YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**Before Sinai: Jewish Values and Jewish Law**

**By Rav Dr. Judah Goldberg**

For easy printing, see

<http://vbm-torah.org/archive/sinai/13sinai.htm>

**Shiur #13: Jewish Peoplehood (6): Incomplete Conversions – Part One**

 In the last two *shiurim*, we looked at the relationship between entrance into *berit Avot* and acceptance of *berit Sinai* in the context of conversion. Our analysis led us to prefer R. Soloveitchik’s contention that mainstream conversion treats *berit Avot* and *berit Sinai* as independent, though linked, covenants that each require outright commitment. Neither one is the road to the other. Rather, the potential convert stands before two parallel covenants that he enters simultaneously.

 Reaffirming the independence of *berit Avot* and *berit Sinai* for the convert, though, leads us to another question: Despite R. Soloveitchik’s generalizations that “there is no such thing as partial conversion” and that “one cannot omit one iota of either of these two Covenants” (*Kol Dodi Dofek: Listen—My Beloved Knocks*, 74), can there be uneven entrance into these two covenants? The last *shiur* closed with an example: The Rambam treats a Canaanite slave as someone who has joined *berit Sinai* but does not yet participate in *berit Avot*. Can we identify other cases in which the duties and privileges of either of these covenants are held back? If so, are *berit Avot* and *berit Sinai* equally flexible, or does uneven conversion occur in only one direction?

Beyond elucidating the nature of conversion and its component parts for their own sake, the answers to these questions may impact the range of possibilities that the contemporary practice of conversion can consider.

**Jewish Marriage: Right or Privilege?**

 After presenting various laws about marriage with gentiles or slaves, the Rambam writes:

All gentiles, when they convert and accept upon themselves all the *mitzvot* of the Torah, and slaves when they are emancipated, are Jews for all matters, as it says, “The congregation, one statute for you and the convert who dwells” (*Bamidbar* 15:15); and they may enter the Congregation of God immediately, that is, a male convert or emancipated slave can marry a Jewess and a Jew can marry a female convert or emancipated slave; except for four nations only, and they are Amon, Mo’av, Mitzrayim, and Edom, for [regarding] these nations, when a member of them converts, he is a Jew for all matters except regarding marriage into the congregation. (*Hilkhot Issurei Bi’a* 12:17)

R. Soloveitchik is quoted as observing from the Rambam’s formulation that marriage with Jews should not be taken for granted for the convert. Rather, it is a separate privilege afforded to him or her by the process of conversion. Not only are converts “Jews for all matters,” but additionally they “may enter the Congregation of God,” even though converts do not belong to it themselves (*Reshimot Shiurei Maran Ha-Grid Ha-Levi*, *Yevamot*, 507-508).[[1]](#footnote-1)

In what sense can we isolate marriage into the Jewish people from other privileges of Jewish status, such as counting towards a *minyan* or acting as a *shaliach* (designee)? In contrast to rights that emanate from the convert’s newfound sanctity (*kedushat Yisrael*), which takes hold through obligation in *mitzvot*,[[2]](#footnote-2) his or her ability to marry a Jew is a statement of the convert’s acceptance into Jewish peoplehood. While the capacity to write a *sefer Torah* or read the *Megilla* for others is a function of participation in *berit Sinai*, the right to marry into the Jewish nation is a function of participation in *berit Avot*. The standard convert, of course, enters both.

In this vein, R. Soloveitchik continued, we can appreciate the end of the Rambam’s statement, regarding Amon, Mo’av, Mitzrayim and Edom. *Devarim* 23:4-9 prohibits converts from these four nations from marrying into the “Congregation of God,” either temporarily, by implication from a positive commandment (Mitzrayim and Edom), or permanently, by dint of an explicit negative commandment (Amon and Mo’av). A simple reading of the Torah might suggest that these prohibitions are completely independent of the individual’s conversion status. An Amonite or Moabite can convert completely but nevertheless is restricted from marrying into the congregation, no different from a bastard or a castrate, whose Jewishness is untainted but whom the Torah similarly restricts in the preceding verses (23:2-3).

The Rambam, however, diverges from this interpretation. He writes explicitly that a convert from one of these four nations is “a Jew for all matters **except** regarding marriage into the congregation.”[[3]](#footnote-3) His restriction from marrying into the congregation is not independent of his conversion but is a limitation in his very status as a Jew![[4]](#footnote-4) Regarding *berit Sinai*, the Amonite or Moabite is embraced completely. He can immerse himself in Torah and even, like the converts Shemaya and Avtalyon, belong to the elite cadre of scholars responsible for the Oral Law across the generations.[[5]](#footnote-5) Regarding *berit Avot*, however, the Amonite or Moabite is incompletely absorbed. He remains an outsider to Jewish peoplehood, expressed through his restriction from marrying into the Congregation of God.[[6]](#footnote-6)

 It is possible that the Rambam found proof for his position in *Kiddushin* 74b, which states that even Rabbi Yehuda, who believes that a convert may not marry a bastard (*mamzer*), agrees that an Amonite or Moabite convert may marry a bastard. A regular convert, Rabbi Yehuda maintains, belongs to the Congregation of God, but an Amonite or Moabite is certainly excluded. Thus, the prohibition that prevents them from marrying into the congregation is not an independent prohibition but a broader statement about their exclusion from participating fully in the community.[[7]](#footnote-7)

**Conversion Without a *Beit Din* (Jewish Court)**

As another example of a convert who has not yet earned the privilege of marrying into the Jewish people, R. Soloveitchik pointed to a position quoted in the name of the Rif. Regarding a convert who apparently never involved a *beit din* (rabbinical court) in his or her conversion, the Ramban quotes the Rif as saying that a private conversion is technically valid, only that “we do not relate to him as a Jew and do not marry a Jewess to him until he has immersed in front of three [judges]” (*Yevamot* 45b).[[8]](#footnote-8)

It seems that the Rif (as the Ramban quotes him) distinguishes between two outcomes of conversion: 1) The personal status of the convert as a Jew and 2) his standing vis-à-vis the Jewish community. The first aspect—which we would call *berit Sinai*—the convert can accomplish on his own, without the intervention of a *beit din*, but the second aspect—entrance into the nation, or *berit Avot—*is conditional upon immersion before three judges. Without the participation of the judges, the convert is ineligible to marry Jews; likewise, the community does not relate to him as one of their own.[[9]](#footnote-9) The judges mediate the convert’s absorption into Jewish peoplehood,[[10]](#footnote-10) and without them he shares in only one of the two covenants.

The Ramban himself advocates a modified version of the position he quotes from the Rif. The presence of three judges is absolutely indispensable regarding the acceptance of *mitzvot*. However, if one accepted the *mitzvot* in front of a *beit din* and then proceeded with circumcision and immersion in private, the ruling quoted from the Rif applies: The convert has gained the personal status of a Jew, but he cannot marry into the people until he has immersed as well in front of a *beit din*. The original logic, then, holds true, only that the Ramban attributes two different roles to the judges who execute a conversion: 1) They formalize the acceptance of *mitzvot*; and 2) they admit the convert to the ranks of the Jewish nation. If they are present only for acceptance of *mitzvot* but not for the immersion, *berit Sinai* is complete, but *berit Avot* is lacking.[[11]](#footnote-11)

**Conclusion**

 The next *shiur* will continue our examination of converts whose participation in Jewish identity is in some way incomplete.

**For Further Thought:**

1. To what degree is an Amonite or Moabite excluded from *berit Avot*? Can he recite “that You took us out of Egypt,” the way a typical convert can?

2. According to R. Soloveitchik’s reading of the Rambam, the inability of a first- or second-generation Egyptian or Edomite to marry a Jew is also a reflection of incomplete conversion. Unlike a descendant of Amonites or Moabites, however, a third-generation Egyptian or Edomite may marry a Jew. On the one hand, we can easily understand why absorption might only occur over time and across generations. On the other hand, by what mechanism is the conversion of a third-generation Egyptian or Edomite completed?

3. *Yevamot* 45b seems to present a case of a woman who immersed not in the presence of three judges. We discussed the explanations of the Rif and the Ramban above; *Tosafot*, however, offer a different interpretation: “Some explain that because it was widely known that she immersed, it is as if [the judges] were standing there.” In what way does public knowledge substitute for the presence of a *beit din*? We can offer two different interpretations: 1) The *beit din*’s awareness of her immersion suffices, even if the *beit din* itself was not present; 2) Perhaps the *beit din*’s role at the time of immersion is only to represent the Jewish people. If the immersion is public knowledge, however, then the community as a whole presides over her conversion, and a formal *beit din* is not necessary!

**Questions or Comments?**

Please email me directly with your feedback at judahlgoldberg@gmail.com!

1. See *Hilkhot Issurei Bi’a* 15:7 and *Shiur* #9. [↑](#footnote-ref-1)
2. Hence the formulation of a blessing that precedes the performance of a mitzva: “Who has sanctified us through his *mitzvot*.” [↑](#footnote-ref-2)
3. R. Soloveitchik’s second observation substantiates the first. Read in isolation, the first part of the Rambam’s statement could be understood as simply rejecting the opinion that Canaanite converts may not marry Jews (see the following *shiur*). The end of the Rambam’s statement, however, clearly demonstrates that Jewish marriage is a unique privilege that stands apart from other consequences of conversion.

In addition, the Rambam’s citation of the laws regarding Amon, Mo’av, Mitzrayim and Edom within a chapter otherwise dedicated to the prohibition against marrying gentiles, rather than in the context of the prohibitions against a bastard and a castrate (*Hilkhot Issurei Bi’a* chapters 15 and 16, respectively), further supports R. Soloveitchik’s reading. Similarly, in the Rambam’s *Sefer Ha-mitzvot* and Introduction to *Mishneh Torah*, the prohibitions regarding these four nations (#53-55) follow a cluster of prohibitions that relate to gentiles and paganism, whereas the prohibitions regarding a bastard and a castrate (#354 and #361, respectively) appear among the forbidden sexual relationships. [↑](#footnote-ref-3)
4. This logic bears similarity to R. Chayyim Soloveitchik’s position regarding *tereifot* (maimed animals). In place of the conventional interpretation, which presumes that the slaughter of a *tereifa* is valid but the animal is nonetheless forbidden, R. Chayyim argued that the prohibition against consuming a *tereifa* stems from a deficiency in the very act of slaughter. See *Chiddushei Maran Riz Ha-Levi* *al Ha-Rambam*, 79a (letter dated 18 *Adar* 5672). [↑](#footnote-ref-4)
5. See Rambam’s Introduction to *Mishneh Torah*. Also see *Yevamot* 76b, regarding Minyamin (or Binyamin—see textual variants to *Tosefta Kiddushin* 5:6 [Vilna ed.]), an Egyptian convert who was a student of Rabbi Akiva. [↑](#footnote-ref-5)
6. It is important to note that a convert from one of these four nations, in contrast to a gentile, is able to establish marital ties with a Jew (*tefisat kiddushin*). *Tefisat kiddushin* is a function of personal halakhic status that is rooted in one’s obligation towards the *mitzvot* of Sinai. Permission to marry other Jews, however, depends upon participation in *berit Avot*. [↑](#footnote-ref-6)
7. However, this proof is only relevant for the Rambam, who believes that one can belong to the congregation while at the same time be prohibited from marrying others in the congregation. Thus a castrate, who may not marry into the congregation, is nonetheless prohibited from marrying a bastard, for the castrate himself belongs to the congregation (*Hilkhot Issurei Bi’a* 16:2). That an Amonite or Moabite can marry a bastard, then, demonstrates that their status is inferior to that of a castrate*,* in that they are further excluded from the congregation. The Ra’avad, however, disagrees with the Rambam and presumes that a castrate may marry a bastard. For the Ra’avad, status vis-à-vis the congregation is dichotomous. One is either free to marry into the congregation or is excluded completely. In that case, Rabbi Yehuda’s position is an obvious conclusion that does not add anything to our understanding of the Amonite or Moabite’s conversion. [↑](#footnote-ref-7)
8. Also see Me’iri (*Shabbat* 68a): “Perhaps he converted without three [judges], as it says, ‘that he converted in the midst of gentiles’; ideally [conversion] requires three [judges], but after the fact, even by himself [his conversion is valid], according to what [the Rif] ruled [in *Yevamot*].” However, in all likelihood these commentators were looking at a defective text of the Rif. According to the text before us (15b), as the Bach explains (*Yoreh De’ah* 268), the Rif only foregoes definite knowledge that a court of three judges presided over the conversion. If the convert is practicing normative Judaism, we can presume that he or she has undergone the standard conversion process, but in order to marry into the Jewish people we require explicit evidence. Additionally, this is the position of the Rambam (*Hilkhot Issurei Bi’a* 13:9), who is typically a reliable reflection of the Rif (also see *Maggid Mishneh*). Also see *mori ve-rabbi* R. Aharon Lichtenstein, “Conversion: Birth and Judgment,” *Leaves of Faith: The World of Jewish Living*, 207, note 26. [↑](#footnote-ref-8)
9. In the Rif’s words, “*lo nahaginan bei minhag Yisrael*.” [↑](#footnote-ref-9)
10. Also see *Shiur* #10 regarding the absence of a *beit din* at Mt. Sinai and *Shiur* #12 regarding the role of the *beit din* at a Canaanite slave’s second immersion. [↑](#footnote-ref-10)
11. Admittedly, the Ramban calls for a *beit din* not only for the act of immersion, but also for a concurrent, second acceptance of *mitzvot*. We can suggest several possibilities for this *halakha*: 1) The presence of judges at the immersion is not at all about admitting the convert to the Jewish people, but about a second step to acceptance of *mitzvot* that finishes the conversion process and gives him the full privileges of Judaism, including marriage; 2) Acceptance of *mitzvot* is a necessary condition not only for *berit Sinai*, but also for *berit Avot,* inasmuch as the judges will only naturalize a convert who wants to join mainstream Jewish practice; 3) This acceptance of *mitzvot* is only a reinforcement of the original acceptance at the time of immersion but ultimately not transformative in any way. The *nafka mina* (practical ramification) might be a case in which a *beit din* was present at immersion but did not oversee a second acceptance of *mitzvot*. Could such a convert marry a Jew? [↑](#footnote-ref-11)