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ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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

**By Rav Dr. Judah Goldberg**

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Dedicated in memory of
Lillian Grossman *z”l* – Devora Leah bat Shlomo
by Larry and Maureen Eisenberg

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Dedicated *le-zekher nishmot* Amelia Ray and Morris Ray
on the occasion of their seventh yahrtzeits
by their children Patti Ray and Allen Ray

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**Shiur #15: Jewish Peoplehood (8): Leaving Judaism**

 Having examined extensively the dual nature of Jewish identity as reflected through the laws of conversion, we now turn our gaze from the entrance to the exit. What can the laws regarding a Jew who abandons his heritage tell us about the nature of Jewish identity? Conversely, can the twin covenants of *Avot* and *Sinai* help us decipher his status?

 The discussion in this *shiur* will revolve around a seminal essay by *mori ve-rabbi* R. Aharon Lichtenstein, “Brother Daniel and the Jewish Fraternity,” which discusses the case of a Jew-turned-Catholic priest who applied for Israeli citizenship under the Law of Return.[[1]](#footnote-1) One of several cases that sparked the “Who is a Jew?” debates in the early years of the Jewish state, Brother Daniel challenged religious and secular Jews alike to reflect intensively upon the essential character and substance of Jewish identity.

**Once a Jew, Always a Jew?**

 Regarding a Jew who has apostatized, R. Lichtenstein notes that rabbinic texts present conflicting information. On the one hand, *Yevamot* 47b speaks plainly and emphatically with regard to a convert: “If he were to reverse himself and then marry a Jewess, he is [nevertheless] called an apostate Jew, and his marriage is valid.” Even if a convert immediately renounces his transformation and reverts back to his former lifestyle and identity, he is forever labeled as a Jew in the eyes of the law, with all of the attendant ramifications, including the ability to establish marital ties with another Jew. Once he has been endowed with *kedushat Yisrael* (the formal sanctity of a Jew), he can never escape from it; and if this is true regarding a newcomer to the faith, how much more so for one who was born a Jew.

 On the other hand, at least two other texts suggest the possibility of losing Jewish identity. In *Yevamot* 16b, Rav Assi states that if a gentile betroths a Jewess, we cannot dismiss the validity of the marriage, for perhaps he descends from one of the ten lost tribes. When Shmuel heard this ruling, however, he responded, “They did not move from that place until they made [the descendants of the lost tribes] into absolute gentiles, as it says, ‘They have betrayed God, for they have begotten alien children’ (*Hoshe’a* 5:7)” (17a). Similarly, *Chullin* 6a tells how Rav Ami and Rav Assi discovered that the Samaritan community, which had long been suspected of engaging in pagan worship, was no longer observing Jewish law at all. In response, “They did not move from that place until they made [the Samaritans] into absolute gentiles.” If we take these texts at face value, it seems that Jewish identity is not necessarily preserved forever, in contrast to what was stated about a convert.

**Resolving Contradictory Sources**

 In Talmudic analysis, whenever two sources (A and B) conflict, we are faced with three fundamental options: 1) Prioritize source A and reinterpret source B; 2) Prioritize source B and reinterpret source A; 3) Distinguish between A and B in a way that preserves the essential meaning of each source. Indeed, each of these approaches is represented in our case:

***Option #1***

 Rashba (*Yevamot* 22a) takes *Yevamot* 47b at face value and therefore must explain Shmuel’s statement about the Samaritans: “This does not mean that, with regard to a Jew who has become [like] a full gentile and engages in pagan worship, his marriage attempts can be dismissed. Rather, only that population did [the Sages] make like absolute gentiles from the outset and annul their marriages,” according to the principle that “one who marries” does so “according to the will of the Sages.”[[2]](#footnote-2) In other words, the personal status of the descendants of the lost tribes remains unchanged, but any attempts at Jewish marriage have been invalidated from the outset.[[3]](#footnote-3)

 Others similarly explain Rav Ami and Rav Assi’s declaration about Samaritans in a way that preserves the plain reading of *Yevamot* 47b. They assert that the Sages only applied the stringencies of gentile status to Samaritans (for example, their wine is forbidden and their ritual slaughter invalid) but could not in any way uproot their fundamental Jewish identity. Thus R. Yehudai Gaon ruled that a Samaritan can effectuate marriage with a Jewess,[[4]](#footnote-4) and R. Yosef Karo adds that one may not pay interest to a Samaritan even though one may charge him such (*Shulchan Arukh*, *Yoreh Dei’a* 159:3).

***Option #2***

 In contrast, a minority opinion maintains that an apostate has completely lost his Jewish identity; as a result, marriage with a Jewess has no validity.[[5]](#footnote-5) Presumably, this opinion champions the sources that speak about the lost tribes and the Samaritans, but how can it interpret *Yevamot* 47b? *Hagahot Mordekhai* (*Yevamot* 107) explains, “that which his marriage is valid, this is only a stringency… perhaps at that moment he had pangs of repentance.” Fundamentally, an apostate is equivalent to a gentile, and marriage to a Jewess is not possible. However, at any moment he may cease to be an apostate![[6]](#footnote-6)

***Option #3***

 R. Chayyim Soloveitchik observed, according to an oral tradition, that the Rambam does not seem to avail himself of either of these two options.[[7]](#footnote-7) On the one hand, the Rambam rules explicitly in *Mishneh Torah* that an apostate’s marriage is valid (*Hilkhot Ishut* 4:15, *Hilkhot Issurei Bi’a* 13:17), in keeping with the simple reading of *Yevamot* 47b. On the other hand, he writes in his Commentary on the *Mishna* (*Nidda* 7:4) that “today, a Samaritan corpse does not spread ritual impurity in a tent, for gentiles do not spread ritual impurity in a tent.” This is leniency that can only be explained by presuming that Samaritans have lost their Jewish status altogether.[[8]](#footnote-8) According to the Rambam, is a Jew who has abandoned his faith still Jewish or not?

 R. Chayyim explained that the two texts, and thus the two different rulings of the Rambam, apply to two different scenarios. *Yevamot* 47b describes a convert who has returned to his old practices, including pagan worship. As R. Lichtenstein terms it, this is “an apostasy of action” (64). The violations are heinous and the consequences grave, but this apostate’s core identity is not shaken. The Samaritans and the descendants of the lost tribes, however, belong to an entirely different category. They have not merely deviated in their conduct, but have given up their personal identities as Jews. This apostasy does not spare personal status, but cuts to its heart. When absolutely no connection to Jewish roots remains, Jewishness is lost completely.[[9]](#footnote-9)

**Breaches of *Berit Avot* and *Berit Sinai***

 Before discussing the nuances of R. Chayyim’s distinction, let us pause to reflect upon its nature. R. Chayyim differentiates between a Jew who has flagrantly betrayed God’s code of behavior and one who has utterly abandoned his personal identity as a Jew. Does this not correspond exactly to breaches of *berit Sinai* and *berit Avot*, respectively? Consider R. Lichtenstein’s portrayal of the second, more penetrating type of apostasy:

There is an apostasy not of action but of person, an estrangement manifested not merely by the commission of various sins but by the complete severance of personal bonds with Jewry; by total alienation from the Jewish people and its history as a spiritual and physical community; and finally, by thorough assimilation into the mainstream Gentile society. (64)

Does this not, in the negative, describe exactly the values of Jewish peoplehood as encapsulated by *berit Avot*? Minimally, as the progeny of Avraham, a Jew is asked to maintain his existential otherness, his identification with the Jewish historical experience and his connections to the collective Jewish community. When, in addition to trampling the Code of Sinai, he has failed at all these, he has abandoned not only *berit Sinai*,but *berit Avot* as well.

 In this light, we can readily understand the consequences that each of the texts specifies. From the perspective of *Yevamot* 47b, no matter how far a Jew strays from a path of *mitzvot*, his core Jewish identity—his connection to *berit Avot*—keeps him rooted. Just as Moshe can appeal to the memory of Avraham, Yitzchak and Ya’akov when the Jewish people worship an idol (*Shemot* 32:13) and God Himself promises to recall His covenants with our forefathers when we betray *berit Sinai* (*Vayikra* 26:42), so too is the individual Jew held in place by his connection to Jewish peoplehood, even when he is guilty of “apostasy of action.”

 *Yevamot* 17a and *Chullin* 6a, on the other hand, describe a different reality. They relate to populations that descend from Jews but bear no trace of that heritage. The legacy of forefathers cannot provide an anchor when, as the *Gemara* so appropriately quotes, “they have begotten alien children,” who not only know nothing of the revelation at Sinai but are also dissociated from Jewish history and Jewish national consciousness. At least one presentation of R. Chayyim’s tradition emphasizes the loss of “otherness” vis-à-vis the gentile population.[[10]](#footnote-10) If, as his grandson R. Joseph B. Soloveitchik writes, “the Patriarchal covenant manifests itself in the sense of seclusion of the Jew; in his existential isolation… in the fact that the security of society generally does not ipso-facto provide security for the Jew” (*The Rav Speaks: Five Addresses on Israel, History, and the Jewish People*, 147), then one who blends in seamlessly with his gentile surroundings has clearly left that covenant.

**Loss of Jewishness: When and How?**

The main thrust of “Brother Daniel and the Jewish Fraternity” is to demonstrate that two categories of apostasy exist: “There is, then, a point beyond which the apostate cannot go and yet remain a Jew. The account can be overdrawn, and the rubber band can burst” (64). Regarding which category applies under what circumstances, however, R. Lichtenstein admits significant uncertainty. One possibility he entertains is to distinguish between the apostate himself and subsequent generations, in keeping with a literal reading of the verse, “For they have begotten alien children.” One born as a child of Avraham perhaps can never quite erase this mark, no matter how much he tries. Furthermore, his foothold in *berit Avot* keeps him rooted in *berit Sinai* as well and preserves his *kedushat Yisrael.* His progeny, however, to the extent that they emerge into a context that is bereft of any hint of Jewish belonging, may never lay down any ties at all.[[11]](#footnote-11)

Moreover, we may restrict the phenomenon of “total assimilation” even further. The process may take several generations or, as R. Lichtenstein alternatively raises, may be restricted to situations of “mass secession whereby not only an individual but his whole social context becomes uprooted” (67).[[12]](#footnote-12)

R. Lichtenstein seems to consider more seriously the possibility that a total apostate himself loses his Jewish identity, such that attempts to marry a Jewess would be futile. Still, while we might want to equate such an apostate, devoid of any connection to *Avot* or *Sinai*, with a full-fledged gentile, R. Lichtenstein is reluctant:

Instinctively, I think, we feel that these aliens are *not* simply like Russian Cossacks or Mexican mestizos. We feel that halakhic obligations *are* relevant to them, and that, should they return to the fold, they would represent reformed prodigal children rather than fresh converts. (65)

Thus, R. Lichtenstein proposes a third option:

If we ask, in purely descriptive terms, whether anyone born of Jewish parents is a Jew, the answer must be yes. As an epithet, the term “Jew” remains applicable to any individual who was ever endowed with Jewish status—even to a *meshumad* [apostate]…. However, if we ask whether a *meshumad* has anything of a Jewish personality and character, and whether, therefore, he continues to be endowed with the personal status of a Jew, the answer is a ringing no. He remains a Jew without Jewishness. (66-67)

To explain his model, R. Lichtenstein invokes a parallel distinction between the “identity” of the Land of Israel and its formal “sanctity.”[[13]](#footnote-13) Similarly, a total apostate has lost his formal sanctity as a Jew (*kedushat Yisrael*) and is therefore functionally a gentile with regard to Jewish law, including the inability to establish marital ties with another Jew. However, something of his original identity remains, so that he remains formally obligated in *mitzvot* and may be able to return to Judaism without a conversion process.[[14]](#footnote-14)

 Here, too, perhaps the framework provided by *berit Avot* and *berit Sinai* can help sharpen the point. The formal, halakhic sanctity of a Jew, with all of its ramifications, emanates from his participation in *berit Sinai.* As a “covenant of destiny,” to use R. Soloveitchik’s terminology (*Kol Dodi Dofek: Listen—My Beloved Knocks*, 65), it depends on willful engagement, and one who does not merely violate its terms but completely dissociates from the Jewish experience can indeed annul the covenant of Sinai—“for he has spurned God’s words and annulled His commandment” (*Bamidbar* 15:31).

*Berit Avot*, on the other hand, is a covenant grounded in the hard facts of biological roots and historical experience. As R. Soloveitchik stresses, this primordial covenant is one of compulsion, haunting the Jew no matter how hard he may try to escape (*Kol Dodi Dofek: Listen—My Beloved Knocks*, 52-55). By dint of his birth into the tribe, the apostate may never be able to shake off the bare reality of this identity, even though he leaves his spiritual destiny behind.

To recast this point in more formal terms, though the apostate ceases to be a *Yisrael*, invested with personal sanctity, he remains *zera Avraham* (an offspring of Avraham) because of his parents. Children born to him in these circumstances, however, may be neither. Not only would they not possess their own personal status, the previous generation’s diluted identity may not leave an imprint upon them either.[[15]](#footnote-15)

**So Who Is a Jew?!**

 Ultimately, R. Lichtenstein leaves many of the technical details of his position unfinished. About which apostate do we speak, and exactly what are the consequences and for whom?[[16]](#footnote-16) At first glance, this degree of ambiguity might leave us uneasy. How could a question both so elementary and so consequential—indeed, the iconic “Who is a Jew?”—not yield a more definite answer?

 But should we really be so surprised? After all, we have left the world of legal constructs, of castles in the sky made of virtual bricks and mortar, to descend into something at once murkier yet more concrete. Jewish identity as defined by *berit Sinai* is formal, measurable and predictable; Jewish identity as determined by *berit Avot* is experiential, visceral and, in some sense, unfathomable. Embedded in the very mystery of Avraham’s election is our inability to set strict criteria that define when an individual has strayed so far that he no longer shares in it.

Perhaps the best we can do is sense this movement in hindsight. We cannot always articulate exactly what it means to be Jewish. Rather, we can only know when this once-fellow “other” has rejoined the masses across the river[[17]](#footnote-17)—when our essential Jewish consciousness once again feels alone.

**For Further Thought:**

1. I direct the interested reader to the second half of “Brother Daniel and the Jewish Fraternity,” in which R. Lichtenstein complements his halakhic analysis with philosophical reflections upon the dual nature of Judaism as both a people and a religion. In addition, his essay “Conversion: Birth and Judgment” (*Leaves of Faith: The World of Jewish Living*, 189-205), on which I relied heavily in earlier *shiurim*, closes with a similar note. Both of these essays have had significant influence on my own thinking regarding *berit Avot* and *berit Sinai*. How do they compare to each other?

2. Are the phenomena of the Samaritans and the lost tribes truly equivalent? While the lost tribes, of course, were full-fledged Jews, the Samaritan population descended from converts who may never have fully integrated into the mainstream Jewish community (see, for instance, *Nidda* 56b and [*shiur* #14](http://vbm-torah.org/archive/sinai/14sinai.htm), “For Further Thought,” #2). In what ways might it be easier for the Samaritans to lose their Jewish identity than for native Jews?

**Questions or Comments?**

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

1. *Judaism: A Quarterly Journal of Jewish Life and Thought*, 12:3 (Summer 1963), 260-280; reprinted in *Leaves of Faith: The World of Jewish Living*, 57-83. [↑](#footnote-ref-1)
2. See, for instance, *Yevamot* 90b. [↑](#footnote-ref-2)
3. Compare to Ritva 22a. R. Pinchas Horowitz (*Sefer Ha-mikna*, *Kunterus Acharon*, *Even Ha-ezer* 44:10) offers a different solution for Shmuel. He suggests that the need to consider the remote possibility that this apparent gentile might descend from the lost tribes is only rabbinic, and therefore the Sages were able to overlook it. [↑](#footnote-ref-3)
4. Quoted by *Ittur*, letter “*kuf*”—*Kiddushin* 78a [↑](#footnote-ref-4)
5. See *Ittur*, letter “*kuf*”—*Kiddushin* 78a, who quotes an early responsum. Also see *Tur*, *Even Ha-ezer* 44. [↑](#footnote-ref-5)
6. Even this minority opinion seems to assume that an apostate would not need any formal re-initiation to Judaism (also see note #14). Repentance is sufficient. [↑](#footnote-ref-6)
7. See *Reshimot Shi’urei Maran Ha-Grid Ha-Levi*, *Yevamot*, 211. [↑](#footnote-ref-7)
8. Also see *Shakh, Yoreh De’a* 159:5, who argues strongly for this position. [↑](#footnote-ref-8)
9. The Meiri proposes a similar distinction. Commenting on *Yevamot* 16b, he writes that “from here, some of my mentors hesitantly say that any apostate in the present day is a complete gentile, and we do not worry about his marriage attempts.” Later (22a), quoting a similar position from the *Geonim* and challenged by 47b, he adds: “It seems to me that [the *Geonim*] are relying on what [the Sages] said… regarding the ten tribes, that the rabbinic courts of their generation made them into absolute gentiles **because of the degree to which they assimilated into them**. These *Geonim* ruled that in the present age as well, [apostates] are assimilated completely. This is a support for what my mentors wrote.” [↑](#footnote-ref-9)
10. See *Reshimot Shi’urei Maran Ha-Grid Ha-Levi*, *Yevamot*, 211. [↑](#footnote-ref-10)
11. Compare to *Maggid Mishneh*, *Hilkhot Ishut* 4:15 and *Shulchan Arukh*, *Even Ha-ezer* 44:9. However, as noted above regarding R. Yosef Karo, they likely do not see any possibility for total loss of Jewish identity. [↑](#footnote-ref-11)
12. This last point may depend on whether we view assimilation as an active or passive process. Conventionally, we presume that assimilation occurs passively, and therefore the unaffiliated are most at risk. One who is not connected to other Jews and does not assert his or her Jewish otherness will ultimately succumb, like a lone victim in quicksand, to the overpowering forces of his surroundings. However, according to R. Lichtenstein’s suggestion, this may not be enough to eradicate Jewish identity. Only those who actively uproot their Jewish identity—perhaps in keeping with the formulation of “they have **betrayed** God,” and possibly contingent on the collective decision of an entire community—lose all connection to Jewish peoplehood. [↑](#footnote-ref-12)
13. We will explore this distinction further in future *shiurim*. [↑](#footnote-ref-13)
14. In a footnote, R. Lichtenstein expresses uncertainty about this last point. The lesser apostate “of action,” it should be noted, definitely does not require any conversion ritual upon returning to Judaism. The Ritva, however, cites a rabbinic requirement to symbolically immerse in a *mikve* (*Yevamot* 47b). [↑](#footnote-ref-14)
15. This logic resembles a point I heard from R. Lichtenstein regarding a *challal* (defiled *kohen*), who is equivalent to a non-*kohen* for most matters but whose ritual service in the Temple is, after the fact, valid (see *Kiddushin* 66b). *Keli Chemda* (*Parashat Emor*, 1) suggests that a *challal* has lost the personal status of being a “*kohen*” but retains the status of being a “*ben Aharon*” (a child of *kohanim*), which validates his service. If so, R. Lichtenstein adds, this may be limited to a first-generation *challal*, whose father, at least, is a legitimate *kohen*. A second-generation *challal*, however, may not have either designation. [↑](#footnote-ref-15)
16. R. Chayyim is quoted as referencing pure descendants of Spanish *conversos* as an example of progeny that would not be Jewish, despite their lineage (*Reshimot Shi’urei Maran Ha-Grid Ha-Levi*, *Yevamot*, 211). On a personal note, I found myself pondering the limits of Jewishness when an Italian co-worker was struggling with a disease that has a high prevalence among Jews. When I joked that she must be carrying Jewish genes, she explained that her maternal grandmother was indeed Jewish but had married into a strongly Italian community. I wondered about my co-worker’s two daughters, who have classic Italian names and would likely never feel any kinship with the Jewish community: Would their children be Jews? [↑](#footnote-ref-16)
17. See *Bereishit Rabba*, *Lekh* *Lekha* 42:13, regarding the phrase “*Avram Ha-ivri*” (*Bereishit* 14:13): “Rabbi Yehuda says, ‘the entire world is on one side (*mei-eiver echad*) and [Avraham] is on another side.’” [↑](#footnote-ref-17)