

Illegitimate Jesus: Family Matters with “Toledot Yeshu”

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“Where is your father?” the Pharisees said to Jesus, and Jesus gave elusive answers that could only contribute to the never-ending inquiry into his origins: “My father and I are two witnesses of my mission, but you know neither of us” (paraphrase, John 8:12-19). Thus the circumstances of Jesus’ birth became a leitmotif of the religious controversy, all the more poignant since all parties agreed on basic facts: there was a couple, Joseph and Mary, and they had a child, Jesus; Joseph, however, was not his biological father.

The debaters learned to play out this minimalist setting to accommodate their own beliefs, some by an interpretation of the narrative basics—Jesus said that he was a son of a human parent and God; clearly, the human parent was Mary the virgin, since the incorporeal God was his father¹—and some by enhancing the story with details. Was Mary married to Joseph, or only betrothed? If betrothed, did they eventually marry? Did Jesus, actually, have a human father? Was his father a Jew or a Gentile? As the meaning of possible answers changed so did the answers, since the polemicist sought to perpetuate a preferable significance of the birth narrative in the ever-changing social environment. For the student of religion, the analysis of social dynamics behind

¹ Tert. *Marc.* 4.10.6.

the fluctuating storyline should open broader avenues for understanding its authors and their authentic audience; for the legal historian, any adjustment to the details of Jesus' lineage might signal a corresponding development in norms of the community responsible for that adjustment.

This paper presents an attempt to follow the Jewish polemicist, and, arguably, the most notorious product of his polemic—*Toledot Yeshu* (Life Story of Jesus), the body of traditions as old as the Gospels, which coalesced into a written composition by the eighth century.² Aiming to interest both the student of religion and the student of legal history, the paper will not only document but also seek to explain the diverse and sometimes contradictory attempts of *Toledot Yeshu* to represent its antagonist as illegitimate. The paper will also argue that these fluctuating representations of Yeshu's illegitimate lineage do reflect the evolving legal, social and cultural norms of the story's tradents and audience.

I. A PARADOX

Close to two hundred extant manuscripts tell many different versions of the story,³ all revolving around a few touchstones: the shameful birth of Yeshu, his use of magic, and his inglorious death. Yeshu was tried and condemned because he stole the Ineffable Name from the Temple, and used it to lead the people astray; he stole the Name because he was excommunicated; and he was excommunicated because he turned out to be a mamzer—the illegitimate child of Miriam, a chaste and beautiful woman who was *married* to the scholar Yohanan.⁴ Across from their house, there lived a certain Yoseph ben Pandera, a handsome fellow, who set himself a goal to seduce Miriam by all means. Seeing that his charm was of no avail, Yoseph resorted to deceit and violence. One Sabbath eve, when Yohanan went to a synagogue, and Miriam was menstruating and stayed home, Yoseph came to the couple's house and raped Miriam, pretending that he was her husband. In the morning, Miriam accused Yohanan of breaking the commandments of God, and soon they both understood what had really happened. Contrary to Yohanan's expectations, Yoseph never re-

² This date is debatable. HORBURY 1970B argues for a much earlier date, the second century CE. SOKOLOFF 2011, on a basis of linguistic analysis of the Aramaic fragments, dates the composition of *Toledot Yeshu* to the fifth or sixth century. In addition to MEERSON & SCHÄFER 2014, see KRAUSS 1902 and DI SEGNI 1985.

³ See the lists of the manuscripts in DI SEGNI 1984 and MEERSON & SCHÄFER 2014, vol. 2, 1-48.

⁴ In some versions the name of the rapist is Yohanan, and the husband is Yoseph. For different variants of the late-medieval birth narrative in the *Toledot Yeshu*, see SCHÄFER 2012.

turned to Miriam, and so Yohanan was unable to capture him in the presence of the two witnesses who would have been necessary for his accusation. When Yohanan noticed that Miriam was pregnant, he left her without a divorce and went to Babylonia. In a due time, Miriam bore a boy and named him Yeshua, after the name of her paternal uncle. When Yeshua grew older, he became an exceptional student, capable of learning “in one day what others learn in a year,” but also an arrogant and disrespectful person. For this reason, the sages decided to investigate his origins, and discovered the truth, that Yeshua was “a bastard and the son of a menstruant.” These new facts elegantly explained both his success and arrogance,⁵ but most importantly, they allowed the sages to expel Yeshua,⁶ for he had already become a real nuisance. Most versions say that the problem was that he did not bow before rabbis and taught *halakha* in front of his teacher, but some say that it was his keen sense of justice:⁷

(22r) In those days, the court of that place was judging the nation's cases, and they were perverting the judgments with bribery and with favoritism. And this Yeshu ha-Not[sri] was sitting there. Once he rebuked them regarding a righteous person, and they were mena[cing] him on that account. He bested them in the argument [...]. (22v) And they had enough of him and were searching for a pretext to remove him from his position amongst them. One day, Yeshu went to the village for his work and was delayed there. The court called Miriam, his mother [...] On account of her greatly advanced age, she feared the oath by the Divine Name and told the court what happened. When Yeshu returned from the village, he came to sit in his customary place. The court arose and drove him out. They said to him this: *A bastard shall not enter into the congregation of God* (Deut. 23:3). He said to them, “And even if it were as you say, I am wiser than you and fear the Lord, and I will not hold back His rebuke from you, *You shall surely rebuke your kinsman*” (Lev. 19:17). They replied to him, “From now on, we will not accept your words, and you will not even dwell among us, because you are a bastard.” He tried

⁵ Yer. Kid. 48a: רוב ממזרים פקחים (“most bastards are intelligent”).

⁶ The Pentateuchal ruling, “No bastard shall be admitted into the congregation of God” (Deut. 23:2), has proved to have far-reaching consequences. First, Israelites would not marry them, thus obstructing the efforts of bastards’ families “to make the political and economic alliances attendant on ‘good marriages’” (See KATZOFF 2003, 281). Second, persons of illegitimate birth suffered serious economic disadvantages, to be discussed in the last section of this paper. And third, the most relevant obstruction at the moment, they were forbidden to enter Jerusalem and to learn Scripture (*Ab. R. N.* version A, ch. 12; version B, ch. 4; see BAR-ILAN 2000, 134-35). See also BAUMGARTEN 1974; BLIDSTEIN 1974.

⁷ MS St. Petersburg RNL EVR 1.274, the manuscript is dated to 1536; published in MEERSON & SCHÄFER 2014, vol. 1, 155-66; vol. 2, 71-78. Surprisingly, *Toledot Yeshu* is not only a satire on the Gospels but also a work of self-criticism concerning contemporary Jewish society; see YASSIF 2011.

to appease them, but they did not relent until he gave in and went away in his zeal. And Jeroboam turned to evil ways. He went from his home to the land of the Galilee and proclaimed, “I am the son of God. You will believe in me because of the signs that I will show you.” And every vain and reckless person gathered around him.⁸

The excommunication of Yeshua (renamed Yesu)⁹ triggered the series of events culminating in his execution and burial. The discovery of Yesu’s true parentage, therefore, was crucial to the plot. Had he been a legitimate son of Yohanan, the sages would have had a hard time getting rid of him.

The legal status of Yesu drew the attention of Maimonides, who doubtlessly was familiar with the story. In his *Letter to Yemen*, written about 1172, Maimonides replies to an inquiry of Ya’akov ben Natan’el seeking support of Maimonides in countering a campaign by Muslim converts and a local messianic movement. In a passage where Maimonides speaks about enemies of the Jewish nation, he first considers those who tried to demolish the God-given Law by conquest—“Syrians, Persians, and Greeks”—then, those who did it combining two methods, conquest and controversy:¹⁰

The first one to have adopted this plan was Jesus the Nazarene, may his bones be ground to dust. He was a Jew because his mother was a Jewess although his father was a Gentile. For in accordance with the principles of our law, a child born of a Jewess and a Gentile, or of a Jewess and a slave, is legitimate. *Jesus is only figuratively termed an illegitimate child.*

With reference to a late medieval version of the *Toledot*, this comment is surprising. Did Maimonides refer to an earlier version of the *Toledot Yesu*?

II. A CHILD OF INTERMARRIAGE

Most likely, yes. The very first mention of the controversial opinion regarding the birth of Jesus differs from the medieval versions in some significant details. According to Celsus, who himself heard this from “a certain Jew,” Jesus was born from a poor country woman, who gained her subsistence by spinning, and “was turned out of doors by a carpenter to whom she had been

⁸ All quotations of the *Toledot Yesu* texts are taken from MEERSON & SCHÄFER 2014.

⁹ The excommunication is explicit in the version published by WAGENSEIL 1681; e.g., MS Harvard 57.22r: “They blew three hundred trumpets, and they announced concerning him that he is a bastard and unfit to join the community. And they called his name Yesu, an acronym: ‘let his name and his memory be erased.’ When Yesu heard this matter, that he had been disqualified to join the community, he became sad in his heart and fled.”

¹⁰ HALKIN 1952, 13.

betrothed, as having been guilty of adultery, and that she bore a child to a certain soldier named Panthera.”¹¹ The foreign nationality of Panthera/Pandera surfaced again in an Aramaic version of *Toledot Yeshu*,¹² while in Amulo’s *Contra Iudaeos* (846), Pandera is “someone of uncertain origin.”¹³ Eventually, he became Yoseph (ben) Pandera, a Jew and even, in East European versions, a scholar.¹⁴ The reason for Pandera’s metamorphosis is important for the thesis stated in the beginning, but is not clear at the moment. Yet it is clear that Maimonides referred to the antique tradition that knew a Roman soldier or just a foreigner, Panthera/Pandera.

Apparently, Celsus’ Yeshu was doubly illegitimate too: as the offspring of an adulterous woman and as the offspring of a Jewess and a Gentile. Of these two blemishes in Yeshu’s pedigree, the first follows from the definition of *mamzerim* given in *Mish. Yeb.* 4:13: They are the offspring of “any [union] for which the participants are liable to excision.” Since the illicit union of a married woman with someone other than her husband is included in the category of transgressions punishable by excision (*Mish. Ker.* 1:1), R. Shimon ben Azzai (*Mish. Yeb.* 4:13) specifies: “I discovered a family register in Jerusalem, in which was written: ‘So-and-so is a bastard, [having been born] of a married woman’”; just like Yeshu.

The offspring of a Jewess and a Gentile was also considered illegitimate by some prominent sages, but never undisputedly. The harsh opinion of R. Yohanan ben Zakkai and his disciples (R. Eleazar and R. Hanina) was countered by a more lenient attitude of other sages of later generations, such as Shimon bar Kappara and R. Yehoshua ben Levi (e.g., *Bab. Yeb.* 45a). The roots of the debate stem from the ambiguity of legal norms concerning the validity of betrothal between the groom and the bride with different personal statuses (*Mish. Kid.* 3:12). The illegitimacy of the offspring of intermarriage was not there stated explicitly but could be deduced, if one so wished:

¹¹ Orig., *Cels.*, 1.32: ὡς ἐξωσθείσα ἀπὸ τοῦ μνηστευσαμένου αὐτὴν τέκτονος, ἐλεγχθείσα ἐπὶ μοιχείᾳ καὶ κύουσα ἀπὸ τινος στρατιώτου Πανθήρα τοῦνομα. See also Eus. *Ecl. proph.* 3:10: according to the Jews, Jesus was “fathered from a panther.” See a discussion of Celsus’ account of the family of Jesus in SCHÄFER 2007, 19–20. On the name Panthera/Pandera, see DEISSMANN 1906.

¹² Aramaic *Toledot Yeshu* were published by KRAUSS 1911; ADLER 1910; GINZBERG 1928, 1:329–338; HORBURY 1970; FALK 1978; BOYARIN 1978.

¹³ “...nescio cuius ethnici.” Amulo was a bishop of Lyon. On this source, see SCHÄFER 2011, 44–48.

¹⁴ The so-called “Slavic” version (due to the East European provenance of the manuscripts); e.g., MS. Princeton 28, quoted *infra*.

- (a) unions by valid betrothal produced offspring with the status of the father;
- (b) sinful unions for which betrothal was nevertheless valid, such as a union of a divorcée and a priest, for example, produced offspring with the status of the tainted party;
- (c) unions in which the woman had no right, according to Scripture, to valid betrothal with the particular individual produced bastards;
- (d) unions in which the woman, such as a Gentile or a slave, had no right to valid betrothal with any Jewish man excluded their offspring from Israel—like the mothers, the children were either Gentiles or slaves.¹⁵

If the situations described by the parts (c) and (d) are gender specific, meaning that they concern a fully legitimate man and a woman of tainted status, then the status of the offspring of an Israelite woman and a Gentile has to be inferred from parts (a) and (b). According to the inverse of part (a)—“unions by invalid betrothal produced offspring with a status of the wife”—their children would be legitimate Jews; but according to a possible argument *a fortiori* from part (b), they would be Gentiles. A similar ambiguity would have existed in Roman law too, had the pre-*lex Minicia* ruling, roughly identical with the above part (a), continued alongside the later principle, established by the *lex Minicia*, according to which a couple without *conubium* bore offspring with the status of the tainted parent (no matter the gender).¹⁶ However, the case of a Jewess and a Gentile involves no ambiguity if it falls under category (c), which then should be understood as referring to both the offspring of incestuous unions and the offspring of an Israelite woman and a man of tainted status. Their union as well produced bastards.

¹⁵ The explicit ban on intermarriage originated in Second Temple Judaism as a part of the struggle for a national identity. *Jubilees*' adaptation of *Genesis* and its attempt to “erase” intermarriage from the lives of the patriarchs provides evidence of this relatively later policy in Judaism. See WERMAN 1997; COHEN 1983.

¹⁶ *Conubium* denotes “capacity of a man or woman to conclude a valid marriage with a given individual.” *Ulp. Tit. 5.3–5, 8–10*: “When *conubium* is present, children always follow (the status of) their father. When *conubium* is not present, they follow their mother's (legal) status, except for a person born from a male peregrine and a female Roman citizen; for the *lex Minicia* orders that the child of a foreign mother or father follows the condition of the parent of lower status.” The *Lex Minicia* solved a paradoxical situation, in which the offspring of a Roman woman married to a peregrine with *conubium* was a peregrine, but the offspring of a Roman woman and a peregrine without *conubium* was a full-fledged Roman citizen. The quotations are taken from FRIER & MCGINN 2004, 31–32. See COHEN 1985 who argues that Roman rules of the offspring's status before the *lex Minicia* were responsible for the matrilineal principle in Jewish law; and also see KATZOFF 2003, disproving the position of Cohen.

An overload in category (c) threatened the breakdown of the concept of illegitimacy¹⁷ and forced the sages to readdress the question: Why should the illicit unions which are liable to different punishments bring about an identical diminution of their offspring's status? In response, the amoraim (*Bab. Yeb.* 45) divided category (c) into two subcategories—one, incestuous unions punishable by excision (henceforth: c.1), whose offspring were bastards, and one, unions punishable by flogging only (henceforth: c.2). Their children were considered legitimate. An undesirable consequence of this subdivision was the fusion of the categories (b) and (c.2). Therefore the objection was raised—“if the son of a widow who was married to a high priest, who is not subject to a prohibition to all [b], is tainted, how much more the offspring of this one, who is forbidden to all [c.2] should be tainted?”

The sages therefore agreed to acknowledge a child of a Jewess and a Gentile or a slave as legitimate but tainted, like a child of a widow and the high priest. Yet in practice the ruling was not necessarily accepted: the main disadvantage of an illegitimate child persisted—legitimate Jews who knew he was “tainted” still refused him betrothal with their children (*Bab. Yeb.* 45a)

This is how some rabbis ended up offering illegal advice: either conceal your origins by emigrating somewhere where nobody knows you, or marry your own kind.¹⁸ Clearly, the above differentiation on account of the invalid betrothal has created more shortcomings in legal reasoning than it has eliminated, a fact which can only reassure us in the social importance of the rabbis' decision to pursue that differentiation and its consequence—legitimation of children of intermarriage.

III. A CHILD OF ADULTERY

The foreign nationality of Yeshu's father could now only pose an impediment to the polemicist's cause: In fact, in Maimonides' time it guaranteed Yeshu legitimate status even if his mother was an adulteress,¹⁹ and threatened the polemicist with an accusation of killing the gentile Messiah.²⁰ Thus Pandera

¹⁷ See LEVY 1949, ch. 2, who describes, by an example of the concept of “inherently dangerous object,” a process in which a legal concept overburdened by subcategorizing ceases to exist as a useful legal concept.

¹⁸ “When someone of that class [i.e., the son of a Jewess and a Gentile] came before R. Judah, he said to him, ‘Either emigrate or marry your own kind’” (זיל איטמ, או נסיב בת מינך).

¹⁹ Maimonides, *Hilchot Isurei Biah* 15:3.

²⁰ Such accusations regarding Jesus' non-Jewish father, constructed, ironically, on the basis of the early *Toledot* tradition were indeed pronounced in the not too distant past by HAECKEL 1899, 379.

became a Jew, named Yoseph or Yohanan ben Pandera, and Yeshe still appeared as a bastard born from an adulterous affair with a married woman. That Miriam was betrothed to Joseph, not married, offered no hope for Yeshe's situation. Or did it?

The acquisition of Miriam was accomplished by paying the bride-price. This real act transaction established the beginning of marriage,²¹ formalized by a marriage agreement, which was also written at that stage.²² If the bride or the groom got cold feet, their betrothal could not be ruptured by a mere renunciation.²³ Instead, a formal writ of divorce had to be issued (*Mish. Ket.* 5:1).²⁴ If a year had passed since the day of betrothal, and the betrothed couple had neither consummated their marriage nor divorced, the bride was entitled to the maintenance of a married woman from the estate of her fiancé (*Mish. Ket.* 5:2; *Tosefta Ket.* 5:1).²⁵ And, of course, any sexual relationship with a man other than her fiancé was considered adultery and was punished by stoning (*Deut.* 22:24; *Sifre Deut.* 242; *Mish. Sanh.* 7:4, 9; *Tosefta Sanh.* 10:8, 12:2). At the same time, the possibility of the espoused ones' intimacy during the betrothal period was accounted for by the requirement of a waiting period of three months in case a woman remarries, be it after the nuptials, or only the betrothal—this was necessary to assure her new fiancé that she was not pregnant (*Tosefta Yeb.* 6:6; *Bab. Yeb.* 42b; *Mish. Yeb.* 4:9). Such intimacy, although illicit elsewhere,²⁶ was permitted in Judea (*Mish. Yeb.* 4:10; *Ket.* 1:5; *Yer. Ket.* 1:4-5, 25), because, as the Palestinian Talmud explains, the occupiers decreed that an officer "possesses" first.²⁷ Therefore, the source continues, it was en-

²¹ All Near Eastern and Hellenistic contracts were real-act transactions, meaning, in the case of marriage, that an actual payment of the bride-price had to be made and this payment established the beginning of marriage. See PESTMAN 1961, 13-20. For a Jewish marriage, the bride-price was paid at betrothal, irreversibly instituting matrimonial obligations for the groom and the bride. On the acquisition of a bride at the stage of betrothal, see COHEN 1949, 77-79. On Hellenistic contracts as real-act transactions, see RUPPRECHT 2005.

²² Which follows from *Tosefta Ket.* 4:9 that I discuss *infra*: Hillel's answer regarding betrothal, which assumes that the fiancée already has her marriage agreement (*ketubbah*). See COHEN 1949, 82-83

²³ As the Roman *sponsalia* could (*D.* 24.2.2.2). See COHEN 1949, 81, 115.

²⁴ "If a woman was widowed or divorced, whether at the stage of betrothal or at the stage of consummated marriage, she collects the full amount [of her *ketubbah*]," which may contradict *Mish. Ed.* 4:7 and *Git.* 8:9 (see *infra*) depending on whether or not the groom and the bride spent a night together. See COHEN 1949, 108.

²⁵ See COHEN 1949, 109.

²⁶ *Mish. Ed.* 4:7 and *Git.* 8:9 says that a man who divorced his wife and then spent a night with her should give her a writ of divorce in the case of marriage, but not in the case of betrothal; thus taking for granted that the fiancée "was not yet shameless" before his betrothed. See EPSTEIN 1948, 126-27.

²⁷ See a brief discussion in ILAN 1993, 261-262.

acted that the fiancé might have intimacy with his bride while she is still in her father's house. The betrothal has in essence merged with nuptials.

Nevertheless, applying this observation to a discussion of the legitimacy of a child conceived by the bride from someone other than her fiancé does not bring about a clear conclusion. How so? All circumstantial evidence bearing on matters of legitimacy is countered by the “queen of proofs,” the famous answer of Hillel to this very question (*Tosefta. Ket.* 4.9): If a betrothed woman is abducted, and conceives children from her abductor, are they legitimate? Hillel answers “Yes,” because marriage contracts say “When you enter my house you shall be my wife according to the law of Moses and Israel,”²⁸ meaning that before the home-taking takes place, the woman is not yet a man's wife, and the laws of adultery do not apply. Philo too mentions “some,” presumably legal authorities, who turn a blind eye to the above situation (intercourse with a man's bride) because it falls in between the categories of seduction of an unmarried woman (φθορά) and adultery (μοιχεία).²⁹ Superficially, these marriage customs of the Alexandrian Jews aimed at loosening the mutual obligation of a betrothed couple, and at enabling the groom or the bride to escape marriage with impunity. Therefore, an escape clause, quoted by Hillel in strict accordance with Jewish law,³⁰ was inserted. The betrothal appears to be separated from nuptials.

The contradictory rulings displayed in the two above paragraphs cannot be harmonized. On the one hand, the rabbis assimilate betrothal with nuptials by permitting the bride to her fiancé; on the other, rabbis distance betrothal

²⁸ See also *Yer. Ket.* 4:8; *Yer. Yeb.* 15:3.

²⁹ *Leg.* 3.72. See a discussion of the excerpt from *Tosefta. Ket.* 4.9 and Philo in BELKIN 1940, 241-250; see also COHEN 1949, 124-26 and KATZOFF 1996. These “some” might be Roman (according to Katzoff), but, in my opinion, more likely Jewish legal authorities who, like Hillel, maintained that the bride's intimacy with a man other than her groom during the betrothal is not adultery.

³⁰ *Mish. Kid.* 3:1: “He who says to a woman, ‘You are betrothed to me after thirty days [have passed],’ and someone else came along and betrothed her during the thirty days, she is betrothed to the second party.” On conditional clauses in Jewish law, see COHEN 1949, 129. *PPolitlud.* 4 (Herakleopolis, 134 BCE) presents a remarkable example of a similar situation: A certain Philotas, member of the *politeuma*, betrothed Nikia daughter of Lysimachos. Although they drew up their marriage agreement and Lysimachos swore to provide the dowry, the father then joined Nikia to another man, without even “the customary deed of divorce” (ἐπισημένον τοῦ ἀποστασίου τὸ βύβλιον) from Philotas. Philotas, therefore, wished to summon Lysimachos to the court, obviously believing that the actions of Lysimachos were illegal. Might this papyrus signal a controversy which was finally solved in favor of those who wished the betrothal to be just a preliminary agreement? See KISTER 2002, 57-60.

Erroneous perception of the Roman law on adultery (in fact, the violation of a betrothed woman was as well considered adultery: *D.* 50.16.101) could hardly contribute to the formation of the corresponding Jewish concept. On this erroneous perception by the sages (R. Hanina in *Bab. Sanh.* 57b) see COHEN 1949, 129.

from nuptials by permitting the bride to elope with her seducer, to marry him, and to bear him legitimate children! Yet it appears that both enactments had an identical legal intent. In the case of the alleged *jus primae noctis*, it is difficult to tell who the foreign offenders were. They could be Greeks,³¹ or rather Romans whose two legions stationed by the end of the first century in Judea might be held accountable for the sages' concern and their incongruous enactment.³² Whereas the occupiers' "decree" was certainly a myth,³³ ten thousand soldiers did pose a considerable danger to Judaeen women. It is not clear, however, how the rabbis' permission of sexual intimacy between the betrothed couple could save a woman from being raped by a Roman soldier. In fact, this permission definitely solved only one problem: If the bride became pregnant, her child would not automatically become illegitimate. Moreover, once the groom was allowed to be alone with his bride, he might be forced to recognize her children, even if he suspected they were not from him, because "He who says, 'This son of mine is a bastard,' is not believed. And even if both parties say concerning the fetus in the mother's womb, 'He is a bastard,' they are not believed" (*Mish. Kid.* 4:8). R. Judah objects, "*They* are believed," meaning that the testimony of the mother was indispensable. Her children were legitimate as long as she did not break under interrogation and testify to the opposite. The other enactment, reported by Hillel, gave the mother of the child another option to the same purpose—to leave her groom for the father of her child legally. Considered in this manner, the above enactments appear to pursue one goal: rendering the obsolete statute inoperative (concerning the status of children conceived during the betrothal period), while avoiding the harmful consequences of its possible annulment.³⁴

³¹ Of the second century BCE, encouraged by anti-Jewish policy of Antiochus IV: BELKIN 1940.

³² Five legions participated in the first Jewish revolt: X *Fretensis*, V *Macedonica*, XII *Fulminata*, XV *Apollinaris*, and VI *Ferrata*. After the war, the last four legions withdrew, but X *Fretensis* remained stationed in Jerusalem. After 74 CE Judea became a consular province, and one more legion was permanently stationed there—II *Traiana*. *Legio* VI *Ferrata* also returned after 138 CE. See DANDO-COLLINS 2010.

³³ See LEVI 1898; SCHMIDT-BLEIBTREU 1988; ILAN 1993, 263-264.

³⁴ A well-known tactic now and then: A nice Roman example is an interpretation given by jurists to the law permitting the father to kill his daughter caught in adultery. Only if he is the *pater familias* (who could be eighty years old), only in his house, only if he "caught the adulterer inside his daughter" ("*in filia adulterum deprehenderit*"), and only if he kills both his daughter and her lover immediately, "with virtually the same blow" the father would be vindicated by the law. Otherwise (e.g., the seducer is killed, but the daughter escaped), he would be charged with homicide (*D.* 48.5.21-22, 24). Were fathers likely to take a risk and exercise their *vitae necisque potestas*?

IV. A CHILD OF A RAPE VICTIM

The husband's decision about his wife and her child presents the most substantial mismatch of facts reported in the birth narratives of the Gospels and of Celsus: In the Gospels, δίκαιος Joseph accepts Mary and Jesus, and, it may be argued, travels from Nazareth to Bethlehem because Judaeen customs were exactly applicable to his situation;³⁵ in the account of Celsus, however, the carpenter rejects his pregnant wife.³⁶ Both stories report a moral conflict; and the question, which of the two husbands was considered truly δίκαιος, should not be addressed lightly. It is very difficult to recover a contemporary opinion regarding the following dilemma: Should the husband (or groom) leave his pregnant-by-rape wife (or bride) and her child?

To start with an attitude expressed in Scripture and the exegetical literature: a raped virgin was supposed to marry the offender,³⁷ but if this was impossible, she certainly did not become unmarriageable. After the rape, Dinah married Simeon and bore a daughter from Sichem—Asenath; later, she bore a son to Simeon too—Saul. When Simeon divorced Dinah, she married Job and bore him seven sons and three daughters.³⁸

If a married woman was raped, her husband could refuse sharing a bed with her ever again. But he, certainly, did not send his wife away. Such was the case of Bilhah, who slept throughout the intercourse with Reuben (Gen. 35:22), and screamed for help as she woke up. She was “defiled” by the rape,³⁹ but nevertheless allowed to stay in Jacob's house. The incident with Sarah in

³⁵ Not inconsistently with my suggestion, Jane SCHABERG 1987, 91, considers as “home-taking” Luke's description (2:5) of Joseph traveling from Nazareth to Bethlehem with the pregnant Mary, called “his betrothed” (ἐμνηστευμένη)—the public act finalizing the marriage.

³⁶ The Talmud maintains the same opinion regarding the decision of Jesus' father: *Bab. Shab.* 104b, discussing the “fool's” family background, concludes that his mother Stada was “turned away by her husband.” Her son, therefore, was called by the matronymic “ben Stada,” although his father was Pandera. See a discussion in SCHÄFER 2007, 16-17.

³⁷ Exod. 22:29: “The man who has raped her must pay her father fifty shekels of silver and she must become his wife because he has violated her.” Therefore, Tamar implores Amnon to marry her (2 Sam. 13:16). For the same attitude among Greeks and Romans, see Hermog. *Stat.* 10, and Sen. *Con.* 1.5, 2.3, 3.5, 7.8, 8.6—the rapist either dies or marries his victim without dowry. See COLE 1984, 105.

³⁸ Jacob exposed Asenath, and the archangel Michael took her to Egypt, where the Heliopolite priest Potiphar reared her as her own (*Gen. Rab.* 966-967; *Pirke R. El.* 35, 37-38; *Targ. Yer. Gen.* 41; *Yalk. Reub. Gen.* 32:25; see OPPENHEIM 1886).

³⁹ According to *Jubilees* 33:3-4 and the *Testament of Reuben* 3:11-15. Dinah, however, was not “defiled” according to Ephraim of Nibisis: “*You went up to your father's bed* (Gen 49:4): also it is explained that while Bilhah was sleeping, he cohabited with her, and therefore, she was not cursed with him” (Ephrem, *Genesis* 42.2 in McVEY 1994, 201; I am also relying on a lecture delivered by Yifat Monnickendam at Princeton University in 2011 entitled “Rape, Abduction and the Creation of a Bond in Ephrem and Qumran”).

Egypt (Gen. 12:1-20) is more controversial because Scripture is ambiguous on what really happened while Sarah was alone with Pharaoh, and because Abraham and Sarah continued living as husband and wife after the incident. Jewish and most Christian authors retell a sanitized variant of the story: although Abraham was trying to conceal Sarah's beauty from the Egyptians, she was found and reported to Pharaoh. He seized Sarah, promising her for her love the land of Goshen, gold and silver. In the night, however, all Pharaoh's attempts to approach Sarah were frustrated by an invisible angel who hit him every time he tried to touch her; and in the morning, leprosy stains were found all around the palace. Then Pharaoh sent Sarah back to Abraham with gifts and a handmaid, Hagar.⁴⁰ Ephrem of Nisibis, however, expresses a different opinion—Sarah was raped, but this fact neither defiled her, nor changed the affection of Abraham⁴¹:

If a [captor] kidnaps you and exposes your dignity in the field, the force of the defiler will argue [concerning you] that you are chaste, *just as Sarah [too] was chaste in the bosom [of Pharaoh] for she did not commit adultery by her own will*. The will became [a priest that by] his hyssop [purifies one who has been defiled] by force.

An important detail for the current inquiry—the pregnancy of the victim—is lacking in the above stories. Greek and Roman literature may fill the gap.⁴² The *Epitrepontes* and the *Samia* of Menander give us an indication of popular opinion on the subject; and the *Alexander Romance*, attributed to Pseudo-Callisthenes, describes Philip and Alexandra in a situation quite similar to that of Joseph and Mary.

⁴⁰ *Apocalypse of Lamech* [1QapGen], 43-44; *Gen. Rab.* 389, 554; *Tan. Lekh.* 5, 6; *Pirke R. El.* 26; for a discussion ZAKOVITCH & SHINAN 1983; John Chrys., *Hom. 32 in Gen.* 32 (PG 53, 292-303); Eus., *PE* 9.17; Hier., *Quaest. Hebr. Gen.* 12.15-16. In *BJ* 5.9.379, Josephus “re-makes” an example of Sarah's salvation from Pharaoh's lust to draw an interesting parallel between Roman and Egyptian invaders: “In old times there was one Necao, King of Egypt, who was also called Pharaoh; he came with a prodigious army of soldiers, and seized Queen Sarah, the mother of our nation.” Did he imply that Romans presented a threat to Jewish women similar to that of Necao for Sarah? See also Jos. *AJ* 1.1.8.1, and Philo *Abr.* 96-98.

⁴¹ Ephr., *Hymn. de Vir.* 1.9 (adapted from the translation by McVEY 1989, 263-264; and MONNICKENDAM 2011).

⁴² I omit a discussion of victims of divine rapists and seducers. On the women's part, they might welcome their association with the gods—like Tyro who fell in love with Enipeus (Hom. *Od.* 11.236-254), “the most beautiful of rivers flowing the earth”—or might feel disgraced by it, like Creusa, raped by Apollo (Eur., *Ion*). It depended on the gods' manners, and the gods' subsequent actions. Mortal men certainly did not avoid marrying the gods' lovers and victims: Echeclus, for example, was eager to marry Polymele, the mother of Hermes' son Eudorus (Hom. *Il.* 16.180-86); and Amphitryon married his fiancée Alceme when she was pregnant with Heracles (Plaut., *Amph.*). See LEFKOWITZ 1993.

“The father is he who raised the child, not he who sired it,”⁴³ wrote Menander, and elaborated on this idea in his comedies. In *Epitrepontes*, Charisios discovers that his wife Pamphile had given birth to a baby during his absence, just five months after their wedding. Offended, he deserts Pamphile and her child. Eventually, it is Charisios who turns out to be the offender and a complete fool too, since it was he who, roaring drunk, raped Pamphile and begot on her their child before she became his wife.⁴⁴ A somewhat similar situation occurred in the *Phasma*;⁴⁵ and, fiction aside, a surprisingly real concern of finding oneself in Charisios’ shoes is reported by Roman jurists, who advised testators to institute posthumous heirs (*postumi*) virtually from any woman with whom they had intercourse, lest in case they marry them in the future, making these *postumi* their legal dependents (*sui heredes*) and ruining their testament.⁴⁶ A lesson for husbands who for their fear of raising illegitimate children are too quick in accusing their pregnant wives of infidelity is repeated in *Samia*.⁴⁷ After an absence from home, Demeas finds his concubine Chrysis with their, as he thought at the moment, newborn child. Demeas is enraged, while his adopted son, Moschion, unsuccessfully tries to convince Demeas to forget his prejudice towards illegitimate children (lines 135-42):

D: Would you expect me to rear a bastard son here?! / What you suggest is disgusting, and not my way! / *M*: For heaven’s sake! Who is / legitimate, and who a bastard, if he’s a human being? *D*: Oh, well, / You’re kidding. *M*: No, by Dionysus! I said it / seriously. I don’t think one pedigree differs from another at all. / But if one fairly judges the matter, then, a good man is legitimate /, and a vile man is also a bastard...

The decision of Chrysis to keep the child turns to be a “just cause” for Demeas to consider sending her away.⁴⁸ Soon, the situation gets worse. Demeas, who “knows everything”, (line 316) accuses Chrysis of adultery with Moschion. When both the concubine with the child and his son leave Demeas, the “comic tyrant” finds himself as alone and deserted as the “tragic” Creon. Even his friend and neighbor, Nikeratos, decries Demeas (lines 410-12):

⁴³ *Mon.* 637: πατήρ ο θρέψας κούχ ο γεννήσας πατήρ.

⁴⁴ See GOMME & SANDBACH 1973; FANTHAM 1975, 67-68.

⁴⁵ Pheidias falls in love and eventually marries a daughter of his stepmother conceived in premarital rape by Pheidias’ father (now the stepmother’s husband): See GOMME & SANDBACH 1973, 673-6; TRAILL 2008, 66-67.

⁴⁶ A Roman testament was invalid if the testator passed over any of his dependents (*sui heredes*). For the aforementioned advice regarding *postumi*, see *D.* 28.2.5; this concerns even those women with whom legal marriage is impossible, such as one’s sister (*D.* 28.2.9.3), perhaps assuming a *Phasma*-like possibility, that one day she might turn out to be his stepsister.

⁴⁷ See KEULS 1973.

⁴⁸ Lines 354-55: ἔχεις δὲ πρόφασιν ὅτι τὸ παιδίον / ἀνείλετ’.

[to Chrysis] ...I personally heard the women say / You kept the child and rear it—lunacy!
But that [Demeas] is a joy! (ἀλλ' ἔστ' ἐκείνος ἡδύς)

In other words, he was a really “nice” person, whose prejudice, suspicion and jealousy almost cost him his family and friends. Fortunately for all the characters of Menander’s comedies, the poor wives were vindicated, and the jealous husbands were dissuaded. But for King Philip in the *Alexander Romance*, there is no happy ending, because his wife, Alexandra, had indeed conceived a child from a man who deceived and raped her. This was the Egyptian magician Nectanebo. First, when Philip was absent from home, Nectanebo had sent a dream to the queen, in which he appeared as the Lybian god Ammon. Having thus aroused the queen’s desire for Ammon, the magician then came to the queen’s chamber, and, pretending to be the Lybian god, sired a child that would become Alexander the Great. Nectanebo had also taken care to convince Philip of the divine origin of Alexandra’s pregnancy by sending a message to him in a dream. When Philip returns, he finds Alexandra pregnant and comforts her: “We must indeed be fortunate, darling. It is not some vile mortal who smote you; you are pregnant with a god’s child!” For a moment, the reader may think the king is cuckolded. But no, one day Nectanebo overheard Philip saying to himself: “A god? Nonsense. It is some vile mortal who smote you, and I shall find and kill him!” To put it simply: Philip reassured his wife, but secretly swore to punish the offender.⁴⁹

Real-life husbands probably acted in the same way, preferring to keep their raped or even seduced wives, and to avoid washing their dirty laundry in public. That is why Aeschines was unable to convince husbands of raped women to testify against their offender, the notorious Timarchus. In 346 BCE, he attempted to prosecute Aeschines; Aeschines counterattacked and secured the conviction of Timarchus, accusing him, among other charges, of rape (Il. 107ff.): “And he [Timarchus] displayed such licentiousness (ἀσέλγεια) in his treatment of wives of free men as no other person ever did. *But I present none of the men here to testify in public to the personal misfortune that he chose to conceal.*”⁵⁰

Our Yoseph/Yohanan was not made of iron, either. In the early medieval versions of the *Toledot*, he eventually believed that Miriam was raped, consummated their marriage, and legitimized her son, Yeshu. Three manuscripts

⁴⁹ Retold (not quoted) from WOLOHOJIAN 1969, 23-31.

⁵⁰ ὧν οὐδένα ἐγὼ παρακαλῶ δεῦρο τὴν αὐτοῦ συμφορὰν, ἣν εἴλετο σιγᾶν. In his attack on Timarchus, Aeschines repeatedly accuses him of sexual promiscuity as a rapist and a male prostitute (18-22, 41-43, 51-52, 159-60). See a discussion in DOVER 1978, Chapter 2: “The Prosecution of Timarkhos.”

report this variant of the story, each with some particulars. The only complete Hebrew translation from the Aramaic *Toledot*, preserved in an oriental manuscript, MS New York JTS 8998, tells how Yehudah Pardasi (Yehudah ha-Ganan in other versions) interrogates Yeshu (*Yoseph—husband, the foreigner Pandira—seducer*):

(1r) And Yehudah Pardasi caught him and brought him before them and they asked Yeshua the wicked and said to him, “From what place are you? And from what nation?” And he said to them, “I am a Jew, and also a bastard.” And they said to him, “Your father, what was his name, and his business and occupation?” And he said, “The name of my father was Pandira, and he was a foreigner in Israel and a player.” “And your mother, what was her name, and her business?” He answered, “Her name is Miriam, and she braids women’s hair. When my father died, and Yoseph became aware of her [condition], he married her.”

The innocence of Miriam and the compassion of her husband Yoseph are emphasized in the St. Petersburg manuscript (MS RNL EVR 1.274; *Yoseph—husband, Yohanan—rapist*):

(21v) After three months, her belly grew, and Yoseph noticed. He said to her, “Oh, Miriam, my beloved, what is that?” She answered to him, “Oh, my husband, from that Sabbath eve when you slept with me I felt that I had become pregnant.” When Yoseph heard such words of his wife, he said to her, “Oh, woe is me, what are you saying? That never happened! You shall know that that wicked man who quarreled [with me] did that.” She said to him, “Oh, my husband, I (22r) did not sin!” And from his great love for Miriam, for she was very beautiful, he did not reveal what happened, so that the matter would not have to go before a court. When in the due time the pregnancy became obvious, he was afraid that the local people might cause trouble, since she had always been barren. And Yoseph took her and left their [cit]y of Nazareth.

According to these stories, Yeshu was a sort of “crypto”-bastard, judged illegitimate only in his twenties on the grounds of a suspicion of the sages, self-incrimination, or a late testimony of his mother. This was doubtfully legal and believable; therefore, the benefits of such presentation were dwarfed by its disadvantages—a sympathetic picture of Yeshu’s family. Getting rid of the husband Yoseph was then a natural solution, presented in a Yemenite manuscript (MS New York JTS 6312):

(67v) Immediately, [Yehoshua ben Perahiah] went to visit this woman—the mother of Yeshu—and said to her, “Tell me the origin of this boy, and I shall be your guarantor for Paradise.” The woman said, “Once I went out at night, to launder my shawls after menstruation, and I still was impure. Then, someone approached me, and I did not recognize him, and he raped me, and so I conceived this boy.” The sages immediately took notice of this thing, and said, “Blessed be the Lord, who reveals His secret to those who fear Him!” And the mother of Yeshu was an extremely important woman, although a frivolous one, and because she used to go out alone, without (a man) who would keep her safe, she brought this misfortune upon herself.

Because the son of a single mother would not have been a bastard, this version introduces a detail, which, since its addition, recurs in most copies of the *Toledot Yeshu*—Miriam was menstruating; therefore Yeshu was born under a cloud no matter who his parents were.⁵¹ Whether this detail escaped a *Toledot* copy of Maimonides or was introduced after his time is impossible to tell. Perhaps he knew the first two of the above stories, but was not convinced by the fraudulent illegitimization of their antagonist.

Late medieval versions, attempting to secure the illegitimate status of Yeshu, made Yoseph (in the version below called Yohanan) change his mind again. Yet this change came at a certain cost for the whole *Toledot*, in which the birth narrative now occupies half of the entire story thanks to the complex feelings and deliberations of its personages, reading more like a modern drama with a feminist coloring.

In the days of the Second Temple, Queen Helene had a family relative, the virgin Miriam (MS Princeton 28.1r-10v; *Yohanan* —husband, *Yoseph*—rapist):

beautiful and clever and modest and complete in all of the virtues, and her name was known in every house of honorable people, and she was an orphan, and she was very rich from many assets in Efrat Bethlehem (in) Judah. And because of the many delights that she had, she dwelled in Jerusalem,

where one of her neighbors was the carpenter Panderi, a good craftsman but a “simpleton of simpletons.” He left a single son, Yoseph, who unlike his father grew intelligent and knew some *halakha*. In an unlucky hour he fell in love with Miriam, and “drained his soul to attract her”:

He was always coming and going near her and speaking to her heart. She did not want to embarrass him: With two hands she pushed him away, with kindness and laughter, and he thought that maybe she would agree to marry him, even though she was from the royal line, and he was lowly and the son of a proselyte.

Soon the queen decided to give away her orphan relative Miriam to “an important young man from the royal Davidic line,” and a student of the renowned Rabbi Tanhuma, named Yohanan. He was clever, handsome, “complete in all of the virtues,” and a great expert in all of the chambers of Scripture. The manuscript then tells us how Miriam betrothed Yohanan, surprisingly accompanying this with a critique of the couple’s sexual promiscuity, yet customary in their time:

⁵¹ The author of this version of the *Toledot* clearly believed that a child of a menstruating woman was a bastard, the conclusion made according to *Mish. Yeb.* 4:13 and *Mish. Ker.* 1:1, but contrary to *Bab. Yeb.* 49b and Shulhan Arukh, *Even ha-Ezer* 4:13, which plainly states that a child of a menstruating woman is *pagum* (blemished).

And it was the custom in days of old in Israel, that a fiancé betrothed his fiancée at the time of the writing of the terms of the agreement because of the promiscuity that there was in Judaism... Yohanan thus married Miriam immediately at the time of the writing of the agreement.

When Yoseph learned about the betrothal, “his countenance withered their expressions,” he fell lovesick and would have died, had his mother not taken the business into her hands. Her first plan of luring Miriam to the feast in their house failed. The girl, led by compassion for her ill neighbor, indeed came to visit him, but when Yoseph attempted to rape her,

Miriam grew strong and escaped from the house and went up to her house, shocked out of her senses. She took her clothes there and left in embarrassment and did not reveal her shame. And also because of her modesty, she said in her heart, *Wickedness proceedeth from the wicked: but mine hand shall not be upon him.* (1 Sam. 24:13)

But Yoseph’s mother did not give up. She devised another plan: Her son would give money to Yohanan and become his student! That is what Yoseph told him:

You, Yohanan, are a lion in our company, the greatest and most important of the scholars, and you are from the inhabitants of Jerusalem and from the seed of Davidic kingship, while I am an ignorant man and from those who left Jerusalem. Yet I have a lot of money... Give me a sign for good! For if I would get only one sign from you, I will glorify you, and you will be called a great expert, earning a lot of money ... *Where you go, I will go, and where you sleep, I will sleep* (Ruth 1:16), and I will enrich you with much money. Whatever you claim from me, I will surely help you. We have only one purse between us and one God for all of us.

And so it turned out that Yoseph bought the righteous Yohanan with his flattery and money. When Miriam saw Joseph coming with Yohanan, she was shocked, “her face changed, and she could not speak peaceably to him.” When they were finally alone, Miriam tried to dissuade Yohanan from joining that wicked man, but all in vain. Yohanan was too proud to listen; instead, he preached in parables:

My love, I will tell you a parable about a burning candle. A hundred people come and light their candles from it, and that candle (turns) darkness into light, still the candle burns as before. Thus am I, and even if you are right and he is a totally wicked man, I do not care, for I will certainly not learn from his wicked deeds; on the contrary, he will learn good deeds from me.

But he was certainly wrong, because soon, while Yohanan was sleeping drunk in Yoseph’s bed, Yoseph pretended that he was Yohanan and, saying that he was going to die if Miriam would not allow him to touch her, Yoseph raped

Miriam. When Yohanan sobered up, and learned from Miriam what had happened, he realized that Miriam was now “forbidden” to him. Yet Miriam could not grasp it, “May the fulfillment of God’s commandment cause separation from my spouse?”⁵² Miriam implored Yohanan but to no avail, and he left her, saying: “*Turn away your eyes from me, for they have overcome me* (Cant. 6:5), and do not see my face anymore, because a disgrace was done to you.” Later, testifying before the Sanhedrin and telling the truth, Miriam says, “‘Do not call me Miriam, because God has changed me.’ They therefore called her name Maria.” Of all people, only Yoseph did not forsake Miriam, accepting her and their child. It seems that in the eyes of the author, Yoseph, a rapist and simpleton, now proved himself a true altruist comparable to Ruth, with whose words he is speaking:

Everything that you want, I will do for you (Num. 22:17), because I do not desire a dowry or a gift. *For all of my people know that you are a worthy woman* (Ruth 3:11). And do not notice that the world is gossiping after you, for what is yours is mine, and what is mine is yours, as they say, *Only death with separate me from you* (Ruth 1:17) and *where you sleep I will sleep* (Ruth 1:16).

The story then ends, rather dramatically: “And she abandoned herself like one of the whores.”

V. THEN AND NOW

There was a long way to go from a poor country woman in the story of Celsus to the rich and beautiful Miriam of the seventeenth-century *Toledot*, a more modest and sensible woman than her scholarly husband, whose pride and coldness were solely responsible for Miriam’s fall from grace, for her “metamorphosis” into Maria. Such exaltation of Miriam at expense of her husband’s reputation was, at least partially, collateral damage from the polemicist’s struggle with the changing legal and moral norms inside Jewish society.

Speaking of the children’s legitimacy, what were the causes of these changes? Doubtlessly, the opinion on what is good or bad for the society has totally reversed in the last twenty-five centuries. Whereas the law of Solon banned fathers from legitimizing their bastard children,⁵³ the Israeli Genetic Information Act of 2000 required that a married woman or man should

⁵² She alludes to *pikuach nefesh* for the “dying” Yoseph, who, she thought, was her husband Yohanan (MS. Princeton 28, fol.3v.23).

⁵³ Which, in opinion of LAPE 2003, 122, “follows from the laws which exclude the bastard from inheritance rights and from the phratry oath”; see also WOLFF 1944, 79.

first obtain court permission for ordering a DNA paternity test, and the Act's 2008-amendment completely denied them such testing, because it "would involve a risk of illegitimacy to the future child."⁵⁴ In the other words, whereas ancient Greek fathers were not allowed to legitimize their biological children born out of wedlock, modern Israeli fathers may not deny that any children of their wives are legitimate.

This slow but total sea change has, first of all, economic reasons. It was argued that Solon, by his legislation, intended to limit the procreative zeal of wealthy aristocrats and thus to shape a new democratic society with a lower percentage of prominent families and their members.⁵⁵ This purpose was foreign to the Mediterranean nations of later periods; and for Jewish society, whose mothers were "notorious" for raising all their children⁵⁶ instead of exposing some, an impediment to children's legitimacy could only bring disadvantages. The husband, in his marriage agreement, promised the wife to provide for their children; more specifically, he undertook to maintain their daughters and to pass their family estate, including the wife's dowry, to their sons.⁵⁷ These benefits were only available to the couple's children from each other; illegitimate children were excluded as co-owners of the parental estate and had neither a legal claim to maintenance from their mother's husband, in case of her predecease, nor full inheritance rights.⁵⁸ Such a situation was asking for a remedy.

In Roman law, SC Orficianum (178 CE) permitted illegitimate children to inherit on intestacy from their mothers in the first praetorian class *unde liberi*;⁵⁹

⁵⁴ BOROCHOV website. See also LAURIE 2004, 284-285.

⁵⁵ See LAPE 2003.

⁵⁶ See SCHÄFER 1998, 175, quoting Philo *Leg.* 3.110: "Parents who expose their children 'are breaking the laws of nature and stand self-condemned on the gravest charges, the love of pleasure, hatred of men, murder, and the most abomination of all, murder of their own children.' See also Tac. *Hist.* 5.5.

⁵⁷ *PMuraba'at* 115.8-9: αὐτοῦ υἱοὺς ἢ θυγατέρας οὓς ἐχ[.....]εἰ[.....]... ιος ὡς.. [...]. οὓς ἂν σχῇ ἅπ' αὐ[τ]οῦ τραφῇσονται καὶ ἀμφιασθήσ[ον]ται ἐκ τ[ῶ]ν ὑ[π]αρχόντων τῶ αὐτῷ... "...his sons and daughters... that she would have from him shall be fed and clothed from all his property..." *PMuraba'at* 21.10-11: [הן בנן יהי לי מני] כנמסא והן ו[י]הין יתבן ביתי ו[י]הין מתזון מן נכסי – "If I have legitimate children from you, and they survive, they shall live in my house and be fed from my property." This clause may also be restored in *XHev.* 69. 11-13, but is missing in other marriage contracts from the Judaean Desert, *PYadin* 18 and 37. The formula is also missing in Hellenistic magic contracts and in the aforementioned documents may reflect specifically Jewish and Near Eastern traditions. See a brief discussion in COTTON 1994. For the clauses in Hellenistic marriage contracts, see YIFTACH-FIRANKO 2003.

⁵⁸ See *Tosefta B. Bat.* 7:1: "A bastard child leaves his inheritance to his relatives."

⁵⁹ SC Orficianum followed in about fifty years after SC Tertullianum that permitted a mother with three or more children to inherit from them. The law pertained to illegitimate children as well. Their mother was allowed to record all her children in the city register, and to count them for *ius trium*

while in Jewish law, the problem was addressed by another, far more effective approach—by limiting the number of potentially illegitimate children.⁶⁰ The threat of Roman legionnaires quartering since the first century CE throughout the villages of Judaea⁶¹ had to trigger countermeasures on the part of the sages, addressing, on one hand, the possible marriage of a Gentile (such as a Roman veteran, for example) with a Jewess;⁶² and on the other, incidents of abduction and rape, which, in fact, were among the most important motives behind the inquiry into the status of children of mixed marriages, recorded in *Bab. Yeb.* 45a:

R. Aha, head of the castle, and R. Tanhum b. Hiyya of Kefar Akko redeemed some female captives, who came from Armon to Tiberias. There was one who had become pregnant by a gentile...

If these “female captives” were married, their redemption would have been a duty of the women’s husbands, who, then, would have been obliged to accept them as legal wives again, notwithstanding their abduction and even rape (*Pyadin* 10.10-11 [Babatha’s *ketubba*): “And if you are taken captive, I will redeem you from my “house” and estate, [and I will rest]ore you as a wife (לֹאֲנִתָּה לִּי בִּנְךָ...”)”⁶³ In all cases envisioned by the legal enactments in *Bab. Yeb.* 45a-b, and by the ransom clauses in marriage contracts, children of the violated women were likely to turn out legitimate, whether she was single or married, and, at least in Judea, even if she was betrothed. Even in this case, a decision on the child’s status was in the hands of both parents.

liberorum (D. 38.8.2 [Gaius]; 38.8.4 [Ulpian]). See GARDNER 1998, part I.5 (a-b); and *ead.* 2001, 53-54.

⁶⁰ Instead of two different answers to a common problem, as I here suggest, HAYES 2002, 89, in her analysis of laws on intermarriage and personal status, supposes that “the parallels between specific aspects of Roman and Jewish laws... owe something to the interaction of these two great legal systems...”. This, indeed, is also possible.

⁶¹ For example, *Pyadin* 11, written in May 124, indicates that the first Thracian cohort was stationed in the middle of Ein Gedi (lines 13-14): “Judah son of Eleazar Khtousion of Ein Gedi to Magonius Valens, centurion of the *cohors I milliaria Thracum* greetings....” Lines 17-19: “the abutters of the said courtyard being the east tents... to the north a road and a praesidium.” For the translation and a discussion of these excerpts, see COTTON 2001. For Roman military units stationed inside cities and villages, see ISAAC 1990, 269-280.

⁶² Although Augustan legislation forbade soldiers and officers in active service to form legal marriages, they could form stable relationships with non-citizen women and have children from them. One of the few Roman testaments from Egypt before the *Constitutio Antoniniana*, BGU I 326 (189-94 CE) is evident of such situation: Gaius Longinus Castor, a veteran from the praetorian fleet of Misenum, wrote a testament to his three daughters (not wives, *pace* the interpretation of ROWLANDSON 1988 [188 no. 139]). On such unions, see TREGGIARI 1991, 46-47. Veterans, however, could marry non-citizen women by a special permission; see CSILLAG 1976, 97.

⁶³ Meaning that a violated wife was not forbidden to her husband (*Bab. Yeb.* 100b; *Bab. Ket.* 51b). See YADIN 2002, 118-141; for a discussion regarding a captive wife’s status, see FRIEDMAN 1996; SAFRAI 1996.

Thus, the social and moral norms of late antiquity had introduced changes into the early versions of *Toledot Yeshu*, clearly against the intention of the polemicist: Yeshu became the legitimate child of the raped Miriam, a single woman, or, alternatively, married to the righteous Yoseph/Yohanan, who was kind enough to adopt the child. Late medieval polemicists tried to rectify the situation—so that Yeshu would still be a *mamzer*—but the result of their attempts was rather peculiar: Yoseph/Yohanan, “forgetting” to give a divorce document to his wife, emigrated and disappeared “to the end of his days,” while the “fallen” Miriam-Maria was convinced to cohabit with her rapist, producing with him more and more illegitimate children.⁶⁴

⁶⁴ The Huldreich version is an exception (Johann Jacob Huldreich [Huldricus], *Sefer Toledot Yeshua ha-Notsri/Historia Jeschuae Nazareni: à Judaeis blasphemè corrupta/ex manuscripto hactenus inedito nunc demum edita, ac versione et notis, illustrata a Joh. Jac. Huldrico* [Leiden: J. du Vivie, 1705]: Miriam willingly elopes with her seducer (not rapist) and lives with him in unlawful marriage. See YOFFIE 2011.

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