

לאור הצהרת המבקשים מחליט ביה"ד:

MAMZERIM

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Edited by

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Midrash on Mamzer written by Elisabeth Goldwyn

A mamzer shall not be admitted into the congregation of the Lord; none of his descendants, even in the tenth generation, shall be admitted into the congregation of the Lord. (Deuteronomy 23: 3)

The sages said, "When the adulterers increased, the [ordeal of the] bitter, curse-causing waters ceased. R. Yohanan stopped them." (Sotah 89: 49)

From now on say: When the adulterers increased, the mamzerim ceased. As it says, "In those days, they shall no longer say, parents have eaten sour grapes and children's teeth are blunted." (Jeremiah 31: 28)

*

Just as Israel are all ritually defiled, the children of Israel are all perhaps-mamzerim.

And how [can that be]?

If you want, explain thus: the sons of Rachel and Leah are all mamzerim, as it is written, "Do not marry a woman as a rival to her sister and uncover her nakedness in her lifetime" (Leviticus 18:18). And he who comes on her nakedness, her sons are mamzerim.

If you want, explain thus: the sons of Yehuda are all mamzerim, as it is written, "Do not uncover the nakedness of your daughter-in-law, she is your son's wife; you shall not uncover her nakedness it is the nakedness of your brother" (Leviticus 18:15). And Tamar was the daughter-in-law of Yehuda; and the sons of he who uncovers her nakedness, are mamzerim.

If you want, explain thus: a family [of mamzerim] that assimilated [into the congregation of the Lord], assimilated. (Kiddushin 71: 71) From now on say, Israel are all perhaps-mamzerim. And who is the congregation of the Lord? A person does not know himself that he is the congregation of the Lord [and not from a mamzerim assimilated family].

And why was this law written? Study [it] and receive a reward.

Pulling the Rug Out from Under

Elisabeth Goldwyn

Mamzer is a mark of shame with deep roots in Jewish tradition and culture. A mamzer, born as the result of forbidden sexual relations, pays a heavy price for his parents' act and is considered a social outcast with whom it is forbidden to marry and whose children bear the mark of shame for all eternity.

The fear of giving birth to a mamzer is one of the most powerful mechanisms enslaving Jewish women seeking a divorce from their recalcitrant husbands, and denying them the elementary right to have children. In the State of Israel in the year 2017, the power of this threat still holds sway, even over the non-religious section of the population fearful of "staining" its future generations.

In this article, I will claim that a social approach is needed to remove the stain of mamzerut. As long as people cooperate with the injustice and fear of mamzerut, its power will intensify. Only when people cease cooperating with, and according significance to, the notion of mamzerut, will its strength diminish. The way to do this is for each and every one of us to refrain from using the term "mamzer" and to simply stop cooperating with this needless injustice. In other words, I seek to claim and to implement the social understanding that there is no evil in being defined as a mamzer; it has no significance.

The Torah itself does not clarify the interpretation of the term "mamzer": "No one misbegotten shall be admitted into the congregation of the Lord; none of his descendants, even in the tenth generation, shall be admitted into the congregation of the Lord." (Deut. 23:3)

It is difficult to exaggerate the importance of this point—the identity of the

person forbidden from entering the the congregation of the Lord, even in the tenth generation is unclear. As always, the Sages complete what the Torah has left vague, and define:

Who is a mamzer? [The offspring of a union with] *any relative with whom cohabitation is forbidden*," in the words of Rabbi Akiva. "Shimon HaTeimani says: "[The offspring of any union] *for which one is obligated karet [divine excommunication] at the hands of heaven*; and the halakha is according to him." Rabbi Joshua says: "[The offspring of any union] *for which one is obligated death at the hands of a court*"; Rabbi Shimon ben Azzai said: "I found a scroll of genealogical records in Jerusalem, and it was written on it, '*So-and-so is a mamzer [having been born] from an adulterous woman,*' which confirms the view of Rabbi Joshua." (Mishna Yevamot 4:13)

Shimon HaTeimani determined that a mamzer is someone born as the result of forbidden sexual relations for which the punishment is karet (a punishment imposed by heaven and not by a rabbinic court). Included in this are all the forms of incest detailed in chapters 12 and 20 of Leviticus, and also the relations between a married woman and a man other than her husband (but not the opposite). Following the Mishna, the halakha determines that mamzerim may not marry Jews whose lineage is undisputed but only converts or among themselves.

In contrast to other problematic laws in the Torah that the rabbis found ways to bypass and remove of practical content, such as the stubborn and rebellious son, a city in which the majority of inhabitants are idolaters and others, or laws to which they accorded complex interpretations such as "An eye for an eye" (payment and compensation)—no such approach was adopted regarding mamzerut. This was so despite the rabbis' obvious awareness of the injustice being caused to innocent children. This awareness is clearly illustrated in the well-known midrash:

"I further observed all the oppression . . ." (Eccles. 4:1)

Hanina interpreted the verse as referring to mamzerim. (*Midrash Vayikra Rabba* 32:8)

Throughout history, the halakhic authorities and rabbis made every effort to remove the stain of mamzerut from anyone suspected of such and deliberately ignored explicit information, sometimes even surprisingly manipulating it, all so as not to stain a newborn child.¹ Nonetheless, the fear of giving birth to a mamzer has, to this day, remained a potent means of control over women's sexuality.

The State of Israel has authorized the Chief Rabbinate to be the sole body entitled to deal with laws concerning Jews' personal status. This constitutes one of the main spheres in which there is a mix of religion and state, of halakha (Orthodox halakha, as the Chief Rabbinate is Orthodox and mainly ultra-Orthodox) with the civil body of law.

The liberal philosophy upon which democracy is based opposes essentialist definitions such as "mamzer," as they contravene the principle of fundamental equality. In the State of Israel, though it too defines itself as a democratic country, no such legal equality exists. The reason is that Jewish religious law is not based on equality and makes use of essentialist definitions of identity, which has ramifications for the rights and obligations of different groups of people: women, converts, non-Jews, *kohanim* (Jews from the priestly tribe), and others. Consequently, in the State of Israel, there is no equality between men and women, between Jews and non-Jews, and between mamzerim and halakhically valid Jews. All proponents of the notion according to which fundamental equality between all people must be the basic foundation for the universality of the law in a democratic state, must therefore object to the introduction of an essentialist definition of identity into its statute book. This constitutes one of the main spheres in which it is paramount to create a reality of separation between state and religion.

Apart from the inequality, punishing the mamzer for no fault of his own, contradicts the basic values of justice and morality. This sentiment was expressed by the Sages in the continuation of the midrash quoted above: "Their mothers transgressed and these miserable ones are banished. His father was guilty of incest, what did he do and what does he care" (*Vayikra Rabba* 32:8). How can we allow such a blatant injustice?

The fear of mamzerut in the modern-day State of Israel has assumed truly

demonic proportions, far in excess of the actual phenomenon. In a discussion on the issue held at the Knesset in March 2017, information was presented according to which a total of 86 mamzerim and another 176 “doubtful” mamzerim are currently on record.

Many are of the mistaken opinion that mamzerim are children born to unmarried parents (this is a Christian definition), and many couples marrying via the Rabbinate, merely out of the fear of giving birth to mamzerim, are unaware that this is actually increasing a woman’s risk of giving birth to a mamzer should the marriage break down.

I am aware of this because I am frequently asked by couples before their wedding and by their parents: what will happen to the children of a couple who don’t marry via the Rabbinate? Won’t they be mamzerim? People are convinced that this is the primary problem with marriage outside the rabbinical establishment. The truth however is that the children of a single woman are not mamzerim. Only the children of a woman married according to the Law of Moses and Israel, but fathered by a man other than her husband, are considered mamzerim.

The Rabbinate, however, rather than attempting to fight ignorance is actually cultivating it, serving as this does, their ultimate purpose.

The fear of giving birth to mamzerim or of discovering the mamzer status of existing children encompasses increasingly widening circles of people. This fear dismantles relationships and denies the child the right to receive child-support payments from the biological father (if he is not the mother’s legitimate husband, because the demand for child support will expose the child’s mamzer status; the legal system in the State of Israel today enables this by adopting a stance that it is preferable to leave a child without financial support and poor, as long as he is not designated as a mamzer). And these are only a few examples of the harms associated with the fear of mamzerut.²

The effect is that, in contrast to what many people believe, it is preferable in the State of Israel today to refrain from marrying according to the halakha. It is preferable to live as common-law partners and remain officially registered as single, especially for women. This is the safest way to avoid having children who will be labeled by the Rabbinate as mamzerim.

As stated previously, in the past the halakhic authorities strove to assimilate mamzerim within society to cleanse them of their mark of shame. For example, mamzerim could leave their community and be absorbed as halakhically valid Jews in another community. The Talmud writes:

R. Yehoshua ben Levi said: "money purifies mamzerim"³ as it is said: He shall act like a smelter and purger of silver ... so that they shall present offerings in righteousness (Mal. 3:3). What is "present offerings in righteousness"? R. Yitzchak said: God was charitable to Israel, to permit a family who had assimilated [into Israel] to remain assimilated (BT *Kiddushin* 71a).

This passage teaches us two things: firstly, and this is a good thing, that wealthy mamzerim succeeded in marrying despite their mamzer status. It is God's grace that this reality will likely also remain unchanged in the future. Secondly, that in order to enable a mamzer to assimilate, we should not excessively search and scrutinize a Jew's genealogy.

And indeed, throughout Jewish history, the rabbis refused to hear testimonies about people's mamzer status, and even went to great lengths to validate people who were nevertheless considered mamzerim. Such efforts included finding a blemish in the mother's marriage thereby causing its annulment; adopting a general assumption that a new-born baby is the child of the legal husband, while ignoring evidence to the contrary.

Halakhic authorities even went so far as to define the reasonable period of a woman's pregnancy as being up to twelve months, all for the purpose of avoiding the need to banish mamzerim from the community. Nevertheless, in complete contradiction of this halakhic tradition, the Chief Rabbinate in the State of Israel maintains a secret list known as "the blacklist," of all those forbidden from marrying in the State of Israel, including mamzerim.

This list does not only prevent the assimilation of mamzerim, but may also rely on unverified and false testimony. Today's sophisticated means of identification also serve to preclude any possibility of assimilating anonymously.

The Rabbinate's current policy thus contradicts not only fundamental moral, liberal, and democratic principles, but also the spirit of the halakha and

the halakhic authorities throughout the generations that eschewed indicating people as mamzerim, even in the face of convincing proofs, in order not to tarnish them and to enable them to assimilate into the Jewish people.

From the saying “A family that has assimilated, remains assimilated,” we can conclude with a high degree of probability that the entire Jewish people can today be suspected of being mamzerim, as none of us can be certain that there were no mamzerim among our ancestors. If this is the case, there is no basis for today’s separation between mamzerim and the congregation of the Lord—there is no absolutely pure community of God free of the suspicion of mamzerut, and all Jews are therefore considered “suspected mamzerim.”

Originally, the law of mamzerim was likely intended to dissuade married women from being unfaithful to their husbands, and to guarantee to men, halakhically obligated for the financial support of their children, that the children they are supporting are indeed theirs. My proposal to deplete the term “mamzer” of its power and discard the demonic baggage surrounding it should not be construed as encouraging women to cheat on their husbands. My claim is that the use of the threat of mamzerut is immoral, dishonest, and ineffectual, and must therefore not be brandished today. The inequality in women’s and men’s status on this issue—a married man unfaithful to his wife does not lead to mamzerut—serves only to exacerbate the injustice against women. The fear of mamzerut has become a means for a husband to extort a wife who is seeking a divorce and fearful of giving birth to mamzerim.

Annulment of mamzerut does not encourage infidelity; if we believe that loyalty to a spouse is a worthy value, it must be achieved through education. The punishment of a woman’s children is not a reasonable, effective, or fitting means toward achieving this objective.

Mamzerim today are generally born either out of ignorance of the halakha or as the result of men refusing to grant their wives a divorce, when women decide to continue their lives despite being refused a get. Thus, not only is the law unsuccessful in creating the reality for which it was intended, rather, it creates new injustices. When a law no longer corresponds with social reality, and even leads to more grievance, either its use must be suspended or it must be reinterpreted such that it is no longer practicable.

What Can Be Done to Minimize the Law and Its Influence on Jewish and Israeli Society?

The Council of Conservative Rabbis ruled in 1970 that the law of mamzerim has no validity today, a resolution that was reaffirmed in a detailed halakhic ruling in the year 2000.⁴ The significance of the decision is that Conservative rabbis will refrain from scrutinizing and prying into the private lives of a Jew requesting to marry, and will not check a suspicion of mamzerut, out of a recognition that this law bears no modern-day meaning.

Orthodox Jews can put pressure on the rabbinical establishment to validate the existing cases of mamzerut through halakhic means and campaign for the annulment and erasure of the blacklist, the very existence of which contravenes the spirit of the halakha and the principle of “A family that has assimilated, remains assimilated.”

For its part, the secular sector of the public that does not adhere to a halakha-based lifestyle, needs to understand the irrelevance of the “mamzer” concept for their own lives and begin to ignore it, as it contravenes the basic values of decency and justice. As secular citizens committed to these values, we have a moral obligation *not* to cooperate with an ideal contributing to women’s enslavement to men who abuse them or live separate lives, and not to abet the punishing of people for the actions of their parents.

And to the general public, I call: don’t rush to marry via the Rabbinate. It is specifically marriage via the Rabbinate that increases the risk of giving birth to a mamzer, while marrying in a non-halakhic ceremony not recognized by the Rabbinate prevents mamzerut, as a child born to a woman defined by the halakha as “single” is not considered a mamzer! Liberal movements or “private ceremony” initiatives offer excellent alternatives for marriage in a ceremony that embodies equal standing to men and women.

Let us declare that there are no mamzerim today or, alternatively, that all Jews are considered as “suspected mamzerim,” and thereby pull out the rug from under the greatest threat to women today. If we understand that the term “mamzer” is founded on injustice, we will avoid labeling people as mamzerim, accept them into our community as equals, and enable them, as a perfectly

normal practice, to marry the partner of their own choosing. This is the official policy of “Havaya—Israeli Life Cycle Ceremonies” and of other liberal organizations.

Furthermore, it is important to remember that the only problem faced by mamzerim in the State of Israel today is that they are unable to marry halakhically via the Rabbinate.

Let us strive for a future in which the Rabbinate is not the sole body responsible for marriage and divorce in Israel, thereby enabling hundreds of thousands more people considered “invalid for marriage” to formalize their relationship. It’s not so terrible to be a mamzer. The mamzer is in “good company,” especially with those born in the former Soviet Union or their descendants, people unable to satisfactorily prove their Judaism to the Rabbinate, same-sex couples, inter-religious couples, and others forbidden from marrying for halakhic reasons such as a female convert or a divorcee and a kohen.

As parents, we make many decisions for our children: when and where they will be born, how they will be raised, the education they will receive. Our children do not choose their gender, ethnicity, or their sexual orientation. These are facts of life. Parents choosing to give birth to mamzerim must understand that the price is simply that they will be unable to marry via the Rabbinate.

It is our hope that until these children reach that stage, we, as a society, will succeed in creating a worthy alternative to the Rabbinate and that civil marriage will be an available option in the State of Israel. Should we not reach our goal, we need not fear, as it is certainly within our power to fill the gap that has been left by the State of Israel’s shirking of its responsibility toward its citizens in not enabling them to marry in their own country, by granting them a suitable alternative in which to formalize their relationship.

Notes

- 1 See examples in Michael Wygoda's comprehensive article "Clarifying suspicions of genealogical validity in Rabbinic Courts," [Heb.] a professional opinion submitted to the Rabbinic High Court during Appeal No. 621/2000 in Case 1/99009 – published in the *Da'at* website of the Herzog Academic College: <http://www.daat.ac.il/mishpat-ivri/havat/45-2.htm>
- 2 For examples of all these problems see Rivkah Lubitch's columns on Ynet in which she describes cases she dealt with at the rabbinic courts; her book *From the End of the World and Beyond* [Heb.], Tel Aviv 2017; and in her article in this book.
- 3 Rashi: "Money purifies mamzerim'— who are assimilated into Israel because of their money, and it is the cause of their purification. For, in the future to come, The Holy One Blessed be He will not distinguish them, because they have assimilated into many Jewish families ... , The Holy One Blessed be He's justice is that he does not distinguish them, but rather, as they have assimilated, they remain assimilated."
- 4 Rabbi Daniel S. Nevins, "A Concurring Opinion regarding Mamzerut," *Respona of The CJLS 1991-2000*, EH4 2000b; Elie Kaplan Spitz, "Mamzerut," *Respona of The CJLS 1991-2000*, EH4.2000a.