

# **The Attitude towards Mamzerim in Jewish Society in Late**

## **Antiquity**

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One of the basic aims of a sociological study - in whatever period - is to attempt to isolate a sub-group from the group being investigated. Such diagnosis is valuable not only in itself but also helps in the better understanding of the society as a whole. Hence, the goal of the following is to examine a specific aspect, specific but limited, of Jewish society, particularly Palestine, in antiquity.<sup>1</sup> An alternative approach for the understanding of a society is to examine the limits of the society, what it considers standard, “normative”, and what it considers deviant or non-normative. Thus a better understanding of Jewish society can be obtained. In practice, these two approaches to understanding that society are joined in the understanding of the attitude of that society towards the mamzer and his parents.<sup>2</sup> They are at the fringe of society for not meeting the criteria of that society and, with others of their status, constitute a sub-group or “anti-society” which indirectly helps define the society itself. It follows that the study of the status of the mamzer, from both social and religious aspects, in

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<sup>1</sup> There is no intention here to deal with stories of the society as a society nor with an approximate demarcation of the periods, generally defined on the basis of literary sources, since the demarcation of social phenomena may be found to be deceptive. For a summary of the status of research regarding Jewish society in Palestine in antiquity, see S. Safrai, *At the End of the Second Temple and the Mishnaic Period: Chapters in the History of the Society and Culture*, Jerusalem 1983 (Hebrew); H. L. Poppers, ‘The Declasse in the Babylonian Jewish Community’, *Jewish Social Studies*, XX (1958), pp. 153-179.

<sup>2</sup> For early research on this subject, see: A. Geiger, *Urschrift und Uebersetzungen der Bibel in ihrer Abhaengigkeit* (Hebrew translation: *HaMiqea weTirgumav*), Jerusalem 1972, pp. 35-37; Louis M. Epstein, *Marriage Laws in the Bible and the Talmud*, Cambridge, Massachusetts: Harvard University Press, 1942 (rep. 1968), pp. 183-197.

antiquity - and also in other periods - is bound to be a key question, sociologically, anthropologically, and also demographically, in the understanding of Jewish society. It may even be possible to extend the findings to studies of other societies.<sup>3</sup>

In Jewish tradition the special attitude towards the mamzer appears already in the Pentateuch. Deuteronomy 23: 1-9 contains a collection of laws including that of the mamzer:

No man shall marry his father's former wife, so as to remove his father's garment.

No man whose testes are crushed or whose member is cut off shall be admitted into the congregation of the Lord.

No mamzer shall be admitted into the congregation of the Lord; none of his descendants, even in the tenth generation, shall be admitted into the congregation of the Lord.

No Ammonite or Moabite shall be admitted into the congregation of the Lord; none of their descendants, even in the tenth generation, shall forever be kept from admission into the congregation of the Lord...

You shall not abhor an Edomite, for he is your kinsman. You shall not abhor an Egyptian for you were a stranger in his land. Children born to them may be admitted into the congregation of the Lord in the third generation.

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<sup>3</sup> For a comparative study, informative data, statistics and research regarding Europe, America and Japan at the end of the Middle Ages, see: E. Shorter, 'Illegitimacy, Sexual Revolution, and Social Change in Modern Europe', Theodore K. Rabb and Robert I. Rotberg (eds.), *The Family in History*, New York - Hagerstown - San Francisco - London: Harper & Row, 1973, pp. 48-84; Peter Laslett, *Family Life and illicit love in earlier generations*, Cambridge: Cambridge University Press, 1977 (rep. 1978); P. Laslett, Karla Oosterveen and R. M. Smith (eds.), *Bastardy and its Comparative History*, Edward Arnold, 1980. The data in these books establish that the percentage of bastards in society moved between 1-8% (and in certain circumstances even higher) corresponding to changing social phenomena such as age of marriage and religious outlook. It is self-understood that the difference in definition between Jewish mamzer and Christian bastard is highly significant in this case. Moreover, the definition of the mamzer in Jewish circles (see below) affects the determination of this fraction, and this uncertainty is granted without even considering the mamzerim who are not known as such to society.

This group of laws opens with forbidden liaisons, proceeds to defects in reproductive capability,<sup>4</sup> continues with the mamzer,<sup>5</sup> and concludes with links or relationships (not necessarily sexual) with foreign nationals living as neighbors nearby: Ammonites, Moabites, Edomites, and Egyptians. For every subject, and in some cases for two subjects, the law is presented differently. The key words differ: “marry” and “be admitted” in the third person

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4 It can be deduced that from the Scriptural point of view, the eunuch who cannot father children is like a man who has been punished as written in Leviticus 20:20-21: “If a man lies with his uncle’s wife, it is his uncle’s nakedness that he has uncovered. They shall bear their guilt: they shall die childless. If a man marries the wife of his brother, it is indecency. It is the nakedness of his brother that has uncovered; they shall remain childless”. By analogy the punishment is seen as a consequence of the sin and to conclude that the childless person has previously sinned in the area of sex and is therefore punished in the area of fertility - measure for measure - by absence of fertility. The punishment of lack of offspring is seen as the opposite of the divine blessing “Be fertile and increase” Genesis 1:22; 1:28; 9:11; 9:7) although there are uncertainties regarding this issue. For various proposals regarding “childless (=ariri)” see: G. Brin, ‘Ariri’, *Encyclopedia Miqratai*, 6, Jerusalem, 1972, pp. 390-391. On the categories of eunuchs (and mamzerim) in the ancient Near East and the (dim) possibility of their procreating see: E. Neufeld, *Ancient Hebrew Marriage Laws*, London - New York - Toronto: Longmans, Green and Co., 1944, pp. 220-227.

5 Linguists have had difficulty with the meaning of the word in the absence of a parallel in the Semitic languages. Geiger (above, Note 2) proposed derivation of “mamzer” from “m<sup>e</sup><a>m-zar” (from an alien folk) with elision of the second letter. According to this interpretation, the definition of the mamzer (see below) derives from the linguistic connection (offspring of parents, one Jewish, the other of an alien folk). However Rabbi Jonah ibn Ganach (*The Book of Roots*, B. Z. Bacher edition, Berlin 1896, pp.257-258) assigns the word to the root “mzr” meaning he is deprived of seed” (unable to procreate). According to Rabbi Nathan of Rome (*The Complete Aruch*, A. Kahut edition, photo-offset, New York 1945 5, p. 162) the meaning is an “affair of mixtures”. For a summary of research on this issue, see: L. Koehler and W. Baumgartner, *The Hebrew and Aramaic Lexicon of the Old Testament* (translated and edited by M. E. J. Richardson), II, Leiden - New York - Koeln, 1995, p. 595.

(the person excluded) as against the second person (the one commanded to be the excluder).<sup>6</sup> The law asserts that certain persons are forbidden to enter the community of the Lord, but there is no explanation of the significance of the prohibition, not even clarifying the sanctions against the transgressor who does enter the community of the Lord. In any case, it is important to note that the disqualification resulting from a relationship does not disappear with the death of the initial “sinner” whose relationship led to the damage, but the defect is transmitted “genetically” to succeeding generations. In some cases the disqualification is transmitted to the second generation and terminates in the third generation; in other cases the disqualification is transmitted to all subsequent generations “even the tenth generation”, a kind of genetic disqualification.<sup>7</sup> This transmission of the disqualification to later generations essentially resembles the patriarchal (and Scriptural) perception of relationships, according to which descendants inherit from their ancestors their kinships and social status.

The law forbidding the admission of the mamzer to the community of the Lord is a natural part of the set of laws connected to the concurrent social and religious status, as can be deduced from the description of the society as the community of the Lord (or the congregation of God; Nehemiah 13:1). The laws are expressed as prohibitions requiring the

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<sup>6</sup> The change in person addressed (third - second) can be explained in two ways: 1) A matter of style: The reprehensible sin of adultery affects wording in a manner of (impersonal) designation in third person “he shall take” (m. Megillah 4:9: “He who reads the Torah and changes (from 2<sup>nd</sup> to 3<sup>rd</sup> person) in sexual matters is to be silenced”), whereas the wording in Leviticus 18:7: “Your father’s nakedness, that is, the nakedness of your mother, you shall not uncover; she is your mother - you shall not uncover her nakedness” is in the second person. But “he shall take” is replaced by the hinting language “to uncover nakedness”. Once the text started in the third person, it continued in this person until it reached the milder sin, in thought without action, and goes over to the second person “You shall abhor”; 2) Another possibility is to attribute the change to literary adaptation. See: M. Smith, ‘Pseudepigraphy in the Israelite Literary Tradition’, Kurt von Fritz (ed.), *Pseudepigrapha*, I, Geneve: Vandaeuvres, 1971, pp. 189-215.

<sup>7</sup> An example is seen in I Chronicles 2:34-41 listing genealogy starting from Jarha, an Egyptian slave, who married the daughter of Sheshan. His descendants over thirteen generations recognized their origin and did not blur it. The “genetic” defect stands in opposition to the punitive approach (as explained below).

mamzer, and also the Ammonite and the Moabite, to separate himself from the community of the Lord even though, practically, the intent of the law seems to be the reverse. It is self-understood that the law is not directed against the Ammonite or the Moabite but for the good of the community of the Lord;<sup>8</sup> the law's instruction "No Ammonite or Moabite shall be admitted into the congregation of the Lord" really has to be understood to mean the obverse: "\*The community of the Lord shall not admit the Ammonite or Moabite".<sup>9</sup> Thus the warning to the mamzer against coming into the community of the Lord is not so much a warning to the mamzer as it is a warning to the community against allowing the mamzer to enter (that is, joining them). In the same sense, the community of the Lord shall not admit a man whose

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<sup>8</sup> Compare the verses in Nehemiah 13:23-25: "Also at that time I saw that Jews had married Ashdodite, Ammonite, and Moabite women... I censured them, cursed them, flogged them, tore out their hair, and adjured them by God, saying 'You shall not give your daughters in marriage to their sons or take any of their daughters for your sons or yourselves'". In other words, the leader instructs the people to separate from the Gentiles, not the reverse. The reference to cursing is to be seen not as a chance curse but as ritualistic, of the kind described in the next note. As for "I tore out their hair" (=I made them bald), see further on. Compare also the description in Ezra 9 "the Ammonites, the Moabites, the Egyptians. They have taken as wives for themselves and for their sons, so that the holy seed has become intermingled with the peoples of the land ...I tore hair out of my head". See: Shaye J. D. Cohen, 'The Origins of the Matrimonial Principle in Rabbinic Law', *AJS Review*, 10 (1985), pp. 19-53; M. Heltzer, 'A New Approach to the Foreign Women in the Books Ezra and Nehemiah', *Shenaton - Yearbook for Scripture and Ancient Eastern Studies*, 10, (1986-9), pp. 83-92 (Hebrew).

<sup>9</sup> The asterisk is chosen to indicate a reconstructed version. The inverted wording can be explained in one of two ways: 1) The wording derives from rhetorical considerations of oral statement of laws in the swearing-in ritual present in the Pentateuch (and Nehemiah 13), see: M. Bar-Ilan, 'The Torah Written on the Rocks at Mount Ebal', Z. Ch. Ehrlich and Y. Eshel, (ed.), *Researches on Judea and Samaria*, 2, (1993), pp. 42-49 (Hebrew); 2) The wording is chosen to emphasize in a special way the "community of the Lord" (a word combination almost exclusive to this chapter), and thus to emphasize the mutual responsibility of the entire community (so no one shall say, if his neighbor married an Ammonite woman, it does not concern him, for example), a sort of law applied to the collective.

testes are crushed; the community shall not accept a mamzer; the community shall not accept an Ammonite; and so on.

It is seen that the propinquity of the mamzer with the Ammonites and Moabites derives from the fact that these nations were descendants of offspring of illicit liaisons (Genesis 19:31-38), explaining their distancing from the community of the Lord.<sup>10</sup> The harshness of the law is stressed through the emphasis of the prohibition “shall not be admitted” (into the community) by the doubling “even in the tenth generation” and “forever”.<sup>11</sup> Clearly the lawgiver followed an especially harsh line, as the law is not directed at the offenders (the parents who transgressed) but also punishes the descendants of the transgressors, if we view the prohibition as punishment.<sup>12</sup> Recall that, as a rule, in the laws of punishments, Scriptural law

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10 For the internal connection between the various laws, see: C. M. Carmichael, *The Laws of Deuteronomy*, Ithaca and London: Cornell University Press, 1974, pp. 173-175.

11 Verses 5-7 (“because they did not ...as long as you live”) seem to be secondary reasons from the school of Wisdom (see: Nehemiah 13:2). The sin “because they did not meet you with food and water” cannot explain the severity of the punishment, as it is not a transgression of any specific law but at most the custom of charitable people (Isaiah 21:14; Z. Safrai, *The Jewish Community in Palestine in the Period of the Mishnah and Talmud*, Jerusalem 1955, p. 198 Hebrew). Even if it said that the meaning of “meet” here is a matter of feeding, as Obadiah fed the prophets with bread and water (I Chronicles 18:4) or the Edomites refused to make possible the passage of Israel through the sale of water (Numbers 20:19), it still does not constitute a sin according to Biblical laws. Moreover the text in Deuteronomy 2:19 explicitly states that the Moabites in Ar did sell water. Also the second reason: “because they hired Balaam son of Beor” is not sufficient to explain the great distancing, but only slightly the secondary demand “You shall never concern yourself with their welfare or benefit”. See: M. Weinfeld, ‘The Affinity of the Book of Deuteronomy to Wisdom’, M. Haran (ed.), *Jubilee volume for Ezekiel Kaufmann*, Jerusalem 1961, pp. 89-108 (Hebrew); B.Z. Luria, ‘The Curse Laid Down on Ammon and Moab’, *Bet Mikra*, 27 (1982), pp. 191-194 (Hebrew).

12 The prevailing perception, proposed below, is of distancing as punishment, but it has to be noted that the Biblical text does not connect the removal to the transgression (as is seen from the intentional lack of closeness of the transgression to the punishment, as the verse “No one whose testes are crushed or whose member is cut off shall be admitted to the

deals with the transgressor rather than his descendants. The restriction on the children is also to be seen as an additional deterrent (and in a definite sense also as punishment) for the sinners.<sup>13</sup> In addition the lawgiver was not at ease until the punishment (or exclusion) extended to “the tenth generation”,<sup>14</sup> reinforced by “forever”.<sup>15</sup>

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congregation of the Lord” separates the sinners and their children). The ban of the mamzer is therefore to be seen as a consequence of reality as in the case of the removal of a harmful person from society, such as anyone with an eruption or discharge (Numbers 5:2) or a dog (see below). The matter is related to the perception of the mamzer as impure, as is made clear below. Also compare the position of Hosea (2:6): “I will not pity her children for they are a harlot’s brood”.

<sup>13</sup> According to the prevailing approach, removal of the mamzer is part of the punishment, which has two meanings: punishment as retribution for wickedness and punishment as deterrent of future repetition of the deed. Since the mamzer has done nothing, the wrong result is that he is punished for the sin of his parents as part of their punishment. According to the Biblical doctrine of retribution, *Lex talionis*, the punishment of the child of the transgressor (together with his father the transgressor and as part of the punishment of the transgressor) apparently deviates from the prevailing legal norm in Biblical law, as stated in Deuteronomy 24:16: “Nor shall children be put to death for parents; a person shall be put to death only for his own crime”. This legal principle was affirmed by Amaziah the son of Joash King of Judah (II Kings 14:6; II Chronicles 25:4) and supported by Jeremiah (31:28-29) and Ezekiel (18:1-32), not in accord with popular opinion “Parents have eaten sour grapes and children’s teeth are set on edge” (Thus even Jeremiah prophesied [29:32]: “concerning Shemaiah the Nehelamite and his offspring”). Indeed the prohibition of idolatry includes punishment unto the fourth generation, as written: “an impassioned God, visiting the guilt of parents upon the children, upon the third and upon the fourth generations of those who reject Me” (Exodus 20:5; Deuteronomy 5:9). The Gibeonites also thought so (II Samuel 21:6). For an example of a son punished for the sin of his father, see the code of Hammurabi 230. See M. Weiss, *Texts and their Meanings*, Jerusalem 1988, p. 458f. In Note 3 Weiss writes: “The commentaries, both early and late, find expression of the perception that the person sins as a consequence of his ancestry, in the words of Job: ‘Who can produce a clean thing out of an unclean one? No one!’ (14:4). But these words are no proof of the presence of this perception in Scripture, not even as an isolated perception, since they are said by a person

The lawgiver did not explain the nature of the law: there is no definition of mamzer or an explanation of the prohibition “shall not be admitted into the community of the Lord”.

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in special distress”. It is surprising that in Weiss’s entire learned and profound article there is no reference to the case of the mamzer (but Ammon and Moab are mentioned at the end of Note 45 in another connection). Also compare the commentaries on “and his kin” in Leviticus 20:5. It is worth noting that in Talmudic literature, even if officially a person does not suffer for the sins of his ancestors, in *b. Shabbat* 32b (and parallel sources) this Beraita is cited: “The rabbis learned: for the sins in pledges, sons die, according to Rabbi Elazar the son of Rabbi Simon; Rabbi Judah the Prince says: because of the sin of desecration of the Torah (also see *b. Berakhot* 5b).

14 Both the third generation and the tenth generation represent recognized typological numbers, but the limiting of the time of the prohibition (apparently, with respect to Ammon and Moab) deviates from the Biblical law, whose prohibitions are absolute and unrestricted in time. The emphasis on ten generations as the end of a time period is recognized both in the two genealogies of the ten generations from Adam to Noah and from Noah to Abraham and in the divine promise regarding the exile and slavery of the children of Abraham lasting 400 years (Genesis 15:13), that is, 10 generations (each living 40 years). Also see: R. R. Wilson, ‘The Old Testament Genealogies in Recent Research’, *JBL*, 94 (1975), pp. 169-189; Walter E. Aufrecht, ‘Geneology and History in Ancient Israel’, Lyle Eslinger and Glen Taylor (eds.), *Ascribe to the Lord: Biblical & other studies in memory of Peter C. Craigie*, Sheffield: JSOT Press (JSOT Sup. 67), 1988, pp. 205-235 (esp. p. 217 n. 44). Incidentally, anyone wishing to see the range of “ten generations” as a time unit of historical significance, a kind of “historical horizon”, though without connection to the question of the status of the mamzer being considered here, should see: George E. Mendenhall, *The Tenth Generation*, Baltimore and London: The Johns Hopkins University Press, 1973, pp. 215-226.

15 In practice the word “forever” is superfluous, as evidenced by the other laws in this section. This expression is seen as an attempt to confront a limiting interpretation, likely to claim that the Torah prohibited until the tenth generation but afterwards the mamzer was allowed to, as the Ammonites and Moabites were allowed. However, it is reasonable that the words “unto the tenth generation” imply the meaning “forever” and it is only a metaphorical expression in way of exaggeration (like in I Sam. 1:8).

Consequently, these concepts allow for varied explanations, both broadening and narrowing.<sup>16</sup> The following is not intended to clarify the “original” intent of Scripture in this prohibition or to define exactly who is considered a mamzer in the “original” perception.<sup>17</sup> The following discussion focuses on how the prohibition was maintained in historical reality, subsequent to the “Scriptural period”, and what can be thus learned regarding the changes in Jewish society and its values in the later period.

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<sup>16</sup> The explanation of the terms - “mamzer” and “shall not be admitted into the community of the Lord” - can be seen as dependent on the literary point-of-view of the text, or on the social point-of-view reflected in the text; in this is based the fuzziness in the various concepts. From the aspect of the literary connection the mamzer is located (in a hierarchial listing?) between the opening with the adulterer taking his father’s wife (one of the most serious sins) to the despised Edomite (considered the mildest sin). In light of this, we can link the mamzer, and likewise his sin, to forbidden “taking”, that is, sexual relation, or with love/hate of Edomite. Either too much or too little. From the sociological point-of-view the mamzer is an inevitable result in every society that distinguishes between permitted and forbidden sexual relations, as the mamzer is the consequence of society’s defining itself according to these sexual relations. In a traditional patriarchal society with solid opinions regarding its members’ sexual relations, and also a definite degree of control, the mamzer is but the offspring of parents who conducted sexual relations in opposition to the social norms. Since there are many such, as is known, obviously, various categories of mamzerim exist. In contrast, in a modern society in which non-normative sexual relations are not a criminal matter (and at times are not considered immoral) it follows that this society has no mamzer.

<sup>17</sup> See: S.A. Lowenstam, ‘Mamzer’, *Encyclopedia Miqrait*, 5, Jerusalem 1968, corrected second printing, 1978, Columns 1-3 (Hebrew). Also see: J. Jeremias, *Jerusalem in the Time of Jesus*, Philadelphia: Fortress Press, 1975, pp. 337-342. A collection of Biblical laws can be seen, from the anthropological point of view, as a statement in the social area. Society thus declares that it forbids marriage with one who is not suitable to bring a child into the world and that endogamous marriages are desirable - but not to the extent of a relative so distant as to be considered the member of another nation (Ammonite, Moabite or Egyptian). According to that approach the mamzer is the result of the violation of one social law or another. The prohibition of entering the community applies only to marriage. If such is indeed the case with the related difficulties, see more below.

## A. The Limiting Interpretation

### 1. Prohibition of Marriage (exclusively)

The only interpretation accepted as law in Talmudic literature for the verse “No mamzer shall be admitted into the community of the Lord” relates exclusively to the prohibition of marriage. That is, the words “shall not be admitted” were interpreted as a prohibition of an Israelite (and a fortiori Levite and Cohen) to be married to a mamzer (male or female). This is a social separation with only one application (a meaning that is disclosed to the individual only once and at a relatively mature age).

This law is elaborated upon in the m. Kidushin 4:1:

Ten levels of status were found in those who returned from Babylon:

Kohen, Levite, Israelite, desecrated, converted, liberated slaves, mamzer, netini, shetoki, and asufi.<sup>18</sup>

Kohen, Levite, and Israelite are permitted to intermarry;

Levite, Israelite, desecrated, converted, and liberated slaves are permitted to intermarry;

Converted, liberated slaves, mamzer, netini, shetoki, and asufi are all permitted to intermarry.<sup>19</sup>

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18 For this list and greater accuracy: social strata, textual and social parallels, the related laws, etc., see: M. Bar-Ilan, *The Polemic between Sages and Priests in the Final Days of the Second Temple*, work presented for the Ph. D. degree from Bar-Ilan University, Ramat Gan 1982 (Hebrew).

19 Below are changes according to manuscripts. In the Mishnah Kaufman manuscript (Makor/Source Press, Jerusalem 1968, p. 250): relations, mamzeri, netini, Israelite, liberated slave (compare “Levite, Israelite” etc. to “converted” omitted by the scribe, because of the similarities, which he completed in revision of the sheet) are permitted to intermarry (without “all”). In the Cambridge manuscript (W. H. Loew edition, Cambridge 1883, p. 100b): relations, to marry (a line is missing from “Levite, Israelite” to “intermarry”). There are minor changes, but later the scribe skipped to “our father Abraham” at the conclusion of the chapter and tractate. The Parma manuscript C (De

As this Mishna is a foundation stone in the understanding of the status of the mamzer in ancient Jewish society,<sup>20</sup> we have to insert some comments both on its linguistic perspective and on its historical perspective. As for the language, this Mishnah is one of the few in the Mishnah written in Aramaic (under a Hebrew heading).<sup>21</sup> Indeed, the six sets of the Mishnah contain a number of mishnahs in Aramaic but these are of a decidedly different nature: citation of the format of contracts, aphorisms, quotations of what people said or heard

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Rossi 984, photo-offset), Jerusalem 1971, p. 211, has slight differences: “Ten relationships” and differences in the addition or absence of the conjunction “and”, and the addition of the letter yod in “giri/converts”. The second part of the mishnah was forgotten by the scribe; later he completed the text with a (foot) note. In the Paris manuscript 328-329, photo-offset, Jerusalem 1973, p. 470 the changes are even more trivial. In the b. Yebamoth 85a the mishnah is cited in a reworked version (all the endings, except “shetoki and asufi” are “-im” as in Hebrew, even “harurim”! – an Aramaic word with the Hebrew plural ending). See: A. Liss (ed.), *Diqduqei Soferim HaShalem*, Yevamoth, 3, Jerusalem, 1989, pp. 245-246. For another adaptation of the mishnah according to Hillel (the second), see below. For another corrected version, see Y.N. Epstein, *Introduction to the Text of the Mishnah*, second edition, Jerusalem - Tel-Aviv, 1964, p. 379 (Hebrew).

<sup>20</sup> On the Jewish society and its strata in the period of the Mishnah and the Talmud, see: M. Stern, ‘Aspects of Jewish Society: The Priesthood and other Classes’, S. Safrai and M. Stern (eds.), *The Jewish People in the First Century (Compendia Rerum Iudaicarum ad Novum Testamentum)* Assen / Amsterdam: Van Gorcum, II, 1976, pp. 561-630. However, this research was done with no relation to the social research literature. The discussion relates to the sages as if they were a social layer and as if the slaves were part of the society but as in Greece they constituted part of the society only if liberated.

<sup>21</sup> H. Albeck, *The six Sets of Mishnah - Nashim*, Tel-Aviv 1959, p.414, noted that “All ten were formulated in the plural according to Aramaic declension”. From that he inferred that the language itself is not Aramaic (Perhaps because of that, this Mishnah is not treated with additional Aramaic mishnahyot - see the next note). This deduction is not reasonable because it disregards the fact that the word “haruri” is clearly Aramaic; except for our Mishnah (and its counterpart in the Tosefta), the word “haruri” does not appear in Tannaitic language, but rather “manumitted slaves” and neither in all the matching lists of the social strata.

(heavenly voices) from the Holy of Holies, and the like.<sup>22</sup> However, this Mishnah, written in Aramaic, differs in nature from all the other Aramaic mishnahs, containing a hierarchal list of the social strata, levels that in all the parallel lists are in Hebrew.<sup>23</sup>

As for the historical character of the Mishnah, in this respect, too, this Mishnah is an exception in that it depicts historically the formation of Jewish society in Palestine and its dependence on the previous period in the time of Ezra and the returnees from Babylon.<sup>24</sup> The

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22 Here are few examples of Aramaic in the tannaitic literature: phrases (Hillel the Babylonian) – m. Aboth 1:13; 2:6; testimony – ibid 8:4; testimonia from Megillat Taanith – m. Taanith 2:6; citation of translation – m. Megillah 4:9; citation of various contracts – m. Ketuboth 4:8, m. Gittin 9:2; m. Bava Metzia 9:3; m. Bava Bathra 10:2; words of Samuel Haqatan, voice heard from Holy of Holies – t. Sotah 13:4-6 Lieberman edition pp. 231-232 “And he heard them in the Aramaic language”. See A. Buechler, *The Priests and their Service*, Jerusalem 1966, pp. 47-52 (Hebrew); H. L. Strack and G. Stemberger, *Introduction to the Talmud and Midrash*, Minneapolis: Fortress Press, 1992, p. 112. However, for all that, the Mishnahunder discussion (m. Sotah 9:14) is not mentioned there.

23 This list of strata is not in this form in the Mishnah (but only partially: m. Sheqalim 1:3), but is cited several times in the Tosefta (such as: t. Berakhot 5:14, Lieberman edition, p. 27; t. Rosh Hashana 2:2 p. 314; t. Megillah 2:7 p. 349; similarly in Beraithot cited in the Babylonian Talmud!) and always in Hebrew. Instead of “shetoki and asufi” various categories of eunuchs are mentioned, as in the example below. Also compare the Scholion to the Megillat Taanith (HUCA, 8-9 [1931-2] p. 332): “And with them the sons of the priests and Levites and converts and netinim and mamzerim and liberated slaves and all who erred in his tribe” etc. In other words, the list of social strata partially differs in a sequence, the writer does not recognize ten strata, and the eunuchs and the shetokim do not form their own social strata.

24 The days of the “returnees from Babylon” are depicted in this mishnah as formative if not mythological, similar to the regulations attributed to Ezra (b. Bava Kama 82a), the Torah that Ezra established anew (b. Sukah 20a) and more. Some scholars see historical information in the establishment of regulations, see: S. Hubner, ‘Ezra Formulator of Regulations’, H. Gevariahu, Y. Hocherman, M. Lahav and B.Z. Luria [eds], *Sefer Zer-Kavod*, Jerusalem 1968, pp. 178-189 (Hebrew); N. Ararat, ‘Ezra the “Scribe” in the Post-

author of this Mishnah claims - or transmits - a tradition of what occurred centuries earlier. In this matter too this Mishnah has few parallels. Note, immediately after the “historical” heading, the author lists the different levels of Jewish society, a hierarchical list in descending order.<sup>25</sup> Only after this social introduction does he turn to the law - the primary interest of the sages of the Mishna.

From all appearances this Mishnah actually provides no historical evidence in the strict sense of the word, as shown by the following:

- 1) The number of social levels is ten, a typological number with no relation to reality (as recognized nowadays, as in the expression “the upper tenth” in the economic sphere).<sup>26</sup>

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Biblical Literature’, *Beth Mikra*, 52 (1973), pp. 85-101 (Hebrew). It is worth noting that the term “returnees from Babylon” serves in the Mishnah and Tosefta as an interchangeable term for the entire Jewish community of the time (in Palestine), that is, a term that preserves the idea that the returnees of Babylon are of the period of the Tannaim. See: *m. Beitza* 5:5; *m. Nedarim*, 5:4-5; *t. Bava Kama* 6:15 Lieberman edition p. 23: “A pit found in the middle of the road - it is presumed to be from the returnees of Babylon, until it is known that is of the people of that city”, and so on. See: Z. Safrai, *The Jewish Community* (op. cit. n. 11), p. 192 n. 41 (Hebrew).

<sup>25</sup> For the list as a literary category, examples of lists in the various sources, and the special way of research on them, see: M. Bar-Ilan ‘The Nature and Origin of Megillat Taanit’, *Sinai*, 98 (1986), pp. 114-137 (Hebrew).

<sup>26</sup> A typological number is one that is used relatively more than other numbers (especially in cultural connections) like the numbers 3, 5, 7, 10, and 12 (see Y. Zeligman, *The Treasury of Numbers*, New York 1942 [Hebrew]). The opposite of a typological number is a random number, a number the distribution of whose usage is equal to that of its neighboring number (such as 16-17 but not 11-12). Also compare to the Biblical text above relating to the third and tenth generation. It is obligatory to emphasize that the typological number highlights the ahistoric nature of the description but does not necessarily convert it to inauthentic.

- 2) Some of the social levels mentioned in this list or its parallels is unknown among the returnees from Babylon as recorded in the books of Ezra and Nehemiah, such as “mamzerim” (“shetoki” and “asufi”), “freed slaves” and “converts”.<sup>27</sup>
- 3) In the parallel lists of relationships in the beraithot (external to the Mishnah) other names appear, not all identifiable with the list in this Mishnah; even their number does not necessarily match up.<sup>28</sup>
- 4) The netinim in the merit list in the mishna have status near the mamzerim whereas in Scriptural literature (and later writings including Ezra and Nehemiah) they have high status.<sup>29</sup>
- 5) The levels “shetoki” and “asufi” and also “desecrated” could not be a significant fraction in society to an extent constituting an independent level. It appears, though

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27 Compare to Ezra 2:59-62 (Nehemiah 7:61-64): “They were unable to tell whether their father’s house and descent were Israelite... Of the sons of the priests, the sons of Habaiah, the sons of Hakkoz... These searched for their genealogical records, but they could not be found, so they were disqualified for the priesthood” (like “halalim”, used in the Mishnah [m. Kiddushin 4:1] for those unfit for the priesthood [desecrated] - note the use of this word in Biblical Hebrew for slain person). As for converts, apparently the subject is a later religious-social phenomenon. In contrast compare what is written of the people of an earlier period: “All of them were registered in the genealogies in the days of King Jotham” (I Chronicles 5:17) or “All Israel was registered by genealogies” (I Chronicles 9:1). That is to say, the texts testify to a crisis in the area of ancestry.

28 As an example, see t. Megillah 2:7 Lieberman edition p. 349: “All are obligated in the reading of the Megillah (Scroll of Esther): priests, Levites and Israelites, converts and liberated slaves, desecrated, netinim and mamzerim, eunuchs by human or solar action, crushed testes or cut-off member”. This list lacks a number in its “introduction”. Its definitions strengthen the tie between the list of social strata in this law and the list in the Mishnah in Kidushin.

29 Baruch A. Levine, ‘Later Sources on the Netinim’, Harry A. Hoffner Jr. (ed.), *Orient and Occident: Essays presented to Cyrus H. Gordon on the Occasion of his Sixty-fifth Birthday*, Neukirchen-Vluyn: Neukirchen Verlag, 1973, pp. 101-107.

difficult to prove, that these people, set on the secondary side of the social ladder are only a projection of those of high status.<sup>30</sup>

- 6) The members of the lower strata had obviously no incentive to unite on the basis of unacceptable ancestry. On the contrary, it is reasonable that in a society where ancestral descent is so important, those lacking proper ancestry would make every effort to hide their defective ancestry and assimilate within the levels of more distinguished families.

Therefore, because of all the above reasons considered individually and collectively, it is reasonable to assume that the author of “Ten levels of status” intended to express a sociological position rather than to give a historical accounting.<sup>31</sup> In fact, more than the

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<sup>30</sup> Practically, the subject of the “asufim” needs deeper research. In France for example, in the 18-19th centuries, the percentage of “asufim” was 9-35% of all births. (See: P. Laslett, Karla Oosterveen and R. M. Smith (above n. 3), p. 252. However this high percentage cannot be applicable to the Jewish society for several reasons: 1) We are dealing with a fraction of births but not a fraction of the entire society; the mortality of these groups of children was lower (see below, n. 111); 2) Possibly this case allows expression of the difference in definition of mamzer in Jewish as in contrast to Christian society. For the Christian mother, the child born before marriage is considered a bastard and she therefore had reason to abandon it; whereas the Jewish mother was in a different condition, knowing that her child’s ancestry was determined by her ancestry and thus it is not a “mamzer” at all (and in the various researches in the above cited book, only in rare instances is a distinction made between the various categories of “illegitimate” child); 3) The “shetoki” and the “asufi” appear only in this mishnah whereas parallel lists contain four categories of eunuchs (a social layer recognized in India). That is to say, the fluidity of the text at the end of the list shows that it is not stable and historical; 4) No historical information is available on “asufim”, a fact strengthening the view that we are dealing with a group that is only “theoretical” or a one that is insignificant (compare also Rashi’s comment on b. Kiddushin 73a: “Alternatively, shetoki is a rare thing”).

<sup>31</sup> Practically, this mishnah or at least its heading can be seen as having a mythological character. As a generalization, the mythological tale is directed to answer the question “How did the situation come about?” The mishnah under consideration here provides an answer to the question “How did the present society come about?” Note that not only the

author sought to clarify the social structure of his time, it appears that he sought to reconstruct the formation and early days of the Jewish society known to him in his time in Palestine. Hence, the Mishnah, or least its heading, may definitely be designated as a Mishnah of mythological nature, that is, a narrative of the formation of the society known to the narrator.<sup>32</sup> Indeed, whether the heading is considered “historical” or “mythological”, it appears from a historical perspective that Jewish society started to take its form in its various layers not in the days of the returnees from Babylon but in a later period, most likely after the ascension of the Hasmoneans; however, this issue is outside the current subject matter.<sup>33</sup> In any case, whether or not this Mishnah is authentic in the strict historic sense of the word, one thing is clear: this Mishnah is unique in two respects. It is no wonder that it was seen by some as an ancient

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Jewish society in Palestine in the Tannaitic period is described as deriving from the returnees of Babylon but also the boundaries of the land.

<sup>32</sup> “Myth” has, as is known, more than one definition, but the best of them seems to be the one that defines myth as a tale that describes how things came about within an explanation of the current (social) order. On this see: J. Pitt-Rivers, *The Fate of Shechem*, Cambridge: Cambridge University Press, 1977, pp. 131-140. An additional example of a mishnah with mythological character is seen in m. Avoth (Fathers) 1:1 but this is not the place to deal with it. Also look into the attempt to explain the stratified structure of the society with anthropological tools (with partial success): Bruce J. Malina, *The New Testament World - insights from cultural anthropology*, Atlanta: John Knox Press, 1981, pp. 131-137.

<sup>33</sup> Indeed it is reasonable to assume that the migration of over 42,000 people from Babylon (a large faction without distinguished ancestry) and their blending into the small Jewish settlement (as can be inferred from the limited geographical scope of the settlement of the returnees from Babylon) substantially changed the appearance of the society, but from this point to the creation of a stratified structure as described in the Mishnah - is still a long way. On this see: Daniel L. Smith, ‘The Politics of Ezra: Sociological Indicators of Postexilic Judaeon Society’, C. E. Carter and C. L. Meyers (eds.), *Community, Identity and Ideology*, Winona Lake, Indiana: Eisenbrauns, 1996, pp. 537-556. As to tying the the social-strata structure to the rise of the Hasmoneans - and the Temple in Jerusalem see for now: A. I. Baumgarten, ‘He Knew that He Knew that He Knew that He was an Essene’, *JJS*, 48 (1997), pp. 53-61. (It remains to deal with the connection between the formation of the strata of converts and the conversions of the Hasmoneans).

Mishnah from the time of the Temple.<sup>34</sup> It is possible to see the Aramaic as a indication of ancient origin presumably reflecting the “returnees of Babylon” (on the other hand, the Aramaic may represent the objective of archivization, giving a text the appearance of having an older origin).<sup>35</sup>

Moreover, the Mishnah opening Kidushin Chapter 4 and dealing with the stratification of the Jews of Palestine in the period of the Mishnah (or perhaps, the time of the Second Temple) is a departure. Apparently, its main purpose was to establish the background of the contemporary sociological reality (at the time of the author). This reality establishes that the children of the upper levels of society - the levels constituting the core of society: Kohanim, Levites and Israelites - are forbidden to marry mamzerim. In conjunction with this prohibition, a mamzer is allowed to marry only children of inferior social status (lacking proper connections), like converts and liberated slaves and all those of questionable social origin. Even if not stated explicitly, the source of the prohibition of marriage to mamzerim is in the verse “shall not be admitted” or “shall not enter”, interpreted by the Rabbis as “shall not marry” (or better: “shall not maintain sexual relations with...”) - without any other explanation or addition – either because they understood “entry” in the sense of sexual entry or because the mamzer’s prohibition of “shall not enter” is located in the Pentateuch near “a man shall

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<sup>34</sup> See: Y.N. Epstein, *Introductions to the Literature of the Tannaim*, Tel-Aviv 1957, p. 54 (Hebrew), who believes that this mishnah “is certainly from the time of the Temple and that it apparently caused the Aramaic influence”. However, it seems that the Aramaic is an artificial means of creating archaisation of the Halacha (law), presumably from the time of Ezra, and Epstein’s “certainly” is a great doubt. Also compare the opinion of Shaye J. D. Cohen (above, n. 8) regarding the time of the adjoining mishnahyot also dealing with ancestry And mamzerim (ibid, pp. 34-35).

<sup>35</sup> Reason dictates that since it is proven that the content is tendentious (the social reality is anchored in the distant past) rather than on a historical basis, it is reasonable that the linguistic formulation can also be attributed to the same tendency. Remember that we are dealing with two phenomena - historic and linguistic formulations - each of which is in itself exceptional. It can be claimed that both serve the same trend: archivization. If so, the mishnah was composed after the Destruction and perhaps even close to the time of the last Tannaim. However this analysis is subordinate to research that has yet to be done on the Aramaic in the Mishnah. It requires study.

not take his father's wife", clearly dealing with sexual relationship. A separate question is the source of the other laws mentioned in this mishnah, laws not leaning on any Scriptural verse. These laws can be defined as conditions of social mobility, but this is not the place to deal with this question.<sup>36</sup> The important point for the subject here is that a mamzer is forbidden to marry anyone with origins in a higher social level and, for all practical purposes, the entire society. The Mishnaic author (of this or any other mishnah) knows of no other restrictions on the mamzer beyond this one (presumably the Scriptural prohibition of "shall not enter" is equated with the nearby "shall not take" and is interpreted as maintaining prohibited sexual relations).

## 2. Definition of the Mamzer

Regarding the definition of the mamzer, there were in practice various opinions among the Tannaim (rabbinical authors of the Mishnah); it is not unlikely that additional opinions were expressed in the past but they are not mentioned by the Tannaim. This subject is elaborated in the m. Yebamot 4:13 (and its parallels):

Who is a mamzer?

Any relative encompassed by "He shall not enter", the statement of Rabbi Akiba.

Simon the Yemenite says: any offspring for whose begetting the punishment is kareth (death) through the action of Heaven (not a human court) - the offspring is a mamzer - and the law is decided this way;

Rabbi Joshua says: any offspring for whose begetting the punishment is death at the hands of a court.<sup>37</sup>

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<sup>36</sup> Social stratification and social mobility are among the most frequent subjects in modern social studies. See, for example: L. Broom and P. Selznick, *Essentials of Sociology*, Tel-Aviv 1979, pp. 163-201 (Hebrew); S.N. Eisenstadt, *Differentiation and Social Stratification*, Jerusalem 1979 (Hebrew).

<sup>37</sup> In the Kaufman manuscript as well as Cambridge manuscript there are several minor differently readings. See also: *Diqduqei Soferim HaShalem*, Yebamoth, 2 (above, n. 19), p. 144, 219-220; *Sifre on Deuteronomy (23:3, Par. 248)*, E. A. Finkelstein edition, New York, 1969, p. 276. The version in *Sifre* differs in having a heading "Whoever is a Mamzer", the spelling of Akiva differs in the final letter, and the words of Simon the

In other words, according to Rabbi Akiba, a mamzer is the result of forbidden intercourse, one of those specified in Leviticus 18:6-20 as one of the forbidden relationships (perhaps also including a Gentile). According to Simon the Yemenite, any one whose intercourse subjects him to kareth at the hands of Heaven - the offspring is a mamzer (perhaps also including one who has intercourse with his menstruating wife).<sup>38</sup> Opposed to them, Rabbi Joshua takes the position that a mamzer is one born to those subject to execution by a court (emphatically - and apparently this definition limited the number of mamzerim). All in all, these approaches overlap to a great extent and it is unnecessary to go into detail regarding the various rules and possible incidents.

As an illustration, we consider the t. Kidushin 4:16, Lieberman edition p. 292:

If a Gentile or slave has intercourse with an Israelite woman and she gives birth to a son  
- the child is a mamzer;

Rabbi Simon ben Judah says in the name of Rabbi Simon: a mamzer is only from a woman of a forbidden relationship for whom one receives the penalty of kareth.

Here and in other texts of the Tannaim,<sup>39</sup> we find perceptions expanding or contracting the number of mamzerim depending on the definition of the mamzer, a definition that was not

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Yemenite are not supplemented by “the law is decided his way” but are replaced by a supplement of learning.

<sup>38</sup> Consider m. Kerithuth 1:1 enumerating thirteen women with whom intercourse is forbidden on punishment of kareth. It can be said that according to Simon the Yemenite one who has relations with his menstruating wife - the child is a mamzer (differing with Rabbi Akiva). But the Tanna who learned t. Yebamoth 6:9, Lieberman edition p. 21, thought otherwise: “Rabbi Simon the Yemenite confesses that one who has relations with his menstruating wife, although he is subject to kareth, the child is not a mamzer but of kin-relations only”.

<sup>39</sup> Such is the text in t. Yebamoth 1:10, Lieberman edition p. 3: “Rabbi Elazar stated: even though the House of Shammai differed with the House of Hillel regarding levirate in case of a second-wife they grant that the offspring is not a mamzer; for a mamzer is only from a woman whose nakedness is forbidden and for whom the punishment is kareth”. That is

uniform.<sup>40</sup> Because of the practical and societal nature of the dispute among the Tannaim, it is reasonable that the Tannaim were engaged not only in a theoretical dispute but that they represent different approaches in Jewish society. (The first Tanna anonymously represents a more ancient approach whereas Rabbi Simon represents a relatively new approach).<sup>41</sup> Actually, the law adopted the restrictive definition that only one born as a result of a forbidden liaison involving a prohibited relationship is considered a mamzer.<sup>42</sup>

The rule, derived from the discussion on this point, is that the Scriptural text “A mamzer shall not enter the community of the Lord” was understood by the Tannaim (exclusively) as a

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to say, Rabbi Elazar like Rabbi Simon ben Judah (and Rabbi Simon) required that two conditions be met to mark a person as a mamzer, both the condition of Simon the Yemenite and that of Rabbi Joshua (or close to it).

40 On the legal-Halachic aspect regarding the mamzer, see: A. Buechler, ‘Family Purity and Family Impurity in Jerusalem before the year 70 C.E.’, *Studies in Jewish History*, London: Oxford University Press, 1956, pp. 64-98; B. Cohen, ‘Some Remarks on the Law of Persons in Jewish and Roman Jurisprudence’, *PAAJR*, 16 (1946-47), pp. 1-37. As to the general problem of relationship (ancestry) in ancient times, look into: A.S. Hirschberg, ‘The Dough - Its Nature and History’, *Devir*, 2 (1924), pp. 92-104 (Hebrew); R. Yankelewitz, ‘The Weight of the Family Connection in the Jewish Society in Palestine in the Period of the Mishnah and the Talmud’, *Nation and Its History*, 1, (1983), pp. 151-162 (Hebrew).

41 See: S.Z. Schechter (ed.), *Avoth (Fathers) of Rabbi Nathan*, 3<sup>rd</sup> ed., New York 1967, Ver. A, ch. 16, p. 63: “For Rabbi Zadok was the great man of his generation. When he was imprisoned in Rome, a matron took him into custody and sent a beautiful slave... she sent and called to him...he responded: what am I to do? I am from great priesthood; I am from a great family. I am concerned about having relations with her and increasing the number of mamzerim in Israel”; Shaye J. D. Cohen (above, n. 8), p. 36, n. 53. As for the priority of the opinions, it is reasonable (in accordance with what is stated below) that the broadening (and priestly!) system is older than the restrictive system.

42 Maimonides, *Mishneh Torah*, Laws of Forbidden Relations, 15:1. For the differing views of the Karaites in this matter, see: B. Revel, ‘Inquiry into the Sources of Karaite Halaka’, *JQR*, 3 (1912-13), pp. 337-396 (esp. 374-375); idem, ‘Jonathan’s Translation of the Torah’, *Ner Maarav*, 2 (1925), pp. 77-122 (Hebrew, esp. 93-94).

prohibition of marriage to a mamzer. Though there were different opinions regarding the definition of a mamzer, the rabbinic law is seen to restrict the application of the definition of the mamzer to limited individuals (especially in comparison with the laws of certain nations for whom a mamzer is the result of an “inappropriate” marriage such as marrying a woman who is not a local resident, or others).<sup>43</sup>

Note that the rabbinic law of the Talmudic period shows a trend to limit the law as applied to the mamzer in two ways: first, in the definition of the mamzer;<sup>44</sup> and second, in the nature and scope of his exclusion from society, as explained below.

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43 On illegitimate children in Graeco-Roman societies, see: W. K. Lacey, *The Family in Classical Greece*, Ithaca, New York: Cornell University Press (Second Printing), 1989, pp. 103-105; R. Syme, ‘Bastards in the Roman Aristocracy’, *Proceedings of the American Philosophical Society*, 104/3 (1960), pp. 323-327; P. A. Brunt, *Italian Manpower 225 B.C. - A.D. 14*, Oxford: The Clarendon Press, 1971, p. 150-151; B. Rawson, ‘Spurii and the Roman View of Illegitimacy’, *Antichthon*, 23 (1989), pp. 10-41; D. Ogden, *Greek Bastardy: In Classical and Hellenistic Period*, Oxford: Clarendon Press, 1996. In Athens and Rome children of a male “citizen” and female “non-citizen” (compare: Ruth 4:6) were considered mamzerim, and not only they. If the societies of Athens and Rome are accepted as models for comparison, the interpretation of the word mamzer as coming from “m<sup>e</sup>-am zar” (from a foreign people) is supported. Against this background we can understand the meaning of the modern Hebrew term “netinut” (= citizenship), as noted by Levine (above n. 29). However Ogden in his book warns against comparing a mamzer from one society with another, as he shows that even in the same culture there are differences in the definition of the mamzer, a product of time, place and other reasons.

44 However, there were other definitions at other times. For example, in: A. L. Sclossberg (ed.), *Halakoth Pesukot*, Paris 1886 (rep. Jerusalem 1967), p.107; S. Sasson (ed.), *Halakoth Pesukot according to Rabbi Yehudai Gaon OBM*, Jerusalem 1971, p.142], it is written: “Even an unattached woman who strayed and gave birth, and it is not known whether her partner was one of her prohibited relatives – the child is a mamzer; if he was one of the permitted relative - the child is fit; he becomes a shetuki and is forbidden to enter the community. If his mother is asked and answers I had relations with a fit partner

## **B. The Broader Interpretation**

In contrast to the limiting interpretation, which proposes a single definition of a mamzer, the broader interpretation offers a number of possibilities for the prohibition “The mamzer shall not enter the community of the Lord”. Every source cited below gives a different practical interpretation. These sources are listed below in approximately chronological order without firmly fixing the order.

### 1. At Qumran: The Mamzer is Forbidden to Enter (and to go about)

The Qumran excerpt entitled 4Q Florilegium contains a Halachic midrash (legal/homiletic rendering) of Exodus 15:17-18:

[The Sanctuary, O Lord which] Your hands established. The Lord will reign for ever and ever!

That refers to the structure to which entry is forbidden [for any person with a bodily defect in his flesh] forever, and also to the Ammonite and the Moabite and the mamzer and the foreigner and the convert (?) forever.<sup>45</sup>

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- he is permitted to enter the community”. This ruling can be seen as stricter than the Talmudic regulation, but, on the other hand, it may contain nothing new.

<sup>45</sup> This excerpt was first published: John M. Allegro, *Qumran Cave 4, Discoveries in the Judean Desert of Jordan*, V, Oxford: The Clarendon Press, 1968, p. 53 (4Q 174). The version is cited according to the summary of the readings of various investigators cited in: M. Kister, ‘At the Edges of the Book Ben Sira’, *Leshonenu*, 47 (1983), pp. 125-146 (Hebrew, p. 131). Previous treatments, see: J. M. Baumgarten, ‘The Exclusion of “Netinim” and Proselytes in 4Q Florilegium’, *RevQ*, 8 (1972), pp. 87-96 [=Studies in Qumran Law, Leiden: Brill, 1977, pp. 75 ff.] Levine (above n. 29), p. 105 n. 27; G. Blidstein, ‘4Q Florilegium and Rabbinic Sources on Bastard and Proselyte’, *RevQ*, 8 (1974), pp. 431-435; J. M. Baumgarten, ‘Exclusions from the Temple: Proselytes and Agrippa I’, *JJS*, 33 (1982), pp. 215-225; Lawrence H. Schiffman, ‘Exclusion from the Sanctuary and the City of the Sanctuary’, *Hebrew Annual Review*, 9 (1985), pp. 301-320.

Thus, a member of the sect established here a number of laws pertaining to the prohibition of entry to the Sanctuary, some known from another place, some innovated by him (or the sect). The author established that it is forbidden for a foreigner to enter the Sanctuary, a prohibition known from both literary and archeological evidence.<sup>46</sup> Together with this prohibition, the author established that the convert is also forbidden to enter the Sanctuary, in opposition to Rabbinic law (for example, m. Bikkurim 1:4). Similarly the author established that it is forbidden for a disabled person to enter the Sanctuary, along the lines of the ancient law: “No one who is blind or lame may enter the House” (II Samuel 5:8) but in explicit opposition to the law in the Mishnah.<sup>47</sup> Even if the specification of the Ammonite and Moabite seems superfluous as they are included in the “foreigner” or “convert”, the member of the sect extended in this way the ancient Scriptural law pertaining to people of this ancestry in a unique way.<sup>48</sup>

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46 See: S. Safrai, *The Pilgrimage Festival in the Days of the Second Temple*, 2ed., Jerusalem 1985, pp. 92-95 (Hebrew).

47 This prohibition is seen as an expansion of the prohibition imposed only on the priests in Leviticus 21:17f: “Speak to Aaron and say: No man of your offspring throughout the ages who has a defect shall be qualified to offer the food of his God”. Also see: M. Bar-Ilan, ‘Are the Tractates Tamid and Midoth Polemic Documents?’, *Sidra*, 5 (1989), pp. 27-40 (Hebrew). It is reasonable that the members of the Qumran sect believed that just as one with a defect could not enter the Temple, so he could not be a member of the sect. See: Y. Licht, ‘Shanks as a Sign of Selection’, *Tarbitz*, 35 (1966), pp. 18-26 (Hebrew, see a similar analogy below). Additional on the question of the the blind and the lame (read: people with a defect) in the Temple and in society: S. Vargon, ‘The Blind and the Lame’, *Vetus Testamentum*, 46/4 (1996), pp. 498- 514; A. Qimron, ‘The Conflict over the Sanctity of Jerusalem in the Days of the Second Temple’, *Researches on Judea and Samaria*, 6 (1996), pp. 73-77 (Hebrew).

48 The Rabbinic law, though only after debate, abolished the special law against converts from Ammon and Moab, this after Rabbi Joshua claimed that the historical reality had changed. Look into m. Yadaim 4:4; b. Yebamoth 78a. It appears that in all the details of this Qumranic law there is a conflict with the Rabbinic law; see more below. For more on the converts in Qumran see: Daniel R. Schwartz, ‘On Two Aspects of a Priestly View of Descent at Qumran’, Lawrence H. Schiffman (ed.), *Archeology and History in the Dead Sea Scrolls*, Sheffield: JSOT press, 1990, pp. 157-179 (esp. 165-166); J. Luebbe, ‘The

In addition, in Deuteronomy 23:3-4, immediately after the banning of the mamzer, comes the banning of the Ammonite and the Moabite. As such, there is no doubt that the linking of “the Ammonite and the Moabite and the mamzer” responds to the text and generates this interpretation. In other words, the member of the sect understood that “shall not enter the community of the Lord”, a prohibition explicit for all three, applies also to entry to the Sanctuary. Granted, this prohibition of the entry of the mamzer to the Sanctuary was not known before the discovery of Qumran, but it is worth comparing this point with the approaches of various religions widespread in antiquity; they forbade sinners of various categories from entering the Sanctuary and the Holy City.<sup>49</sup> Since the attitude towards the mamzer derives only from the sin of his parents, we find that his exclusion from the Sanctuary is an additional expression of the exclusion of transgressors from the Sanctuary: the convert and the mamzer are equal in their unfit ancestry, their defect resembling a defect causing exclusion from the Sanctuary, as the disabled were forbidden to join the exclusive group of the “Yahad”.<sup>50</sup>

Another excerpt from Qumran connected with the prohibition applied to the mamzer’s entry to the Sanctuary appears in *Some of the Deeds of the Torah* in 39-40:

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Exclusion of the GER from the Future Temple’, Zdzistaw J. Kapera (ed.), *Mogilany* 1993, Krakow: The Enigma Press, 1996, pp. 175-182.

<sup>49</sup> See Psalms 15:24; 118:19-20: “Open the gates of righteousness ... This is the gateway to the Lord - the righteous shall enter through it”; Letter of Aristaias 103: “It is not permitted to bring every person”; Revelation of John 21:27; Safrai, *The Pilgrimage Festival* (above n. 46), p. 18; M. Weinfeld, ‘Instructions for Visitors to the Sanctuary in the Bible and in Ancient Egypt’, *Tarbitz*, 62 (1993), pp. 5-15 (Hebrew).

<sup>50</sup> Lawrence H. Schiffman, *Law, Custom and Messianism in the Dead Sea Sect*, Jerusalem 1993, pp. 287-298 (Hebrew).

As for the Ammonite and Moabite and mamzer and those with crushed testes or whose member is cut off who enter the community and women unite with them and they come to the Sanctuary.<sup>51</sup>

In other words, the people of Qumran complained about their legal opponents, to all appearances the sages from whom the Mishnah was derived, because they did not maintain the prohibitions separating the mamzerim (and others of similar status) in that they intermarried with them and the mamzerim entered the Sanctuary (and thereby contaminated it). It is likely this legal difference regarding the mamzerim, and also the legal controversy between the sect and their opponents led to the invention of the designation “community of mamzerim” for the opponents of the sect.<sup>52</sup>

Thus, the law of the sect shows that the mamzer is excluded from the “community of the Lord” not only by being ineligible for marriage to a proper Israelite (in agreement with the sages of the Mishnah) but also by being forbidden to enter the Sanctuary, that is, social exclusion in the religious plane. Indeed, since this law excluding the mamzer from the Sanctuary is not found in Rabbinic literature in this form, there exists a legend that is worth looking into, as is done below.

It is reasonable that just as the people of Qumran prohibited entry of the mamzer into the Sanctuary, so they also prohibited entry of the mamzer into the “yahad”. The proof (besides from the analogy: Sanctuary-yahad) is the text of the Damascus Covenant 14:4-6 “and they inscribed the names of the Kohanim first, the Levites second, the Israelites third, and the convert fourth”.<sup>53</sup> In other words, those of status below the convert (similar to Rabbinic law)

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51 See now: E. Qimron and J. Strugnell, *Qumran Cave 4 V (Discoveries in the Judean Desert X)*, Oxford: Clarendon Press, 1994, pp. 50, 146, 158-160, and see there the relationships between the various manuscripts.

52 M. Baillet (ed.), *Discoveries in the Judean Desert, VII*, Oxford: Clarendon Press, 1982, pp. 222. Also compare there p. 237: “And I fear God to the end of generations to exalt the Name I have spoken in fear. In his power is all my spirit to subdue mamzerim because of His fear”; p. 243: “And my mouth will subdue [all spirits of] mamzerim”.

53 S. Schechter, *Documents of Jewish Sectaries, I*, rep. [New York]: Ktav, 1970, p. 105.

cannot join.<sup>54</sup> It follows that the shetoki, whose social status is similar to that of the mamzer (or lower), was not accepted by the sect.<sup>55</sup> And there was not only this exclusion but it is plausible that the people of Qumran retained the ancient view of the mamzer as impure,<sup>56</sup> unlike the Rabbinic definition. The sect's definition was the basis for preventing his entry into

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<sup>54</sup> L. Ginzberg, *An Unknown Jewish Sect*, New York: The Jewish Theological Seminary of America, 1976, pp. 87-89.

<sup>55</sup> But see: M. Broshi, 'A Day in the Life of Hananiah Nothos', *Alpayim*, 13 (1997), pp. 117-134. The source of this name is connected to the list of people whom the overseer in Qumran reprimanded. See: Esther Eshel, '4Q477: The Rebukes by the Overseer', *JJS*, 45 (1994), pp. 110-122. It is self-understood that there is insufficient information to establish whether that Hananiah Nothos was a mamzer, but in light of what is said here, it appears that he was not (but rather according to the first interpretation of Eshel: "Hananiah the Southerner"). The word nothos in Greek is a bastard (according to its classification) and S. Lieberman (*Researches in the Torah of Palestine*, Jerusalem, 1991, p. 69, Hebrew) notes that it appears only once in our sources. For the colorful meaning of the word see Ogden (above n. 43) pp. 15-17.

<sup>56</sup> M. Newton, *The Concept of purity at Qumran and in the letters of Paul*, Cambridge: Cambridge University press, 1985, pp. 40-51. The "impurity" of the mamzer is inferred from additional comparisons, but it lacks unambiguous proofs: 1) Compare Deuteronomy 24:4: "since she has been defiled" in connection with the prohibition of marriage. That is to say, unlike the later Rabbinic conception, the prohibition of marriage is a matter of impurity (and Biblical impurity is applied in additional instances compared to the Rabbinic conception of impurity); 2) According to the socio-anthropologic principle: "Any disruption of birth acquires a sense of impurity", per the definition of N. Rubin, *The Beginning of Life: Rituals of Birth, Circumcision and Redemption of the (First-born) Son in the Rabbinic Sources*, Tel-Aviv: Publication of the Kibbutz Meuhad, 1995, p. 152, n. 26 (Hebrew); 3) According to the explanation in the Book of Job (Above n. 13); 4) According to the saying of Rabbi Tarfon that "Mamzerim can be purified" and the saying of Rabbi Joshua ben Levi "Money purifies mamzerim" (below adjoining n. 106); 5) According to the idea (expressed for other objectives): "What is derived from the impure - is impure" (t. Bekhoroth 1:6, Zuckerman edition, p. 534). It is clear that the birth of the mamzer begins with a transgression containing impurity (even though the matter depends on the definitions of impurity and mamzer).

the “yahad” in the way that the impure are excluded from society according to the Pentateuch on the one hand,<sup>57</sup> and as sinners are excluded from the sect on the other hand.<sup>58</sup>

However, whether or not the mamzerim were considered impure, it is reasonable that the list of netinim discovered at Qumran,<sup>59</sup> reflects the removal of the netinim like the mamzerim from the group of the “yahad”. Despite gaps in the list, it is clear that in accordance with the opinion of its publicizers, it was a “kind of a negative status list”, that is, people whose defective origin excluded them from the “yahad”, better yet: a list of people who sought to be accepted in the sect but were rejected after clarification of their defective origin.<sup>60</sup> It is reasonable that at Qumran, as at other places and other times, the expression “shall not enter the community” was interpreted literally, that is, any of the defectives mentioned in the Torah could not participate in any social event in which the “community of the Lord” observed any kind of religious assembly,<sup>61</sup> and in that way they were subject to prohibition of marriage and additional prohibitions some of which are detailed below.

It can, therefore, be concluded that the diverse Qumranian sources strengthen the assumption that mamzerim were not admitted to the sect of the “Yahad”. It is reasonable that those who forbade his entry to the Sanctuary also forbade his admission to the sect. This is how to see

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<sup>57</sup> Thus, for instance, in the case of the leper (Leviticus 13; Numbers 12:14), the one with a discharge (Numbers 5:2), the one who kills in war (Numbers 31:19), and others.

<sup>58</sup> Regarding the position of the Qumran sect regarding expulsion of “any one of them who transgresses anything in the law of Moses defiantly”, see: Lawrence H. Schiffman, *Law, Custom and Messianism in the Dead Sea Sect* (above, n. 50), pp. 257-267.

<sup>59</sup> M. Broshi and Ada Yardeni, ‘On the Netinim and False Prophets’, *Tarbitz*, 62, (1993), pp. 45-54 (Hebrew, and see Levin, above n. 29).

<sup>60</sup> However, the editors ignored the Rabbinic approach which regards the banning of the mamzer only in the matter of marriage and therefore considers it as “a list of those banned from marriage”. But according to what is said here, we are dealing not with “banned from marriage” but with “banned from the sect”.

<sup>61</sup> This is the opinion of Philo and apparently his opinion was accepted by some of the Church Fathers. See: Shaye J. D. Cohen, ‘From the Bible to the Talmud: The Prohibition of Intermarriage’, *Hebrew Annual Review*, 7 (1983), pp. 23-39. However, the opinion of Cohen that “The opinion of Philo could not be correct” (p. 33) requires clarification.

the practical interpretation that the members of the sect gave the verse “A mamzer shall not enter the community of the Lord” even though who is a mamzer was not clearly defined in this literature.<sup>62</sup>

## 2. The Mamzer Is Forbidden Entry into Jerusalem (and it is forbidden to teach him Torah)

The Aboth of R. Nathan, Version A, Chapter 12, cites the following story:

And so one who transgresses causing the birth of a mamzer is told: you empty person, you hurt yourself,<sup>63</sup> you hurt him. A certain mamzer wanted to learn Torah with students who were studying in Jerusalem. The mamzer accompanied them till they reached Ashdod. He remains there and says: Woe unto me. Were I not a mamzer, I could now be studying with the students with whom I studied till now. Being a mamzer, I cannot study with those students, for a mamzer may not enter Jerusalem in any case, as it is written (Zechariah 9:6) “And a mamzer shall settle in Ashdod. I will uproot the grandeur of Philistia”.<sup>64</sup>

It is quite certain that this tale is based on the prophet’s words only in a forced way. In effect it reflects two ancient laws (from the period preceding crystallization of Tannaitic law): a mamzer shall not study Torah and shall not enter Jerusalem. The denial of Torah to the mamzer is not stated anywhere else, but seems to be in accord with the reasoning of the Disciples of Shammai as cited in the Aboth of R. Nathan Chapter 4 (Version B, S. Schechter edition, p.14):

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<sup>62</sup> It is possible that in the future more fragments from Qumran that deal with mamzer will be brought to light. In any case, according to what is proposed here, the definition of the mamzer is to be seen as corollary of the sanctions imposed on him. In other words, the broader the sanctions, the broader was the definition of mamzer, and vice versa (as an example can be seen the modern society which has no sanctions and no mamzerim). Accordingly it can be inferred that the Qumran people broadened the definition of mamzer beyond that of the Sages.

<sup>63</sup> The Hebrew text is not “bi - in me” as emphasized by Schechter there. Clearly “bo – in him” is a euphemism for “becha - in you”, in yourself.

<sup>64</sup> Avoth of Rabbi Nathan, Version A, 12. p. 27a.

And sustain many students - the Disciples of Shammai say: one teaches only to those of proper ancestry; the Disciples of Hillel say: to everybody.

In other words, the denial of Torah to the mamzer followed the reasoning of the Disciples of Shammai, which is considered to represent an ancient law according to which Torah is taught only to those of proper ancestry. This definition is intended to minimize the teaching of Torah to various categories of those with defective ancestry, including mamzerim.<sup>65</sup> Indeed, this approach forbidding a mamzer to learn Torah resembles other anecdotes that mention in passing that Torah is not taught to converts since they do not fit in the category of “sons of the fathers”.<sup>66</sup> At the same time the prohibition of the mamzer entering Jerusalem in the Tannaitic

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<sup>65</sup> For the limitation of teaching the Torah “to the fit and sons of fathers” exclusively”, according to the system of the House of Shammai, see: E.A. Finkelstein, Introduction to the Tractates Avoth and Avoth of Rabbi Nathan, New York 1951, p. 21 (Hebrew); Y. Ben-Shalom, ‘Study of Torah for all or only for the Elite? (In the academies in the days of the Second Temple to the end of the period of Rebbi)’, A. Oppenheimer, A. Kasher and U. Rappaport (eds), Ancient Synagogues, Jerusalem 1988, pp. 97-115 (Hebrew). To what is considered here compare the words of Rabbi Joseph of Orleans (twelfth century) cited in the Torah commentary of Rabbi Isaac son of Rabbi Yehudah Halevi, Paaneach Raza (Resolution of Secrets), Tarnapol, 1813, Portion Haye Sarah: “It is impossible that this (knowledge of Torah) will be found in a natin or mamzer for they are not taught Torah”.

<sup>66</sup> Thus in Sifre Zuta, Behaalothkha (Numbers 10:29), H.S. Horowitz edition, Jerusalem 1966, pp.264-265: “They (the sons of Kini, the father-in-law of Moses) went and found Yaavetz in the academy, and priests and levites and kings were seated with him, and all of Israel was there, They (the sons of Kini) said: We are converts, How can we sit with these people? What did they do? They sat at the gates of the academy and listened and learned, etc.”. That is, they sat outside the academy, as in the story of Hillel (b. Yoma 35b). In contrast, compare: Y. Frankel, Investigations of the Spiritual World of the Aggadic Tale, Tel-Aviv: Kibbutz Meuhad, 1992, third edition (Hebrew), p.67: “The story opens with the description of an extraordinary fact - a fee was charged for admission to the academy! Apparently this is the only place in the entire Talmudic literature where this practice is described; nothing like it occurs anywhere else. It is permitted to assume that

tale is but the ideological parallel of the Qumran law prohibiting the entry of mamzerim into the Sanctuary. In other words, it appears that the Rabbinic tale is harsher on the mamzer than the law of the sect (prohibition of entry into the Sanctuary) which is generally stricter than the Rabbinic law (prohibition of entry into Jerusalem).<sup>67</sup>

In practice, in additional places the people of Qumran treat the Sanctuary legally the way Chazal (the Talmudic sages) treat Jerusalem, as in the question of the locus for eating the Passover sacrifice, the locus for eating the Second Tithe, and others.<sup>68</sup> In any case these tales teach us that just as the Scriptural prohibition “a mamzer shall not enter the community of the

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this incident is entirely an exception, that is, it was never standard”. Also see p. 87; b. Taanith 24a; S. Safrai, ‘The Relation of the Aggadah (Tale) to the Halakhah (Law)’, A. Oppenheimer and A. Kasher (eds), *From Generation to Generation, From the End of the Biblical Period to the Sealing of the Talmud, A Collection of Researches in Honor of Joshua Ephron*, Jerusalem 1995, pp. 215-234 (Hebrew, esp. 227); Y. Ben-Shalom, ‘Hillel the Elderly - His Personality and Work against the Background of His Time’. A. Malkhin and Z. Tsahor (eds), *Leader and Behavior*, Jerusalem 1992, pp. 103-132 (Hebrew, esp. p. 128). Incidentally, the study itself was regularly free but there were charges for rental of the structure or its heating (on a winter day).

<sup>67</sup> Already Rabbeinu Hananel in his commentary on b. Bava Kama understood this tale as reflecting an ancient law. See: B. M. Levin, *Treasure of the Geonim - Bava Kama*, Jerusalem 1943, *Commentary of Rabbeinu Hananel*, p. 84; S. Bialoblotsky, *Source of Tradition*, Tel-Aviv 1971, pp. 35-36 (Hebrew). Also see: E.Y. Waldenberg, *Tsits of Eliezer: Responsa*, Jerusalem 1970, part 10, section 3 (Hebrew), p. 97: “And it is learned from the whole story, and especially from the wording ‘for a mamzer does not enter Jerusalem at all’ and from the nearby location of the proof from the verse ‘and the mamzer dwelled in Ashdod’ that there is a prohibition of entry of a mamzer into Jerusalem”.

<sup>68</sup> On the lack of clarity between laws applicable in the Sanctuary or Jerusalem, see: *Book of Jubilees* 32:14; 49:15; *The Temple Scroll* 17:9; H. Pardes, “On the Commentary of Rambam on One Mishnah”, *Sinai*, 49 (1961), pp. 11-76 (Hebrew, esp. p. 34 n. 108). Taking into account the incomplete nature of the sectarian law, it can be presumed that the people of Qumran forbade the entry of mamzerim not only to the Sanctuary but to all of Jerusalem.

Lord” was interpreted at Qumran as pertaining to the prohibition of entering the Sanctuary, thus it was also interpreted (in ancient law) as prohibiting the entry of the mamzer into Jerusalem and the study of Torah (or perhaps to teach him Torah). It appears that in this way the mamzer was equated with the leper from whom all distanced themselves. Both persons were forbidden to enter Jerusalem, a fortiori the Sanctuary, and did not learn Torah because everyone kept away from him (because of his impurity).

### 3. Social and Economic Banning of the Mamzer

In order to understand the unique social condition of the mamzerim in antiquity it is worth examining a Tannaitic excerpt that appears in two different places in Talmudic literature.<sup>69</sup> Because of differences between the texts and because of their importance for the understanding of the status of the mamzer in the eyes of the Tannaim, the two excerpts are presented in parallel below:

#### **b. Yoma 65a**

Rabbi Eliezer was asked:

How does so-and-so stand regarding the world  
to come?

- He said: Are you asking me only about so-and-  
so?

What about rescuing a sheep from a lion?

- He said: Are you asking only about the sheep?

What about rescuing the shepherd from a lion?

- He said: Didn't you ask me about the  
shepherd only?

Does mamzer inherit?

#### **t. Yebamot Chapter 3**

(Lieberman ed. p. 9)

Rabbi Liezer was asked:

Regarding the mamzer, does he inherit?

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<sup>69</sup> For the history of research on this beraita, see: B. W. Helfgott, *The Doctrine of Election in Tannaitic Literature*, New York: King's Crown Press, 1954, p. 59. See also: M. Bar-Ilan, 'Patrimonial Burial among the Jews in Ancient Period', I. Singer (ed.), *Graves and Burial Practices in Israel in the Ancient Period*, Jerusalem: Yad Ben-Zvi - The Israel Exploration Society, 1994, pp. 212-229 (Hebrew).

- Does he levirate?

What about plastering his house?

- What about plastering his grave?

- He said: Does he remove the sandal?

Does he remove the sandal?

- He said: Does he inherit?

Does he inherit?

- He said: What about plastering his house?

[What about plastering his house?]<sup>71</sup>

- He said: What about plastering his grave?

What about plastering his grave?

- He said: What about raising dogs?<sup>72</sup>

Indeed what about raising dogs?

- He said: What about raising pigs?<sup>73</sup>

What about raising pigs?

- He said: What about raising chickens?<sup>74</sup>

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71 The bracketed excerpt was apparently discarded by the scribe alongside the similar ones (although an alternative explanation is available).

72 On the problem of raising dogs and the law in Qumran (MMT), see the work of Qimron, above n. 47. Regarding the subject considered here, it is to be noted that the prohibition of raising dogs is apparently in opposition to what is written in the Torah (Exodus 22:30) “You shall cast it to the dogs”. Similarly, the hundreds of times that dogs are mentioned in the Talmudic literature show that dogs were also raised by sages (see for example: m. Shabbat 24:4; m. Bekhoroth 4:4; b. Shabbat 19a, and many others). Also compare to t. Bava Kama 8:17, Lieberman edition p. 41: “Rabbi Liezer says: One who raises dogs is like one who raises pigs”, meaning that sages avoid it as is included in “cursed be” - see S. Lieberman, *Tosefta Kiphshuta*, 9, *Nezikin*, New York 1988, p. 89 (Hebrew). The sages did not enter the home of one who raised a goat (t. Bava Kama, 8:13 Lieberman edition p. 40: “How did he visit him?”), and it is inferred that they thus also avoided the mamzer.

73 The Torah has no explicit prohibition of raising pigs. The question illustrates the nature of all the questions here (see below regarding the raising of “thin animal” [=sheeps and goats]).

74 The raising of chickens and other creatures mentioned here is pointed out in m. Bava Kama 7:7: “A thin animal is not raised in Palestine, but is raised in Syria and in the

What about raising chickens?

- He said: What about raising thin cattle?<sup>75</sup>

What about raising thin cattle?

- He said: What about rescuing the shepherd from the wolf?<sup>76</sup>

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wildernesses of Palestine; chickens are not raised in Jerusalem because of the Holies, and not by priests in Palestine because of the Purities; pigs are not raised anywhere; one should raise a dog only if it is chained (m. Nedarim 5:1; t. Bava Bathra 2:13 Lieberman edition p. 136). Regarding the possibility that the prohibition is imposed on priests, see: A. Schwartz, *Higayon (Logic) Arye*, Frankfurt on the Main 1912, pp. 82-83 (Hebrew). In any case it is hard to say with certainty that this mishnah is (also) from Rabbi Eliezer. It is worth mentioning that chickens are not mentioned in the Torah. From all indications they were not raised in Palestine before the seventh century B.C.E (S. Bodenheimer, *The Living in the Bible Lands*, I, Jerusalem 1950, p. 321 (Hebrew); II, Jerusalem 1956, pp. 379-382 (Hebrew). More than one reason can be found for prohibiting eating it. Indeed, it is worth noting that according to the first Karaites, this fow was prohibited as food, but the late Karaites permitted it. See: A.A. Harkavy, *The Survivor and Refugee from the First Books of Commandments of the Karaites*, St. Petersburg, 1903, p. 67 (Hebrew); S. Pinsker, *Likutei Kadmoniot (Collections of Antiquities)*, II, Vienna 1860 (photo-offset, Jerusalem 1968), p. 84 (Hebrew); Z. Yaavetz, *Mohlefeth Hashita*, Haifa 1924, p. 13 (Hebrew); R. Mahler, *The Karaites*, Merhavia 1949, p. 134 n. 31, 143 (Hebrew); A. Beshaitzi, *Adereth Eliyahu*, Odessa 1871, Subject of Shechita (Slaughter), 111d (Hebrew); Shmuel Hacoheh, *Subject of Shechita for the Karaite Jews* (publication site missing) 1958, p. 3 (Hebrew). All that is said here should be attached to the Temple Scroll col. 48: “Do not raise a chicken in the entire Sanctuary”. See E. Qimron, ‘The Chicken and the Dog and the Temple Scroll - 11QT<sup>c</sup> (col. XLVIII)’, *Tarbitz*, 64 (1995), pp. 475-476 (Hebrew).

<sup>75</sup> The raising of a “thin animal” is thoroughly researched, as there is abundant evidence that in spite of this mishnah, many “thin animal” were raised (see immediately following). See: G. Allon, *The History of Jews in Palestine in the Period of the Mishnah and the Talmud*, *Hakibbutz Hameuhad*, 1967, I, pp. 173-178, 357 (Hebrew).

What about rescuing the shepherd from the wolf?

- He said: It seems you asked [only] about the sheep.

And what about saving the sheep?

- He said: It seems you asked only about the shepherd.

What happens to this one and that one in the world to come?

- He said: It seems you asked only about this one.<sup>77</sup>

What happens to that one in the world to come?

Rabbi Liezer was not one to speak excessively but he said nothing that he had not heard earlier.<sup>78</sup>

Not because he spoke excessively but he never said anything he had not heard from his teacher.<sup>70</sup>

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<sup>76</sup> Evidently, the intent of the text is that since the shepherd transgressed an ordinance of the Sages, it is not necessary to endanger oneself to rescue him from a wolf (or - better yet - a lion, according to the Talmud's version), in accordance with the principle that "whoever transgresses the words of the Sages deserves death" (b. Berakhot 4b). Since the wolf or the lion came to kill the shepherd, there is no need to save him.

<sup>70</sup> This is the printed version and the various questions were arranged as rhetorical questions matching the parallel text. With this in mind, the questions "Regarding the mamzer, does he inherit? Does he perform levirate marriage?" etc. can be seen as various questions of the students, questions left unanswered. However manuscript JTS 218 has more than a few differences in the wording including dialogue (as in the Tosefta), but the questions are as in the printed version. Clearly the "original" dialogue was reworked to suit the oral transmission (literary refinement), but that does not affect the matter treated here.

<sup>77</sup> S. Lieberman in his edition placed a period here. On that basis the continuation "And what happens to that one in the world to come?" reverts to the words of the questioners. However, it is more plausible that Rabbi Eliezer repeated the question (perhaps with change of the name of "the one") as a circular argument and the dialogue ended with his

Indeed the difference between the versions in the different sources is not insignificant, but no attempt is made here to clarify the matter, rather to deal with the exceptional dialogue and especially with the questions related to the mamzer. First it has to be noted that this dialogue (in the Tosefta), entirely in the style of a dialogue assembled from rhetorical questions, is a unique occurrence in the sayings of the Tannaim and calls for an explanation. What's more the deliberation over "so-and-so" hints at a deliberate intent to hide the name of the person being talked about, a fact making historical identification understandably difficult.<sup>79</sup>

In contrast to the core of the discussion, a dialogue between a teacher and his students, the conclusion is a kind of commentary. In the added final words of the deliberation of the sages, the "editor", not necessarily of a much later period, tried to explain why Rabbi Eliezer did not answer the questions he was asked. Basically - thought the "editor" - Rabbi Eliezer could answer his students in all Torah subjects.<sup>80</sup> If Rabbi Eliezer did not reply to his students, It

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words and not theirs. Afterwards the "editor" added his own interpretation (and therefore the period was removed to emphasize the continuity of the text).

78 On the different versions see: Tosefta - Nashim (Women), Lieberman edition, New York 1967, p. 9. For the explanations proposed here, compare: S. Lieberman, Tosefta Kipheshuta - Nashim, 6, New York 1967, pp. 22-24 (Hebrew).

79 The question apparently related to famous contemporaries (as in m. Sanhedrin 10:2; m. Avoth 3:11), but the matter cannot be nailed down. Someone believed that the anonymous one mentioned here is none but Jesus (about him and his relation to mamzerim see below), but this lacks proof. See: R. Travers Herford, Christianity in Talmud and Midrash, rep. Clifton, New Jersey: Reference Book Publishing, 1966, pp. 45-47; J. Z. Lauterbach, Rabbinic Essays, Cincinnati: Hebrew Union College, 1951, p. 543; Y. Klausner, Jesus of Nazareth, second edition, I., Tel-Aviv, 1954, pp.48-49 (Hebrew).

80 Indeed, on approximately ten other occasions Rabbi Eliezer knew how to respond to his students (m. Negaim 9:3 - first he responded, then he answered "I did not hear"; b. Taanith 22b; b. Yebamoth 78b; b. Kiddushin 31a; p. Peah 1:1, 15c; p. Yoma 1:1, 38c; p. Yoma 6:3, 43c; p. Taanit 3:9, 67a; p. Yebamoth 8:3, 9c; b. Kidushin 4:1, 65c; Kallah 1:3.

was not because he did not know the law but - explained the commentator in praise of Rabbi Eliezer and taught - Rabbi Eliezer did not reply because his custom was not to say anything he had not received from his teachers and therefore he remained silent.<sup>81</sup> Thus we see indirect evidence that he was a great man.<sup>82</sup>

However, in spite of this interpretation of the “editor”, it can be inferred from his “reverse questions” that he knew the answers and by means of new legal subjects directed his students to another subject. He who really does not know is bound to be silent, but in his questions Rabbi Eliezer created a kind of “intellectual stimulation” reflecting, apparently, the fact that he knew well the answers to the questions he was asked and the questions he himself asked.<sup>83</sup> If so, the reasons he did not reply to his students differed. In other words, not that he did not know the answers to the questions he was asked, but on the contrary, Rabbi Eliezer knew very well the answers to the questions he was asked and to those he himself asked, but intentionally he did not reply to questions whose subject is not explained in the Torah.<sup>84</sup>

Apparently, when Rabbi Eliezer was asked by his students whether a mamzer inherits his father (or perhaps since he is not his legal son, he is not included in inheritance), he did not want to give his real opinion that a mamzer does not inherit. It is reasonable that he held to the ancient opinion that a mamzer does not inherit, whereas his students dissented. Being “permissive” if not “modern”, they believed that that a mamzer inherits in spite of birth

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Accordingly it is understood that when this great scholar did not answer his students' questions, he had a special reason.

81 A similar example albeit different, see t. Sukah 1:9 Lieberman edition, p. 258; m. Kelim 17:16 “On all of them Rabbi Yohanan ben Zakai said: Woe unto me if I say, woe unto me if I don't say”; p. Pesahim 2:1, 28d: “And Rabbi Yehuda remained silent” - and not all silences are assent.

82 Investigate: Y.D. Gilat, *The Mishnah (Study System) of Rabbi Eliezer ben Hyrkanos and Its Place in the History of the Halachah*, Tel-Aviv 1968, pp. 7ff. (Hebrew).

83 Compare: A.S. Rosenthal, ‘Halachic Tradition and Halachic Innovations in the Mishnah (Study System) of the Sages’, *Tarbitz*, 63 (1994), pp. 321-374 (Hebrew esp. 331-334).

84 A similar case is found in t. Parah 4:7 Zuckerman edition p. 633: “Not that he did not know, but he sought to urge the students”. On this see: M. Bar-Ilan, ‘The Practice of the Red Heifer in the Days of Hillel’, *Sinai*, 100 (1987), pp. 143-165 (Hebrew).

tainted by sin.<sup>85</sup> However, since Rabbi Eliezer suspected that his students might ridicule him or pounce on him with additional questions (or even act violently towards him),<sup>86</sup> he avoided giving his real opinion and switched to another subject.<sup>87</sup>

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85 On the connection of Rabbi Eliezer to the ancient Halacha, see the words of Gilath (above, n. 82). In t. Bava Batra 7:1 Lieberman edition p. 152, the Tanna taught: “A mamzer bequeaths to his relatives”. However, there is a difference between the recipient and the donor: the son of the mamzer has the same ancestry as his father and therefore can bequeath (to his children or to his brothers who are fit). However, the mamzer himself, unlike his father, lacks ancestry and it is possible that he does not inherit, especially if this matter is understood as an additional (economic) social sanction. Also see: Ch. Tschernowitz, ‘The Inheritance of Illegitimate Children According to Jewish Law’, Jewish Studies in Memory of Israel Abrahams, New York 1927 (rep. New York 1980), pp. 402-415. On the extreme position of Rabbi Eliezer compare to b. Nedarim 20b : “...And he [with his wife] as if forced by a demon; I said to him: how come? And he said: So I shall not look at another woman, in which case his (euphemism for: my) children would be mamzerim!”. The text cited in a slightly different version in Kallah 1:10 with the addition: “On this basis they said the following ten are like mamzerim but are not mamzerim; children of a maidservant, children of a slave, children of a despised wife, children of a menstruating woman, children of a banned woman, children of an exchange, children of a quarrel, children of a drunk, children of a wife divorced in the heart (mind), children of confusion, and some add children of a sleeping woman”. That is to say, in Rabbi Eliezer’s opinion, one who looks at (and thinks about) a woman not his wife - his children are mamzerim (= children of exchange). It follows that there were others who maintained similar extreme positions reflected in this tradition. The shared aspect is that the definition of the mamzer is much broader than the normative definition according to any system. On the viewpoint (attributed to Rabbi Akiva!) that the children of people with “narrow eyes” are mamzerim: see: L. Ginzburg, Schechter Archives, I., New York 1922, p. 211 (Hebrew).

86 On possible violence in the world of the sages, see: Z. Yaavetz, History of Israel, third edition, Jerusalem Tel-Aviv 1933, V., pp. 196-198 (Hebrew); Y. Cohen, Chapters in the History of the Period of the Tannaim, Jerusalem, 1978, pp. 171-172; 179 n. 199 (Hebrew).

The fate of Rabbi Eliezer who was ostracized by his colleagues is evidence they hesitated to say that his legal opinion contained false suspicion. Apparently he saw his students' questions as intended to trap him, questions best not dealt with at all. That is to say, in the law of inheritance by a mamzer, as in other instances, Rabbi Eliezer avoided giving a clear opinion and instead replied with a question: (before you ask me whether I know the law of inheritance by a mamzer) do you know whether a mamzer loosens the sandal? In other words, Rabbi Eliezer knew simply that a mamzer does not perform a levirate marriage, since he is forbidden to enter the community, in other words: marry.<sup>88</sup> However, if he does not perform a levirate marriage, is he required to loosen the sandal, or does perhaps his sinful birth disqualify him from any legal status, as if he did not exist and consequently he does not perform levirate marriage just as he does not inherit.

This question of Rabbi Eliezer did not earn a sound response, for his students did not know the law of the mamzer or insisted on waiting for their teacher's opinion. Therefore his students returned to Rabbi Eliezer's question: Does a mamzer perform levirate marriage? Again Rabbi Eliezer evaded an answer. Apparently, Rabbi Eliezer avoided telling them his true opinion that a mamzer does not perform levirate marriage just as he does not inherit since he is not considered a brother or a son. Since he did not want to answer, Rabbi Eliezer

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87 According to the Tosefta, Rabbi Eliezer diverted them to another matter ("What about raising dogs?"), but according to the Babylonian Talmud the set of questions ends - and as a matter of fact, two sets - regarding the problem of the mamzer. It is possible they went from the easy questions to the difficult.

88 Investigation is still merited since a positive commandment overrides a negative combined with a positive. Therefore the commandment "the levirate comes unto her" should override "the mamzer shall not enter the community of the Lord". However, since the Torah itself provides an opening to permit not to perform the levirate marriage, therefore if the levirate is a mamzer, the levirate marriage is void and the only question remaining is that of the loosening of the sandal (since if the mamzer does not fit the requirement of levirate marriage - he may also not fit the loosening of the sandal). Indeed, in the parallel text in b. Yoma 66b the question was "What about levirate marriage", that is, levirate marriage or loosening of the sandal (like a full brother), whereas according to the version of the Tosefta, the choice is: is loosening of the sandal required or not.

returned his students to their original question: Does a mamzer inherit? And simply, the students still did not grasp that their teacher deliberately avoided answering them and they returned to their original question: “What about inheriting?”

Again Rabbi Eliezer evaded answering his students and diverted them to another law pertaining to a mamzer: Is the house of a mamzer plastered? Understandably this question was also beyond the students’ ability to answer and, when they repeated the question in the presence of their teacher, he asked them an additional rhetorical question: Is the grave of a mamzer plastered?

The students were also unable to answer these questions. It is reasonable that just as Rabbi Eliezer was strict regarding the law of inheritance and loosening of the sandal, he was also strict regarding the law of plastering the home and grave of a mamzer. That is to say, Rabbi Eliezer believed that indeed the house of a mamzer is plastered and so is his grave so that the mamzer will be recognized in both life and death.<sup>89</sup> Thus, just as various places are marked so

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<sup>89</sup> Part of the explanation proposed here is at the emendations of Rabbi Yoel Sirksh (ba”h) on b. Yoma 66b: “Regarding mamzer he was asked whether it is permissible to plaster his house since he has to mourn over being forbidden to enter the community. On this he cited the question of plastering his grave; since he is excommunicated - he is not honored in death, so that the banning of his descendants is recognized. We are not dealing here with the pouring of plaster on his grave as a marker, as at the beginning of the chapter “Mashkin”, but spreading of the plaster as was done on graves as a sign of respect, and the explanation of Rashi is puzzling”. In one of my last conversations with him shortly before his death, S. Lieberman accepted my proposed explanation here and withdrew his printed explanation (Tosefta Kiphshuta - Nashim (Women), 6, New York 1967, p. 22): “What is really your opinion about whether they should plaster his grave, according to the law of marking graves, so people should not be rendered impure by a grave”, etc. After a long discussion, S. Lieberman informed me that he had erred in interchanging “marking” and “plastering”. According to the accepted interpretation it is puzzling why they asked particularly about the mamzer since all graves equally render impure, and the idea that the mamzer has to mourn because of his ban from marriage is basically untenable.

that their nature is recognized from a distance, so a mamzer is marked in life and death so that he will be recognized and everyone will be careful to shun him.<sup>90</sup>

In other words, while the law in the Mishnah saw in the prohibition of the marriage of a mamzer to a woman of good stock exclusive and adequate fulfillment of the command “A mamzer shall not enter the community of the Lord,” there were contemporaries with other, much stricter opinions. There were those who believed that it was required to avoid a mamzer in every possible way (almost) and to apply white plaster to his house and grave, that is, to mark his home both in this world and in the world to come, and, as a matter of course, also in additional ways.<sup>91</sup> In this way the mamzer is, from the social perspective, totally isolated,

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<sup>90</sup> For marking of the house of a mamzer compare t. Maasser Sheni 5:13, Lieberman edition p. 271: “Others say: if he designated a place for a holy cause - it is scanned with a red paint; a house of pagan worship – it is blackened with charcoal; a house of a leper - ashes of shame are thrown on it; the place of one murdered - it is designated with blood; the place of a heifer with broken neck - it is marked with a belt of stones”. This law is repeated in the m. Maasser Sheni 5:1: “A planting in its fourth year - it is designated by mounds of earth; and plantings in the first three years - by clay; and graves - with plaster”. Thus it is possible that they followed the practice: “the house of a mamzer - it is plastered”. More on the designation of graves of sinners, see: M. Bar-Ilan, ‘Burial in the “estate of the fathers” (above, n. 69). It is also worth noting that in a stratified society a person’s status is also recognized on the basis of the location of his dwelling; in a society with rigid stratification as in India, the homes of the Untouchables are painted blue (“to separate the pure and the impure”). That is to say, the application of white plaster to the house of the mamzer is only a specific example of an accepted social phenomenon.

<sup>91</sup> Compare to the Responsa of the Geonim Shaarei Tzedek Part 4, Paragraph 14 (Salonika 1792, 75b; rep. Jerusalem 1966, p. 166): “And when you get this ban and excommunication you shall ban them everyday forever and declare on him that his food is of Samaritans and the wine of his is for libation [for idolatry] and his fruits are untithed and his books are of sorcerers and remove his mezuzoth (the printed “mezonoth” is an obvious error). Do not pray with him, do not circumcise his son, do not teach his children in the synagogues, do not bury his dead, do not admit him to gatherings commanded or optional, maintain force against him, and treat him with contempt and like a gentile. The sages said (b. Moed Katan 16a): “one banned - he learns and is taught, he is hired and one

already from birth and in his growth all his life - in this world and in the world to come - with the prohibition of marriage only a small detail (and later) in the life of the mamzer. It is almost superfluous to point out that they kept a mamzer from levirate marriage with his brother's widow, since he was not considered a "brother". It is easily understood that he also did not inherit with his proper brothers. Thus society inflicted a heavy financial penalty on the mamzer; the social ostracism was made complete through the financial penalty.

#### 4. Marking of the Mamzer with Baldness

The opinions deduced above from deciphering of the words the Tannaim resemble in no small measure the knowledge preserved explicitly in Jewish tradition, even though uncertain in origin and time: 'Toledot Yeshu' ("The History of Jesus").<sup>92</sup> This kind of Jewish literature dealing with Jesus from the Jewish point of view is strange in various respects. It has the nature of a "Jewish version" in the category of "response" to the Evangelicals. At times it contains parody and its historical reliability is questionable, to say the least. Nevertheless, one composition from this literary category contains interesting and unique testimony about the attitude towards mamzerim in antiquity. It is worth looking into:

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can be hired by him; one excommunicated - does not learn and is not taught, is not hired and one cannot be hired by him". Here the designation of the house of the excommunicated and also denial of burial with the community are stated (akin to the relation to the mamzer hinted in the Tosefta). It goes without saying that the other acts also resemble those mentioned here. Also see: M. P. Behr, *The Words of Meshulam*, Frankfurt a/M 1926, pp. 38-39 (Hebrew, on the relation of the words of the Gaon to the Talmudic period); G. Leibson, 'For What Does One Ban', *Hebrew Law Yearbook*, 2 (1975), pp. 292-342 (Hebrew). The law of the mamzer is equated with that of the banned in various respects. The principal difference is that one is banned by the Torah from long ago (for one specific act) and the other is banned by the guardians of the Torah, the sages in the current reality (for any deed).

<sup>92</sup> On this literary genre including various writings, see: Y. Klausner, *Jesus of Nazareth*, 1, pp. 64-72; Hugh J. Schonfeld, *According to the Hebrews*, London: Duckworth, 1937; M. Goldstein, *Jesus in the Jewish Tradition*, New York 1950, pp. 147 ff.; G. Schlichting, *Ein juedisches Leben Jesu*, Tuebingen: J. C. B. Mohr, 1982 (includes bibliographic listing).

Rabbi Akiba returned to Jerusalem and related the matter to Rabbi Eliezer and Rabbi Joshua. The three went to the study hall of Rabbi Joshua ben Perahia. They took Jesus, they shaved his hair in a circle, and washed his head in “water of *Bulat*” so that hair would never grow back, for it was customary to mark mamzerim to keep them from mixing in the community of Israel... And when Jesus saw that the sages recognized that he was a mamzer and therefore marked him this way... John advised Jesus to order all of his men to wash around their hair with “water of *Bulat*” so that they will be recognized as his people. And so whoever came to him from among the landowners, he washed him with “water of *Bulat*” around his head so hair should not grow and he will be recognized as a Christian.<sup>93</sup>

Without trying to solve the puzzling nature of this excerpt, its place, time or its Hebrew,<sup>94</sup> it is clear that its author made a gross error in describing a meeting of second century tannaim

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<sup>93</sup> The citation is from: Toledot Mehoqequei Hanosrim, Version 2 (subtitle: Copied from a book Investigated by a Christian named John Jacob the Haltruca according to what he found in a book ascribed to Rabbi Yohanan ben Zakkai) in: Toledot Mehoqequei Hanosrim (Stories of Lawgivers of the Christian Religion), Brooklyn, N.Y. undated, p. 42. According to Y. D. Eisenstein (Treasury of Midrashim, New York, 1, 1915, p. 214) the book was published in London in 1906. On the other hand H.D. Friedberg (Bet Eqed Sefarim, Tel-Aviv 1951, Samekh, 548) believes the book was published in Kracow in 1907. He also completes the name of the editor: Menahem Eliezer Mahler. Incidentally, in the words “a book ascribed to Rabbi Y.b.Z.”, the editor apparently had in mind the (pseudepigraphic) letter of Rabbi Yohanan ben Zakkai appearing in the same volume. However there is no literary connection between the two works. Also see: M. Bar-Ilan, ‘Books from Cochin’, Peamim, 52 (1992), pp. 74-100 (Hebrew); Hanne Trautner-Kromann, ‘The Enigmatic Iggeret R. Johanan ben Zakkai: A polemical letter Against Christianity’, Proceedings of the Eleventh World Congress of Jewish Studies, Jerusalem 1994, B, I, pp. 69-75.

<sup>94</sup> From the principal point of view it can be said that the confrontation with Christianity through dealing with Jesus is more fitting for Palestine than for Babylon, as there was no Christian rule (though there were Christians). The Hebrew itself, the Biblical images, and the historical treatment are not particularly successful. It is necessary to hint at the post-Talmudic period. The subject still needs considerable investigation.

with Jesus, indicating that it is difficult to assign historical value to this tradition.<sup>95</sup> One point is clear: In the opinion of the author, Jesus was a mamzer, hardly surprising, since his father was unknown.<sup>96</sup> However, the author tried here, to all appearances, to explain in an etiological story (and in any case, anachronistic) the origin of the baldness of Christian priests (“galah”, shaven in medieval language).<sup>97</sup> With this, the author knew of a Jewish tradition accepted in his time (“for it was customary”)<sup>98</sup> to mark mamzerim by causing directed baldness on their head by means of a material that removes the hair roots.<sup>99</sup> And indeed, even if this tradition is not known from another source, it has ideological parallels, as shaving and baldness were considered disgraces (even though these acts had associated significances).<sup>100</sup>

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95 However, as to the relation between Jesus and Yehoshua ben Perahiah (even if not historical), see: M. Geller, *Joshua b. Perahia and Jesus of Nazareth: Two Rabbinic Magicians*, A Dissertation presented to Brandeis University, Ann Arbor, Michigan: University Microfilms, 1974, pp. 5 ff.; 70-117.

96 See the sources in Herford (above, n. 79), pp. 47-50. In spite of their relative lateness, it is definitely possible that they represent more ancient views, as some of the opinions regarding that man were hidden by a mask of various legendary images or just were not put in writing.

97 It is worth noting that the matter of the baldness of Jesus appears in the “History of Jesus” in additional forms, but not necessarily connected to his being a mamzer. See: *Stories of the Lawgivers of the Christian Religions* (above, n. 93, pp. 31, 34).

98 The expression “such was the custom” is not found in Talmudic sources. In conjunction with the other problems in this excerpt, it appears that its time is in the period of the Geonim (and not necessarily at its end).

99 I do not know the meaning of the word “bolet” (or: “bulat”). The material itself, serum containing arsenic, is well described in the alphabet of Ben Sira (Warsaw 1927, p. 11; A.M. Haberman, *New and Old*, Jerusalem, 1976, p. 129). There were, of course, various recipes for the material, see: b. Moed Katan 9b; E. Yasif, *Stories of Ben Sira in the Middle Ages*, Jerusalem 1985, pp. 24-25, 50 f f. (Hebrew).

100 See: II Samuel 10:4; I Chronicles 19:4; II Kings 2:23. Apparently also connected to this is “shall dishevel the woman’s hair” (Numbers 5:18), dealing with adultery. Also see *Lamentation Rabba*, Petihta 17, S. Buber edition, Vilna 1899, p. 14: “Why is his head shaved?” (and *ibid.* p. 128); *ibid.* Section A, p. 50: “Where do I bring him [with the diminished head]” (=I bring him, the Athenian, and his head is shaved”. Also see Galit

In the post-Talmudic period Jews were accustomed to shave the hair of an adulteress.<sup>101</sup> The shaving of the hair of one born from adultery is only an extension of the punishment of the adulterous parents (especially the mother), similar to the banishment of the mamzer from the Sanctuary which is an extension of the banishment of the parents. It is then possible to see evidence of the reflection of a custom (perhaps from the post-Talmudic period), not necessarily normative, of giving mamzerim bald heads as a distinguishing social sign (resembling castration symbolically).<sup>102</sup>

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Chazan-Rokem, Rikmat Haim, Tel-Aviv 1997, pp. 61-62 (Hebrew). That is: not only do I bring him but also I bring him also in disgrace.

101 See: S. Asaf, Punishments after the Sealing of the Talmud, Jerusalem 1922, p. 24 (Hebrew, and according to index); S. Kraus, Antiquities of the Talmud, 2, 2, Berlin-Vienna, [undated], p. 17ff; A. L. Epstein, Ways of Matrimony and Its Customs according to the Law of Israel, Tel-Aviv 1959, p. 187 (Hebrew); S. Lieberman, 'On Sins and Their Punishment', Hebrew Thought in America, 1 (1972), pp. 288-307 (Hebrew); A. M. Rabelow, The Jews in Spain before the Arab Conquest in the Mirror of Legislation, Jerusalem 1983, pp. 150-151 (Hebrew); Z. Safrai, The Jewish Community (above, n. 11), p. 164, Note 314. On punishment of sinning women by hanging them by their hair (in the category of first punishing the sinning limb according to retaliatory principle (*lex talionis*) - Deuteronomy 25:12; m. Sotah 1:7; b. Nidah 13b, and others), see: S. Lieberman, Texts and Studies, New York: Ktav 1974, pp. 52-54; Martha Himmelfarb, Tours of Hell: The Development and Transmission of an Apocalyptic Form in Jewish and Christian Literature, Ph.D., University of Pennsylvania (University Microfilms International), 1981, pp. 162-197.

102 Shaving of the hair or a change in the shaping of the coiffure, especially when done forcibly by external forces, is a humiliation and an expression of change in social-religious status (resembling cutting of sideburns, beard or head hair in other circumstances), as can be seen in many sources (Leviticus 14:8; Numbers 6:9; 6:18; m. Ketuboth 2:1; 2:10). Since the sexes differ in all cultures regarding head hair, baldness is intended to characterize the bald persons as neither man nor woman (this can be seen as measure for measure: loss of a mark of sex as punishment for excessive sexuality). Baldness symbolizes (in an initiation ritual) the bald person's being a newborn child (as in *halake* [first haircut of a child] or before the start of learning in the *cheder* [first classroom], loss of masculinity (like a novice soldier), loss of sexuality (like a Christian

In the opinion of the author of this excerpt, Jesus was bald and it is clear that he considered baldness a serious shame or even a defect.<sup>103</sup> Not only Jesus was bald because he was a mamzer and in accordance with the Jewish custom of marking a mamzer with baldness, but all who joined his sect received the mark of baldness. Thus, the punitive nature of baldness

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priest), loss of life (Deuteronomy 14:1) and loss of freedom (like a prisoner), the bald person lacking significance or social power (Deuteronomy 21:12; Judges 16:19). See: C. R. Hallpike, 'Social Hair', W. A. Lessa and E. Z. Vogt (eds.), *Reader in Comparative Religion - An Anthropological Approach*, 4th ed., New York 1979, pp. 99-105. Everything said here can be seen as an explanation of the plucking of the hair mentioned in Nehemiah 13 (above, n. 8) and concerning, implicitly, similar circumstances. Also look into the literature designated in: N. Rubin, *The End of Life: Rituals of Burial and Mourning in Rabbinical Sources*, Tel-Aviv 1997, p. 304, n. 56 (Hebrew).

<sup>103</sup> In m. Bekhorot 7:2 it is established that a bald priest is disqualified for service; apparently this law goes beyond what is written in the Torah. However it appears that the priests interpreted "They shall not shave smooth any part of their heads" (Leviticus 21:5) not as interpreted by the Tannaim (that the verse deals with baldness for the deceased; Sifra ad loc.) but as a prohibition for the priests to disgrace themselves in the form of baldness, the prohibition in Ezekiel 44:20: "They shall neither shave their heads nor let their hair go untrimmed; they shall keep their hair trimmed". It is not unlikely that the priests were united in the style of their hair and a disruption by means of baldness (or cutting) expressed disrespect for the commandments of the priesthood or the removal of the mark of the priesthood. Similar is the commandment "You shall not round off the side-growth on your head, or destroy the side-growth of your beard" (Leviticus 19:27) signifying prohibition of disruption of the external (national and) personal characteristic. One can view similarly a man who pulls down his foreskin in a later period (to exclude himself from the general circumcised public). See: M. D. Herr, 'External Influences in the World of the Sages in Palestine – Absorption and Rejection', Y. Kaplan and M. Stern (eds.), *Assimilation: Continuity and Change in the Culture of the Nations and in Israel*, Jerusalem 1989, pp. 83-106 (Hebrew especially: 92-93); N. Rubin, 'Pulling of the Foreskin and Undoing of the Retraction', *Zion*, 54 (1989), pp. 105-117 (Hebrew)

was blurred on the one hand, and on the other hand baldness was turned into a religious-social mark of separation.<sup>104</sup>

The generalization arising from this tradition is that at the end of antiquity (starting in the early centuries of the Common Era or perhaps only later), it was customary among Jews - not necessarily sages – to isolate the mamzer socially by making him recognizable at a distance. This tradition, and also the conclusion from the discussion between Rabbi Eliezer and his students, are equally strange halachically. That is to say, these halakhot (laws) are evidence of very strict halachic norms regarding mamzerim, going beyond the previous law. In this way these extra-rabbinic traditions suggest a very broad interpretation of the Scriptural prohibition “A mamzer shall not enter the community of the Lord”.

### C. The Social Significance

An investigation of the ways of carrying out the Scriptural law “A mamzer shall not enter” reveals a broad spectrum of interpretations of this law, many beyond the single limiting interpretation of the Tannaim: prohibition of marriage. The tales of the Tannaim and also the Qumran laws, teach of the limiting in the punishment of the mamzer over the years. Whereas in the period preceding the crystallization of rabbinic law, the prevailing religious-social law was very strict with mamzerim and included his social ostracism in all matters, even after death, the later rabbinic law as expressed in the Mishnah and Talmud shows a trend of

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<sup>104</sup> It is possible that the shaving of Jesus derived from an initiation custom of the early Christians and the Jewish author interpreted it as derogatory. Similar to it was the initiation rite of the Levites upon their entry into the Sanctuary service as written in Numbers 8:7. Also compare to the initiation of those entering to the sanctuary of Astarte (as understood after Lucian, *The Syrian Goddess*, 55), also to the description of the idolatrous priests appearing in the letter of Jeremiah 30: “And their head and beard are shaved” (see: Y. M. Grintz, *Chapters in the History of the Second Temple*, Jerusalem 1969, p. 75 [Hebrew]). The Egyptian priests from the eighteenth dynasty on were shaved (M. Nadel, *The Bible and the Cultures of the Ancient World*, Merhaviva 1962, p. 149 [Hebrew]). These ancient customs are not far from the modern practice in many armies of shaving the hair in recruits, an external expression of an inferior and limited social status.

limiting the sanctions against mamzerim: establishment of the law only as a prohibition of marriage to a person of improper descent, and even this at times only through lip service.<sup>105</sup>

The trend of narrowing the critical attitude towards mamzerim is recognized not only from the laws (and the stories hinting at laws) but also from the opinions expressed by the tannaim regarding mamzerim. In m. Kidushin, end of Chapter 3, the text reads:

Rabbi Tarfon says: Mamzerim can be rendered clean.<sup>106</sup> How? If a mamzer marries a slave, the child is a slave; when he is liberated, the son is a free man. Rabbi Eliezer says: He is both a slave and a mamzer.<sup>107</sup>

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105 It appears that the punishment inflicted on the mamzer (linked to the question of whether the nature of his exclusion is punishment - see above, n. 12) expresses the notion of retaliation, “measure for measure”, like the punishment of the eunuch (above, n. 4). In other words, the transgressor who was unable to overcome his sexual lust to perform a prohibited act (and lie with a woman forbidden to him) - will be punished (besides the punishment of death) in that his issue (the consequence of this sin) will overcome their lust and will be unable to marry even permitted women (even when not married to others). Thus the trend of limiting the punishment of the mamzer reflects the notion of retaliation exclusively (he sinned in sex and is punished in sex), and disregards broader punishment unrelated to sexual outlook. However, this does not mean that the other punishments inflicted on the mamzer - removal from Jerusalem or the Sanctuary, and the like - are not “original” because apparently the retaliatory notion does not “justify” them (but the “genetic” principle does justify them). In any case, in the relation to the mamzer can be seen prohibitions of social removal dependent on their ultimate objective: prohibition of marriage like the prohibition of sharing bread, wine or oil with an idolater in order to avoid marriage and idolatry.

106 Nowhere is it stated explicitly that the mamzer is impure, but the use of the language here shows that the mamzer was considered “impure” as stated above (n. 56). It is reasonable that Rabbi Tarfon’s words preserve an ancient concept that is not expressed in the explicit law.

107 In Kaufman manuscript as well as Cambridge manuscript the changes are minor enough to be ignored in translation into English. In b. Yebamoth 78a the mishnah is cited with a slight change: “liberated - he is a free man”, but the intent of the words is the same.

Here are two opinions: that of Rabbi Tarfon at the opposite pole from the Scriptural law regarding the mamzer: “even unto the tenth generation he will not enter the community of the Lord”. The second opinion is the strict one of Rabbi Eliezer noted above, according to another source. In any case, the opinion of Rabbi Tarfon reflects the continuation of the trend to limit discrimination of mamzerim up to its disappearance.<sup>108</sup> The continuation of this idea is seen in the words of Rabbi Yose cited in t. Kiddushin 5:4, Lieberman edition p. 294: “Netinim and mamzerim will be pure in the future”. If we include among the sayings of tannaim the saying of Rabbi Joshua ben Levi (third century Common Era) in b. Kiddushin 71a: “Money purifies mamzerim”,<sup>109</sup> it is clear that the sages of the Mishna and Talmud sought to limit the low status of mamzerim to the point of seeming to ignore an explicit verse from the Pentateuch.<sup>110</sup>

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108 Compare the mishnah version according to Hillel (the second, in the opinion of Epstein, above n. 34) in b. Kidushin 75a: “Hillel learns: ten levels of relationship returned from Babylon and all are permitted to intermarry”. In other words, in the time of the Amoraim (Talmudic sages) someone wanted to abolish the distinction between strata. For the solution of the problem of mamzerim by various means in later generations, see: Y. Nini, *From East and West - the Jews of Egypt*, Tel Aviv 1990, pp. 41-44 (Hebrew); M. Zemmer, ‘Purifying Mamzerim’, *The Jewish Law Annual*, X (1992), pp. 99-114.

109 Note that the words “in the future” are only words of consolation, whereas the one speaking of money gives practical advice for that time. The meaning of the words is not certain, presumably to cover those involved in the matter. The way the issue develops, the approach is positive and it is possible that the advice of Rabbi Joshua ben Levi was that he pay money to a great man to have him declare that he is not a mamzer (but this explanation is difficult from several aspects, and compare to the topic “Those who are appointed with money”: G. Allon, *Researches in the History of Israel*, 2, Tel-Aviv 1970, pp. 25-55 (Hebrew). It is more plausible that the words of Rabbi Joshua ben Levi were said sarcastically and perhaps even directed against a famous mamzer of his day, whose wealth led people to overlook his being a mamzer and intermarried with him (compare the explanation of Rashi ad loc.); the informers were careful with their actual words but not with the scoffing tone. Further investigation is required

110 The rabbinical contraction regarding the punishment of the mamzer (who did not sin) can be seen as equating the judgment of the son of an adulterer with the judgment of the son of every other transgressor who is free of punishment; presumably modernization of the

Additional expression of the reversal in the attitude of society to mamzerim is seen with the transition from the period of the tannaim to the later period of amoraim (Talmud), approximately in the third century. In testimony cited numerous times in the Jerusalem Talmud, Rabbi Huna reports in the name of Rav: “A mamzer lives no longer than thirty days”.<sup>111</sup> From all appearances, Rav did not invent this idea, as it is already found in the Apocrypha,<sup>112</sup> but the application of this idea is evidence of a new approach. It is worth

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Halacha matching the words of Jeremiah and Ezekiel. Also compare the teaching in Leviticus Rabba 32:8, M. Margaliot edition, Jerusalem 1956, p. 754: “I further observed all the oppression (Ecclesiastes 4:1). Hanina Hayata solved the reading as pertaining to mamzerim ...their mothers sinned and these miserable ones are banished? This one’s father had an illicit relation, but what did he do, and what does he care? The Almighty told me to console them. For they have a defect in this world but in the world to come”, etc.

<sup>111</sup> p. Yebamoth 8:3, 9c; p. Kidushin 3:12, 64c; ibid 4:1, 65c.

<sup>112</sup> See: Ben-Sira 23:36-41; I Enoch 10:9; Wisdom of Solomon 3:3-4:7; Numbers Rabba 9:8; I. Ta-Shma, ‘A Mamzer is Not Alive?’, Beth Mikra, 34 (1968), pp. 33-36 (Hebrew). Ta-Shma cited b. Yebamoth 78b which understood from the words of Rabbi Eliezer (who said about mamzerim: “If you will only give me the third generation, I will purify him”.) that a mamzer does not live. However, according to the text here (that Rabbi Eliezer was strict with mamzerim and his wife teaches us about his extreme opinion in b. Nedarim 20b) we can explain the words of Rabbi Eliezer as claiming that mamzerim are not known in the third generation and therefore his students asked a hypothetical question (in his opinion). It is also worth noting that Ta-Shma’s puzzlement regarding the correctness of the generalization, “a mamzer does not live”, is resolved by the historical reality, not on the theoretical plane. That is to say, the life expectancy of an illegitimate or unwanted child was lower than that of other children not because of genetic differences but because of the involvement of the parents in his life as well as his death. Consider: II Samuel 12:18 (a child of adultery dies); I Kings 3:19 (a child of a prostitute dies); Judges 11 (the son of a prostitute indeed lives and even procreates but in the end he dies without continuing his dynasty). Incidentally, in Christian society at the end of the Middle Ages most of the foundlings (abandoned in monasteries) died within a relatively short time for one reason or another. On the relatively low life expectancy of illegitimate children with

noting that this expression of Rav is in strong contrast to the Scriptural law which knows not only that a mamzer lives but that he has descendants “even unto the tenth generation”. The amoraim in Palestine<sup>113</sup> sensed this and commented on the words of Rav: “When? At a time that he is not famous, but if he is famous - he is alive”. Indeed both the tannaim and amoraim knew a number of living mamzerim.<sup>114</sup> In any case, it appears that Rav’s expression that mamzerim are not alive reflects the disregarding of the Scriptural law (and also Mishnaic) in both spirit and actualization.<sup>115</sup> They are a direct continuation of the limiting of the negative attitude towards mamzerim in the Jewish society in antiquity.

The principle that “A mamzer lives no longer than thirty days” does not match the Pentateuchal law nor the biological reality as known from experience. At the same time we cannot forget that this principle could be sustained with the help of the Lord who, as is known, does not want sins or even with the help of the parents of the mamzer (through abortion, abandonment or murder),<sup>116</sup> since everyone wants to avoid publicizing the sin.<sup>117</sup> In

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significant differences (even in the twentieth century) see: S. Shachar, *Childhood in the Middle Ages*, Tel-Aviv 1990, p. 206 (Hebrew); J. Teichman, *Illegitimacy: A Philosophical Examination*, Oxford: Basil Blackwell, 1982, pp. 104-105; P. Laslett, Karla Oosterveen and R. M. Smith (eds.), *Bastardy and its Comparative History*, (above, n. 3), index.

113 The topic opens with the words: “Rabbi Zeira when he came here” (or: Zeura, and the two are equivalent).

114 Known mamzerim are mentioned in a scroll of relationships found in Jerusalem, see b. Yebamoth 49a-b, p. Yebamoth 4:15, 5b. Also compare to Leviticus Rabba, 32:7 M. Margalioth edition (Jerusalem 1956), pp.752-753, telling about a mature mamzer and similarly in b. Kidushin 69a: “the innkeeper for Rabbi Simlai was a mamzer”; “the neighbor of Rabbi Ami (b.Yebamoth 78b); Yehudah bar Pappa in Pumbeditha (b. Kidushin 70b).

115 It appears that this incident of deletion of a verse from the Torah (in practice if not in law) can be seen against the background of other incidents of “deception” by the Tannaim. See, for example: E. E. Urbach, *The Halachah - Its Sources and Development*, Givataim 1984, pp. 166-170 (Hebrew).

116 Rabbi Yosef Karo ruled Halachically, *Shulhan Aruch*, Yoreh Deah, 265:4: “A mamzer is like an Israelite and the blessing of circumcision is said for him to ‘koreth habrith (seals

any case, it is reasonable that the practical significance of this assertion was the assumption or “knowledge” that there are no mamzerim at all in the world, since, if mamzerim do not live more than thirty days, it follows that every living person is not a mamzer. This saying completes the former one of the purifier of mamzerim in the present or future: there are / will be no mamzerim.

It can be generalized from these laws and opinions that the sages of the Mishnah and Talmud minimized the number of social separators between a mamzer and the general society, presumably as part of the narrowing of other exclusions within society, such as exclusion of the menstruant and the disappearance of the “house of impurities”,<sup>118</sup> (like the disappearance

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the covenant)’ but we do not plead for mercy on him”. He is saying, we do not assist him the way all small children are assisted (following the pattern: “remain seated and take no action”).

117 Compare to the author of the Midrash Lamed-Bet who wrote that David wanted the death of his mamzer son, an idea that according to S. Lieberman “looks very strange”. However, according to what is said here, this idea is self-understood. See Lieberman, *Researches* (above, n. 55), p. 161.

118 It appears that just as the physical removal of the mamzer was abolished, so was abolished the physical removal of impure people according to the text (Numbers 5:2): “They will remove from camp anyone with an eruption or a discharge and anyone defiled by a corpse”. According to the Talmudic law (b. Pesahim 67a) there is no need for removal (=abolished) from anyone with a discharge and the impure (including menstruating women), and only lepers were removed. That is to say, the law was formally retained but not in line with its “literal meaning”. According to the mishnah (Nidah 7:4) there was a “house of impurities” (or: house of impure [women]) a house (not a room as explained by Rashi) in which menstruating women were confined, that is, separated from their husbands while menstruating (see: H. Albeck, *Six Sets of Mishnah - Taharoth*, Jerusalem - Tel-Aviv: Bialik 1959, pp. 588-589 (Hebrew); A. Z. Eshkoli, *The Book of Falashim*, Photo-offset, Jerusalem 1973, pp. 43-46 (Hebrew). In contrast, in the post-Talmudic period (perhaps as a Halachic remnant from the past), menstruants were removed only from the synagogue, but not from their home, as a remnant of the Biblical law removing the impure from the camp. See: J. D. Cohen, ‘Purity and Piety: The Separation of Menstruants from the Sancta’, Susan Grossman and Rivka Haut (eds.),

of the house of the mamzer). In practice they almost eliminated the possibility of finding a live mamzer.<sup>119</sup> A similar trend is also seen in the laws close to the subject of the mamzer in Scripture, relating to the prohibition of social ties with Ammonites, Moabites and Egyptians. Apparently the prohibition “An Ammonite and a Moabite shall not enter the Community of the Lord” was interpreted (originally)<sup>120</sup> with a restrictive definition: “male Ammonite - but

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Daughters of the King: Women and the Synagogue, Philadelphia: Jewish Publication Society, 1992, pp. 103-115. (Previous researches on this subject are designated there); I. Ta-Shma, “‘Small Sanctuary’ - the Symbol and the Reality”, *Ezra Assembly - Literature and Life in the Synagogue*, Jerusalem 1995, pp. 351-364 (Hebrew especially: 360-361). It appears that the abolition of these laws - physical removal of certain people from the “camp” - is bound up with the disappearance of awareness of “the sacred place”, certainly after the destruction of the most sacred place, the Temple. Also see: Baruch M. Boxer, ‘Approaching Sacred Space’, *HTR*, 78 (1985), pp. 279-299.

119 An inverted trend is seen in tractate Kallah 1:16 (M. Hieger edition, New York 1936): “impudent - Rabbi Eliezer says: mamzer; Rabbi Joshua says, son of a menstruant; Rabbi Akiva says mamzer and a son of menstruant”. That is to say, if you see an impudent person, the presumption is that he is a mamzer. Despite this inverted trend of “increasing” the number of mamzerim, we can see in this concept the continuation of the Biblical concept regarding the genetic nature of mamzerim within the general perception of ancestry. That is to say, an impudent person certainly inherited his nature from his impudent father, a nature expressed in the sexual transgression that led to his birth.

120 According to the Talmudic description, the prohibition did not apply originally to women, but, as understood, this interpretation appears distant from the simple text, as was already challenged in *b. Yebamoth* 76b: “We learned: Ammonite - male but not female, Moabite - male but not female. If thus, also mamzer - male but not female!” A similar trend of limitation by sex is also seen in the Tannaim’s interpretation of a wayward and defiant son (*Deuteronomy* 21:18; *m. Sanhedrin* 8:1): “son - but not daughter”, as in the prohibition of impurity (*b. Kidushin* 77a) “He shall not defile himself, as in the text below, males but not females”, etc. It is important to emphasize that according to the Karaites Ammonite and Moabite women are also prohibited. See: A. Bashaitzy, *Adereth Eliyahu*, *Set Nashim* 158c; *Revel* (above, n. 42), p. 93.

not female Ammonite, male Moabite - but not female Moabite".<sup>121</sup> Eventually it was established that there no longer are Ammonites and Moabites since "Senacherib came and mixed up all the nationalities".<sup>122</sup> Rabbi Akiba said explicitly that this rule applies also to an Egyptian, a concept that was ignored in practice.<sup>123</sup> That is to say, the consecutive prohibitions of mamzer, Ammonite, Moabite and Egyptian, to whom were applied the terms "even tenth generation" (or "third") those liminal images,<sup>124</sup> "disappeared" in practice in the legal and intellectual world of the tannaim and their successors the amoraim.<sup>125</sup>

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121 m. Yebamoth 8:3; Sifri Deutoronomy, 249, Finkelstein edition p. 277; b. Yebamoth 69a; 76b; b. Kidushin 75a; p. Yebamoth 8:3, 9c. Also see: L. Ginzberg, *Legends of the Jews*, 5, Ramat-Gan 1975, p. 171, n. 45 (Hebrew).

122 m. Yadaim 4:4; t. Kidushin 5:4; t. Yadaim 2:17; b. Berakhot 28a; and others. It is self-understood that the history of this law cannot be deduced from the Talmudic sources as they are, but it is important to mention that the gradual restriction of the prohibition makes sense from logically reason and from the process approximated in the Talmud. It is possible that the permitting of the conversion of the Edomites is connected to the forced conversion of the Edomites by Yohanan Hyrcanus. See: Y. Klausner, *History of the Second Temple*, III, Jerusalem 1959, pp. 87-88 (Hebrew).

123 t. Kidushin 5:4, Lieberman edition p. 295 (and parallels designated ad loc): "Rabbi Yehudah said: Binyamin an Egyptian convert had a friend among the students of Rabbi Akiva..Rabbi Akiva said to him: Binyamin, you have erred in the Halacha! from the time that Sennacherib came and mixed up the nations", etc.

124 Note that people with this ancestry, also like the various eunuchs, were at the fringe of society and they had a special status that removed them and yet tied them to the society in which they lived. In contrast, according to what is described here, society abolished the vagueness connected to these people as the social boundaries became more clearly "black and white".

125 It is not necessary to fix exact historical boundaries for the processes of the "disappearance" of mamzerim on one hand and of Moabites and Ammonites on the other, for it is reasonable that various groups in the population - whether through ancestry or through geographic location - saw the situation differently. In any case, comparison of those banned from entering the community "even unto the tenth generation" enables us to deduce from one about another and shows a clear trend of restriction and "effecting disappearance".

These opinions appear revolutionary in comparison with Scriptural law. They reflect a significant social change: from a society that identifies mamzerim and ostracizes them to a society that does not identify mamzerim or disregards the phenomenon known as mamzerim. Indeed, in the period of the Mishnah and Talmud, that is, under Roman rule (in the first three centuries of the Common Era), Jewish society was undergoing various changes: transition from a traditional society to a “modern” society, constant growth, wandering from village to city,<sup>126</sup> and exposure to Graeco-Roman culture<sup>127</sup> or society.<sup>128</sup> It also appears that the family structure changed from clan to nuclear family,<sup>129</sup> from a society where ancestry followed the

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126 On the difficulties relative to the link between urbanization and the increase of mamzerim, see Ogden (above, n. 43, p. 11). However, comparative research in various societies and changing conditions shows that the connection is clear though the explanations are not unambiguous (see P. Laslett, Karla Oosterveen and R. M. Smith, above, n. 3, according to the Index: urbanization, and additional places there, such as p. 325). In the name of accuracy it should be said that not only did urbanization in itself cause a change in sexual customs, but the process of urbanization reflects the change in the family unit, a change whose consequence (in the urban environment) was an increase in mamzerim over those in a less mobile society from the geographic-social aspect.

127 On a similar process of a liberal trend in the Roman law regarding one aspect of the mamzer, in the course of the second century, see: B. M. Rawson, ‘Spurii and the Roman View of Illegitimacy’, *Antichon*, 23 (1989), pp. 10-41. For a theoretical treatment of the possibility that the Jews were influenced by Roman law (as strange as it seems at first glance), see: S. Cohen, (above, n. 8) pp. 42-46. In spite of the similarities, the possibility remains of independent internal development of the two different societies, which in the “modern” period restructured some of their parents’ customs.

128 Z. Safrai, ‘The Demographic Increase as a Basic Process in Life on the Land in the Period of the Mishnah and Talmud’, A. Oppenheimer, A. Kasher, and A. Rappaport (eds), *Man and Land in Ancient Palestine*, Jerusalem 1986, pp. 20-48 (Hebrew). Here too it is necessary to admit that the link between foreign rule and the change in attitude towards the mamzer is not unambiguous, but the historical facts point to a number of social changes, some substantial, that occurred to the people of Israel in that period.

129 Z. Safrai, ‘The Structure of the Family in the Period of the Mishnah and Talmud’, *Milet*, 1 (1983), pp. 129-156 (Hebrew).

father to also following the mother.<sup>130</sup> It also appears that additional changes occurred in Jewish society, as can be concluded from, among others, the final splitting of the Samaritans (suspected of being mamzerim) from the community of Israel.<sup>131</sup>

And finally, it should not be forgotten that in the centuries called the “period of the Mishnah and Talmud” the reliance of Jewish society on the priesthood and the Temple decreased - certainly after the destruction, but possibly even before that. The destruction of the Sanctuary caused, if not immediately, the disappearance of the superiority of the priest and presumably at the same time the disappearance of the Ammonite, Moabite and Egyptian strangers at the

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130 Following S. Cohen (above n. 8). Note that since society’s definitions regarding ancestry and “conversion” changed, the definition of the mamzer also changed (even if there was no exact overlap of the various social processes).

131 Kuthim 2:7: “Why are the Kuthim (Samaritans) forbidden to enter (the community of) Israel? Because they mingled with the priests of the altars; Rabbi Ishmael says: Originally they were sincere converts, and so why are they forbidden? Because of suspicion of mamzerim and they do not perform the levirate with a married woman [with betrothal woman only]” (M. Hieger, (ed.), *Seven Small Tractates*, New York, 1930, p. 66). Compare to b. Yebamoth 37a: “The following are doubtful: shetuki, asufi, and kuthi”. It appears that those who see the separation from the Samaritans against a political or religious background forget the social aspect reflected in suspicion of mamzerim. It is worth quoting the citation in t. Ketuboth 4:9 Lieberman edition, p. 68: “Hillel the Elder taught in simple language when the men of Alexandria were taking women in marriage, another man came and grabbed her from the market. The matter came before the sages; they wanted to declare their children mamzerim”. The common feature of the two incidents is in the geographically relative nature of mamzerim from the point of view of the Sages (living in other places). It is understood that the social outlook - definition of the limits of society (read: mamzerim) - has an implication for the setting of the date of separation from the Samaritans. See: Alan D. Crown, ‘Redating the Schism Between the Judeans and the Samaritans’, *JQR*, 82 (1991), pp. 17-50. Incidentally, some see the beginning of the separation from the Samaritans in the deeds of Nehemiah (above, n. 8). If so, the beginning and end of the social division are tied to social problems and their consequence (= mamzerim). See: Jarl E. Fossum, *The Name of God and the Angel of the Lord*, Tuebingen: J.C.B. Mohr, 1985, pp. 32-33.

opposite pole of society.<sup>132</sup> Similarly, as long as the Temple was in place, it was a holy place serving as a perceptible example of purity, and consequently serving as contrast to an impure place (such as the house of impure women and the house of a mamzer). Indeed with the destruction of the Temple, when one religious pole was destroyed, the other religious pole disappeared, albeit gradually. In this way the destruction of the Temple influenced both the development of the Halacha (law) and the development of society as well. These two faces of reality reflected each other and in both instances the gaps diminished: socially priest and mamzer both lost their importance and their polarization in the religio-social area, one at the positive pole and the other at the negative pole of society.<sup>133</sup>

As is known, in the world of the sages of the Mishnah the status of a sages knowledgeable in Torah rose, even if he was a mamzer; in the words of the sages. A mamzer who is learned takes precedence over a High Priest who is an ignoramus” (m. Horayoth 3:4; t. ibid, 2:6).<sup>134</sup>

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132 It is understood that the destruction of the Temple removed the basic cause for the establishment of the socially stratified arrangement presented above. The priests were no longer the focus of power, honor and wealth; no longer was there a social hierarchy similar to that at the time of the Temple. Consequently, there was no barrier to acceptance of a mamzer as equal among equals, in a world in which the only criterion (almost) was knowledge of the Torah (more below).

133 In practice, from the Halachic point of view, the priests also “disappeared” as they were defined, in the time of the Geonim, as lacking ancestry (and therefore not receiving the privileges of the priesthood). See: Y. Blau (ed.), *Responsa of Maimonides*, II, Jerusalem 1960, pp. 718-720 (Maimonides is based on the Geonim). Even if there is no direct connection between the disappearance of the priests (marked positively) to the disappearance of the mamzerim (marked negatively), we seem to be dealing with a similar social phenomenon of the shrinking of the gaps between levels of society.

134 The Sages also included mamzer in the count of seven who go up to the Torah (t. Megillah 3:11, Lieberman edition p.356), the opposite of the opinion that Torah is not taught to mamzerim (note the sources are not to be separated into matters of thought on the one hand, and matters of law on the other, since these subjects are intertwined). Similarly the Tannaim established that a mamzer can be a member of the Sanhedrin (m. Horayoth 1:4) and to be a judge (but not in capital cases; m. Sanhedrin 4:2). See: E. A. Finkelstein, ‘A Difficult Beraita Shedding Light on the History of the Sanhedrin’, PAAJR Jubilee

Thus the society represented in the tannaitic law established a new set of relationships: neither family relationship nor priesthood and the Temple is significant but talent in knowledge of Torah is recognized. In other words, the high ancestry of the priest on the one hand or the low ancestry of the mamzer on the other declined in importance in favor of a new social standard: Torah and wisdom. In other words, the change in attitude of the tannaim towards the mamzer on the one hand and towards the High Priest on the other informs us of the “modernization” of Jewish society in Palestine (to the extent that the tannaim represent it). This modernism finds expression in the recognition of personal ability, of the individual,<sup>135</sup> disregarding ancestral group and, in definite measure, of tradition.<sup>136</sup>

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Volume, 46-47 (1978 - 1979), Hebrew section, pp. 97-109. It is self-understood that in a society in which ancestry counted, a mamzer could not be accepted for any of the functions listed above. From the sociological point of view we can say that a society resting on ancestry, like any traditional society, discarded the old scale of values (resting on the Temple, see below) and established a new scale in the image of Torah.

135 The rise of the individual as against the traditional society in which the individual is one of a relationship group is seen for example in the fact that the sectarian literature from Qumran does not include the names of its members: all are anonymous just as their “uniforms” make them anonymous. In contrast, the mishnah of the Tannaim maintains attribution of opinions to the various Tannaim, such as: “Rabbi Ploni says” (except for a limited number of tractates). Also see A. Baumgarten (above, n. 31) p. 58; E. Rivkin, ‘Pharisaism and the Crisis of the Individual’, JQR, 61 (1970), pp. 27-53.

136 Also compare to the citation in b. Pesahim 49b: “The Rabbis learned: A man should sell all his possessions and marry a daughter of a sage; if he did not find a daughter of a sage - he should marry a daughter of the great ones of the generation”, etc. From this beraita we see the following social hierarchy: sage - great one of the generation - the head of the assembly - the treasurers of charity - a teacher of children - an ignoramus (see: A. E. Halevy, Values in the Legends and the Law, I, Tel-Aviv 1979, p. 117 [Hebrew]). I could not find an additional source that anchors this legal suggestion in the reality of life (that is to say, the people and their functions were real but the internal division and gradation were only in the imagination of the Tanna, like the establishment of the marriages sought). Also see: p. Berakhot 3:1 6a (unlike b. Ketuboth 8b) mentioning “cantor of the assembly - head of the assembly - Rabban Gamliel (=great one of the generation)”.

It appears that the inability of the society to cope with the problem of mamzerim in line with ancient practice as reflected in the Scriptural law (with its various broadening interpretations) reflects the crumbling of the social institutions. The inability to inflict punishment on trespassers of the law (read: social norms) expresses the inability of the society to continue in the accepted way at the time that the old world disappeared (and even was ruined). Under foreign rule the traditional society lost its power of coercion and so in practice the society adjusted itself to its new status: a less harsh attitude towards the group and the individual.<sup>137</sup>

In addition - and in light of examination of data on the change in the number of mamzerim in non-Jewish society under various historical conditions<sup>138</sup> - it can be assumed that the limiting of measures taken against mamzerim derived from the increase in the number of mamzerim in

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137 Similarly the modern religious congregation ceased to ostracize those who left it (except for those holding fanatical and extreme opinions, like those who plastered homes of mamzerim in ancient times). Such a lenient social approach can also be seen in the change of the attitude of society towards the child and improvement in his status compared to his status in the society of the Biblical period. See: M. Bar-Ilan, "'Childhood' and Its Status in the Biblical and Talmudic Society', *Beth Mikra*, 40/140, (1995), pp. 19-32 (Hebrew).

138 However, the definition of a mamzer differs in Jewish Rabbinic society and in Christian or pagan society providing "parallel" data (the definition of the mamzer in the various cultures overlaps only partially). Nevertheless, regarding the matter under discussion here, it should be remembered that despite differences between societies there are similarities: 1) In every instance we are dealing with children born in defiance of the social-legal-religious norm; 2) In specific instances children born from the same kinship relationships can have the status of a mamzer in Christian (or Karaitic) society but not in Jewish society (such as marriage of an uncle to his niece, marriages of cousins). In other words, the "red line" determining mamzerim hinges on violation of the law without dependence on the actual details of the law (the evidence: the dispute of the Tannaim regarding the definition of the mamzer). In any case, it is clear that one cannot learn superficially about the mamzer in one religion or culture from the mamzer in another religion. Further investigate Ogden's book (above, n. 43), pp. 1-28.

society.<sup>139</sup> If, for instance, in the pre-Talmudic period (designated “scriptural”) there were “illegal” children, read: mamzerim, their number was so scanty that it was possible to apply social sanctions against them (as punishment of their parents and as deterrent against potential transgressors). But “When the adulterers increased” (m. Sotah 9:9), the number of mamzerim also increased and it was no longer practical to maintain means of social segregation, since contacts with mamzerim in their great relative number was unavoidable (especially when Torah intellect was considered superior to ancestry). However, whether or not the number of mamzerim increased, it seems society sensed that its ranks were weakening and consequently the means of punishment lost their social power and disappeared for the most part.<sup>140</sup> Society’s

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139 This estimated increase of the mamzerim in society is strengthened by another phenomenon: the change in the age of marriage. In another place it will become clear that in the Talmudic period the age of marriage declined compared to the preceding period [See: A. Schremer, ‘The Age of Marriage of Jewish Males in Palestine in the Period of the Second Temple, the Mishnah and the Talmud’, *Zion*, 61 (1996), pp. 45-66 (Hebrew)]. And so, according to research performed in England a relationship was established between the increase in the number of illegitimate children (not necessarily mamzerim) and the change in the age of marriage. That is to say, with the decrease in the age of marriage - the number of illegitimate children increases; conversely, with the increase in the age of marriage the number of illegitimate children decreases. See: P. Laslett, ‘Introduction: comparing illegitimacy over time and between cultures’, P. Laslett, Karla Oosterveen and R. M. Smith (eds.), *Bastardy and its Comparative History*, (above n. 3), pp. 1-68 (esp. pp. 22, 59). Note that this “paradox” - only apparent - is documented in research relating to various societies, as noted by Ogden (above n. 43) p. 12, n. 30.

140 The sense of the distinction of social institutions is seen in the many times the Tannaim, in the Mishnah and the Tosefta, pointed to legal changes resulting from changes in patterns of behavior. An example is in m. Sotah 9:9: “From the time that the murderers increased - the ritual of the heifer with the broken neck was abolished; ...from the time that the adulterers increased - the ordeal by bitter waters was stopped”. Similarly the Tannaim said in the t. Sotah 14, Lieberman edition pp. 235-238: “From the increase of murderers... from the increase of adulterers... from the increase of pleasure seekers... from the increase of judges showing preferences... from the increase of taxes over householders... from the increase of those who accepted your favor... from the increase in each person doing as he sees fit”, etc. Similarly in m. Sheviit 4:1 and m. Shekalim 1:2: “From the

revised way of coping with the problem of mamzerim, not in accordance with the strict that social norms of traditional society, reflects broad changes in society and perhaps even a change in sexual behavior but this matter is outside the present discussion.<sup>141</sup>

### Summary

In antiquity mamzerim were segregated from birth from the general Jewish society in many areas: dwellings, studies, marriage, etc.<sup>142</sup> Society saw these people as outcasts because of the sin of their parents: consequently mamzerim could not be integrated in society in any way. Nevertheless, since it was established that “Sons shall not be killed because of (the sins of) their fathers” and as a consequence of the presumed social change, the means of society’s punishing of mamzerim continually diminished. Thus mamzerim were more readily integrated into society, though the prohibition of marriage to them remained in force. That is to say, the social stratification based on ancestry continually weakened as can be seen from

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increase of transgressors”, and in t. Maaser Sheni 4:3 Lieberman edition p. 263: “From the increase of cheaters”. Clearly all these statements cannot be attributed to inner feelings alone but they are anchored in the crumbling reality of rule and society. In light of this one has to see the increase in the number of sinners, murderers, adulterers (and mamzerim) as a process that led to abolition of the ancient practice of breaking the neck of the heifer (capital laws), the ordeal of the suspected wife, and also punishment of the adulterers and their mamzer child (or adoption of sanctions against him).

<sup>141</sup> Indeed a number of attempts have been made along these lines. See for example David Biale, *Eros and the Jews: From Biblical Israel to Contemporary America*, New York: Basic Books, 1992; O. Kiefer, *Sexual Life in Ancient Rome*, London 1969.

<sup>142</sup> An informative example of the infinite possibilities for society to punish the mamzer and his parents is in the description (though belated) of the child of an unmarried mother (that is to say, one who is not a mamzer according to the Jewish norms, but illegitimate according to the position of the Church). See: Y. Hoffman, “‘Book of Mohalim (Ritual Circumcisers) of Lower Franconia from the Years 1814-1868’, *Jerusalem Researches in Jewish Folklore*, 11-12 (1989-1990), pp. 152-157 (Hebrew). On assigning special names to mamzerim or those with questionable ancestry, see Sarah Munitz, *Personal Names - Custom and Law*, M.A. Thesis Submitted for Bar-Ilan University, Ramat-Gan 1989, pp. 60-63 (Hebrew).

the narrowing of the exclusive characteristics of the priests on one hand<sup>143</sup> and abolition - even if only partial - of the discrimination against mamzerim on the other. It is presumed that the diminution in the number of means of social segregation resulted from various factors and at the head of the list: destruction of the Temple and the weakening of the social frameworks as well as the relative increase in the number of children born of forbidden liaisons. These social phenomena reflect additional deep changes in Jewish society at the end of the Second Temple and the first centuries of the Common Era.<sup>144</sup>

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143 This subject is treated in: M. Bar-Ilan, The Polemic between Sages and Priests in the Final Days of the Second Temple (above, n. 18). It is clear that with the lowering of the priesthood from its top status in society and the raising of the mamzerim from their status, the society or the sages representing the society in their laws made a huge stride of social “equalization” (that could be labeled “democratization” but this label is not entirely exact).

144 For the continuation of the process of increasing Halachic leniency regarding mamzerim in the Middle Ages, see: S. M. Passamaneck, ‘Some Medieval Problems in Mamzeruth’, HUCA, 37 (1966), pp. 121-145. For a similar phenomenon in Christian society, see: M. Harsegor, ‘Fortunate Bastards’, Zemanim, 1 (1979) pp. 26-33 (Hebrew).