YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha and Israeli History**

**Rav Aviad Tabory**

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Dedicated in memory of Rabbi Jack Sable z”l and

Ambassador Yehuda Avner z”l

By Debbie and David Sable

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**Shiur#03: 27** **October, 1958**

**Who is a Jew?**

In the early days of the State of Israel, the definition of “who is a Jew” had not yet been decided, and it was only a matter of time until it arose. Zerach Warhaftig, a signatory of the Declaration of Independence and a minister in Ben-Gurion’s cabinet wrote that, in the beginning, it was assumed the status quo would remain: Jewish identity was primarily religious and hence should be based upon Jewish law.[[1]](#footnote-1)

In March 1958, Israel’s minister of internal affairs, Israel Bar-Yehuda, decided that parents could declare their children Jewish even in cases where the mother was not. The decision created an uproar in the country and led to a coalition crisis. As a result, Ben-Gurion decided to establish a committee consisting himself and two other ministers.[[2]](#footnote-2) The committee was given the task to examine the rules for the registration of children of mixed marriages. They were also encouraged to solicit the opinions of Jewish scholars both in Israel and abroad on this subject before making their decision. The government decided to focus on children and not on adults. In the latter case, it was decided that to be registered as a Jew, it was sufficient for an adult to “feel” Jewish.

On 27 October, 1958, a letter was sent out to over 50 leading poets, scholars and rabbis, asking them to share their views on the following question:

How should the State of Israel register a child in a case where both the non-Jewish mother and Jewish father wish the child to be registered as Jewish?[[3]](#footnote-3)

In total, the committee received 46 written responses.[[4]](#footnote-4)

As might be expected, all the Orthodox rabbis and scholars were adamant that this was a religious question and should therefore be decided based on Jewish law.[[5]](#footnote-5) The response of the Lubavitcher Rebbe, Rav Menachem Mendel Schneerson, is typical:

My opinion is absolutely clear, following the Torah and the tradition accepted for generations, that in these matters there can be no validity whatsoever to a verbal declaration expressing the desire to register as a Jew. Such a declaration has no power to change the reality.

According to the Torah and the tradition throughout the ages, a Jew is a person born to a Jewish mother, or a convert who had been converted following the procedure laid down in the authoritative codes of Judaism from ancient times down to the *Shulchan Arukh*.[[6]](#footnote-6)

Rav Joseph B. Soloveitchik responded in a joint letter with his friend and colleague Rav Hayyim Heller, stating the obvious but adding their concern:[[7]](#footnote-7)

We are indeed perplexed that the State of Israel now seeks to hew down our traditional branches and thereby smear the ancient glory of Israel, which has long been sanctified through spilt blood and sufferings of preceding generations… Will the State of Israel be built up by the destruction of the sanctity of the Jewish people?

What is the source for following the mother rather than the father (matrilineal descent) regarding the question of how to determine a child’s religion?

The Gemara in *Kiddushin* (68b) asks:

From where do we derive that her (a Jewish woman who marries a non-Jew) offspring is like her?

Rav Yochanan in the name of Rabbi Shimon ben Yochai answers the question by quoting a text from *Devarim* (7:3-4) which prohibits intermarriage:

Your daughter you shall not give to his son…for he will turn away your son from following Me.

He then argues the following:

Since the verse is concerned that after one’s daughter marries a non-Jew, the father will lead his children away from the service of God, this indicates that **your son,** i.e., your grandson, **from a Jewish woman is called “your son”** by the Torah, **but your son from a non-Jewish woman is not called “your son,” but her son.**

Rav Baruch Epstein in his commentary[[8]](#footnote-8) on *Chumash* explains the Gemara’s proof. After the Torah prohibits intermarriage for both men and women, it explains the danger and the result of such a marriage: “He will turn your son away…” Surely, the Torah should have used plural language: **they** will turn your **sons** away, thus referring to both your son and daughter marrying non-Jews. Therefore, the understanding is that the Torah accepts that the son of a non-Jewish woman is not considered “your son” anymore.

The Gemara in *Yevamot* (45a) rules that the offspring of a non-Jew or a slave who engages in intercourse with a Jewish woman is Jewish, and he or she may marry into the congregation of Israel.

However, according to other sources, it is unclear if this practice was kept in early times. In *Vayikra* (24:10-11) we read:

The son of an Israelite woman — and he was the son of an Egyptian man — went out among the Israelites, and they quarreled in the camp: this son of the Israelite woman and an Israelite man. And the son of the Israelite woman pronounced the [Divine] Name and cursed….”

According to *midrash halakha*,[[9]](#footnote-9) the “son of the Israelite woman” and the “Egyptian man” cursed God after Moshe’s court ruled that he was not entitled to inherit land in Israel as an Israelite. The Midrash understands that having an Israelite mother does not make one Jewish if the father is Egyptian. The Midrash even adds that the “son of the Israelite woman” converted to Judaism.

The Ramban (ad loc.) questions the Midrash’s interpretation, as it contradicts the normative *halakha* that Jewish identity follows the mother. He quotes an opinion in the name of French sages (*Tzarfatim*) who claim that before the Torah was given at Mt. Sinai, the custom was to define Jewish identity by the father, as is implied by the Midrash.

Ramban disagrees and argues that the Torah’s rule of following the mother was always in effect. He understands the Midrash as referring to several laws in Jewish law in which we follow the father’s lineage, e.g. inheritance laws and the priesthood. As for the Midrash’s reference to conversion, Ramban explains that this was not real conversion but rather his decision to follow his mother’s family rather than his non-Jewish father’s family.

The most direct source from biblical times that the practice was to follow the mother’s side can be found in the Book of *Ezra* (10:1-4).

While Ezra was praying and confessing, weeping and throwing himself down before the house of God, a large crowd of Israelites — men, women and children — gathered around him. They too wept bitterly. Then Shekhanya son of Yechiel, one of the descendants of Eilam, said to Ezra, “We have been unfaithful to our God by marrying foreign women from the peoples around us. But in spite of this, there is still hope for Israel.Now let us make a covenant before our God **to send away all these women and their children**, in accordance with the counsel of my lord and of those who fear the commands of our God. Let it be done according to the Torah. Rise up; this matter is in your hands. We will support you, so take courage and do it.”

The covenant made by Ezra mentions sending away the non-Jewish women and their children. The children of non-Jewish men are not mentioned, so presumably they remained within the Jewish community.

Rav Yechiel Weinberg, a prominent leading Posek of the 20th century, also responded to Ben-Gurion’s letter. In his letter, he suggests reasons for the Torah’s ruling that we follow the mother for deciding who is a Jew.[[10]](#footnote-10)

According to the laws of the Torah, Jewish identity follows the mother. We do not claim to know the reasons of the Torah’s laws, yet suggestions have been made as to the reason for this law. Some say that it is a biological reason, as the child develops in its mother’s womb. Some say that it has a moral reason, since the mother and her constant influence determine the education of the child ... and others see the reason as the unquestionable certainty that the child is born to his mother. However, whatever the reason may be, it is not the rational element but rather the religious element that was the deciding factor in shaping the character of the nation and shaping the Hebrew family.

At least twice more in later years[[11]](#footnote-11) the question of defining “who is a Jew” created major crises, both in the State in Israel and abroad. Rav Immanuel Jakobovits, Chief Rabbi of the British Commonwealth at the time, describes the uniqueness of our question:[[12]](#footnote-12)

No single issue has epitomized the challenge to traditional Jewish norms created by the restoration of Jewish statehood more than this ongoing debate on the definition of Jewish personal status.

Why is this true? What makes this issue so compelling and so unique? Why does the “restoration of Jewish statehood” have such an impact on the “who is a Jew” question?

I believe that there are two main reasons for this:

Firstly, the question of who is a Jew is not just an internal problem of the State of Israel; rather, it affects Jews around the world. The decisions of Israel’s government and courts threatened to split the Jewish world.

The Lubavitcher Rebbe writes in his letter:

The question of registration, or however it may be described, is not a matter confined to Israel alone. It goes without saying — as explained in your letter — that no one may raise a barrier between the Jews of Israel and those of the Diaspora. On the contrary, all our brethren, wherever they may be, have constituted one people from the moment of their emergence, in spite of their dispersion in all the corners of the world. Consequently, the solution of the problem must be one that is acceptable to all members of the Jewish people everywhere…

Secondly, there was deep concern within the Jewish world that the State of Israel was creating a new Judaism. The fear was that secular Zionism was attempting to redefine Jewish nationality. Judaism had always been defined as both religion and nationality. Throughout the long years of exile, it was the religious aspect that kept our Jewish identity. Would the new State of Israel change that? Were new criteria developing to define the Jewish people that would reject the central place of religion?

I believe HaRav Aharon Lichtenstein addresses this issue in his important article about Brother Daniel.[[13]](#footnote-13) Brother Daniel (Shmuel Oswald Rufeisen, 1922–1998) was born to a Jewish family in Poland. While hiding from the Nazis, he converted to Christianity. In the 1950s, Rufeisen applied for [Israeli](https://en.wikipedia.org/wiki/Israel) citizenship. He claimed that although he was not an observant Jew, according to Jewish law, he was still considered Jewish.

The Israeli government denied Brother Daniel’s request on the grounds that he had converted to [Christianity](https://en.wikipedia.org/wiki/Christianity). The case reached the [Supreme Court](https://en.wikipedia.org/wiki/Supreme_Court_of_Israel), and in 1962 the Court upheld the government's decision: any Jew converting to another religion would lose their ancestral right to immigrate to Israel.

In his introduction, Rav Lichtenstein points out the changes that the State of Israel brought to the ongoing discussion about who is a Jew:

The existence of the State has radically changed the character of the problem itself. Its establishment opened up the possibility that political and geographic elements might supplement or supplant racial and religious criteria in determining membership in the community of Israel. The possibility was of course two-edged. On the one hand, it might be contended that Jews living in Israel were somehow “more Jewish” than their co-religionists elsewhere… On the other hand, arguing for inclusion rather than exclusion, one might hold that non-Jewish residents of the state are also, in a sense, within the “community of Israel.”

Today, in the 21st century, this is still a major issue within the State of Israel and the Diaspora.

1. In his book *Chuka Le-Yisrael Dat U-medina,* pp. 153-178. [↑](#footnote-ref-1)
2. Ben-Gurion’s son had married a non-Jewish woman, and it therefore seems that he may have taken a personal interest in this matter. See Anita Shapira, *Ben-Gurion: Demuto shel Manhig,*pp. 127-129. [↑](#footnote-ref-2)
3. The entire letter can be found online at <https://toldotofakim.cet.ac.il/ShowItem.aspx?ItemID=a7e56358-9249-4e6a-84e8-9047e8fdab14&lang=HEB>. [↑](#footnote-ref-3)
4. All the responses were collected and published by the government in a collection called *Kovet*z *Mihu Yehudi*. A summary of all the answers can be found in Avraham Korman’s book *Yehudi: Mihu U-mahu*. [↑](#footnote-ref-4)
5. The majority of responses agreed that the definition of who is a Jew is a religious one. Ironically, the responses were never addressed properly by the government. [↑](#footnote-ref-5)
6. The original letter was published in the journal *Ha-pardes*, Year 34, I, p. 34. It can also be found in English at: <https://www.chabad.org/therebbe/letters/default_cdo/aid/2064625/jewish/David-Ben-Gurion-Asks-Who-is-a-Jew.htm>. [↑](#footnote-ref-6)
7. A complete translation of the letter can be found in Rav Soloveitchik’s *Community, Covenant and Commitment*, edited by Rav Helfgot, pp. 168-169. [↑](#footnote-ref-7)
8. *Torah Temima*, *Devarim* 7:3-4: “Do not intermarry with them: your daughter you shall not give to his son, nor take his daughter for your son. For he will turn away your son from following Me to serve other gods, and the Lord’s anger will burn against you and will quickly destroy you.” [↑](#footnote-ref-8)
9. *Sifra, Emor* 4. [↑](#footnote-ref-9)
10. The entire letter was published in his book *Li-frakim,* pp.301-311. [↑](#footnote-ref-10)
11. In 1968, the Shalit affair arose. Benjamin Shalit, an Israeli officer, married a non-Jewish woman. In 1970, the Supreme Court ruled that his children could be registered as Jews. Throughout the 70s, a major crisis erupted within the government regarding the question of recognizing Reform and Conservative conversions. [↑](#footnote-ref-11)
12. Immanuel Jakobovits, *If Only My People*, p.193. [↑](#footnote-ref-12)
13. “Brother Daniel and the Jewish Fraternity,” *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*, pp. 57-83. [↑](#footnote-ref-13)