

## Foreign Marriages and Citizenship in Persian Period Judah

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# FOREIGN MARRIAGES AND CITIZENSHIP IN PERSIAN PERIOD JUDAH\*

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## INTRODUCTION

The problem of foreign marriages occurs in several places in the Hebrew Bible and these occurrences show both differences and commonalities.<sup>1</sup> In this paper I will not engage in a detailed exegesis of any of these references; rather, I am aiming at identifying the underlying political concepts that may have induced the respective texts, namely the concept of citizenship, and in connection with that, the notion of membership in the popular assembly, and the question of inheritance of membership. A comparison with texts from ancient Greece which also deal with the problem of foreign marriages will prove to be helpful in this investigation.

## THE BIBLICAL EVIDENCE

Deuteronomistic literature (Exod 34:15–16<sup>2</sup>; Deut 7:1–5) prohibits marital ties with non-Israelites in order to prevent Israelites from

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<sup>1</sup> On that subject see most recently Benedikt J. Conczorowski, “All the Same as Ezra? Conceptual Differences Between the Texts on Intermarriage in Genesis, Deuteronomy 7 and Ezra,” in Christian Frevel (ed.), *Mixed Marriages. Intermarriage and Group Identity in the Second Temple Period* (LBH/OTS, 547; New York / London: T & T Clark, 2011), 89–108.

<sup>2</sup> Exod 34:11–26 is a much discussed text. A late date has been proposed by Erhard Blum, “Das sog. ‘Privilegrecht’ in Exodus 34,11–26: Ein Fixpunkt der Komposition des Exodusbuches?” in Marc Vervenne (ed.), *Studies in the Book of Exodus. Redaction – Reception – Interpretation* (BETHL, 126; Leuven: University Press, 1996, 347–366, reprinted in Erhard Blum, *Textgestalt und Komposition. Exegetische Beiträge zu Tora und Vordere Propheten, hg. von Wolfgang Oswald* (FAT, 69; Tübingen: Mohr Siebeck, 2010), 157–176; David Carr, “Method in Determination of Direction of Dependence. An Empirical Test of Criteria Applied to Exodus 34,11–26 and its Parallels,” in Matthias Köckert, Erhard Blum (eds.): *Gottes Volk am Sinai. Untersuchungen zu Ex 32–34 und Dtn 9–10* (VWGTh, 18; Gütersloh: Chr.

taking part in the cult of the gods of their foreign spouses' communities. The accounts dealing with the problem of foreign marriages in Ezra 9–10 and in Neh 13, however, do not even mention the danger of cultic aberration (the same is true for Gen 24; 27:46–28:9, two texts we do not consider further). Although in many ways different from each other, these texts dealing with foreign marriages have some features in common. One aspect which deserves certain attention is the concern for the children of these mixed couples. In the book of Nehemiah it is their inability to speak the Judean language: **ואינם מכירים לדבר יהודית** (13:24). In the Ezra account, offspring and wives are placed in the same category. The initial statement activates the semantic field related to procreation: “The holy offspring (**זרע הקדש**) has mixed itself (**התערבו**) with the peoples of the lands” (Ezra 9:2). The measure to be taken pertains to both wives and children (10:3): “So now let us make a covenant with our God to send away all these wives and their children (**להוציא כל-נשים והנולד מהם**), ... and let it be done according to the law (**וכתורה יעשה**).” The final statement says: “All these had married foreign women (**נשים נכריות**), and they sent away women and sons (or: and there are from them women who had placed children)”<sup>3</sup> (Ezra 10:44)<sup>4</sup>

The situation is anything but clear and this has led to a variety of modern explanations for the matter.<sup>5</sup> Some have proposed that

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Kaiser/Gütersloher Verlagshaus 2001), 107–140. A dtv provenance was proposed by Wolfgang Oswald, *Staatstheorie im Alten Israel. Der politische Diskurs im Pentateuch und in den Geschichtsbüchern des Alten Testaments* (Stuttgart: Kohlhammer, 2009), 128–129. For a different view see Michael Konkel, *Sünde und Vergebung. Eine Rekonstruktion der Redaktionsgeschichte der hinteren Sinaiperikope (Exodus 32–34) vor dem Hintergrund aktueller Pentateuchmodelle* (FAT, 58; Tübingen: Mohr Siebeck, 2008), 245–300.

<sup>3</sup> Alternative translation proposed by Tamara C. Eskenazi, “The Missions of Ezra and Nehemiah,” in Oded Lipschitz (ed.), *Judah and the Judeans in the Persian Period* (Winona Lake: Eisenbrauns, 2006), 509–529 (514).

<sup>4</sup> The meaning of Ezra 10:44b MT is uncertain; the text is probably corrupt or at least “somewhat obscure” (Zipora Talshir, *I Esdras: A Text Critical Commentary* (SBL Septuagint and Cognate Studies, 50; Atlanta, GA: Society of Biblical Literature, 2001), 482. The most convincing emendation is according to 1Esd 9:36: **וישלחם נשים ובנים**, cf. Wilhelm Rudolph, *Ezra und Nehemia* (HAT, I/20; Tübingen: Mohr Siebeck, 1949), 100. Hugh G. M. Williamson, *Ezra, Nehemiah* (WBC, 16; Waco: Word Books, 1985), 159 reckons that 10:19 was originally repeated after 10:44, so that there “is no need to emendate this verse into a statement that the wives were dismissed”, since 10:19 already conveys this information. Eskenazi, “Missions,” 515 holds that the text does not want to say that all women and their children had been expelled, but only those of the priests, as narrated in 10:18–19. But 10:19 is better understood to be exemplary for the whole people. Even in its masoretic form the account clearly implies the expulsion of all foreign women and their children.

<sup>5</sup> For an overview of recent proposals see Lisbeth S. Fried, “The Con-

the problem behind the texts is the ambition to “marry up,” that is, to gain a higher social status or to gain economical advantages.<sup>6</sup> On the other hand, some insist that the whole dispute is primarily about religious self-conception.<sup>7</sup> With respect to Nehemiah the connection between ethnicity and language has been emphasized.<sup>8</sup>

As far as Ezra and Nehemiah are concerned the problem is clearly a political one. There may be some aspects in the debate which we today would consider religious, but principally the object of dispute is the political community. Admittance to the cult or orthodoxy of faith are not at issue but rather a civil matter: the status of foreign women and the status of children from such a relationship.<sup>9</sup> Hence, those who decide to investigate these cases are the civil leaders of the community, namely “the officials (השרים) and the elders (הזקנים)” in Ezra (Ezra 10:8), and the governor in Nehemiah (Neh 13:23–30a).

What has previously been a matter of private law—marriage—now becomes an issue of public law. Those who do not comply with the newly established rules have to face severe consequences, as Ezra 10:8 shows: “That if any did not come within three days, by order of the officials and the elders, all their property should be forfeited, and they themselves banned (יבדל) from the assembly of the exiles (קהל הגולה).”

In the Ezra story (Ezra 9–10), there is a public corporation consisting only of persons who define themselves as “sons of the golah” (בני הגולה). The foreign wives are obviously not descendants

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cept of ‘Impure Birth’ in 5th Century Athens and Judea,” in R. H. Beal, S. Holloway, and J. Scurlock (eds.), *In the Wake of Tikva Frymer-Kensky. Tikva Frymer-Kensky Memorial Volume* (Piscataway: Gorgias Press, 2009), 121–142 (122–124).

<sup>6</sup> Daniel L. Smith-Christopher, “The Mixed Marriage Crisis in Ezra 9–10 and Nehemiah 13: A Study of the Sociology of the Post-exilic Judean Community,” in Tamara C. Eskenazi, Kent H. Richards (eds.): *Second Temple Studies 2: Temple and Community in the Persian Period* (JSOTSup, 175; Sheffield: Sheffield Academic Press, 1994), 243–265, esp. 261.

<sup>7</sup> Frank C. Fensham, *The Books of Ezra and Nehemiah* (NICOT; Grand Rapids: Eerdmans, 1982), 124; Joseph Blenkinsopp, *Ezra-Nehemiah. A Commentary* (OTL; Philadelphia: Westminster Press 1988), 176; Tamara C. Eskenazi, Eleanore P. Judd: “Marriage to a Stranger in Ezra 9–10,” in Tamara C. Eskenazi, Kent H. Richards (eds.), *Second Temple Studies 2: Temple and Community in the Persian Period* (JSOTSup, 175; Sheffield: Sheffield Academic Press, 1994), 266–285.

<sup>8</sup> Ina Willi-Plein, “Problems of Inter-marriage in Postexilic Times,” in M. Bar-Asher, D. Rom-Shiloni, E. Tov, and N. Wazana (eds.), *Shai le-Sara Japhet: Studies in the Bible, its Exegesis and its Language* (Jerusalem: The Bialik Institute, 2007), 177–192; Katherine Southwood, “‘And they Could not Understand Jewish Speech’: Language, Ethnicity, and Nehemiah’s Inter-marriage Crisis,” *The Journal of Theological Studies* 62 (2011), 1–19.

<sup>9</sup> A. H. J. Gunneweg, *Ezra* (KAT; 19/1; Gütersloh: Gütersloher Verlagshaus Mohn, 1985), 170.

of the *golah* and this status remains the same even in a marriage. But what is more important, it seems as if this status also applies to the children of a mixed couple. The offspring of such mixed couples are not considered to be legitimate members of the assembly of the exiles and are to be expelled with their mothers. Finally, if a member of the assembly of the exiles refuses to send off his foreign wife and their children, such a person loses membership in the assembly.

Although technical terms such as “assembly of the exiles (קהל הגולה)” and the figure of Ezra do not occur in Neh 9–10, the political constellation in this account is similar to that of Ezra 9–10.<sup>10</sup> All Israelites who have separated from the foreigners (Neh 9:2) gather in an assembly and pass a resolution in order to implement the ordinances of the Torah (ספר תורת יהוה, Neh 9:3; תורת האלהים, Neh 10:30). The initial stipulation is: “We will not give our daughters to the peoples of the land or take their daughters for our sons” (Neh 10:31).

The narrative in Neh 13:23–30a, which is part of the Nehemiah Memoir, is not as elaborate as the aforementioned ones, but nevertheless shows some interesting features. First of all, the assembly of the exiles as a corporate body does not exist; the problem is not *exiles vs. natives*, rather, the opposition is *Judeans vs. Ashdodites*.<sup>11</sup> A number of Judeans married women from Ashdod (and Ammon, and Moab – see below) with the result that their children were not able to speak Judean. The narrative covers mainly the accusation of those who had taken foreign wives, and the measures being taken are only briefly mentioned. The problem is not the foreign language as such—since this could have been remedied by teaching them Judean—it is the very fact of having “contracted marriages with non-Judeans”<sup>12</sup>. The culprits are not the foreigners but those Judeans who had taken foreign wives. The final statement reads: “I cleansed them from everything foreign (מכל־נכר)” (Neh 13:30a). This should be interpreted alongside Ezra’s account, meaning that Nehemiah urged the foreign wives

<sup>10</sup> This section is not part of the Nehemiah Memoir which is resumed in Neh 11:1 (Blenkinsopp, *Ezra-Nehemiah*, 281) but has a strong relation to Neh 8 and to Ezr 9–10 (for discussion, see Blenkinsopp, *Ezra-Nehemiah*, 294–295). Lisbeth S. Fried, “A Religious Association in Second Temple Judah? A Comment on Nehemiah 10,” *Transeuphratène* 30 (2005), 77–96, holds that Neh 10 originates from the foundation document of a religious association of Levites. We let this supposition rest; the present text includes the entire people (Neh 10:29–30).

<sup>11</sup> Jacob L. Wright, *Rebuilding Identity. The Nehemiah Memoir and its Earliest Readers* (BZAW, 348; Berlin / New York: de Gruyter, 2004), 256–257, rightly points out that in the Nehemiah Memoir there is no group defined as “returnees from exile”. This concept evolved only later, comp. also Oswald, *Staatsstheorie*, 259.

<sup>12</sup> Wright, *Identity*, 246.

and their non-Judean speaking children to leave.<sup>13</sup> Likewise, Nehemiah expels a person who is not willing or not able to cut his ties with a non-Judean family, the son-in-law of the governor of Samaria (Neh 13:28). But as a general rule, the governor alone is the subject of all actions undertaken in Neh 13:23–30a, and not the officials and elders of the assembly.

Unlike the story in Neh 13:23–30a, at the beginning of this chapter, in Neh 13:1–3, there is an group, here called “the assembly of God” (קהל האלהים). There is no governor in action, rather, the members of the assembly themselves take responsibility for the case. Therefore this short episode is commonly considered to be a later addition to the Nehemiah Memoir.<sup>14</sup> Citing the assembly rule Deut 23:5–6 according to which – among others – no Ammonite and Moabite is allowed to enter the assembly of Yahweh, they – i.e. the “assembly of God” or Israel – exclude all mixed people (כל-ערב) from Israel. In this case, the measures do not aim specifically at foreign wives but rather at male persons who are not of legitimate origin. But the Moabites and Ammonites occur once again in Neh 13:23, the story of the foreign wives. Most commentators consider, and rightly so, the Ammonites and Moabites here to be a later addition, meant to link the two stories and thereby the two problems.<sup>15</sup> The final phrase of Neh 13:1–3 again states that all persons of mixed descent (כל-ערב) were expelled from the assembly, thus paralleling the extensive conclusions in Neh 13:30a and Ezra 10:44. The occasioning events and the procedures may differ, but the consequences in all cases are comprehensive: any person of illegitimate descent has to leave, be it husband, wife, or child. Foreign wives are only one case among others and this indicates what is basically intended by all these measures: to restrict membership in the assembly, as in Ezra 9–10, Neh 9–10 and in Neh 13:1–3, or – less formally – to restrict active participation in Judean life, as in Neh 13:23–30a.

The expulsion from an institutional body, the “assembly of the exiles” (קהל הגולה, Ezra 10:8) or the “assembly of God” (קהל האלהים, Neh 13:1), attests that the actors defined themselves

<sup>13</sup> This final clause is often held to be an addition. Gunneweg, *Nehemia*, 175 takes it as a late insertion commencing the final paragraph; Blenkinsopp, *Ezra-Nehemiah*, 363 notices the parallel to Ezra, but attributes it to a “well-meaning scholiast”, comp. also Wright, *Identity*, 268–269. Actually, Neh 13:30a seems to be the necessary completion of the whole story. It binds together the two cases in 13:23–27 and 13:28–29 and provides the solution for both.

<sup>14</sup> Gunneweg, *Nehemia*, 163–164; Williamson, *Ezra, Nehemiah*, 381; Blenkinsopp, *Ezra-Nehemiah*, 351.

<sup>15</sup> See Gunneweg, *Nehemia*, 172; Williamson, *Ezra, Nehemiah*, 397; Blenkinsopp, *Ezra-Nehemiah*, 362. Neh 13:24b belongs to the same redactional layer. Wright proposes a slightly different solution, *Identity*, 245–246.

politically as an association of persons. A political entity of this type is commonly referred to as a “citizen state”<sup>16</sup>, and membership in the assembly is equivalent to citizenship. By adopting this political conception it is possible to speak more precisely on this matter than when using the vague term “community.”

Meaning and usage of the Hebrew term קהל are disputed, in particular if it denotes a civil or a religious entity. Wellhausen distinguished sharply between the קהל of Deuteronomy, which he considers to be a “bürgerliches Gemeinwesen,” and the עדה of the Priestly Code, which he calls a “geistliches Gemeinwesen” or even “eine Kirche”<sup>17</sup>. Wellhausen’s view was contradicted by Hossfeld, who claims: “Im Fall des Gemeindegesetzes wird die Verbindung *q̄bal Jhwh* zum term. tech. für eine religiös-kultisch bestimmte Versammlung, der Männer mit Defekten an Fortpflanzungsorganen und Abstammung nicht zugehören dürfen.”<sup>18</sup> Jeffrey Tigay opposes both Wellhausen and Hossfeld, stating that קהל and עדה are synonymous and that both refer to the political community: “This assembly seems to have been of a type similar to other popular assemblies in the ancient world, such as the *ekklesia* in Athens and the *puhrum* in Mesopotamian cities.”<sup>19</sup>

This comparison points in the right direction, but the definition should be further elaborated: Mesopotamian assemblies (*puhru(m)*) had no legislative functions and served as an auditorium for royal edicts or in trials.<sup>20</sup> In contrast, the main purpose of Greek assemblies (*agora, ekklesia*) was legislative.<sup>21</sup> The assemblies depicted in the Pentateuch and in Ezra/Nehemiah clearly conform to the Greek type. On the one hand, this applies to the paradigmatic assemblies of the Pentateuchal narratives, particularly to Exod 24:3 where the people pass the resolution to bring into force the

<sup>16</sup> Sometimes also mistakenly “city-state”. For a definition comp. Ernst Meyer, *Einführung in die antike Staatskunde* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1980), 66–80.

<sup>17</sup> Julius Wellhausen, *Die Composition des Hexateuchs und der historischen Bücher des Alten Testaments* (Berlin / New York: de Gruyter, 1963), 202.

<sup>18</sup> Frank-Lothar Hossfeld, Eva-Maria Kindl and Heinz-Josef Fabry, “Art. קהל *q̄bal*,” *TbWAT VI*, 1204–1222 (1212).

<sup>19</sup> Jeffrey Tigay, *The JPS Torah Commentary. Deuteronomy* (Philadelphia/Jerusalem: Jewish Publication Society, 1996), 210.

<sup>20</sup> Muhammad Dandamaev, “Babylonian Popular Assemblies in the First Millennium B.C.,” *The Canadian Society for Mesopotamian Studies Bulletin* 30 (1995), 23–29; Lisbeth S. Fried, “‘You Shall Appoint Judges’: Ezra’s Mission and the Rescript of Artaxerxes,” in *Persia and Torah: The Theory of Imperial Authorization of the Pentateuch* (ed. James W. Watts; SBLSymS 17; Atlanta: Society of Biblical Literature, 2001), 63–89 (71–72).

<sup>21</sup> Karl-Joachim Hölkeskamp, *Schiedsrichter, Gesetzgeber und Gesetzgebung im archaischen Griechenland* (Historia Einzelschriften, 131; Stuttgart: Franz Steiner Verlag, 1999), 272.

so-called Covenant Code,<sup>22</sup> and also to Deut 29:9–14. On the other hand, we find this political structure in Neh 8:1–12, where the people command Ezra to proclaim the Torah (8:1), and Neh 10, where the assembled people swear the oath in order to put into effect “God’s law, which was given by Moses the servant of God” (10:30).

In Ezra 9–10, there are at least three incidents where people gather: initially only “those who tremble at the words of the God of Israel” (9:4), then after Ezra has finished his prayer, all Israel including women and children for an act of repentance (10:1), and finally “all men of Judah and Benjamin” (10:9). It is the last assembly, consisting only of male citizens, that formally appoints a committee to investigate and to solve the matter.<sup>23</sup>

According to the office laws of Deuteronomy the assembly was also responsible for the appointment of officers: “It might not be too far fetched to argue that such an assembly is also responsible for the investiture of the judges and officials in Deut 16:18.”<sup>24</sup> Such forms of government, ranging from democracies *strictu sensu* to any type of participatory government were widespread in the Mediterranean and did not conflict with Persian imperial government. Persian policy was to accept local peculiarities—they even accepted democracies (Hdt. 6,43).<sup>25</sup>

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<sup>22</sup> Wolfgang Oswald, “Early Democracy in Ancient Judah. Considerations on Ex 18–24 with an Outlook on Dtn 16–18,” *Communio Viatorum LII* (2010), 121–135; idem, “Die Exodus-Gottesberg-Erzählung als Gründungsurkunde der jüdischen Bürgergemeinde,” in Friedrich Avemarie et al. (eds.), *Abstract Law and Case Narrative (FAT)*, Tübingen: Mohr Siebeck forthcoming.

<sup>23</sup> Pace Lisbeth S. Fried, *The Priest and the Great King. Temple-Palace Relations in the Persian Empire* (BJS, 10; Winona Lake, IN: Eisenbrauns, 2004), 191.

<sup>24</sup> Anselm C. Hagedorn, *Between Moses and Plato. Individual and Society in Deuteronomy and Ancient Greek Law* (FRLANT, 204; Göttingen: Vandenhoeck & Ruprecht, 2004), 120–121.

<sup>25</sup> The conclusion of Fried, “Ezra’s Mission,” 89: “There was no self-rule in Judah, as there was none in any province of the [Persian] empire” cannot be verified. For Fried local self-governance and imperial control seem to be mutually exclusive. But these two are complementary with each having its particular scope. Peter Frei, “Persian Imperial Authorization: A Summary,” in James W. Watts (ed.), *Persia and Torah. The Theory of Imperial Authorization of the Pentateuch* (SBL Symposium Series, 17; Atlanta: Society of Biblical Literature, 2001), 5–40, states that the interaction between local and imperial institutions “functioned without regard to the constitution of the subordinate group that determined the form of the local decision-making process. In the case of Xanthus, it can be described as democratic (in a broad sense); in Egypt and among Jews, experts or expert committees formulated the local norms. They were all compatible with the procedures used in the higher-ranking Achaemenid legislation.” (39) This seems plausible whether or not the theory of Imperial Authori-



The assemblies as depicted in the Pentateuch and in Ezra-Nehemiah are functionally the same as the Greek assemblies, the main difference being the deviating nomenclature, as there is no “assembly of the Jerusalemites” and no “assembly of the Judahites” as might be expected from the Greek evidence. The reason for this peculiarity is most probably the unsettled situation in post-monarchic Judah/Benjamin. The first option is ineligible because the location of the capital is a pending problem, as is obvious from the frequent formula “the place that Yahweh your God will choose out of all your tribes” (Deut 12:5 and *passim*). The second alternative is disqualified because Deuteronomy diminishes the role of the tribes in favour of the overall assembly.<sup>26</sup> The terms “assembly of Yahweh” or “assembly of God” resolve these political problems, but they are not an indication of a religious community.

Membership in the assembly or citizenship is also at issue in Deut 23:2–9, and here again we face the problem of foreign marriages.<sup>27</sup> The “assembly rule” regulates the admittance of several categories of persons to the “assembly of Yahweh” (קהל יהוה). Despite its name it does not refer to a religious but to a political entity, presumably to the same body as in Ezra 9–10 and in Neh 13:1–3. For our present purpose we concentrate on Deut 23:3 which prohibits the admittance of any ממזר to the assembly. It is commonly assumed that the term ממזר refers to illicit offspring.<sup>28</sup> Although the assembly rule itself does not say who is a ממזר and who is not, illicit offspring means offspring from an illicit relationship. And in the context of Deuteronomy, foreign marriage is the most prominent case of illicit relationship.<sup>29</sup> Thus, Deut 23:3 like

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zation can be applied to the Pentateuch, which is not at issue here, and whether or not Frei’s view of the Jewish *modus operandi* is accurate.

<sup>26</sup> Comp. Joshua Berman, *Created Equal. How the Bible Broke with Ancient Political Thought* (Oxford: Oxford University Press, 2008), 73–78.

<sup>27</sup> The relationship between these texts is made explicit by citation of Deut 23:7 in Ezr 9:12 and of Deut 23:5 in Neh 13:2. For the first comp. Juha Pakkala, *Ezra the Scribe. The Development of Ezra 7–10 and Nehemiah 8* (BZAW, 347; Berlin / New York: de Gruyter, 2004), 111–122.

<sup>28</sup> See HALAT, s.v. ממזר; Gesenius 18<sup>th</sup>, s.v. ממזר. The only other occurrence of the term is in Zech 9:6.

<sup>29</sup> Later tradition defined illicit offspring as children born out of wedlock, or from incest, or from a marriage between a priest and a divorced woman, etc. (see e.g. Marvin A. Sweeney, *The Twelve Prophets, Volume Two*, (Berit Olam; Collegeville, MN: The Liturgical Press, 2000), 660; Alexander Rofé, *Deuteronomy. Issues and Interpretation* (OTS; London: T&T Clark, 2002), 63). But this makes no sense in Zech 9:6. “In both Zech 9:6 and Deuteronomy, the noun might refer to a child of mixed ethnic background.” (David L. Peterson, *Zechariah 9–14 & Malachi: A Commentary* (OTL; London: S.C.M. Press, 1995), 40) In Zech 9:6, the point is that a non-indigenous people or a non-indigenous ruler will reside in Ashdod, which could be understood as a response to Neh 13:23–24.

Ezra 9–10, Neh 9–10 and Neh 13:23–30a considers the offspring of foreign marriages to be illegitimate, and secondly, Deut 23:3 like Ezra 9–10 and Neh 13:1–3 excludes these persons from the assembly, or in other words, they are denied citizenship.

To summarize and to systematize, admittance to the assembly and regulations concerning foreign marriages seem to be different aspects of one problem: how to regulate membership in the assembly. The persons to be excluded are foreign males, foreign wives, and descendants of mixed marriages. All these are not allowed to become members of the assembly. It may be assumed that normally the son of a member of the assembly would inherit the membership from the father. In order to prevent sons of mixed marriages from inheriting membership, marrying foreign women is prohibited, and in case the marriage had already been consummated, wives and children are sent off.

### THE GREEK EVIDENCE

This type of legislation is not a solitary development in Persian period Judah but is found elsewhere in the Mediterranean. Greek poleis also took legislative measures to control and to restrict access to citizenship or membership in the polis assembly respectively.

The most well known example for such a regulation is the so-called “citizenship law” of Pericles from mid 5<sup>th</sup> century, of which the Aristotelian or pseudo-Aristotelian *Constitution of the Athenians* (ΑΘΗΝΑΙΩΝ ΠΟΛΙΤΕΙΑ, *Ath. pol.* 26,3/4, comp. *Plutarch, Per.* 37,2) gives notice:

And two years after Lysicrates, in the year of Antidotus, owing to the large number of the citizens (διὰ τὸ πλῆθος τῶν πολιτῶν) an enactment was passed on the proposal of Pericles confining citizenship to persons of citizen birth on both sides (μὴ μετέχειν τῆς πόλεως, ὅς ἂν μὴ ἐξ ἀμφοῖν ἀστοῖν ᾗ γεγονώς).<sup>30</sup>

Further on, the *Constitution of the Athenians* reads (*Ath. pol.* 42,1):

The present form of the constitution is as follows. Citizenship belongs to persons of citizen parentage on both sides (μετέχουσιν μὲν τῆς πολιτείας οἱ ἐξ ἀμφοτέρων γεγονότες ἀστῶν), and they are registered on the rolls of their demes at the age of eighteen (ἐγγράφονται δ' εἰς τοὺς δημότας

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<sup>30</sup> Translation from *Aristotle in 23 Volumes*, Vol. 20, translated by H. Rackham (Cambridge, MA: Harvard University Press / London: William Heinemann, 1952), retrieved from [www.perseus.tufts.edu](http://www.perseus.tufts.edu). Literally rendered: “that one who is not born from two citizens cannot participate in the community”.

ὄκτωκαίδεκα ἔτη γεγονότες). At the time of their registration the members of the *deme* make decision about them by vote (διαψηφίζονται περὶ αὐτῶν) on oath, first whether they are shown to have reached the lawful age, and if they are held not to be of age they go back again to the boys, and secondly whether the candidate is a freeman (εἰ ἐλεύθερός ἐστι) and of legitimate birth (καὶ γέγονε κατὰ τοὺς νόμους). ...

Regulation of citizenship was not an Athenian peculiarity. An inscription from Thasos from the 5<sup>th</sup> or 4<sup>th</sup> century states the following:

The assembly of citizens (τῶι δήμῳ) has decided; decision identical for the remaining (affairs) with the decision of the Council (βουλῆι); pray to Herakles and to all the other gods; Good fortune, the inhabitants of Neapolis, who descend from Thasian women (ἐκ Θασίῳ γυναικῶν εἰσιν), will be considered Thasians (τότος Θασίος εἶναι) and they can participate (μετεῖναι), themselves and their children, in everything that Thasians take part in; and when they reach the same age as the other Thasians, they shall swear an oath (of allegiance) according to the law. ...<sup>31</sup>

The proceeding in court is described as follows (*Demosthenes*, [Neaer.] 59,16):

If an alien (ξένος) shall live (συνοικῆ) as husband with an Athenian woman (ἄστῆ) in any way or manner whatsoever, he may be indicted before the Thesmothetae by anyone who chooses to do so from among the Athenians having the right to bring charges. And if he be convicted, he shall be sold, himself and his property, and the third part shall belong to the one securing his conviction. The same principle shall hold also if an alien woman (ξένη) shall live (συνοικῆ) as wife with an Athenian (ἄστῶ), and the Athenian who lives as husband with the alien woman so convicted shall be fined one thousand drachmae.<sup>32</sup>

<sup>31</sup> Translation from Ilias Arnaoutoglou, *Ancient Greek Law. A Sourcebook* (Routledge: London / New York, 1998), 93, comp. also Reinhard Koerner, *Inchriftliche Gesetzestexte der frühen griechischen Polis. Aus dem Nachlaß von Reinhard Koerner hg. von Klaus Hallof* (Akten der Gesellschaft für griechische und hellenistische Rechtsgeschichte, 9; Köln: Böhlau, 1993), 267–272.

<sup>32</sup> Translation from *Demosthenes: Against Neaera. Demosthenes with an English translation* by Norman W. DeWitt and Norman J. DeWitt (Cambridge, MA: Harvard University Press / London: William Heinemann Ltd., 1949), retrieved from [www.perseus.tufts.edu](http://www.perseus.tufts.edu).

To return to the citizenship law of Pericles: It is commonly assumed that Aristotle's explanation of the law (the large number of citizens) was not Pericles'. As in the case of Ezra and Nehemiah, a wide range of explanations have been proposed for the citizenship law.<sup>33</sup> Some authors consider that certain protective laws only applied to citizens, e.g. the prohibition of torture, so it was crucial to know who was an Athenian or not. Similarly, when wheat supplies were distributed only citizens were entitled to receive a share. Others say the citizen body had become too large to be managed effectively. Yet others say the law intended to prevent rich citizens from arranging diplomatic marriages or to prevent wealthy citizens from enfranchising an excessive number of their own offspring. The last option is favoured by Peter John Rhodes in his commentary on the *Athenaion Politeia*:

Pericles' law thus limited the class of γνήσιοι [legitimate sons, W.O.] who could succeed to their father's position in the community, and those affected by the limitation became νόθοι [illegitimate sons, W.O.].<sup>34</sup>

There may have been more than one reason, and the causes may have changed from city to city and from time to time, and the same may be true for Judah. Anyway, the scholarly explanations given by classical and biblical scholars have a lot in common. Remarkably, in Greece as well as in Judah there are not only accounts of events which led to the restrictions, we also have laws pertaining to membership regulation.<sup>35</sup>

### PARALLEL DEVELOPMENTS IN GREECE AND JUDAH

The parallelism of these developments has already been observed by scholars, namely by Baruch Halpern, Tamara C. Eskenazi, and Lisbeth S. Fried.<sup>36</sup> For Halpern, the policy of restriction of foreign

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<sup>33</sup> See the annotations in Aristoteles: *Der Staat der Athener*, übersetzt und erläutert von Mortimer Chambers (Aristoteles: Werke in deutscher Übersetzung 10/I; Darmstadt: Wissenschaftliche Buchgesellschaft, 1990), 263–265, and Alan L. Boegehold, “Perikles’ Citizenship Law of 451/0 B.C.,” in Alan L. Boegehold and Adele C. Scafuro (eds.), *Athenian Identity and Civic Ideology* (Baltimore/London: The Johns Hopkins University Press, 1994), 57–66; see also Alick R.W. Harrison, *The Law of Athens* (Oxford: Clarendon Press, 1968), 24–28.61–68.

<sup>34</sup> Peter John Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford: Clarendon Press, 1981), 332. The juridical term νόθος seems to be equivalent to Hebrew נִזְמוֹר.

<sup>35</sup> To go even further, the threat of punishment in Ezra 10:8 is similar to procedures in Greek cities, comp. Gerald J. Blidstein, “Atimia: A Greek Parallel to Ezra X 8 and to Post-biblical Exclusion from the Community,” *VT XXIV* (1974), 357–360.

<sup>36</sup> Baruch Halpern, “Ezra’s Reform and Bilateral Citizenship in Athens

marriages goes back to the monarchic era, to which he dates most of Deuteronomy and P.<sup>37</sup> Ezra and Nehemiah only inaugurate slight modifications to an already established policy. Halpern considers the books of Ezra and Nehemiah to be historical accounts and follows the traditional assumption that both Ezra and Nehemiah acted on Persian order. Consequently, Halpern gives a historical explanation for the parallels between Judah and Athens. As in Athens, where wheat supplies from Egypt caused the restriction of the number of beneficiaries, the same measures were taken in Judah when Ezra brought the treasures from Babylonia (Ezra 7:11–26; 8:24–36). Moreover, the measures primarily aimed at the wealthy families, since the expulsion of non-compliant persons led to the redistribution of their properties to the remaining citizens.<sup>38</sup>

Halpern's observation suffers from the "bird's eye view"<sup>39</sup> he is trying to adopt and which leads him far away from the texts. The treasures and endowments, which are said to be given to the temple in Ezra 7–8, are so excessive in their dimensions that it proves that the account is not a historical report. Similarly, it seems inappropriate to restrict the Athenian situation to the problem of wheat supplies. However, the main problem of Halpern's reconstruction is that he does not reflect on the concept of citizenship by itself. It is by no means universal; only certain types of societies define their cohesiveness by means of the concept of citizenship. For example, Oriental monarchies probably did not (more on that, see below). Thus, it is reasonable to assume that all the biblical texts concerning foreign marriages, including those from Deuteronomy and from the Priestly literature, stem from the post-monarchic era. This is supported by the evidence from Elephantine: "It seems therefore that the Judean community in Upper Egypt was not aware of the same restriction of intermarriage attested in the biblical tradition."<sup>40</sup>

Tamara C. Eskenazi also advocates a historical approach. She follows an interpretation of Pericles' lawgiving which, according to Victor Ehrenberg, aimed at the aristocrats of Athens in order to cut their power.<sup>41</sup> Eskenazi opines that the measures of Ezra and Nehemiah likewise had the upper class as their targets: "Ezra's re-

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and the Mediterranean World," in Gary N. Knoppers and Antoine Kirsch (eds.), *Egypt, Israel, and the Ancient Mediterranean World. Studies in Honor of Donald B. Redford* (Leiden/Boston: E.J. Brill, 2004), 439–453; Eskenazi, "Missions," Fried, "Impure Birth." Hagedorn, *Moses and Plato*, 120, n. 85 also notices the parallel, but does not elaborate on it.

<sup>37</sup> Halpern, "Ezra's Reform," 439–444.

<sup>38</sup> Halpern, "Ezra's Reform," 450.

<sup>39</sup> Halpern, "Ezra's Reform," 452.

<sup>40</sup> Sebastian Grätz, "The Question of 'Mixed Marriages' (Intermarriage): The Extra-Biblical Evidence," in Christian Frevel (ed.), *Mixed Marriages. Intermarriage and Group Identity in the Second Temple Period* (LBH/OTS, 547; New York / London: T&T Clark, 2011), 192–204 (196).

<sup>41</sup> Eskenazi, "Missions," 517.

forms are the beginning of the process of reducing the monopoly of the priests as well as of creating a more egalitarian community.”<sup>42</sup> She denies the notion that Ezra and Nehemiah acted on Persian order, rather, she believes that there were internal grounds: “Shared concerns about ‘mixed’ marriages in Athens and Judah, as well as the absence of such concerns in Mesopotamia and Egypt, may reflect shared concern with new political structures for community.”<sup>43</sup>

Lisbeth S. Fried develops her thesis in discussion with Eskenazi, agreeing that the measures of Ezra primarily aimed at the upper class and the priests in particular, but disagreeing on the political goals. While for Eskenazi it was the redistribution of power towards the people, for Fried it is quite the opposite: “Like Pericles, these imperial Persian officials [i.e. Ezra and Nehemiah, W.O.] may also have sought to limit the influence of aristocratic families so that all power would stem from Persia.”<sup>44</sup> This view is in accordance with Fried’s reconstruction of the political structure of Persian period Judah which she construes as strongly controlled by Persian administration.<sup>45</sup>

Different from Halpern, both Eskenazi and Fried interpret the controversy over foreign marriages as a problem that has its roots in the specific historical context of post-monarchic Judah. Particularly, the concept of citizenship as applied by Eskenazi provides a means (in terms of political theory) to interpret the textual evidence appropriately. The foregoing analysis of the political structure of post-monarchic Judah and in particular the outlined office of the assemblies clearly favour Eskenazi’s view over Fried’s. Eskenazi recognizes the fundamental change in societal organization which comes along with the concept of citizenship. But like Halpern and Fried, Eskenazi compares assumed historical developments. In this paper, however, the quest for the historical figures of Ezra and Nehemiah is not at issue, particularly since it is unclear what their relations to the Persians were.<sup>46</sup> Rather we ask to what extent the basic political structures of Athens and Judah can be compared. Eskenazi’s assumption that there were “fundamental differences between Athens and Jerusalem at this juncture”<sup>47</sup> may be premature. Her statement that the Ezra and the Nehemiah ac-

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<sup>42</sup> Eskenazi, “Missions,” 512.

<sup>43</sup> Eskenazi, “Missions,” 525.

<sup>44</sup> Fried, “Impure Birth,” 137.

<sup>45</sup> Fried, *Priest*, summary on 233.

<sup>46</sup> Oswald, *Staatstheorie*, 231–233.242–243. Except for the so-called Artaxerxes rescript Ezra 7:11–28, which is the latest addition to Ezra-Nehemiah, there is no official commissioning of either Ezra or Nehemiah. Thus, Eskenazi’s opinion, “that we need not explain Ezra’s reforms in terms of the vested interests of the Persian imperial court” (Eskenazi, “Missions,” 525), can strongly be supported.

<sup>47</sup> Eskenazi, “Missions,” 524, n. 27.

counts suggest that the prohibition of foreign marriages was only a “major step in developing participatory government”<sup>48</sup> is true but not far reaching enough. Rather, these measures could only be taken because the basic structure of the Judean society in the post-monarchic era, i.e. in the Babylonian and the Persian periods, was already participatory in nature.<sup>49</sup>

It was because of this participatory (or even pre-democratic) political system that it was necessary to control membership permanently and not only occasionally. Ezra 9–10 does not say why the mingling of the holy offspring is a problem; furthermore it does not say when exactly the problem occurred. This has led to the above mentioned speculations on the actual grounds for the measures taken. But this lack of information has to be understood in a positive way: there is no certain occasion, and Ezra 9–10 narrates the introduction of a general rule when Ezra says in his prayer. “We have forsaken your commandments” (Ezra 9:10). No single event led to the prohibition of foreign marriages and the prohibition is not a temporary action, rather, the story narrates the permanent enactment of a commandment of the Torah. Thus, we should be reluctant to speak of a “mixed marriage crisis”. The whole problem is not confined to a certain period of time, rather, it is a structural one. It seems as if the structures of the Persian period Judean society and of the Greek city states demanded certain regulations of this type. But what type of societies were they?

### THE CONCEPT OF THE CITIZEN STATE

The vast majority of states in the ANE were dynastic monarchies. The problem of membership in an assembly does not exist in this type of society.<sup>50</sup> Any person who is under the rule of the monarch is considered to be his subject. Ancient monarchies were no nation states, indeed, kings benefitted from foreigners, be it as subjugates or as mercenaries. In a monarchy of this type there is no need and no cause to restrict foreign marriages. For example, one of the best

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<sup>48</sup> Eskenazi, “Missions,” 516.

<sup>49</sup> For an analysis of the constitutional principles of Babylonian and Persian periods Judah comp. Oswald, “Democracy,”; idem, “Gründungsurkunde.” The political concepts of Deuteronomy are thoroughly outlined in Dean S. McBride, “Polity of the Covenant People. The Book of Deuteronomy,” *Interpretation* 3 (1987), 229–244; Joshua Berman, “Constitution, Class, and the Book of Deuteronomy,” *Hebraic Political Studies* 1 (2006), 523–548; Bernard Levinson, “The First Constitution: Rethinking the Origins of Rule of Law and Separation of Powers in Light of Deuteronomy,” *Cardozo Law Review* 27 (2006), 1853–1888. However, these authors differ significantly among each other and from this paper with regard to dating and to the presumed “Sitz im Leben” of Deuteronomy.

<sup>50</sup> Similarly Eskenazi, “Missions,” 525.

officers of King David's army was Uriah, the Hittite, but his non-Judean descent did not hinder David from employing him, nor was it a hindrance to him in marrying his widow (2 Sam 11–12). But in the time of Ezra, the Hittites were counted among “the peoples of the lands with their abominations” (Ezra 9:1).

On the one hand we have a monarchic state with a king as its head in which individuals are not primarily differentiated by their nationality. On the other hand we have a non-monarchic state which is constituted by the assembly of its citizens, and here we find this differentiation between those who belong to the assembly and those who do not. It is this basic constitutional principle that Persian period Judah (or already Babylonian period Judah?) and the early Greek citizen states have in common.<sup>51</sup>

Both of them control their own affairs according to their laws, and the assembly is the sovereign in domestic affairs,<sup>52</sup> and for these reasons the concept of citizenship evolved in these societies. Citizenship, however, is a broad concept which has developed over the time. A purely legal definition in which citizenship is defined by registering in a citizen list came only at the end of the period. We have evidence of this type of administration from Ezra 2 || Neh 7 and from Ezra 8, where membership in the assembly is equal to being registered in genealogy lists.

But much more prevalent is a more societal apprehension of citizenship. A citizen is a person who owns real estate in a related territory and who participates in the communal activities of the city: warfare, symposia, and cult. In earlier times, this is exactly the content of citizenship. Citizenship manifests itself in performing joint activities of that kind.<sup>53</sup> Thus, we can better understand the comprehensive prohibitions in Deut 7:1–4: no treaties with non-Israelites, no intermarriage with them, and no participation in their cult. These activities are not prohibited in order to prevent apostasy from the right faith, but rather because they would lead into an active participation in the corporate body which in turn may lead to citizenship in the relevant community. Uwe Walter comes to the conclusion referring to the archaic Greek citizen states: “Die integrative Funktion des Poliskultes kann gar nicht überschätzt

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<sup>51</sup> This basic commonality is not challenged by the obvious fact that the political system of Athens was far more differentiated than that of Judah. The same difference applies to any other Greek citizen state.

<sup>52</sup> Compare the introductory remarks in Peter Frei, “Zentralgewalt und Lokalautonomie im Achämenidenreich,” in Peter Frei, Klaus Koch, *Reichsidee und Reichsorganisation im Perserreich* (OBO, 55; Freiburg/Schweiz: Universitätsverlag and Göttingen: Vandenhoeck & Ruprecht, 21996), 5–131 (8–10).

<sup>53</sup> See Uwe Walter, *An der Polis teilhaben. Bürgerstaat und Zugehörigkeit im Archaischen Griechenland* (Historia Einzelschriften, 82; Stuttgart: Franz Steiner, 1993), 76–88.



werden.”<sup>54</sup> The connection between intermarriage and participation in the cult of the spouse’s community is explicitly made in Exod 34:15–16 and in Deut 7:3–5. Thus, the prohibitions in Deuteronomy and in deuteronomistic texts like Exod 34 are meant to prevent common activities that may lead to integration into another community.

The problem in Ezra 9–10 and in Neh 13 is not much different,<sup>55</sup> since familial bonds to foreigners may result in the same alienation from the community as participation in a foreign cult. And the problem of being committed to foreign elders may even be bigger for the children of mixed couples. But what makes these conflicts of interests so severe is that in any of them the balance of power in the assembly is at stake. Upper class men who were able to contract more than one wife would on average have a larger number of sons than those of lesser descent. Before the enactment of the marriage laws, all these sons would have inherited citizenship, and the family would gain a strong standing in the assembly. In order to avoid such an imbalance, wives *and* children, in particular sons, were expelled.<sup>56</sup> The assumption of Halpern, Eskenazi, and Fried, that the foreign marriage laws were primarily directed against the wealthy people can be underpinned; the foregoing considerations were intended to bring forward the political structures of post-monarchic Judah which made these laws possible and necessary.

## CONCLUSIONS

Neither the biblical nor the Greek evidence allows us to identify the exact cause of the foreign marriage laws. But much more important is the fact that both societies use this type of legislation. This parallel development may allow for some conclusions for the biblical case. My assumption is that marriage laws are a common device in societies which are organized as associations of persons. In the case of Greece and Judah these associations of persons are not primitive tribes but quite the opposite; they are complex societies with elaborate law codes serving as constitutions, a differentiated system of public offices and an assembly of full citizens as the central decision-making body. Those who belong to this body enjoy certain privileges (e.g. the right to purchase land, legal security, participation in decisions on public affairs), but also have to fulfill certain duties (submission under the public law). As far as cult is concerned the members of the body have both the right to partici-

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<sup>54</sup> Walter, *Polis*, 86 (“The integrative function of the polis cult cannot be overestimated.”)

<sup>55</sup> The dependency of Ezr 9–10 on dtr conceptions is rightly emphasized by Pakkala, *Ezra*, 132–135 and Eskenazi, “Missions,” 512.

<sup>56</sup> Compare Peter John Rhodes’ explanation of the proceedings in Athens (see above II. at n. 34).

pate and the duty to finance the common expenditure. In a societal system of this type it is necessary to control membership in the assembly, and this means controlling citizenship.

The biblical texts, laws and narratives equally know of several devices for controlling citizenship. The most prominent is the membership law in Deut 23:2–9. Other means are to investigate genealogies or to construct them, or to keep registers of admitted persons (Ezra 2 || Neh 7). Marriage laws are another useful device for achieving this goal. Biblical marriage laws are not an expression of religious intolerance nor do they indicate racism. Rather, they are the ancient equivalent to modern citizenship laws.