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All Jews are Jews by Birth

Biblical and Rabbinic Judaism agree, that anyone born to the appropriate Jewish parent – is Jewish. To most Jews, it sounds quite reasonable for Jewishness to derive from birth. However, such a determination is far from self-evident. Consider a counter-example: if a person was born on a kibbutz, and her two parents are members of the kibbutz, she is not automatically a member. Rather, upon reaching a certain age, she must decide if she wishes to apply for membership. If she applies, her application comes up for discussion by the kibbutz assembly, who then decide the matter by a vote. While it is reasonable to assume that a child born and grown on the kibbutz will be accepted for membership if she applies, it is not automatic. The important point (in the current context) is, that her membership is contingent upon at least two decisions: her decision to apply, and the assembly's decision to accept her. In contrast, Jewishness is not contingent upon any person's decision, but is regarded by tradition as a 'fact of birth'. The sources of this self-understanding are very ancient: in the Bible, the Israelites are the "Children of Israel", i.e., the lineal descendents of the Patriarch Jacob and his twelve sons. In the bible, then, the People of Israel are made up of persons born into a (very) extended family.

Some notions accepted in Biblical times were abrogated or modified by the Oral Torah (*Torah she-b'al peh*); significantly, the concept of the familial nature of Jewishness was not only retained, but also even reinforced. Not only is Jewishness acquired by birth, according to Rabbinic tradition, but it is permanent and irrevocable. In other words, if a person born as a Jew freely chooses to relinquish all contacts with his Jewishness, and (furthermore) to join another faith community out of sincere and deep belief in a totally non-Jewish theology (e.g., Hare Krishna) – that person nevertheless remains a Jew, in the eyes of halakha. He is an apostate – but, an apostate *Jew*. The main practical halakhic implications of this are twofold.

First: If at any point this person decides to join the Jewish community – all he has to do is to recant, and resume Jewish praxis. No conversion is required, for in the eyes of halakha he has 'really' been Jewish all along.¹

Second: If our devout Hare Krishna apostate places a ring on the finger of a Jewess in the presence of two valid Jewish witnesses and while doing so recites the halakhic formula: "You are betrothed to me by this ring according to the law of Moses and Israel" – the couple is now halakhically man and wife.² As Maimonides writes:

If an apostate Israelite performs a betrothal, even if he has freely chosen an alien religion, the betrothal is fully valid and [for the wife to be released from that union] she requires a bill of divorce.³

This is also the clear-cut ruling of rabbi Joseph Caro in his *Shulhan 'Arukh*.⁴

But ... How do Maimonides and rabbi Caro know this? Surprisingly, it is nowhere stated directly in the Talmud, that an apostate Jew remains a Jew. Rather, both Maimonides and Caro derive the absolutely non-contingent Jewishness of a Jew by birth who willingly abandoned Judaism, from the Talmudic ruling with regard to a Gentile who became a Jew and immediately recanted.⁵ Rabbi

¹ This is the original halakha. In medieval times it became customary in Europe for returning apostates to undergo a ceremony analogous to *giyyur*, although this was not formally necessary. Cf. *Shulhan 'Arukh Yoreh De'ah* 268:12.

² A Jewish marriage can be contracted only between a man and a woman, both of whom are Jewish.

³ *Hilkhot Ishut* 4:15.

⁴ *Shulhan 'Arukh Even HaEzer* 44:9.

⁵ Cf. Yevamot 47b. For this being the source of Maimonides' ruling, cf. *Maggid Mishne ad.loc.* For this being the source of rabbi Caro's ruling, cf. the following commentators *ad.loc.*: *Be'er HaGolah* #90; *Beiur HaGra* #16 (who concurs and adds a second source, Bekhorot 30b, that also relates to a recanting *ger*). Interestingly, rabbi Moshe

Shlomo Cohen writes,⁶ that this is an *a-fortiori* (*qal va-homer*) inference: if a person who was not born as a Jew, but became a Jew via *giyyur* and then reverted to a Gentile life and faith, is nevertheless halakhically an apostate Jew and can perform a valid betrothal – then surely a person who was born as a Jew and chooses a non-Jewish life and faith is still halakhically Jewish (albeit, an apostate).

But in fact, postulating such a hierarchy is not logically or textually necessary. Rather, what the Tannaitic text states is, that immediately after *giyyur* the status of the former Gentile is *equivalent* to that of a Jew by birth. Here is the entire text, a Baraita cited in Yevamot 47a-b:⁷

Our Rabbis taught: If a prospective proselyte comes to undergo *giyyur* in the present era, we/they⁸ say to him: “What did you see that made you come to seek *giyyur*? Do you not know that nowadays Israel are afflicted, oppressed, downtrodden and harassed and that hardships come upon them?” If he responds: “I know, and I am unworthy [of joining them],” we accept him immediately. And we inform him of some minor commandments and some major commandments. And we inform him of the sin [of the neglect of the commandments] of Gleanings, of the Forgotten Sheaf, of the Corner, and of the Poor Man's Tithe⁹. And we inform him of the punishment for the transgression of the commandments. We say to him: “Be aware, that before you reached this situation, if you ate [forbidden] suet you were not punishable by Karet [extinction by Heaven]; if you profaned the Sabbath, you were not punishable by stoning; but now [after *giyyur*], if you eat suet, you will be punished by Karet, and if you profane the Sabbath, you will be punished by stoning.” Just as we inform him of the punishments for [transgressing] the commandments, we inform him of the rewards [for observance]. We say to him: “Know, that the world to come is not made except for the righteous. And, in the present era the Jewish people cannot receive an abundance of good or an abundance of calamity.” We do not overwhelm him, nor are we strict with him. Once he received,¹⁰ we circumcise him immediately. If shreds that impede a valid circumcision remain, we circumcise him again. Once he has healed, we immerse him immediately. And two rabbinic scholars stand over him, and inform him of some minor commandments and some major commandments. Once he has immersed and come up, he is like a Jew in every respect.¹¹

The Talmudic sages ask with regard to the phrase “Once he has immersed and come up, he is like a Jew in every respect” – “What is the implication of this statement?” and answer:

Feinstein holds that the impossibility of a born Jew changing his identity and becoming a Gentile requires no source text at all, as it is absolutely self-evident (Responsa *Iggerot Moshe Even Ha'Ezer* IV:83). However, an examination of the history of halakha reveals that the matter was not regarded as self-evident. Rather, it was seriously debated in early medieval times and there were Geonic authorities who held that if a born Jew abandons Torah to the extent of joining another religion and publicly desecrating the Shabbat, he is no longer a Jew even for purposes of marriage (cf. Responsa of *Rashi* #169; Responsa *Tashbetz* III:43; Responsa *Yakhin uBoaz* II:31).

⁶ Responsa *MaHarShaKh*, 3:102. Rabbi Cohen lived in the 16th century Ottoman Empire.

⁷ Translated by Sagi and Zohar in *Transforming Identity* (Continuum Press, London and New York, 2007).

⁸ The grammatical structure of the talmudic text is ambiguous regarding the subject addressing the prospective proselyte: the phrase *Omrin lo* [say to him] is in present tense plural, but the subject can equally be translated as we or you (pl.), or they. Our use of “we” is not definitive.

⁹ These are commandments instructing farmers to leave portions of the crop for the poor. Cf., e.g., Leviticus 19,7 and 23,22.

¹⁰ The Hebrew word *Qibbel* is ambiguous. We translate it here as “receive,” but it can also be translated as “agrees” or “accepts.” This ambiguity enables multiple interpretations, as Avi Sagi and I discuss in *Transforming Identity*.

¹¹ Yevamot 47b. Our translation here is based on the Schottenstein edition of the Talmud Bavli, New York, Mesorah Publications, 1999. However, we have emended the translation in several places to give what we see as a better rendition of the sense of the original text.

[The implication is], that if the proselyte reverts [to a Gentile life], and performs a ceremony of *qiddushin* [halakhic betrothal] with a Jewish woman, we regard him as an apostate Jew, and the *qiddushin* are valid.¹²

Qiddushin is a ceremony in which a Jewish woman becomes betrothed to a Jewish man, a condition that continues until the death of one of the partners or their divorce. According to Talmudic halakha, if one of the partners to such a ceremony is not Jewish, the ceremony has no effect whatsoever. To state that a person following a totally Gentile lifestyle can be a partner to a valid *qiddushin* is equivalent to stating that she is unconditionally a Jewess. The Talmud thus indicates that our Baraita is a statement about membership in the Jewish collective. Any person who has undergone a process of *giyyur* is irrevocably a member of the Jewish collective, and is equal to a person biologically born as a Jew; both remain a Jew regardless of how they behave.

A similar position is found in tractate Bekhorot, in the framework of the Talmudic interpretation of a Baraita originating in Tosefta Demai. The Tosefta states:

A proselyte who took upon himself all matters of Torah, and is suspected [of non-observance] with regard to one matter, even with regard to the entire Torah – behold, he is like an Israelite apostate.¹³

And how is he like a Jewish apostate? The Talmud answers thus: “If he performs *qiddushin*, his *qiddushin* is valid”.¹⁴ On the basis of Bekhorot alone, one might imagine that perhaps some minimal period of time must elapse between the *giyyur* and the apostasy, for the person to be considered irrevocably Jewish. However, Yevamot makes it very clear, that Jewishness becomes irrevocable immediately upon the completion of the *giyyur* ritual “Once he has immersed and come up, he is like a Jew in every respect”. In other words, if upon emerging from the waters of the *miqve* our newly-Jewish acquaintance resonates to the drumbeat of an idolatrous procession in the adjacent thoroughfare, rushes outside, joins the procession and disappears from our view never to be seen again – he remains a Jew for evermore.

Maimonides illustrates this by referring to the case of King Solomon’s idolatrous wives. He explains, that (*pace* the plain meaning of the biblical text¹⁵) Solomon never married non-Jewish wives. Rather, every time he found a Gentile woman whom he wished to marry, he convened an *ad hoc* ‘court’ of three laymen who conducted a *giyyur* ritual through which the woman became a Jew – and he then married her. True, her only motivation for *giyyur* was for the sake of marriage, she knew nothing about any of the commandments, and – furthermore – devoutly believed in alien gods before, during and after undergoing *giyyur*. Her subsequent behavior confirmed this, for after her *giyyur* she continued to worship these gods, using her husband’s resources to construct and maintain sites of idolatrous activity. Nevertheless, she was a Jewess, and therefore her marriage to King Solomon was completely valid. Here is how Maimonides puts it:

Do not imagine that Samson, the savior of Israel, or Solomon, king of Israel, who was called “the beloved of the Lord,” married foreign women while they were still Gentiles. Rather, the secret of this matter is as follows... since Samson had women undergo *giyyur* and then married them; and Solomon had women undergo *giyyur* and then married them. And it is known that they became Jewish only for a purpose, and their *giyyur* was in defiance of the [official] court. Therefore, Scripture considered them as-if Gentiles. In addition, their subsequent behavior revealed their original mindset, that they worshipped their alien gods. And they constructed high-places for those gods, and Scripture attributed to Solomon as-if he had built them, as it says (Second Kings XI:7): “Then did Solomon build a high-place”.¹⁶

¹² Yevamot 47b.

¹³ Tosefta Demai 2:4 (p. 69 in the Lieberman edition). Our translation.

¹⁴ Bekhorot 30b.

¹⁵ Cf. Second Kings XI.

¹⁶ *Mishne Torah, Hilkhot Issurei Biah*, XIII:14-16.

According to Maimonides, it is worse to be involved in an intermarriage than to be married to an apostate Jewess. Therefore, *giyyur* of a person who never even considered abandoning pagan belief and worship and who becomes a Jew only for the sake of marriage is preferable, if the concrete alternative is a Jew living with that same person without *giyyur*. Clearly, this entire scenario is possible only if a ritual of *giyyur* performed under such circumstances is efficacious – and Maimonides stresses that such is indeed the case:

A proselyte whose motives were not investigated or was not informed about the commandments and their desserts, but was circumcised and immersed in the presence of three laymen, is a proselyte. Even if it was known that his becoming a proselyte is for some utilitarian purpose, he has exited from the Gentile group once he was circumcised and immersed. However, he should be regarded with reservation until his righteousness becomes apparent. Even if he once again worships idols, he is as an apostate Israelite, whose betrothal is valid. And we are commanded to return his lost property to him. Because he immersed, he is an Israelite. That is why Samson and Solomon kept their wives, even though their wives' secret was manifest.¹⁷

It is obvious from this text that once a person underwent *giyyur*, her Jewishness is completely non-contingent upon her subsequent praxis or beliefs, or indeed, upon her praxis and beliefs at the very moment of *giyyur*. It is therefore clear that whatever the phrase “he should be regarded with reservation” means,¹⁸ it does not refer to the existence of any doubt regarding the validity of the *giyyur* itself: if such doubt were to exist, no valid *qiddushin* could have occurred, and Maimonides would have failed to rescue Samson and Solomon from the charge of intermarriage. Indeed, if the validity of the *giyyur* of these women was in any way contingent upon on their behavior or beliefs during or after their *giyyur*, they would have been considered Gentiles because “their secret was manifest” namely, at no stage did they forsake their idolatry.

To make my argument as strongly as the sources warrant: at no point between the Talmudic period and the 19th century did any rabbi rule that an individual proselyte's sinful behavior or pagan beliefs after immersion for *giyyur* would invalidate his Jewishness. Furthermore, at no point between the Talmudic period and the 19th century did any rabbi rule that an individual proselyte's inappropriate motivation, inner disposition or beliefs during the process of *giyyur* itself – would invalidate the efficacy of the ritual.¹⁹

Giyjur as Birth

As I noted above, the irrevocability of *giyyur* is consonant with the general halakhic position regarding the autonomy of ritual acts affecting personal status. According to all major halakhic sources, the halakhic efficacy of any specific ritual process of *giyyur* is dependent only upon the empirically verifiable performance of certain acts (or: occurrence of certain events).

¹⁷ Ibid., XIII:17.

¹⁸ Much ink has been spilled by rabbis in recent times to explain this. For our interpretation, see *Transforming Identity* pp. 168-169.

¹⁹ For the sake of clarity: this is true not only with regard to those rabbis who held that a valid *giyyur* is possible without *qabbalat mitzvot*, but also with regard to those rabbis who held that *qabbalat mitzvot* is a *sine qua non* for a valid *giyyur*. This is so because, however those rabbis understood that phrase, they never identified it as an internal disposition but as an event that is empirically verifiable at the moment it occurs. Some understandings of that event were: the proselyte's reception of information about the commandments, as conveyed to him by the court; the proselyte's willingness to become a Jew; the proselyte's commitment to proceed with the *giyyur* ritual (= circumcision and immersion) after hearing about the commandments; the proselyte's declaration of commitment to observe the commandments. See: *Transforming Identity*, chapters 9, 10, 11, 12.

Furthermore, I noted that with regard to *giyyur* all major halakhic sources concur that the same text(s) generate the irrevocability of the Jewish status of a *ger* and the Jewish status of a Jew-by-birth. Therefore, there is an inseparable halakhic link between the (irrevocable) Jewishness of a proselyte and the (irrevocable) Jewishness of a Jew by birth, whatever they believe and however they act.²⁰

This inseparable link is not merely a formal correlation, but derives from the core metaphor of Jewishness as kinship, in which membership is acquired in only one way: birth. For a person to be a Jew, he must be born into that status. That is the basis for the religious-cultural halakhic logic, of considering *giyyur* as equivalent to birth. Indeed, the rabbis explicitly compare a *ger* to a newly-born Jew, stating: “A proselyte who has undergone *giyyur* is as a newborn child.”²¹ This equivalence of *giyyur* with birth applies not only to the irrevocability of a proselyte’s Jewishness – but also to other very basic aspects of his formal status. As a newly-born person, all the proselyte’s prior kinship ties are regarded by halakha as dissolved from the moment of *giyyur*. If several members of a Gentile family underwent *giyyur*, each one is now regarded as a discrete, unrelated individual. This entails powerful halakhic consequences, such as:

- 1) The [newly unrelated] proselytes were allowed by Torah law (*de-Oraita*) to marry one another: the [biological] father might marry his daughter, the mother her son, a brother his sister, and so forth.²²
- 2) If a father and son both underwent *giyyur*, the son does not inherit his father upon the latter’s death.²³
- 3) While according to halakha the testimony of relatives is not acceptable in court, persons who were related prior to *giyyur* may [after undergoing *giyyur*] testify in court on behalf of each other.²⁴

The radical implications of these laws can hardly be overemphasized, for they subvert the most basic foundations of conventional social order and of morality by upsetting family ties ostensibly grounded in biological reality. Undoubtedly, this is a high price to pay. But since Torah regards Jewishness as deriving only from birth, the only other avenue open to halakha would be, total rejection of the possibility of *giyyur*. But the G-d of Israel loves proselytes; indeed, He is characterized as *Ohev Ger* (*Deuteronomy/Devarim* 10:18). Therefore, *giyyur* IS possible – and it is possible only as birth into the Jewish kinship. Thus, a former Gentile who immerses in water for the sake of *giyyur* is transformed and recreated. Emerging from the waters of the *miqveh*, he is newly-born, as an infant emerging from a mother’s womb – a *Jewish* mother’s womb. That is why he is as irrevocably Jewish as is a Jew by [biological] birth: “Once he has immersed and come up, he is like a Jew in every respect”. Birth cannot be retroactively annulled.

²⁰ Undermining the status of a person who underwent *giyyur* because of how he conducts himself logically entails undermining the status of a person who was born to a Jewish mother, because of how he conducts himself. Indeed, it is my personal opinion that this is the ‘deep logic’ that underlies the common custom in *haredi* circles to reject the propriety of marriage between “frum from birth” *haredim* and Jews who were born to non-haredi families and later chose to adhere to a haredi lifestyle.

²¹ *ger she-nitgayyer ke-qatan she-nolad* -- Yevamot 22a, and parallel texts.

²² It should be noted that such marriages between relatives of the first degree have been forbidden by rabbinic enactment. However, marriages between relatives of lesser closeness are permitted to proselytes, although they are forbidden between Jews born to a Jewish mother. On all this see *Code of Maimonides*, Laws of Forbidden Intercourse, 14:11 and ff.

²³ See *Code of Maimonides*, Laws of Original Acquisition and Gifts 1:6.

²⁴ See *Code of Maimonides*, Laws of Evidence 13:2.