of credit based electronic payment tools would allow tricking the monetary system [World Bank 2010].

The German payment system is operated by the central bank. The Bundesbank operates a Retail Payment System which covers all credit transfers, direct debits and electronic collections of cheques in Euro currency. Since 2008, this system is connected to the Single Euro Payments Area (SEPA). Such a system is indispensable in an economy consisting of a multitude of payment tools based on credit like credit cards and store cards, bank overdrafts, point-of-sale instalment contracts, ATM withdrawals, payday loans and cash loans. In a payment system, these single customer transactions are directly linked to financial market activities, which are settled by another electronic clearing system. In the case at hand, all electronic payments performed in the connected systems of the Euro area are communicated by a central node that is managed by the four central banks of Germany, France, Italy and Spain [BIS 2012: 165–166]. Commercial banks have an intrinsic interest to be connected to this system either directly or indirectly because performing an electronic payment on behalf of a customer that is not backed by existing assets, which may happen if the customer paid with the very same asset somewhere else before, would result in a loss of capital. In Germany, it was a precondition to be registered as a credit institution operating under the German Banking Act in order to be allowed to perform payment services

until 2009. Then, this was changed due to a Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*). This reform opened another door to the consumer credit market because deferred payments performed in the system may be charged with a fee, i.e., they are another form of consumer credit[6].

For the purpose of this article it may be sufficient to acknowledge the task of payment systems and of credit scoring on the relation of credit providers and customers. In fact, the necessity of credit providers to ask potential borrowers for personal information about economic conditions and income prospects, and to verify the information given has been replaced by a more complex but nonetheless much faster procedure. Credit providers still gather information from their customers, but these data do not serve the risk assessment procedure directly. Instead, they are transferred to credit bureaux, where they are added to and calculated with already existing information on the involved customer. The outcome of this calculation is sold by the credit bureaux to commercial banks again, and here it serves the risk assessment procedure. Credit bureaux and banks also check the payment system for unsettled payments of the potential customer [Frohman 2012, Burton 2008: 46–65; Leyshon and Thrift 1999].

It can be said that this procedure replaces trust that a credit provider has to put into a customer with confidence that has to be placed in the accuracy of the calculations of credit bureaux, which in turn derives from an observation of the economic activity of the prospected borrower in the past. It should be noticed that this technology has discriminating effects and is not free of irrationalities. It may operate in discriminatory ways because it extrapolates generalised assumptions and facts of the past into the future. For instance, the fact of being a resident of a social hotspot of the city may have a negative impact on the credit score because people from this area showed a higher probability of non-repayment of loans in the past. Of course, this does not tell anything about the willingness of a potential borrower to pay back his loan but may result in a rejection of his application nevertheless. This loan may have been the precondition for his escaping from the social hotspot, though. Among the irrationalities of credit scoring belongs the effect of perfect financial household management. A potential borrower who always had paid all of his expenses from already existing earnings, i.e., who never made use of credit money, will have a credit score of "0" because there is

[6] Interestingly, this competition promoting act allowed Wonga.com to enter the German market. They bought BillPay, a company from Berlin which provides payment services to retailers and consumers in Germany, Austria, Switzerland and The Netherlands [http://about.wonga.com and The Guardian from 13 October 2013]. These payments require some time to be settled, and therefore contain credit money which is charged with a fee.

nothing to calculate. This, too, may result in rejection of a loan application. The irrationality of credit scoring consists in the fact that a customer has to become indebted first before he can receive a credit score greater than zero; additionally nobody has a credit score of 100. This is, however, not result of the moral and financial sinfulness of all human beings but simply an axiom of mathematical stochastics that excludes 0 and 1 from its results by definition.

Intermediate result of this analysis is that in financialised consumer credit agreements trust between lender and borrower has been replaced by control, which is performed by third parties. This finding stands in relation to an argument brought forward by Starosta and Brzezinski [2014] in their study on social trust in post-industrial cities of Central an Eastern Europe. The common denominator consists in the fact, that the extension of consumer credit markets has to be understood as a geographic extension, too. Banking business, and especially money lending, was a privilege of urban areas before the arrival of electronic communication and data processing technology. Financialised consumer credit, however, also is accessible in rural areas, and more, it encourages providers of instalment credit to compete in these areas, too. Starosta and Brzezinski found that 30 per cent of generalised trust in their areas of research correlates with trusting attitudes in horizontal and vertical relationships, but identified a lack of 70 per cent in the explanation [Starosta and Brzezinski 2014: 69]. My suggestion at this point is to take into account institutions as “big structures” and the sale of financialised commodities as “large processes” [Tilly 1984]. Many people are confronted with them in their daily life, and they build their opinion on them from reports of the mass media, reports by friends and relatives, and from a public discourse on a general level. Of course, the attitude towards banks and credit providers contributes only in part to the attitude of trust. However, the success of home loan companies in Poland is remarkable. As shown above, they offer a rather traditional mortgage related product, but the biggest provider is a financialised company nevertheless. It operates from its headquarters in Leeds in Great Britain, and it refinances itself on financial markets – a fact many rural borrowers will not be aware of. Obviously, these customers trust a product they know about from traditional experience. In order not to be misunderstood: these home loans are comparatively cheap, at the mode of repayment is relatively flexible, so it is a rational move to choose this product. Nevertheless, the difference to the popularity of more formal and easier accessible unsecured loan products is striking. Starosta and Brzezinski wrote that their findings suggest “that mistrust in institutions is specifically compensated by more positive attitudes towards familiar people and human beings as creatures sharing basic norms and values”.

They further explained that “this human world refers mainly to the closest family, and to a lesser extent to neighbours, co-workers or residents of the city” [Starosta and Brzezinski 2014: 70]. This might exactly describe the pool of people the customers of home loan agencies receive knowledge about the risks involved in credit products from, whereas the more abstract products like unsecured loans are known only from distant acquaintances and impersonal sources like mass media. At this point further research might be of interest.

## INSOLVENCY LAWS AS DISTRIBUTION OF RISKS

To finalise the search for trust in financialised consumer credit, the legislation of consumer bankruptcy has to be taken into account.

The extended availability of consumer credit caused increased levels of over-indebtedness from the 1970s on. As a consequence, many governments initiated legal reforms with the intention to extend bankruptcy law or to implement a new customer protection law to address the problem. Political debates signified attempts to collect debts from desperately over-indebted borrowers as time consuming, expensive and totally hopeless. Additionally, over-indebted citizens obviously lack a motivation to earn money because increased income has to be passed on to creditors. In the worst case, the citizens affected become a burden to the welfare state. Hence, the option of debt relief may be to the benefit of debtors, creditors and society alike. Debtors with a prospect of restored financial autonomy should be motivated to serve at least a part of their debts, and to escape economic dependencies again. However, as the establishment of consumer credit markets had to overcome the age-old moral scruples of usury, the introduction of legal debt discharge options had to oppose the principle of sanctity of contracts [Kilborn 2007: 6–13]. In Germany, for instance, first attemptsof a reform were started in 1978, the bill was finally passed in 1994, and came into effect in 1999 only. Despite resistance in almost all countries, twenty-one European countries introduced laws containing an option of debt relief since 1984, among them Poland in 2008.

The German system puts a strong emphasis on out-of-court agreements between creditors and borrowers. Only if the failure of negotiations within the last six months is certified by a debt advisor or lawyer, the borrower may enter the legal procedure of consumer insolvency. This procedure consists of two parts. The first part is called a “period of good conduct” (*Wohlverhaltensperiode*). At this stage, the consumer has to strive for employment but deliver all earnings above the protected social minimum to an insolvency administrator, who in turn distributes the money among the creditors. Basically, this represents an instal-

ment plan. The period of good conduct usually lasts for six years. In regard to the discussion of trust it is of importance that the period of good conduct is justified as a proof of honesty (*Redlichkeit*) by the law. This means that the problem of unpaid debts is not economic in nature but a moral one, and it is intended to serve the restoration of trustworthiness in the first place.

The second stage consists of a decision on debt discharge by a court (*Restschuldbefreiung*). Should the debtor manage to repay at least 35 per cent of his financial obligations, the period of good conduct may be shortened to three years – a very unlikely scenario for a middle-class debtor who lost financial autonomy. Of importance is the list of criteria that require a court to reject the application for debt relief. Besides criminal acts it contains the misdeed of having provided false information on the own economic situation within a period of nine years, i.e., including three years before the period of good conduct was started. This means that the delivery of wrong facts to credit providers and credit bureaux deprives a debtor from the option of receiving a debt discharge. Finally, debt discharge in Germany means making financial claims unenforceable. That is to say that a credit provider looses the option of involving the legal system, however, the debts are not wiped out [Kilborn 2007: 39–42, 77–81].

In Poland, the Bankruptcy and Reorganisation Law was amended more than once. Since 2008, it affects natural persons not conducting commercial activity, too. It is the debtor himself who is entitled to file for consumer bankruptcy, subject to the condition that his assets are sufficient to pay the costs of the litigation. Polish proceedings combine the idea of a "fresh start" with a repayment plan. After filing for bankruptcy – which may be rejected for a whole number of reasons – the over-indebted borrower has to abandon his estate and assets. They are handed over to a trustee who is commissioned to liquidate them by the way of tender or auction. Part of the procedure is to prepare a list of creditors entitled to receive a share of the proceeds of liquidation, a process which may take quite a while. Once the liquidation is completed, and the proceeds were not sufficient to repay all debts, a court will set up a repayment plan. For the maximum period of five years, an over-indebted borrower will be obliged to serve the plan. Should his economic condition recover, creditors are entitled to call for a review of the repayment plan in order to increase their share. Should the debtor manage to fulfil his obligations under the plan, a court will discharge the rest of his debts at the end of the period [Adamus 2011].

The Polish consumer bankruptcy procedure differs from German consumer insolvency law by putting emphasis on the maximum satisfaction of the creditors' claims. That is to say, it aims at defending the economic rights of creditors

in the first place, whereas the German law is geared towards disciplining the consumer. However, both laws have in common that they subordinate already over-indebted persons to long lasting proceedings which inevitably will result in a further impoverishment of the debtors involved. Both laws have in common that responsibility for indebtedness is assigned to the debtors. In this regard it is important to notice that debtors in both countries have no chance of debt discharge should they be guilty of any misdoing like fraud, tax evasion, or even false information in a loan application. Nevertheless, both legal systems treat them as *innocent persons responsible*. Taking into account that the main reasons for over-indebtedness are illness, unemployment, and divorce – all of them rather unpleasant life events – this should be a debatable appraisal.

A review of the history and variations of consumer bankruptcy and insolvency law – which cannot performed here in detail – reveals that both legislations miss the core rationale of bankruptcy and insolvency [Niemi, Ramsay and Whitford 2009; Kilborn 2007; Niemi-Kiesiläinen, Ramsay and Whitford 2003]. The purpose of a "fresh start", i.e., the discharge of accumulated debts after a liquidation of existing assets, is to reintegrate the consumer into economic life. On the other hand, the basic idea of a repayment plan is to protect the economic position of a debtor by making use of his future income. To sum up, a "fresh start" was intended to utilise existing assets in order to achieve an unburdened future, whereas a repayment plan intended to protect achievements of the past at the cost of future earnings. Tragically, German as well as Polish laws take away achievements of the past and encumber five to six years of the future, that way transforming over-indebted debtors into citizens at the bottom of the social strata. Additional costs resulting from this social relegation will have to be covered by the welfare state and the rest of society.

How do these laws affect trust? In both countries, credit providers are confronted with a rather general and distant threat of losing some financial claims in the future, should the borrower successfully file for insolvency respectively bankruptcy, and then be able to serve the included obligations. In all other cases, a default of repayments will result in higher earnings of the credit provider because he will be able to charge additional fees and to compound interest. As a consequence, I would say that there is no horizontal trust required because borrowers in Germany and Poland do not have any option to evade their financial obligations, except of the rare cases in which they completely lost their financial autonomy and they became willing to accept a long-standing period of repayment. For credit providers, this risk seems to be offset by the confidence in legal and economic systems which puts them into a protected position of a payee.

Their interests are protected not only by contract law and monetary claims, but also by credit bureaux and payment systems, which not only observe current economic acts but also allow tracking a debtor's economic activity in the future. For a debtor, it is almost impossible to earn money or to accumulate assets without being registered by a payment system, which means that there is almost no option to evade financial obligations. The times of disappearing debtors are gone in a financialised economy.

## THE HUMAN POTENTIALS OF CONSUMER CREDIT

This final section is more than a summary, because a characteristic of debates on consumer credit is that they tend to neglect an obvious fact, i.e., that roughly 90 per cent of all credit customers in Central Europe never get over-indebted. This means that it is important to distinguish the state of indebtedness from financial stress and over-indebtedness. Every borrower is, from the disbursal of the principal to the settlement of the final instalment, indebted by definition. To finance consumer goods from a stable income is perfectly rational if instalments allow to "buy up", i.e., to acquire a high quality good that could not have been paid from savings. The most prominent examples in this regard are housing and cars. The situation changes when consumers get into trouble to serve their monthly obligations. Part of the problem is a difficult delineation because the transgression of this boundary often will be recognisable only in retrospect. Being short of money may be a temporary problem for a month or two due to unforeseen circumstances, but turn into a serious financial problem very quickly. In this regard, further research seems to be worthwhile in order to provide the public with knowledge about indicators of coming financial trouble.

From the institutional analysis it became clear that the establishment of financialised consumer credit markets is the result of elaborated regulatory arrangements, which require sophisticated adjustments as well as expensive investments. In many cases, private business activities go hand in hand with governmental reforms. This is the case with payment systems that connect household payments and settlements on financial markets. They manage the money supply of the interbank market as well as of the public economy. It is also the case with the data sets of credit bureaux and public administration. The exchange of details about movements and activities of citizens obviously is of mutual interest.

Incentive for governments to promote consumer credit markets, even if they necessitated painful interventions into legal principles like *pacta sunt servanda*, obviously is the option to enable citizens to achieve consumer goods and services

without affecting the monetary supply of the economy or to burden the welfare state. In other words, financialised consumer credit takes pressure from social and economic policies of governments by shifting part of the distribution of welfare from political debates to the financial management of households and individuals: men and women become architects of their own fortune.

It should not be missed that this includes emancipating qualities. Without any doubt, financialisation contains the option of increasing monetary autonomy of ordinary citizens, as Judge Johnes already registered in the mid-nineteenth century. Financialisation *may* also mean: a democratisation of finance and a more human economy [Hart, Laville and Cattani 2010]. Robert Shiller [2003] suggested facilitating individual career planning and accumulation of household assets by making use of publicly designed institutions of risk sharing. Although some of his ideas might have been lenient in regard to the irrationalities of social systems that are based on mathematical stochastics, the main obstacle to his plans is a striking mismatch in the institutionalisation on the supply side and the demand side of the market. Governments, public institutions and private companies put a lot of effort into the establishment of sophisticated systems of investment in consumer credit, but there is a lack of attention in regard to the investment *of* consumer credit. Consumers of a financialised economy are part of an extended actor-network, in which the allocation of credit money is streamlined and the distribution of credit risks became a business of its own right. Credit money and claims on its repayment circulate through the economy. Many citizens participate on both sides, as borrowers and as bond investors. However, the question of how to refinance financial obligations on the part of consumers is left to individual decisions. To turn financialisation into a democratisation of finance would require distributing risks more fairly. This would mean to encourage trust in vertical social relations, and increase generalised trust into the socio-economic development of society that way. Additionally, it would be worthwhile to establish public associations that develop ideas of how to invest credit money instead of just consuming it.

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## KREDYT JAKO ŹRÓDŁO DŁUGÓW I DOBROBYTU

Streszczenie

Przedmiotem analizy jest sposób, w jaki łatwo dostępny, sfinansjalizowany kredyt konsumencki zmienia społeczny charakter pieniądza jako takiego. Najwyraźniej współczesne rynki kredytów konsumenckich pociągają za sobą większe niebezpieczeństwo nadmiernego zadłużenia, ale także możliwości zwiększania się niezależności ekonomicznej obywateli. Sfinansjalizowany kredyt konsumencki charakteryzuje się trzema cechami: złożoną regulacją, możliwością odsprzedaży długów oraz wysokimi kosztami klienta. Moją główną tezą jest, że konsekwencje działania rynków sfinansjalizowanych kredytów konsumenckich mogą być regulowane przez prawidłowo zorganizowany układ instytucjonalny. Innymi słowy uważam, że sfinansjalizowany kredyt konsumencki generalnie nie jest ani dobry, ani zły, a jego akceptacja społeczna będzie wynikiem złożonego układu regulacyjnego. Aby zademonstrować możliwości takiego układu, w artykule badane są warunki rynku w Niemczech i porównywane do pewnych cech rynku w Polsce.

**Słowa kluczowe**: finansjalizacja, kredyt, gospodarka rynkowa, prawo