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Taking Interest from Non-Jews – Main Problems in Traditional Jewish Law

Questions of money lending between Jews and non-Jews and the problems of interest-charged loans can be viewed through the mirror of Jewish law and have been discussed by rabbinical authorities. To begin with the legal sources: All Jewish communities of the Middle Ages in the Mediterranean area and in non-Mediterranean Europe have a common stock of Holy Scriptures constituting the basis of their legal culture and life. Apart from the Hebrew Bible with the Pentateuch as the main law book, they all have in common use a corpus of legal and ritual works written in Palestine and Babylonia during the Late Antiquities: the Mishna compiled at the beginning of the 3rd century C.E. in Northern Palestine, constituting the first comprehensive law-book of normative Judaism after the destruction of the Second Temple with laws and legal discussions mainly from the 2nd century; then a commentary to the Mishna in form of the Babylonian Talmud containing laws and legal discussions from the 3rd to the 6th century; further legal corpora of secondary importance as the Tosefta and the Palestinian Talmud from the 4th and 5th centuries; and the bulk of the so-called Midrashic literature. Midrashic literature, of Jewish Palestinian origin, presents the rabbinical expositions of scriptural verses. Embodied into this literature is a canonical corpus of Midrashim with laws and legal discussions from the 2nd to the 3rd centuries expounding the laws of the Pentateuch. These legal or Halakhic Midrashim were, in addition to the Mishna and the Babylonian Talmud, of obligatory significance for every community in the medieval Jewish world.

As two thirds of the medieval discussions of the leading Jewish scholars are based upon the laws and discussions in the Talmudic and Midrashic literature, it is indispensable to begin with the statements of the rabbis in late antiquity concerning the problem of money lending to non-believers. One main problem and a blue thread in all discussions, from late antiquity and continuing in the Middle Ages, is the correct understanding of the central injunction of Deuteronomy 23, 21: *From a foreigner You may exact interest; from Your brother You shall not exact it, in order that the Lord Your God bless You in all Your enterprises* etc. Already in the early rabbinical literature enumerated above we find a fundamental discord concerning the correct understanding of the treatment of non-Jews in biblical law. Must the text be understood as translated: *From a foreigner You may exact interest*, or is the correct understanding of the text as follows: *From a foreigner You must exact in-*

terest? At the surface, it is a problem of Biblical Hebrew syntax. The verb of the Hebrew text: *tashik*, uses the so-called preformative conjugation, which is ambiguous in its modal uses, designing inter alia either a possibility or a necessity¹. The Mishna clearly presupposes the optional solution. In the Tractate Baba Metzi'a V,6 we find the short statement: *One may borrow from non-Jews and lend to them at interest*². Whereas the biblical legislation deals only with the constellation of lending money to a non-Jew, early rabbinical law presents an important enlargement: It is also allowed for a Jew to borrow money from a Gentile and to pay him interest for the loan³. And, to look forward into the Middle Ages: In the legal literature of Judaism in Muslim and Christian countries we find beyond the theoretical discussions clear evidence of interest charged loans in everyday life, payable by a Jewish debtor to a Muslim or to a Christian creditor. And when the Jewish disputant in the Sefer ha-Berit of Josef Kimhi, written in Narbonne in the second half of the 12th century, attacks his Christian counterpart, he uses the argument that Christians also are lending money at interest to both Christians and Jews⁴. His reproach must not be a statement devoid of any substance, on the contrary, it may point to economic realities of that time in Southern France and Christian Spain. But let us return to the older rabbinical legislation. The opposite part to the Mishnaic statement is represented by the Midrash Sifre to Deuteronomy, an important Halakhic work of Palestinian Jewry compiled at the end of the 3rd century⁵. In § 263 of this work the decisive words of the Hebrew text: *la-nokri tashik* are expounded by the following short remark: *It is a positive commandment*⁶. Rabbinical hermeneutics divide the laws of the Pentateuch into two parts, positive precepts and negative ones. Negative precepts comprise actions which must be avoided under all circumstances, for example the injunctions: *You shall not commit murder, You shall not bear false testimony against your fellow* etc. Positive commandments, whose performance is absolutely obligatory, are for example: to circumcise a newborn male, to pay a worker his wages on time and so on. On this background, the position of the Midrash Sifre is clear: The biblical words of Deuter. 23,21 must be understood as a duty: A Jew granting a loan to a non-Jew is by divine revelation obliged to demand interest from the foreigner, whenever he lends money to him, a thing absolutely forbidden towards a coreligionist. Mishna and Midrash Sifre contain the two positions that were to be important for the later medieval discussions. But before we analyze the medieval controversy, we must take a short glimpse at the

¹ Compare B. K. Waltke, M. O'Connor, An Introduction to Biblical Hebrew Syntax (Winona Lake/Indiana 1990) 508ff.

² Hebrew text in the edition of D. Hoffmann, Mischnajot – Die sechs Ordnungen der Mischna – Part IV: Ordnung Nesikin (Basel 1986) 71.

³ A very convincing analysis of the Mishnaic statement is presented by J. Rosenthal, Ribbit min ha-nokri, in: *idem*, Mehqarim umeqorot, vol. 1 (Jerusalem 1967) 257f.

⁴ The Book of the Covenant of Joseph Kimhi, translated by F. Talmage (Toronto 1972) 34f.

⁵ Compare G. Stemberger, Einleitung in Talmud und Midrasch (Munich 1992) 269.

⁶ Hebrew text in the edition of L. Finkelstein, Sifre al sefer Debarim (New York 1969) 285 (reprint of the edition Berlin 1939).

Talmudic discussion presented in the Tractate Baba Metzi'a fol.70b–71a, based on authorities living in Babylonia during the 4th and 5th century. The main features of the discussions contained in this section are indeed astonishing: The Babylonian Talmud recommends to avoid the granting of interest-charged loans to non-Jews, if possible. Interest taken from non-Jews will bring about unhappiness to the lender according to an opinion of Rav Huna. According to his son, Rav Hiyya, money lending to non-Jews must be limited to the requirements of one's livelihood; but one should not exercise that activity with the intention to gather wealth; and according to yet a third authority, the permission of the Mishna refers only to scholars. They alone are free to engage in money lending to non-Jews without limitations, because they are not in danger to learn from the ways of the non-Jews, in contrast to an ordinary Jew. The Babylonian Talmud adds by citing a fourth authority, that a Jew having the choice to grant a loan without interest to a coreligionist or at interest to a non-Jew, is obliged to give it to his fellow without demanding interest at the time of repayment. The words of the Babylonian Talmud are well understandable on the background of whole regions and complete towns inhabited exclusively or in overwhelming majority by Jews, as in Sassanid Mesopotamia. There, the functioning of an internal Jewish economy and market was, by that reason, more or less possible. Commercial dealings with non-Jews were not absolutely inevitable to secure one's existence. But the Talmudic admonitions were disregarded in the diaspora of post-Talmudic times. Money lending to non-Jews became one important branch of Jewish livelihood, with no difference between scholars and average members of the Jewish communities playing the role of money-lenders. In a famous statement stemming from the middle of the 12th century Rabbenu Tam, living in France, declares the restrictions of the Babylonian Talmud as not applicable any more to the conditions of Jewish life in his time⁷. He points out that Jews of today must pay taxes to the king and to feudal lords, that Jews are living as a minority between the non-Jews, that Jews are totally dependent on non-Jewish clients in all kinds of commercial transactions, and that therefore lending at interest to non-Jews must be allowed to everybody in the Jewish community⁸. Such theoretical discussions took place also in Egypt in the second half of the 12th century, by no inferior scholar than Moses Maimonides, whose legal works received broad acceptance already during his lifetime, not only in oriental Jewry but also in the Jewish communities of Christian Mediterranean countries. In an extremely harsh statement in his "Book of Commandments", written about 1170 in Arabic language, positive precepts § 198, Maimonides says that the words of Deuter. 23,21 concerning the non-Jew are of obligatory nature. One must lend at interest to a non-Jew, *"so that we don't be useful to him nor treat him kindly; on the contrary: that we cause damage to him even in money lending by means of interest,*

⁷ Mentioned already by *Rosenthal*, Ribbit min hanokri, op. cit. 263.

⁸ Tosafot to Baba Metzia 70b. The edition used here is: *Masseket Baba Metzia min Talmud Babli im perush Rashi, Tosafot ...* (Jerusalem 1981).

which we impose on him by contract”⁹. Maimonides continues, that the words of Deuter. 23,21 contain a command and that no freedom of choice is implied therein; and he adduces the Midrash Sifre to Deuteronomy as the decisive proof for his arguments. In his main legal work written in Hebrew, the Mishneh Torah, Maimonides repeats his injunction in his laws concerning money lending, chapter V § 1, in a non-polemical form by only citing Midrash Sifre without mentioning his source by name¹⁰. Several Hebrew translations of the Book of Precepts already realised during Maimonides’ lifetime secured a broad reception of this work in the other Mediterranean Jewish communities; the same happened to the Mishneh Torah, which did not need a translation and was completed about 1180. The reactions to his theory of interest were negative by the majority of his commentators. The first and most important one was his contemporary Abraham Ben David of Posquières in Southern France, who wrote a commentary to the Mishneh Torah of Maimonides, consisting of very critical glosses and who, by virtue of his personal biography, had no reason to act benevolently towards non-Jews. In his comment to chapter V § 1 of Maimonides’ laws concerning money lending he remarks in his short, enigmatic style, that such an exegetical tradition is unknown to him, and that Maimonides misunderstood the Midrash Sifre. The Midrash, says Abraham Ben David, which declares money lending at interest to non-Jews as a positive commandment, intends only to corroborate the prohibition to exact interest from a fellow Jew, and nothing else¹¹. Moses Nahmanides (Gerona, middle of the 13th century) follows Abraham Ben David in his commentary to Maimonides’ Book of Commandments (chapter 6 in his general introduction) and writes, that Maimonides committed a mistake by classifying Deuter. 23,21 as a commandment. The Midrash Sifre must be interpreted as a mere permission to lend money at interest to a non-Jew, and as a non-permission to lend money at interest to a coreligionist¹². The position of Abraham Ben David is repeated by Nahmanides’ pupil Solomon Ben Adret of Barcelona in his Talmudic commentary to Baba Metzi’a 70b: The Midrash Sifre, classifying the exaction of interest from a non-Jew as a positive commandment, intends only to strengthen the prohibition of demanding interest from a fellow Jew. It is not the intention of the Midrash to obligate Jews to take interest from non-Jews, and Maimonides does not present the correct interpretation of the Midrashic state-

⁹ Arabic text in: *Moshe ben Maimon*, Sefer hamitzwot, edited and translated into Hebrew by D. Kapah (Jerusalem 1971) 159. *Rosenthal*, Ribbit min hanokri, op. cit. 265, in his Hebrew translation of the text omits the clause on damaging the non-Jew!

¹⁰ Hebrew text in: Mishneh Torah wehu sefer hajad hahazaqah leharab rabbenu Moshe Bar Maimon zal, traditional edition with commentaries, 2nd part (Berlin, New York 1926) 34a in the tractate Hilkot malweh weloweh.

¹¹ Text of his remark according to the bibliography given in the preceding footnote. The critique of Abraham Ben David is also cited by *Rosenthal*, Ribbit min hanokri, op.cit. 265.

¹² Hebrew text in: Sefer hamitzwot lehanasher hagadol rabbenu *Moshe Ben Maimon* zal wehaholkim alaw – a) Hassagot haRamban (Rabbenu *Moshe Ben Nahman* zal ...), traditional edition (Jerusalem no year) 52a–b.

ment. So far Solomon Ben Adret¹³. Let us again go back for a moment to Nahmanides. In his commentary on the Pentateuch to Deuter. 23,20, Nahmanides writes that according to verse 21, it is allowed to exact interest from a non-Jew, and that no theft or robbery to the disadvantage of the non-Jew is implied in such a deal¹⁴. With this statement, Nahmanides is apparently dependent upon his early contemporary David Kimhi (1165–1235) of Narbonne, who already wrote this in his own commentary on the Pentateuch. David Kimhi continues there with the remark, that the granting of interest-free loans to Jewish fellows rests on the legal duty of a Jew to act benevolently towards his coreligionists and to benefit them. These obligations must not be observed in dealings with non-Jews, because most of them hate Jews. But if a non-Jew acts benevolently towards a Jew and deals with him in a kind manner, the Jew is reciprocally obliged to a benevolent dealing with his non-Jewish counterpart¹⁵. Does David Kimhi herewith indicate a moral obligation to grant an interest-free loan to a non-Jew in certain circumstances? I am unable to give a clear answer to this question, but David Kimhi seems to be inclined to such a solution. The opinion of Maimonides found only a few supporters. A certain acceptance of his position was demonstrated by Levi Ben Gershom (Southern France, 14th century). He writes in his commentary to Deuter. 23,21, that it is absolutely obligatory by divine law to demand interest from a non-Jew in the case of granting a loan to him, because he is an idolater and because one must cause damage to him to the possible extent. This does not constitute a deviation from the principle of righteousness¹⁶. This means that according to his opinion the religious duty to take interest from a borrowing non-Jew must be fulfilled by demanding a not too excessive percentage of interest¹⁷. But the vast majority of the Jewish scholars living in the western Mediterranean area during the later Middle Ages regarded the biblical words of Deuter. 23,21 only as a possibility. The final decision of the matter was prepared by the monumental law-code “Arba’a ha-Turim” of Jacob Ben Asher from Toledo (1st half of the 14th century). In the section Yoreh Deah § 160, Jacob Ben Asher remarks laconically that according to the word of the Torah it is allowed to lend to a non-Jew at interest¹⁸. The Shulhan ‘Arukh of the Spaniard Josef Caro, though written in Ottoman Palestine about the middle of the 16th century, defi-

¹³ Digitalized text in the following edition: Hiddushe haRashba al masseket Baba Metzia fol.70b, in: Hataqlitor hatorani leshas im rishonim (Jerusalem 1999). The statement of Solomon Ben Adret is reproduced by *Rosenthal*, Ribbit min hanokri, op. cit. 267.

¹⁴ Hebrew text in: Perushe hatorah lerabbenu *Moshe Ben Nahman* (haRamban), edited by *Ch. D. Chavel*, 2nd volume (Jerusalem 1960) 461.

¹⁵ Hebrew text in: Perushe rabbi *David Qimhi* (Radaq) al hatorah, edited by *M. Kamelhaar* (Jerusalem 1970) 282.

¹⁶ Hebrew text in: *Levi Ben Gershom*, Perush al hatorah al derek beur (Venice 1547) fol. 234a. The statement of Levi Ben Gershom is presented by *Rosenthal*, Ribbit min hanokri, op. cit. 274 in a totally mutilated form without any mention of the damage to be caused to the non-Jew!

¹⁷ I think that this interpretation of Levi Ben Gershom's statement in the article “Moneylending” in the *Encyclopedia Judaica*, vol. 12 (Jerusalem 1971) col. 250, is correct.

¹⁸ Text in: *Arbaah Haturim – Yoreh Deah*, 2nd part, traditional edition with supercommentaries, reprint of the edition from Warsaw 1861 (Jerusalem no year) fol. 1a.

nately puts an end to the discussion by quoting Jacob Ben Asher verbatim in the section Yoreh Deah § 159¹⁹. Both authorities silently reject Maimonides in this way; they represent the predominant opinion.

But at the end of these expositions, we must try to trace the rationale of the legal discussions presented here. First, Maimonides is quite correct in interpreting the Midrash Sifre as he does. His opponents, not daring to disregard the authority of that old work, were forced to interpret it against its literal meaning and to squeeze the Midrash in favour of their optional interpretation of the biblical text itself. Furthermore, the Midrash Sifre and Maimonides as its follower represent the most authentic and original Jewish tradition of interpreting Deuter. 23,21. Already the Greek Bible of Alexandrian Jewry in the 3rd century B.C.E. translated the Hebrew Text as a double commandment: *Upon the stranger You must impose interest; upon Your brother You shall not impose interest* (τῷ ἀλλοτρίῳ ἐκτοκίεις, τῷ δὲ ἀδελφῷ σου οὐκ ἐκτοκίεις)²⁰, using the indicative of the future tense as a circumscription of a strong jussive typical for negative and positive injunctions in the legal texts of Septuaginta²¹. Let us return to the Middle Ages. The problem is that for a Christian client borrowing from a Jew it does not make any difference whether the payment of interest imposed on him is the result of an optional interpretation of the biblical law or not within the Jewish community. The internal Jewish discussion remains undisclosed to the non-Jew; and he has to pay, on the basis of non-Jewish contract-law in general and of non-Jewish Jewry law in special, which rendered a Jew's title enforceable before a Christian court of law. The reason for the controversy described above must have been another one. If money lending at interest to a non-Jew is allowed, a Jew is also free to grant to a non-Jew a loan without interest, treating him as a Jewish coreligionist. If money lending to a non-Jew is not allowed without demanding interest, the second possibility is obstructed *ab initio*. The distinction between Israel and the peoples of the world is drawn sharply by the old exegetical tradition in the Midrash Sifre and its medieval recipient Moses Maimonides. The opponents of Maimonides with their more lenient interpretation of Deuter. 23,21 apparently intended to open the possibility to a Jew to grant an interest-free loan to a non-Jewish friend, in order to corroborate existing ties of good neighbourhood, friendship or something like that. Were loans without interest from a Jew to a non-Jew granted anywhere in the medieval world? Gershom Ben Jehudah of Mainz mentions such a case in early 11th century Germany, but without linking it to the discussion presented here²². Nevertheless, the presumably rare oc-

¹⁹ Hebrew text in: Shulhan Arukh – Yoreh Deah mehagaon moharar *Josef Qaro* zal, traditional edition (Wilna 1925) 367.

²⁰ Greek text according to the edition of J. W. Wevers, Septuaginta – Vetus Testamentum Graecum ... vol. III,2: Deuteronomium (Göttingen 1977) 263.

²¹ Compare C. Conybeare, G. Stock, Grammar of Septuagint Greek (no location ²1995) 72.

²² See H. G. von Mutius, Rechtsentscheide rheinischer Rabbinen vor dem 1. Kreuzzug, I, (Judentum und Umwelt 13/I, Frankfurt a. M. and elsewhere 1984) 105. The case is mentioned also by J. Shatzmiller, Shylock reconsidered – Jews, Moneylending and Medieval Society, (Berkeley and elsewhere 1990) 100.

currence of interest free loans granted by a Jew to a non-Jew shows that the mainstream of legal discussions: *You may* or *You must lend at interest to a foreigner* does not necessarily reflect frequent occurrences in daily live; and that is the main result of the reflections on the matter presented here.