"IS SHE FORBIDDEN OR PERMITTED?" (bSANHEDRIN 82a):
A LEGAL STUDY OF INTERMARRIAGE IN CLASSICAL JEWISH SOURCES

by

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This longitudinal and comparative study explores the nature and development of rabbinic thought on intermarriage. One could hardly phrase the query that lies at the heart of this work better than the Talmud itself: "Is she forbidden or permitted?" (bSanhedrin 82a). This challenge, posed to Moses as part of an exegetical exploration of the problem of intermarriage, asks so much more than whether an Israelite might marry a Gentile. It points to conflicts between biblical law and narrative, biblical and rabbinic law, as well as incompatibilities within rabbinic halakhah. The issues of status, national identity and gender loom large as the various legal and narrative sources on intermarriage are set on an hermeneutic collision course. In this way many rabbinic sources display a deep understanding of the complexity inherent to any discussion of intermarriage in rabbinic tradition. Considering intermarriage as a construct that lies at the intersection between identity and marital rules, we begin this study of rabbinic legal systems with an analysis of the notion of intramarriage and Jewish identity in halakhah as expressed through the
system of the asarah yuchasin (ten lineages). Discussion of various systems dealing with intermarriage follows, including qiddushin (Jewish betrothal/marriage) and the status of the offspring of intermarriage, the concept of the qahal (congregation of God), the arayot (levitical incest laws) as well as the individual legal rules related to marriage and sexual relations between Jews and Gentiles. The role of narrative in the representation of case law and rabbinic engagement with these legal systems forms an integral part of our analysis of the law. The overall conclusion of the dissertation is that rabbinic approaches to intermarriage were characterized by multiplicity and diversity. Rabbinic tradition engaged with the issue of intermarriage through a wide variety of often unrelated and incompatible legal systems. Furthermore, it is apparent that conflicting attitudes towards the interpretation and implementation of these rules are represented in both tannaitic (c. 70-200 C.E.) and amoraic sources (c. 200-500 C.E.), such that several key problems related to intermarriage in early rabbinic tradition remain unresolved.
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For Sarah

In memory of:
Dr. Diane Kriger, scholar, mentor, friend

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Table of Contents:

Transliteration Guide p. vi
Glossary of Terms p. vii
Preface p. x
Introduction p. 16
Chapter 1 p. 71
Chapter 2 p. 131
Chapter 3 p. 188
Chapter 4 p. 228
Chapter 5 p. 268
Conclusion p. 317
Bibliography p. 325
Transliteration Guide:

Transliteration of terms attempts to stay as close as possible to the original Hebrew. Accurate pronunciation is the primary aim, and so ayin and aleph are represented only by their accompanying vowel sounds, tet and tav are both represented by t, and samekh and sin are both represented by s. Particular letter combinations are used to represent certain letters as follows:

\( h \) represents \( ה \) (heh)
\( ch \) represents \( ח \) (chet)
\( y \) represents \( י \) (yod consonant)
\( kh \) represents \( כ \) (khaf)
\( k \) represents \( כ \) (kaf)
\( q \) represents \( ק \) (qof)
\( ts \) represents \( צ \) (tsade)

Abbreviations:

mQiddushin = Mishna
tQiddushin = Tosefta
bQiddushin = Babylonian Talmud
yQiddushin = Palestinian Talmud
d.h. = dibbur hamatchil (=s.v.)
Glossary of Terms:

*aggadah* - narrative traditions and sources - these may be stories regarding rabbis or legal cases, or may be purely *aggadic*, in the sense that they present narrative explication of narrative biblical material

*amah ivriyah* - a Hebrew (i.e. Jewish) female maidservant

*amoraic* - the later period of rabbinic Judaism c. 200-500 CE (preceded by the *tannaitic* period). Primary works include the Palestinian and Babylonian Talmuds, though these also contain earlier material from the *tannaitic* period.

*arayot* - the sexual laws of Leviticus 18 and 20, prohibiting incest and some other sexual acts such as relations with a menstruant and bestiality

*asarah yuchasin* - ten lineages - the ten Jewish castes said to have returned to Judah from exile Babylon.

*aveirah* - transgression - in this context referring to a marriage that violates a particular legal rule

*boel aramit* - "one who has intercourse with an Aramean woman" - this law is included in mSanhedrin 9:6, which allows for zealots to kill the Jewish man who is having sexual relations with a Gentile woman. Also referred to as *boel nokhrit* (a foreign or Gentile woman) and *boel kutit* (a Samaritan woman)

*chalitsah* - the ritual that releases a man and his *yevamah* (sister-in-law) from the bond of levirate marriage

*d'rabbanan* - "of the rabbis", indicating a rule that is of rabbinic, rather than biblical, origin.

*ervah* - nakedness - referring to a forbidden sexual partner under the *arayot*

*eshet av* - the case of the father's wife (with whom the son is forbidden from having sexual relations in Deuteronomy 23:1)

*gemara* - the talmudic commentary on the Mishna

*gezeirah* - a legal decree enacted by a Jewish court of law

*halakhah* - Jewish law - usually referring to legal issues and sources as opposed to *aggadic* sources. May also indicate a single law or rule (*a halakhah*) or many legal rules (*halakhot*).

*halakhah lemoshe misinai* - a type of law given to Moses while in the Sinai that was not included in the written Torah. Such a law is understood to have been passed down orally through the generations of rabbis, and thought to be impossible to derive or interpret from existing material in the written Torah.
issur - prohibition

karet - excision (a divine punishment rather than a punishment at the hands of a human court)

mamzer (m.), mamzeret (f.), mamzerim (pl.), mamzerut (abstract), as in illegitimacy - one of the castes of the asarah yuchasin, this is the offspring of a marriage defined by the rabbis as transgressive, though the precise details are in dispute, usually a child of adultery or incest, and sometimes a child of intermarriage between a Jewish woman and a Gentile man. Frequently translated as "bastard" or "illegitimate" offspring (though such translations are misleading, as an unmarried woman's child is not a mamzer unless it is from an incestuous, adulterous, or perhaps an intermarital relationship).

middot - middah (sg.), exegetical, hermeneutic rules by which the Torah is explicated

mishnayot (pl.) - mishnas (mishna sg.), indicating several entries or laws from the Mishna

mita bidei shamayim - death at the hands of heaven (as opposed to mitat beit din, capital punishment at the hands of a Jewish court)

molekh - Leviticus 20:1-5 bans the passing of one's seed over to the Molekh.

mutarin lavo zeh bazeh - "permitted to marry each other" - individuals from the listed groups are allowed to marry each other as opposed to asurim lavo zeh bazeh - "forbidden to marry each other"

natin - the "one who has been given" (netinim pl.). one of the castes of the asarah yuchasin, usually understood to be descendants of the Gibeonites who are consider to have been false converts to Judaism

niddah - menstruant, menstrual impurity

qulah - a legal leniency, also heter/ah (as opposed to a chumrah or stringency)

savar leh k'rabanan - "he held like the rabbis," i.e. this rabbi agreed with the position of the sages (i.e. the majority opinion) on this particular point

sotah - the suspected adulteress (Numbers 5:11-31)

qahal - Congregation - often referring to the core castes of Jewish identity, the kohen (kohenet, or bat kohen f.) levi (leviyah or bat lev f.) and yisrael (yisraelit or bat yisrael f.) and sometimes ger (gioret f.), convert.

qanaim - zealots or "jealous ones," who may act as independent vigilantes in an extra-judicial manner
qiddushin - Jewish marriage - or more properly, betrothal, also referred to as eirusin, the first stage in Jewish marriage (inchoate marriage). This term is often used to refer to Jewish marriage in general, including the ability to legally contract such a marital bond. Mequdeshet, the state of a woman who is a party to qiddushin.

gedushah - holiness, often in opposition to issur

sheniyyot - secondary arayot - additional degrees of incestuous relationships (over and above the biblical arayot) prohibited by rabbinic law

tumah - ritual impurity

pesulah (f.), pasul (m.) - unfit, often unfit to marry into a certain group

pesulah lakehunah - unfit to marry into the priesthood (or class of kohen)

qal vahomer - an a fortiori inference.

sugya - a passage in the gemara in either of the Talmuds

shifchah - a female Gentile slave

shomeret yavam - a woman who awaits marriage (or release through chalitsah) to her deceased husband's brother through levirate marriage (yibbum)

tannaitic - the early period of rabbinic Judaism c. 70-200 CE, primary works include the Mishna and Tosefta

terumah - heave offering to be consumed only by priests, their families and slaves in a state of ritual purity

tofsin - taking legal effect - as in the case of a marriage which can be contracted (or is valid) which is considered tofsin, as opposed to one that cannot be contracted (or is invalid) that is considered lo tofsin

yefat toar - a beautiful captive woman - the law in Deuteronomy 21:10-14 allows for a soldier in wartime to take captive a woman whom he finds attractive

yibbum - levirate marriage - the marital bond between a childless man's widow and her deceased husband's brother (Deuteronomy 25:5-10). Yavam, the male (deceased husband's brother); yevamah, the female (deceased husband's wife)
Preface

The first inspiration for this project arose as I was reading through the exegesis of Leviticus 18 in Sifra Acharei Mot. In the midst of all the talk of the deeds of the Canaanites and the Egyptians, to be avoided at all costs, and the laws against incest and adultery, I found myself thinking about intermarriage. Taken aback at the thought, I paused and wondered to myself why the topic of intermarriage would have occurred to me at all in this context. As it turned out, quite unaware, I had been reading verses about intermarriage, interpolated with exposition of Leviticus.

Sifra had successfully managed to associate intermarriage with the deeds of the terrible other, with the arayot and their sexual crimes, at least in the mind of this reader. The question that lingered for me was why? Why would the midrash have chosen to weave intermarriage into this fabric? Was there a need to associate intermarriage with other prohibitions in order to highlight the issue, emphasize its severity or bolster the solidity of the ban against it? Where was the prohibition of intermarriage located, and why was Sifra trying to put it here? It was thus that this unique and unusual midrash instigated what would become this exploration into the rabbinic legal engagement with intermarriage.

As I continued my research, I was curious as to whether I would find similarly complex and multi-layered treatments of the topic of intermarriage elsewhere in the legal literature and I was not to be disappointed. This study has demonstrated, in support of recent scholarship countering the reductionist and essentialist perspectives on Jewish marriage and identity, that the notion of a single, linear prohibition of intermarriage, sourced in the Bible and consistently and methodically developed through rabbinic literature and
into the medieval codes, is a fiction.

The analysis of the various legal systems and rules through which the rabbis engage with the issue of intermarriage clearly shows that there is no single concept of intermarriage in rabbinic literature, and that the kinds of language, terminology and interpretive approaches used to describe it and understand it are highly variable. Likewise, I have found that there is no single system or rule that regulates intermarriage, and it follows that one cannot speak of one particular universal rabbinic position on the question.

Furthermore, these legal systems form an integral part of broader systems regulating identity through marital rules. The asarah yuchasin, the qahal and the arayot are sets of rules related to marriage and sexual relations that govern access to constructed identity categories of various kinds, including those we might consider "Jewish," those we might consider "Gentile" and others that lie in between. Rabbinic tradition is clearly very concerned with lineage and personal status, and intermarriage between Jews and Gentiles is only one of the issues that arises in the discourse. Discussions of intermarriage in rabbinic sources are thus intimately connected with other marital rules and problems of identity, caste and hierarchy.

There does not appear to be any particular caste reserved for the intermarried or their offspring and the status of the children of intermarriage has proved to be a challenging case for the sources. Once again for our analysis we have turned to the systems that serve to determine the status of offspring generally. These descent systems have varied origins and stem from different stages in the development of Jewish identity, ethnicity and nationhood, such that we find a core patrilineal system, modified by a bilineal system that transmits any genealogical blemish to the offspring, which are in turn competing with an apparently
matrilineal descent rule. The special cases of the chalal and the mamzer further complicate the situation. There is evidence of some debate regarding the status of the child of a Gentile woman and a Jewish man in the tannatic sources, and ample evidence of unresolved disagreement regarding the status of a Jewish woman and a Gentile man through to the latest talmudic layers.

Underlying this legal limbo, we find a conflict between these descent systems, as well as a struggle between a desire to accept the offspring of a Jewish woman and a Gentile man as a full, fit Jew (or perhaps as some particular caste) that is linked to a deep discomfort with the integration of the offspring of intermarriage into the qahal. The fact that such an offspring, when considered Jewish and not a mamzer is merely called fit, rather than yisrael or qahal, is an example of how there is no real articulated place for this child in the system of the asarah yuchasin or the qahal. This disjunction between the segmented descent groups of the asarah yuchasin and the generalized abstracts of Jew and Gentile makes it even more difficult to determine the actual status of such offspring within the wider hierarchy.

While some of the rabbis might have wished that there existed a clear general prohibition of both intermarriage and sexual relations between Jews and Gentiles, this study agrees with recent scholarship that the rabbinic sources themselves display an awareness of the lack of any such rule or system. Instead, the sources grapple with disparate systems and rules that are never properly integrated. Some sources, notably the Babylonian Talmud, attempt to construct an evolutionary legal history for the development of ever more restrictive and all encompassing rules regulating marriage and sexual relations between Jews and Gentiles, in the process only revealing a lack of clarity and confidence in their
project.

There is no sole origin for a single prohibition of intermarriage in rabbinic literature; it has no fixed location. Instead, rabbinic sources used various rules related to different types of intermarriage and sexual relations, which were all constructed in different ways. Considering just one, or even a few, of these as representative of the rabbinic approach to intermarriage would be akin to insisting that a single tiny triangle of a kaleidoscope represents the whole moving image. This project thus fills out the picture of the variety of ways in which the rabbinic sources deal with intermarriage.

Perhaps the most interesting finding is revealed in the narrative legal sources, in the Babylonian and Palestinian Talmuds, which tell stories about the law and the rabbis as legal authorities. These provide us with valuable insight into the perspective of the rabbi as he tries to live between reality and his *halakhah*, within the framework of the legal legacy of which he is the inheritor. These legal *aggadot* consistently reveal, in the case of almost every system and rule, a remarkable awareness on the part of the rabbis of the fallibility of their *halakhah* and of the impracticality and challenges of enforcing it in the real lives of actual people in society. These sources are replete with self-doubt, insecurity and a sense of a lack of agency. This study has proven that they embody a sense of embarrassment, as per Fox and Bloom, on the part of the rabbis with many of the laws related to intermarriage.

Furthermore, the narrative legal material indicates a profound struggle between conflicting approaches to dealing with intermarriage and lineage problems in the real world. We find a gap between theory and practice, as well as disagreement on the matter of how to interpret and implement the law in practice. A whole range of methods exist, from maintaining and enforcing the received tradition, to negotiating the discord between the two,
to abandoning the legal legacy in the face of reality. If the formal legal treatment of intermarriage is complicated, how much more so the moment of meeting between rabbi and person, between law and life. So it is that the individual seeking a certain ruling, a clear judgment, before a great sage, often is faced with uncertainty and ambiguity, and in the absence of any effective resolution, at least in one case, meets his own death. Following Haninah Ben Menachem, we may say that the person in question in not always entitled to a uniquely correct legal answer, due to the existence two equally authoritative and/or persuasive but conflicting opinions.\(^1\) The legal doubt is at times so profound that it may be neither repressed nor resolved, and that even when a sage clearly follows a particular ruling or approach, the correctness of the ruling may be questioned and the ability of the sage to enforce or even speak of his position emphasizes the sages' inability to act as authoritative interpreter of the law.

The situation of the rabbis described in these sources stands in sharp contrast to the notion that rabbinic tradition has always confidently held and enforced a clear general prohibition of intermarriage. Behind these opposing analyses lie two understandings of rabbinic *halakhah*: a multiplicity of voices often endeavouring to engage with the real world, as opposed to a single legal authority enforcing its judgment on its subjects.\(^2\) Robert

\(^1\) Hanina ben Menachem, "Is there always one uniquely correct answer to a legal question in the Talmud?" *The Jewish Law Annual* 6, 1986* pp.164-175. See p. 9 for this discussion of legal doubt between two opposing opinions, sages or traditions. Menahem also states that providing an "authoritative interpretation of the law" is a "main function" of the court (p.175). Ben Menahem focuses his analysis on cases involving litigants in dispute regarding a behavioural issue, though I would suggest that his general theoretical treatment of the *halakhah* may also be applied to issues of status.

\(^2\) Hanina Ben Menahem warns against understanding the multiplicity and diversity of positions in the *halakhah* as evidence of its true plurality. He argues that the variety of the law and its presentation is countered by a prevailing negative attitude towards dissent and disagreement (*The Jewish Law Annual* 6, 1986* p.6-8). I would suggest that despite this
Cover writes of two such legal extremes as he posits, on the one hand, a hypothetical Herculean legal interpreter or judge, to which we might link some of the strictly legal literature and the medieval codes, and on the other hand, flexible, pluralistic legal authorities, which might be compared to the situation expressed in our narrative legal sources. He writes,

The single decision of a hypothetical Hercules is likely to be more articulate and coherent than the collective decision of many judges who may make compromises to arrive at that decision.

Our legal narratives thus not only provide a connection between the systems of rules and the world in which people lived, they are a literary expression of an active, responsive, engaged legal process. The natural direction for the next stage of this project, already underway, is to consider the purely aggadic material, that is stories about stories (rather than stories about or primarily concerned with law). As an interpretive process, the aggadah develops in relation to narratives in the biblical layer, in concert with a wide range of later narrative traditions and legal discourse. It follows that the genre deals with a wide variety of traditions about intermarriage that are largely ignored in the legal discourse.

attitude, and even though dissent can have a negative impact in our sources, a true rejection of dissent would not be likely to result in the preservation of a variety of dissenting opinions.

5. Cover, Nomos and Narrative, p. 5.
These stories have the potential to reveal additional layers of rabbinic engagement with the issue that might otherwise remain obscured in any study dealing solely with legal texts. Through this analysis of the *aggadah* I aim in the future study to determine the nature of these rabbinic responses to the issue of intermarriage, in particular attitudes and perspectives in the rabbinic imagination, and to that end will focus upon interpretive approaches and attitudes in the *aggadah*.

In dealing with the issues of intermarriage, lineage problems and descent rabbis find themselves caught and struggling in a web of systems and rules that frequently leaves them uncomfortable, disempowered, alienated or ineffective, while their legal and narrative subjects are all too often left in legal limbo. It is perhaps no small wonder that modern scholarship has been tempted to construct a neat, single, definite, decisive and everlasting rule for the prohibition of intermarriage, in the face of all that is messy, multiple, uncertain, unresolved and ever-changing. If the Babylonian Talmud's question, "Is she forbidden or permitted?" is a good one, then perhaps the truest and best rabbinic answer is "it depends" or even none at all.

6. bSanhedrin 82a.
Introduction

According to bSanhedrin 82a Zimri stands before Moses, an Israelite who has a question for his leader. Zimri desires a Midianite woman named Kozbi, and has grabbed her by the hair and brought her to his people. His question seems a simple one, “Is she forbidden or permitted?” Zimri poses this query just before he begins to have sexual relations with Kozbi, an act for which they will both be killed by a priest named Pinchas. As Moses and his challenger, Zimri, are brought face to face, the exegete brings the reader to the very intersection of a rather chaotic host of legal systems and rules. Kozbi is not the only Midianite woman in the picture, for Moses remains married to his Midianite wife, Tzipporah, and Zimri’s killer, Pinchas, is understood to have Midianite heritage. The man with a Midianite wife, Moses, is left speechless as Zimri’s question rings in the air, leaving the man with a Midianite mother, Pinchas, to kill him in a vengeful rage. Once Zimri and Kozbi are stabbed through with a spear, the voice of the divine praises the killing, one rabbinic rule canonizes it, while no biblical law forbids relations with a Midianite woman, and no other rabbinic or biblical tradition allows for execution in cases of relations with a Gentile woman.

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7. This version is a narrative re-working of Numbers 25 that also refers to the law of the boel aramit (one who has sexual relations with an Aramean woman) in mSanhedrin 9:6.
8. See bSanhedrin 82b. According to Exodus 6:25, Eleazar, son of Aaron and father of Pinchas, married a daughter of Putiel. This verse provides no information about Putiel, but Exodus Rabbah 27:7 (also Targum pseudo-Jonathan to Exodus 6:25 and bSotah 44a) identifies Putiel with Jethro, a Midianite. See Numbers 25:11-13 where the divine speaks well of Pinhas' act and promises him an eternal priestly covenant. mSanhedrin 9:6 allows for qanaim (zealots) to kill a Jewish man who for having sexual relations with a Gentile woman. The source of this mishna is not entirely clear, but it is often linked to Pinhas' act in Numbers 25. See Chapter 5 for a detailed discussion of these issues.
9. A rule allowing for the formal execution by the beit din (Jewish court of law) for relations or marriage between Jews and Gentiles is nowhere in evidence. mSanhedrin 9:6
This challenge posed to Moses asks so much more than whether an Israelite might marry a Gentile, and has no easy single answer. It forms part of the rabbinic exegetical exploration of the problem of intermarriage, pointing to conflicts between biblical law and narrative, biblical and rabbinic law, as well as incompatibilities within rabbinic halakhah. This rabbinic midrash displays a deep understanding of the complexity and contradiction inherent to any discussion of intermarriage in rabbinic tradition. The issues of status, national identity, gender and authority loom large as the various legal and narrative sources on intermarriage are set on a hermeneutic collision course.

The problem of intermarriage in halakhah is one that cuts to the heart of key questions related to Jewish religious and ethnic identity, the nature of Jewish law and boundaries and interactions between Jews and Gentiles. This dissertation explores the problem of the nature of the rabbinic engagement with and construction of intermarriage. Otherwise put, what is the rabbinic position on, language for, and attitude towards the issue of intermarriage? Central questions that are raised by an examination of this problem include: What is the rabbinic construction of intermarriage, of Jew and Gentile, self and other and even more broadly, of status, lineage, identity and the marital connection? When we speak of intermarriage in rabbinic tradition, what do we mean? Are rules related to intermarriage divorced from or connected to marital rules and hierarchies within Jewish identity? How do we relate to the construction of the status of the children of intermarriage? How do we understand and locate the development of a general prohibition of intermarriage calls upon zealots to kill the man engaged in sexual relations in a vigilante extra-judicial framework. See however, Maimonides Hilkhot Issurei Biah 12:9-10 who adds an apparently new law calling for the killing of a Gentile woman who has had sexual relations with a Jewish man (the traditional commentators struggle with the apparent novelty, see Magid Mishneh, Yad HaMelekh and Osher LaMelekh to Issurei Biah 12:10).
in rabbinic tradition?

This Talmudic question, "is she forbidden or permitted?" assumes that intermarriage is a complicated and problematic issue. The midrash from which it springs never provides a definitive answer, and the various responses in the Talmuds demonstrate a wide range of approaches to the problem. This reveals an intimacy with the complexity of the biblical and rabbinic sources that is not always found in modern scholarship on intermarriage. There is a body of work on intermarriage that has tended towards a reductionist and homogenizing view of intermarriage in biblical and rabbinic tradition, providing the reader with a simplistic answer that does a disservice to the complexity of the rabbinic sources in its superficiality. Spurred by modern panic regarding intermarriage rates and a related concern regarding the continuity or survival of Jewish identity and population,11 such scholarly

11. The so-called crisis of intermarriage and continuity is generally perceived as a major issue in contemporary Judaism. Encyclopaedia Judaica’s entry on “Mixed Marriages”, for example, begins with the following heading, “The Meaning Of Intermarriage Rates: The Problem Of Jewish Survival” and notes that “there is a widespread belief that a high rate of Jewish intermarriage in a given locality leads to the disappearance of the Jewish community there” (p. 373, Rosenthal). Another piece in the same entry reads, “Many observers consider the recent trends in Jewish family formation with great concern and a leading factor in the quantitative and identificational erosion of Jewish population. Others view the same trends as an opportunity for community growth and expansion. Both approaches may be using sophisticated theories, concepts, and analyses, and interestingly, the same data. The main debate revolves around the paradigms of Jewish assimilation and erosion versus resilience and revival” (p. 382, DellaPergola). That is, while there is disagreement as to the ultimate outcome of the current situation, and the best form of response to it, intermarriage is universally perceived as a potential major threat. Statistically speaking, DellaPergola notes further that “the worldwide average level out-marriage rate passed from 5% around 1930 to 31% around 2000. The same average computed for Jews in the Diaspora only, without Palestine/Israel, passed from 5% in 1930 to 48% in 2000. While this quite dramatic increase underscores the nearly irreversible trend toward social integration and acceptance of Jews among general society, it should be stressed that the rising share of Israel and the parallel shrinking of the Diaspora in the world Jewish population tends to reduce significantly the world out-marriage average” (p.383). (Rosenthal, Erich, Ben-Zion Schereschewsky, Mervin Verbit, and Sergio DellaPergola, "Mixed Marriage, Intermarriage" in Encyclopaedia Judaica, eds. Michael Berenbaum and Fred Skolnik, Vol. 14. 2nd ed. Detroit: Macmillan Reference USA, 2007 pp. 373-385.)
analysis is often tainted by a crippling bias.

The inadequacy of this response to what appeared to me to be an unusually complicated problem in the rabbinic sources was part of the inspiration behind this project. One hallmark of this type of scholarship is the emphasis on the significance of the prohibition of intermarriage, either in terms of its centrality to Jewish law or with respect to its connection to the survival of all things Jewish. The prohibition of intermarriage has thus been characterized as “the bedrock of Jewish ethnic identity,” a prohibition of an act so terrible that “among Jews no practice is more widely abhorred than is intermarriage.” In such works, intermarriage is often considered to be synonymous with idolatry so that the belief in an eternal prohibition of intermarriage becomes crucial to the defense of monotheism. Jewish identity and Jewish monotheism are thus predicated upon the

Two early articles that offer a different perspective on the issue include, Leonard Fein’s “Some Consequences of Jewish Intermarriage” in Jewish Social Studies, 33 (1971) 44-58. Fein notes that any apparent increase in intermarriage rates was received by Jewish communities as a "sign of attrition" and a threat to Jewish survival, despite the dearth of information regarding actual consequences of intermarriage. Fein concludes that the rate of intermarriage alone is not necessarily an indicator of group survival. Another is J.S. Frideres’s “Jewish-Gentile Intermarriage: Definitions and Consequences” Social Compass 21 (1974) 69-84. The author challenges the general assumption held in sociological literature that intermarriage leads to psychological and other problems in the offspring. Frideres' main argument is that the "nominal faith affiliations" of spouses in a marriage do not present an accurate index of the degree of conflict in a marriage. He further suggests that the traditional definition of intermarriage be modified to take into account "nominal faith" as opposed to actual religious and ethnic patterns of identification. Frideres concludes that the traditional definition of intermarriage is not a sociologically significant measure, both unwarranted and misleading. More recently, see the excellent article examining the role of sociology in debates on the intermarriage crisis in Judaism, Lila Corwin Berman, “Sociology, Jews, and Intermarriage in Twentieth-Century America” Jewish Social Studies, 14: 2 Winter 2008 pp. 32-60. The concern around intermarriage is so intense that Michael Satlow lists the "hysterical" discourse on intermarriage first in his discussion of contemporary concern about the decline of Jewish marriage in general (Marriage in Antiquity, p. xv).

13. M. Mielzine, The Jewish Law of Marriage and Divorce in Ancient and Modern
existence, maintenance and enforcement of a prohibition against intermarriage, and in Bleich's work intermarriage becomes the most despicable act in Judaism.

Perhaps as a result of this exaggeration of the importance of intermarriage and its prohibition, this scholarly school tends to take the existence of a biblical prohibition of intermarriage for granted. This is a problematic position that creates flawed arguments, as evident in the following claim that “from the early dawn of history the people of Israel sought to preserve their ethnic purity and legislated against intermarriage” even though the same author admits that the sources do not offer any “explicit reference to a biblical prohibition.”\textsuperscript{14} This statement is representative of the belief that there must have been a biblical prohibition against intermarriage that was continued in a linear fashion through to the rabbinic and modern eras even in the absence of sufficient evidence, because it “seems unavoidable that there was a prohibition against marriage [with Gentiles]” and that they must have been “contrary to law” (my emphasis).\textsuperscript{15} As Shaye Cohen has argued, the tendency of modern halakhic authorities to insist that “the Torah prohibits both marital and extra-marital liaisons with all Gentiles may be good halakhah and good preventative medicine, but it is bad history and bad exegesis.”\textsuperscript{16}

The connection made between a perceived intermarriage crisis in contemporary times and the situation in antiquity is another hallmark of this type of work, as reflected in the following conclusion that Ezra’s “dedication [in calling for the separation from foreign

wives] preserved the Jewish people… until the present era which faces a similar crisis,” one where contamination (i.e. intermarriage) threatens to destroy the community, and presumably another Ezra is called for. This conflation of current concerns with the problem of the historical situation is reflected in the characterization of intermarriage as an “epidemic,” the contemporary Jewish community’s greatest problem, and as something that Jews have “always seen… as the greatest threat and danger to their very survival” (my emphasis). Though the current intermarriage crisis is a relatively recent phenomenon, this general approach dates back to the 19th century, where we also find statements that intermarriage had a serious detrimental effect on Judaism, threatening to “weaken its influence” and “endanger its very existence.”

This approach to the analysis of rabbinic sources on intermarriage is encapsulated by the following heading from the Encyclopaedia Judaica article on "Mixed Marriages": “Mixed Marriages are Prohibited and Invalid.” In this section, it is held that intermarriage

18. D.J. Bleich, The Prohibition Against Intermarriage, p. 281, 282 and 268, respectively.
19. M. Mielziner, M., The Jewish Law of Marriage, p. 49. On Leopold Löw (1811-1875) and his role in Hungarian Jewish Neology, see Howard Lupovitch’s “Between Orthodox Judaism and Neology: The Origins of the Status Quo Movement” Jewish Social Studies 9:2 2003, pp. 123-153. As an interesting aside, the battle between Orthodoxy and Neology in the 1800s appears to have continued in the current era, as the following excerpt from an article suggests, “In the early part of the 19th century, the Reform Movement began to rear its ugly head, and the Chasam Sofer was one of its staunchest opponents. The advocates of the Reform movement, known as Neologists, attempted to undermine religion. They were led by Aaron Choriner, who had once been a yeshiva student. When he died, Leopold Löw succeeded him. Under Löw's leadership, the situation deteriorated. Reform temples soon began to resemble churches. References to Tziyon [Zion] and to the Beis Hamikdash [The Temple] were expunged from Reform prayer books, and intermarriage was officially sanctioned.” See, http://www.tzemachdovid.org/gedolim/ ravshaag.html, originally appeared in the Ultra-Orthodox publication Yated Neeman.
is prohibited in Judaism based on the deuteronomic prohibition against marrying the seven nations (Deuteronomy 7:1-5), and reaffirmed in Nechemiah 10:31 (likely preferred over Ezra by the author because it is one of the few sources that deals with intermarriage in both gender combinations), and that such marriages are invalid (based on Maimonides’ *Mishneh Torah, Hilkhot Ishut* 4:15) and that no marriages of Jews in Israel are valid unless contracted in accordance with the law of the Torah. This pattern of reasoning back from the medieval codes (such as Maimonides' *Mishneh Torah*) to the written Torah and the early rabbinic literature, which is also a feature of Bleich’s work, further contributes to the process of representing the *halakhah* on intermarriage as uni-dimensional and uniform. Revisionist reconstruction of *halakhah* based on the later codes is methodologically problematic since the codes by nature reflect merely a particular position or tradition on any given issue, and necessarily erase much of the debate, inquiry and intellectual process that is typical of the earlier literature. Berman, in her article dealing with the role of sociology in the contemporary Jewish engagement with intermarriage aptly describes the sometimes unfortunate outcome of this phenomenon,

The intimacy between American Jews and sociology, at its best, helped Jews to understand themselves in deeper and more complicated ways. At times, however, the ideological dimensions of sociological research about Jewish intermarriage went unacknowledged by Jewish leaders and Jewish sociologists. In these cases, instead of exercising their authority to speak as public intellectuals or true leaders, Jewish leaders and sociologists concealed their ideological investments and thwarted conversations about the kinds of things – such as belief, meaning, and ideology – that rest behind reductive statistics.21

Reacting against, though inevitably also influenced by the tradition of scholarly

work on the so-called Jewish prohibition of intermarriage, I initially approached this project with the evolution of a singular tradition in mind - the biblical prohibition, the tannaitic prohibition, the amoraic prohibition - thereby demonstrating the longitudinal development of the prohibition of intermarriage through time. Seeking the singular, I found the plural and the conflicting; anticipating the linear, I encountered a series of webs. Through textual analysis it became apparent that the biblical literature contained several different legal systems, a variety of rules and a host of narratives, each engaging with intermarriage in a different manner. The rabbinic tradition likewise appeared to be engaging with intermarriage through a variety of legal systems, some of them biblical in origin and others apparently novel, while it used narrative discussions of the law to explore inner conflicts, inconsistencies and unresolved problems. Reducing this wealth of sources and approaches to a prohibition rooted in Deuteronomy 7 and Ezra/Nechemiah began to seem like a gross misrepresentation. The rabbinic engagement with intermarriage was, as a project, far more complex and insightful than much of the modern scholarship on the issue and it became my intention to explore its range and depth in order to develop a more accurate and fuller analysis of the issue for the modern reader.

This dissertation thus builds upon the work of a group of scholars that has been endeavouring to deconstruct the notion of a single and static Jewish general prohibition of intermarriage and to enrich our knowledge of the full breadth of rabbinic tradition on issues related to identity and marriage. This effort begins in earnest with Epstein’s foundational work on marriage in biblical and rabbinic literature, which should now be read with Silberman’s work in mind, and has been followed by Shaye Cohen’s work on Jewish identity in antiquity, Michael Satlow’s work on Jewish marriage in antiquity and Christine Hayes’ work on the notion of Gentile impurity in rabbinic literature as well as her article on
Palestinian rabbinic positions on intermarriage.22

This innovative scholarship has proposed a number of challenges to the field that are important foundations for this dissertation. Most fundamentally, it has been successfully argued that there is no general prohibition of intermarriage in the Hebrew Bible. Even the understanding of Ezra's post-exilic call for Jewish men to separate from their foreign wives (Ezra 10 and Nechemiah 13) as a general prohibition of intermarriage has been questioned by a number of scholars.23 It has also been demonstrated that the narrative biblical material is inconsistent on this issue, sometimes critical of intermarriages, while at other times apparently neutral or even positive, even in cases where the the intermarriage involves a


nation specifically forbidden in marriage elsewhere in the Hebrew Bible. It has also been proposed that two dominant features of the halakhah on intermarriage, namely the rule of matrilineal descent and the legal construction of intermarriages as invalid (rather than simply prohibited) are rabbinic innovations, rather than biblical norms.  

More generally, scholars such as Cohen, Hayes and Satlow have conducted their analyses of identity, impurity and marriage, respectively, with reference to a broader context, be it historical, cultural, religious or legal. In this way, the distortion caused by the tendency to view a given issue very narrowly can be more readily avoided. Satlow's approach of viewing intermarriage as part of a spectrum ranging from exogamy to endogamy is closest to my project's framing of intermarriage within the broader context of marital legal rules (both endogamous and exogamous) and identity categories (both inner and outer).

Epstein’s classic work Marriage Laws in the Bible and Talmud includes a chapter on intermarriage, where he establishes endogamy as the “general rule” amongst “the primitive oriental tribes.” Overall, Epstein presents an evolutionary view of the development of a prohibition of intermarriage. It begins with a very simple almost instinctual reaction in the

24. For a thorough study of the matrilineal principle, its possible sources and its development, see Shaye Cohen, Beginnings of Jewishness, pp. 263-307. He offers several possible reasons or bases for its development, including scriptural influence (Deuteronomy 7:3-4), Ezra's call for separation from the foreign women (which Cohen dismisses), the uncertainty of paternity, the intimacy of motherhood, primitive matriarchy, Roman law and forbidden mixtures (Leviticus 19:19). He finds the last two - Roman law and forbidden mixtures - to be the most compelling, and I agree. Though the law against forbidden mixtures is not prominent in the legal material on intermarriage, my initial research in the next stage of this project indicates that it surfaces in the aggadic material.


27. Epstein, p.145.
pre-deuteronomic era, which then develops into a more and more highly articulated and legally formalized state over time. The argument presented regarding the development of the view on intermarriage is that the early biblical period of neutrality (or innocence as Epstein calls it) was followed by a new view of intermarriage in the deuteronomic period, when avoidance of intermarriage changed from a social preference to a legal prohibition. He locates the creation of the law in newfound political conflicts and an (apparently new) “antagonism to the ethically degraded cultures of the heathens.” In the final analysis Epstein offers a number of different rationales for the development of a prohibition of intermarriage and it is not clear whether Epstein views this development as a xenophobic reaction to political instability, part of a superior priestly tradition of endogamy, or simply as the legal formalization of a cultural preference for endogamy.

Epstein argues that what he calls a “rule of endogamy” created “a barrier against intermarriage with other racial groups.” Since a rejection of intermarriage was merely a natural result of a preference for endogamy, Epstein argues that there was no specific prohibition in the pre-deuteronomic period. Rather, the prohibition of intermarriage “existed in the stage of an endogamous social rule that permitted exceptions.” Epstein cites a number of biblical cases where intermarriage is frowned upon as less desirable, and yet also notes several cases where such intermarriages occur without negative comment, or are mentioned with a positive attitude. Epstein concludes that aside from the biblical preference for endogamy, the biblical attitude towards intermarriage was neutral.

29. Epstein, p.154, 156.
30. Epstein, p.149.
Epstein cites various biblical examples for a strong history of Jewish endogamy going back to Abraham, which lead him to conclude that there existed a “definite biblical standard of marriage between near relatives,”\textsuperscript{32} though he does note that this did not develop into a prohibition of exogamous marriages. He argues that the specific deuteronomistic prohibition of various nations (Deuteronomy 7:3; 23:4-9) implies that exogamous marriages (i.e. outside the large patriarchal family) were in fact not forbidden. Likewise, Epstein suggests that the decision of the tribes to stop intermarrying with the tribe of Benjamin (Judges 19-21) testifies to the existence of intermarriage between the various tribes.\textsuperscript{33} I would add that it also suggests that marital rules governing the exchange of women between different groups may have been understood as a political and military tool. Regulating the exchange of women could be used to establish or alter the various types of identity boundaries, effectively cutting off or integrating a given group.

As for the supposed Ezran prohibition of intermarriage, Epstein concludes that acceptance of intermarriage was the normative attitude at the time, and therefore no argument against intermarriage would have been accepted into the canon during that period. Epstein therefore dates Ruth, for example, to the pre-exilic or even pre-deuteronomistic period because of the lack of any negative commentary on intermarriage with Moabites (prohibited by Deuteronomy 23). According to this dating, Ruth merely reflects the attitudes of its own period and is not a polemic against Ezra. As support for this view, Epstein points out that in Ruth the rule of endogamy was not a binding law, that the “idea of the taint of blood” (genealogical impurity) was “altogether unknown,” and further that (though this is an

\textsuperscript{32.} Epstein, p.146.  
\textsuperscript{33.} Epstein, p.147.
exception to the rule rather than the rule itself) that Boaz was obligated to marry Ruth.

Epstein notes one endogamous law in Numbers 36 that objects to intertribal marriage when it comes to the question of the loss of property as a result of such a marriage. According to Numbers 36, in order for a daughter (in the absence of sons) to inherit her father, she must marry endogamously, so that the tribe would not lose the father’s property to an outside husband’s tribe. The author argues that the concern for retention of tribal property was later replaced by a concern for “family purity.” Epstein's "family purity" is essentially a purity from exogamy (which has now developed into national endogamy, rather than tribal or familial) and purity from what Epstein calls “illegitimacy.” He cites the traditions of keeping records of ancestry and the role the priestly class had in perpetuating this tradition. Any groups which did not meet such criteria tended to marry endogamously within their own groups. Historically, Epstein argues that the tannaitic period was marked by “inbreeding” as a strong trend, if not a law.

Silberman’s article is useful as a companion to and critique of Epstein's chapter and generally valuable for its broad scope. The article deals with the development of halakhah with respect to the issue of intermarriage, from the Bible through to the modern era. Like Epstein, Silberman argues for a preference for endogamy in biblical times (both tribal and national) though he asserts that exogamy was still "possible." The author's argument is based upon biblical narrative and genealogy. He concludes that while biblical

34. Epstein, p.148. Satlow in his Marriage in Antiquity, however, cites a rabbinic source that relates retention of ancestral land to marrying an appropriate woman, "a value placed on the correct order of things. Just as each man should attempt to adhere to the biblical precedent of keeping his ancestral land intact, so too should he strive to keep the (tribal) genealogies pure" (p.152), see yQiddushin 1:5 60c and yKetubot 2:10, 26d.
tradition met exogamy with “social reprobation” there was “certainly” no prohibition, and the extent of this social reprobation remains uncertain.\textsuperscript{37} He critiques some of Epstein’s contradictory claims; for example, that Israelite and Judean kings’ Jewish marriages were evidence of the extent of the preference for endogamy on the one hand, and his assertion that royalty “welcomed intermarriage” on the other.\textsuperscript{38} Silberman suggests that royalty and the priesthood were characterized by a high degree of endogamy not present in the other classes.\textsuperscript{39} Statements in Ezra/Nechemiah regarding intermarriage in the priesthood might contradict this claim, see Ezra 9:1, 10:18 and Nechemiah's in 13:28. In Ezra 9:2 the princes and rulers are singled out for their high rate of intermarriage.

From the fact that biblical examples of intermarriage exist, and from the silence of Leviticus 18 (which deals with the sexual prohibitions of the \textit{arayot}) on the subject of intermarriage, Silberman concludes that “no effective interdiction existed or was intended in the pre-exilic period.”\textsuperscript{40} He deals with the laws found in Exodus 23:23, 34:11 and Deuteronomy 7:1-11, arguing that they are representative of an attempt to change “social reprobation” into a proper prohibition. Silberman notes that the exclusion of certain nations from the \textit{qahal} (congregation of God) may refer to converts, or to a period of naturalization. He agrees with Epstein and Lôw that no concept of invalid \textit{qiddushin} existed at this time.\textsuperscript{41} He concludes that the reference to intermarriage in Deuteronomy 7:3 indicates that while it was forbidden, it was nonetheless possible and effective, and that the notion of invalidity only developed in the tannaitic era. He sees two phenomena as tannaitic innovations: the

\begin{thebibliography}{99}
\bibitem{37} Silberman, "Reprobation, prohibition, invalidity," p. 3.
\bibitem{38} Epstein, "Marriage Laws," p.150, 154.
\bibitem{39} Silberman, "Reprobation, prohibition, invalidity," p.3 n.3.
\bibitem{40} Ibid, p.3.
\bibitem{41} Ibid, p.5 n.7.
\end{thebibliography}
use of biblical exegesis to create a biblical prohibition of intermarriage with all Gentiles, and the invalidation of intermarriage which shifted marriage away from the private realm.

Silberman critiques Epstein’s notion that in contrast with the deuteronomistic period, the Ezran period was characterized by a “racial ideology.” He argues that the attitude was in fact agriculturally based ("seed" of plants, not of semen) and that the attempt to create a “closed society” was “based on a complex historico-politico-religio concept.” The author claims that Ezra's approach was not innovative, rather he simply added a new zeal and political authority that lent a brief effectiveness to the movement against intermarriage. Silberman notes that even in the Ezran period there was no notion of intermarriage as invalid.

The Hasmonean revolt was a response to hellenization, and was characterized (or so says the Talmud) by various decrees, such as the eighteen decrees, that Silberman calls “exclusivist,” i.e. serving to further separate Jews and Gentiles. Silberman takes the existence of various punishments for intermarriage in the Hasmonean era to be proof that some heeded the prohibition, while others did not, i.e. that intermarriage did take place and that the prohibition was inconsistently followed. Silberman is hesitant to conclude anything about the Hasmonean period, making the important observation that “the surviving party after the revolt read its attitudes, positions and legal structures into the past, beclouding the actual situation” (p.7). Silberman argues that the post-destruction tannaitic period was similar to the Ezran period, in that a weakened or threatened Jewish community sought to

44. Ibid, p.7.
further separate itself from Gentiles. He argues that the sages initially fell in line with Jubilees and the zealots, but that later came to view intermarriage as a biblical prohibition merely punishable by lashes.\textsuperscript{45}

Shaye J.D. Cohen's \textit{Beginnings of Jewishness}\textsuperscript{46} is a significant book for issues peripherally important to intermarriage, especially with regards to Cohen’s extended discussion of conversion and the development of the matrilineal principle. In broad terms, Cohen argues that the boundaries between Jew and Gentile in antiquity were vaguely defined and permeable. He places each issue in its proper historical context, analyzes the relationship to the rabbinic desire to avoid ambiguity and addresses the relationship to boundary definition and creation. Cohen combines textual analysis and historical analysis in order to produce a relatively innovative and important study in the area, though it bears some similarity to Epstein’s work. Cohen states that “a new and unbiased study of the subject [of intermarriage] is needed”\textsuperscript{47} and regarding the prevalence of intermarriage in areas outside the rabbinic sphere of influence, he writes that "a full collection of all the rabbinic and non-rabbinic evidence bearing on this question is a desideratum.”\textsuperscript{48}

In terms of his theoretical approach, Cohen calls himself a positivist saying, “I study the past in order to make positive statements about what I believe happened or did not

\textsuperscript{45} Silberman, "Reprobation, prohibition, invalidity," p.9. For the idea that sexual relations with a Gentile are punishable by lashes, see Maimonides, \textit{Mishneh Torah Issurei Biah} 12:2, \textit{Shulkhan Arukh Even HaEzer} 16:1.
\textsuperscript{46} Shaye J.D. Cohen, \textit{The Beginnings of Jewishness: Boundaries, Varieties, Uncertainties}, pp.241-262. The chapter on intermarriage was first published as: "From the Bible to the Talmud; the prohibition of intermarriage" \textit{Hebrew Annual Review} 7 (1983) 23-39. The two works are very similar, with the more recent chapter on intermarriage in \textit{Beginnings of Jewishness} containing an additional section and limited additional analysis.
\textsuperscript{47} Cohen, "From the Bible to the Talmud," p.24 n.1
\textsuperscript{48} Cohen, "From the Bible to the Talmud," p.27-28 n.8.
happen. I study not only the historical traditions about an event but also the event itself. 49 Thus, while Cohen focuses on textual analysis, he consistently attempts to link textual and legal changes or approaches to socio-historical realities. The author's links between textual analysis and historical analysis are sometimes inconsistent and very occasionally contradictory. Cohen seems to link given changes in halakhah to a variety of factors at different points without really bringing those possible factors together in a coherent analysis. In addition, on the one hand Cohen frequently attributes some legal developments to historical circumstances (or deduces historical circumstances from those legal developments) and on the other hand claims that other halakhic developments have no such relation, being mere “scholarly construct[s]” (p.36). In my view a carefully articulated method should be used when attempting to make such distinctions.

Shaye Cohen has critiqued Schiffmans' work on Jewish identity in rabbinic law, saying that he "ignores these social questions entirely and focuses exclusively on the history of rabbinic law, as if rabbinic law were the only legal system in antiquity that had an interest in defining Jewishness and as if legal history were social history." 50 This project is a study of rabbinic law and literature, rather than an explicitly socio-legal or historical effort, in part because I do not view these sources as a reliable source of historical information. Rather than using the textual material as a source for how things were and what people were doing, this project approaches them as a source for how the rabbis were thinking and writing about intermarriage, and how they imagined the place of their halakhah in the world. As Michael Satlow has put it, the texts are up to something, and I am interested in what the texts are

With respect to this last question of the connection between legal theory and practice, I do suggest that the narrative legal sources express the difficulty inherent in the attempt to make halakhah manifest with real people in the real world, thereby highlighting the contrast between the legal tradition of the rabbis and their social and historical milieu.

Cohen argues that rabbinic attitudes towards intermarriage were created by historical conditions. In some cases his conclusions in this regard seem tenuous or speculative. For example, Cohen argues that the rabbinic period was characterized by increased legislation in the area of intermarriage because the biblical legal system did not meet their needs in this area. He also argues, however, that “the rabbis of the Mishna and Talmud lived in a society which … was not much affected by intermarriage,” a social reality which he links to a lack of interest in intermarriage on their part. Hence, it is not entirely clear whether legislation during the rabbinic period was influenced by a need for such legislation that could not be met by the biblical record, or by certain elements in the biblical legal tradition, or if there was in fact no need for such legislation since intermarriage was neither of interest, nor a problem. With regards to the rabbinic disinterest in intermarriage, Cohen notes the relative silence of the Mishna (aside from mSanhedrin 9:6) and the Palestinian Talmud, and points to the fact that in the Babylonian Talmud, the “named authorities hardly discuss the prohibition.”

Cohen generally seeks to find an historical basis for halakhic approaches to intermarriage. He therefore argues that because of their social situation, the sages were able

51. Satlow, Jewish Marriage in Antiquity, p.xxiii.
52. Cohen, From the Bible to the Talmud, p.36.
53. Ibid, p.36.
54. Ibid, p.28.
to acknowledge that the general prohibition was *d'rabbanan* (of rabbinic, rather than biblical origin). Essentially, intermarriage was not an issue at the time and so they did not need biblical authority to bolster the new prohibition. Since these *halakhic* changes were apparently made without any clear biblical basis, Cohen argues that the changes were made according to two different approaches. One was the “imposition of the new realities upon the laws and narratives of Scripture” at least in part to lend authority to the new developments. The second approach was to simply acknowledge that the innovations were a rabbinic innovation. Cohen argues that this second approach may have resulted from a reduction in “external pressure.”

Cohen suggests that the general prohibition originated in the Second Temple period as a result of political instability (loss of sovereignty), and increased contact with Gentiles. As a reactionary measure, it grew out of a sense that Jewish “survival depended upon their ideological (or “religious”) and social separation from the outside world.” Cohen also attributes the general prohibition to the internal matter of “the rabbinic concern for proper pedigree and genealogical purity.” This prohibition began in the period of Ezra-Nehemiah, was further developed in the Hasmonean and rabbinic eras, and was completely established by the amoraic period.

Cohen argues that the general prohibition of intermarriage (i.e. to all Gentiles) is not biblical, though later sources try to link it to biblical texts. He is certain that there was no

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55. Ibid., p.24.

56. Ibid, p.36.


general biblical prohibition and that “the rabbis of the Talmud were the first to develop a sustained and detailed exegesis justifying the prohibition of intermarriage.”\textsuperscript{59} Cohen notes that both Talmuds seem to assume that the biblical prohibitions extend only to the seven nations. The author concludes that the statement presented in the name of R. Shimon ben Yochai to the effect that the prohibition of intermarriage with the seven nations applies to all Gentiles is really from the stammaitic period, a period of extended editing that followed the amoraic period.\textsuperscript{60} Cohen notes that since the Babylonian Talmud does not conclude on the matter, the question of the origin of the general prohibition and the problem of extra-marital sexual relations continued to be a subject of debate through medieval times.

Michael Satlow's \textit{Jewish Marriage in Antiquity} is another important work in the field that breaks new ground in the study of marriage in Jewish communities and traditions. He is responding to and arguing against an essentialist model of Judaism by focusing on Judaism in the real world, on lived traditions.\textsuperscript{61} In a similar vein to this project, its primary argument is that "there was no single concept of "Jewish marriage."\textsuperscript{62} It is particularly important for its contextualization of marriage as practiced and imagined by Jewish communities within the context of surrounding cultures, through which Satlow concludes that while Jews did "Judaize" marriage, in general, marriage in Judaism and Jewish communities was similar to marriage in the surrounding society.

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\textsuperscript{59.} Cohen, \textit{Beginnings of Jewishness}, p.262. \\
\textsuperscript{60.} Hayes makes the same argument, suggesting that it was altered from its original form: a statement in support of the universal application of the matrilineal principle. "Palestinian Rabbinic Attitudes," p.29. \\
\textsuperscript{61.} Satlow, \textit{Jewish Marriage in Antiquity}, xviii. \\
\textsuperscript{62.} Ibid, xiii. 
\end{flushleft}
The volume includes a chapter entitled "Endogamy and Exogamy," that deals briefly with the biblical material and then focuses on early and late Second Temple and rabbinic material. Satlow views the development of a formal general prohibition of intermarriage as an amoraic development that only really receives any serious attention in the Babylonian Talmud. He attributes the general absence of any discussion on this particular issue to the rabbinic legal view that marriages between Jews and Gentiles were impossible, and so did not exist. He quotes Rabba on this point, "while they are non-Jews, they do not have 'marriage' [chatnut]." There can be no doubt that the invalidity of intermarriages in rabbinic halakhah is a widely held principle, however, this study will note the numerous sources wherein intermarriage is discussed as if it does in fact exist as marriage.

Acknowledging the lack of available data on actual intermarriage rates in those periods, Satlow generally does not attempt to draw conclusions regarding historical actualities. Rather, he seeks to examine the development of endogamy (and/or the rejection of exogamy) as a value in Jewish communities in antiquity and to contextualize these Jewish practices. Perhaps the most significant difficulty for work in the area is the lack of historical data. Scholars who aim to make claims regarding historical social realities based on the available literature are faced with a very challenging, if not impossible task. Satlow's use of the available evidence is careful however, as he notes,

The reader who approaches the Jewish literature of antiquity seeking to ferret out actual Jewish marriage patterns of endogamy and exogamy will be sorely disappointed. There is simply not enough data to determine the extent to which Jews throughout antiquity married "in" or "out". Instead, the sources draw a picture of the ways in which Jews deployed the categories of exogamy

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63. Ibid, p. 159, bYevamot 76a.
and endogamy in order to form group and self-identity.\textsuperscript{64}

In particular, Satlow is interested in how such communities manipulated and reinterpreted values regarding endogamy and exogamy to suit their particular needs. Satlow argues that these were used to assist in the formation of group and individual identity as well as for ideological purposes. He writes,

Ultimately, the purpose of rabbinic marital legislation went beyond concern with the problem of adultery, or indeed, marriage itself. One very significant purpose of this legislation was to create a Jewish identity. That is, this marital legislation creates a collective memory through which Jews could unite into a single community. ... share a collective memory, the same understanding of a trajectory from biblical text to contemporary practice.\textsuperscript{65}

He suggests that the condemnation of exogamy and valuation of endogamy remained consistent from biblical times, but that the precise boundaries of these practices were not fixed. Delineations of these boundaries were variable and were employed to meet different ends in different communities and historical periods. Satlow emphasizes the importance of considering approaches to intermarriage with regards to their respective contexts, including any political or societal influences that might have had a formative influence. He also provides an excellent review of the available evidence, including the documents from the Jewish community in Elephantine.\textsuperscript{66}

\textsuperscript{64} Ibid, p. 160-161.
\textsuperscript{65} Ibid, p. 88.
\textsuperscript{66} Ibid, p. 136, see also p. 135-147.
This chapter on endogamy and exogamy is interesting in terms of Satlow’s critical and contextualized approach to the material. His skepticism regarding connections between the extant textual material and actual behaviour regarding intermarriage is welcome. Rather than attributing changes in the approach to intermarriage as reactions to actual contemporary rates, he prefers to interpret them as simply a means of reinforcing group boundaries. Of particular interest to this study is his work endogamous marital rules in the form of the development of a rabbinic caste system, his analysis of the Babylonian rabbinic self-construction as a "marital caste," and his comparison between Palestinian and Babylonian notions of marriage and caste.\textsuperscript{67}

Christine Hayes' work on Palestinian rabbinic attitudes to intermarriage is important for its articulation of Hayes’ general arguments in her \textit{Gentile Impurities} with respect to the specific issue of intermarriage.\textsuperscript{68} She focuses on the issue of a general prohibition of intermarriage, its nature and origins. The Palestinian rabbinic approach, she suggests, can only be understood in its proper historical context of Second Temple and early Christian sectarianism. Hayes argues that tannaitic (necessarily Palestinian) sources do not hold to a biblical general prohibition of intermarriage or of sexual relations between Jews and Gentiles. This ban is viewed by the rabbis as a way of dealing with what she calls a “moral-religious danger” rather than any kind of ritual or genealogical impurity (as per her conclusions in \textit{Gentile Impurities}). Hayes presents important and well-argued discussions of the eighteen decrees and related material, as well as on the relationship between positions on intermarriage and convert status, a discussion that is particularly valuable given

\textsuperscript{67} Ibid, p. 149, 156.
\textsuperscript{68} Christine Hayes, "Palestinian Rabbinic Attitudes to Intermarriage in Historical and Cultural Context," pp. 11-64.
that the Palestinian Talmud is often neglected as a source.\textsuperscript{69} The rabbinic struggle with issues of genealogy is minimized in this work, however, which, in my view, renders peripheral an issue which in critical to the overall rabbinic approach to intermarriage as well as to the rabbinic understanding of convert status and lineage.

In \textit{Gentile Impurities},\textsuperscript{70} Hayes argues that it was a true innovation for Ezra to define Jewish identity in almost exclusively genealogical terms. This new definition stood in sharp contrast to the earlier moral-religious approach under which integration of non-Israelites and intermarriage were both possible. This moral-religious approach was linked with a certain moral impurity that was caused by behaviour and was in no sense an inherent or communicable impurity. According to Hayes, Ezra-Nechemiah determined the offspring of intermarried priests to be genealogically impure and turned that priestly characteristic into a national one. Thus, all of Israel became holy seed and an impermeable boundary was created between Jews and Gentiles since genealogy could not be altered through any change in behaviour or intermarriage. According to this new approach, intermarriage became a serious contravention, since it was equivalent to desecration of holiness.

The author argues that the rabbinate denied the Ezran requirement of genealogical purity for all of Israel. They thus minimized the genealogical component in favour of a moral-religious system with a behavioural purity marker. They were thus able to develop and support \textit{halakhic} conversion to Judaism. Hayes argues that the rabbis excluded Gentiles from the system of ritual impurity. For the author, the system of ritual impurity is biblical in

\textsuperscript{69} Hayes, "Palestinian Rabbinic Attitudes" pp. 11-64.
origin, while any moral impurity attributed to Gentiles is a construct of rabbinic origin, likely designed to create obstacles to Jewish-Gentile interaction.

Hayes argues that within the rabbinic system, the existence of a biblical universal ban on intermarriage is denied, and marriage with converts to Judaism is permitted. The sages attributed the ban on intermarriage with uncoverted gentiles to a moral danger. Hayes suggests that the rabbis broke off from the Ezran tradition and limited concerns of ritual impurity to priests in order to create a more permeable group boundary. She argues that the rabbis actively attempted to minimize the inferior status of converts through various halakhic developments including the development of a prohibition of intermarriage between converts and classes prohibited to native-born Jews, and by supporting the notion of intermarriage between converts (or their descendants) and the priestly class.

As this body of scholarly work demonstrates, the topic of intermarriage in halakhah is one that cuts to the heart of key questions related to Jewish religious and ethnic identity, the nature of Jewish law, boundaries and interactions between Jews and Gentiles and the history of Jewish communities. This dissertation explores the following question: What is the nature of the rabbinic engagement with intermarriage? Otherwise put, what is the rabbinic position on, language for, and attitude towards the issue of intermarriage? Central questions that are raised by an examination of this problem include: What is the rabbinic construction of intermarriage, of Jew and Gentile, self and other and even more broadly, of status, lineage, identity and the marital connection? When we speak of intermarriage in rabbinic tradition, what do we mean? Are rules related to intermarriage divorced from or connected to marital rules and hierarchies within Jewish identity? How do we relate to the construction of the status of the children of intermarriage? How do we understand and locate the development of a general prohibition of intermarriage in rabbinic tradition?
This dissertation is a longitudinal and comparative study of the development of rabbinic thought on the issue of intermarriage, focusing not only on change over time, but on the inter- and intratextual complexity of the relevant sources. Aside from filling a gap in the scholarly literature on intermarriage in rabbinic tradition by presenting a broad and thorough examination of all the relevant sources, this study presents an innovative approach to the subject in three major respects. Rather than simply focusing upon various genres or periods in rabbinic literature, the dissertation is structured according to the various systems and legal rules through which the rabbis engage with the issue of intermarriage. The aim is to present the issue of intermarriage as it is dealt with in the rabbinic sources without superimposing any presuppositions upon the material, for example, that a single, clear prohibition of intermarriage governed the rabbinic treatment of intermarriage. This approach allows for a thorough analysis of the complexity and multiplicity of rabbinic approaches to the issue of intermarriage.

Secondly, I argue that the issue of intermarriage cannot be properly understood in isolation, as it has often been studied thus far. Rather, following the type of approach taken by Cohen, Hayes and Satlow, I suggest that rabbinic approaches to intermarriage must be understood in their proper context of rabbinic legal systems that regulate identity categories and the formation of community boundaries through marital rules. By focusing on the broader context of the function of marital rules (both intermarital and intramarital), this study reframes the issue of intermarriage in Judaism.

Finally, rather than focusing on halakhah alone, this study pays particular attention to sources that use a narrative approach to express legal issues. Strictly legal sources, such as the Mishna, Tosefta, and much of the exegesis and interpretation found in the midrashim and Talmuds is the central material that is addressed in this study. These sources record
normative law and legal debates, including majority and minority opinions, as they also engage in processes of generating and adapting law. In contrast, the narrative legal sources might be thought of as *aggadah* that relates to legal issues.71 These are, in essence, stories about the law. Examples of this genre include tales of how the rabbis dealt with legal issues in their own lives and communities, rabbis acting as legal authorities, and stories telling of individuals bringing legal problems before rabbis, requesting a ruling regarding their situation or a specific issue. The importance and value of these stories should not be underestimated, as Robert Cover wrote, "no set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning."72

Comparative analysis between the strictly legal sources and the narrative representations of legal problems through the (likely symbolic) encounter between various great sages and individuals who embody the legal problem at hand, as well as stories that are related about the rabbis and how they dealt with these legal issues in practical terms forms a key aspect of this project.73 The narratives locate and contextualize legal rulings, bridging – more or less successfully – the gap between legal theory and legal practice.74

71. The narrative regarding Zimri, Kozbi, Moses and Pinchas found in bSanhedrin 82a and discussed at the opening of the introduction is just such a source. It is a story about a great Sage (Moses) and a man who comes before him seeking a legal response. As we shall see in Ch. 5, the narratives related to the original story in Numbers 25 and the law of the *boel aramit* in mSanhedrin 9:6 reveal much more about the complexity of the problem that a reading of the strictly legal sources or even Numbers 25 would suggest.
73. Here I agree with Satlow (*Jewish Marriage in Antiquity* p.82) that while such cases may indicate the types of issues that rabbis might have dealt with, and I would add, the types of problems that individuals may have encountered under the *halakkah*, they are likely not "real", that is they are not usually historical records of actual cases, but rather symbolic, fictional or academic in nature. It is the legal complexity of the problem at hand that is being explored through the narration of a particular case.
These sources represent a rabbinic attempt to bring the legal abstract into contact with some version of reality, where the Law meets the actual situation of the person in the real world. These are the kind of texts that Satlow has described as mediators in the midst of the tensions between societal ideals and the law.\textsuperscript{75} He describes the role of these texts as follows,

The ideals expressed in these texts are in direct response to competing, ultimately irreconcilable, social forces. The texts mediate between social values and the impossibility of their implementation.\textsuperscript{76}

The narrative legal sources prove crucial to the development of any real understanding of rabbinic attitudes towards intermarriage, in that they often reveal responses, positions and difficulties that remain obscured in purely legal sources. This work on the narrative sources dealing directly with legal cases has lead to another study that is currently underway on the purely agadic material.\textsuperscript{77}

I would argue that the minority, or archaic, legal positions embedded in narrative sources are akin to the tip of an iceberg. The discomfort regarding radical changes in the law or with particular interpretations or rulings, underlies the legal discourse. It may be, however, that such dissent or protest could be more fully expressed in a narrative context, a supposedly less "serious" genre which belies the weightiness of such claims. In this vein, the narrative legal material often tackles aspects of biblical and rabbinic laws on intermarriage that strike the rabbis as confusing, illogical, difficult or disturbing. Such

\textsuperscript{75} See Satlow, "Jewish Marriage in Antiquity," p.131.
\textsuperscript{76} Ibid, p. xx.
\textsuperscript{77} The distinction between halakhah and aggadah is not always clear, as in the case of the narrative material on legal issues. In this context, purely agadic material refers to rabbinic narrative sources that present exegesis or elaboration upon biblical narratives, i.e. stories about stories. This is not to suggest that these aggadot are not deeply engaged with legal issues, as they often are.
sources are often conduits for the expression of doubt, be it regarding the prohibition of intermarriage or about intermarriages that face no criticism in the Hebrew Bible. The midrashim work through doubts and possible challenges. While the aggadic midrashim are unlikely to openly reject a given ruling, a careful reading demonstrates an engagement with particular rules as problematic. I would suggest that analysis of the aggadic material demonstrates a tension in the abstract between prohibiting and permitting intermarriage, an ongoing attempt to negotiate the Jewish-Gentile connection, to rationalize, to air and set aside doubts.

A primary finding of this research is that rabbinic tradition on intermarriage consists of an accretion of diverse systems, legal rules and narrative traditions. These are often unrelated, incompatible or impractical in varying degrees. Even within a given system, we find incompatible legal rulings as well as tensions between contrasting methods of negotiating the application of the legal system’s theoretical rules to the realm of the social or individual reality. In this respect, two important rabbinic attitudes towards problems related to lineage and intermarriage are discernable: a strict abstract legalist approach that stands in sharp contrast with the other perspective, which might be described as practical, accommodating and laissez-faire, the latter usually expressed in the narrative legal sources. In general, the elaborate legal systems fail to translate effectively to the practical realm, a problem that the rabbinic sources explore through these narrative descriptions of legal cases and rabbinic encounters.

The dissertation begins with a study of the martial rules and identity categories that are internal to what we think of as Jewish, that is the castes of early rabbinic Judaism, and continues through the various legal systems and rules related to intermarriage. A brief summary of each chapter follows here:
Chapter 1 – Intramarriage and Intermarriage: The asarah yuchasin

The asarah yuchasin (ten lineages) constructs identity categories, structures these in an hierarchical fashion, and determines their permeability through the creation of marital rules. It is frequently combined with other systems dealing with issues of intermarriage, in particular the laws related to the qahal (congregation) and the descent rules related to transmission of identity to subsequent generations. The complexity of the system itself, the variety of its interpretations, the conflicting approaches to its implementation, as well as its built-in limitations and apparent incompatibility with other important rabbinic systems complicate any discussion of intermarriage in rabbinic thought. For the asarah yuchasin there is no Jew, there is no non-Jew, there is no single notion of intermarriage; rather we find a multiplicity of identities, constructs and approaches.

Chapter 2 – Qiddushin, Aveirah (Marriage and Transgression) and the Status of the Offspring of Intermarriage

Qiddushin (marriage\textsuperscript{78} or sanctification) and aveirah (transgression) are concepts that form a rabbinic system that is crucial to any discussion of the status of the offspring of intermarriage. By combining innovative constructs and principles regulating identity and marriage with concepts borrowed from the asarah yuchasin and the laws of the qahal and the arayot, forbidden sexual unions, this system aims to define the nature of every union and determine the status of every child. While there are many individual decisive legal rulings on these questions, I demonstrate that the halakhic response in general to the problem of the status of the children of intermarriage was characterized by multiplicity and diversity, and

\textsuperscript{78} More properly, betrothal, though in these discussions, the term signifies the ability to contract a valid marriage under halakhah.
that despite obvious attempts to clarify the law on this issue, some sources clearly suggest
that even amoraic halakhah failed to arrive at a workable solution.

Chapter 3 – Mah Ani Lavo Baqahal?: Entry into the Congregation of God

In rabbinic sources, the qahal (congregation of God) comes to be defined as a group
comprised of various members of the asarah yuchasin, and entry to the qahal is understood
to refer to marriage (with members of the qahal). There appears to have been no agreement
as to whether or not the deuteronomic laws of qahal related to nationality were still
considered valid in tannaitic and amoraic times. For those traditions that appear to have maintained the marital rules of Deuteronomy 23 regarding Ammonites, Moabites, Edomites
and Egyptians, some of the legal details were under dispute, and the sages were able to mold
them to fit their needs. Within those traditions that dispensed with the deuteronomic laws,
those particularities - bans against intermarriage with specific nations - were replaced by a
general concern around Gentiles as an undifferentiated category, and a concern about
conversion and the status of converts over and above that of intermarriage. Moreover, we
have at least one source that suggests that the issues of nationality and intermarriage that
are so crucial to the system of the qahal became entirely irrelevant.

Chapter 4 – Intermarriage and the Levitical Arayot

Milgrom, in his commentary to Leviticus, calls the apparent lack of a prohibition of
intermarriage among the sexual prohibitions of Lev 18 and 20 a "glaring omission." In

79. The question Mah ani lavo baqahal? that is, May I enter the congregation? or What
is my status with respect to my ability to enter the congregation? is posed in mYadaim 4:4,
tYadaim 2:17.

contrast, I argue that, generally speaking, the rabbinic traditions did not understand intermarriage to be included amongst the *arayot*. The *arayot* were not usually used as a system for engaging with the issue of intermarriage, rather they were considered to be relevant to intramarital issues, be they consanguineous or otherwise. While rabbinic traditions are not homogeneous on this account, it may be argued that, in general, the *arayot* as a system are not used to deal with intermarriage, and that intermarriage, in turn, is not deemed to be one of the *arayot*.

**Chapter 5 – The Legal Rules and Decrees**

The legal systems and principles we have thus far encountered are not the sole rabbinic methods for dealing with the issue of intermarriage. With respect to the topic of sexual relations between "Jews" and Gentiles, in particular, we find a number of legal rules that exist independently of other rabbinic and biblical systems. These individual *halakhot* (legal rules) or *gezeirot* (decrees) are often difficult to reconcile with the existing systems and basic principles that deal with intermarriage, causing dissonance both for the rabbis and for the contemporary reader. bAvodah Zarah 36b, in its convoluted attempt to render this multiplicity into a cohesive linear tradition that would fit its own agenda, perhaps best demonstrates the tradition's actual multilayered diversity.

Despite the ambivalence, multiplicity, disagreement and impracticality that is characteristic of the material related to intermarriage, I argue that the material suggests a strong rabbinic tradition that is in favour of the development of a general prohibition of intermarriage. This might be described as a vague underlying assumption, a sense even, that there should be such a prohibition, even as it is acknowledged that this is not at all the case. Rabbinic thought is caught in limbo between admitting that there is no general prohibition
of intermarriage, feeling that such a general prohibition should by all accounts exist, and the process of attempting to project or construct such a prohibition. The process of constructing an understanding of intermarriage, and of a prohibition of it, is a genuine struggle - a convoluted, conflicted project. There is no dominant homogeneous legal stance. Rather, to follow the development of rabbinic tradition on intermarriage is to walk a circuitous labyrinthine set of paths, often with no final destination.

Even the sages appear to have acknowledged the complexity of the Jewish traditions on intermarriage. In an attempt to develop or find a source for a general prohibition of intermarriage and of sexual relations with Gentiles, the Babylonian Talmud goes to great lengths to attempt to sort out the various tannaitic statements regarding the existence of various decrees and bans. This attempt does not result in any clearly logical, definitive, singular path or location for bans on either intermarriage or sexual relations between “Jews” and “Gentiles”. Rather, we find an interpretive process of exclusion (that reads something like this: x banned this, no x banned that; maybe y banned this? no y banned something else, etc.)\(^{81}\) that demonstrates that there was a lack of understanding of the earlier legal traditions in the Amoraic period. This further suggests that these legal traditions were not in operation in the Amoraic period (200-500 C.E.), and possibly not even in the Tannaitic period (70-200 C.E.). Rather, these rules served as a kind of reconstructed, revisionist legal history for the rabbinic tradition on intermarriage. Underlying this tradition is an assumption that if the Bible did not prohibit intermarriage (and sexual relations) with Gentiles, it must have been authoritatively (and reasonably) prohibited at some other time.

The Hebrew Bible poses a problem as a proof-text because it includes a

\(^{81}\) See bAvodah Zarah 36a-b.
variety of different (and often unrelated) legal and narrative sections that address intermarriage. Some of these sections obviously deal with intermarriage, and others are usually or sometimes interpreted such that they are understood to refer to intermarriage. We find a prohibition against marrying specific nations (as in Deuteronomy 7:3-4), another prohibition against other specific nations and persons entering the congregation of God (Deuteronomy 23:4-9), a prohibition against passing one’s seed over to the Molekh\(^82\) (Leviticus 20:3-5), law ritualizing the sexual union with a foreign woman during times of war (Deuteronomy 21:10-14), narratives that are clearly opposed to intermarriage with specific foreign women or to foreign women under specific circumstances (Genesis 27:26, 28:1 where Rebecca and Jacob prefer kin marriages for their sons, 1 Kings 11 which is critical of Solomon's intermarriages and others), and others that are neutral towards intermarriage, portraying it without any apparent critique (Genesis 41:45 where Joseph marries Asenath daughter of the Egyptian priest of On, Exodus 2:21 where Moses marries Tsipporah daughter of a Midianite priest, Ruth 1 and others). Then, of course, we find the general call to separate from foreign wives in general, in Ezra/Nechemiah. The biblical record thus presents a variety of paradigms for constructing intermarriage and regulating it.

This multi-faceted situation is part of the inheritance of the rabbinic sources. As both proof-text and, from a rabbinic perspective, revelation, the biblical record is problematic because it presents a multi-faceted, multi-vocalic approach to intermarriage. The rabbinic sources introduce the additional factor of later legal (and narrative) innovations. Furthermore, we find, naturally, a wide range of interpretations of biblical

\(^{82}\) The meaning of this act is uncertain. See Chapter 5 for detailed discussions of the issues related to the prohibition of passing one's seed over to Molekh.
sources as rabbinc sources attempt to reconcile the various legal systems and attitudes found in the biblical texts and in rabbinc tradition as it develops. There is a strong tendency towards merging biblical and rabbinc law, such that any apparent conflict or disconnect between the two is erased. There is also sometimes a tendency to attempt to reconcile disconnected approaches to intermarriage so that they function in concert and do not contradict each other.

There is, however, also a clear pattern in the narrative legal sources, at the intersection between theory and practice, away from resolution and towards dissolution. These are moments in the literature where it is acknowledged that the system of rules for regulating intermarriage does not function, or is impossible to enforce in practice. There are also instances where analysis reveals that the various systems cannot and do not operate

83. This will be discussed in detail in each chapter, but see for example, enforcement of the system of the asarah yuchasin (Chapter 1), bQiddushin 71a-b, yQiddushin 4:1 65c which suggest that the rabbis were not able to enforce these laws and also point to the possibility that an extreme emphasis on marital rules and lineage (at least in Babylonia) may have lead to a non-functional system wherein marriage became, at least in theory, impossible. With respect to the rules related to qiddushin and aveirah (Chapter 2) yYevamot 4:14-15 6c, bYevamot 44b-45a and Sifra Emor Parashat 14:1, Weiss p.102, amongst others reflect the clash between patrilineal and matrilineal descent patterns as well as the lack of clarity regarding the various systems for determining the status of the offspring of intermarriage, and the ultimate dysfunctionality of the system, in particular in the case of the status of the child of a female yisrael and male Gentile. The system of the qahal (Chapter 3) in turn is clearly abandoned in some sources, while others struggle to determine its most appropriate implementation as we find in tQiddushin 5:4 (Lieberman), tYadaim 2:17 (Zuckerman), mYadaim 4:4, mYevamot 8:3, bYevamot 78a, yYevamot 8:2 47b. The arayot (laws regarding sexual relations in Leviticus 18 and 20) likewise do not appear to provide a useful system for the rabbis in their engagement with intermarriage, though Sifra Acharei Mot Pereq 13:22-23 (Weiss p.85-86) links the two in its exegesis and there are traditions linking the prohibition against passing seed to Molekh (Leviticus 20:2-5), for examples of the latter see Sifrei Devarim Piska 171 (Finkelstein p.218), yMegillah 4:10 75c, and Targum Yonatan to Deuteronomy 18:9 and mMegillah 4:9 specifically states that this is an undesirable interpretation.
in concert. This suggests that either the system as a whole did not function, or that some systems or rules were operative while others were not. The literature also suggests that there may have been enough disagreement between rabbis on fundamental points such that the legal rule could not be reasonably followed or applied, given the inconsistency of the situation. There appears to have been a divide in rabbinic sources (especially earlier rabbinic sources, but certainly not exclusively so) over a number of key issues, including the definition of mamzerut (illegitimacy) the status of the offspring of various kinds of intermarriages, the scope of the biblical prohibitions of intermarriage, and the development of a prohibition of intermarriage amongst others. Diversity is both the strength and the weakness of the law.

The layering of system upon system is revealed through the sources, as they demonstrate allegiance to earlier systems, even in the face of complete shifts in normative law. An example of this phenomenon is the Babylonian Talmud’s (and to a lesser degree the Palestinian Talmud’s) attempts to reconcile conflicting or obviously incompatible or non-functional legal areas. The pattern towards including sources that emphasize the non-functional, irrelevant, or impractical nature of these rules/systems points to the problematic nature of these systems and to the impossibility of developing a coherent, singular, linear treatment of intermarriage within the context of the sources.

84. See for example my discussion of the attempt to create a working system using the asarah yuchasin and the qahal in Chapters 1 and 3, the problem of the various systems regulating descent in Chapter 2, the difficulties involved in relating the arayot to other systems regulating intermarriage in Chapter 4 and the problem of the miscellany of legal rules in Chapter 5.
85. The child is not necessarily illegitimate in the common sense of the term. Mamzer offspring may result from adulterous, incestuous and according to some opinions, intermarital relationships.
As a result of this state of affairs, contemporary (and other) sources that do articulate such a position are out of step with the classical literature. Though they do succeed in creating a monolithic position that is, at least in theory, more functional, they lose the depth, breadth, historicity and complexity of the sources. Perhaps most importantly, they lose the sources’ own engagement with the human element. It is this human element – the person standing before the law – that usually precipitates the dissolution of these carefully and elaborately constructed but precarious legal arrangements. Without this engagement with the person, the law is at risk of becoming all the more violent, if not physically, certainly in the brutality, rigidity and uniformity of its approach.\(^8\) In place of a chaotic web, we find a single strand. It is, in a sense, a continuation of a single aspect of a tradition, taken out of its context.

In contrast to such claims, my general argument is that the rabbinic treatment of intermarriage is neither monolithic nor linear. The rabbinic imagining of and response to intermarriage does not occur in a vacuum, rather, it is part and parcel of a broader engagement with identity. Of particular relevance is the issue of the construction of internal (i.e. “Jewish”) identity and its categorization and regulation by marital rules. Through this type of contextualized analysis, we find that the pattern of delineating distinct categories and determining their marriageability occurs not only in intermarital cases but also in *intramarital* cases, that is cases involving different castes of Jews. We may therefore properly understand intermarriage in rabbinic tradition as belonging to a larger process of the regulation of identity, the establishment of hierarchy and the maintenance of status and

\(^8\) My thinking on the violence of the law and the relationship of the law to the individual is influenced by Robert Cover's *Violence and the Law*, The Yale Law Journal, Vol. 95, No. 8 (July 1986).
community boundaries through the application of marital rules.

Turning to the topic of intermarriage itself, I argue that rabbinic sources do not relate to a single type of intermarriage, rather they relate to a variety of constructs or understandings of intermarriage. Any discussion of rabbinic approaches to intermarriage must consider the full range of paradigms and terminology referring to various internal (“Jewish”) identities, as well as various external (“Gentile”) identities. For example, we do not find any term paralleling that of the term “Jewish” in the rabbinic sources. Rather, we find a range of category specific terms, both internal and external, such as kohen, levi and yisrael amongst others. It should be noted, however, that I have discerned a general trend away from specification and towards generalization, as the specific terms become less meaningful and increasingly irrelevant. For example, while biblical sources are often concerned with banning Israelites from marrying particular nationalities, as in the case of Deuteronomy 23 which bans Moabites and Ammonites and articulates a series of other marital rules that relate to specific nationalities, rabbinic sources tend to relate to an abstract other, called goy or nokhri (Gentile), and even terms such as Aramean lose any specificity and are used to refer to a generalized Gentile other. This trend towards a generalized undifferentiated internal (yisrael) and external (Gentile) identity impacts many of the systems through which the rabbinic sources engage with the issue of intermarriage, because these systems are often predicated upon specific constructions of a range of meaningful internal and external identities.

Similarly, I argue that we cannot speak of a single rabbinic position, legal system or legal rule vis-à-vis intermarriage. There is no one system, rule or stance to which the rabbinic engagement with the issue of intermarriage may be reduced. The rabbinic “approach” to intermarriage would be better described as rabbinic approaches to
intermarriages. The biblical inheritance of the rabbis, whether it be as proof-text or worldview means that the variety of legal systems in the bible became, to some degree or other, part of the rabbinic treatment of intermarriage. This legal and narrative variety leads to the creation of a variety of systems in rabbinic literature. Within each system and with reference to each rule, we also find a diversity of opinions and approaches, many of which are contradictory or incompatible.

The continued elaborate development of these systems, rules and interpretive traditions, combined with the simple fact of their number (i.e. there are a number of systems, each highly elaborate, including incompatible or contradictory claims), and their fundamental disconnectedness from each other, has lead to a number of phenomena in the literature on intermarriage, usually in the amoraic layer. These include:

- the tendency to attempt to reconcile conflicting and contradictory statements or systems, thereby re-writing and re-inventing the law or the narrative

- the creation of legal systems that appear to be non-functional, impractical, and even theoretically implausible;

- the representation of some of the legal systems and rules related to intermarriage as irrelevant, unacceptable or ineffective.

The representation of the latter phenomenon in the sources usually involves the representation of a (symbolic) human being who would be regulated by said rule or system, begging for an answer or an authoritative and binding ruling from a (symbolically) prominent rabbi. These cases frequently demonstrate the failure of halakhah in resolving problems related to intermarriage in real terms, through the literary representation of a rabbi's failure to offer a decisive ruling, or a rabbi's outright dismissal of the established
legal tradition.

We also find expressions of rabbinic discomfort with some of these rules/systems and their application, as well as with many of the biblical narratives. There is clearly an element of distaste in the face of certain traditions, such as the law of the boel aramit, (the one who has sexual relations with a Gentile woman)87 the emphasis on the significance of genealogical descent and its accurate tracking, the exposure of problematic lineage, the applicability of biblical laws to intermarriage in rabbinic times, the absence of intermarriage from the arayot, and the significance of the law of the yefat toar88 (beautiful captive woman) to name a few.

Having articulated the primary aims and findings of this study, we will now turn to the matter of theoretical considerations. This dissertation is not an anthropological, historical or social study of intermarriage, so much as it is a legal and literary study. It is legal in that it is concerned with legal sources, that is: the genre of halakhah, and focuses its analysis upon legal rules and problems. I have now, perhaps, brought to mind Bialik's exclamation, "Halachah and literature! Could there be any greater contradiction?"89 My answer to this challenge, in some agreement with Bialik's, is that the legal sources are literature, different in form and substance from the aggadah, but no less literary.

Despite this legal and literary focus, some theories related to kinship systems have informed my general approach. These theories assist in grounding and framing my

87. mSanhedrin 9:6 allows for vigilantes, or zealots, to kill a yisrael man who is having sexual relations with a Gentile woman (note that Aramean here stands for Gentile).
88. The law in Deuteronomy 21:10-14 allows a soldier to take an attractive woman captive in wartime and describes certain procedures she must undergo once she is brought to the soldier's home.
understanding of the patterns and systems that I have located in the literary sources. Perhaps most central of these is the one notion that anthropological theories of kinship tend to have in common, and that is the notion that kinship systems and aspects thereof are not entities that exist in isolation. Marital rules must be analyzed within the context of a given kinship system which operates within a social-historical-cultural and, where applicable, national context. Furthermore, kinship systems, many have argued, related to and addressed primary human needs, and as such, they are, in their tremendous variety, a universal expression of humanity. Each system and its characteristics is relatively unique, each its own manifestation or construct of kinship. These manifestations or constructs, within this theoretical framework, are not biological or legal (or religious) facts that remain static and given. To the contrary, they are characterized by change, by accretion and segmentation (or as earlier anthropologists would have argued, evolution). This understanding of kinship systems and marital rules as mutable, multi-layered, developing constructs is an important foundation of this work.

Just as we must understand kinship to be a unique, developing and complex system, itself a part of broader socio-cultural, political and national contexts, I would propose that intermarriage must in turn be analyzed within its context of the broader kinship system.

90. See for example, Quale, G. Robina. *A History of Marriage Systems.*
91. Smith argues in *The Antiquity of Nations* that a given identity can shift over time from ethnic to national and back again, hence my reference throughout to national/ethnic/identity systems. Grosby argues, in his *Biblical Ideas of Nationality* as does Smith, against the theory of the nation as an exclusively modern entity.
92. Both Fox and Smith relate kinship and nation to basic needs such as avoiding what Smith calls the oblivion of death, or death replacement and continuity in anthropological terms. Robin Fox, *Kinship and Marriage: an Anthropological Perspective.* Cambridge: Cambridge University Press, 1983. p.27.
Analyses of socio-historical phenomena or legal rules as immutable facts or moral truths miss this kinship aspect entirely. If regulations around intermarriage are marital rules, then these are essentially kinship rules, and hence are an integral part of a kinship system. The regulation of intermarriage is an expression of a construct of kinship, that is, who is and who is not kin, who may and who may not become kin. It is thus not merely a question of family relations, but relates to the potentiality of kinship: with whom may one connect through marriage? It is a question of the boundary between self and other, be that expressed through family, community, faith, caste, nation or other identity categories.

Rules regulating intermarriage might then be described as rules within a kinship system that serve to express, define and regulate identity boundaries. How these are expressed may depend upon the concerns and self-understandings of the group in question. One example of this might be the development of familial endogamy early in the narrative of the Abrahamic line, later developing into a tribal construct, and then again into a national construct, such that intermarriage is sometimes considered to be marriage outside the family, sometimes marriage between tribes or outside the tribal group, sometimes marriage with other nationalities.

Some kind of notion of intermarriage, or of degrees of intermarriage, whether prohibited or permitted is simply a feature of any kinship/identity structure. Marital rules

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93. This follows C. Levi-Strauss, in *The Principles of Kinship* (1949), who argues that a woman is not prohibited in marriage because of anything that is particular to her (i.e. her biological or consanguineous status) but rather that some women are prohibited as a function of the system itself. Marital prohibitions are never absolute, and always relative. That is, for Levi-Strauss, marriage is a cultural construct as marital rules defines what is normative for a given society. Hence, when we come to define intermarriage we need to be aware of the fact that it rests upon a particular construction of identity, so that whether a woman is forbidden or permitted in marriage depends upon the descent system and construction of identity, which are both mutable.
related to intermarriage assist in the definition and perpetuation of distinct identity groups (anywhere from the small family clan as we find in Genesis, to the national entity as we find in Deuteronomy, to the religious-political system of the priesthood as we find in the Mishna, or the rabbinic caste that Satlow has located in the Babylonian Talmud\(^\text{94}\)) by affecting the process of inheritance of status and group affiliation. These rules are always part of a larger kinship and identity system that is itself continually changing and developing.

By examining intermarriage in rabbinic tradition within this theoretical framework, we can see how rules related to intermarriage are more than responses to socio-historical pressures, more than questions of blood or lineage, and more than questions of religious and national identity. Indeed, regulation of intermarriage is both an expression and a means of responding to, creating and perpetuating all of these. By understanding and contextualizing intermarriage in this manner, we can understand it as a function of processes \textit{internal} to Jewish kinship and identity, such that intermarriage is actually be part of a system of \textit{intramarriage}, as much about the inside, as it is about the outside.

The connection between issues of family, community, religion and nationality is reflected in the tendency of anthropological theories of kinship to understand kinship as a system that does not exist in isolation. Indeed, some theorists have argued that kinship cannot actually be isolated as a distinct social or cultural system, such that kinship \textit{is} politics, leading to Schneider’s apparently radical claim that in cultural terms, kinship, nation and religion are not distinguishable from each other in any meaningful way (and that kinship in that sense does not actually exist).\(^\text{95}\)

\(^{94}\) Satlow, \textit{Marriage in Antiquity}, p. 155-156.

Theories of nationhood and identity in turn must tackle the relationship between those concepts and kinship. Some theorists have gone so far as to argue that nation and identity are categories secondary to kinship, that is, that they are functions of kinship. Even those who critique such approaches as reductionist, such as Smith, must acknowledge the key role that kinship plays in nation. Indeed theorists tend to envision both kinship and national/ethnic systems as meeting basic human needs and as a means of attaining of various social, economic and political ends. I would argue that neither kinship nor nation/ethnicity exists in isolation from the other, such that they may not actually be separated from each other in any useful way. It is in this symbiosis between kinship and nation systems that what we call intermarriage is created.

This joint kinship-nation model is particularly useful for understanding the complex manifestation of intermarriage within rabbinic literature. This perspective on the macro, abstract level assists in producing a more sophisticated and situated analysis of intermarriage within the Jewish legal system. Through this theoretical framework we can come to a number of important understandings: Intermarriage and its would be prohibition in Judaism may not be reduced to a legal or moral fact, or an isolated prohibition, that is, we cannot understand it as a single one-dimensional law or some kind of moral imperative. (This does not mean that a given rabbinic source might not see intermarriage in precisely such a fashion.) Nor may rules regulating and constructs of intermarriage be reduced to a simple function of either genealogy, blood kin, affinity (marriage ties and marital rules), or religious, national or ethnic boundaries.

96. For example, in Biblical Ideas of Nationality Grosby writes of “ideas of nationality [and] the attendant phenomena of bounded territoriality and kinship” p.1.
The theoretical argument that kinship and nation are both characterized by change and variety means that intermarriage, as a marital rule and an expression of boundary, must be examined in each of its incarnations as a conceptual construct, made manifest through its expression. Esau’s marriages with local women (Genesis 27-28) for example, which contravene the deuteronomic rule against marrying Canaanites, may be mentioned without comment and then castigated, demonstrating pre-existing tensions between biblical sources themselves. Here I will appeal to Anthony Smith who argues that national identity is at once a construct and real, and to Schneider who argues that while the cultural symbolism of kinship does not exist as an independently distinguishable system, kinships (i.e. relatives) do exist.97 I would argue that notions of intermarriage in halakhah are similarly both constructs and real, the latter indicating that they may be understood as Law and as such may have a material effect on social and individual realities rather than existing only as intellectual fictions. Thus, while I have proposed that rules and attitudes regarding intermarriage may not be reduced to fact or truth (legal, moral, genealogical, biological, religious etc.), they may nonetheless also have important implications beyond the realm of the abstract. At the very least we have individuals and groups within the sources who are clearly impacted by the manner in which the rabbis are portrayed as having interpreted and implemented their halakhah. This relates to my view that halakhah as a religious legal system (by turns theoretical and practical) is real, is Law, and may exist with real effects, at the same time as it is a system of constructed concepts that are constantly (even if

reluctantly) in flux and may be subjected to critical, situated analysis.

The transition within the sources from the legal construct to the practical legal outcome is, however, problematic. As I shall argue, many of the major avenues through which the rabbis engage with the issue of intermarriage appear to have a tendency to fail when they encounter reality. We shall find several cases where the abstract legal constructs regulating intermarriage cannot solve, or otherwise prove irrelevant to, the practical human problems related to intermarriage. The violence of the law, broadly understood, towards both the “intermarried” and their offspring is notable. I suggest that this violence is often a source of discomfort for the rabbis, such that they attempt to justify, glorify, erase, or object to various aspects of these rules. The problematic nature of this gap - between the abstract idea of the law, and the law in practice acting upon the individual, was elegantly expressed by Robert Cover when he wrote, “Between the idea and the reality of common meaning falls the shadow of the violence of law, itself.” 98 The fate of the person, in particular as expressed in the sections of the Babylonian and Palestinian Talmuds that relate to this space between idea and reality, between construct and person, is a primary concern of this dissertation.

In order to contextualize the oft remarked upon Jewish prohibition against intermarriage, we can situate it within the rabbinic kinship and identity system. I would

98. Robert Cover. *Violence and the Word*, Yale Law Journal, 95:8, 1986 (pp.1601-1629). Satlow has worked with the problem of this type of gap in his work on matchmaking, see *Jewish Marriage in Antiquity*, 101-132. "Its focus (matchmaking chapter) is on the gap between the ideals of this process and its realities, and the meaning of this gap. I develop in more depth here an argument that I allude to in part 1 and use through the rest of the book: the ideals expressed in these texts are in direct response to competing, ultimately irreconcilable, social forces. The texts mediate between social values and the impossibility of their implementation."
argue that the mishnaic rules on intermarriage have at their core the remnants of a system of patrilineal descent groups that functioned as political-ethnic-religious entities, namely the castes of kohen (Priest), levi (Levite) and yisrael (remaining tribes). This latter category of yisrael is itself a later development away from, and in some senses superimposed upon, the earlier structure of tribal identity. Several processes common to kinship systems likely combined in order to create the mishnaic systems for genealogical lineage and inheritance of genealogical status within a hierarchical structure. Fortes argues that status is an essential part of kinship systems. Kinship is not merely a collection of connected individuals but is designed to meet certain social, and other, ends. First is the tendency of linear descent groups to move towards segmentation into more and smaller groups (which are often hierarchically structured) as well as isolation. It is thus not surprising that we find the development of numerous descent groups internal to the system (subject to what might be called intramarital rules, that is, rules regulating which internal groups can intermarry and which cannot) that become further isolated from each other in the course of the development of halakhah such that, according to some opinions, members of certain groups cannot marry anyone at all. Note that the groups who, according to some opinions may not marry at all, are in this position because their identity is uncertain. That

99. Not unlike the “ethnic core” of the nation, as described by Smith, Antiquity of Nations, p. 18-21.
100. As described by Fortes, The Structure of Unilineal Descent Groups, p. 263-275 and Robin Fox, Kinship and Marriage: an Anthropological Perspective, p.97-122.
101. Louis Dumont for example, notes that affinity (or marital rules) helps define group membership and that such groups can become political or other social institutions, much like the priestly caste, and following Satlow, the rabbinic caste. L. Dumont, The Marriage Alliance, 1957, pp.183-198.
104. mQiddushin, bQiddushin and yQiddushin 4:1 and 4:3, see Chapter 1.
is, it is uncertain which class they really belong to, and hence it is unclear whether or not, and to whom they are marriageable. As a result, rather than risk making an error in judgment, they are considered to be unmarriageable. This highlights the importance of the establishment and maintenance of clear identity category definitions and of careful monitoring of identity and status such that individuals or groups do not lose their ability to marry altogether.

Further, as we have noted, kinship groups in general are characterized by change and accretion over time. Identity systems are likewise generally in flux, including with respect to the degree of intervention on the part of the nation when it comes to matters of kinship. This is what Smith refers to as the regulatory state. The interesting issue is the degree to which it regulates matters such as reproduction, marriage and status. We might consider Roman regulation of status through taxation as such a phenomenon that may have affected the construction of the status of the children of intermarriage as well as of slave and half-slave classes. Smith describes two types of nation formation: the lateral, where an aristocratic “ethnie” creates a state by imposing its bureaucracy on the lower classes, and the vertical, wherein the people are mobilized by “an indigenous ‘returning’ intelligentsia” which gathers large population groups using myths, memories, values and symbols in order to achieve their political goals. I would suggest that Jewish identity formation shifted

106 Diane Kriger, *Sex Rewarded, Sex Punished: The Evolution of the Status “Female Slave” in Early Jewish Law*, forthcoming from Academic Studies Press, Chapter 4, where she argues "that there were principles other than matriline that were debated with regard to the inheritance of slave status," and suggests that the mishnaic matrilineal principle became prominent "in response to Greco-Roman administrative rules, particularly the need to define 'slaves' for tax purposes." See also Martin Goodman, "Nerva, the Fiscus Judaicus and Jewish Identity," *The Journal of Roman Studies*, Vol. 79, (1989), pp. 40-44.
107 Smith, Anthony D. *The Antiquity of Nations*, p.25. The term ethnie is borrowed from the French, and here describes an ethnic community with common socio-cultural
between these two types, the latter gaining dominance with the return from exile as in the books of Ezra and Nechemiah, which are unique in the Hebrew Bible in their approach to the regulation of intermarriage. The change between biblical and rabbinic notions of marriage and identity might be met with surprise, resulting in analyses that respond to the obvious gaps and inconsistencies as a problem that must be solved (for example by positing a single primordial prohibition of intermarriage). Within this theoretical framework, we may instead see this change as a given, as an inevitable phenomenon inherent to the systems themselves. This notion of kinship and identity as systems characterized by change and diversity allows for the examination of the development of these changes as a dynamic process under the influence of various forces as opposed to seeing such changes as merely unexpected, isolated, irregular responses to socio-historical pressures and influences.

I have suggested that the complex mishnaic system includes a core originating in the Israelite patrilineal, patrilocal descent groups. Inheritance of status in this system runs through the male. Marital rules serve to define and separate the various lineage groups and classes, such that certain groups may intermarry with lineage groups in their own class, and to a limited degree into other classes, but may only marry up or down within the hierarchy to a limited degree. The marital rules thus serve to protect the coherent identity of the respective lineage groups, and any related economic, social, religious and political status.

In particular, I would argue that the marital rules serve to construct and protect male identity and, in particular, male priestly identity. Robin Fox argues that preservation of male power and control are at the heart of patriarchal (he actually argues all) kinship systems.\(^\text{108}\)

\[^{108}\text{features that has not (yet) developed into a nation.}\]

Levi-Strauss argues that the exchange of women is at the heart of kinship system, a hallmark of his alliance theory of kinship.\footnote{C. Levi-Strauss, The Principles of Kinship (1949) (republished in The Elementary Structures of Kinship) pp. 47-63.} Both these theories fit very well with my analysis of rabbinic notions of kinship and marital rules. Indeed, it may be argued that in the core system, the transmission of the status of a female \textit{per se}, does not exist. Rather, the female identity is contingent upon and created by attachment to a father or husband, and may shift from one to the other upon marriage, or upon dissolution of the marriage through death or divorce. We will see that in some cases, intermarriage results in the loss of the ability of a daughter to re-establish the lapsed connection to the father’s status following dissolution of the intermarriage.

Note, however, that intermarriage is not considered a marriage under rabbinic law. It is at least not considered to be \textit{qiddushin}, since Gentiles as a status are constructed so as to disallow them from contracting \textit{qiddushin}. This is despite the fact that it is not uncommon to find references to marriage between a Jew and a Gentile in the literature. The use of such language should not be taken as a refutation of the Gentile’s inability to contract \textit{qiddushin}, but may reflect an acknowledgment that marital relationships may exist in practice without \textit{qiddushin}. This nullification of marriages involving Gentiles, coupled with the use of non-technical terminology in the literature, makes it difficult to distinguish between marital-type relationships (i.e. marriages or long-term relationships that may not be contracted by \textit{qiddushin}) and sexual relations. Maimonides offers a response to this vagueness by ruling that marriage between Jews and all Gentiles is biblically prohibited and punishable by lashes, while sexual relations is prohibited separately \textit{d'rabbanan}. He further
differentiates between two types of non-marital sexual relationships, the more serious violation of *zenut* (long-term liaisons, perhaps leading to a marital relationship) and *mikreh* (a single instance). The rabbinic sources, however, use vague and general language, perhaps because they are concerned with whether the marriage is valid and/or prohibited rather than with the character of the relationship or sexual relations *per se* (rules pertaining to sexual relations specifically are dealt with in Chapter 5).

Problems in determining the status of the child of intermarriage arise with the development of matrilineal descent. In cases of intermarriage, if status follows that of the mother, then what is the status of the child? If tribal and caste status is passed through the father, and the father is Gentile, while at the same time the woman would normally gain her husband’s status, the practical implications of matriliny are difficult to discern. Whether or not the offspring can take on any tribal, caste or religious status, becomes a difficult question, as the child is caught between patrilineal and matrilineal systems. While clearly stated in the literature, (and likely a practical rule during wartime or other situations of assault by Gentiles, since the child would remain with the mother) the rule of matriliny does not follow easily from this inherently patrilineal system. I will argue that this results in a complicated and conflicting legal situation when it comes to determining the status of the child of a Jewish mother and a Gentile father.

The development of non-patrilineal descent patterns is important to any analysis of the status of the children of intermarriage, as well as for an analysis of forbidden intramariages. The descent pattern for permitted marriages within the core group remains patrilineal, but others are either governed by matrilineal descent, bilateral descent (following

the more blemished partner), or the creation of a third status that differs from that of either parent, namely the mamzer, a class whose marriageability is highly restricted. Our theoretical framework allows for various possibilities when it comes to the origins and function of these non-patrilineal descent patterns. We might consider the possibilities of accretion, fission, change and response to an interfering state. This latter possibility allows for the suggestion that Roman law served as the model for the application of the matrilineal principle in less desirable marriages (be it as general legal/social influence and/or a response to Roman pressures on local kinship and political systems).  

It might also be argued that, in some respects, non-patrilineal decent in general and matriliny in particular fulfill a particular function as a supplement to the patrilineal system. Their function is likely deterrent and punitive, as alternate descent patterns deny males who reproduce in a transgressive or undesirable manner (as in the case of a priestly male married to a divorcee or a yisrael male married to a Gentile woman) of the benefits, rights and obligations of the patrilineal system. Under the normative patrilineal system, a yisrael man (by a woman of the castes of yisrael, levi or kohen, for example) would have a yisrael child, whose identity would in turn be yisrael, following its father. Father and child would also share all the rights and obligations engendered by the patrilineal connection (for example, the ability to inherit). In the case of matrilineal descent, however, the father who has offspring by a Gentile woman loses all connection to the child so that, even though they are consanguineous relations, none of the standard rights and obligations exist. In essence, the  

matrilineal principle in this case removes the intermarried male, his offspring and his Gentile wife from the patrilineal system (understood broadly as part of the kinship-identity structure). 112

This phenomenon underscores the idea that intermarriage cannot be reduced to facts of genealogy or consanguinity alone and disrupts normative kinship patterns. We find, for example, that the children of a Jewish man by a Gentile woman are his by blood and lineage, but are not considered his offspring under rabbinic law. The intermarried female is punished in that her connection to the outsider male is not acknowledged, and she appears to exist in a kind of limbo state where she cannot gain identity within the system from her husband, and is severed from her status link to her father. The status of her child, as we shall see, is a matter of some dispute, with some sources arguing the offspring is a mamzer, others that it is a kasher (fit, i.e. non-mamzer) Jew, and yet another suggesting it may be a Gentile. 113 The woman, following the opinion where her child is a kasher Jew, can gain recognition in this system through acknowledgment of a connection to her child, though both Talmudim ultimately express serious ambivalence about the status of this child, who appears to remain in a kind of limbo of its own.

I am arguing that intermarriage is constructed of a variety of kinship and identity systems that serve to create and maintain identity boundaries, thus perpetuating the core of


113. See, for example Sifra to Leviticus 24:10-11, Acharei Mot Parashah 9 and Parashah 13:3-23, Weiss p.85c-86d.
the linear descent system and the political and religious influence of its elite. In this vein, we find the asarah yuchasin as well as the traditions related to qiddushin and aveirah (transgression) and descent rules. In addition, we have the construct of the qahal, which in rabbinic terms refers to the core groups of kohen, levi and yisrael, and from a biblical basis excludes internal categories (the mamzer and the male with damaged genitalia) as well as specific external nationalities (the Moabites and Ammonites) but permits other external nationalities under specific conditions (the Egyptians and the Edomites).

We also find the various legal rules and cases that come to bear on the issue of intermarriage and sexual relations, including everything from the laws related to the boel aramit, to the prohibition of intermarriage with the seven nations, to the permission to marry the captive woman. We also find the rules of the arayot, which primarily regulate incest, in addition to some other sexual acts. I shall argue that these are largely concerned with regulating endogamous relationships rather than exogamous relationships, and so do not include discussion of intermarriage.

It is not unreasonable to suggest that the rabbinic approach to intermarriage is overwhelmed by an accretion of an excess of relatively unrelated systems, constructs and rules. These include the variety of often disconnected biblical rules, the early and later rabbinic developments, and the multiplicity inherent in rabbinic tradition. I would suggest that it is evident in the literature that this conglomeration of complex legal systems tends towards dissolution and becomes less than functional in the rabbinic era.

Furthermore, a tension clearly exists between two different rabbinic methods of

114. See Deuteronomy 23, where Ammonites and Moabites are prohibited but Egyptians and Edomites are permitted after three generations.
dealing with the situation. The first is to maintain the legal categories stemming from biblical and tannaitic law as much as possible and reconcile them as far as is feasible into a working system and apply the rules and categories strictly, even to the point of increasing strictness and limitations. The other is to recognize the fallibility of these systems as well as their disconnectedness from each other and from the human condition, resulting in a fairly laissez-faire approach to the law, even to the point of the neglect or complete abandonment of a legal system. The co-existence of these two approaches results in a situation where elements of the tradition maintain a variety of conflicting and disconnected legal systems and rules on intermarriage, while others abandon them.

Rabbinic tradition on intermarriage is incredibly rich, multi-layered and diverse. Focusing on a single legal tradition, to the exclusion of its internal critics, does the sources a disservice. The wealth of these traditions, as we shall see, does not always translate well into reality, or at least into the rabbinic literary imagination thereof.
Chapter 1

Intramarrriage and Intermarrriage:

The Ten Lineages - עשרה יוחסין - Asarah Yuchasin

The asarah yuchasin or Ten Lineages (mQiddushin 4:1-3) is, on its most basic level, a list, but it is also much more than that. It forms the basis of a legal system for the construction and regulation of identity. In this respect, it establishes various identity categories and subsequently regulates marriage between the listed groups, thereby establishing a hierarchical relationship between them. In brief, the asarah yuchasin represents a hierarchical categorization of status that is regulated by marital rules. In this process, the list of the asarah yuchasin not only establishes a series of internal identities, it also delineates the external boundaries of the larger entity of the asarah yuchasin as a whole. The rules for marriage between the various groups on the list thus determine which groups are permitted to each other in marriage, and which are not; which groups are included at the core and which are relegated to the outer reaches; which groups are included in the group and which are excluded completely. A study of the asarah yuchasin thus becomes essential for a study of intermarriage in the rabbinic tradition because it is concerned with the construction and maintenance of the inner and outer boundaries of identity through marital rules, thereby determining which types of marriages are intramarital, and which are intermarital.

Intermarriage may then be understood as a marriage between a member of the

115. Throughout this chapter, I use the term intermarriage to refer to marriage between any two groups, be they members of the asarah yuchasin or not, though the term
asarah yuchasin, that is, one of the ten lineages, and a non-member whose identity category is not on the list. Beyond this boundary definition, the very structure of the intramarital rules and the identity categories that they regulate is significant to our understanding of intermarriage. One cannot properly understand rabbinic notions of intermarriage without an analysis of how intramarriage operates in rabbinic halakhah. I would even suggest that, given that intra- and intermarriage in rabbinic traditions might both be described as systems of identity categories regulated by marital rules (in a hierarchical structure), they are very much akin to one another. Furthermore, the emphasis on hierarchical identity categories, the use of marital rules to establish and maintain these, and the related emphasis on genealogical lineage within the asarah yuchasin extends to external categories as well, i.e. intermarriage. On this note, Michael Satlow writes that "When they had the choice in antiquity, Jews may well have engaged in exogamy to a significant degree: in any case they often appear much more worried about not intermarrying other groups of Jews than they do about marrying non-Jews."\(^{116}\)

The asarah yuchasin is primarily concerned with clear and certain identity categorization and the regulation of identity categories through marital rules. The asarah yuchasin presents a list of identities and conceives of two types of marriage between them: mutar (permitted), and by implication, asur (forbidden). While the categories and rules of the asarah yuchasin are primarily intramarital (the core list in mQiddushin 4:1 does not list the goy/ah, nokhri/t, eved or shifchah, i.e. the Gentile or the slave), those groups on the outside or lower levels of the system (as well as those on the outer borders of each

\(^{116}\) Satlow, Marriage in Antiquity p. xvii.
individual class) have a kind of liminal identity, not quite included and not quite excluded. Following the asarah yuchasin, there is no single unified identification of "Jew"; no simple unified homogeneous category of identity. The list does not even provide a name for the entire grouping of lineages. Rather, we are left with a variety of identities, some doubtful, some unknown, some on the fringes, some in the centre, not all of which are able to intermarry (or perhaps more properly, intramarry).

It is notable that the Mishnaic system of asarah yuchasin is not concerned with transmission of status or the offspring of said unions, nor with any punishment or enforcement related to the marital rules, or marriage with full non-Jews (though liminal groups such as the netinim and kutim, which are not quite Jewish and not quite Gentile, are of interest to this system). Likewise, it does not articulate a legal principle beyond the marriageability of the defined groups. The asarah yuchasin is thus of limited use as an independent system for the practical construction and regulation of identity and its transmission through the generations. Nevertheless, it remains necessary to any discussion of intramarriage or intermarriage because it lays down a foundational structure. We will find that as halakhah developed, attempts were made to link the asarah yuchasin to other approaches, combining other concepts and processes with the asarah yuchasin in an effort to create a fully functioning legal system.

The asarah yuchasin are articulated in mQiddushin 4:1 as follows:

עשרה יוחסין על מבבל: קוהני, ליי, ישראלי, חללי, גרי, והוררי, ממזורי, נתוני, שותקיו, אספפי. קונני ליי ישראלי, ממזורי ולא זה בטוח. ליי ישראליים גרי והוררים, ממזורי ולא זה בטוח. גרי והוררים ממזורי נתוני שותקיו אספפי,замזורי ולא זה בטוח.

Ten lineages went up from Babylon: Kohanei, Leviei, yisraelei, chalalei, gerei, and charurei, mamzerei, netinei, shetukei, and asufei. Kohanei, Leviei, and yisraelei are permitted to each other. Leviei, yisraelei, chalalei, gerei and ccharurei are permitted to each other. Gerei and charurei, mamzirei,
netinei, shetukei, and asufei are permitted to each other.\textsuperscript{117}

The Mishna claims that the \textit{asarah yuchasin} are the lineages of those who returned from Babylonia to the land of Israel, thus linking its \textit{halakhah} to a narrative of the return from exile. The Babylonian and Palestinian Talmuds both unquestioningly accept this narrative, and are primarily concerned with using biblical proof-texts to link the groups from mQiddushin 4:1 to biblical peoples and events.\textsuperscript{118} Some of these groups are not mentioned in the biblical record on the return, though most of the names in the list are mentioned in the biblical record in other contexts. The Talmuds' use of a wide range of verses unrelated to this historical event in their attempts to link the Mishna's categories to the Bible supports the notion that the \textit{asarah yuchasin}, as a list, is a rabbinic construct. I would suggest that rabbinic tradition adapted and grouped biblical terms in its construction of a largely novel system and language around intramarriage.

Ezra Chapter 2 contains a record of those who returned from Babylon. The description in Ezra is markedly different from that of mQiddushin 4:1. The focus in Ezra 2 is on status related to the Temple (temple servants, \textit{Kohanim} and \textit{Leviim}), as well as on noting individuals who had no genealogical record at all (i.e. their descent was indeterminate). The chapter begins by noting the leaders of the community and the

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\textsuperscript{117} The list is generally rendered by Danby as follows, "Ten family stocks came up from Babylon: the priestly, levitic, and Israelitish stocks, the impaired priestly stocks, the proselyte, freedman, bastard and \textit{Nathin} stocks, and the \textit{shetuki} and \textit{asufi} stocks" \textit{(The Mishnah, Translated by Herbert Danby, 1933: Oxford University Press, p.327)}. I have maintained the simple transliteration here as the meaning of these terms is not always straightforward. Each group will be discussed individually, below.
\textsuperscript{118} bQiddushin 69a-70b, yQiddushin 4:1. Though there is no doubt expressed regarding the narrative or the list itself, as we shall see, there are debates around purity of lineage, and around Ezra's supposed role in the return.
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remaining returnees are called אנשי עם ישראל (people of the nation of yisrael). They are
categorized initially by city and family (including the governor of Moab in Ezra 2:6). The
chapter continues to list the kohanim, levim, netinim and the descendants of Solomon's
slaves. The chapter concludes by listing those whose lineage could not be determined.

Ezra 2:58-62:  

59 And those who went up from Tel Melach, Tel Charsha, Keruv, Addan, Immer were not able to tell [the name of] their father's house, or if their seed [i.e. descendants] were from yisrael: 60 The children of Delayah, the children of Tobiah, the children of Neqoda [numbered] six hundred and fifty two.

119. In general, the term netinim appears to be derived from the root n.t.n., those who were given. Ezra 2:58 appears to recognize two categories: the netinim and the bnei avdei Shlomo or children of the slaves of Solomon. Ezra 8:20 calls them הנתיניים שנותו ידיד והושר-Smith נטינים whom David and the and the ministers had given (root n.t.n.) for the service of the Levites. The Netinim are consistently described as such where they are referred to in the biblical record, specifically Ezra, Nehemiah and I Chronicles. In rabbinic literature, the Netinim are generally linked to the Gibeonites of Joshua 9 who attempted to escape destruction by establishing a covenant as servants to Joshua (Joshua 9:27: יונקנמ ויהיו כן, "and Joshua set (n.t.n.) them on that day as choppers of wood and drawers of water for the community." Upon discovering that they were not in fact a distant people, but a local people (who should have been destroyed), Joshua curses them and condemns them to eternal slavery. There is no mention of a position on intermarriage with the Gibeonites in Joshua 9. The Gibeonites would appear to be a different group from the Netinim described in Ezra, who were appointed by David's authority, and were the descendants of Solomon's slaves. The low status of the Gibeonites as false converts forced into slavery fits with the low status of the natin in mQiddushin 4:1, though certainly a priestly slave class might also have been a group with moderately low status. From a legal and literary perspective, we may understand the natin of mQiddushin 4:1 as a rabbinic construct based on a kind of merger between the Netinim of the Bible and the story of the Gibeonites. From a historical perspective, the question of whether this class of temple servants or the ethnic Gibeonites were still identifiable groups in rabbinic times deserves further inquiry.

120. See also Nehemiah 7.
And of the children of the Kohanim [Priests]: the children of Chovayah, the children of Haqqots, the children of Barzillai who took [i.e. married] a woman from the daughters of Barzillai the Gileadite, and who was called after their name. These sought their genealogical records but they were not found and they were expelled from the priesthood. And the Tirshata said to them that they would not eat of the most sacred food until a priest stood to [consult the] Urim and Tummim.

In these verses those with problematical lineage are listed. The first group includes those from particular locations who did not know their patrilineal descent line and could not say whether they were from yisrael. This use of yisrael assumes that they were not of either the levitical or priestly class. This supports the notion that Ezra 2 knows of three main classes: Kohanim, Leviim (and their servants), and yisrael. Ezra 2:60 mentions two particular lineages who did not know their patrilineal lines nor whether their offspring were of Israel. It is unclear why that was the case, though the emphasis on patrilineal descent is notable. These families (possibly offspring of intermarriage) are followed by priestly lineages, one of whom intermarried with a Gileadite woman. These groups could not

121. Many readings have "havayah" with a hataf patah.
122. Though the usual meaning is to redeem (amongst others), this late usage in the Piel (here Pual) indicates desecration or defilement. This reading is difficult. BDB has, for example, "and they were desecrated out of the priesthood, i.e. deposed, as desecrated ones" (p.146). Koehler Baumgartner have "to be defiled (ritually)". One might prefer the root g.l.h., which could mean to expose or remove, but the presence of the medial alef makes this impossible. It is difficult to see how a lack of written genealogical records would render the priesthood ritually impure, unless we are speaking of a metaphorical use of the term. One of these families had intermarried, and perhaps there is some suggestion that intermarriage defiles the priesthood, in that it violates the marital rules set out for the Kohanim (priests).
123. I prefer this reading, from Myers' translation in the Anchor Bible (Ezra - Nehemiah), to my original "with Urim and Tummim."
124. Note that it is the patrilineal line and not the matrilineal that is important in this verse. It does not say that they knew neither their fathers' nor their mothers' houses, or that they did not know their mothers' houses.
125. Are knowing one's father's house and knowing the status of your own offspring one and the same? In a pre-Ezra, pre-mQiddushin 3:12 context (matrilineality in cases of intermarriage), one would expect patrilineal descent to determine the status of the offspring.
provide a written genealogical record and their priestly status was revoked.¹²⁶ It is unclear whether the lack of a record or the existence of intermarriage was the main factor in the case of the children of Barzilai. The Palestinian Talmud assumes that the daughters of Barzilai converted, replacing any consideration of intermarriage with the paradigm of conversion.¹²⁷

The summary of the chapter in Ezra 2:64 categorizes the people in yet another fashion, by כל הקהל אחת (all the congregation as one), including their slaves, male and female singers, horses, mules camels and donkeys (2:65-67). Those of uncertain lineage would appear to be included in the qahal, though this is necessarily speculative. Unlike mQiddushin 4:1, Ezra 2 does not mention the mamzer, the ger or the freed slave. It likewise does not mention the shetuki or asufi, though it clearly acknowledges those of unknown lineage, which may be linked to these rabbinic categories. The chalal or disqualified priest is likewise not mentioned, though this rabbinic category might be linked to the discussion of disqualified priests in Ezra 2. As noted, the natin in Ezra 2 appears to refer to a different category from that of mQiddushin 4:1. While Ezra 2 clearly emphasizes the importance of priests keeping a written record of their genealogy, and of non-priests being able to state

¹²⁶ Note that their priestly status may not have been entirely revoked, if they were merely barred from eating of the most sacred food and not from terumah. Note that they are only forbidden from eating the kodesh kodashim temporarily. On this last point see Rashi bSotah 48b, d.h. ad amad kohen etc., וענד Territory אמו, which suggests that it was a permanent removal, because the urim and tummim were no longer in use. yQiddushin 4:1 65b states that use of this expression is akin to saying that they would not eat the most sacred food until the resurrection of the dead, or until David's son (i.e. the Messiah) comes, making the ban very long term, if not quite permanent. Discomfort with the role of the urim and tummim in the determination of membership in the priesthood in the absence of a written genealogical record, whereby some other form of inquiry may undermine rabbinic systems may also be in evidence. In any case, the urim and tummim were no longer in use come the post-exilic period (Moshe Greenberg, Urin and Thummin, Encyclopedia Judaica Vol. 20 2nd ed. 2007, p. 422) and this indicates a deferral of the ultimate decision.

¹²⁷ yQiddushin 4:1 65b.
their patrilineal descent and being able to state that they are of Israel, it does not articulate any rules around marriage between any of these groups.

Having noted the state of affairs in Ezra Chapter 2, we will continue by discussing the various lineages included amongst the ten of mQiddushin 4:1. The first are the Kohanim or priestly class, a line traced back to Aaron. The Levites, perhaps descendants of the Tribe of Levi, who were involved in temple services, and are described in Numbers 18:2-6 as a kind of priestly assistant. These two are specific lineages with an historical (or mythic) ancestry. yisrael, or Israel, presumably grew out of the Israelites of the Hebrew Bible, themselves named after Jacob, who was renamed yisrael in Genesis 32:28-29. What was once the name of a people becomes the name of a category in this mishna, as distinguished from kohen and levi as well as from the other seven lineages. This is a far more general genealogical category, though from Ezra 2:58-63 it is clear that awareness of genealogical descent played a part in yisrael identity.

Chalalei are related to marital rules specific to the priestly class (Leviticus 21:7, 14-16), the chalalah being one of the prohibited partners for a kohen. Grouped with the widow, divorcee and zonah, this was not a lineage so much as a category of female status of specific relevance to priestly marriages. Rabbinically, the chalal status is a punitive measure resulting from particular prohibited unions, such that one who would otherwise be

128. As is common in rabbinic lists, the actual number of lineages does vary, though rarely, according to some opinions (see yQiddushin 4:3 44b). R. Eliezer ben Yaaqov said that there were eight (because he held that the shetuq and asufi were part of the qahal, subsumed under yisrael, or so explains Qorban HaEdah d.h. al da'ateh), and Rabban Gamliel and R. Eleazar argued for nine (because they held that in the case where the father was unknown, the mother's claim about his status (i.e. that the child is kasher or otherwise) is accepted, and so the status of shetuqi does not really exist (Qorban HaEdah d.h. al da'ateh derabban gamliel).

a *kohen* and pass on his priestly status to his children, instead creates a line of *chalalim*; a lineage that is forbidden from marrying into the class of *kohen*. The line of the *kohen* is thus shifted closer to the outer periphery. In contrast, the *gerei* and *charurei* (namely the convert and the slave) move inwards from lineages outside the outer limits of the *asarah yuchasin*. The *gerei* are related to the biblical *ger*, the sojourner or stranger, but rabbinically are the converts to Judaism. Here they do not become part of an existing genealogical lineage but form their own.130 Likewise, the *charurei* are linked to the non-Jewish slave (either of other nations or of the *ger*) of the Hebrew Bible (Leviticus 25:44-46).131 The biblical slave category appears to have been one that could be passed through the generations, and hence formed a genealogical group. Scripture does not include the construct of the freed Gentile slave, though in rabbinic tradition it is a Gentile slave whose process of being freed is akin

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130. According to the rule of the *pegum* a child of a *yisrael* and a *ger* would always carry the blemish of *ger* (if *ger* is indeed considered a blemish - R. Yehudah might disagree, due to his inclusion of *gerim* in the *qaḥal*). *Chalalim*, *gerim*, and *manzerim* and are sometimes offered different kinds of "remedies" to their condition, that is, rabbinic solutions related involving marriage to a *yisrael*, or a slave in the case of the *manzer*, as in mQiddushin 3:14 and mQiddushin 4:6-7. Note that the slave is likely used as an example instead of the Gentile woman because the slave is under the man's control. In this respect she does not present the same kind of threat that a free Gentile wife might present. This in turn suggests that a free wife was considered to have a certain degree of influence or power that a slave would not have had, for example with respect to theological beliefs and family connections. On the status of the slave woman, see Kriger, "Introduction" in *Sex Rewarded, Sex Punished*.

131. 

25:44 And as for your bondmen, and your handmaids, whom you may have: of the nations that are round about you, of them you shall buy bondmen and handmaids. 45 Moreover of the children of the strangers that do sojourn among you, of them you may buy, and of their families that are with you, which they have begotten in your land; and they may be your possession. 46 And you may make them an inheritance for your children after you, to hold for a possession: of them may you take your bondmen for ever; but over your brothers, the children of Israel you shall not rule, one over another, with rigour (trans. adapted from JPS).
to conversion (bQiddushin 22b-25b).132 In our mishna it has become a lineage. The gerei and the charurei are both identities characterized by transformation, that is each began as an outsider and underwent a change so as to be included (to a greater or lesser degree) as part of the community.

The mamzirei find their origin in the two biblical mentions of the term, Deuteronomy 23:3 and Zachariah 9:6.133 The only biblical information available on the mamzer is that it was forbidden from entering the congregation of God (Deuteronomy 23:3).134 In our mishna the mamzer is a specific lineage. The natin is called by the same term as the netinim of Ezra (i.e. temple servants), but in rabbinic literature is often described as being the descendant of the Gibeonites condemned to slavery.135 Both the mamzer and the natin are permanent

132. See yQiddushin 4:1 42a, however, where the charurei are linked to the brief mention of the netinim in Nechemiah 7:46. The traditional commentaries offer no explanation here, but there seems to be an understanding that the netinim of Nechemiah are not the netinim of the Mishna, rather, they became the freed slaves.

133. Zachariah 9:6 states that "A mamzer shall dwell in Ashdod." Nechemiah 13:23 lists Ashdod as one of the places of origin (along with Ammon and Moab) of the women with whom the Jewish men had intermarried. Nechemiah is concerned that the children of these intermarriages did not speak Judean, but rather the languages of the other nations.


135. In my view it is entirely possible that the natin was no longer a living category in rabbinic times, or at least in post-tannaitic times. The category is usually appended to the category of mamzer without much special consideration. If this category were no longer relevant, it might explain its unclear definition under rabbinic halakhah. On the netinim in the Bible and rabbinic literature, see Baruch A. Levine, "The Netinim" in Journal of Biblical Literature, 82:2 (June 1963), pp. 207-212 and "Later sources on the 'netinim'" in
statuses, that is they are passed down through the generations indefinitely.

As mentioned, there is a rabbinic tradition that holds that the mamzer may be "purified," i.e. he may produce children free of his mamzer status, through a legal loophole involving marriage to a female Gentile slave (shifchah). Any children of this marriage, following the law of kamotah (meaning "like her", i.e. that the offspring has the same status as the mother) would take their mother's slave status. As slaves they might be freed and become part of the class of charurei, a more desirable status with greater marital options. Note that only the male mamzer is considered in this solution and that the transmission of mamzerut through the female line, i.e. matrilineal transmission, is not considered. This may indicate a general default to patrilineal descent patterns and may also serve as a particular punishment for the female. Note, however, that in the case of the mamzeret, it is not the rule of matriliny, but the rule of pegum that would determine her child's status; her child will take on her blemish. 136

In our mishna the netinim form their own lineage, not unlike in Ezra where they are a special class of slaves. The mishna then turns to the shetuqeï and the asufeï. These have no real basis in Scripture. 137 Rabbinically, each refers to a child whose parentage is either partially or entirely unknown because the child has been abandoned or the woman is unwilling or unable to identify the father. Such a child's genealogical lineage is therefore in some degree of doubt, and there is a concern that the child may be a mamzer. These children are represented in our mishna as lineages, though the only factor they necessarily

136. See mQiddushin 3:14 and Kriger, "Introduction" in Sex Rewarded, Sex Punished.

- 66 -
have in common is some degree of uncertain parentage. The Mishna itself will explain what
each of these terms refers to.

mQiddushin 4:2:

These are the shetuqi.\(^{138}\) Any who knows his mother, but does not know his
father. Asufeî: Any who was gathered from the market, and does not know
either his father or his mother. Abba Shaul called the shetuqi: beduqeî.

According to the Mishna's definition the shetuqi is a child whose patrilineal line is
unknown. It is perhaps unsurprising that the child whose father is known but whose
matrilineal line is a mystery is not mentioned. In the case of the shetuqi, the uncertainty
regarding the child's identity is significant. Any identity carried through the male line is
indeterminate, and any identity created through that specific union with the unknown man is
a possibility, as is the possibility that the unknown man passed some genealogical blemish
on to his child (through the law of the pegum). It therefore cannot be determined whether
the child is a kohen, levi or yisrael (patrilineal descent). Likewise it is unknown whether or
not the child is a chalal or a mamzer (created by the union or passed down from the father)
or if the child carries another of the ten lineages passed down from his father. When the
mother's status is known, assuming that she is known to be one of the asarah yuchasin, it is
only certain that the child falls within the asarah yuchasin, that is, he is Jewish.\(^{139}\) This last

\(^{138}\) Or: And who are the shetuqim?

\(^{139}\) Shaye Cohen (Beginnings of Jewishness, p.291) points out that in cases of uncertain
parentage, the rabbis do not rule following matrilineal descent. This is partly true, as the
status of the child cannot be determined without knowledge of the father's status.
Knowledge of the mother's status, however, is sufficient to determine whether the offspring
is "Jewish." As I note in Chapter 2, the actual categorization of this offspring (of a Jewish
mother and a Gentile father) as non-Gentile does not assist the rabbis in finding a place for it
only holds true if the rule of kamotah is followed, that is, the rule of matriliny in cases of intermarriage or slave-free marriage (mQiddushin 3:12). The narrow scope of this rule and its practical weaknesses are evident in the case of the shetuqi. We may know that the child is a Jew, but that is about all we know. Its identity is otherwise completely uncertain, and as we shall see, its marriage options highly restricted. The asufi is a foundling, one whose ancestry and genealogical lineage is entirely unknown.

Once it has listed its categories of identity, Mishna Qiddushin 4:1 divides them into groups using the simple marital rule of mutarin or permitted. Those permitted to enter into each other are allowed to intermarry, those which are not, we may presume, are forbidden to do so. Regulation of inter- or intra-marriage thus forms a key part of the approach in mQiddushin 4:1. The mishna essentially creates levels of marriageability, and degrees of access within a hierarchical group system. The most exclusive is the kohen or priestly class, who may marry the levi and yisrael but no others. The Israel and levi may both marry up, into the priestly class, and down into the chalal, who are specifically prohibited to the Kohanim or priests. These three, the levi, yisrael and chalal may marry the transitional classes of the ger and charur, the convert and the freed slave who have entered the asarah yuchasin from the outside, but no lower. These last two may marry up into yisrael, levi and chalal (but not into kohen), as well as down into the classes of mamzer, natin, shetuqi and asufi. This last set may marry up into the classes of ger and charur but no higher (i.e. not to levi, yisrael, chalal and certainly not to kohen).

The asarah yuchasin is particularly innovative in its application of heirarchical marriage categories (the laws governing the marriage of the priestly class in the Bible) to the within the asarah yuchasin.
outer fringes of identity, and for the resulting incorporation of all (or most) categories and their internal marriageability (marital rules) within a single system. It also introduces the novel, and typically rabbinic concept of uncertainty of parentage. Those of unknown parentage (either the father or both parents), and hence unknown identity form their own classes within this structure at the very fringes. Certainty or knowledge of lineage thus becomes a principle upon which some marital rules are based, and a key factor in determining one's marriageability.

mQiddushin 4:1 is also notable for its unique language and construction. It is a category based system that groups identities together who are "mutarin lavo zeh bazeh (permitted to marry each other)." The asarah yuchasin as it is constructed in mQiddushin 4:1 does not appear to be internally concerned with other languages or constructs other than its own. For example, the core mishnah (mQiddushin 4:1) that articulates this system does not use the language of the "qahal", and does not state, for example, that they are forbidden to enter the congregation. ¹⁴⁰ The mishna does not explicitly relate to the Bible's negative prohibition, "asur lavo baqahal," it does not name who is or is not considered "qahal," nor does it relate to its rules in terms of entry into the "qahal." Its divisions are typically more complex than the rule asur lavo baqahal, in that it sets up several genealogical subgroups. Around the core of kohen, levi and Israel, a system for genealogical naming and classification of marital unions is developed for all of the asarah yuchasin, various types of categories which are all presented as ancestral lineages.

Perhaps because mQiddushin 4:1 does not directly address the question of qahal, other sources must tackle the problem of linking the language of asarah yuchasin to the

¹⁴⁰. The system of Qahal is discussed in Chapter 3 below.
biblical concept of qahal and take on the task of defining which of the ten are included in or excluded from the qahal. mQiddushin 4:3 connects the language of "asurim lavo baqahal" to the language of "mutarim lavo zeh bazeh" found in mQiddushin 4:1. As we shall see, there are a number of different rabbinic interpretations of mQiddushin 4:3. I would suggest that the variety of interpretations results from rabbinic attempts to merge these relatively incompatible systems (asarah yuchasin and qahal).

mQiddushin 4:3

All who are forbidden from entering the congregation are permitted to each other.

Rabbi Yehudah forbids.

Rabbi Eliezer says: certain with certain is permitted; certain with uncertain, uncertain with certain, and uncertain with uncertain is forbidden. And these are the uncertain ones: shetuqi, asufi, and kuti.

Aside from its merger of the asarah yuchasin with the rule of the qahal, mQiddushin 4:3 teaches that there was a legal disagreement between the Tanna Qamma, R. Yehudah and R. Eliezer regarding the marital rules applied to the lower classes of the asarah yuchasin, and also notes that R. Eliezer added the kutim or Samaritans to the category of uncertain identities (thereby adding the kutim to the asarah yuchasin). The Babylonian Talmud has considerable difficulty with its interpretation of mQiddushin 4:3. The Tanna Qamma of 4:3 states, kol ha asurim lavo baqahal mutarim lavo zeh bazeh. This statement links the language of 4:1 to another concept, that of permission to enter the congregation. The notion of asurim lavo baqahal is a biblical construct normally linked to the simple binary of asur/mutar and a range of specific identities and/or characteristics that result in an individual's exclusion from the qahal. I would suggest that this attempt to combine two systems in such
a brief mishna accounts for its lack of clarity. The Tanna Qamma groups an unnamed set of identities together based on one common characteristic, namely that they are forbidden from entering the congregation. It then rules that they are permitted to intermarry with each other. That is, for them, marriage to the qahal is prohibited, but they are permitted to marry each other. The mishna groups them together based on this one characteristic and rules that they may intermarry with each other. Though we must consider the possibility that the merging of these two different systems is ultimately unsuccessful (that is 4:1 and 4:3 do not make sense together and their methodologies are different), we will nevertheless attempt a coherent reading of mQiddushin 4:3 in context of 4:1.

If we attempt to merge the approaches of asarah yuchasin and qahal, the resulting system expressed by the Tanna Qamma might look something like this:141

\[
\text{qahal} = \text{kohen, yisrael, Levi, chalal}
\]

\[
\text{mutarin (permitted) lavo baqahal} = \text{chalal, ger,}^{142} \text{charur}
\]

\[
\text{asurin (forbidden) lavo baqahal} = \text{mamzer, natin, shetuki, asufi}
\]

I shall now attempt to develop an independent reading of the mishna that does not

141. As discussed earlier, mQiddushin 4:1 is structured as follows:

kohen, levi and yisrael are permitted to each other.

levi, yisrael and chalal are permitted to each other (i.e. chalal and kohen are forbidden to each other).

levi, yisrael, chalal, ger and charur are permitted to each other (i.e. chalal, ger, charur are forbidden to kohen).

ger, charur, mamzer, natin, shetuki and asufi are permitted to each other (i.e. mamzer, natin, shetuki and asufi are forbidden to kohen, levi, yisrael and chalal).

142. R. Yehudah holds that the ger is included in the qahal, tQiddushin 5:1, yQiddushin 4:3 66a, bQiddushin 72b-73a.
harmonize with the interpretations in the Babylonian Talmud and the Palestinian Talmud, in order to determine whether the mishna as an early tannaitic source may be understood differently in terms of how it relates to these two legal systems (asarah yuchasin and qahal). The Tanna Qamma states that those who are forbidden from entering the qahal are permitted to each other. The mishnah continues by stating that R. Yehudah forbids. The most obvious meaning of this statement would be that R. Yehudah rules differently from the Tanna Qamma, so that where the Tanna Qamma permits the asurim (those excluded from the qahal) to marry each other, R. Yehudah forbids them from intermarrying with each other. It is also possible to understand R. Yehudah's statement as prohibiting converts from marrying with the asurim, a position he is known to hold.143 Once again, the simplest recourse at this point is to assume that these asurim are among the ten lineages of mQiddushin 4:1, namely the mamzer, natin, shetuki and asufi. The problem with this interpretation of mQiddushin 4:3 is that 4:1 has already taught us that these categories are mutarin zeh bazeh.144 However, we may note that mQiddushin 4:1 did not teach us that these are all forbidden from entering the congregation per se. The mamzer is forbidden d'oraita (Deuteronomy 23:3) but the natin, shetuki and asufi are not forbidden under the biblical law of the qahal.145

143. See discussion below.

144. On this problem see bQiddushin 74a. We may also consider that each mishna need not teach something entirely new (other than the fact that there was a legal disagreement on this point, and the addition of the kuti to the uncertain categories). Alternately, the Tanna of the one mishna may not be the same as the Tanna of the other such that harmonization of mQiddushin 4:1 and 4:3 actually has an impact on the intention of each Mishna. yQiddushin 4:3 65d appears to assume that the asurim are those forbidden to enter the qahal, beginning with a discussion of physical impediments (e.g. crushed testicles) and genealogical impediments (e.g. mamzerut).

145. The abandonment of the asufi and the lack of disclosure regarding the father's
Following this reading, R. Yehudah forbids *mamzer, natin, shetuqi* and *asufi* intermarriages. This implies that anyone from one of these four excluded groups may marry one of its own (e.g. a *mamzer* may marry a *mamzeret*) but not someone from another excluded group. This interpretation works well with the third alternative, R. Eliezer's opinion. R. Eliezer neither simply permits (as the *Tanna Qamma*) nor forbids (as R. Yehudah). Rather, amongst the *asurim* he permits definite identities to marry definite identities but forbids any marriage involving one or two uncertain partners. R. Eliezar's position is the *halakhah*. While biblical law only bans a certain *mamzer*, rabbinic law raised the bar, so to speak, and banned also the doubtful or *safeq* mamzer. Maimonides forbids any of the uncertain categories, which he lists as *safeq* mamzer, *shetuqi* and *asufi*, from marrying into the congregation. These categories are likewise forbidden from marrying each other. He notes that if such a union were to occur, the offspring would take the *safeq* status of his father (note patrilineal descent). If one of the uncertain categories were to have a child with a *ger* or freed slave, however, the child would take the status of the most blemished parent, namely the *shetuqi* or *asufi* status. R. Eliezer's position appears to be that those belonging to certain forbidden groups may marry each other. However, identity in the case of the *shetuqi* might lead one, however, to suspect that they are *mamzerim*. The *natin* is biblically linked to a kind of quasi-slave status.

146. Note that R. Yehudah does have a dissenting opinion as to the status of *gerei*, namely that they are included in the *qahal*. However, to read his position here as connected to that ruling, we must understand that the *Tanna Qamma* rules that the *gerei* are forbidden from entering the congregation, which is untenable.

147. That is, an identity that is of a particular, definite category - certain as opposed to unknown or doubtful.

148. That is, those of uncertain or doubtful status may not marry either those of certain or uncertain status, see yQiddushin 4:3 65d and Maimonides *Mishneh Torah Hilkhot Issurei Biah* 15:21-24.
certain forbidden groups may not marry uncertain groups (e.g. a mamzer may not marry an asufi). Furthermore, uncertain groups are forbidden to marry each other. On the individual level, R. Eliezer's position may be understood as a prohibition against any individual shetuqi marrying any other individual shetuqi (for example). Since the uncertain identities cannot marry certain identities and cannot marry each other, they are unable to marry. Maimonides' ruling on the offspring of the child suggests that such unions (however transgressive) were at least conceived of, if not an actual phenomenon. The mishna goes on to define the uncertain as shetuki, asufi and kuti, adding an additional uncertain lineage to those of 4:1. If we read the mishna in this way, we find that it offers a range of positions on the marital rules which apply to the lowest level of the asarah yuchasin.

We must also consider the possibility that R. Yehudah forbids members of these groups from marrying anyone at all, including members of their own groups. We have seen that according to some sources R. Yehudah forbids (or at least discourages) mamzerim from marrying mamzerim so that they will disappear, and according to other sources he forbids converts marrying each other. This would be a theoretically sound way to arrange for the elimination of doubtful status from the genealogical pool. Such a position would have been difficult to enforce, especially in the case of conjugal union (as opposed to restricting formal official marriage) and would have been unsuccessful, therefore, as an attempt to eliminate certain categories of people from reproduction.

The addition of the kuti or Samaritan as one of the uncertain identities, in the lower level of the asarah yuchasin, is significant. It is of some interest that this ethnic/religious

150. Rabbinic tradition is divided in terms of its construction of the kutim. They are
group is not included on that basis along with the netim but rather is grouped with those who do not know their parentage.\footnote{See II Kings 17:30 for a mention of the people of Kut who were resettled to the region:}

If they are understood to be false converts, then they should fall in the same groups as the netim (if we understand netim to be false converts rather than an ancient temple servant lineage). mQiddushin 4:1, however, does not include them along with the netim, indeed it does not include them at all. R. Eliezer's opinion would appear to understand the kutim to be a lineage that, while it is uncertain and unknown in terms of its particulars, is nevertheless included within the scope of the asarah yuchasin. This inclusion within the asarah yuchasin, according to the Tanna Qamma, would in theory allow them to intermarry with the lower level, presumably including converts and freed slaves as well as mamzerim and netim, while according to R. Yehudah, they would be forbidden from marrying any group but their own, and according to R. Eliezer, as an uncertain group, they would only be able to marry other Samaritans. R. Eliezer's position seems to be the only one to add the kutim to the asarah yuchasin.

Though this is an inclusive position, his particular addition of a marital rule that forbids those of uncertain identity from marrying anyone of another group, be their identity perceived either as genuine converts or as false converts. See mDemai 3:4 and mNedarim 3:10.

\footnote{See II Kings 17:30 for a mention of the people of Kut who were resettled to the region:}

\footnote{Every nation made gods of their own, and put them in the houses of the high places which the Samaritans had made, every nation in their cities wherein they dwelt. 30 And the men of Babylon made Succoth-benoth, and the men of Cuth made Nergal, and the men of Hamath made Ashima, 31 and the Avvites made Nibhaz and Tartak, and the Sepharvites burnt their children in the fire to Adrammelech and Ananmelech, the gods of Sepharvaim (JPS).}
certain or uncertain, means that the *kutim* are ultimately very much excluded. It is possible that in addition to the role of isolating those of uncertain lineage from the general populace, his ruling had the intention of discouraging marriage with *kutim*. In addition, his ruling appears to have added a punitive consequence to the creation of children of unknown lineage by further limiting their marriageability. It should be noted, however, that keeping *asufim* and *shetuqim* separate from *mamzerim* might ultimately result in an increase in status rather than a negative outcome. The problem of uncertainty is not limited to these groups, however, and could extend to any blemish, including the possibility of *chalal* status (i.e. problems in priestly lineage) and slave status.

R. Yehudah's prohibition of marriage between the groups forbidden from entering the *qahal* means that the lower categories must also define their own intramarital borders and are severely limited in that they may only marry within their own group. This is an approach that maintains lineage divisions throughout the system. R. Eliezer's ruling introduces the problem of uncertain identity. The certain identities may intermarry as in mQiddushin 4:1. Unlike mQiddushin 4:1, however, the uncertain may only marry within their particular groups (or perhaps they are not allowed to marry at all). This privileges the knowledge of parentage above all else. The main factor allowing marriage at all is knowledge of one's parentage, which allows for knowledge of one's lineage and who one may or may not marry. Uncertainty is a great threat and must not spread into the general population. Presumably, the introduction of unknown or uncertain identities into any part of the system may result in forbidden unions and descendents of indeterminate lineage, thereby rendering both the system of the *asarah yuchasin* and the system of the *qahal* unworkable and irrelevant.
bQiddushin presents a series of interpretations of this mishna and R. Yehudah's position, that it ultimately dismisses in favour of a particular reading, namely its own (i.e. the Babylonian Talmud's) interpretation of Rava’s interpretation, which limits Rabbi Yehudah's position to converts who are ineligible to enter the congregation:

bQiddushin 74b

If that is so, what does R. Yehudah forbid? This is what he [means to] say: Even though R. Yehudah forbids a convert from marrying a mamzeret, these words apply only to a convert who is fit to enter the qahal, but an Ammonite or Moabite convert, who are not fit to enter the qahal: no.

This convoluted interpretation presents a very different reading of the mishna. The reasoning that forms a basis for this version is that R. Yehudah prohibits a mamzer from marrying a convert because he considers converts to be part of the qahal. The revised version includes no Tanna Qamma and appears to attribute the entire mishna to R. Yehudah. It might read as follows:

כל האסורים לבא בקהול מתונים לא לבא

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152. That R. Yehudah prohibits Ammonite and Moabite converts from marrying mamzerim, as was just proposed. This is a problematic solution because such converts are certainly not qahal, since they are banned from it (i.e. even according to R. Yehudah, who considers converts to be part of the qahal, male Ammonite and Moabite converts cannot be part of the qahal (Rashi bQiddushin 74b d.h., iy hakhi amai ro. Yehudah oser, "אע" בהק"ה אמאי ר' יהודה אוסר). This is Rava's interpretation, and the final position in the sugya is a particular reading of his version.

153. Rava.

154. See Rashi who notes that it appears as if the mishna is all the opinion of a single Tanna, bQiddushin 74b, d.h. h"q (hakhi qa'amor) כ"ה ר' יהודה אוסר).

155. This text is my revision of the mishna in light of the Babylonian Talmud's interpretation.
[R. Yehudah says:] All who are forbidden from entering the qahal [including Ammonite and Moabite converts and mamzerim] are permitted to each other, even though R. Yehudah forbids a [regular] convert [from marrying] a mamzeret.

In my view this re-reading of the mishna distorts the text unnecessarily, especially since the mishna clearly presents two conflicting opinions. One must nevertheless consider the possibility that the asurim are not necessarily listed amongst the asarah yuchasin, or that the mishna refers to asurim as a group, including both those who are amongst the ten lineages and those who are not (Moabites and Ammonites for example). As we shall see, the Palestinian Talmud presents a reading along those lines that is far more sophisticated, if not quite so elaborate. I would suggest however, that the regulation of intermarriage between Moabites and Ammonites (for example) is beyond the interest or scope of the asarah yuchasin, and I would suggest, also beyond the scope of the rules of the qahal.\footnote{The Palestinian Talmud suggests otherwise, see below.}

Tosefta Qiddushin 5:1-2 is an interesting point of comparison because it presents a different reading from mQiddushin 4:3.

\begin{quote}
\textit{tQiddushin (Lieberman) 5:1:}
\end{quote}

\begin{quote}
Gerei and charurei, mamzerei and netinei, shetuqei and asufei, and all who are forbidden from entering the qahal are permitted to each other. [These are] the words of R. Meir. R. Yehudah says: There are four congregations [qehilot]: qahal of kohanim, qahal of leviim, qahal of yisrael, qahal of gerim.
\end{quote}
And the rest are permitted to each other. And the sages say: there are three congregations [qehilot]: qahal of kohanim, qahal of leviim, qahal of yisrael. R. Liezer says: All who are forbidden from entering the congregation: certain with certain is permitted, certain with uncertain, uncertain with certain and uncertain with uncertain is forbidden. These are the uncertain ones: shetuki and asufi and kuti, and thus would R. Liezer say: a mamzer shall not marry a kutit and a kuti shall not marry a mamzeret, and a kuti shall not marry a kutit, and so a shetuqi and an asufi and the like.

tQiddushin 5:1 is an important text in a number of respects. It brings the statement of the Tanna Qamma in mQiddushin 4:3 in the name of R. Meir. His statement clarifies a number of problems arising from mKiddishin 4:1-3: it establishes that gerim are not part of the qahal; it lists the non-qahal members of the asarah yuchasin and mentions those who are forbidden from entering the qahal. This phrasing emphasizes the use of two different systems: the list of the asarah yuchasin and the qahal. Given that some members of the asarah yuchasin are forbidden from entering the qahal, we must understand that R. Meir means to include some other groups that are forbidden from entering the qahal but are not included amongst the asarah yuchasin.157 These categories are all permitted to marry each other. If, however, the converts are not of the qahal they would be permitted to marry Moabites and Ammonites. This scenario raises the question of whether intermarriage is only a concern for the members of the qahal and those accessible to it. Furthermore, it suggests that permissiveness with respect to certain kinds of intermarriage might be linked to low status, while high status (such as the priestly class) is linked to restrictive martial rules (the notable exception being the uncertain identities). Tosefta then brings R. Yehudah's position that converts are part of the qahal and that the remaining groups are

157. Those forbidden to the qahal by Deuteronomy 23 include the Moabites and Ammonites, who fall outside the asarah yuchasin, as well as males with injured genitalia and the mamzer.
permitted\textsuperscript{158} to marry each other (i.e. \textit{mamzerim} down - the status of \textit{charurei} is not mentioned but is theoretically analogous to the \textit{ger}). The sages agree with R. Meir, and hold that only three of the \textit{asarah yuchasin} are included in the \textit{qahal}. (The sages and R. Meir are in agreement with the \textit{Tanna Qamma} of m\textit{Qiddushin} 4:1 in that they allow converts to marry \textit{mamzerim}.)

Tosefta also includes a statement by R. Liezer\textsuperscript{159} regarding certain and uncertain status. This reading also includes the \textit{kuti}, but clarifies that R. Liezer's ruling that uncertain groups are unable to marry into either certain or uncertain groups has two important consequences: a certain identity may not marry an uncertain (e.g. a \textit{mamzer} may not marry a \textit{kuti}) and an uncertain may not marry an uncertain, which means that a \textit{kuti} cannot marry a \textit{kutit}. This reading offers an answer to the interpretive problem discussed above: does R. Liezer mean that uncertain groups cannot marry into other uncertain groups, or that they cannot marry at all? Tosefta here is quite clear that the uncertain groups - \textit{shetuqi, asufi, kuti}...

\textsuperscript{158} Compare to m\textit{Qiddushin} 4:3 which according to my reading has R. Yehudah forbidding them to marry. Here Mishna and Tosefta either contradict each other or my interpretation of R. Yehudah's ruling in the Mishna is incorrect. Lieberman notes that Tosefta brings together the two different mishnaic traditions, and suggests that R. Yehudah's position here is a response to the dominant legal opinion regarding converts which allows them to intermarry with the \textit{charurei, mamzirei} and so on. The forbidden, or partially forbidden converts such as the Ammonites and Egyptians are not at issues here, following Lieberman, rather the question is whether or not converts are considered to be part of the \textit{qahal}, and following this, whether or not they are permitted to marry with the groups of the \textit{asarah yuchasin} that are forbidden to the those within the \textit{qahal}. See Lieberman, \textit{Tosefta Kifshutah, Qiddushin}, p.963.

\textsuperscript{159} The various readings are R. Eliezer, R. Liezer and R. Eleazar. For a detailed discussion of the variant readings see Lieberman in \textit{Tosefta Nashim} p.293 and \textit{Tosefta Kifshutah} (Sotah-Qiddushin) p.964-965. He proposes that the legal ruling is given by R. Eliezer (i.e. R. Liezer) but the example is in the name of R. Eleazar. He argues that it would be problematic if both were in the name of R. Eliezer, since the example doesn't add anything material to the legal rule just presented (and so Tosefta means to say that R. Eleazar agrees with R. Eliezer). The MSS are inconsistent in the latter case of the legal rule, and while they may be two different sages, it is not impossible that both the rule and the helpful practical example could be given by the same sage.
cannot marry at all - either into their own uncertain group, or into another. This understanding of the ruling is extremely restrictive and seems highly impractical. Its theoretical concerns appear to be prevention of mixing between certain and uncertain groups, prevention of potentially forbidden unions between people of unknown parentage, and the regulation of marriage amongst kutim and between kutim and the asarah yuchasin.

tQiddushin (Lieberman) 5:2

A convert and a freed slave are permitted [to marry] a mamzeret, and the child is a mamzer.

Lieberman in his Tosefta Kifshutah suggests that the correct reading is: (a convert shall not marry a mamzeret), though the manuscripts read like our text here.160 Lieberman's reading of R. Yehudah's statement is in accordance with R. Yehudah's position that the ger is part of the qahal, and so forbidden to marry a mamzer, though there is insufficient manuscript evidence for his emendation. A prohibition against a convert marrying another convert is difficult to explain, unless it has some connection to a desire to see converts marry into the class of yisrael. This would be an effective way of discouraging the development of an independent convert lineage. It is also in line with R. Yehudah's statements elsewhere (see yYevamot, below) in favour of the elimination of

160. Tosefta Kifshutah Nashim, Qiddushin p. 966. Lieberman bases his reading on bQiddushin 72b, which reads, (a convert marries a mamzeret, the words of R. Yose. R. Yehudah says a convert shall not marry a mamzeret).
mamzer lineage through restrictive marital rules.

Tosefta here contrasts the positions of R. Yose and R. Yehudah, pointing out the very different halakhic outcomes generated by these two rulings. The normative case, however, stands very much in contrast to that of the kohenet.\(^\text{161}\) She may marry any of these classes that are forbidden to male Kohanim. This highlights the mutability and permeability of female status. Even the most highly ranked woman is only highly ranked in a theoretical sense. Practically speaking, she may marry into classes forbidden to her male relatives, thus becoming part of a different and lower category, who will take on her husband's lineage status. Still another view of this difficult mishna is presented in yQiddushin 4:3 65d and yYevamot 8:2 9b.\(^\text{162}\)

yYevamot 8:2 9b:

According to R. Yudah's\(^\text{163}\) opinion, a mamzer shall not marry a mamzeret. Let us learn it from this, from that which that R. Imai said, R. Akiva Gavlaya

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161. The term kohenet (priestess) is technically synonymous with the term bat kohen (daughter of a kohen). The term bat kohen, however, clearly expresses the fact that her status is determined through patrilineal descent. The term kohenet, in contrast, may suggest some vague understanding of an independent female status, or of status conferred by the husband. It should be noted that a woman could only gain the status of kohenet through a male.

162. The version in yQiddushin 4:3 65d is slightly corrupt and yYevamot 8:2 9b is preferable. Also in this tradition: Sifrei Deuteronomy Ki Tetsei 247 (Finkelstein ed. p. 276).

163. R. Yudah is the same rabbi as R. Yehudah.
taught before R. Yochanan, R. Yitschaq bar Tavlay, in the name of R. Shimon ben Lakish: The words of R. Yehudah: a mamzer shall not marry a mamzeret so that mamzerim will cease [i.e. disappear] from the world. And similarly, an Ammonite shall not marry an Ammonite? R. Yose b. R. Bun said, is it necessary for the rabbis [to ask this]?!\textsuperscript{164} For R. Yudah doesn't hold that converts are unfit [to marry into the] congregation of God. He [the Ammonite] is unable to marry a female Ammonite because he is [considered to be part of the] congregation of God with respect to her. He is unable to marry an Egyptian for he is the congregation of God with respect to her. R. Matnayah said, one frees a shifchah for him.

Following the traditional commentaries, the primary question for this part of the sugya is the obvious one: what does R. Yehudah forbid? Does he forbid those who are forbidden to enter the qahal from marrying each other (i.e. a mamzer marrying a natin), or does he forbid them from marrying even within each type (e.g. a mamzer to a mamzeret)\textsuperscript{165}

There are two separate problems that arise out of this. The first involves the case of the mamzer, where there are two possibilities, either mamzerim may marry each other, or they may not. The teaching that they may not is bolstered by the explanation that they should be eliminated from the world. The rationale for this ruling is made explicitly clear: the ideal goal is that mamzerim should not exist. If they do not marry and have no offspring, their lines will die off (assuming that new mamzerim are not created).\textsuperscript{166} This ruling applies some

\textsuperscript{164} Qorban HaEdah \textit{d.h. al d'rabban} states that the rabbis certainly would have permitted Ammonite converts to marry each other, for if they did not the Ammonite convert could not marry at all. On a more legal note, the rabbis hold that converts (of any kind) are excluded from the qahal, which would allow them to marry each other. Note that the rationale for mamzerim to avoid marrying each other - ensuring their disappearance - is not applied to the Ammonites here.

\textsuperscript{165} See the Ridbaz (Rabbi Yaakov David b. Zeev Wilowski), \textit{d.h. mamzer lo yisa mamzeret} מפריר לא ישא ממרות and Qorban Aharon \textit{d.h. al derabban}, etc. to yQiddushin 4:3 and the parallel in yYevamot 8:2 9b and Lieberman \textit{Tosefta Kifshutah Qiddushin} p.964.

\textsuperscript{166} In realistic terms, the goal of eliminating the Ammonite and Moabite converts by stopping them from marrying each other is probably impractical.
of the patterns involved in the asarah yuchasin to the system of the qahal. While the aim of eliminating the low status of mamzer status may be positively perceived, the inability of such persons to marry and have offspring is also an additional restriction placed upon this low class. Lieberman notes that R. Yehudah's ruling is not so much a prohibition as it is a wish that mamzerim should not marry each other, an interpretation that might be inspired by some embarrassment at the motivation behind the ruling and its restrictiveness. The second problem is that of the Ammonite. It is possible that the various forbidden convert groups cannot marry with each other since they are all considered a congregation unto themselves, but they can marry within their own group (i.e. an Ammonite could not marry a Moabite, but could marry another Ammonite). This interpretation is preferred by the commentators over the last possibility that creates a situation where it is impossible for the Ammonite (for example) to marry at all. R. Yehudah holds that converts are part of the qahal, and so it may be that even the Ammonite convert, though forbidden to marry into the qahal, is considered a part of it. It would follow that the Ammonite cannot marry an Ammonite woman since they are both at once considered qahal and forbidden from marrying into the qahal. This interpretation of R. Yehudah's view is considered to be problematic since it does not allow the Ammonite to marry (a concern that is not raised in the case of the mamzer). If this last interpretation is the correct one, the commentators hold that the Ammonite must have an option, and this is the solution proposed in the sugya, namely that a slave woman be freed so that he may marry her. As a member of the charurei, she is not part of the qahal and so is permitted to him in marriage. The commentators clearly prefer the less restrictive version of R. Yehudah's ruling, which allows

167. See Lieberman Tosefta Kifshutah Qiddushin p.964, n. 7.
each type of forbidden group to marry amongst themselves, while not allowing them to marry those of another forbidden group.

Along with the system of lineage categories and marital rules set up by the *asarah yuchasin*, comes a procedure for checking lineage that is outlined in mQiddushin 4:4-5. I would argue that this procedure is part of a general concern around awareness of genealogical lineage, accuracy of genealogical record keeping, and the investigation, identification and avoidance of genealogical blemishes. In this tradition, the *asarah yuchasin* plays a key role in identity boundary maintenance through the application of marital rules to the various lineage groups. yQiddushin 4:4 66a offers an explanation of the underlying purpose of this system, namely that it is a fine established by the Sage so that a man stays close to his tribe and his family. A man wishing to marry outside his family or a related group with whom he is well acquainted is saddled with the extra burden of conducting an investigation into his potential wife's ancestry.

The process for checking lineage is described in the Mishna as follows:

mQiddushin 4:4:

הנושא אישה כוהנית ארבע לבדוק אחריה ארבע אםות שוחר שמות:

אימה באב אימה, אמא אביה אמא, אמא אביה אמא, אמא אביה אמא.

Leviyah and yisraelit: add to these one more.

One who marries a woman who is a *kohenet*, he must check after her four mothers, which amounts to eight: her mother and her mother's mother, and the mother of her mother's father and her mother, and her father's mother and her mother, and her father's father's mother, and her mother. *Leviyah* and *yisraelit*: add to these one more.

The procedure for checking goes two women back on each male relative, in addition to going two women back on the woman herself (i.e. her mother and her mother's mother - the only matrilineal line). This process of investigation is highly gendered, in that it only
calls for a male marrying a female to check into her background (unidirectional) and that a man checks only his prospective spouse's female relatives. bQiddushin 76a notices these biases and offers both a psychological and a legal explanation for the discrepancy. The first rests upon the assumption that women, unlike men, are not likely to use lineage based insults in a fight, and so any blemishes are likely to remain hidden, while a man's would be well known. The legal explanation is that women, unlike men, are not expected to marry a suitable mate; a kohenet may marry even a convert. This position is linked to what I suggest is a foundational principle of lineage in pre-Rabbinic Judaism: the woman's status is irrelevant. Protection and maintenance of the patrilineal line that is of key importance and female status is only significant in so far as it may affect the male line. Additionally, the man is generally constructed as the active agent, and not the woman. While these reasons may explain why only a man must check, they do not entirely explain why a man is enjoined upon to check only into female relatives. I would speculate that the sages may have been more comfortable encouraging such invasive and challenging investigation into women than into men, that women are more highly controlled and thus checking their lineage may have been more practical, or to a general concern around control of female sexuality. Alternatively, it is likely that a kohen would have known whether someone in his paternal line actually functioned as a priest in the Temple because of the high status connected to such work. This procedure sets up a hierarchy of lineage reliability or accuracy, with kohenet presumed to be the most reliable in terms of ancestry since she requires the least checking. This in turn suggests more active monitoring of lineage in the priesthood.168

168. As discussed above, Ezra 2 suggests that the priestly class had to be able to provide a
The mishna, it should be noted, does not actually say for what exactly one should be checking. The status of the man who is checking is not mentioned, but if we imagine the man in question to be of the priestly class, his checking of the women in the family appears quite reasonable. He would be seeking a mate allowed by the marital rules applying only to the priestly class. By checking into each woman, he would be verifying that there is nothing in her lineage of the chalalah. This would also explain why he only checks into the female relatives, presumably under the assumption that each male is a legitimate kohen. While each male could be a chalal, if all the female relatives are found to be suitable, it becomes unnecessary to check the males, since they could only be chalalim if they had been coupled with or fathered by an unsuitable female. (This might also explain why the investigation only goes back to the maternal grandmother and no further, but goes further on the father's side.) If this view is accurate, the investigation may have had the aim of verifying the woman's priestly lineage and ensuring that there are no genealogical problems that would render the match undesirable or prohibited. This process is extended to the class of yisrael, however, where even more investigation is required. This extension suggests that the investigator is looking for a wider range of problems, if we assume that priestly marital rules were not of concern to non-priests.

Thus a process is established for rooting out the full range of genealogical blemishes of varying degrees. This concern regarding lineage is further discussed in mQiddushin 4:5 which articulates a clear social hierarchy headed by those who are assumed to have unblemished lineage (those who are known to have had their lineage investigated) due to written genealogy in order to maintain full priestly status, and may set up a tradition of verifying the lineage of kohanim.
their position, employ or profession. A man must check into a woman's lineage, but need not check the female relatives of men holding certain positions. I would suggest that these mishnayot emphasize the connection between lineage, accurate record keeping and socio-political status (priestly or otherwise).

mQiddushin 4:5:

We do not check from the altar and upwards, and not from the podium and upwards and not from the Sanhedrin and upwards. Anyone whose ancestors were public servants or charity collectors, may be married into to the priesthood and we do not need to check past them. R. Yose says: Also one who was signatory witness in the ancient archives of Tsippori. R. Hanina ben Antignos says: also one who was written in the army (or list of officers) of the king [of Israel].

These prescriptions for checking into a prospective wife's background are presented as clear legal directives, but the narrative sources that tell of various rabbis' actual practices reveal a tension between the formal legalistic process for inspecting lineage, and reality.

yQiddushin 4:4 66a:

By whose power does he check? Rabbi Chaggai said in the name of Rabbi Yoshayah, he checks his female relatives. R. Chama came [upon] an elder. He said to him, does one marry into the priesthood from this seed? He said to him, "yes" and he married [based] on his word. 171

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169. A kohen or priest.
170. The platform or stage used in Temple service, i.e. a Levite.
171. Literally, "his mouth."
A kohen came by R. Yochanan. He said to him, I have followed the mishna.
I have married a woman [who is a] kohenet and I checked after her four mothers, which amounts to eight. He [R. Yochanan] said to him, if the root is smitten\textsuperscript{172} from its source [lit: head], who would inform you?

These stories feature rabbis challenging the process and and practicality of the system of lineage checking. The first indicates that the opinion of an elder male regarding a family's purity in terms of caste might be trusted in place of the complex procedure of inquiring into the background of a series of female relatives. The informality and simplicity of this approach stand in contrast to the procedural legalism of the other sources. The second narrative tells of a man of the priestly class who appears to be proudly explaining to R. Yochanan how he carefully did as the mishna teaches by checking his wife's lineage by checking that of her female relatives. R. Yochanan responds in a surprisingly dismissive manner, essentially stating that this method of checking lineage has no real value, since no one from within the family would reveal any lineage problems. According to these stories, one might be better off asking an elderly man about a family's reputation than following the mishna's instructions, and any attempt to follow the mishnaic rules would be a mere formality as one cannot expect to glean any real information about genealogical problems, at least through that method. These narrative sources thus openly critique and dismiss the mishnaic method for investigating lineage, and put the entire project into question.

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\textsuperscript{172} Sokoloff, \textit{Dictionary of Jewish Palestinian Aramaic}, 286a, s.v. \textit{l.q.y.}, calls this an adjective meaning "defective," though all other dialectical meanings relate to corporal punishment, suffering or being smitten by disease. Sokoloff links his meaning to Jastrow's "disordered, sickly, stunted" for \textit{לקוי}, p.718.
In a category based genealogical system, such as the asarah yuchasin, one concern that arises is that of category mutability. Since the Mishna relates to the ten lineages as sets of ancestry akin to ethnic or familial groups, their creation, transmission and possible transformation remain open issues. How accessible are the inner identities? How mutable are the outer ones? What of the identities outside of the ten lineages? Are the ten lineages absolutely fixed? Are they definitive or simply representative examples? Are one's offspring necessarily of one's own category? I argue in the following chapter that the rules for determining the status of the offspring of a given union form part of a legal system other than the asarah yuchasin. This other system does not always match particularly well with the asarah yuchasin and its categories, and is itself subject to some debate in early rabbinic sources. The basic rules set out by mQiddushin 3:12 lay out three basic methods of transmitting identity: patrilineal, blemish and matrilineal. In a legal marriage that does not violate any marital rules, descent is patrilineal. In a union where the marriage is valid but involves some transgression of a marital rule, the descent follows the more blemished partner. In a case where the one of the parents is Gentile, the status follows that of the

173. The status descriptor of issah is one term that describes a general unspecified lineage problem. The beginning of bQiddushin discusses at length whether Israel or Babylonia is issa with respect to the other, with issah representing genealogical blemishes mixed into the general population. This discussion seeks to establish a geographic hierarchy of genealogical purity, generally with Babylonia at the top (and perhaps Rav Yehudah at the very pinnacle), though the position of the sages is that all lands are under an assumption of fitness (i.e. one may assume that the inhabitants are genealogically fit), see for example, bQiddushin 72b. tQiddushin 5:2 describes the issah as a woman who has no ancestry from the groups of natin, mamzer or servants of the kings. Lieberman, Tosefta Qiddushin p.293, states that she is a woman who is permitted in marriage to a yisrael, but forbidden to a kohen because she has convert or chalal heritage. Issah probably refers to mixed dough or flour, as opposed to sifted, clean flour (See Jastrow pp. 1072-1073, bQiddushin 69b and Lieberman Tosefta Kifshutah Qiddushin p.967). On the topic of issa, see also Satlow, Jewish Marriage in Antiquity p. 155-156, yKetubot 1:9 25d-26a.
mother ("Jewishness" is thus established matrilineally). A marriage that is both invalid and transgressive, following mQiddushin 3:12, produces a child who is a mamzer. The two systems do not function entirely smoothly together. For example, what of a marriage between two caste members that does not involve a transgression, say a mamzer and a natin? Do the transitional classes become part of yisrael eventually, or do they remain separate? Are they also transmitted through the law of the most blemished parent? Similarly, the question of the actual identity of the child of an intermarriage remains unclear. A woman under the asarah yuchasin gains her status from her husband, but if she has a child by a Gentile, her child has her status. This "Jewishness", however, does not seem to find a particular home amongst the existing lineages. These problems related to the merging of various types of identities and a variety of descent patterns will be discussed in detail in the following chapter. For now we must be content with the notion that the upper levels of the asarah yuchasin are patrilineal, marriages between the asarah yuchasin and non-members (i.e. Gentiles) are matrilineal, and the blemish may be passed down by either parent.

These problems are compounded by the fact that the asarah yuchasin includes true genealogical descent groups that are theoretically the remains of the earlier tribal system, along with transitional identities, special identities created by particular unions (chalal, mamzer) as a punitive measure, and categories defined by a lack of identity (shetuqi, asufi). The combination of such diverse groups makes it difficult to apply a single method for determining identity to all members of the asarah yuchasin.

Generally the asarah yuchasin seem to be constructed as immutable, a kind of clear, homogeneous, and relatively permanent notion of (male) identity. Note that female identity
is drawn either from her father or her husband (she takes on either her father's or her husband's identity) and in the normative case (permitted marriages between kohen, levi, yisrael) her status is irrelevant in terms of her offspring. Female identity is thus constructed, in contrast to the male, as highly mutable, shifting and impermanent. A most important exception to this state of affairs is the daughter of a kohen. Until she marries, she remains a kohenet with all the privileges associated therewith. If she marries a yisrael, she loses her kohenet status (and with it her ability to eat terumah and other sacrificial gifts), but upon dissolution of the marriage, she may return to her father's house and live as a kohenet, with renewed access to priestly privileges, assuming that she has no offspring nor is she pregnant from the non-kohen. In other words, in the absence of any connection to her non-priestly husband, she regains her father's priestly status. In contrast, if she marries a Gentile man, she loses any possibility of taking on her father's status following dissolution of the marriage. Her loss of status is thus permanent. It follows that even though her children are considered "Jewish" (at least according to mQiddushin 3:12), she and her children (i.e. the patrilineal line of the Gentile man) cannot revert to priestly status.\textsuperscript{174} In this case, matrilineal descent serves to keep Gentile patrilineal lines from becoming Kohanim.\textsuperscript{175} Similarly, a daughter of a kohen who marries a non-kohen is permanently banned from eating of certain types of offerings, though she regains her ability to eat terumah following

\textsuperscript{174} On this special case, see bYevamot 45a (where the Tosafot note that even those who hold that the kohenet's child by a Gentile man is a Jew and not a mamzer maintain that she permanently loses her priestly status, Tosafot d.h. yatsu וַאֲנָא) and Maimonides Hilkhot Issurei Biah 18:2. Note, however, that were the kohenet subsequently to have a child with a yisrael, the daughter would be considered fit to marry into the priesthood, not unlike the case of the chalal and the ger.

\textsuperscript{175} See Maimonides, Hilkhot Terumot 6:7.
the dissolution of the marriage.\footnote{See bQiddushin 69b.}

One important exception may be found in mQiddushin 3:13 which records a school of thought that held that the status of \textit{mamzer} could be altered from one generation to the next (a position that appears to be quite the opposite from the ruling in Deuteronomy 23:3) through access to systems and categories outside of the \textit{asarah yuchasin}, specifically through the impact of principles on the transmission of the genealogical status of the \textit{nokhrit} and the \textit{shifchah} (the Gentile woman and the slave woman).\footnote{This will be discussed in detail in the following chapter.}

It is worth mentioning here that there is a dissenting position that constructs the dual identity of an \textit{eved-mamzer}, that is a person who is \textit{both} a slave and a \textit{mamzer} (mQiddushin 3:13). This merging of two lineages in one, one outside of and the other inside of the \textit{asarah yuchasin}, is highly irregular when viewed in the framework of the \textit{asarah yuchasin}. We, however, might understand such a dual identity to be the result of a reluctance to alter an existing identity category (\textit{mamzer}), resulting in a maintenance of that identity in conjunction with another. This ultimately serves to maintain the integrity and immutability of the status of \textit{mamzer}.

If the system of \textit{asarah yuchasin} constructs relatively stable, even immutable categories, what are we to make of the transitional identities of the convert and the freed slave who are defined by their movement from outside to inside, or of the \textit{shetuqi} and \textit{asufi} who are defined by uncertainty? mQiddushin 4:1 clearly allows the \textit{gerei} and the \textit{charurei} to intermarry through all the lower groups: those that mQiddushin 4:3 might call \textit{asurim lavo baqahal}. They are also allowed to intermarry with \textit{yisrael} and \textit{Levi}, but are not
allowed to marry into the priestly class.  

Apparently the children of these classes (ger, charur) may intermarry with the qahal (with the exception of the priestly class). This suggests that their status might not be passed on to subsequent generations. While this discussion centres upon the first generation (i.e. a person who has converted), it must be noted that laws regulating the transmission of status to offspring (discussed above and again in the following chapter) affect the continuation of any given status through the generations. One cannot really speak of lineage without incorporating other legal systems. With respect to the asarah yuchasin, I would suggest that we can relate to the question of whether or not they - as constructs - are perceived as distinct, enduring lineages. As argued above, I would suggest that the first three groups form the paradigm for the remaining identities. This relationship is problematic, given the fact that the remaining identities do not always match the existing model. Maimonides' Hilkhot Issurei Biah (15:8-9; 19:12) demonstrates the confused situation. He notes that if a ger marries a gioret, the child is always a ger and so on through the generations until the offspring is unaware of having ever had convert lineage. When the distant offspring is so far removed from this lineage that he cannot remember it, the offspring is forbidden from marrying a mamzer. This suggests that the convert status is lost at this point, and that convert identity somehow hinges upon awareness or knowledge of convert lineage rather than on the fact of the lineage itself. In contrast, if a convert were to marry one of the group yisrael, the offspring would be yisrael. This process does not follow any of the descent rules and clearly encourages marriages between converts and yisrael, presumably discouraging the existence of a separate convert class. Convert status is thus only
This suggests that in the system of *asarah yuchasin*, not only do the slave and the Gentile gain a new distinctive lineage that retains a mark of their previous status (i.e. they do not become *yisrael*, for example) that new lineage does not fall within the same grouping as *yisrael* and *levi*. Even though they can intermarry with them, they are not subject to the same marital rules since they cannot intermarry with the *kohanim*. This serves to separate the priestly class from the transitional lineages and to raise *yisrael* and *levi* above *gerei* and *charurei* in the genealogical hierarchy. This may be pointing to the system's protection of the priestly class, as well as a relative lack of acceptance/inclusion of those of a transformed class. The latter suggests a discomfort with permeable identity boundaries. Even in the case of the *shetuki* and *asufi*, who are by definition an unknown quantity, the gemara speaks of the *bat-shetuqit* and the *bat-asufi*, indicating that this uncertain status remains part of the *shetuki* or *asufi*’s lineage at least to some degree.179

While it is very much concerned with marriage between the listed groups, and with identifying the outer limits of "Jewish" identities, the system of *asarah yuchasin* in its tannaitic form does not seem to be concerned with intermarriage between Jews and non-Jews specifically. The list of lineages in mQiddushin 4:1 is a list of genealogical status that is transmitted in some fashion through lineage and which limits the realm of permissible marriage to certain other groups, in a hierarchical fashion. Some of these lineages are transmitted by birth or marriage (for example, *kohen*, *levi*, *yisrael*, *natin*, *kuti*). Others are created as a result of a particular union and are also transmissible by birth and marriage (for example, *chalal*, *mamzer*), while others are categories that are created through a change

179. bQiddushin 73a.
from non-Jewish to Jewish status (for example, *ger, charur*) and still others are of uncertain status, that is, their status is to a greater or lesser degree of unknown parentage (*shetuqi, asufi*).

I would argue that it is clear from the Mishna’s list that there is no particular or special identity category *per se* for intermarriage between *asarah yuchasin* and Gentile, either for the person engaging in intermarital relations (the participant) or for the offspring. Intermarriage thus becomes a sexual act that does not (necessarily) result in the creation, in either participant or in offspring, of a person who falls under any particular lineage. In essence, intermarriage between Jew and Gentile is invisible in the *asarah yuchasin*. It does not include a category for those who have intermarried, or for their offspring. The only exception would be the opinion that the offspring of a Jew and a Gentile is deemed to be a *mamzer*, in which case the class of *mamzer* would function for *yisrael* in much the same way that *chalal* does for the *kohen*. This is in contrast, for example, to the sexual act between a *kohen* and, for example a divorcee, which turns both the divorcee and the offspring into a *chalalah*, which is indeed one of the ten lineages. In short, intermarriage does not create its own particular lineage status that is itself transmissible.

In later sources, however, intermarriage is linked to the *asarah yuchasin*. The *asarah yuchasin* and its principle of *mutarin zeh bazeh* is merged with the rule of those who are *asurim lavo baqahal*, thereby connecting intermarriage between Jews and non-Jews with the intramarital system of *asarah yuchasin*.\(^{180}\) bQiddushin understands mQiddushin 4:3 to refer to unions between the *asurim* who fall within the *asarah yuchasin*, and those *asurim*

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180. This development grows out of the *gemara*’s interpretation of mQiddushin 4:3. Note that, following my analysis, in a tannaitic context, mQiddushin 4:3 likely did not refer to intermarriage between Jew and Gentile.
who fall without, specifically the Moabite and Ammonite males. bQiddushin (74a-b) understands that the Tanna Qamma in mQiddushin 4:3 permits all those who are forbidden from entering the qahal to marry each other, meaning the lower levels of the asarah yuchasin and Ammonites and Moabites (as converts). Following this interpretation, a mamzer could marry an Ammonite convert. The Babylonian Talmud understands R. Yehudah as ruling that a convert may not marry a mamzeret ("R. Yehudah forbids"). This interpretation is linked to his dissenting position that converts are part of the qahal and mamzerim are therefore forbidden from marrying them. The sages rule that converts are not part of the qahal and that mamzerim may form unions with them. mQiddushin 4:1 appears to be in accordance with the sages since it permits converts and mamzerim to marry. The Babylonian Talmud's approach might indicate a disconnect between the sages of the Bavli and the early tannaitic law. From the Babylonian Talmud's difficulty with this mishna it would appear that the amoraic sages may not have understood the meaning of this obscure mishna. Alternately, they may have been uncomfortable with its obvious meaning that intended to severely restrict the marriageability of certain classes.

In mQiddushin 4:1, the Tanna Qamma permits intermarriage between asurim. Since bQiddushin understands this to mean marriage between the asurim of the ten lineages and the Moabite and Ammonite converts,\(^{181}\) it must follow that some of the ten lineages are permitted to intermarry even with nations specifically forbidden by Scripture (d'oraita)\(^ {182}\).

\(^{181}\) bQiddushin 74b. The accepted interpretation is that Ammonite and Moabite converts are permitted to each other. R. Yehudah forbids a convert from marrying a mamzer, but this applies only to converts who are permitted to enter the congregation, i.e. R. Yehudah's ruling does not apply to Ammonite and Moabite converts, and so such converts would be permitted to marry a mamzer even according to R. Yehudah.

\(^{182}\) Note that there is no indication of exogamy to an outside group without conversion, rather the case in question is that of a member of a group forbidden from

- 97 -
A male Moabite might thus marry a *mamzeret* or *netinah* (and possibly a *shetuqit* or *asufit*).\textsuperscript{183}

Following mQiddushin 4:1 we might conclude that *shetuqi* and *asufi* are also forbidden from entering the congregation. *Shetuqi* status is rendered less problematic by Abba Shaul in mQiddushin 4:2, where he calls the *shetuqi* a *beduqi*, apparently meaning that the mother should be checked, or questioned regarding the father's status. The mother's statement regarding the father's status is believed, and may even allow the child to marry a priest.\textsuperscript{184} However, according to mQiddushin 4:3 R. Eliezer, at least, deals with them separately. Due to their uncertain status they are not permitted to marry even with the other *asurim* included in the ten lineages, making them the most restricted class. If we understand R. Yehudah's statement to referring only to the *asurim* included in the ten lineages, then he restricts their marriageability even further, prohibiting the *asurim* from marrying even each other, whether their status is uncertain/unknown or not. This interpretation is not in line with bQiddushin 74b, which understands R. Yehudah to be referring to Ammonite and Moabite converts. The Babylonian Talmud may be uncomfortable with the highly restricted marital options suggested by the other interpretation.

This would mean that those among the *asarah yuchasin* who are forbidden from marrying into the *qahal* can intermarry with any Gentile, regardless of the Gentile's nation, entering the *qahal* who has converted.

\textsuperscript{183} bKetubot 12b records a disagreement between R. Yehoshua on the one hand and Rabban Gamliel and R. Eliezer on the other; the latter (but not the former) accept the mother's statement as valid evidence. If the Babylonian Talmud's attribution is correct, we must note that the fate of the *shetuqi* is not so dire as mQiddushin 4:3 would have us believe.

\textsuperscript{184} See bQiddushin 74a. See also mKetubot 1:9 and bKetubot 12b regarding a fetus.
gender or generation. Furthermore, we might consider the possibility for intermarriage between non-qahal members of the asarah yuchasin (who are permitted to enter the congregation) and those asurim who fall outside of the asarah yuchasin. For example, if male Moabites are forbidden from entering the congregation and converts are not considered to be a part of the congregation (following the view of the sages), then technically they should be able to intermarry, just as they are allowed to intermarry with the asurim that are part of the asarah yuchasin. R. Yehudah, it follows, would forbid such intermarriage (since he includes converts as part of the qahal).

The asarah yuchasin are further relevant to the issue of intermarriage between "Jew" and Gentile since, according to other systems that deal with transmission of status to offspring, some intermarriages can produce children that fall into categories included within the asarah yuchasin (e.g. mamzer or yisrael). These rules for determining the status of the offspring of a given intermarriage will be dealt with in detail in second chapter, below. For the moment, it is sufficient to point out that some of the asarah yuchasin can include the offspring of certain intermarriages. In this sense, intermarriage is included in the asarah yuchasin because of other rabbinic processes.

The system of the asarah yuchasin is also linked to a general focus on lineage ancestry in rabbinic Judaism. Where lineage and ancestry are considered to be of great importance, intermarriage is also likely to be considered as an important issue. While there is clearly evidence of a strong culture of vigilance around lineage, marriages, and identity in rabbinic literature, this culture did not exist unchallenged. The amoraic material on ancestral lineage is characterized by tension between an approach that emphasized the importance of lineage, and another that preferred to reduce the impact of lineage on Jewish
identity and community. I shall argue that narrative or *aggadic* portions of the Talmudic discussions on inter/intra marriage often serve to mitigate or contradict the legalistic, often unrealistic positions based upon the Mishnah.

There are a number of areas in which this tension manifests itself. Let us begin by looking at the notion of an assumption of genealogical fitness or *chezqat kashrut*. This principle is related to the ruling in mQiddushin 4:4-5 that certain people are assumed to be of the appropriate lineage. The Talmud builds upon a broader tannaitic principle of a hierarchy of genealogical fitness according to which it is assumed that Babylonia is the most genealogically fit, followed by Israel, with all other lands falling at the bottom of the genealogical hierarchy. Various areas in and around Babylonia are then discussed and ranked in order of genealogical fitness, with Pumbedita at the pinnacle. Following this view, Babylonia may be assumed to be genealogically fit, that is it has a *hezkat kashrut*, that is not held by any other land. This means in practice that no investigation of a Babylonian woman’s lineage need be carried out prior to the marriage, since she may be assumed to be of unmixed, known heritage.

This hierarchical, simplistic approach is challenged and deconstructed in a number of ways. Palestinian sages express discomfort and insult at the sense of genealogical superiority held by the Babylonian sages, who are depicted as unwilling to marry even the daughter of a great Palestinian sage such as R. Yochanan. Through these stories, the genetic superiority of Babylonia is called into question. Indeed, after much Talmudic discussion that takes for granted the assumption of Babylonian superiority and even attempts to work out whether any genealogical fitness may be assumed in Israel at all, the Talmud brings a

185. bQiddushin 69b, 71b, 72a
statement indicating that the majority view is, quite to the contrary, that all lands are under an assumption of genealogical fitness. While this principle of all lands being under an assumption of genealogical fitness might officially be the majority halakhic opinion, it does not appear to be the driving force behind any of the arguments in the Talmud or in its tannaitic sources.

Indeed, there is a major conflict in the Talmud in terms of how one should deal with genealogical status. To begin with, there definitely is a clear impulse to investigate. The rabbinic class appears to have positioned itself as a kind of lineage police in a post-temple world. They become the holders of information about the lineages of various Jewish communities and, thus protecting the status of the priestly class, and the community at large from connection with people of unsuitable status such as slaves and mamzerim or people who may be non-Jews. Not only did the sages sometimes act as a lineage police, they themselves seem to have become a kind of lineage not unlike those listed in the asarah yuchasin, preferring to marry amongst themselves and considering themselves to be of better, clearer lineage than non-sages.

In this capacity, they saw the need to investigate everyone in order to determine their genealogical status, but at the same time were clearly grappling with the widespread existence of lineage problems, and express a sense of disempowerment when it comes to their ability to enforce the rules. In the face of a sheer lack of evidence regarding people’s actual lineage, a number of notions arise as to how else persons of unfit lineage might be identified. These include the suggestion that there are behavioural characteristics of

186. bQiddushin 72b.
genealogical status. For example, it is by turns suggested that loud argumentative people are considered to be of unfit lineage, or that those who speak with a Babylonian accent are considered to be fit.\textsuperscript{188} That is, it is finally acknowledged that some people fake the accent so that people will assume that they are genealogically fit. There is also a sense that genealogical mixing has occurred through to the highest levels of society, and that even though the rabbis know which families are unfit, they must keep this information to themselves for fear of violent retribution. For example,

\textbf{bQiddushin 71a}

\begin{quote}
ישב ובדקו, עד שנגעו לפסגנה ופיסלו. \textsuperscript{א}"ד יונתן: היכל! ידינו יהי,\textsuperscript{189}\\
אבל מה astronomer זכרי אחרון תבש ידם בה. סבר לה fer' צחק, דאמר \textsuperscript{2} צחק.\\
\textsuperscript{3} צחק: משפחה שנעמעה – ונעמעה.
\end{quote}

They \textsuperscript{[students of R. Pinchas]} sat and investigated \textsuperscript{[into the genealogical status of families in Israel]} until they were endangered\textsuperscript{189} and they gave up. [By the] Temple! It is in our hands, but what can I do, for the greats of the generation have been mixed with it \textsuperscript{[genealogical unfitness]}. He thought like R. Yitzchak, as R. Yitzchak said: A family that has become mixed - is mixed.

The Palestinian Talmud records statements that reflect a similar approach to the issue of genealogical purity.

\textbf{yQiddushin 4:1 65c:}

\begin{quote}
א"ר יוחנן כל משפחת שנשתקע בפסול Ainמדקיק אחריה \textsuperscript{א}"ר שמעון\\
וב כלים מתניתא יאמר כי משפחת כי אריפת היהת عبرה רימוד
\end{quote}

\textsuperscript{188.} \textbf{bQiddushin 81b.} The reliability of a Babylonian accent for determining genealogical fitness is then questioned, because the \textit{gemara} notes that people were pretending to have such an accent when they were not in fact from Babylonia.

\textsuperscript{189.} \textbf{Rashi bQiddushin 71a, \textit{d.h. yashvu vebadqu},} ישב ובדקו.
R. Yochanan said: Any family that in which some unfit [genealogical element] has been mixed (or: dissolved), one does not investigate after it [i.e. look into it]. R. Shimon b. Lakish said, the Mishna said so was the family of the sons of Tseriphah, which was on the other side of the Jordan, and ben Tsion distanced them forcefully, and yet another was there and ben Tsion drew them near forcefully, but the sages did not seek to expose them. The sages, however, transmit them [the status of these families] to their sons and their students twice a week. R. Yochanan said, By the [Temple] service I know them, but what can be done, for they have been mixed in with the greats of the generation.

This tension between the desire to have serious lineage problems exposed or punished on the one hand, and a preference for discretion and a lack of rabbinic agency on the other is also evident with respect to *mamzerim* in particular, as in the following statements:

*YQiddushin 4:1 65c:*  
אמר רבי חנינה, אחין לשל על שנה الخطבא"ה מביא דרב בעלים מכלל אתחנן. המתרמים גנוול עמרם כשירים שלא לפרסם חתיאם.

... R. Chaninah said, "Once every sixty or seventy years the Holy One Blessed Be He brings a plague into the world and destroys (or: finishes) all the *mamzerim*, but it takes fit people [i.e. non-*mamzerim*] along with them so as not to publicize [who] the sinners [are].

... A *mamzer* does not live longer than thirty days. When? When he [i.e. his *mamzer status*] is not publicized. But if [his *mamzerut*] is publicized, then he lives.

Part of an extended discussion on the life span and situation of *mamzerim*, these statements...
neatly juxtaposes a rabbinic need to see *mamzerim* eliminated from the world (coupled with a need to explain plagues and the seemingly random nature of misfortune) with an urge to protect the privacy of those who have sinned in their relationships so as to produce *mamzerim*. The issue of publicity and concern for privacy becomes more complex when the problem of the *mamzer* living in the community is pondered. In this case, publicity is necessary in order for non-*mamzerim* to avoid marrying a *mamzer*, that is, the person's status must be widely known in order for the martial rules of the *asarah yuchasin* to be followed. If, however, the person's *mamzer* status remains hidden, he will die within thirty days.190 We find a variety of rabbinic approaches to the particular problem of the *mamzer*: a desire to conceal the identity of those who are *mamzerim* or have produced *mamzer* offspring, a desire to see such persons exposed and a desire to see *mamzerim* eliminated.

In this way, many of the routes for determining and investigating genealogical status are shown to be ineffective through the use of halakhic case studies. In addition to this sense of disempowerment, some passages display a clear reluctance to enforce the genealogical rules.191 The source of this reluctance grows out of a number of factors, primarily the realization that communities are already mixed and the effort is therefore futile.

This analysis turns the rather neat looking list of ten lineages into a somewhat

190. It would seem that the *mamzer* is thought to die as a young infant (and before the end of the thirty day period when no mourning or official burial is required), perhaps indicating that this is meant as an incentive to a new parent to declare that the child is a *mamzer*, lest it die. This would run counter to what would probably be the more likely course of action, namely to conceal the status of the child in order to protect it from social stigma and martial limitations. Such concealment could only become more likely in cases of incest or adultery.

191. bQiddushin 71a.
messier conglomeration of lineages and identities arising out of various unions, broadening the field considerably. The list of \textit{asarah yuchasin} reads as if everyone has a frozen status akin to biological fact that can be easily placed within a given lineage and each lineage then neatly distinguished from every other lineage. The mishna itself, however, includes positive rules regarding which groups within the hierarchy can intermarry. It might follow that this argument “\textit{mitsidah tavrah}” (is broken from its side, i.e. by itself), since the Mishna itself acknowledges and approves of certain mixing. Furthermore, many of the details of the \textit{asarah yuchasin} and its relationship to other rabbinic legal systems give the impression of being less than functional. In this sense, we might see the lineages as fictions, or as symbols rather than fact. Intermarriage itself shows how these symbolic labels do not always reflect the complexity of the actual underlying genealogy. It is interesting to note that kinship theory claims that such lineage systems usually cannot be actually proven as biological fact for any significant number of generations, and are usually claimed to originate in a mythical original founding member, thus suggesting that lineage systems are culturally symbolic systems rather than records of consanguineous relations. Indeed, as we shall see, consanguinity does not necessarily lead to membership in a given lineage or to kinship status.\footnote{See, for example: Fortes, \textit{The Structure of Unilineal Descent Groups} (1953) p. 263-275.}

The difficulty and danger of exposing such problems is compounded by the chaos and suffering that might be caused upon their revelation.\footnote{This is also alluded to in bQiddushin 70b where Rav Yehudah's investigation is linked to the annulment of marriages.} The literature is divided in this approach as well, some passages espousing a belief in maintaining complete and strict separation in order to maintain fitness of lineage, what one might call an “investigate and
expose” approach, while others hold that communities and families are already mixed and that breaking up and excommunicating families by investigating and exposing their unfit lineage causes unrest and is an unrealistic approach for the real world. The latter advocate a “don’t ask don’t tell” attitude, a sort of harm reduction policy for problems of genealogy.

This conflict around enforcement even makes its way into discussions of how Elijah (Eliyahu) will deal with problems of lineage come the time of the messiah. On the one hand there are a number of statements that claim that God only dwells with those of completely fit lineage (bQiddushin 70b). On the other hand, there is the principle that a family that is mixed, is mixed, mishpachah shenitmeah, nitmeah, which means that a family of unfit or mixed lineage will not be separated during the time of the messiah.194 This concern with the time of the messiah might also have been a way for the rabbinic tradition to maintain the genealogical system in a theoretical mode even though it may have been rendered moot in practice.

In the midst of strict legalistic arguments clearly advocating that mixed families and communities be investigated, exposed and cut off from fit communities, there are a number of narratives195 which bring the two extreme ends of the rabbinic approaches to intra/inter-marriage problems into contact. One such passage involves a story about Rav Yehudah. The Talmud has established through a series of case studies that Rav Yehudah was very concerned with genealogical fitness, was extremely strict and fell into what we might call the “investigate and expose” school of thought. These also bring in a principle of marriage, namely that one should marry one who is well-suited, here understood as a union between

194. The sources are not entirely clear of what this separation would consist.
195. These are similar to the halakhic case studies, though they are longer and more elaborate stories, often involving interactions and discussions between prominent Sages.
two suitable lineages. According to this principle of מנהגה שיאינה ההוגנה ול feu (any who marries a woman who is not suited to him), God and Elijah both punish the one who enters into an unsuitable match. As a point of interest, these narratives also betray inter-communal rabbinic conflicts between the two major centres in Babylonia: Pumbedita and Nehardea.

We will begin by citing our first passage with a bit of its context in order to emphasize the contrast:

bQiddushin 70a

אמר רבח בר בר חנה: כל הנישה אשיה ההוגנה ול, מעלה עלי נבחדנו כל השולח חל ירח מלח... אמר רבח בר בר אלא אמרו ספרו כל הנישה אשיה ההוגנה ול אלאו חפתי חקד"ה ועף תנא על כלו אלנה כותב חקד"ה והותס איש ויד למוסס את ודע התו פגנש את ויבשחא אשניה ההוגנה ול אלאיו חפתי חקד"ה ועף תנא פסוד ארי מדבר בשבחא עלעל ואמר ישואל בכרו פוסל.

הוהו גברו תמרדהה דעל ליב משבתיי בפוסחלית אמר לו הזה עלי יבר אתו ארמר ליה תעד שמשליאו דודר יהודה בר יחידל ויתיב כל ארמר מאין יהודה בר שוייסלאד דקדים לי שמשל מאין אלו ארמר לי longitud יהודה שסתיי אמרו רגל הקדר אנשי עבדי עלייה עבדה הוא.

Rabbah bar bar Chanah said: Anyone who marries a woman who is not suited to him, Scripture considers him as if he had plowed the entirety of the earth and sown it with salt … And Rabbah bar bar Adda said, and some say R. Sala said [in the name of] Rav Hamnunah: Anyone who marries a woman who is not suited to him: Elijah forces him, and the Holy One Blessed be He flogs him. And it was taught: For all of them, Elijah writes and God seals: Woe be to him who renders his seed [offspring] unfit, or who introduces (genealogical) flaws into his family, or who marries a woman not suited to him. Elijah forces him, and God flogs him.

And anyone who declares another unfit is himself unfit, and never speaks any

196. The contrast between the violence and strictness of this text and the levity and complexity of the text that follows is marked. For a study of this genre, see Satlow's "'Texts of Terror': Rabbinic Texts, Speech Acts and the Control of Mores" AJS Review, 21:2 (1996), pp. 273-297.
praise. And Shmuel said: He declares others unfit of his own unfitness.

There was a man from Nehardea who went to the butcher in Pumbedita. He said to him: Give me meat! They said to him: Wait until Rav Yehudah bar Yehezkel’s helper has taken [i.e. has been served] and [then] we will give [it] to you. He said: Who is this Yehudah bar Shviskel [Yehudah son of Roast Meat] who is before me, who takes before me?!! They went and told [the story] to Rav Yehudah. He banned him. They said: He is used to calling people slaves. He [Rav Yehudah] declared regarding him that he is a slave.

This principle of kol haposel pasul, one who declares others unfit is himself unfit, addresses the potentially detrimental aspect to high awareness of lineage. In this story, Rav Yehudah uses this very principle to punish the pushy person at the butcher shop, if not for his rudeness, at least for declaring others slaves. Oddly enough, Rav Yehudah himself is portrayed in the Talmud as being rather eager to declare others unfit.197 While this source tells of Rav Yehudah using this principle, it paradoxically also portrays Rav Yehudah as very quick to declare others unfit. The principle of kol haposel pasul thus serves to turn this process of public exposure of unfit genealogical status on its head. The principle of kol haposel pasul appears to acknowledge the power and possible abuse inherent in the "investigate and expose" approach to genealogical problems. It is clearly opposed to declaring others unfit and brands this approach as negative and characteristic of negative, judgmental people. Indeed, it visits the status the person imposes on the other back onto him or her, so that someone who regularly exposes other people as mamzer, are themselves declared to be a mamzer (or alternately, it may be understood as a psychological notion that the reason they declare others to be mamzerim is that they actually are a mamzer).

What follows is an extended back and forth banter between Rav Yehudah and Rav

197. bQiddushin 70b. 

- 108 -
Nachman that is a very clever commentary on rabbinic authority, strict legal observance and social class. Ultimately, Rav Nachman submits to Rav Yehudah's authority, and accepts his justification for naming the man in the butcher shop a slave.

bQiddushin 70b:

He [Rav Nachman] said to him, [Rav Yehudah] Since Mar has come here, let us discuss these matters, so that they should not say that the Rabbis favour each other. He [Rav Nachman] said to him [Rav Yehudah]: What is the reason why Mar has banned this man? He bothered a messenger of the sages. Then Mar should have punished him [with lashes] for Rav punishes [with lashes] anyone who bothers a messenger of the sages! I have dealt with him better than he. What is the reason why Mar decreed regarding him that he is a slave? He [Rav Yehudah] said to him: because he was accustomed to calling people slaves, and it is taught: any who declares others unfit, is declared unfit, and never speaks any praise for eternity, and Shmuel said, he declares others unfit of his own blemish. The saying that Shmuel said, is to suspect him. To declare him [as such], who said?! (A certain man of the law from Nehardea came.) This opponent said to Rav Yehudah: You

198. b Qiddushin 70a-b.
have called me a slave, I who come from the royal house of Hasmoneans!? He said to him, so Shmuel said: Any who says, I come from the Hasmonean house - he is a slave. He said to him, does Mar not agree with what R. Abba said in the name of Rav Huna in the name of Rav? Any scholar (talmid chacham) who teaches a rule and continues [to support his ruling based on a previous rabbinic saying], if he stated it before the event, we listen to him, and if not, we do not listen to him. Rav Matnah supports me. Rav Matnah had not been to Nehardea in thirteen years. On that day he came and said to him [Rav Yehudah]: Does Mar remember what Shmuel said when he stood with one foot on the river bank and one on the bridge? He said to him, thus said Shmuel: Any who says, I come from the royal house of the Hasmoneans - he is a slave, because there were none left from them but a certain woman, who went up to the roof, raised her voice, and said: "Any who says, I am from the Hasmonean house - he is a slave. She fell from the roof and died. He [Rav Nachman] declared regarding him that he was a slave.

This narrative explores a series of justifications for Rav Yehudah having declared a man a slave. The initial rationale for Rav Nachman's decision to declare this man a slave, that he had bothered a messenger of the sages, smacks of elitism and the petty exercise of authority with serious consequences for the man in question. A concern regarding rabbinic collusion and favouritism is also noted. The next reason provided is that the man who had been banned had a bad habit of calling people slaves and following Shmuel's addendum to kol haposel pasul should be declared a slave. Rav Nachman counters that Shmuel was merely suggesting that we suspect him to have the same blemish of which he accuses others, and that this is no basis for actually declaring him to be a slave. The sugya does not allow any of these reasons to be the sole basis for such a declaration, instead offering an independent record of an historical event that proves that this man is in fact, literally a descendant of slaves. Here again doubts are raised regarding rabbinic authority, this time suggesting that Rav Yehudah might have invented a the story and attributed it to Shmuel in order to bolster his position. Though none of the various reasons for declaring the man a slave is dismissed outright, the historical evidence transmitted by Shmuel and corroborated
by Rav Matnah is the only one that stands alone as sufficient support for such a decree. Various concerns regarding rabbinic authoritativeness are raised but all are dismissed, revealing a sensitivity to problems in the rabbinate, as well as a desire to demonstrate that such concerns are needless. Rav Nachman finally agrees to declare the man a slave, and the sugya demonstrates the serious practical outcome of such labeling.

That day they tore many ketubot (marriage documents) in Nehardea. When he [Rav Yehudah] went to leave they went after him to stone him. He [Rav Yehudah] said to them, if you will be quiet, be quiet and if not, I will reveal about you that which Shmuel said: there are two seeds in Nehardea, one is called the house of Yonah (dove), and one is called the house of Orveti (raven). And your signs: impure is impure, pure is pure. They dropped the stones from their hands and a dam was erected in the river Malka.

The agreement between Rav Yehudah and Rav Nachman to declare this man a slave, a decree initially based on his rudeness in the butcher shop but ultimately justified by the man's claim that he was of Hasmonean ancestry, has repercussions far beyond the fate of this one individual. Due to the newfound slave status of one man, many marriages were torn apart by Rav Yehudah. The community responded as a violent mob, ready to stone Rav Yehudah. Rav Yehudah's only defense is his knowledge of genealogical problems in the community, which he wields as a threat to ensure their retreat. By threatening to expose a large portion of the population in Nehardea as being of so-called impure lineage, he raises the specter of even more broken families. Unlike the rabbis in the Palestinian Talmud, Rav Yehudah is portrayed as very comfortable acting on some of his special rabbinic knowledge.
regarding lineage, and in using the remainder as a method of social control and self-defense. While he is clearly presented as a far more authoritative and powerful figure, the relationship between him as a rabbi and the population at large (at least in Nehardea) is clearly openly antagonistic.

Another such narrative describes an encounter between Rav Yehudah and Ulla and is an excellent example of the two extremes of the rabbinic approach to inter/intramarriage problems.

bQiddushin 71b

Ulla went to Pumbedita to Rav Yehudah’s house. He saw that Rav Yitzhak, Rav Yehudah’s son was grown and not married. He asked him: Why hasn’t master taken a wife for his son? He [Rav Yehudah] answered him: How can I know from where I might take a wife [for him]? [Ulla] replied: How can we know\(^{199}\) whence we come?

Ulla, during his visit to Rav Yehudah, notices that his grown son is not yet married. It turns out that Rav Yehudah is so concerned, or we might say paranoid, about genealogical mixing that he refuses to marry off his son (even in Pumbedita) because there is no one fit enough for his son. Ulla counters that none of us really know our ancestral heritage and to what extent we might be fit or flawed. Ulla thus dismisses Rav Yehudah’s sense of his own genealogical superiority, and advises that since everyone has long been of mixed ancestry, one must live in the real world and accept that state of affairs. This story supports Michael

\(^{199}\) Or: Do we know...?
Satlow's suggestion that the Babylonian sages, in particular were becoming an increasingly closed community.200

There follow a series of biblical references which are offered as proof for the fact that everyone's ancestry is mixed, implying that such blemishes may be in anyone, unbeknownst to all. The two examples that are accepted as evidence both concern *mamzerim* which appears to be the blemish that is of concern here (though note that slave status the primary interest, above). The first, based on Lamentations 5:11 is a case in which virgin women were raped by Gentile men, thus producing *mamzer* offspring who were mixed into the general population. This proof requires agreement with the rule that the offspring of a Gentile man and a Jewish woman be a *mamzer*, as it specifically rules out the possibility of adultery (unless they were betrothed). The second piece of evidence based on Amos 6:4 is presented as an alternate proof for those who hold that such a child is not a *mamzer*. This case clearly adulterous, involving the swapping of wives (at least according to the Talmud's interpretation here), and produces *mamzer* offspring who were mixed into the community. Ullah's final recommendation for attempting to find a suitable match for his son in a world where anyone might be a *mamzer*, regardless of your definition of a *mamzer*, is to seek a woman from a quiet family that is not prone to arguing. The particular details of lineage and rules of descent prove largely ineffective, and are replaced instead by a qualitative, superstitious evaluation of the potential spouse's family.

The legalistic purism of the Mishnah and its parallel elements in the Talmud are countered by a single principle, some halakhic case studies and a couple of stories (narrative *aggadah*) about Rav Yehudah. I would suggest that these narratives serve the function of

subverting the “investigate and expose” approach to genealogical problems. In addition, I would argue that these narrative sections represent the spectrum of rabbinic legal practice in Jewish communities at the time, demonstrating that actual rabbinic practice was likely far more diverse than the legal rulings of the Mishnah and Talmud would suggest.

The asarah yuchasin serves to construct identity categories, structure these in a hierarchical fashion, and determine their permeability (or ability to intermarry) through the creation of marital rules. The outer boundaries of this list are not always clear, nor is the common denominator of its members. Marriage may be forbidden both between the inner groups (intramarriage) and between the inner and outer groups (intermarriage), though marriage between inner and outer is also permitted in some cases. As a system it is crucial to rabbinic halakhah on intermarriage even as it is unable to function independently. It is frequently combined with other systems dealing with issues of intermarriage, in particular the laws related to the qahal and those related to transmission of identity to subsequent generations. Rabbinic attempts to work with these relatively independent systems and their respective sources, concepts and categories often result in problematic positions. The sources dealing with the asarah yuchasin demonstrate an interest in establishing and maintaining class hierarchies, limiting access to the core identities and regulating mixing between identities, avoiding groups or individuals of doubtful or uncertain identity, promoting a culture of awareness of genealogical lineage and investigating and exposing lineage problems.

We also find in the sources a discomfort with the rigidity and restrictiveness of this system, an acknowledgment of its impracticality, an admission that families and communities are often mixed and that this system as a construct does not reflect reality, coupled with a desire to avoid exposing any existing lineage problems. The complexity of
the system itself, the variety of its interpretations, the conflicting approaches to its implementation, as well as its built-in limitations and apparent incompatibility with other important rabbinic systems complicate any discussion of intermarriage in rabbinic thought. For the *asarah yuchasin* there is no Jew, there is no non-Jew, there is no single notion of intermarriage; rather we find a multiplicity of identities, constructs and approaches. Only by dealing with the internal complexity of the *asarah yuchasin* can we hope to fully understand rabbinic notions of identity and marriage in general and intermarriage in particular.
Chapter 2

_Qiddushin, Aveirah and the Status of the Offspring of Intermarriage_

_Qiddushin_ (betrothal or sanctification) and _aveirah_ (transgression) are concepts that form a rabbic system that is crucial to any discussion of intermarriage, in particular with regard to the status of the offspring of intermarriage. This system deals with questions that other rabbic legal rules and systems leave unanswered. By combining innovative constructs and principles regulating identity and marriage with concepts borrowed from the _asarah yuhasin_ and the laws of the _qahal_ and the _arayot_, this system aims to define the nature of every union and determine the status of every child. As a result of the merging of a variety of relatively unrelated legal systems, the status of intermarried unions and their offspring becomes complicated as various rulings rely on different grounding principles and legal rules. While there are many individual decisive legal decisions on these questions, I shall demonstrate that the _halakhic_ response in general to the problem of the status of the children of intermarriage\(^\text{201}\) was characterized by multiplicity and diversity, and that despite obvious attempts to clarify the law on this issue, some sources clearly suggest that even amoraic _halakhah_ failed to arrive at a fully workable solution. By this, I mean that legal instability, unresolved debate between _halakhic_ authorities and the power of social prejudice resulted in a situation wherein the rabbis were either unable or unwilling to implement a legal solution to this status problem, resorting instead to circumventing both the law and the rabbinic authorities or simply eliminating the perceived source of the problem, that is, the person who holds this status. These sources describe rabbinic engagement with social,  

\(^\text{201. As we shall see, intermarriage is a gendered construct within this system. We are speaking here primarily of intermarriage between Gentile men and "Jewish" women.}\)
communal and individual problems. It should be noted that it is often unclear to what
degree these representations are purely fictional constructs, symbolic expressions or
historical accounts. More broadly, these sources prompt the question of whether or not the
rabbis were acting in a judicial capacity over real communities and individuals. The
suggestion here is that the sources tend to offer symbolic representations dealing with
problems in the law, including a range of rabbinic agency (from frustrated impotence to
bold legislation even in the face of community opposition) as well as more general societal
issues. While these are generally not historical representations, in my view, neither are they
purely fictional, having some bearing on rabbinic self-perception, including their attempts to
implement halakhah. Whether the sources are an accurate expression of their actual role
and relevance in society is probably impossible to determine, but they certainly do reveal a
great deal about rabbinic cultures.

In contrast to the asarah yuchasin, the system that I am calling qiddushin and
aveirah is principle based rather than category based. That is, rather than starting from a list
of identities, it generates various principles under which different identities might be
grouped. This system deals with a full range of identities including both intra- and
intermarriages. With respect to terminology, the type of relationship, if any, between the
yisrael woman and the Gentile man (or any of the other groups) is irrelevant in the rabbinic
sources. This system is concerned with the theoretical question of whether or not qiddushin
between the two individuals would be 1) prohibited and 2) valid. A Jew cannot technically
be intermarried through qiddushin because the Gentile is considered to be unable to contract
qiddushin. The sources nevertheless relate to the concept of intermarriage between Jews
and Gentiles and use general marital terminology to describe such relationships. Legally
such a connection is characterized by its necessary lack of qiddushin rather than anything that is descriptive or definitive of the relationship itself. We shall see that as the biblical laws prohibiting specific intermarriages were superseded by the legal invalidation of intermarriages, any difference between marriage and sexual relations becomes relatively insignificant. It is the inability of the partners to contract qiddushin, and ultimately the fact of whether or not they have produced offspring that is of concern. A mamzer, similarly, is produced by a couple who cannot contract qiddushin (whether they be Jew and Gentile, adulterous or incestuous - depending on the tradition followed on the necessary factors for the creation of mamzerut) and the actual nature of the relationship is inconsequential. When we speak of intermarriage in this context, the term therefore includes any kind of sexual relations between a Jew and a Gentile - whether within the context of a marital type relationship or not - that has produced offspring.202

The foundational principle for this system is a biblical one, namely that certain marriages are prohibited. There are a number of different types of marriages and sexual unions that are prohibited in the Hebrew Bible. Examples include the laws prohibiting (and regulating) entry to the qahal in Deuteronomy 23, the prohibition of marriage with the seven nations in Deuteronomy 6, those prohibiting men of the priestly class from marrying certain categories of women in Leviticus 21, the arayot of Leviticus 18 and 25 (including adultery and incest amongst others), and perhaps what some see as a general prohibition against marrying supposedly Gentile women found in Ezra 9 and Nechemiah 13.203 In the language


203. The topic of intermarriage in Ezra and Nechemiah has received a great deal of scholarly attention. See, for example, Sara Yaphet, “Gerush haNashim haNokhriot (Ezra 9-10)” in Teshurah le-Amos Collected Studies. In general, however, rabbinic sources do not
of mQiddushin 3:12 such marital connections are transgressive (yeish aveirah) while others are permitted and do not violate any marital rules (ein aveirah). Building upon this notion of the transgressiveness of a given union, the Mishna adds the rabbinic concept of the legal validity of the marriage itself. Following this principle, some unions are deemed valid (i.e. they take effect, tofsin) while others are deemed invalid (i.e. it is impossible for the union to take effect, ein tofsin). A union may be invalid due to the particular relationship between the participants, or it may be invalid because one of the individuals lacks the ability to be a party to the contract of qiddushin. This notion of a union (or a person) that has no qiddushin (ein qiddushin) or a marriage that cannot be contracted (qiddushin lo tofsin), has no basis in the biblical record. I am arguing that while biblical rules prohibit certain sexual relationships and marital unions, these sources do not articulate any concept of valid or invalid marriage for these cases. The marital union is either forbidden or allowed, and the situation is not considered beyond the scope of this terminology. Note also that in rabbinic halakhah a transgressive (i.e. forbidden) union is not necessarily invalid (though any invalid union must be transgressive). This notion of validity becomes a crucial concept in the rabbinic treatment of marriage in general and intermarriage in particular. The twin concepts of the transgressiveness of the union on the one hand and the validity of the union on the other generate a series of rules for categorizing unions and determining the status of their offspring.

This system, at least as it is presented in mQiddushin 3:12 categorizes marriages into four different types, based on whether or not the marriage is transgressive and on whether or

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rely upon Ezra or Nechemiah in their work on intermarriage. One notable exception is Sifra Acharei Mot to Leviticus 18, which uses verses from Ezra to link the arayot to discussions of intermarriage (see my discussion in Chapter 4).
not the marriage is valid. This is referred to in terms of the female partner's ability to contract *qiddushin* either generally or with that particular partner. These types of marriages are then linked to different systems for the transmission of genealogical status. These principles are comprehensive, and the mishna appears to be presenting paradigmatic models for each of these principles, rather than exclusive lists. This means that one should theoretically be able to determine the status of any union and its offspring based on the principles and rules set out in the Mishna. This stands in contrast to the *asarah yuchasin* which is limited by its category based, list structure.

The system in mQiddushin 3:12 for dealing with unions and the status of their offspring is important for any consideration of intermarriage because of how it might categorize intramarital unions with respect to their validity and transgressiveness. It is equally important for any consideration of the effect of the union on the status of its members (i.e. does a union between any two given individuals change the status of either?) and the effect of the union on the status of any offspring.

mQiddushin 3:12:

In every case where there is *qiddushin* and there is no transgression, the offspring follows the male. And who is this? A *kohenet*, *leviah* or *yisraelit*?

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204. One notable exception: mQiddushin 3:12 does not deal with the case of a union between a Jewish woman and a Gentile man.
who were married to a kohen, levi or yisrael. And in any case where there is qiddushin and there is transgression, the offspring follows the blemished. And who is this? The widow to the high priest, the divorcee and the chalutsah to the common priest, a mamzeret or netinah to a yisrael, a daughter of yisrael to a mamzer or a natin. And for anyone [any woman] who does not have qiddushin with him, but she does have qiddushin with others, the offspring is a mamzer. And who is this? The one who comes unto any of the arayot mentioned in the Torah [in sexual relations]. And anyone [any woman] who does not have qiddushin with him or with anyone else, the offspring is like her. And who is this? This is the offspring of a shifchah (female slave) and a nokhrit (a Gentile woman).

mQiddushin 3:12 creates two main classes of people, those who can contract qiddushin and those who cannot. It also presents various permutations of qiddushin, namely those that are valid and without transgression (i.e. permitted), those which are valid and transgressive (i.e. even though they violate some marital rule, qiddushin takes effect), those which have no qiddushin in that particular case, and those where the woman has no qiddushin in general (i.e. she is of a class that cannot contract qiddushin). A hierarchy is thus created, with the valid non-transgressive union at the top, and the invalid unions at the bottom.

This system is important not only for its establishment of the principle of valid and invalid qiddushin, but also for its articulation of various processes for the transmission of genealogical status. In the normative case, that is, a union that occurs amongst the core genealogical groups of kohen, levi and yisrael, among whom there is no transgression in the marriage, the transmission is patrilineal. Only in marriages that lack either in validity or

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205. This example seems to imply inclusion of kohen and levi.
206. This likewise implies inclusion of the bat levi and bat kohen.
207. Such people have the ability to enter into qiddushin in general even though they might not be able to in some particular cases (such as the incestuous relationships of Leviticus 18 and 20).
permissability does the transmission alter from the patrilineal. In any union that is transgressive, but none-the-less valid, the offspring will take on the status of the blemished partner. A union where the woman for some reason lacks the ability to contract *qiddushin* with that particular man (but has such ability in general) will result in an offspring which is a *mamzer*.

The transgressiveness of this type of union is not based on any blemish, but rather on the serious prohibition placed upon their joining. Finally, a union where the woman lacks all ability to contract *qiddushin* will result in an offspring that takes on the mother's status. It might be argued that the less normative the union, the less patrilineal the transmission.

Interruption is a highly gendered construct within this system. While, as we shall see, some paradigmatic cases in the mishna are bilateral or reciprocal (such that gender is essentially irrelevant), not all are. This is perhaps unsurprising given the unilateral gendered relationship of *qiddushin* itself. mQiddushin 3:12 maintains the earlier system of patrilineal transmission.

208. An excellent discussion of *mamzerut* and intermarriage in rabbinic tradition is, Charles Touati, "Le mamzer, la zona et le statut des enfants issus d'un mariage mixte en droit rabbinique: étude d'un développement historique," Les Juifs au regard de l'histoire: mélanges en l'honneur de Bernhard Blumenkranz, Gilbert Dahan ed. Paris: Picard, 1985, pp. 37-47. Touati argues that when the sages encountered concepts or definitions that did not fit into their normative law, they reinterpreted those concepts or terms away from the obvious sense in order to suit their concerns and purposes. The author argues, as I do, that the halakhic consensus on the Jewish status of the child of a Jewish mother developed over an extended period of time and was long a subject of disagreement in halakhah.

descent, but only for unions which have qiddushin and lack any transgression. These unions between yisrael, levi and kohen, the inner circle of the asarah yuchasin, produce children who take their father's identity. The mother's identity in this system is entirely mutable, as she takes on either her father's or her husband's status. For a union that is transgressive, but nonetheless valid, the mishna rules that the offspring take on the status of the blemished partner. Here there is a risk that the father may lose his ability to pass on his identity to his offspring, since the offspring may follow either partner. We shall call this the principle of the pegum, blemished or defective status. For a union that is transgressive, and where the woman has the ability to contract qiddushin in general, but cannot with this particular man (due to the specific relationship), the offspring is a mamzer. In this case neither the father nor the mother pass on their status to their offspring, as the child is of its own class, forbidden from entering the congregation. Finally, if the woman is unable to contract qiddushin at all, then the offspring takes the mother's status. In this case, the father loses all ability to transmit ancestry to his offspring, losing that right to the mother.

A comparison between the system of the asarah yuchasin and that of qiddushin and aveirah reveals some important differences. Unlike the asarah yuchasin, qiddushin and aveirah is concerned with principles regulating specific relationships as well as with the validity of qiddushin. For example, where mQiddushin 4:1 lists the lineage of chalalei, 3:12 lists the prohibited priestly unions (which create chalalim). mQiddushin 4:1 lists gerei and charurei where 3:12 does not. These do not appear to have an obvious place under any of the basic principles of mQiddushin 3:12. Both systems include the mamzer and the netin/ah. While in the asarah yuchasin these are both lineage groups, mQiddushin 3:12 deals with these identities differently. The netinah and the mamzeret are considered blemished
identities, falling under the law of the *pegum*. The identity of the *netinah* is not explained, and it is safe to assume that the mishna relates to *netinim* as a lineage identity in both systems.

mQiddushin 3:12, however, treats the case of the *mamzer* rather differently. Rather than simply listing *mamzerim* as a lineage, mQiddushin 3:12 presents two possibilities for the creation of an offspring with the status of *mamzer* following its principles: first, where a man has an offspring with a woman forbidden to him under the *arayot*, and second, where a *mamzer* offspring of such a union marries another less blemished or exactly as blemished as him. Thus this mishna not only tells us that there is a category of *mamzer*, it tells us how it is created and what status its offspring might have. It constructs the *mamzer* as a consequence of a forbidden union, a punishment if you will. The creation of an original *mamzer* is born of the principle governing a union where the two members normally can contract *qiddushin* but cannot do so with each other, so severe is the transgression. Once this *mamzer* is created, it becomes a regular identity that is passed down following the law of the *pegum*.

Two notable differences between these two systems concern uncertain lineage and marriage between the *asarah yuchasin* and complete outsiders. mQiddushin 3:12 is not concerned with uncertain lineage as mQiddushin 4:1 is. Uncertain or doubtful identities are not mentioned, and the mishna presents no specific rule for transmission in that case. It does however include the issue of marriage with a *nokhrit* and *shifchah*, which falls outside the scope of the *asarah yuchasin*. Following the principles articulated in mQiddushin 3:12, any union with a woman who cannot contract *qiddushin* produces a child that is *kamotah*, that is, like her. The son of a *nokhrit* even with one of the *asarah yuchasin* is therefore a
nokhri. Note that the mishna does not refer to different kinds of Gentile women (e.g. Moabite, Ammonite, Egyptian, Canaanite, Aramean, Greek). Rather, it uses the term nokhrit\(^{210}\), which appears to be a catch all term referring to all women who are not of the asarah yuchasin; all who are foreign.\(^{211}\) This generalized terminology may reflect the lack of relevance (or perhaps the non-existence) of such individuated identities. There is tension between a desire to maintain such categories, on the one hand, and the acknowledgment that these no longer exist as distinct entities (so rendering the systems related to them irrelevant). The principle for such a marriage (between a nokhrit or shifchah and a male of the asarah yuchasin) as it is articulated here, supports its exclusion from the asarah yuchasin, since its offspring would be a nokhri/t, falling outside the ten lineages.

This rule only pertains to a particular kind of intermarriage: that between a Gentile or slave woman and a "Jewish" man. What happens when a Jewish woman (who can contract qiddushin) marries a Gentile man (who cannot) is a question that remains unanswered by mQiddushin 3:12. This, despite the fact that this case could, and probably should, be dealt with in accordance with these principles. The gap is significant because the status of the offspring of a union between a yisraelit and a nokhri is not explicitly stated. The question thus remains: is the matrilineal principle applied so that the child is like the mother (i.e. yisrael) and the father's identity has no effect, or is there some other consequence? Does the child fall within the asarah yuchasin? Is the child kamotah, i.e. like its mother? This problem cannot be solved through this mishna alone, and we shall see whether other sources address this particular issue.

\(^{210}\) MS Kaufmann and MS Parma both read nokhrit.

\(^{211}\) This will be discussed in detail in Chapter 3 on the qahal, below.
Some of the laws that fall under the rubric of this system are related specifically to the priesthood. These rules are important for regulating priestly marriages but also serve as a theoretical evaluation of the status of the offspring of all other unions. By this, I mean that rabbinic sources often seek to determine whether the offspring of a given union might be eligible to marry into the class of kohen. Where the rules and principles related to marriage with a nokhrit determine the outer borders or lowest levels of the system, rules regulating marriage into the priesthood negotiate access to the most exclusive and highly ranked class. The ultimate clarification of status under rabbinic law appears to be the admissability of any female offspring to the priesthood (and the ability of a daughter or wife to eat terumah). In short, the theoretical test question in terms of status becomes: can the daughter of this union marry a kohen? In addition, the rules related to disqualification from marrying into the priesthood, or chalalut, sometimes form a model for the rules related to the status of the offspring of the transitional identities, namely the ger and the eved meshuchrar (or charurei).

Rather than relating to the chalalei as a pseudo-ethnic group (as the asarah yuchasin seem to do), this system deals with the marital rules that apply exclusively to the priestly class and outlines the processes for determining the status of offspring of forbidden unions. These mishnayot offer a few different positions on the question of if and when

212. See, however, Satlow's Jewish Marriage in Antiquity, where he argues for the existence of a rabbinic caste, particularly in Babylonia, p. 148. I would suggest that this class replaces the priestly class as the ultimate and most exclusive lineage, especially in the Babylonian Talmud. As there is no biblical regulation of any such group, the general directive to find a woman “suitable for him” (hogenet lo) is sufficient.

213. For the marital rules specific to the priesthood see Leviticus 21 and Ezekiel 44. The notion of the seed of yisrael becomes particularly important in these discussions of lineage, as will be discussed below.
the daughters of chalalim and gerim may marry into the class of kohen. One might assume that unions involving chalalim and gerim would be subject to the rule of the pegum. Indeed, this is how the chalal class is created according to mQiddushin 3:12 - when a kohen marries and has offspring with a woman forbidden to him, this is a union that has qiddushin but is also transgressive. It therefore is subject to the law of pegum. Following mQiddushin 4:6-7, however, the transmission of chalal identity does not follow the law of pegum at all.

mQiddushin 4:6-7:214

4:6 The daughter of a male chalal is disqualified from the priesthood forever. An Israelite who married a chalalah, his daughter kesheirah [i.e.: she is fit or permitted to marry into the priesthood]. A chalal who married the daughter of an yisrael, his daughter is disqualified from the priesthood. Rabbi Yehudah says: The [law of the] daughter of a male convert is like the [law of the] daughter of a male chalal.215

4:7 Rabbi Eliezer ben Yaakov says: An Israelite who married a female convert, his daughter is fit for the priesthood, and a convert who married the daughter of an yisrael, his daughter is fit for the priesthood, but a male convert who married a female convert, his daughter is disqualified from the priesthood. [This applies] equally to converts and to freed slaves, even up to ten generations, until their mother is from Israel. Rabbi Yose says: even if a

214. This version is consistent with MS Kaufmann (folio 126r).
215. The basic set up is as follows, with case C being identical to case A:

A. Any person + male chalal = daughter is pesulah
B. Male yisrael + chalalah = daughter is kesheirah
C. Female yisraelit + male chalal = daughter is pesulah
male convert married a female convert, his daughter is fit for the priesthood.

*Chalal* status is passed through the male. A *chalal* will always pass on his status, in a patrilineal fashion to his offspring, so that any of his daughters will be unable to marry into the priesthood. In this way, the male line of a *kohen* who has offspring with a forbidden woman is permanently cut off from the priesthood. Should a *chalalah*, that is, a female *chalal*, marry a *yisrael*, they do not take on her status. Patrilineal descent is maintained. The woman's status is lost, and her children take on Israel status, so that any daughters would be able to marry into the priesthood. Female descendants (granddaughters onwards) of a *kohen’s* union with a forbidden woman may thus marry into the priesthood (assuming a marriage with the class of *yisrael*).²¹⁶

R. Yehudah rules that the case of the convert follows that of the *chalal*. This means that it does not follow the law of the *pegum* (for R. Yehudah). Instead, convert status is passed down through the male line. A female convert, however, if married to a male *yisrael*, does not pass on her status to her offspring, and any daughters may marry into the class of *kohen*. R. Eliezer b. Yaakov, however, holds that any union between a convert and a *yisrael*, regardless of gender, creates daughters who are permitted to marry into the priesthood. This means that the rule of patrilineal descent *per se* does not apply here. Rather, any mixing produces a fit offspring. Only a union between two converts produces daughters who may not marry into the priesthood. Note that this process also does not follow the law of the *pegum*. For R. Yose, convert status appears to be irrelevant to the question of admissability to the priesthood, since even the daughter of two converts may...

²¹⁶ Note that the marital rules articulated in mQiddushin 4:1 indicate that *chalalei* are forbidden from marrying *Kohanim*, as are *gerei*. 
marry into the priesthood.

The Tosefta records yet another position, there anonymous, regarding the offspring of converts and freed slaves.

tQiddushin 4:15 (Lieberman):

כהנָתֵת לְיוֹלָה יִשְׂרָאֵלִית שְׁנֵי סֵלָה לָגוְלָה גֵרִי וּלְעבָד מְשֻׁבוּר הַוֶלֶד עַבְדָה.

A kohenet or a leviyah or a yisraelit who were married to a convert, the offspring is a convert; to a freed slave [charur], the offspring is a freed slave.

This statement is clear in that it determines that a marriage between a ger/eved meshuchrar and any of the yisrael, levi, kohen group produces a child that is a ger/eved meshuchrar. This follows R. Yehudah's position in mQiddushin 4:6 where convert status is passed through the male line. The gendered nature of this statement suggests that this rule is not based on the principle of the pegum (which is gender neutral).

In short, in order to determine the status of the offspring of converts (gerim), the Rabbis follow different principles and come to different results. R. Yehudah applies patrilineal descent, so that gerim are subject to the same type of descent law as kohen, levi and yisrael. This is perhaps not surprising, given his contention that gerim are part of the qahal. The outcome of his position is that a male convert's offspring will always be a convert. It is important to note that the mishna does not state the case in exactly this way. Rather, it states that the offspring is (or is not) able to marry into the priesthood. I am

217. The term eved meshuchrar is equivalent to the term charur, both indicating a freed slave.
reasoning that a daughter is not allowed to marry into the priest hood because she is understood to carry a convert identity, in this case from her father. The "seed", if you will, is passed through the male, and so her seed is not of Israel. A daughter of a convert mother and a yisrael father, on the other hand, may marry into the priesthood because the convert lineage is not passed on to her. Instead, she becomes a yisrael like her father.

It follows that the status of the offspring of a female convert is dependent upon the father's; the female convert does not pass on her status to her child. Note that this appears to be the anonymous halakhah in Tosefta. One may easily deduce that for R. Yehudah a union between two converts results in a offspring that is also a convert. For the other sages, patrilineal descent is not used in the case of converts. For R. Eliezer b. Yaakov, any union with at least one Israel member, regardless of gender, creates an offspring that is admissible to the priesthood. Only in the case of a union between two converts is that child also a convert. Finally, R. Yose suggests that converts do not pass on their status to their offspring, so that even the daughter of a union between two converts may marry into the class of kohen.

Note that this process is articulated differently from the principle of inheritance of the pegum (blemish) that is, the inheritance of defective status as found in one or both parents, in mQiddushin 3:12. If we understand the forbidden woman as becoming a chalalah herself, then her child would take on her pegum, i.e. they are chalalim. Note, however, that if a female chalalah marries an Israel, the daughter is permitted to the priesthood, and therefore not a chalalah herself. In this case the transmission appears to be patrilineal. The gendered nature of this descent pattern would appear to be a leniency on the female side, making it possible for them to prevent passing on their status by marrying an
Israel male. This may, however, simply be due (at least in part) to the general mutability of female identity, and the importance of the male line in the priestly class.

With regard to the transitional categories of the convert and the freed slave, the legal positions outlined in these mishnayot suggest that transitional identities are lost when they are mixed in a union with a yisrael. This loss of identity through marriage to a yisrael is not at all suggested by mQiddushin 3:12 (or by mQiddushin 4:1). Following the principles of mQiddushin 3:12, I would propose that in a union between a yisrael and a female convert or freed slave there is qiddushin (that is they may contract a marriage) and there is no transgression (that is their union does not violate any marital rules).218 If this is true, then for mQiddushin 3:12 the offspring should follow the male, adhering to the norm of patrilineal descent. This is the position held by R. Yehudah and by tQiddushin 4:15, where in the case of a female kohen, levi or yisrael, married to a ger/eved meschuhrar, the offspring takes the father's status. The other rabbinic opinions do not apply patrilineal descent to this case, and hold that the offspring of any convert and yisrael (regardless of gender) is permitted to the priesthood, or that even the daughter of two converts is permitted.

Now that we have established the norms for transitional identities, we can address the problem of the status of the offspring of a female Israel and a male Gentile. mQiddushin 3:12 applies the principle of matrilineal descent, but is the offspring of such a union always considered to be kamotah (like the mother)? We already know that the offspring of a female

218. Note that these categories are not mentioned in mQiddushin 3:12. If this mishna is presenting paradigms, then we should be able to determine the process for identity transmission in this case, even though it is not listed as an example, that is, the argument is partially from silence and on the assumption that the mishna wishes to list all cases.
Gentile is always Gentile (mQiddushin 3:12). Would such an offspring, the daughter of a Gentile man, even be allowed to marry into the priest hood?

As we have already noted, the intermarried heterosexual union must be considered with respect to two different cases:

1) male Israel - female Gentile

2) female Israel - male Gentile

Of these two possible permutations, the union between a male Israel and a female Gentile is the paradigmatic case of intermarriage for mQiddushin 3:12. The male is the one who attempts to "megadesh" (or contract qiddushin with) a non-yisrael woman. mQiddushin 3:12 constructs its principles around the ability of the woman to be a party to qiddushin. As discussed above, this may be why mQiddushin 3:12 does not discuss the case of union of a male Gentile and a female yisrael. According to mQiddushin 3:12, a Gentile woman, like a slave woman, lacks the ability to contract qiddushin with anyone. This intermarried union is therefore invalid as qiddushin. It follows that the offspring of this union, where the woman cannot contract qiddushin, would result in a matrilineal transmission pattern. In short, we would expect that the child would take the mother's status.219

Rather than viewing this matrilineality as a general rabbinic position on identity transmission, I would suggest that it is a position that was not universally held in tannaitic

219. mQiddushin 3:12 does not address the ability of the male Gentile or the male slave to be a party to qiddushin.
times. Furthermore, it appears to function as a kind of punishment of the male who intermarries, since he does not gain the privilege of passing on his heritage to his offspring as he would in an approved marriage (i.e. a marriage between kohen, levi and yisrael). Matriliney as loss of connection and rights within the larger patrilineal system is evident in the example of mYevamot 2:5, which addresses the laws of levirate marriage (yibbum). These mishnayot attempt to map the scope and limits of yibbum. Since yibbum is a non-normative marital connection, a connection which would normally violate the arayot, careful determination of appropriate processes and exact details is crucial to ensure that it is properly followed, and that the arayot are not violated.

mYevamot 2:5:

ミィשייוולאחימקוהלתאתאתילייבםואחיילכלדברתום
מימישייוולמקוםהמתוכנניםיהםשתולולמקומיופותראתשת
אותםימיםהיהום交流合作כלكلفוהובבלכלדברתוםممימיישייו
וםوضوعהםתוכננים.

One who has a brother, of any kind [in any case], binds his brother's wife to yibbum, and he is his brother in every respect, except for one who has [a brother] from a shifchah or from a Gentile woman. One who has a son, of any kind [in any case], exempts his father's wife from yibum, and is liable for hitting him and for cursing him. And he is his son in every respect, except if he is from a shifchah or a Gentile woman.

This mishna rules that the offspring of a yisrael male, for example, and a Gentile female does not take his father's status. Rather than following the norm of patrilineal descent, the father suddenly loses connection to his son, and the brother loses connection


221. This is especially so in the case of kohen and the chalalah, etc.
with his half-brother (by a Gentile mother, but sharing the same father). This exceptional
descent pattern serves to sever any official ties in the face of consanguinity.
Consanguineous family members are determined to be no more than strangers. This
expands upon the ruling of mQiddushin 3:12. Not only does the status of the child follow
that of the mother, the consequences are severe as it is clarified that the father has no legal
connection to his offspring by the Gentile woman. The boy is not his father's son and has
no connection to any of his father's family. Likewise the father loses the right to pass on his
identity, inheritance or to extend his authority over his son or daughter.222

In contrast, the intermarriage between a female yisraelit and a male Gentile is a more
complex case. From mQiddushin 3:12 alone it is difficult to determine what the status of
the offspring would be. Theoretically speaking, there are a number of possibilities. If the
mishna means specifically and only where the woman has no qiddushin, but not the man,
then only in the case of a female Gentile would the offspring follow the mother. We might
conclude that since the male Gentile cannot contract qiddushin, the offspring might take on
his status, that is Gentile. Alternatively, wherever a relationship has one member that is
unable to contract qiddushin, the status of the offspring follows that of the mother. We
might conclude that for mQiddushin 3:12 the offspring of a Jewish woman and a Gentile
man is considered to be a Jew, that it is like her.

Continuing in our analysis of the possibility that the offspring is kamotah (like her),
we must consider under which of the asarah yuchasin the child would fall. If the mother is
a yisrael or levi, is her child a yisrael or levi respectively? Or does the child have some kind

222. This might not have held if the adjudicating court were not Jewish. The jurisdiction
of Jewish courts in contexts where other religious or civil legal systems dominate is an
important issue beyond the scope of our study.
of new status of general "Jewishness", through matrilineal descent, that is not connected to the asarah yuchasin? I would suggest that there is actually no real evidence within mQiddushin 3:12 regarding the status of the child of a union of an Israel mother and a Gentile father. Determining matrilineal descent within a system dominated by a norm of patrilineal descent is obviously problematic, and points to the incongruity between these systems.

We must look elsewhere for clear tannaitic rulings on the offspring of this type of intermarriage. Tosefta Qiddushin 4:16 states that the offspring of a union between a female Israel and a male Gentile is a mamzer,223 while recording the dissenting opinion, namely that the child is like her.224 This ruling of mamzerut may seem unexpected in view of the definition of definition of mamzerut as the offspring of a union between arayot in mQiddushin 3:12. It is less surprising, however, if we consider this relationship according to the following positions:

1) The intermarriage between a yisraelit and a Gentile man is transgressive, that is it violates a legal rule;

2) The woman is able to be a party to qiddushin in general, but has no qiddushin with this particular man (because he is Gentile and so cannot contract it);

This case fits the criteria for the creation of mamzerut according to mQiddushin 3:12.225

The only difficulty is that mQiddushin 3:12 specifically limits mamzerut to the arayot and intermarriage is not explicitly included amongst the arayot of Leviticus 18 and 20. Some

223. Note that mamzer is a Jewish category.
224. Note that this tradent is different from the attribution in the Mishna.
225. There are a number of different opinions on what kinds of unions result in mamzer offspring, as we shall see.
traditions, however, understand the laws forbidding the passing of one's offspring to Molekh as a prohibition of reproductive intermarriage. If mQiddushin 3:12 understands that mamzerim are only created through the arayot, then this case does not fit its construct, and such a union could not create mamzerim according to its definition. If, however, the arayot are merely an example, or if the arayot do include intermarriage, it would be quite reasonable to add this type of intermarriage to their list of relationships that produce mamzerim. This proves to be a serious debate in the tannaitic sources, as evident in tQiddushin 4:16.

A Gentile or a slave, who had intercourse with a daughter of yisrael and she bore a child [lit: son]: the offspring is a mamzer. R. Shimon ben Yehudah says in the name of R. Shimon: there is no mamzer except from the woman whose prohibition is a prohibition of ervah, and one is liable on her account to karet.

There is another ruling in mYevamot 7:5 (which is concerned with degrees of access to priesthood, specifically with the ability to eat terumah) that the child of such a union is a mamzer.

mYevamot 7:5

226. For a detailed discussion of this issue, see Chapter 4 on the arayot, below, also see Leviticus 20:2-5.
…A *mamzer* both disqualifies and enables one to eat [*terumah*]. How so? A daughter of a *yisrael* to a *kohen*, or a daughter of a *kohen* to a *yisrael*, and she bore a daughter by him, and the daughter went and was married[^227] to a slave or to a Gentile, and she bore a son by him, behold, this is a *mamzer*. If his mother's mother was a daughter of *yisrael* married to a *kohen*, she shall eat of *terumah*; a daughter of a *kohen* to an *yisrael*, she shall not eat of *terumah*.

These positions in Tosefta and Mishna are representative of the tannaitic opinion that an intermarriage between an Israel woman and a Gentile man creates a *mamzer* offspring, and that *mamzerut* is not limited to unions listed amongst the *arayot*. *M*Yevamot 7:5 clearly assumes that the offspring of a Gentile and, in this case, the daughter of a *kohen*, is a *mamzer*. tQiddushin 4:16 also records a dissenting view, namely that *mamzerut* is only created by *ervah* (i.e. through a union between two individuals forbidden by the *arayot*).[^228] This dissenting opinion clearly states that intermarriage is not considered to be one of the *arayot* and that *mamzerut* is created exclusively through the *arayot*, and so never by intermarriage. This opinion presumably maintained that the offspring of an intermarriage was therefore not a *mamzer*.

According to the position that holds that the offspring of a Gentile man and a

[^227]: Note the use of marital terminology where *qiddushin* is impossible. This may reflect an understanding of relationships of a marital type outside of *qiddushin*, such as those registered in other courts, or may be euphemistic language for sexual relations. Shaye Cohen argues that there existed a rabbinic notion that Gentiles can only “create a *de facto* status of marriage through sexual intercourse, but are incapable of creating a *de jure* status of marriage” (*Beginnings of Jewishness*, p.29). Unfortunately he does not explore this idea further, though it does seem reasonable that the rabbis understood that Gentiles had marriages of some kind in practice. Satlow (*Jewish Marriage in Antiquity*) addresses the issue of *defacto* marriage, stating that "For most people at most times, the precise legal definition of marriage is largely irrelevant" (p.73), arguing that related problems, including invalidity are most often resolved by inuition and common sense (p.74).

[^228]: The *arayot* and their relevance to intermarriage will be discussed in detail below.
"Jewish" woman is "Jewish," the child is considered to be kasher, that is, the child is permitted (as opposed to pasul or disqualified) to marry into the priesthood. This position might have been arrived at through bilateral application of the matrilineal principle, so that where any partner in the union cannot contract qiddushin in general (i.e. is a Gentile or a slave), regardless of gender, the offspring follows the mother. Alternately, it might be reasoned that the child is kasher by exception to the rule (of mQiddushin 3:12). From this perspective, the child is almost a mamzer\textsuperscript{229} since she has qiddushin in general but not with this particular man (the Gentile), and so the child should be a mamzer, but is not since the rule for the creation of mamzerut (according to this school of thought) is strictly limited to the arayot, amongst which intermarriage is not listed.\textsuperscript{230}

Given the available evidence, it would seem that there is sufficient basis to extend the valad kamotah principle of mQiddushin 3:12 to a larger so-called matrilineal principle (that would also include female yisrael intermarriage with a Gentile). Regardless of the rationale behind the outcome, the child of such a union is either kasher for mQiddushin 3:12 and for our other early sources it is a mamzer. We thus find that there was no single tannaitic position on the offspring of such an intermarriage.

It is clear that the rulings on the status of the child of a yisrael woman by a Gentile man is closely linked to the laws of mamzerut, and so mamzerut becomes critical in the rabbinic consideration of intermarriage. We will now consider why there were different

\textsuperscript{229} tYevamot 6:9 mentions an offspring that is close to being a mamzer (in the case where he has relations with the yevamah for selfish reasons, that is for reasons other than carrying on his dead brother's name). That is the case there because the father is considered as if he had violated the rules of the arayot.

\textsuperscript{230} For a full discussion of the arayot and intermarriage, see the chapter on the arayot, below.
rules regarding the creation of *mamzerut* and how this might be linked to positions on intermarriages and their offspring.

mYevamot 4:13\textsuperscript{231}

And who [or: which] is a *mamzer*? Any relative who is [prohibited] by a negative commandment [lit: he shall not enter], [these are] the words of R. Akiva. Shimon HaTimni\textsuperscript{232} says: Any on whose account one is liable to *karet* at the hands of heaven, and the *halakah* follows his words. Rabbi Yehoshua says: Any on whose account one is liable to execution by a court. Rabbi Shimon ben Azai said: I found a scroll of lineages in Jerusalem and [this was] written on it, "So and so is a *mamzer* due to *eshet ish* [adultery]," affirming the words of R. Yehoshua...

Where does intermarriage stand in relation to the dispute on *mamzerut*? According to R. Yehoshua's and R. Shimon HaTimni's rules for the creation of *mamzerut*, intermarriage does not produce *mamzer* offspring because intermarriage is subject neither to *mitat beit din* nor to *karet*. When it comes to R. Akiva's position, it depends on which interpretation is followed. Following the most likely interpretation, the child would not be a *mamzer*, because intermarriage is not a union between two close relatives forbidden to each other. There is, however, another interpretation of R. Akiva's position whereby

\textsuperscript{231} Questions of *mamzerut* naturally arise in Tracate *Yevamot* since this exceptional case itself "violates" the *arayot* and so if not properly followed in every respect, might produce an unfit child from an *ervah* relationship.

\textsuperscript{232} Sometimes vocalized as HaTemani but MS Kaufmann has HaTimni (folio 87r).
intermarriage does in fact produce *mamzer* offspring.

R. Akiva's position is certainly the most difficult. Does R. Akiva mean any relative who is also *belo yavo* (i.e. the *arayot* who are *shear basar*) or anyone at all who is *belo yavo*, that is, any union forbidden by a negative commandment? The first reading creates a narrow definition of *mamzerut*, while the second is extremely broad, and would mean that the offspring of intermarriage (between a Gentile man and a "Jewish" woman) would be *mamzerim*. The relative expansiveness of the terms for the creation of *mamzerim* is important in that it, at least in theory, would create a smaller or larger community of marital exiles, unable to marry into the *qahal*.233 In my view, the text as it stands clearly refers to a relative (*shear basar*) who is also *belo yavo* (i.e.: relatives forbidden by a negative commandment).

Maimonides (in his commentary to mYevamot 4:13) prefers to read the mishna so that even relationships biblically prohibited (to enter the *qahal*) and rabbinically punishable by lashes produce *mamzerim*.234 This reading creates an order of degrees within the mishna, with R. Akiva's ruling being the most stringent, and R. Yehoshua's the least. It also solves the apparent contradiction between R. Akiva's principle in mQiddushin 4:13 and his rulings in mYevamot 4:12. As we shall see, R. Akiva's ruling in this mishna suggests that he may not have limited the creation of *mamzerim* to the *arayot*.

mYevamot 4:12:

*המקים גורשות הנותשים הלצות והנותשים קרובות הלצות ייצא והולך*

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233. For further discussion of the rules of *qahal*, see Chapter 3 below.
234. MS Kaufmann (folio 87r) reads as follows: א"י והוה ממון כל שאר ושאר הוא בלא יהב. See also discussion of this interpretation in bYevamot 49a.
The one who returns [i.e. remarries] his divorcee [after she had subsequently remarried and been divorced or widowed], and the one who marries his *chalutsah*, and the one who marries the relative of his *chalutsah*: he shall send her out [i.e. divorce her] and the offspring is a *mamzer*. [These are] the words of R. Akiva. And the sages say: the offspring is not a *mamzer*. But they agree regarding the one who marries the relative of his divorcee that the offspring is a *mamzer*.  

R. Akiva's rulings in *mYevamot* 4:12 appear to be based on a principle that creates *mamzerut* even from forbidden relationships that are not *arayot*, i.e. relationships that are not incestuous or otherwise included in Leviticus 18 and 20. One must keep in mind, however, that *yibbum* technically contravenes one of the *arayot* prohibitions (Leviticus 18:16 prohibits sexual relations between a man and his brother's wife). A man who releases his brother's widow from the bond of levirate marriage and then remarries her might be transgressing this prohibition. Rashi, however, holds these two *mishnayot* to be contradictory, as if R. Akiva *choleq al atsmo* (disagrees with himself).  

Tosafot disagree and hold that the two opinions are in line with each other. They reach this conclusion by arguing that the cases that R. Akiva rules on in *mQiddushin* 4:12 are in fact both *belo yavo* and *shear basar*. Following their reading, the essence of the dispute between R. Akiva and the sages in *mYevamot* 4:12 is thus based on their different notions of what *shear basar*...
Even according to this reading, the order of most stringent to the most lenient is maintained.

Another record of R. Akiva’s position on mamzerut is found in tYevamot 6:9, which works through the sages’ respective rulings (excepting R. Yehoshua).

tYevamot 6:9 (Lieberman):

The one who comes unto his yevamah [in conjugal union] for the sake of beauty, for the sake of property, [we] see him as if he violates an ervah and the offspring is close to being a mamzer. Rabbi Meir used to say: A man shall not come unto his yevamah until she reaches her time [of maturity] and so [for] co-wives and so [for] arayot. They shall not be married and they shall not be betrothed until they have reached their time [of maturity] lest these be found [to be] ayloniot [i.e. sterile] and so found to be pesulot [unfit for yibbum]. And the sages say: behold they are presumed to be fit and they are kosher. R. Akiva agrees [in the case of] a widow to the High Priest, a divorcer and a chalutsah to a common priest, for even though she is belo yavo [i.e. prohibited], the offspring is not a mamzer because there is no mamzer except from shear basar [i.e. relatives]. R. Shimon HaTimni agrees regarding the one who comes unto his wife [in conjugal union] [while she is] niddah, for even though she is subject to being excised [i.e: karet], the offspring is not a mamzer because there is no mamzer except from shear

239. Note that we may understand that R. Akiva holds that mamzerut is also created by unions that are merely prohibited (and punishable by lashes) while the Sages disagree. Therefore, they agree on the case of the man who marries the relative of his divorcee because as his former wife, the violation of the prohibition against marrying his relatives is subject to karet. Marriage to a wife’s relatives is listed amongst the arayot (Lev. 18:17-18) but the case of divorce is not mentioned.

240. One would accept the opposite order, unless the intention is that she shall not even be betrothed (my emphasis).
basar.

The Tosefta here reads very much like an effective clarification (or a promotion of a specific reading) of the Mishna. This source reads R. Akiva explicitly as following the principle that a mamzer is created only by a union that is both shear basar and belo yavo. According to TYevamot 6:9, both R. Akiva and R. Shimon HaTimni agree that a mamzer is only created by the combination of shear basar and another factor. So R. Akiva holds it is shear basar and belo yavo, while R. Shimon HaTimni rules it is shear basar and karet that produces a mamzer. The exceptions presented clarify their rules because they are cases which are belo yavo or karet, respectively but do not fall under shear basar and so do not create mamzerut. The primary defining element for creation of mamzerut thus remains shear basar.

How does Tosefta's reading of the Mishna relate to the case of the intermarried female yisrael and her offspring (i.e. the yisraelit or leviah who has a union and a child with a male nokhri)? We must look first at the principles of the various rulings with reference to the situation of intermarriage. In order for intermarriage to create mamzer offspring, the following conditions must be met. First, the intermarriage must be considered shear basar. Second it must also be considered belo yavo for R. Akiva, or also karet for R. Shimon ha Timni. By all accounts it would seem that intermarriage cannot be considered shear basar, even if it is considered belo yavo. Indeed, shear basar refers to endogamous connections, rather than exogamous ones; laws against unions between shear basar are concerned with preventing unions between some of the closest familial connections - intramarriage rather than exogamous ones.

241. Each of their positions is based on a general principle, rather than being limited to the list of the arayot as mQiddushin 3:12 seems to be (unless, of course, the arayot serve as example in mQiddushin 3:12, rather than an exclusive definition).
than intermarriage. Following this reading in Tosefta, it would seem that neither of these opinions would create a mamzer from an intermarriage since all agree that intermarriage never produces a mamzer offspring unless the couple are already somehow shear basar.

This is in contradiction with mYevamot 7:5 and tQiddushin 4:16 which both list the ruling that the child of an intermarried yisrael woman to be a mamzer.

It is clear that there were a variety of tannaitic opinions on mamzerut and intermarriage. The principles articulated lead to rulings that intermarriage between a "Jewish" woman and a Gentile man takes on the mother's status (and is not a mamzer), but we also find sources that record rulings that the offspring of such a union is indeed a mamzer. These latter rulings may have been based on differing notions of mamzerut or the factors which create it, or may be linked to mQiddushin 3:12, following the principle of having qiddushin in general but not in particular, which there creates mamzerut.

Turning to Sifra, we find a midrash to Leviticus 24, which as Shaye Cohen has argued in Beginnings of Jewishness further demonstrates the diversity of early rabbinic

242. These terms are related to the body and the flesh, including relatives through affinity as well as consanguineous relatives.
243. Theoretically, this would also mean that adultery would not produce a mamzer offspring (unless the adulterous pair were also related). mYevamot 4:13 links R. Yehoshua's position on mamzerut to adultery. Following mQiddushin 3:12, however, describes the relationship that produces a mamzer as one where the woman does not have qiddushin with that particular man, but does in general, perhaps indicating a case of adultery (though adultery is not explicitly mentioned there).
244. Both of these statements are brought anonymously. Note that tQiddushin 4:16 records a dissenting opinion in the tradent of R. Shimon ben Yehudah in the name of R. Shimon, that is in accordance with R. Shimon haTimni in mYevamot 4:13 and with mQiddushin 3:12.
245. Note that this principle operates differently from the category method of arayot/shear basar relationships.
positions on the offspring of a *yisrael* woman and a Gentile man. This midrash is based upon Leviticus 24:10-14, which speaks of the son of an Israelite woman of the tribe Dan and an Egyptian man.

Leviticus 24:10-14

10 The son of the Israelite woman went out and he was a son of an Egyptian man within the children of Israel and they strove in the camp, the son of the Israelite woman and the Israelite man. 11 And the son of the Israelite woman blasphemed the Name and cursed [God] and they brought him to Moses and the name of his mother was Shelomit bat Divri of the tribe of Dan. 12 And they placed him under guard, [so that his fate] would be declared according to the word of God. 13 And God spoke to Moses, saying: 14 Take the curser outside of the camp and let all those who heard place their hands on his head and let the entire community stone him.

The biblical narrative tells us only that the man's Egyptian parentage was worthy of note, though the reason for this is unclear. Some scholars suggest that the intention of the passage is to clarify that certain laws and punishments applied to all in the Israelite camp regardless of lineage. As we turn to Sifra's exegesis, however, we find a very different interpretation.

Sifra *Emor Parashah* 14:1 (Weiss p.104c):

The biblical narrative tells us only that the man's Egyptian parentage was worthy of note, though the reason for this is unclear. Some scholars suggest that the intention of the passage is to clarify that certain laws and punishments applied to all in the Israelite camp regardless of lineage. As we turn to Sifra's exegesis, however, we find a very different interpretation.

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247. See, for example, Martin Noth, *Leviticus*, pp. 178-181.
"The son of the Israeliite woman went out." From where did he go out? From the court of Moses. As he came to pitch his tent in the midst of the camp of Dan, they said to him: What is your qualification [i.e. what right do you have?] to pitch [your tent] in the midst of the camp of Dan? He said to them: I am from the daughters of Dan. They said to him: The Scripture says: each man by his flag, according to the ensigns of their fathers' houses, shall camp the children of Israel (Numbers 2:2). He entered the court of Moses and left condemned [i.e. his appeal to camp with Dan was rejected] and blasphemed. "And he was a son of an Egyptian man." Even though there were no mamzerim at that time, he was like a mamzer. "In the midst of the children of Israel" teaches that he had converted.

This exegesis appears to generate several different conclusions regarding the status of the offspring of a yisrael woman and a Gentile man. The first is an unequivocal affirmation of patriline. If the offspring's father is not of yisrael, the offspring can have no place amongst his people. His mother's status is absolutely irrelevant, and his attempt to stake his claim by his association with the daughters of Dan has a pathetic, meaningless ring to it. The second is that he was like a mamzer. This suggests that the sages would have liked to make him a mamzer but could not. The rationale for their inability to do so is that there were no mamzerim at that time. While it might seem that the lack of mamzerim might be due to the possible placement of this incident on the biblical timeline before revelation, and so before the application of the laws of mamzerut, the traditional commentary is that there were no mamzerim at that time because no one (other that this Danite woman) engaged in the kind of sexual relations that would produce a mamzer. In any case, this ruling

248. See Cohen, Beginnings of Jewishness pp. 316-318 for his discussion of this source.

249. It is not entirely clear whether this incident should be understood as having taken place before or after revelation at Mount Sinai (matan torah, giving of the Torah). Rashi (d.h. ben ish mitsri) explains that the Egyptian father was the man whom Moses had killed
appears to understand him to have some kind of Jewish status from his mother, however improper. The last is that he had converted to Judaism. In order for the man to have converted, he must have been a Gentile, not a Jew and not a mamzer (also a Jewish status).

This ruling thus belongs to a tradition that maintains patrilineal descent, and does not apply the matrilineal principle. The uncomfortable situation of this man as a convert is also palpable - even if he converted, how can he possibly take his place amongst the tribes?

Ultimately, patrilineal descent is too powerful.

A similar midrash, offering some glosses and more elaborate interpretations is found in Leviticus Rabbah.

Leviticus Rabbah 32:3–4 (Margoliot p. 742-3):

3. The son of the Israelite woman went out (Leviticus 24:14). ... R. Hiyya taught: He went out regarding the issue [or: section] of lineage, when he

(Exodus 2), and that the mother (Shelomit) was a zonah, presumably having committed adultery with this very man (whom Moses had killed) as we find in the midrash in Leviticus Rabbah. Following this, the man would have been born before matan torah. See also Nachmanides (Ramban) to Leviticus 24:10 and Shaye Cohen's discussion of the problems of the son of the Egyptian's supposed conversion and his mamzer status, where he states that he is like a mamzer because he was conceived prior to revelation (Beginnings of Jewishness p. 318 and p. 318 n. 20).
came to pitch his tent in the midst of the camp of Dan, they said to him, what [right do] you have to set up to pitch your tent in the midst of the camp of Dan? He said to them: I am from the daughters of Dan. They said to him: The Scripture says: "each man by his flag, according to the ensigns of their fathers' houses" (Numbers 2:2), not the house of their mothers. He entered the court of Moses and left condemned [or: guilty] and blasphemed [God].

4. "And he was the son of an Egyptian man" (Leviticus 24:10). The Rabbis and R. Levi [disagree]. The Rabbis say: Even though there were no *mamzerim* at that time, he was like a *mamzer*. R. Levi said: he was actually a *mamzer*. How so? The Egyptians were taskmasters and Israel were overseers. A taskmaster was appointed over ten overseers, and an overseer was appointed over ten people, [so that] a taskmaster found himself appointed over 110 people. One time, a taskmaster [visited] an overseer early [in the morning]. He said to him: Go gather your group [lit: your ten]. When he entered his house [the overseer's] wife laughed [flirted; also a euphanism for sexual relations]. He said: That man's wife, she [is mine]. He want out and hid himself behind the ladder. When her husband left, he entered and had despoiled her.

Leviticus Rabbah explicitly reinforces the point that patrilineal descent eclipses matrilineal descent. It also brings a new tradition in the name of the early amora R. Levi. Rather than being *like* a *mamzer*, this man was actually a *mamzer*. The original meaning of R. Levi's statement is uncertain. It may have been an argument against the tannaitic rationale for him being almost-a-*mamzer*. The remainder of the midrash, however, explains it otherwise. The man was actually a *mamzer* because he was the offspring of adulterous relations. This portion of the midrash thus appears to follow the tradition wherein intermarriage does not produce *mamzerim*, while adultery does. The fact that these relations occurred between a *yisrael* woman and an Egyptian man appear to be irrelevant (and sexual relations between a Gentile and a married *yisrael* woman appear to be considered adulterous). We may therefore deduce that this exegesis understands the child of this couple to be not only a Jew (otherwise he could not be a *mamzer*) but a *kasher* or non-*mamzer* Jew (or else the adulterous narrative would not be necessary to explain why he is a
mamzer). Leviticus Rabbah further supports the notion that conflicting positions existed on the status of the offspring of this kind of intermarriage and on the definition of what kind of relationship creates mamzer offspring.

We may now turn to Sifrei Devarim for further assistance in working through the situation of intermarriage and mamzerut. As a midrash, this source is primarily concerned with linking the range of halakhic rulings to biblical prooftexts. Sifrei Devarim relates three positions on mamzerut (those three found in mYevamot 4:13) to a single exegetical method.\footnote{250}

Sifrei Devarim 248\footnote{251} also focusses on a single paradigmatic case (eshet av, the wife of the father, Deut. 23:1) and the rule lo yavo mamzer baqahal (Deut. 23:3).

Sifrei Devarim pisqa 248 (Finkelstein p.276):\footnote{252}


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\footnote{250. The verses in question are Deut. 23:1and 23:3 (note the convenient omission of 23:2):}

\footnote{251. For a full discussion of this source see Chapter 3.}

\footnote{252. See Chapter 2 for a discussion of parallel sources.}
"A mamzer shall not enter the congregation of God": Whether male or female. "A mamzer shall not enter": Anyone who is a mamzer. Who is a mamzer? Any relative who is forbidden (shall not enter), the words of Rabbi Akiva, as it is said: "A man shall not take his father's wife (Deut. 23:1)" and "A mamzer shall not enter the congregation of God (Deut. 23:3)." Just as the [case of] father's wife is unique in that she is a relative who is forbidden (shall not enter) and the offspring is a mamzer, so [in the case of] all relatives who are forbidden (by shall not enter), the offspring is a mamzer. Shimon haTimni says: All who are subject to karet at the hands of heaven, the offspring is a mamzer, as it is said: "A man shall not take his father's wife (Deut. 23:1)" and "A mamzer shall not enter the congregation of God (Deut. 23:3)." Just as [the case of] the father's wife is unique in that one is subject on her account to karet at the hands of heaven, the child is a mamzer, so all who are subject to karet at the hands of heaven, the offspring is a mamzer. Rabbi Yehoshua says: All who are subject to execution at the hands of a court, the offspring is a mamzer, as it is said: "A man shall not take his father's wife (Deut. 23:1)" and "A mamzer shall not enter the congregation of God (Deut. 23:3)." Just as [the case of] the father's wife is unique in that one is on her account subject to execution by the court, and the offspring is a mamzer, so all who are subject to execution by the court, the offspring is a mamzer. "The tenth generation": It is said here (Deut. 23:3): "the tenth generation" and it is said there (Deut. 23:4) "the tenth generation. Just as the "tenth generation" below is forever, also the "tenth generation" said here is forever.

Three tannaitic opinions are derived from Sifrei's single question 'mah meyuchedet?' (what is the defining characteristic). Each rabbi finds something different that is unique about the model case, thus arriving at a different ruling about the defining characteristic of the type of relationship that produces a mamzer. Sifrei Devarim appears to be working with the same material as mYevamot 4:13, linking each position with an interpretation of a biblical verse.253 It does not seem to disagree with mYevamot 4:13 at all, rather it simply links its

253. Sifrei Devarim is dated to the latter half of the third century, just after Mishna.
independent rulings with biblical exegesis. Sifrei Devarim and mYevamot 4:13 are both similar to Tosefta in that Sifrei Devarim reads R. Akiva as requiring both shear basar and belo yavo for the creation of mamzerut (i.e. both criteria must be met). In contrast with Tosefta, Sifrei Devarim and mYevamot 4:13 do not include shear basar as a defining principle for the other sages.

As has already been noted, the systems for identity transmission in intermarriage are highly gendered. A female Gentile and a male Jew produce an offspring that is outside the intermarriage system, i.e. a Gentile. The reverse produces either a kasher Jewish offspring (of indeterminate class) or a mamzer. The offspring of a female Jew and a male Gentile is generally deemed to be a Jew rather than a Gentile. Based upon this finding we may conclude that patrilineal descent was not applied to the case of intermarriage, with the notable exception of the traditions in Sifra and and Sifrei Devarim where patrilineal descent determines the status of the child in some of the traditions. On this basis, we may conclude that the rabbinic sources are not entirely in agreement when it comes to the status of the children of intermarriage; there is debate regarding whether the child is mamzer or not, and some record of disagreement over whether the child takes the mother's or the father's status. Both the kasher and the mamzer, though they are at opposite ends of the spectrum of inclusion, fall within the intramarital system of the asarah yuchasin.

As I have suggested, though the status of the offspring of a "Jewish" woman and a Gentile man is considered to be kasher, its place within the asarah yuchasim is indeterminate. At first glance, one might conclude that the male "Jew" is further punished

254. It is the only other early source to include R. Yehoshua's statement, a further similarity to mYevamot 4:13.
given that his marriage with the Gentile is not only invalid, furthermore his offspring are not his, while the female intermarried "Jew" retains the link with her child. Note that this holds true within a Jewish context, but may not have actually taken effect in all situations where another legal system may have trumped halakhah and had jurisdiction over such matters. I shall tentatively suggest that in such cases the dominant legal system may have asserted a Gentile father's right to the child regardless of the halakhic position on the matter. A preference for matrilineality may also relate to the fact that women cared for the children, particularly if the man was not in a stable marriage with her. However, for those tannaitic sources that rule the child is a mamzer, we must consider the permanent and excluding nature of this identity category.

Which is a greater punitive measure, a non-Jewish child who may gain convert status or a mamzer child who is forbidden, along with its descendents, from entering the qahal? Gentile is a mutable status, while mamzer is not, though the opinion that mamzerut can be removed from the line through marrying a shifchah is noted. mQiddushin 3:13 records a ruling in the name of R. Tarfon that mamzerim may remove mamzerut from their descendents' lineage by marrying a shifchah, producing a slave child with her (following mQiddushin 3:12), and freeing said child (who would presumably have the status of a freed slave and be part of the charurei). This process should work equally well with a nokhrit


mQiddushin 3:13:

רב טירון אומר, יכלו הוס淝ים, ילשדו. כיוד: ממזרו שבתה, והולד עבד;

שתראו, נמצא בן חורין. רב אליעזר אומר, והרי הזעב ממזר.

Rabbi Tarfon says, mamzerim can be purified. How? A mamzer who married a shifchah, the offspring is a slave, free him and he becomes a free man [a charur and Jew]. Rabbi
and subsequent conversion for the child. The dissenting opinion brought in the name of R. Eliezer rules the child to be both a slave and a mamzer, following the school that prefers to see mamzerut as a permanent and immutable category as well as due to a possible reluctance to encourage Israel-slave/Gentile marriages. This view, however, creates a person who has dual categories, one within and one outside of the asarah yuchasin, a position which is highly problematic. The status of mamzer may serve as a means of creating a practical (earthly) punishment for various violations in a context where courts either no longer have jurisdiction or do not have the legal basis for punishing offenders, as in cases where karet (excision) or mitat bidei shamayim (death at the hands of heaven) are the official sentences.

Not unlike Sifrei Devarim, the Babylonian Talmud is primarily (or at least initially) concerned with attaching the positions as described in the Mishna with scriptural sources. In this respect its method is similar to Sifrei Devarim. Both use Deuteronomy 23:1 and 23:3 but bYevamot 49a is interested in attributing further rationale and explanations to the various rules of the sages. In particular, it develops a range of interpretations of R. Akiva's position on mamzerut. bYevamot does not use any particular exegetical formula, in contrast with Sifrei Devarim, simply asking: What is R. Akiva's reason?

bYevamot 49a:

Eliezer says, behold this is a slave and a mamzer.

256. bYevamot 49a. For discussion of the treatment of this issue in the Palestinian Talmud see p. 192 on yYevamot 4:14-15, 6c.
What is R. Akiva's reason? As it is written: A man shall not take his father's wife and shall not uncover his father's garment. The garment that his father saw, he shall not uncover. And he reasoned like R. Yehudah who said: the verse [Scripture] speaks of his father's rape victim, which is subject to negative commandments, and next to this: A mamzer shall not enter the congregation of God" hence from these [unions] there will be a mamzer. And for R. Simai who includes the rest of the negative commandments that are not of shear, and for R. Yesheivav who includes even positive commandments, it is derived for him from "and not." And Shimon HaTimni reasoned like the rabbis, who said: the verse speaks of his father's potential yevamah, which is subject to karet, and next to it, A mamzer shall not enter... hence from karet there is a mamzer. And R. Yehoshua? Let the Merciful One write "he shall not uncover" [only]. "He shall not take (and he shall not uncover)," why do I have [both]? Rather, is this not what it means to say? From "he shall not take" to "he shall not uncover" it will be a mamzer, more than that, it will not be a mamzer.

The interpretation of R. Akiva's position in bYevamot 49a hinges upon the meaning of the expression נאמוץ אביו (father's wife) in Deuteronomy 23:1. If Leviticus 18:8 prohibits זנות אישה (adultery), then this prohibition in Deuteronomy 23:1 may be taken to refer to something else. bYevamot understands that R. Akiva interprets Deut. 23:1 to refer

257. Meaning the border or edge of his clothing, this is a euphemistic reference to sexual relations.
258. The intervening verse has been conveniently omitted, see also above p. 178.
259. Meaning that R. Simai understands R. Akiva's position as creating mamzerim from relationships forbidden by negative commandments, even if they are not relatives (i.e. not amongst the arayot).
260. R. Yesheivav understands R. Akiva's position as creating mamzerim also from relationships whose prohibition is only derived from a positive commandment.
261. Deuteronomy 23:3: לא יבה. This second negative (he shall not take, followed by he shall not reveal) is presumably thought to have been superfluous and so available for exegetical purposes.
262. The use of both these expressions in this verse is considered superfluous.
263. Meaning, beyond that case (i.e. any case that does not fall within the scope of this case does not produce a mamzer).
to a woman with whom his father had sexual relations, i.e. a woman other than his wife. bYevamot then connects R. Akiva's interpretation of the verse to the interpretation of another tannaitic Sage, R. Yehudah. R. Yehudah understands the verse to refer to his father's rape victim. bYevamot suggests that he interprets it as such since he includes all (willing) sexual female partners under the rubric of Leviticus 18:8. He is thus free to understand Deut. 23:1 as referring to a specific type of sexual act with a woman.264

bYevamot then connects this verse to Deut. 23:3, just as Sifrei Devarim does. The intervening verse, which prohibits a man with crushed testicles from entering the congregation, is ignored in both sources. From the supposed juxtaposition of these verses, Deuteronomy 23:1 on the father's wife (read: sexual partner) and Deuteronomy 23:3 on the prohibition of the mamzer from entering the congregation, it is concluded that the relationship in the first verse results in the status (in any offspring produced) listed in the third verse. It follows that the offspring of the union of a son with his father's sexual partner (other than his wife) would produce a mamzer. The key factor in bYevamot's interpretation is the status of the act of sexual relations between a son and his father's sexual partner. Since this is understood by bYevamot to fall outside the scope of the Levitical arayot, not as a relationship punishable by karet, but rather a simple negative commandment. In this way, the Babylonian Talmud connects relationships prohibited by a simple negative commandment with the production of mamzer offspring. According to this interpretation, we should understand R. Akiva's position in mYevamot as: A union that is shear basar produces a mamzer even if it is only prohibited by a negative commandment. According to

264. See bYevamot 4a.
this view, even though it is much broader than the \textit{arayot} alone, intermarriage would still have to be considered both \textit{shear basar} and prohibited by a negative commandment to produce a \textit{mamzer} child.

\textit{bYevamot} continues to make connections with a broader range of sages, relating interpretations and opinions. In doing so \textit{bYevamot} suggests that there was a broad range of understandings of R. Akiva's position on \textit{mamzerut}. R. Simai suggests\textsuperscript{265} that R. Akiva held that any union forbidden by a negative commandment, \textit{even if} it is not \textit{shear basar} produces a \textit{mamzer}. This interpretation radically widens R. Akiva's position. This reading of R. Akiva's position means that an intermarried \textit{yisraelit} would have a \textit{mamzer} child (so long as the intermarriage is considered to be prohibited by a negative commandment). Rashi's commentary on this reading is obviously critical:

\begin{quote}
\texttt{مم ז들과 עשה ר' עבודת ממותים.}
\end{quote}

R. Akiva would make \textit{mamzerim} from everything.

This interpretation may be in accordance with \textit{mYevamot} 4:12 where R. Akiva's opinion appears to be in dispute with \textit{mYevamot} 4:13. According to this perspective, intermarriage would produce a \textit{mamzer} child if it were forbidden by a negative commandment (since it does not have to be considered to be \textit{shear basar}, or amongst the \textit{arayot}). Rashi points out that the only exception to this would be the specific priestly prohibitions which create \textit{chalalim}. I would tentatively suggest that this hints at \textit{mamzerut} as a parallel system to that of the \textit{chalal} for the non-priestly set in the rabbinic era. Note

\textsuperscript{265} Note: He is apparently giving an interpretation of R. Akiva and not his own opinion. See also b\textit{Ketubot} 29b, b\textit{Qiddushin} 68a.

\textsuperscript{266} Rashi \textit{bYevamot} 49a. \textit{d.h. ul'rabi simai}. Rashi continues to explain that the only exception is the widow with the \textit{kohen gadol} (high priest), a union which creates \textit{chalalim}. 

- 156 -
that the *chalal* system looks like a *qulah* or leniency compared to the *mamzer* system. The language in these *mishnayot* (*pesulah min hakehunah* or unfit for the priesthood) might be taken as (very) loosely parallel to *asur lavo baqahal*. The notion of the priesthood as a separate *qahal* certainly exists in rabbinic literature, where the classes of *kohen*, *levi*, *yisrael* and sometimes *ger* are considered each to be a *qahal* (e.g. *qahal levim*). Rashi makes the connection to intermarriage explicit in his commentary:

> זכון נתינה לישראל דקימה בלא התחלתי, ומשבעת אומות הי, כנונ
> עכון נסשת בת ישראל, בני ממחורים.

And like a *netinah* to a *yisrael* which falls under *lo titchaten* [do not intermarry] (Deuteronomy 7:3-4) for he is from the seven nations and like the Ammonite who married a daughter of *yisrael*, his sons are *mamzerim*.

Rashi is very careful to list only identities specifically forbidden in the bible, such as Ammonites (Deuteronomy 23:4) who are biblically forbidden from entering the congregation, and the *netinim*, who are understood to have been a Canaanite local people, banned under Deuteronomy 7. This is clearly a very different understanding of the *natin* than we find either in the *asarah yachasin* or in mQiddushin 3:12 which do not seem to think that the ban against the *netinim* marrying into the *qahal* (and note that they are permitted to marry into the other lineages) stems from the particular ban against the Canaanites. One might ask why Rashi does not simply mention intermarriage in general. I would suggest that he chooses the clearest cases, which do not depend on the construction of a general prohibition of intermarriage. If there is no general prohibition, following this view one could only list those intermarriages specifically banned by the bible which

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267. Rashi bYevamot 49a, *d.h. uleR. Simai*.
268. Note the use of the term for marriage where *qiddushin* is impossible.
produce *mamzer* offspring, while others would not. The development of a general prohibition of intermarriage is, of course, a major issue. For a detailed discussion see the chapter below on sexual relations between Jews and Gentiles, which explores the various rabbinic methods for developing and supporting general prohibitions against marriage and sexual relations with Gentiles.

Furthermore, according to R. Simai's interpretation alone, it should follow that any intermarriage prohibited by a negative commandment would result in a *mamzer*, whether the father or mother was *yisrael*. Rashi, however, genders his commentary so that a *netinah* and a *yisrael* produce a *mamzer*. The case of the Ammonite follows the matrilineal rule of mQiddushin 3:12, but the case of the *netinah* does not agree with the process articulated in that mishna. Unions between the class of *netin* and *yisrael* are gender blind in mQiddushin 3:12, such that any such union regardless of gender would transmit the most blemished status to the offspring, following the principle of the *pegum*. For mQiddushin 3:12 such a union is transgressive, but none-the-less valid.\(^{269}\) According to Rashi's interpretation of this reading of R. Akiva's position, however, such a union produces a *mamzer*.

The *gemara* continues to offer wider interpretations of R. Akiva's position on *mamzerut*. R. Yesheivav suggests that even unions prohibited by deduction from a positive commandment produce *mamzerim*. An example of such a case might be the positive commandment that Egyptians of the third generation may marry into the *qahal*. The negative commandment that may be deduced from this is that first and second generation Egyptians are forbidden from marrying into the *qahal*. Here Rashi once again notes how this interpretation is even more inclusive of intermarriage when it comes to the creation of

269. The *natin* or *netinah* can apparently contract *qiddushin*. 

- 158 -
mamzerim. He writes:

An Egyptian or an Edomite before three generations [i.e. in the first or second generation]: It is written: In the third generation they shall enter [lit. it will come to them] and not the second. But a negative [commandment] that comes [i.e. is derived] from a positive rule is a positive [commandment]... 

For R. Yesheivav also [says] in Ketubot (29b): Come and let us complain against Akiva b. Yosef who said: any who does not have biah\(^{271}\) in yisrael, the offspring is a mamzer.

This last approach appears to construct mamzerut as a category produced from a union with anyone who cannot enter the congregation, be it by positive or negative commandment. This bases the process for determining the offspring of intermarriage with "Jewish" women on the rules of qahal. As opposed to creating a mamzer that stems from the arayot, this interpretation would create mamzerim from any union with those forbidden from entering the qahal, presumably including intermarriage as well as marriage with mamzerim, netinim and possibly the uncertain identity classes.

The views of and/or related to R. Akiva may be summarized as follows: the relationships that produce mamzerim are: shear basar even if only prohibited by a negative commandment; any union, including those which are only prohibited by a negative commandment, any union prohibited by a negative commandment, even including negative commandments derived from positive commandments.\(^{272}\)

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270.  See Rashi bYevamot 49a, d.h. chayvei aseh.
271.  That is, one who cannot enter or marry into yisrael. However, the meaning of biah as sexual intercourse, that is, as an efficacious legal act (for example, biah may effect qiddushin) might also be relevant.
272.  See bYevamot 44a.
In the Babylonian Talmud, a great deal hangs on the interpretation of this one verse. The gemara continues to make links between sages, claiming that Shimon haTimni 'savar leh k'raban' or was of the same opinion as the sages. The 'sages' and Shimon haTimni apparently held that our verses in Deuteronomy 23 actually refer to the shomeret yavam. The shomeret yavam is waiting for her deceased (childless) husband's brother to either marry her or release her from this marital bond through the ritual of chalitsah. These verses are therefore understood to refer to a case where the son has relations with this woman whom his father is obligated to marry (or release by chalista) (i.e. his father's brother's wife). In conjunction with the verse on the mamzer, they learn that the defining characteristic of mamzerut is karet (since the wife of your father’s brother is subject to karet).273 In contrast, both R. Yehudah and R. Akiva see the defining characteristic of that verse as a negative prohibition (father's rape victim or sexual partner).274 Based on these verses, the Babylonian Talmud derives R. Yehoshua's position as follows: the main defining factor of mamzerut is mitat beit din, or execution by a court. This radically limits the creation of mamzerut. Following this perspective intermarriage would not produce a mamzer (unless it were an adulterous relationship).

The Babylonian Talmud then states that all agree, according to Abaye, that unions with the niddah and the sotah do not produce mamzerim.275 The niddah is derived from exegesis of the word תהי in Leviticus 15:24, which is taken to mean that she can

273. See bYevamot 97a.
274. Note that R. Yehudah and rabanan in the Babylonian Talmud disagree about one who marries the rape victim.
275. bYevamot 49a-b.
276. The root היה and the term היהות are often linked to the ability to contract qiddushin, see Jastrow p. 338 s.v. היהות.
contract qiddushin. We have also seen in tYevamot 6:9 that niddah was considered an exception, though there because she does not fit the basic defining principle of shear basar (unrelated there to this verse or to her ability to contract qiddushin.) bYevamot 49b further links this to a tannaitic statement regarding the niddah, the sotah and the shomeret yavam, explaining that they do not produce mamzerim.

bYevamot 49b:

אמר אביי הכלה מдержан, בבא על הנדיה ועלה הוספה ישני חולד מולו, נדה
דרת תפסי וב קדישין, שבא分かる: (יוקאים ט"כ) ודחתו עלינו, אפיא
ובשת רדיה תפסי וב קדישין, סותר נמי – דרה תפסי וב קדישין. נגיא
נמי המדר: הכלה מдержан, בבא על הנדיה ועלה הוספה ועלה שומרת יבם – שיאן
וולד מSharedPtr. אובין? שומרת יבם מפסיקה לי איבי יבר איל ש vnמיאה.

Abaye said: everyone agrees regarding the one who has sexual relations with the niddah and the sotah that the child is not a mamzer. Niddah because qiddushin may be contracted with her, as it is said," And her niddah upon him" (Leviticus 15:24), even at the time of her menstruation, qiddushin may be contracted with her. Sotah also, for qiddushin may be contracted with her. It was also taught like this: All agree, regarding the one who has sexual relations with the niddah, sotah and the shomeret yavam that the offspring is not a mamzer. And Abaye? He was undecided [regarding the case of the] shomeret yavam, whether it is according to Rav or according to Shmuel.

The niddah and the sotah may both contract qiddushin, despite any rules banning sexual relations with them. Abaye himself does not include the shomeret yavam in his statement (though it is included in the baraita) since he himself is not sure if she can contract qiddushin (see also and bYevamot 92a-b). The ability of the woman who is waiting for yibbum to be mekudeshet (betrothed/married) is an interesting problem related to

277. Why her ability to contract qiddushin is the main issue all of a sudden is an interesting question. The inability to contract qiddushin in the arayot is the defining factor of mamzerut in mQiddushin 3:12 but not in this section of the Babylonian Talmud. Perhaps this section follows mQiddushin 3:12.

278. This raises the question of whether a wife who is niddah would be considered shear basar for the category of niddah.
prohibited and invalid qiddushin. If all do in fact agree with this particular exegesis of Leviticus 15:24, as Abaye here claims, then all agree that mamzerut is linked to an ability to contract qiddushin. Our analysis, however, clearly demonstrates that this was not a position that was universally held. Even if it was generally agreed that unions with the niddah and the sotah create mamzerim, there is ample evidence that many positions on the creation of mamzerut were not at all based on this principle of the ability to contract qiddushin.

The gemara is trying to work out what R. Akiva is saying through recourse to a range of rabbinic opinions. This means that, despite the position of Tosafot and the Rambam that there is no dispute, the gemara reveals a lack of agreement and clarity even on the simple question of what R. Akiva ruled. Each version plays havoc with the principles in mQiddushin 3:12 and so the status of the offspring of intermarriages remains unclear. These debates on the creation of mamzerut are significant for intermarriage, in particular for the status of offspring of unions between a female yisrael and Gentile male. Rashi is certainly making the link between expanded constructions of mamzerut and the status of various kinds of intermarriages. Broader constructions of mamzerut are an easy way to render intermarriage more problematic. These sources are evidence for diversity, lack of clarity and multiplicity in the sources regarding the status of the offspring of intermarriage.

We shall turn to the Palestinian Talmud, which includes an interesting presentation of the various opinions on mamzerut. While the legal section follows the Mishna in presenting a clear position on mamzerut, it includes an aggadic section that highlights the debates regarding the status of the children of intermarriage.

yYevamot 4:14-15, 6c

א אמר רבי שמעון ב עזאי טרי יסרו ב תונה אומר
וכולם מאש תב את אשה לא יועדו הлежа יחל נחל אביו

- 162 -
Who is the *mamzer*? etc.²⁸¹ R. Shimon ben Azai said etc.²⁸² R. Yose b. Haninah says: And all of them learned it from *eshet av* [the case of the father's wife] (Deuteronomy 23:1): "A man shall not take his father's wife and shall not uncover his father's garment" (Deut. 23:1). R. Akiva interprets: Just as what is unique about the father's wife is that she is belo yavo [and] the offspring is a *mamzer*, so any who is belo yavo, the offspring is a *mamzer*. They objected: Behold [the case of the] widow to a High Priest! It is different, for a *chalal* issues through her. Shimon HaTimni interpreted: Just as *eshet av* is unique in that one is liable to *karet* at the hands of heaven on

²⁷⁹ Sokoloff, in his *Dictionary of Palestinian Jewish Aramaic of the Byzantine Period (DPJA)*, suggests that this form is influenced by Babylonian Aramaic and is not proper Palestinian Aramaic. See p.577. The term is not unusual in the Palestinian Talmud, however, appearing particularly frequently in *Yevamot*.²⁸⁰ Sokoloff, in his *DPJA* p.403, states that this form (and he quotes our text) is uncertain. The other entry he has for עיני is n.m. cataract, from the Syriac meaning cloud or mist. Sokoloff (p.403) calls it "uncertain" and presents a similar text from Palestinian Talmud Qiddushin 64d. It is Jastrow's suggestion that we read it like that phrase: והזו דאינא מילך המילך "he who is with thee, exiles thee" (p.1069). I am indebted to Tirzah Meacham and Harry Fox for suggesting another possible emendation: והזו דאינא דכלל, "the one who is with you is the one who exiles you." *Penei Moshe* explains that he should gather up his legs and leave quickly. *Qorban Ha'Edah* suggests that this means that the man's legs were dark and tired "from this." He prefers this interpretation to that offered in *Penei Moshe*. The tiredness of his legs may be fatigue as a result of the ongoing journey that he has undertaken in order to learn what his status is under *halakhah*, or to find a woman who shall accept him as a husband. In any case the 2ms suffix to יער is problematic. In my view, the sense is that the man should move on, lest Shmuel come by and issue a contrary ruling.

²⁸¹ mYevamot 4:13.
²⁸² mYevamot 4:13.
her account, and the offspring is a mamzer, so any on whose account one is subject to karet at the hands of heaven, the offspring is a mamzer. They objected: behold [the case of the] niddah! It is different since Scripture does not write about her: "shear basar." R. Yehoshua interpreted: Just as eshet av is unique in that one is subject to execution by the court on her account, and the offspring is a mamzer, so any on whose account one is subject to execution by the court, the offspring is a mamzer. Even though R. Yehoshua said [that in the case of] the one who comes unto [has relations with] the sister of his chalutsah,283 the offspring is kasher, he agrees that if the offspring were female, that she is disqualified from the priesthood.284

Despite that [which] R. Shimon b. Yehudah [said] in the name of R. Shimon: A Gentile or a slave who came upon [i.e. had sexual relations with] a daughter of yisrael, the offspring is kasher, he agrees that if she were female, that she would be disqualified from the priesthood. A person came by Rav. He said: [What is the status of] the sons his mother has born from this Aramean man?285 He said to him: kasher. Rav Chama bar Guria said to him: he who is with you exiles you, lest Shmuel come and disqualify you.286

[This] even though Rav said: A Gentile or a slave who came upon a daughter of yisrael, the offspring is kasher, he agrees that if she were female, she is disqualified from the priesthood.

yYevamot 6c begins its work on this mishna with the statement that all of the rabbis derived their positions from Deuteronomy 23:1. It proceeds to clarify each of the sages' positions, and the exceptions thereto. The sugya is also interested in determining whether or

283. The sister of of the woman he was obligated to marry according to the laws of yibbum but rejected and released through chalitsah. This sister is thus his deceased brother's wife's sister. Relations with the brother's wife is prohibited by Leviticus 18:16/20:21 and 18:20 prohibits taking the sister of one's wife in her lifetime.

284. The daughter is not permitted to marry into the priesthood. The offspring is thus not a mamzer, but she is also not kasher for marriage with the priesthood.

285. See Qorban Ha'Edah and Penei Moshe to this halakhah (29b in the printed edition), who explain that this man's mother had him by an Aramean man, and he wants to know whether or not he can enter the qahal (i.e. whether or not he is a mamzer and whether or not he is Jewish).

286. Shmuel having held that such a child would be a mamzer (see Qorban Ha'Edah). Though see bYevamot 45a states that both Rav and Shmuel rule that such a child is kasher. This source may preserve a different position on mamzerut in the name of Shmuel. It may also, however, refer not to his position on mamzerut, but to his position on whether or not this man's daughter (that is the granddaughter of the Aramean man) would be admissible to the priesthood. Even this interpretation is problematic in view of the claim here and in bYevamot 45a that all agreed that such a daughter would be disqualified from marrying into the priesthood.
not the female offspring of various types of unions are permitted to marry into the priesthood. It is therefore very useful in clarifying the gradations between kasher, pasul and mamzer. (This points to a parallelism between chalal and mamzer, kohen and yisrael) The interpretation of R. Akiva's position here is that any union that is belo yavo creates a mamzer. The exception to this case is the widow and the High Priest. Their union is forbidden by a negative commandment but the child is a chalal and not a mamzer. This ruling would create mamzerim from intermarriages with Gentile males. Shimon HaTimni's position is that only relationships punishable by karet at the hands of heaven create mamzerim, excepting the niddah who is not considered to be shear basar. This latter interpretation suggests that this ruling is that only relationships that are punishable by karet and are shear basar produce mamzerim, thereby excluding intermarriage from the definition. R. Yehoshua's position is that only relationships punishable by execution produce mamzerim. This exception to this ruling is the case of the sister of a man's chalutsah. Should a man have relations with his chalustah's sister, the child is not a mamzer, however any female offspring would be disqualified from marrying into the priesthood. This indicates the creation of three levels of status for such a child: mamzer (forbidden to enter the qahal), kasher (permitted to enter the qahal), and pasul (permitted to enter the qahal but forbidden to enter the class of kohen). This same hierarchy is then applied to the female offspring of a Gentile male and a yisrael woman: even for those who hold that she is kasher (i.e. she is not considered to be a mamzer), she is pesulah (i.e. she may not marry into the priesthood). The female offspring of an intermarriage with a male

287. Note that this rationale is different from that used in bYevamot 49b, where it is the niddah's ability to contract qiddushin that exempts her. This focus on the ability to contract qiddushin is also evident in bYevamot 45a.
Gentile is therefore not quite of the same status as the daughter of a *yisrael*.

This legal section is followed by an *aggadic* passage that describes a case brought before Rav that reinforces the legal ruling that has just been presented, namely that even those who hold that the child of a Gentile and a *bat yisrael* is not a *mamzer* agree that she is banned from marrying into the priesthood. The discussion ends with a statement that the *halakhah* follows R. Shimon HaTimni, so that *mamzerim* are only created by relationships punishable by *karet.*[^288] It is also clear from the *sugya* that he is understood to have referred to relationships that are both *shear basar* and subject to *karet*. Of all these rulings (at least as they are understood in this *sugya*), this one is the closest to the ruling in mQiddushin 3:12, that it is that the *arayot* that are punishable by *karet* that produce *mamzerim*. This narrative presents a rabbinate that is very conflicted on the issue of intermarriage and *mamzerut*. So much so, that a man, if he is not careful, might happen upon two conflicting opinions regarding his own status from two great sages. This narrative has the effect of questioning the significance of these rabbinic rulings in actual cases and communities.

The *sugya* in bYevamot 44b-45a works through the question of the status of the offspring of intermarriages with Gentile men in some detail, highlighting the different *halakhic* positions on the topic. It is particularly concerned with the transmission of Palestinian traditions on this issue, and with determining which rabbis held that the offspring would be a *mamzer*. It also addresses the problem of the space between *kasher* and *mamzer*, finally echoing the suggestion in yYevamot 6c that the lack of legal consensus on this issue causes problems for those who find themselves the children of such a union.

[^288]: This is also the *halakhah* in bYevamot 49b.
And Rav also teaches regarding her a leniency."

I have included the entire sugya, though the key segment is the last paragraph: "And Rav also teaches regarding her a leniency."
Rabbah bar bar Chanah said [that] R. Yochanan said: All agree [in the case] of a slave or a Gentile who comes unto [has sexual relations with] a daughter of a yisrael that the offspring is a mamzer.

Who [is] "everyone [who] agrees"? Shimon HaTimni, for even though Shimon HaTimni said that there is no mamzer from [relationships prohibited by] negative commandments, these words [apply] to [relationships forbidden by] negative commandments where qiddushin is effective, but here, [in the case of] a Gentile and a slave, since qiddushin cannot take effect on them, it is similar to [relationships] punishable by karet. They objected: a Gentile and a slave who come unto a daughter of Israel, the offspring is a mamzer. R. Shimon b. Yehudah says: there is no mamzer except from someone whose prohibition is a prohibition of ervah and is punishable by karet. Rather, said Rav Yosef, who is "all [who] agree"? Rabbi [Yehudah ha Nasi]. Even though Rabbi says that these things are only said with regards to the words of R. Akiva, who made the chalutsah like the ervah [i.e. he considered relations with one's chalutsah to be amongst the arayot] though he [Rabbi] did not reason like him [R. Akiva], he agrees in [the case of] a Gentile or a slave [who had a child with a bat yisrael, that the offspring is a mamzer].

For when Rav Dimi came [he said in the name of] Rav Yitshak bar Avudimi [who said] in the name of our Rabbi [Rabbi Yehudah ha Nasi]: A Gentile or a slave who comes unto a bat yisrael, the offspring is a mamzer. R. Ahah governor290 of the birah and R. Tanhum the son of R. Hiyya a man of Kfar Akko released these captive women who came from Armon to Tiberias. There was one who was pregnant from a Gentile and they came before R. Ami. He said to them him: R. Yochanan and R. Eleazar and R. Haninah [are the ones] who say: a Gentile or a slave who come unto a bat yisrael, the offspring is a mamzer.

Rav Yosef said: Is it greatness to enumerate authorities?291 Behold, Rav and Shmuel in Bavel and R. Yehoshua b. levi and Bar Kapparah in the land of Israel (and some say switch Bar Kapparah with the elders of the south) say: a Gentile or a slave who comes unto a bat yisrael, the offspring is kasher! Rather Rav Yosef said: It was Rabbi [who ruled that the offspring is a mamzer]. For when Rav Dimi came and said in the name of R. Yitshak bar

290. Or some other leadership position.
291. That is, what is accomplished by merely listing an opinion in the names of great rabbis who apparently ruled on one side of an issue when the same may be done with rabbis who ruled the other way?
Avudimi in the name of Rabeinu [Rabbi Yehudah HaNasi], they said a Gentile or a slave who comes unto a daughter of Israel, the offspring is a mamzer.

R. Yehoshua ben Levi says: the offspring is mequlqal. For whom [is the offspring mequlqal]? if you say to the qahal [i.e. the offspring is a mamzer], behold R. Yehoshua said: The offspring is kasher. Rather [the offspring is mequlqal] with regards to the priesthood, for all the Amoraim who render [such an offspring] fit, agreed that the offspring is blemished for the priesthood. [This is derived] from a gal vahomer [a fortiori inference] from the [case of] the widow: If [in the case of] a widow to the high priest whose prohibition is not the same for all, her child is blemished, this one whose prohibition is the same for everyone, is it not logical that her child should be blemished?

What [similarity] does the widow to the high priest have for she herself is rendered a chalalah? Here also, since she has been had relations with, he [the Gentile man] has disqualified her [from the priesthood]. As R. Yochanan said in the name of R. Shimon: from where [do we know that] a Gentile or a slave who comes unto the kohenet, and unto the leviah, and unto the yisraelit, that they disqualify her [from eating priestly terumah]? As it is written (Lev 22:13) "and should a daughter of a kohen become a widow or a divorcee..." One who has [the ability to create] widowhood and divorce to her [enables her to eat terumah again following dissolution of the marriage]. A Gentile and slave are excluded, because who don't have [the ability to create] widowhood or to divorce with respect to her [the yisrael woman]. Abaye said to him: What did you see that you relied on Rav Dimi?! Rely on Ravin [instead]! For when Ravin came, he said: Rabbi Natan and R. Yehudah Hanasi teach regarding her a leniency. And who is R. Yehudah HaNasi? Rabbi.

And Rav also teaches regarding her a leniency. For there was this one who came before Rav. He said to him: A Gentile or a slave who comes unto a bat yisrael, what is [the ruling regarding the status of the child]? He said to him: The offspring is kasher. He said to him [Rav]: Give me your daughter [in marriage]. [Rav responded:] I will not give [my daughter] to you. Shimi Bar Hyya said to Rav: people say the camel in Medea dances in a qabba.

292. Meaning damaged, ruined, corrupted. It is interesting that the term pasul is not used. I have kept the original term here to emphasize the different terminology and because the meaning of the term in this context is not precise.

293. That is, the prohibition against her is only relevant to the High Priest and does not apply to others, who are allowed to marry widows.

294. According to rabbinic exegesis on Leviticus 22:13, the daughter or a kohen who is divorced or widowed and has no children and is not pregnant returns to her patrilocal original home, and through her father's status is able to eat terumah once again.

295. This man was apparently the offspring of a Gentile man and a yisraelit.

296. A small measure or arched, rounded shape, here indicating a very small space.
and here is a camel and here is Medea and it does not dance!\(^{297}\) He [Rav] said to him: If he were like Yehoshua bin Nun, I would not give to him my daughter! He said to him [Rav]: If he were like Yehoshua bin Nun, if \(Mar\) would not give [his daughter] to him, others would give to him. This [man], if \(Mar\) does not give to him, others will not give to him.\(^{298}\) He [the man in question] would not leave from before him [Rav]. He [Rav] set his eyes upon him and he died. And Rav Matnah also teaches regarding her a leniency, and also Rav Yehudah teaches regarding her a leniency for when [a man] came before Rav Yehudah he [Rav Yehudah] said to him: Go, hide yourself or marry a daughter like you \([\text{lit: from you, i.e. from your lineage type}]\). And when [a man] came before Rava he said to him: either go into exile or marry a daughter like you.

This *sugya* in bYevamot works through the various traditions regarding the early positions on the offspring of a Gentile and a *bat yisrael*. It highlights the disagreements on the issue, as well as the limbo area between *mamzer* and *kasher*. This narrative case law that concludes this section demonstrates the problematic situation: even for those who consider such a child theoretically *kasher*, the child is in practice an undesirable match. Furthermore, it seems that for every rabbi who deems the offspring to be *kasher*, there is another who will call it a *mamzer*. The solutions to this quandary generally consist of avoidance of the legal problem by either marrying someone in the same predicament \(i.e.\) another offspring of this kind of intermarriage) or going somewhere where one's status is...

\(^{297}\) Rashi notes that he is challenging Rav to make good on his legal position by marrying his daughter to this man. Rashi states that Shimi bar Chiyya is suggesting that Rav's position, permitting marriage with this man, is a *chidush* or a novelty, see Rashi bYevamot 45a, *d.h. haqabbah vehagamlah*. Rav's ruling is, however, far from a novelty since there were clearly tannaitic traditions that ruled such a child to be *kasher*. In my view, the point of the challenge is to bring Rav's position from the realm of the theoretical into the practical.

\(^{298}\) He may be suggesting that were this man of such stature, he would easily find a match elsewhere. It is implied that this man is not quite so desirable a match, and so if Rav refuses to marry his daughter to him, no one else will either. This points out the difficult position in which Rav has left this man: he is technically permitted, but in practice he is rejected.
unknown (though it is undesirable, the status is not technically a problem). Perhaps the most remarkable solution to a major legal problem is presented in a story about Rav. Unable to rule that such a man is forbidden to marry Jews, and unwilling to marry his own daughter to him, he gives him the look of death. The man who would not go away, whose problematic identity would not go away, will not bother Rav anymore. I would suggest that this narrative, like that found in the Palestinian Talmud, portrays the laws around the status of the children of Gentile men and "Jewish" women as impossible to implement, and highly problematic to the point of being insoluble.

The various opinions presented in the early literature suggest that there were numerous ideas about processes for the transmission of different types of genealogical status in the early rabbinic legal system. In addition, there appears to have been a complex range of identity constructs above and beyond the categories of the asarah yuchasin, including the almost-mamzer, the mequlqal, the pasul, the kasher and the pegum. Moreover, even with respect to a given type of genealogical status, there seems to have been significant disagreement over what the process of transmission should be. This begs the question of which processes were followed, where and when. It is not unreasonable to suggest that a unified, consistent approach to lineage transmission did not exist in Tannaitic or Amoraic times.

Indeed, the system of qiddushin and aveirah is often merged with the systems related to the qahal, arayot and asarah yuchasin, with varying degrees of success. Efforts to clarify the various legal positions on this issue, and to articulate a comprehensive, stable and practical halakhic response to the question of the status of the children of intermarriage are met, in both Talmuds, with stories describing the failures of great sages to resolve the
problem. Starting our analysis from the neatly outlined principles of mQiddushin 3:12, and winding our way through the laws of the mamzer and the chalal, their scriptural sources and supports, as well as the various processes for determining the identity of the children of different types of unions, we end with a vision of Rav, a great Sage unable to resolve the conflict between his legal position and its practical application, a problem whose only resolution lies in the death of the man in whom it is embodied.
Chapter 3

Mah Ani Lavo Baqahal?\(^{299}\)

Entry into the qahal (a.k.a. the Congregation of God)

The concept of the qahal of God and the rules regulating access thereto served as one of the ways of creating and maintaining community boundaries in the biblical text. It is not clear what entry to the qahal meant in the biblical context. The qahal itself is not defined, nor is the expression "to enter the qahal" explained. The only matter that is explored in detail is the excluded groups, though even some of these are listed with no explanation, most notably the mamzer. In short, the actual nature of this biblical system is something of a mystery.\(^{300}\) In rabbinic sources, the qahal comes to be defined as a group comprised of various members of the asarah yuchasin, and entry to the qahal is understood to refer to marriage (with members of the qahal). The laws of the qahal regulate both intra- and intermarriage, for the list of forbidden persons includes a range of different types of

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299. The question Mah ani lavo baqahal? (that is, May I enter the congregation? or What is my status with respect to my ability to enter the congregation?) is posed in mYadaim 4:4 and tYadaim 2:17.

300. For example, Cohen in his Beginnings of Jewishness concludes that being banned from the congregation (qahal) was not always interpreted as referring to marriage, but rather to entry to the Temple and participation in festivals. Cohen argues that that the prohibition against entering the congregation was “probably not” a prohibition of marriage (p.261, 1999). 4Q Florilegium, for example, understands the rule as banning the Ammonite, Moabite, mamzer, stranger (נַעַר בֶּן) and ger from the temple of future messianic times. See George J. Brooke, Exegesis at Qumran: Florilegium in its Jewish Context, Journal for the Study of the Old Testament Press (Supplement Serious 29), Sheffield: 1985, pp.101-102 and pp.178-193, and Baumgarten Joseph, "The Exclusion of the 'Netinim' and Proselytes in 4Q Florilegium," Revue de Qumran 8, 1972, pp. 87-96, especially pp. 93-94, and G. Blidstein, 4Q Florilegium and Rabbinic Sources on Bastard and Proselyte" in Revue de Qumran 31, 1974, pp. 431-435.
identities and personal characteristics. Early rabbinic law adapted this system with some innovations, but was divided both in its understanding of which groups were included in qahal, and in its treatment of the biblical laws related to qahal and intermarriage. The biblical material is as follows:

Deuteronomy 23:1-9:

1 A man shall not take his father's wife and shall not uncover his father's garment. 2 One whose testes are crushed or whose member is cut off shall not enter the congregation of God. 3 A mamzer⁴⁰¹ shall not enter the congregation of God none of his descendants, even the tenth generation, he shall not enter the congregation of God. 4 An Ammonite or a Moabite shall not enter the congregation of God; even the tenth generation shall not enter the congregation of God, forever. 5 because (of the fact that) they did not meet you with food and water on the way after you left Egypt, and because they hired Balaam son of Beor against you, from Pethor Aram Naharaim, to curse you. 6 But the Lord your God refused to listen to Balaam, rather the Lord your God turned the curse into a blessing for you, because the Lord your God loves you. 7 You shall not seek their welfare or being all your days, forever. 8 You shall not abhor an Edomite because he is your brother. You shall not abhor an Egyptian, because you were a stranger in his land. 9 Children that are born to them in the third generation⁴⁰² may enter the congregation of God.

Deuteronomy 23 is the only biblical source to refer to access to the congregation of

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⁴⁰¹ Though commonly translated as bastard the meaning of the Biblical Hebrew mamzer is uncertain. See also my discussion of the place of the mamzer amongst the asarah yuhasin in Chapter 1.
⁴⁰² Following the sense of this chapter, this likely refers to the third generation of residence amongst the Israelites.
God (aside from Nechemiah 13 which appears to record a reading of this or a similar source). It does not define what it means by the 'congregation of God'. The term qahal adonai may refer to cult participation. Alternately, those forbidden from access may be either unable to have offspring, or it may have been considered undesirable for them to reproduce, resulting in their exclusion from cultic participation and/or marriage.

Though Deuteronomy 23 does not delineate who is in the congregation, it does list those who are forbidden from entering it. Regarding the laws of the qahal in Deuteronomy 23, we may summarize as follows: a concept exists called the congregation of God. Some are admitted to this group and others are not, while some are admitted under certain conditions. Those who are not admitted are of three types: males with specific injuries to the reproductive organs (crushed testes or amputated penis), the mamzer, and those of specific nationalities/ethnicities (the Ammonite and the Moabite). Those who are admitted under certain conditions are also of national/ethnic categories, namely the Edomite and the Egyptian. It follows that Deuteronomy 23 may be relating to exclusion based on reproductive issues and nationality. \(^{303}\) How this relates to the mamzer in the biblical context is unclear. Rabbinically, the mamzer is often deemed to be the offspring of incestuous or other forbidden relationships, and sometimes of certain types of intermarriage. In my view, there is not enough information about the mamzer in the biblical material to confirm any connection to the rabbinic interpretations of mamzerut.

The actual definition of the mamzer is likewise foggy, since this verse offers no

\(^{303}\) Note, however, Deuteronomy 23:1 which deals with a forbidden sexual relationship. The inclusion of this verse at the beginning of Chapter 23, rather than at the end of Chapter 22 is important for exegetical work on the creation of mamzerut, as discussed in the previous chapter on qiddushin and aveirah.
explanation whatever as to what a mamzer actually is. We might consider an initial analysis based on the context of these verses alone. It is unlikely to be any kind of reproductive problem, or inability to reproduce, since the ban extends to include even the tenth generation. This in turn suggests an identity that is transmitted to offspring through the generations. We might also consider the possibility that, at least according to rabbinic understanding, the mamzer is linked to ethnic or genealogical issues.

Deuteronomy 23 is concerned with the admissability of both the individual and the individual's descendants. The male with the crushed testes or amputated penis would presumably be infertile, thereby explaining why Deuteronomy does not relate to his offspring. In all other cases, the individual and offspring are either denied access to the congregation of God in perpetuity, or the individuals are excluded while their offspring are admitted after the passing of a certain number of generations.

There is limited mention of gender in these verses. The first category of damaged reproductive organs refers exclusively to males while the remaining categories use male language (which may be gender neutral in Hebrew) without specifically including or excluding females.\footnote{This may be due to the external visibility of these injuries in male individuals, whereas infertility may remain invisible in females. Alternately, it may be due to a preoccupation with male fertility or reproductive organs. Note, however, that in rabbinic halakhah at least, women who have visible signs of an inability to reproduce, such as the aylonit who has no secondary sex characteristics, maintain full rights to priestly functions.}

\textsuperscript{304} Hebrew does not have a gender neutral form. Masculine grammatical forms therefore may express the neuter (i.e. he represents it), certainly in the plural and possibly in the singular, though midreshei halakhah will manipulate the gender according to established practice.
privileges. It is unclear from this text alone, the only legal verse in the Hebrew Bible to mention the *mamzer*, whether it is a status including both males and females.\(^\text{305}\) With respect to the national or ethnic categories one might argue in two directions. One approach would be to argue that male language (i.e. gender neutral) and reference to national names without any specific exclusion of women indicates a general exclusion of the given nation regardless of gender. On the other hand, one might argue that lacking any specific inclusion of women in the prohibition, they are not subject to the ban. This vagueness becomes very important for rabbinic exegesis, which tends to interpret these rules in a highly gendered manner, as we shall discuss in detail, below.

What kind of rationale is given for these exclusions? None at all is provided for those with damaged male sexual organs or the *mamzer*. The singling out of the Ammonites and Moabites is explained by a rationale based on apparent historical/political enmity (i.e. enemies rather than allies). Exclusion or inclusion of ethnic/national groups is explicitly linked to either negative or positive social, political or military relations. This exclusion of enemy nations that pose a threat may be linked to a broader tendency to react to intermarriage or sexual relations as problematic when they involve an enemy party, while accepting such connections with allies, or with individuals who do not pose a threat. The issue of the beautiful captive in wartime (*yefat toar*) (Deut. 21:10-14) and rules surrounding her integration into Israel as well as the demand for partial or complete genocide of certain enemies (as in the case of Amaleq in Deuteronomy 25:17-19 and Exodus 17:14-16 or that of the seven Canaanite nations in Deuteronomy 20:16-18) may define Israel’s relationship to

\(^{305}\) Though rabbinic sources certainly know, or create, the term *mamzeret* which is a female *mamzer*. 
In the case of the Ammonites and Moabites, the law goes further than banning them from the congregation of God, by calling for a disregard for their welfare. (Note no such ill will is mentioned in the case of the males with damaged sexual organs or the mamzer.) This rationale for exclusion is then followed by a rationale in favour of the (relative) inclusion of two other groups: the Edomites and the Egyptians. The rationale for those who are admitted relates to positive associations with the national groups in question, be it shared lineage or shared territory.

The procedure for admission of the Edomite and the Egyptian is as follows. They are not themselves (i.e. as they are, of their own merit) immediately admitted to the congregation of God. They must meet the following qualification, namely they must be a child of the third generation. This appears to be a case of Egyptians and or Edomites marrying each other and having children under certain circumstances. The text does not stipulate any particular requirements to be filled during that time, though rabbinic texts assume the beginning of a proto-conversion process in a number of areas, such as the notion of slaves keeping negative commandments and the integration process for the yefat toar. In the third generation, the offspring may enter the congregation of God. Admission is not immediate, takes place after a set period, and then lasts through the generations as a permanent inclusion.

Nechemiah Chapter 13 mentions a ban on entry of Ammonites and Moabites into the qahal. The differences between the two sources are underlined, as follows:

Nechemiah 13:1-3

1 On this day, it was read in the book of Moses, in the ears of the people, and it was found written in it, that the Ammonite and the Moabite shall not enter the congregation of God (the Elohim), forever. 2 Because they did not meet the children of Israel with bread and water and they hired Bilam (Balaam) against him to curse him and our God (our Elohim) turned the curse into a blessing. 3 And it happened that when they heard the Torah, they separated all mixture from Israel.

Deuteronomy 23:

4 Neither an Ammonite nor a Moabite shall enter the congregation of the Lord (tetragrammaton) forever. 5 On account of their not having met you with bread and with water on the way when you were leaving from Egypt and [on account of] hiring Bilam ben-Beor from Petor Naharaim against you to curse you. 6 And the Lord (tetragrammaton) your God (Elohim) did not desire to listen to Bilam and the Lord (tetragrammaton) your God (Elohim) turned the curse into blessing because the Lord (tetragrammaton) your God (Elohim) loved you. 7 You shall not seek their well being (or peace, so JPS) or their welfare (or prosperity, so JPS) all your days, forever.

Though some sections of verses are identical, much of the phrasing is different (as noted in the underlined areas, above). Differences of particular interest include: the name of God, Nechemiah's reference to Benet yisrael in the third person (sometimes singular), while Deuteronomy addresses the audience directly, includes much more detail, uses more complex technical terminology, and Nechemiah uses the imperfect past narrative while Deuteronomy uses the perfect (יִשְׂרָאֵל, שָׂכַר). In addition, Deuteronomy has Adonai...
Elohekha (the Lord your God) rather than Nechemiah's Eloheinu (our God) as it addresses the Israelites directly. Nechemiah lacks the rationale offered in Deuteronomy 23. In general it seems that Nechemiah 13 is clearly not a word for word reading aloud of Deuteronomy 23, though some of these differences indicate a reference to a pre-existing text.

Nechemiah seems to use these verses to support a general prohibition of intermarriage with non-Israelites. This shift towards a general prohibition of other nationalities is marked by the absence of the verses referring to non-national/ethnic categories such as the mamzer and by an emphasis on loss of language fluency, which serves as a signifier of ethnic/national identity. The understanding of Nechemiah 13 of exclusion from the qahal remains problematic. Likewise, how does Nechemiah name the "'am" or people to whom the verses are being read? In terms of category definition, one wonders how Nechemiah defined the Gentile other, if the specific national categories were indeed subsumed under a broader category.

The main concern for the rabbinic project becomes defining what qahal is. The rabbis assumed that entry into the qahal refers to marriage (but not to conversion). Rabbinic adaptation of the various rules related to entrance to the qahal was inconsistent, resulting in a variety of approaches to incorporating the system of qahal with other systems and legal principles, both in terms of membership (i.e. who is qahal) and in terms of access (i.e. who can marry qahal). The biblical qahal is linked rabbinically to particular groups of

307. In the book of Esther, for example, nations are distinguished by their languages (Esther 1:22). The book of Nechemiah may also be expressing the disappointment experienced upon return from exile. Wishing to reestablish an idealized isolated community, Nehemiah may have found instead a degree of linguistic assimilation. See Nehemiah 13:24.
308. This may be a response to the ambiguity of the term qahal in the biblical text.
the *asarah yuchasin*, namely the *kohen, levi, yisrael*, and for R. Yehudah, also *gerim*. In rabbinic sources, the *qahal* becomes an inner circle of Jewish caste identities, allowing for negotiation of problems of inclusion and exclusion. This system of *qahal* is significant for establishing who is in the inner circle and who is not, and in particular for working out problems related to converts and *mamzerim*.

Sifrei Devarim addresses the question of what the congregation of God is composed:

Sifrei Devarim Pisqa 247 (Finkelstein p. 276):

בקהל ה': רבי יהודה אומר: ארבע קהילות וה קהל כהנים קהל לוים קהל ישראל קהל גרים והכמים או מורים שלם.

Into the congregation of God: Rabbi Yehudah says: There are four congregations: congregation of *kohanim* (priests), congregation of *keviim* (Levites), congregation of *yisrael*, the congregation of *gerim* (converts). And the sages say: three.

This midrash records a *halakhic* dispute between R. Yehudah and the sages, namely that the sages excluded converts from the *qahal*, while R. Yehudah included them. All agree that *qahal* refers to identity groups (including at least *yisrael, levi, kohen*). This midrash is more of a *halakhic* statement than any kind of exegesis, and does not explain or offer rationale for the positions that it lists, merely linking legal positions to the appearance of the term *qahal* in the verse. Deuteronomy 23 does not mention either the *yisrael, levi, kohen* or convert. I would argue that these classes are part of the *asarah yuchasin* and are not

309. See mQiddushin 4:1.

310. Note, *yisrael* is the only *qahal* that is referred to in the singular. Is this a shortening of *benei yisrael* or an indication of the general catch-all nature of this term at this point in its development?

311. This presumably refers to the rabbinic construct of *ger* as convert, rather than the biblical notion of the *ger* as stranger or sojourner. This midrash does not mean that converts were prohibited from marrying into the *qahal*, rather they were not considered a part of the *qahal*. 

- 181 -
Sifrei pays some attention to the question of what a mamzer is. The issue of mamzerut is linked to discussions of the asarah yuchasin and the status of the children of intermarriage, as well as to the qahal.

Sifrei Devarim 248 (Finkelstein p.276): 312

"A mamzer shall not enter the congregation of God": Whether male or female. "A mamzer shall not enter": Anyone who is a mamzer. Who is a mamzer? Any relative who is forbidden (he shall not enter), the words of Rabbi Akiva, as it is said: "A man shall not take his father's wife (Deut. 23:1)" and "A mamzer shall not enter the congregation of God (Deut. 23:3)."

Just as the [case of] father's wife is unique in that she is a relative who is forbidden (shall not enter) and the offspring is a mamzer, so [in the case of] all relatives who are forbidden (by shall not enter), the offspring is a mamzer. Shimon ha'Tinni says: All who are subject to karet at the hands of heaven, the offspring is a mamzer, as it is said: "A man shall not take his father's wife (Deut. 23:1)" and "A mamzer shall not enter the congregation of God (Deut. 23:3)."

Just as [the case of] the father's wife is unique in that one is subject on her account to karet at the hands of heaven, the child is a mamzer, so all who are subject to karet at the hands of heaven, the offspring is a mamzer. Rabbi Yehoshua says; All who are subject to execution at the hands of a court, the offspring is a mamzer, as it is said: "A man shall not take his father's wife (Deut. 23:1)" and "A mamzer shall not enter the congregation of God (Deut. 23:3)."

312. See Chapter 2 for a discussion of parallel sources.
mamzer, so all who are subject to execution by the court, the offspring is a mamzer. "The tenth generation": It is said here (Deut. 23:3): "the tenth generation" and it is said there (Deut. 23:4) "the tenth generation. Just as the "tenth generation" below is forever, also the "tenth generation" said here is forever.

The first task for the midrash is to make it clear that the mamzer can be either male or female. This is particularly important in view of the exclusively male categories brought prior to this one in Deuteronomy 23, the indeterminate gender of the other categories (both mamzer and the ethnic identities) and in view of the midrash on gender and the Ammonites and Moabites to follow. The following midrash states that anyone who is a mamzer is forbidden from entering the congregation. This would appear to be a straightforward matter, not requiring elucidation - especially since the midrash has already clarified that both men and women may be mamzerim - unless the midrash means to emphasize that anyone can be a mamzer, i.e. that mamzerut can happen to anyone, regardless of their lineage or caste. The midrash then tackles the thorny question of who or what a mamzer is. Sifrei Deuteronomy lists various midrashim and their legal conclusions without choosing a preferred one.313 Each is a midrash that relies on the juxtaposition of Deut. 23:1 regarding one's father's wife314 and the law of the mamzer in Deut. 23:3. These verses are, of course, not actually juxtaposed, given that verse 23:2 regarding males with damaged genitalia intervenes.

Using various midrashic methods the midrash generates (or supports with Scripture) three definitions of the mamzer that might be summarized as follows:

313. This is naturally in contrast to mYevamot 4:13 which lists the various opinions on mamzerut without reference to any scriptural supports.
314. Deuteronomy 23:1: A man shall not take his father's wife and shall not uncover his father's skirt.

לֹא-יֵקַּח אִישׁ אֶת אִשָּׁה אֶת אָביו לֹא יִגָּלֶה וְלֹא אָביו
1. The *mamzer* is the offspring of any who is of *shear basar* that is *belo yavo*, i.e. the offspring of a relative that is forbidden sexually according to the levitical *arayot* (*belo yavo*, here refers to sexual prohibitions in general rather than the laws regulating access to the *qahal*).

2. The *mamzer* is the offspring of any whose relationship was punishable by *karet* at the hands of heaven.

3. The *mamzer* is the offspring of any whose relationship is punishable by execution by the court.

All three definitions have in common that the status of *mamzer* falls upon a child because of some problem with the relationship, each here derived from some characteristic of the relationship described in Deut. 23:1 (itself not related to questions of *qahal*). According to these definitions, intermarriage or sexual relations between a "Jew" and a Gentile, should not produce a *mamzer*. Following Sifrei we might then understand that a *mamzer*, the offspring of some kind of forbidden sexual relationship (depending on which Sage's opinion one follows), is forbidden from entering the *qahal*, that is the *kohen*, *levi* and *yisrael* groups (or also the *geirim* for R. Yehudah). Once again, we must assume that entering the *qahal* means marrying into one of the groups that compose the *qahal*. The lineage of unions that violate the sexual prohibitions is thus severed from the *qahal*, or central lineages. The midrash builds upon Deut. 23:4, where the verse states that the Moabites and Ammonites are forbidden *ad olam* (forever), stating that since Deut. 23:4 explains that the tenth generation means *ad olam* in that case, it likewise means *ad olam* with respect to the *mamzer*, even though it is not explicitly mentioned. Alternatively, ten generations may actually be similar to the idea that the defect only exists until it is so far in the past that it has been forgotten. The *mamzer* is thus permanently cut off from the *qahal*

315. Or, alternately, which version of R. Akiva's opinion one follows.
316. This is the case with convert lineage, see discussion on p. 109.
in terms of marriage and lineage. In general, the exegetical rulings on the *mamzer* have the
effect of broadening the category: both men and women are included, and the exclusion is
not just for ten generations but for eternity.

The Mishna brings the laws related to those forbidden from entering the *qahal* into
the context of ability to eat *terumah*,\(^1\) with reference to marriageability, specifically to the
ability to marry with particular groups of the *asarah yuchasin*. The Mishna thus connects
*qahal* to the *asarah yuchasin*, the priesthood and its benefits, and intermarriage. There is a
general concern in the sources regarding who may and who may not eat *terumah*. The
interrelation of the issues of *qahal* and access to *terumah* is clear in mYevamot 8:1:

> הערל וכל העמנים, לא יأكل בתרומה, נשות העבדים, יأكل.
> דנא מבחר שופכה, והעבדים יأكلים, נשים לא יأكلו, אס לא דעה

The uncircumcised and all the impure, they shall not eat of *terumah*. Their
wives and their slaves, they may eat. One with crushed injured [testicles] or an
amputated penis, they and their slaves eat, but their wives shall not eat. If
he has not known her [sexually] since he was made *patsua dakka* or *kerut shofkhah* behold, these may eat.

mYevamot 8:1 discusses two types of cases: the uncircumcised and the impure on
the one hand, and males with damaged reproductive organs on the other (these last of
Deuteronomy 23). The important difference for our discussion is that the latter type is
permanently forbidden from entering the *qahal* by Deuteronomy 23 while the first is not.\(^2\)

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317. *Terumah* is commonly translated in English as "heave offering" and refers to a type of
food tithe available to priestly classes of the *kohen* and *levi* in place of a territorial
inheritance. *Terumah* was consumed only by priests, their families and slaves while in a
See "Terumot and Ma’aserot" by A’hron Oppenheimer in *Encyclopaedia Judaica*. Michael
Berenbaum and Fred Skolnik, Eds. Vol. 19. 2nd ed. Detroit: Macmillan Reference USA,

318. Note that the discussions of *qahal, mamzerut* and intermarriage do not address this
The mishna explains that a man whose testicles are crushed or whose penis has been injured may partake of terumah, as may his slaves. His wife, however, may not partake of terumah, unless he had not had intercourse with her since he had become damaged, in which case his wife may eat of terumah.\textsuperscript{319} Her ability to eat terumah is the only one that is in question. For her, access to terumah hinges upon whether or not she has had sexual relations with her husband after he has suffered such damage to his sexual organs. If they have not had sexual relations since the injury she may continue to eat terumah following her original status.

In contrast, both the wives and the slaves of the first type (the uncircumcised, the impure), who are not forbidden from entering the qahal, and may eat of terumah, even though their husbands/masters are themselves unable to partake of it. This suggests that, for this mishna, access to the qahal is not equivalent to an ability to eat terumah, since those who are permanently forbidden (from qahal) may eat, while those who are not forbidden may not eat. The key issue is the wives of those forbidden to enter the qahal. They may eat of terumah, if they have avoided sexual intercourse with their husbands since the injury (presuming the injury occurred during the course of their marriage).\textsuperscript{320} This suggests that her access to terumah is linked to sexual intercourse with such a husband, who is now

\textsuperscript{verse. In my view it does not fit with the rabbinic adaptation of this system for regulation of marriage and identity. The uncircumcised and the impure may also be temporary problems, solved through circumcision and immersion respectively. This raises some interesting questions, regarding the uncircumcised man, including: why is the man uncircumcised, can an uncircumcised man actually marry or is marriage terminology used here despite the fact that marriage may not be possible, as we have seen in a number of other sources?}

\textsuperscript{319} His injury may also have occurred after his marriage which, as we see, has impact on terumah privileges for his wife.

\textsuperscript{320} Kehati, however, following mYevamot 6:3 notes that if he betroths her when he is so injured, and does not even have intercourse with her, she is still disqualified since "she awaits unlawful intercourse" (p.110). See discussion below.
forbidden from entering the qahal.

One might paraphrase the following rule: if a man with crushed testicles or an injured penis, who is forbidden from entering the congregation, has intercourse with a woman (his wife), he disqualifies her from eating terumah. Following this, we might argue that for mYevamot 8:1, entrance to qahal is understood to be sexual intercourse with a woman (even one's wife). Violating this prohibition disqualifies his wife from eating terumah. This, even though he himself may still partake of terumah. He may partake of terumah since that is not considered to be entering the congregation. He may not engage in sexual intercourse with a woman (presumably part of the qahal); this is the essence of the prohibition. Why he is not then forbidden from eating terumah, like his wife, is not entirely clear, but we may presume that access to qahal has no bearing on the ability to eat terumah.\(^\text{321}\)

mYevamot 8:2 specifically relates to Deuteronomy 23:2 in articulating its ruling on the patsua dakka and the kerut shofkhah.

mYevamot 8:2:

ואיזה הוא פוצע דכא? כל שנמצאו הביצים של, אפיל אתח מחר. וכרות שפוכת, כל שנכרת הגדה; נושתיי מונזרה אפיל חות השערה, נש. פוץ דכא נבחר שפוכת, מותרים בנותו במשחותר, א公开发行 אליו ממלוא ביתה. שנאמר "לא יזכ פצת דכא נחרת שפוכת, בקהל ה" (דברים כ,ב).

And who is the patsua dakka? Any whose testicles have been injured, even [if only] one of them. And kerut shofkhah, any whose penis has been cut off; [if] there is left from the glans even like a thread, [he is] kasher. Patsua dakka and kerut shofkhah are permitted to a female convert and a female

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321. This suggests that the rabbinic understanding of entrance to the qahal is sexual relations with a woman who is part of the qahal (or marriage if he is forbidden at the time of qiddushin) and not participation in the cult, including access to priestly privileges such as terumah. The politics of denying priests their rights to terumah may have been too difficult for the rabbis to negotiate.
freed slave, and are not forbidden except from entering the congregation, as it is said, "A patsua dakka and a kerut shofkhah shall not enter the congregation of God (Deut. 23:2).

The mishna begins by presenting the defining characteristics of these two categories, mentioned in the previous mishna, expanding one and limiting the other - a man with crushed testicles includes even one who has only crushed one of his testicles, and one whose penis has been cut off partially or totally including the entire glans with an injury to his penis must have lost the entire glans. The mishna rules that both are permitted to marry the convert and the freed slave woman. This is because they are only forbidden from entering the congregation, as per Deuteronomy 23:2. This mishna clearly understands that the convert and the freed slave are not part of the qahal, following the position of the sages on the matter, and in opposition to the opinion of R. Yehudah. Since the transitional identities of the convert and the freed slavewoman are not part of the qahal, for this mishna, they may marry men with such injuries.

mYevamot 8:2 also clearly understands that entry into the qahal is equivalent to marriageability amongst the asarah yuchasin (intramarriage). As such, those who are forbidden from entering the qahal may marry only those of the asarah yuchasin who are not members of the qahal. The mishna does not deal with the case of the mamzer here, skipping it in its treatment of the various categories mentioned in Deuteronomy 23. This mishna is somewhat unusual in that it quotes Scripture. It emphasizes that men with such injuries to their genitalia are only forbidden from entering the qahal of Deuteronomy 23:2, which it assumes to refer to the categories of kohen, levi and yisrael. They are likewise permitted to marry into groups not included in the qahal. These mishnayot go further than the asarah

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322. Who may, incidentally, be fertile.
yuchasin by considering the legal impact of sexual relations as well as marriage. The boundary between sexual relations and marriage is generally unclear and problematic, though we do know that sexual relations with a mamzer, natin or Gentile renders a woman pesulah or unfit to marry into the class of kohen, and so clearly affects her status to some degree.

The following mishna further explores the issue of access to terumah, here with respect to those who have contravened the laws of the arayot, the priestly marital rules or the rules of the asarah yuchasin.

The Mishna continues to work with the underlying assumption that entry into the qahal is equivalent to marriage into the qahal in mYevamot 8:3. Gender is a primary concern for this mishna which articulates a series of rules without quoting Scripture or mentioning the rationale used in Scripture.

mYevamot 8:3:

The Ammonite and the Moabite are prohibited, and their prohibition is an eternal one, but their females are permitted immediately. The Egyptian and the Edomite are only prohibited for three generations, both the males and the females.324 Rabbi Shimon permits the females immediately. Rabbi Shimon said: these matters are qal vahomer [i.e. an a fortiori inference]: just as in a case where he prohibited the males forever, and permitted the females

323. This underlined section is missing in MS Kaufmann (folio 88v).
324. Or: males and females alike.
immediately, so in a case where he did not forbid the males forever, rather only until three generations, is it not logical that we would permit the females immediately? They said to him: If it is halakhah, we accept, but if it is of logic (or a fortiori inference), there is a refutation. He said to them: Not so, for I am stating a halakhah. Mamzerim and netinim are prohibited and their prohibition is an eternal prohibition, both the males and the females.

mYevamot 8:3’s most significant ruling is that while male Ammonites and Moabites are forbidden in perpetuity, females are permitted immediately. This ruling genders the deuteronomistic law by exempting women from it (or understanding it as having exempted women itself). While there is no debate recorded on this point in the Mishna, there is disagreement on the question of the Egyptians and Edomites, and whether or not the exemption of Ammonite and Moabite women should be extended to other nationalities. The first position is that the restriction allowing only those of the third generation (and after) applies equally to males and females, applying the deuteronomistic rule with no gender division. The second position, brought in the name of R. Shimon, is that the gender division applied to the Ammonites and Moabites also applies to the case of the Egyptians and Edomites, meaning that only the males need wait three generations, while the women are admitted (i.e. eligible for marriage) immediately.

R. Shimon offers a cogent qal vahomer (a fortiori) argument supporting his ruling. The sages however, argue that if it is a halakhah, meaning here a legal tradition that has been received, they will accept it. If, on the other hand, it is a logical argument, they propose a challenge (which is left unstated). R. Shimon both supports the validity of his

325. Also: traditional rule, legal rule, custom, common practice, adopted legal rule. In my view, the essence here is the difference between a rule learned from a qal vahomer and a law either learned from one's teacher or some other authoritative source. Halakha is perceived as being transmitted from teacher to student and has the norm of tradition. The middot (hermeneutic rules by which the Torah is explicated) are powerful and are sometimes perceived as a threat to normative law.
argument on an independent logical basis and claims that it is in fact a halakhah. This matter remains unresolved in the mishna, and is an interesting case of tannaitic concern around innovative halakhot and midrashic exegesis with powerful middot (hermeneutic rules) versus received tradition.\footnote{326 No debate is mentioned regarding the mamzer and the natin, both of whom are deemed by this mishna to be forbidden forever without regard to gender. The debate over gender does not extend to these categories. Note that the mishna includes netinim with the mamzerim, even though the netinim are nowhere mentioned in Deuteronomy 23. This is an example of the integration of the categories of the asarah yuchasin into the concept of entry into qahal.}

Sifrei Devarim 249 also deals with the problem of gender and the ethnic/national exclusions from qahal.

Sifrei Devarim \textit{Pisqa} 249 (Finkelstein p.277):

\begin{quote}
אל יבוא עממי וمؤعطاء בקהל ר': בכרים ההכותב מדבר ולא ניבוט. \footnote{327 The smaller print indicates a later addition or gloss, see L. Finkelstein, Siphre ad Deuteronomium, 1939 and 1969.}

לפי הפסוק, מהו נייד עלול בגמרא ולפי הפסוק מהו נייד עלול בגמרא?

 løנול:\\lamtikin לא מהי נייד עלול בגמרא\\stop

The Ammonite and the Moabite shall not enter the congregation of God: The Scripture is speaking of males and not females. An Amoni but not an Amonit [i.e. a female Ammonite], a Moavi but not a Moavit, the words of Rabbi Yehudah. And the sages say: "On account of the matter that they did not meet you with
bread and water" (Deuteronomy 23:5). Whose way is it to meet? Men and not women. Which is also [possible to derive] through logic: In the case of the mamzer, of whom it is not said "forever", is it not logical that the women would be made like the men? Or reverse it: In the case of the Ammonites and Moabites, of whom it is said "forever," he did not make the women like the men. There is a teaching that says "A mamzer shall not enter," whether a man or a woman. After the Scripture has included [in the case of the mamzer], it excludes [in the case of Moabites and Ammonites]. Are you not only able to rule following the first ruling?: As in the case of the mamzer, of whom it is not said "forever," and the women are made like the men, Ammonites and Moabites, of who it is said "forever", is it not logical that they we would make the women like the men? A teaching says: Ammoni and not an Ammonit, the words of Rabbi Yehuda. If it says the tenth generation, why does it say forever? It is available to make an analogy and to reason a gezeirah shavah. It is said here: "the tenth generation," as it is said above, "the tenth generation." Just as the tenth generation said here is forever, so the tenth generation said above is forever.

The midrashic direction on the Ammonites and the Moabites is in line with that of the Mishna. It begins by stating that Scripture is talking about men, and not women. R. Yehudah's midrash is very simple, stating that when the verse says Moavi/Edomi, it is not using male language as gender neutral language, rather, it excludes Moabite and Edomite women. The midrash thus establishes that, in contrast with the mamzer, only Moabite and Edomite men are forbidden from entering the congregation. The sages, however, do not rely on this midrash. They prefer to use exposition to determine that based on the nature of the rationale that Scripture presents for the exclusion of these two peoples, we may conclude that the resulting prohibition applies only to males. The midrash notes the contradiction between the approach to mamzerut and Moav/Ammon, and goes on to challenge the sages' methodology. Bringing a variety of challenges to their methodology, the midrash closes in a circular fashion with R. Yehudah's simple midrash: Amoni velo Amonit (a male Ammonite and not a female Ammonite). This midrashic exchange reveals the exegetical weakness of

328. Or greet.
329. In the verse dealing with the mamzer.
this position. Attempts to shore it up with logic or a real basis in the biblical text ultimately fail, and all that remains is a categorical reading that could just as easily go the other way (as it so often does in rabbinic literature, just as in the case of the *mamzer* above).\(^{330}\)

Sifrei Devarim 253 continues to discuss the question of gender, here with respect to the Egyptian and Edomite.

Sifrei Devarim *Pisqa* 253 (Fink. p. 279):

Children (*banim*): Sons (*banim*) and not daughters, the words of Rabbi Shimon. And the sages say: "which were born to them" (Deuteronomy 23:9), to include the daughters. Rabbi Shimon said: these are matters of *gal vahomer*: In the case where He said males are prohibited forever, He permitted the females immediately, in a case where He only prohibited the males until three generations, is it not logical that we should permit the females immediately? They said to him: if it is halakhah we accept and if it is of a logical argument [i.e. a *gal vahomer*] there is a refutation. He said to them: not so, I am stating a halakhah and the Scripture supports me: sons (*banim*) and not daughters.

"The third generation" (Deuteronomy 23:9): It could be that the first and second are permitted and the third would be forbidden. The teaching (or Scripture) says: "In the third generation they shall enter the congregation of God." Conclude from this that first and second are forbidden and third is permitted. Rabbi Yehudah said: Binyamin, son of an Egyptian was a friend of mine from among the students of R. Akiva. And he said: I am an Egyptian convert and I am married to a a female Egyptian convert. And I am

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330. Note that Finkelstein's Sifrei Devarim apparatus sees these as two separate *baraitot* (extra-Mishnaic tannaitic statements) joined together, p.279-280.
going to marry my son to a woman who is a daughter of an Egyptian convert so that the son of my son will be fit to enter the congregation, to fulfill what is said: "In the third generation they shall enter the congregation of God."

The inconsistent application of gender inclusion/exclusion to the rule of qahal poses problems for halakhic and exegetical consistency. R. Shimon rules that only male Egyptian and Edomite offspring are subject to waiting three generations, while females may be admitted without delay. The sages disagree in this case, arguing that when the verse says, "אשר יולדו לدمات" (which were born to them) this includes daughters as well as sons. R. Shimon's rationale, according to this midrash is a qal va homer argument based on the acceptance of Moabite and Ammonite women. The sages say that they will accept R. Shimon's ruling if it is "halakhah" but if it is based on logic, they can refute it. R. Shimon counters that it is "halakhah" and that in fact Scripture supports him: "בונים ולו בנות" (sons and not daughters). That is, when the verse says בונים, it means to exclude and not to include בנות, not unlike R. Yehudah's simple midrash "מואבי ולו מואвит". Despite R. Shimon's claim to be stating a "halakhah" rather than his own qal va homer argument, the sages do not accept this ruling, indicating a reluctance to take the exceptional work around the biblical text and make it into a general principle.331

Thus far, it would seem that there was early rabbinic consensus that entry to the qahal referred to sexual intercourse and/or marriage between men and women. Likewise, these mishnayot and midrashim are very comfortable when it comes to linking the biblical notion of qahal to the rabbinic notion of asarah yuchasin. There is consensus that the

331. They may have had more cause to make such an exception in the case of the Moabite women due to the course of biblical narrative. Also, consider the significance of patriloc al marriage patterns in this gendered dynamic as well as the factor mentioned in conversation by Tirzah Meacham, namely the powerlessness and low threat level of women as booty in war.
women of the nations who are eternally forbidden are themselves permitted to the congregation, such that the prohibition applies exclusively to men. There is debate, however, on whether or not the women of the nations who are temporarily forbidden are similarly to be admitted.\footnote{Though the \textit{manzeret} remains permanently forbidden. In rabbinic literature, this category is clearly not dealt with in the same way as the nationalities.}

Study of additional sources will demonstrate that the rabbinic approach to \textit{qahal} was not as neat as these \textit{mishnayot} and \textit{midrashim} suggest. mYadayim 4:4 is an important source addressing the concept of \textit{qahal} within the rabbinic framework.

mYadayim 4:4:

On that very day Yehudah, an Ammonite convert, came and stood before them in the house of study. He said to them: Am I able to enter the congregation? Rabban Gamliel said to him: You are prohibited. R. Yehoshua said to him: You are permitted. Rabban Gamliel said: The Scripture says: "An Ammonite and Moabite shall not enter the congregation of God, even the tenth generation etc." (Deuteronomy 23:4). Rabbi Yehoshua said to him: And are the Ammonites and Moabites in their places? Sennacherib the king of Assyria has already come up and mixed all the nations, as it is said: "For he hath said: by the strength of my hand I have done it, and by my wisdom, for I am prudent; in that I have removed the bounds of the peoples, and have robbed their treasures, and have brought down as one mighty the inhabitants" (Isaiah 10:13)\footnote{JPS translation.} Rabban Gamliel said to him: The Scripture says: "But afterward I will bring back the captivity of the children of Ammon" (Jeremiah 49:6) and they have returned. R. Yehoshua said to him: The Scripture says: "And I shall return the captivity of my people \textit{yisrael} and Yehudah" (Amos 9:14), and they have not yet

\footnote{332. Though the \textit{manzeret} remains permanently forbidden. In rabbinic literature, this category is clearly not dealt with in the same way as the nationalities.}
\footnote{333. JPS translation.}
returned. They permitted him to enter the congregation.

This mishna, part of a series of mishnayot ostensibly recording rulings made on the day that R. Eleazar ben Azaryah became head of the Academy, is a fascinating one for the question of admissability to qahal in early rabbinic tradition. The first important element is the use of the term Ammonite convert. This term confirms that entry to qahal was not deemed to mean conversion in the rabbinic system. That is, an Ammonite or Moabite could convert to Judaism, while they could not (presumably) marry. This assumes a rabbinic meaning for ger (i.e. the convert) rather than the biblical meaning of a stranger or sojourner dwelling among a foreign people. Note that mQiddushin 4:3 states that, following R. Yehudah's opinion, asurim may not marry each other, which bQiddushin 74b interprets to refer to Ammonite and Moabite converts. This merging of rabbinic conversion and marriage (eirusin, nisuin) with deuteronomic law is interesting.\(^334\) Once again, we find that the sages were very comfortable with merging unrelated systems in the process of constructing various systems and concepts.

That the rabbis permitted conversion but not marriage for those forbidden from entering the qahal (here, of course, exempting the mamzer who was already Jewish) leads one to wonder why one would allow a member of a given rejected or undesirable group to convert to Judaism, but not enable them to marry Jews. On the one hand our analysis has shown that we do have various classes of Jews who cannot intermarry with each other, so

\(^{334}\) The rabbinic understanding that conversion existed in biblical times is crucial for maintaining many rabbinic normative laws. For an excellent discussion of the development of conversion in Judaism, see Cohen's *Beginnings of Jewishness* "The Boundary Crossed: Becoming a Jew*, pp. 107-238.
the notion of a convert Jew unable to marry anyone is plausible. On the other hand, the idea of letting an individual into a group without allowing marriage in perpetuity is counterintuitive. I would suggest that the dissonance between allowing conversion and forbidding marriage is linked to the problems inherent in the task of rabbinicizing biblical law, as well as to tensions between the desire to allow greater access to "Jewish" identity and the desire to closely monitor genealogical lineage and protect the integrity of certain categories.

Indeed, this mishna records a debate about the ruling that reveals an element of rabbinic discomfort with the application of the deuteronomistic law in rabbinic times. The mishna records a disagreement between Rabban Gamliel and R. Yehoshua as to whether or not an Ammonite convert is permitted to enter the congregation. We must note that, at least in this presentation of this case, the Ammonite convert does not himself know whether or not he is admissible to the qahal. This suggests that this law was either not common knowledge or a very uncommon case, or both. It also suggests that the Ammonite convert recognizes the Beit Midrash as an authority on his status within the broader community. Note also that the mishna has him self-identifying as an Ammonite, as some kind of ethnic or national identity. This appears to be irrelevant in the final ruling.

The mishna records two opposing rulings: Rabban Gamliel rules him forbidden from

335. This may assume that religious practice at a certain level was necessary for interactions, particularly that there be no suspicion concerning idol worship in common transactions such as buying and selling.

336. There may also be an underlying derogatory subtext where the religious knowledge of converts is portrayed as negligible. Alternately, as in other case histories brought in the Talmuds, the man in question may in fact know the answer, but is challenging the sages to fully admit, articulate and implement their halakhah.
entering the qahal while R. Yehoshua permits him. Both Rabban Gamliel and R. Yehoshua use Scripture in order to support and explain their respective rulings. Rabban Gamliel turns to Deuteronomy 23:4 and its exclusion of Moabites and Ammonites from the qahal. R. Yehoshua in turn relies upon Isaiah 10:13 and Amos 9:14, while Rabban Gamliel counters with Jeremiah 49:6. These latter verses are used by both as a kind of historical record. R. Yehoshua argues, based on Scripture, that following the exile of various peoples by Sennacherib, national borders and identity no longer existed as in biblical times, as the borders have been altered and the peoples once separate, mixed together. R. Yehoshua therefore makes an argument from Scripture to nullify a law from elsewhere in Scripture, on the basis that historical/national/geographical details have changed such that the law no longer applies.

Rabban Gamliel refutes R. Yehoshua's argument by quoting Jeremiah 49:6, which states that the Ammonites are to be returned from captivity, suggesting that those who were exiled have since returned, with their national identity intact. R. Yehoshua counters that Amos 9:14 similarly claims that Israel will be returned from captivity, but that in fact, they have not yet returned.

The mishna ends by stating that "they" permitted him to enter the qahal, suggesting that R. Yehoshua's argument was accepted. Since Deuteronomy 23:4 speaks of Ammonites and Moabites, and one can no longer speak of Ammonites and Moabites, the law itself is nullified. The scope of this ruling is sweeping. It is interesting that Rabban Gamliel's strict and simple adherence to Deuteronomy 23:4 loses the contest, even though the man in question himself identifies as an Ammonite. This mishna suggests that this biblical law, at

337. Competition between them may be part of the dynamic in these sources.
least, was not generally relevant to the rabbinic community at the time. Despite this, discussions of the prohibitions of Ammonites and Moabites are found elsewhere in rabbinic literature, often as if this ruling overturning such laws had not occurred or was not known. This may suggest (once again) a broader range of 'in practice' legal rulings in tannaitic law (even in prominent batei midrash) than is always reflected in the literature.

Having considered this mishna, we may now turn to tYadayim 2:8, which records a different version of this ruling in the beit midrash on whether or not an Ammonite convert is permitted to enter the qahal.

tYadayim 2:17 (Zuckermanandel edition):

בַּח, בֶּם בָּיְנוֹנָה יְהוָה רָגוּ עָמוֹן לְפֶנֶיהוּ בֵּית המְדַרְשָׁה. אָמְרָה לָהּ: מַה
אֲנֵה בְּבַיָּהוּ? אָמְרָה לָרָב גַּמְלִיאֵל: אָסֵפָה אָתָה. אָמְרָה לָרivas בַּיָּהוּ. ריב
בַּיָּהוּ, וּרְבָּב בְּנֵיהֶם: קָדָם כָּה. אֱלֹהִים גָּדוֹל לָרָב גַּמְלִיאֵל. יִשְׂרָאֵל
עֲצַבְתָּן מְחֻבָּא בַּיָּהוּ. לְפָנָיוֹר צִוְיָֽו, וְאַחַר כָּה כָּל הַיָּהוּ
עֲצַבְתָּן וַעֲרָבָּב. אֱלֹהִים עֲצַבְתָּן בַּיָּהוּ, וְאַחַר כָּה הַיָּהוּ
שָׁבָּה לְאֵל. בְּבַיָּהוּ: כְּשֶׁם הַיָּהוּ אֵל, כִּי אָמְרָה יִשְׂרָאֵל
שָׁבָּה לְאֵל. כְּשֶׁם הַיָּהוּ אֵל, כִּי אָמְרָה יִשְׂרָאֵל: אֲנֵה בְּבַיָּהוּ.

On that very day, Yehudah, an Ammonite convert, stood before them in the house of study. He said to them: Am I able to enter the congregation? Rabban Gamliel said to him: You are forbidden. R. Yehoshua said to him: You are permitted. Rabban Gamliel said to him: Is it not written: "An Ammonite and a Moabite shall not enter the congregation of God"? (Deut. 23:3) But do the Ammonite and the Moabite stand in their places? Sennacherib has already come and mixed all the nations, as it is said: "And I have removed the bounds of the peoples, and have robbed their treasures..." (Isaiah 10:13). Rabban Gamliel said to him: And has it not been said: "But afterward I will bring back the captivity of the children of Ammon [said the Lord]." (Jeremiah 49:6) first in Judah, he said it and they have not yet returned. Rabbi Yehoshua said: The Scripture says: "And I shall return the captivity of my people Israel and Yehudah" (Amos 9:14), and just as these have not returned, so these have not returned. Yehudi, an Ammonite convert, said to them: What shall I do? They said to him: You have already heard it from the mouth of The Elder. Behold you are permitted to [enter]

338. Instead of bilbel.
the congregation.

The substance of this record is similar, though towards the end it seems to put the ruling permitting him to enter the qahal in the mouth of Rabban Gamliel. The phrasing makes it seem like Rabban Gamliel remains the authority and has merely been convinced by R. Yehoshua. The apparent brusqueness of the response to the Ammonite convert is surprising. He has heard the debate between the opposing opinions, but does not seem to have been given a clear final ruling. This version lacks the line containing the final ruling of the *beit midrash*, which we do find in the mishna. The fact that he asks twice suggests that two versions may have been combined here. Following this, Tosefta brings a section that the Mishna lacks, which exempts the Egyptians from the nullification of the ban on the Ammonite and Moabite (though the Edomite is not mentioned) on the basis of a verse from Ezekiel.339

Another story on a similar theme appears in tQiddushin 5:4, which deals more generally with the question of purification of *mamzerim*. In this case the concern is with the question of the admissability of the offspring of Egyptians and Edomites to the qahal.340

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339. Overall, Rabban Gamliel does not come across too well in these versions.
340. In addition to the other versions of this narrative found in Sifrei Deuteronomy 253 (Finkelstein p. 279-280), yYevamot 8:2 9b, yQiddushin 4:3 65d, and bYevamot 78a (see also bSotah 9a) discussed below, a short excerpt from this story also appears in *Pesiqta Zutarta Devarim Parashat Tsesei*. Lieberman notes that the material is not brought in the name of R. Akiva in *Sifrei* or in the sources in the Babylonian Talmud, *Tosefta Kifshutah Qiddushin*, pp. 972-3.
An Egyptian who has married an Egyptian woman, an Edomite who has married an Edomite woman: the first generation and the second are prohibited, and the third is permitted. R. Yehudah said: Binyamin, an Egyptian convert, had a friend amongst the students of R. Akiva. He said: I am an Egyptian convert, and I have married a woman who is an Egyptian convert and here I am going to marry a woman to my son, a daughter of a female Egyptian convert, so that my son's son may be permitted to enter the congregation, as it is said: the third generation shall enter the congregation of God" (Deuteronomy 23:8). Rabbi Akiva said to him: you have erred in your tradition [or: your law is wrong]. Since Sennacherib came up and mixed up all the nations, neither the Ammonites nor the Moabites are in their places, and neither Egyptians nor Edomites are in their places, rather an Ammonite marries an Egyptian woman, and an Egyptian marries an Ammonite woman and one of all of these marries one of all the families of the earth and one of all the families of the earth marries one of all of these. Everything goes according to (or follows) the offspring.

In this story, the Tosefta presents the halakhah, and uses a story about a sage, supposedly an actual halakhic ruling, to contradict it. tQiddushin 5:4 puts R. Yehoshua's argument against R. Gamliel's ruling that the Ammonite convert is forbidden to the congregation into R. Akiva's mouth. In this case, Tosefta begins with a simple ruling on the admissability of offspring of Egyptian couples into the qahal. An Egyptian who marries an Egyptian, or an Edomite who marries an Edomite, the first and second generations are forbidden but the third is permitted. This ruling follows both biblical and mishnaic law (mYevamot 8:3). This ruling is followed by an anecdote related by R. Yehudah, regarding an Egyptian convert named Binyamin, who (in this version) had a friend who was a student of R. Akiva's. Binyamin explains that he is an Egyptian convert. He has married an Egyptian convert, and is planning to marry his son to another Egyptian convert, who is
herself the daughter of an Egyptian female convert.

His goal in all these marital schemes is that his grandson (his son's future son) would be allowed to enter the congregation of God, in accordance with Deuteronomy 23.\textsuperscript{341} Tosefta has him quote Deuteronomy, or else, adds the quote to this statement. Binyamin specifies that he is marrying his son to the daughter of a female Egyptian convert. Tosefta has R. Akiva himself (and not his student) respond that Binyamin's halakhah (law or legal tradition) is incorrect. He claims that since Sennacherib mixed up all the nations, neither Ammonites nor Moabites nor Egyptians nor Edomites are in their proper places. Rather, he suggests, an Ammonite marries an Egyptian, and an Egyptian marries an Ammonite and any of these marries any of the families of the earth and so on.

R. Akiva describes an increasing process of mixing of peoples until people of mixed heritage marry other people of mixed heritage such that particular identities, once clear, no longer exist. This rationale, presented without any actual reference to scripture (though Sennacherib is presumably an allusion to Isaiah 10), is interesting to compare to R. Yehoshua's in mYadayim 4:4. R. Akiva also makes an argument based on alteration of national boundaries and mobility of inhabitants (forced or otherwise). But, R. Akiva claims that rather than the peoples simply not having returned (yet) they are all marrying each other.\textsuperscript{342} In the face of the reality of this intermarital mixing, R. Akiva proposes a new rule: that the law of Deuteronomy no longer applies. Rather, everything follows the offspring. The question is, what does this mean? The phrasing "everything follows the offspring" is

\textsuperscript{341} Note that these cases present the Egyptians and Ammonites as concerned about their ability to enter the qahal and desiring to do so, perhaps more aware than anyone else of their supposed exclusion.

\textsuperscript{342} Might R. Akiva be describing a post-exilic tendency towards exogamy?
reminiscent of the descent rules outlined in mQiddushin 3:12: "the offspring follows the male" (הולד הלול אוחר הזכר). There are, however, no manuscript readings to suggest any problem with our text as it stands. The suggestion is clearly that Binyamin's efforts to ensure that his grandson will be a third generation Egyptian have been in vain, since his halakhah is incorrect.\textsuperscript{343} Lieberman argues that fitness of lineage ceased to be relevant and fitness of the physical body was the only remaining criterion. He further explains that R. Akiva means to say (kelomar) that since converts no longer require bediqah to determine whether or not they are from a people forbidden from entering the congregation (pesulim), everything "follows the offspring itself, and if he has no physical defect (patsua dakka or kerut shofkhah), he is kasher."\textsuperscript{344} According to this reading, R. Akiva has abandoned all deuteronomistic descent rules related to nation or ethnicity. The only concern remaining is the fitness of the child itself, as its heritage has become irrelevant. This interpretation works well with the notion that national/ethnic exclusions had become irrelevant, such that various specific nationalities and the various rules specific to them come to be replaced by a general acceptance and requirement of conversion. Due to the brevity of this statement, and its unusual phrasing (thus far I have found it nowhere else) I think its interpretation requires further attention.

Another version of this story appears in Sifrei Devarim 253 (Finkelstein, p. 279-280):

דור שליש: יבראושי ושבינתי מותר ושילושי יהא אשר, תלבושו לזר דזר שליש יבראושי והשכלו גם. אמרו מעותה רבירושי ושבינתי אספוי ושילושי מותר.

\textsuperscript{343} One wonders what role matriline/patriline has here. Does it matter what generation the other mate is? Does only one need to be of 2nd generation to make the offspring 3rd? Need this apply to both parents or the father or mother only? See discussion below.

\textsuperscript{344} Lieberman, Tosefta Nashim, p. 295 n. 34 and Tosefta Kifshutah Qiddushin p.974.
"The third generation" (Deuteronomy 23:8): It could be that the first and second would be permitted and the third would be prohibited. Scripture says: "The third generation may enter the congregation of God" (Deuteronomy 23:8). It is said (or: deduced) from this that the first and the second are forbidden and the third is permitted. Rabbi Yehudah said: Binyamin an Egyptian convert was my friend from amongst the students of R. Akiva. And he said: I am an Egyptian convert and I married a female Egyptian convert and behold I am going to marry my son to a woman [who is] the daughter of an Egyptian convert so that my son's son will be fit to enter the congregation in order to uphold what is said: "In the third generation it shall come to them in the congregation of God."

This section of Sifrei brings a version of the story about the Egyptian convert who seeks to enable his offspring to enter the qahal. It works very well with the context in Sifrei, being similar in theme to the previous midrash dealing with generations, and beginning with the law on the generations of Egyptians and Edomites. Here the story reads such that R. Yehudah is the friend of Binyamin the Egyptian convert. Here, Binyamin is actually one of R. Akiva's students. In this story, Binyamin does not ask any questions about his or his descendants' admissability to the qahal. Rather, he explains that he has himself married an Egyptian convert, and will be marrying his son to the daughter of a female Egyptian convert, so that his son's son will be fit to enter the congregation, following the deuteronomistic law regarding the third generation. This story contains no

345. Finkelstein does not comment on this, but Lieberman notes that it appears as לו in some MSS of Tosefta, while in others it has been corrected to ל (Tosefta Kifshutah Qiddushin p. 972).

346. A negative commandment, forbidding the first and second generations, is learned from the positive commandment, permitted the third generation.

347. Note the recurring concern around admissability of sons and the importance of the role of marrying the appropriate generation of female convert to that end.
response from R. Akiva at all.\textsuperscript{348} Binyamin\textsuperscript{349} thus seems to be knowledgeable about the law and follows it strictly. According to this reading, Binyamin is correctly ensuring that his son marries another second generation (of a female convert) so that the offspring will be a third generation. In this version of the story, the deuteronomistic rule stands.

This story is also brought in yYevamot 8:2 9b, where it is proposed that we learn regarding the marital options of the mistri through a story similar to that of the Egyptian convert in Sifrei and Tosefta. yYevamot is working through the practical outcomes of R. Yehudah's position that geirim are considered qahal, focussing on the limited marital options of certain groups. As discussed in Chapter 1, it is even suggested that a slavewoman be freed in order to provide a spouse.

\textit{yYevamot 8:2 9b:}\textsuperscript{350}


Let us learn it from this: R. Abbahu repeated before Rabbi Yochanan: Rabbi Yudah said: Binyamin, an Egyptian convert, was one of the students of R. Akiva. He said: I am an Egyptian convert married to a female Egyptian convert. My son is the son of an Egyptian convert and I am marrying him to a female Egyptian convert; my son's son will be found fit to enter the congregation. Rabbi Akiva said to him: No, my son, rather: you must also marry him to the daughter of an Egyptian convert, so that there will be three generations from there and three generations from there [i.e. three

\textsuperscript{348} None of the manuscripts readings show any such response or challenge.

\textsuperscript{349} In some MSS, as in bTalmud, Minyamin.

\textsuperscript{350} See the parallel in yQiddushin 4:3 66a.

\textsuperscript{351} Note the female parentage of the female convert is not mentioned here, unlike our other sources.
generations on both sides].

This time, the story is brought in the name of R. Abbahu who related it before R. Yochanan. This brings the telling of the story into an Amoraic setting. The story is still about R. Yudah (Yehudah), though the convert is not here portrayed as his friend, rather Binyamin the Egyptian convert was one of R. Akiva's students. Binyamin here states that he has married an Egyptian convert and plans to marry his son, a son of an Egyptian convert (so 2nd generation) to an Egyptian convert (not the daughter of an Egyptian convert) with the aim of having a grandson who is able to enter the qahal. This would be a union of a 2nd generation Egyptian on his side, with a 1st generation Egyptian on the other. In this version, R. Akiva corrects Binyamin's approach, stating that he must marry his son to a daughter of an Egyptian (female) convert so that the offspring would have three generations on each side.

The story presents Binyamin as not sufficiently learned in the laws of Deuteronomy, or at least in R. Akiva's interpretation of them. According to this reading, R. Akiva held that both sides of the person's family must have been Egyptian converts for three generations in order for the third generation to be admissable. This bilateral lineage (or bilineal) transmission, that is transmission based on both parents, is unusual, though perhaps influenced by the bilineal mode of transmission through the rule of the pegum. R. Akiva maintains the deuteronomic system here, and advocates that his student continue to follow it. Given the context that this story is brought in, dismissal of the entire system of the qahal would run counter to the aim of the sugya which is to refine our understanding of the rules of the qahal in relation to R. Yehudah's inclusion of gerim.

bYevamot 78a also includes a version of the story about Binyamin, here called
Minyamin, which attempts to work out the problem of descent patterns in the laws of access to the qahal:

אמר רבח בר בר חנה א"ר יוחנן: מצרי שנשי מצריית רושמה בנה שלישיה היא אלמה קבורה ברה דידה שדינה לחניב רב יוסף רבי טרומא אנום יכליל מсмерת ליטה, בעד מсмер נאם חלקלק,response ננמצאו ברוחות אלמה בן דידה שדינה לחניב רב אמא, ר' יווחדה מניני ומרצי היה Liability זה התחלתי לאלמל하 מתה רב אמא, ר' דידיה מומרים אמרו ר' יוחנן אולמרahkan legislature אתא מתיב התם ליתא בתקרא תמר שלישית, כי אם ישה בר אמא, אмотрה ויהיה שדינן של בנה, בר אמא, ישה בר אמא. כל חניב רב דמי אמור ברו יוחנן מצריך分会 מצריית רושמה ליתא.

Rabbah bar bar Channah said in the name of R. Yochanan: A second generation Egyptian who married a first generation Egyptian woman, her son is of the third generation. It follows that he hold that we throw him after him [i.e. the son's identity follows that of the father]. Rav Yosef refuted: Rabbi Tarfon says: mamzerim can be purified. How? A mamzer who marries a slavewoman, the offspring is a slave. Free him and is found to be a free man. It follows that we throw him after her [i.e. that the son's status follows that of his mother]. It is different in that case, for Scripture says: "The woman and her children will be her master's." Rava refuted: R. Yehudah said: Minyamin, an Egyptian convert, was a friend of mine from among the students of R. Akiva, who said: I am a first generation Egyptian and I have married a first generation Egyptian woman. I will marry a second generation [woman] to my son so that my son's son will be fit to enter the congregation. And if you think that we throw him after him [i.e. the son's status follows that of the father], even a first generation [woman] also [would result in a son fit to enter the congregation]. So Rabbi Yochanan said to the Tanna: Repeat "a first [generation woman]." When Rav Dimi came,

352. This is the rule of kamotah, i.e. the offspring is like her (the mother).
353. We cannot learn from this case because it differs.
354. This implies that both sides of the family must be of 2nd generation status, both on the father's and mother's side. This is either bilineal descent or the law of the pegum. Note that the insertion of the following clause and the order to the tanna to change the reading of this version, changes a story that teaches the law of the pegum to one that teaches a patrilineal rule.
355. This implies that only the father's side must be of the 2nd generation and that the mother's generation is irrelevant. The offspring thus takes on the status of the father, as per patrilineal descent.
356. That is, when the tanna repeats the story, he should tell the story so that Minyamin is planning on marrying his son to a first generation Egyptian female convert, to make it clear
[he said]: R. Yochanan said: A second generation Egyptian who married a first generation Egyptian woman, her son is of the second generation. It follows that we throw him after his mother [i.e. the son's status follows that of the mother].

A statement is brought in the name of R. Yochanan that a second generation Egyptian who marries a first generation Egyptian woman has a child who is a third generation Egyptian. According to this tradition about his position, it would seem that R. Yochanan held that the status of the child follows that of the father in this case; a patrilineal descent pattern. Rav Yosef disagreed, citing R. Tarfon's procedure for purifying mamzerim. Since the mamzer and the shifhah have a child which is an eved, it clearly takes on the mother's status, a matrilineal descent pattern. The suggestion seems to be that the status of the child should follow that of the mother (i.e. kamotah) and moreover that this rule should be applied beyond that case to the situation of Egyptian converts. The gemara notes that this case is different since Scripture specifically states that her children will be her master's, a type of male descent line that apparently is not considered to be applicable outside of that particular case. If it is indeed the rule of kamotah of mQiddushin 3:12 that is being alluded to here, then it should only apply where one of the partners has no capacity whatsoever to contract qiddushin. Since it would appear that these Egyptian converts can and do marry each other, this rule should not apply to this case. It would seem that Egyptian converts have the ability to contract qiddushin or at least marry in some manner. Following mQiddushin 3:12, the inability to contract qiddushin in general appears to be limited to the

that the rule underlying the story is that the descent is patrilineal.

357. This implies that the offspring's status follows that of the mother (or follows the law of the pegum), otherwise the child would be third generation, since the father is 2nd generation. Note that the sources do not use the term pegum, rather they suggest a reliance on a rule of matriliny.
Gentile and slave classes (i.e. to groups that fall outside the asarah yuchasin).

Rava objects, citing R. Yehudah's story about Minyamin. In this version, Minyamin, an Egyptian convert, and here again a friend of his from among the students of R. Akiva, states that he is a first generation Egyptian (clarifying his generational position) and that he has married a first generation Egyptian woman. He in turn plans to marry his son to a second generation Egyptian woman (i.e. a daughter of), so that his grandson will be able to enter the qahal. This version of the story is akin to the Palestinian Talmud's in that it supports the requirement for bilineal descent. Note that Rava brings this story as an objection to patrilineal descent in this case. This suggests that the story was "originally" one that supported the rule of pegum or bilineal descent. The problem is then raised, that if one were to follow a patrilineal descent pattern, Minyamin could even marry his son to a first generation female convert, since her generational status would ultimately be irrelevant. This version of the story seems to prove that this was not the case, at least according to R. Akiva. We may conclude that R. Akiva held that both parents would have to be of the second generation for the child to be of the third.

In response, R. Yochanan is supposed to have told the tanna to change the story brought in the name of R. Yehudah, such that it reads "first generation" or rishonah instead of "second generation" or sheniah. In this way, the story about Minyamin (in its present incarnation) is altered so that it becomes consistent with the position supposedly held by R. Yochanan, namely that descent in such a case was patrilineal. This is clearly inconsistent with R. Yochanan's view as presented in yYevamot 8:2 where Binyamin himself says rishonah (first) and is corrected by R. Yochanan who insists that it must be second generation on both sides. One source has R. Yochanan espousing a position that he corrects
and opposes in the other. A statement is then brought by Rav Dimi that reports that matrilineal descent (which we may understand as an expression of the law of *pegum*) in such a case was actually R. Yochanan's position. The sugya then ends with the following principle:

כִּי אַחַת בַּרְיָה אֵר יִוְנָה בַּאֲמִית הַלֵּד אֵשֶׁר הָאָרֶנ, נַטְנִייוּ הַלֵּד אֵשֶׁר פֹּנוּ

When Ravina came, Rabbi Yochanan said: Amongst the nations it follows the male, if they have converted it follows the blemished between them.

According to this version of R. Yochanan's position, the rule of the *pegum* applies in general to converts.\(^ {358}\) Only here do we see the use of the actual term *pegum*. This follows the version of R. Yochanan's position where both sides must be of the same generation, or else the offspring will take on the status of the more blemished partner and not gain third generation status. This indicates that in the case of the Egyptian converts, the child's status would develop out of the status of the parent with less generations, irrespective of gender. For example, any second generation convert marrying a first generation convert would produce a child that would follow the first generation, that is, the child would be a second generation (and not a third generation) convert, and would remain inadmissable to the qahal. Amongst those who have not converted, the status follows the male parent.

The Babylonian Talmud brings a number of contradictory versions of R. Yochanan's position on descent in the case of Egyptian converts. Ultimately, the sugya seems to choose the principle of the *pegum*, rather than the other options of matrilineal or patrilineal descent, though there are clearly a number of contradictory sources on the issue. In the Yerushalmi,

\(^ {358}\) This, despite there not being any apparent *aveirah* or transgression in these marriages.
R. Yochanan is portrayed as holding that both sides must have second generation status in order for the child to have third. Rather than reflecting a bilineal descent pattern, this may reflect application of the law of *pegum* (even though this principle is not mentioned). If the law of *pegum* is applied, both parents must be of the second generation for the child to gain third generation status. In Sifrei Devarim 253, the same pattern is followed. In tQiddushin 5:4, this system is abandoned.

There appears to be no consistency or agreement as to whether or not the deuteronomistic laws of *qahal* for Moabites, Ammonites, Egyptians and Edomites were still considered valid in tannaitic and amoraic times. In terms of gender, there appears to have been consensus that Moabite and Ammonite women were exempt from the prohibition, while there was disagreement as to whether that exemption applied to Edomite and Egyptian women as well. In terms of *mamzer*, there was agreement that both men and women were included, but disagreement as to what kinds of relationship produced *mamzerim*.

The *qahal* is an important rabbinic system in that it assists in the grouping of the elite *asarah yuchasin* and in regulating marital access for the external members, and specific groups mentioned in Deuteronomy. Some aspects of rabbinic *qahal* are clearly linked to the biblical *qahal*, specifically the laws related to *mamzerut*, Moabites, Ammonites, Egyptians and Edomites. In general, however, the rabbinic system of *qahal* appears to be quite different and much broader than this biblical link. There was not a unified or monolithic approach to *qahal*. There was debate on the question of which groups composed the *qahal*,

359. The exemption of women from the ban may be linked to the dominance of patrilineal descent, and to the low status of women and foreign women whose integration into the community through intermarriage may have been perceived as posing no threat to Jewish identity or security.
as well as on the finer points regarding those who are either forbidden from or must wait in order to be admitted to it. *qahal* is important to the issue of intermarriage since it is one method of regulating marital options. In concert with the *asarah yuchasin*, *qahal* serves to keep certain groups out while identifying and isolating the inner or elite groups within.

Within the rabbinic framework, I would argue that the systems of *qahal* and the *asarah yuchasin* are highly integrated, such that each cannot operate fully without the other. *qahal* seems to rely on categories of the *asarah yuchasin* for its very definition. In contrast, *qahal* as a rabbinic concept seems to have been able to exist rather independently of the deuteronomistic system. For those traditions that appear to have maintained the prohibitions of Deuteronomy 23, some of the legal details were under dispute, and the sages were able to mold them to fit their needs. Within those traditions that dispensed with the deuteronomistic laws, those particularities - bans against intermarriage with specific nations - were replaced by a general concern around Gentiles as a general, undifferentiated category, and a concern about conversion and the status of converts over and above that of intermarriage. It is as if the sage stands with the biblical law of the *qahal* behind him, which forms an integral part of the foundation for his own rabbinic understanding of identity and intermarriage, but also has grown increasingly irrelevant to the world that is all around him. Once again we find that the individual, bringing himself as a case, as a person, before a great sage poses a serious challenge to the halakhic systems dealing with intermarriage, and forces the rabbis into a reckoning with biblical law, rabbinic *halakhah* and the reality that stands before them.
Chapter 4

Interruption and the Levitical Arayot

Jacob Milgrom, in his commentary to Leviticus, calls "the absence of a ban against intermarriage among the sexual prohibitions of Lev 18 and 20" a "glaring omission." Is this in fact the case? Why would one expect to see a ban on intermarriage included here? Why does its absence "demand an explanation"? If we look at Leviticus from a rabbinic perspective, do we find ourselves wanting to stumble upon intermarriage somewhere between the verses? Is intermarriage absent from a list where we would by all accounts expect it, or does the issue of intermarriage actually not belong in their midst?

This chapter will explore the relationship between the arayot of Leviticus and discussions of intermarriage in rabbinic literature. Ultimately, the aim is to determine whether the arayot developed into a rabbinic system for engaging with the issue of intermarriage. For the moment, I shall propose that intermarriage per se is not a concern for Leviticus 18 and 20 and is not included amongst the arayot for that reason. We may understand the presentation of the arayot in Leviticus 18 and 20 as rules regulating certain types of sexual contact, primarily between family members, acts which seem to violate established authority and sexual norms within the family structure and community. We must also consider the possibility, however unlikely, that intermarriage was assumed to be transgressive by Leviticus (or H/P), and for some reason this rule was not explicitly mentioned. In contrast to the lack of connection in biblical sources, I shall demonstrate that

there is at least some connection between the *arayot* and intermarriage in rabbinic sources. I shall present an analysis of sources that do attempt to form some kind of connection between intermarriage and Leviticus 18 and 20. I shall also compare those sources to others that do not make such connections, with the aim of determining why some sources might make such connections between intermarriage and the *arayot* and others not, all the while assessing the consequences on rabbinic exegeses, attitudes and positions on intermarriage.

The first source we shall turn to is mYevamot 2:3-4, which categorizes various types of sexual prohibitions with reference to levirate marriage (*yibbum*). The law of levirate marriage, or the marriage of a widow to her late husband's brother where the late husband had no offspring, is outlined in Deut. 25. *Chalitsah* is the process whereby the brother may release himself (and the widow) from the bond of levirate marriage. Note that normally such a marriage would be considered one of the *arayot*, since a brother is forbidden from marrying his brother's wife following Lev. 18:16 and 20:21 (interestingly enough, in the latter case the punitive element is that they shall have no offspring). These *mishnayot* are concerned with the situation of the *yevamah* and the ability of *yibbum* to take hold and/or be consummated in the face of various kinds of problematic relationships between her and her *yavam*. The feasibility or ability of *yibbum* to take hold in a given case is related to the relative severity of the prohibition that would be transgressed by the given union. For example, in a given case *yibbum* itself might be impossible, such that it cannot even take hold and hence even *chalitsah* is not required. Alternately, *yibbum* might take hold in a particular case, while its actual consummation might be forbidden thus requiring *chalitsah*. These conceptual categories are not dissimilar from mQiddushin's categorization of types of marital possibilities, in that they group various kinds of marital connections according to
their level or type of transgressiveness. They also, similarly, rely on groups from the asarah yuchasin, the ten lineages that mQiddushin 4:1 records as having returned to Israel from Babylon.\footnote{bTalmud Qiddushin 69a. See Chapter 1 on the asarah yuchasin, above.} We will consider whether intermarriage is part of this discussion in mYevamot and what that means for the place of intermarriage vis-a-vis the arayot.

mYevamot 2:3; 2:4

2:3 They stated a general rule in [the case of] the yevamah: Any whose prohibition is an ervah prohibition, she does not engage in chalitsah and she does not engage in yibbum. A mitzvah prohibition or a kedushah prohibition, she engages in chalitsah but does not engage in yibbum. Her sister who is her sister-in-law, she either engages in chalitsah or in yibbum.

2:4 A mitzvah prohibition: secondary [prohibitions] following the words of the scribes. A qedushah prohibition: A widow to a high priest, a divorcee or a chalutsah to a common priest, a mamzeret or a netinim to an Israel, a daughter of yisrael to a mamzer or a natin.

For mYevamot 2:3-4 there are three categories of issur or prohibitions: Prohibition of ervah, commandment prohibitions, and holiness prohibitions. The ervah prohibition is not defined by either mishna, though it is presumably any of the biblical arayot, while the issur mitzvah is a prohibition secondary to the biblical arayot. These secondary prohibitions are attributed to the "scribes." The holiness, or qedushah, prohibition includes the biblical
priestly prohibitions, as well as the prohibitions of the asarah yuchasin (also related to the rules of the qahal). 362

Their relevance for the case of yibbum lies in their relative ability to render yibbum impossible. If the marriage (between the yevamah and her yavam, i.e. her brother-in-law) is completely forbidden, the bond of yibbum that normally automatically would take hold upon the death of the childless husband cannot take place. In such a case, yibbum is impossible, and hence chalitsah is neither possible nor required, since she cannot become connected to the man who would have otherwise been her yavam. In other words, we might understand this as ein lah qiddushin (she has no qiddushin) with this particular man. 363

Other types of prohibitions do not prevent the bond of yibbum from being initiated, i.e. where marriage is possible, but transgressive. This, despite the fact that this bond can never be acted out (i.e. they can never have bi’ah or sexual intercourse and become yevamah and yavam in order to produce a child in the dead husband's name, except through transgression). In such a case, fulfilling the bond of yibbum is impossible, and so chalitsah is not only possible but required (lest the would-be yevamah rest in limbo, unable to marry anyone at all, since as long as her bond with her yavam is maintained, she is forbidden to marry any other man).

According to mYevamot 2:3-4, there are three types of prohibitions, all of which are

362. I deal with the rules of the qahal (Deut. 23) and their relationship to intermarriage in Chapter 3. The various definitions of the mamzer, and their significance for our study of rabbinic positions on intermarriage, are discussed in detail there. The mamzer is forbidden from entering the congregation, and rabbinically, the natin comes to be associated with the category of mamzer, and according to the laws of the asarah yuchasin, is likewise forbidden from marrying those categories which form the qahal (i.e. the classes of kohen, levi, yisrael and sometimes ger.)

363. As we have noted, normally, a woman would not have qiddushin with her brother-in-law. Levirate marriage itself is an exception to normative marital rules.
rabbinic categories, and some of which have a basis in the biblical rules. These marital prohibitions affect the status of the ye'evamah as follows:

1. Issur ervah: no yibbum, no chalitsah = this type of union is totally forbidden and so yibbum is impossible;
2. Issur mitsvah: no yibbum, yes chalitsah = this type of union is partially forbidden, so yibbum takes hold but cannot be consummated so chalitsah must take place;
3. Issur gedushah: no yibbum, yes chalitsah = this type of union is partially forbidden, so yibbum takes hold but cannot be consummated so chalitsah must take place.

These mishnayot create (or describe) three rabbinic categories of issur: ervah, mitsvah and gedushah, which are ranked more or less hierarchically. The first are the arayot, followed by their secondary extensions (issur mitsvah). \( bYevamot \) 21a discusses the sheniyyot or secondary arayot. The secondary arayot are perceived as a means to prevent transgression of an actual biblical ervah, as a kind of buffer zone or gader (fence). A biblical source for the secondary arayot is sought in this sugya, but it is finally concluded that, despite its best efforts to attribute the secondary arayot to the biblical layer, the secondary arayot are not of biblical origin.

\( bYevamot \) 21a

א"ל אביי לרב יוסף: היא דאורייתא היא. דאורייתא מפרש רבוע. כל תורות
נמי פירשו רבוע! אלא מדרבון וקרא אסמכא בעלאם.

Abaye said to Rav Yosef: It is biblical. It is biblical and the rabbis interpreted it. But the rabbis have interpreted the entire Torah also! Rather, it is of the rabbis and the Scripture is merely a support.

These secondary prohibitions are thus determined to be rabbinic in origin by the Babylonian Talmud, and in the Mishna are attributed to the scribes. From a rabbinic perspective, the Torah itself did not even have them in mind, in that the Bible is not seen as an exegetical source for the issur mitsvah. Rather, these secondary prohibitions reflect the rabbinic concern around the arayot and their desire to expand them further, especially in

- 217 -
terms of consanguineous relationships and those of affinity. It is worth noting that this expansion is limited to these types of relationships, and does not extend to relations that might be of concern due to ethnic, national or religious differences, i.e. intermarriage.

The secondary prohibitions are followed by the priestly marital prohibitions and the prohibitions applying to the non-priestly classes, namely marriage between yisrael (and also presumably levi) and the mamzer or natin. An important question regarding the inclusion of this intramarital law is whether this is an exclusive ban applying only to natin and mamzer, or an inclusive ban, applying equally to the other gradations in the asarah yuchasin and the groups mentioned in the laws of the qahal. Exploration is warranted as to whether there may be any assumptions made in this source regarding the ger and its status with respect to the mamzer and qahal. It is interesting that the priestly marital prohibitions are grouped with the prohibitions of the asarah yuchasin/qahal (i.e. those dealing with the mamzer). This brings non-priestly marital prohibitions within the scope of the issur qedushah or the holiness prohibition. Intramarital bans thus become, even if only in name, an issue of holiness, whether priestly or otherwise. This supports my suggestion that the laws of the asarah yuchasin are a kind of parallel structure to the priestly marital restrictions.364 General intramarital laws become just as important as priestly marital laws, if not more so, in the rabbinic context.

Overall, this hierarchy of issurim or prohibitions tends to extend and merge different and unrelated prohibitions. These prohibitions may differ in terms of their origins (biblical vs. rabbinic) or their topic and context. For example, this system builds upon the levitical arayot, extending the range of forbidden relationships through the issur mitzvah. It also

364. See Chapter 1 Asarah Yuchasin.
brings the marital rules of the *qahal* and *asarah yuchasin* under the umbrella of the priestly marital prohibitions. Finally, mYevamot 2:3-4 integrates various biblical and post-biblical marital laws related to the priesthood and to the *asarah yuchasin* into a broader system of *issur* (prohibition) headed by *ervah*, which might have the effect of linking the *asarah yuchasin* to the *arayot*, at least in the mind of the reader.\(^{365}\)

The main difference between *issur ervah* and the *issur mitzvah/qedushah* is that an *issur ervah* puts in place a complete prohibition that prevents any kind of marital bond. In contrast, the secondary *arayot*, the priestly prohibitions and the ban against marrying the *mamzer* and *natin* catch the would-be *yevamah* in a bit of a bind. Rabbinically, they are not powerful enough prohibitions to stop any kind of marital bond from taking hold. The widow is thus bound to her *yavam* even though these prohibitions make it rabbinically impossible to consummate the *yibbum*. She and her *yavam* are thus forced to enact *chalitsah* and release this bond. Both the priestly prohibitions and the prohibition of the *mamzer* and the *natin*, in the language of mQiddushin 3:12, might be termed as *qiddushin* with *aveirah* or transgression. The reference in mQiddushin 3:12 to all the *arayot* mentioned in the Torah (וְהָאֶבֶן עַל אָתָה מִכָּל הָעֵרִית הַעַמְרֹת בַּתוֹרָה) it remains unclear whether or not this is understood to include the secondary *arayot*. By bYevamot's own admission, the secondary *arayot* are not "in" the Torah. It is unclear whether they would be deemed as having or not having *qiddushin* by mQiddushin 3:12. The *ervah* prohibition, in contrast, would be described as having no *qiddushin* possible with that particular partner.

\(^{365}\) This would be similar to Sifra's approach of linking otherwise unconnected notions in the mind of the reader, in that case, *arayot* and intermarriage. See Sifra, *Sifra Acharei Mot Parasha* 1 (Weiss p. 85d).
Tosefta Yevamot makes just such a connection between the type of language used in our mishna, and the kinds of categories and concerns found in mQiddushin 3:12.

mQiddushin 3:12 deals with the marriageability of various identity categories, as well as the status of their offspring (using different descent patterns for different types of unions). To summarize, the categories are: normative unions (where qiddushin is possible and no rules are violated) follow patrilineal descent, in unions where qiddushin is possible but some law is violated the child takes the status of the more genealogically blemished parent, in unions where one of the arayot is contravened, the child has the status of mamzer, and finally unions involving Gentile and slave women follow matrilineal descent (these categories are considered to be unable to contract qiddushin). In chapter two on the asarah yuchasin I argue there that the descent rules outlined in this mishna where not universally held in early rabbinic tradition. There is evidence of debate (in both the halakhic and aggadic sources) on the status of the offspring of intermarriages, as well as on the types of unions that produce a mamzer.

tYevamot 2:2-4 (Lieberman)

ב. העדות שאמרו אני נשים כלכלהตก. אבי לה חותמת אלא פורט אלא מונותת אלא בלאתת ואינן דלי לא במצאתה אלא מונתיה דלי לא בהר

דריה ואינון ורשה ואין מטעמא לה אינא לבח קדוש ואין צירכה הדנה ולא

היא פסולה והולד מוחמד.

ג. הלאמנה כלכה גודל גורש וחלצה אותה דחייתו והר והן נשים לכל דכר.

יש לה חותמת פורטת מונותת בלאתת תוכי במצאתה ובמטעמה דחי

והחר ערה ורשה ואין מטעמא לה. יש לבה קדוש ואיא צירכה הדנה והן

היא פסולה והולד פסול.

ד. שנות מדבר טפורים יЈני נשים לכל דכר אבי לה חותמת אלא פורט

לא מונותת אלא בלאתת אינן דלי ואינון במצאתה אלא מונתיה דלי לא

בהפרת הציריה ורשה ומטעמא ליח. יש ליח קדוש ואיא צירכה מונתיג. היא

часירה והולד כשר כופין deport. לא ידוחה אחר אלמנה לכל חם למד

גרשה ומחלצה להכות דחייתו איסור מقوة. שנות מדבר טפורים. אייסור

קדושה. אמר ג"א שמעון בילע מבס מק אפרים אלמנה לכל חם למד יש לה

- 220 -
2. The arayot that are mentioned: they [the forbidden women] are not like his wife in any respect. They have no ketubah, peirot, mezonot, or velaot and he has no right over anything she finds or produces, nor the right to annul her vows, and does not inherit her, and does not become impure for her, and he has no giddushin with her and she does not need a get from him. She is unfit and the offspring is a mamzer.

3. A widow to a high priest, a divorcer and a chalutsah to a common priest: behold, these are like his wife in every respect. They have a ketubah, and peirot, mezonot and velaot, and he has a right to anything she finds or produces, and a right to annul her vows, and he inherits her but he is not rendered impure for her. He has giddushin with her and she needs a get from him. She is unfit [i.e. a chalalah] and the child is unfit [i.e. a chalalah].

4. Secondary [arayot] from the words of the scribes: They are not like his wife in any respect. They do not have ketubah, or peirot, mezonot, velaot, and he has no right to anything she finds or produces or to annul her vows. He inherits her and becomes impure for her. He has giddushin with her and she needs a get from him. She is fit and the offspring is fit. They compel him [however] to divorce [her]. R. Yehudah says: A widow to a high priest, a divorcer or a chalutsah to a common priest: this is issur mitsvah. Secondary [arayot] from the words of the scribes are an issur gedushah. R. Shimon b. Lazar: Why did they say that a widow [married to] a high priest has a ketubah? Because he is fit and she is unfit, and in every case where he is fit and she is unfit, they fine him to give her a ketubah. Why did they

366. See also: mYevamot 9:3 (note in particular that the case of the mamzer or natin married to a yisrael is grouped with the priestly marital prohibitions and that in each case she gets her ketubah).

367. The husband's financial obligations to his wife: the ketubah payment upon his death or their divorce, fruits, that is profit gained from her property, support, depreciation, that is compensation for any loss in value of any property.

368. In the normative case the bond of the spouse overrides the avoidance of death impurity from a human corpse.

369. Or: disqualified from marrying a priest.

370. mYevamot 2:4

371. mYevamot 2:4

372. This monetary obligation on his part may have served as a punitive measure for marrying a woman who was "unfit." Alternately, it may have been a method of providing
say that *shniyot midivrei sofrim* do not have a *ketubah*? Because he is fit and she is fit, they fine her of her *ketubah* so that she will be insignificant in his eyes [and it will be easy] to divorce her. R. [Rabbi Yehuda haNasi] says: this is from the words of the Torah and the words of the Torah need no strengthening, and this is from the words of the scribes, and the words of the scribes need strengthening. Another matter: This one persuades [in order to] be married to him, and this one is persuaded that she should marry him.

Tosefta Yevamot 2:3 notes of the *arayot* that a man and a woman who is his *ervah* have no *qiddushin* and she is not his wife in any respect, and the child is a *mamzer*. Tosefta then lists the priestly prohibitions, stating that they have *qiddushin* and she is his wife in every respect, but the child is *pasul* as is his wife. In the case of the *shniyot midivrei sofrim*, they have *qiddushin*, though she is not like his wife in any respect. Both she and the child are *kasher*. The Tosefta records an opinion attributed to R. Yehudah, such that the priestly prohibitions are called *issur mitsvah* and the *shniyot* are called *issur gedushah*. This naming is the reverse of what we find in the mishna, where priestly prohibitions are named *gedushah* and *shniyot* are *mitsvah*.

While these categories are important for intramarriage, we must now consider whether they are relevant to the issue of intermarriage. In a case of intermarriage there can be no *qiddushin*, according to mQiddushin 3:12. Where there can be no *qiddushin* there can be no *yibbum* and as a result, no *chalitsah*. It follows that a case of intermarriage is, in terms of results, in the world of *yibbum*, equivalent to the case of *ervah*, which also has no *yibbum* and therefore no *chalitsah*. Note, however, that mQiddushin differentiates between

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373. The variant reading is R. Meir, see Lieberman, Tosefta Kifshutah Yevamot-Ketubot p.17.
374. See Lieberman, Tosefta Kifshutah, p.17-18, see also Jastrow p. 1448, s.v. הער.
375. This is in line with the ruling in mQiddushin 3:12 on the *mamzer*.
ervah, where the qiddushin is impossible only because of the specific relationship, and intermarriage, where the qiddushin is generally impossible (since a Gentile woman or man cannot contract qiddushin with anybody). In the case of ervah, qiddushin is impossible because of a prohibition. In the case of intermarriage, qiddushin is impossible because, at least from the perspective of mQiddushin 3:12, the Gentile woman (and presumably the Gentile man), cannot be a party to qiddushin.

If we consider that mitsvah prohibitions are extensions of the biblical arayot and qedushah prohibitons are based on intramarital laws (priestly and otherwise), intermarriage could either fit in as a secondary ervah\textsuperscript{376} or as an extension of intramarital rules. Intermarriage is not listed amongst the biblical arayot (i.e. it is not an ervah), and is not an extension of an existing forbidden relationship (of affinity or consanguinity), nor is it an intramarital rule ( qedushah), therefore, I would argue that it does not fit into any of these categories of issur. The precedent is set in these sources for including general intramarital prohibitions, that is non-ervah prohibitions, along with ervah prohibitions (and rabbinic arayot along with biblical arayot). This has the potential to set the stage for integrating intermarriage into these issur prohibitions. Despite this potential opening, neither Mishna nor Tosefta takes that direction at all. Like the asarah yuchasin, the issur categories are concerned with intramarital rules alone. Even as this mishna extends them and groups them with other categories, the arayot are ultimately concerned with relationships that are too close, rather than too far. While the sages were clearly willing to make their own additions

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\textsuperscript{376} I have, thus far, found no instance of intermarriage being listed as one of the secondary arayot. The only source that might come close is Sifra in its commentary on the introductory and concluding sections of Leviticus 18 and 20 (see below) and it does not use the language of shniyot.
and category changes to the arayot and other sexual prohibitions, they did not, at least in these sources, include intermarriage amongst them.

Probably the most important source that appears to make an effort to link the arayot to intermarriage is Sifra. I shall argue that its commentary to Leviticus, though it does not succeed in legally integrating intermarriage into the arayot, effectively blurs the boundaries between the two through its exegesis. This exegesis may not be legal in nature (in the sense that they are not producing or transmitting law), but it is nonetheless able to create a lens through which the verses in the Pentateuch are read, so that verses come to be understood only in the way the midrash interpreted them. In this way, such midrashim have a significant influence in the legal sphere.

The midrashim that are of interest to us here are from Acharei Mot, some of which is considered to be of the Mekhila de Arayot, which is apparently not original to Sifra. The midrashim of interest are from Acharei Mot Parashah 9 (original), Parashah 13:3-23 (of

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377. See Finkelstein, Sifra on Leviticus - Introduction (New York, 1989) p. 370-387, Epstein, and Melamed, ed., Introduction to Tannaitic Literature: Mishna, Tosefta and Halakhic Midrashim (Jerusalem: 1957), p.640, Strack and Stemberger, Introduction to the Talmud and Midrash (Minneapolis: Fortress Press), p. 261. Note that this section was added to Codex Assemani 66 from an unknown source, though the printed edition's version was drawn from the Yalkut. Codex Assemani 66 is the oldest surviving of the rabbinic MSS and so this puts the addition of that version of the Mekhila de Arayot to somewhere between the 8th and 10th centuries, certainly earlier than the Yalkut. I have produced a critical edition of parts of the Mekhila de Arayot, which has the potential to become an interesting larger project.

378. In these sections original to Sifra, the sages are third and fourth generation Tannas, contemporaries of Akiva, students of Akiva, or members of the Patriarchate. Naming of R. Shimon without patronym is characteristic of a midrash from the so-called School of Akiva (School II). Akiva himself is not mentioned in any of these midrashim (again a characteristic of midrashim from School II). There are various sources that attest to the notion that the arayot were not dealt with in public (beyond chevrutah study) in the Akivan school. Sources that express this position are mChagigah 2:1 which prohibits such readings in strong terms, tChagigah 2 (Lieberman Moed p.380) which explicitly allows such readings with two people, and yChagigah 2:1 7a, where this position is attributed to R.
which 13:3-14 is original and 13:3-15 is *Mekhilta de Arayot* and *Qedoshim Parashah* 10 (Sifra proper) on Molekh, which will be discussed separately below. *Pereq* 13:3-14 was added to Sifra through the Yalkut and Qorban Aharon, and features rabbis from the third, fourth and fifth generations of *tannaim*. R. Ishmael is mentioned, as is R. Shimon b. Yochai (a student of R. Akiva), and R. Meir, a student of both Ishmael and Akiva. Rabbi is also named. The attribution of a midrash to R. Yirmia is problematic, though other versions of this midrash attribute it to R. Meir.\(^{379}\)

What is particularly notable in all of these *midrashim*, from all sources, is their effort towards expanding the umbrella of the levitical *arayot* into other arenas, including the customs of non-Jews and intermarriage. In this respect, these midrashim are remarkably different from Mishna and Tosefta, in that they move away from the sphere of familial relationships and intramarital prohibitions into that of ethnic, religious and national concerns, concerns which are closely linked to intermarriage. The midrashim in the *Mekhilta de Arayot* in particular are not shy to use verses from outside the Pentateuch, in

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379. The only known R. Yirmia would appear to be a third generation Palestinian Amora. Note that the version in the Yalkut attributes this midrash to R. Meir. It is so brought in bBaba Qamma 38a. Attribution to a tanna is definitely preferable, but it would be ideal to have additional textual witnesses to determine whether or not R. Meir is the original reading. The MSS of Sifra all read R. Yirmia.
order to develop a variety of arguments against Jewish involvement in non-Jewish life, customs and learning, and against intermarriage, all the while engaging with Jewish doubts and non-Jewish critiques of Jewish observance.

*Sifra Acharei Mot* to Leviticus 18 has a general tendency to include verses outside the Torah in its exegesis, including verses from Song of Songs, Malakhi, Ezra and Nechemiah. This is despite the fact that the exegesis is ostensibly on Leviticus 18, and is not characteristic of Sifra as a whole (not surprising considering that these *baraitot* come from another source, possibly some sort of *Mekhilta* to Leviticus).³⁸⁰

Verses from outside the Torah might easily be brought as a flourish in the midrash, but they can also be used to influence the tone or direction of the exegesis. A single verse from another source can bring in a whole host of images, stories, or legal issues. In the cases of the inclusion of the verses from Ezra and Nechemiah (and Malakhi), it is the opposition to intermarriage and demand for the separation from the foreign women that is at the forefront. I would suggest that *Acharei Mot Parashah* 9 and *Pereq* 13 connect intermarriage to the *arayot* through two main methods. The first is a general emphasis on the differences between Israel and the surrounding nations in terms of various customs.³⁸¹ This brings the focus of the exegesis to bear on matters of ethnicity, religion, nationhood and difference, that is, isolationism or xenophobia in various degrees. The second method is the use of prooftexts from contexts dealing with intermarriage.

I would argue that, using this second method, the midrash in *Sifra Acharei Mot*

³⁸¹. These *midrashim* work with the introductory segments to the chapters in Leviticus. As general statements regarding the ways of Egypt and Canaan, they are more amenable to such interpretation than the main body of the chapters which list highly specific rules.
Parasha 13 conflates the intermarriage crises described in Ezra and Nechemiah with the arayot of Leviticus. I shall argue further that the verse from Malakhi regarding the bat el nekhar\(^{382}\) is used in the same way. This midrash has a tendency to use verses from outside the Pentateuch (often introduced with "and so-and-so says", or "and he says"), verses which are chosen and used in such a way as to deliberately colour the central verses (Leviticus) with the secondary verses (Ezra, Nechemiah, Malakhi) in order to add resonance to the general position of the midrash with respect to Jews' connections to non-Jews and the non-Jewish world.

The verses used by Sifra include:

Malakhi 2:13

וַאֲנָ֑קָה בְּכִ֖י יְהוָ֑ה אֶת־מִזְבַּֽח דִּמְﬠָ֙ה כַּסּ֤וֹת תַּֽﬠֲשׂ֔וּ שֵׁנִ֣ית וְזֹאת֙ מִיֶּדְכֶֽם׃

ולְךָ֖ה רֶעֶֽן מִקְּרֵֽים׃

And this further you do: you cover the altar of the LORD with tears, with weeping, and with sighing, insomuch that He regards not the offering any more, neither receives it with good will at your hand (JPS).

Ezra 9:14-15

לְאֵ֥יןﬠַד־כַּלֵּ֔ה תֶֽאֱנַף־בָ֙נוּ הֲל֤וֹא הָאֵ֙לֶּ֔ה הַתֹּﬠֵב֖וֹת בְּﬠַמֵּ֥י וּלְהִתְחַתֵּ֔ן לְהָפֵ֣ר הֲנָשׁוּב֙ וּפְלֵיטָֽה׃

בְּאַשְׁמָתֵ֔ינוּ לְפָנֶ֖י הִנְנ֤וּ הַזֶּֽה כְּהַיּ֣וֹם פְלֵיטָ֖ה כִּֽי־נִשְׁאַ֥רְנוּ אַתָּה צַדִּ֣יק يִשְׂרָאֵל֙ הֵ֤י j אֱיְהוָ֞ה עַל־זֹֽאת׃

14 shall we again break Thy commandments, and make marriages with the peoples that do these abominations? wouldest not Thou be angry with us till you have consumed us, so that there should be no remnant, nor any to escape? 15 O LORD, the God of Israel, Thou art righteous; for we are left a remnant that is escaped, as it is this day; behold, we are before Thee in our guiltiness; for none can stand before Thee because of this' (JPS).

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Nechemiah 13:28

I shall now demonstrate how Sifra Acharei Mot Pereq 13 incorporates these verses so as to conflate the intermarriage crises in Ezra, Nechemiah and Malakhi with its main subject, namely the arayot of Leviticus 18. I shall begin with the end of the parashah, since it leaves the reader with a final impression by concluding the discussion in this fashion.

Pereq 13:22 is a midrash on the very last verse of Leviticus 18:22, beginning with ושמרתם это midrash itself is unremarkable, linking the arayot to tumah (ritual impurity), until it takes the following turn, which leads into the midrash in 13:23 as follows:

Sifra Acharei Mot Pereq 13:22-23 (Weiss p.86):

And you shall not become impure through them: This teaches that all the arayot are called impurity. And you shall not become impure through them: and you became impure through them: If you become impure through them, you are rendered unfit from behind [before] me. What pleasure do I have in you, that you are liable to destruction by me therefore it is said: I am the LORD, I am the LORD your God (Lev. 18:12). 23: And so Ezra says: shall we once again violate Your commandments by intermarrying with these

383. See Nechemiah 13. This verse, accusing one of the family of the High Priest of intermarriage, which is linked to desecration of the priesthood, is part of Nehemiah's notes about intermarriage, including his concerns about linguistic assimilation, critique of King Solomon's intermarriages, and his own rebuke of intermarried persons.

384. This phrase is found in Leviticus 11:43.
peoples who follow such abhorrent practices? Will you not rage against us until we are destroyed without remnant or survivor? (Ezra 9:14) O LORD, God of Israel, You are just (Ezra 9:15). 385

Sifra turns from an exegesis based in Leviticus 18:22 to the intermarriage crisis of Ezra 9:14-15. Internally to Leviticus, tumah, in its original sense of ritual impurity, is by all accounts related to the arayot. Leviticus 18, however, frames the list of arayot in a series of introductory and concluding verses which forbid the Israelites from following the ways of the people of the land, and their abominations (or abhorrent practices) (Leviticus 18:29) specifically mentioning the Egyptians and the Canaanites. The generality and vagueness of this prohibition is in stark contrast to the specificity of the list of the arayot. The concluding paragraph beginning with Leviticus 18:24 links the list to the deeds of the nations:

Do not become impure through any of these, for through all these the nations are defiled, which I cast out from before you.

Sifra maintains this general reading as it goes through this concluding section, until the very end. For example in 13:16, is not interpreted to mean anything related to intermarriage, and the midrash simply reinforces the link between the nations and the tumah, yet again focussing on its theme of God's punishment of Israel's misdeeds. The language at the end of 13:22, as cited above, however, recalls Ezra's language of destruction, helping to link God's punishment in Leviticus to Ezra's warnings regarding God's anger and punishment. Of course, the "abominations" that Ezra is concerned with are not the same abominations that Leviticus is concerned with. Ezra is clearly concerned with intermarriage, which he frames with the language of abomination. While Leviticus links the abominations of the arayot to the goyim, and prohibits the

385. This translation is an adaptation of the Jewish Publication Society translation.
Israelites from following them, it is concerned with the *arayot* and does not mention intermarriage. For Leviticus, the *arayot* hold the central place. Concerns regarding the surrounding nation are secondary, resulting from the concern regarding the *arayot*.

By bringing in Ezra 10:14 (and part of 10:15), Sifra links the two themes of destruction of Israel by God as punishment, and the abominations of the nations. It is in this fashion that Sifra thus conflates the *arayot* with intermarriage with the foreign women. This midrash actually works rather nicely, both in terms of roots (both use *הללים, חיות*) and in terms of the concern around other nations. Through the midrash in Sifra, suddenly Leviticus is not only concerned about engaging in *arayot* as the nations do, but about intermarrying with the nations. It is as if the exegete/redactor read Leviticus 18 and thought, but what about intermarrying with them? It may be that for this source, intermarriage should be included amongst the *arayot*. Note, however, that the midrashim do not articulate a *halakhic* position on intermarriage (other than that they have no *qiddushin*) and do not attempt to actually generate *halakhah*, that is, some sort of legal interpretation linking intermarriage to the *arayot* on anything more than a literary level. This is significant in that these midrashim ultimately have no real legal impact.

Through this section of Sifra, intermarriage is thus linked to the powerful notions of *tumah* and *karet* that pervade Leviticus 18 (and 20). This connection not only changes how the reader sees Leviticus 18 and the *arayot*, it ultimately changes how the reader sees Ezra, Nechemiah and Malakhi. Those verses, through Sifra, become linked to the *arayot* in a way that they are not in their respective contexts. Both the Levitical *arayot* and these discussions of intermarriage are transformed by each other through Sifra's exegesis.

It might be argued that it is this very midrashic quality inherent in Ezra-Nechemiah
that makes it a secondary and less useful source as a prooftext in rabbinic literature on intermarriage. Why use Ezra-Nechemiah when you can go directly to the source in Leviticus or Deuteronomy, both of which are far more authoritative as part of the Pentateuch? Moreover, even if one did want to rely on Ezra-Nechemiah since it brings all these notions together, I would suggest that there might be a discomfort with the way in which Ezra-Nechemiah uses its sources. In effect, both simply quote, adopt and merge language from disparate sources that have no connection in subject, context, or proximity in order to create a new rhetoric. Many midrashim would be uncomfortable with this methodology. Clearly, this section of Sifra is not. I would argue that the reason for this is rather simple, namely that this section of Sifra takes precisely the same approach. It takes a quote and language from disparate sources, inserts it into its own new text and thus connects the themes, in order to create a new model. It is thus not surprising that this section of Sifra is comfortable with using sources from Ezra-Nechemiah.

Sifra's use of Nechemiah and Malakhi in this section is quite similar to its use of Ezra. Both of these treatments of marriages with foreign women are dealt with in *Pereq* 13:4.

Sifra *Acharei Mot Pereq* 13:4 (Weiss p.85d-86a):

רב אחא אמר: גלייה לה פניניMi שאמרא והיה זהה לשם שסומן לינתק בעריה. לכל בר אלוהים בנביה. אני 'א אלפיים. עד מי הנורה עילום. ווק מצינו. שנינו קברות, שנאמר, ושם נשואין תשעים בקבאו בלשנותינו וגו'.וכם מלאכיขอบ לוה: הוא שנותו נשוא בכות דמעה אטימבה ה' כי אט אטימבו.אמרנו liable: לא🗣ו.אמרו: אני והתייה לכם בבר ימי נשעה.אמרו: מעבר:

386. Shaye Cohen argues that it may be possible that the rabbis "deduced" (his emphasis) the matrilineal principle from Ezra, but that they were hesitant to admit any such derivation, since they preferred not to base rabbinic law on biblical sources other than the Pentateuch, *Beginnings of Jewishness*, p.290.
Rabbi says: it was revealed before the one who spoke and there was the world [the world came into existence] [i.e. God] that their end [i.e. Israel's] would be to be torn from the arayot. Therefore, it came upon them in a decree: “I the LORD am your God” [meaning] know who it is who makes the decrees for you. And so we have found that they were torn from the arayot as it is said: “Moses heard the people weeping each in his family”\(^\text{387}\) (Numbers 11:10). And so Malakhi says to them: “And this you do as well: You cover the altar of the LORD with tears, weeping and moaning” (Malakhi 2:13). (JPS) He said to them: “This is not the first time\(^\text{388}\) for you, you have already cried in the days of Moses.” They said to him: “Did not the One make [all] so that remaining spirit\(^\text{389}\) is His?” (2:15) Is the one who created Israel not the one who created the nations? He said to them: “And what does that One seek? The descendants [seed] of God\(^\text{390}\) (2:15). They all answered and said: “May the LORD excise\(^\text{391}\) the one who does this any descendants\(^\text{392}\) from the tents of Jacob [and presenting offerings to the LORD of Hosts] may he not have have descendants amongst the tents of Jacob (2:12). And if he was a kohen [may he have no descendant] “presenting offerings to the LORD of Hosts” (2:12). (JPS) 21: And so he says: “One of the sons of Yoiada son of Eliashiv the high priest was a son-in-law of Sanballat the Choronite [and so I drove him away from me]” (Nehemiah 13:28).\(^\text{393}\)

\(^\text{Pereq 13:4 begins with a midrash attributed to Rabbi, related to the difficulty the Israelites had in adhering to the laws of the arayot. In this midrash, they are represented as}\)
having been initially quite attached to such sexual relationships or activities. They reluctantly give these up as they are torn from them by God, and grieve the loss as they adapt to the change. This midrash uses Numbers 11:10 to construct the moment of the implementation (or adoption) of the arayot prohibitions. This midrash hinges on the phrase “I the LORD am your God.” God knew beforehand that this would be a hardship for the Israelites and that is why they are presented with the phrase “I the LORD am your God” as in Leviticus 18:2,4,30 (and also, “I am the LORD” in verses 8:5-6 and 21). This phrase emphasizes that God was the one issuing the decree (and hence emphasizing the importance of following it, the danger of disobeying it and that it was perceived as unnatural in normative Israelite practice).

The midrash uses the first section of Numbers 11:10 as a proof-text for the supposed difficulties the Israelites had in ceasing from the arayot. This verse is taken completely out of context here, in contrast to Sifra's use of verses from contexts involving intermarriage.394

Numbers 11:10:

וּבְﬠֵינֵי, מְאֹד יְהוָה אַף - וַיִּחַר; אָהֳלוֹ לְפֶתַח, אִישׁ -- לְמִשְׁפְּחֹתָיו בֹּכֶה, הָﬠָם -- אֶת מֹשֶׁה וַיִּשְׁמַע. רָע מֹשֶׁה''

“Moses heard the people weeping, each in his family, each person at the entrance of his tent. The LORD was very angry, and Moses was distressed.”

In Numbers 11, the Israelites are tired of eating manna and are longing for the foods they

Rashi to Numbers 11:10 (דברי למשפחתיך) offers an interpretation that reflects the straightforward meaning of the verse, emphasizing that they mourned in public. However, Rashi also refers to Sifre Bamidbar 90 (p.91 Horovitz) which understands למשפחתיך as referring to the Israelites' distress upon hearing from Moses that they must end any relationships forbidden by the arayot.

Sifrei Bamidbar Pisqa 90:

"And Moses heard the people crying to their families": Rabbi Nehorai used to say: It teaches that the Israelites were distressed at the time that Moses told them to separate from the arayot, and teaches that a man would marry his sister, and his father's sister, and his mother's sister, and at the time that Moses told them to separate from the arayot, they were distressed.

Sifrei Badmidbar clearly links this incident over food to the implementation of the prohibitions of the arayot. Unlike Sifra, it lists specific relationships, and makes no effort whatsoever to link this incident with intermarriage. Sifra's midrash takes this link further by linking it to verses from Malakhi.

The sections quoted from Malakhi address the iniquities of the priestly class (2:1-9), the iniquities of Judah (2:10-12), specifically marrying the bat el nekhar, and the undesirability of divorce (2:13-16). The verses dealing with divorce are understood by the

395. Food is often used as a euphemistic metaphor for sexuality in rabbinic sources, and so here may be seen as an allusion to the sexual (rather than dietary) ways they followed in Egypt. On such issues generally, see Michael Satlow, Tasting the Dish: rabbinic rhetorics of sexuality, Atlanta: Scholars Press, 1995.

396. Rashi to Numbers 11:10:

משפחת משפחות נאספים בוכנים לפריסי טרומתו בבלג. רבוריינים אמרים: למשפחותינו,

על עסיק משפחות, על עירית האספים לחר.

Family by family [they] are gathering and crying to publicize their complaint in public. And our Sages said: to their families [means] regarding family matters, about the arayot that had been forbidden to them.
sages within the context of the previous verses regarding marrying daughters of other faiths, such that the men are understood to have married women of other faiths, and subsequently divorced the Jewish wives of their youth. The call and response in the Biblical verses are nicely echoed in the midrash.

Malakhi 2:11-17:

11 Judah hath dealt treacherously, and an abomination is committed in Israel and in Jerusalem; for Judah has profaned the holiness of the LORD which He loves, and has married the daughter of a strange god. 12 May the LORD leave to him who does this no descendants dwelling in the tents of Jacob and presenting offerings to the LORD of Hosts. 13 And this you do as well: You cover the altar of the LORD with tears, weeping and moaning, so that He refuses to regard the oblation any more and to accept what you offer. 14 Yet you say: 'Why?' Because the LORD has been witness between you and the wife of your youth, against whom you have dealt treacherously, though she is your companion, and the wife of your covenant. 15 Did not the One make all so that all remaining life-breath is His? And what does that One seek but godly seed? So be careful of your life-breath, and let no one break faith with the wife of his youth. 16 For I hate sending away, says the LORD, the God of Israel, and he that covers his clothing with violence, says the LORD of hosts; therefore guard your spirit, so that you deal not treacherously. 17 You have wearied the LORD with your words. Yet you say: 'With what have we wearied Him?' In that you say: 'Every one that does evil is good in the sight of the LORD, and He delights in them; or where is the God of justice?'

The midrash in Periq 13:4 creates a thematic link between the crying in Malakhi 2:13 (over divorce, itself linked to interfaith marriage by the rabbis) to the crying in Numbers 11:10...
(over the lack of food other than manna, itself linked to parting from relationships forbidden by the arayot), thereby connecting the interfaith marriage of Malakhi with the arayot of Numbers (where intermarriage is not mentioned in the midrashim). This midrash serves to read intermarriage into the Levitical list by connecting verses that describe crying in two otherwise disparate and unconnected situations. The instance in Moses's era describes, as we have noted, the distress regarding manna rather than distress regarding the arayot or intermarriage. As R. Hillel notes in his commentary on this midrash, the first instance was at the time of Moses, and the second instance is in the time of Malakhi. Incorporation of these two time periods, however, serves Sifra rather well, lending a kind of historical timeline to the intermarriage and its connection to the arayot amongst the people of Israel.

This interpretive approach alters the reading of the Levitical list of arayot in Leviticus 18 by reading them through another lens. In this way the midrash does have an impact on Leviticus 18, but the verses it uses as proof-texts come from Malakhi, and it references Numbers. This midrash does not relate to Leviticus 18 in any specific way, which further demonstrates that this midrash is not only external to Sifra; it is not dependent on Leviticus at all.

The midrash concludes with a verse from Nechemiah 13:23-31, which relates the marriage of male Jews to Ashdodite, Ammonite and Moabite women (13:23), whose children apparently spoke the languages of these peoples but not Judean (13:24). Nechemiah admonishes them and states that sons and daughters must not marry members of these groups (13:25). He relates this “sin” of foreign wives to King Solomon, and to pollution of the priesthood. Verse 13:27 is reminiscent of the verses from Malakhi and

\[397\] Note the unusual reference to both genders.
precedes the verse used in this midrash:

Nechemiah 13:27-30:

27 How, then, can we acquiesce in your doing this great wrong, breaking faith with our God by marrying foreign women? 28 One of the sons of Joyada son of the high priest Eliashib was a son-in-law of Sanballat the Choronite; I drove him away from me. Remember them, my God, for their defiling of the priesthood, and the covenant of the priesthood and the Levites. 30 So I purified them from all foreignness, and appointed wards from the priests and for the Levites, each in his work. 308 (Adapted from JPS)

The relationship of these verses to the subject of intermarriage is especially clear. The midrash merely restates 13:28, with the introduction אומר הוא וכן, which brings this verse as a kind of proof text, evidence of the effect of intermarriage on the priesthood (Sanballat being a non-Israelite).

The following midrash (Pereq 13:5) appears to move on in topic, having no obvious relevance to the issue of intermarriage. It is, however, possible to interpret it as part of an ongoing concern regarding intermarriage.

Sifra Acharei Mot Pereq 13:5

Rabbi says: “Speak to the Israelite people and say to them: I the LORD am your God.” Say to them, " I [Moses] have also been warned." As I said it to you [Moses], and you accepted it, so it was said to them and they accepted. And you said to them: Behold this is a warning for the court. I am the LORD
your God. I am a Judge [who] takes revenge and is trustworthy in paying reward.

With this midrash we finally return to Leviticus 18 with a midrash attributed to Rabbi.\textsuperscript{399} Shiloni, in his remarks to his edition of the Yalqut,\textsuperscript{400} relates this section to Numbers 12, where Moses is chastised by Aaron and Miriam for marrying a Cushite woman (Numbers 12:1). He continues by suggesting that God told Moses to separate from the woman (hence how Moses was warned) and so the essence of what Moses said to them was, I also have been warned to separate from my foreign wife. This explanation, however, is not obvious from the midrash. Indeed, God does not warn Moses about his Cushite wife (Miriam and Aaron do). The aggadic midrashim there deliberately avoid any interpretation that understands Miriam's critique as relating to intermarriage. This avoidance on the part of the sages goes against Shiloni's interpretation here. The midrashim generally understand that Moses was asked to separate from his wife, as were all the Israelite males, but that Moses, unlike the other males, permanently ceased having sexual relations with his wife. The \textit{midrashim} therefore understand Miriam's rebuke as a critique of his sexual abstinence and neglect of his wife. I have not yet found a midrash that understands Numbers 12 to be a critique of his intermarriage.

This section of Sifra clearly uses these verses to connect intermarriage from outside the Torah to the verses in the Pentateuch. This connects intermarriage to the \textit{arayot} and lends an authoritative and powerful history (both legal and narrative) to the intermarriage crises of Ezra and Nechemiah. Sifra's use of these sources brings intermarriage into

\textsuperscript{399} Note that this is not consecutive and brings us back to Leviticus 18:2: \textit{וַיְדַבֵּר} \textit{לָאָמֶרְךָ אֶל} \textit{הָאָלֹהָיִם} \textit{אֵלֵּי הָאָלֹהָיִם וְאֶל} \textit{מָשָׁה}.\textsuperscript{400} Yitzchak Shiloni, \textit{Yalkut Shimoni}, Jerusalem: Mosad HaRav Kuk, 1973.
Leviticus 18 & 20, and brings the *arayot* into intermarriage. This creates the *impression* of a rather, long standing, severe and broad prohibition of intermarriage. I must emphasize that even though this midrashic approach has a significant impact, historically and legally, it is highly metaphorical and its connections are not created through an explicitly halakhically sound method. Indeed, this is not really a concern for Sifra here since it is not producing any actual *halakhah* in these sections. Perhaps this is why, though Rashi brings much of Sifra in his commentary (as he is wont to do) this section of Sifra is largely ignored by rabbinic tradition on intermarriage. As weighty as it might read as a literary construction, its legal influence is limited.

The difference between midrashim that use Ezra and Nechemiah and those that do not is perhaps most marked within Sifra itself, if we turn to Sifra *Qedoshim* to Leviticus 20. Sifra *Qedoshim Parashah* 10 to Leviticus 20 is similar to Leviticus 18. Important differences include the integration of punishment (usually capital) into the list of the *arayot*, the addition of verses dealing with Molekh, and very few of the type of introductory/concluding general verses we find in Leviticus 18. Most importantly for our argument here, *Qedoshim Parashah* 10 does not use any verses from Ezra or Nechemiah. It prefers to make internal connections, and to develop halakhah, focusing in particular on the notion of Leviticus 18 as warning and Leviticus 20 as punishment. Perhaps since it only deals with internal connections and takes on the project of creating a commentary and halakhah from them, it does not deal with intermarriage *per se*. This, even though it deals with Molekh, to which interpretations related to intermarriage exist.\(^{401}\) Rather, the closest this section of the midrash gets to intermarriage is when it deals with separation from the nations and their

\(^{401\text{.}}\) As will be discussed in detail below.
idolatry, and with the nations' obligation regarding the *arayot*. Sifra *Qedoshim Parashah* 10:2 to Leviticus 20:2 *Qodashim Pereq* 9:2 to Leviticus 20:7 are both good examples of this.

Sifra *Qodashim Parashah* 10:12 (Weiss p. 91):

If so why does it say: "A man, a man [each man]? To include the nations who come unto the *arayot*, that the nations should be judged by the laws of the nations and those who come unto the *arayot* of Israel, should be judged by the laws of Israel." 402

Sifra *Qodashim Pereq* 9:2 (Weiss p.91d):

And you shall sanctify yourselves: And you shall be sanctified. This is the holiness of separation of idolatry (or idolaters). You say: This is the holiness of separation of idolatry, or is it actually the holiness of all commandments? Where he says "You shall be holy", behold it means the holiness of all commandments. And what does Scripture mean by: "And you shall sanctify yourselves, and you shall be sanctified?" That is separation of idolatry.

Sifra *Qodashim Pereq* 9:2 interprets the phrase *ךדושים והיתם* so that it takes on a particular meaning (probably due to the repetition) referring to separation from idolatry or idolaters. The midrash could presumably bring in material about separation from Ezra or

402. The sense of this is not entirely clear, but suggests that violations of the *arayot* between Gentiles should be governed by Gentile law, while violations between Gentiles and Jews be governed by Israelite law, perhaps acknowledging the lack of power Jews had over Gentiles.
Nechemiah but does not, in line with its preference for working internally. The emphasis on general separation from idolatry makes the midrash more exclusionary than the verses which only address Molekh in particular. Nevertheless, I would argue that this midrash does not explicitly, or even implicitly connect intermarriage to idolatry, so that it can be argued that this midrash is less exclusionary than Sifra to Leviticus 18. Whether or not this is the intent of the exegete/redactor is difficult to say, since it may simply be a result of a general tendency to avoid outside proof texts. Even if that is so, this case demonstrates that without Ezra or Nechemiah, within the context of the Pentateuchal (here Levitical) text, the midrash is less exclusionary.

Of all the individual arayot, Molekh is the one that has, at times at least, been linked to intermarriage. Molekh is included amongst the arayot in both Leviticus 18:21 and 20:2. It is clearly not one of the arayot concerned with consanguineous or affinity relations, as it involves the offering or participation of one's child in some kind of ritual. Similar rituals are also mentioned in 2 Kings 23:10 and Jeremiah 32:35. The historical existence and nature of this ritual is a subject of much scholarly debate. The main concern for our purposes here, is how the rabbis understood this Levitical (and Deuteronomistic) prohibition. Did they relate it to intermarriage? Did they use it in order to build a prohibition of

intermarriage? Did the sages, through this particular instance of the arayot, understand intermarriage to be part of the arayot? I will argue that the rabbinic sources appear to be divided on this question. Most sources do not relate the prohibition of Molekh to intermarriage at all, while others relate it to sexual relations between Israel (etc.) men and Gentile women.  

The Scriptural sources referring to Molekh include:

Leviticus 18:21:

יְהוָה אֲנִי, הֶיָּה אֱשֶׁר -תְחַלֵּל וְלֹא; לְמֹלֶכַח -תִּתֵּן -לא שֵׁם אֶת אָדָם. And thou shalt not give any of thy seed to set them apart to Molech, neither shalt thou profane the name of thy God: I am the LORD.

Leviticus 20:2:

וְאֶל-בְּנֵי יְשֵׁרָאֵל, אוֹמָה, אֲשֶׁר אֶשֶּׂם מֵבֶן יְשֵׁרָאֵל וְהַגָּרֶה, כֹּה-בִּלְוָא יָשֵׁר-אָדָם אֲשֶׁר יִתְּנָה יָשֵׁר-בָּלָק לִפְלֹט. You shall say to the children of Israel: Any man of the children of Israel, or of the stranger that sojourn in Israel, who gives of his seed to the Moleck; he shall surely be put to death; the people of the land shall stone him with stones.

2 Kings 23:10

וַיֵּעָבֵר מְלֹט, לְמַﬠַן--הָאָרֶץ--ﬠַם-יְהוּדָה, אֶת הַחֲטִי, לְפִקָּנָה--לָכֶם. And he defiled the Tophet, which is in the valley of the son of Hinnom, that no man might cause his son or his daughter to pass through the fire to the Molekh.

Jeremiah 32:35

וַיָּבֵל אֲשֶׁר-בִּתָּהּ, אֲשֶׁר בִּתָּהּ-בְּגֵי-אֲשֶׁר, הַבַּﬠַל, בָּמֹת-אַל-יָהָה--לָכֶם, הַזֹּאת-הַתּוֹﬠֵבָה לַﬠֲשׂוֹת, לִבִּי-ﬠַל-ﬠָלְתָה. They built the high places of Baal, which are in the valley of the son of Hinnom, to pass over their sons and their daughters to the Molekh; which I did not commanded them, and it did not come it into My mind, to do this abomination; to cause Judah to to sin.

404. Note that participation in the Molekh ritual is subject to capital punishment by communal stoning.
Deuteronomy 18:10:

There shall not be found among you any one that causes his son or his daughter to pass through the fire, one that uses divination, a soothsayer, or an enchanter, or a sorcerer. 406

The Mishna (Sanhedrin 7:7), like the sources in Sifra, the Palestinian Talmud and the Babylonian Talmud, links the Molekh ritual to fire, perhaps under the influence of Deuteronomy and 2 Kings. It also similarly limits the scope of obligation for participation in the Molekh ritual to certain circumstances: the child must be given over to Molekh (specifically) and must be passed in the fire. The other rabbinic sources go into much more detail, naturally, regarding the rabbinic understanding of what this ritual was. It would appear that it was not seen as actual child sacrifice, rather a ritual involving a child. The Mishna lists the one who gives of his seed to Molekh amongst the transgressions punishable by stoning (M Sanhedrin 7:4). The Mishna does not, however, link Molekh to any kind of sexual relations between Jews and Gentiles or to intermarriage. 407

mSanhedrin 7:7

The one who gives of his seed to the Molekh: he is not liable until he has given over [his child] to the Molekh, and has passed him in the fire. [If] he gave him to the Molekh, but did not pass him in the fire, [or] passed him in

405. Note link to the kosem (magician) of the Mishna on the boel aramit (mSanhedrin 9:6).
406. These translations are adapted from JPS.
the fire, and did not give him to Molekh, he is not liable unless he has given [his child] to the Molekh and passed him in the fire.

tSanhedrin 10:4-5 similarly concerns itself with the specific circumstances which result in a Molekh transgression, and confirms the particulars of the ritual. Like the Palestinian Talmud, which we shall review below, it records the opinion that one is obligated for Molekh and for idolatry as separate transgressions. Tosefta, however, does not bring any of the additional material that we shall find in the Babylonian Talmud.

tSanhedrin 10:4-5 (Zuckerman p.430):

4) The one who gives of his seed to the Molekh is not liable unless he gives [his child] to the Molekh and passes him in the fire. [If] he gave him to Molekh and did not pass him in the fire, passed him in the fire and did not give him [over to the Molekh], he is not liable unless he gives [his child] over to Molekh and passed him in the fire. And he is not liable unless he passes [his child] in the normal way. [If] he passed him by his leg, he is exempt, and is not obligated unless they are his descendants.

5) The one who passes his father and his mother and his sister, is exempt. One who passes himself is exempt. And R. Eleazar son of R. Shimon makes [him] liable either for Molekh or for the remaining idolatry [i.e. separately]. And R. Eleazar son of R. Shimon says: he is not liable except for Molekh.

The double attribution is likely incorrect since it is included twice. We might

408. Literally: came from his thighs, i.e. his own biological children.
409. Some MSS have: "and his brother," see Zuckerman, tSanhedrin p. 430.
understand that following the first opinion one is obligated for both Molekh and idolatry, while the latter opinion holds that one is liable only for Molekh (i.e. that Molekh is not idolatrous). We also learn that very specific requirements must be met in order for a person to violate the prohibition.

There is a midrashic tradition that links the Molekh ritual to sexual relations between a Jewish man and a Gentile woman. This interpretation may be picking up on the root עבד, meaning to pass over in the hifil, to another possible meaning in Middle Hebrew and Aramaic: pregnancy. In our first example of this tradition, from Sifrei Devarim, a particular connection is made between bonding to a Gentile woman and idolatrous worship through the use of a verse from Jeremiah.

Sifrei Devarim Pisqa 171 (Finkelstein p.218):

דבר אחר: מעביר בנו ובתו באש, זה הבועל ארצים שמעמיד ממנה יבים
למעקים... רבי יהודה אומר: זה שוהא מעביר בנו ובתו עלבעדה אחר זכר
עמה ברית. שנאמר: הугл אשר כורתו לשנים וחבורה בין בתריה.  

Another interpretation: one who passes his son or his daughter into the fire, this is the one who has intercourse with the Aramean woman, who raises an enemy of the Lord from her. ... R. Yehudah says this is the one who passes over his son and daughter to idolatry and makes a covenant with it, as it is said: The calf which they had cut in two and passed between its parts (Jeremiah 34:18).

This section, above, according to Finkelstein in his Sifrei Devarim, was added to Sifrei by a scribe, and is only part of a baraita found in its entirety in Midrash Tannaim. The question of the proper place of this baraita is important since aside from it, Sifrei makes no link between the Molekh ritual and sexual relations of any kind. Indeed, Midrash

410. This is a play on the root k.r.t. which is used with reference to the physical cutting of the calf as well as to the creation of a covenant. These two uses for the root are found even in Jeremiah 34:18.
411. See p. 218, note to line 10.
Tannaim brings us a similar midrash\(^{412}\) to Sifrei Devarim, though this time in the name of R. Yishmael, and connected once again to Molekh.

Midrash Tannaim Devarim 18:9:

"One who passes his offspring over to Molekh": R. Yishmael says: This is the one who passes over his son or his daughter to idolatry.

The Palestinian Talmud in Megillah 4:10 \(75c\) also records this statement in the name of R. Yishmael. The first portion of this midrash is likely a clarification by yMegillah; note its use of Aramaic and a possible link to Targum Pseudo-Jonathan, to be discussed below:

You shall not give of your seed to pass over to the Molekh: You shall not give of your seed to impregnate an Aramean woman. Rabbi Yishmael taught: This is one who marries an Aramean woman and raises children from her. He raises enemies of the Lord.

Targum Yonatan to Leviticus 18:21 also understands the Molekh ritual as a sexual act between a Jewish man and a Gentile woman, though it is the only Targum to do so\(^{413}\):

And you shall not give from your seed through intercourse with a daughter of the nations to become pregnant for foreign worship.\(^{414}\)

Of those midrashim that connect the Molekh ritual with sexual activity, Targum Yonatan's interpretation of the Molekh ritual is the most limited, since it seems to specify

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412. Sifra *Qodashim Parashah* 10: 15 Weiss p. 91 c, suggests that karet based on Molekh is applicable to all idolatry.
413. Though Targum Neofiti is explicit in calling the ritual foreign worship (פלחנה נכראה), the Targum Neofiti is explicit in calling the ritual foreign worship (פלחנה נכראה).
414. The *lamed*, however, suggests 'to ensnare' or 'catch' from נצר. If so, the term suggests a deliberate effort to conceive and raise children for such purposes on the part of the man. The term for pregnancy here is also the same root that the other targums use to describe passing through the fire (רברא).
both pregnancy and the dedication of the child to some kind of idolatrous service. This takes the Molekh ritual out of the realm of mere sexual activity, since it specifies that offspring and religious worship are its characteristics. The Hebrew Bible does not understand this ritual to involve any sexual aspects whatsoever, while the midrash adds sexual and idolatrous elements. Both Sifrei Devarim and Midrash Tannaim understand the Molekh ritual as one where an Israelite (or Jewish) man has sexual relations with a Gentile woman. In Midrash Tannaim, this position is attributed to R. Yishmael. R. Yehudah's statement is more ambiguous, describing the transgression as passing over one's children over to idolatry, an act that may or may not have any relation to sexual acts with Gentile women. From these perspectives, the "seed" becomes both semen and offspring; the semen is passed over to the Gentile woman, while the offspring are dedicated to idolatry. It is perhaps of interest that these positions (named or otherwise) do not appear in our sections in Sifra.

The interpretive tradition that understands the Molekh ritual as an act of sexual relations, specifically impregnating a Gentile woman (possibly for the purposes of idol worship) is deliberately opposed in mMegillah 4:9. Following this position, this tradition should be met with censorship.

mMegillah 4:9:

האמר "ומערע לא יתוי, להעביך למולך" (ויקרא יח,כא), מה דרש לא

415. See Chapter 5 for discussion of whether or not this refers to private or public sexual relations.
416. Note that similar midrashim appear elsewhere wholly unconnected with Molekh as will be discussed in Chapter 5. For example, ySanhedrin 9:7 27b:

רביע אראמי:(?: הוהי רביעי מעשה: полно שעון נשה גוהי mollות: בני מעמיד אובים ממון

One who has sexual relations with an Aramean woman: R. Yishmael taught, this is one who marries a Gentile woman and has children [with her], he raises enemies of God from her.

417. Targum Onqelos and Rashi do not relate to this interpretation. See however, Targum Pseudo-Jonathan below.
The one who says: "And you shall not give of your seed to pass over to Molekh," (Leviticus 18:21) [means] you shall not give of your seed to impregnate an Aramean woman, he is silenced with rebuke.

Looking at Sifra's treatment of the Molekh ritual, I first observed that Sifra does not link the Molekh ritual to intermarriage or sexual relations between Jews and Gentiles, unlike Sifrei Devarim and Midrash Tannaim. When it comes to Molekh, Sifra is primarily concerned with working out the legal details of the Levitical prohibition, rather than with making connections to outside issues, such as intermarriage. Sifra Qedoshim Parashah 10 (Weiss, p.71) presents exegesis on Leviticus 20:2, but at no times links the ritual or its prohibition to intermarriage or sexual relations between Jews and Gentiles. Sifra's exegesis is therefore not particularly relevant for our purposes here, aside perhaps from the following ambiguous ruling:

Sifra Qedoshim Parashah 10:3:

אשר ית מזרעו למולך: לא ית מזרעו מיך כר.

Who shall give of his seed to the Molekh (Leviticus 20:2): Not that that he gives of his seed like this and that [unclear].

This midrash is pointing at something that it means to distinguish from the Biblical verse, something that it prefers to refer to in very ambiguous terms. This might be a reference to seed (as in semen). This meaning works with how Sifra understands the "seed" of Leviticus 20:2. For Sifra, this is an actual child, such that "seed" is understood to mean descendent. Indeed, the Rabad, in his commentary on this section, writes,

וכך שממעתי בפירושו: כלומר שלח הרוחיו לע שבחת ורש שם יוננו למולך,

אלאעלaroo שהוא בנים וננות, ומקר=urlך כניה היה.
And so I have heard in its interpretation: It is as if to say that he is not warned regarding his semen, that he should not give it to the Molekh, rather regarding his seed, which is sons and daughters, and "mikakh kakh" ["like this and that"] is a euphemism.\textsuperscript{418}

If we can accept the Rabad's interpretation, which follows well in the context, this midrash further emphasizes Sifra's position on the Molekh, namely that it does not refer to semen, nor to sexual acts, or sexual relations of any kind. I have argued elsewhere\textsuperscript{419} that this suggests that there was a tradition that did not relate Molekh to intermarriage or sexual relations between Jews and Gentiles. While this still holds true, within the context of Sifra, its significance is somewhat altered. If this section is in fact Sifra proper as Strack and Stemberger claim, Sifra (proper) has already linked the \textit{arayot} to intermarriage through the use of Ezra 9:14-15, as here as well as through its other methods. For Sifra, then, the \textit{arayot} are already generally linked to intermarriage. A specific \textit{arayah} is not required in order to link the two, and Sifra is therefore free to interpret the Molekh prohibition as a form of child sacrifice (or of passing the child through the flame) as best suits its understanding of those particular verses.

The Palestinian Talmud, like Sifra, generally does not link the Molekh ritual to sexual relations with Gentiles (aside from the remarkable exception above), or otherwise. It is concerned with working out the internal \textit{halakhic} mechanics of the prohibition and its punishment (see ySanhedrin 7:10, 39a). The Babylonian Talmud's treatment of Molekh (bSanhedrin 64a-b) seems likewise less than relevant to our topic. There is no connection made between the Molekh ritual and sexual relations between Jews and Gentiles. Like Sifra

\textsuperscript{418} Others, however, suggest that it is heresy, so Neusner in his translation brings the Gaon of Vilna and translates: "Not that he give his children to heresy [so GRA]" (Neusner, \textit{Sifra: an Analytical Translation}, Atlanta, Ga. : Scholars Press, 1988, p. 131).

\textsuperscript{419} See my discussion of this issue in Chapter 5.
and the Palestinian Talmud, the Babylonian Talmud is primarily concerned with working out the mechanics of the ritual and its punishment, as it perceived the ritual. A number of perceptions of the ritual are brought forth, all of them involving children and fire in some form.420

This *sugya* is interesting for the way in which it deals with the question of whether or not the Molekh ritual is idolatrous. The *sugya* overwhelmingly assumes it to be idolatrous, though it cites statements that clearly see it as a forbidden ritual that is not idolatrous. Here, this conclusion is related to the question of why Molekh is specifically prohibited when idolatry is already generally prohibited. One explanation it that the Molekh ritual is not idolatrous. This explanation may also stem from the original ritual itself not having been idolatrous. The Babylonian Talmud appears to be working off this statement recorded in *ySanhedrin* 39a, which on its own suggests that one would be obligated for the two transgressions (Molekh and idolatry) separately, and seems to suggest that Molekh and idolatry are two separate violations.

*ySanhedrin 39a*:

רבי עמר הוא רבי שמעון מחייב את עמד המלך ואחת שאר.Seekah אברוח

Rabbi Lazar b. of Rabbi Shimon makes one liable [separately], one for Molekh and one for the rest of idolatry.

*bSanhedrin 64a*:

كاتני ע"מ ז킨ים ממלך. אמר רב כלנפי תמנ חמא דאמר ממלך לא"ו ממלך

It is taught [in the Mishna] idolatry, and it is taught Molekh. Rabi Avin said, we teach like the one who said Molekh is not idolatry, as it is taught, he is

420. Note the influence of verses outside Leviticus, such as Deuteronomy, on the understanding of the Molekh ritual. Leviticus itself does not mention fire.
liable, either for Molekh or for the rest of idolatry. R. Eleazar b. R. Shimon says, to Molekh, he is liable, if not to Molekh, he is not liable.

These sources indicate that there was a dispute regarding whether passing one's child over to Molekh was idolatrous or whether it was a separate violation that was not idolatrous in nature.

What can we say about the relationship between the arayot and intermarriage? We may conclude that, generally speaking, the rabbinic traditions did not understand intermarriage to be included amongst the arayot. The arayot were not used as a system for engaging with the issue of intermarriage, rather they were considered to be relevant to intramarital issues, be they consanguineous or otherwise. Problems related to ethnicity, nationality or religion and sexual relations or marriage were not dealt with under the scope of the arayot. Exceptions to this include Sifra's exegesis on the arayot which is grounded in precisely such concerns and takes an isolationist stance. There, biblical verses dealing with intermarriage (or having been interpreted as such) are used in such a way as to give the impression that Leviticus 18 and 20 are actually warning the reader about marriage between Jews and Gentiles. This sleight of hand deftly integrates concern around intermarriage into the reader's understanding of the arayot. The single law amongst the arayot that is sometimes interpreted to be a prohibition against sexual relations between Jews and Gentiles is the Molekh ritual. These traditions link sexual relations between Jewish men and Gentile women, in particular those producing offspring, to the prohibition against the Molekh ritual. The gendered nature of this interpretation fits neatly with the status of the children of such unions following mQiddushin 3:12. However, most sources do not include this tradition, making no connection between the Molekh ritual and intermarriage at all, while the Mishna openly silences it. Even when the Molekh ritual is so interpreted, it does
not usually lead to a general integration of intermarriage into the *arayot*. While rabbinic traditions are not homogeneous on this account, it may be argued that, in general, the *arayot* as a system are not used to deal with intermarriage, and that intermarriage, in turn, is not deemed to be one of the *arayot*. 
Chapter 5

Legal Rules on Marriage and Sexual Relations between Jews and Gentiles

The legal systems and principles we have thus far encountered are not the sole rabbinic methods for dealing with the issue of intermarriage. With respect to the topic of sexual relations between "Jews" and Gentiles, in particular, we find a number of legal rules that are relatively free standing and independent of other rabbinic and biblical systems. These traditions must also be addressed in order for a full picture of the rabbinic engagement with the issue of intermarriage to emerge. Though the rules dealt with in this section address sexual relations between "Jews" and Gentiles, they also often deal with intermarriage as well. We have seen how intermarriage, though impossible under the system of qiddushin is often referred to using the same language as valid qiddushin. In this sense, one must understand intermarriage to be something of a fiction in the rabbinic construct (since qiddushin is invalid in such a case) so that every discussion of intermarriage is in essence a discussion of sexual relations. On the other hand, even though qiddushin is impossible, rabbinic tradition clearly imagines a concept of a marriage-like union between "Jews" and Gentiles, such that even these rules which often deal explicitly with sexual relations also frequently deal with marriage.

Rabbinic approaches to sexual relations per se between Jews and non-Jews were

421 Though, see Maimonides in his Hilkhot Issurei Bi'ah 12:9-10, where he distinguishes between long-term established relationships between a Jew and a Gentile (i.e. a marriage, were qiddushin not impossible) and a short term sexual liaison, which he understands as an instance of sexual relations. Maimonides' scriptural support comes in the form of Numbers 31:16-18, where after the war against the Midianites, Moses rages against those who spared the lives of all the women. They were to have killed all the women who had had sexual relations.
varied and diverse, with respect to attitude and construction, not unlike the broader systems dealing with intermarriage. In addition there are different interpretations of many of these traditional rules, rendering the field even more complex. These individual *halakhot* or *gezeirot* (decrees) are often difficult to reconcile with the existing systems and basic principles that deal with intermarriage, causing some dissonance both for the rabbis and for the contemporary reader. Some of these laws appear to be based, at least in part, on biblical sources, though in general their origins are quite obscure. Indeed, the question of the origins and meaning of these various traditions are of great significance to the rabbis.

This analysis will begin with the, thus far rather unexpected, mishnaic rule of the *boel aramit* (mSanhedrin 9:6). This section is, in part, focused on the development of an understanding of the rule of the *boel aramit* and its place within rabbinic traditions. In this process, rabbinic positions on sexual relations (and marriage) between Jews and Gentiles will be examined, and become a complex and challenging subject in their own right. We shall begin with a consideration of the rule of the *boel aramit*, examining the interpretative traditions connected to it, starting with the simplest midrashim and continuing with sources that deal with the narrative of Numbers 25, and turning finally to the problem of the post-biblical decrees against marriage and sexual relations with Gentiles.

**The Boel Aramit:**

mSanhedrin 9:6

ט. כוהן ששים באשמהו--איני איש התכתוב המביא את חיה בלבית, אלא פרתי קなる עד כאן--קנאין פוגעין בהן.

כוהן שעשה מעשה--איני איש הכתוב המביא את חיות חיות, אלא פרתי קנהה מצעין את חותי ערב, ומצעין את חותי טבר.
One who steals the *qasavah*, curses by divination, or has intercourse with an Aramean woman, zealots attack them. A priest who served while impure, his brothers, the priests, do not bring him to a court, rather youth of the priesthood take him outside the court and take out his brain with clubs. A stranger [i.e. a non-priest] who served in the Temple, Rabbi Akiva says: [execution] by strangulation, and the sages say: at the hands of heaven.

There are three types of acts that are subject to *qanain pogin bo/bahem* or attack/murder by zealots, the one of interest to us being the *boel aramit* or one who has intercourse with an Aramean woman. This type of sexual intercourse, usually interpreted as sexual intercourse in public, is deemed appropriate for attack by zealots, a kind vigilante justice. Following the reading of the mishna, this punishment is meted out upon the man (the *boel aramit*). The fate of the woman is not mentioned.\(^\text{422}\)

In no other system dealing with marriage, sexual relations and reproduction between

\(^{422}\) Silence regarding her fate may be a consequence of generalized androcentrism, or it may signal that the Aramean woman herself, as a Gentile, is of no consequence to the rabbinic legal system. It is, therefore, the punishment of the "Jewish" man that is of key interest to our mishna, as the Aramean woman's situation falls beyond the scope of the *halakah*. See however, Maimonides in *Hilkhot Issurei Biah* 12:9-10 who adds an apparently new law (the traditional commentators struggle with the apparent novelty, see Magid Mishneh, Yad HaMelekh, Osher LaMelekh to *Issurei Biah* 12:10) calling for the killing of a Gentile woman who has had sexual relations with a Jewish man:

12:9 - A Gentile man who has sexual relations with a daughter of *yisrael*, if she is a married woman, he is killed on her account (i.e. on account of adultery). If she is single, he is not killed.

12:10 - But, a *yisrael* who has sexual relations with the Gentile woman (or: female), whether she is a minor of three years and a day, or has reached the age of majority, whether single or a man's wife, and even if he was a minor of nine years and a day, since he had sexual relations with a Gentile woman deliberately, behold, she is killed, like an animal, because a stumbling block came to Israel through her.

Maimonides offers Numbers 31:16-17 (where God refers to Numbers 25 and orders the killing of any Moabite women of Shittim who have had sexual relations with a man) as a scriptural support. The ruling is reminiscent of Leviticus 20:15-16 which calls for a female animal with whom a human male has had sexual relations to be stoned to death (see bSanhedrin 54a).
Jew and Gentile have we seen the expression *boel aramit* nor have we found any ruling that calls for violent punishment of the participant(s). Indeed, this mishna raises more questions than it answers: who is the *boel aramit*? Is this an act related to Numbers 25? If so, why does the mishna phrase the rule with reference to an Aramean woman, when Numbers 25 is clearly a story about a Midianite woman? What exactly is the act of "*boel aramit*"? Is it any kind of sexual relations, marriage or public sexual relations? Are we to understand that Pinchas' killing of Zimri and Kozbi lead to the creation of a general rule, or is this a rabbinic law that developed relatively independent of scriptural sources? Why are sexual relations suddenly worthy of punishment by vigilante attack? Is this ruling specific only to sexual relations with an Aramean woman, or should we understand that all intermarital (or otherwise) sexual relations should be punished by an attack by zealots?

The source that so often helps us understand and contextualize the Mishna, is here silent on the topic. Tosefta never mentions the *boel aramit* or even the punishment of *qanaim pogim bo*. Why Tosefta does not deal with this topic remains an open question. I would tentatively suggest that this ruling is so peripheral, and so out of line with the bulk or rabbinic systems and rulings on intermarriage/sexual relations that it may have thus escaped its notice or, perhaps even more likely, its exclusion may have been deliberate. We must thus turn to the *halakhic midrashim* and the Talmuds. The *halakhic midrashim* and Talmuds

423. It is worth noting that we do find the use of the word jealous ones, or zealots, in both this mishna and Numbers 25:11. These terms which describe an intense feeling of zeal or jealousy which is felt by both God and Pinchas, and apparently also the zealots (or jealous ones) of the Mishna. See also Hengel on zeal, p. 146, p.149.

424. The specificity of the Aramean identity is not related to in the sources. In rabbinic tradition this particular punishment is usually understood to apply to sexual relations with a Gentile woman in public. This term may be used as representative of Gentile, however, it may also indicate a process of transition from particularized national identities to a generalized Gentile other. This is in accordance with the view that Zimri and Kozbi were engaged in sexual relations either in full view of the whole congregation, or in view of (and/or with) Zimri's kinsmen. This limitation of the rule to a public act, however, is not always clear in the sources.
offer various explanations of what the *boel aramit* refers to, creating different scriptural connections in the process.

**The Boel Aramit and its Interpretive Traditions:**

The central questions here are, how was the rule of *boel aramit* understood by the sages? How did they define it? What kind of history of origins do the sages attribute to these understandings of the rule of *boel aramit*? We shall begin with the simple midrashim. The two traditions that we shall discuss first are that the *boel aramit* is a *yisrael* man who has sexual relations *and* children by a Gentile woman, and that the *boel aramit* is a *yisrael* who has sexual relations with a Gentile woman. The first of these interpretations suggests a long-term marriage-like relationship with offspring. A third alternate approach links the Molekh laws to a prohibition of idolatrous practice rather than to sexual relations and reproduction with Gentile women.425

Sifrei Devarim Piska 171 states:426

דְּבֵרָא אַחְרֵי: מַעֲבִּר בְּנוֹ וּבְתָתוֹ בַאֲשָׁה, זֶה הַבְּכוּל אָרְמִית שְׁמַעְמִית מִמָּה אַוּב
לַמְּכוֹם... רְבֵי יְהוּדָה אָמְרִים: זוֹ שִׁמוֹר מַעֲבִּר בְּנוֹ וּבְתָתוֹ לֶעֱבָרָה וּרְהוֹ.

Another interpretation: one who passes his son or his daughter into the fire, this is the one who has intercourse with the Aramean woman, who raises an enemy of the Lord from her. ... R. Yehudah says this is the one who passes over [i.e. gives over] his son and daughter to idolatry.

Midrash Tannaim brings us a similar midrash to Sifrei Devarim, though this time in the name of R. Yishmael, and connected here to Molekh.

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425. For a detailed analysis of the midrashim related to Molekh and their connection to intermarriage and sexual relations between Jews and Gentiles see Chapter 4 on the *Arayot*.

426. The following two sources have been dealt with in Chapter 4 because of their link with the *arayot*, but I bring them here as well for their relevance to this question.
Midrash Tannaim Devarim 18:9

One who passes his offspring over to Molekh: R. Yishmael says: This is the one who has intercourse with an Aramean woman, who raises up from her an enemy of the Lord... R. Yehudah says: This is the one who passes over his son or his daughter to idolatry.

There were clearly two competing traditions regarding the boel aramit and its connection to the laws related to Molekh. The first understood the boel aramit as one who had given his offspring to Molekh, meaning that he had offspring by a Gentile woman, a midrash explicitly opposed by mMegillah 4:9427, while the other denied any connection between the laws of Molekh and the boel aramit, understanding giving one's child to Molekh as a literal donation of the child to idolatrous purposes.

ySanhedrin 27b links the treatment of boel aramit to Numbers 25, which shall be discussed in detail below, but also includes a version of the midrash that defines the boel aramit as one who has children with a Gentile woman.

ySanhedrin 16:11 27b:

"One who has intercourse with an Aramean woman": R. Yishmael teaches: This is one who marries a Gentile woman and has children; he raises enemies of the Lord from her. It is written: "And Pinchas the son of Eleazar the son of Aaron the priest saw." (Numbers 25:7) What did he see? He saw the act and remembered the halakah: "One who has intercourse with an Aramean"428

427. For discussion of this issue see Chapter 4 on the arayot.

428. Note that all sources seem to assume that the Aramean woman represents all Gentile
woman, the zealots attack them." It is taught that this is not according to the will of the sages. But [could it be] that Pinchas did not act according to the will of the sages!? Rabbi Yudah bar Pazi said: They [would have] sought his excommunication, were it not for that the holy spirit leapt upon him and said: "And it will be for him and his descendants after him a covenant of eternal priesthood." (Numbers 25: 13) descendants after him a covenant of eternal priesthood.

The treatment of the *boel aramit* in ySanhedrin 16:11 27b combines the approach of Sifrei Devarim and Midrash Tannaim (i.e. that he is one who marries and has children by a Gentile woman) with another approach that relies upon a connection to Numbers 25. The Palestinian Talmud first brings a statement in the name of R. Yishmael, similar to those we have already seen, that the *boel aramit* is one who has children by a Gentile woman, who is considered to be raising enemies of the Lord.429 Unlike both other sources we have seen, the Palestinian Talmud attaches this midrash to a verse from Numbers 25, and so to Pinchas' killing of Zimri and Kozbi. This is a somewhat difficult connection thematically, given that Zimri and Kozbi were killed during the act and so presumably did not have any children at all. Whether or not they were married is not at all clear from the text. Indeed, this verse is not connected to R. Yishmael's statement, so much as it is to the following anonymous midrash related to Numbers 25 that will be discussed in detail below.

Rather than presenting a single *halakhic* tradition, we shall see that the Palestinian Talmud seems more interested in working through a wide range of positions on the issue. For the moment we can certainly conclude that this source reveals a multiplicity of rabbinic opinions on the *halakhah* of the *boel aramit*. Some appear to have held that the *boel aramit* refers to a man who had children by a Gentile woman, while others seem to have defined it as one who engaged in an act like Zimri (presumably public sexual relations with a Gentile woman). Of the latter position, as well shall see, the attitudes towards Pinchas' killing of women.

429. Note the gender bias in these sources. The representation of the Gentile woman as a threat, connecting the husband or children to idol worship is a recurring theme.
Zimri and Kozbi appear to have ranged from open approval to clear disapproval.

Now turning to the Babylonian Talmud, we find that it includes midrashim that link the boel aramit to scripture, traditions that attribute it to Numbers 25 and still others that link it to the Hasmonaean decrees (the latter two traditions will be discussed below). In the simple midrashim in bSanhedrin 82a we find the expression הבא על הכותית (ba al hakutit/nokhrit), one who has intercourse with a Samaritan (or Gentile) woman. Its scriptural connection is to Malakhi 2:11-12 regarding the bat-el nekhar, which shares the same root as the term nokhrit.

The midrash notes with brevity:

"וַגֵל בַּת–אָל נֶכֶר, זו הָבֵא על הָכֹותית"

"And had intercourse with the daughter of a foreign God," this is the one who has intercourse with the Samaritan woman.

A more elaborate midrash is then brought in the name of R. Chiyya bar Avuyah that offers a gloss on this scriptural connection:

אמר רב חייה בַּר אֲבֻיָה: כָּל הָבֵא על הָגוֹרִי הָלָא מַחְתַּת בּוּרָדוּת רוּחַ.


Rabbi Chiyya bar Avuyah said: Any who has intercourse with the Gentile woman, it is as if he marries idolatry, as it is written: And had intercourse with the daughter of a foreign god." (Malakhi 2:11) And does a foreign god have a daughter? Rather, this is the one who has intercourse with the Gentile woman.

This midrash explains that we are to understand Malakhi 2:11 not as a reference to a daughter of a foreign God, but as an allusion to the ba al hakutit/nokhrit. Neither of these midrashim, however, succeeds in creating a scriptural basis for the boel aramit/ba al hakutit/nokhrit. Note here, that the ba al hakutit/nokhrit appears to be a reference generally to sexual intercourse with a Gentile woman, without any reference to Numbers 25 or the specific circumstances of public sexual relations.

We thus find a range of interpretations of the boel aramit and the ba al hanokhrit,
both of which appear to refer to sexual relations with Gentile women, including reproduction with a Gentile woman and sexual relations with a Gentile woman. A tradition also exists that refuses any link between the boel aramit and the laws against Molekh worship. Scriptural connections within these simple midrashim include Molekh (Leviticus 20:1-5) and Malakhi (2:11). The most complex and notable Scriptural connection, however, is with Numbers 25.430

Sources that link the boel aramit to Numbers 25 and Zimri's sexual relations with Kozbi and their subsequent killing by Pinchas include Rashi's commentary to Numbers 25:6 and 25:7 as well as bSanhedrin 81b, bAvodah Zarah 36b and ySanhedrin 16:11 27b. Numbers 25:7-8 reads, "And Pinchas, son of Eleazar, son of Aaron the priest, saw, and he rose from within the community and he took a spear in his hand. He came after the Israelite

430. A version of the work on interpretive traditions related Numbers 25 will appear as an article entitled "It was not according to the will of the Sages' (Palestinian Talmud Sanhedrin 27b): Halakhic and Aggadic Responses to Pinhas' Killing of Zimri and Kozbi in Numbers 25" in Vixens Vanquishing Vineyards: The Embarrassment and Reembrace of Scriptures – A Festschrift Honoring Harry Fox LeVeit Yoreh, forthcoming from Academic Studies Press, pp. 176-199. Of the scholarly literature on the topic, the most interesting and relevant to this study includes: Christine Hayes' article: "Palestinian Rabbinic Attitudes to Intermarriage in Historical and Cultural Context", in Jewish Culture and Society under the Christian Roman Empire, Richard Lee Kalmin, Seth Schwartz, eds., Leuven: Peeters Publishers, 2003, where she includes analysis of the passage in the Palestinian Talmud dealing with Pinchas' killing of Zimri and Kozbi, p.36-38. Also useful is Martin Hengel's The Zealots: investigations into the Jewish freedom movement in the period from Herod I until 70 A.D., translated by David Smith, Edinburgh : T. & T. Clark, c1989, originally published in the German: German: Die Zeloten: Untersuchungen zur Juedischen Freiheitsbewegung in der Zeit von Herodes I bis 70n. Chr. First ed. 1961, second edition 1976, where he deals with many traditions related to Pinchas and the Zealots. See also Hagith Zlotnick Sivan, "The rape of Cozbi (Numbers XXV)," Vetus Testamentum, 51,1 (2001) 69-80, and the recent publication by Paul Steinberg, "Phinehas: hero or vigilante?" Jewish Bible Quarterly, 35,2 (2007) 119-126. His article presents a general discussion of Numbers 25, the function of God's punishments in the chapter and in general, as well as Pinchas' role in the context of divine punishment.
man, to the tent, and he pierced the two of them, the Israelite man and the woman in her belly." The story tells of Pinchas' apparently spontaneous killing of the Israelite man and the Midianite woman, who are understood to have been engaged in sexual relations.

Pinchas' act is met with a wide range of reactions on the part of the sages. I shall argue that analysis of these rabbinic texts dealing with Pinchas, Zimri and Kozbi reveals conflicting opinions about Pinchas' act and the legal and narrative traditions that came to be related to it. These reactions range from open rejection, to ambivalence, to justification and glorification of the killing. I shall argue that even as they respond in a variety of ways, the sources betray a general rabbinic discomfort around Pinchas' killing and its literary and legal legacy. Rabbinic reception of the canonical textual traditions is ultimately uncomfortable and embarrassed, resulting in a rich literary tradition replete with layers of intertextual interpretations.431

Rabbinic tradition is engaging with a series of sources including biblical narrative, early rabbinic laws from the tannaitic era, and a variety of halakhic and aggadic midrashic interpretive traditions. The central narrative begins one fine day in the Israelite camp, as the second half of Numbers 25 relates the following tale:432


432. Note that the first section of Numbers 25 speaks of the Israelites and Moabites at Shittim, while the second relates to an encounter between an Israelite man and a Midianite woman. It would appear that the structure of the chapter is not cohesive. This has lead to a conflation of the two events (the Moabites and the Midianite Kozbi) even within Numbers 25, but has also allowed for the incident involving Kozbi to be dealt with relatively independently in some rabbinic sources. An example of a thorough commentary is Baruch A. Levine, *Numbers 21-36: A New Translation with Introduction and Commentary*, The Anchor Bible, New York: Doubleday, 2000, 279-303.
Numbers 25:6-15:

25:6 And behold, a man of the Israelites came and brought the Midianite woman to his brothers, before the eyes of Moses and the eyes of the whole community of the Israelites. And they were crying at the opening of the tent of meeting. 7 And Pinchas, son of Eleazar, son of Aaron the priest, saw, and he rose from within the community and took a spear in his hand. 8 He came after the Israelite man, to the tent, and he pierced the two of them, the Israelite man and the woman in her belly. 9 And the plague was kept from the Israelites. 10 And the dead in the plague were 24,000. 11 God spoke to Moses saying: 11 Pinchas, son of Eleazar, son of Aaron, the priest turned back my wrath from the Israelites in his being jealous with my jealousy among them. And so I did not destroy the Israelites in my jealousy. 12 Therefore, say: I

433. Pinchas is also represented in English as Phinehas or Phineas.

434. Note the similarity between רְקְבָּה קַבָּתָה and רְקָבָה קַבָּתָה. The first may be understood as "her belly", though the reading "her tent" is not impossible. Levine, in his translation, prefers "at her qubbah-tent" (p.281), whereas Koehler Baumgartner understand it as "stomach," while noting that it is a possible dittography. My translation follows the rabbinic interpretation of this term as referring either to Kozbi (and/or Zimri's) innards, womb or genitalia. See for example on Numbers 25:8, Targum Onkelos "לְפַת" and Targum Neofiti "לְפַת" or the variant "לְפַת הָאֲבָת". S.C. Reif, in his article, "What Enraged Phinehas?: A Study of Numbers 25:8," Journal of Biblical Literature, Vol. 90, No. 2. (June, 1971), pp. 200-206, suggests that the original meaning of the term was "her shrine," and the translations that understand innards or womb are midrashic in origin. Milgrom in his commentary (The JPS Torah Commentary: Numbers. Philadelphia: Jewish Publication Society, 1990) suggests that this term refers to a marriage canopy (p.215, n.5).

hereby give him my covenant, of peace. 13 And it will be for him and his descendants after him an eternal priestly covenant, because he was jealous for his God and he atoned for the Israelites. 14 And the name of the Israelite man who was killed, the one who was killed with the Midianite woman was Zimri son of Salu, a chief of a father's house of the Shimonites. 15 And the name of the woman who was killed, the Midianite woman, was Kozbi daughter of Tsur, who was a head of nations of a father's house in Midian.

This narrative in Numbers 25 lends itself well to midrashic explication in that it is powerful, complex and begs many questions. What are Zimri and Kozbi doing? Why does Pinchas kill them and on what authority? Where is Moses, and why are the people crying? Generally speaking, rabbinic tradition understands that Pinchas killed Zimri and Kozbi precisely because they were engaged in public sexual relations. Moses is perceived as relatively passive or forgetful in comparison with Pinchas' quick, decisive, independent and violent action. The text also poses a number of problems when contextualized within biblical law and narrative and later rabbinic developments. In particular, the vigilante killing of a couple because they are engaged in sexual relations has no obvious basis in biblical law, nor in normative rabbinic law, nor in narratives outside of this context. Important questions are raised regarding the role of divine inspiration, divine law, and individual authority in relationship with the rabbinic legal system, rabbinic courts and legal


437. Hengel states that Zimri and Kozbi were engaged in adulterous relations (see p. 147). I would argue that there is no basis whatsoever for this conclusion. Such an interpretation attempts to explain the violence of the attack through referral to adultery (a capital crime) rather than attempting to explore the case as it is. I argue in my dissertation that the agadic (narrative) interpretations dealing with intermarriage often use this same approach: associating intermarriages with adultery in order to conflate the two.

438. Where the judicial process itself is critiqued it is perceived as overly deliberative, delayed, hesitant and uncertain, just as Moses is.
precedent. Problems of lineage and identity also figure prominently, as the sources struggle with the complicated legacy of a variety of conflicting descent patterns and methods for determining identity and the boundaries for permissible relationships. The sources in question here all engage with these problems and their ramifications, simultaneously revealing and attempting to resolve the rabbinic discomfort and embarrassment resulting from this narrative tradition.

Based on a perusal of some rabbinic texts, such as the Mishna and sections of both Talmuds, one might assume that rabbinic law simply made use of this story as a basis or justification for a particular legal rule, namely mSanhedrin 9:6 and the law of the boel aramit\(^\text{439}\) or the one who has intercourse with an Aramean woman. One might assume that inclusion of permission to act as a zealot (or qana) and kill an Israelite man who is having sexual relations with an Aramean woman in the Mishna represents a categorical acceptance and integration of Numbers 25 and the law of the boel aramit in rabbinic tradition. For example, Rashi's commentary on Numbers 25:7 explicitly links the law of the boel aramit to the verse in question, without referring to any of the ambiguity that accompanies this midrash within its context in the Babylonian and Palestinian Talmuds.

Rashi to Numbers 25:7 reads:

\begin{quote}
(ה) וַיַּרְא פִּינְחָס - רָאָה מִעַשֶּׁהָ נוֹכֵר הָלָכָה, אֶמֶר לְלַמְשָׁה מַכָּוֵלִי מֵמִי
הַבָּעָל אָרְמִית קֵנַיָּא פּוֹנֵעַ בּ, אֶמֶר לְכָּרִיָּא דַּאֲנָגָּה אַיָּה לְלוַהי
פָּרֹונָקָא, מִדָּי יִקְח רַמְמָא בָּדָי גָּוִל.
\end{quote}

"And Pinchas saw": He saw the act and remembered [the] halakhah. He [Pinchas] said to him, to Moses, I have received from you [the following law]: The one who has intercourse with an Aramean woman, zealots attack

\begin{footnotes}
439. Hayes writes that the zealots of mSanhedrin 9:6, who kill the one who has relations with an Aramean woman, are modelled after Pinchas' act in Numbers 25 (see p.36).
\end{footnotes}
him. He [Moses] said to him, The reader of the letter, let him be the messenger. Immediately, "He took the spear in his hand etc." (Numbers 25:7).

Closer study, however, suggests that there is evidence in the literature of a wide range of responses to this story, reflecting the multiplicity inherent in the developing rabbinic tradition, as well as the contradictions and gaps between Numbers 25 and certain rabbinic legal rules. There is evidence for the existence of conflicting opinions regarding Pinchas' act and the legal and narrative traditions that came to be related to it. Many of the halakhic and aggadic sources also reveal attempts to explore and resolve rabbinic discomfort with the killing, either by ruling against such acts, or by creating narratives that engage with problematic aspects of the killing. As Hengel notes rather delicately, "those in rabbinic circles who were concerned with the interpretation of Numbers 25 were confronted with certain difficulties" (p. 168). Beginning with mSanhedrin 9:6 and the law of the boel aramit, and turning to sections from the Babylonian and the Palestinian Talmuds respectively, we will tease out these various reactions to this story about Pinchas, Zimri and Kozbi.441

The relevant section of mSanhedrin 9:6, discussed above, reads as follows:

440. Hayes describes what she calls a rabbinic "anxiety" as a result of the Bible containing "no more" than a partial prohibition of intermarriage. Rabbinic attempts to root related laws in ancient layers, along with a desire to "castigate" those involved thus stem from this anxiety (see p. 36). I have noted that this pattern continues into the period of the Rishonim.

441. Important parallels include: Targum Pseudo-Jonathan to Numbers 25, which includes a lengthy addition, Bamidbar Rabbah, Parashat Balaq, Pisqa 24-25 and Sifrei Bamidbar (Numbers) Parashat Balaq, Pisqa 131. These versions of the midrashim may be loosely grouped together, while the Palestinian Talmud, as we shall see, includes one particularly important unique tradition.

- 266 -
...And one who has intercourse with an Aramean woman: zealots attack him.

This mishna presents, in its typical style, a clear legal ruling: anyone who has intercourse with an Aramean woman is subject to an unusual kind of vigilante justice: being killed by zealots. A zealot or qana has the right to kill a man engaged in such an act.\footnote{442. It may be argued that the zealot has the right or option to do so, but is not commanded to do so, such that this is not considered to be a positive commandment (see bSanhedrin 82a, Maimonides' \textit{Mishneh Torah Issurei Biah} 12:4, and \textit{Entsyqlopedia Talmudit}, p. 15). The consequences of this distinction are important for laws of the rodef.} I would suggest that the law regarding one who has intercourse with an Aramean woman was strongly influenced by Numbers 25. Numbers 25 is certainly used in the rabbinic literature in order to justify the existence of the law of the \textit{boel aramit}, as I shall discuss below. In this way, an embarrassing law is rendered acceptable because of its supposed biblical source. The question of the actual origin of this mishna is, however, a more complicated matter. There is evidence that this rule existed in early rabbinic law in connection with Numbers 25, as we shall see in both Talmudim. We have also found, however, sources that link the law of the \textit{boel aramit} to other biblical laws, rather than linking it to the tale of Pinchas, such as the laws against Molekh worship, and the \textit{bat el-nekhar}, while still others prefer to attribute bans against sexual relations with Gentile women to post-biblical decrees. In short, there is no consensus as to the origin and development of the law of the \textit{boel aramit}, or regarding its relationship to Numbers 25.

Following mSanhedrin 9:6, one could easily conclude that early rabbinic tradition stood solidly behind Pinchas and carried on this legal tradition related to him as a normative
halakhic rule. As we turn to the Babylonian and Palestinian Talmuds, however, we find that this rule existed in a context characterized by multiplicity and diversity, wherein the rabbis sometimes seem supportive, often ambivalent and occasionally opposed to Pinchas’ killing of Zimri and Kozbi and to the Mishna’s law permitting vigilante killings. Hengel sees mSanhedrin as an ancient tradition that was rejected in the Tannaitic period, an conclusion too general by far. 443

Through an analysis of the Talmudic engagement with both mSanhedrin 9:6 and Numbers 25, a complex set of reactions is revealed. Beginning with the Babylonian Talmud, we find the following midrash. This midrash is agadic in terms of genre but deals with a number of complex and important legal issues in a sophisticated manner.

bSanhedrin 82a

443. Hengel argues that rabbinic rejection of this tradition was rooted in the actual negative outcomes of what he calls “Zeal for Law” during the first century CE in terms of political and social instability (p.177). It is important to note that the zeal of the qana is not so much a zeal for law, as it is an act driven by intense spontaneous emotion driven by moral compulsion and divine inspiration. Though the zealot is constructed outside of Numbers 25 as one who is adhering to a law, I would suggest that the zealot in fact eschews the legal context, rules and procedures. The zealot acts on the basis of a direct connection to the divine without regard for the law or its institutions.

444. This terminology is variable due to censorship issues, and all terms refer generally to a category of Gentile women. Other versions have: haboel nokhrit.
"Moses said to the judges of Israel...[let each man kill his men who are tied to Baal Peor]" (Numbers 25:5). The tribe of Shimon went to Zimri ben Salu. They said to him: They are sitting in judgment over capital cases, and you sit and are silent!? He [Zimri] stood and he gathered twenty four thousand of Israel\(^{445}\) and went to Kozbi. He said to her: Obey me! She said to him: I am a king's daughter and so has my father commanded me: do not obey any but the greatest among them. He said to her [that] he was also a tribal chief, and not only that but he was greater than him [Moses], for he is second from the belly [i.e. the womb] and he [Moses] is third from the belly. He caught her by her braid and brought her to Moses.\(^{446}\) He said to him: Son of Amram! Is she\(^{447}\) [Kozbi] forbidden or permitted? And if you say forbidden, who permitted you to the daughter of Jethro?\(^{448}\)

He [Moses] forgot the halakhah [and] they all burst into tears, as it is written: "And they were crying at the opening of the tent of meeting." (Numbers 25:6) And it is written: "And Pinchas ben Eleazar saw" (Numbers 25:7). What did he see? Rav said: He saw the act, and remembered the halakhah. He said to him [Pinchas said to Moses]: My father's father's brother, did you not teach me thus upon your descent from Mount Sinai: One who has intercourse with the Gentile woman, zealots attack him! He said to him [Moses said to Pinchas]: The reader of the letter [i.e. Pinchas], let him be the messenger.\(^{449}\)

These midrashim brought by the Babylonian Talmud serve a number of purposes. From a narrative perspective, they provide a back story connecting the story of Baal Peor (Numbers 25:1-6) and that of Zimri and Kozbi that follows, as well as filling in the

\(^{445}\) 24,000 being the number killed in the plague. In this way, the midrash explains (and justifies) the large number of Israelites killed because of Zimri and Kozbi's actions. This demonstrates some discomfort on their part with the scale of the casualties, perhaps in relation to the severity of the crime.

\(^{446}\) Note that this midrash implies a non-consentual act. Even after he attempts to convince her, he grabs her. Sivan discusses the aspect of sexual violation in more detail, with reference to the case of Dinah. My preliminary research into the aggadic material on intermarriage indicates that sexual violation is not an uncommon theme in cases of highly exogamous relations.

\(^{447}\) Literally, "this one."

\(^{448}\) Jethro was a Midianite priest.

\(^{449}\) Here, Moses indirectly tells Pinchas that he should act in accordance with the Mishnaic law of the boel aramit. According to rabbinic tradition, a vigilante may not be instructed to kill and must act spontaneously of his own accord. Therefore, Moses could not be the one to direct Pinchas in his zeal.
personality and motivations of Zimri, explaining the reason for the community's tears as well as Moses' inaction and Pinchas' lethal zeal. These are not merely narrative flourishes, however, as they represent a process of legal interpretation. The midrash explicitly links the narrative of Numbers 25 to the rule of mSanhedrin 9:6 and more generally to the issue of intermarriage, all the while rewriting the narrative such that Pinchas is acting in accordance with rabbinic law. The midrash constructs a comparison between Zimri and Pinchas' ancestral and political status, as well as between the various characters' connections to intermarriage. Underlying this competition is a legal dialogue regarding the rules and narrative traditions regulating intermarriage and for determining the identity of the children of such marriages. This reaches its climax as Zimri dares to challenge Moses himself, asking the seminal question: "Is she forbidden or permitted?" The midrash puts a crucial question in Zimri's mouth: Is a Midianite woman, not specifically prohibited anywhere in the Hebrew Bible, permitted in marriage (or in sexual relations)? And if she is not, how can it be that Moses himself has married Tsipporah, also a Midianite woman?

A variety of techniques are used in these midrashim in order to deal with the problem of the legal status of marriage and sexual relations between an Israelite man and a Midianite woman. The apparent contradiction between Moses' marriage and Zimri's

450. Compare to Numbers 12 where Moses is challenged for his marriage to a Cushite woman. In that case, rabbinic tradition categorically refuses to understand Miriam's critique as an opposition to Moses' intermarriage and erases the issue of intermarriage from the narrative.


452. While halakhic tradition usually understands the boel aramit to refer only to sexual relations of a non-marital type in public, this midrash clearly relates it to the issue of intermarriage.

453. Note the merging of the nationally specific identities of Midianite and Aramean in some rabbinic sources. There appears to be a trend away from the particularized identities of the Hebrew Bible, towards an undifferentiated other in the rabbinic sources. Though it should be noted, as I have argued elsewhere, that many rabbinic sources maintain such identity categories.
connection with Kozbi in addition to the lack of a clear biblical ruling on intermarriage in general or Midianites specifically, create a confusing legal situation. The midrash raises these problems of its own accord and seeks to resolve the discomfort and embarrassment that they cause through the interpretive process. Using the device of "nitalmah mimenu halakhah", or "[Moses] forgot the halakhah", the midrash attempts to construct this legal tradition as authentic, authoritative and decisive. This legal phrase suggests that Moses forgot the halakhah or more literally, that the halakhah disappeared from him. The suggestion is that Moses' apparent inaction in the narrative as it is presented in Numbers 25 as well as in the midrash brought in the Babylonian Talmud, does not indicate that this legal rule (that called for Pinchas to kill Zimri and Kozbi) did not exist at that time, or that there were any problems or contradictions between it and its legal and narrative context, or that it was not part of the revelation. To the contrary, it was explicitly given as part of revelation. The rationale for Moses' inaction is that he has forgotten the rule. Pinchas therefore reminds Moses of the rule of the boel aramit, and Pinchas is then empowered to act as one of the zealots or qanaim mentioned in the mishna (with careful adherence to the rules that zealots are subject to in rabbinic tradition, namely that they cannot be instructed to kill, rather they must act of their own spontaneous feeling).

The midrash thus positions the rule of mSanhedrin 9:6 as a halakhah that was known from the time of revelation at Sinai. The aggadah (narrative)grounds a halakhah (law) in the most authoritative level, despite the fact that there is no record of this rule per se in the Hebrew Bible. Each is thus used to justify the other in a circular argument: Pinchas'

454. Technically, Pinchas does not need to consult with anyone, nor should he, in order to act as a qana in this situation. This interpretive element, however, is important because it confirms the divine origin of the law, as well as explaining why Moses did not act.

455. Hengel argues that the title Zealot was probably derived directly from that of "Phinehas the Zealot" (Hengel p.174).
vigilante killing is supported by the mishna's law, and the mishna's law is, in turn, supported by his killing - seen as evidence of the rule's early origins in divine revelation. In this revised narrative, Moses is supposed to have told Pinchas regarding the rule of the boel aramit: qanaim pogim bo (the one who has intercourse with an Aramean woman: zealots attack him) on the occasion of his descent from Mount Sinai. Moses, having forgotten the halakhah, and having been subsequently reminded of it by Pinchas, alludes to the fact that Pinchas may take the role of the zealots or qanaim with respect to Zimri. Pinchas, of the priestly line, thus becomes a repository, not only for halakhic action, but halakhic knowledge, authority and memory. This is a process that Michael Satlow describes as "law in the service of the creation of a collective memory, a formation of one Israel through the perception of continuous communal adherence to laws that stretch back to the primal myths." The primary function of this approach is to shore up both the biblical narrative and the rabbinic law, revealing the rabbinic discomfort with both Pinchas' act and mSanhedrin 9:6. Pinchas' act and the rule of the boel aramit both need to be supported and justified precisely because, from a rabbinic perspective, each is problematic, lacking in legal authority and potentially unjustifiable.

The midrash is not merely concerned with the formalities of justifying the biblical

456. This section follows the halakhic positions on how qanaim pogim bo functions. This part of the midrash may be an attempt to accommodate the rabbinic rule that one may not instruct a person to act as a 'qana.' Indeed, the act of Pinchas in Numbers 25 seems to have been such a spontaneous vigilante reaction. In contrast, the midrash suggests that some discussion and suggestion occurred prior to the act.

457. Note that this midrash, found elsewhere anonymously, is here attributed to Rav. Shmuel, in a midrash brought next in the sugya, holds that Pinchas did not consult with Moses before killing Zimri and Kozbi (Sanhedrin 82a) because it was a case of hilul hashem, or "desecration of God", requiring immediate action without discussion, even though Moses was his "rav." The understanding of public sexual relations with a Gentile woman as hilul hashem could ultimately be the main problem with Zimri's act (from a rabbinic perspective). Understanding Zimri and Kozbi's act as chitul hashem neatly avoids the general issue of intermarriage by viewing the act as a far more severe violation.

458. Satlow, Jewish Marriage in Antiquity, p.76.
story and the Mishnaic rule. It expresses a deeper anxiety regarding intermarriage in general. This appears to be a general question about sexual relations/marriage with a Midianite woman (rather than a more specific concern about sexual relations with Gentile women in public). This interpretation is further supported by Zimri's subsequent question, which addresses Moses' own intermarriage. The midrash thus responds to the contradiction between a biblical record that appears to permit (or at least does not explicitly prohibit) marriage between Midianites and Israelites, and a rabbinic rule that calls for the killing of an Israeliite who has intercourse with an Aramean woman. As well, it addresses the internal biblical inconsistency between Moses' apparently accepted marriage to the Midianite Tsipporah and the rejection of Zimri's actions with the Midianite Kozbi. Pinchas, however, only kills Zimri and spares Moses, which suggests that qanaim pogim bo (zealots attack him) applies only to Zimri and not to Moses, even though Moses himself is married to a Midianite. The midrash does not supply a clear reason for this, be it the distinction between public and private, between marital and non-marital sexual relations or otherwise. In the final analysis, aside from rendering Pinchas' actions acceptable, this

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459. The Midianites are not explicitly forbidden in marriage in the Hebrew Bible. Hayes, "Interrmarriage and Impurity in Ancient Jewish Sources," The Harvard Theological Review 92:1, 1999, p. 6, offers a concise presentation of prohibition and permission of intermarriage in the Hebrew Bible.

460. See, however, Numbers 12, which may be understood as an rejection of Moses' intermarriage, though it is not received as such in rabbinic tradition.

461. This is not to suggest, of course, that the relationship between Zimri and Kozbi was necessarily the same as that between Moses and Tsipporah, or that the threat posed by Zimri's and Kozbi's actions was an element also found in Moses' union. I would speculate that it may be that Zimri's action involved some political link to the Midianites that had some military or social significance, while Moses' marriage to Tsipporah had no such connection.

462. Note that Ginzberg, for example, explains the problem of why the rule of the boel aramit does not apply to Moses by claiming that Moses married Tsipporah prior to revelation, and so is exempt from the rule (Legends of the Jews p.781, n.791). While there are midrashic traditions that have Moses divorce Tsipporah or stop having sexual relations with her after revelation, in my view it is not at all clear that those midrashim do so out of
midrash does not explicitly answer Zimri's question or resolve any of the problems related to it. Rather, the questions are left hanging as the sugya moves into the next midrash, which constructs a legal framework for Pinchas' actions.

With this next midrash, bSanhedrin 82b continues with additional traditions that betray an ambivalence towards Pinchas' act. As in the case of the previous midrash, this source points to a discomfort that lies deeper than the problems of legal contradictions, to a more fundamental embarrassment with Pinchas' action in the narrative. There are clear elements of praise, combined with more obvious attempts to deal with distaste or disapproval in the face of Pinchas' sudden violent vigilanteism. The sugya relates some of the details of Pinchas' killing of Zimri and Kozbi through a series of statements attributed to Rabbi Yochanan that list the miracles enacted for Pinchas in that moment (bSanhedrin 82b). These include that Zimri could have separated from Kozbi, but did not. Other miracles include that Zimri could have spoken out in a call for help and did not, that Pinchas attacked Zimri and Kozbi in their genitals, their bodies did not fall off the spear, an angel came and lifted the lintel (over the door) so that Pinchas could pass (with them still on the spear) and that an angel came and destroyed the people.

These are all miracles that allowed Pinchas to kill Zimri and Kozbi in accordance with rabbinic halakhah, and in such a way as to justify his act to all. On the one hand, these miracles clearly suggest that God was working in support of Pinchas' actions, always facilitating the killing. On the other hand, this facilitation seems to have been deemed

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concern regarding intermarriage. Rather, emphasizing Moses' ascetic approach to sexuality seems to be the main purpose. This approach is part of a general valuation of sexual control in the aggadic midrashim. My argument is supported by the fact that our midrash does not answer Zimri's question in this way (i.e. it does not say that it is permitted for Moses because his marriage was before revelation).

463. According to rabbinic law, Pinchas must have warned Zimri before killing him, this despite the sugya's discussion of the miracles, which clearly describes Pinchas' deceptions in his effort to approach and kill Zimri by surprise. Had Zimri separated from Kozbi, according to halakhah, Pinchas could not have killed him, and Zimri could have killed Pinchas in his own defense (bSanhedrin 82a).
crucial, suggesting that Pinchas' act might otherwise have been construed as unjustifiable in the eyes of rabbinic tradition and in the eyes of the community at the time. The miracles render Pinchas' act acceptable in a number of ways, including by making it obvious to any onlooker that Zimri and Kozbi had in fact been having intercourse, and by ensuring that Pinchas followed rabbinic rules (both obvious and obscure) for such a killing. While these midrashim work to support Pinchas' action, it is significant that they feel that his action requires support. Had these miracles not occurred, had God not intervened in these ways, Pinchas' action would have been viewed as highly problematic. The reader is led to consider how many things could have gone terribly wrong for Pinchas had he been bereft of divine assistance. Even as they glorify Pinchas, these miracles emphasize the idea that he could never have succeeded in his act (for mundane reasons as much as for legal ones), or indeed should never have, without direct heavenly intervention.

These rabbinic rules and the set of miracles may also serve to restrict the actions of the vigilante, as Christine Hayes has suggested. She argues that this midrash "places a strong burden on would-be zealots." These conditions would, practically speaking, make it very difficult for a zealot to bring about his punishment without miraculous assistance (though presumably a true zealot would believe that such miraculous assistance would come just as it did for Pinchas). Hayes argues this is part of the rabbinic tradition's deflation of Pinchas, in contrast to his treatment in Jubilees and Second Temple sources, where she finds a valorization of his act combined with an encouragement of similar actions. Hayes argues (with reference to interpretive traditions related to Lev. 18:21) that the rabbinic tradition felt a "general discomfort with zealots and the severity of punishment called for in

464. Hayes p. 37. She offers a tantalizing parallel in Roman law, see p. 38 n. 54, citing Susan Tregiari in Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian, Oxford: Clarendon Press 1991, p. 282, wherein a father was permitted, upon discovery of his daughter engaged in adulterous relations in his house, to kill both the adulterer and his daughter under the condition that he killed them both with the same blow.

the text - execution by an extra-legal agency." 466

One might take this argument a step further by breaking down this discomfort into its constituent elements. First is the severity of the application of capital punishment. Rabbinic traditions are generally uncomfortable with the notion that intermarriage and sexual relations between Jews and non-Jews be punishable by death, and do not tend to understand intermarriage per se or sexual relations between Jew and Gentile to fall under the rubric of the levitical arayot. 467 Hengel argues more generally that the Pharisees were hesitant to impose the death penalty (though this is based on Josephus, see Antiquities 13:294) and argues, following mMakkot 1:10 468 and Finkelstein's "The Pharisees" 469 that this trend only increased through the second century CE. 470 He argues further that mSahnedrin 9:6 became "difficult to justify" because it was "no longer in accordance with the later principles of the law." 471 In terms of broader principles (as opposed to the more specific limitations placed on vigilante killings) I would argue instead that mSahnedrin 9:6 was never in accordance with general halakhic principles or even with the legal rules and systems relating to intermarriage (or sexual relations between Jews and Gentiles) and

466. Hayes p.40 n.58.

467. Notable exceptions are Sifra Acharei Mot Pereq 13:3-23 (Weiss p. 86b-d) and some of the traditions related to the worship of the Molekh. Note that Sifra does not relate to Numbers 25 and the traditions related to Molekh are very diverse in their textual connections, with only some of them referring to Numbers 25.

468. The latter part of the mishna clearly indicates a reluctance to enact the death penalty, on the part of R. Eliezer b. Azariah, R. Tarfon and R. Akiva, while Rabban Shimon ben Gamliel argues for the deterrent value of executions. See Beth Berkowitz, however, who argues that the rabbis utilized discourse on the death penalty to construct themselves as authoritative, "Execution and Invention: Death Penalty Discourse in Early Rabbinic and Christian Cultures," Oxford: Oxford University Press, 2006.


continues to exist as a rather irregular rule throughout the development of rabbinic tradition.

The vigilante nature of the killing is yet another source of discomfort. Hengel argues that the rabbinic legal system is struggling with the canonization of vigilante capital punishment. It is hardly surprising that such an elaborately conceived legal system(s) would be uncomfortable with giving the legal stamp of approval to an extra-legal act. Hengel argues along these lines, writing that Pharisaic law attempted to limit the option of vigilante killing to cases where the persons were caught in the act. This is part of a divide that Hengel sees between the Pharisaic courts and the zealots' notions of "due process". In terms of the development of rabbinic tradition, I would suggest that ideological and practical problems are caused by the integration of vigilante justice into the mishnaic and later traditions, a type of justice which circumvents rabbinic legal context, reasoning and procedure. For the vigilante, zealot or qana, divine inspiration overrides legal procedures, which, as Hengel points out, were often under foreign control. While such legal courts were limited in their jurisdiction and independence, they may have also been perceived as relatively lenient or unable to implement punishment. The application of a rabbinic legal framework to the zealot laws removes much of their spontaneity, and mediates the zealot's

472. Paul Steinberg, in his article, "Phinehas: hero or vigilante?" Jewish Bible Quarterly, 35.2 (2007) 119-126, states briefly that, "The most common reaction to Phinehas' act is discomfort. That is, despite the fact that God is content and the sin expiated, Phinehas acted as a vigilante. Not surprisingly, the rabbis of the Talmud distinctly express such a discomfort" (p.126). He notes as evidence of this discomfort ySanhedrin 27b, and bSanhedrin 82a. Regarding the latter, however, he writes that "82a states that although God's law finds what Phinehas did acceptable, the rabbis do not follow that law" (p. 126 n.10). In my view, the sugya does include a number of halakhic checks and balances on vigilante killings, and demonstrates a discomfort with such killings, but it does not actually reject such killings or the law of the boel aramit.


474. Hengel argues that after the exile, "law came between the individual and God as the norm of man's relationship to God." Hengel p.154.

direct connection to the divine through rabbinic *halakhah*.  

Another midrash included in this *suga* raises the problem of the ambiguity of the rules on intermarriage. Rather than praising Pinchas' action, as the many miracles would have us expect, the community here ridicules Pinchas as a hypocrite, while God must come to his defence. Where Zimri challenged Moses in the earlier midrash above, here the people challenge Pinchas. The *suga* thus compares Moses, Pinchas and Zimri with respect to their connections to intermarriage.

bSanhedrin 82b

The tribes began to mock him: Have you seen this son of Puti, whose mother's father fattened calves for idol worship, and he has killed a leader of a tribe of Israel?! Scripture came and related him [i.e. in lineage]: Pinchas the son of Eleazar the son of Aaron the *kohen* (Numbers 25:11). The Holy One Blessed be He said to Moses: Greet him with peace, as it is said: So He said: I hereby give him my covenant of peace (Numbers 25:12). And this atonement is fit to keep atoning and continues forever.

This exegesis brings up yet another instance of intermarriage involving prominent Israelites. Here, Pinchas' mother is thought to have been a daughter of Putiel (Exodus 6:25). Following Exodus we have no information as to Putiel's origins, but some sources

476. It should be noted that the rabbinic laws also serve to protect the independence of the zealot from outside instruction or interference, perhaps indicating an ambivalent response to the problem of divine inspiration that nullifies the authority of the rabbinic court and contradicts rabbinic normative law.

477. Or: sneer at him, spurn him, despise him.

478. Note it is Scripture and not the divine *per se* that is the actor here.
understand him and Jethro to be one and the same.\textsuperscript{479} A question worthy of further inquiry is why the sages construct this genealogy for Pinchas. If it is simply because they do not know who Putiel is, why choose this mixed heritage? I would suggest that the \textit{agaddah} on intermarriage actively engages with legal problems, and may here be deliberately creating a challenge between the traditions of patrilineal and matrilineal descent in cases of intermarriage. Though there is no specific basis for this in the text, the midrash clearly understands that Pinchas himself descended from an intermarriage with a Midianite (note that Jethro was a Midianite). (I tentatively suggest that there may be a link between this midrash and the principle of \textit{kol haposel pasul}, or "all who declare others unfit are themselves unfit."\textsuperscript{480} Hengel writes that the problem was his "insignificant origin," stemming from his mother's lineage, a daughter of "an idolatrous priest who converted."\textsuperscript{481} I would suggest that Hengel's analysis overlooks the main force behind the midrash and the legal complexities that it raises. My ongoing research on intermarriage in the \textit{aggadic} material suggests that this type of construction of conversion stems from a discomfort or embarrassment with intermarriage in the received textual tradition in narrative sources.

In light of Pinchas' own Midianite heritage, his killing of a leader of an Israelite tribe (himself presumably not of mixed heritage) on account of his having relations with a Midianite woman seems hypocritical indeed. Moreover, according to \textit{mQiddushin} 3:12, which rules that the offspring of a union between an Israelite man and a Gentile woman takes the Gentile status of its mother, Pinchas would be deemed a Midianite. Through the rule of matrilineal descent, Pinchas would take on the status of his mother. Rabbinic

\begin{enumerate}
\item According to Exodus 6:25, Eleazar, son of Aaron and father of Pinchas, married a daughter of Putiel. This verse provides no information about Putiel, but Exodus Rabbah 27:7 (also Targum pseudo-Jonathan to Exodus 6:25 and bSotah 44a) identifies Putiel with Jethro, a Midianite.
\item bQiddushin 70a.
\item Hengel, \textit{Zealots}, p. 156-157 n. 66.
\end{enumerate}
tradition generally superimposes rabbinic conversion over biblical intermarriages, such that the Gentile woman becomes a female convert. If we look at the narrative through this lens, Pinchas is the offspring of a female convert and an Israelite man. Following the law of the pegum or "blemished" (wherein descent follows the blemished parent) in mQiddushin 3:12, he would probably take the status of the blemished parent, in this case his convert mother.

Perhaps in response to this legal problem, God himself relates his ancestry according to the male line, going back to Aaron. In this manner, the midrash interprets the biblical text in such a way as to dismiss the challenge of matrilineal descent to the patrilineal transmission of priestly and tribal identity, reaffirming the core pattern of transmitting identity from father to son. The recitation of Pinchas' patrilineal lineage avoids the status of any female ancestors, rendering matrilineal connections irrelevant, ultimately asserting the integrity of the male line and of patrilineal descent in cases of intermarriage with Gentile women. This position flies in the face of the rule of matriliny in intermarriage, as articulated in mQiddushin 3:12.

Turning now to the Palestinian Talmud, we find that its engagement with the narrative of Numbers 25 and with the law of the boel aramit is far more limited than that of the Babylonian Talmud. The Palestinian Talmud, while it presents two brief familiar midrashim, is particularly notable for its inclusion of unique material, as well as for the various traditions (the miracles, the challenges to Moses and Pinchas) that are missing.

ySanhedrin 9:7 27b

הבועל ארמית: תני רבי ישמעאל: ذو נשא נשה גוזה ומוליד בניו מעמד

482. The halakhic argument might also be slightly more specific: accepting the offspring of intermarriages where the father is an Israelite, and identifying such offspring according to patrilineal descent, while taking a stand against public sexual relations with Gentile women. A stand against any public sexual relations would be expected.
"One who has intercourse with an Aramean woman": R. Yishmael teaches: This is one who marries a Gentile woman and has children; he raises enemies of the Lord from her. It is written: "And Pinchas the son of Eleazar the son of Aaron the priest saw" (Numbers 25:7). What did he see? He saw the act and remembered the halakhah: "One who has intercourse with an Aramean woman, the zealots attack them." It is taught that this is not according to the will of the sages. But [could it be] that Pinchas did not act according to the will of the sages!? Rabbi Yudah bar Pazi said: They [would have] sought his punishment, were it not for that the holy spirit leapt upon him and said: "And it will be for him and his descendants after him an eternal priesthood..." (Numbers 25: 13).

The treatment of the boel aramit (one who has intercourse with an Aramean woman) in ySanhedrin 27b combines a number of approaches. The sugya first brings a statement in the name of R. Yishmael that the boel aramit is one who has children by a Gentile woman. He is considered to be raising enemies of the God. This midrash is then attached to a verse from Numbers 25, and so to Pinchas' killing of Zimri and Kozbi. This is a somewhat difficult connection thematically, given that Zimri and Kozbi were killed during the act and so presumably did not have any children at all (though sexual intercourse might more generally be linked to reproduction). It may be that the core midrash links the law of the boel aramit to the levitical laws against passing seed over to Molekh, rather than to Numbers 25.

The midrash's use of the term marriage in the case of a union with a Gentile woman

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483. Note that all sources seem to assume that the Aramean woman represents all Gentile women. The importance and relevance of particular national or ethnic identities so prevalent in the Hebrew Bible appears to have waned.

484. Probably referring to a ban, removal or excommunication.
is of interest. Hayes offers an interesting interpretation of R. Ishmael's interpretation of the boel aramit. She argues that the mention of marriage serves to limit the application of the rule to this specific case and "signals a rabbinic aversion to the notion of zealous assaults on those who engage in casual and nonreproductive intercourse" (p.36). The rationale for this, according to Hayes, is that what she calls a "moral-religious danger" presented by intermarriage per se is not present in non-marital/non-procreative relationships. Note, however, that there does not appear to be any evidence that the paradigmatic case of Zimri and Kozbi is understood to involve marriage. Hayes notes, in relation to rabbinic traditions on Lev 18:21 (Molekh) that rabbinic tradition is characterized by a "general discomfort with zealots and the severity of punishment called for in the text - execution by an extra-legal agency" (p.40 n.58). I would emphasize that it may not be (only) the severity of the punishment (in the case of the boel aramit) that disturbed them, but the vigilante nature of the punishment, what Hayes calls an "extra-legal agency". It is hardly surprising that rabbinic tradition would be uncomfortable with extra-legal killings.

Indeed, the verse in Numbers 25 is not connected to R. Yishmael's statement, so much as it is to the following midrash, quite similar to one included in bSanhedrin. Here we find an anonymous midrash to Numbers 25:7 that uses the notion of the memory of perhaps the most authoritative moment of divine revelation in order to construct a history of origins for the boel aramit. The verse merely states that "Pinchas saw," begging the question, what exactly did he see? The midrash explains that he saw the "act" (i.e. Zimri's sexual relations with Kozbi). Upon seeing the act, the midrash explains, Pinchas remembered the halakhah of the boel aramit. This midrash claims that boel aramit was an ancient legal tradition going back to the time of Pinchas, and that upon remembering it, Pinchas decided to take action in accordance with it. Rather than positioning Pinchas as a vigilante acting alone out of a sudden jealous feeling, this midrash paints him as knowledgeable in the legal tradition.
and zealous in upholding it. This revisionist approach neatly (if artificially) connects Mishna and Bible by understanding mSanhedrin 9:6 as the driving force behind Pinchas' action in the biblical story. This particular midrash is unquestioningly approving of Pinchas' act, constructing his spontaneous violent response as normative law. Unlike the similar midrash that appears in bSanhedrin 82a, no attempt is made here to bring Pinchas' act in line with the details of rabbinic law on such matters. In addition, ySanhedrin does not relate to Moses or his supposed forgetfulness, preferring to focus exclusively on Pinchas, suggesting a reluctance to use criticism of Moses in order to solve the legal and narrative conundrum.

The Palestinian Talmud diverges even further from bSanhedrin as it immediately questions the authoritative normativity it has just constructed by quoting an anonymous baraita\(^{485}\) that states that Pinchas' killing of Zimri and Kozbi was in fact against the will of the sages. Here I understand this very short statement to be originating from the Tannaitic tradition, and to be referring to the rabbis. I therefore suggest that we have an early rabbinic statement, or at the very least a statement masquerading as an early rabbinic ruling, recording opposition to Pinchas' act.

Note, however, that Hayes refers to this passage as demonstrating the disapproval of the Amoraim (p.36) and Hengel understands the sages to be "the members of the 'Synhedrium' of the time, including Moses" while in n.126 he calls it a protest of the scribes" (p.169). Though the term tani (i.e. repeat, teach) here does not necessarily indicate a statement of tannaitic origin, this cannot be ruled out, and it would not be unreasonable to understand it as such. Hengel also argues that mSanhedrin 9:6 was rejected in the tannaitic period, presumably a reference to this source in yTalmud. Hengel also calls the Palestinian Talmud's criticism "hidden", which hardly seems to be the case. In my view this statement

\(^{485}\) An extra-mishnaic statement.
clearly refers to a tannaitic, or possibly amoraic rabbinic opposition to Pinchas' act; an open
expression of the discomfort and embarrassment reflected in the broader literature. The
more interesting question is that if Pinchas' act was rejected (as much as possible) by the
Palestinian sages (or at least some segment thereof), we certainly find no suggestion to that
effect in the Mishna, and this tradition is not carried in any other extant source as far as I
have found. It is unfortunate that Tosefta does not offer any readings on this issue. There
may be an argument to be made from its silence.

The Palestinian Talmud has thus positioned, on the one hand, the argument that
Pinchas represented and acted according to the normative authoritative law of the sages,
while on the other it situates the argument that his action was not in accordance with the
position of the sages at all. The problem posed by these two contradictory traditions that it
has juxtaposed is met with a statement of incredulity and doubt, questioning whether it
would even be conceivable for Pinchas to have done something against the will of the sages.
Since God himself approves of Pinchas' act in Numbers 25:11,\textsuperscript{486} one is led to imagine the
sages in disagreement with God, a difficult position to be sure. Are we to understand from
this statement that the sages disagree with Mishna Sanhedrin 9:6? And if the sages do
disagree with Mishna Sanhedrin 9:6, then who supports it? ySanhedrin resolves the
problem arising from these two very different traditions on Pinchas' act by confirming that
the sages did indeed disapprove of Pinchas' act. Furthermore, they would have punished\textsuperscript{487}
Pinchas on account of it, had not God intervened and promised him the priesthood. This
\textit{baraita} is thus accepted as authentic, and the sages are portrayed as having to put up with an
act to which they were fundamentally opposed. Following this tradition, there is something

\textsuperscript{486} Numbers 25:11 "Pinchas son of Eleazar son of Aaron the priest turned back my
wrath from the Israelites in his being jealous with my jealousy among them. And so I did
not destroy the Israelites in my jealousy."

\textsuperscript{487} Probably referring to a ban, removal or excommunication.
in Pinchas' act that flies in the face of (at least one) rabbinic tradition. His killing of Zimri and Kozbi is unacceptable, and opposed by the rabbis. Ultimately, however, this rabbinic tradition that would have seen Pinchas judged and sentenced, is trumped by divine intervention.

Despite the fact that the opposition to Pinchas' act is ultimately deflected, it represents a unique record of a clear opposition. This may reflect a difference between the Palestinian and Babylonian traditions, though it should be noted that such a clear legal statement is not recorded in any other extant source. In her analysis, Hayes remarks that Pinchas "is less clearly a hero for this Palestinian authority - indeed he borders on dangerous." 488 Hengel notes that "a completely positive assessment of Phinehas' action (Sifre Numbers and Numbers Rabbah) can be contrasted with a cautiously negative attitude (ySanhedrin) on the one hand and a conciliatory approach (bSanhedrin) on the other." 489 My analysis of the Palestinian Talmud's approach is generally in agreement with Hengel's position, though in my view, Hengel underestimates the degree of opposition expressed therein. I would argue, however, that the danger that Pinchas poses is acutely felt in both Talmuds, as Hengel seems to suggest. Furthermore, following my analysis, even those sources that Hengel considers to be entirely positive in their approach, are engaging with a level of embarrassment felt throughout rabbinic tradition. 490

488. Hayes, p.38. Note that our texts are not willing to revoke or take any argument with Pinchas' heavenly support. Hengel states that confirmation by God is not found in yTalmud, but I disagree (see Hengel p.159 n.76). The sugya clearly submits to the divine voice in Numbers 25, however reluctantly.

489. Hengel p.176-177.

490. See Numbers Rabbah 20:25 and the end of Sifrei Numbers (Sifrei Badmidbar), Pisqa 131. These sources' approaches are similar to that of the Babylonian Talmud in that they include an extended discussion of the miracles, and an explanation of why Pinchas acted alone. It is notable that neither understands Moses to have been forgetful, rather they refer to (or imply in the case of Sifrei Numbers) a general hesitation regarding the application of the death penalty to Zimri and Kozbi to which Pinchas presents a quick and decisive solution. This support for circumventing legal procedure, coupled with the end of the pisqa
In this analysis, we might further consider how the various sources frame Pinchas' action as well as the law of the *boel aramit*. In bSanhedrin, he reacts to Moses' forgetfulness, while in Numbers Rabbah and Sifrei Numbers, Pinchas acts in the face of deliberation or hesitation on the part of the judicial bodies, and in ySanhedrin he simply sees and acts. The first approach serves to link Pinchas' biblical action to Mishnaic law, emphasizing the importance of rabbinic halakhah. The second method rests upon a mistrust of legal procedure and makes no attempt to source his action in an established legal rule. The last approach in ySanhedrin is perhaps indicative of the absence of any attempt to justify his act. In this vein, Hengel notes that, "Silence was one of the most popular polemical means employed by the rabbis."\(^{491}\)

The contextualization and re-imagining of the killing within a rabbinic legal framework and the emphasis on the divine approval of his act point to a rabbinic sense of powerlessness and to anxiety around the loss of rabbinic authority in this case. Furthermore, I have suggested that while the glorification (or gorification\(^{492}\)) of Pinchas' act and the miracles that fall upon him suggest the construction of Pinchas as a hero, the effort expended on creating a heroic framework for his actions and all manner of divine and legal justifications is an expression of an underlying discomfort with the killing. The other

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in Numbers Rabbah that emphasizes the role of vigilante punishment in warding off divine anger, supports Hengel's contention that the approach of these sources is linked to debates regarding the ideology of the Zealot movement. Both sources, however, include the various miracles enacted for Pinchas, and Sifrei Numbers adds the narrative wherein Pinchas' own heritage is questioned, which clearly transmits the rabbinic discomfort with the situation, even as these sources support extra-legal vigilante action. Another important source is Targum Pseudo-Yonatan which has major additions in Numbers 25:6-8 and 25:13. Pseudo-Yonatan is reminiscent of bSanhedrin 82a, though it has elements of the traditions mentioned above (see 25:7 where Pinchas clearly acts in a context of judicial impotence).


492. This element of graphic gore may be linked to the understanding of acts such as Pinchas' as sacrificial and expiatory in nature. For a discussion of the act of the zealot as sacrifice see Hengel p. 159, 175.
aggadic midrashim brought by the Babylonian Talmud reveal a host of concerns regarding Pinchas' act and the law of the boel aramit. These doubts and anxieties are sometimes left unresolved, and sometimes deflected, a pattern not entirely dissimilar from the Palestinian Talmud. I would suggest that rabbinic tradition is essentially embarrassed by this act, though the Talmuds express this response differently. The textual traditions that they have received are problematic, sources of anxiety and discomfort. They must either accept them by reconfiguring them as best they can, or reject them as best they can. These are two positions that are, therefore, not quite as far apart as they seem. In the final analysis, neither is quite completely successful in its efforts to integrate or repudiate either the law of the boel aramit or Pinchas' killing of Zimri and Kozbi.

We may conclude that a wide range of responses to the story of Pinchas, Zimri and Kozbi in Numbers 25 is preserved in the literature. In some cases we find conflicting positions on Pinchas' act and the legal traditions that came to be related to it. Often the halakhic and aggadic sources reveal attempts to explore and resolve rabbinic problems with the killing, by engaging with contradictions with later rabbinic law and by working through discomfort with various aspects of the biblical story, whether it be its violence or incompatibility with later legal principles. The reactions to Pinchas' killing range from open disgust, to ambivalence, to attempts to justify and explain the killing. Through this process, rabbinic embarrassment and discomfort becomes a catalyst for legal and narrative interpretation.

The Decrees:

The gemara also records traditions that link haba al hakutit to the Hasmonean decrees. These approaches differ radically from all the midrashim that we have discussed
thus far as they do not rely upon scriptural connections. According to these traditions, the prohibition against sexual intercourse with Gentile women originated in Hasmonean decrees rather than from biblical tradition (i.e. not d’oraita).

bSanhedrin 82a:

כַּאֲחַת רֹב דִּמְי אָמֶר: בֵּית דִינָנ של חָסְמֹנָא גוֹר: הָבֶּא עַל הַנְּכֵרִית חֵיָּב עֲלֵיהּ מְשֻׁמֶּשֶׁנָּה. שְׁפָחָה. גוֹיָה. אָשֶׁת אִישׁ. כְּאֲחַת רֹבֶין אָמֶר: מְשֻׁמֶּשֶׁנָּה נְדָה. שְׁפָחָה. גוֹיָה. אָבֶּל מְשֻׁמֶּשֶׁנָּה - לִיפְתֵּל. אָבֶּל מְשֻׁמֶּשֶׁנָּה. מִפָּקָרִי.

When Rav Dimi came he said: the Hasmonean court decreed: one who has intercourse with the Gentile woman is liable on her account because of niddah [the menstruant], shifchah [the slave woman], goyah [the Gentile woman], eshet ish [a married woman]. When Ravin came he said: because of nshg"z: niddah, shifchah, goyah, zonah. But because of ishut [marriage, i.e. being a wife], [this] they do not have. And the other [i.e. Rav Dimi]: Their wives are certainly not made available [i.e. to other men].

Apparently, both Rav Dimi and Ravin returned from Israel with the teaching that the law regarding the ba al hanokhrit originated in the Hasmonean courts. Both traditions agree that the law did not originate in Scripture. They differ, however, on what the basis was for the creation of this decree. Both agree that such intercourse was banned due to a number of factors. Some commentators understand this to mean that he is punished like one who has violated these legal rules, while others (including Rashi) understand it to mean that he is punished because of all of these factors. On the basis of the text I understand it to mean that he is punished because of all of these factors, that is, that these factors serve to explain why he is accountable (suggesting that otherwise he would be presumed unaccountable.)

He is also liable due to the shifchah or the Canaanite slavewoman. This tradition is part of a rabbinic prohibition (linked to Deuteronomy 23:18) on sexual relations with a

493. c. 167-63 BCE.
494. To Babylonia from Israel.
495. Rashi (bSanhedrin 82a d.h. aval ishut ein lahem) comments that this means that Cuthean/Samaritan women are generally available and is not specially assigned to her husband, so that the principle of eshet ish does not apply in the first place.
Why he is liable on account of the amah in this case is not at all clear to me at present, though Rashi notes in his commentary to Deuteronomy 23:28 that the amah and the eved do not have qiddushin, not unlike the Gentile. Rashi also notes that the Gentile woman is like a shifchah when compared to the Israelite man, making a general claim of inferior status. Such a claim, however hardly seems sufficient basis for a ban.

Goyah refers to the Gentile woman. What this indicates specifically is not entirely clear. It may be linked to Deuteronomy 7:3-4, or other verses that are interpreted as prohibitions against relations with Gentile women. Rashi notes that scripture only banned marital relationships, and that this decree came to ban sexual relationships. If, however, goyah alone does in fact refer to such a ban, surely that would have eliminated any need for this decree.

Regarding zonah, Tosafot comment that this applies only if he is a kohen. On the matter of eshet ish, Rashi comments to the effect that if one assumes that Gentiles observe a kind of marriage, even though they cannot enact qiddushin, it is better not to have intercourse with such "married" women since it would lead to Jewish men being accustomed to adultery in general. This despite the fact that there is no actual adultery occurring, since she is not considered married. Note, however, that this would only apply according to the opinion that Gentile women are not reserved for their husbands and are generally sexually available, the rule of eshet ish does not apply. Furthermore, this only includes "married" Gentile women rather than Gentile women as a general category.

As presented in the Bavli, these elements forming the basis for the Hasmonean decree against intercourse with a Gentile woman are less than clear. These mnemonics,

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496. Targum Onqelos' reading of Deuteronomy 23:18 translates qedeshah (temple prostitute) as maidservant (amah).
497. Rashi, bSanhedrin 82a d.h. shifchah.
498. Rashi, bAvodah Zarah 36b d.h. d'oraita.
499. Tosafot, bSanhedrin 82a, d.h. nshg"z.
unfortunately, do not offer anything in the way of explanation. Rashi offers commentary on these cases, and we have suggested our own understanding of them. The situation remains problematic, however, in that the zonah only applies to Kohanim, the eshet ish is debated, and even if it does apply only applies in the case of "married" women.

In general all elements other than the goyah are unrelated to the question of identity itself. Each of these is related rather, to its own core issue, namely maintenance respectively of menstrual and sexual norms of conduct in general, and to the notion of sexual intercourse as an act with legal ramifications (i.e. an act that may acquire a woman in qiddushin). The one category that actually relates to identity and status, goyah, is not explained, though Rashi links it to Deuteronomy. Even so he states that the understanding of the verses in Deutoronomy 7:3-4 applies only to marriage-like relationships (though actual marriage is not possible) and not to sexual relations outside of an intermarital relationship, and that the Hasmonean court ruled to separate from her because of all these (factors). This reveals the insufficient basis of goyah alone, and the importance of all of them working together in order to construct a rationale for the decree. In essence, the Hasmonean decree is supported by ... an Hasmonean decree.

bAvodah Zarah 36a-b presents a more detailed discussion of decrees against sexual relations between Jewish men and Gentile women amongst others. This section likewise uses the langauage of a haba al... rather than the Mishna's boel. The sugya here turns to a discussion of the eighteen decrees of Hillel and Shammai (shmoneh asar davar). Amongst

500. A decree was created regarding the menstrual impurity of a Gentile woman, whose menstrual blood was considered to be like that of an animal in that it did not transmit ritual impurity, see Rashi Avodah Zarah 36b, d.h. nsbg"a. See Hayes, "Palestinian Rabbinic Attitudes" argues that this decree was actually originally a general prohibition of intermarriage, p.21. If she is correct, perhaps there were two different underlying concerns - intermarriage and casual sexual encounters with Gentile women.

501. It is also possible that these aspects are compounded for effect, as a series of violations, and that each and every one need not be completely relevant or be a particularly well considered component.
these is a ban against "their daughters." The *gemara* asks what "their daughters" actually means and brings statements that present different traditions on what the rationale was behind said ban. This *suga* also deals with the meaning and place of *msanhedrin* 9:6 in the context of these decrees.

The first tradition, brought in the name of Avimi in the name of Rav attributes the ban against "their daughters" to the *niddah* or the menstruant. Unlike *bsanhedrin* 82a, this statement elaborates upon the rationale for this ban. This particular ruling seems to be directed at Gentile women in general, without any reference to a particular ethnicity.

*ba*Avodah Zarah 36b:

> [Returning to the statement] itself: Bali said [in the name of] Avimi Nuta'ah in the name of Rav: Their bread and their oil, their wine and their daughters, all are from the eighteen decrees. What is [the ruling regarding] their daughters? Rav Nachman bar Yitschak said: They ruled regarding their daughters [that they are] *niddot* [i.e. menstruants] from their cradles [i.e. from infancy].

Rav Nachman bar Yitschaq's statement is brought as an answer to the *gemara's* query. He states that they decreed that Gentile women are considered to be *niddah* from infancy. According to this reasoning, Gentile women were not intrinsically forbidden, but came to be forbidden only because they were determined to be as if they were menstruants. Following this tradition Gentile women were not biblically forbidden, nor were they inherently forbidden for their having been Gentile women (i.e. on the basis of identity) even

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502. Samaritan women are considered to be menstruants from infancy following *mniddah* 4:1. See also the very beginning of *Sifra Tazria* (Weiss p. 57c), where Gentiles are excluded from the purity laws of Leviticus 15, though the *shifchah* is explicitly included as is the female convert.
according to later tradition. Rather, the ban against them developed subsequent to their having been ruled *niddot*, presumably in order to justify a general prohibition. I would suggest that this tradition on the development of the ban on "their daughters" explains it as a series of legal fictions, constructs created with the intent of reaching a particular goal. Together, they are part of a barrier principle, designed to ensure separation, possibly in order to prevent sexual relations or intermarriage. Unfortunately, following these statements, the actual substance of the ban remains obscure. Is it a ban against sexual relations or marriage, or both? The *gemara* will attempt to clarify these questions, as we shall see later on.

We find that the ban against "their daughters" is based on an entirely different rationale according to the statement next brought in the *sugya*:

bAvodah Zarah 36b:

והנאהمشמעהדרבאמר:כללםמשמעעבדתכוכביםגוורב,דיהאתאהרב
אחתבראדהא"ריצחק:גזורעלפתיםמשמעשמון;מאיאולמייהדשמן
מכтяжאלא,עלפתיםמשמעינו,עגליוםמשعبةוה,על
בנותיהםמשמעדבראחר,עגלדבראחרirmingham ד"א.

And Geniva said in the name of Rav: They decreed regarding all of them because of idolatry, for when Rav Acha bar Ada came [he said in the name of R. Yitschaq]: They decreed regarding their bread because of their oil. What is the strength of oil over bread? [i.e. why should banning oil be more important than banning bread?] Rather, [they decreed] regarding their bread and their oil because of their wine, and regarding their wine on account of their daughters, and regarding their daughters on account of "another matter", and [they decreed] regarding another matter on account of [yet] "another matter".

According to this series of statements we are to understand that "all of them" find their origin in a concern around idolatry. Ultimately, it is determined that the ban on their bread and oil was on account of their wine and the ban on their wine in turn was on account of their daughters. Rashi understands this to mean that drinking their wine might lead to
sexual relations with their daughters.\textsuperscript{503} This presumably reflects a concern around becoming inebriated in Gentile contexts.\textsuperscript{504} The ban on Gentile women itself is attributed euphemistically to "another matter," and that in turn to "another matter" which, according to Rashi is simply not mentioned here. The first "another matter", again following Rashi, refers to idolatry. This use of \textit{davar acher} is not unusual, however, one might wonder why the text would shrink from using the actual term for idolatry when it has just used it one line earlier.\textsuperscript{505} Overall, this tradition represents the decrees as attempts to separate Jews from Gentiles in order to limit contact and hence limit sexual relations with Gentile women, with the apparent aim of preventing idolatry. This reflects a clear isolationist stance.

The \textit{sugya} continues with a consideration of the origins of prohibitions related to marriage and sexual relations with Gentiles. The \textit{sugya} embodies a certain tension between two contradictory assumptions: that the prohibition against sexual relations and marriage with Gentiles is biblical in origin and that prohibition is a post-biblical decree.

\textit{bAvodah Zarah 36b}

"Their daughters." [The decree against their daughters] is biblical, as it is written: "You shall not marry with them"! (Deut. 7:3) The seven nations are biblical, but the rest of the idolaters [i.e. Gentiles] are not, and they came and decreed even regarding the rest of the idolaters [i.e. Gentiles].

The \textit{sugya} at first suggests that the ban on their daughters is in fact biblical, and

\begin{flushleft}
\textsuperscript{503} \textit{bAvodah Zarah 36b, d.h. mishum yenan.}

\textsuperscript{504} This interpretation is supported by the \textit{agadic} sources in which warnings against drunkenness, especially in the company of foreign women, is a common theme.

\textsuperscript{505} They decreed regarding all of them because of idolatry.
\end{flushleft}
based on Deuteronomy 7:3 ("You shall not marry with them"). It then corrects this, stating that the deuteronomic ban on the seven nations in particular is biblical, but that the ban on Gentiles in general is not, since Deuteronomy 7:1-5 refers to a specific list of nations. This explains why there had to be a later decree regarding "their daughters." "Their daughters" is thus understood as a reference to Gentile women in general. In short, while the Bible banned marriage with the seven nations, the decree was later understood to have banned all Gentile women.

bAvodah Zarah 36b:

באבuddleת צרא 36b:

אלה לרבו, מאחרי בך את ייסר לך ברך מאור, ברוח כל המסרות,מאית איכא למשה? אלו אמרים אישה דרכ התותנ, ואתה יכין גוזר איביל דרכ גוזר. גוזר נמי ביבת דיני של שם גוזר, דכתיב: (בראשית לח:כ) אימר יהודה הערוה ותשורק

But for R. Shimon b. Yochai, who said "for he will turn your son from behind me" [i.e. away from me; from following me] (Deuteronomy 7:4) includes all those [women] who cause [you] to turn [away], what is there to say? Rather, relations through marriage is biblically [forbidden], and they came and decreed [that] even sexual relations\(^{506}\) [are forbidden]. They ruled [regarding] sexual relations also [i.e. already] in the court of Shem, as it is written: And Judah said: "Take her out and let her be burned!" (Genesis 38:24)

The sugya now raises a problem with this perspective. Rabbi Shimon ben Yochai interprets Deuteronomy 7:4 to include all Gentile women. Since his exegesis leads to a biblical origin (however midrashic) for the ban on all Gentile women, we require another interpretation of the later decree against their daughters. The gemara argues that Rabbi Shimon ben Yochai held that Scripture only prohibited marital relationships with Gentile women, while the later decree banned non-marital relations (in the way of zenut, possibly

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\(^{506}\) The term in this context likely refers to sexual relations that are not in the context of a monogamous relationship.
promiscuous or with prostitutes). This, however, was apparently not the only instance of a decree against *zenut*, as Genesis 38:24 is interpreted to mean that Judah called for Tamar's punishment by burning on account of *zenut*, thus providing evidence of a kind for an earlier biblical decree along the same lines. These interpretations construct two bans, one against marriage with Gentile women and one against sexual relations with Gentile women.

The *gemara* decides that this interpretation of the story of Judah and Tamar is evidence of a very early ban on sexual relations with Gentiles, and so the later ban on "their daughters" must be understood to mean something else.

bAvodah Zarah 36b:

Rather, the [prohibition against] a Gentile man who has sexual relations with a *bat yisrael* is biblical, for he pulls her after him, but [the rule against] a *yisrael* who has sexual relations with a Gentile woman [is] not [biblical] and they came and ruled even [against] a *yisrael* who has sexual relations with a Gentile woman. [The rule against] a *yisrael* who has sexual relations with a Gentile woman is a law [given to] Moses from Sinai, for Master said: the *boel aramit*: zealots attack him!

The *gemara* thus offers a very different interpretation. It is now proposed that the biblical ban applies only to male Gentiles with Jewish/*yisrael* women, and so the later decree against their daughters includes also the reverse case, that is a prohibition against a

507. It is unclear whether this is understood as a ban on intermarriage with Gentile women only or with Gentiles in general. Regardless, the emphasis on intermarriage with Gentile women is quite obvious.

508. This concern regarding male Gentiles leading daughters of *yisrael* into idolatry (or perhaps leading them away to the patrilocal residence) stands in sharp contrast with the more common concern that female Gentiles may seduce *yisrael* men into idolatrous practices.
male Israel with a Gentile woman. The gemara immediately protests, noting that the case of an yisrael having relations with a Gentile woman is a halakhah leMoshe miSinai (a law [given] to Moses from Sinai) and brings an anonymous statement identical to mSanhedrin 9:6: The one who has intercourse with an Aramean woman: Zealots attack him.

For the moment, the sugya now understands mSanhedrin 9:6 as a prohibition against relations between a male yisrael and a Gentile woman that finds its origins in the law revealed at Sinai to Moses. We are thus, once again, left with no suitable meaning for the decree against "their daughters." The sugya thus continues its circuitous search for a suitable interpretation.

bAvodah Zarah 36b: Rather, public [sexual relations] in public is biblically [prohibited], and [this is] like the incident that occurred [i.e. Zimri and Kozbi in Numbers 25] and they came and ruled even [regarding sexual relations] in private. The beit din of the Hasmoneans also [i.e. already] ruled [regarding sexual relations] in private. For when Rav Dimi came he said: The beit din of the Hasmoneans ruled [that] a yisrael who had sexual relations with a Gentile woman is liable on account of NSG"A [i.e. the mensruant, the female slave, the Gentile woman, adultery]. When Ravin came he said: On account of NSG"Z [i.e. the menstruant, the female slave, the Gentile woman and "promiscuity"]). When the beit din of the Hasmoneans ruled [they ruled against] sexual

509. Whether or not the sugya now means both marriage and sexual relations/zenut is not entirely clear. Likewise, the gendered nature of these questions becomes somewhat foggy. This may be a result of the gemara's attempt to link relatively unrelated rulings from different contexts.

510. Note that glosses change amar leh to ela and the brackets are not my addition, rather they are found within the talmudic text.

511. The two sets of abbreviations stand for niddah, shifchah, goyah and eshet ish and niddah, shifchah, goyah and zonah, respectively.
relations, but not [regarding] seclusion, and they came and ruled even [against] seclusion [with a Gentile woman].

It is now proposed that public sexual relations with Gentiles (both men and women?) is biblically prohibited, just as it happened in the story of Zimri and Kozbi's (public) sexual relations. This interpretation thus links Zimri and Kozbi of Numbers 25 to the boel aramit of mSanhedrin 9:6, and defines that law as referring to sexual relations in public only. The gemara then suggests that the ban on their daughters might have come to ban sexual relations in private as well. For this ban too, however, another source is found, namely the Hasmonean decree against a male Israel and a Gentile woman. Therefore, it is proposed that we might understand that the Hasmonean decree banned intercourse with a Gentile woman, while the later ban against "their daughters" prohibited even seclusion with Gentile women. This interpretation, however, will also prove problematic.

bAvodah Zarah 36b:

The beit din of David also ruled against seclusion [with a Gentile woman] as Rav Yehudah said: At that time they ruled against seclusion! They said: There [it is a case of] seclusion with a bat yisrael, but [regarding] seclusion of a Gentile woman, [they did] not [decree]. And they [the students of Shammai and Hillel] came and decreed regarding seclusion with a Gentile woman. Seclusion of a bat yisrael is biblical! As R. Yochanan said in the name of R. Shimon b. Yehotsadaq: Whence do we have an allusion to seclusion from the Torah? As it is said: "If your brother, the son of your mother should entice you [i.e. to idolatrous worship]" (Deuteronomy 13:7).

512. At the time of the rape of Tamar by her half-brother Amnon.
And does a son of a mother entice, [and] a son of a father not entice? [i.e. what is the significance of the specific language?] Rather, a son may be secluded with his mother, but no other may seclude himself with any of the arayot that are in the Torah! Biblical seclusion is regarding adultery [i.e. seclusion with a married woman], and David came and decreed even regarding seclusion with an unmarried woman, and the students of the house of Shamai and the students of the house of Hillel ruled even regarding seclusion with a Gentile woman.

The gemara suggests, on the basis of a statement in the name of Rav Yehudah that seclusion with Gentiles had already been prohibited by David's court. An anonymous statement is then brought that suggests that this ruling by David's court was in fact a ruling against seclusion with a yisrael woman, which would allow us to understand the later ruling against their daughters as a ban against seclusion with Gentile women. This interpretation is also set aside, as the gemara brings a statement by R. Yochanan in the name of R. Shimon ben Yehotsadaq to the effect that the ban on seclusion (presumably with a yisrael woman) is biblical in origin (based on a midrash). It is then suggested that we understand the biblical verse as a ban on seclusion with a married woman, while David's court ruled against seclusion with a single woman, and the schools of Hillel and Shamai ruled against seclusion with a Gentile woman. This conclusion is interesting in that it sets up a hierarchy of prohibitions. All prohibitions against intermarriage are deemed to be biblical in origin. The distinction between marital and regular sexual relations is not clearly maintained, though marital prohibitions are sourced in Deuteronomy, and public sexual relations in the story of Pinchas and Zimri, itself related to mSanhedrin 9:6. Seclusion with a married Jewish woman is also deemed to be a biblical prohibition, and the later post-biblical prohibitions dealt with seclusion with single Jewish women and Gentile women. 

513. It is ultimately unclear to me how we are to interpret the ruling of the Hasmonean
In this way a number of statements that offer very different constructions of the origins of the ban on sexual relations and marriage with Gentiles are incorporated into an argumentative direction that subsumes them into its final conclusion. Thus, the statements brought early on in the sugya, for example, that a general prohibition of intermarriage can be traced back to a biblical decree, is lost in the gemara's homogenizing motion towards a particular goal. I would suggest that the gemara's goal is, in part, to locate prohibitions against marriage and sexual relations with Gentiles in the biblical layer. The sugya also gives the distinct impression that, faced with a multiplicity of divergent views and statements, that are generally overly vague and disconnected from each other, it tries to tie them all into its own framework (foreign to the statements themselves), which ultimately has an artificially unifying and orderly influence on an otherwise messy and challenging body of work.514

We have shown that the rabbis are challenging, accepting, rejecting and modifying rules and stories, as they struggle with their inheritance and build their legacy. The origins and meaning of the rule of the various rules regarding sexual relations between "Jews" and Gentiles are traced and understood in a number of different ways in the literature. We certainly do find links between Numbers 25 and the Mishnaic rule of the boel aramit in our sources. It is worth noting however, that not all sources link the Mishnaic rule to Numbers 25, as some traditions connect it to the laws against Molekh worship or to the bat el-nekhar. This suggests that there were traditions that traced the rule of the boel aramit to the story of court - it seems to be understood as a ban on sexual relations in private, while public sexual relations are of biblical origin (and linked to mSanhedrin 9:6), and seclusion (yichud) was banned by the students of Shammai and Hillel. See Rashi bAvodah Zarah 36b d.h. d'oraita. 514. Hayes likewise notes that the editors of this passage created and manufactured crucial elements, and that the passage is characterized by a "deep tension" between irreconcilable legal positions on intermarriage ("Palestinian Rabbinic Attitudes", p.35).
Pinchas and Zimri, that others merely connected the two thematically, and still others traced it back to other biblical verses or even to post-biblical legal decrees. Of those sources that do link the boel aramit to Numbers 25, we find elements that have a completely positive response to Pinchas' killing of Zimri and Kozbi, while there are others that betray discomfort or dissatisfaction with him. The very substance of this rule, and the various other related bans on sexual relations/marriage with Gentiles was also in question, as we have found contradictory interpretations of that rule, as well as uncertainty regarding the actual meaning of related bans. bAvodah Zarah 36b, in its convoluted attempt to render this multiplicity into a cohesive linear tradition that would fit its own agenda, perhaps best demonstrates the tradition's actual multilayered diversity.

The rabbinic construction of the development of laws against marriage and sexual relations with Gentile women is highly convoluted and, in my view, evidence of the contradictory, incompatible, inconsistent, unclear and fragmentary state of law and narrative on the issue. The origin of the law of the boel aramit, and its relationship to other laws related to intermarriage and sexual relations between Jews and Gentiles is, therefore, not at all clear. The rule of the boel aramit is generally understood to refer to sexual relations with a Gentile woman, as opposed to "marriage" with a Gentile woman (zenut vs. ishut). (Note, however, that marriage with a Gentile woman is invalid under rabbinic law, as Gentiles are unable to contract qiddushin.)

With respect to the law of the boel aramit, rabbinic halakhah is concerned with the following main questions: is this law biblical in origin, does it refer to marriage-like connections or more cursory sexual relations, and does it apply to acts in private as well as in public? Prohibition of sexual relations is attributed in the literature to various sources, such as the court of Shem, the Hasmonean court or the words of the scribes, often with no connection to the rule of the boel aramit (see bSanhedrin 82a). Some later commentators
argued that the law of the *boel aramit* applies to both public and private domains since the Hebrew Bible does not legally distinguish between the two spheres. Others argued that the rule applies only to public acts, with some arguing that private acts are instead punishable by *karet* (excision at the hands of heaven). The lack of immediacy of this punishment at the hands of the divine is understood to have been insufficient by some, and so earthly punishments were devised. In general, the later development of the *halakhah* reveals a preoccupation with a sense of powerlessness in the face of such acts.\(^{515}\)

We have found an interpretative tradition linking the *boel aramit* to Molekh, sometimes attributed to R. Yishmael.\(^{516}\) Another scriptural connection is sometimes made to Malakhii 2:11-12 and the *bat el-nekhar*, as we have seen in bSanhedrin 82a, while a number of sources link the *boel aramit* to Pinchas' killing of Zimri and Kozbi in Numbers 25. Still other traditions make no scriptural link whatsoever, as in bSanhedrin 82a where Rav Dimi and Ravin both state that they learned in Israel that the source of the *boel aramit* is an Hasmonean decree. One cause for the confusion is the lack of clarity regarding the origins and nature of the ban on sexual relations (in public and in private) between Jews and Gentiles. It is clear that rabbinic tradition wants to see such a ban, but is not entirely certain as to how it might be arrived at.

\(^{515}\) See HaRan, Rabbeinu Nissim to bSanhedrin 82a. For references on the later halakhic development, see *Entsyqlopedia Talmudit* (Yerushalayim: Yad ha-Rav Hertsog, Mekhon ha-Entsyqlopedia ha-Talmudit, 1984), s.v. *boel aramit*, p. 16.

\(^{516}\) See Midrash Tannaim Devarim 18:9; a variation is found in Sifrei Devarim *pisqa* 171, Finkelstein p. 218, there brought in the name of R. Yehudah
Conclusion

This dissertation has demonstrated through analysis of the classical rabbinic sources that the rabbis dealt with the issue of intermarriage from a variety of different legal perspectives. They relied upon and engaged with a number of legal systems, rules and principles in order to approach the subject of intermarriage. These different approaches were often disconnected, unrelated and poorly integrated with each other. The resulting legal positions were often divergent, and sometimes incompatible, causing a variety of problems within the halakhah and interfering with the ability of the rabbis to enforce the halakhah in practice (at least within the rabbinic imagination reflected in the sources).

This situation was complicated by the fact that each approach was generally insufficient on its own and required supplementation by one or more of the others, either due to a built-in deficit or due to the conflict between earlier biblical legal systems within the context of normative rabbinic law as well as due to changing historical context. The systems of the Ten Lineages (asarah yuchasin), Betrothal and Transgression (qiddushin and aveirah) and the system of the Congregation (qahal) ultimately became at once irreconcilable and inseparable.

The asarah yuchasin set the stage for the rabbinic engagement with lineage and identity by delineating a hierarchical system of identity regulated by marital rules. This treatment of various degrees of intra-marriage, from the central elite through to the outer liminal castes sets the stage for our understanding of the rabbinic engagement with identity in general and intermarriage in particular. The system of asarah yuchasin is bound up with the system for determining descent – Betrothal and Transgression (qiddushin and aveirah) –
as well as with that of the Congregation (*qahal*). In rabbinic sources, the *qahal* becomes an inner circle of Jewish caste identities, allowing for negotiation of problems of inclusion and exclusion. This system of *qahal* is important for establishing who is in the inner circle and who is not, and especially for working out problems related to converts, *mamzerim*, and gender with respect to the prohibitions of specific nations.

Following some sources, it would appear that there was early consensus on the laws of *qahal*, understood as sexual intercourse and/or marriage between men and women. Following various narrative legal sources, however, we find some evidence that the laws of the *qahal* regulating intermarriage with Ammonites, Moabites, Edomites and Egyptians were actually deemed to be completely null and void. As these categories became historically irrelevant, the *qahal* became a system for regulating the status of converts and mamzerim and maintaining the integrity of the boundaries of what became the rabbinic *qahal*: the classes of *kohen*, *levi* and *yisrael* (and converts, following R. Yehudah) – that is, the inner sanctum of the *asarah yuchasin*. Within the rabbinic framework, I would argue that the systems of *qahal* and the *asarah yuchasin* are highly integrated, such that each cannot operate fully without the other. *Qahal* seems to rely on categories of the *asarah yuchasin* for its very definition. In contrast, *qahal* as a rabbinic concept seems to have been able to exist rather independently of the original deuteronomic system.

The literature demonstrates a rabbinic attempt to harmonize these three legal systems into a single approach. This effort to merge the systems was often confused, and sometimes failed to resolve the inherent contradictions and incompatibilities underlying the combined approach. This process occurred in view of and perhaps in response to the divergent nature of the law, the gaps between biblical and rabbinic law on the subject, inconsistencies within
both biblical and rabbinic law on the topic, and was also due to the limited nature of each system. Each system was insufficient for dealing with the topic of intermarriage on its own.

It has been shown that the narrative legal cases, that is stories with legal content, as a genre reveal the degree to which the law frequently became unworkable, that is, impractical or impossible to implement in practice. The non-functional nature of the law was due to a number of factors, including the gap between theory and practice, historical or social situations that rendered the law irrelevant or impossible, and the conflicted nature of the law itself, including its internal incompatibilities. The problem of the inadequacy of the law as expressed in the narrative legal sources lies in its failure to create a stable normative legal approach that could have functioned in reality as well as in the inability of the rabbis to legislate effectively.

In contrast to this complex situation in the law, I noted an apparent rabbinic belief (a priori assumption) that intermarriage should have been highly transgressive and clearly, consistently and effectively prohibited. This rabbinic image of how the law should have been did not match the state of the law itself, and so was supported through association with other clearer prohibitions, various decrees and negative narratives. The notion that intermarriage and sexual relations between Jews and Gentiles should have been subject to a clear, linear and singular prohibition, and treated with a consistent negative attitude, was supported through a variety of literary and legal techniques, including associating intermarriage with more clear and severe violations as well as negative stories, in addition to the construction of a clear, linear, progressive history of legal enactments on intermarriage and related issues.

It is the hope of the author that the findings of this study regarding this type of
rabbinic engagement with the legal problem of intermarriage, in particular the legal inconsistencies and the role of the narrative legal material, may be applied more widely to rabbinic legal thought on other problematic issues in the halakhah.

My continuing research on the narrative material on intermarriage further supports my argument that the rabbis linked intermarriage conceptually with other more severe and very clear prohibitions (idolatry, adultery, kilayim, incest) and the undesirable in general (drunkenness, promiscuity, hedonism). The aggadah further reveals a tendency to use creative plot twists and the recasting of Gentiles as converts to erase intermarriages from the biblical narrative.

Thus far, we have considered legal systems and rules dealing with intermarriage, but rabbinic thought on intermarriage is also expressed through the narrative or aggadic material. As an interpretive process, the aggadah develops in relation to narratives in the biblical layer in concert with a wide range of later narrative traditions. It follows that the genre deals with a wide variety of stories about intermarriage that are largely ignored in the legal discourse, stories that have the potential to reveal layers of rabbinic engagement with the issue that would otherwise that remain obscured in any study dealing solely with legal texts. Our analysis of the aggadah, which will inform the next stage of our project, aims to determine the nature of these rabbinic responses to the issue of intermarriage, in particular attitudes and perspectives in the rabbinic imagination, and to that end will focus upon interpretive approaches and attitudes in the aggadah.

Dealing with the narratives on a case by case basis, I shall present a comparative analysis of the interpretive approaches utilized in the sources in an attempt to ascertain what sort of attitudes towards intermarriage are in evidence. The case by case approach allows
for a comparative analysis of the methods through which various traditions engage with the same "original" or core narrative, thereby allowing us to draw conclusions regarding the diversity of rabbinic approaches to intermarriage within the context of each narrative. The analysis may also be extended amongst the various cases and the various sources of aggadic midrashim, in order to discern any additional patterns of significance.

Through this examination of interpretive approaches, we are considering the exegetical and hermeneutic techniques through which the rabbis interpret, re-write and re-imagine narrative traditions, that is, their methods of dealing with intermarriage, and hence their perspectives on the issue. While rabbinic exegetical and literary techniques and methodologies are relatively clear categories for analysis, the problem of the underlying attitude towards intermarriage is a more complex and less obvious feature. The authorial or editorial attitude towards intermarriage may be difficult to determine, such that suggestions for various possibilities may be made while the ultimate authorial positions and attitudes necessarily remain indeterminate and illusive to some degree. Nevertheless, patterns, constructions and a range of attitudes related to intermarriage, including the expression and resolution (or embrace, following Fox and Bloom) of doubts regarding the acceptability and desirability of intermarriage are clearly revealed through this analysis.

In general, I am arguing that a study of the aggadah is essential to any complete discussion of the rabbinic and halakhic treatment of intermarriage. Specifically, I am suggesting that rabbinic aggadic traditions react to and deal with intermarriage

(methodologically, intellectually and emotionally) in a variety of different ways. We thus find a wide range of exegetical and emotional responses to the issue of intermarriage in the narrative material. Furthermore, I hope to argue that the *aggadah* is a site for the expression of a wide variety of attitudes and legal positions related to intermarriage. The legal and emotional stances revealed in the *aggadic* sources, that would remain obscured in any study that dealt merely with the legal material, are essential components of the full range of the rabbinic engagement with intermarriage. In short, I am suggesting that the narrative material on intermarriage reflects a diversity and plurality of approaches, attitudes and legal positions.

Rabbinic tradition is the inheritor of a complex and rich set of biblical legal and narrative traditions on intermarriage. The biblical layer is itself often inconsistent and individual narratives may differ dramatically in their treatment of intermarriages, just as they often appear to contradict the legal positions on intermarriage preserved in the biblical record. The legal sources themselves, as demonstrated, are far from homogenous and pose similar problems. In addition, the biblical layer, as we have seen, is often disconnected from elements of the developing rabbinic traditions. The rabbinic interpreter is thus blessed by a rich and diverse set of narrative and legal traditions, just as he is constrained by the problematic nature of the pre-existing biblical and developing rabbinic traditions.

There are many biblical narratives that involve or engage with intermarriage and are interpreted, re-written, expanded or commented upon in rabbinic sources. These include stories about Abraham, Sarah, Hagar, Keturah, Ishmael, Isaac, Jacob and Esau; Jacob's offspring; Moses, Tsiporah, Jethro and other stories related to Egypt and the generation of the Exodus; Joshua, Rahab and the case of the Gibeonites; Samson and his partners; David,
Goliath and Tamar; Solomon and his wives, Naamah and Rehoboam; Ruth; Esther; Daniel, Ezra/Nechemiah and Nebuchadnezzar. This analysis will consider the case of the offspring of Jacob, including the stories of Judah, Dinah and Joseph, in detail.

The group of narrative traditions about Jacob's offspring, which includes stories about the marriages of the twelve tribes, Dinah and Joseph is particularly rich and illustrative for our purposes for a number of reasons. To begin with, most of the biblical sources do not make any particular comment, either positive or negative, on the intermarriages that form a part of the narratives, aside from some elements of the story of Dinah in Genesis 34 and that of Esau in Genesis 27-28. The general neutrality of these sources is helpful for our analysis in that it presents a neutral base for rabbinic exegesis. The situation becomes even more interesting when we consider that all of these intermarriages might be forbidden under the legal rules of the qahal or the Deuteronomic prohibition of intermarriage with the Canaanite nations, given that the biblical narrative usually does not relate to these intermarriages as problematic. This apparent contradiction between the narrative and legal dimensions poses a special challenge to the rabbinic exegete.

The rabbinic exegete is thus faced with a number of potential problems: all of the children of Jacob intermarried; these intermarriages were specifically banned by biblical legal codes; the biblical text does not mention these prohibitions; the biblical text does not criticize or comment on these intermarriages. Furthermore, it is difficult to imagine how the children of Jacob would have married without intermarrying with the surrounding peoples, unless Jacob had married them with relatives from abroad, as Abraham and Isaac had done. It follows that we may ask the following question: Where rabbinic interpreters encounter intermarriages that receive no particular comment in the biblical layer, and where such
intermarriages may be forbidden under biblical (and probably rabbinic) law, which midrashic approaches are used? What sorts of attitudes are in evidence? It is my suggestion that, on the background of this neutral, yet challenging slate, we may discern a great deal regarding the rabbinic engagement with the issue of intermarriage.
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- 316 -


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