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THE CURIOUS CASE OF PROZBUL'S DISAPPEARANCE AND RESURGENCE

Hillel HaZaken famously promulgated the *prozbul* document which allows for the payments of debts despite the Torah's command to forgive loans in the Sabbatical year.¹ By signing a *prozbul*, the lender would create a permanent lien against the debtor's real estate, which was publicly recorded with the courts, thereby preventing its cancellation through *shemitta's* release of debts.² Hillel's enactment³ generated great controversy, with *amora'im* questioning how Hillel could seemingly nullify a Biblical law and later authorities debating whether this document represents an innovative legal creation, the mere extension of a lesser-known but already existent Biblical law, or some other formulation.⁴ Yet somehow Hillel's innovation was accepted and is regularly cited as an example of successful rabbinic innovation. Indeed, hundreds of thousands of Jews, in Israel and around the world, will sign a *prozbul* document at the end of the 5782 *shemitta* year.

This essay draws from my doctoral dissertation, Repealing Rabbinic Laws: Talmudic and Medieval Perspectives on the Authority to Nullify Halakhic Norms (Bar-Ilan University Law School, 2018). My thanks to my advisor Rabbi Prof. Yitzhak Brand for his many helpful suggestions. Many ideas in this paper were discussed with my father, Prof. Baruch Brody z"l (Baruch Alter ben R. Eliezer Zeev), and I dedicate it to his memory.

¹ The literature on *prozbul* is vast. For a bibliography of major texts and articles, see R. Yisrael Schepansky, *Ha-Takkanot be-Yisrael* (Jerusalem, 1991), vol. 1, 301–313, and Dalya Heshin, “*Ha-Prozbul: Beyn Fiktzi'a Mishpatit le-Drama Hilkhait*,” *Akdamos* 15 (5765), 165–192.

² Mishna *Shevi'it* 10:4 and 10:6.

³ Numerous sources call this legal pronouncement a “*takkana*” or use the verb *bitkin* to describe his action. See Mishna *Shevi'it* 10:3 and *Gittin* 4:3. Shmuel Safrai and Zev Safrai, *Mishnat Eretz Yisrael: Shevi'it*, 334–335, note that the term is not always used consistently.

⁴ See, most extensively, David Henschke, “*Kaytzad Mo'il ha-Prozbul? Le-Toledot Bi'urah shel Takkana Hillel*,” *Shenaton ha-Mishpat ha-Ivri* 22 (5761–5763), 71–106. See also the analysis within Safrai, *Mishnat Eretz Yisrael: Shevi'it*, 319–352; David Bigman, “*Ba'aya Hilkhait o Tikkun Hevratit? Al Mashma'ut ha-Prozbul*,” *Akdamos* 20 (5768), 155–166; and Elisha Ancselovits, “The Prozbul – A Legal Fiction?,” *The Jewish Law Annual* 19 (2011), 3–16.

Despite all the attention given to the origins of *prozbul*, less attention has been given to the fact that for many centuries, Jews stopped writing a *prozbul* document yet continued to collect loan payments, as if the Biblical commandment did not exist.⁵ Thus Rav Natronai Gaon, in the ninth century, would declare, “In our times, loan remission in the Sabbatical year does not occur either in the Land of Israel or outside the Land of Israel.”⁶ In Provence, in the twelfth and thirteenth centuries, leading figures like R. Zerahiah HaLevi and R. Menahem HaMeiri defended the contemporary practice not to sign a *prozbul*. This was despite the considerable number of Talmudic texts that indicated there was such a requirement as well as a tradition that Rabbenu Tam drafted a model *prozbul*.⁷ Upon his arrival in Toledo, Spain, in the beginning of the fourteenth century, Rabbenu Asher bemoaned that no one writes a *prozbul*; meanwhile, his colleague in Seville, Ritva, would write, “Regarding claims about a *prozbul* . . . we have never seen anyone in this land do this.”⁸ Rashbetz, R. Shimon ben Tzemah Duran, lamented that fifteenth-century Algerian Jews did not sign a *prozbul*; his son and successor, however, accepted it with equanimity.⁹ Their colleague in Austria, R. Yisrael Isserlein, asserted that none of the senior scholars wrote a *prozbul*; moreover, if they would try to do so, it would be seen as bizarre.¹⁰ In sixteenth-century Poland, R. Mordechai Jaffe lamented that people in his community did not write a *prozbul*, even though he felt that all of the halakhic justifications given for the practice

⁵ For partial documentations of this phenomenon, see Gavriel Zinner, *Nit’ei Gavriel: Hilkhot Shemitta u-Kesafim u-Prozbul* (Jerusalem, 5767), 7–18, 59–65, and 331–342; Yedidya Dinari, *Hakhmei Ashkenaz be-Shilhei Yemei ha-Beinayim* (Jerusalem, 1984), 199–204; Yitzhak Gilat, *Perakim be-Hishtalsbelut ha-Halakha* (Ramat Gan, 1992), 230–235; Mordechai HaCohen, “*Ha-Prozbul Halakha le-Ma’ase*,” *Torah she-be-al Peh* 8 (5726), 67–83; and Rav Shagar, *Shemitta* (Jerusalem, 5775), 107–121.

⁶ The rulings are collected in Bentzion Levin, *Otzar ha-Geonim: Gittin (Teshuvot)*, 187, and republished in *Teshuvot Rav Natronai Gaon* (ed. Yerahmiel Brody), *Hoshen Mishpat* #339–340.

⁷ R. Zerahiah HaLevi is cited in R. Shmuel HaSardi, *Sefer ha-Terumot, Sha’ar* 45, letter *daled*. For Meiri, see his *Bet ha-Behira* to Makkot 3b, s.v. *ha-malveh* and his *Sefer Magen Avot* #15. Regarding Rabbenu Tam, see, for example, *Piskei ha-Rosh*, *Gittin* 4:13, *Tosafot Gittin* 36b, s.v. *de-alimi*, and most significantly, *Sefer ha-Yashar (Hiddushim)* #138. See, however, the discussion in Yisrael Ta-Shma, “*Ma hi Hashivuto shel Bet Din Hashuv?*” in *Iyyunim be-Mishpat ha-Ivri u-Halakha*, ed. Amihai Radzyner and Yaakov Habah (Ramat Gan, 2007), 335–345, which compellingly argues that R. Tam did not believe that a *prozbul* must be signed.

⁸ *Teshuvot ha-Rosh* 64:4 and 97:4; *Teshuvot ha-Ritva* #196.

⁹ See *Sefer ha-Tashbetz* 2:99 with *Sefer ha-Tashbetz (Hut ha-Meshulash)*, vol. 4, 1:22.

¹⁰ *Terumat ha-Deshen* #304. See also *Maharik* #92.

were entirely unconvincing.¹¹ In seventeenth-century Constantinople, R. Yosef Trani (Maharit) asserted that people did not write a *prozbul* to the extent that any individual scholar who would seek Sabbatical-year loan remittance for his debts would be scolded by the leading rabbis.¹² Toward the end of the eighteenth century, the scholars of Izmir declared that no borrower could make a claim for Sabbatical year loan remissions until the messianic era!¹³ In the beginning of the nineteenth century, R. Shneur Zalman of Liadi would testify that people in his environs did not write a *prozbul*, even as he himself urged his followers to take the simple steps of rectifying the situation.¹⁴ Similarly, late nineteenth- and early twentieth-century Hungarian and Polish communities, including their rabbinic leaders, did not sign this document.¹⁵

In short, over many centuries, in a wide range of communities across the Jewish globe, Jews did not write a *prozbul* even as they continued to collect loans following each *shemitta* cycle. The great sixteenth-century Polish decisor, R. Shlomo Luria (Maharshal) aptly described the situation by tersely declaring, “The *prozbul* has been nullified.”¹⁶

This should come to a great surprise to students of the Talmud as that canonical text explicitly declared that the decree of *prozbul* could not be repealed due to a mishnaic principle: “A judicial court cannot (*ein bet din*) nullify the edicts of a fellow court unless it is greater than the latter in wisdom and numbers” (*Eduyot* 1:5; hereafter known as the “*ein bet din*” rule). Within the Talmud, the mishna’s principle was

¹¹ *Levush*, H.M. 67:9. See also R. Yoel Sirkes, *Bah*, H.M. 67.

¹² *Maharit*, H.M. 2:113. See also R. Chaim Benevisti, *Knesset ha-Gedola to Bet Yosef*, H.M. 67:8.

¹³ As reported by R. Chaim David Hazan, *Sefer Yishrei Lev*, letter *shin* #140 (folio 86b).

¹⁴ *Shulhan Arukh ha-Rav*, H.M., *Hilkhot Halva’a*, 35. For further evidence, see R. Yaakov Bruchin, *Mishkenot Yaakov*, H.M. 36; R. Shlomo Ganzfried (1802–1884), *Kitzur Shulhan Arukh*, 180:1; R. Yisrael Yehoshua Trunk, *Yeshuot Yisrael*, H.M. 67; and R. Yaakov Prager (1843–1918), *Sheilat Ya’akov* 1:105. R. Moshe Sofer, *Teshuvot Hatam Sofer*, H.M. #113, asserts that most people do not write a *prozbul*. See also R. Avraham Sofer, *Teshuvot Ketav Sofer*, H.M. #9.

¹⁵ R. Menashe Klein (*Mishneh Halakhot* 12:407) asserts that even in the pre-World War II Hungary of his youth, most people did not sign a *prozbul*. Similarly, R. Yaakov Breisch (*Helkat Ya’akov*, H.M. #6) asserts that pre-World War II communities in Poland did not sign a *prozbul*. This point regarding Polish *batei din* is readily conceded by R. Shmuel Hibner in “*Birur be-Inyan Shemittat Kesafim ve-ha-tzorekh likhtov prozbul*,” *Ha-Darom* 37 (Nisan 5733), 36. An attempt to educate Polish Jews about the necessity of *prozbul* was made in a small pamphlet in 1910 by my great-great-grandfather, R. Yehuda Yudel Rosenberg, now republished by R. Yehoshua Ben-Meir, *Dinei Prozbul* (Efrat, 5768).

¹⁶ *Yam Shel Shlomo*, end of *Gittin* 4:42.

cited regarding the potential repeal of three other laws. In all those cases, the law was in fact nullified, with the Talmud offering various explanations for why its repeal was not a violation of the *ein bet din* rule.¹⁷ In contrast, the Talmud seemingly concludes that *prozbul* could not be nullified.¹⁸ Yet somehow, the law did evolve and did, to a certain extent, become nullified in practice for many centuries, only to see a slight revival again in the sixteenth century and a true resurgence in the second half of the twentieth century. This phenomenon requires an explanation.

Why Did Jews Stop Writing a Prozbul? Three Unsatisfactory Theories

Why did Jews stop signing this simple and beneficial legal document? One might suggest that since there were medieval disagreements about the calculation of the Sabbatical cycle, Jews did not remit loans because there was always a doubt about whether it was truly the *shemitta* year.¹⁹ This might justify delaying the remission of a loan for a year or two.²⁰ After all, if a loan is not cancelled at the end of one possible *shemitta* year, it should get cancelled by the following year. At some point, the once in seven-year *shemitta* must take place. Moreover, most scholars recognized a particular calculation of *shemitta* cycles, deeming this a resolved question that resolved its uncertain status.²¹

A second theory was offered in the nineteenth century by R. Tzvi Hirsch Chajes. He suggested that once Jews had limited professional opportunities and many became moneylenders, it was economically

¹⁷ The meaning of this mishna and the Talmudic cases are discussed at length in my *Repealing Rabbinic Laws*, 15–160.

¹⁸ *Gittin* 36b, discussed below.

¹⁹ See the brief statement of R. Yisrael Lifshitz in *Tiferet Yisrael: Hilkheta Gevirta to Shevi'it* 10:8. On the dispute, see R. Shai Walter, “*Heshbonot Mo’ed Shenat ha-Shemitta*,” *Ha-Maayan* 239 (Tishrei 5782), 30–46.

²⁰ This possibility is discussed in *Tashbetz* 2:99. Indeed, for this reason, some decisors recommend signing a *prozbul* immediately before the conventionally-accepted *shemitta* year (e.g., we would have most recently done so in Elul 5781, before the current 5782 *shemitta* year). R. Eliezer Melamed, *Peninei Halakha: Shemitta* 5:7 and 7:3, discusses how the inability to resolve the true calendar cycle might indicate that Jews accepted observing *shemitta* anyway only as a custom (as argued by some Provençal authorities). He utilizes it as an additional factor to support the *heter mekhira* arrangement to allow Jews to till the land during the (purported) Sabbatical year.

²¹ See, for example, R. Chaim Kanievsky, *Derekh Emuna*, vol. 4, *Hilkhot Shevi'it* 10:8, 350, based on Rema’s glosses to H.M. 67. See also the letters published in that volume from Hazon Ish, 401–406.

unfeasible for lenders to remit loans in the Sabbatical year.²² This is an unsatisfactory answer, however, because the entire point of the *prozbul* was to make it possible for people not to remit loans. As such, there should have been even more of an incentive for people to sign this relatively simple document. Signing a *prozbul* is a simple dispensation, not a hardship, and therefore should have been an attractive option.

Others, alternatively, suggested that the lack of money during the hard years of exile made signing a *prozbul* irrelevant since hard-pressed Jews did not have anything to lend.²³ At the very least, some suggested, they lacked land possessions, which might be necessary for a *prozbul* to operate properly.²⁴ While this might have been true in certain circumstances, this is an insufficient explanation since legal scholars throughout the centuries bemoaned the fact that Jews were not writing a *prozbul* for their loans. Halakhic texts talk history, and in this case, they testify to the fact that some Jews clearly had money to lend and were collecting payment for them. Additionally, the historical sources give no indication that there was some political impediment that made it difficult to write this document. As such, the cause does not seem to be socio-economic, political, or some other external pressure. Presumably there was some internal factor that led to this phenomenon.

Legal Explanation #1: Re-Interpreting the Decree – Loan Remissions Are No Longer Required

Perhaps the most often cited justification for the long-standing practice asserts that *shemittat kesafim* (loan remissions) no longer applies in contemporary times, at least outside the Land of Israel. This controversial position is rooted in the stance of R. Yehuda HaNasi that *shemitta* was no longer in force on a Biblical level because it was tied to the dormant *yovel* (jubilee) calendar cycle. Hillel HaZaken, he believed, introduced *prozbul* on the legal premise that *shemittat kesafim* was only a rabbinic decree established by earlier sages to remember the original Biblical law. Here's one formulation of this position:

²² See R. Tzvi Hirsch Chajes in his *Darkhei Hora'a*, 1:2, found in *Kol Kitvei Maharatz Chajes*, vol. 1, 224.

²³ R. Levi ibn Haviv, *Teshuvot Maharalbah* #143

²⁴ *Arukh ha-Shulhan*, H.M. 67:10, based on H.M. 67:22. This attempted justification is readily dismissed by R. Ovadia Yosef, *Hazon Ovadia: Prozbul* (Jerusalem, 5775), 5–6, in part because later Talmudic sages and subsequent authorities found readily available alternatives for land ownership that would allow signing a *prozbul*. (The requirement for land ownership on the part of the borrower is to have real estate against which the lien can be placed allowing the *prozbul* to be effective.)

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R. Yehuda HaNasi says: “And this is the manner of the release: He shall release” (Deuteronomy 15:2). The verse speaks of two types of release [of loans]: One is the release of land and one is the release or forgiveness of monetary debts. At a time when you release land (i.e., when the Jubilee Year is practiced), you release monetary debts; at a time when you do not release land, such as the present time, when the Jubilee Year is no longer practiced, you also do not release monetary debts.

And the Sages instituted that despite this, the Sabbatical year still will release debt in the present, in remembrance of the Torah-mandated Sabbatical year. Hillel saw that the people of the nation refrained from lending to each other, so he arose and instituted the *prozbul* (*Gittin* 36a–b).

Not everyone agreed with the ruling, with some *tana'im*, alongside a few medieval figures, asserting that loan remission remains a Biblical law. Yet the vast majority of medieval commentators adopted R. Yehuda HaNasi’s position.

Nonetheless, this stance would still assert that a *prozbul* is required to avoid loan remissions mandated by rabbinic decree, as made clear in the above passage and others. Moreover, the Talmud seems to explicitly state that this obligation is not a land-based law, which is contingent on being in the Land of Israel. That is to say, it applies to individuals wherever they may reside in the world.²⁵ To that point, Babylonian *amora'im* continued to discuss the details of *prozbul* in the generations following R. Yehuda HaNasi and they seem to assume *shemittat kesafim* applies in their locale and time. For example, Rav Ashi, a sixth-generation *amora*, wrote a *prozbul*, while other scholars discuss utilizing oral agreements instead of putting the *prozbul* arrangements in writing.²⁶

As such, Rambam, R. Yosef Karo, and others asserted that there is no reason why *shemittat kesafim* should not apply outside the Land of Israel.²⁷ Indeed, many pious figures, alongside a few communities, continued to sign *prozbul* documents over the generations since they believed

²⁵ See *Kiddushin* 38b. This is also made clear in *Yerushalmi Gittin* 4:3, 45d. “When *shemitta* is practiced as a biblical requirement in the Land of Israel, monetary *shemitta* is in effect as a biblical requirement both in and outside the Land of Israel. When *shemitta* is practiced as a Rabbinic requirement in the Land of Israel, monetary *shemitta* is in effect as a Rabbinic requirement both in and outside the Land of Israel.” See also Rashi to *Avoda Zara* 9b, s.v. *hai*.

²⁶ *Gittin* 37a.

²⁷ *Mishneh Torah, Hilkhot Shemitta* 9:3; *Shulhan Arukh*, H.M. 67:1 and glosses of *Pit'hei Teshuva*.

that the rabbinic requirement of loan remissions applied in all eras, both inside and outside the land.²⁸

Nonetheless, there were a group of medieval authorities who asserted that *shemittat kesafim* does not apply in their era or location.²⁹ There were two variations of this model:

Some suggested that loan remission is no longer a requirement in either the Land of Israel or in the Diaspora: This position, most prominently held by scholars from Provence, asserted that R. Yehuda HaNasi's position of a rabbinic requirement was contingent on the presence of a *bet din* in Israel that theoretically could establish *yovel* years. In a later period, when that institution no longer existed, observing *shemittat kesafim* became entirely non-obligatory. The Babylonian scholars that spoke about fulfilling *prozbul* requirements were only acting out of a sense of piety, not obligation. This is why they utilized many leniencies (discussed further below) which would not have been acceptable had this been a bona fide obligation.³⁰

Alternatively, others argued that loan remission was only rabbinically instituted by the Sages in the Land of Israel and its immediate surrounding areas. When they created a law to commemorate the biblical *shemittat kesafim*, they tied it directly to the areas in which the obligation to leave the land fallow (*shemittat karka'ot*). In this respect, loan remissions are similar to the laws of tithing (*terumot u-ma'asrot*) which only were enacted for the Land of Israel and its immediate environs.³¹

Significantly, this latter explanation was accepted by R. Moshe Isserles in his glosses to the *Shulhan Arukh* to justify the popular practice of not writing a *prozbul* in the sixteenth century.³² This latter theory would also be compatible with the evidence, starting from sixteenth-century

²⁸ See, for example, the rulings in *Sefer Yereim* #264 and *Or Zarua, Piskei Avoda Zara* #108. See also R. Gavriel Zinner, *Nit'ei Gavriel: Hilkhot Shemitta u-Kesafim u-Prozbul*, 292–297, and the examples discussed below.

²⁹ For sources and discussion, see Zvi Cohen, *Shemittat Kesafim u-Prozbul* (Bnei Brak, 5767), 49–61.

³⁰ See, for example, *Teshuvot Tamim De'im* #133 (in the name of R. Natronai Gaon) and Rabad's glosses to Rif to *Gittin* 37 (19a in pagination of Alfasi); R. Shmuel HaSardi, *Sefer ha-Terumot, sha'ar* 45, letter *daled* (in the name of R. Zerariah HaLevi); R. Menahem HaMeiri, *Magen Avot* #15.

³¹ *Terumat ha-Deshen* #304. See also *Teshuvot Maharil* #197.

³² *Hosben Mishpat* 67:1. For a novel variant of this position to assert that Jews in the Diaspora only have to sign *prozbul* documents in times when they are being signed in Israel, see R Moshe Sternbuch, *Teshuvot ve-Hanhagot* 3:449. He then uses this to explain why contemporary Jews have resumed signing *prozbul* documents.

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sources, that Jews in the Land of Israel (and certain adjacent areas) did sign *prozbul* documents.³³

In any case, common to both variations of this thesis is the belief that the original decree was limited in its scope. These scholars justified the common practice by asserting a reinterpretation of the original law, even as there is no clear indication in the Talmud itself of this geographical limitation.

Legal Explanation #2: Legal Developments that Undermined Prozbul

Other medieval figures, however, point to a different and more compelling explanation: contemporary Jews, unwittingly, rely on certain positions taken by *amora'im* that make the *prozbul* unnecessary in several different circumstances. The advantage of this approach is that the legal explanation is rooted in the Talmud itself. If this theory is correct, the great irony of this development becomes apparent as many of the amoraic positions seemingly developed in the wake of an allegedly failed attempt to nullify Hillel's enactment or, conversely, through an allegedly successful endeavor to preserve it. This tale of the *prozbul* explains not only the fascinating history of this law but also reveals something larger about the ability of later sages to nullify, indirectly, rabbinic enactments.

a) Can Prozbul Be Repealed? The Innovations of Shmuel and his Undermining of Prozbul Without Nullifying the Decree

While many questioned how Hillel had the authority to undermine the Biblical law, his enactment remained in force and unchallenged by later figures in the Talmud Yerushalmi. In contrast, within the Talmud Bavli, *amora'im* questioned whether it could be nullified.³⁴

They inquired: When Hillel instituted *prozbul*, was it for his generation that he instituted it or also for all generations? What is the legal ramification of this question? With regard to abolishing the decree. If you say that it

³³ See, for example, *Teshuvot Mabit* 1:301, 2:81, and *Bet Yosef*, H.M. 67:28. See also R. Karo's ruling in *Teshuvot Avkat Rokhel* #154. Hida, *Teshuvot Zera Anashim*, Y.D. #28, also asserts this was the custom in the Land of Israel and further asserts that this was the practice in Damascus and other areas surrounding the Land of Israel. This claim was preceded by R. Hayyim Shabtai of Salonika (d. 1647), *Teshuvot Torat Hayyim*, 2:37. R. Karo also indicates that the practice in Egypt was to assume that loans would be remitted unless the parties made an oral *prozbul* agreement, as found in the Talmud and discussed below.

³⁴ Rashi s.v. *bei dina* indicates that this question was asked in the generation of Rav Ami and Rav Asi. See also David Halivni, *Mekorot U-Mesorot: Gittin* (Toronto, 5753), 541.

was for his generation alone that he instituted it, then it can be abolished. But if you say that it was decreed to also apply to later generations, then “A judicial court cannot nullify the edicts of a fellow court unless it is greater than the latter in numbers and wisdom” (*Gittin* 36b).

The Talmud assumes that if this was a temporary decree, then it would not require a greater *bet din* to nullify it. Yet, if it was meant to be lasting, then the *ein bet din* principle would buttress the stature of this embattled law. Indeed, immediately afterward, the Talmud asserts that Shmuel desired to nullify this decree yet could not because he was not of sufficient strength or stature to succeed. Moreover, his own student, R. Nahman, asserted that he would affirm the law.

Shmuel said: “The *prozbul* is an affront to the judges. If my strength increases, I will nullify it.” [How could Shmuel say] I will nullify it? But is it not the case that a court cannot nullify the pronouncement of another court unless it is greater in wisdom and in number? Rather, this is what he meant to say: If my strength increases to be greater than that of Hillel, I will nullify it [the *prozbul*]. R. Nahman said: “I will uphold the institution of *prozbul*.” Uphold? It is already upheld and standing! Rather, this is what he meant to say: I will say something about it: Even if [the *prozbul*] was not written, it is considered as though it was written (*Gittin* 36b).

Thus, despite the initial questions raised regarding its legitimacy and Shmuel’s declared desire to nullify it, the *prozbul* remained in force.³⁵ This, according to the conclusion of the passage, was largely because Hillel had issued a lasting decree that was protected by the *ein bet din* principle.

³⁵ It is interesting to note that elsewhere, the Yerushalmi (*Shabbat* 1:4, 13d) records, at least tentatively, a tradition that Shmuel believed that the *ein bet din* rule buttressed *only* the Eighteen Enactments (discussed in Mishna *Shabbat* 1:4) declared after a violently contentious quorum between the schools of Hillel and Shammai. Other decrees could be nullified by lesser courts. This interpretation would be an amazing limitation on the *ein bet din* rule and give later figures much greater authority. (For evidence of Shmuel’s autonomy in decision making, see Barak Cohen, “*Amar Shmuel Hilkhata*,” *JSIJ* 12 (2013), 1–32.) In any case, this reported position of Shmuel was immediately challenged in the Talmud. Echoes of such an alleged position are faintly heard in a question submitted to Rashi, in which the questioner posits that perhaps any decree besides the Eighteen Enactments may be nullified by a lesser court. Yet Rashi, following the definitive conclusion of the Talmud, asserts that even other enactments require a greater court. See *Teshuvot Hakhmei Tzarfat ve-Lunel*, ed. Yoel Miller (Vienna, 5641), #22, p. 13. This alleged position of Shmuel was thereby left by the historical waysides.

Yet Shmuel was undeterred by these limitations and attempted other methods of neutralizing the writing of a *prozbul*. The Talmud cites Shmuel as affirming the decree but asserting that the only courts authorized to accept a *prozbul* are those of the stature of Sura or Nehardea, i.e., esteemed courts which have significant powers over financial matters.³⁶ As Nahmanides and others argued, this was an attempt by Shmuel to greatly minimize the use of a *prozbul* by making it difficult to execute. Without nullifying it, he added a restrictive condition that would minimize its use and thereby reduce the insult of judicial bodies to executing the document. In Nahmanides' words, "It seems to me that Shmuel's stance that we do not write a *prozbul* except in courts like Sura or Nehardea follows his motivation to nullify it [the use of *prozbul*]. And therefore, we do not rule like this position [requiring a qualified court]."³⁷ These commentators rejected this legal restriction since they believe that the Talmud, following the lead of R. Nahman, clearly legitimated the use of *prozbul*.

Yet a few medieval scholars, including Maimonides, accepted Shmuel's restrictions to only write a *prozbul* in esteemed courts.³⁸ Others accepted his ruling and then further argued that, in practice, a *prozbul* could not be written in their times because they lacked courts of such stature.³⁹ For example, R. Isaac ben Abba Mari (twelfth century, Provence) wrote that his era lacked a sufficiently qualified court.⁴⁰ A similar claim was made

³⁶ Ancselovits, "The Prosbul," 11, understands this to limit the *prozbul* to significant commercial debts and liens whose contracts were deposited in the public archives of the large cities Sura and Nehardea. This might indicate that he simply felt that a *prozbul* could not be easily performed in the Babylonian legal culture, which differed from the Greco-Roman culture. The Talmud indicates that it is an "affront" to legal decisors for the process to be done through a document without any judicial investigation into the matter or any real handover or transfer of the loan to the *bet din*. See Rashi 36b, s.v. *ulbana*, *Teshuvot Maharik* #1, and Henschke, "Kaytzad Mo'il ha-Prozbul?," 84–85.

³⁷ Ramban, *Gittin* 36b, s.v. *ve-ha*. See also Rashba 37b, s.v. *u-le-inyan*, Ritva and Ran 36b, s.v. *de-amar*. This point is emphasized in Gilat, *Perakim*, 224–225.

³⁸ *Shemitta ve-Yovel* 9:17. See further discussion about his position in *Kesef Mishneh* and *Teshuvot Radbaz* 1:176. See also R. Yosef ben David ibn Lev, *Teshuvot Maharival* 1:126 and 2:44.

³⁹ See, for example, the opinions cited in *Sefer Ra'avya*, vol. 3, *siman* 893 (p. 687 in Aptiwizer edition, including footnote 2), the discussion about the position of Rabbenu Tam cited by Rosh, *Gittin* 4:13, and R. Shlomo Luria, *Yam Shel Shlomo*, *Gittin* 4:42. Dinari, *Hakhmei Ashkenaz*, 203, contends that this was a significant factor in explaining why certain Ashkenazic communities discontinued *prozbul*.

⁴⁰ *Sefer ha-Ittur*, *helek* 1, letter *pay*, 77b, emphasis added. It should be noted, however, that he immediately also quotes the passage from Shmuel in *Makkot* about other ways to circumvent the problem, as discussed below, and further discusses the possibility that *shemittat kesafim* does not apply outside of Israel, as discussed above.

centuries later by R. Shlomo Luria (Maharshal) who asserted that we lack scholars of sufficient stature to approve such documents.⁴¹

As such, Shmuel's position was somewhat successful, at least in limited eras and places, in quashing the decree of Hillel by imposing a restrictive condition on its use. The decree could not be formally abolished, but Shmuel was able to restrict its use, in practice, by demanding a court of senior figures. This was one factor in contributing to why Jews stopped writing a *prozbul* over the centuries.

This does not mean that Shmuel did not seek to address the socio-economic problems created by the laws of *shemittat kesafim*. Instead of utilizing *prozbul*, he interpreted Biblical law in a way to make it unnecessary. As R. Abraham Isaac Kook observed, various positions attributed to or promoted by Shmuel offered different ways of dealing with the remission of loans without using the *prozbul* document.⁴² For example, at least according to one tradition, Shmuel asserted that loans beyond seven years (e.g., a ten-year loan) automatically do not get remitted by the *shemitta* requirements.⁴³ Most significantly, he asserted that it is legitimate for a lender to condition his loan on the premise that the borrower will not claim that there will be *shemitta* remissions of this loan.

Rav Yehuda said in the name of Shmuel: . . . If he stipulates "on condition that *you* do not cancel the debt for me in the Sabbatical year," the Sabbatical year does not cancel it. But [if he stipulates] "On condition that the *Sabbatical year does not cancel it*," then the Sabbatical year does cancel it.⁴⁴

⁴¹ *Yam Shel Shlomo, Gittin* 4:43.

⁴² R. Kook, *Mishpat Kohen* #4. See also R. Yehuda Zoldan, "*Ha-Prozbul ke-Reka le-Heter Mekhira*," *Tzohar* 35. This point is emphasized by Gilat, *Perakim*, 225–228, drawing from the above-cited statement of Ramban.

⁴³ *Makkot* 3b. See Ramban, s.v. *ika de-amar*, and Rosh, *Makkot* 1:3, who explain why this tradition in the name of Shmuel is more authoritative. Additional lenient statements in the name of Shmuel include the idea that any loan owed to an orphan does not require a *prozbul* (*Gittin* 37a) and his interpretation of *Shevi'it* 10:2 that a loan that has an extremely minimal collateral is sufficient to prevent the *shemitta* year from remitting the loans; see *Yerushalmi Shevi'it* 10:1.

⁴⁴ *Makkot* 3b, emphasis added, followed by the personal testimony of the sage Rav Anan that Shmuel felt this formulation prevented loan remission. A similar idea is also found in *Yerushalmi Shevi'it* 10:1 and *Makkot* 1:2. Ancselovits, "The Prozbul," 11, n. 35, notes that this ruling might have reflected practices that were already being performed in the Land of Israel. See Seth Schwartz, *Imperialism and Jewish Society: 200 BCE to 640 CE* (Princeton University Press, 2001), 68–69, citing documents found in Qumran in which a lender agrees to repay a debt even if the Sabbatical year intervenes. In general, Ancselovits highlights the fact that the Sages' positions on *prozbul* was greatly impacted by practice within Greek and Roman culture in which

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This stipulation, of course, readily removed the need for judicial intervention within this process as the matter could be easily resolved within the contractual details of the loan.

The ideas promoted by Shmuel had such broad implications for limiting loan remissions that it led many medieval Talmudic commentators to question why Hillel would have needed to enact the *prozbul* document in the first place. The question was particularly acute since, as previously noted, their own communities were also not writing *prozbul* documents, in part based on the legal mechanisms promoted by Shmuel. Here, for example, is the formulation in *Sefer ha-Hinnukh*, commenting on the Torah's prohibition against not lending to the poor for fear of an inability to collect because of the approaching Sabbatical year (Deuteronomy 15:9).

And perhaps it will come to your mind, my son, to say, "And why should a person ever refrain from granting a loan because of this, and why was a negative commandment written about this? Surely it is in our power to stipulate with the borrower [that he loan is made] "on condition that it not be released in the seventh [year]" *in the way that we always do in our contracts?* Let this thing not confuse you, as the Torah warns us about matters even though it is possible [to circumvent them] with ordinances and conditions.⁴⁵

In other words, the option promoted by Shmuel always existed, but the Torah does not focus on the ways in which laws may be circumvented. Nahmanides alternatively suggests that *prozbul* was necessary because people sometimes forgot to make such a stipulation at the time of the loan.⁴⁶ Additionally, he argues that the conditional loan option was not previously promoted publicly since it would lead to the law of Sabbatical debt remission to be forgotten entirely—which, of course, was exactly what happened during the medieval period, at least among many lay people who knew nothing of its requirement.

loan documents were deposited with courts and public archives. Indeed, *prozbul* is clearly a Greek loan word. For parallels in antiquity to *prozbul*, see S. Llewelyn, "The procedure of execution and the προσβολαι" in *New Documents Illustrating Early Christianity: A Review of Greek Inscriptions and Papyri*, vol. 7 (Eerdmans, 1994), 225–232. For other ways in which the law's details may have reflected the reality of property ownership in the Land of Israel, see Moshe Gil, *Ve-ha-Roma'i Az ba-Aretz* (Jerusalem, 2008), 38–39. Shmuel and others had to address the legal precedents that had been created within the halakhic system while creating other innovations that would work in their time period, as clearly expressed in the Talmudic texts.

⁴⁵ *Sefer ha-Hinnukh* #480, emphasis added.

⁴⁶ Ramban, *Gittin* 36a, s.v. *u-me*. For additional sources, see Ritva, *Makkot* 3b, and the discussion in *Otzar Mefarshei ha-Talmud: Gittin* II, 596–599, and Gilat, *Perakim*, 226–227.

A cogent formulation of the impact of Shmuel's legal positions is found in Meiri's writings. He asserts that those who believe that *shemittat kesafim* applies in current times have a problem because communities do not have established, senior courts that can fulfill Shmuel's requirement of a *bet din* like those in Sura or Neherdea. As such, those who want to observe this law should make stipulations in their loan that the borrower will repay them if the Sabbatical year intervenes.⁴⁷ This position—which limits the use of *prozbul* but offers an alternative solution—reflects entirely the stances taken by Shmuel. Thus, at least in some communities, Shmuel was able to overcome the constraints on repealing the decree of Hillel HaZaken to effectively nullify the use of *prozbul* while promoting his preferred solution to ensuring credit supply to those in need.

Hillel HaZaken and Shmuel did not disagree about the need to prevent automatic loan remission. Both understood that the current situation was intolerable since it led people to not help others in need. This led to a violation of the Biblical mandate to lend money, a transgression of the prohibition to not refrain from loaning money for fear of inability to recoup, as well as a serious moral and societal problem. Hillel offered a legislative model to solve these problems. His decree created a legal mechanism to circumvent loan remissions. Shmuel disagreed with that solution. Unable to nullify the earlier legislation, Shmuel proposed an interpretive model to deal with the problems created by the Biblical law. He initiated or supported various interpretations of the Biblical law that would allow for legal remission without inappropriate judicial involvement. The Biblical law would be applied very differently, yet without explicit legislative intervention by the Sages. This would prevent the “affront” to the judges and judicial system without ignoring the societal problems created by the original law.

One can understand why the Talmud perceived Shmuel's purported desired to nullify Hillel HaZaken's decree as an outright violation of the *ein bet din* principle. Shmuel was not arguing that the law was no longer necessary, that it was ineffectual, or that it had become counter-productive to its original purpose. He was stating outright that the

⁴⁷ Meiri, *Gittin* 36b, s.v. *ke-she-tikken*. Others justified the popular practice by asserting that we simply assume it as if they have made such a stipulation. See *Teshuvot ha-Rosh* 64:4, and *Sema* to H.M. 67:4. R. Yitzhak Adarabi (sixteenth century, Salonika), *Teshuvot Divrei Rivot* #100, argues that since the established practice is for loans not to be remitted, it is as if all loans are made on that premise. Therefore, this is a case of “*minhag mevatel halakha*.” Such language is also indicated in the beginning of R. Levi ibn Haviv, *Teshuvot Maharalbah* #143, which had significant impact on subsequent rulings in Salonika. See R. Shmuel di Medina, *Teshuvot Maharashdam* #186. Such a notion is opposed by R. Moshe Hagiz, *Lekat ha-Kemah*, Y.D., *Hilkhot Ribbit* 50b.

legal pronouncement made by his distinguished predecessors was a bad law and that it should be directly repealed.⁴⁸ In his words, “If I had greater power than Hillel, I would repeal it.” History has shown that Shmuel might have ultimately achieved his goal, even as it took many generations for his position to dominate.

Shmuel’s rulings created a fascinating legal situation in which the two models of Hillel and Shmuel co-existed, sometimes in harmony and other times in conflict. This dual-system would become further complicated as the next generation of *amora'im*, led by R. Nahman, would affirm Hillel’s model. Yet, as we will now see, it might be precisely R. Nahman’s affirmation of Hillel’s model that ultimately led to abandoning the practice of *prozbul*. This, of course, would be surprising, for as we saw, R. Nahman is presented in the Talmud as the defender of the *prozbul*. Ironically, it was precisely his adamant affirmation of the *prozbul* which also greatly contributed to the demise of this document’s observance.

b) Can a prozbul become so obvious that it is unnecessary?

R. Nahman’s affirmation of prozbul

Before examining R. Nahman’s position, it is critical to appreciate that the *tanna'im* encouraged borrowers to return money even when they were not required to do so. As the Mishna states, “One who returns the loan during the Sabbatical year, the spirit of the Sages is pleased by him.”⁴⁹ Even without a *prozbul* mandating the return of the loan, borrowers were urged to return the borrowed money even after the lender had announced the cancelation of the loan. In this respect, the innovation of Hillel HaZaken was only a significant extension of a general sentiment that borrowers, whenever possible, should voluntarily return their loans even if the Torah mandates their remission. Nonetheless, the working assumption seems to be that if a borrower does not want to return the loan, and a *prozbul* has not been written, then the lender has no recourse.

This assumption that borrowers should return their loans was strengthened by two important rulings of early Babylonian *amora'im*.

⁴⁸ The claim that the *ein bet din* principle only governs direct repeals but not indirect forms of nullification is a theme throughout my *Repealing Rabbinic Laws*. See also my “The Repeal of Tosefet Shev’it: The Role of Discovered Traditions, Indirect Nullifications, and Asmakhtot in Annulling a Rabbinic Decree,” *Hakirah* 32 (2022).

⁴⁹ *Shevi’it* 10:9. For further evidence, see Safrai, *Mishnat Eretz Yisrael: Shevi’it*, 349–350.

The first relates to the position of some *amora'im* that we can force the borrower to return the loan. This is reflected in the position of Rabba:

In the case of one who repays a debt to his friend during the Sabbatical year, the creditor must say to him: I release the debt, but if the debtor then said to him: Nevertheless [I want to repay you], he may accept it from him, as it is stated: “And this is the manner [*devar*] of the release” (Deuteronomy 15:2). [From the fact that the verse employed a term, *devar*, that can also mean, “This is the *statement* of the cancellation,” the Sages derived that the creditor must state that he cancels the debt, but he is allowed to accept the payment if the debtor insists on repaying.] Rabba said: And the creditor is permitted to tie up the debtor until he says so [until the debtor volunteers repayment] (*Gittin* 37b).

According to some commentators, the borrower could literally be tied up to compel him to “willfully” pay back the loan.⁵⁰ According to many others, Rabba only meant this figuratively, that is, the lender can make the borrower feel guilty until he pays.⁵¹ Either way, such social pressure makes a *prozbul* unnecessary, even as this solution is clearly an inefficient and acrimonious process.

The second development relates to a change initially inspired by the chaotic period of the Bar Kokhba rebellion. When legal documents were not easily preserved during this era, Rabban Shimon ben Gamliel asserted that a creditor can collect on a debt even if he could not produce the physical *prozbul*.

She says, “My bill of divorce is lost,” and [the husband] says, “My receipt [of payment of the *ketuba*] is lost.” And similarly, if a creditor produces a promissory note but there is no *prozbul* accompanying it. [In both cases] they are not paid. R. Shimon ben Gamliel says, “From the time of public danger and on, a woman may collect her *ketuba* [even] without the bill of divorce, and a creditor may collect without a *prozbul* (Mishna *Ketubot* 9:9).

The Yerushalmi limits this leniency only in times of danger (such as the Bar Kokhba rebellion); otherwise, the document must be produced.⁵² The Babylonian *amora'im*, however, assert that even after the time of

⁵⁰ See Rashi as well as *Arukh*, s.v. *tel*. The term also has this connotation in *Bava Batra* 47b–48b.

⁵¹ See, for example, Ramban, *Gittin* 37b, s.v. *ve-tali*, and Meiri 37b, s.v. *me-ata*. This interpretation might be confirmed by the follow-up story with Abayye as well as the position of Rav Huna in *Yerushalmi Shevi'it* 10:8, 39d. See also the ruling in H.M. 67:33.

⁵² *Yerushalmi Ketubot* 9:9, 32c.

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danger passed,⁵³ we believe the lender to assert that a *prozbul* was written, and they cite a position of the *tanna'im* (against the first position in the above-cited mishna) to affirm this stance. This development follows the position reported in the name of Rav, who asserts that we make a default assumption that a *prozbul* was written.

R. Yehuda said in the name of Rav:⁵⁴ We take a man's word if he says, I had a *prozbul* and lost it. What is the reason? Since the Rabbis have instituted a *prozbul*, a man would not [as we say] "leave on one side permitted [food] and eat forbidden." When such a man came before Rav, he said to him, "Have you prepared a *prozbul* and lost it?" This is a case for opening the mouth for the dumb.⁵⁵

There are two innovative rulings here: Firstly, that we accept the claim that a person wrote a *prozbul* but lost it, and secondly, that we initiate such a claim for those who are not sufficiently knowledgeable to make the claim on their own.⁵⁶ As Meiri notes, by suggesting such a claim to the lender, we somewhat undercut the impetus to write a *prozbul* since the lender would be believed anyway in circumstances when *prozbul* agreements are generally made.⁵⁷ Rav seems perfectly comfortable in creating a legal culture where it is assumed that a *prozbul* has been agreed upon.

This approach, presuming the existence of a *prozbul* as the default reality, even in the absence of the physical document, thus allowing collecting all loans, culminated in the third development, as reflected in the statement of R. Nahman, quoted previously. In rejecting Shmuel's attempted repeal of *prozbul*, R. Nahman exclaimed, "I will uphold the institution of *prozbul*." The simple meaning of this statement is that he would continue to sign a *prozbul* despite Shmuel's objection. Yet since the Talmud had already rejected Shmuel's initiative, R. Nahman's statement

⁵³ For more examples of this phenomenon, see my *Repealing Rabbinic Laws*, 467–470.

⁵⁴ The standard editions of the Bavli report this position in the name of R. Nahman, which makes less sense because R. Yehuda predated him. Many Rishonim report the position in the name of Rav. See *Dikdukei Soferim ha-Shalem* and the comments of Kahana, *Mippenei Tikkun Olam*, 198.

⁵⁵ *Gittin* 37b. See *Shita Mekubetzet* to *Ketubot* 89a, recording the positions of Ritva and Rabbenu Yona, as well as Safrai, *Mishnat Eretz Yisrael: Ketubot*, vol. 2, 551–553.

⁵⁶ This is based on the verse in Proverbs 31:8; see the commentary of Malbim there. See also *Yerushalmi Sanhedrin* 3:9, 21c and *Midrash ha-Agur*, 312.

⁵⁷ Meiri, *Bet ha-Behira*, *Gittin* 37b, s.v. *tava*. See also *Teshuvot ha-Rashba* 4:127.

is turned into a more far-reaching position. “I will say that even though [the *prozbul*] was not written, it is considered as though it was written.”

What exactly did R. Nahman mean by this? According to Rabbenu Asher, it effectually makes the written *prozbul* superfluous by asserting that the presumption of an oral understanding is entirely sufficient to circumvent the prohibition of collecting the loan.⁵⁸ Indeed, later Sages from the school of R. Ashi made “*prozbul* arrangements” through an oral agreement.⁵⁹ According to Rashi, however, this meant that R. Nahman would have liked to establish a *bet din* to assert that all loans, by default, function *as if* they had a built-in *prozbul*. Historically, no court declared any such bold declaration.⁶⁰ Had such a court attempted to nullify the actual writing of a *prozbul*, it is not clear that it would not have run afoul of the *ein bet din* rule.⁶¹

In any case, whatever R. Nahman’s intent, Jews stopped preparing *prozbul* documents. That is to say, Jews adopted his position that all loans operate, by default, as if a *prozbul* was signed. This, at least, was one of the earliest explanations for widespread practice, as given by R. Natronai Gaon. In his brief remarks on the reality of his own day, he simply states that Hillel enacted the *prozbul* and “we say, ‘I will say that even though [the *prozbul*] was not written, it is considered as though it was written,’” citing the position of R. Nahman as authoritative.⁶² In other words, R. Nahman and others made the non-remission of loans self-evident, even without an actual *prozbul*, to the point that the social and legal assumption became that the right to debt remission was verbally or

⁵⁸ Rosh, *Gittin* 4:13

⁵⁹ *Gittin* 37a.

⁶⁰ Rashi, *Gittin* 36b, s.v. *eima*.

⁶¹ R. Yoel Sirkes, *Bah*, to H.M. 67, asserts that such an initiative would have run into problems with the *ein bet din* principle and therefore R. Nahman would have never contemplated it. R. Meir Schiff (*Maharam Schiff*) to *Gittin* 36b, s.v. Rashi, on the other hand, considers whether nullifying a *takkana* through an act of omission (*shev ve-al ta'aseh*), i.e., not writing the actual document, would violate the *ein bet din* rule. On the larger question of passive nullifications, see Ramban, *Gittin* 36b, s.v. *ve-ha*, and Medini, *Sedei Hemed* (vol. 1), *Kelalim: Ma'arekhet Aleph* #184, s.v. *ein bet din*, p. 54. For attempts to prove that a greater *bet din* should not be necessary, see *Teshuvot Hikrei Lev*, Y.D. 2:49 and R. Elhanan Wasserman, *Kovetz Ha'arot Yevamot* 69:38–43. For further discussion, see *Otzar Mefarshai ha-Talmud: Gittin* II, 632 and 639.

⁶² The rulings are collected in Levin, *Otzar ha-Geonim: Gittin* (Teshuvot) #187, and republished in *Teshuvot Rav Natronai Gaon* (ed. Brody), H.M. #339–340, p. 496. Interestingly, Rabbenu Tam, in *Sefer ha-Yashar* #138, also speculates that the reason why Rav Yehudai Gaon didn’t compose a *prozbul* in his book because he relied upon the position of R. Nahman.

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automatically waived by the borrower. As such, the medieval phenomenon of not writing a *prozbul* had deep roots in the rulings and practices of Babylonian *amora'im*.⁶³

Yet as we have seen, R. Nahman's affirmation of the *prozbul* arrangement was only one of the factors that led to the end of *prozbul* composition. Even before his innovations, we saw the following factors played a major role:

- 1) The push by the *tanna'im* for borrowers to continue to pay back their loans under all circumstances;
- 2) The difficulty of composing and preserving *prozbul* documents during political turmoil;
- 3) The reduced status of *shemitta* as declared by R. Yehuda HaNasi;
- 4) and the alternatives to *prozbul* offered by Shmuel.

All of these aspects led to an environment in which Jews would, in practice, collect loans without the actual preparation of a *prozbul*.

The irony, of course, is that it would be R. Nahman's declaration to support and preserve the *prozbul* mechanism that provided the final major factor that led to the significant reduction of *prozbul* writing. Perhaps one could say R. Nahman (and later *amora'im*) affirmed the spirit of Hillel's ruling to the point in which they nullified his mechanism. It could be that R. Nahman and others might have gladly accepted this result, but the ambiguity of their position left medieval commentators struggling to find answers for why Hillel's famous document was no longer being written. After all, the Bavli had explicitly stated that Shmuel could not nullify the decree and R. Nahman wanted to affirm it.

The widespread re-adoption of this practice highlights the limits of significant changes introduced indirectly. When a practice is only implicitly nullified, it can always make a comeback. This is especially so when the authoritative Talmudic texts, in contrast to the subsequent common practice, seem to affirm that a written *prozbul* remains necessary because the original enactment cannot be repealed.

Why Did People Start to Sign a Prozbul Again?

The question remains why, after many centuries of neglect, Jewish communities around the world have reembraced *prozbul* writing. Unfortunately, it is difficult to trace the re-emergence of the practice because

⁶³ See Gilat, *Perakim*, 230 and HaCohen, "Ha-Prozbul Halakha le-Ma'aseh," 77, conclude that already in the amoraic period the masses had stopped writing a *prozbul*. This conjecture might be correct but I found no direct proof to that claim.

rabbinic sources might note that a *prozbul* was signed by a certain figure without indicating the *extent* of the practice in the location. R. Gavriel Zinner has painstakingly documented several *teshuvot* which indicate that in certain locales a *prozbul* was written.⁶⁴ Many of the sources, however, only indicate that a *prozbul* was written by elite scholarly figures and tell us nothing about the behavior of others, let alone the masses.

Some researchers have attributed great importance to the impact of influential scholars on changing public practice.⁶⁵ For example, R. Yonatan Eybeschetz (1690–1764) wrote an impassioned plea to revive the practice of *prozbul*, even as he indicated that this was not the common practice of his era.⁶⁶ It left an imprint on subsequent rabbinic literature and it is possible that his influence was felt in cities in which he held particular clout,⁶⁷ just as the position of the Vilna Gaon may have influenced some unknown number of community members to write a *prozbul* in Lithuania.⁶⁸ Nonetheless, it is not clear that the stance of these great figures, which echoed the position of many earlier authorities, had any particular impact on the masses, even as they left their mark in rabbinic literature.

Where available, archives from various rabbinic courts around the world can help us trace this development. Archival research, for example, has shown extensive writing of a *prozbul* in early eighteenth-century Morocco; *prozbul* documents, however, were not regularly found

⁶⁴ R. Gavriel Zinner, *Nit'ei Gavriel: Hilkhot Shemitta u-Kesafim u-Prozbul* (Jerusalem, 5767), 331–342.

⁶⁵ Yosef Rivlin, “*Ha-Shtarot be-Shemitta u-Shemitta ba-Shtarot*,” *Sidra* 18 (2003), 119–133.

⁶⁶ R. Yonatan Eybeschutz, *Tumim* to H.M. 67:1, cited in *Reishit Bikkurim* 2:1 and many other subsequent works.

⁶⁷ R. Eliezer Fleckeles (1754–1826), *Teshuva me-Ahava* 1:72 indicates that the contemporary practice in Prague, where Eybeschutz served as a prominent figure, was to sign a *prozbul*.

⁶⁸ The Vilna Gaon (1720–1797) ruled that a *prozbul* must be signed, as seen in *Bi'ur ha-Gra*, H.M. 67:4, and he reportedly urged people to sign a *prozbul*. See *Ma'aseh ha-Rav ha-Hadash* (Bnei Brak, 5740), 14, based on the manuscript of R. Mordechai Epstein. Indeed, R. Avraham Danziger (1748–1820), author of *Hayyei Adam*, writes in his *Sha'arei Tzedek* 21:6 that in four consecutive *shemitta* years (starting in 1776–1777), *prozbul*s were signed in Vilna (although that anecdotal fact cannot tell us exactly how widespread the practice was even in that one city). *Arukh ha-Shulhan*, H.M. 67:1, 6–10, justifies the practice of many places not to write a *prozbul* even as he asserts that other locations do have the practice to write one, including contemporary Lithuania. Not every influential rabbinic figure was so impactful. See the end of R. Moshe Sofer, *Teshuvot Hatam Sofer* 1:15, regarding the practice of R. Natan Adler, which does not seem to have impacted the broader communal practice.

in Yemen.⁶⁹ Similar type of research would need to be performed around the world to understand where and when *prozbul* documents were signed by significant numbers of people.

With those caveats in place, I tentatively suggest three major factors that will lead many people to sign this document at the end of the current 5782 *shemitta*:

a) The Influence of Jewish Settlement and Scholarship in the Land of Israel

As previously noted, Jews returning in the sixteenth century to the Land of Israel, as well as its surrounding areas, were punctilious about signing a *prozbul*. This practice seems to have continued in subsequent centuries as Jews in *Eretz Yisrael* renewed land-based *mitzvot*, including repeated discussions about other aspects of the *shemitta* year. The practices of the community in *Eretz Yisrael*, however small, seems to have been impactful over the centuries.

One can point to the following potential influences from the Land of Israel: Rabbinic figures in the Land of Israel urged Diaspora Jews to follow their community's lead and to sign a *prozbul*. One of the earliest letters was sent by R. Isaiah Horowitz (*Shela ha-Kadosh*), who died in Jerusalem in 1630. In his highly influential work, *Shenei Lubot ha-Berit*, he described the renewal of land-based agricultural laws in the Holy Land and then urged his children to also fulfill the simple but important mitzva of *shemittat kesafim*, including the writing of a *prozbul*. This was not just one more letter written by yet another scholar (however important) urging people to write a *prozbul*; it was coming from a community in which the *prozbul* was widely signed, making the argument more powerful for the actual necessity of this document.⁷⁰

Additionally, of course, such messages were not just coming from any community. They came from the Land of Israel which, by virtue of

⁶⁹ R. Avraham Hillel, "Takkanat ha-Prozbul ve-Yissuma Halakha le-Ma'aseh – Moracco u-Baghdad," in *Kovetz Min ha-Genazim*, vol. 6 (Modi'in Illit, 5775), 245–306. In addition to the sources he cites, see R. Raphael ben Mordecai Berdugo, *Mishpatim Yesharim* 1:348. In contrast, Yemenite archives do not indicate the writing of a *prozbul*. See the comments of R. Yitzhak Ratzabi in his "Hilkhot Shemittat Kesafim u-Prozbul" found in Meir Levi, *Otzerot ha-Shemitta le-Hokhmai Teiman*, 223.

⁷⁰ The statement of *Shela* is cited in *Be'er ha-Gola*, H.M. 67:9 and by many subsequent authorities. For other early examples of scholars in *Eretz Yisrael* urging Diaspora Jews to sign a *prozbul*, see R. Yisroel of Shklov, *Pe'at ha-Shulhan: Hilkhot Shevi'it* 29:4 (which includes a reworking of the language of the *Tumim*), and R. Moshe Nahman Kahanav, *Shenat ha-Sheva – Hilkhot Shevi'it, netiv* 7 (Jerusalem, 5732), 31b–32a.

its being the Holy Land, served as a spiritual focal point for many Jews. Some have speculated, for example, that Moroccan Jews felt a great tie to the community in Israel and therefore emulated their ways. It seems that nineteenth-century Jews in Baghdad began to write a *prozbul* more regularly.⁷¹ What's fascinating is that some of these documents appoint a *bet din* in Jerusalem as their officiating court, clearly linking the two communities and this practice.⁷² In general, the renewed attention in the nineteenth century given to the agricultural laws of the Sabbatical year, which included heated polemical debates, almost certainly highlighted other aspects of this year, including *shemittat kesafim*. After all, many of the medieval sources that were invoked about the contemporary status of *shemitta* observance were the same texts cited earlier that downplayed the status of *shemittat kesafim* in their era. More generally, such attention might have brought greater focus onto writing a *prozbul* since, after all, the other aspects of the Sabbatical year do not apply to Jews outside of Israel.

b) The Loss of the Mimetic Tradition and the Return to Texts

Renewed attention of practices in the Land of Israel, however, seems insufficient to explain the exponential rise in *prozbul* writing in second half of the twentieth century. There is no doubt that the founding of the State of Israel further increased the attention given to the *shemitta* year. Nonetheless, one needs to examine the return of the *prozbul* with another well-known phenomenon: the shift in Ashkenazic circles from a mimetic society to a textual one, famously described in the pages of *TRADITION* by Haym Soloveitchik in his influential essay, "Rupture and Reconstruction."⁷³

The writing of a *prozbul* seems to be a remarkable example of the resurgence of an authoritative text-based culture. For well over 1000 years, rabbis complained, at least on paper, that Jews should be signing a *prozbul*; yet, it seems, hardly no one did. Suddenly,⁷⁴ everyone is following

⁷¹ R. Yosef Hayyim of Baghdad (1835–1909), the *Ben Ish Hai*, seems to have successfully reinstated the practice of writing a *prozbul* in Baghdad. See *Ben Ish Chai, shana rishona, Parashat Ki Tavo* #26.

⁷² R. Avraham Hillel, "Takkanat ha-Prozbul ve-Yissuma Halakha le-Ma'aseh," 297.

⁷³ Haym Soloveitchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy," *TRADITION* 28:4 (Summer 1994). See also the special issue of *TRADITION* 51:4 (Fall 2019) dedicated to the lasting relevance of the article's thesis.

⁷⁴ I use "suddenly" in a rhetorical sense. This change, of course, did not happen instantaneously. It would be important to examine when the numbers shifted. Take, for example, the case of the American Jewish community. The 1938 edition

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the directive found in the texts, despite this going against the practice of their ancestors.⁷⁵ The logic seems to be that if R. Nahman affirmed in the fourth century that a *prozbul* should be utilized, and the texts never explicitly instructed otherwise, then why should we not execute this in practice? Such an argument only becomes compelling in a culture that prioritizes the rules as they appear in authoritative texts.

c) Credit-Based Economies

Contemporary economies are built on credit. Anyone who has a checking account, takes out a mortgage, uses a credit card, and a myriad of other activities is borrowing or lending money, in one form or another. This creates a culture in which nearly everyone feels (or should feel) that, in some manner, *shemitta* loan remissions somehow impact them. Has this sense impacted the way in which modern Jews view *shemittat kesafim*? That is hard to say, but I suspect that the changed economic environment has created the feeling that everyone in the community might need to write a *prozbul*. Since it is a simple document to sign, with clear benefit to the signatory, why not do it? By way of comparison, it is no more complicated than arranging for the pre-Passover sale of *hametz*, which is nearly universally performed by observant Jews the world over, even before the internet further expanded its ease and access. Medieval communities clearly had some moneylenders, and even if such activity was not wide scale, *ad hoc* loans to the poor existed in all times and places; yet I doubt

of *Ha-Pardes*, published in Chicago, includes a reminder that a *prozbul* should be signed and provides a model text. See *Ha-Pardes* 12:6 (Elul, 5698), 1 and 17. Yet it is clear that the masses were not signing a *prozbul* at that time in America. Indeed, *Ha-Madrikh: The Rabbi's Guide* by R. Hyman E. Goldin, written in 1939 and republished in 1956, does not include the sample text of a *prozbul*, even though it does include a model *shetar shutfut*, *heter iska*, and other forms. R. Shmuel Hibner, writing in 1973, argues for lenders to sign a *prozbul*, in line with the historical practice in Lithuania and against the practice in Poland. His concluding paragraphs, however, clearly indicate that this was still not the widespread practice in America and he remained respectful of those who don't sign a *prozbul*. See his "*Birur be-Inyan Shemittat Kesafim ve-ha-Tzorekh Likhtov Prozbul*," *Ha-Darom* 37 (Nisan 5733), 36–48. As stated earlier, careful research is required on this matter.

⁷⁵ For testimony to these changes, see R. Menashe Klein, *Mishneh Halakhot* 12:407, and R. Yaakov Breisch, *Helkat Ya'akov*, H.M. #6. R. Moshe Feinstein (*Iggerot Moshe*, H.M. 2:15) argues that we would allow someone to collect their loan, even if they did not write a *prozbul*, since the new practice of signing this document may have only been accepted as a custom but not a matter of law. Regarding the implications of this question in contemporary Israel, see the debate between R. Baruch Finkelstein (*Tzohar* 38, 5775, 187–196) and R. Yehuda Zoldan (*Tzohar* 39, 5776, 295–302).

there was any reason to think that everyone might need to sign a *prozbul*. In general, it may be easier to encourage people to fulfill a religious obligation when they feel it is imposed on the entire community and not just on limited individuals. This creates a greater awareness of the law as well as a broader sense of legal obligation. Has this factor somehow impacted the way in which we approach *prozbul*? Again, it is difficult to determine and nearly impossible to prove, but I suspect that the answer is yes. Indeed, in 5782, I suspect that thousands will sign a *prozbul* on different rabbinic websites, ushering in a new virtual era in the storied history of Hillel's innovation. Ultimately, more research is required to trace this document's resurgence. Yet one thing remains clear: Hillel HaZaken's document is back and is here to stay.