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# THE ORIGINS OF THE MATRILINEAL PRINCIPLE IN RABBINIC LAW

*by*

SHAYE J. D. COHEN

According to rabbinic law, from the second century to the present, the offspring of a gentile mother and a Jewish father is a gentile, while the offspring of a Jewish mother and a gentile father is a Jew (albeit, according to the Mishnah, a *mamzer*, a Jew of impaired status).<sup>1</sup> Each of these two

Research on this paper was supported by a generous grant from the Nisson Touroff Fund of the Jewish Theological Seminary. References to the Mishnah, Tosefta, Babylonian Talmud, and Palestinian Talmud are indicated respectively by M., T., B., and P. followed by the name of the tractate. Unless otherwise noted, all translations in this essay are mine. This paper has benefited from the suggestions and advice of Mr. David Cherry, Mr. Leonard Gordon, and Professor Sarah Pomeroy. A capsule version of this essay has appeared in *Judaism* 34, 1 (Winter 1985): 5–13.

1. A *mamzer* is a male or female Jew (the feminine form of the noun is *mamzeret*) who, because of the circumstances of his or her birth, may not marry a native-born Jew; if he or she does, the children are *mamzerim*. I leave *mamzer* untranslated because the English terms “illegitimate” and “bastard” derive from a completely different legal system and do not accurately reflect the meaning of the Hebrew.

rulings has its own history, as I shall show below, but it is convenient to group them together under the general heading of the “matrilineal principle.” Anthropologists and sociologists use the term *matrilineal* to describe societies in which kinship is determined through the females and not the males. Such societies once existed in ancient Egypt and Mesopotamia, and can still be found in parts of Africa, India, and Polynesia.<sup>2</sup> Although rabbinic society and family law have not yet been studied in the light of modern anthropological and sociological theories, it seems clear that the kinship patterns which characterize matrilineal societies are thoroughly foreign to rabbinic society. With only a few exceptions, rabbinic family law is patrilineal. Status, kinship, and succession are determined through the father. (“The family of the father is considered family, the family of the mother is not considered family,” B. *Bava Batra* 109b.) Why, then, did the rabbis adopt a matrilineal principle for the determination of the status of the offspring of mixed marriages?

In the first section of this essay I examine the Bible and the texts of the Second Temple period in order to determine the earliest attestation of the matrilineal principle in Jewish sources. The second section is dedicated to the Mishnah, the Tosefta, and the two Talmudim. In the third section I assess various explanations for the origins of the matrilineal principle, and in the fourth I attempt to reach a conclusion.<sup>3</sup>

2. Paul Koschaker, “Fratriarchat, Hausgemeinschaft und Mutterrecht in Keilschrifttexten,” *Zeitschrift für Assyriologie* 41 n.s. 7 (1933): 1–89; David M. Schneider, *Matrilineal Kinship* (Berkeley: University of California Press, 1961); in general see Jack Goody, ed., *Kinship: Selected Readings* (Baltimore: Penguin, 1971) and Jack Goody, *Comparative Studies in Kinship* (Stanford: Stanford University Press, 1969), chap. 3. For recent kinship studies see Robert A. Oden, Jr., “Jacob as Father, Husband, and Nephew: Kinship Studies and the Patriarchal Narratives,” *Journal of Biblical Literature* 102 (1983): 189–205.

3. This article is the fourth in a series about conversion and intermarriage in antiquity; see also “Conversion to Judaism in Historical Perspective: From Biblical Israel to Postbiblical Judaism,” *Conservative Judaism* 36, no. 4 (Summer 1983): 31–45; “From the Bible to the Talmud: the Prohibition of Intermarriage,” *Hebrew Annual Review* 7(1983): 23–39; “Was Timothy Jewish (Acts 16:1–3)? Patristic Exegesis, Matrilineal Descent, and Rabbinic Law,” *Journal of Biblical Literature* (in press). The most important scholarly contributions to the study of the matrilineal principle are: Victor Aptowitzer, “Spuren des Matriarchats im juedischen Schrifttum,” *Hebrew Union College Annual* 4 (1925): 207–240 and 5 (1926): 261–297; Louis M. Epstein, *Marriage Laws in the Bible and the Talmud* (Cambridge, Mass.: Harvard University Press, 1942), esp. pp. 174 and 194–197; Boaz Cohen, “Some Remarks on the Law of Persons in Jewish and Roman Jurisprudence,” *Proceedings of the American Academy for Jewish Research* 16 (1946–47): 1–37, esp. 12–24; and Lawrence Schiffman, “At the Crossroads: Tannaitic Perspectives on the Jewish-Christian Schism,” in *Jewish and Christian Self-Definition*, vol. 2, *Aspects of Judaism in the Greco-Roman Period*, ed. E. P.

## I

*The Biblical Period*

The preexilic portions of the Hebrew Bible are not familiar with the matrilineal principle. Numerous Israelite heroes and kings married foreign women; for example, Judah married a Canaanite, Joseph an Egyptian, Moses a Midianite and an Ethiopian, David a Philistine, and Solomon women of every description.<sup>4</sup> Although Exod. 34:16 and Deut. 7:1–3 prohibit intermarriage only with the Canaanites, a prohibition that was supposed to have originated with the patriarchs Abraham (Gen. 24:3) and Isaac (Gen. 27:46–28:1), some Israelites extended the prohibition to include all foreigners (Judg. 14:3). But it never occurred to anyone in preexilic times to argue that such marriages were null and void. Marriage was the non-sacramental, private acquisition of a woman by a man, and the state had little or no legal standing in the matter.<sup>5</sup> The foreign woman who married an Israelite husband was supposed to leave her gods in her father's house, but even if she did not, it never occurred to anyone to argue that her children were not Israelites. Since the idea of conversion to Judaism did not yet exist (see below), it never occurred to anyone to demand that the foreign woman undergo some ritual to indicate her acceptance of the religion of Israel. The woman was joined to the house of Israel by being joined to her Israelite husband; the act of marriage was functionally equivalent to the later idea of conversion. In some circumstances biblical law and society did pay attention to maternal identity—the children of concubines and female slaves sometimes rank lower than the children of wives<sup>6</sup>—but it never occurred to

Sanders et al. (Philadelphia: Fortress Press, 1981), pp. 115–156, esp. 117–122. The abundant literature spawned by the debate in the State of Israel on the question “Who is a Jew?” (see, e.g., Baruch Litvin and Sidney Hoenig, eds., *Jewish Identity: Modern Responsa and Opinions* [New York: Feldheim, 1965], a book brought to my attention by Rabbi Wolfe Kelman) is important for the student of contemporary Jewry but not for the historian of antiquity. The same judgment applies to the recent pronouncements of the Reform movement justifying a patrilineal or nonlinear system (see the Winter 1983 issue of the *Journal of Reform Judaism*).

4. A convenient collection of the material is Raphael Patai, *Sex and Family in the Bible* (New York: Doubleday, 1959), pp. 31–35. It was first collected in modern times by Leopold Löw, “Ehrerechtliche Studien,” *Gesammelte Schriften* III, ed. Immanuel Löw (Szegedin, 1893; reprint ed., Hildesheim: Olms, 1979), pp. 112–143.

5. Most legal systems of antiquity shared this attitude. See, e.g., Elias Bickerman, “La conception du mariage à Athènes,” *Bulletino dell’ Istituto di Diritto Romano* 78, n.s. 17 (1975): 1–28.

6. See, e.g., Gen. 21:10, 22:20–24, and 25:5–6; Judg. 9:1–5 and 11:1–2; cf. Exod. 21:4.

anyone to impose any legal or social disabilities on the children of foreign women.

Although Deut. 7:3 prohibits Israelite men from marrying Canaanite women, and Israelite women from being given in marriage to Canaanite men, the legislator is particularly concerned about the former possibility, because “their daughters will lust after their gods and will cause your sons to lust after their gods” (Exod. 34:16, cf. Deut. 7:4).<sup>7</sup> This concern indicates not a matrilineal principle but a patriarchal society in which the cult, as well as everything else of importance, was the domain of the men. If Israelite men are incited by their foreign wives to abandon the worship of the true God, the result could be catastrophic; if Israelite women are turned astray by their foreign husbands, who would notice?<sup>8</sup> Furthermore, when an Israelite woman was married to a foreigner she usually became part of her husband’s family (just like the foreign woman who was married to an Israelite husband) and was no longer under the jurisdiction or authority of her native people. Hence the legal and narrative texts pay little attention to marriages between Israelite women and foreign men. Like the women themselves, they were easily overlooked. A similar phenomenon can be observed not only in the Mishnah (see below) but also in the literature of other societies which enacted prohibitions of marriage with foreigners.<sup>9</sup>

The meager biblical data about such marriages suggest that the offspring of Israelite women and foreign men were judged matrilineally only if the marriage was matrilocal, that is, only if the foreign husband joined the wife’s domicile or clan.<sup>10</sup> 1 Chron. 2:34–35 describes a marriage between an

There are many parallels in other legal systems of antiquity; see G. R. Driver and John Miles, *The Babylonian Laws*, 2 vols. (Oxford: Clarendon Press, 1952), 1:350–353. A notable exception is Egyptian law, according to which the offspring of a slave mother and a free father is legitimate (Diodorus of Sicily 1.80.3).

7. On Deut. 7:4 see below.

8. The Bible seldom notices idolatrous acts by Israelite women: see 2 Kings 23:7; Jer. 7:18 (the whole family); and Ezek. 8:14.

9. On Periclean Athens see below. *Matroxenoi*, “those born of foreign mothers,” is an attested Greek word (Pollux, *Onomasticon* 3.21 [E. Bethe ed., vol. 1, p. 161]; see the passages listed in Bethe’s note, especially the scholion to Euripides, *Alcestis* 989); *patroxenoi*, “those born of foreign fathers,” is unattested. The *Digest* gives the Roman version of the matrilineal principle but omits the *Lex Minicia* (see below). (Mr. David Cherry suggests that it was omitted because the *Constitutio Antoniniana* of 212 C.E., which conferred Roman citizenship on virtually all inhabitants of the empire, effectively rendered it obsolete.)

10. On matrilocal marriage in general, see Edward Westermarck, *The History of Human Marriage*, 3 vols. (New York: Allerton, 1922), 1:296–297. On matrilocal marriage in the ancient Near East, see Koschaker, “Fratriarchat, Hausgemeinschaft und Mutterrecht,” pp.

Egyptian slave and the daughter of his Israelite owner. The marriage was probably a form of adoption.<sup>11</sup> Other instances of matrilocal marriage involving a foreign male are recorded by Lev. 24:10<sup>12</sup> and 1 Chron. 2:17 (contrast 2 Sam. 17:25). If the marriage was not matrilocal, that is, if the Israelite woman joined the house of her foreign husband, I assume that the fellow nationals of both the husband and the wife would have considered the children to be of the same nationality as their father. Unfortunately, little evidence confirms this assumption.<sup>13</sup>

### *Ezra*

The situation becomes less clear in the fifth century B.C.E. At about the time that Pericles was enacting a law restricting Athenian citizenship to those born of an Athenian woman lawfully wedded to an Athenian man (451 B.C.E.), Ezra was promoting a similar reform in Judea.<sup>14</sup> After exacting a pledge from the notables of Jerusalem to refrain from marriages with foreigners, Ezra attempted to expel from the community approximately 113 foreign wives with their children. Only two aspects of this obscure episode need to be treated here. First, why did Ezra virtually ignore the marriages between Israelite women and foreign men?<sup>15</sup> Second, why did he attempt to

84–85; G. R. Driver and John C. Miles, *The Assyrian Laws* (Oxford: Clarendon Press, 1935), pp. 134–142; E. Neufeld, *Ancient Hebrew Marriage Laws* (London and New York: Longmans, Green, 1944), pp. 56–67; idem, *The Hittite Laws* (London: Luzac, 1951), pp. 126, 140–141, and 151–153; Werner Plautz, “Zur Frage des Mutterrechts im alten Testament,” *Zeitschrift für die alttestamentliche Wissenschaft* 74 (1962): 9–30, esp. 18–26; Patai, *Sex and Family in the Bible*, pp. 52–53.

11. For the legitimization of the offspring of a slave father and a free mother, cf. Driver and Miles, *Babylonian Laws*, 1:353–356.

12. The verse carefully contrasts the “son of an Israeliite woman” with the “Israeliite,” thereby implying that the former was marked by a social stigma.

13. 1 Kings 7:13–14, cf. 2 Chron. 2:12–13.

14. On the citizenship law of Pericles, see W. K. Lacey, *The Family in Classical Greece* (Ithaca, N.Y.: Cornell University Press, 1968), pp. 100–103; Jean-Marie Hannick, “Droit de cité et mariages mixtes dans la Grèce classique,” *L’antiquité classique* 45 (1976): 133–148; John K. Davies, “Athenian Citizenship: The Descent Group and the Alternatives,” *Classical Journal* 73 (1977): 105–121; Cynthia Patterson, *Pericles’ Citizenship Law of 451–50 B.C.* (New York: Arno, 1981). The parallel between Pericles and Ezra was observed by George Foot Moore, *Judaism in the First Centuries*, 3 vols. (Cambridge: Harvard University Press, 1927), 1:20, and by Solomon Zeitlin, *The Rise and Fall of the Judean State*, 3 vols. (Philadelphia: Jewish Publication Society, 1968–78), 1:17.

15. He briefly mentions these marriages in his penitential prayer (Ezra 9:12) but otherwise ignores them. So too his contemporary Malachi (2:11–16).

expel the children of the foreign wives as well as the wives themselves? The usual answer to these questions is that Ezra introduced the matrilineal principle. He attacked marriages between Israelite (at this period we can begin to say "Jewish") men and foreign women because their consequences were serious; like their mothers, the offspring were not Jewish. In contrast, he could ignore (at least temporarily) the marriages between Jewish women and foreign men because their consequences were relatively benign; like their mothers, the offspring were Jewish.<sup>16</sup> (Of course, according to the Mishnah these offspring should have been expelled anyway, since they were *mamzerim*—a minor detail.)

This view *may* be correct, but it is not necessarily so; other explanations are possible. Perhaps Ezra ignored the marriages between native women and foreign men because, as I have just mentioned, such marriages were generally ignored by both biblical and nonbiblical texts. Ezra's jurisdiction extended only to the members of his people,<sup>17</sup> and he could do nothing to a foreign man who had married an Israelite woman. Even the attempted expulsion of the children of the foreign wives does not necessarily presume a matrilineal principle. Perhaps, like Pericles, Ezra introduced a bilateral requirement for citizenship. This innovation affected *matroxenoi* (offspring of foreign mothers) more than *patroxenoi* (offspring of foreign fathers) in both Athens and Jerusalem, since the former had previously been regarded as citizens while the latter had always been regarded as foreigners.<sup>18</sup> Furthermore, the attempted expulsion of the children was an act of supererogation by Shecaniah ben Jehiel (Ezra 10:2–3) and was not demanded by Ezra himself (Ezra 10:11).<sup>19</sup> If we insist on seeing the matrilineal principle in this

16. Chaim Tchernowitz, *History of Hebrew Law* [Hebrew], 4 vols. (New York: no publisher, 1943–44), 3:108–111; Samuel Belkin, "The Problem of Paul's Background," *Journal of Biblical Literature* 54 (1935): 47–48; Zeitlin, *Judean State*, 1:27, referring to Solomon Zeitlin, "The Offspring of Intermarriage," *Jewish Quarterly Review* 51 (1960): 135–140; Schiffman, "At the Crossroads," p. 121. The amora R. Haggai also deduces the matrilineal principle from the Ezra story (see below).

17. Ezra 7:25, reading *ammak* or *ammeh* instead of *amma*. See H. L. Ginsberg, *The Israelian Heritage of Judaism* (New York: Jewish Theological Seminary, 1982), p. 17, n. 18.

18. Anastasios Christophilopoulos, *Dikaion kai Historia* (Athens: no publisher, 1973), p. 69 (part of his article "Marriage with a Foreign Woman According to Ancient Hellenic and Hellenistic Law" [Greek]); C. Vatin, *Récherches sur le mariage et la condition de la femme mariée à l'époque hellénistique* (Paris, 1970), pp. 120–122; and the studies listed in note 14 above. Isaeus, *Orations* 8.43 summarizes the Periclean law as follows, "If our mother was not a citizen, we are not citizens" (quoted by Lacey, *Family in Classical Greece*, p. 282, n. 14).

19. This was sensed by Thomas de Vio Cajetan (1469–1534) in his commentary on Ezra 10:5, 11, and 44; see his *Opera Omnia quotquot in Sacrae Scripturae Expositionem Reperiuntur*,

story, we must ascribe its origin not to Ezra but to an unheralded member of the clan of Elam.

### *The Second Temple Period*

The likelihood that Ezra (or a contemporary) introduced the idea that the offspring of a Jewish father and a gentile mother is a gentile is further diminished by the fact that this half of the matrilineal principle is never attested explicitly, and is frequently contradicted implicitly, by the later literature of the Second Temple period.<sup>20</sup> When confronting the biblical narratives about the heroes of Israel who married foreign women, an exegete committed to the matrilineal principle and to the prohibition of intermarriage with all gentiles has only three options: (1) he can assert that the principle and the prohibition were in effect in biblical times, but that they were occasionally ignored; (2) he can admit that the principle and the prohibition were not in effect in biblical times; or (3) he can argue that the principle and the prohibition were in effect and were observed by all. The first two possibilities were near impossibilities for anyone who believed in the harmony of Sacred Scripture and Jewish law. Some rabbis could admit that Jacob and his sons did not observe the legal distinctions between clean and unclean animals (*M. Hullin* 7:6),<sup>21</sup> and some works of the pseudepigrapha could portray the patriarchs in exotic ways, but the general

5 vols. (Lyons: Jacobus et Petrus Prost, 1639), 2:370–371. Similarly, according to some Karaite exegetes Ezra did not even attempt to expel the children; see below. Some modern Jewish apologists explain that Ezra did not regard the women and their children as gentiles; he was merely purifying the lineage of the aristocracy from admixture with Jews of poor pedigree. See Heinrich Graetz, *Geschichte der Juden*, 2d ed. (Leipzig: O. Leiner, 1902), II, 2, pp. 130–136 (with the critique of Yehezkel Kaufmann, *History of the Religion of Israel*, vol. 4, *From the Babylonian Captivity to the End of Prophecy*, trans. C. W.鄂roymon [New York: Ktav, 1977], pp. 340–342); F. Rosenthal, *Monatschrift für die Geschichte und Wissenschaft des Judentums* 30 (1881): 120–122; and Lewi Freund, “Über Genealogien und Familienreinheit in biblischer und talmudischer Zeit,” in *Festschrift Adolf Schwarz*, ed. Victor Aptowitzer and Samuel Krauss (Berlin and Vienna: R. Löwit, 1917), pp. 168–169.

20. Of course, one could argue that this fact is merely further testimony to Ezra's relative lack of success; see, e.g. Morton Smith, *Palestinian Parties and Politics That Shaped the Old Testament* (New York: Columbia University Press, 1971), pp. 121–122. The documents of Elephantine describe several cases of intermarriage, but the matrilineal principle is nowhere in evidence. See Bezalel Porten, *Archives from Elephantine* (Berkeley: University of California Press, 1968), pp. 148–149, 203–213, and 252–258.

21. E. E. Urbach, *The Sages*, trans. I. Abrahams, 2 vols. (Jerusalem: Magnes Press, 1979), 1:335–336.

tendency of rabbinic literature, *Jubilees*, and the Testaments of the Twelve Patriarchs is to claim that the patriarchs observed the law in a manner consonant with later beliefs. And even if an excuse could be found for the marriages of the sons of Jacob, what excuse could be found for Moses himself and for the figures who lived after the revelation of the Torah at Mount Sinai? Rabbinic midrash, therefore, chose the third course, and argued that the foreign women were not foreign at all, either because they were of Israelite origin or because they converted to Judaism before their marriages.<sup>22</sup> This exegesis does not necessarily presume the matrilineal principle—the removal of the blot of intermarriage is sufficient incentive to invent stories about Israelite lineage and conversions to Judaism—but without it the matrilineal principle cannot be maintained in the presence of the biblical data. Therefore, the absence of this exegesis from the vast majority of the midrashic and exegetical works of the Second Temple period implies that these works are not familiar with the matrilineal principle.

Some examples: The Book of Jubilees has Abraham (20:4, 22:20, and 25:5), Rebecca (25:1–3), and Isaac (27:10) admonish their sons not to marry Canaanite women, “for the seed of Canaan will be rooted out of the land,” but the author mentions without comment the Canaanite wives of Simon and Judah (34:20), marriages which were sanitized by rabbinic exegesis.<sup>23</sup> According to *Jubilees* 41:1 and *Testament of Judah* 10:1 Tamar, the daughter-in-law and paramour of Judah, was an Aramean; in rabbinic lore (and in Philo) she was a convert to Judaism.<sup>24</sup> *Testament of Joseph* 18:3 mentions without comment Joseph’s marriage to the daughter of the priest of Heliopolis; rabbinic midrash (and Joseph and Asenath) removes this cause for opprobrium.<sup>25</sup> Egyptian Jews told many wonderful stories about

22. L. Ginzberg, *Legends of the Jews*, 7 vols., reprint ed. (Philadelphia: Jewish Publication Society, 1967–68), index, s.v. “conversion” and “proselytes”; Victor Aptowitzer, “Asenath, the Wife of Joseph,” *Hebrew Union College Annual* 1 (1924): 239–306; and Bernard Bamberger, *Proselytism in the Talmudic Period* (1939; reprint ed., New York: Ktav, 1968), pp. 174–217. I hope to study these techniques elsewhere.

23. R. H. Charles, *Apocrypha and Pseudepigrapha of the Old Testament*, vol. 2, *Pseudepigraphy* (Oxford: Clarendon Press, 1913), note ad loc.

24. In some midrashim, notably *Targum Jonathan* on Gen. 38:6, she is the daughter of Shem. (Her loyalty to God is indicated in *Targum Jonathan* and *Fragment Targum* to Gen. 38:25.) See Marshall Johnson, *The Purpose of the Biblical Genealogies* (Cambridge: At the University Press, 1969), pp. 156, 159–162, and 270–272 (who omits Ps.-Philo, *Biblical Antiquities* 9.5). For Philo (*On the Virtues* 40. 220–222) Tamar plays the same role as Asenath in Joseph and Asenath: she is the perfect archetype of the female proselyte, just as Abraham is of the male. See Marc Philonenko, *Joseph et Aséneth* (Leiden: Brill, 1968), p. 55.

25. See Aptowitzer, “Asenath.”

Moses' Ethiopian wife, but one story they did not tell was her conversion to Judaism; that motif appears only in the rabbinic version of the tale.<sup>26</sup> The rabbis insist that a female war captive must convert to Judaism before being married by her Israelite captor; Deut. 21:10–14 neglects this provision, as does the Temple Scroll, a work closely related to Jubilees.<sup>27</sup> In the middle of its paraphrase of Gen. 34, the story of Shechem's rape of Dinah, Jubilees inserts a tirade against intermarriage. It condemns the unions of Israelite men with foreign women and the unions of Israelite women with foreign men, but, influenced by the scriptural text, directs the brunt of its anger toward the latter, not the former. A man who gives his daughter to a gentile is guilty of handing his seed over to Molech, and therefore both the man and his daughter deserve death (30:7–11, esp. 10). In rabbinic texts, by contrast, the prohibition of Molech worship (Lev. 18:21) is understood to refer to unions between Israelite men and foreign women: "this is a man who has sexual intercourse with a gentile woman and raises up children who are the enemies of God." Jubilees does not know the matrilineal principle, the rabbis do.<sup>28</sup>

Following the biblical tradition, few texts of the Second Temple period indicate the status of the offspring of unions between Jewish women and gentile men. Some scholars have adduced Acts 16:1–3 to prove that such offspring were considered to be Jewish, but the passage is ambiguous.

And he [Paul] came also to Derbe and to Lystra. A disciple was there, named Timothy, the son of a Jewish woman who was a believer; but his father was a Greek. He was well spoken of by his brethren at Lystra and Iconium. Paul wanted Timothy to accompany him; and he took him and circumcised him because of the Jews that were in those places, for they all knew that his father was a Greek.<sup>29</sup>

Paul circumcises his new traveling companion so that he will not offend the Jews of Asia Minor, but his act can be interpreted in either of two ways: is

26. Tessa Rajak, "Moses in Ethiopia: Legend and Literature," *Journal of Jewish Studies* 29 (1978): 111–122, and Avigdor Shinan, "Moses and the Ethiopian Woman," in *Studies in Hebrew Narrative Art*, Scripta Hierosolymitana, vol. 27 (Jerusalem: Magnes Press, 1978), pp. 66–78.

27. R. Akiva in *Sifrei Deut.* 213 (Finkelstein ed., p. 246); Temple Scroll, col. 63.

28. M. *Megillah* 4:9 and the statement of R. Ishmael in B. *Megillah* 25a; see S. Cohen, "Prohibition of Intermarriage."

29. The translation is the Revised Standard Version.

Paul circumcising an uncircumcised Jew, or is he converting a gentile to Judaism? In other words, was Timothy a Jew with a gentile father or a gentile with a Jewish mother? The latter possibility is supported by the simple meaning of the phrase “for they all knew that his father was a Greek.” Patristic exegetes unfamiliar with the rabbinic matrilineal principle had no doubt that Timothy was a gentile.<sup>30</sup>

Philo, Paul, and Josephus, three authors of the first century, are unfamiliar with either half of the matrilineal principle. Philo applies the term *nothos* (“bastard”) to the offspring of both types of mixed marriage: Israelite mothers with gentile fathers, and Israelite fathers with gentile (or slave) mothers. This usage is somewhat puzzling, but it certainly does not presume familiarity with the matrilineal principle.<sup>31</sup> Paul thinks that either a Christian father or a Christian mother could “consecrate” the children to Christ (1 Cor. 7:14). Josephus knows that priestly lineage can be debased if a priest’s wife is raped or is unfaithful,<sup>32</sup> but he does not know that a gentile woman married to a Jewish man produces gentile children. Josephus carefully narrates the conversion (or, in some cases, nonconversion) of the gentile men who married the princesses of the Herodian house, but he never mentions the conversion (or nonconversion) of the gentile women who were married to the princes of the house, and Josephus obviously has no doubt that their children are Jewish. The biblical principle still applies: a gentile

30. S. Cohen, “Was Timothy Jewish?”; cf. David Daube, *Ancient Jewish Law* (Leiden: Brill, 1981), pp. 25–26.

31. Israelite mother and gentile father: *On the Life of Moses* 2.36 § 193 (referring to Lev. 24:10). Israelite father and gentile (or slave) mother: *On the Virtues* 40 § 224, and cf. *Allegorical Interpretation* 2.24 § 94 (referring to the offspring of Bilhah and Zilpah); *On the Life of Moses* 1.27 § 147 (referring to the mixed multitude, the offspring of Egyptian women and Hebrew men). In some Greek cities the offspring of a citizen mother and a noncitizen father was a *nothos* (see Demosthenes, 23 [*Against Aristocrates*] § 213, referring to Oreus in Euboea), but I think that Philo is using the term in a nontechnical sense: “of impure lineage” or “a product of mixed breeding.” This usage is well attested. Samuel Belkin argues that Philo knew the rabbinic matrilineal principle, but the merits of his argument need not be considered (and they are few) because he mistakenly believes that Philo restricts the term *nothos* to the offspring of Israelite fathers and gentile mothers. See his *Philo and the Oral Law* (Cambridge: Harvard University Press, 1940), pp. 233–235. The mistake originates with Isaac Heinemann, *Philons griechische und jüdische Bildung* (Breslau: Marcus, 1932), pp. 313–314, but Heinemann, at least, realized that Philo’s usage is not compatible with rabbinic law. See too B. Cohen, “Law of Persons,” p. 24, n. 71.

32. *Jewish Antiquities* 3.12.2 § 276, 13.10.5 § 292, 13.13.5 § 372; cf. 11.3.10 § 71 and *Against Apion* 1.7 § 35.

woman “converts” by being married to a Jewish husband.<sup>33</sup> Herod the Great is labeled an “Idumean” and a “half-Jew” because of his paternal ancestry; the fact that his mother was an “unconverted” Arab woman is ignored.<sup>34</sup>

### *Conclusion*

The Apocrypha, the pseudepigrapha, the Qumran scrolls, Philo, Paul, Josephus, and Acts are not familiar with the rabbinic matrilineal principle. It is probably not a coincidence that most of these works also do not know that foreign women can convert to Judaism by a means other than marriage to a Jewish husband. Conversion to Judaism by men is first attested in the sixth and fifth centuries B.C.E.; its identification with circumcision is first attested (aside from the ambiguous story in Gen. 34) in the second century B.C.E. Few texts of the Second Temple period, however, speak of the conversion of women, and no text of the period prescribes immersion as a component of the ritual of conversion for either man or woman. (In Joseph and Asenath the ritual of Asenath’s conversion is the eating of honey from a honeycomb.) If the only way foreign women can “convert” to Judaism is through marriage, the biblical material prevents any matrilineal theory, since the Bible shows that the children of such marriages were accepted as Israelites. With the emergence of the possibility that women could convert to Judaism on their own, the matrilineal principle could develop. This process is underway in the latter part of the Second Temple period but is not complete until the second century, when immersion for women (and men) and the matrilineal principle are securely attested for the first time.<sup>35</sup>

33. *Jewish Antiquities* 16.7.6 § 225, 18.5.1 § 109, 18.5.4 §§ 139 and 141, and 20.7.1–3 §§ 139–147. (Josephus does not say whether Agrippa, the son of Drusilla and the uncircumcised Felix [§ 143], was Jewish.)

34. Herod: *Jewish Antiquities* 14.1.3 §§ 8–10, 14.7.3 § 121, and 14.15.2 § 403; cf. Eusebius, *Ecclesiastical History* 1.7.11–14. Joseph Justus Scaliger noticed this problem and solved it by arguing that Herod’s mother converted to Judaism; see the *Animadversiones in Chronologica Eusebii*, p. 149, in his *Thesaurus Temporum: Eusebii Pamphili . . . Chronicorum Canonum . . . Libri Duo* (Leiden: T. Basson, 1606).

35. For a brief history of conversion to Judaism, see S. Cohen, “Conversion to Judaism.” Several scholars have noted that conversion for women developed only after conversion for men: see Tchernowitz, *History of Hebrew Law*, 1:301–303; Belkin, *Philo*, p. 235, n. 60; and the

## II

*The Mishnah*

The central rabbinic text on the matrilineal principle is M. *Kiddushin* 3:12.<sup>36</sup>

[A] Wherever there is potential for a valid marriage and the marriage would not be sinful, the offspring follows the male. And what [woman] is this? This is the daughter of a priest, Levite, or Israelite who was married to a priest, Levite, or Israelite.

[B] Wherever there is potential for a valid marriage but the marriage would be sinful, the offspring follows the parent of lower status.<sup>37</sup> And what [woman] is this? This is a widow with a high priest, a divorcee or a “released woman” [*haluzah*, Deut. 25:5–10] with a regular priest, a *mamzeret* or a *netinah* [Ezra 2:43–58, etc.] with an Israelite, an Israelite woman with a *mamzer* or a *natin*.

[C] And any woman who does not have the potential for a valid marriage with this man but has the potential for a valid marriage with other men, the offspring is a *mamzer*. And what [man] is this? This is he who has intercourse with any of the relations prohibited by the Torah.

[D] And any woman who does not have the potential for a valid marriage either with this man or with other men, the offspring is like her. And what [man] is this? This is the offspring of a slave woman or a gentile woman.

Paragraph D clearly states that the offspring of a slave or gentile mother (and a Jewish father) follows the mother, a ruling which appears also in M. *Yevamot* 2:5 and which constitutes half of the matrilineal principle.

This mishnah is carefully constructed out of four paragraphs which share a common literary structure (each states a general rule followed by one or more examples of the rule) but differ from each other in style. Paragraphs A and B begin with *kal makom she-yesh kiddushin*, ask whether

chapter on conversion in Daube, *Ancient Jewish Law*. Elsewhere I hope to study the development of the rituals of conversion (including immersion) and the emergence of nonmarital conversion for women.

36. I translate Albeck's text. For representative variants I have checked facsimiles of the following codices: Parma De Rossi 138 and 984, Budapest Kaufmann A 50, Paris 328–329, Leiden Scal. 3 (the most important manuscript of the Palestinian Talmud), and Munich 95 (the most important manuscript of the Babylonian Talmud).

37. All the manuscripts listed in the previous footnote read (*ha-)pagum she-bi-shneihen*.

the union is sinful or not, ignore the potential of the woman to contract a legal marriage with other men, and introduce women as their examples. Paragraphs C and D begin with *ve-kal mi she-ein lah alayv kiddushin*, ask whether the woman has the potential to contract a legal marriage with other men, ignore the sinfulness of the union, and introduce men (more precisely a man in C and a masculine noun in D) as their examples. In their examples A and C use a verb (*she-niset/she-ba*), B and D do not. These interlocking patterns imply that the examples are an intrinsic part of each paragraph and that the mishnah as a whole is an organic composition.<sup>38</sup>

The literary unity of the mishnah is complemented by its thematic unity. The mishnah is based on two assumptions which are unknown to the Bible: first, some marriages are valid and some invalid; second, the status of offspring is determined not by the marriage of the parents but by the potential of the parents to contract a valid marriage with each other (*kiddushin*).<sup>39</sup> Paragraph A treats unions which are permitted and potentially valid; B, unions which are prohibited but potentially valid; and C and D, unions which have no potential validity because they are prohibited (although this point is left unstated).

The literary and thematic unity of this mishnah implies that each of the four paragraphs is based on this postbiblical legal theory, but the implication is misleading. The redactor has brought order out of chaos by imposing a single theory upon practices of disparate origins. The basic principle enunciated by A is biblical (the offspring of a union between Israelites follows the father). C's ruling that incestuous relationships produce *mamzerim* may also be biblical, as some scholars have argued.<sup>40</sup> Half of D may be biblical (the offspring of a slave woman follows the mother at least to some extent),<sup>41</sup> but the other half certainly is not (the offspring of a gentile woman follows the mother). Nor is there any biblical support for the principle stated by B. A further indication of the artificiality of the structure of

38. Albeck's edition uses *ve-eizeh zeh* to introduce the examples of A and B, and *ve-eizo zo* to introduce the examples of C and D. Most of the manuscripts are not so exact.

39. "Potential to contract a valid marriage" is the only possible meaning of the term in paragraphs C and D, a point not appreciated by many translators of this Mishnah. See B. Cohen, "Law of Persons," p. 14. The rabbis do not require marriage of the parents for a child to have the status of its father; see below.

40. The meaning of *mamzer* in Deut. 23:3 is obscure. See Neufeld, *Ancient Hebrew Marriage Laws*, pp. 224–227; *Encyclopaedia Biblica* [Hebrew], vol. 5 (1968), s.v. *mamzer*; Calum M. Carmichael, *The Laws of Deuteronomy* (Ithaca, N.Y.: Cornell University Press, 1974), pp. 173–174.

41. See note 6.

this mishnah is the fact that two of the four examples in paragraph B are inappropriate. Examples three and four (*mamzer/mamzeret* and *natin/netinah* with an Israelite) well illustrate the principle that the offspring of certain unions follow the parent with the lower status, but examples one and two (widow with a high priest, divorcee and *haluzah* with a priest) do not. The children of these unions do not follow either parent; they are *hallalim*, a status held by neither the father nor the mother.<sup>42</sup>

### *The Other Half of the Matrilineal Principle*

Nor does M. *Kiddushin* 3:12 account for all the anomalies of the rabbinic law of status. The two Talmudim, the Tosefta (*Kiddushin* 4:16 [Lieberman ed., p. 292]), and the rabbinic commentators on this mishnah point out many omissions, one of which is the union of a Jewish woman with a gentile man. Like the Bible, the Mishnah is interested primarily in those who may and may not be married by Israelite men. As the Palestinian Talmud says, “Israelite men of good pedigree are prohibited from marriage with women who are unfit, but Israelite women of good pedigree are not prohibited from men who are unfit.”<sup>43</sup> Elsewhere, however, the Mishnah does refer to this half of the matrilineal principle. M. *Yevamot* 7:5 states, without giving any reason, that the child of a Jewish mother and a gentile or slave father is a *mamzer*. Perhaps the ruling is a development of the principle stated by paragraph D of M. *Kiddushin* 3:12, which declares that the offspring of a woman who does not have *kiddushin* follows the status of the mother. The logic of the argument is not spelled out, but most commentators assume that the mother’s incapacity to enter a valid marriage renders her child fatherless. Since there is no potential for *de jure* paternity, the child follows the mother.<sup>44</sup> Perhaps, then, this logic was extended also to men who lack *kiddushin*. The offspring of a Jewish woman by a slave or a gentile does not have a legal father and therefore follows the status of the mother. But just as the law penalizes a Jewish man who has fathered a child on a gentile woman

42. In his commentary on this mishnah Maimonides tries to answer this difficulty.

43. P. *Kiddushin* 3:14 64c; cf. B. *Kiddushin* 73a and parallels. Neither the Babylonian nor the Palestinian Talmud asks why the Mishnah omits the union of an Israelite woman with a gentile or slave. The answer was obvious.

44. This is not, however, the logic of paragraph C; incestuous and various other prohibited relations produce a *mamzer*, not a fatherless child who follows its mother.

(the child is a gentile), the law had to penalize a Jewish woman who conceived a child from a gentile man: the child is a Jew but a *mamzer*. Roman law provides a good analogy to this process (see below). If this exegesis is correct, paragraph D of M. *Kiddushin* 3:12, as elaborated by M. *Yevamot* 7:5, testifies to both halves of the matrilineal principle.

The Talmudim, however, use not paragraph D but paragraph C for determining the consequences of a union between a Jewish woman and a gentile or a slave: since the mother does not have the capacity to contract a valid marriage with the father (because he is a gentile) but does have that capacity with other (i.e., Jewish) men, her offspring therefore is a *mamzer*.<sup>45</sup> If this explanation is correct, one half of the matrilineal principle comes from paragraph C, the other from paragraph D.

The two halves are even further apart if we accept the implications of T. *Kiddushin* 4:16 (Lieberman ed., p. 292).

A gentile or a slave who had intercourse with an Israelite woman and she gave birth to a child—the offspring is a *mamzer*. R. Simeon b. Judah says in the name of R. Simeon, “There is no *mamzer* except [for the offspring] of a woman whose prohibition is among the relations prohibited by Scripture and on account of whom [those who have intercourse with her] are liable to extirpation.”

The first opinion, which is that of M. *Yevamot* 7:5, declares that the offspring of a Jewish mother and a gentile father is a *mamzer*. R. Simeon, however, says that the child is not a *mamzer* but a legitimate Jew.<sup>46</sup> This debate, the Talmudim say, centers on the question whether or not paragraph C (“the offspring is a *mamzer*”) extends to the case under discussion. When shorn of the talmudic additions, however, the debate in the Tosefta seems to be based not on paragraph C of M. *Kiddushin* 3:12 but on M. *Yevamot* 4:13. In that mishnah, which reflects neither the ideas nor the terminology of M. *Kiddushin* 3:12, R. Akiva, Simeon the Temanite (perhaps the same R.

45. See P. *Kiddushin* 3:14 64d and B. *Yevamot* 45b (and parallels). The counter-argument in both Talmudim is difficult to understand. That the principle of paragraph C includes male gentiles and slaves seems to be confirmed by M. *Gittin* 9:2.

46. In medieval times some commentators (notably Rashi) argued that R. Simeon meant that the offspring was not a *mamzer* but a *gentile*. See Aptowitzer, “Spuren des Matriarchats,” p. 268. This view, incompatible with B. *Yevamot* 44b—45b and contradicted by P. *Yevamot* 4:15 6c (and P. *Kiddushin* 3:14 64c–d), is a willful distortion of the Talmud and is a product of the medieval period.

Simeon quoted by the Tosefta),<sup>47</sup> and R. Joshua debate the definition of *mamzer*. In their debate these three rabbis do not refer explicitly to the consequences of a union between a Jewish woman and a gentile or a slave, but T. *Kiddushin* 4:16, by echoing the language of M. *Yevamot* 4:13, implies that this case too was included in their debate. If the Tosefta's interpretation is correct, the Mishnah is unfamiliar with a single matrilineal principle. The status of the offspring of a Jewish father and a gentile or slave mother was determined by one legal principle (paragraph D of M. *Kiddushin* 3:12), while the status of the offspring of a Jewish mother and a gentile or slave father was determined by another (M. *Yevamot* 4:13 as understood by T. *Kiddushin* 4:16).

In sum, one mishnah clearly states that the offspring of a gentile mother and a Jewish father is a gentile, and offers a reason for this ruling, although the reason may not be the original one. Another mishnah clearly states that the offspring of a Jewish mother and a gentile father is a *mamzer*, but offers no reason for this ruling. The reason offered for the first ruling may be applicable also to the second, although the Mishnah does not connect them.

### *Date*

Both M. *Kiddushin* 3:12 and M. *Yevamot* 7:5 are anonymous. Can they be dated? Jacob Neusner argues that M. *Kiddushin* 3:12 is Yavnean (end of the first century and beginning of the second century C.E.) because Rabbis Eliezer and Tarfon refer to it in M. *Kiddushin* 3:13, but this exegesis is incorrect. Rabbis Eliezer and Tarfon debate whether a *mamzer* can ever produce children who are not *mamzerim*, but they do not discuss the definition of *mamzer* and do not presume the principles outlined in 3:12.<sup>48</sup> J. N. Epstein argues that M. *Kiddushin* 3:12 opens a tractate on "Forbidden Relations and Pedigrees" which extends through 4:14, and which, aside from various interpolations, is an "ancient mishnah" of Second Temple times.<sup>49</sup> Unfortunately, this "tractate" is neither a thematic nor a literary unit, and the principles

47. The manuscripts and testimonia of T. *Kiddushin* 4:16 provide various readings; see Lieberman's apparatus and commentary.

48. J. Neusner, *A History of the Mishnaic Law of Women*, 5 vols. (Leiden: Brill, 1980), 5:173 and 200–201.

49. J. N. Epstein, *Introduction to Tannaitic Literature*, ed. E. Z. Melamed [Hebrew] (Jerusalem: Magnes Press, 1957), pp. 54 and 414–415. See Schiffman, "At the Crossroads," p. 118.

of 3:12 nowhere recur within it. The discussion of the ten “genealogical stocks” in chapter 4 includes many of the anomalous unions omitted by 3:12 (see above). But Neusner and J. N. Epstein, taken together, are correct to the extent that M. *Kiddushin* 3:12–4:14 (or 4:12) is a series of anonymous texts on genealogical matters, into which comments by named authorities, almost all of them Yavnean, have been inserted. This implies that 3:12 is Yavnean (if not earlier), but the conclusion is far from certain. If M. *Yevamot* 7:5 is to be connected with M. *Yevamot* 4:13, as T. *Kiddushin* 4:16 implies, it too is probably Yavnean.<sup>50</sup>

The two halves of the matrilineal principle are combined explicitly for the first time in the Babylonian discussion of M. *Kiddushin* 3:12. In order to prove the scriptural origin of the ruling that the offspring of a gentile woman follows the status of its mother, the two Talmudim quote (in slightly different forms) a statement of R. Yohanan in the name of R. Simeon b. Yohai. The Babylonian version (B. *Kiddushin* 68b and parallels) appends the following comment of Ravina, “Learn from this [the exegesis of R. Simeon] that your daughter’s son who is fathered by a gentile is called ‘your son.’” The Palestinian Talmud has nothing comparable to Ravina’s comment, perhaps because it thought that R. Simeon’s exegesis extends also to the offspring of Israelite mothers and gentile fathers (see below). If this is correct, the two halves of the matrilineal principle were first connected by R. Simeon (middle of the second century). According to the Babylonian Talmud, however, the credit for this connection belongs not to R. Simeon but to Ravina (late fourth century).

### *Dissenting Opinions*

The anonymity of M. *Kiddushin* 3:12 implies that the editor regarded its rulings as beyond dispute. Virtually all tannaim and amora'im agreed that the offspring of a gentile or slave woman follows the status of the mother. Everyone further agreed that the offspring of a Jewish woman by a gentile or a slave is a Jew, although there was a vigorous debate among the amora'im whether to accept the Mishnah's view that such an offspring is a *mamzer*.

50. Neusner, *Law of Women*, 5:68 leaves M. *Yevamot* 7:5 unassigned. A Yavnean date also fits R. Ishmael's exegesis of Lev. 18:21 (see n. 28). Perhaps the matrilineal principle entered rabbinic Judaism from the marriage regulations of pre-70 sectarianism (cf. Neusner, *Law of Women*, 5:179–192), but I see no evidence to support this conjecture.

The lenient view came to prevail, but in all other aspects the mishnaic statement of the matrilineal principle was followed.<sup>51</sup>

The consensus was not unanimous, however. Rabbinic literature preserves several traces of an antimishnaic view (relics of the premishnaic view?). Lev. 24:10 describes how a man, the son of an Israelite mother and an Egyptian father, argued with an Israelite “in the camp,” cursed God, and was brought before Moses for judgment. The *Sifra* comments that the phrase “in the camp” implies that the man had “converted” to Judaism (Weiss ed., p. 104c). Nahmanides and many other medieval commentators are puzzled by this statement, for how can the son of an Israelite woman, that is, a born Jew, convert to Judaism? None of the answers they offer is as strong as the question. Whoever is responsible for this pericope of the *Sifra* did not accept the dominant rabbinic view that the offspring of a Jewish mother is a Jew.<sup>52</sup> Similarly, some rabbis believed that the offspring of a gentile mother and a Jewish father was a *mamzer*, not a gentile. R. Zadok in Rome excused himself from spending the night with a woman who had been offered to him because, he said, he feared that he might “multiply *mamzerim* in Israel.”<sup>53</sup> Even more extreme is the view of Jacob of Kefar Neburaya, who argued that such a child was a Jew in all respects—the old patrilineal view of

51. On this debate see B. Cohen, “Law of Persons,” pp. 15–19. The dynamics of this debate remain to be investigated. The Talmudim ignore the evidence of 1 Chron. 2:34–35 (see above note 11).

52. The reading of Weiss’s edition of the *Sifra* is confirmed by codex Assemani 66, p. 465 in the facsimile edited by Louis Finkelstein (New York: Jewish Theological Seminary, 1956). See the following commentaries on Lev. 24:10: Nahmanides (Chavel ed., pp. 162–163), Hizzekuni (Chavel ed., p. 410), *Moshav Zeekenim* (S. Sassoon ed., p. 396), and Malbim. See Aptowitzer, “Spuren des Matriarchats,” pp. 274–277. Rashi on Lev. 24:10 had no difficulty with the *Sifra*, since he thought that the offspring of a Jewish mother and a gentile father was a gentile; see note 46. The end of T. *Eduyyot* refers to Lev. 24:10, but the text is corrupt.

53. *Fathers According to Rabbi Nathan*, version A, chap. 16 (Schechter ed., p. 32a). Aptowitzer’s interpretation (“Spuren des Matriarchats,” pp. 266–267) is far-fetched: R. Zadok feared that he might father a gentile son who might, in turn, marry a Jewish woman and father *mamzerim*. See the ingenious suggestion of I. Heinemann, *Zion* 4 (1939): 284, n. 55 (*mamzer* is here used as a translation of the Greek *nothos*) and the discussion of M. Herr, *Studies in Aggadah and Folk Literature*, Scripta Hierosolymitana, vol. 22 (Jerusalem: Magnes Press, 1971), p. 137. Some medieval commentators found the same view in the statement of R. Asi in B. *Yevamot* 16b, “A gentile who betroths [a Jewish woman] at this time—we suspect that the betrothal might be valid because he might be a descendant of the ten lost tribes.” See the Tosafot ad loc. with the comments of D. W. Halivni, *Sources and Traditions: A Source-Critical Commentary on Seder Nashim* [Hebrew] (Tel Aviv: Dvir, 1968), pp. 703–704, on B. *Kiddushin* 68a.

the Bible! After a stern rebuke from R. Haggai, he retracted his opinion.<sup>54</sup> All in all, these exceptions do not amount to much. Perhaps outside the rabbinic pale the matrilineal principle had its opponents, but within rabbinic society it commanded almost universal assent.<sup>55</sup>

### III

The matrilineal principle is not attested in either the Bible or the literature of the Second Temple period. Even in the first century of our era it is still unknown to Philo, the New Testament, and Josephus. All of these texts seem to be familiar with a patrilineal system. The Mishnah, however, states the two halves of the matrilineal principle as if they were agreed upon by all. Why did the rabbis break with previous practice? The innovation (or innovations, if we keep the halves separate) can be explained either as the product of a new ideology (a chapter in the history of ideas) or as a response to new social conditions (a chapter in social history). I shall treat each approach separately.

#### *Ideological Origins: Deuteronomy 7:3–4*

Both Talmudim usually try to find a basis in Scripture for the rulings of the Mishnah, and both Talmudim adduce the exegesis of R. Yoḥanan in the

54. P. *Kiddushin* 3:14 64d; P. *Yevamot* 2:6 4a; *Genesis Rabbah* 7:2 (Theodor-Albeck ed., pp. 51–52); and parallels. O. Irsai suggests a different interpretation of Jacob's argument: Jacob regarded the child as a convert to Judaism but believed that a child convert could be circumcised on the eighth day even if it was a Sabbath. See O. Irsai, "Ya'akov of Kefar Niburaia—A Sage Turned Apostate" [Hebrew], *Jerusalem Studies in Jewish Thought* 2, no. 2 (1982/83): 153–168, esp. 157–163. (I am grateful to Dr. Marc Hirshman for this reference.)

55. The evidence for the practices of the nonrabbinic Jews of antiquity is meager. If gentiles were allowed to erect epitaphs in the Jewish catacombs for their relatives who had converted to Judaism, the sepulchral inscriptions of Rome provide no instance against the rabbinic matrilineal principle. See H. J. Leon, *The Jews of Ancient Rome* (Philadelphia: Jewish Publication Society, 1960), appendix, inscriptions 68 and 222. Compare nos. 256 and 462; no. 21 is difficult to understand, matrilineal principle or no. According to the Karaites the child of a gentile mother and a Jewish father is a Jew. Therefore, they argued, Ezra expelled the foreign women (because they had not converted to Judaism) but did not expel their children (since they, like their fathers, were Jewish). See Bernard Revel, "The Karaite Halakah," *Jewish Quarterly Review* 3 (1912–13): 375–376. Compare the latter-day apologists for Ezra (n. 19). (The Karaites followed the rabbis in presuming that the Bible knew the institution of conversion for women; see, e.g., Aaron b. Joseph the Karaite, *Sefer ha-Mivhar* [Eupatoria, 1835], p. 17b, commentary on Deut. 21:10–11 [the law of the female war captive; see above n. 27].)

name of R. Simeon b. Yoḥai to prove the scriptural origin of half of the matrilineal principle. Here is the Palestinian version (P. *Kiddushin* 3:14 64d, cf. P. *Yevamot* 2:6 4a):

It is written “You shall not intermarry with them: do not give your daughter to his son” [Deut. 7:3], and it is written “For he shall turn your son away from me” [Deut. 7:4]. Your son from an Israelite [woman] is called “your son,” but your son from a gentile woman is not called “your son” but her son.

This version differs from the Babylonian (B. *Kiddushin* 68b and parallels) chiefly by having R. Simeon quote Deut. 7:3 as well as 7:4, but how the verse or verses lead to the requisite conclusion is equally obscure in both sources.<sup>56</sup> In their commentaries on the Babylonian Talmud, Rashi and Rabbenu Tam suggest that R. Simeon’s deduction is based on the anomalous syntax of Deut. 7:4. Scripture prohibits the marriage of Israelite men with Canaanite women as well as the marriage of Israelite women with Canaanite men. Why, then, does Scripture say, “For *he* shall turn your *son* away from me”? The verse should have read either “For *she* [or *they*] shall turn your *son* away from me” or “For *he* shall turn your *daughter* away from me.” It is this anomaly which impelled R. Simeon to deduce that the son of a gentile woman by an Israelite man is “her son” and not “your son.” So far Rashi and Rabbenu Tam agree; how the anomaly is connected with the conclusion, however, is the subject of debate. Rashi argues that R. Simeon understood Deut. 7:4 to refer to the marriage of an Israelite woman with a gentile man: “for *he* [the gentile who married the Israelite woman] shall turn your *son* [the son of his Israelite wife] away from me.” R. Simeon deduced that the son of an Israelite woman by a gentile man is “your son” but that the son of a gentile woman by an Israelite man is not “your son.” Rashi’s interpretation is perhaps corroborated by the Palestinian version, which has R. Simeon quote “Do not give your daughter to his son” in addition to the first part of Deut. 7:3. This implies that R. Simeon thought that the anomalous syntax of Deut. 7:4 referred to the marriage of an Israelite woman with a gentile man, just as Rashi says.<sup>57</sup>

56. In the Babylonian version the anonymous redactor (the *setam*) quotes Deut. 7:3, thereby splitting R. Simeon’s exegesis in half.

57. The reading in P. *Kiddushin* 3:14 64d is confirmed by codex Leiden Scal. 3. The parallel in P. *Yevamot* 2:6 4a (even in codex Leiden Scal. 3), however, omits the phrase “Do not give your daughter to his son.” Since scribes often exercised great freedom in copying biblical quotations in the Talmud, my argument is, at best, suggestive.

According to Rashi's interpretation, R. Simeon finds a basis in Scripture for both halves of the matrilineal principle. According to Rabbenu Tam, however, R. Simeon understood Deut. 7:4 to refer to the marriage of an Israelite man with a gentile woman: "for he [the gentile father-in-law] shall turn your son [his son-in-law] away from me." Only half of the matrilineal principle is derived from Scripture. Rabbenu Tam's interpretation has two distinct advantages over Rashi's: it is supported by Ravina, who did not think, as Rashi does, that R. Simeon treated marriages between Israelite women and gentile men (see above); and it is rather close to the simple meaning of Deut. 7:4. For if we exclude the obvious possibilities that the text of Sacred Scripture has suffered corruption, or that the singular "he" and "son" should be understood as equivalent to "they" and "sons," the simple meaning of the text is that of R. Simeon as explained by Rabbenu Tam.<sup>58</sup> As Exod. 34:16 demonstrates, Scripture is concerned primarily about the marriage of Canaanite women with Israelite men.

But even in Rabbenu Tam's interpretation, R. Simeon's conclusion can be extracted from the scriptural text only with great difficulty. The Babylonian Talmud admits as much by seeking scriptural proof-texts for the principle that gentiles and slaves do not have the capacity to contract a valid marriage, an exercise which would have been unnecessary had the proof from Deut. 7:4 been convincing.<sup>59</sup> The Palestinian Talmud admits as much when R. Haggai, in order to silence the obstreperous Jacob of Kefar Neburya, deduces the matrilineal principle chiefly from Ezra 9–10, not Deut. 7:4 (see above). Perhaps R. Simeon intended his exegesis to be merely a scriptural hook from which to hang a rabbinic law (an *asmakhta*).

58. *Targum Neofiti*, *Targum Jonathan*, *Targum Onkelos*, and Saadiah Gaon, followed by the new (1962) Jewish Publication Society version, understand "he shall turn" to mean "they shall turn" (*Neofiti* even supplies a subject, "their daughters shall turn"). Most of these also take "son" to be the equivalent of "sons" ("children" in the JPS version). Rashi's exegesis is followed by R. Meyuhas b. Eliyahu, *Commentary on the Book of Deuteronomy*, ed. Yehiel Katz [Hebrew] (Jerusalem: Mosad ha-Rav Kook, 1968), pp. 27–28; Rabbenu Tam's exegesis is followed by R. Joseph Bekhor Shor in his Torah commentary, ed. Joseph Gad, 3 vols. (Jerusalem: no publisher, 1959), 3:16 (= *Der Pentateuch Kommentar des Joseph Bechor-Schor zum fünften Buche Moses*, ed. Alfred Zweig [Breslau: Koebner, 1914; reprint ed., Jerusalem: Makor, 1978], p. 26), by Hizzekuni (Chavel ed.), and by Aaron b. Joseph the Karaite, *Sefer ha-Mivhar*, p. 6b (who discusses two other interpretations as well).

59. Medieval rabbis continued the exercise; see, e.g., the *Sheiltot de Rav Aḥai Gaon*, chap. 25 (ed. Samuel Mirsky, vol. 1 [Jerusalem, 1961], pp. 158–163), and B. M. Lewin, ed. *Ozar ha-Ge'onim*, vol. 9, *Kiddushin* (Jerusalem: Mosad ha-Rav Kook, 1940), p. 167, § 376. Some medieval rabbis were not convinced by any of these proof-texts; see the comment by R. Israel in the Responsa of R. Asher b. Yehiel, § 55.9 (Vilna, 1881, p. 52c).

Whatever his intention, his statement does not disprove my argument that the matrilineal principle is unknown to Scripture.<sup>60</sup>

### *Ideological Origins: Ezra*

If the matrilineal principle does not come from Deut. 7:4, what are its ideological origins? In his refutation of Jacob of Kefar Neburya, R. Haggai anticipates the modern scholars who suggest that it was introduced by Ezra. I demonstrated above that this view is wrong, or, at least, not necessarily correct, but perhaps R. Haggai and his modern followers are correct to the extent that the rabbis *deduced* the matrilineal principle from the Ezra episode. Since the rabbis tried to avoid basing halakhah on any part of the Bible other than the Pentateuch, we can understand their hesitation to admit that the matrilineal principle was derived from the Book of Ezra. But the difficulty with this suggestion is that according to the Mishnah Ezra should have expelled the children of the Jewish mothers too. As *mamzerim* they could not remain as full-fledged members of the community.<sup>61</sup> The Ezra episode could have served as a source only for those who said that a Jewish mother and a gentile father produce a legitimate Jew, not a *mamzer*, a view which did not gain ascendancy until amoraic times.

### *Ideological Origins: The Uncertainty of Paternity and the Intimacy of Motherhood*

Scripture, then, does not provide the ideological origins for the matrilineal principle. I offer three other suggestions. First, perhaps the principle is based on the idea stated by Paulus in the *Digest* 2.4.5, *semper [mater] certa est, etiam si vulgo conceperit, pater vero is est quem nuptiae demonstrant*, “the mother is always known, even if she conceived out of wedlock, whereas the father is he whom the marriage indicates.” The identity of a mother is always knowable, but the identity of a father is never knowable; if a woman

60. Some modern Jewish apologists imply that the matrilineal principle really is to be found in the sacred text. See S. D. Luzzatto, *Commentary to the Pentateuch* [Hebrew] (1871; Tel Aviv: Dvir, 1965), p. 520; David Hoffmann, *Das Buch Deuteronomium*, 2 vols. (Berlin: Poppelaer, 1913–22), 1:91; and J. J. Hertz, *The Pentateuch and Haftorahs* (1936), 2d ed. (London: Soncino Press, 1961), p. 775.

61. See note 19 above.

is married, the law presumes that her husband is the father of her child, but this presumption always lacks certainty. Perhaps the rabbis too believed that paternity was always unknowable and felt that a child's identity should be determined in the first instance by its mother and not by its putative father. Hence the matrilineal principle.<sup>62</sup> This view is unsatisfactory for two reasons. First, as I remarked in the first paragraph of this essay, the rabbis restricted the matrilineal principle to cases of intermarriage, but paternity is no more uncertain in those marriages than it is in unions between Jews. Paulus too adduces the uncertainty of paternity not in connection with the Roman matrilineal principle (which will be discussed below) but in connection with something else entirely (respect for one's parents). Second, unlike the Romans, the rabbis did not require marriage between the father and the mother for the offspring to inherit from his father or receive his status. If an unmarried woman is pregnant and declares that the father of her child is a priest, R. Gamaliel and R. Eliezer say that she is to be believed; if a woman becomes pregnant as the result of rape, the offspring is presumed to have the same status as the majority of the people where the rape occurred (*M. Ketubbot* 1:9–10). In these cases paternity is very uncertain, but the rabbis did not judge the offspring matrilineally.<sup>63</sup>

Instead of emphasizing the uncertainty of paternity, some have suggested that the matrilineal principle is the result of the natural closeness between mother and child.<sup>64</sup> The offspring of a gentile mother and a Jewish father is a gentile because the intimate connection between a mother and her child makes it certain that she will influence him and instruct him in the ways of the gentiles. This suggestion too is unconvincing. The ancients, both Jewish and gentile, recognized the intimacy of motherhood, but drew no legal inferences from this intimacy. Indeed, it was not until the nineteenth century that the legal systems of Europe began to recognize the legal rights of a mother to her children.<sup>65</sup> According to rabbinic law a woman's obliga-

62. Paulus' comment is usually summarized by the phrase *mater certa, pater incertus*. I have not succeeded in finding a scholarly presentation of this view, but I believe that it is widely accepted. At the 1983 meeting of the Society of Biblical Literature, it was advanced by several people during the discussion of this paper. See below for another widely held view which lacks scholarly documentation.

63. See Zeitlin, "Offspring of Intermarriage," p. 136. *M. Ketubbot* 1:9–10 is addressing the status of the woman, not that of the child, but the implications are clear.

64. I have not found a scholarly presentation of this view, but it too was advanced during the discussion at the 1983 meeting of the Society of Biblical Literature.

65. Priscilla Robertson, *An Experience of Women: Pattern and Change in Nineteenth Century Europe* (Philadelphia: Temple University Press, 1982), p. 648, index, s.v. "child

tion to care for her children derives more from her status as a wife than from her status as a mother. It is the duty of the father to raise the children, and it is the duty of the wife to assist him. The intimacy of motherhood did not have legal consequences.<sup>66</sup>

### *Ideological Origins: Roman Law*

The citation from Paulus leads to my second suggestion: the matrilineal principle entered rabbinic thought under the influence of Roman law. The parallel between the Roman and the rabbinic law of persons was observed by various eighteenth- and nineteenth-century scholars, but it was Louis M. Epstein in 1942 (followed, without acknowledgment, by Boaz Cohen) who first suggested that the Roman law influenced the rabbinic.<sup>67</sup> The suggestion, therefore, is not new; on what evidence does it rely?

According to Roman law, a child is the legal heir of his father and is in his father's custody (*potestas*) only if his father and mother were joined in a legal marriage (*justum matrimonium*). The capacity to contract a legal marriage was called *conubium* (also spelled *connubium*), and was possessed almost exclusively by Roman citizens. Marriage between a person with

custody" (I owe this reference to Professor Paula Hyman). Intimacy of motherhood: Lacey, *Family in Classical Greece*, p. 169 (quoting Xenophon, *Memorabilia* 2:2:5–10 and Aristotle, *Nicomachean Ethics* 8:12:3 [1161B]). The rabbis know that a child often "honors" his mother more than his father (B. *Kiddushin* 30b–31a and parallels).

66. Obligation of father to raise his children: M. *Kiddushin* 4:14 and T. *Kiddushin* 5:15–16 (Lieberman ed., pp. 297–298). Obligation of mother: T. *Niddah* 2:4–5 (Zuckerman ed., p. 642) and M. *Ketubbot* 5:5. The intimacy of motherhood did have legal implications for the treatment of animals: *Sifra* on Lev. 22:28 (Weiss ed., p. 99b) and B. *Bekhorot* 45. "The mother is not of kin to her child," writes Henry Swinburne, *A Treatise of Testaments and Last Wills* (1591), quoted by Laurence Sterne, *The Life and Opinions of Tristram Shandy*, vol. 4, chap. 29. Some rabbis knew that a fetus was formed from matter contributed by both the mother and the father (see B. *Niddah* 30b [and parallels] with the comments of J. Needham, *A History of Embryology*, 2d ed. [Cambridge: At the University Press, 1959], pp. 77–79), but knowledge of embryology had no impact on the development of law.

67. J. J. Wetstenius, *Novum Testamentum Graecum*, 2 vols. (Amsterdam: Officina Dommeriana, 1752), 2:552 (commentary on Acts 16:3); Isaac Weil, *Prosélytisme chez les Juifs selon la Bible et la Talmud* (Strassburg, 1880), pp. 79 ff., a work which I know only through the citation by Bamberger, *Proselytism in the Talmudic Period*, pp. 89–90; M. Mielziner, *The Jewish Law of Marriage and Divorce* (New York: Bloch, 1884), pp. 95–97; Epstein, *Marriage Laws*, and B. Cohen, "Law of Persons." In his review of Epstein's book in *Historia Judaica* 6 (1944): 87–90, B. Cohen commented specifically on Epstein's suggestion (p. 89); why did he not refer to it in his own essay on the subject?

*conubium* and a person without *conubium* was valid, but it was not a *justum matrimonium*; and without a *justum matrimonium*, the status of the child follows that of its mother. Consequently, if a Roman citizen marries a noncitizen woman, the children are noncitizens. If a Roman citizen has intercourse with a slave woman, the children are slaves. According to the legal theory, if a Roman matron marries a noncitizen, the children are citizens, except that the *Lex Minicia*, a law probably enacted during the first century B.C.E., declared that the children of such unions follow the parent with the lower status, that is, the children follow the father. Similarly, the children of a Roman matron by a slave ought to be, according to the theory, free citizens like their mother, except that a law enacted under Claudius declared that they are slaves.<sup>68</sup>

The differences between the Roman and rabbinic systems are numerous and important. For a son to follow his father the Romans demand not only *conubium*, the potential for a legal marriage, but also *justum matrimonium*, the legal marriage itself. A child born of a *matrimonium injustum* was considered *spurius* or *vulgo quaeitus*. In M. *Kiddushin* 3:12, however, the rabbis use *kiddushin* to mean not “legal marriage” (*justum matrimonium*) but the capacity to contract a legal marriage (*conubium*). Marriage between the father and the mother is not essential, according to rabbinic law, for the offspring to follow the father (see above). The rabbis do not have a category corresponding to the *spurius*, and the Romans do not have a category corresponding to the *mamzer*.<sup>69</sup> In Roman law, even the offspring of an incestuous relationship is nothing more than a *spurius* (Gaius, *Institutes* 1.64 and Ulpian, *Tituli* 5.7). A final distinction: the Romans allow their rules to be affected by the intention of the actors. If a Roman citizen, either male or female, marries a noncitizen in the erroneous belief that the noncitizen is a citizen, and can demonstrate that the mistake was an honest one, the non-

68. R. Taubenschlag, *The Law of Greco-Roman Egypt*, 2d ed. (Warsaw: Państwowe Wydawnictwo Naukowe, 1955), pp. 104–108; J. Crook, *Law and Life of Rome* (Ithaca, N.Y.: Cornell University Press, 1967), pp. 36–68 (“The Law of Status”), esp. 40–41; A. Watson, *The Law of Persons in the Later Roman Republic* (Oxford: Clarendon Press, 1967), pp. 27–28; M. Kaser, *Das römische Privatrecht*, 2d ed. (Munich: Beck, 1971), §§ 66 I 2, 68 I, 73 II, and 84 II; Joseph Modrzejewski, “Un aspect du ‘couple interdit’ dans l’antiquité: les mariages mixtes dans l’Égypte hellénistique,” *Le couple interdit: Entretiens sur le racisme*, ed. Léon Poliakov (Paris: Mouton, 1980), pp. 53–73, esp. 64–67 (a reference I owe to Professor Roger Bagnall). The major primary texts are: *Digesta* 1.5; Ulpian, *Tituli* 5; Gaius, *Institutiones* 1.48–96. For the law of Claudius, see Tacitus, *Annals* 12.53.

69. The closest rabbinic approximations to the *spurius* are the *shetuki* and *asufi* (M. *Kiddushin* 4:1–2).

citizen spouse and the children automatically become citizens (Gaius, *Institutes* 1.67–68).<sup>70</sup> The rabbis have no parallel to this remarkable law, although they often accord intention an important place in their rulings. In the law of status they make no such allowances.<sup>71</sup>

These differences, however, cannot mask the conceptual similarity between the Roman and rabbinic systems. Marriages between citizens and marriages between noncitizens<sup>72</sup> produce children whose status is determined patrilineally. Marriages between citizens and noncitizens produce children whose status, in theory at least, is determined matrilineally; but both legal systems tried to equalize the consequences for male and female citizens who strayed from the fold. A Roman matron impregnated by a noncitizen or a slave bears a noncitizen or slave, not a citizen; a Jewish woman impregnated by a gentile or a slave bears a *mamzer*, a citizen of impaired status.

Even the language of M. *Kiddushin* 3:12 echoes Roman legal terminology. Ulpian, *Tituli* 5.8 is a brief summary of the Roman law of status, and its phraseology is closely paralleled by M. *Kiddushin* 3:12.<sup>73</sup> *Conubio interveniente liberi semper patrem sequuntur*<sup>74</sup> (compare the Mishnah's "Wherever there is potential for a valid marriage . . . the offspring follows the male") *non interveniente conubio matris condicioni accedunt*<sup>75</sup> (compare the Mishnah's "And any woman who does not have the potential for a valid marriage either with this man or with other men, the offspring is like her") *excepto eo qui ex peregrino et cive Romana peregrinus nascitur, quoniam lex Minicia ex alterutro peregrino natum deterioris parentis condicionem sequi*

70. See too *Gnomon of the Idios Logos*, §§ 39, 46, and 47.

71. The importance of intention in the Mishnah is analyzed and exaggerated by Jacob Neusner, *Judaism: The Evidence of the Mishnah* (Chicago: University of Chicago Press, 1981), pp. 270–281.

72. See R. Yohanan in P. *Yevamot* 2:6 4a and cf. B. *Kiddushin* 67a; R. Hanina in B. *Sanhedrin* 57b. See the Roman sources analyzed by Kaser, *Das römische Privatrecht*, § 73 II, and P. E. Corbett, *The Roman Law of Marriage* (Oxford: Clarendon Press, 1930), pp. 96–106. The offspring of a marriage between *peregrini* might follow the status of the mother if her nationality received a *privilegium* from the Romans to this effect; see *Digesta* 50.1.1.2.

73. "When *conubium* intervenes [between the father and the mother] the children always follow the father; when *conubium* does not intervene, they accrue to the status of the mother, except that he who has a noncitizen father and a citizen mother is born a noncitizen, because the Minician law ordains that one born of a noncitizen mother or father follows the status of the lower parent."

74. Compare *cum legitimae nuptiae factae sint, patrem liberi sequuntur* (Celsus in *Digesta* 1.5.19).

75. Compare *ex eis inter quos non est conubium, qui nascitur . . . matris condicioni accedit* (Gaius, *Institutes* 1.78).

*iubet*<sup>76</sup> (compare the Mishnah's "The offspring follows the parent of lower status"). M. *Kiddushin* 3:12 is one of the few sections of the Mishnah which can be translated easily into classical Latin.<sup>77</sup>

Although it is generally very difficult to prove the influence of one legal system upon another, here the evidence is rather strong.<sup>78</sup> The Roman law, whose principles are clearly attested in republican times,<sup>79</sup> antedates the earliest attestation of the rabbinic law. As far as I have been able to determine, if the rabbinic law had an external source, Roman law is the only real possibility. The Greek law of the classical and Hellenistic periods is not comparable, nor is the law of Egypt or the other kingdoms of the ancient Orient.<sup>80</sup> This suggestion accounts for the phraseology of the Mishnah as well as its dominant ideas. It also takes seriously the Mishnah's explanation of itself, since the Mishnah ignores Scripture and emphasizes the notion of *kiddushin* (a translation of *conubium*). It also is economical, since it accounts at once for both halves of the matrilineal principle.

A full assessment of this suggestion must await a detailed study of other possible influences of Roman ideas and institutions upon ancient Judaism. If the matrilineal principle can be shown to be but one of the many legacies of Rome to Jerusalem, the suggestion will gain force. This study will also have to address several difficult questions. How did the rabbis learn the principles of the Roman law of status? Surely not from the study of Roman law books. How, then? Why did they allow themselves to draw on Roman

76. Compare *Gnomon of the Idios Logos*, § 39 (*ta tekna hettoni genei akolouthei*).

77. A point unappreciated by Guilielmus Surenhusius, *Seder Naschim sive Legum Mischniarum Liber qui Inscriptitur de Re Uxoriorum* (Amsterdam: Borstius, 1700), p. 377, who translates the Mishnah literally (*quocunque in loco obtinent despousationes et non obtinet transgressio infans sequitur virum*, etc.).

78. For the methodological difficulties, see, e.g., R. Yaron, "Jewish Law and Other Legal Systems of Antiquity," *Journal of Semitic Studies* 4 (1959): 308–331; Zeev Falk, "Zum fremden Einfluss auf das jüdische Recht," *Revue internationale des droits de l'antiquité*, 3d series 18 (1971): 11–23; and Bernard Jackson, "On the Problem of the Roman Influence on the Halakah," in *Jewish and Christian Self-Definition*, vol. 2, *Aspects of Judaism in the Greco-Roman Period*, ed. E. P. Sanders et al. (Philadelphia: Fortress Press, 1981), pp. 157–203 (with extensive bibliography).

79. Cicero, *De Natura Deorum* 3.18 § 45 and *Topica* 20. Livy 43.3.1–4 (a reference I owe to Mr. David Cherry) seems to imply that the principle was already in force in 171 B.C.E.

80. The status of the offspring of mixed marriages varied from one Greek state to another; see Vatin, *Récherches sur le mariage*, pp. 123–128 and Hannick, "Droit de cité et mariages mixtes." In Roman Athens the offspring of an Athenian mother and a slave or noncitizen father was a noncitizen; see Dio Chrysostom, *Orations* 15.3 (trans. T. Wiedemann, *Greek and Roman Slavery* [Baltimore: Johns Hopkins University Press, 1981], p. 225). For the law of the ancient Orient, see n. 10.

wisdom when hatred of Rome was so widespread in Judean society, even among those opposed to war with Rome? These questions are analogous to those which must be asked in any study of rabbinic “Hellenism,” and the answers remain elusive.

### *Ideological Origins: Forbidden Mixtures*

My third suggestion sees the matrilineal principle not as the result of external influence but as an organic part of rabbinic thought. The Babylonian Talmud asks whether there is scriptural support for the notion that slaves lack the capacity to contract a valid marriage and gives as its answer Gen. 22:5, Abraham’s statement to his servants “You stay here with the ass.” This is interpreted, in a very unecumenical pun, as “You stay here, you who are a race similar to an ass” (*im ha-hamor/am ha-domeh la-hamor*). And since asses are unable to contract valid marriages, so too gentile slaves are unable to contract valid marriages (B. *Kiddushin* 68a). I am not about to suggest that this oft-repeated exegesis accurately portrays the ideological origins of our mishnah—I am not even sure of its real intent<sup>81</sup>—but I am suggesting that the Mishnah’s treatment of the consequences of intermarriage should be juxtaposed to its discussion of the results of mixed breeding in the animal kingdom.<sup>82</sup> Scripture prohibits the breeding of animals of different species (Lev. 19:9), but if the prohibition is violated, what is the status of the resulting offspring? Does it belong to the species of the father or the species of the mother? Or is it a new species altogether? In the Tosefta the sages argue that a mule is neither a horse nor a donkey, but a new and distinct species. It makes no difference whether the mule’s mother is a horse or a donkey; a mule is a mule (T. *Kilayim* 5:5 [Lieberman ed., p. 222]). The

81. Joseph Heinemann, “‘A Race Similar to an Ass’: The Transformation of a Midrash” [Hebrew], *Molad* 22, nos. 193–194 (October 1964): 456–462. Heinemann observes that the application of this exegesis to halakhic matters characterizes the Babylonian Talmud, not the Palestinian. Heinemann argues that the original purpose of the exegesis was anti-Christian polemic. More convincing is his argument that the exegesis should not be taken as rabbinic “philosophy.” Compare B. *Hullin* 5a (the sinners of Israel resemble animals) and Morton Smith, “On the Shape of God and the Humanity of Gentiles,” in *Religions in Antiquity: Essays in Memory of E. R. Goodenough*, ed. J. Neusner (Leiden: Brill, 1968), pp. 315–326.

82. In his commentary on Deut. 7:4 R. Joseph Bekhor Shor observes, “[the offspring of] a gentile or a slave follows the mother, just like an animal.” For the structural parallel between the classification of humans and the classification of animals, see Mary Douglas, *Implicit Meanings* (London and Boston: Routledge & Kegan Paul, 1975), pp. 267–271.

Mishnah, however, seems to ignore this opinion in favor of that of R. Judah (M. *Kilayim* 8:4).<sup>83</sup>

R. Judah says: All those born from a [female] horse, although their father is a donkey, are permitted one with another. Thus too, those born from a [female] donkey, although their father is a horse, are permitted one with another. But those born from a [female] horse with those born from a [female] donkey, they are prohibited one with the other.

R. Judah's statement is ambiguous. Perhaps it means that a mule whose mother is a horse and whose father is a donkey is permitted to mate not only with other such mules but even with pure-bred horses, since a mule follows the status of its mother.<sup>84</sup> If this interpretation is correct, M. *Kilayim* 8:4 and M. *Kiddushin* 3:12 are exactly parallel. The offspring yielded by the mixed breeding of either animals or humans is judged matrilineally: a mule, like the offspring of a gentile mother and a Jewish father, belongs to the species of its mother. The view of the sages (a mule is a separate species) has its analogue in M. *Yevamot* 7:5, since the status of a mule, which cannot mate with the kind of either its father or its mother, is analogous to that of the *mamzer*, the offspring of a Jewish mother and a gentile father (analogous but not parallel—a *mamzer* is a Jew).<sup>85</sup> It is most regrettable, therefore, that the Babylonian Talmud rejects this interpretation and suggests that R. Judah posits two types of mules, those whose mothers are horses and those whose mothers are donkeys. Mules may mate only with their own kind (B. *Hullin*

83. "Seems to ignore" because there is room for doubt; see M. *Kilayim* 1:6 with T. *Kilayim* 1:8 (Lieberman ed., p. 204). The rabbis knew that a mule is sterile, but the question had to be treated anyway.

84. In their commentaries on the Mishnah R. Samson of Sens and R. Yom Tov Lipmann Heller recognize that this is the simple meaning of R. Judah's statement. See too H. Albeck ad loc.

85. B. *Pesahim* 54a explicitly compares the *mamzer* (the offspring of incest) to the mule: Anah, the *mamzer* son of Esau, was the first man to mate a horse with a donkey. See Theodor-Albeck's discussion of *Genesis Rabbah* 82:14 in their edition, pp. 993–994. (I am grateful to Dr. David Lieber for bringing this passage to my attention.) Cyrus the Great was a "mule" because he was the son of a Persian father and a Median mother; see Herodotus 1.55.2 and J. Fontenrose, *The Delphic Oracle* (Berkeley: University of California Press, 1978), p. 302. C. M. Carmichael suggests that the deuteronomistic prohibition of plowing with an ox and an ass together (Deut. 22:10) is a veiled allusion to mixed marriage, especially the Dinah story of Gen. 34. See his *Laws of Deuteronomy*, pp. 159–163. He expands upon this thesis in his "Forbidden Mixtures," *Vetus Testamentum* 32 (1982): 394–415, and *Women, Law, and the Genesis Traditions* (Edinburgh: At the University Press, 1979), pp. 33–48 and 57–73.

78b–79a).<sup>86</sup> According to this interpretation, the parallel between R. Judah's view and M. *Kiddushin* 3:12 is not exact. In the mixed breeding of humans, the result is either Jew or gentile, and the matrilineal principle serves to determine whether the offspring is the former or the latter; in the mixed breeding of animals, the result is a hybrid, and the matrilineal principle serves to distinguish one sort of hybrid from another.

In any case, the important point is that the laws of *kilayim*, prohibited mixtures, provide an ideological context for the matrilineal principle. Jacob Neusner has well demonstrated the Mishnah's deep and abiding fascination with mixtures and with creatures like hermaphrodites, Samaritans, and the land of Syria that defy simple classification.<sup>87</sup> For a reason which I do not know, this fascination did not extend to gentiles who have become Jews (proselytes), or to intermarriages, the forbidden union of diverse kinds. Although the Mishnah says very little about these two categories, perhaps what it does say, especially in M. *Kiddushin* 3:12, should be understood in the light of its larger interests. The offspring of mixed marriage is a form of *kilayim*.

### *Social Origins*

I have surveyed five possibilities for the ideological origins of the matrilineal principle: Deut. 7:4, the Ezra episode, the uncertainty of paternity

86. See too T. *Kilayim* 5:5 (Lieberman ed., p. 222). The discussion of Irving Mandelbaum, *A History of the Mishnaic Law of Agriculture: Kilayim* (Chico, Calif.: Scholars Press, 1982) is not entirely helpful. In his commentary on T. *Kilayim* 1:8, Mandelbaum writes (p. 47, n. 156, referring to p. 324), "Cf. M[ishnah] 8:4, where Judah distinguishes between the mule (the dam of which is a mare) and a hinny (the dam of which is a she-ass) and does not allow one to be mated with the other. T[osefta] (which makes no such distinction) and M[ishnah] thus represent two different traditions of Judah concerning the same issue." On p. 270, however, Mandelbaum explains R. Judah's opinion of T. *Kilayim* 5:5 in the light of M. *Kilayim* 8:4—so the Tosefta is aware of the Mishnah's view. On p. 267, commenting on M. *Kilayim* 8:4, Mandelbaum writes, "According to Judah two mules which were born of dams of a single kind (and, of course, of sires of a single kind as well) may be paired with one another, for these animals themselves form a single 'kind.'" His parenthetic remark is far from obvious and needs greater support than an introductory "of course." B. *Hullin* 78b adduces another instance of the matrilineal principle in the animal kingdom: the prohibition of slaughtering an animal with its young on the same day applies only to a mother and her young. See further *Sifra* on Lev. 22:28 (Weiss ed., p. 99b) and B. *Bekhorot* 45b.

87. Neusner, *Judaism: The Evidence of the Mishnah*, pp. 256–270. Neusner is applying to the Mishnah the interpretation of Leviticus by Mary Douglas, *Purity and Danger* (London and Boston: Routledge & Kegan Paul, 1966), pp. 52–53.

(and the intimacy of motherhood), the Roman law of status, and the laws of forbidden mixtures. The last two are far more compelling than the first three. The major difficulty with all of them, however, is that they explain *how* the rabbis could come to the matrilineal principle but not *why* they would want to come to it. What compelled them to depart from the biblical tradition and from the practice of the Second Temple period? Did some societal need dictate the new law? It has been suggested that many Jewish women were raped by Roman soldiers during the wars of 66–70 and 132–135, and that the rabbis, out of pity for their plight, declared the resulting offspring to be Jewish, not gentile. But the quality of this suggestion befits the obscurity of its origins,<sup>88</sup> because telling an unfortunate woman who has been raped that she is about to bear a *mamzer* is only slightly more consolatory than telling her that she is about to bear a gentile. In some respects it is less consolatory: a gentile, at least, can convert to Judaism, but a *mamzer* can never be legitimated.<sup>89</sup> Further, why declare the offspring of a Jewish father and a gentile mother to be gentile? If its purpose was to discourage intermarriage by Jewish men, there seems to have been little need for such legislation. Perhaps in first-century Rome and Alexandria intermarriage between Jews and gentiles was not uncommon, but it certainly was uncommon in first-century Judea and in rabbinic society generally throughout the following centuries.<sup>90</sup> And if the primary motivation was to restrain intermarriage, the rabbis should have introduced a bilateral requirement for citizenship, just as Pericles did in Athens and Ezra did (perhaps) in Jerusalem (see above).

88. This view is widely held, especially in contemporary rabbinic circles, but I have not found its original author; it is repeated by Daube, *Ancient Jewish Law*, pp. 27–30, but he too does not indicate his source. The rape of women by victorious soldiers was a normal part of ancient warfare (Isa. 13:16 and Zech. 14:2; see S. G. Cole, “Greek Sanctions against Sexual Assault,” *Classical Philology* 79 [1984]: 97–113, esp. 111–113, who refers to D. Schaps, “Women of Greece in Wartime,” *Classical Philology* 77 [1982]: 203–204), and it is likely therefore that many women were raped during the wars of 66–70 and 132–135 (see M. *Ketubbot* 2:9 with the Talmudim ad loc.; and *Song of Songs Zuta*, end, as presented by S. Lieberman, *Greek in Jewish Palestine* [1942; reprint ed., New York: Feldheim, 1965], pp. 179–184). The question remains whether their plight was the social setting for the emergence of the matrilineal principle.

89. The amoraim reverse the ruling that the child is a *mamzer*, but the Mishnah is quite clear on this point. See above.

90. S. Cohen, “Prohibition of Intermarriage.” The problem with the lineage of the Jews of Messene, etc., is not intermarriage but *mamzerim* and improper divorces; see B. *Kiddushin* 71b–72b (and parallels). Prof. Sarah B. Pomeroy impresses upon me that this suggestion should not be rejected so lightly, since the purpose of Pericles’ citizenship law (and its subsequent imitations) may have been to improve the marriageability of Athenian women (see Lacey, *Family in Classical Greece*, pp. 100–103).

*Primitive Matriarchy*

In order to explain the matrilineal principle Victor Aptowitzer suggests not societal need but social tradition. It is a relic of very ancient times when Israelite kinship was matrilineal and Israelite society was matriarchal. Aptowitzer offers a striking parallel to the rabbinic law from Herodotus' description of the Lycians (1.173):

Their customs are in part Cretan and in part Carian. But they have one which is their own and shared by no other men; they take their names not from their fathers but from their mothers; and when one is asked by his neighbor who he is, he will say that he is the son of such a mother, and recount the mother of his mother. Nay, if a woman of full rights marry a slave, her children are deemed pure-born; and if a true-born Lycian man takes a foreign wife or concubine, the children are dishonored, though he be the first in the land.<sup>91</sup>

This is the passage which launched J. J. Bachofen on his quest for *Das Mutterrecht*, and this is the passage cited by Aptowitzer to prove that the rabbinic law is a relic of primitive times.<sup>92</sup> Aptowitzer supports this thesis by the discovery of numerous other "relics" in both the Bible and the Talmud, none of them more striking than two mishnaic laws which appear on the page following M. *Kiddushin* 3:12. M. *Kiddushin* 4:4 ordains that "He who wishes to marry the daughter of a priest must investigate her lineage through four mothers which are eight"—the pedigree of the bride's mother and grandmothers is checked, but not the pedigree of her father and grandfathers. A proselyte, or the son of proselytes, may not marry the daughter of a priest, and a priest may not marry the daughter of a proselyte. But if the second-generation proselyte has a native-born Jewish mother, he or she may marry into the priesthood (M. *Kiddushin* 4:7). The same requirement for a native-born Jewish mother appears elsewhere too.<sup>93</sup>

Is the matrilineal principle a relic of prehistoric times? Various scholars

91. The translation is that of A. D. Godley in the Loeb Classical Library, slightly modified.

92. J. J. Bachofen, *Das Mutterrecht: Eine Untersuchung über die Gynaikokratie der alten Welt* (Stuttgart, 1861). See *Myth, Religion, and Mother Right: Selected Writings of J. J. Bachofen*, trans. R. Manheim and introduced by J. Campbell (Princeton: Princeton University Press, 1967). Aptowitzer, in "Spuren des Matriarchats," forgot to cite Bachofen.

93. M. *Bikkurim* 1:4–5, B. *Yevamot* 45b, B. *Kiddushin* 76b, and elsewhere. These passages are misconstrued by Daube, *Ancient Jewish Law*, pp. 24–25. Compare Demosthenes 59 (*Against Neaera*), § 106 (the Plateans who received Athenian citizenship may not become archons, but their children born of native Athenian women may become archons).

have attempted to find traces of matrilineal organization in the legal systems of antiquity, but Aptowitzer does not aid his case when he confuses *matri-liney* (determination of kinship through females) with *matriarchy* (rule by females), a social form which never existed.<sup>94</sup> Whether ancient Israelite society was ever matrilineal, I leave for others to determine, but the alleged relics of that alleged society collected by Aptowitzer are, for the most part, trivial or debatable.<sup>95</sup> I am not sure how M. *Kiddushin* 4:4 and 4:7 should be explained, but relics which are nowhere attested in the Bible and postbiblical Jewish literature and which surface miraculously in rabbinic texts a millennium or two after the period of their origins—these are remarkable relics indeed. Perhaps a methodologically sophisticated study of rabbinic family law and kinship patterns will reveal traces of a matrilineal society, but in the absence of such a study, Aptowitzer's suggestion is unconvincing.

#### IV

#### *Summary and Conclusions*

In the biblical period a mixed marriage between an Israelite and a non-

94. E. Kornemann, "Mutterrecht," in Pauly, Wissowa, and Kroll, eds., *Realencyclopädie der klassischen Altertumswissenschaft*, supplementary vol. 6 (1935), pp. 557–558; J. Bamberger, "The Myth of Matriarchy," in *Woman, Culture, and Society*, ed. M. Z. Rosaldo and L. Lamphere (Stanford: Stanford University Press, 1974), pp. 263–280; and the works listed by Sarah Pomeroy, "Selected Bibliography on Women in Classical Antiquity," in *Women in the Ancient World: The Arethusa Papers*, ed. J. Peradotto and J. P. Sullivan (Albany: State University of New York Press, 1983), pp. 347–354. For an erudite but disjointed discussion of Herodotus 1.173, see Simon Pembroke, "Women in Charge: the Function of Alternatives in Early Greek Tradition and the Ancient Idea of Matriarchy," *Journal of the Warburg and Courtauld Institutes* 30 (1967): 1–35.

95. The rabbinic predilection for uncle-niece marriages is not a relic of a matrilineal society, since most such societies would regard the marriage of a man with his sister's daughter as incestuous. Rabbinic ideology and practice on this matter must be studied anew, especially in light of the Qumran Temple Scroll, col. 66. See Samuel Krauss, "Die Ehe zwischen Onkel und Nichte," in *Studies in Jewish Literature in Honor of Kaufmann Kohler* (Berlin: G. Reimer, 1913), pp. 165–175; Louis Ginzberg, *An Unknown Jewish Sect* (New York: Jewish Theological Seminary, 1976), pp. 23–24; Aptowitzer, "Spuren des Matriarchats," pp. 232–237; and Salo Baron, *Social and Religious History of the Jews: Ancient Times*, 2d ed., 2 vols. (New York: Columbia University Press, 1952), 1:310, n. 20, and 2:230 with 411, n. 14. Even matronymy is occasionally encountered in rabbinic sources (see S. Lieberman, *Tosefet Rishonim*, 4 vols. [Jerusalem: Bamberger et Wahrmann, 1939], 3:160, and B. M. Lewin, *Ozar ha-Ge'onim*, vol. 7 *Yevamot* [Jerusalem: no publisher, 1936], p. 156, § 360; see too Bamberger, *Proselytism*, pp. 230–231), but in all likelihood this practice too is not a relic of primitive times. Compare A. Christophilopoulos, "Matronymy among the Ancient Greeks" in *idem*, [Greek], *Dikaion kai Historia*, pp. 60–67.

Israelite produced offspring which was usually judged patrilineally. If an Israelite woman was married to a non-Israelite man, she would join his clan and bear children who were not Israelite. If he joined her clan through matrilocal marriage, the children apparently were considered Israelite. A matrilocal marriage could even legitimate the children of an Israelite mother and a slave father (1 Chron. 2:34–35). In the Mishnah, however, the children of an Israelite mother and a gentile father (either slave or free) are *mamzerim*, Jews of impaired status. The Talmudim declare these children to be not *mamzerim* but full and legitimate Jews. Both decisions, at least in cases of patrilocal marriage, contradict the Bible.<sup>96</sup> In biblical times many Israelite men married foreign women, and there was never any doubt that the children were Israelite. The offspring of a slave mother and an Israelite father did, apparently, suffer from some disabilities, but no one questioned its Israelite status. The Mishnah, however, explicitly states that such offspring follow the mother, and this ruling is not disputed in the Talmudim. As far as I have been able to determine, the transition from biblical patriliney to mishnaic matriliney cannot be dated before the period of the Mishnah itself. There is no evidence that Ezra attempted to introduce the matrilineal principle, and even if he did, there is abundant evidence that it was still unknown in the first century of our era. Why did the Yavnean rabbis depart from biblical practice?

There are two good explanations, one internal, the other external. The matrilineal principle accords nicely with the mishnaic laws regarding the mixture of diverse kinds (*kilayim*). The union of a Jew with a gentile is akin to the forbidden union of a horse with a donkey. In both cases the Mishnah judges the resulting offspring matrilineally. Even more striking is the parallel afforded by the Roman law of status. The terminology, ideas, and conclusions of M. *Kiddushin* 3:12 are thoroughly Roman: if one parent does not possess the capacity to contract a legal marriage (*conubium* in Latin, *kiddushin* in Hebrew), the offspring follows the mother. The rabbis, like the Romans, departed from this principle in order to penalize a citizen woman who married a noncitizen or a slave: the Romans declared that the offspring follows the parent of lower status (in this case, the father), the rabbis declared that the offspring is a *mamzer*. I am unable to decide between these two explanations. Perhaps they are both true, the rabbinic notions of *kilayim* facilitating the influx of the Roman law.

96. Why the Talmudim reversed the Mishnah, and why some medieval scholars reversed the Talmud (n. 46), requires investigation.

Another factor is relevant too. The idea of conversion to Judaism is a creation of the exilic period. At first it was an option only for men; its ritual was circumcision. A gentile woman "converted" to Judaism through marriage with a Jewish husband, a procedure presumed by the Bible and still presumed by Josephus. Gradually, however, conversion for women was introduced; its ritual was immersion (a practice which also became part of the conversion ritual for men). This facilitated the rise of half of the matrilineal principle, since the gentile woman was now a person whose Jewishness could be determined without reference to her Jewish husband. If she converts to Judaism, the children she bears to her husband are Jewish; if she does not, they are gentile, in spite of the Jewishness of her husband. This new ideology mandated the reinterpretation of the biblical narratives which glibly admitted that the heroes of ancient Israel married foreign women. These developments are obscure, but they certainly form part of the ideological background to the emergence of the matrilineal principle.<sup>97</sup>

All of these suggestions are exercises in intellectual history. Did social history too play a role in the creation of the matrilineal principle? Numerous practitioners of Jewish *Wissenschaft* have argued that rabbinic law was determined, at least in part, by the social and economic needs of contemporary Jewry. The matrilineal principle has had enormous social consequences for modern Jews, and it is easy to believe that the rabbis must have been compelled by some societal need to institute it. But there is little evidence to support this belief. Intermarriage was not a severe problem in rabbinic society, and even if it was, the logical response would have been the institution of a bilateral system (either a gentile father or a gentile mother renders the offspring a gentile). Perhaps in regard to other matters the rabbis were legislators listening attentively to the demands of their constituency. In their statement of the matrilineal principle, however, the rabbis were philosophers, and, like most philosophers, they did not always live in the real world.

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97. Perhaps this development is connected with a change in the status of the woman in ancient Judaism.