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Author(s): ROBERT P. MALONEY

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## USURY IN GREEK, ROMAN AND RABBINIC THOUGHT

By ROBERT P. MALONEY, C.M.

The Christian teaching on usury did not develop in a vacuum. Christianity was born in a semitic milieu and spread rapidly through the Graeco-Roman world. Naturally, its ancestry and its environment influenced its moral thinking. The Fathers of the Church were well acquainted with the thought of others about usury. Besides many references to the clear Old Testament usury prohibition, the writings of the Fathers reflect and interact with attitudes toward interest-taking in Greece and Rome and in early rabbinical literature. It will thus be helpful to examine those strains of thought that existed side by side with the early patristic teaching and influenced it.

### I. GREEK ATTITUDES TOWARD USURY

Lending was very common in ancient Greece. Taking interest was a fact of life, though never a universally approved one. Thriving land and sea commerce provided expanding markets for the moneylender's wares. It seemed quite legitimate to most Greek citizens that the lender should share in the increased productivity his loan caused, especially when he risked his money in the process.<sup>1</sup> Even if at times the professional money-lender's reputation suffered (often deservedly),<sup>2</sup> citizens put him in a class different from that of the honest man who lent as a service to the community rather than hoard his own capital. Orators proclaimed the public usefulness of loans at reasonable interest-rates as a means for feeding trade.<sup>3</sup> The courts were severe with fraudulent debtors.<sup>4</sup>

By the end of the fifth century before Christ, banking was a growing concern in Athens. Inventories of legacies and lawsuits in the middle of the fourth century show fortunes invested entirely in loans.<sup>5</sup> Aeschines the philosopher kept his perfume-works in business by borrowing. Pantaenetus and Mantitheos ran mines with the help of the moneylenders.<sup>6</sup> Lending at

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<sup>1</sup> Cf. Demosthenes, *In Pantaenetum* 53-54.

<sup>2</sup> Plutarch, *Moralia* 10.829.

<sup>3</sup> Demosthenes, *Pant.* 53-54.

<sup>4</sup> Demosthenes, *In Phormionem* 50. This work was probably written by a contemporary of Demosthenes, not by Demosthenes himself. For a discussion of the authenticity of each of Demosthenes' works, cf. F. Blass, *Die Attische Beredsamkeit* (Leipzig 1893) III 225 f.; concerning *Phorm.* cf. 581.

<sup>5</sup> G. Glotz, *Ancient Greece at Work* (New York 1926) 241.

<sup>6</sup> *Ibid.*

interest was so commonly accepted at Athens that the popular uprisings of debtors which dotted Roman history are generally lacking in Greece.<sup>7</sup> Most Greeks saw loans made for commercial reasons as an element in the general prosperity. An unknown contemporary of Demosthenes (384-322 B.C.), for example, writes:<sup>8</sup>

... the resources required by those who engage in trade come not from those who borrow, but from those who lend; and neither ship nor shipowner nor passenger can put to sea, if you take away the part contributed by those who lend. In the laws there are many excellent provisions for their protection. It is your duty to show that you aid the laws in righting abuses, and that you make no concession to wrongdoers, in order that you may derive the greatest possible benefit from your market.

Two types of loans at interest existed: ordinary (or terrestrial) and maritime. The first involved only the single danger of insolvency; even this could be greatly attenuated by pledges. The second involved all the dangers of ancient-world shipping, so that naturally its rate of interest was higher.<sup>9</sup>

It is practically certain that the principle of unrestricted liberty on interest rates prevailed throughout Greek history.<sup>10</sup> A decree at Delphi limiting interest to 6% seems only a temporary revolutionary phenomenon.<sup>11</sup> The general attitude was *laissez faire*.

The ordinary rate of interest, paid on a monthly basis, came to 12% a year (one drachma per mina).<sup>12</sup> A 10% rate was considered a favor.<sup>13</sup> Mortgage and commercial loans were offered at 16% and 18%,<sup>14</sup> while maritime loans had rates of 20%, 40%, 60% and even 100%<sup>15</sup> depending on who the borrower was, the destination of the ships, and the political and economic situation. Maritime loans often took the form of bottomry bonds, so that the ship served as security.<sup>16</sup> In case of shipwreck, the borrower owed nothing, neither interest nor principal; as a result, the creditor ran an even greater risk than the debtor. This helps account for the high interest rates. For a single voyage from the Bosphorus to Piraeus in wartime, creditors asked 12 1/2 %; the trip took just a few days. For a round-trip over the same route they asked

<sup>7</sup> E. Caillemer and F. Baudry, 'Foenus,' DS 2.1214-26, cf. 1215.

<sup>8</sup> Demosthenes, *Phorm.* 51-52 (Loeb transl.).

<sup>9</sup> L. Beauchet, *Histoire du droit privé de la République athénienne* (Paris 1897) IV 243 ff.

<sup>10</sup> Caillemer-Baudry 1215; Glotz 242; Bernard, 'Usure,' DThC 15.2319-20.

<sup>11</sup> Glotz 242.

<sup>12</sup> Beauchet IV 249-50. Because of the publication of numerous Greek documents since 1897, Beauchet's work is now clearly outdated, but it is still very useful for its many details concerning the practice of interest-taking. Cf. especially 243-71.

<sup>13</sup> Glotz 243.

<sup>14</sup> Bernard 2320.

<sup>15</sup> Caillemer-Baudry 1216.

<sup>16</sup> Glotz 243.

30%. In better times 30% was asked for the whole sailing season, about seven months. Some money-lenders asked 100% for ventures in the Euxine and the Adriatic.<sup>17</sup>

Yet while the legitimacy of interest-taking was generally recognized throughout Greek history, several strains of opposition did exist. First, family customs were still strong enough for the free loan (*eranos*) to be a constant, and highly esteemed, practice, which extended beyond the family to corporate enterprises. Second, legal and non-legal reactions to abuses involved in money-lending show popular concern and restrictions in practice. Third, the greatest of the philosophers, Plato and Aristotle, attacked usury as an unnatural means of acquiring money. Each of these strains will now be briefly considered.

(1) *The Eranos*. The word *ἐρανος* originally designated a communal banquet among friends. Homer used it in this sense in the *Odyssey*.<sup>18</sup> From this primitive sense the word came to designate a sumptuous meal in general,<sup>19</sup> and then an association made up of friends who reunited at definite intervals for a common meal.<sup>20</sup> Such associations might have various ends: religious, political, economic, etc. Finally the word came to mean a gratuitous loan made by several persons who had come together to help a common friend.<sup>21</sup> In this last meaning, the one which is of interest here, the meal-element has dropped out of *eranos* entirely, but the elements of friendship and association remain, now specified toward a definite goal.

The obvious difference, then, between the ordinary loan (*δανεισμός*) and the *eranos* is that the one bore interest while the other did not. Since the ordinary rate in Greece was 12%, the *eranos* was considered a service par excellence. Its only return was well-deserved gratitude.<sup>22</sup>

Often it was an urgent need that gave rise to an *eranos*. Sometimes it was a question of paying the ransom of a captive,<sup>23</sup> sometimes buying back a slave,<sup>24</sup> supplying a dowry,<sup>25</sup> or satisfying demanding creditors.<sup>26</sup> Ordinarily it was the borrower himself who had to approach his friends with the hope

<sup>17</sup> *Ibid.*

<sup>18</sup> Homer, *Odyssey* 1.227; 11.415.

<sup>19</sup> Euripides, *Helena* 388; Pindar, *Pythia* 5.77; 12.14.

<sup>20</sup> Cf. Pliny 10; *ep.* 93.

<sup>21</sup> Cf. Aristophanes, *Acharnenses* 615; Theophrastus, *Characteres* 1.13; 15.10; 17.16; 23.23.

<sup>22</sup> Theophrastus, *Characteres* 17.16.

<sup>23</sup> Demosthenes, *In Nicostratum* 8-9. This work appears under Demosthenes' name, but was almost certainly not written by him, but by a contemporary. Cf. Blass III 520.

<sup>24</sup> Demosthenes, *In Neaeram* 31. This work also merely uses Demosthenes' name; it was written by a contemporary. Cf. Blass III 535.

<sup>25</sup> Cornelius Nepos, *Epaminondas* 3.

<sup>26</sup> Aristophanes, *Acharnenses* 615.

of scraping together an *eranos*. The comic poets, the orators and the moralists all paint scenes depicting this burdensome job.<sup>27</sup>

Little is known of the legal formalities surrounding the *eranos*. Each creditor certainly received his money back, without interest, probably in installments. It also seems certain that the *eranos* gave rise to a true civil obligation<sup>28</sup> which could be pressed in court (though Plato would not have allowed this).<sup>29</sup>

The *eranos* was a constant practice throughout the Athenian period. It enjoyed high honor since the creditor parted with something which could be useful to him and which he might never receive back. Because of its economic advantages for the debtor, it was always seen as preferable to the loan at interest and was continually held in greater esteem.

(2) *Reactions to Abuses*. Greed consistently awakens adverse public reaction. In Athens orators scorned it, playwrights satirized it, and philosophers condemned it. Especially odious was the greed of the public money-lender, which tended to reduce the debtor to privation or even slavery. Bemoaning the greed that corrupted Athens, Demosthenes placed the following lament in the mouth of Solon, the reformer-hero of the debt-ridden poor:<sup>30</sup>

Not by the doom of Zeus, who ruleth all,  
Not by the curse of Heaven shall Athens fall.  
Strong in her Sire, above the favoured land  
Pallas Athena lifts her guardian hand.  
No; her own citizens with counsels vain  
Shall work her ruin in their quest of gain;  
Dishonest demagogues her folk misguide,  
Foredoomed to suffer for their guilty pride.  
Their reckless greed, insatiate of delight,  
Knows not to taste the frugal feast aright;  
Th' unbridled lust of gold, their only care . . .

Until the sixth century B.C. insolvent debtors were obliged to place their bodies at the disposal of their creditors, to work as slaves, to be sold into captivity, or even to be killed.<sup>31</sup> Solon put an end to that by forbidding the

<sup>27</sup> Cf. Aristophanes, *Acharnenses* 615; Demosthenes, *In Neaeram* 31, and *In Nicostratum* 8-9.

<sup>28</sup> Th. Reinach, 'Eranos,' DS 2.805-8; cf. 807.

<sup>29</sup> Plato, *Leges* 11.921d.

<sup>30</sup> Demosthenes, *De falsa legatione* 255 (Loeb transl.).

<sup>31</sup> *Lex XII Tabularum* 3.5. It is possible that in early Rome creditors might even have dissected the debtor's body, *XII Tab.* 3.6: 'Tertiis nundinis partis secanto. Si plus minusve secuerunt, se fraude esto': 'On the third market day the creditors shall cut shares. If they have cut more or less than their shares it shall be without prejudice' (transl. A. C. Johnson, P. R. Coleman-Norton, F. C. Borne, *Ancient Roman Statutes* [The Corpus of Roman Law, ed. Pharr, 2; Austin, Texas 1961] p. 10), but the meaning of *partis secare* is controversial.

pledging of the body as security for a loan. The exact nature of his reform is not totally clear (nor was it clear even in Aristotle's time),<sup>32</sup> but from Plutarch's *Moralia*<sup>33</sup> and Aristotle's *Ἀθηναίων πολιτεία*<sup>34</sup> it is evident that the great reformer abolished all borrowing on the security of the debtor's person. Aristotle, for example, writes:<sup>35</sup>

. . . all borrowing was on the security of the debtor's person down to the time of Solon: it was he who first became head of the People. Thus the most grievous and bitter thing in the state of public affairs for the masses was their slavery; not that they were not discontented about everything else, for they found themselves virtually without a share in anything.

He continues later on:<sup>36</sup>

. . . the three most democratic features in Solon's constitution seem to be these: first and most important, the prohibition of loans secured upon the person; secondly, the liberty allowed to anybody who wished to exact redress on behalf of injured persons; and third, what is said to have been the chief basis of the powers of the multitude, the right of appeal to the jury-court . . .

With Solon's reform one of the greatest abuses involved in moneylending was eliminated. But others remained. Anatocism, the practice of taking interest on interest (easily manipulated by adding the unpaid interest to the unpaid capital and using the sum as the base for the next interest payment), aroused strong public resentment,<sup>37</sup> though probably not to the extent of provoking a legal prohibition, as was later enacted in Rome.<sup>38</sup>

Plutarch, whose general attitude toward lending at interest is a bit ambiguous, warns his fellow citizens not to borrow lightly, whether they be rich (because then they do not need to borrow) or poor (because then they will be unable to repay). He asks what good Solon had done for the Athenians when he put an end to giving one's person as security for a debt, if debtors are still slaves to those who ruin them and moneylenders still make the marketplace a place of the damned:<sup>39</sup>

As Darius sent Datis and Artaphernes against Athens with chains and fetters in their hands for their captives, in similar fashion these men, bringing against Greece jars full of signatures and notes as fetters, march against

<sup>32</sup> Cf. Aristotle, *Ἀθηναίων πολιτεία* 9.1.

<sup>33</sup> Plutarch, *Moralia* 828: 'For what good did Solon do the Athenians when he put an end to giving one's person as security for debt?' (Loeb transl.).

<sup>34</sup> Aristotle, *Ath.* 2.2; 4.2; 9.1.

<sup>35</sup> *Ath.* 2.2 (Loeb transl.).

<sup>36</sup> *Ath.* 9.1 (Loeb transl.).

<sup>37</sup> Plutarch, *Moralia* 828.

<sup>38</sup> Caillemer-Baudry 1216.

<sup>39</sup> Plutarch, *Moralia* 829 (Loeb transl.).

and through the cities, not . . . sowing beneficent grain, but planting roots of debts, roots productive of much toil and much interest and hard to escape from, which, as they sprout and shoot up round about, press down and strangle the cities.

Plutarch also highlights another of the practices that aroused strong public opposition in Greece, immediate discount of interest from the loan (i.e., subtracting the interest from the capital even before handing it over, so that the debtor actually paid for what he never received):<sup>40</sup>

They say that hares at one and the same time give birth to one litter, suckle another, and conceive again; but the loans of these barbarous rascals give birth to interest before conception; for while they are giving they immediately demand payment, while they lay money down they take it up, and they lend what they receive for money lent.

While seizure of person disappeared after Solon, the fear of property-seizure remained to plague the debtor as the dreaded first of the month approached. In *Nubes*, Aristophanes pictures Strepsiades' sleepless night as he thinks of the coming moneylender:<sup>41</sup>

But I can't sleep a wink, devoured and bitten  
By ticks, and bugbears, duns, and race-horses,  
All through this son of mine. He curls his hair,  
And sports his thoroughbreds, and drives his tandem;  
Even in dreams he rides: while I — I'm ruined,  
Now that the Moon has reached her twentieths,  
And paying-time comes on. Boy! light a lamp,  
And fetch a ledger: now I'll reckon up  
Who are my creditors, and what I owe them . . .  
You have rolled me out of house and home, my boy,  
Cast in some suits already, while some swear  
They'll seize my goods for payment.

The difficulty that presses Strepsiades is not the capital that his son has squandered at the races, but the interest, which is continually mounting.<sup>42</sup>

STREPS. Interest? what kind of a beast is that?  
AMYN. What else than day by day and month by month  
Larger and larger still the silver grows  
As time sweeps by. STREPS. Finely and nobly said.  
What then! think you the Sea is larger now  
Than 'twas last year? AMYN. No surely, 'tis no larger:  
It is not right it should be. STREPS. And do you then,  
Insatiable grasper! when the Sea,  
Receiving all these Rivers, grows no larger  
Do you desire your silver to grow larger?

<sup>40</sup> *Ibid.*

<sup>41</sup> Aristophanes, *Nubes* 12 ff. (Loeb transl.).

<sup>42</sup> *Nubes* 1286 ff. (Loeb transl.).

While public opinion clearly opposed the greedy practices of the money-lenders, in general the citizens of Greece always recognized the legitimacy of normal interest and the usefulness of loans at interest for the welfare of the city-state.<sup>43</sup> Pseudo-Demosthenes reflects both the opposition to abuse and the approval of legitimate practice in the oration *In Pantanetum*:<sup>44</sup>

I, for my part, do not regard a moneylender as a wrongdoer, although certain of the class may justly be detested by you, seeing that they make a trade of it, and have no thought of pity or of anything else, except gain. Since I have myself often borrowed money, and not merely lent it to the plaintiff, I know these people well; and I do not like them either; but, by Zeus, I do not defraud them, nor bring malicious charges against them. But if a man has done business as I have, going to sea on perilous journeys, and from his small profits has made these loans, wishing not only to confer favors, but to present his money from slipping through his fingers without his knowing it, why should one set him down in that class? — unless you mean this, that anyone who lends money to you ought to be detested by the public.

(3) *The Philosophers.* The most clear-cut opposition to interest-taking in Greece was philosophical. Plato and Aristotle both condemned the practice. Yet loans at interest were so widely recognized as integral to Athenian economic life that the voices of the great philosophers went largely unheard.

There is a temptation (into which several important modern works on usury have fallen)<sup>45</sup> to dismiss Plato's statements on the subject as musings on an ideal republic; the inference is that Plato could hardly have intended such impractical reflections as applicable to the real world. But this is to misunderstand Greek political theory.

In ancient Greece political theory was a practical science. It dealt with matters which could be otherwise. Philosophers felt themselves charged with the duty of showing how things might be otherwise — and better.<sup>46</sup> Their political theory was idealistic, yet practical. It envisioned ideal states, yet states which were meant to be realized. Plato actually attempted to put the ideal into practice in his ill-fated venture at Syracuse.

Both Plato and Aristotle held up the independent city-state as their ideal.<sup>47</sup> They sought to rescue the city state from the intellectual and moral corruption

<sup>43</sup> The words *in general* must be used to qualify this statement. As will be seen, there were exceptions to this general attitude. In Sparta, moreover, interest taking was apparently forbidden as part of a larger isolationist policy that abhorred money and commerce. Unfortunately most information concerning Sparta comes from Athenian sources; there are almost no extant indigenous sources.

<sup>44</sup> Demosthenes, *Pant.* 53-54 (Loeb transl.)

<sup>45</sup> Cf. L. Levasseur, 'Prêt à intérêt,' *La Grande Encyclopédie* 27.608-14; cf. 610; also, A. Bernard, *op. cit.* 2318. Bernard's work is one of the best general surveys of the question available. He misses the point here, however, as explained above in the text.

<sup>46</sup> E. Barker, 'Greek Political Thought and Theory in the Fourth Century,' *CAH* 6.506 f.

<sup>47</sup> W. Jaeger, *Paideia* (New York 1943) I 107.



that threatened its life. For both philosophers, politics and morals were two sides of the same coin. That state's purpose was to realize the highest good for its citizens. It was the home of moral life.<sup>48</sup> It aimed to make its citizens virtuous. If interest-taking was the cause of evil, the state should eradicate it. Neither Plato nor Aristotle were blind to the signs of the times. But the signs, as they saw them, were those of moral decay. Both philosophers were critics of the democratic Athens that had turned itself into a commercial center and had thrown away moral purpose. They were thus conservative and radical at the same time; in a prophetic way, they called for a return to the true ideals of the self-sufficient city-state, but their call necessarily meant drastic change from the *status quo*. Believing in the city-state as it should be, they could not believe in it as it was.<sup>49</sup>

So at a time when gold and silver were very much a reality, when banking was flourishing and commerce was Athens' lifeblood, Plato wrote that the amassing of wealth was incompatible with sober and virtuous citizenship.<sup>50</sup> Greed, he said, reduces many to poverty. It creates debtors who are soon eager for revolution. Moneylenders only hasten the decay of the *polis*. For their own profit, they build up the drone- and pauper-element of the population.

Plato, like Aristotle, saw money as barren,<sup>51</sup> so he outlawed profit on loans. In his *Leges* he writes:<sup>52</sup>

No one shall . . . lend at interest, since it is permissible for the borrower to refuse entirely to pay back either interest or principal.

Plato aimed to form citizens mutually interested in one another. He eliminated traffic in gold and silver as the source of selfishness and strife. He believed that the lawmaker's job was to establish an order where the good was the supreme value; consequently, the *Leges* put aside what his society considered the ordinary means of commercial growth and fortune. But this ideal scheme never took root in the real world of Athens.

Aristotle, like Plato, was far from unconscious of the real-world situation. He examined that situation philosophically and condemned it. The condemnation is really quite amazing when viewed in its context. Aristotle wrote at the dawn of a new era. His pupil Alexander was to establish a world empire that would make the self-sufficient city-state a thing of the past. In Athens commerce with other states had long been a thriving enterprise. Usury was an everyday affair. Yet Aristotle condemned it.

For Aristotle, economics was subordinate to politics, and politics to ethics. There could be no isolation of the economic motive, no separate inquiry into

<sup>48</sup> Barker 514; also, Jaeger I 113.

<sup>49</sup> Barker 528-29.

<sup>50</sup> Plato, *Respublica* 8.10.556a.

<sup>51</sup> Plato, *Leges* 11.921d.

<sup>52</sup> Plato, *Leges* 5.742 (Loeb transl.).

economics as an independent science.<sup>53</sup> *Oikonomia* was literally the 'law of the household.'<sup>54</sup> It studied the ways in which households and cities could properly use the means at their disposal for the better living of moral life. Wealth was simply a means to a moral end. Its acquisition was necessarily limited by that end. A man should have neither more nor less than the end required.

Moneymaking, for Aristotle, is certainly a necessary art; it is part of managing a household. But if it becomes the end of life, if it knows no bounds and turns even to unnatural practices to satisfy its excessive desires, it is plainly contrary to man's true good. Interest-taking is a prime example:<sup>55</sup>

Of the two sorts of moneymaking, one, as I have just said, is a part of household management, the other is retail trade: the former necessary and honorable, the latter a kind of exchange which is justly censured; for it is unnatural and a mode by which men gain from one another. The most hated sort, and with the greatest reason, is usury, which makes gain out of money itself, and not from the natural use of it. For money was intended to be used in exchange, but not to increase at interest. And this term usury (*τόκος*), which means the birth of money from money, is applied to the breeding of money because the offspring resembles the parent. Wherefore of all modes of making money this is the most unnatural.

Aristotle's position is clear. He condemns usury uncompromisingly as contrary to nature. He starts from a limited concept of money as a medium of exchange and envisions no other natural usage. Attempts to employ money in a way contrary to its nature are wrong. This position, while uncompromising, was also rather isolated in commercial Athens.

Aristotle places moneylending among the most despicable occupations. The usurer, because of greed, attempts to make a profit from what is naturally sterile and purely a medium of exchange. Discussing 'meanness' in the *Ethica Nichomachea*, Aristotle distinguishes those who are mean because of deficiency in giving and those who are mean because of excess in getting. In the latter category he lists the moneylender along with other unsavory characters.<sup>56</sup>

The other sort of people are those who exceed in respect of getting, taking from every source and all they can; such are those who follow degrading trades, brothelkeepers and all people of that sort, and petty usurers who lend money in small sums at a high rate of interest; all these take from wrong sources, and more than their due.

But Aristotle's idealistic vision, like Plato's, did not captivate the minds of his fellow countrymen. Contemporary writers, as seen above, show a

<sup>53</sup> Barker 528.

<sup>54</sup> Cf. Aristotle, *Politica* 1.10.1258 a-b (Jowett transl.).

<sup>55</sup> *Ibid.*

<sup>56</sup> Aristotle, *Ethica Nicomachea* 4.1.40 f. (Loeb transl.).

completely different attitude toward the moneylender. They regard him as a man worthy of esteem, since he gives the borrower something valuable and in return receives only a tablet with a promise inscribed on it. The orations *In Phormionem* and *In Pantaenetum*, both quoted earlier, manifest a clear appreciation of the role of the moneylender in the commercial life of Athens.<sup>57</sup>

In summary, it is clear that all through Greek history interest-taking was common practice. The usual rate was 12%. Several strains of opposition did, however, exist. The *eranos* remained a constant practice which was always held in higher esteem than the loan at interest. Abuses, moreover, aroused adverse public sentiment toward the professional moneylender and interest taking. Finally, Plato and Aristotle, both condemned interest taking.

## II. ROMAN ATTITUDES TOWARD USURY

Romans, like Greeks, regarded loans at interest as a fact of life. But what was an element in the general prosperity of Greece brought misery and revolt to Rome.<sup>58</sup> Whereas in Greece loans at interest served primarily to finance commercial enterprises, in Rome they served to supply the daily expenses of small farmers, to satisfy previous debts and to pay tribute. The plight of the debtor was tragic in the first centuries of the Republic because of the unscrupulous practices of the ruling patricians. As late as 326 B.C. creditors had power over the person of the debtor,<sup>59</sup> whom they could sell or even put to death if he failed to satisfy them.

While Roman literature castigated the greedy usurer, it rarely questioned the legitimacy of interest taking.<sup>60</sup> Even those who were severe on usurers did not themselves hesitate to be lenders.<sup>61</sup> The state sought to remedy the plight of debtors through a whole series of varied enactments from the *Twelve Tables* to the *Codex Justinianus*; its efforts were usually in vain. It even tried to abolish interest-taking, but the prohibition did not work.

Tacitus describes the beginnings of Roman legal involvement in the usury problem in the sixth book of his *Annales*:<sup>62</sup>

<sup>57</sup> Demosthenes, *Phorm.* 51-52 and *Pant.* 53-54.

<sup>58</sup> Cf. Tacitus, *Annales* 6.22.

<sup>59</sup> The Lex Poetelia Papiria (326 B.C.) took away this right. Cf. A. Berger, *s.v.*, RE Suppl. 7.405-9 (see note 64).

<sup>60</sup> Seneca does disapprove of usury in passing. He refers to the practice in *De beneficiis* 7.10.3, and labels it an unnatural form of human greed, but unfortunately he does not develop the argument: 'Quid enim ista sunt, quid fenus et calendarium et usura, nisi humanae cupiditatis extra naturam quaesita nomina?'

<sup>61</sup> E.g., Cato the elder and Cicero. Cf. Plutarch, *Vitae parallelae* ('Marcus Cato') 21.6, and Cicero, *Epistulae ad Atticum* 5.21.

<sup>62</sup> Tacitus, *Annales* 6.16 (Loeb transl.).

The curse of usury, it must be owned, is inveterate in Rome, a constant source of sedition and discord; and attempts were accordingly made to repress it even in an older and less corrupt society. First came a provision of the Twelve Tablets that the rate of interest, previously governed by the fancy of the rich, should not exceed *unciariorum faenore*; later a tribunician rogation lowered it to one-half of that amount; and at length usufruct was unconditionally banned; while a series of plebiscites strove to meet the frauds which were perpetually repressed, only, by extraordinary evasions, to make their appearance once more.

Unfortunately, Tacitus' account was written long after the events described. Sources from this earlier period are sparse, so that many details are not clear. The first legal intervention mentioned took place c. 451-449 B.C. through the famous *Law of the Twelve Tables*. The tablets are of immense importance since they provided the foundation for the whole fabric of Roman Law. They mark a critical point in the conflict between the patricians and plebeians. The plebeians compelled the codification and promulgation of what had formerly been customary law administered and interpreted by the patricians. The eighth tablet took up the problem of exorbitant rates of interest.<sup>63</sup>

... No person shall practice usury at a rate of more than one-twelfth. Authors have argued endlessly over the meaning of *unciariorum faenore*,<sup>64</sup> the rate prescribed by the eighth tablet. While there have been some extreme estimates (both 1 % and 100 % have been proposed as the annual rate),<sup>65</sup> the rate at this early period was probably 8 1/3 % or 10 % a year.<sup>66</sup>

In 357 B.C. the Lex Duillia Menenia, not mentioned in the text quoted above from Tacitus, reaffirmed the prescription of the Twelve Tables. Livy tells of the enactment,<sup>67</sup> but it is not clear whether the new law was necessary simply because the earlier one had been ignored or because laws in the intervening time had allowed higher rates. Anyway the rate in 357 was the *unciariorum faenore* again (or still).

Livy relates that between these two legal prescriptions concerning the rate of interest the Lex Licinia Sestia (c. 375 B.C.) had sought to deal with the usury problem more directly:<sup>68</sup>

<sup>63</sup> XII Tab. 8.18a (transl. *Ancient Roman Statutes* [n. 31] 11).

<sup>64</sup> The exact rate of interest is not especially relevant to the topic under discussion. For a detailed presentation of the various opinions, cf. Caillemer-Baudry DS 2.1224 f., and especially Klingmüller's outstanding article 'Fenus' in RE<sup>2</sup> 6.2187-205; cf. 2189-92.

<sup>65</sup> Caillemer-Baudry 1224. An annual rate of 1 % could hardly have brought about the huge social unrest that usury caused in Rome. On the other hand, a rate of 100 % is so oppressive that it is difficult to imagine how both Tacitus and Livy could consider it an improvement of the debtor's lot (cf. Tacitus, *Annales* 6.16; Livy, 7.16).

<sup>66</sup> Klingmüller (n. 64) 2192. The base for computing the interest is not certain; therefore, either annual rate is possible.

<sup>67</sup> Livy 7.16.

<sup>68</sup> Livy 6.35.1-5 (Loeb transl.).

An opportunity for innovation was presented by the enormous load of debt, which the plebs could have no hope of lightening but by placing their representatives in the highest offices. They therefore argued that they must gird themselves to think of this: with toil and effort the plebeians had already advanced so far that it was in their power, if they continued to exert themselves, to reach the highest ground, and to equal the patricians in honors as well as in worth. For the present it was resolved that Gaius Licinius and Lucius Sextius should be elected tribunes of the plebs, a magistracy in which they might open for themselves a way to the other distinctions. Once elected, they proposed only such measures as abated the influence of the patricians, while forwarding the interest of the plebs. One of these had to do with debt, providing that what had been paid as interest should be deducted from the original sum, and the remainder discharged in three annual installments of equal size.

While the Lex Licinia Sestia aimed to reduce the debtor's burden by cutting his payments and spreading them out, a law in 347, the second of those mentioned above in Tacitus' *Annales*, reduced the interest-rate. Livy gives the details:<sup>69</sup>

The same peaceful conditions continued at home and abroad during the consulship of Titus Manlius Torquatus and Gaius Plautius. But the rate of interest was cut in half (*semiunciarium tantum ex unciario fenus factum*), and debts were made payable, one-fourth down and the remainder in three annual installments; even so some of the plebeians were distressed, but the public credit was of greater concern to the senate than were the hardships of single persons.

By 347, then, the legal rate of interest had sunk to 4 1/6 % or 5 %. Livy's account reflects a political movement seeking to alleviate the debtor's misery through legal action. The movement culminated in the complete abolition of usury.

The Lex Genucia (342), the third of those mentioned above in Tacitus' *Annales*, prohibited usury altogether. Livy mentions the prohibition briefly:<sup>70</sup>

In addition to these transactions, I find in certain writers that Lucius Genucius, a tribune of the plebs, proposed to the plebs that it should be unlawful to lend at interest.

The law seems to have had little lasting practical effect. As a matter of fact, its very existence has been contested<sup>71</sup> because it fits in so poorly with what we know of the conditions of the time. But that the law did exist seems certain (besides Livy, it is very well attested in Tacitus and Appian).<sup>72</sup> On the

<sup>69</sup> Livy 7.27.3 (Loeb transl.).

<sup>70</sup> Livy 7.42.1 (Loeb transl.).

<sup>71</sup> Klingmüller 2192-3.

<sup>72</sup> Tacitus, *Ann.* 6.16; Appian, *Bella civilia* 1.54. The Lex Marcia, probably from the same period, also gave the debtor legal action against the usurer. Gaius, *Institutiones* 4.23, relates: 'Other statutes, however, set up procedure by *manus iniectio*, . . . the L.

other hand, it also seems certain that it was honored more in the breach than in the keeping. The lawmaker had tried, and failed, to eliminate what was already a necessary part of the Roman economy.<sup>73</sup>

While much of the data from this early period of Roman history is fragmentary and details are meager, it is rather clear that the laws concerning interest-taking were generally not obeyed,<sup>74</sup> as was the case with the Lex Genucia. The legal rate of interest was regarded more as a minimum than a maximum. Exorbitant rates sowed seeds of discord. Popular uprisings resulted, and several times the plebeians refused to fight in Roman wars unless something were done about the condition of debtors.<sup>75</sup> Reform legislation ordinarily followed the outbreak of public hostility, but only to be met with general disregard by the moneylenders. The problem of the debt-ridden poor would plague Rome throughout its entire history.

Legal prohibitions could easily be eluded. Creditors could lend through the Latins, whom Roman Law did not generally touch (just as in Greece the Metics were often used to circumvent burdensome prescriptions). Naturally, creditors took advantage of the legal loopholes. The Lex Sempronia (193) attempted to check abuses by making the Latins declare all debts in which they had an interest.<sup>76</sup>

Other laws focused more directly on the debtors' unsolved problems. The Lex Flaminia *minus solvendi* (217) allowed borrowers to pay off their debts with money of reduced value.<sup>77</sup> In 88 B.C. the Lex Cornelia returned to the rate of interest set by the Twelve Tablets.<sup>78</sup> The Lex Valeria (86) allowed bankrupt debtors to satisfy their creditors by repaying one-fourth of what they owed.<sup>79</sup>

Shortly after this time, as commerce with Greece and Asia Minor increased, the Romans began to adopt the long standing Greek practice of 1% a month (12% a year) as the rate of interest on loans. Around the year 71, Lucullus made this the maximum rate for Asia and Cilicia.<sup>80</sup> As in Greece, the rate for maritime loans remained completely free. Cicero imitated Lucullus'

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Marcia against usurers provided that if they had exacted interest, proceedings by *manus iniectio* should be taken against them for repayment' (de Zulueta transl.).

<sup>73</sup> Cf. P. Louis, *Ancient Rome at Work*, translated by E. Wareing, (New York 1965) 87; also, Caillemier-Baudry 1226, and Klingmüller 2194.

<sup>74</sup> Louis 87.

<sup>75</sup> The secessions of 495 and 286 produced at least temporary reforms. Cf. Louis, 87.

<sup>76</sup> A. Berger, 'Leges Semproniae,' RE Suppl. 7.412-13.

<sup>77</sup> Befger, 'Lex Flaminia,' RE Suppl. 7.394-95. There is some doubt, however, about the content of this law.

<sup>78</sup> Berger, 'Lex Cornelia,' *Encyclopedic Dictionary of Roman Law* (Philadelphia 1953) 550.

<sup>79</sup> E. Weiss, 'Leges Valeriae,' RE<sup>2</sup> 12.2417.

<sup>80</sup> Plutarch, *Vitae Parallelae* ('Lucullus') 20.35; Appian, *De bello Mithridatico* 62, 63, 83.

practice in Cilicia.<sup>81</sup> His writings give valuable details about interest rates and the practices of moneylenders. They show that around the year 60 a man of good name could borrow for as little as 4%, but that shortly after the middle of July, 54 B.C., the rate jumped to 8%.<sup>82</sup> 12% was the highest honorable rate; this became the legal maximum in Rome in 51 B.C.<sup>83</sup> The perennial, high-priced moneylender remained, however. Verres lent at 24%.<sup>84</sup> Brutus and his agents lent at 48%.<sup>85</sup> High rates kept the greedy moneylender in public odium, but the taste of profit made odium easier to live with. Cicero remarks about Scaptius, one of Brutus' agents:<sup>86</sup>

The bystanders all declared that the conduct of Scaptius was outrageous in refusing 12 percent with compound interest. Others said he was a fool. He seemed to me to be more of a knave than a fool: for either he was not content with 12 percent on good security, or he hoped for 48 percent on very doubtful security.

How huge interest payments could get becomes evident from another of Cicero's accounts:<sup>87</sup>

Pompey has more influence than anyone for many reasons and because it is rumored that he will come to conduct the war against the Parthians. Even to him, however, payment is made on the following terms. On every thirtieth day some £8000 is paid and that by tribute imposed on the king's subjects. Even such a sum will not cover the amount of monthly interest. However, our friend Gnaeus [Pompey] is an easygoing creditor. He is willing to forgo his capital and is content with interest, and that not in full. The king pays no one else and has no means to pay. He has no treasury and no regular tribute: he levies taxes on the method of Appius. They are scarcely sufficient to pay the interest on Pompey's money.

While 12% remained the legal maximum for centuries, rates varied from place to place. Lower rates, 6% for example, were quite common where security was good.<sup>88</sup> As ever, higher rates were common too.<sup>89</sup>

Around A.D. 112 Pliny the Younger sought to lower the rate of interest (which was still 12%) in order to encourage borrowing in his province. He feared that the money in the provincial treasury would lie idle because, all things being equal, people preferred to borrow from private persons rather

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<sup>81</sup> Cicero, *Epistulae ad Atticum* 5.21.

<sup>82</sup> Cicero, *Att.* 4.15.

<sup>83</sup> Cicero, *Att.* 5.21.

<sup>84</sup> Cicero, *Actio in Verrem* 2.3.71.

<sup>85</sup> Cicero, *Att.* 5.21; 6.2.

<sup>86</sup> Cicero, *Att.* 5.21 (Loeb transl.).

<sup>87</sup> Cicero, *Att.* 6.1 (Loeb transl.).

<sup>88</sup> Pliny, *Epistulae* 7.18; Pliny the Elder, *Historia naturalis* 14.56.

<sup>89</sup> Juvenal, *Saturae* 5.6-8.

than municipalities. So he wrote to Trajan asking that the rate of interest be lowered. Trajan replied:<sup>90</sup>

I also, my dearest Secundus, discern no other remedy than that the rate of interest shall be lowered that the public money may be invested more readily. The moderation of this rate you shall determine in accordance with the number of those who will borrow.

Other attempts at restricting interest more generally took place. The Emperor Constantine issued a very specific decree on April 17, 325:<sup>91</sup>

If a person should lend farm products, either liquid or dry, to those who need them, he shall receive a third additional part as interest; that is, if the sum credited should be two measures, he shall gain a third additional measure. I. But if, on account of the advantage of the interest, a creditor should refuse to accept payment of the debt when he is formally notified, he shall be deprived not only of the interest but also of the principal of the debt. II. This law shall pertain to farm produce only, for a creditor is forbidden to receive more than one per cent for money lent on interest.

A series of laws aimed at *virī illustres*. Alexander Severus (222-235) prohibited senators from taking interest, but allowed them gratuities.<sup>92</sup> Severus' law was soon set aside by another permitting senators 6%.<sup>93</sup> In 397 stricter voices prevailed, and senators were again forbidden to take interest.<sup>94</sup> They easily evaded the law by making loans in the name of a minor son, so in 405 the emperors Arcadius and Honorius returned to the more moderate position of allowing senators 6%.<sup>95</sup>

Abuses continued to arouse legal reaction. Anatocism, which had awakened adverse public sentiment in Greece without being formally prohibited, was forbidden at least in some cases in Rome.<sup>96</sup> A very important reform law put a ceiling on the accumulation of interest, so that it could not mount higher than the capital.<sup>97</sup> In 284 Diocletian imposed the penalty of infamy on those who took illegal interest.<sup>98</sup> In 386 Theodosius the Great decreed that usurers must pay a penalty of fourfold the amount of illegal interest that they had taken:<sup>99</sup>

<sup>90</sup> Pliny, *Ep.* 10.55 (Loeb transl.).

<sup>91</sup> *Codex Theodosianus* 2.33.1. The 1% rate here referred to is monthly (i.e. 12% per year). (The translation of the Theodosian Code and its *Novellae* used here and elsewhere is that of Clyde Pharr, *The Theodosian Code and Novels and the Sirmondian Constitutions* [Princeton 1952]).

<sup>92</sup> Klingmüller 2198.

<sup>93</sup> *Ibid.*

<sup>94</sup> Cf. *Cod. Theod.* 2.33.3.

<sup>95</sup> *Cod. Theod.* 2.33.4.

<sup>96</sup> *Codex Justinianus* 4.32.28.

<sup>97</sup> *Cod. Theod.* 4.19.2; Justinian, *Novella* 121.

<sup>98</sup> *Cod. Just.* 2.12.20.

<sup>99</sup> *Cod. Theod.* 2.33.2.



If any person, taking advantage of the necessity of a debtor, should extort anything beyond the one percent [per month] allowed by law, he shall immediately, without delay, restore what was rapaciously taken, and he shall be obligated to pay fourfold the amount as a penalty. But those persons who are detected as guilty of having acted with equal madness by making excessive demands in any transaction before the issuance of this law shall restore twofold the extorted sum.

Theodosius, while recognizing the importance of credit transactions and protecting them legally, shows a distinct dislike for greedy creditors. In a law of June 17, 380, providing for penalties if a debtor still refuses to pay even after a legal judgment has been handed down against him, the emperor writes:<sup>100</sup>

Of course, provision must be made on the other hand also against the notoriously fraudulent trickery of creditors, lest when the person condemned should delay payment, they should begin to hang over him with the hope of double the one percent [per month] interest.

Likewise, one of Valentinian's *Novellae*, forbidding interest temporarily in Africa because of the destruction wrought by the Vandal invasions, shows a similar disdain for creditors' greed:<sup>101</sup>

If by every possible kind of humanity it behooves the public sympathy to make wise provision, either in specific cases or in general, for the afflicted fortunes of the Africans, who have been compelled to lose all their resources through very bitter sufferings, how much more fitting it is that their misfortunes should be alleviated by the remedies of Our Clemency against the wicked molestations of their creditors! . . . For the same reason of justice, it must also be observed that absolutely no interest for any period of time shall be demanded for money that has been lent to those persons whose misfortunes have been stated above, since it ought to be more than enough for the creditors if, after the restoration of the situation, they can attain the principal of the debt.

Justinian (483-565)<sup>102</sup> renovated the whole legal treatment of loans at interest, incorporating much previous legislation into his *Corpus* and showing far reaching kindness toward the debtor. Without going so far as to suppress interest-taking, as ecclesiastical prohibitions might have suggested,<sup>103</sup> he reduced the rate of interest to 6% for ordinary loans and even to 4% if the lender was a *persona illustris*. Those involved in commercial transactions could ask 8%. For maritime loans and loans of produce (where terms were

<sup>100</sup> *Cod. Theod.* 4.19.1

<sup>101</sup> Valentinian, *Novella* 12 (transl. Pharr 526).

<sup>102</sup> Even though chronologically Justinian comes slightly later than the period with which this paper is mainly concerned, nevertheless this brief summary of his legislation may be useful.

<sup>103</sup> Although conciliar teaching on usury lies outside the scope of this paper, it may be noted here that usury was prohibited by a whole string of councils, from 306 right through the Middle Ages. Cf. e.g. the 17th canon of the Council of Nicaea.

often shorter and risks were greater), 12% or 12 1/2% was permitted.<sup>104</sup> Justinian again forbade that interest mount higher than capital,<sup>105</sup> and he strengthened the law against anatocism.<sup>106</sup>

He shows the same hostility toward greedy creditors that was seen in Theodosius. In one of his *Novellae*, limiting the rate of interest to 12 1/2% on farm produce, he writes:<sup>107</sup>

We have considered it advisable to correct a most atrocious and inhuman abuse which is far worse than any act of impiety or avarice, and administer a remedy applicable to all persons, not only in this present time of necessity, but throughout all future ages; for it has come to Our ears that certain persons, in the province which you govern [i.e. Thrace], being induced by avarice to take advantage of the public distress, and, having drawn up agreements bearing interest, by which they loaned a small amount of grain, have seized the lands of the debtors, and that, for this reason, some farmers have fled and concealed themselves, others have died of starvation, and pestilence, not less terrible than a barbarian invasion, has, in consequence of the failure of the crops, afflicted the people. Hence we order that all creditors of this kind, no matter what may be the value of the articles which they have loaned . . . shall hereafter be entitled to receive annual interest on such articles at the rate of the eighth part of a measure for each measure furnished, and must return to the farmers the lands which they have taken in pledge . . . This law shall apply to all Our subjects, for it is humane and just, it relieves the poor, and affords adequate compensation to creditors.

Justinian limited the rate for monetary loans to farmers to 4%<sup>108</sup> and those to churches and pious foundations to 3%.<sup>109</sup> In general, a practical concern for the poor marked his legal enactments on usury.

To sum up, interest taking was generally accepted in Rome as it had been in Greece, but here it caused suffering and political unrest among the poor. From the time of the Twelve Tables, legislation sought to limit interest and aid the poor. Numerous laws over the centuries allowed various restrictive rates; for the most part the laws were ineffective. In the first century B.C. the Greek practice (12%) was adopted for ordinary loans, but maritime loans remained free. Higher rates persisted. In the Christian era, numerous attempts at restricting interest and eliminating abuse took place, especially under Constantine, Theodosius and Justinian, but limited interest-taking remained legal.<sup>110</sup>

<sup>104</sup> *Cod. Just.* 4.32.26; *Nov. Just.* 32.

<sup>105</sup> *Cod. Just.* 4.32.27; *Nov. Just.* 121.

<sup>106</sup> *Cod. Just.* 4.32.28.

<sup>107</sup> *Nov. Just.* 32 (transl. S. P. Scott, *The Civil Law* [Cincinnati 1932] 16 p. 185).

<sup>108</sup> *Nov. Just.* 32.

<sup>109</sup> *Nov. Just.* 120.

<sup>110</sup> Interestingly, when the ecclesiastical prohibition of usury finally entered oriental

### III. EARLY RABBINICAL ATTITUDES TOWARD USURY

In the early centuries of the Christian era, as the Fathers of the Church were beginning to comment on the practice of usury, Jewish writers were not silent. The ideas that were in circulation in the Palestinian world form the background for what the first Christian teachers said and how they said it. Philo and Josephus, the *Mishna* and *Tosephta*, the *Siphra on Leviticus*, the *Siphre on Numbers and Deuteronomy*, and the *Mekiltha on Exodus* all provide insights into Jewish thought on usury, roughly from the time of Christ until the beginning of the third century. The Palestinian and Babylonian Talmuds, though compiled up to the fifth- and sixth centuries respectively reflect much of earlier Jewish thinking. It was in the midst of such thinking that Christianity was born. Though the new religion soon became separated from Judaism, Christian and Jewish thought remained in contact with one another not only in the East but in the diaspora as well. It is important, therefore, to know more precisely what early Judaism said about usury.

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imperial law, it was a disaster. In his *Prochiron legum*, Basil the Macedonian (867-886) decreed: 'Even though many emperors before us deigned to allow interest-taking, perhaps because of the incorrigibility and crassness of creditors, nevertheless we judge that it ought to be repudiated as unworthy of our Christian state because it is prohibited by divine law. Therefore, Our Majesty decrees that no one has the power to receive interest for any reason whatsoever, lest, while we seem to keep the law of God, we should transgress his precept. But if anyone should receive anything anything, let it be imputed as a debt to the creditor' (*Prochiron legum* 16.14, ed. B. Brandileone and B. Puntoni [Rome 1895]; translation mine). Basil's decree caused such havoc that his successor, Leo the Wise (886-911), abrogated it (with great delicacy) and set the maximum rate of interest at 4%. 'Certainly it would be excellent and salutary if the human race, being conformed to the laws of the Holy Spirit, had no need for human regulations. Nevertheless as it is not granted to all to be raised up to the heights of the Holy Spirit and to hear the echo of the divine law, but actually there are very few who arrive there through the practice of virtue, we ought to be quite happy if men at least live conformably to human laws. The judgment of the Holy Spirit condemns in an absolute fashion what is called interest on loans of money, and knowing that, the Emperor of eternal memory, our father, decided to forbid, by a special measure, the receiving of interest. But that prohibition became, because of extreme poverty, a cause, not of betterment, as was the legislator's aim, but of perversion . . .' Leo explained that those who would formerly have lent to the poor, because they could no longer make gains from their loans, became hard and inhuman toward those who needed their help (cf. the same problem in Dt. 15.3 f and in *Shebi'it* X 3-5). Moreover, the law led to perjury and, because of the perversity of human nature, to increased misery. Leo concluded: 'Without wanting to condemn the law in itself (something which would not please God), granted (as I have said) that human nature cannot attain the sublimity of the law, we abrogate this enactment which was too perfect, and we permit, on the contrary, a return to the practice of loans of money at interest, as the ancient legislators had authorized' (*Nov.* 83, ed. P. Noailles and A. Dain, *Les Nouvelles de Léon VI le Sage* [Paris 1944]; translation mine).

Talmudic legislation far outdid the Old Testament in discouraging loans at interest. The Jew was to lend freely, asking no interest.<sup>111</sup> Taking this a step further, the rabbi Gamaliel II (T2)<sup>112</sup> even made it a practice to take losses on his loans, accepting reimbursement at whichever price level was lower, that of the time of lending or of repayment.<sup>113</sup> Laws forbade not just usury, but even what looked like usury.<sup>114</sup> Numerous cases were examined and were answered with a severity that went far beyond the biblical prohibition. As in Old Testament times, however, many did break both the letter and the spirit of the law.<sup>115</sup> Interest taking still went on. The permission to take interest from the gentiles remained;<sup>116</sup> some, as will be seen, even saw it as a command.<sup>117</sup> The 24% rate in Egypt of Hellenistic and Roman times and the 50% penalty for failure to pay on time were a strong incentive either to break the prohibition against usury or to circumvent it through short-term loans with high penalties for defaulting.<sup>118</sup>

The usury prohibition was one of those laws which concerned only members of the community. It sought to foster community, to strengthen the bonds that gave Israel her identity, to recall to the Israelite that his fellow countrymen were his brothers. When an Israelite was in need, his brethren were to come to his aid. The *Mekiltha on Exodus* (c. 2nd cent.) taught that Jews had a positive obligation to lend.<sup>119</sup>

<sup>111</sup> *Tosephta to Baba Mezi'a* 6.18.

<sup>112</sup> With few exceptions, it is impossible to date exactly the rabbis mentioned in the *Talmud*. To aid the reader, the letter and number given in parentheses after the name of a rabbi indicate the relative chronology used by H. L. Strack, *Introduction to the Talmud and Midrash* (Philadelphia 1931) 109 ff. The letter indicates the period (here, always T, indicating the earlier Tannaitic period), and the number indicates the generation to which the rabbi belonged:

T1: First Generation of Tannaim — before A.D. 90

T2: Second Generation — 90-130

T3: Third Generation — 130-160

T4: Fourth Generation — 160-190

T5: Fifth Generation — 190-c. 220.

For a comparable relative chronology, cf. the index volume of the Soncino *Talmud* (London 1935).

<sup>113</sup> S. W. Baron, *A Social and Religious History of the Jews* (New York 1960) II 250; cf. *Baba Mezi'a* V 8.

<sup>114</sup> Cf. *Baba Mezi'a* 5.1 ff.

<sup>115</sup> Cf. Philo, *De virtutibus* 86-87; also, Baron II 250.

<sup>116</sup> Cf. Philo, *De specialibus legibus* 2.73; see also, for example, *Baba Mezi'a* 5.6; henceforth, BM.

<sup>117</sup> *Siphre on Deuteronomy* 263 (on 23.21); also, 113 (on 15.3).

<sup>118</sup> Baron II 250.

<sup>119</sup> *Mekiltha on Exodus*, 'Tractate Kaspa' (Ex. 22.24-29) 3.147, translated by J. Z. Lauterbach (Phila. 1933).

*If Thou Lend Money to Any of My People.* R. Ishmael says: Every 'if' in the Torah refers to a voluntary act except this and two others. 'And if thou bring a meal-offering of first-fruits' (Lev. 2.14) refers to an obligatory act. You interpret it to be obligatory. Perhaps this is not so, but it is merely voluntary? Scripture, however, says: 'Thou shalt bring for the meal-offering of thy first-fruits' (*ibid.*) — it is obligatory and not voluntary. Similarly, 'And if thou make Me an altar of stone' (Ex. 20.22) refers to an obligatory act. You interpret it to be obligatory. Perhaps this is not so, but it is merely voluntary? Scripture, however, says: 'Thou shalt build . . . of unhewn stones' (Deut. 27.6) — it is obligatory and not voluntary. And so also here you interpret: 'If thou lend money' as referring to an obligatory act. You interpret it to be obligatory. Perhaps this is not so, but it is merely voluntary? Scripture, however, says: 'Thou shalt surely lend to him' (Deut. 15.8) — it is obligatory and not voluntary.

In the same vein Rabbi Simeon b. Eleazar (T4) sang the praises of the man who lends without interest and condemned those who refuse to do so.<sup>120</sup> Likewise the *Tosephta to Baba Mezi'a* notes the promise of a reward to those who lend freely.<sup>121</sup> Philo (c. 30 B.C. - A.D. 45) took up the same theme in his *De virtutibus*:<sup>122</sup>

For along with the capital, in place of the interest which they determine not to accept, they receive a further bonus of the fairest and most precious things that human life has to give: mercy, neighborliness, charity, magnanimity, a good report and good fame. And what acquisition can rival these? No, even the Great King will appear as the poorest of men if compared with a single virtue. For his wealth is soulless, buried deep in storehouses and recesses of the earth, but the wealth of virtue lies in the sovereign part of the soul, and the purest part of existence, heaven, and the all-creating God claim it as their own.

Unfortunately, as Deuteronomy had clearly foreseen,<sup>123</sup> the prohibition on interest-taking discouraged lending. Philo recognized the problem in his own time and exhorted his readers to generosity:<sup>124</sup>

He forbids anyone to lend money on interest to a brother, meaning by this name not merely a child of the same parents, but anyone of the same citizenship or nation. For he does not think it just to amass money bred from money as their calves are from cattle. And he bids them not to take this as grounds for holding back or showing unwillingness to contribute, but without restriction of hand and heart to give free gifts to those who are in need, reflecting that a free gift is in a sense a loan that will be repaid by the recipient when times are better, without compulsion and with a willing heart.

<sup>120</sup> BM 71a. The letter *J* will be placed before the abbreviation of a tractate when the citation is from the Gemara of the *Jerusalem Talmud*.

<sup>121</sup> *Tosephta to BM* 6.18; henceforth, TBM.

<sup>122</sup> Philo, *De virtutibus* 14.84-85 (Loeb transl.).

<sup>123</sup> Cf. Dt. 15.7-11.

<sup>124</sup> Philo, *De virtutibus* 14.82-83 (Loeb transl.).

Yet the prohibition against usury came to be extended to far more than the taking of interest.<sup>125</sup> The *Siphre on Deuteronomy* declared that not only is all interest forbidden, but anything that looks like interest, like greeting the debtor or keeping informed about him.<sup>126</sup> Likewise one of the rabbis commented:<sup>127</sup>

The commandment has been formulated to show that there is a type of interest which precedes and a type which follows. How? A man is seeking to borrow from someone and he sends him a present saying, '... so that you might lend to me.' That is interest which precedes. A man has borrowed from someone and sends him small coins and a present, saying, '... for your inactive money which I have.' That is interest which follows.

The extension of the usury prohibition is especially clear in the fifth chapter of *Baba Mezi'a* (M).<sup>128</sup> The term *usury* takes on a very broad meaning here so that rather common commercial activities fall under the prohibition.<sup>129</sup> The chapter gives too many cases to list them exhaustively, but some of the details are interesting as examples of how broad the meaning of usury had become.

The creditor may not dwell without charge in the debtor's courtyard or hire it from him at a reduced rate, since that counts as usury.<sup>130</sup>

If a man sold his field and was given a part of the price and said to the buyer, 'Pay me (the rest of) the price when you will, and then take what is yours,' this is forbidden.<sup>131</sup>

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<sup>125</sup> The *Talmud* and other Jewish writings distinguish four main types of increase': (1) **רְבִית קְצוּצָה**, or fixed interest; (2) **אֶבֶק רְבִית** or 'the mere dust of interest'; (3) **מַחְזִי כְרִבִּית** or 'the semblance of interest'; (4) **רְבִית דְּבָרִים** or interest which is payable by some means other than money. The first of these denotes the ordinary transaction where interest on money is paid directly on a loan. The second denotes some indirect form of interest connected with bargain or sale, even if given more or less gratuitously by the borrower; it also covers cases where a borrower gives something in anticipation of a loan. The sale of futures was prohibited under this second category. The third type of 'increase' refers to interest paid out of gratitude for a past loan or out of the desire to induce a future one. The fourth includes many disparate cases, as, for example, when a borrower honors his creditor by allowing him to perform some religious duty in connection with synagogue worship. Cf. J. Abelson, 'Usury (Jewish),' *Encyclopedia of Religion and Ethics* 12:557.

<sup>126</sup> *Siphre on Deuteronomy* 262 (on 23.20); henceforth, SD.

<sup>127</sup> SD 263 (on 23.21) (my transl. from the French of J. Bonsirven, *Textes rabbiniques des deux premiers siècles chrétiens* [Rome 1955] 76).

<sup>128</sup> The letters in parentheses after the name of a tractate indicate whether the citation is from the *Mishna* (M) or the *Gemara* (G), which are the two constituent parts of the *Talmud*. The letters are used only where the origin of the citation is not otherwise obvious.

<sup>129</sup> Cf. BM 5.4.

<sup>130</sup> BM 5.2. Unless otherwise noted, all citations from the *Talmud* are from the Soncino version. But, for the text of the *Mishna* for *Baba Mezi'a*, the translation is from H. Danby, *Mishnah* (London 1933).

<sup>131</sup> BM 5.3.

None may set up a shopkeeper on the condition of receiving half the profit, or give him money to buy produce with on the condition of receiving half the profit, unless he is paid his wage as a laborer.<sup>132</sup>

Even more interesting are the complicated commentaries of the rabbis on *Baba Mezi'a*. Through casuistry they refined the meaning of usury even more than the text of the *Mishna* had done. Some of their comments will be considered shortly in passing, but only a full reading of the *Gemara*, which it is impossible to reproduce here, will give an adequate picture of the intricacies of usury that were discussed within Judaism.<sup>133</sup>

The *Tosephta to Baba Mezi'a* adds case after case involving the broadened concept of usury.<sup>134</sup> Again, it forbids not just interest-taking, but what looks like usury, even though granting that it might not be. *Baba Bathra* further illustrates the lengths to which such an understanding of usury could be carried. The following discussion from the *Gemara* involves the subtle use of the usury principle:<sup>135</sup>

Come and hear! It has been taught: In the case where a man hired a laborer to work for him at the harvesting season for a denarius a day, and paid him his wage in advance, but at that season the laborer was worth a *sela'* a day he must not derive any benefit from it. If, however, a man hires a laborer to commence work at once and to continue through the harvesting season for a denarius a day, although at the harvesting season he was worth a *sela'*, he is permitted to pay in advance and to have the benefit of the difference.

In the first case there is a difference between the salary given and the price of labor; hence there is usury involved, since the laborer is paying a *sela'* in labor for every denarius he has received. In the second case the whole period of the contract is considered as one long day. Since, during the first days of the period, labor was worth only a denarius a day, no higher price need be paid for the other days; hence no usury is involved. In another case *Baba Bathra* (G) explicitly refuses to apply the usury prohibition to the reciprocation of wedding gifts, so as to allow a person to give a gift of higher value than the one he received.<sup>136</sup>

*Baba Kamma* does apply the broadened concept of usury to sales transactions. The *Gemara* states:<sup>137</sup>

Advance payment at present prices may be made for the future delivery of products, but no advance payment at present may be made if the value of the products will subsequently be paid in actual money in lieu of them.

<sup>132</sup> BM 5.4.

<sup>133</sup> Cf. *The Talmud* (London 1935) 'Nezikin II: Baba Mezi'a' 5.361 f.

<sup>134</sup> Cf. TBM 4.3.

<sup>135</sup> *Baba Bathra* 86b-87a; henceforth, BB.

<sup>136</sup> BB 145a, last line.

<sup>137</sup> *Baba Kamma* 103a; henceforth, BK.

The latter transaction is condemned because it could involve the handing over of a sum of money now in exchange for a larger one later. The *Gemara* views this as contrary to the spirit of the usury prohibition.

The *Mishna* carefully lists all those who incur guilt in usurious deals:<sup>138</sup>

These transgress a negative command: the lender, the borrower, the guarantor, and the witnesses. And the Sages say: The scribe also. They transgress the command 'Thou shalt not give him thy money upon usury,' and 'Take thou no usury of him,' and 'Thou shalt not be to him as a creditor,' and 'Neither shall ye lay upon him usury,' and 'Thou shalt not put a stumbling-block before the blind, but thou shalt fear thy God. I am the Lord.'

Commenting on this text, the *Gemara* in the *Jerusalem Talmud* points out the blindness of the usurer who hires a notary and witnesses to attest to his sin.<sup>139</sup> Similarly the *Mekilltha on Exodus* condemns everybody who takes part in usury.<sup>140</sup>

So far I know only of a warning to the lender and to the borrower. But how would I know of a warning to the guarantor, to the witnesses, and to the notary? Therefore it says here: 'Neither shall you lay upon him interest' — in any capacity at all. In this connection the sages said: He who lends on interest transgresses five commandments, namely: 'Not to give' (Lev. 5.37), 'and not to take' (Lev. 5.36), 'Thou shalt not be to him as a usurer' (Ex. 22.24), 'Neither shall you lay upon him interest' (Ex. 22.24), and 'nor put a stumbling block before the blind' (Lev. 19.14). And just as the lender and the borrower transgress five commandments, so also do the guarantor and the witnesses and the notary. R. Judah would exempt the notary. R. Meir says: He who lends on interest, saying to the scribe: 'Come and write,' and to the witnesses: 'Come and sign,' has no share in Him who decreed against taking interest.

For further applications of the usury principle in rabbinical writings, there are ample examples in *Baba Mezi'a* V, 7 ff., the *Tosephta* to *Baba Mezi'a* 4.4-5 and 9-25, 'Arakin (M) 9.2-4, and *Baba Bathra* 87a. All of these texts are available in translation.<sup>141</sup> They apply the usury principle to prices, wages, sale of inheritances, partnerships, advance payments, rents, and other transactions.

In line with its recommendations to lend generously to fellow Israelites and its deep concern over dealings which might even appear usurious, the *Talmud* exhorts the creditor to great delicacy toward debtors. It warns him not to wound them, nor to seek profit from debts subtly by imposing unfavorable conditions. Rabbi Simeon b. Joḥai (T3) even states:<sup>142</sup>

<sup>138</sup> BM 5.11.

<sup>139</sup> JBM 5.10.

<sup>140</sup> *Mekilltha on Exodus* (Ex. 22.24) 3.149.

<sup>141</sup> Cf. I. Epstein (ed), *The Babylonian Talmud* (London 1948-52), or Danby, *op. cit.*

<sup>142</sup> BM 75b (my transl. from Bonsirven 462).



If a man does not usually greet another first, he ought not to do so because he has lent him a mina. You can deduce this from Dt. 23.20: 'You shall not take usury.' Everything which can be usury, even a word, is forbidden.

Dealings with foreigners, however, were different. In his *De specialibus legibus* Philo comments on the difference in attitude:<sup>143</sup>

He does not allow them to exact money from their fellow nationals, but does permit the recovery of dues from the others. He distinguishes the two by calling the first by the appropriate name of brethren, suggesting that none should grudge to give of his own to those whom nature has made his brothers and fellow heirs. Those who are not of the same nation he describes as aliens, reasonably enough, and the condition of the alien excludes any idea of partnership . . .

The *Siphre on Deuteronomy* goes a step further and states that to demand interest from an alien is a positive command.<sup>144</sup> Numerous practical applications of the law regarding foreigners are available from the *Tosephta to Baba Mezi'a*.<sup>145</sup> In case after case what is forbidden in relation to the Israelite is allowed in relation to the alien. Interestingly, a prescription in the *Tosephta* deals with a ruse analogous to the practice used to circumvent the law in Greece and Rome: an alien may not charge interest if he is using an Israelite's money.<sup>146</sup>

It is quite clear that the practices of Jews who lent to foreigners were notorious at a very early date, though this fact has sometimes been disputed.<sup>147</sup> In a papyrus from Egypt in A.D. 41, a certain Serapion counsels a young man, Heracleides, to be careful with creditors and not to fall into the hands of the Jews: *Βλέπε σάτον ἀπὸ τῶν Ἰουδαίων*.<sup>148</sup>

While the law forbade 'iron terms' toward Jews, it allowed them toward foreigners.<sup>149</sup> This permission refers to the type of contract where A sells B a field or flock, demanding that B share the profits from the field or flock until he has made full payment, and where B in the meantime bears the burden of all losses. In such a case A's security was like 'iron.' But this was obviously usury in the broad sense of the rabbis, since B was forced to give more than what he had received. Clearly B was the owner of the field or flock since he had bought it and bore the burden of all losses, but he was being compelled to pay an additional portion of the profits anyway. Such a transaction was permitted only if B were a foreigner.

<sup>143</sup> Philo, *De specialibus legibus* 2.73 (Loeb transl.).

<sup>144</sup> SD 263 (on 23.21); also, 113 (on 15.3).

<sup>145</sup> TBM 5.15-17, 19-21.

<sup>146</sup> TBM 5.20.

<sup>147</sup> Cf. the comments of M.-J. Lagrange, *Le Judaïsme avant Jésus-Christ* (Paris 1931) 520.

<sup>148</sup> U. Wilcken, *Archiv für Papyrusforschung* 4 (1907) 567.

<sup>149</sup> BM 5.6; TBM 5.14; *Bekoroth* 16 b.

Even in loans among Jews, however, interest was not *absolutely* forbidden by the rabbis. In the *Tosephta to Baba Mezi'a*, for example, we find the prescription:<sup>150</sup> 'A man can borrow at interest from his wife and his sons only to let them know the taste of usury.' In this case charity allows for a usurious deal. Rabbis disputed over a second case mentioned in the Gemara of the *Jerusalem Talmud*:<sup>151</sup>

You meet the case of a house situated in a fortified city. A person can rent it and then buy it the following year. The rent received is a type of interest permitted by the Torah. R. Meir says that it is not true interest, while R. Judah says that it is interest, but is permitted by the Torah. . . . R. Hezekiah makes this remark: they say that this is interest permitted by the Torah. If it permits interest here, what about elsewhere?

It is evident from the text that Rabbi Judah (T4) did not see the prohibition as absolute, since to his mind the Torah could permit exceptions. Rabbi Hezekiah's (dates uncertain, seems post Tannaitic) statement reflects the casuistic method that was already present in Deuteronomy and Leviticus and that will play a major role in introducing new insights into the usury question in the late Middle Ages.

But while the rabbinical prohibition against usury is not absolute, it is certainly very grave. Usury is at times made equivalent to denying God. The *Gemara* of the *Babylonian Talmud*, *BM*, quotes Rabbi Jose (T3) as saying:<sup>152</sup>

Come and see the blindness of those who lend at interest: . . . get together witnesses, a notary, quill and ink, and then write down and seal (a contract): 'So-and-so has denied the God of Israel.'

In almost the same words the *Gemara* of the *Jerusalem Talmud* labels interest-taking as denial of Yahweh:<sup>153</sup>

Come and see the blindness of those who lend at interest: if anyone calls another an idolator, an incestuous man or a murderer, the other seeks vengeance on his life; and here is someone who hired a notary and witnesses and says to them, 'Come and testify that he has denied the Omnipresence.' This brings out that everyone who lends at interest denies the Root Principle.

Reading these two texts in the light of the *Gemara* on *Sanhedrin*<sup>154</sup> and the *Tosephta to Aboda Zara*,<sup>155</sup> it is very striking how grave some of the rabbis, at least for homiletic purposes, declared the sin of usury to be. A Jew was

<sup>150</sup> TBM 5.15 (my transl. from Bonsirven 472).

<sup>151</sup> JBM 5.10 b (my transl. from Bonsirven 460).

<sup>152</sup> BM 71a (my transl. from Bonsirven 461).

<sup>153</sup> JBM 5.10 (my transl. from Bonsirven 462).

<sup>154</sup> Sanhedrin 74a.

<sup>155</sup> *Tosephta to Aboda Zara* 1.10, 11.

permitted to violate the ordinances of the Torah if he were threatened with death, but he was forbidden to do so in cases of idolatry, immorality and bloodshed. The text given above from the *Jerusalem Talmud* alludes to these three special cases and connects usury with idolatry, the most serious of sins. So grave was the prohibition of idolatry that it was regarded as 'equal in weight to the whole Torah.'<sup>156</sup> To drive home their general teaching on idolatry the rabbis formed practical regulations which aimed at lessening the likelihood that Jews would be contaminated with pagan practices. To the modern reader their measures might seem extreme, but they worked from the principle that prevention was better than cure. A treatise like *Aboda Zara* gives flesh to this principle through multiple minute regulations. The *Gemara* expresses its working philosophy in an aphorism: 'Keep off, we say to a Nazirite: go round the vineyard and come not near to it.'<sup>157</sup> Just as the Nazirite could avoid the fruit of the vine by avoiding the vineyard itself, so also could the Jew be preserved from idolatry by being preserved from any idolatrous object. The *Tosephta* to *Aboda Zara* applies this principle to usury by forbidding business dealings that involved any money that had formerly been gained from usury.<sup>158</sup> The connection of usury with idolatry makes rabbinical efforts to avoid even what looked like usury much more understandable, even though much of what the rabbis recorded is obviously homiletic material containing exaggerated statements aimed at driving the point home.

In the opinion of the rabbis usury was also equivalent to the shedding of blood.<sup>159</sup> Frequently Jewish writers upbraided the usurer for his savagery. Philo was particularly outspoken. In his *De virtutibus* he wrote:<sup>160</sup>

But there are some who have reached such a pitch of depravity that, when they have no money, they supply food on loan on condition that they receive in return a greater quantity than they gave. It would be a long time before you would catch these people giving a free meal to beggars since they create famine when they have plenty and abundance and draw a revenue out of the wretches' empty stomachs and as good as measure out food and drink on a balance to make sure that they do not overweight the scale. So then he absolutely commands those who shall be members of his holy commonwealth to discard such methods of profit-making, for these practices show the marks of a slavish and utterly illiberal soul transformed into savagery and the nature of wild beasts.

With even more bite, his *De specialibus legibus* emphasized the same point:<sup>161</sup>

<sup>156</sup> *Sanhedrin* 74a; *Horayoth* 8a.

<sup>157</sup> *Aboda Zara* 58b.

<sup>158</sup> *Tosephta* to *Aboda Zara* 1.10-11.

<sup>159</sup> *Temurah* 6b.

<sup>160</sup> Philo, *De virtutibus* 86-87 (Loeb transl.).

<sup>161</sup> Philo, *De specialibus legibus* 2.74-77 (Loeb transl.).

Now lending money on interest is a blameworthy action, for a person who borrows is not living on a superabundance of means, but is obviously in need, and since he is compelled to pay the interest as well as the capital, he must necessarily be in the utmost straits. And while he thinks he is being benefited by the loan, he is actually like senseless animals suffering further damage from the bait which is set before him. I ask you, Sir Moneylender, why do you disguise your want of a partner's feeling by pretending to act as a partner? Why do you assume outwardly a kindly and charitable appearance but display in your actions inhumanity and a savage brutality, exacting more than you lend, sometimes double, reducing the pauper to further depths of poverty? And therefore no one sympathizes when in your eagerness for larger gains you lose your capital as well. In their glee all call you extortioner and money grubber and other similar terms, you who have lain in wait for the misfortunes of others, and regarded their ill luck as your own good luck. It has been said that vice has no sense of sight; so too the moneylender is blind, and has no vision of the time of repayment, when it will hardly be possible, if at all, to obtain what he has expected to gain by his greed. Such a person may well pay the penalty of his avarice . . .

The rabbis looked at the usury prohibition as intimately connected with Israel's covenant with Yahweh. The *Siphra on Leviticus* states:<sup>162</sup>

I, the Lord your God, have brought you out of Egypt on the condition that you accept the commandments on usury. Whoever professes them professes the exodus from Egypt, and vice versa.

From this it followed that the breaking of the prohibition had brought about the subjection of Israel to her enemies, since this was a necessary consequence of unfaithfulness to the covenant. The *Gemara of Sukkah* draws this conclusion:<sup>163</sup>

The possessions of the householders have been delivered to the empire because of four faults: on account of those who retain in their possession bills which have been paid (in the hope of claiming them again); on account of those who lend money on usury; on account of those who had the power to protest against wrongdoing and did not protest; and on account of those who publicly declare their intention to give specified sums for charity and do not give.

So abhorrent was usury to the rabbis that some remarked that selling one's daughter into slavery was less self defeating than a usurious deal. The *Gemara* on 'Arakin records that R. Huna (A.D. 216-297) makes the comparison:<sup>164</sup>

. . . he teaches us that a man should rather sell his daughter than borrow on usury; for in the former case she goes on making deductions and goes out free, whereas here the debt becomes even larger.

<sup>162</sup> *Siphra on Leviticus* 25.38 (my transl. from Bonsirven 46); ed. Weiss, 109c.

<sup>163</sup> *Sukkah* 29a, b.

<sup>164</sup> 'Arakin 30b.

The rabbis saw that the daughter's work would count toward the payment of the debt, so that eventually, when the balance was paid, she would be free again. A loan at interest, on the other hand, would just keep mounting higher and higher and would worsen the debtor's lot rather than improve it.

Considering usury equivalent to robbery, the rabbis excluded the money-lender from being a witness or a judge. *Sanhedrin* (M)<sup>165</sup> classes the usurer with the gambler, the pigeon trainer (probably a man who engaged in some form of racing birds or who lured birds from another man's dovecote by means of decoys), and the trader who carried on operations during the sabbatical year. None of these might be judges or witnesses. The disqualification is based on Ex. 23:1: 'Put not your hand with the wicked to be an unrighteous witness.' This text had been applied to robbers and was used to exclude them from the two offices. The rabbis consider all those listed in *Sanhedrin* as worthy of the same treatment.

Like the Old Testament, rabbinic literature did not consider the usury question in terms of justice. As seen in the second chapter, the Old Testament was concerned with the bond of brotherhood and charity toward the poor in its explanation of the prohibition of usury. Rabbinic writings develop the same ideas. When the question of restitution arose, rabbis disputed whether or not interest had to be returned, but neither side in the argument argued from considerations of justice. The *Gemara* of *Temurah* describes the dispute:<sup>166</sup>

... wherein do Abaye and Raba really differ? — They differ in the case of stipulated usury [where the creditor arranges for a fixed amount of interest on a loan] ... For R. Eleazer said: Stipulated usury can be reclaimed through the judges, whereas the dust of usury [i.e., indirect usury, as when a man sells his field and says to the buyer that if he pays him at once the price will be so much, but if he pays later, the price will be more] cannot be reclaimed through the judges. R. Johanan, however, says: Even stipulated usury is not reclaimed through the judges. ... R. Isaac said: What is the reason of R. Johanan? Scripture says: 'He hath given forth upon usury and hath taken increase: shall he then live? He shall not live,' thus intimating that the taking of usury is a matter that affects life but is not subject to restoration. ... Lenders on interest are compared to shedders of blood. Just as shedders of blood cannot make restoration of the lives lost, so lenders on interest are not required to make restoration of interest.

The *Gemara* treats restitution in several other places,<sup>167</sup> as does the *Tosephta* to *Baba Mezo'a*,<sup>168</sup> but perhaps most interesting of all is the discussion in *Baba*

<sup>165</sup> *Sanhedrin* 3.3.

<sup>166</sup> *Temurah* 6a, b. The explanations in brackets are mine (based on notes accompanying the Soncino translation).

<sup>167</sup> Cf. e.g. BM 61b; BB 94b.

<sup>168</sup> TBM V, 21-25.

*Ḳamma*. It brings out clearly that even when restitution is demanded, the demand does not arise from principles of justice. After mentioning various opinions on restitution, the *Gemara* states:<sup>169</sup>

Come and hear: Robbers and usurers even after they have collected the money must return it. But what collection could there have been in the case of robbers . . . It must there read as follows: 'Robbers, that is to say usurers, even after they have already collected the money, must return it' — it may, however, be said that though they have to make restitution of the money it would not be accepted from them. If so why have they to make restitution? — To make it quite evident that out of their own free will they are prepared to fulfill their duty before Heaōen

While upholding restitution here, however, *Baba Ḳamma* denies the need for it in both an earlier and later passage concerning the children of the usurer.<sup>170</sup> If the consideration were one of justice, the change would be incomprehensible. The later passage reads:<sup>171</sup>

R. Adda b. Ahabah read the statement of Rami b. Hama with reference to the following teaching: 'If their father left them money acquired from usury they would not have to restore it even though they definitely know that it came from usury.' . . . [Raba said]: Here there is a special reason, as Scripture states: Take thou no usury of him or increase, but fear thy God that thy brother may live with thee, as much as to say, 'Restore it to him so that he may live with thee.' Now, it is the man himself who is thus commanded by Divine Law, whereas his son is not commanded by Divine Law [to make restitution].

Even though the goods can be identified with certainty, the children of the debtor are excluded from any obligation of restitution because they do not fall under the positive divine command. Such a line of reasoning obviously does not revolve around principles of justice.

This is also the case with Rabbi Meir's (T3) opinion. He held the strict view that the usurer should lose everything, principal and interest;<sup>172</sup> but *Baba Bathra* (G)<sup>173</sup> makes it clear that this is a case of a penalty imposed on the whole for the sake of its part. Anyway the Sages disagreed with Rabbi Meir<sup>174</sup> and demanded only that the interest be given back. But again *Baba Bathra* (G) calls this a penalty,<sup>175</sup> not restitution demanded in justice.

Finally, considering all the intricacies of the restrictions involved in the legislation surrounding loans, it is not difficult to imagine that even the generous

<sup>169</sup> BK 94b.

<sup>170</sup> Cf. BK 94b (earlier) and 112a.

<sup>171</sup> BK 112a.

<sup>172</sup> BK 30b; BB 94b.

<sup>173</sup> BB 94b.

<sup>174</sup> BM 72a, and BB 94b.

<sup>175</sup> BB 94b.

man might have been discouraged. Deuteronomy had foreseen this situation.<sup>176</sup> The *Mishna* witnesses that it was a stark reality. But *Shebi'ith* (M) shows an attempt to adapt the law to the needs of the times.<sup>177</sup> Because the law concerning the sabbatical year (cancelling debts) had paralyzed generosity, Hillel had to enact the law of *prozbul* by which a creditor could recover a loan at any time. The text is very interesting in that it shows the adaptation of Old Testament law to changing conditions:<sup>178</sup>

A loan secured by a *prozbul* is not cancelled. This was one of the things instituted by Hillel the elder; for when he observed people refraining from lending to one another, and thus transgressing what is written in the Law, 'Beware, lest there be a base thought in thy heart,' . . . he instituted the *prozbul*. This is the formula of the *prozbul*: 'I declare before you, so-and-so, judges of that place, that touching any debt that I may have outstanding, I shall collect it whenever I desire.' And the judges sign below, or the witnesses.

One of the contracts from the caves of Murabba'at provides a recently discovered example of the *prozbul*.<sup>179</sup> The papyrus is from A.D. 55/56 and concerns a loan of money. If the loan is not paid on time, the borrower will pay 20% interest as a penalty.<sup>180</sup> The creditor retains his right to reimbursement even in the sabbatical year, and if the debtor defaults he may seize his property.

To sum up: contemporary with early Christianity, Talmudic legislation far outdid the Old Testament in discouraging interest taking. Conversely, it strongly emphasized the obligation to lend freely to the poor man. The rabbis at the same time extended the prohibition against usury to much more than interest taking; they forbade even what looked like usury. But permission to take interest from the gentiles remained in effect; some even regarded it as a command. Casuistry, moreover, did provide for interest taking in a few cases even among Jews, so that in practice the prohibition was not absolute. Violation of the prohibition was considered very grave; at times it was spoken of as

<sup>176</sup> Dt. 15.7-11.

<sup>177</sup> *Shebi'ith* 10.3-6.

<sup>178</sup> *Ibid.* The usual spelling is פרוזבול, though פרוסבול is not uncommon. The word corresponds formally with the Greek *προσβολή* but historically it has been difficult to find any meaning of this rather common Greek word which would be applicable to a legal instrument such as the Jewish *prozbul*. In recent times, however, Greek papyri from Egypt have afforded several instances of a technical juridical usage of *προσβολή*, so that this seems the best derivation for *prozbul*. Cf. Ludwig Blau, 'Prosbol im Lichte der Griechischen Papyri und der Rechtsgeschichte,' *Festschrift zum 50jährigen Bestehen der Franz-Joseph-Landesrabbinerschule in Budapest* (Budapest 1927) 96-151; esp. 112; S. Krauss, *Griechische und Lateinische Lehnwörter im Talmud, Midrasch and Targum* (Berlin 1899) 482; G. F. Moore, *Judaism* (Cambridge, Mass. 1932) III 80.

<sup>179</sup> Cf. P. Benoit, J. Milik, and R. deVaux, *Discoveries in the Judean Desert II: Les Grottes de Murabba'at* (Oxford 1961) II 100 f.

<sup>180</sup> Cf. Lev. 5.16, 24; 27.27.

being equivalent even to the shedding of men's blood and the denial of Yahweh. Like the Old Testament, rabbinic literature did not pose the usury question in terms of justice; it saw it in terms of charity toward the poor, especially where the bond of brotherhood united the poor man with his brethren.

It must be left for another paper to show that the early Christian Church was not unaware of contemporary Jewish writing, and that the Fathers, in particular Clement of Alexandria, Basil, and (through Basil) Ambrose, quote verbatim from the Jewish literature on usury.

*Mary Immaculate Seminary,  
Northampton, Pa.*