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Legal Prohibitions on Usury and the Documents of the Cairo Geniza

Wucherverbote und die Dokumente der Kairoer Genisa

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Abstract: The Cairo Geniza contains a plethora of loan agreements, many of which were executed in the Jewish court. Despite a widely known prohibition on collecting interest on loans, some of these agreements stipulated the payment of interest. I have already explored elsewhere why the court might be willing to give its imprimatur to such agreements despite the fact that they ran afoul of Jewish law. In this brief note, I hope to explore why the parties to such agreements – who might otherwise care what Jewish law had to say – would agree to a relationship that so clearly and publicly transgressed Jewish legal norms. Was this simple economic expedience, or were other factors at play? Did they not know the law? Were they deliberately choosing to violate it? These agreements offer us an unparalleled window into the daily life of the medieval Jewish community and its relationship with the law.

Keywords: Geniza; moneylending; interest

Schlüsselwörter: Genisa; Geldverleih; Zinsen

That both Jewish and Islamic law go to great lengths to prohibit the lending of money at interest is well known. Indeed, we might say that Jewish law rejects the very idea of the time value of money – that money today is worth more than money tomorrow. Part of the theoretical and ideological underpinning of this rejection is the idea that money itself is nonproductive. To illuminate this point, we may turn to partnership law. While the Mishna explains in the tenth chapter of Ketubbot that partners depositing their joint funds into a purse should divide their assets according to their investment, the Talmud pushes back on this and divides prof-

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its and losses equally among the participants in a partnership.[1] It is only when profits and losses to the partnership come about because the coins in the common purse are themselves worth more or less than they were at the start that profits are allocated to partners according to their initial investment.[2] Maimonides makes this clear in restating the law in the »Mishneh Torah«: before the partners have transacted, partners divide the assets of the partnership according to their investment; once the partners have transacted, profits and losses are divided evenly among the parties.[3] That is to say, it is only where the capital itself has not been utilized whatsoever that we might ascribe profits or losses to the partnership capital. Once the money has been put to work by partners, it is the sweat equity they invest and not the financial capital that determines the partners' split.

It is axiomatic that lenders cannot demand a fixed payment for their loans, since this is clearly *ribit* (usury). However, the laws of investing reflect a similar distaste for ascribing gains to money alone: when an investor places funds with an administrator with the understanding that profits or losses will be shared, Jewish law explains that the administrator must employ an instrument called the *ʿisqa*, reckoning the investment »half a loan, half a deposit«.[4] As Maimonides explains, this convoluted construct is designed specifically to avoid the impression that the investor is receiving profits on his or her investment that were not earned with sweat equity. The investor must pay the administrator some sort of wage for his or her work, which led to the profits on the half of the invested capital reckoned a deposit. Otherwise, without this wage, a bystander might have the impression that the returns the investor earned on his or her deposit were compensation for having made the loan to the administrator – a sort of tinge of interest that the rabbis call *avaq ribit*.[5] Thus, whether an investor expects a fixed payment or a share of profits, Jewish law goes to great lengths to avoid directly compensating the investment of capital.

The *ʿisqa* is an instrument that allows administrators without their own capital to get their mercantile career off the ground.[6] It also gives the opportunity to sedentary investors to benefit from the work of several different administrators by investing in more than one *ʿisqa*.[7] Since Jewish law forbade those investors from

1 Mishnah Ketubbot 10:4; Talmud Bavli, Ketubbot 93a–b.

2 Talmud Bavli, Ketubbot 93b.

3 Mishneh Torah, Sheluḥin ve-Shutafin 4:3.

4 For this, see Talmud Bavli, Bava Meṣiʿa 104b.

5 Mishneh Torah, Sheluḥin ve-Shutafin 6:1–3.

6 For this, see Abraham L. Udovitch: Partnership and Profit in Medieval Islam. Princeton 1970, pp. 233–234.

7 For the idea that a sedentary investor could participate in multiple *ʿisqa*s, see Phillip I. Ackerman-Lieberman: The Business of Identity: Jews, Muslims, and Economic Life in Medieval Egypt. Palo Alto 2014, pp. 112–115.

simply lending money at interest, the *ʿisqa* contributed to the liquidity of mercantile capital.

Despite the prohibition in Jewish and Islamic law of moneylending at interest, money *could* be lent interest-free. Indeed, the *Qurʾān* is explicit that the interest-free loan (*qarḍ ḥasan*) is a public good rewarded by God (Q 57:11). However, as S. D. Goitein explains in »A Mediterranean Society«, much of the day-to-day business of the Jews of the medieval Mediterranean was conducted on credit.[8] Shopkeepers certainly did so as a matter of course, indicated by account records from the Geniza. However, while granting customers credit may be seen as tantamount to a no-interest loan, the option to delay payment has a financial value, even if on the page the agreement looks like a no-interest loan. Although Jewish law allows a buyer to pay a discounted price now for a transaction to take place in the future, a purchase on credit is a spot transaction with delayed payment and actually runs afoul of the Jewish prohibition. Despite this, as Goitein points out, the Jews of the medieval Mediterranean transacted on credit as a matter of course, permitted by Maimonides in one of his responsa (#53) simply because he sees no alternative.[9] However, Maimonides notes there that agreeing to a higher price for delayed payment is forbidden.

Borrowers and lenders in the Geniza period had a number of ways to mask usurious loan transactions even where their agreement was recorded in a document and notarized by the court. The easiest of them would have been for the borrower to receive less cash on the barrel or a lower credit amount than that specified by a loan agreement. The borrower could then repay the full amount according to a fixed schedule, and the lender would thereby have been compensated for the time value of the lent money. The problem this points to is the very sort of »fiction in the archives« identified by Natalie Zemon Davis:[10] even the documents of the Geniza involve a self-presentation that need not have reflected the quotidian reality. Thus, ferreting out this sort of subtle usury from the business transactions of the Geniza people will be impossible. With this in mind, we cannot rule out the possibility that Jewish – and Islamic – prohibitions on usury were simply not followed. However, if loan agreements did at least *nominally* toe the line on usury, we could at minimum say that the parties tried to avoid the outward appearance of running afoul of Jewish law.

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8 Shlomo Dov Goitein: A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza. Berkeley 1967, Vol. 1, pp. 197–200.

9 *Hākadha jarrat al-ʿādatu fī al-muʿāmalāt bayn al-nās wa-lawlā dhālik la-baṭalat akhthar al-maʿāyishi* – »This is the norm for people, were it not for this, most livelihoods would be rendered invalid.«

10 For this, see Natalie Zemon Davis: Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France. Palo Alto 1987.

In this brief note, I aim to look at a few agreements from the Geniza in order to describe the role that interest-bearing loans might have played in Geniza society, with an eye towards identifying the cultural and economic factors that might have pressed borrowers and lenders to run afoul of the well-known prohibition of usury in Jewish and Islamic law. One might ask why Jewish leaders would allow such agreements to make their way through the Jewish courts; I have already addressed this elsewhere, in my 2014 book »The Business of Identity«,[11] in which I argue that the Jewish courts did not refuse to give their imprimatur to agreements that ran afoul of Jewish law. Rather, they saw their role as »norm-educating« and not »norm-advocating«, which meant that the court may have informed the parties that Jewish law was opposed to usury, but the court would nonetheless have allowed the parties to agree to terms that were usurious.[12]

In the book, my primary evidence for this claim was a fragment from the British Library's Oriental Collection (shelf-mark BM Or 10126.6), a document converting an unsuccessful *qirāḍ* – the term used in Islamic law for the Jewish *ʿisqa* – into a loan at fixed interest.[13] Surprisingly, the document even uses the rabbinic term *ribit* for the monthly payment of 20 *dirhems* against the capital amount of some 36 *dināṛs*. While Goitein found no other document in the Geniza in which »a fixed interest is stipulated to a Jew«, with the benefit of some of the tools that have been developed in recent decades, we may identify with a little more detail the presence of interest in the marketplace described by the Geniza. Indeed, a legal query entered into the Princeton Geniza Project (PGP) last year from the Taylor-Schechter Geniza Collection at the Cambridge University Library, shelf-mark CUL TS G1.20, describes a business partnership gone bad not unlike the relationship in BM Or 10126.6 which also seems to have been renegotiated into a loan at interest that one of the parties tries to invalidate. Interestingly, the Taylor-Schechter document concerns a partnership between a Jew and Muslim. That the two documents may have been from the same time period hints that there may have been a commercial practice in the first half of the 13th century to renegotiate failed partnerships, with the lost capital reckoned a loan at interest. Another document likely from the same period includes a complaint made to a judge that, after having made good on the judge's ruling demanding that he pay 10 *dināṛs* to his creditors, the complainant's creditors demanded that he pay the balance with interest.[14] Although it might be

11 Ackerman-Lieberman, The Business of Identity (cf. n. 7).

12 For this, see Ackerman-Lieberman, The Business of Identity (cf. n. 7), pp. 172–181.

13 For a transcription and translation of this document, see Phillip I. Ackerman-Lieberman: A Partnership Culture: Jewish Economic and Social Life Seen through the Legal Documents of the Cairo Geniza. Princeton 2007, Vol. 2, pp. 5–7.

14 From the Bodleian Library's collection of Hebrew manuscripts, shelf-mark Bodl Ms Heb e 100/56.

surprising to find the Jewish courts validating a loan at interest, Goitein mentions in passing a scribe who »discontinued writing in the middle of the line, because the circumvention of the law habitual in the Islamic environment had also been accepted in Jewish courts and could not be treated as a crime.«[15]

The PGP yields other allusions to loans at interest. For instance, we find a passing mention in TS Ar 54.37 to someone having taken interest (*akhadha minhu ribit*), although the rest of the details concerning the usurious transaction escape us. That the interest due to debt service could be crippling is suggested by a document from the head of the Palestinian yeshiva in Damascus, which asks the addressee to make good on a pledge immediately lest the yeshiva become immersed in interest payments. We see a similar letter from the year 1025 directed towards Ephraim b. Shemariah in Egypt alluding to the demands of interest payments on the community,[16] and a poetic mention of debts with crippling interest in a request for help.[17]

Although the Jewish court might have occasionally given its imprimatur to loans at interest, there was no universal acceptance of the practice. A document ascribed to the end of the Mamlūk period (1250–1517) includes a sermon stating that the evils which had come down on the Jewish people were due to the fact that they collected *ribit ha-goyim*, which would ultimately bring the community to lose all their wealth.[18] Likewise, in a document discussed by Oded Zinger from the Elkan Nathan Adler Collection at the Jewish Theological Seminary (shelf-mark JTS ENA 2727.31), a local leader excoriated in a sermon a group of women who allegedly transacted with interest; Zinger hints that the sermon targeted women because their practices may have been different.[19] As Goitein notes, slaves were often sold by women rather than men, and unlike other transactions, the sale of slaves was almost always made in cash installments, rather than on credit like most other business. Further, the slaves remained with the seller while payments were made. All this strengthens Zinger's contention that women had a prominent and perhaps distinctive role in the cash economy.

On the other hand, we have seen at least a few instances of lending at interest by men. In an appeal to a notable on behalf of a bankrupt banker, there is an allusion to customers who failed to make principal or interest payments (*al-ṣarf wa-l-*

15 Goitein, A Mediterranean Society (cf. n. 8), Vol. 3, p. 329.

16 JTS ENA 2804.8.1.

17 CUL TS 20.148.

18 British Library, shelf-mark BL OR 5561B.7.

19 Oded Zinger: »What Sort of Sermon is This?« Leadership, Resistance and Gender in a Communal Conflict. In: Jews, Christians and Muslims in Medieval and Early Modern Times: A Festschrift in Honor of Mark R. Cohen. Ed. by Arnold E. Franklin, Roxani E. Margariti, Marina Rustow and Uriel Simonsohn. Leiden 2014, pp. 83–98.

ribit; CUL TS 8 J 22.30). We also have some evidence of interest being demanded of individuals (CUL TS 10 J 8.10, 1r). CUL TS Ar 54.37, the document I mentioned before with the explicit phrase *akhadha minhu ribit*, points to this as well. Although this does not indicate a broad practice of taking and paying interest, it does reveal an undercurrent in the economic practices of the Jews of medieval Egypt that did not toe the line on usury law. This is not to say that there was no concern with usury law; a rabbinic query in the Geniza asks, »If a payment bearing the tinge of usury cannot be seized by judges (cf. Talmud Bavli, Bava Meṣiʿa 67a), how *can* it be seized? Or perhaps it cannot be seized at all and can only be forfeited. And if it is forfeited, why does the Talmud say that it cannot be removed by judges – shouldn't the Talmud say that when it was given to the lender, it was forfeit? Given that it is forbidden; why can't it be seized – doesn't [the Mishna] state explicitly that a lender cannot live in the courtyard of the borrower?«[20] (CUL TS 13 J 22.14 v). A similar query to Naṭronay Gaʾon (late 9th century) differentiates between stipulated interest (*ribit qeṣuṣa*) and the tinge of interest – the former being subject to seizure by the court and the latter not.[21]

The Palestinian yeshiva, too, seems to have borrowed funds at interest. Although the yeshiva might rationalize borrowing at interest in order to meet its needs (a behavior we see in circular letters from the 1020s, 1030s, and 1050s) by arguing that the yeshiva itself had no corporate persona and therefore was exempt from the prohibition on usury, Islamic law and Jewish law both prohibit not only the payment of interest, but also its collection.[22] Thus, while the yeshiva might be exempt from the prohibition, the individuals lending it money would not have been. One letter from approximately 1024 (ENA 4020.19) depicts the miserable state of the Jerusalemite Jewish community and declares that they were driven to borrowing money at interest.[23] It is here that we may begin to think about the »why«: was it just financial exigency that drove the Jewish *dramatis personae* of the Geniza to demand and to pay interest on their loans, or was there more to the picture?

The many opportunities to charge interest on loans covertly, such as initiating a loan for an amount less than the contracted amount, make it difficult for us to identify the frequency of interest-bearing loans. Even where repayments were recorded on the verso of the loan agreement itself, we are unable to know what happened on the ground. What is the correspondence between actual payments and the records

20 For the document, see CUL TS 13 J 22.14 v. For the allusion to the Mishna, see Bava Meṣiʿa 5:2.

21 Teshuvot of Naṭronay. Ed. by Robert Brody. Jerusalem 2006, #244.

22 For the circular letters, see CUL TS 13 J 26.1, CUL TS 13 J 11.5, and JTS ENA 4020.19; for a discussion of this practice, see Moshe Gil: A History of Palestine, 634–1099. Cambridge 1992, pp. 147–150 and 156.

23 In the Hebrew: »*ve-hiṣraḥnu laqaḥat bi-ribit*«.

on the document itself? We simply cannot know. However, it is clear that some financial liquidity was provided by interest-bearing loans. It may have been the case, as suggested by Zinger, that women provided much of this liquidity, and in fact these women may have used interest-bearing lending instruments rather than partnership investments to keep the economy running smoothly. We do not have enough evidence to suggest that the economic function of these female lenders was distinct from that provided by partnership investors – say, for instance, that women provided small-scale financial liquidity, whereas credit was sufficient to keep business partnerships moving. But it is possible that a low-end credit market existed that served the same role taken on by pawns in Christian Europe.

Given the sermons berating those who took interest on loans, it seems likely that Jewish and Islamic prohibitions on collecting interest were widely known. But the Geniza reveals individuals to have run afoul of those prohibitions with the full knowledge of the Jewish court. Where the circumstances of the yeshiva of Palestine demanded it, interest-bearing loans appeared. But even outside of financial exigency, Jewish creditors and their debtors demonstrate a complicated relationship with the well-known prohibitions on lending money at interest.