

# Zera Shimshon

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## Chapter XLIX: Ki Teitzei (Deut. 21:10–25:19)

### Essay 6. Biblical and rabbinic limitations on the *mamzer*

This essay discusses the *mamzer*, which is sometimes mistranslated as “bastard.” However, it is not related to a child born out of wedlock, but rather to a child born out of adultery or incest.

בְּמוֹת פְּרִק ח' (דף ע"ח) אָמַר רַב הוֹנָא: מְזֻזָּרָא לֹא חַיִּי. וְהָא אֲנִן תַּנְּנָן: מְזֻזָּרִים אֲסוּרִים וְאִיסוּרָן אִיסוּר עוֹלָם וְכוּ'! מְקֻשִׁים אֲמַאי לֹא פְּרִיָּד לִיה מְקָרָא דְכְּתִיב "לֹא-יָבֵא מְזֻזָּר" וְכוּ' "גַּם דּוֹר עֲשִׂירִי לֹא-יָבֵא לוֹ בְּקֶהֱל ה'".<sup>1</sup>

### Tractate *Yevamot*, chapter 8 (page 78b):

Mishnah: *Mamzerim* and *netinim*<sup>2</sup> are prohibited [from entering into the congregation, i.e., they are restricted as to whom they can marry]. Their prohibition is eternal [i.e., for all generations], both males and females.

Gemara: . . . [The students] asked Rabbi Eliezer: [With regard to] a *mamzeret* after ten generations, what is [the *halacha*]? He said to them: ‘Who will give me a third-generation [*mamzer* so that] I will declare him pure?’ Apparently, he maintains that a *mamzer* does not survive. [I.e., he believes that *mamzerim* perish at the hand of Heaven, and therefore this question is not a practical one.] And similarly, **Rav Huna said, ‘A *mamzer* does not survive.’**

**But didn’t we learn [in the Mishnah that] *mamzerim* are prohibited [from entering into the congregation], and their prohibition is eternal?** [I.e., how is this possible if they do not even live long enough to produce three generations?]

- *Yevamot* 78b

Also, [people] question why Rav Huna makes this statement, for doesn’t Scripture refute him, as it says, “A *mamzer* shall not enter into the congregation of the L-rd; even to his tenth generation, none shall enter into the congregation of the L-rd” (Deut. 23:3). I.e., it sounds as though a *mamzer* can survive and have offspring, if we have to be warned that they can’t enter the congregation.

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<sup>1</sup> The translator has omitted the first edition’s concluding words "עַד-עוֹלָם" (“forever”). This appears at the end of the next verse, Deut. 23:4, “An Ammonite or Moabite shall not enter into the congregation of the L-rd; even to their tenth generation, none shall enter into the congregation of the L-rd, forever.”

<sup>2</sup> The “*netinim*,” meaning “given ones” or “subjects” was the name given to Temple assistants. The term was originally applied in the Book of Joshua to Gibeonites. It is unclear whether the later use of the term *netinim* also applied to Gibeonites or to questionable Jews in general.

Zera Shimshon now investigates the verse further, before returning to discuss its implications regarding Rav Huna's opinion.

וְנִשְׁ לֹאמַר דְּאִמְרִינָן בְּמַסַּכְתָּ קִידוּשֵׁין (דָּף ס"ט) ר' טַרְפוֹן אוֹמֵר יְכוּלִים מְמַזְרִים לִיטְהַר, כִּי צַד מְמַזֵּר שְׁנַשְׂא שְׁפָחָה, הַנֶּלֶד עֶבֶד. שְׁחָרְרוּ, הָרִי זֶה בֶּן חוֹרִין. רַבִּי אֱלִיעֶזֶר אוֹמֵר, הָרִי זֶה עֶבֶד מְמַזֵּר.

**It can be said that it says in the last Mishnah in the third chapter in tractate Kiddushin (page 69a)<sup>3</sup>: “Rabbi Tarfon says: *Mamzerim* can be purified [so that their offspring will not be *mamzerim*]. How so? [With regard to] a *mamzer* who married [a Canaanite] maidservant, the offspring is a slave. [If the offspring's master subsequently] emancipates him, the son is a freeman [and upon conversion would be fully Jewish without any trace of *mamzerut*].<sup>4</sup> [Rabbi Eliezer] says: [This method is not effective], as this son is a *mamzer* slave.”**

וְאִמְרִינָן בְּגִמְרָא דְהִלְכָה כֶּר' טַרְפוֹן, וּמֵאִי טַעְמִיהָ דֶּר' אֱלִיעֶזֶר, דְּאָמַר קָרָא "לוֹ" הֵלֶךְ אַחַר פִּיסוּלוֹ, וּפְרַשׁ רַש"י אֶפִּילוּ אִין בּו צַד מְמַזְרוֹת אֱלָא מֵאוֹתוֹ דְּהִינּוּ מִצַּד הָאָב, וְרַבְּנָן הֵוּא בִּישְׂרָאֵל שְׁנַשְׂא מְמַזְרֵת וְכוּ'.

**It says in the Gemara that according to Rav Yehuda in the name of Shmuel that the halacha is like Rabbi Tarfon. What is the reason of Rabbi Eliezer for disagreeing and saying that the son would be a *mamzer* slave? For Scripture says, “even to his tenth generation,” and one follows his parent with the flawed [lineage], so the child is a *mamzer*. Rashi explains this is so even if he has no aspect of *mamzerut* other than this, which is from the side of the father.**

The Gemara continues: “**And [how do] the rabbis [deal with Rabbi Eliezer's challenge]? [They maintain] that [this verse is referring] to a Jew [of unflawed lineage] who married a *mamzeret*.”** I.e., a *mamzer* from a maternal ancestor cannot purify his descendants.

וְאִם כֵּן אִי הָנָה פְּרִיָּף לִיהָ, מְקַרָּא הִנֵּה יְכוּל לְדַחוֹת, שְׁהַפְּסוּק מִיִּירֵי בְּמַמְזֵר מִצַּד הָאָב בְּלִבְד כֶּר' אֱלִיעֶזֶר, אוּ מִצַּד הָאֵם בְּלִבְד כֶּרַבְּנָן, וְהֵוּא חַי הוֹאִיל שְׁאִינּוּ מְמַזֵּר אֱלָא מִצַּד אָחִיד. וְדִיִּיקָא נְמִי דְּסַמוּף ל"דוֹר עֲשִׂירִי" כְּתַב מַלְת "לוֹ", דְּמִשְׁמַע מִיָּגִיהָ מְמַזֵּר מִצַּד הָאָב בְּלִבְד, וְרַב הוֹנָא מִיִּירֵי בְּמַמְזֵר גְּמוּר דְּהֵוּא לֹא חַיִּי.

**If so, [Rav Huna] could indeed have been refuted, as Scripture could have been used to reject his view that a *mamzer* does not survive. For the verse speaks of a *mamzer* only from the side of the father, according to Rabbi Eliezer, or only from the side of the mother, according to the rabbis, and [the *mamzer*] survives since he's only a *mamzer* from one side.**

**It's nicely precise that adjacent to “tenth generation” is written the word “to his” from the phrase, “even to his tenth generation,” for which the meaning speaks of a *mamzer* from the side of the father only, as Rabbi Eliezer holds, and perhaps Rav Huna is speaking of a complete *mamzer*, i.e., from both the maternal and paternal lines, who in his opinion will not survive. If so, then Rav Huna would agree with Rabbi Tarfon and the rabbis that a *mamzer* from one side can survive?**

<sup>3</sup> Mishnayot Kiddushin 3:13.

<sup>4</sup> The Gemara (Kiddushin 69a) says that this was only effective for male offspring.

However, Zera Shimshon now casts additional doubts about Rav Huna's position. As quoted above, the Mishnah in Yevamot 78b states, "Mamzerim and netinim are prohibited. Their prohibition is eternal, both males and females." In addition, we quoted above from the end of the third chapter in Kiddushin, and immediately following that, at the beginning of the fourth chapter, the Mishnah details ten categories of lineage: Priests; Levites; Israelites; priests disqualified due to flawed lineage [*chalalim*]; converts; emancipated slaves; *mamzerim*; *netinim*; children of unknown paternity [*shetuki*]; and foundlings. Priests could only marry the daughters of priests, Levites, and Israelites. Levites, Israelites, *chalalim*, converts, and emancipated slaves could marry each other. Converts, emancipated slaves, *mamzerim*, *netinim*, *shetuki*, and foundlings could marry each other.<sup>5</sup>

אָבֵל הַשְּׁתָּא דְּמִתְנִיתִין דְּקִתְּנִי סְתָמָא מְמַזְרִים וְנִתְיָנִים אָסוּרִים וְאִסּוּרָן אִסּוּר עוֹלָם. דְּמִשְׁמַע כָּל מִן מְמַזְר, וּמְכַל שְׁפֹן דְּקִתְּנִי לָהּ בְּהַדִּי הִלְכְּתָא פְּסִיקְתָּא דְּנִתְיָנִים וְכוּ'. מִשּׁוּם הָכִי פְּרִידָה לִּיהָ מִמִּתְנִיתִין דְּוָקָא.

**But now** that we see that the rabbis agree with [Rav Huna, if his teaching is limited to a *mamzer* from both maternal and paternal lines], like Rabbi Tarfon [that *mamzerim* can be purified], and the halacha is in accordance with him, we have a problem. For **the following Mishnah teaches that "mamzerim" (without specifying partial or complete) and netinim are prohibited** from marrying an Israelite, **and the prohibition is an eternal prohibition**, with no way to correct the blemish. For this would mean every type of *mamzer*, even if only in the paternal line. **We hear that this means all types of mamzer**, even if only in the paternal line. This is true **even more so as is taught with established halachot regarding netinim etc.**<sup>6</sup> **Because of this, [Rav Huna] is refuted, especially from the following Mishnah.**<sup>7</sup>

וְעוֹד יֵשׁ לוֹמַר דִּהוּאִיל דְּאִיפָּא גַם ר' אֱלִיעֶזֶר דְּסִבְרָא לִיהָ קָרַב הוּנָא דְּמְמַזְרָא לֹא חֵי. מִשּׁוּם הָכִי אִין לְהַקְשׁוֹת לְרַב הוּנָא מִהַפְּסוּק "גַּם דּוֹר עֲשִׂירִי" וְכוּ', מִפְּנֵי שְׁמֵהַפְּסוּק קִשְׁיָה נְמִי לְר' אֱלִיעֶזֶר, וּבִנְדָאֵי שְׂיִהֵיָהּ לֹו אִינְיָה תִּירוּזָ, נֶאֱפָ רַב הוּנָא יִתְרַץ הַפְּסוּק כְּמוֹ שְׂיִתְרַץ ר' אֱלִיעֶזֶר.

**Further, one can say that there is also Rabbi Eliezer, who in Yevamot 78b is in accordance with Rav Huna that a mamzer does not survive. Because of this, we don't question Rav Huna from the verse, "even [to his] tenth generation." Because the verse is also difficult for Rabbi Eliezer, and certainly he would have had some solution, and even Rav Huna would have solved the verse as Rabbi Eliezer would have solve it.**

<sup>5</sup> Kiddushin 69a.

<sup>6</sup> Shulchan Aruch, Even haEzer, 4:1, "Mamzerim and netinim are forbidden forever, whether male or female."

<sup>7</sup> A section entitled "Omissions" at the end of the first edition corrects the text that had been presented earlier in the sefer for this essay. The Hebrew version presented here and the accompanying translation follows the correction.

אָבֵל מִמִּתְנִיתִין שְׁפִיר קָא מְקוּשָׁה, שְׁהָרִי מִמִּתְנִיתִין לִיכָא לְהַקְשׁוֹת לִר' אֱלִיעֶזֶר דְּהָא תַּנָּא הוּא וּפְלִיג, אָבֵל לְרַב הוּנָא פְּרִיךְ מִסְתַּמָּא דְּמִתְנִיתִין דְּהַלְכָתָא הִיא. וְלִיכָא לְמִימַר דְּסִבְרָא לִיהּ כִּר' אֱלִיעֶזֶר, מִשּׁוּם דְּשִׁמּוּתֵי הוּא וְלִית הַלְכָתָא פְּנִתִיהּ. וְרַב הוּנָא דְּאִיהוּ אַמּוּרָא יֵשׁ לוֹ לְדַקְדָּק וְלוֹמַר דְּבִרְיוּ אֵלִיבָא דְּהַלְכָתָא.

**But from the following Mishnah in Kiddushin 69a, [the halacha] is well strengthened, for from the following Mishnah one can question Rabbi Eliezer, who himself was a *tanna* and therefore, unlike later *amora'im*, could disagree with opinions of other *tanna'im*. But Rav Huna, who was a later *amora*, by saying that a *mamzer* does not survive, essentially disputed that the unattributed teaching of the following Mishnah was the halacha.**

**That is not to say that [the halacha] is in accordance with [Rav Huna], as like Rabbi Eliezer, because [Rabbi Eliezer] is from Beit Shammai,<sup>8</sup> and the halacha is not in accordance with him, as the halacha generally follows Beit Hillel. And Rav Huna, who is an *amora*, he must be precise and say words that are in accord with the halacha.**

וְעוֹד יֵשׁ לוֹמַר שְׁפָתַי הִרְבֵּי"ם (בְּפֶרֶק ט"ו מֵהַלְכוֹת אִיסוּרֵי בֵּיאָה) דִּין תּוֹרָה שְׁסַפֵּק מִמְזַר מוּתָר לְבוֹא בַּקְהֵל, שְׁנֵאמַר "לֹא-יבֹא מִמְזַר", מִמְזַר וְדַאי הוּא דְּלֹא יָבֹא, אָבֵל מִמְזַר סָפֵק יָבֹא, אֲלֵא שְׁחַכְמִים גָּזְרוּ אָף עַל הַסָּפֵק.

**It can also be said that the Rambam writes (in chapter 15 of the laws of Forbidden Intercourse, halacha 21): “According to Scriptural Law, a person suspected of being a *mamzer* is permitted to enter the congregation, for it is said, ‘A *mamzer* shall not enter into the congregation of the L-rd,’ [which implies] that a definite *mamzer* shall not enter, but a questionable *mamzer* can enter, but the rabbis enacted a prohibition even against the questionable [*mamzer*].”**

וְאִם כֵּן כְּשֵׁאמַר רַב הוּנָא מִמְזַרָא לֹא חַי, הִינּוּ יְכוּלִים לוֹמַר דְּמִיִּרֵי בְּסַפֵּק מִמְזַר שֶׁהוּא מִמְזַר מְדַרְבָּנּוּ, וְיֵשׁ סִבְרָא לוֹמַר כֵּן דְּאִי אֲמַרְתָּ דְּמִיִּרֵי בְּמִמְזַר וְדַאי, מֵאִי שְׁנָא מִמְזַר מִשְׁאֵר פְּסוּלֵי בַּקְהֵל שֶׁהֵם חַיִּים וְזֶה לֹא חַי, אֲלֵא וְדַאי דְּמִיִּרֵי בְּמִמְזַר מְדַרְבָּנּוּ, וְהוֹאִיל שֶׁהוּא סָפֵק יֵשׁ לְחוּשׁ שְׁמָא יִטְמַע וְלֹא יִתְרַחֵקוּ מִמֶּנּוּ לְגַמְרֵי, לְפִי שִׁיְהִי מְקוּלִים בּוֹ דְּדִילְמָא אִינוּ מִמְזַר וּמִשּׁוּם הֵכִי לֹא חַי, אֲמַנְם מִמְזַר וְדַאי שְׁנֹדַע וְנִכְפַר פִּיסוּלוֹ, וּבְדַאי שִׁיְתְּרַחֵקוּ מִמֶּנּוּ זֶה יוּכַל לְחַיּוּת.

**If so, when Rav Huna said that “a *mamzer* does not survive,” we could say that he is speaking of a questionable *mamzer*, who is a *mamzer* according to the rabbis. There is a logical argument to say so, for if you will say he was speaking of a definite *mamzer*, what is the difference between a *mamzer* and the remaining disqualifications in the congregation, that they will survive, and this [*mamzer*] will not survive? Rather, it is certain that he is speaking of a *mamzer* according to the rabbis, and since he is a questionable [*mamzer*], there is a fear lest he integrate and that they not distance themselves from him completely, because they will be lenient on him, lest he is not a *mamzer*. Because of this concern, he will not survive, i.e., he will die at the hand of Heaven. Indeed, [regarding] a definite *mamzer* whose disqualification is known and recognized, certainly [the community] will distance themselves from him, and thus he will be able to live, i.e., he will not die at the hand of Heaven.**

<sup>8</sup> Shabbat 130b.

ומשום הכי לא הקשה מהפסוק "לא יבא ממזר", דמיירי בממזר ודאי, ורב הונא מיירי בממזר ספק ושהוא מדרבנן, אלא הקשה ממתניתין דקתני ליה בהדי נתינים, דתנן ממזרים ונתינים אסורים. ונתינים ודאי ושהם מדרבנן, ואף ממזרים דקתני נמי היינו אף ממזר מדרבנן, וקתני איסורן איסור עולם אלקא חיי, ותיירץ דידיע ולא ידיע, דאין הדבר תלוי בספק אלא בידיעת בני אדם.

**Because of this, they didn't question [Rav Huna] from the verse, "a *mamzer* shall not enter," for now we understand that it is speaking of a definite *mamzer*, while Rav Huna is speaking of a questionable *mamzer*, whose lineage is suspect according to the rabbis. Instead, [Rav Huna] was questioned from the following Mishnah, as is taught regarding *netinim*, which teaches that *mamzerim* and *netinim* are forbidden.**

*Netinim* are certainly [forbidden] by rabbinic law, and not by Biblical law. So too *mamzerim*, who are also taught as being [forbidden] according to the rabbis, and as taught, they are forbidden with an eternal prohibition that apparently, he will survive. The solution is that [one] who is known and not known, i.e., one who is under suspicion by the rabbis, but it is unclear whether or not he is actually a *mamzer*, his descendants will survive for three generations, but more than this they will not survive. **For this matter does not depend upon the doubt, but upon the knowledge of people.**

This is as it says in the Gemara, in Yevamot 78b: "Rabbi Zeira said: Rav Yehuda explained this to me: One who is known [to be a *mamzer*] will survive [as there is no concern that there will be any mingling of his seed]. [On the other hand, one] who is not known [as a *mamzer*] will not survive [as he will die at the hand of Heaven so that there will be no mingling of his seed]. [As for one] who is known and not known, [i.e., one who is under suspicion, but it is unclear whether or not he is actually a *mamzer*, his descendants will] survive for three generations, [but] more [than this they will] not survive."

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