ARCTOS

ACTA PHILOLOGICA FENNICA

NOVA SERIES

VOL. III

HELSINKI 1962 HELSINGFORS

INDEX

THE HELLENISTIC προσβολή AND THE *PROSBUL*

Michael Ginsburg

The solution of the problem of the legal protection of economically weak classes, for which whole legions of lawmakers have worked, and to which a satisfactory answer will perhaps never be found, was for the first time considered in a systematic and concrete plan by the legislation of Ancient Israel. One of the measures taken in the hope of approaching this Utopian goal — the prohibition of loans at interest — was later adopted by other nations[1], but the other measure — the suspension of all debts for a sabbatical year, designated by the term *shemittah* — has never been imitated. The immutable laws of economic progress and the concept of justice are not always reconcilable. Against these laws humanity's noblest enthusiasms have been shattered. They have also frustrated the efforts of that unknown biblical lawmaker who wished by just such a radical measure as the periodic suspension of debts to alleviate the lot of the *miseri debitores*.

The incentive for the law which introduced the *shemittah* is clear. In a population almost exclusively agricultural as were the ancient Jews, among whom commerce had scarcely developed, a loan was resorted to only in cases of extreme necessity. In ancient times indebtedness was not only the principal cause of unequal distribution of real property among the population, but it often involved slavery for the insolvent debtor and his family. To avert these two calamities, biblical law created two institutions: the year of jubilee, and the *shemittah*. A debt which had not been paid back before the sabbatical year could not give rise to a coercive action at law. The periodic liquidation of debts was to be, in the mind of the lawmaker, a regulation assuring equality among people and was to avert the evil which Solon wished to disperse by means of the σεισάχθεια[2]; Solon's reform was, however, no guarantee against the reappearance of the same evil in the future. The biblical lawmaker himself

---

[1] On prohibition of loans at interest in Roman law cf. P. E. GIRARD, Manuel élémentaire de droit Romain, 5th ed., Paris 1911, p. 516.

[2] Cf. Diod. Sic. 1. 79; Plut., Solon, 15.

felt the weakness of the *shemittah;* he foresaw the refusal of loans at the approach of the seventh year, but found no other means of meeting the evil than to appeal to the magnanimity of the more fortunate classes.

In the epoch of the Second Commonwealth, following the development of commerce and industry in the land — a development which could not have been initiated without large loans — the inadequacy of the ancient law became increasingly manifest. The economic prosperity of Palestine, which even before Alexander the Great attracted Greek tradesmen into the country, increased rapidly. Numerous products described in the well-known geographical monument of the fourth century, *Totius Orbis Descriptio*[1], existed and were exported for centuries before this epoch.

The system of taxation reflects clearly the economic development of the country, for the degree of taxation and the productive capacity of the country are found in close relation with each other. We find in the sources, and particularly in the first two books of the Maccabees, numerous passages attesting the complexity of the fiscal system in Palestine during the epoch of the Seleucids. Very heavy assessments were imposed on the population by the Hasmonean princes. But it was particularly Herod the Great who oppressed the population by taxes on account of his grandiose enterprises. The taxes imposed by Herod surpassed the limits of the population's capacity and were the principal cause of the protests which arose against the regime of the Idumean dynasty; but the mere fact of their existence clearly shows what a long road Palestine had travelled from the epoch of the First Temple to the dawn of the Christian era.

The *shemittah* endangered all commercial transactions which were necessarily connected with a free flow of credit. It was doomed, therefore, to fall, in the course of time, into disuse as an anachronism.[2] Men of affairs could not admit a state of things where their interests depended entirely on the good will of a debtor who, on the arrival of the seventh year, could always lean on the law of the *shemittah* to protect himself against an exaction of his debt. The

---

[1] MÜLLER, Geogr. graeci minores, vol. II, p. 513 f.

[2] The economic life in Palestine, particularly agriculture, continued to slacken during the sabbatical year; this slackness explains the bestowal of an important privilege — the exemption from taxation — on the population of Palestine by Iulius Caesar, cf. Ios. ant., 10, 5—6. On the history of this privilege cf. M. AUERBACH, Zur polit. Gesch. d. Juden Palästinas im 3. u. 4. nachchr. Jahrh. (Jahrb. d. jüd. lit. Ges. zu Frankf. am M., 1907, p. 155 f.) and J. JUSTER, Les Juifs dans l'Empire Romain, vol. I, Paris 1914, p. 358 f.

fact of the econimic development of the country is a proof of the actual disappearance of the institution of the *shemittah*.[1]

The religious feeling of the Jewish orthodoxy could not but find itself offended by such oblivion of biblical traditions; although the interpretation of the divine law was admitted by the rabbinical doctrine, the divine law could not be repealed. In order to legalize the suppression of the *shemittah* in the eyes of those faithful to the law, an ideological basis had to be given to the new practice.

The innovator who found the formula which would reconcile the claims of life with the biblical law was Hillel, the eminent representative of the ethical teachings of the Talmud and a contemporary of Herod the Great.[2] The juridical institution proposed by Hillel bears the name of *prosbul*.[3]

This institution, in accordance with the Talmudic treatise *Shebiit*[4], may be defined as follows: the creditor who wishes to avoid the unpleasant consequences of the *shemittah* makes the following declaration to the court: »I declare to you, so and so, judges of such and such a place, that I hereby reserve unto myself the right to demand the payment of any debt due me at any time and at my convenience». The judge or the witnesses attest this declaration vith their signatures.[5] The idea which is at the base of the prosbul is obvious; it is based on the interpretation of the words of Deuteronomy 15,3: »That which is thine with *thy brother* thy hand shall release» — that is, the *shemittah* only annuls debts to private people and not those to the tribunal; the prosbul precisely implies the temporary cession of the creditor's rights to the court.[6]

The question whether in this procedure the creditor should deliver the deed of acknowledgment of the debt to the tribunal, or whether the latter had only to register in its records the above mentioned declaration of the creditor, has been the subject of repeated controversy in rabbinical literature.

---

[1] For the same reason the restitution of real estate to its former owner, the most important consequence of the year of jubilee, was not practiced: cf. L. N. Dembitz, Loans, Jewish Encycl. vol. VIII, p. 1423.

[2] On Hillel cf. J. Fromer, Der Talmud, Berlin 1920, p. 192f.

[3] The purpose of this institution was the »improvement of the world» (*tikkum haolam*) since it protected both the creditor against the loss of his property and the needy against being refused a loan by a creditor reluctant to take any risk.

[4] Cf. Babyl. Talmud, herausgeg. u. übersetzt von L. Goldschmidt, Berlin 1896, vol. I.

[5] Sheb., X, 3f.

[6] It is noteworthy that the Jewish lawyers favored the debtor who voluntarily repaid his debt in the sabbatical yerar, cf. Sheb., X, 9.

We have already stated that Hillel, in introducing the institution of the prosbul, was attempting to reconcile, in the eyes of the religious elements of the Jewish population, the exigencies of life with the biblical law. It seems impossible to see in the creation of the prosbul an irrefutable proof of the application of the *shemittah* in practice. This would be in contradiction with a number of facts of which we mention but two: Flavius Iosephus, who belonged to the second generation after that of Hillel, says that the cancellation of debts took place every year of jubilee, that is, every fifty years;[1] the very omission of the *shemittah* on the part of Iosephus confirms that the latter had ceased to have a practical importance in his days. The other proof is the mentioning in the Mishna of a loan contracted for ten years; the sabbatical year which intervened during that lapse of time would have annulled the debt — a fact which does not at all disturb the author, for the simple reason that the arrival of the seventh year no longer had any effect on debts. Nevertheless it seems that Hillel's reform, besides its ideological importance, had a real practical value. The biblical law of the *shemittah* had fallen into disuse, but it still continued to exist; the debtor therefore *could* eventually take advantage of it at the aproach of the seventh year and refuse to pay his debt; the mere possibility of it made the creditor's position insecure. Hence it is possible to surmise that Hillel had in mind also a practical goal — to insure the credit.

Alongside of the prosbul, the Talmudic law provided still other means to cancel the disastrous consequences of the sabbatical year as concerns the operation of loans. We read in the above-mentioned treatise *Shebiit* [2]: »If one lends money on security, or if one delivers to the tribunal the acknowledgment of the debt, the nullification of the debt will not thus take place» — that is on the occasion of the sabbatical year. Further on, mention is made of the motives which urged Hillel to introduce the prosbul: »The prosbul prevents the cancellation of debts. It is one of the things which Hillel the Elder has introduced. When he saw that men were violating the commands of the Torah: 'Take care never to let yourself be overtaken by that impious thought to say in your heart: the seventh year, which is the year of cancellation, is approaching, and you will turn your eyes from your brother who is poor, without wishing to lend him that which he asks of you . . .' [3] he introduced the Prosbul.» At first sight, the text of the *Shebiit* can not but surprise the reader.

[1] Ios. ant. 3, 12, 3.
[2] Sheb., X, 2.
[3] Deut., 15, 9—10.

If rabbinical law sanctioned two means for removing the consequences of the *shemittah*, the delivery of a security to the creditor, and the delivery of the act of acknowledgment of the debt to the tribunal by the creditor, what could be the meaning of the reform of Hillel? Does it not lose its justification, and does it not become entirely superfluous?

It seems that the only satisfactory answer to these questions is the following explanation: The anonymous editor of the *Shebiit*, who doubtless lived much later than Hillel, was lacking in any historical intuition; in his account he does not describe the evolution of the legal measures opposed to the *shemittah*; he simply sets them down without any systematic arrangement. It is difficult to reconstruct their chronological order, but it seems possible to note the principal stages in their evolution. There can be no doubt that among them priority belongs to the prosbul. This reform made a very strong impression on the people of the time and left its traces in popular memory. It alone is linked with the name of a definite historical personage and evidently responded to the needs and desires of a part of the population. Another reason is of a more general character. As a rule, the evolution of juridical forms tends towards their simplification, towards the transition from the more complicated to the less complicated. In this respect, the prosbul, which requires a special intervention by the creditor before the tribunal, a declaration by him, and its registration in the records, is considerably more complicated than the other two methods. It is, moreover, less effective than the others; a security and the delivery of the acknowledgment of the debt to the tribunal insured the interests of the creditor from the moment the debt was contracted, whereas in accordance with all the data on hand, the creditor could only have recourse to the prosbul at the approach of the sabbatical year. To these considerations it is possible to add the following arguments: (1) If the delivery of the acknowledgment protected the creditor's interests already *before* Hillel, it would be difficult to explain why, as we read in Shebiit, »the people abstained from giving loans at the approach of the seventh year.» (2) We have to remember that different rabbinical authorities tried to justify Hillel in his attempt to annul *de facto* a biblical law by its interpretation; if Hillel's innovation had not the significance of a real reform and were not the *first* attempt to modify the law of the *shemittah*, this effort to defend Hillel would be certainly superfluous.

Let us note in passing that if the delivery of the deed acknowledging a debt to a tribunal was considered as a special means of combatting the *shemittah*, the procedure of the prosbul itself should certainly have consisted of something

else. The first words of the formula of the prosbul, »I declare to you», do not signify at all the actual delivery of a document, but a declaration by the creditor indicating his desire to insure his rights.

How can it be explained that Hillel borrowed a Greek word to designate the institution which he had created? The question quite naturally arises whether the word *προσβολή* did not have a technical significance and whether Hillel had not borrowed it from the contemporary legal terminology.

As a matter of fact, this term is common in the Hellenistic law of Egypt. We find it several times in the papyrological sources and it belonged to the juridical vocabulary. It signifies the award of the ownership of a security [1], and is generally used along with another term, *ἐνεχυρασία* [2], that is, seizure, which preceded the *προσβολή*. According to Mitteis, the *ἐνεχυρασία* and the *προσβολή* supplemented each other: the first designates the attack by the creditor, the second, the adjudication by the magistrate. These two steps were usually followed by a third which bore the name of *ἐμβαδεία*, that is, the effective grant to the creditor of the ownership of the security.

There is a temptation to relate the prosbul of Hillel to the *προσβολή* of the papyri. L. Blau, for example, has not been able to resist that temptation. In the prosbul of Hillel he sees no more than the adjudication of ownership made in favor of the creditor by the judges who sign the official record. [3] But such an interpretation is in contradiction with the text preserved in the Talmudic sources, where we look in vain for any reference to an adjudication of ownership; besides, the *προσβολή* is the award of the ownership of a security, whereas the prosbul of Hillel does not imply the existence of the right of security on the part of the creditor: we have already seen that the security was a separate means of combatting the *shemittah*.

It goes without saying that if the Jewish prosbul represented the award of the ownership of a security, we would be dealing with facts extremely interesting for the comparative study of the Hellenistic law of the papyri and the law of the Talmud. But it is impossible to prove on the ground of facts

---

[1] Cf. F. Preisigke, Fachwörter d. öffent. Verwaltungsdienstes Ägyptens in d. griech. Papyruskunden d. ptolem.-röm. Zeit, Göttingen 1915, p. 149: »*προσβολή*- Eigentumszuschlag des Pfandes im Vollstreckungsverfahren» (references to Mitteis and Wilcken, Koschaker, P. M. Meyer and other authors). The same term was also used for the designation of the delivery of corn (natural tax) at the state granary, cf. Preisigke, *ibid.*; *id.*, Wörterbuch d. griech. Pap.-urkunden, vol. II, Berlin 1926, p. 389 f.

[2] Zeitschr. Sav. 1908, p. 468.

[3] L. Blau, Prosbol im Lichte d. griech. Papyri u. d. Rechtsgesch. (Festschr. zum 50jähr. Bestehen d. Franz-Josef-Landesrabbinerschule in Budapest, Budapest 1927, p. 112 ff.)

which we possess that the prosbul of Hillel coincided with the *προσβολή* of the Hellenistic law, and BLAU's explanation is not convincing.[1]

In the second half of the first century B. C. the relations between Palestine and Egypt were very close; let us recall how close were the ties which bound Herod the Great to Cleopatra. But we cannot speak of the borrowing of the institution of the *προσβολή* by Hillel from the judiciary practice in Egypt because there is no evidence of the existence of this institution in Egypt at this period; its first mention relates to an epoch which is separated from Hillel by a lapse of almost 300 years. We find no trace of the *προσβολή* in any other Hellenistic country at an earlier epoch. For these reasons it must be inferred that in choosing the term for the designation of the institution which he had introduced, Hillel certainly did not have in view the *προσβολή* in the sense it has in the later papyri, but that he simply borrowed from the language of everyday life, the *κοινή*, the expression which seemed to correspond more exactly to the purpose of his reform.

The penetration of Greek idiomatic expressions into the current language of the Palestinian Jews dates back to the time of Alexander the Great; it was brought about partly in a quite natural way by the constant relations with the numerous Greek immigrants and with the Jewish diaspora which rapidly assimilated Greek culture; in part it was stimulated by political circumstances, as, f.i., the administration of the Syrian kings, who tried by various devices to inculcate Hellenism in their domains. The history of the first translation of the Old Testament confirms the fact of Palestine's Hellenization; no matter what one thinks of the authenticity of the letter of Aristeas, there is no doubt that the Septuaginta was prepared with the assistance of Palestinian Jews. It suffices to run through the monumental work of S. KRAUSS, *Griechische und lateinische Lehnwoerter im Talmud*, to be persuaded of the abundance of Greek expressions in the current language of the Jews in Palestine.[2] As concerns Hillel in particular, it must be recalled that he was of Babylonian

---

[1] Op.c., p. 114: »Der Talmud kommt in diesem Punkte der Papyrologie zur Hilfe, indem er ihr für *προσβολή* einen Beleg liefert, der um 250 Jahre älter ist als der datierbare Papyrus, in welchem sich dieses Wort findet». BLAU would be right if he could prove that the prosbul was equivalent to the award of ownership, but, unfortunately, his only argument is an assumption *a priori* that the prosbul corresponds exactly to the *προσβολή* of the papyri: it is a striking example of a *petitio principii*.

[2] The Greek vocabulary of the Talmud must be considered as an important source for the study of *κοινή*. The comparative study of the Greek element in the rabbinical literature and of the language of the papyri shows that they derive from the same source, the *κοινή*; cf. BLAU, Papyri u. Tamlud in gegenseitiger Beleuchtung, Leipzig 1913, p. 16 f.

origin, and Babylon, since the time of its conquest by the Macedonians, had completely adopted Greek civilization. There can be no doubt that Hillel knew the Greek language.

The litteral sense of *προσβολή* is »addition»;[1] it was therefore completely appropriate to designate the procedure introduced by Hillel, which consisted in a declaration made by the creditor before the magistrates: the declaration was »added» to the primary loan agreement between the creditor and the debtor.

We cannot consider here all the interesting questions which arise in the study of this ancient institution of Talmudic law. In drawing the attention of the readers to the prosbul, we wished to share with them this excursion into the realm of Talmudic law, a domain relatively little known to most classical scholars, but which merits, nevertheless, to be the subject of a serious study based on the methods of comparative philology and of comparative law.

Helsinki, 1961.

---

[1] Cf. PREISIGKE, Wörterbuch, loc. c.