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Karin Hügel

Queer Readings of Jewish Male Prostitution in Antiquity: Mishnah Horayot 3:7 and Two Different Rabbinic Traditions Based on Tosefta Horayot 2:5-6[1]

Abstract
In antiquity, not only poor Jewish women and children but also poor Jewish men and boys could end up in hopeless situations of sexual exploitation by those in power. The Halakhah contains a reference to the handling of Jewish prostitutes. If a Jewish man and a Jewish woman were sold into a brothel, the man should be redeemed first according to Mishnah Horayot 3:7. Subsequent to this Mishnaic passage, a narrative in Tosefta Horayot 2:5-6 mentions an encounter between a rabbi and a Jerusalemite child with beautiful eyes and good looks, destined for prostitution. Interestingly enough, the rabbi was willing to redeem him and had to pay a huge amount of money to do so. This anecdote in Tosefta Horayot 2:5-6 has been further developed in later Jewish writings in various ways, whereby two different rabbinic traditions can be discerned. According to the Palestinian Talmud Horayot 3:7, 48b, Rabbi Yehoshua ben Ḥananyah encounters a figure that alludes both to the young biblical David in the First Book of Samuel 16:12 and to the beloved in the Song of Songs. However, in the Babylonian Talmud Gittin 58a and in Lamentations Rabbah 4:4 on Lam. 4:2, this character is identified with Rabbi Ishmael ben Elisha. Queer and feminist issues are discussed in connection with these rabbinic traditions.

Resumen
En la antigüedad, no solo las mujeres y los niños judíos pobres, sino también hombres y jóvenes judíos pobres podían acabar en situaciones desesperadas de explotación sexual por parte de quienes detentaban el poder. La halajá contiene una referencia a

[1] This article has been presented at the Annual Conference of the European Association of Biblical Studies in August 2021 at the University of Wuppertal in Germany, at the International Meeting of the Society of Biblical Literature in July 2022 at the University of Salzburg in Austria, and at the Interdisciplinary Conference on Feminist Theologies, Religion and Sustainable Democracy in the Nordic Countries and Europe "Confronting Gender Polarity and Nationalism" in August 2022 at the University of Regensburg in Germany.

cómo tratar la prostitución masculina. Según Misná Horayot 3,7, si un hombre judío y una mujer judía eran vendidos a un burdel, el hombre tenía que ser redimido primero. Posterior a este pasaje de la Misná, una narración en Tosefta Horayot 2,5-6 menciona un encuentro entre un rabino y un niño de Jerusalén, con ojos hermosos y bella apariencia, destinado a la prostitución. Curiosamente, el rabino estaba dispuesto a redimirlo y tuvo que pagar por ello una gran cantidad de dinero. Esta anécdota conservada en Tosefta Horayot 2,5-6 se desarrolla diversamente en textos judíos posteriores, prudiéndose identificar dos tradiciones rabínicas diferentes. Según el Talmud de Jerusalén, en Horayot 3,7, 48b, el Rabí Yehosua ben Ḥananiah se encuentra con una figura que alude tanto al joven David en 1 Sam 16,2 como al amado del Cantar de los Cantares. Sin embargo, en Talmud de Babilonia Gittin 58a y en Lamentaciones Rabbah 4,4 sobre Lam 4,2, a este personaje se le identifica con el Rabí Ismael ben Elisa. El artículo discute cuestiones queer y feministas en relación con estas tradiciones rabínicas.

Zusammenfassung
In der Antike konnten nicht nur arme jüdische Frauen und Kinder, sondern auch arme jüdische Männer und Knaben in ausweglose Situationen sexueller Ausbeutung durch die Machthabenden geraten. In der Halacha findet sich ein Hinweis auf den Umgang mit jüdischen Prostituierten. Wenn ein jüdischer Mann und eine jüdische Frau in ein Bordell verkauft wurden, sollte nach Mischna Horayot 3,7 zuerst der Mann freigekauft werden. Im Anschluss an diese Textstelle der Mischna erwähnt eine Erzählung in Tosefta Horayot 2,5-6 eine Begegnung zwischen einem Rabbi und einem Jerusalemer Kind mit schönen Augen und gutem Aussehen, welches zur Prostitution bestimmt war. Interessanterweise war der Rabbi bereit, es freizukaufen, und musste dafür eine große Summe an Geld zahlen. Diese Anekdote in Tosefta Horayot 2,5-6 wurde in späteren jüdischen Schriften unterschiedlich weiterentwickelt, wobei zwei verschiedene rabbinische Traditionen erkennbar sind: Nach dem palästinischen Talmud Horayot 3,7,48b trifft Rabbi Jehoschua ben Chananja auf eine Figur, die sowohl auf den jungen biblischen David im ersten Samuelbuch 16,12 als auch auf den Geliebten im Hohelied anspielt. Im babylonischen Talmud Gittin 58a und im Midrasch zu den Klageliedern 4,4 zu Klgl 4,2 wird diese Figur jedoch mit Rabbi Jischmael ben Elischa identifiziert. Im Zusammenhang mit diesen rabbinischen Traditionen werden queere und feministische Fragestellungen diskutiert.

Keywords: queer readings; Jewish male prostitution; Mishnah Horayot 3:7; Tosefta Horayot 2:5-6; Palestinian Talmud Horayot 3:7, 48b; Babylonian Talmud Gittin 58a.

Introduction

This article is part of my research on queer readings of the Hebrew Bible.[2] They focus on non-normative sexualities in the Tanakh or the Old Testament and related Jewish and Christian exegetical traditions as well as works belonging to the visual arts. These queer readings have been developed within the framework of intertextuality. Not only certain passages of the Hebrew Bible are queerly read but also selected rabbinic sayings that build on these passages.

Since the beginning of the 21st century, queer readings of the Hebrew Bible as well as other Jewish and Christian writings are offered. People from the Anglo-American world have started to read the Torah in a queer way.[3] Various queer persons, namely lesbians, gays, bisexuals, transgenders and intersexuals, as well as others who question their sexual orientation or their identification with the sociocultural gender assigned to them,[4] have begun scientifically investigating old religious sources like the Bible and the Halakhah[5] from their own perspectives. In this contribution, I will focus on rabbinic views on Jewish male prostitution, starting with a passage from Jewish law.

In antiquity, not only poor Jewish women and children but also poor Jewish men and boys could end up in hopeless situations of sexual exploitation by those in power. The Halakhah contains a reference to the handling of Jewish prostitutes in Mishnah Horayot 3:7. Subsequent to this Mishnaic passage, a narrative in Tosefta Horayot 2:5-6 mentions an encounter between Rabbi Yehoshua ben Ḥananyah and a Jerusalemite child with beautiful eyes and good

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2 Cf. for instance Karin Hügel, *Studien zu queeren Lesarten der Hebräischen Bibel* (PhD diss., Vienna 2022). (https://hdl.handle.net/11245.1/096f67eb-8359-42f1-9b91-ee39be73fb19, 1 March 2023) and my book with the same title (forthcoming).

3 Cf. Gregg Drinkwater, Joshua Lesser and David Shneer (eds.), *Torah Queeries: Weekly Commentaries on the Hebrew Bible* (New York University Press: New York and London 2009).

4 These people took the previously abusive word "queer" – which means "strange" or "odd" – for their affirmative self-designation and use it in the sense of "positive perverse". An affirmative reinterpretation of swear words like the term "queer" is not new, for example "Quaker", French *huguenots* or Dutch *geuzen* (as self-designation of Dutch freedom fighters in the Eighty Years' War which have been reviled as French *gueux*). In linguistics such words are called – in connection with the last-named example – *geuzennaam*.

5 The word "Halakhah" (הֲלָכָה) is a derivation of the Hebrew verb הלך ("to go"). Halakhah is the right way to go, to behave, hence "norm" or "law". In the singular, Halakhah can mean the entire obligatory religious law, but also a single statute with the corresponding plural Halakhot. Cf. Günter Stemberger (ed.), *Mekhilta de-Rabbi Jishma'el: Ein früher Midrasch zum Buch Exodus* (Verlag der Weltreligionen: Berlin 2010), 588.

looks, destined for prostitution. This anecdote in the Tosefta Horayot 2:5-6 is further developed in two different rabbinic traditions, one in the Palestinian Talmud Horayot 3:7, 48b and the other in the Babylonian Talmud Gittin 58a and Lamentations Rabbah 4:4 on Lam. 4:2. According to the tradition in the Palestinian Talmud Horayot 3:7, 48b, the child is a figure that alludes both to the young biblical David in the First Book of Samuel 16:12 and the beloved in the Song of Songs. In describing individual fates, the power relationships between the Jewish and the Roman population during the Roman supremacy is reflected. However, according to the tradition in the Babylonian Talmud Gittin 58a and Lamentations Rabbah 4:4 on Lam. 4:2, the child is identified with Rabbi Ishmael ben Elisha. I will offer different explanations for the identification of the child with Rabbi Ishmael ben Elisha. It is not very plausible to consider the encounter between Rabbi Yehoshua ben Ḥananyah and the child in Rome as a verified historical memory. Towards the end of my article, I will refer to the different contexts of similar stories in the Palestinian Talmud Horayot 3:7, 48b and the Babylonian Talmud Gittin 58a. Finally, I will draw queer feminist conclusions in connection with these rabbinic traditions.

Having chosen a topic concerning sex between men this time, I will nevertheless make feminist observations and pose feminist questions. For instance, I will point to the fact that the positive discrimination of men in Mishnah Horayot 3:7 results in rabbinic stories of redemption from captivity only for young Jewish men, like for a beautiful young quasi-David in Tosefta Horayot 2:5-6, but not for beautiful young Jewish women.

In the context of queer readings of the Hebrew Bible, it will be striking that the young David, according to the rabbinic interpretation in the Palestinian Talmud Horayot 3:7, 48b, can be understood as a boy who is particularly suitable for pederastic purposes due to the description of his beautiful appearance in the First Book of Samuel 16:12. My question is, whether precisely this strange erotic idea of one of the most prominent figures of the Hebrew Bible, namely of David, of the later king of Judah and Israel, might have been decisive for the emergence of another tradition based on Tosefta Horayot 2:5-6 in the Babylonian Talmud Gittin 58a and Lamentations Rabbah 4:4 on Lam. 4:2. These are rabbinic texts in which erotic contents have been partially or completely deleted.

Now, I will turn to the halakhic discussion in Mishnah Horayot 3:7, which provides a reference to the handling of Jewish prostitutes by their own people.

Mishnah Horayot 3:7: A Man is Given the Precedence Over a Woman in Case of Disgrace

The third chapter of the Mishnah[6] Horayot[7] deals with the differences between men and women with regard to injunctions of the court.[8] In m.Hor. 3:7 a man is given the precedence over a woman in the case of rape or prostitution: "If both [a man and a woman] are exposed to the disgrace [of rape or prostitution] [בזמן ששניהן עומדין בקלקלה[9]], the man takes precedence over the woman [האיש קודם לאשה]."[10] Rape or prostitution can be associated with the disgrace (קִלְקֻלָה) to which both Jewish men and women are exposed. Especially in times of war and in Roman captivity, parts of the Jewish population have been confronted with it. Does this Jewish rule mean that sexual violence against men has been considered to be worse than the rape of women because Jewish women had a lower status than men at that time?[11] In the Mishnah Horayot

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6 In Hebrew, Mishnah (מִשְׁנָה) means "study", more precisely, study learnt by heart through repetition and passed on. In the narrower sense, Mishnah (here abbreviated with "m") designates the main work of the rabbis at the times of the Tannaites. It is a comprehensive codex of religious law which was edited in around 200 CE. Stemberger (ed.), *Mekhilta*, 590.

7 Horayot ("instructions", "decisions") is a tractate in Neziqin ("damages"). Cf. Günter Stemberger, *Introduction to the Talmud and Midrash*, translated by Markus Bockmuehl (T & T Clark: Edinburgh 1996), 115.

8 Cf. Michael Krupp (ed.), *Die Mischna: Textkritische Ausgabe mit deutscher Übersetzung und Kommentar, 4. Ordnung Nesikin, 10. Horajot. Verfügungen* (Lee Achim Sefarim: Ein Karem – Jerusalem 2006), VII-VIII.

9 קִלְקֻלָה means "degradation" or "disgrace". Cf. Marcus Jastrow, *Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature* (Hendrickson Publishers: Peabody, Massachusetts 2006), 1382. In t.Hor. 2:5-6 and p.Hor. 3:7, 48b,we find the word קִלּוֹן, which has a similar meaning and can be translated as "prostitution" due to the contents there. Therefore, it is possible to associate the disgrace in m.Hor. 3:7 (cf. b.Hor. 13a) also with the "disgrace of prostitution".

10 My translation from the Mishnaic Hebrew according to Krupp (ed.), *Die Mischna: Textkritische Ausgabe mit deutscher Übersetzung und Kommentar, 4. Ordnung Nesikin, 10. Horajot*, 17. Concerning other English translations of m.Hor. 3:7 cf. *The Mishnah, Translated from the Hebrew with Introduction and Brief Explanatory Notes by Herbert Danby* (Oxford University Press: London 1974, 1st edition 1933), 466: "When both stand in danger of defilement, the man must be freed before the woman." or of m.Hor. 3:7 in b.Hor. 13a cf. Isidore Epstein (ed.), *ʿAbodah Zarah, Horayoth, Shebuʿoth, Makkoth, ʿEduyyoth, Aboth* (Soncino Press: London 1935), The Babylonian Talmud, Seder Neziḳin IV, 97: "When both are exposed to immoral degradation in their captivity the man's ransom [to spare him the indignity of pederasty] takes precedence over that of the woman."

11 Cf. Catherine Hezser, "Der Loskauf von Sklaven und Kriegsgefangenen im antiken Judentum," in: Heike Grieser and Nicole Priesching (eds.), *Gefangenenloskauf im Mittelmeerraum: Ein interreligiöser Vergleich, Akten der Tagung vom 19. bis 21. September 2013 an der Universität*

there are no reports on concrete measures that a Jewish court could have taken at all so that Jewish men were protected from impending rapes in war as a matter of precedence. The Jewish revolts against the Romans failed and many Jewish men and women were deported and enslaved afterwards. Therefore, the following explanation is plausible: if a Jewish man and a Jewish woman were sold into a brothel, the man ought to be redeemed first according to Mishnah Horayot 3:7.[12] The reasons for the positive discrimination of men in this old Jewish law might have been the prohibitions of sex between males in Mishnaic times,[13] which included a sexual relationship between a Jewish male prostitute and his client. Hence, Jewish men and boys in particular should be safeguarded against being abused as sex slaves. It is necessary to question Mishnah Horayot 3:7 from a today's point of view due to its unequal legal treatment of men and women.

In the Tosefta[14] Horayot 2:5 and the Palestinian Talmud[15] Horayot 3:7, 48b, the "disgrace" (קְלָקָלָה) in the Mishnah Horayot 3:7 is described as the "disgrace of prostitution" (קָלוֹן).[16] In the Palestinian Talmud Horayot 3:7, 48b, it

Paderborn (Georg Olms Verlag: Hildesheim, Zürich and New York 2015), 13: *Sklaverei – Knechtschaft – Zwangsarbeit*, 3-23, here 19.

[12] Cf. Krupp (ed.), *Die Mischna: Textkritische Ausgabe mit deutscher Übersetzung und Kommentar, 4. Ordnung Nesikin, 10. Horajot*, 16, footnote 23.

[13] In the tractates of the Mishnah Sanhedrin 7:4 and Keritot 1:1 and in the Tosefta Yebamot 10:2, only the penetrating male partner is punished, whereas both male partners are prosecuted in Sifra Qedoshim 9:14 (92b) and later in the Palestinian and Babylonian tractates of the Talmud Sanhedrin (p.San. 7:9, 25a and b.San. 54b).

[14] The Aramaic substantive Tosefta derives from the Aramaic verb יסף ("to add") and generally means "addition" or "supplement". The Tosefta is an additional halakhic teaching which supplements the Mishnah (in the wider sense as the officially taught Halakhah). Stemberger, *Introduction*, 150.

[15] The Talmud (תַּלְמוּד) (from למד "to learn" or למד in pi'el "to teach") means "study", but also "instruction" or "teaching", especially instruction from Scripture and, hence, Scriptural proof. However, "Talmud" can also designate the entire traditional "teaching", particularly the teaching derived from the interpretation of the Mishnah, which is contrasted with Scripture and the Mishnah. Stemberger, *Introduction*, 164-165. The two most important centres of Jewish life in the ancient world were Palestine and Babylonia, from which the Palestinian and the Babylonian Talmud emerged. The Palestinian Talmud (here abbreviated with "p") was edited in the early 5th century CE, whereas the core of the Babylonian Talmud was edited in the 6th century CE but was perpetuated and expanded until the 8th or 9th century CE. Stemberger (ed.), *Mekhilta*, 592.

[16] קָלוֹן means "degradation", "disgrace", and – in connection with p.Hor. 3:7, 48b – "prostitution". Jastrow, *Dictionary*, 1373.

is stated that for a woman prostitution (קָלוֹן) is "according to her way", whereas for a man it is not "according to his way":

> If both [a man and a woman] are exposed to prostitution, the man takes precedence over the woman [שניהם עומדין בקלון האיש קודם לאשה] [m.Hor. 3:7]. Why [למה]? For a woman [prostitution] is according to her way, whereas for a man it is not according to his way [[17]שהאשה דרכה לכן והאיש אין דרכו לכן].[18] (pHor 3:7, 48b)

To women of today, this rabbinic explanation must seem outrageously misogynous. It has to be criticised from a feminist perspective. This statement in the Palestinian Talmud Horayot 3:7, 48b is connected with a Jewish understanding of sexuality, according to which sex between a man and a woman – in contrast to sex between men – is normal. Thereby, only men as clients of female prostitutes are assumed, and not also women as clients of male prostitutes. A Jewish man or boy who was forced into prostitution with other men did not behave "according to his way [דַּרְכּוֹ]" from a Jewish perspective at that time.[19]

Does this really refer to the "unnatural" behaviour of a man or is such an idea just an eisegesis in current translations?[20] Where might this concept in the Palestinian Talmud Horayot 3:7, 48b, which presupposes something similar to a natural order of the sexes, have come from? The idea of a natural order of sexes is alien to the Hebrew Bible, also with regard to sexuality.[21] The notion of an order of "nature" (φύσις)[22] derives from the Greek. Thus,

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[17] In MS Leiden there is a dittography (that is a double writing) of והאיש אין דרכו לכן. Cf. Peter Schäfer and Hans-Jürgen Becker (eds.) together with Gottfried Reeg, Kerstin Ipta, Gerold Necker, Martina Urban and Gert Wildensee, *Synopse zum Talmud Yerushalmi, Band IV: Ordnung Neziqin. Ordnung Ṭoharot: Nidda*, (J. C. B. Mohr (Paul Siebeck): Tübingen 1995), 308.

[18] My translation from the Hebrew according to Heinrich W. Guggenheimer (ed.), *Tractates Sanhedrin, Makkot, and Horaiot, The Jerusalem Talmud, Fourth Order: Neziqin* (Walter de Gruyter: Berlin and New York 2010), Studia Judaica 51, 592. Concerning a German translation of p.Hor. 3:7, 48b, cf. Martin Hengel et al. (eds.), *Übersetzung des Talmud Yerushalmi 4,8: Horayot – Entscheidungen*, translated by Gerd A. Wewers (Mohr Siebeck: Tübingen 1984), 104.

[19] דֶּרֶךְ means "way", "manner". Jastrow, *Dictionary*, 323.

[20] Cf. for instance the English translation of p.Hor. 3:7, 48b in Guggenheimer (ed.), *Tractates Sanhedrin, Makkot, and Horaiot*, 592: "For a woman it is natural, for a man it is not natural".

[21] In the Hebrew Bible דֶּרֶךְ also means "way" or "manner", "behaviour" (cf. Ludwig Koehler and Walter Baumgartner, *The Hebrew and Aramaic Lexicon of the Old Testament* [Brill: Leiden 1994-2000], CD-ROM Edition, s. v. דֶּרֶךְ), but in the sentence כִּי־דֶרֶךְ נָשִׁים לִי in Gen. 31:35 דֶּרֶךְ נָשִׁים refers to menstruation.

[22] "The regular order of nature". *LSJ. The Online Liddell-Scott-Jones Greek-English Lexicon* s. v. φύσις A.III. (http://www.tlg.uci.edu/lsj/#eid=1&context=lsj, 1 March 2023).

this misogynous rabbinic idea in the Palestinian Talmud Horayot 3:7, 48b cannot already be found in this way in the Hebrew Bible.

The rabbinic explanation in the Palestinian Talmud Horayot 3:7, 48b clearly favours the rescue of men in the case of forced prostitution and therefore constitutes discrimination against women. In the following anecdote of the Tosefta Horayot 2:5-6, the rescue of a Jewish child from impending prostitution is described.

Tosefta Horayot 2:5-6: An Encounter Between a Rabbi and a Jerusalemite Child

In Tosefta Horayot, a Haggadah (narrative)[23] about a Jewish child is provided on the subject of what is called "disgrace" (קְלָקְלָה) in Mishnah Horayot 3:7. In Tosefta Horayot 2:5, this disgrace is understood as "disgrace of prostitution" (קָלוֹן). The Haggadah in Tosefta Horayot 2:5-6 describes the encounter between a rabbi and a Jerusalemite child with beautiful eyes and good looks, destined for prostitution. Interestingly enough, the rabbi was willing to redeem him and had to pay a huge amount of money for it:

> An incident which concerns Rabbi Yehoshua [ben Ḥananyah][24] who went [on a journey] [מעשה שהלך ר׳ יהושע].[25] They said to him [ואמרו לו], "There is a child from Jerusalem with beautiful eyes and good looks [יש כאן תינוק אחד ירושלמי יפי עינים וטוב רואי] which is destined for prostitution [ועומד לקלון]". Rabbi Yehoshua went [off] in order to test him [והלך ר׳ יהושע לבודקו]. As he reached the door, he quoted the following verse from the Bible [כיון שהגיע לפתח אמ׳ המקרא הזה]: "*Who gave Jacob*

[23] The Aramaic word אַגָּדָה or אֲגָדְתָּא derives from the Hebrew verb נגד in Hif'il ("to tell") and means "tale". The narrative texts in the rabbinic literature are designated with this word in a broader sense than all non-halakhic materials. Stemberger (ed.), *Mekhilta*, 588.

[24] Rabbi Yehoshua ben Ḥananyah is mentioned later in b.Git. 58a and LamR. 4:4 on Lam. 4:2 with his full name; in the Mishnah – and here in the Tosefta – he is simply called Rabbi Yehoshua. The Jewish tradition places him among the older group of the second generation of Tannaites. Rabbi Yehoshua ben Ḥananyah worked in Peqiin in Galilee and enjoyed Greek education. Stemberger, *Introduction*, 70. Peqiin was identified with the ancient village Baca (Βακὰ) which Josephus mentions in *The Jewish War* 3.39. Cf. Steve Mason (ed.), *Flavius Josephus, Life of Josephus*, Translation and Commentary by Steve Mason, Volume 9 (Brill: Leiden, Boston and Köln 2001), 179.

[25] The formula מעשה ש- – as written here in מעשה שהלך – may have been the original introductory formula in the early rabbinic literature (Mishnah and Tosefta). מעשה is derived from the verbal abstractum "to do" and means something like "Ereignis" ("incident"), "Geschehen" ("occurrence") or ("Faktum") ("fact"). Cf. Arnold Goldberg, "Form und Funktion des Ma'ase in der Mischna," in: Arnold Goldberg, *Rabbinische Texte als Gegenstand der Auslegung* (Mohr Siebeck: Tübingen 1999), Gesammelte Studien II, 73: Texte und Studien zum Antiken Judentum, 23.26.

> *up to the plunder and Israel to the robbers* [מי נתן למשיסה יעקב ישראל לבוזזים]?" [Isa. 42:24] The child answered him saying [נענה אותו תינוק אמ׳]: "*Was it not G*d,*[26] *against whom we have sinned? They would not [walk] in his ways [and did not obey his law]* [הלא י״י זו חטאנו לו ולא א׳ בדרכיו]." [Isa. 42:24] At that moment Rabbi Yehoshua said [באותה שעה אמ׳ ר׳ יהושע]: "I call heaven and earth as witnesses that I do not leave from here until I have redeemed him [that is the child] [מעידני עלי שמים וארץ שאיני זו מיכאן עד שאפדה אותו]." He redeemed him paying a huge amount of money and sent him to the Land of Israel [פדאו בממון הרבה ושיגרו בארץ ישר׳]. Because of it, Scripture has said [ועליו אמ׳]: "*The precious children of Zion, worth more than fine gold, [alas, they have the value of earthen pitchers, the work of a potter's hands]* [בני ציון היקרים המסולאים בפז]!" [Lam. 4:2][27] (t.Hor. 2:5-6)

In this anecdote, the child alludes to David as a shepherd boy due to his beautiful eyes and good looks.[28] Therefore, the child (תִּינוֹק)[29] is already associated with the male gender by readers of Tosefta Horayot 2:5-6. He is said to have been able to provide the correct answer to the Bible test, whereby Rabbi Yehoshua ben Ḥananyah considered him worthy of redemption.[30] The child was not only able to quote the biblical verse Isa. 42:24 correctly but thereby simultaneously demonstrated his Jewish piety, which might have been decisive for Rabbi Yehoshua ben Ḥananyah's subsequent action. In the child's correct answer to the Scriptural quotation Isa. 42:24, a collective confession of guilt of the Jewish people is included. While – from the perspective of the Book of Isaiah – the sin against G*d (יהוה) led to the catastrophe of the Babylonian exile,[31] – from the rabbinic perspective of Tosefta Horayot – it caused the enslavement of parts of

[26] The spelling of the names of God with an asterisk, G*d (יהוה) in Scripture or G*d (י״י) in later Jewish writings, is mine and is inspired by queer theory. For יהוה has no gender that can be unambiguously and grammatically determined. The body concept of this name of God omits the dimension of the sex.

[27] My translation from the Mishnaic Hebrew according to Moses Samuel Zuckermandel, *Tosefta: Based on the Erfurt and Vienna Codices, Including Supplement to the Tosefta by Saul Lieberman* (Wahrmann: Jerusalem 1970), 476. Concerning an English translation, cf. Jacob Neusner (ed.), *The Tosefta, Fourth Division: Neziqin (The Order of Damages)* (KTAV Publishing House: New York 1981), 351.

[28] Cf. 1Sam. 16:12.

[29] תִּינוֹק means "child" or "boy". תִּינוֹקֶת ("girl") would have been the female term. Jastrow, *Dictionary*, 1665.

[30] Cf. Catherine Hezser, *Jewish Travel in Antiquity* (Mohr Siebeck: Tübingen 2011), Texts and Studies in Ancient Judaism 144, 266.

[31] Cf. Ulrich Berges, *Jesaja 40-48* (Herder: Freiburg, Basel and Wien 2008), Herders Theologischer Kommentar zum Alten Testament, 266-267.

the Jewish population including this Jewish child during the time of the Roman Empire. Thousands of Jews were captured by the Romans during the first and second Jewish revolts.[32] Prostitution was a fate that awaited many enslaved children who were sold abroad to non-Jewish masters.[33] Very often this resulted in sexual exploitation, especially of beautiful young people.

However, from a present-day perspective, such a theological explanatory model, as occurs in Tosefta Horayot 2:5-6, is obsolete. Now we rationally come to terms with the experience of disaster mostly in a different way. Actually, isn't it especially impertinent to have such a confession of guilt come out of the mouth of a child, who cannot have been guilty of much in his short life?

The question of Rabbi Yehoshua ben Ḥananyah for the correct answer from the Bible could also be explained as follows: rumors had called Rabbi Yehoshua ben Ḥananyah's attention to the difficult situation of the child.[34] If the rabbi had found more children at the door of the brothel or a foreign, Roman household, he could now be sure despite the lack of external signs[35] that this particular child was indeed the *Jewish* child he had been looking for. According to the Tosefta Horayot 2:6, the Jewish child could return to Israel again after all, suggesting a scene outside this land. Further Jewish writings, namely the Palestinian Talmud Horayot 3:7, 48b, the Babylonian Talmud[36] Gittin[37] 58a, and Lamentations Rabbah 4:4 on Lam. 4:2[38] (also called *Midrash Threni* or – after its Hebrew opening – *Ekhah Rabbati* [איכה רבתי]),[39] place this storyline later in Rome.

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[32] Cf. Catherine Hezser, *Jewish Slavery in Antiquity* (Oxford University Press: Oxford 2005), 180.

[33] Cf. Hezser, *Jewish Slavery*, 44.

[34] Hezser, *Jewish Travel*, 266.

[35] In antiquity, circumcision was practised not only on Jews. Hezser, "Der Loskauf von Sklaven," 18.

[36] The Babylonian Talmud (here abbreviated with "b") is less a thematically closed book than a national library of Babylonian Judaism with a structure that emulates the Mishnah. Stemberger, *Introduction*, 192. It attained its (almost) final form in the 8th century CE, at a time when the Babylonian academies were flourishing and when the newly ascendant Abbassids founded Baghdad. Stemberger, *Introduction*, 214.

[37] Gittin ("divorce certificates" [Deut. 24:1]) is a tractate in Nashim ("Women"). Stemberger, *Introduction*, 114.

[38] Cf. also LamR. 4:34 on Lam. 4:2 or Salomon Buber (ed.), *Midrasch Echa Rabbati: Sammlung agadischer Auslegungen der Klagelieder, herausgegeben nach einer Handschrift aus der Bibliothek zu Rom cod. J. I. 4, and a manuscript of the British Museum cod. 27078* (Olms: Hildesheim 1967, Reprogr. Nachdr. d. Ausg. Wilna 1899), 143.

[39] Ekha Rabbati is an exegetical midrash on Lamentations. This biblical book is interpreted verse-by-verse by way of simple lexical and substantive explanations, but also through sundry parables and stories. The most likely date of origin of Lamentations Rabbah is the first half

Finally, in Tosefta Horayot 2:6, the Jewish child from Jerusalem is associated with the precious children of Zion (בְּנֵי צִיּוֹן הַיְקָרִים) in Lam. 4:2. The children of Zion (בְּנֵי צִיּוֹן) in this biblical verse of the fourth lament[40] about the destruction of the city of Jerusalem in 587 BCE are understood in the narrower sense as "children", and not generally as "inhabitants of Jerusalem". The following words הַמְסֻלָּאִים בַּפָּז in the biblical quotation in Lam. 4:2 contain a hapax legomenon and therefore their meaning is unclear. The participle in puʿal הַמְסֻלָּאִים is usually associated with preciousness in reference to the preceding term הַיְקָרִים, which results in a translation of the beginning of the sentence of Lam. 4:2 like "The precious children of Zion, worth more than fine gold […]".[41] However, the subsequent biblical lament in Lam. 4:2 "[…] alas, they have the value of earthen pitchers, the work of a potter's hands" addresses the worthlessness of the children of Zion after the destruction of Jerusalem and their deportation to Babylonia. The children of Zion are compared to pitchers made of baked clay, that is, to fragile pottery. The thought of the earthenware shards resonates with the heavy fates of the Jewish children. Thus, the biblical quotation Lam. 4:2 not only emphasises the special value that the helpless Jewish child from Jerusalem had for Rabbi Yehoshua ben Ḥananyah, but also creates an association with the deportation of Jewish children in the context of the catastrophe of the Babylonian exile. However, the question of credibility arises regarding the successful rescue of the Jewish child in the narrative of the Tosefta Horayot 2:5-6 in connection with the political reality of those days.

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of the 5th century CE. The popularity of this midrash meant that later on, pieces from other writings were incorporated or the text was adapted to parallel traditions. Its use in the Babylonian Talmud cannot be assumed despite the long collection of parallel material in b. Git. 55b-58a. The question of the influence of the Babylonian Talmud on Lamentations Rabbah belongs not to the redactional history of the midrash but to the history of its textual transmission; this is also illustrated particularly by the Genizah fragments. Stemberger, *Introduction*, 284-286.

40 "Lamentations" is the translation of the Greek name θρῆνοι (latinised: *threni*), which was taken up in the Latin term *lamentationes*. In Hebrew, the book is called "Ekhah" (אֵיכָה; "alas") after the first word of the first, second and forth lament (cf. also Lam. 4:2). Cf. Christian Frevel, *Die Klagelieder* (Verlag Katholisches Studienwerk: Stuttgart 2017), Neuer Stuttgarter Kommentar – Altes Testament 20/1, 11.

41 Cf. similarly Johan Renkema, *Lamentations*, translated from the Dutch by Brian Doyle (Peeters: Leuven 1998), Historical Commentary on the Old Testament, 496; Adele Berlin, *Lamentations, A Commentary* (Westminster John Knox Press: Louisville, Kentucky and London 2002), The Old Testament Library, 98; and Robert B. Salters, *Lamentations: A Critical and Exegetical Commentary on Lamentations* (T & T Clark: London and New York 2010), The International Critical Commentary on the Holy Scriptures of the Old and New Testaments, 283.

Basically, it can be stated that with Tosefta Horayot 2:5-6 a positive narrative is provided about shocking events in Jewish history often considered taboo, namely about the rescue of a Jewish child from forced prostitution.

Two Different Rabbinic Traditions Based on Tosefta Horayot 2:5-6

This anecdote in the Tosefta Horayot 2:5-6 is developed further in different ways in later Jewish writings. Firstly, I will discuss the Palestinian Talmud Horayot 3:7, 48b and, secondly, the Babylonian Talmud Gittin 58a. Chronologically, the parallel in Lamentations Rabbah 4:4 on Lam. 4:2 is likely the most recent text of all.

Palestinian Talmud Horayot 3:7, 48b: the Child as a Figure That Alludes Both to the Young Biblical David in the First Book of Samuel and the Beloved in the Song of Songs

According to the Palestinian Talmud Horayot 3:7, 48b, Rabbi Yehoshua ben Ḥananyah was told in Rome about a child (תִּינוֹק) from Jerusalem who "was ruddy [אַדְמוֹנִי], with beautiful eyes [עִם יְפֵה עֵינַיִם] and good-looking [וְטוֹב רוֹאִי]".[42] It is striking that this sentence is indeed identical to the verse from the Bible 1Sam. 16:12,[43] in which the shepherd boy David is described.[44] David was designated in this biblical passage as ruddy, which can be interpreted as a metaphor for his juvenile vitality. In another rabbinic context, the biblical verse 1Sam. 16:12 serves as a Scriptural quotation within a homoerotic Jewish reinterpretation, too. According to Leviticus Rabbah 21:2, Rabbi Judan alleges that the Philistine Goliath desires the young David because of his beautiful eyes and his good looks mentioned in 1Sam. 16:12.[45]

Not only David (דָּוִד) is depicted as ruddy or red – adjectives deduced from the verb אדם ("to be red") – in 1Sam. 16:12 and 1Sam. 17:42, but also the beloved

[42] My translation from Hebrew according to Guggenheimer (ed.), *Tractates Sanhedrin, Makkot, and Horaiot*, 592. Concerning a German translation of p.Hor. 3:7, 48b, cf. Hengel et al. (eds.), *Übersetzung des Talmud Yerushalmi 4,8: Horayot*, 104-105.

[43] P.Hor. 3:7, 48b is identical to 1Sam. 16:12 except for the scriptio plena of the term רוֹאִי in contrast to the scriptio defectiva ראי in the biblical text.

[44] However, "ruddy" (אַדְמוֹנִי) does not occur as a detailed description of the child in b.Git. 58a; LamR. 4:4, and LamR. 4:34 (Buber [ed.], *Midrasch Echa Rabbati*, 143) – both on Lam. 4:2.

[45] Cf. Karin Hügel, "Queere Aneignungen von David und Goliat: Künstlerische Selbstporträts als besiegte Knabenliebhaber," in: Walter Dietrich, Cynthia Edenburg and Philippe Hugo (eds.), *The Books of Samuel: Stories – History – Reception History* (Peeters, Leuven 2016), Bibliotheca Ephemeridum Theologicarum Lovaniensium 284, 541-553, here 541-542 or Hügel, *Studien zu queeren Lesarten der Hebräischen Bibel*.

(דּוֹד) in the Song of Songs in Cant. 5:10. In the following verse in Cant. 5:11, the woman extols her beloved's head of curls with the following words: "His locks are curled [קְוּצוֹתָיו תַּלְתַּלִּים][46]." That is perhaps why the child in the Palestinian Talmud Horayot 3:7, 48b, who is destined for prostitution, is also characterised as especially erotic and seductive due to his "coifed curls [וּקְווּצוֹתָיו מְסוּדָרוֹת לוֹ תַּלְתַּלִּים]".[47] The potential beloved in an impending pederastic relationship becomes here a figure who oscillates between the young biblical David in the First Book of Samuel and the beloved in the Songs of Songs.[48] Such associations in the Palestinian Talmud are fuelled by the fact that the words "beloved" (דּוֹד) and "David" (דָּוִד), which have the same consonants, also have a similar meaning, namely "beloved".

What additional meaning could this anecdote in the Palestinian Talmud Horayot 3:7, 48b have? According to the biblical narrative, G*d (יהוה) selected David, the shepherd of small domestic animals, as king of Israel. Strictly speaking, David came from Bethlehem near Jerusalem. As king of Judah and Israel, he chose the town Jerusalem as his royal residence and turned it into a religious centre.[49] In the Palestinian Talmud Horayot 3:7, 48b, the episode is now located in Rome. The boy, destined for prostitution, may have therefore alluded to the pitiful political situation of Jews during the time of Roman supremacy. A child, who was as beautiful as the former king of Judah and Israel as a shepherd boy, risked being abused as prostitute in Rome, the centre of power of the Roman Empire, but was redeemed by a rabbi. With this short story, the situation of the oppression of the Jews by the Romans is characterised in rabbinic times. Here the Jewish people are not depicted as completely powerless in the face of the Roman Empire from a Jewish perspective. However, in

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[46] The Hebrew term in plural תַּלְתַּלִּים is a hapax legomenon whose meaning is uncertain. Koehler and Baumgartner, *Lexicon*, s. v. תַּלְתַּלִּים.

[47] In Jastrow, *Dictionary*, 1674, the hapax legomenon תַּלְתַּלִּים, following קְוּוצוֹת ("curls"), is also translated with "curls" or "locks". In b.Git. 58a we read וקוצותיו סדורות לו תלתלים. In LamR. 4:4 on Lam. 4:2, the hapax legomenon has been omitted. There is written only וקוצותיו סדורות – most likely following b.Git. 58a in a shortened way. In LamR. 4:34 on Lam. 4:2 (Buber [ed.], *Midrasch Echa Rabbati*, 143) the closer characteristic with the coifed curls is completely missing.

[48] These intertextual connections between p.Hor. 3:7, 48b and 1Sam. 16:12 or Cant. 5:11 are also mentioned in Robert A. Daum, "Captivity, Masculinity and Degradation in an Early Rabbinic Tale," in: *Religious Studies and Theology* 33/2 (2014), 141-156, here 147, and Joshua Levinson, "Captured by Texts: Rabbinic Tales of Captivity in Rabbinic Literature," in: *Journeys: The International Journal of Travel and Travel Writing* 17/1 (2016), 75-95, here 80.

[49] Cf. Karin Hügel, "King David's Exposure while Dancing: A Queer Reading of 2 Samuel 6," in: *Scandinavian Journal of the Old Testament* 30/2 (2016), 249-260, here 251 or Hügel, *Studien zu queeren Lesarten der Hebräischen Bibel*.

Genesis Rabbah 63:10 on Gen. 25:27, Roman supremacy, under which the Jewish people suffered, is worded as a purely humiliating sexual relationship. According to Genesis Rabbah 63:10 on Gen. 25:27, the men of Rome allegedly had sex like women, thus portraying Roman oppression in the period after the abortive Bar Kokhba revolt of 132-135 CE as a particular severe humiliation of the Jewish population.

Babylonian Talmud Gittin 58a and Lamentations Rabbah 4:4 on Lam. 4:2: Identification of the Child with Rabbi Ishmael ben Elisha

In the Babylonian Talmud Gittin 58a[50] and in Lamentations Rabbah 4:4 on Lam. 4:2,[51] the anecdote of the Tosefta Horayot 2:5-6 is further developed in another way, to some extent completely different from the Palestinian Talmud Horayot 3:7, 48b. Despite the differences between b.Git. 58a and LamR. 4:4 on Lam. 4:2, it is legitimate to speak of a new tradition, in which another person is finally redeemed by Rabbi Yehoshua ben Ḥananyah. The encounter between this rabbi and the child with beautiful eyes, who is good-looking and has coifed curls, is also located in Rome, the "big city" (כְּרַךְ גָּלוּד), but now set in a Roman prison.[52] In the Babylonian Talmud Gittin 58a, impending rape or prostitution is not even mentioned,[53] nor does the child come from Jerusalem. In the Babylonian Talmud Gittin 58a, there is also no longer the saying – as in the Palestinian Talmud Horayot 3:7, 48b and subsequent to it in Lamentations Rabbah 4:4 on Lam. 4:2 – that Rabbi Yehoshua ben Ḥananyah's "eyes shed tears",[54] when the child admitted the guilt of the Jewish people for the

[50] Concerning an English translation of b.Git. 58a (*Talmud Bavli [Vilna ed.]* [Bar-Ilan Responsa Project]. [https://www.responsa.co.il, 1 March 2023]), cf. Isidore Epstein (ed.), *Gitṭin, Ḳiddushin* (Soncino Press: London 1936), The Babylonian Talmud, Seder Nashim IV, 270.

[51] Concerning English translations of LamR. 4:4 on Lam. 4:2 (*Midrasch Rabba* [Romm: Wilna 1887] or *Midraš ḥāmeš megillôt* [Soncino: Pesaro 1519]), cf. Harry Freedman and Maurice Simon (eds.), *Midrash Rabbah: Translated into English with Notes, Glossary and Indices, Lamentations*, translated by Abraham Cohen (Soncino Press: London ^{3}1961), 218 or Jacob Neusner, *Lamentations Rabbah: An Analytical Translation* (Scholars Press: Atlanta, Georgia 1989), Brown Judaic Studies 193, 298-299.

[52] In LamR. 4:34 on Lam. 4:2 (Buber [ed.], *Midrasch Echa Rabbati*, 143), Rome is mentioned but not the prison.

[53] However, in LamR. 4:4 and LamR. 4:34 (Buber [ed.], *Midrasch Echa Rabbati*, 143) – both on Lam. 4:2 – impending prostitution (קָלוֹן) – as previously in t.Hor. 2:5 and p.Hor. 3:7, 48b – is mentioned.

[54] Both p.Hor. 3:7, 48b and LamR. 4:4 or LamR. 4:34 (Buber [ed.], *Midrasch Echa Rabbati*, 143) – both on Lam. 4:2 – write זלגו עיניו דמעות(ו) ("[and] his [that is Rabbi Yehoshua ben Ḥananyah's] eyes shed tears").

enslavement of parts of the Jewish population by quoting Isa. 42:24 correctly, so that, according to the Babylonian version, the empathy of this rabbi is no longer described.[55] Rabbi Yehoshua ben Ḥananyah recognises the child as a Jew by his knowledge of Scripture and thereupon announces that he will be a successful teacher in Israel. After his redemption of the child, this prophecy is soon fulfilled, strangely enough. In the Babylonian Talmud Gittin 58a and in Lamentations Rabbah 4:4 on Lam. 4:2, the Jewish boy, rescued from a Roman prison, is identified with Rabbi Ishmael ben Elisha,[56] an important Tannait of the younger group of the second generation. According to the Jewish tradition this rabbi, usually just referred to as Rabbi Ishmael, might have come from a priestly family.[57] He lived mostly at Kefar Aziz on the border with Edom.[58] It can be assumed that this is the reason why the reference to Jerusalem is missing in this rabbinic tradition in connection with the child.

Different Explanations for the Identification of the Child with Rabbi Ishmael ben Elisha

The question of why the child has been identified with Rabbi Ishmael ben Elisha in the Babylonian Talmud Gittin 58a and in Lamentations Rabbah 4:4 on Lam. 4:2 cannot be answered clearly. We can only speculate about it. While the Palestinian version in the Tosefta Horayot 2:5-6 and in the Palestinian Talmud Horayot 3:7, 48b is a narrative about the return to the homeland and the restoration of identity disrupted by exile – the anonymous youth and Rabbi Yehoshua ben Ḥananyah, both from the Land of Israel, meet abroad, whereby the rabbi enables the enslaved youth with his redemption to return to Israel and regain his Jewish identity –, in the Babylonian Talmud Gittin 58a, the diasporic rabbinic community in Babylonia creates a fictitious identity despite the scattering of the Jews to foreign countries: the anonymous youth is identified with Rabbi Ishmael ben Elisha who teaches the collective people of Israel, wherever they may be. A physical homeland and Jewish identity are

[55] According to the rabbinic sources mentioned in the previous footnote, Rabbi Yehoshua ben Ḥananyah's empathy suggests itself as an additional reason for his redemption of the child. Concerning a similar interpretation of LamR. 4:34 on Lam. 4:2 (Buber [ed.], *Midrasch Echa Rabbati*, 143) cf. Galit Hasan-Rokem, *Web of Life: Folklore and Midrash in Rabbinic Literature*, translated by Batya Stein (Stanford University Press: Stanford, California 2000), 144.

[56] However, in LamR. 4:34 on Lam. 4:2 (Buber [ed.], *Midrasch Echa Rabbati*, 143) the identification of the Jewish child with Rabbi Ishmael ben Elisha is missing.

[57] Cf. t.Ḥal. 1:10.

[58] Stemberger, *Introduction*, 71-72.

thereby de-territorialised and replaced with a textual self-fashioning.[59] Even if one agrees with this explanation, the question remains of why the child is identified with Rabbi Ishmael ben Elisha and not with another important scholar who has had a huge influence in the Jewish diaspora.

If the child in the Palestinian Talmud Horayot 3:7, 48b is a figure in an impending pederastic relationship, who oscillates between the young biblical David in the First Book of Samuel and the beloved in the Songs of Songs, then this implies, from a queer perspective, that David can be understood also with regard to the biblical text as a boy who is particularly suitable for pederastic purposes due to the description of his beautiful appearance in 1Sam. 16:12. Perhaps the authors of the Babylonian Talmud Gittin 58a and Lamentations Rabbah 4:4 on Lam. 4:2 wanted the attention to be diverted from such a strange erotic idea of one of the most prominent figures of the Hebrew Bible, namely David, the later king of Judah and Israel, by identifying the "anonymous" child with a certain rabbi from now on. Moreover, in the Babylonian Talmud Gittin 58a, this child is no longer destined for prostitution but stays in prison, which means that another erotic aspect is erased.

However, Lamentations Rabbah 4:4 on Lam. 4:2 still mentions impending prostitution in connection with the child following the storyline of the Tosefta Horayot 2:5 and the Palestinian Talmud Horayot 3:7, 48b. This implies that the famous halakhic teacher Rabbi Ishmael ben Elisha is also suspected of having been a subject of interest regarding the sexual desires of older men as a boy. However, since this rabbi is not mentioned in the Palestinian tradition in the Tosefta Horayot 2:5-6 and the Palestinian Talmud Horayot 3:7, 48b, it is not correct to associate him as a historical person with male homoeroticism. Rather, the question is why Lamentations Rabbah 4:4 on Lam. 4:2 has linked Rabbi Ishmael ben Elisha with male homoeroticism. Unfortunately, this question cannot be answered, because there is no consistent picture of this eminent Jewish halakhic scholar with regards to male homoeroticism.[60]

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[59] Levinson, "Captured by Texts," 75-95.

[60] I do not discuss p.Qid. 1:7, 61a here, a source in the Palestinian Talmud of a saying attributed to Rabbi Ishmael (ben Elisha) in connection with sexual violence between men. In this rabbinic passage the story of the rape of the Judean king Joash by men is attributed to Rabbi Ishmael (ben Elisha). Cf. Karin Hügel, *Queere Lesarten der Hebräischen Bibel* (forthcoming).

In the tractate Sanhedrin of the Babylonian Talmud, two further rabbinic passages exist that attribute sayings in halakhic discussions about sex between men to Rabbi Ishmael (ben Elisha).

Firstly, in the Babylonian Talmud Sanhedrin 54b, a part of a rabbinic passage of Sifra Qedoschim 9:14 (92b) is subsequently attributed to Rabbi Ishmael (ben Elisha). By using the Scriptural quotation Deut. 23:18 ("There shall be no qadesh among the Israelites") and 1Kgs. 14:24 ("There were even qedeshim in the land"), this rabbi argues that, during sex between men, the partner with whom the sexual act is carried out has to be identified with the so-called qadesh.[61] Thus, Rabbi Ishmael (ben Elisha) also derives a prohibition from Scripture for the man, with whom sex takes place. According to the rabbinic tradition of Lamentations Rabbah 4:4 on Lam. 4:2, he, as a prisoner destined for prostitution, would have been in this exact situation if Rabbi Yehoshua ben Ḥananyah had not redeemed him.

Secondly, however, from another saying of Rabbi Ishmael (ben Elisha) in the Babylonian Talmud Sanhedrin, namely from b.San. 74a, it can be deduced that certain biblical interdictions have been subordinated to the principle of survival. This happened in a rabbinic context when the Jewish population has been persecuted and oppressed. Here, Rabbi Ishmael (ben Elisha) builds on the biblical remark in Lev. 18:5 of "Whoever complies with them [that is the divine statutes and the legal determinations], will live by them", saying with particular emphasis, "[…] and shall not die through them".[62] The application of the Jewish law shall lead to life and not to decline. Survival is the most important thing. Death should be prevented.[63] So it might not have been a coincidence that such a saying has been attributed to Rabbi Ishmael ben Elisha if it is compared with the Jewish tradition beginning with Tosefta Horayot 2:5-6.

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[61] I use the – admittedly hardly known – anglicised terms "qadesh" for קָדֵשׁ (masculine singular) and "qedeshim" for קְדֵשִׁים (plural) because all the translations do not really seem to be appropriate. Those Hebrew words derive from the verb קדשׁ ("to be sacred").

[62] My translation from Hebrew or Aramaic according to Adin Steinsaltz (ed.), *The Talmud: The Steinsaltz Edition, Volume XIX, Tractate Sanhedrin, Part V* (Random House: New York 1999), 73. Concerning another English translation cf. also Isidore Epstein (ed.), *Sanhedrin* (Soncino Press: London 1935), The Babylonian Talmud, Seder Neziḳin III, 502.

[63] Cf. Daniel R. Schwartz, "Leben durch Jesus versus Leben durch die Tora: Zur Religionspolemik der ersten Jahrhunderte," in: Jacobus Cornelis de Vos and Folker Siegert (eds.), *Interesse am Judentum: Die Franz-Delitzsch-Vorlesungen 1989-2008* (LIT Verlag: Berlin 2008), Münsteraner Judaistische Studien: Wissenschaftliche Beiträge zur christlich-jüdischen Begegnung 23, 154-171, here 156.

Was Rabbi Yehoshua ben Ḥananyah Ever in Rome?

To sum up, there are two different Jewish traditions based on Tosefta Horayot 2:5-6. According to the first one in the Palestinian Talmud Horayot 3:7, 48b, Rabbi Yehoshua ben Ḥananyah meets a figure in Rome, whose description alludes both to the young biblical David in the First Book of Samuel and to the beloved in the Song of Songs. According to the other tradition in the Babylonian Talmud Gittin 58a and in Lamentations Rabbah 4:4 on Lam. 4:2, this figure is identified with the great Rabbi Ishmael ben Elisha. Due to these different further developments of the instructive anecdote in the Tosefta Horayot 2:5-6, it is not very plausible to consider such encounters of Rabbi Yehoshua ben Ḥananyah in Rome as verified historical memories, because the city of Rome originally is not mentioned in these sources. In scientific literature, it is stated that such an episode had taken place in Rome in 95 CE,[64] because in the Babylonian Talmud Horayot 10a, a joint ship voyage of Rabbi Yehoshua ben Ḥananyah and Rabban Gamaliel II (the leader of rabbinic Judaism during the time between 80 or 90 and circa 110 CE)[65] is mentioned and this is interpreted as a trip to Rome.[66] In fact, the arrival in Rome of the four rabbis Gamaliel II, Eleazar ben Azaryah, Aqiba and Yehoshua ben Ḥananyah can also be read in Sifre Deuteronomy 43. They are supposed to have heard the roaring noise of the city from a distance of 120 miles. While some people cried, because the idolaters were having such a good time there, while the temple in Jerusalem lay in ruins, Rabbi Aqiba drew confidence from it.[67] Also here – as before in the anecdote in the Palestinian Talmud Horayot 3:7, 48b – the main cities of both people, Jerusalem and Rome, are brought into play to refer to the fate of the Jewish people during Roman supremacy and to thereby present a positive view from a Jewish perspective.

It would be problematic to link a possible sea voyage of these four rabbis to Rome with a persecution of the Jews under Domitian, because a planned extermination of the Jews or expulsion of the Jews under this Roman emperor is not documented. The dating of the rabbis' journey to Rome to the last days of Domitian is based on the narrative of the visit to Rome of the rabbis in Deuteronomy Rabbah 2:24, which describes a threat by the

[64] Epstein (ed.), *Giṭṭin*, 270, footnote 1.
[65] Stemberger, *Introduction*, 69.
[66] Epstein (ed.), *Horayoth*, 70, footnote 12.
[67] Cf. Günter Stemberger, "Das Judentum in frührabbinischer Zeit. Zu neuen Entwicklungen in der Forschung," in: *Historische Zeitschrift* 300/1 (2015), 1-32, here 24.

Roman government borrowing from the third chapter of the Book of Esther:[68] according to this Midrash, the Roman senate is supposed to have decided that there should be no more Jews within 30 days. With the help of a god-fearing senator, inter alia, Rabban Gamaliel II and Yehoshua ben Ḥananyah succeeded in postponing the case until the decree expired. But this clearly is a later creation of legend.[69] Historically proven are only a journey to Rome of Gamaliel II (circa between 85 and 100 CE) and a menace to the Jewish population, as well as the presence of sympathisers of Judaism in the senate.[70] Who can know today whether Rabbi Yehoshua ben Ḥananyah had ever actually been in Rome.

Different Contexts of Similar Stories in the Palestinian Talmud Horayot 3:7, 48b and the Babylonian Talmud Gittin 58a

The Palestinian Talmud Horayot 3:7, 48b builds on Mishnah Horayot 3:7, where differences between men and women with regard to injunctions of the court are mentioned. Thus, in Mishnah Horayot 3:7, inter alia, the man takes precedence over the woman if both are in a life-threatening situation. However, the woman generally takes precedence over the man in respect of the redemption from captivity. Only if both are exposed to disgrace (of rape or prostitution), is a man given precedence over a woman. However, in the Babylonian Talmud Horayot, the question of Mishnah Horayot 3:7 concerning the precedence of a man over a woman in case of disgrace (of rape or prostitution) is not taken up. The passage of the Babylonian Talmud Gittin 58a, which is dealt with here in this article, is part of the anecdotes about beautiful Jewish persons in captivity.[71] In the Babylonian Talmud Gittin 58a, two further narratives exist that highlight the particular risks and vulnerabilities of beautiful Jewish persons in captivity, namely the story of Rabbi Ishmael ben Elisha's son and daughter, who were forced by their kidnappers to marry each other,[72] and the tale of the priestly daughter Zafenath bath Peniel, who was raped by

[68] Cf. Günter Stemberger, *Die römische Herrschaft im Urteil der Juden* (Wissenschaftliche Buchgesellschaft: Darmstadt 1983), Erträge der Forschung 195, 110.

[69] Stemberger, "Das Judentum in frührabbinischer Zeit", 25.

[70] Stemberger, *Die römische Herrschaft im Urteil der Juden*, 110.

[71] B.Git. 58a builds on m.Git. 5:6, where the focus is on socio-economic upheavals caused by the Roman wars.

[72] Cf. LamR. 1:46 or LamR. 1 (Buber [ed.], *Midrasch Echa Rabbati*, 83-84) – both on Lam. 1:16 – or Hasan-Rokem, *Web of Life*, 16-38.

a brigand and sold afterwards to an ugly man.[73] Thus, the anecdote about the encounter between Rabbi Yehoshua ben Ḥananyah and Rabbi Ishmael ben Elisha in Rome is an exception because it is not one of martyrs. This means that the narrative of Rabbi Ishmael ben Elisha in the Babylonian Talmud Gittin 58a is the only tale in this tractate of the Babylonian Talmud of the successful redemption of Jews who have been captured.[74] However, in the Babylonian Talmud Sotah 13b we also find a story about Joseph, the beautiful son of Jacob, who was saved by the quasi-divine intervention of the angel Gabriel from the sexual violence of the Egyptian Potiphar, after having been sold by his own brothers. But that is another story.[75]

Queer Feminist Conclusions

Feminist readers are right to ask: Why should a Jewish man be given the precedence over a Jewish woman when both Jewish persons are exposed to the disgrace of rape or prostitution, as it is written in Mishnah Horayot 3:7?

The fact that there are no prohibitions concerning sex between women in Mishnaic times[76] can be considered as an explanation in connection with my deliberations on Mishnah Horayot 3:7, why stories of redemption from captivity exist in rabbinic traditions beginning with Tosefta Horayot 2:5-6 for a beautiful young quasi-David, but none for beautiful young Jewish women. According to the saying in the Palestinian Talmud Horayot 3:7, 48b, for a woman prostitution is "according to her way". This rabbinic conception in connection with Mishnah Horayot 3:7 is particularly misogynous. It clearly favours the rescue of men in the case of forced prostitution and therefore constitutes discrimination against women.

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[73] Cf. Julia Watts Belser, *Rabbinic Tales of Destruction: Gender, Sex, and Disability in the Ruins of Jerusalem* (Oxford University Press: Oxford, New York 2018), 66.

[74] Belser, *Rabbinic Tales of Destruction*, 69.

[75] Cf. Karin Hügel, "Eine queere Lektüre von Josef: Jüdische Interpretationen des schönen jungen Manns aus der Hebräischen Bibel," in: *Biblische Notiz*en 157 (2013), 69-99, here 78-85 or the reworked version in Hügel, *Studien zu queeren Lesarten der Hebräischen Bibel*.

[76] No halakhic sources concerning female homoeroticism exist in the Mishnah or the Tosefta. There are no interdictions of it in the Hebrew Bible. In Sifra Acharei Mot ("After death") 9:8 (85c-d) on Lev. 18:3, not sex between women but the marriages between women and between men are rejected as well as special kinds of polygamy. Cf. Karin Hügel, "Jüdische gesetzliche Auslegungen zu weiblicher Homoerotik," in: *Journal of Ancient Judaism* 10/3 (2019), 416-454 or Hügel, *Studien zu queeren Lesarten der Hebräischen Bibel*.

According to various rabbinic traditions, several prominent beautiful youths were saved from captivity, namely not only the beautiful young quasi David, but also Joseph, the son of Jacob, from Potiphar's sexual lusts.[77] Joseph, the handsome and good-looking seventeen-year-old son of Jacob, is characterised as an effeminate youth beginning with the rabbinic tradition in Genesis Rabbah 84:7 on Gen. 37:2 and Genesis Rabbah 87:3 on Gen. 39:6. Although a feminine appearance of a good-looking young man could in itself be a starting point for gay readers of today, it should be remembered that Joseph has been suspected by his brothers in Genesis Rabbah 91:6 on Gen. 42:3 of being an inmate of a brothel, thus he has been associated with male prostitution from a rabbinic perspective. Various rabbinic and other Jewish interpretations offer an explanation for the biblical statement in Gen. 39:1, why Potiphar, the court official of the Pharaoh, buys the enslaved Joseph in Egypt: he wants to have sex with this beautiful strange young man and is therefore punished with castration.[78]

The prohibitions concerning sex between men in Mishnaic times might have been so decisive that it was regarded as necessary from a rabbinic perspective to leave no doubt about the actions of the famous biblical figures like David and Joseph in accordance with the Jewish law, even if sexual assaults by men of the dominant political powers, be it the clients in Rome in case of quasi-David or Potiphar in Egypt in the case of Joseph, constituted a real threat. From a feminist perspective, however, one has to denounce the positive discrimination of men in Mishnah Horayot 3:7.

It is striking that the young biblical David, according to the rabbinic interpretation in the Palestinian Talmud Horayot 3:7, 48b, can be understood as a boy who is particularly suitable for pederastic purposes due to the description of his beautiful appearance in the First Book of Samuel 16:12. Apparently, for Jewish scholars in the ancient world, it was not preposterous to read this biblical verse of the First Book of Samuel in a homoerotic way. Precisely this strange erotic idea of David, one of the most prominent figures of the Hebrew Bible, might have been decisive for the emergence of a further tradition based on Tosefta Horayot 2:5-6 in the Babylonian Talmud Gittin 58a and Lamentations Rabbah 4:4

[77] Cf. b.Sot. 13b; GenR. 86:3 on Gen. 39:1; TanB. Wayesheb ("But Jacob stays") 14 on Gen. 39:1; TPsJ. Gen. 39:1 or Hügel, "Eine queere Lektüre von Josef," 69-99, here 78-85 or Hügel, *Studien zu queeren Lesarten der Hebräischen Bibel*.

[78] Hügel, "Eine queere Lektüre von Josef," 69-99 or Hügel, *Studien zu queeren Lesarten der Hebräischen Bibel*.

on Lam. 4:2. In these rabbinic texts erotic contents have been partially or completely erased.

A queer reading of ancient religious scriptures enables lesbian, gay, bisexual and other queer readers of today to identify themselves with the figures in the biblical and aggadic texts. But some readers might ask, why, from the rabbinic perspective, according to the anecdote in the Tosefta Horayot 2:5-6, only religious Jews like the child in the Bible test with Rabbi Yehoshua ben Ḥananyah can have hope for redemption in extremely unfavourable situations of sexual exploitation. What about all the other Jewish people of today, who are not so religious or proficient in Scripture?

The motif of beauty, which arouses desire in men and women, but at the same time also increases the risks of the violation of physical integrity, has been questioned from the perspective of disability studies.[79] Rightly, one should also ask about the fates of all the other Jewish persons in Roman captivity and slavery, who did not distinguish themselves by their special beauty.

Therefore, there is a need for new Jewish stories relevant to the present day and for contemporary midrashim that do justice to different forms of suffering of boys and men as well as of girls and women and of various queer persons. Any sexual violence used as a weapon in war against men, women and queer persons must be addressed and strongly condemned in different contexts of today.

In the Babylonian Talmud Gittin 58a and Lamentations Rabbah 4:4 on Lam. 4:2, a famous Jewish scholarly man is introduced with Rabbi Ishmael ben Elisha in connection with the rabbinic tradition of Tosefta Horayot 2:5-6. By comparison, it suggests itself from a queerfeminist point of view, to bring also scholarly women and other queer persons into focus in the course of new midrashim and to weave them into present-day narratives.

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[79] Belser, *Rabbinic Tales of Destruction*, 76.