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## Who Is a Jew?: Reflections on History, Religion, and Culture

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Who Is a Jew?  
Reflections on History, Religion,  
and Culture

Studies in Jewish Civilization  
Volume 25

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Who Is a Jew?  
Reflections on History, Religion,  
and Culture

Studies in Jewish Civilization  
Volume 25

Editor:  
Leonard J. Greenspoon

The Klutznick Chair in Jewish Civilization

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# Acknowledgments

The 25th Annual Klutznick-Harris Symposium took place on October 28 and October 29, 2012, in Omaha, Nebraska. The title of the symposium, from which this volume takes its title, is “Who Is a Jew? Reflections on History, Religion, and Culture.”

As it happened, several symposium participants did not submit papers for this volume. Although their absence is regrettable, three scholars—Annalise E. Glauz-Todrank, Judith Neulander, and Ori Soltes—contributed papers that we would otherwise not be able to include in this collection.

Among our honored guests was Menachem Mor, University of Haifa, the first holder of the Klutznick Chair. A number of friends from his days as Klutznick Chair attended a special luncheon for him on the Sunday of the symposium.

This symposium attracted substantial, enthusiastic audiences consisting of students, Creighton University faculty and staff, members of the Jewish community, and other scholars. To put it another way, we may never settle on an answer (if there is one) to the question, “Who Is a Jew,” but everyone in town knew where to go for the best discussion and analysis of this perennial issue.

As in past years, the success of this symposium owed much to the generosity, wisdom, and patience of two of my colleagues, Ronald Simkins, director of the Kripke Center for the Study of Religion and Society at Creighton University; and Jean Cahan, director of the Harris Center for Judaic Studies at the University of Nebraska-Lincoln. We were once again happy to have the knowledgeable support of Pam Yenko, who worked with both Ron and me. We did not know it at the time, but this was to be Pam’s last symposium; she was subsequently hired by our college’s dean.

Colleen Hastings, whom we hired from among several strong candidates as our new administrative assistant, has been invaluable in the preparation of this volume. Were this not a volume of Jewish studies, I would be tempted to say that Colleen has acquitted herself well in this initial “baptism by fire.” Equally efficient was Mary Sue Grossman, who is affiliated with the Center for Jewish Life (part of the Jewish Federation of Omaha).

This volume is the fifth in our ongoing collaboration with the Purdue University Press, the staff of which, under director Charles Watkinson, continues to make us feel welcome in every possible way.



In addition to the Harris Center, the Kripke Center, and the Jewish Federation of Omaha, this symposium is supported by the generosity of the following:

The Ike and Roz Friedman Foundation  
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The Creighton College of Arts and Sciences  
Gary and Karen Javitch  
The Dr. Bruce S. Bloom Memorial Endowment  
and others.

Although we do not have a formal dedication page for this volume, it nonetheless seems appropriate—in celebration of our presenting a quarter century of Jewish studies at its best—to dedicate this volume to us, to everyone who has made these twenty-five years of accomplishment possible.

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June 2014  
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## Editor's Introduction

When, sometime in late 2011, we considered possible topics for the next Klutznick-Harris Symposium, we all knew that we were coming up on a milestone: 2012 would be the twenty-fifth year that Creighton University's Klutznick Chair in Jewish Civilization sponsored the event. Menachem Mor, the first holder of the chair, devised and convened the initial symposium in 1988. In accordance with Menachem's vision, each subsequent meeting has centered on a different topic related to Jewish studies, speakers have been invited from all over the world, presentations in Omaha have been geared to a general as much as an academic audience, and a volume has followed in a timely manner. As this formula has worked well, there was no reason for substantial change—all of this, we agreed, should be celebrated.

Working within this positive context, our colleagues offered numerous topic suggestions. We solicited ideas from the event's academic sponsors, previous participants, and members of the Omaha community. I readily (if shamefacedly) admit it: when someone first suggested "Who Is a Jew," I had many concerns. Who would respond to a call for papers on this topic? What kinds of presentations would be proposed? Would they be of sufficient interest to draw in the general public as well as other scholars?

These were, as I soon discovered, baseless grounds for my usual "symposium anxiety." We received more than three times as many proposals as we did in a typical year. Because of this, we increased the number of speakers as much as our budget and schedule would allow. At the symposium itself, the audiences were large, the interactions stimulating, and the resultant volume, here published, satisfyingly full.

How could I have been so wrong? Why was I so slow to recognize what everyone else immediately grasped, namely, that issues related to Jewish identity are of perennial interest both for those who identify themselves as Jews and for those looking in from outside the Jewish community? There are few, if any, chronological eras or geographical locales where such questions have not arisen. The establishment of the State of Israel, where Jews uniquely occupy majority status, has led to the articulation and implementation of numerous stances and policies concerning Jewish identity. "Who Is a Jew" is a topic of litigation and controversy as well as a possible source for unity and continuity. Issues of personal identity have often involved conversion; entire groups who self-identify as Jews have had that status challenged.

And on it goes. In addition to all of these factors, how had I missed the rhetoric of race that often punctuates modern discussions? Or the related efforts to establish a genetic basis for Jews and Judaism—or Judaisms? By the time I got up to speed, we were well on our way to hosting one of our most successful and thought-provoking symposia.

I wish to raise another point about these articles. Most of them, I think, can correctly be described as advocating on behalf of a particular cultural, religious, or political stance, in addition to being broadly descriptive and analytic. For some people, a detectable level of advocacy is antithetical to a more scholarly and neutral exposition. I don't agree. To be sure, advocating on behalf of (or in opposition to) selected ideas can lead to one-sided and biased presentations; however, a stance of neutrality is hardly the remedy.

In the case of the papers collected here, it is my editorial and professional judgment that they all, taken individually and collectively, adhere to the standards we expect. Whether or not they agree with the positions taken by the authors, readers of this volume can be assured that we have done the best we can to present a range of opinions and options within a reasonable, respectful, and responsible framework.

As I have written in the introduction to several earlier volumes in this series, I spend, or expend, a considerable amount of time and energy seeking out the best order in which to present symposium papers. Although I have had many arguments and counter-arguments with myself about whether or not the ordering of papers is decisively significant, I cannot slacken my energies in this regard.

If I remember correctly, it was Claude Levi-Strauss (the anthropologist, not the jeans maker) who said that, when working on a research project, there is a point at which the material organizes itself. The papers in this collection seem to come together most effectively in these categories, grouped by the major emphasis of each: race/genetics, Israel, broad coverage (chronologically or geographically), Europe, and the United States.

The first chapter on race, “Traces of Race: Defining Jewishness in America,” is by Sarah Imhoff, Indiana University. As Jon Efron, Eric Goldstein, and others have demonstrated, many nineteenth century Jews used the language of race to describe their Jewishness. Since the Shoah, however, this language is no longer a socially acceptable way to conceive of Jewish identity, but the complex questions surrounding the definition of Jewishness have neither resolved nor dissipated.

This chapter analyzes the ways that two contemporary American conversations about Jewishness recall aspects of racial discourse, even while they refuse the term “race.” First, it explores two types of genetic testing:

for genes related to diseases such as Tay-Sachs and men's Y chromosomes for the Cohen Modal Haplotype, or "Cohen gene." While the first seeks to be vigilant about genetic diseases and the second seeks to use scientific discourse to authorize identity claims, both reinforce links between physical bodies and Jewish identity.

The chapter then turns to peripheral groups who make claims to Jewish identity. By analyzing the testimonies of Americans who identify as Jewish because of crypto-Jewish family roots and Hebrew Israelite groups who claim the Ten Lost Tribes as ancestors, it becomes clear that each of these groups uses biological and geographical discourse—both essential to the social construction of race—to claim Jewish identity.

Leonard Levin, Academy for Jewish Religion, is the author of the next chapter, "It's All in the Memes." A "meme" may be described as a unit of cultural memory (an analogy of "gene"). According to this understanding, a Jew is a person with a critical mass of Jewish memes (Jewish knowledge, values, religious commitments, cultural memories), together with the marker: "This applies to me."

Historically, the biological and cultural criteria of Jewish identity nearly always coincided, so taking the biological criterion as primary usually sufficed. Being born Jewish led automatically to Jewish upbringing, namely, the transmission of cultural memory. Conversion may be viewed on this model as an infusion and adoption of Jewish religious-cultural memory. Religious practice itself served as a transmitter of cultural memory and identity, as an important paragraph in the seder tells us.

The Talmud obliquely mentions a couple of cases where non-Jews slipped into the Jewish community by personal decision. The universal prevalence of the mikvah was used as an expedient to claim that these individuals were de facto converted without a formal court procedure (*Yevamot* 45b, 47a). Today, with the increase of mixed biological heritage, the old patrilineal/matrilineal markers are insufficient to predict where Jewish identity will take hold. This chapter suggests how Talmudic precedent can be invoked to render ritual more malleable to reflect the new social reality.

The third chapter, titled, "Judging and Protecting Jewish Identity in *Shaare Tefila Congregation v. Cobb*," is by Annalise E. Glauz-Todrank, Wake Forest University. In 1987, the U.S. Supreme Court granted race-based civil rights protection to Jewish Americans for the first time in *Shaare Tefila Congregation v. Cobb*. The civil suit was filed by Shaare Tefila Congregation, a synagogue in Silver Spring, Maryland affiliated with the Conservative movement, after the building, playground equipment, and a car were defaced with

Nazi and Ku Klux Klan images and slogans. Because “hate crime” laws did not exist at this time, the synagogue’s lawyer cited a Civil Rights Act from 1866 that had been passed to protect the rights of freed slaves granted in the Thirteenth Amendment.

But the sections of law from the act had been previously invoked only to protect the rights of groups commonly identified as racial minorities in the United States. Hence, the lawyer for the vandals argued that Jews are just members of a religious group and cannot claim race-based protection. At stake in the oral argument, then, was how to locate Jews in relation to the legal categories of religion and race.

This chapter’s analysis focuses on how the justices attempted to situate Jewish Americans in relation to these categories. Glauz-Todrank argues that the justices struggled to do so because Jewish identity did not completely fit into either category and because different discursive systems have informed the characterization of Jewish identity in European and American contexts, both of which apply to Jewish identity in the United States. The justices’ analyses highlight the constructed nature of these often intersecting social categories.

Steven J. Riekes, a lawyer in Omaha, Nebraska, wrote the fourth chapter, “Who Is a Jew? Reflections of an American Jewish Lawyer on the British Supreme Court Ruling Invalidating Jewish Religious Law.” For several millennia, Jewish religious law or halachah has determined Jewish identity by using a matrilineal test. Under this traditional Jewish practice, to be considered a Jew, one must be a child of a Jewish mother, unless one became a Jew by conversion.

However, the British Supreme Court ruled that this Jewish practice constituted unlawful racial discrimination under Britain’s Race Relations Act of 1976. In this case, a young man was denied admission to a prestigious and popular Jewish secondary school. The student’s father was born a Jew; his mother was born an Italian Catholic. She converted to Judaism under the auspices of a Masorti (Conservative) rabbinical court. Since the Chief Rabbi of the British Commonwealth did not recognize a non-Orthodox conversion, the boy’s mother was considered non-Jewish and the school refused to admit him.

The decision of the British Supreme Court was in favor of the father and against the school. The majority of the court reasoned that the student should be regarded as ethnically Jewish. On the other hand, the Jewish religious test was based on “genetics.” Hence, the school had practiced racial discrimination.

Riekes believes that the dissenting opinion, which left the school’s action intact, more appropriately framed the issue and arrived at a more correct result. Moreover, for the author, it is more than disturbing for a civil court in

a democratic state to have arrived at the conclusion embodied in the court's majority decision.

The next chapter, by Judith Neulander, Case Western Reserve University, is titled, "Inventing Jewish History, Culture, and Genetic Identity in Modern New Mexico." In the 1980s, New Mexican Hispanic folkways were widely touted in the popular press and media as "secret-" or "crypto-Jewish" by a small group of local academics, none a trained folklorist. Neulander arrived in New Mexico in 1992 to create the first scholarly documentation of these folkways. But upon investigation, she found that claims of a significant crypto-Jewish heritage were not supported by the folkways in evidence.

An independent genetic study later refuted claims of a significant crypto-Jewish component among New Mexican Hispanics, a scientific study that strongly supported the author's ethnographic findings. But academics promoting the crypto-Jewish discovery dominate the popular press and media. As a result, demonstrably unfounded claims are given as facts. Such claims warrant a response consistent with twenty-first century scholarship norms and fieldwork ethics, since the claims contribute no useful information but simply repatriate the most menacing cultural and scientific fictions of the nineteenth century. Neulander's chapter constitutes such a response.

The last chapter in this section, "'Jewish Genes': Ancient Priests and Modern Jewish Identity," is by Wesley K. Sutton, Queens College, City University of New York. Throughout history, Jewish identity has been perceived as more than accepting the tenets and observing the traditions of Jewish religion. Whether drawn from paternal or maternal lines, parentage has historically been used to determine identity as a Jew.

Our recent ability to determine the sequence of DNA in our genomes has given us access to a vast repository of information about our biological heritage. In 1998 researchers claimed to have found a genetic motif exclusive to kohanim. Named the Cohen Modal Haplotype (CMH), later studies seemed to support this finding. The popularization of these findings has led individuals with no familial history of Judaism to claim Jewish identity. In 2009, the original researchers published a study rejecting their original CMH and substituting the "Expanded CMH."

This chapter examines the scientific validity of such claims, asking, (1) Are there genetic motifs unique to Jews or any subset of Jews, such as the CMH? (2) Can DNA be used to distinguish Jews from other Middle Eastern populations? This study also presents the results of the Sutton's doctoral research into the genetic history of Hispanics in New Mexico, some of whom, based on scientific misinformation, are claiming descent from crypto-Jews.

The State of Israel figures prominently in the next five chapters. Naftali Rothenberg, the Van Leer Jerusalem Institute, is the author of the first in this section, “Conversion in Transition: Practical, Conceptual, and Halachic Changes in Israel.” The “Who is a Jew” public debate in Israel of the fifties had constitutional ramifications but no influence on the situation of conversion applicants. Arguments in the newspapers and at the Knesset struggled with the legal definition of the law that allows automatic citizenship to every Jew in the entire world. At the same time the rabbinical courts [*batei din*] converted to Judaism thousands of applicants in a process that took no more than a year.

The condition of the conversion applicants’ population in today’s Israel is entirely different. The process in rabbinical courts has become four to five times longer than in the past, and many applicants end up waiting an extended period of time, sometimes years, for authorization to begin with the process. All this has an effect on the large population in Israel.

Rothenberg provides an introduction to the general picture of the conversion status in contemporary Israel and a brief summery of the bureaucratic factors in the current crisis. Views of different streams in Israeli society, among them the ultra-Orthodox, Religious Zionists, traditional, and secular, are presented.

The main focus is on the radical halachic changes that have taken place in rabbinical courts regarding conversion. Halachic transformations and differences between rabbinical courts that acted from the fifties to the seventies and rabbinical courts in the last thirty years generate a description of two entirely different systems. The essential understanding of this change is critical to the study of “Who Is a Jew” in today’s Israel.

The next chapter, titled, “Who Is a Jew in Israel?” is by Netanel Fisher, the Open University of Israel. This chapter presents a variety of answers prevailing in Israel to the question, “Who Is a Jew?” In Israel of the twenty-first century, a Jew can be legally identified as such by his passport, but this is not sufficient to allow him to get married as a Jew. Another may be identified as a Jew based on his conversion by the rabbinate, but other Orthodox establishments will not accept his Judaism. On the other hand, Israeli courts have in recent years asserted that in some cases, registration in the Ministry of Interior as a Jew does not require affiliation with the Jewish religion.

By illuminating the maze of categorizations, this paper argues that the establishment of a Jewish state has not supplied a universally accepted solution to the definition of what constitutes being a Jew. The dispute over this issue, whether Judaism is a religion, nationality, ethnicity, or social affiliation, has been transformed into a struggle in Israel between various groups

who try to impose their diverse perceptions on the entire society. At a time when there is a demand for recognition of Israel as a Jewish state, Jewish society itself has not yet succeeded in reaching agreement on what “Jewish” means and on “Who Is a Jew.”

The co-authors of the following chapter, “Who *Should* Be a Jew? Conversion in the Diaspora and in the Modern Nation-State,” are Michael J. Broyde and Mark Goldfeder, Emory University. Citizenship and religion are usually formally independent of one another. Since Israeli citizenship is a right “inherent in being a Jew,” however, the conceptual question of how much religious “Jewishness” one needs in order to gain the secular benefits of citizenship has taken on new and important significance. The argument for a broader definition of Jewish status weighs the desire to foster a more pluralistic national perspective against finding a solution that will keep as many people as possible under one tent.

Some have called for different definitions depending on the context: one for sociological, one for ethnic, and one for religious Jewry. Meanwhile, from an Orthodox Jewish perspective, keeping personal status determinations strictly halachic is vital because such determinations define and delimit proper marriage partners, giving the attendant legitimacy to children resulting from such unions. Any doubts or confusion about people’s unequivocal halachic Jewish status (likely to happen in the event of multiple Jewish definitions) could end up dividing the community into small endogamous groups. This paper presents a pathway toward balancing practical ideals within a strong halachic framework, focusing on conversion as a way of widening the tent while answering the question of “Who, Today, Is a Jew.”

Menachem Mor, University of Haifa, is the author of the next chapter, “Who Is a Samaritan?” At the end of Tractate *Kutim*, the anonymous editor asked a question concerning the Samaritans: “When shall we take them back?” From the patronizing tone of the question came the answer: “When they renounce mount Gerizim and confess Jerusalem and the resurrection of the dead. From this time forth he that robs a Samaritan shall be as he who robs an Israelite” (ch. 2, Halachah, 8).

It is very clear that this anonymous editor considered the Samaritans as Jews who in the past had relinquished Judaism. The conditions that he set for their return to Judaism also reflected his view that the Samaritans were a sect that stemmed from Judaism. The dilemma of “Who Is a Samaritan” was a major concern and was hotly disputed in ancient Jewish sources through the ages.

Surprisingly, the question has emerged once again in modern times. In 1994, the question was raised before the Israeli Supreme Court as to the rights



of the Samaritans in regard to part of the Israeli Law of Return. The legal issue was about the rights of the Samaritans from Nablus (Shechem) who chose to “immigrate” to Israel and live as part of Israeli society. Could these Samaritans be considered Jews?

The first part of this chapter concentrates on the question, “Who Is a Samaritan,” according to a variety of ancient sources: the Bible, the Mishnah, the Talmud. The second part is devoted to a hearing before the Supreme Court, in which the author surveys what considerations derived from the ancient sources and how these influenced the court’s final decision.

Joseph R. Hodes, Old Dominion University, wrote the last chapter in this section, “The Bene Israel and the ‘Who Is a Jew’ Controversy in Israel.” This chapter focuses on the Bene Israel, a tiny Jewish population that according to its own tradition has lived in India for over 2,000 years. It is the largest of the three major Indian Jewish communities, the other two being the Cochin and Baghdadi Jews. The Bene Israel, numbering 20,000 at the height of their population in India, began to make aliyah in 1948; by 1960, there were approximately 8,000 community members in Israel. Today, there are 75,000 Bene Israel in Israel and approximately 10,000 in India, living mostly in Mumbai. For centuries they lived in villages on the Konkan coast in the state of Maharashtra and self-identified as both Indian and Jewish.

In 1960, twelve years after Israel was born, Chief Sephardic Rabbi Nissim decided that the Bene Israel could not marry other Jews in Israel. He stipulated several reasons for this prohibition, which served to set the Bene Israel as a people apart. This set in motion a civil rights struggle between the Indian community and the State of Israel, from 1960 to 1964, that had far-reaching implications. The highest political bodies in Israel and influential members of the international Jewish community became involved. The international media picked up the story, and at one point Egypt even offered the Bene Israel asylum from Israel. After a drawn-out struggle and under pressure from both the Israeli government and the Israeli people, the rabbinate changed its stance and declared the Bene Israel acceptable for marriage. Their experience of being set apart in Israel, after never experiencing persecution in the Diaspora, represents a unique narrative of a Jewish community and raises important questions about Jewish identity, the State of Israel, and who is a Jew.

Hodes discusses a chapter of Israeli history that has never been closely documented. Although most major works on Israeli history discuss the “Who Is a Jew” controversy, no one has ever written in any detail about the fallout of the controversy. The controversy has not been documented because the man at the center of the struggle for religious equality and the leader of the Bene

Israel community, Samson J. Samson, had negative experiences with reporters and academics during the struggle. Thus, he would not allow them access to his archives or experiences, despite many attempts by various leading academics over the decades. In 2008, however, Samson decided to grant access to his archives and experience to the author, resulting for the first time in a detailed description of the events.

Two papers cover topics that range broadly over chronological or geographical expanses. The first is “Have We Ever Known What a Jew—or Judaeen—Is?” by Ori Z. Soltes, Georgetown University. This chapter begins by considering the difficulty of defining “Judaeen” in late pre-Christian antiquity and the early Christian era, before the word evolved into what could eventually be recognized and defined as Judaism and Christianity. Next it reviews part of the rabbinic discussion of what a Jew is and how that discussion follows into the medieval era. The chapter then continues into the period of emancipation and its aftermath—and with emancipation, the evolving question of whether Judaism is most appropriately defined as a religion, race, ethnicity, nationality, culture, or civilization.

This multivalent matrix leads to the observation that, in the emerging arts of the modern and contemporary era, the question of what defines “Jewish” affects our understanding of phrases such as “Jewish art” or “Jewish music”—not only with regard to the question of whether it is the work itself or the identity of its creator that is at issue, but also whether, in the latter case, the artist must be Jewish by birth, conversion, or conviction and whether his or her intention must be to produce “Jewish” art or music. The chapter concludes by noting that the very act of asking questions that are difficult or impossible to answer constitutes a consummate Jewish art.

This chapter is followed by “Will the ‘Real’ Jew Please Stand Up! Karaites, Israelites, Kabbalists, Messianists, and the Politics of Identity” by Aaron J. Hahn Tapper, University of San Francisco. The author explores four case examples of Jewish boundary communities. Although these groups are linked to the normative Jewish community, many mainstream Jews, scholars, and others express doubt as to their Jewishness. The groups discussed here are the Karaites, African Hebrew Israelites (sometimes referred to as Black Hebrews), Kabbalah Centre devotees, and Messianic Jews. All four of these groups exist on the periphery of the current Jewish mainstream, albeit in very different ways. Looking at the margins of a community offers insight into the center, that is, how the group defines its norm. Thus this exercise deepens our understanding of the meaning of Jewishness in the twenty-first century, including the seemingly porous nature of the Jewish community’s

boundaries. Also explored is the question of whether or not there are any boundaries at all to being a Jew.

The first of two chapters that have a European emphasis is “German-Jewish Identity: Problematic Then, Problematic Now,” by Steven Leonard Jacobs, University of Alabama. The question of German-Jewish identity has resulted since the end of World War II in a plethora of texts examining this question since German-Jewish philosopher and religiously committed Jew Moses Mendelssohn (1729–1786) first attempted to bridge the divide between these two communities. This chapter examines not only the theoretical frameworks of such understandings, but also the lives of individual Jews (Heinrich Heine, Hannah Arendt, et al.) as well as the cultural productions of these and other Jews, primarily but not limited to the arts and literature. It is thus an attempt both to address the question of such a dual identity and to survey what has been previously written and thought. This question is relevant to today’s Germany, which houses the fastest growing Jewish community on the European continent. It also has relevance for the American Jewish community and its apparently successful integration into the larger society, though trends then and trends now raise equally uncomfortable questions waiting to be explored.

The next chapter, by Katarzyna Person, the Jewish Historical Institute in Warsaw, is titled, “‘I Sometimes Think That I Grew Up on a Different Planet’: The Assimilated Jewish Community of the Warsaw Ghetto in the Letters of Wanda Lubelska and Hala Szwambaum.” Here Person discusses the story of one very small but particular group among the political, cultural, and national identities that formed the population of the Warsaw ghetto—the assimilated, acculturated, and baptized Jews. Unwilling to integrate into the Jewish community and unable to merge with the Polish one, they formed a group of their own, remaining in a state of suspension, on the border of national and cultural identities. In 1940, with the closure of what was officially called the Jewish Residential Quarter in Warsaw, their identity was chosen for them.

When describing the assimilated and acculturated community of the Warsaw ghetto, Person shows how diverse this group was and how their prewar identity shaped their life choices and decisions in the ghetto as well as their relations with the rest of the ghetto inhabitants. Due attention is given to the problems they faced when establishing themselves in the predominantly Yiddish-speaking environment, their involvement in the ghetto administration, and their contribution to the cultural life of the ghetto. This chapter concludes with a short discussion of the place of the interwar assimilated, acculturated, and baptized group in postwar Poland and in shaping the historiography of the Holocaust.

The final section places particular emphasis on the American experience. Mara W. Cohen Ioannides, Missouri State University, is the author of the first chapter, “Creating a Community: Who Can Belong to the Reform Synagogue?” The question of “Who Is a Jew” reflects on who can have membership in a Jewish community. Every Jewish movement argues about the question of membership; this chapter addresses the most liberal movement, Reform Judaism, and its response to membership. In an effort to be all-inclusive, Reform synagogues around the United States have opened their doors to those who practice Judaism in different ways and to those who are interested in practicing Judaism. The influence of these non-Jews on the Jewish community has led Jews to question the level at which non-Jews are allowed to participate in Judaism and congregation governance. Tied into this issue is the question of the act of conversion and how important it is in defining oneself as Jewish.

This paper examines the role that non-Jews are allowed to have in Reform congregations and how both Jews and non-Jews feel about this. Small Talk, a message board for small Reform communities in North America, has at numerous times hosted conversations on this topic. Here is a gathering of the feelings of these small communities who are regularly threatened with closure.

Matthew Boxer and Leonard Saxe, Brandeis University, co-authored the last chapter in this section, “The Birthright Israel Generation: Being a Jewish Young Adult in Contemporary America.” Taglit-Birthright Israel engages large numbers of young adults with their Jewish identity, with their history, and with the people and land of Israel. Since its launch in 1999, more than 300,000 young adults (18-26 years old) have participated in Taglit’s educational tours of Israel (200,000 have been from North America). Birthright Israel trips are ten days in length, and participants visit sites relevant to ancient and modern Israel. A key element of the program is *mifgash* [encounter] with a group of Israeli age-peers who participate for at least half of the ten day trip. North American participants represent the diversity of American Jewry and include those with little or no prior exposure to Jewish education, those with day school backgrounds, those who emigrated from the Former Soviet Union, and those from families with only one Jewish parent. Birthright Israel receives twice the number of applicants than it can accommodate and uses a lottery-like process to select participants.

Since its inception, a program of research has been conducted with North American applicants and participants, both to describe the population and understand its impact. This work has yielded a portrait of the Jewish identity of contemporary young adults and an understanding of their relationship with Israel and the Jewish community. It has also allowed us to understand

the impact of Jewish education and the trajectory of Jewish engagement of the current young adult generation. In contrast to claims made by some analysts that Jewishness is “melting away” and that American Jews are distancing themselves from the Jewish community and Israel, the present data suggest that there has been a resurgence of interest and engagement in Jewish life. At the heart of what it now means to be Jewish is a connection with Israel and being part of a social network of Jews in Israel and around the world.

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# Traces of Race: Defining Jewishness in America

Sarah Imhoff

When I did a recent Google search, the first advertisement in the sidebar read “Jews: Are You Jewish?” At first glance, this seems to be an absurd question. If the ad was going to address people it called “Jews,” shouldn’t it follow that those people would consider themselves Jewish? What does it suggest about Jewish identity if a Jew wonders if she is Jewish? But upon closer scrutiny, the ad represents much more than a linguistic infelicity. It turns out that destabilizing searchers’ certainty about their Jewishness was exactly the website’s business strategy. The particular business, iGenea, is one of a growing number<sup>1</sup> of mail-order DNA analysis services that markets specific packages for tracing Jewishness.<sup>2</sup> These services, sometimes implicitly and sometimes explicitly, claim that a genetic map can determine Jewishness. This is, both biologically and halachically speaking, nonsense,<sup>3</sup> and yet over the last ten years this gene-based mode of defining who is a Jew has become widespread in popular discourse. Where did this discourse originate? And why do people find this specious narrative so compelling?

We might anticipate that conversations about DNA would create a historically novel way of thinking about Jewishness. Yet a brief historical foray will demonstrate that the use of DNA tests to determine Jewishness represents part of a larger discourse with a long history. In its current forms, this discourse recalls racial constructions of Jewishness even while refusing the term “race.” As historians Jon Efron, Eric Goldstein, and others have demonstrated, many nineteenth century Jews used the language of race to describe their Jewishness.<sup>4</sup> Since the Shoah the language of race has been a problematic way to conceive of Jewish identity, but even if the language of race has fallen out of cultural use and favor, many of the ideas connected with it persist.

In order to explore the history and compelling qualities of this specious narrative, critical race theory provides useful vocabulary. Theorist Kwame Anthony Appiah offers the term “racialism” to describe “heritable characteristics, possessed by members of our species, which allow us to divide them into a small set of races, in such a way that all the members of these races share certain traits and tendencies with each other that they do not share with members of any other race.”<sup>5</sup> It is not a moral error, Appiah contends, to suggest that there are characteristic heritable traits and tendencies of races, because it does not necessarily follow that one race is superior to any other. That is, while

racialist thinking does rely on ideas about heritable characteristics and race, it need not be racist.

Racist ideas about Jewishness—heritable characteristics, traits, and tendencies—continue to be deeply embedded in discourse about who is a Jew. Ideas about physical appearance, aptitudes and capacities, and psychological tendencies remain part of Jewish and non-Jewish conceptions of Jewishness. When dark-skinned Jews go to synagogue and are asked why they are there, when the neuroses of Woody Allen are seen as paradigmatically Jewish, even when Jews count Jewish Nobel Prize winners, these have elements of racist thinking when they rely on ideas of heritable appearances and characteristics.

While racist ideas underlie many cultural constructions of Jewishness, this chapter focuses on two particular contemporary American conversations about Jewishness that disclose these traces of race. First, I discuss two types of genetic testing: testing men's Y chromosomes for the Cohen Modal Haplotype, or "Cohen gene," and testing for genes related to diseases such as Tay-Sachs. While the former seeks to use scientific discourse to authorize identity claims and the latter seeks to be vigilant about genetic diseases, both reinforce links between physical bodies, heritable characteristics, and Jewish identity. Second, I turn to peripheral groups who make claims to Jewish identity. When popular sources present stories of Americans who identify as Jewish because of crypto-Jewish family roots, it becomes clear they use biological and geographical discourse—both essential to the social construction of race—to claim Jewish identity. Ultimately, I suggest that this appeal to biomedical criteria for Jewishness may have such appeal precisely because it offers something that looks like objective criteria for "who is a Jew" in those communities where Jewish identity has become the most fluid and contested.

## DNA

From daytime talk shows to forensic evidence, DNA has become an authoritative means of confirming identity. In colloquial speech it has become a metaphor for essence: people may say that a characteristic is "in my DNA" when they mean that it is an unchangeable part of who they are. Like other communities, Jews have displayed an interest in how DNA can illuminate their health, history, and identity. Because of the relative genetic similarity within populations—resulting from historical practices of endogamy—some Jewish cases (in particular, Ashkenazim) hold special interest not only for those who identify as Jewish but also for scientists studying populations.

Once scientists publish the results of their studies, they are out of scientific hands and available to individual authors, community leaders, businesses, and individuals to interpret with less scientific precision and more interest in broad public access and appeal. In short, looking at accounts of scientific research aimed at a general audience can disclose broader cultural assumptions. While studying the scientific data can illuminate DNA, studying the ways people discuss the data can illuminate the concerns and presuppositions of the people telling these scientific stories and reveal how they think about identity.

A number of recent genetic studies have focused on the discovery of the Cohen Modal Haplotype, a set of markers found on the Y chromosome of both Ashkenazim and Sephardim who claim to be Cohanim, or members of the priestly class. This set of studies has drawn attention for at least two reasons. First, it provides genetic evidence for the relationship of Sephardim and Ashkenazim despite centuries of separation between these communities. Second, it offers the opportunity to use genetic data to make claims about religious authority and the veracity of religious accounts of history. Religiously determined status as a Cohen depends on patrilineal lines: if a father is a Cohen, and he does not forfeit his Cohen status, his sons will also be Cohanim. Biologically, Y chromosomes are passed directly—barring any mutations—from father to son. Therefore, according to the theoretical ideal of one original priest who engendered all subsequent Cohanim, each male Cohen should have the same pattern of alleles on their Y chromosomes.

Subsequently, people have used these findings to make claims as to whether or not men are legitimately Cohanim. On the level of populations, scientists have subsequently tested the Y chromosomes of mostly nonwhite groups who claim Jewish ancestry, such as the Bene Israel of India and the Lemba of South Africa. If some men within the community had the Cohen Modal Haplotype, as in the case of the Bene Israel and Lemba, observers saw it as support for claims to Jewishness.<sup>6</sup> Although there are certainly other contributing issues, the questioning of the legitimacy of these communities hints at social assumptions about the color of a Jew's skin.

But even as part of the discourse among Jews with uncontested Jewish identity, DNA research serves an authorizing function for religious identity. The official Chabad website, for instance, asks: "Are these tribal affiliations just a matter of folklore and tradition? Can such claims actually be proven?" and answers, "Today they can, and the key is DNA testing."<sup>7</sup> According to Chabad's interpretation of this DNA evidence, men can scientifically "prove" their status as Cohanim (or Levites). Here valued above "just" tradition, DNA

offers certainty. In an example from the other end of the religious observance spectrum, the secular journalist Jon Entine writes in his 2007 book *Abraham's Children*, "About 3 percent of Jewish males today claim to be Cohanim. But until the development of genetic genealogy, there was no way to validate those oral claims."<sup>8</sup> Entine likewise gives DNA evidence the power to "validate," whereas religious tradition is merely a "claim." Both Chabad and Entine take the relative frequency of a genetic marker within a population and create a narrative about the proof of Jewish religious history.

These claims, in their simplicity, purport to provide certainty. The world we live in, however, is more complicated on two fronts: the social reality and the science itself. The socially contested nature of priestly identity dates back to ancient times.<sup>9</sup> In the absence of a temple, identification as a Cohen has had to rely on family oral history. When one man does not pass on identification to his male children, those descendants may not identify as Cohanim. Conversely, if someone were mistaken (or lied) about his status as a Cohen, his descendants would identify as Cohanim despite lacking the identical Y chromosome. Moreover, any expectation of homogeneity across present-day Cohanim also assumes that there was a single original male priest and that at no time was priesthood conferred upon anyone outside his hereditary line, be it through adoption into a family, as a political favor, or even by women procreating with men other than their own husbands. The likelihood of all of these assumptions holding true across centuries is quite small.

The science, too, is much messier than Chabad or Entine's rhetoric would suggest. The word "modal" in Cohen Modal Haplotype means the statistical mode, which is the haplotype that occurs most frequently. So it is true that scientists discovered that one particular series of alleles occurs more commonly than others in men who say they are Cohanim. And it is also true that particular sequence is uncommon—although not entirely absent—outside of Jewish men. This particular DNA sequence occurred in 48 percent of Ashkenazi men and 58 percent of Sephardi men who claimed to be Cohanim.<sup>10</sup> While the particular scientific studies and new developments are meaningful and while they suggest significant genetic links between Ashkenazim and Sephardim, this simply cannot constitute proof that any individual person or family is a Cohen. No good scientist would claim such a thing.

And yet plenty of other people do just that. In part because of this Y chromosome research, internet sites advertising DNA testing as a way to "help confirm Jewish heritage" or that ask "What's your tribe?" abound. These all offer genetic testing for men that examines markers on their Y chromosomes

to determine their “ancient origins.” The error here is not simply one of interpretation. This research can show genetic patterns among large proportions of people who identify as Jews, so it may help us consider a population-sized question such as “Who are Jews?” But it is simply not equipped to give us meaningful information on the individual level of “Who is a Jew?”

One website, which partners with a company offering DNA testing, says: “Many people from non-Jewish families ask themselves, ‘Am I Jewish?’ ‘Am I Hebrew?’”<sup>11</sup> The fascinating scenario this website narrates demonstrates a different, although related, sort of error. At base, it is one of logic: there are two different definitions of what it means to be a Jew here. As a DNA testing service, it claims a relationship between Jewish heredity and Jewish identity. If a person were “from a Jewish family,” she would therefore be Jewish. If she were “from a non-Jewish family” and had not converted, she would not. So how could she wonder if she were Jewish? Where would that “Jewish DNA” come from, if not her family? (The website does not market itself to people who were adopted, although adopted persons are a category that demands more attention and research in analyses of Jewish identity.) The website conflates a genetic definition of Jewishness (“Am I Jewish?”—take a DNA test to find out) and a religious or cultural one (“from a non-Jewish family”). In this way, Jewishness is being arbitrated by the very assumptions of heredity, which is tied to geographic origin, even while disavowing its dependence on racialist definitions.

## GENETIC-LINKED DISEASES

A similar medicalizing discourse about Jewishness and DNA exists around genetic diseases, such as Tay-Sachs, Gaucher’s, and breast cancer associated with BRCA1 and BRCA2 mutations, all of which have higher incidences in Ashkenazi Jewish populations. In contrast to studies on the Cohen Modal Haplotype, research on these conditions with genetic factors has a direct application to the health of individuals and their potential offspring. As a result, the cultural conversation about these diseases has been quite beneficial. Therefore, the goal of this critical analysis is not to suggest that genetically linked disease research or its publicity is not desirable, but rather to point to the ways it is historically and discursively connected to racialist constructions of Jewish identity.

The organization Dor Yeshorim, which describes itself as the “Committee for the Prevention of Jewish Diseases,” implicitly constructs the meaning of Jewishness in its description of genetic diseases and Jewishness. When (mainly

Orthodox) Jewish couples consider dating, its service offers genetic screening, which seeks to prevent “Jewish diseases,” as if diseases themselves had cultural or religious affiliation. The Dor Yeshorim website lists genetic conditions that are more common in Ashkenazi populations, those “Jewish diseases,” but it also explains: “If an individual has a family history of a genetic disease, even a ‘non-Jewish’ one, Dor Yeshorim recommends that they be informed of this, as well.”<sup>12</sup> The language of “Jewish diseases” is by no means limited to Dor Yeshorim; it is commonplace in media and even medical clinics. By naming genetic diseases “Jewish” and “non-Jewish,” this discourse effectively aligns particular kinds of genetic material, diseased bodies, and Jewishness.

This discourse also conflates Jewishness and the possession of Ashkenazi heritage and therefore marginalizes non-Ashkenazi Jews. “The Dor Yeshorim screening program is most effective with those of entirely Ashkenazic descent. Anyone with even a small heritage other than Ashkenanic descent (even one grandparent) may experience reduced reliability. (This may be of special concern to those with Sephardim or *Geirim* [Converts] in their background).”<sup>13</sup> Here, then, when “Jewish diseases” have become the focus, Jewishness becomes concentrated in the sectors of the Jewish community most associated with those diseases—here, Ashkenazim. This discourse has real effect beyond the text on websites. The Victor Center for the Prevention of Jewish Diseases likewise tests only for “Jewish Genetic Diseases (JGDs),” which it seamlessly equates with “Ashkenazi Jewish Genetic Diseases (JGDs).”<sup>14</sup> Even the acronym introduced for each is identical: JGDs. The Victor Center does not test for genetic disorders found with greater frequency within Sephardi communities.<sup>15</sup> Sephardi individuals and couples have reported going for genetic counseling and being tested for being carriers of diseases prevalent in those with Ashkenazi ancestry simply because they were Jewish.<sup>16</sup> Sephardim, converts, and their descendants are outliers; they seem to be special cases of Jewishness.

When and how did medical discourse become a significant way to construct the meaning and authenticity of Jewishness? Despite the newness of scientific procedures like DNA testing, determining Jewishness using “medical” or “scientific” means is by no means new. And, while the content and methodology of what counts as legitimate science and medicine have undergone significant changes, throughout American history medical discourse has contributed significantly to the social construction of individual and group identities. The influence and scope of medical discourse has waxed and waned and worked differently during different eras. Today, medical discourse has a significant voice, but does not dominate the chorus of the construction of Jewishness.

In the early twentieth century, medical discourse played a pivotal role, one whose categories and associations—even if they are self-concealing—continue to operate in modern medicine. United under the heading of science, racial and medical claims sorted and categorized bodies and people in American society. The early twentieth century is neither the beginning nor the end of the story of the racial and medical construction of Jewishness, but it is the most salient for the understanding of contemporary Jewishness for two reasons: the prominence and the pervasiveness of scientific medical discourse.<sup>17</sup> First, during the early twentieth century, the science of medicine and race contributed to policy on immigration, education, social work, reform movements, and dozens of other arenas. Second, racial or medical classification was diffuse: it contributed much of the significant framework for popular discussions and assumptions about Americanization, nationalism, citizenship, gender, race, and even economics. The explicit presence of medical discourse on an intellectual and national policy level and its implicit presence on a popular level demonstrates its importance for structuring the national imaginary. In fact, this early twentieth century medical-racial imaginary played such an important role in the construction of Jewishness that it has not all together disappeared.

The term “race” here connotes more than antisemitic fantasies. The early twentieth century construction of race differed substantially from our contemporary notions. As Eric Goldstein and others have demonstrated, American Jews themselves used the language of race to articulate their individual and communal identities.<sup>18</sup> Race, in its historical context, is more than just a four-letter word: it stands for a concept that both Jews and non-Jews deployed to encompass everything from a dizzying combination of physical attributes like skull shape, nose size, and height to social attributes like language, degree of aggressiveness, and intelligence, to political attributes like nation of origin and ability to Americanize.<sup>19</sup>

A longer argument would trace the historical genealogy of an array of nervous diseases, cancer, diabetes, and others, as Sander Gilman has shown in several essays.<sup>20</sup> Here I will focus on Tay-Sachs for two reasons: first, it has continued to be constructed as a “Jewish disease,” and second, its history is easier to trace because, unlike other “nervous diseases,” Tay Sachs continues to be a scientifically operative medical category.<sup>21</sup> In the early twentieth century, the idea of “Jewish diseases” was actually a constellation of mutually reinforcing medical constructions: Tay-Sachs, neurasthenia, hysteria, other “nervous diseases,” weakness, smallness, and superior intelligence were all considered Jewish traits. It is the discourse of racialism and race science that constructed



this constellation, which still echoes today when Dor Yeshorim discusses “Jewish diseases” and Jews who suffer from “non-Jewish diseases.”

Tay-Sachs, although a fatal childhood disease rather than a nonfatal disease affecting adults, was also caught up in the association of Jews and nervous diseases. Sometimes called “amaurotic familial idiocy” in the early twentieth century, Tay-Sachs was connected specifically with the Jewish race (which was, and sometimes continues to be, associated exclusively with Ashkenazim). One physician explained, typically: “We know that it is inherited, that it is a familial affection and that it occurs practically exclusively in the Hebrew race. I have on my records fifteen cases, and every one, without exception occurred in Russian Jews. But we do not know why.”<sup>22</sup> According to one medical text, Dr. Sachs himself noted its “limitation to one race—the Hebrew.”<sup>23</sup> The Jewish race and Tay-Sachs were so intimately connected in the medical community that when a physician described a case of a non-Jewish child who seemed to have all of the symptoms of Tay-Sachs, he called it “juvenile familial amaurotic idiocy,” which he differentiated from Tay-Sachs because of the “lack of Hebrew blood.”<sup>24</sup> The coexistence of racial and historical reasoning resulted in a circular medical reasoning (wherein only Jews get Tay-Sachs, so it can’t be Tay-Sachs if they are not Jewish) that not only associated but also identified the Jewish body with Tay-Sachs.

These medical constructions continue to shape popular discussions of Jewishness. When popular news articles—like a February 2010 article in the *New York Times* Health section—explain genetic testing, they commonly use three examples: Tay-Sachs in Jews, sickle-cell anemia in blacks, and cystic fibrosis in whites. Although these articles discuss the diseases in genetic terms, they still rely on the logic of race when they create a structure in which “blacks,” “whites,” and “Jews” occupy parallel positions.<sup>25</sup> In 1998, when a Maryland boy became sick and began to regress developmentally, the diagnosis of Tay-Sachs was delayed because both his parents were of Irish, not Jewish, descent.<sup>26</sup> Even though significant non-Jewish populations in New Orleans and Montreal have significant numbers of individuals carrying Tay-Sachs mutations and although the number of children born with it annually is now in the single digits, it remains a “Jewish disease” in the cultural imagination.

Some Ashkenazi Jews narrate their experience with genetic links to breast cancer in a similar way. “What’s Jewish about breast and ovarian cancer?” asks one slide at GeneSights: Jewish Genetics Online Series.<sup>27</sup> In its online booklet “Your Jewish Genes,” the Jewish women’s cancer support organization

Sharsheret asks: “What’s Jewish about hereditary breast cancer and ovarian cancer?”<sup>28</sup> In his 2008 *Abraham’s Children: Race, Identity, and the DNA of the Chosen People*, journalist and researcher Jon Entine wrote of the BRCA gene mutation in a personal vein: “The only thing that can be said with near certainty is that it’s a tragic marker of our family’s Jewish ancestry.”<sup>29</sup> In what sense does this genetic mutation “mark” Jewishness? Only 2 percent to 3 percent of Jews carry this gene. Non-Jews also carry it, although at lower rates than Ashkenazim. Sephardim carry it no more than their non-Jewish counterparts. Genes, explains Entine, “catalog my extended family’s vulnerability to many diseases. And they mark me indelibly as a Jew.”<sup>30</sup> What does it mean for Jewish identity if genes and diseases mark a person “indelibly” as a Jew? This language ties disease, harmful genetic variation, and Jewishness into a single definitive concept.

This history of medicalized identity demonstrates the social construction of both race and bodies. In *Birth of a Clinic* Michel Foucault situates modern medicine as part of a social discourse that does not merely describe bodies but constitutes their meaning. Since the nineteenth century, Foucault claims, “[The medical] gaze is no longer reductive, it is, rather, that which establishes the individual in his irreducible quality. And thus it becomes possible to organize a rational language around it.”<sup>31</sup> The medical gaze, then, has become a way of instantiating and explaining the person’s essence and therefore identity. To clarify: this view of social construction does not insist that DNA is nothing more than a fantasy of social discourse. Nor does it, as David Goldstein supposes, support the claim that “we are all the same” because the social scientific interpretations of “race and ethnicity are biologically meaningless.”<sup>32</sup> It does, however, claim that despite any objective claims and rational language of science or medicine, the social meaning of bodies is always contextual and historically contingent. That is, neither race nor ethnicity has any meaning outside of a social context.

Is DNA the same thing as race? Must any correlation between DNA and Jewish ancestry necessarily lead to racist constructions of Jewishness? Of course not. But current discourses rely on biomedical logic to determine who is Jewish. And, much of the contemporary discussion about Jewish DNA relies on (and sometimes reproduces) the history of the idea of a Jewish race and perpetuates one sort of racist definition of Jewishness. Individual Jews or Jewish communities might distance themselves from claims that Jews constitute a race; however, even as people consciously deny the category of race, they situate themselves within its history.<sup>33</sup>

## CRYPTO-JEWS

There is some research to suggest that people who identify as hidden Jews use a variety of ways of describing their experience: spiritual, mystical, and religious, and with richly narrated connections to history and culture. The accounts of other anthropologists studying various communities of *anusim* [individuals forced to abandon Judaism] provide similar accounts of spiritual identification, family lore, and shared customs.<sup>34</sup> When asked about their Jewishness, many people say they “just felt” Jewish or tell tales of their family’s customs such as avoiding pork and cooking only flat bread around Easter time. Much popular American media picks up on these facets of identity when it tells the stories of those who believe they are descendants of *anusim*, but the narrative frequently also emphasizes connections to DNA.

For instance, a New Mexican Catholic priest who claims crypto-Jewish heritage has become something of a media darling.<sup>35</sup> Father Bill Sanchez learned of his heritage by taking a DNA test, but he claims long term spiritual feelings of connection to Judaism. When Jon Entine wrote about Sanchez, he latched onto how genetic Jewishness fulfilled and confirmed more spiritual or ritual ties to Jewishness. Entine quotes Sanchez as saying: “I’m just acknowledging that fact, that spiritual fact, within myself. But now it has a literal reality as well. It’s embedded in my genes, my DNA.”<sup>36</sup> However, when the *LA Times* ran a story about Father Sanchez and several other people who believed they had Sephardic ancestry, titled “Clearing the Fog over Latino Links to Judaism in New Mexico,” it cleared no fog about Jewish identity. It instead told a series of stories: one of a Catholic family that “spun tops on Christmas, shunned pork and whispered of a past in medieval Spain,” another of a man who says finding out the results of his DNA test “was like coming home for me”; and a third about a man who said, “When I found out about my roots, I went to the library and my world opened up. . . . I have reclaimed my life. I live a Jewish life now.” Father Sanchez explained, “I have always known I was Jewish; I can’t explain it, but it was woven into who I was.” He continues his role as priest and also wears a Star of David.<sup>37</sup> Rather than “clearing the fog,” the storytelling reinforced the existence of competing narratives of Jewishness—biological, historical, cultural, geographic, ethnic, and religious—all the while supposing they presented no conflict.

Even those who do not claim crypto-Jewish status have begun to use narratives of *anusim* and DNA to help understand their own Jewish identity. In his *Am I a Jew? Lost Tribes, Lapsed Jews, and One’s Man’s Search for Himself*, Theodore Ross explores his own complicated relationship with Jewishness.

His mother decided to pretend that they were Episcopalian when she and nine-year-old Theodore moved to the Gulf Coast. When Ross tells the story of his “search for himself,” he credits stories about crypto-Jews with the initial spark: “My reckoning with the self began at my laptop when I came across an odd little children’s book, *Abuelita’s Secret Matzahs*,” the story of a family of *anusim* in the American Southwest.<sup>38</sup> Ross narrates his subsequent journey to discover different ways of being Jewish, but he begins and ends with people who identify as crypto-Jews. His narrative journey dedicates an entire chapter to the academic-turned-popular debates about haplogroup research.

One of Ross’s interviewees, Alan Tullio, explained that he had been raised Catholic but “suffered from ‘Jew envy’ for as long as he could remember.” He grew up with many Jewish friends, attended a largely Jewish school, and “felt a kinship . . . an attraction” to Jewish religious rites and practices.<sup>39</sup> After many years of learning about Judaism, Tullio eventually converted with a Conservative rabbi. Tullio told Ross that “he had no doubt that the spark was inside him, although whether he understood it as DNA or as a metaphor for his lifelong attraction to the religion was unclear. He had tended to it, he said, in his own time and in his own way, and now finally, it had burst into flame. ‘And the flame,’ he said, ‘is Judaism.’”<sup>40</sup> Tullio describes his own relationship with Jewishness as a relationship with Judaism, as an interior disposition that needed tending. In Ross’s interpretive hands, however, an inner relationship with Judaism becomes connected to DNA, even when both Tullio and Ross know that the professional genealogist came up with no conclusive evidence of Jewish ancestry.

Dell Sanchez, an author who himself identifies as crypto-Jewish, likewise puts heavy narrative and evidential weight on DNA studies in his *Out From Hiding: Evidence of Sephardic Roots among Latinos*. He writes “While I am not a molecular scientist or DNA expert I must say that I do administer a DNA test project in direct conjunction with the Family Tree DNA laboratory in Houston, Texas. My role is to put into layman’s terms what Sephardic DNA experts are saying in scientific terms which are too complicated for nonscientists to comprehend.” In his quest to prove the legitimacy of crypto-Jews in the American Southwest, Sanchez positions himself as a knowledgeable guide and interpreter. In order to do so, he interprets what select “Sephardic DNA experts” have found. Furthermore, he positions these DNA studies as uniquely authoritative when he explains that some Latinos have attempted “to find records, archives and reliable genealogies that might reveal their true Jewish heritage.”<sup>41</sup>

However,” Sanchez continued, “many have discovered that the inquisitions and holocausts of histories past have greatly succeeded in destroying the majority of these documents. While records still exist, most people do not yet know how to access them and neither do they know how to decipher most of them in a proficient manner.”<sup>42</sup> That is, for Sanchez, historical and genealogical documents are unavailable, unreliable, and too complicated for people to understand. DNA, on the other hand, is a “major breakthrough” because it offers what he considers truth instead of the hints or conjecture of documents. His selection of experts—especially his heavy reliance on data facilitated by Father Sanchez’s Santa Fe DNA Project and his own 4Sephardim Project and neglect of other studies—belies his intention to prove the truth of these crypto-Jewish claims. But his bias aside, his account reflects the language and assumptions that appear in many other popular accounts of crypto-Jews: DNA serves as the authorizing linchpin of identity.

#### WHY THIS NARRATIVE?

If DNA cannot define Jewishness—if, as Robert Pollack has succinctly explained, “Jews are not in fact a single biological family; there are no DNA sequences common to all Jews and present only in Jews”<sup>43</sup>—and if DNA markers are only useful at the level of populations, then why are these spurious uses of genetic research so pervasive and popular in telling the stories of families and individuals? Why are authors, publishers, and readers so invested in this narrative of Jewishness? Perhaps it is precisely because these claims are biomedical and therefore seem objective and authoritative. With all of the uncertainty surrounding what precisely constitutes Jewish identity, this kind of medical discourse provides claims that seem clear-cut and uncontested. People can interpret these scientific findings in ways that claim positive knowledge about Jewish identity, rather than continuing to float in a sea of halachic, political, and social complexity and contingency.

The theme of the 25<sup>th</sup> Annual Klutznick-Harris Symposium is a perennial topic for both scholars and members of the Jewish community: “Who is a Jew?” The presenters—a group mainly comprised of scholars of the humanities and social sciences—clearly have not come to a simple consensus on the question, and there is little warrant for thinking unanimity will come anytime soon. Historians note the changing definitions of Jewishness across time, political scientists show the contingencies of legal designations of Jewishness, and anthropologists and sociologists analyze the myriad ways people and communities identify themselves and others as Jewish. With this scholarly work’s

attention to the complexity of social and religious definitions of Jewishness, the question of who is a Jew can seem unanswerable or hopelessly contingent.

In the face of this uncertainty, biomedical discourse and interpretations of scientific claims can function as a substitute for religion or even seem to trump religious claims. For those who do not assent to the supremacy of halachah, religious boundaries of Jew and non-Jew can be quite permeable, as Mara W. Cohen Ioannides suggests in her research on congregational rules and traditions about the position of non-Jews. And even for those who do hold halachic definitions above all others—as the rabbinate in Israel does, for instance—examples of disagreement about particular cases and policies abound. Racialist definitions in the guise of genetic language can seem to replace this complexity with the certainties of science.

Instead of grappling with the meaning of the religious identity of a priest like Father Sanchez who wears a Star of David around his neck and claims his Jewishness and Catholicism simultaneously, popular interpretations of DNA can answer that he certainly is Jewish. The *LA Times* article referred to his Jewishness as if it were unequivocally determined: “After watching a program on genealogy, Sanchez sent for a DNA kit that could help track a person’s background through genetic footprinting. He soon got a call from Bennett Greenspan, owner of the Houston-based testing company. [Greenspan asked] ‘Did you know you were Jewish?’”<sup>44</sup> The article reproduces what seems to be a shared assumption of Greenspan and Sanchez: the results of a DNA kit can produce definitive knowledge about Jewishness. The formulation “Did you know you were Jewish?” posits the answer as an objective fact to be known and suggests that the truth about Jewishness resides not in religious practice or identity, but in a sequence of chemical bases. Here scientific claims supersede religious authority.

What is more, some authors have rhetorically replaced theism with DNA. Jon Entine even uses language reminiscent of the biblical God when talks of “the tragedy that DNA has visited upon my family.”<sup>45</sup> The complexity of theology and ritual has been replaced by a scientific language of DNA, which promotes a sense of certainty and authority. In *The Wandering Gene*, Jeff Wheelwright refers to ATGC, abbreviations for the four chemical bases that comprise DNA, as “the body’s tetragrammaton.”<sup>46</sup> Going beyond this metaphor, Wheelwright makes science’s supplanting of religion explicit: “By looking at a sufficient number of locations in people’s genomes, science would be able to tell the religious authorities who was a Jew and who was not. . . . Tests like this exist today and are starting to be used, and sharp tongued

prophets of genetics are being heard too.”<sup>47</sup> Wheelwright personifies science, which can “tell” religious authorities who is and is not Jewish. Science would thereby overtake the authority and function of religious law. From another ideological standpoint, even for those authors who continue to be observant Jews, the science serves an authorizing function. Yaakov Kleiman uses DNA not to supplant religious narratives, but to corroborate them. “These genetic research findings support the Torah statements that the line of Aaron will last throughout history. The Kohanim have passed the test of time and tradition. And tradition has passed the test of science.”<sup>48</sup> Even for Kleiman, who holds halachah as authoritative, tradition is still put to the “test” of scientific inquiry when it comes to understanding Jewishness.

The impression of certainty and authority that accompanies biological research—in contrast to the complexity of religious, social, or ethnic definitions—arises clearly in recent popular scientific publications and media reporting. In 2012, geneticist Harry Ostrer published a book titled *Legacy: A Genetic History of the Jewish People*, which uses genetic research to discuss the idea that there is a “biological basis of Jewishness.” When Jon Entine reviewed Ostrer’s *Legacy* in *The Jewish Daily Forward*, it bore the title “Jews are a ‘Race,’ Genes Reveal.”<sup>49</sup> In his preface, Ostrer privileges genetic research as the answer to the question of who is a Jew: “At last one could confront head-on the often debated question of whether Jews constituted a race, a people, or a genetic isolate.”<sup>50</sup> In this formulation, scientific studies of DNA are the proper means to determine who Jews are; DNA meant that one could answer the question “head on,” whereas presumably other means of discussing Jewishness are oblique or incomplete. The *Ha’aretz* review touted the triumph of scientific methods over those other methodologies of imprecise reconstruction: “Fortunately, re-creating history now depends not only on pottery shards, flaking manuscripts and faded coins, but on something far less ambiguous: DNA.”<sup>51</sup> For the reviewer, material culture and texts produce “ambiguous” knowledge, but DNA produces something much more certain.

The opening sentence of *Legacy* declares: “In June 2010, I published an article that demonstrated a biological basis for Jewishness.”<sup>52</sup> Ostrer’s scientific research is impeccable, but his interpretation here is misleading at best. A “basis” is a foundation and an essential component. DNA simply cannot be the foundation of Jewishness because there is no genetic sequence found in all Jews but in no non-Jews. Perhaps DNA could become the essence of Jewishness, but not without radically changing who is and is not considered Jewish. Individuals who consider themselves Jewish but do not have whatever DNA

sequence would be used to adjudicate Jewishness (the Cohen Modal Haplotype? Tay-Sachs? A different marker common to the Mediterranean?) would suddenly find themselves missing the “basis” for Jewish identity. People who converted away from Judaism, or had the genetic marker but did not identify as Jewish, would suddenly find themselves labeled Jewish.

Ostrer explained that *Legacy* sought to make the science accessible to the public and thereby make the conversation about DNA and Jewishness more informed: “This overheated discussion in the press without dispassionate analysis of scientific observations proved to me that a popular book about Jewish population genetics might tone down the debate into a more thoughtful realm.”<sup>53</sup> If “dispassionate analysis” and toned-down rhetoric was the goal, why would Ostrer phrase his conclusion in such a provocative way? After the preface, *Legacy* becomes a clear and accessible text that carefully explains the current genetic research and how it can be interpreted.

Ostrer’s *Legacy* thereby demonstrates the appeal of a narrative of objective verification of Jewish identity. In order to interpret the complex scientific data, he makes declarations about “head-on confrontation” and “dispassionate analysis” and the resulting “biological basis of Jewishness.” For American Jewish communities that witness and participate in continuing debates about who is a Jew, who can decide who is a Jew, and what criteria constitute Jewishness, this biological language seems to offer objectivity and certainty. All of the discourse that hangs Jewishness on the peg of genetics, however, can and has subtly reinforced a racist logic of Jewish identity.

#### AN AFTERTHOUGHT: THE FUTURE OF RACE AND RACIALISM

We think of race as an amalgam of traits: genetic, national origin, historical, cultural, even dispositional or related to capacity, as well as physical appearance including height, facial features, and skin color. Here we see definitions of Jewishness related to genes; we can all come up with examples of Jewishness as dependent on each of the other categories: history, culture, innate capacity (there are even scientific studies “proving” connections of DNA, Jewish intelligence, and Jewish disease), whether someone “looks Jewish.” So if people define Jewishness according to the same categories that people define “other” races, why not talk about the Jewish race? Several reasons: first, skin color continues to be a primary way of identifying race in America, and Jews are not associated with a distinctive skin color. Second, to many, discussion of Jews as a race smacks of antisemitism and evokes associations with genocide. As a term, then, “race” conjures up images of racism with devastating consequences.



Nevertheless, many racial assumptions and categories have continued to operate in the social meaning of Jewish bodies and identities.

So would it be wise to return to using “race” as a category for identifying Jewishness? No. In fact, the example of Jewishness points to the imprecision surrounding the discourse of race in its wider cultural usage. If “race” connotes a combination of genetics, history, geographic origin, and physical traits, what information can it provide, apart from providing an easy hanger for stereotypes? What I am suggesting is that we acknowledge that much of contemporary American discourse about Jewishness relies on racist definitions. And once we acknowledge that these definitions have no firm, objective, unchanging reality apart from social context, we can see that these racist discourses may be of limited utility when discussing Jewish identity.

## NOTES

<sup>1</sup> As of June 2013, the following websites offer services tailored specifically to questions about Jewish DNA: Dnaspectrum.com, 23andme.com, genebase.com, jewishdnaproject.com, familytreedna.com (partners with JewishGen), dnaconsultants.com, and igene.com.

<sup>2</sup> Claiming to adjudicate Jewishness by DNA also raises all sorts of questions: Does this delegitimize the Jewishness of converts and their children? People who are adopted and their progeny? Does it make people who have voluntarily converted from Judaism to Christianity, Islam, or another religion still Jewish?

<sup>3</sup> For a clear and concise description of the biological evidence, see Wesley Sutton’s contribution to these proceedings.

<sup>4</sup> Eric Goldstein, *Price of Whiteness: Jews, Race, and American Identity* (Princeton: Princeton University Press, 2006); John Efron, *Defenders of the Race: Jewish Doctors and Race Science in Fin-de-Siècle Europe*. (New Haven: Yale University Press, 1994).

<sup>5</sup> Kwame Anthony Appiah, *My Father’s House: Africa in the Philosophy of Culture* (Oxford: Oxford University Press, 1992), 13.

<sup>6</sup> Tudor Parfitt and Yulia Egorova, *Genetics, Mass Media, and Identity: A Case Study on the Genetic Research of the Lemba and the Bene Israel* (New York: Routledge, 2006); M. Thomas et al., “Y Chromosomes Traveling South: The Cohen Modal Haplotype and the Origins of the Lemba—The “Black Jews of Southern Africa,” *American Journal of Human Genetics* 66 (Feb. 2000): 674–86.

<sup>7</sup> Lorne Rozovsky, “Raise Your Hand if You’re a Kohen,” *Chabad.org*, [http://www.chabad.org/library/article\\_cdo/aid/762109/jewish/Raise-Your-Hand-If-Youre-A-Kohen.htm](http://www.chabad.org/library/article_cdo/aid/762109/jewish/Raise-Your-Hand-If-Youre-A-Kohen.htm). Accessed June 15, 2013.

<sup>8</sup> Jon Entine, *Abraham’s Children: Race, Identity, and the DNA of the Chosen People* (New York: Grand Central Publishing, 2007), 24.

<sup>9</sup> See Shaye Cohen, *From the Maccabees to the Mishnah* (Louisville: Westminster John Knox, 2006); Martha Himmelfarb, *A Kingdom of Priests: Ancestry and Merit in Ancient Judaism* (Philadelphia: University of Pennsylvania Press, 2006), 5-7.

<sup>10</sup> Karl Skorecki was the lead researcher on the first major study in 1997; afterward the same researchers continued to analyze their data and others followed: Karl Skorecki et al., “Y Chromosomes of Jewish Priests,” *Nature* 385 (1997): 32; M. G. Thomas et al., “Origins of Old Testament Priests,” *Nature* 394 (1998): 138–40; Michael Hammer et al., “Extended Y Chromosome Haplotypes Resolve Multiple and Unique Lineages of the Jewish Priesthood,” *Human Genetics* (Aug 2009).

<sup>11</sup> “Can DNA Testing Confirm Jewish or 10-Israel Ancestry?” *jewsandjoes.com*, July 26, 2007, <http://jewsandjoes.com/can-dna-tell-me-if-i-have-jewish-or-10-israel-hebrew-ancestry.html>. Accessed June 15, 2013.

<sup>12</sup> *The Shidduch Site*, <http://www.chossonandkallah.com/l/133>. Accessed June 15, 2013.

<sup>13</sup> *Ibid.*

<sup>14</sup> “Let’s Talk JGDs,” *Einstein Victor Center for the Prevention of Jewish Genetic Diseases*, <http://www.victorcenters.org/index.cfm/lets-talk-jgds/>. Accessed June 15, 2013. The only mention of non-Ashkenazi Jews on its website is buried in a subsection labeled “For Rabbis and Cantors,” where the last bullet point under the heading “What should they know about screening?” is “If they are Sephardic or Mizrahi, they are at risk of being a carrier for a different set of diseases,” <http://www.victorcenters.org/index.cfm/jgd-community>. Accessed June 15, 2013.

<sup>15</sup> There is greater genetic diversity across Sephardi populations, and therefore genetic screenings are most effective when targeted to a geographical area, for instance, Syrian or Iranian Jews. Even the diseases more commonly found in Sephardi populations—those that the American Sephardi Foundation lists as “Sephardic recessive disorders”—are also common in populations across the Mediterranean and North Africa and are therefore not “Sephardi diseases” or “Jewish diseases.”

<sup>16</sup> See Talia Bloch, “The Other Jewish Diseases,” *The Jewish Daily Forward* (August 28, 2009), <http://forward.com/articles/112426/the-other-jewish-genetic-diseases/>.

<sup>17</sup> I do not claim that discourses of medicine and race worked to construct Jewishness alone or even that Jews were the primary object of most racial or medical interest. The scientific literature and popular conversations targeted many immigrant “groups,” and Jews were neither the most discussed or the most maligned. My interest here, however, is in the construction of Jewishness, so I concentrate on its relationship to science and medicine.

<sup>18</sup> Eric Goldstein, *The Price of Whiteness* (Princeton: Princeton University Press, 2006).

<sup>19</sup> There is a rich literature on race in early twentieth century America. See, for example, Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge: Harvard University Press, 1998).

<sup>20</sup> “Private Knowledge: Jewish Illness and the Process of Identity Formation,” in *Jewish Frontiers* (New York: Palgrave Macmillan, 2003), 149–68; *Diseases and Diagnoses: The Second Age of Biology* (Piscataway: Transaction, 2009).

<sup>21</sup> The physical, mental, and emotional states associated together under the heading “neurasthenia,” for instance, no longer constitute an ailment with social or medical recognizability.

<sup>22</sup> *Pediatrics* (Pediatric Publishing Company, 1912), 42.

- <sup>23</sup> William Osler, *The Principles and Practice of Medicine* (New York: D. Appleton and Company, 1921), 932.
- <sup>24</sup> Canadian Ophthalmological Society, *Transactions of the Canadian Ophthalmological Society, Annual Meeting* (Canadian Ophthalmological Society, 1963): 5.
- <sup>25</sup> "Advice on Who Should Consider Genetic Testing," *The New York Times* (February 17, 2010).
- <sup>26</sup> Andrea Rowland, "Smithville Child Stricken with Rare Disease," *Herald Mail* (January 9, 1999), [http://articles.herald-mail.com/1999-01-09/news/25144595\\_1\\_tay-sachs-baby-boy-smithsburg](http://articles.herald-mail.com/1999-01-09/news/25144595_1_tay-sachs-baby-boy-smithsburg). Accessed June 15, 2013. See also Gilman, *Jewish Frontiers*, 158.
- <sup>27</sup> "Hereditary Breast and Ovarian Cancer," *MyJewishGeneticHealth.com*, <http://www.genesights.com/hereditary-breast-and-ovarian-cancer/>. Accessed June 1, 2013.
- <sup>28</sup> *Your Jewish Genes: Hereditary Breast Cancer and Ovarian Cancer*, Educational Booklet Series (Teaneck, NJ: Sharsheret, 2012), <http://www.sharsheret.org/sites/default/files/SH-07-Your-Jewish-Genes.pdf>. Accessed June 15, 2013.
- <sup>29</sup> Entine, *Abraham's Children*, 6.
- <sup>30</sup> *Ibid.*, 8.
- <sup>31</sup> Michel Foucault, *Birth of a Clinic* (New York: Vintage, 1994), xiv.
- <sup>32</sup> David Goldstein, *Jacob's Legacy: A Genetic View of Jewish History* (New Haven: Yale University Press, 2008), 9.
- <sup>33</sup> When the *New York Times* interviewed Rabbi Josef Ekstein, for instance, he said: "I am a Holocaust survivor. I was born in the middle of the second World War. I hope that I am not a suspect for practicing eugenics. We are trying to have healthy children." "Testing Curbs Some Genetic Diseases," *The New York Times* (February 17, 2010).
- <sup>34</sup> For one ethnographic study with significant transcripts, see Janet Jacobs, *Hidden Heritage: The Legacy of Crypto Jews* (Berkeley: University of California Press, 2002).
- <sup>35</sup> He was profiled in the *LA Times* and interviewed for numerous radio shows. See also Dell Sanchez, *Out from Hiding: Evidences of Sephardic Roots Among Latinos* (New York: iUniverse, 2010).
- <sup>36</sup> Entine, *Abraham's Children*, 15.
- <sup>37</sup> David Kelly, "Clearing the Fog over Latino Links to Judaism in New Mexico," *LA Times* (December 5, 2004).
- <sup>38</sup> Theodore Ross, *Am I a Jew? Lost Tribes, Lapsed Jews, and One Man's Search for Himself* (New York: Hudson Street Press, 2012), 12. *Abuelita's Secret Matzahs*, incidentally, was penned by Rabbi Sandy Eisenberg Sasso, who was the first woman ordained in the Reconstructionist movement (Cincinnati: Emmis Books, 2005).
- <sup>39</sup> *Ibid.*, 197–99.
- <sup>40</sup> *Ibid.*, 203.
- <sup>41</sup> Sanchez, *Out from Hiding*, 41.
- <sup>42</sup> *Ibid.*, 49.
- <sup>43</sup> Robert Pollack, *The Missing Moment: How the Unconscious Shapes Modern Science*. (Boston: Houghton Mifflin, 1999), 194.
- <sup>44</sup> Kelly, "Clearing the Fog."
- <sup>45</sup> Entine, *Abraham's Children*, 5.

<sup>46</sup> Jeff Wheelwright, *The Wandering Gene and the Indian Princess: Race, Religion, and DNA* (New York: Norton, 2012), 18.

<sup>47</sup> *Ibid.*, 41.

<sup>48</sup> Yaakov Kleiman, *DNA and Tradition: The Genetic Link to the Ancient Hebrews* (Israel: Devora Publishing), 24.

<sup>49</sup> Jon Entine, "Jews are a 'Race,' Genes Reveal," *The Jewish Daily Forward* (May 11, 2012).

<sup>50</sup> Ostrer, *Principles*, xvi.

<sup>51</sup> Jon Entine, "DNA Links Prove Jews Are a 'Race,' Says Genetics Expert," *Haaretz* (May 7, 2012), <http://www.haaretz.com/jewish-world/jewish-world-news/dna-links-prove-jews-are-a-race-says-genetics-expert-1.428664>.

<sup>52</sup> Ostrer, *Principles*, xiii.

<sup>53</sup> *Ibid.*, xv.



# It's All in the Memes

Leonard Levin

This paper compares two paradigms of Jewish identity.<sup>1</sup> The first (“sacramental”) paradigm is essentialist: there is a Jewish essence that can only be passed on in the ways prescribed by Jewish law. The second (“covenantal”) is functional: Jewish identity is group memory embodied in individuals. I will first delineate the two paradigms as ideal types. Next, I will examine a few borderline or anomalous cases where they lead us to pass different judgments on the Jewishness of certain individuals. I will examine certain difficult cases presented in the Talmudic and halachic literature to assess whether the Jewish legal tradition hews strictly to the one or the other paradigm or is a mixture of both. I will consider briefly how the conflation of the two paradigms may provide a satisfactory account of how Jewish identity functioned in premodern times. I will then suggest how the onset of modernity upset the traditional equilibrium, necessitating a reexamination of the question of Jewish identity, which helps account for the wide spectrum of competing positions one finds on this question in contemporary discourse. Finally, I will conclude with some brief recommendations on how to address these discrepancies.

## SACRAMENTAL AND COVENANTAL APPROACHES

Let me start with some definitions. I will speak of the objective or external markers of Jewish identity, as contrasted with the subjective or internal markers (see table 1). The objective markers include lineage, circumcision, and immersion, whereas the subjective include personal identification with family, friends, the Jewish community, and the “living the Jewish narrative.”

More broadly, the objective markers are those facts about a person that can be observed by others and attested in a court of law; they include the person’s family background, whether his father or mother were Jewish, whether if a male he was circumcised in a religious ceremony or a secular procedure, whether this individual underwent conversion to Judaism and if so, by whom. The subjective markers are those facts about a person that are experienced by the person him- or herself; they include whether this person believes in Jewish religious teachings, whether this person feels a part of the Jewish narrative, whether this person identifies positively or negatively, strongly or mildly, or not at all with his or her biological Jewish heritage, and whether this heritage consists of one or two Jewish parents of whatever gender.

Table 1. Sacramental and covenantal approaches compared.

| SACRAMENTAL   | COVENANTAL  |
|---|---|
| Definition: A Jew is a person born of a Jewish mother, or converted to Judaism by a legitimate <i>beit din</i> .        | Definition: A Jew is a person with a critical mass of Jewish memes (Jewish knowledge, values, religious commitments, cultural memories), together with the marker: "This applies to me."                                |
| Objective criteria: Lineage, circumcision, and immersion, conversion by the right authorities.                          | Subjective criteria: Personal identification with family, friends, the Jewish community, "living the Jewish narrative."   |
| Matrilineal principle is irrevocable; it determines Jewish status by definition.  | Matrilineal principle is a historical criterion that has changed in the past and does not always correlate with the inner determinants of Jewish identity.  |
| Conversion ceremony changes one's status. Role of the <i>beit din</i> is sacramental: its action makes a person Jewish. | Conversion ceremony ratifies what has already taken place internally. Judgment of <i>beit din</i> gives public confirmation to a person's inner status, so a person will be accepted as Jewish by the larger community. |
| Tends to theocracy: one group's claim to be the legitimate authority supersedes all others.                             | Tends to pluralism: different groups' claims to foster and recognize Jews in their midst are recognized.  |

The sacramental-covenantal distinction builds on the objective-subjective distinction. Roughly speaking, the sacramental theory focuses on the external factors, as if these external factors by themselves automatically make a person a Jew and in their absence a person simply is not Jewish, no matter how many of the internal factors are present. The covenantal theory gives more weight to the internal factors, though it does not regard them as entirely sufficient without at least some external factors present. My notion of covenantal here shares much with Eugene Borowitz's usage in his book *Renewing the Covenant*.<sup>2</sup> There, he speaks of the "Jewish self" as covenanted five ways—to God, to the people Israel, to the Jewish past, to the Jewish future, and to the self. The self's covenant to God, to the past and future, and to the self (especially the

last) all have a strongly subjective slant. But the individual's covenant to the Jewish people implies at least some degree of anchoring in objectivity, through ratification and acceptance by at least some significant segment of the Jewish people, that is not to be had by fiat of the private individual.

Finally, I will suggest that we can interpret the traditional body of law on "who is a Jew" by saying that it can be accounted for by a mix of the sacramental and covenantal approaches, while giving more weight to the covenantal approach than is typically supposed by traditionally oriented theories of Jewish identity.

When I recently discussed the sacramental-covenantal distinction with Rabbi Juan Mejia, he pointed out to me (citing the analysis of Avi Sagi and Zvi Zohar) that it can be correlated with a duality of approach in Maimonides's treatment of conversion—"an ethnic stratum [sacramental/halachic] predicated collectively on the Jewish people and an axiological-religious [covenantal/philosophical] stratum that applies exclusively to the individual."<sup>3</sup> Though in his philosophically oriented *Thirteen Principles* Maimonides makes acceptance of the content of faith the primary criterion of being Jewish, in his halachic code addressing issues of conversion and marriageability he emphasizes the ritual aspect of the conversion process as decisive.

This paper is a sequel to my previous paper, "A Proposal for the Purification of All Jews," which was delivered at a symposium on patrilineal issues at the Academy for Jewish Studies in March, 2012 and published in their online journal *Gevanim*.<sup>4</sup> The previous paper focused specifically on the more practical issue of whether and in what circumstances to accept patrilineal Jews as fully Jewish. This paper will address that practical question as well, but will focus more centrally on the theoretical question, what constitutes Jewish identity itself.

## WHERE THE APPROACHES DIFFER IN PRACTICE

Let us elaborate a little more on the sacramental-covenantal dichotomy. The sacramental theory defines a Jew as someone who is either born of two Jewish parents, or of a Jewish mother and non-Jewish father, or has undergone the right kind of Jewish conversion. If these determinants are present, the person is Jewish. The external factors make the person sacred automatically (hence, the term "sacramental"). If these are absent, the person is not Jewish.

As opposed to the sacramental idea, the root of the covenantal idea is voluntary choice. Maybe we shouldn't stress the voluntary aspect too absolutely; even in the case of converts, there is often a sense of one's course being directed by an overpowering destiny. But at any rate, the criterion of one's Jewishness in this paradigm is an internal determinant. It operates through the



person's consciousness, through one's sense of oneself, of knowing the specifics of Jewishness and identifying with them, of participating in a historical Jewish narrative transcending oneself. This accords with the definition I have offered in table 1: "A Jew is a person with a critical mass of Jewish memes (Jewish knowledge, values, religious commitments, cultural memories), together with the marker: 'This applies to me.'"

Now, in a healthy Jewish society in equilibrium, the external determinants and the inner sense of being Jewish go hand in hand. One is born of Jewish parents, hence one is raised in a Jewish family, replete with family observances of Shabbat and holidays; one is educated in the specifics of the Jewish tradition. One acquires Jewish "memes" in the natural course of living one's life. (The word "meme," an analogy with "gene," means "unit of cultural memory." It was coined by Richard Dawkins, a thinker with whom I have a lot of disagreements, but this coinage was felicitous.<sup>5</sup>) One thus becomes a carrier of Jewish group memory.

So if the external markers of Jewishness and the internal markers are complementary, is it a chicken-and-egg question to ask which comes first? Is it perhaps an exaggeration to say "it's all in the memes"? Perhaps. But I have two reasons for claiming this. The first is that we have perhaps lately been placing too much emphasis on the external criteria of Jewish identity, which leads to the kinds of anomalies that I will soon examine. The second is that if we were pushed to the extremity of choosing one or the other—either having a correct lineage but no perpetuation of Jewish group memory and narrative, or a somewhat incorrect lineage but a healthy flourishing of Jewish group memory and narrative—I would argue for the superiority of the second alternative as a more authentic representation of Jewish existence as it has existed historically and as it is defined and portrayed in the canonical sources of Judaism.

If this is indeed the preferred answer to my admittedly extreme hypothetical question, then I am led to conclude that even in the case of healthy equilibrium of both factors present and mutually supporting, it is really the perpetuation of Jewish group memory and narrative that is the primary thing of value. The details that make for correct lineage are a means to this end and serve as the outer casing to protect and maintain the inner living core.

I will leave for later a more detailed analysis of how the sacramental and covenantal principles complement each other and also differ from each other with respect to the principle of matrilineality and the dynamics of conversion. Suffice it for now to say that in premodern traditional Jewish society they tended to go together. Form followed content. Generally, given the social

separation between Jewish and non-Jewish communities, if intermarriage occurred, either the Jewish partner left the community and the children were lost to Judaism, or the non-Jewish partner converted to Judaism. Also, there was only one kind of conversion to consider. In either case, group homogeneity was preserved. The problems that come up today in this connection are (I believe) rare. Maybe I am rosy-eyed and Pollyannish, but that is my impression. I will leave it to the historical sociologists to confirm or disconfirm it.

### SOME ANOMALOUS CASES

Let us turn our attention now to some anomalous cases, where the sacramental and covenantal approaches yield substantively different answers to the question, whether a particular person is to be regarded as Jewish or not.

Case #1: Jessica Fishman is an extreme test case of how Jewishly correct one can be in lifestyle and inner consciousness and still fall foul of the enforcers of correct lineage. Her mother was a Reform convert whose conversion ceremony included mikvah immersion; her father was a born Jew. Jessica grew up in a Jewishly observant home, where the Sabbath and dietary laws were practiced, and she was educated in a Jewish day school. As a young adult, she made aliyah and served in the Israeli Defense Forces. Upon engagement to a young Jewish man in Israel, she discovered that from the standpoint of the religious legal authorities who are exclusively empowered to act on her case in matters of marital law in Israel, all the positive factors of her Jewish background, education, and observance were of no avail. She was declared categorically not Jewish and therefore not eligible to marry a Jew in Israel. Jessica broke off her engagement and moved back to the United States after seven years as an Israeli. This is a case of the sacramental approach taken to its vicious extreme.<sup>6</sup>

Case #2: I consider in this case the fairly numerous individuals who were raised in the Reform movement as Jewish under the 1983 Resolution on Patrilineal Descent and who wish to be recognized by the Conservative movement either for the purpose of marriage or communal affiliation. The standard Conservative demand in these cases is the same as what the Orthodox in Israel requested of Jessica Fishman: just convert, and you will be Jewish by our standards. Faced with this requirement, some comply and others do not. We are fortunate to have in David Wilensky one who did undergo conversion and who was then articulate in expressing the reasons why he felt in retrospect that this was inauthentic, because it failed to do justice to the fullness of the Jewish identity that he brought with him into the ceremony.<sup>7</sup> We also have the reflections of Rabbi Harold Shulweis, who tells how he had similar misgivings

after a pseudonymous Lucy Cohen, when presented with a similar demand, slammed the door in his face.<sup>8</sup> In today's community, I think it is fair to guess that the Lucy Cohens outnumber the David Wilenskys.

Speaking personally, I will confess that the Jessica Fishman case was a significant factor in leading me to question the viability of the approach that Conservative Judaism has taken towards conversions and determinations of Jewish status that do not meet their halachic criteria. In effect, the traditional Conservative stance has amounted to the combination of two assertions: (1) that there is an objective standard of Jewish authenticity in matters of general religious practice and Jewish identity, namely, the received halachah; by this standard, some claims to Jewish status are valid and others invalid; (2) more particularly, the line between valid and invalid falls between Conservative (whose actions are valid) and Reform (whose actions are prima facie invalid unless proved valid). In the Jewish world as currently constituted, once the force of the general premise (1) is granted, it will be extremely difficult or impossible to gain consensus that the line between valid and invalid will fall precisely where Conservative Judaism wants it to fall. More forcefully put, it is almost inevitable that Conservative Judaism will lose to orthodoxy in the determination of this all-important red line vis-à-vis the Jessica Fishmans, while it loses to Reform in winning the hearts and minds of the Lucy Cohens. Conservative Jews will be left in a small minority—in agreement with neither Reform nor orthodoxy—protesting that the correct place to draw the line is where Conservatism wants to draw it.

The Jessica Fishmans are suffering at the hands of orthodoxy precisely what the David Wilenskys and Lucy Cohens are suffering at the hands of Conservatism. From an objective outside perspective, there is no difference in principle between the two cases, except who is doing the excluding. The only consistent way out of this dilemma is to reject the first premise, in other words, to apply Beit Shammai-Beit Hillel parity to all the major branches of Judaism and to accept as Jewish whoever has been confirmed and raised as Jewish by any of them.<sup>9</sup>

Case #3: We can learn something different in considering the case of someone of minimal initial Jewish background, such as Julius Lester. His autobiography is available in his book: *Lovesong: Becoming A Jew*.<sup>10</sup> He grew up the son of a black Methodist minister, but was aware as a boy that he had a Jewish great-grandfather on his mother's side. It took forty years of life experience for this slim fragment of Jewish background to become activated to the point where it became a determinant component of his identity, but

when that happened, it put the seal on a long-term personal development in which other factors undoubtedly played an important part. Most crucially (it seems to me), when Julius Lester started to immerse himself in study of the Holocaust, the narrative of Jewish suffering fused and became integrated with the narrative of black suffering with which he was familiar, and this enabled him to integrate his sense of himself as simultaneously black and Jewish. The two ritual conversions that he underwent put the formal seal on his Jewish identity. From the sacramental viewpoint, it is a truism that he became Jewish when he underwent the formal conversion ceremony. But that paradigm fails to explain what impelled him to seek conversion in the first place. Was he not-at-all Jewish until the ceremony? The covenantal perspective would answer otherwise and would argue that the real determinant of that Jewish identity came from within—the seed planted by the fact of descent from his Jewish great-grandfather led to a slowly growing sense of Jewish identity that eventually became dominant.

Case #4: The case of Lev Pesahov dramatizes the considerable social movement in Israel occasioned by hundreds of thousands of persons of mixed Jewish-Russian family heritage who were recognized as Jewish for purposes of the Israeli Law of Return but whose status is anomalous in the eyes of the Israeli Orthodox rabbinate. Lev Pesahov was the son of a Jewish father and a non-Jewish mother, who immigrated from Russia to Israel in 1990 under the Law of Return. In August 1993, wearing the IDF uniform, he was killed in a terrorist attack on an army checkpoint. He was refused Jewish burial but was buried on the edge of the military cemetery in Bet Shean. His case raised a considerable furor at the time; even the former Chief Rabbi Shlomo Goren declared that it had been mishandled. But the number of cases in which similar pain and suffering are inflicted that arouse no similar publicity and protest are legion.

## SUGGESTIVE TALMUDIC PRECEDENTS

Let me now turn to two anecdotal cases from the haggadah of the Talmud. Each of these shows that the sacramental standard that characterizes a good deal of Talmudic law on the subject of Jewish status is not always so black and white. For our first case, let us consider the following set of anecdotes:

A slave of Rabbi Hiyya bar Ammi immersed a gentile woman in order to make her his wife. Rav Joseph said: "I can rule that she and her daughter are both kosher (i.e., Jewish). Herself—following [the method of] Rav Assi. For Rav Assi said (in a parallel case): 'Did she not immerse for her menstrual impurity?' Her daughter—[by the

rule that] if a gentile or a slave has intercourse with a Jewish woman, the baby is Jewish.”

[What case of Rav Assi are we talking about? The following:] There was a man who was called “the son of the Aramean woman.” Rav Assi objected: “Did she not immerse for her menstrual impurity?” There was another man who was called “the son of the Aramean.” Rabbi Joshua ben Levi objected: “Did he not immerse [to be purified from] his seminal emission?” (b. Yebam. 45b)

This text tells of three different individuals who decided, without benefit of rabbinic authorization, simply to blend in with the Jewish community and to live Jewish lives. Three different rabbis—Rav Joseph, Rav Assi, and Rabbi Joshua ben Levi (enough to constitute a *beit din*)—all agreed after the fact that these people should be treated as Jewish. As background, we should recognize that from the early rabbinic period onward there were three ritual elements—immersion, circumcision, and the act of a *beit din*—that in various combinations were considered important in signaling a person’s transition to Jewish status. Immersion figures positively as a factor in all three cases in the Rav Assi passage, but the *beit din* is notably absent, and this example doesn’t mention circumcision. (It is evident from another tradition cited in the same chapter of tractate *Yebamot* that as late as the generation of the early second century authorities Rabbi Eliezer and Rabbi Joshua, there was debate as to whether all these elements were necessary for conversion or if only one was sufficient.<sup>11</sup> But the standard Talmudic text on conversion procedure lists all of them.<sup>12</sup> Consideration of all these texts together renders it likely that the consolidation of these requirements probably took place some time in the second or third century CE.)

Another anecdote from the same passage raises additional issues:

“And you shall judge justly between a man and his kinsman and his *ger* (understood as convert).” (Deut. 1:16) Rabbi Judah deduced from this that if a prospective convert was converted before a court, this is a valid conversion, but if he just converted himself, this is not a valid conversion.

[But] there was the case of one man who came before Rabbi Judah and said to him, “I converted myself [without witnesses or a rabbinic court].” Rabbi Judah said to him, “Do you have witnesses [to that effect]?” He replied: “No.” Rabbi Judah asked him, “Do you have children?” He replied: “Yes.” Rabbi Judah ruled: “Your testimony

would be reliable enough to disqualify just yourself, but it is not reliable to disqualify your children.” (*b. Yebam. 47a*)

Rabbi Judah is one of the authors of the sacramental view that the formal validity of the conversion—its administration by a *beit din*—is a requirement of the conversion’s validity. But even he is willing to bend this criterion in the event that the subjective factor—the individual’s determination to be Jewish—is strong enough to lead to a persistence of Jewish commitment and observance into the next generation. In that case, though from a sacramental standpoint the doubtful status of the conversion should render the whole line of progeny illegitimate, it does not. There is a presumption that people who are leading Jewish lives imbued with a Jewish consciousness are to be deemed Jewish, and that presumption outweighs the doubts—however well-founded—of the validity of the original conversion.

One may be tempted to dismiss both these anecdotes as expressing maverick positions that have been rendered irrelevant by the codification of the sacramental standard in the received texts of Jewish law. However, careful study of the codes shows that they have sought to integrate even such cases as these into the complex fabric of a legal synthesis that, though predominantly sacramental in its overall thrust, makes at least a nod in the direction of the validity of the subjective viewpoint. Note paragraph b in the following excerpt from the *Shulḥan Arukh*’s law of conversion:

a. All matters of conversion, whether informing the prospective convert of the mitzvot in order to receive them, whether circumcision or immersion, should be in the presence of three qualified to judge, and in the daytime (see *Tosafot* and *Rabbenu Asher* on *b. Yebam. 47b*).

b. Nevertheless, this standard addresses what one should do in the first place. But after the fact, if one circumcised or immersed only in the presence of two (or if some of the judges were relatives—according to *Mordecai*) or at night, or even if one immersed not for the purpose of conversion but (in the case of a man) to cleanse from seminal impurity or (in the case of a woman) for menstrual impurity, the prospect is considered a valid convert and may marry a Jew.

c. However, the acceptance of mitzvot is mandatory and must be done during the daytime with three.

d. *Alfasi* and *Maimonides* rule that if one immersed or was circumcised before only two, or at night, this is an impediment and such a

person would be forbidden to marry a Jewish woman; even so, if he went ahead and married a Jewish woman and had a child, one does not disqualify him retroactively. (*SA YD* 268:3)

The careful reader will note that the *Shulhan Arukh* does not go all the way to say that a casual immersion suffices to infuse Jewish identity all by itself, in the absence of a *beit din*. The *beit din* is mandatory, according to the *Shulhan Arukh*. But the lack of witnesses for immersion can be overridden after the fact by relying on the precedent of Rav Assi. And if children have ensued from a doubtful conversion, the existence of those children is grounds for treating the irregularities of the conversion process on the side of leniency, based on the precedent of Rabbi Judah. Thus, even though the sacramental approach dominates in the treatment of Jewish status in this canonical halachic text, allowances are made for the subjective covenantal approach.

It can be argued that from a legal-historical perspective the approach of the contemporary Israeli authority Rabbi Haim Amsalem, the author of the treatise *Zera' Yisrael*<sup>3</sup>—who argues for leniency based on these and similar precedents in applying the law of conversion, especially to recent Israeli immigrants of partial Jewish descent from the former Soviet Union—is more legitimately in accord with the long-term historical thrust of Jewish law, in combining aspects of the sacramental and covenantal conceptions of Jewish identity, than the uncompromising approach of the Israeli Chief Rabbinate.

### “LIVING THE NARRATIVE” IN COVENANTAL IDENTITY

Overall, from consideration of the legal traditions concerning conversion it would appear that the sacramental paradigm plays the dominant role in defining Jewish identity, with the covenantal paradigm in a subsidiary role. However, the picture is not complete unless we consider the emphasis placed on the cultivation of Jewish group memory in the fabric of traditional Jewish observance. A complete examination would take into account the thematizing of covenant in the observance of the Sabbath, the whole round of holidays, and daily observances such as prayer, tefillin, and the grace after meals. For conciseness, I will focus on what to me is the most dramatic and explicit case, namely, the invocation of the internalization of group memory and identity at the climax of the Passover Seder.

According to the biblical law, observance of the Passover was strictly coterminous with identification with the Israelite people. No stranger or uncircumcised person was to eat of the Passover. But if one wanted to observe the Passover, one could undergo circumcision, thereby becoming a member

of the Israelite people. (Exod. 12:43–44) On the other hand, an Israelite who failed to observe the Passover was considered to be cut off from his people. (Num. 9:13) A clear correlation is drawn here between cult observance and group identity: if you are a member of the group, you observe the cult, and vice versa; and if you are born outside the group, you must do what it takes to join the group, then you may observe the cult. So far, this agrees with the sacramental approach.

But what is the content of this cult observance? The original biblical law of the Passover goes on to command the Israelite who observes the festival: “And you shall explain to your son on that day, ‘It is because of what the Lord did for me when I went free from Egypt’” (Exod. 13:8). The rabbinic interpretation of this verse is correct in seizing on the first person singular, which is generalized over all historical generations of Israelites who practiced the ritual. They concluded, naturally, that whoever practices this ritual identifies with the narrative of the Exodus from Egypt so thoroughly that it is as if they themselves went out personally from Egypt. The one-time event of the Exodus is perpetuated as eternally present throughout Jewish history. Group memory is incorporated into the individual’s memory. This is what it means to be a member of this group. Thus, though one must be sacramentally eligible to observe the Passover, the essence of the observance is the inculcation of Jewish memes—Jewish group memory—into one’s core identity. If this does not take place, then one has missed out on the essential core of the Passover observance.

The classic cultic statement of the Israelite narrative in the Torah is indeed to be found not in connection with the Passover ritual, but in connection with the ceremony of bringing the first fruits. I refer, of course, to the passage in Deuteronomy:

My father was a fugitive Aramean. He went down to Egypt with meager numbers and sojourned there; but there he became a great and very populous nation. The Egyptians dealt harshly with us and oppressed us; they imposed harsh labor upon us. We cried to the Lord, the God of our fathers, and the Lord heard our plea and saw our plight, our misery, and our oppression. The Lord freed us from Egypt by a mighty hand, by an outstretched arm and awesome power, and by signs and portents. He brought us to this place and gave us this land, a land flowing with milk and honey. Wherefore I now bring the first fruits of the soil which You, O Lord, have given me. (Deut. 26:5–10)

But even though this liturgy was not originally connected with the Passover festival, the rabbinic developers of Jewish ritual could not pass up



the opportunity to connect it with the festival that centrally commemorated the events described in it. They thus transferred this personal recitation of the remembered group experience to the Pesach Seder, where it forms the centerpiece of the *Maggid*, the recitation of the Exodus narrative. The experience is further heightened by enlisting all five senses in the experience of the Seder, which serve to imprint the experience from an impressionable age onward on all conscious and subconscious levels of the personality. To emphasize the point further, the text of the haggadah incorporates a key paragraph from the Mishnah: “In every generation a person should see himself as if he went forth from Egypt, as it says (Exod. 13:8): “And you shall explain to your son on that day, ‘It is because of what the Lord did for me when I went free from Egypt’” (*m. Pesa.* 10:5).

Though the Passover Seder is the most vivid and dramatic example, one must include the entire panoply of Jewish education and ritual observance among the tools that the Jewish tradition uses to implant Jewish group identification and group memory in all who are raised as Jews and participate in Jewish life. Historically, there has generally been a strong overlap between those born of biological Jewish heritage and those who participated in the Jewish religious-cultural experience and thus internalized this sense of identification with Judaism. But there have been exceptions in both directions. On the positive side of the ledger, there have been those who move into the community, either through social involvement (including, but not limited to, marrying someone Jewish) or through intellectual and cultural encounter. On the negative side, there have always been some born of Jewish biological heritage who either rejected the education they received or never received such education in the first place, and who therefore drifted away from the Jewish people.

## HYBRID MEMES BEHAVE LIKE HYBRID GENES

We are now in a position to address the mixed-type exception, increasingly common in our postmodern age, of families formed of the marriage of Jews and non-Jews where no clear decision is made of how to raise the children. Whoever has studied Mendelian genetics can use Mendel’s tables to characterize the outcomes of these matings: when you cross X and Y, the offspring will turn out as some assortment of XX, YY, and XY. As with genes, so also with memes—from any mixed mating, three outcomes are possible. Some of the offspring will imbibe a full set of Jewish memes, which translates into a full set of Jewish cultural memories, and will identify fully as Jews. Some will imbibe only a small sprinkling of Jewish memes, or none at all, and will identify not

at all as Jews or consider a trace of Jewish background to be a negligible, incidental part of their personal identity. And some will fully exemplify the hybrid syndrome and consider their personal identity to be a mosaic of different characteristics, of which the Jewish part is a somewhat significant part but not dominant or definitive for them.

Julius Lester's reflections are a vivid example of a whole genre of the self-reflections of Jews from mixed background that can give us a window into the complexities of this situation. Another striking example of this phenomenon is the case of the urban Marranos of Portugal. Common to Julius Lester and the urban Marranos is the possibility, from the slimmest of biological descent, for the idea of Jewishness to persist for generations in latent form, then suddenly to burst forth and dominate an individual's sense of identity. When conditions are right and the individual is properly motivated, this slim thread of identity leads the individual to reconnect with the mainstream of Jewish memes, imbibe vast stores of Jewish knowledge that are integrated in the form of shared group memory, and thus achieve a rich, authentic Jewish identity from the most modest beginnings.

At the same time, one must be careful not to exaggerate the usual depth of Jewish memory in individuals who subjectively identify as Jewish on the basis of remote or fragmentary biological heritage. In the absence of serious Jewish education and communal integration, such individuals may be Jewish in their own self-definition but lack a common understanding of Jewishness with other Jews. "I identify as Jewish" is only one element of the covenantal paradigm. It may be the key defining meme, but in solitary isolation it is deficient. When in good working order and properly activated, it seeks to be expressed by assembling more and more positive content in the form of intersubjectively validated memories and behaviors of the historic and contemporary Jewish group.

From this perspective, the question "Who Is A Jew?" is an empirical question of the psychology of human personality. It can more adequately be broken down into questions like: How Jewish is this person? How much Jewish knowledge and experience do they have and how central is it to their self-concept as a person? Do they associate socially with Jews and do so because they identify as Jewish? Do they watch Jewish movies, read Jewish books? Do they go to Israel as a personal pilgrimage because they are Jewish? And (along more traditional lines) do they practice Jewish religious practices—Shabbat, holidays, Jewish dietary laws? There is a spectrum of Jewish feelings, knowledge, cultural memory, and present practices that one can refer to in order to

characterize a person as more-or-less Jewish. But there is also a tipping point where a critical mass of all these together coalesces into a “yes”—this person is Jewish, without qualification. And the answer one gets from this approach is not always identical with the answer that the sacramental approach will yield. The anomalies we cited—Jessica Fishman, Julius Lester, and the rest—represent the tip of the iceberg of the tens of thousands who may score “yes” by the empirical approach but will not necessarily be accepted by the sacramentalists.

## ACCOUNTING FOR HISTORICAL JEWISH IDENTITY

Let us now go back and analyze in greater depth how the sacramental and covenantal approaches interpret, in their various ways, the basic rules of Jewish status: Jewish biological heritage, matrilineality, and conversion.

First, let us consider the largest group, the core of the Jewish people, those who have been born of Jewish ancestors for generations going far back into time, perhaps to the beginning of Jewish history. The sacramentalists will say that these individuals are Jewish because they have Jewish ancestors, from whom the Jewish essence—whatever it is—has been transmitted. The covenantalists will say that these same individuals are Jewish because the Jewish cultural memory—which until recent times was identical with Jewish religious group memory—has been successfully implanted in these people, so that they identify with the group memory and therefore identify as Jews. Both are right. The confluence of biological heritage and the transmission of group memory make it impossible to separate out these two phenomena, other than conceptually. In a healthy, stable Jewish people, biological heritage and group memory transmission go hand in hand.

There is one problem that might keep me up nights if I were a consistent sacramentalist: what were the circumstances of the founding generation of each of the major world Jewish communities (let us say, around the tenth century), as we are trying to reconstruct them now on the basis of historical and comparative genetics? If, God forbid, the males of that generation who left their old comfortable homes, driven by the imperative of trade and exploration, settled down with the women of the new locale and mated with them without proper conversion procedures (and who could find a *beit din* of three rabbis under those circumstances?), then not only their own children but the whole line of Jews from that point onward would be tainted with the stain of invalid lineage! Anyone bothered with this kind of worry would either have to claim that every one of the indigenous founding mothers of such communities underwent proper conversion (a claim for which there is no evidence except

one's pious need to believe) or would necessarily have to turn to the Talmudic precedents that we have examined, of the Aramean woman who dunked in mikvah for her period and this was counted as conversion by Rav Assi, and of the man whom Rabbi Judah assured that as long as he had produced Jewish children, any doubt concerning his conversion would be overlooked.

Next, let us consider the case of individuals who have one Jewish parent, from the father's side or from the mother's side. It is rather well established by now that the criterion of identity transmission changed from biblical to rabbinic times—it was patrilineal in biblical times and matrilineal in rabbinic times. Shaye Cohen and others have helped us to evaluate the possible reasons why this change took place.<sup>14</sup> But relevant to our consideration here, I have two observations. One is that the determination of the child's status based on the father's or mother's affiliation may have had an element of empirical probability. That is to say, at least in some cases—such as the single Jewish mother who brings home the child who is the product of a chance encounter or a severed relationship—the dominant parent would have been likely to live in the Jewish community and to raise the child in a Jewish context, thus fostering Jewish identity on the part of the child. But causality could work in the opposite direction as well—whatever determination of status was promulgated by law would have become a self-fulfilling prophecy. Especially in a traditional society, individuals were far more likely than they are today (though even in those days, not all) to accept whatever assignment of status was given them and to live in accord with it. And there was always the recourse of converting children to Judaism to correct any anomalies that the law did not properly cover (though regarding biblical times, we must understand conversion in a more informal sense). So here, too, one may say that in premodern Jewish society the sacramental and covenantal criteria did not lead to widely differing results in the determination of Jewish identity.

Finally, let us focus on the phenomenon of conversion itself. Here, halachah combines the objective and subjective elements of Jewish existence. The *beit din*, whose job it is to establish public determinations on legal issues, which then become legal facts, is called on to do so in this case based on the subjective state of the individual in question. The *beit din* must ask the prospective convert, "Do you, or do you not, accept this covenant as binding on yourself?" This is a call for a subjective piece of information; moreover, whatever the individual's outward profession, the *beit din* is charged with evaluating its sincerity—another subjective factor (though betraying outward manifestations). Based on that subjective state, certain objective acts are to

ensue: the individual must be circumcised if male and immersed whether male or female, and the action must be witnessed by the *beit din*, who then issue the determination that this person is Jewish in the eyes of all. Under ideal conditions, the objective and subjective determinations are present together. We saw that the *Shulhan Arukh* even allows that if there is a slight shortfall from the objective criteria, one may rely on the subjective intention; there is implicit reference here to the Talmudic anecdotes of Rav Assi and Rabbi Judah, where the subjective intention had much greater power to determine the outcome.

It is still not out of place to ask: if one had to decide which was more predominant in the case of conversion, was it the subjective or the objective criterion? And the answer is elusive and paradoxical. There are cases where the objective approach has clear priority. For instance, in cases where it was later found out that the convert was insincere, their Jewish status is nevertheless irrevocable. Any marriage they have entered is still binding and needs a Jewish divorce to terminate it. This is because the individual's subjective Jewish identity has become an objective social fact, on which other objective social facts (such as marriages and families) are based. Once this fact has become part of public reality, annulling it would have disruptive consequences; therefore, it presumptively should stand, unless the grounds for annulling it are overwhelming.

From the other side, the consummation of covenantal affiliation between a convert and the broad Jewish community with which they wish to affiliate is possible only by virtue of public recognition of their Jewish status. The desire to be part of the Jewish community is, from the convert's perspective, a subjective desire and is associated with their inner feeling of "I am Jewish." But this subjective desire can be fulfilled only through the broader acceptance that ensues from public ratification of their Jewish self-affirmation, and this is achieved through the objective legal fact created by the decision of the *beit din*.

Nevertheless, I think it is important to make a sharp distinction between this objective, confirming role of the *beit din*'s determination in the conversion process and a full-blown sacramentalist position. The full-blown sacramentalists on this issue are spiritual heirs of the medieval Jewish philosopher Judah Halevi, who in his *Kuzari* posited a difference of essence between Jews and non-Jews. This difference of essence necessitates an absolutely firm dividing line between one who is fully a Jew and someone else who is not at all a Jew, with no possibility of any intermediate status. In the covenantal view, the *beit din* ratifies the convert's will to be Jewish, which is primary. In the

sacramental view, it is the *beit din*'s action that by virtue of an occult power vested in them brings about a change of essence and actually makes the non-Jew Jewish. On this view, only the right *beit din*, which has this power, can make this change. Someone who goes to the wrong *beit din* achieves nothing. Some Jews will accept the result as valid, but they are the deluded, who lead a major portion of the Jewish people into sin.

## HOW THE ENLIGHTENMENT HAS CHANGED THE PICTURE

All these questions become transformed with the onset of the Enlightenment and its acceptance by the larger part of the Jewish people over the past two centuries. This has had the following results:

1. Individuals have become autonomous. Even in the case where the fact of a Jewish individual's Jewish status is itself unproblematic, the individual feels free to follow his or her own desires rather than the directives of the group. Decisions that fall under this rubric include whether to practice Judaism, whether to marry a Jewish partner, and whether to bring up one's children as Jews with Jewish education and the practices that inculcate Jewish group memory.
2. Judaism has become pluralistic. Different Jewish denominations have arisen, with different standards of belief and practice. Conversion to Judaism becomes conversion to a particular denomination's definition of Judaism, which may not be accepted by another denomination. (Paradoxically, the power vested in the Israeli rabbinate to determine who is a Jew is wielded by the heirs of those ultra-Orthodox who opposed the Enlightenment from the outset, but their decisions are imposed on the whole of Israeli Jewish society, including the majority who took the other turn at that fork in the historical road.)
3. In an open society, intermarriage is rampant. Personal identity becomes hyphenated and polymorphous. In such a society, it is more the rule than the exception for an individual to claim descent from several ancestral groups, with the resulting perplexity: which is primary in my identity? Who am I? These complexities of lineage cannot be dictated by the ancestral groups' preconceived definitions, nor do they follow patrilineal or matrilineal criteria, but they are random and idiosyncratic. The representatives of traditional Judaism can say: this one should be declared "Jewish" and that one should be declared "non-Jewish"

by the traditional rules of lineage. But today's individuals march to the beat of their inner drummer, with unpredictable results.

## CONCLUDING RECOMMENDATIONS

Under these conditions, I believe the covenantal criterion, rather than the sacramental, is a better guide for identifying those Jews who can be counted on to advance the fortunes of the Jewish group. My own application of that criterion to today's reality yields the following tentative guidelines:

1. The rubric of conversion is appropriate for the embracing of Judaism by someone who starts out from an entirely non-Jewish starting point. In such a case, it marks the culmination of a change of identity definition that has occurred over time, accompanied by a process of cognitive learning and behavioral and emotional transformation. It is of questionable propriety when raised as a demand of someone who already has a stable Jewish identity, especially when this Jewish status is already recognized by a major community or denomination in modern Judaism. The notion that there is a species of conversion by which one changes affiliation from one party to another party within the Jewish people is a peculiar modern invention, one that is unknown in premodern Judaism. Moreover, it is based on an individual's denying their understanding of who they have been up until now. I am inclined here to agree with the critical considerations advanced by Harold Shulweis and David Wilensky.<sup>15</sup>
2. There are intermediate cases—especially in cases such as the Julius Lesters and those returning to full-fledged Jewish identity after long periods of persecution, suppression, and denial. Rabbi Juan Mejia points out that in the fifteenth century Rabbi Solomon ben Simeon Duran composed a formula for marking the return of crypto-Jews, one that formally recognized the status of their act as returning to full affirmation of the Jewishness that they had never fully relinquished.<sup>16</sup> This can serve as a precedent for rituals that recognize and honestly articulate the nuances of the objective and subjective realities of these intermediate cases rather than subsuming them to the conversion rubric, which implies a complete transformation from non-Jewish to Jewish status.
3. It would not be a bad idea for Jews to reinstitute a form of ritual immersion on a regular basis, so that we can all be at least as deserving as the girlfriend of Rabbi Hiyya's slave. In connection with my earlier paper on patrilineality, I offered an experimental

liturgy to point the way to what such an immersion ceremony might look like if developed in practice. It was my deliberate intention in composing this ritual to include affirmation of Jewishness as part of the ritual without implying the previous non-Jewishness of the participant, so that it could be engaged in equally by all Jews of whatever background of personal and family history.<sup>17</sup>

4. Each subgroup of Jewry should respect the determinations of other subgroups that such-and-such an individual meets the standards of Jewish identity and should be accorded the rights and privileges of Jewish status. (“Even though the School of Hillel and the School of Shammai differed—the one would forbid what the other permitted, the one would disqualify what the other qualified—the School of Shammai did not refrain from marrying women from the School of Hillel, or the School of Hillel from the School of Shammai.”<sup>18</sup>) As I proposed in my patrilineal paper, if a Reform congregation confers an education together with Bar or Bat Mitzvah on a patrilineal Jew, other denominations should respect this, from their perspectives, as receiving the yoke of mitzvot, which is the prime requirement of conversion.

There is another consideration that I raised in my patrilineal paper, which I call “Avinoam’s Paradox.” It is the inverse of David Wilensky’s position but agrees with it in their common suspicion of touch-up conversions. It was articulated by Rabbi Avinoam Sharon, an Israeli Masorti rabbi, who gave me permission to cite it in his name. In Rabbi Sharon’s words:

According to this view, a person who regards him/herself as Jewish by virtue of patrilineal lineage may not be able to ever become halakhically Jewish. The reason for this is that the only means of doing so is to undergo conversion. If, in order for conversion to be valid, it must be performed with the sincere intention to become Jewish, then a candidate who declares him/herself to be Jewish already would not be sincere in that intention, from an objective perspective. Moreover, such a candidate, believing him/herself to be Jewish already, would not subjectively recognize the validity of his/her own conversion. As a result, arguably, such a person can never become halakhically Jewish.<sup>19</sup>

The same logic could apply to the person who had been converted to Judaism in a Reform ceremony, of whom Orthodox conversion was subsequently demanded. In the best of cases it is logic like this that induces the Jessica Fishmans to refuse an Orthodox conversion and the Lucy Cohens to refuse a



Conservative conversion because they cannot accept the premise implied by such a demand that they are not Jewish in the first place, and they cannot in good conscience enter into such a procedure based on what to them are false premises.

I cite this paradox for two reasons. First, it should cause us to question whether, in the case of the sincere patrilineal Jew, conversion is indeed the optimal course of action to be recommended. Second, the existence of this view on the table illustrates that it is not possible, at least in this case, to be *yotzei yedei kol ha-de'ot* [to pursue a course that will be acceptable in the eyes of everyone]. Once we realize this impossibility, two alternatives open up. One is that, in a given case, no matter what action we take, some people will be dissatisfied—that there will therefore be people who are regarded as kosher Jews by this authority's criterion but not by that authority's criterion. In that case, the Jewish people must be forever split, and the split is irremediable. The other alternative—to avoid this undesirable outcome—is to adopt the position of the School of Shammai and the School of Hillel as cited in Mishnah *Yebamot* 1:4, that even though they subscribed to different rules in the minutiae governing marriage and divorce (and by implication, of personal status), they agreed to accept the actions of the other party performed by the other party's criteria. This is the way of *elu ve'elu divrei elohim hayyim* [these and those are the words of the living God]. This is the path that if followed by all, can lead to a healing of the Jewish people.

## NOTES

<sup>1</sup> Meme: a unit of transmitted cultural memory (an analogy with “gene”). Richard Dawkins, *The Selfish Gene* (2<sup>nd</sup> ed.; Oxford: Oxford University Press, 1989), 189–201.

<sup>2</sup> Eugene Borowitz, *Renewing the Covenant: A Theology for the Postmodern Jew* (Philadelphia: Jewish Publication Society, 1991), 284–99.

<sup>3</sup> Juan Mejia, “Rambam’s Historical Approach to the Laws of Conversion,” *Gevanim* 8 (2012): 1–15, <http://ajrsem.org/teachings/journal/volume8-number1/>. Mejia cites Avi Sagi and Zvi Zohar, *Giyyur ve-zehut yehudit: Iyyun bi-yesodot ha-halakhah* (Jerusalem: Mosad Bialik, 1997). See also Avi Sagi and Zvi Zohar, *Transforming Identity: The Ritual Transition from Gentile to Jew—Structure and Meaning* (New York: Continuum, 2007).

<sup>4</sup> Leonard Levin, “A Proposal for the Purification of All Jews,” *Gevanim* 8 (2012): 16–34, <http://ajrsem.org/teachings/journal/volume8-number1/>.

<sup>5</sup> “We need a name for the new replicator, a noun that conveys the idea of a unit of cultural transmission, or a unit of *imitation*. . . . I want a monosyllable that sounds a bit like ‘gene.’ I hope my classicist friends will forgive me if I abbreviate mimeme to *meme*. . . . It could alternatively be thought of as being related to ‘memory,’ or to the French word *même*” (Dawkins, *The Selfish Gene*, 192).

<sup>6</sup> “She Doesn’t Live Here Any More,” *Yedi’ot Aharonot* (trans. Jonathan Adam Silverman; April 30, 2010), [http://reblen.blogspot.com/2010\\_05\\_01\\_archive.html](http://reblen.blogspot.com/2010_05_01_archive.html).

<sup>7</sup> David Wilensky, “What Would You Call Me?,” *Forward* (April 20, 2012), <http://forward.com/articles/154650/what-would-you-call-me/>.

<sup>8</sup> Harold Shulweis, “Lucy Cohen’s Father Is Jewish,” Valley Beth Shalom newsletter (1993), <http://www.vbs.org/page.cfm?p=720>.

<sup>9</sup> “Even though the School of Hillel and the School of Shammai differed—the one would forbid what the other permitted, the one would disqualify what the other qualified—the School of Shammai did not refrain from marrying women from the School of Hillel, or the School of Hillel from the School of Shammai” (*m. Yebam.* 1:4).

<sup>10</sup> Julius Lester, *Lovesong: Becoming A Jew* (New York: Henry Holt, 1988).

<sup>11</sup> “Our rabbis taught: If a prospective convert has been circumcised but not immersed, Rabbi Eliezer said: He is a valid convert. . . . If a prospect has immersed but not been circumcised, Rabbi Joshua says: He is a valid convert. . . . But the sages say: He is not a valid convert unless he has undergone both circumcision and immersion” (*b. Yebam.* 46a).

<sup>12</sup> The rabbis taught: If a prospective convert comes to be converted in this age . . . they inform him of some of the minor mitzvot and some of the major mitzvot. . . . They do not tell him too much, nor are they too exacting. If he accepts, they circumcise him immediately. . . . When he is healed, they immerse him immediately. . . . When he has immersed and ascended, he is Jewish in all respects (*b. Yebam.* 47a-b).

<sup>13</sup> Haim Amsalem, *Zera’ Yisrael* (Jerusalem: Mekabetz Nidhei Yisrael, 2010), <http://www.hebrewbooks.org/50709>.

<sup>14</sup> Shaye J. D. Cohen, “The Origins of the Matrilineal Principle in Rabbinic Law,” *AJS Review* 10:1 (1985): 19–53.

<sup>15</sup> See above, notes 7–8.

<sup>16</sup> Responsa of Rabbi Solomon ben Simeon Duran, § 89, cited in Juan Mejia, “On the Jewish Status of the Contemporary Descendants of Sephardic Anusim” (unpublished paper).

<sup>17</sup> See Lenny Levin, “A Liturgy for Immersion in Natural Waters,” *Reblen*, March 16, 2012, <http://reblen.blogspot.com/2012/03/liturgy-for-immersion-in-natural-waters.html>.

<sup>18</sup> *m. Yebam.* 1:4.

<sup>19</sup> Avinoam Sharon, letter to the author, May 22, 2013.



# Judging and Protecting Jewish Identity in *Shaare Tefila Congregation v. Cobb*

Annalise E. Glauz-Todrank

## INTRODUCTION: THE VANDALISM INCIDENT

On November 1, 1982, eight young adult males, most of them teenagers, sat drinking in a drugstore parking lot in Silver Spring, Maryland. Not far away at Shaare Tefila, a synagogue affiliated with the Conservative movement, the board of trustees was meeting. The parking lot outside was full of cars. After a few drinks, several of the young adults walked over to the wall of Drug Fair, one among a local chain of drugstores, and spray-painted a burning cross, the slogans “White Power” and “Arian [*sic*] Brotherhood,” the initials KKK, an eagle with a swastika, a Star of David with an arrow through it, and their initials.<sup>1</sup> One of them suggested, “Somebody should do that on a synagogue.”<sup>2</sup> Because they all lived in town or in the surrounding area, they knew where to find Shaare Tefila, and they walked over to it. As the board meeting proceeded inside, the young men started spray-painting one of the outside walls, before ranging over the property and painting a car, playground equipment, and several of the other walls. Among their ominous creations were a six-foot tall Nazi eagle, the words “Toten Kamf Raband” [*sic*], a burning cross in red and black, the words “Dead Jew” and “Death to the Jude,” and the outline of a door, upon which they wrote “In, Take a Shower, Jew.”<sup>3</sup>

When the members of the board exited the building, the young men were gone, and at first the board members did not notice anything amiss. The president, Maurice Potosky, and the executive director, Marshall Levin, had remained inside to discuss some matters a bit further. Jack Teller reached his car and found a swastika painted on it. Shocked, he drove home, and, from there, called Marshall and Maurice back at the synagogue. The board members still at the synagogue walked around the building, discovering one disturbing image after another. After registering their surprise and serious concern about the defacement, Maurice and Marshall telephoned the rabbi at home—he had not been present for the board meeting. After the other board members returned to their homes, the three of them went into the synagogue and considered what should be done.<sup>4</sup>

According to Marshall Levin, in the early 1980s in the Washington, DC area, the prevalent sentiment within the Jewish community was that instances

of antisemitic vandalism should be immediately cleaned up and quietly removed. Better if the surrounding community and the press did not find out. Better to keep it quiet so that “copycat” crimes did not occur. These instances of defacement were viewed as an embarrassment to the Jewish community.<sup>5</sup> As the *Washington Post* reported three days after the incident, “Jewish leaders say that statistics do not accurately reflect the true extent of such incidents, since there is a great reluctance on the part of many victims to report such acts for fear of encouraging their repetition.”<sup>6</sup>

On that night, however, a shift in thinking occurred that would thereafter alter the way that local Jewish communities responded to these crimes. As Levin, Potosky, and Shaare Tefila’s rabbi, Martin Halpern z”l, stood in the synagogue puzzling over what they should do, they considered the practicality of removing the paint.<sup>7</sup> They would need to hire someone with a sand-blaster, who could effectively blast the paint off of the walls. The following day the synagogue would be filled with voters, arriving at their local polling place to submit their ballots. When the voters arrived, they would not miss the six-foot Nazi eagle or the words painted on the walls if these images remained there. Eventually, Levin convinced Potosky and Rabbi Halpern that if the congregation left the graffiti on the building, the larger community would respond by uniting with them against the act. As he predicted, in the week that followed, parents took their children to see the images and explained to them what had happened, and on the following Sunday, Jewish and non-Jewish members of the local community arrived in the hundreds to clean the building. In the years to come, the publicity of this incident resulted in criminal trials and then the civil suit, *Shaare Tefila Congregation v. Cobb*, which eventually landed in the Supreme Court.<sup>8</sup>

#### THE ARGUMENT: SITUATING JEWISH IDENTITY IN *SHAARE TEFILA CONGREGATION V. COBB*

In 1987, the U.S. Supreme Court heard and decided *Shaare Tefila Congregation v. Cobb*, the first case to provide race-based civil rights protection to Jews. Very little has been written about the case, but the legal process that culminated in the Supreme Court hearing and the contents of the oral argument contain a wealth of material that is compelling to anyone with even a passing interest in how the state defines Jewish identity.

The problem of defining terms such as “religion” and “race” in the *Shaare Tefila* case forms the main focus of this chapter, but with the larger aim of delineating how the Supreme Court determined civil rights protection for

Jews. To this end, I examine the legal process and decision in *Shaare Tefila* for what it reveals about legal constructions of Jewish identity. I address the question of how the justices evaluated Jewish identity, and I consider how they determined what discrimination against Jews has entailed. I posit that the problem of how to legally define Jews, or, in other words, how to socially locate Jews in relation to religion and race, highlights at least two related and noteworthy issues. One is that Jewish identity does not neatly fit into either category, which reveals the socially constructed character of the categories themselves. The other is that by analyzing this lack of fit as it relates to relevant discursive systems, it is possible to identify some ways in which these systems intersect. For instance, in both European and American discourses, the two categories are bound up with each other, both genealogically and substantively.

In my analysis of the oral argument for *Shaare Tefila Congregation v. Cobb*, I will highlight moments when these discursive differences arose and address the necessity of recognizing both their distinct histories and how these discourses have come to intersect. They intersect in the specific incident that led to this case but also in contemporary American culture more generally.

At stake in both issues mentioned above is the question of legal protection and the justices' attempts to navigate discursive systems without necessarily recognizing them as such. In this case, to convince the justices that the synagogue members had experienced a racist incident, the lawyer had to respond to hypothetical situations that invoked conceptions of race drawn from different times and places. The justices, however, did not necessarily acknowledge the different origins of these conceptions or the impact that the differences had on their interpretations of what occurred in the defacement incident.

Central to the Supreme Court decision was the question of whether Jews can claim race-based protection or whether "Jewish" is a religious designation only. This question was so difficult for the court to answer, in part, because none of the categories involved—"religion," "race," or "Jewish"—are clearly legally defined. The U.S. legal system has a long history of grappling with both race and religion. Historically, it has defined race in a variety of ways, using scientific narratives and the "common knowledge" test, among others. These definitions were employed to legitimate and to clarify the operation of political institutions, like slavery and immigration.

No legal definition for religion exists, however. Unlike race in the United States, religion is not a category that has been used to explicitly justify a structural hierarchy. In other words, typically, the category of religion has not been imposed on a group of people and then cited as a reason to justify their

subjugation. Rather, due to the American myth of religious pluralism, the category “religion” has been claimed by immigrant and indigenous American communities to legitimate practices and beliefs meaningful to them. Additionally, neither the United States judicial system nor the legislature has ever defined what it means to be Jewish. Jewish Americans had never successfully claimed civil rights protection on the basis of race before, so no immediately obvious precedent existed. Therefore, the Supreme Court justices faced a conundrum regarding how to decide the case. To do so, it was necessary to situate Jewish identity in relation to the legal categories “religion” and “race.”

The court’s attempt to socially locate Jewish identity necessitated the engagement of multiple discourses that developed in different contexts, including Europe and the United States. The social and legal status of Jews as a minority group in both contexts has always been informed by the prevailing conceptions of religion and race in respective times and places. Both European and American histories of race, in particular, were significant to this case because the defacement of Shaare Tefila included images and phrases drawing on Nazi and Ku Klux Klan racial ideologies. To understand historically evolving conceptions of what “Jewish” entails, the role of Jewish racial status in each ideology must be contextualized. In other words, it must be considered in relation to the social and legal discourses through which these ideologies emerged.

#### DISCOURSES ABOUT RELIGION, RACE, AND JEWISH IDENTITY: EUROPEAN AND AMERICAN

In order to contextualize the questions pertaining to Jewish identity that arose in *Shaare Tefila Congregation v. Cobb*, it is important to briefly examine European and American discourses about religion, race, and Jews. The vandals’ defacement of the synagogue included references to Nazi and Ku Klux Klan racial ideologies. Although these two ideologies are distinct, anti-Jewish claims in the American context that construe Jews as an inferior race often draw on both of them. Since the construction of race as a category of human difference is directly tied to the history of imperialism and colonial conquest, European and American conceptions of race are bound together. Nevertheless, the American institution of slavery instantiated an American racial history tied to its legitimation. In the European context, in contrast, Jews had long been construed as the “internal other” and had become racialized at the same time as peoples indigenous to the New World, who were construed as the “external other.”<sup>9</sup>

European racialization of Jews had gradually merged religiously grounded “anti-Jewish” sentiments related to Jews’ rejection of Jesus with racially

grounded “antisemitic” characterizations of Jews associated with assumptions about Jewish bodies and their supposed inherent qualities. One key moment in this process was the *limpieza de sangre* [purity of blood] statute of fifteenth century Toledo, Spain, which implied that *conversos* retained Jewish characteristics and that their conversions to Catholicism did not absolve them of their Jewishness.<sup>10</sup> Preceding and undergirding this development in “race thinking” was the Catholic Church’s ideological shift regarding the role of Jews in Christian Europe. In the thirteenth century, Franciscan and Dominican friars began extensively engaging rabbinic literature and determined that Jews were not the witnesses to the “old” covenant of the Old Testament as Augustine had claimed. Rather, they were “heretics” who followed the laws of the Talmud. Jews were therefore theologically and physically expendable and could be expelled.<sup>11</sup>

The genealogical evolution of modern race theory, which classified Jewish bodies according to physical features, formed another important part of the racialization process and influenced Nazi ideologies about Jews.<sup>12</sup> Early scientific studies of race continue to inform contemporary American conceptions about “race thinking,” even though most scholars deem them outdated. In these studies, “races” could be determined on the basis of physical characteristics, but scientists also often assumed that these physical characteristics correlated with mental, physical, and moral abilities and qualities. Georg Wilhelm Friedrich Hegel, for example, introduces his analysis of race in *Encyclopedia of the Physical Sciences*, by writing: “We shall now characterize the racial diversities of humanity together with their physical and mental or spiritual bearings which go together with these differences.”<sup>13</sup>

Some race scholars also made aesthetic judgments about races based on particular ideals of beauty.<sup>14</sup> For example, in his essay “On the Natural Variety of Mankind,” Johann Friedrich Blumenbach writes about what he deems the “Caucasian variety” of people, stating: “I have taken the name of this variety from Mount Caucasus, both because its neighborhood, and especially its southern slope, produces the most beautiful race of men, I mean the Georgian.”<sup>15</sup> Nazi German nationalist ideology also differentiated between “races” on the basis of aesthetics. Furthermore, the Nuremberg Laws codified racial distinction on the basis of “blood,” in a way that was reminiscent of the Spanish *limpieza de sangre* statutes.<sup>16</sup>

The merging of religious and scientific and later nationalist narratives that classified Jews in Europe has impacted Jewish American history since the first Jews arrived in the New World, fleeing the Spanish Inquisition. In U.S. history, however, dominant discourse situates religion and race separately and generally neglects the continued intersections between them. In the American



context, the prevailing narratives about race and religion have changed over time but have consistently impacted conceptions of Jewish identity both inside and outside of Jewish communities.

Dominant discourses about religion and race reveal the influence of early formative events in U.S. history. Such events include the arrival of early European settlers in the seventeenth century and the role of their religious identities, the elimination of Native American tribes, the institution of slavery, and the waves of immigrants from Europe and Asia. Early usages of the term “race” referred to country of origin and nationality, language group, ancestry from a general region, and the link between geographic areas and physical features, such as “skin color.”<sup>17</sup> “Religion” referred to the divisions relevant to the European context, such as Catholics, different types of Protestants, and “Hebrews” or Jews.<sup>18</sup> Currently, Americans tend to think that religion includes a set of beliefs, regular religious practice, and sacred texts; and that it involves a choice, rather than an identity accorded at birth. In contrast, the dominant conception of race includes an ascription of difference based on bodies and a belief that race is determined by birth.

In the United States, many myths about Jews derive from European contexts and remain active but do not coincide with formulations of the American social landscape. Whereas Jews remained the perpetual other for much of European history, they have mostly evaded this position in the United States, where the major marker of racial difference became the “color line.”<sup>19</sup> European myths about Jews did not disappear when European immigrants arrived in the United States, however. Rather, these tropes continued even as Jews gradually accrued further legal rights and social privileges. Whereas dominant discourse regarding Jews and race has shifted over the years, such that most Jews who “look white” have been able to assimilate into the white racial category, gaining many of the privileges associated with whiteness, myths about Jews as racially inferior persist, resulting in attacks on synagogues, homes, and people.

Contemporary attempts to situate Jewish identity in relation to the U.S. categories of religion and race typically result in confusion. The source of this confusion is two-fold. It exists because these categories are socially constructed rather than naturally occurring and because multiple discourses inform Jewish social location. Conceptions of what these categories mean have developed uniquely in the U.S. context, imbedded in social discourse, legal decisions, and historical events. Narratives about Jewish identity that developed in Europe, however, continue to inform American conceptions of what Jewishness entails, even though they do not predominate in the United States.

Formulations of Jewish identity from within Jewish communities have evolved and shifted over the course of Jewish history, as Jews in various times and places have reflected on the past and engaged with their larger societies. In the contemporary United States, the assumptions that Jews are white and that Judaism is a religion prevail, but confusion about how to categorize Jewish identity remains because racist attacks on Jews continue and because Jewish identity is typically conferred by birth.

#### JEWISH IDENTITY IN THE SUPREME COURT: THE CASE OF *SHAARE TEFILA CONGREGATION V. COBB*

In two lower court rulings, the Federal District Court and the Fourth Circuit Court of Appeals, Shaare Tefila's case had been dismissed on the basis that Jews are white and therefore cannot claim race-based protection by citing an act that protects "all citizens" to the same extent as "whites." The Supreme Court decided to hear the case in conjunction with another case, *St. Francis College v. Al-Khazraji*, because both cases had cited the same law but with different outcomes.<sup>20</sup> Al-Khazraji had claimed that he was denied tenure at St. Francis College because of his Iraqi descent. His lawyer had constructed a well-documented argument claiming that Iraqis would have been deemed a distinct race in 1866, and, therefore, that he could claim protection under the Civil Rights Act of 1866. He had won in the Third Circuit Court of Appeals. The Supreme Court heard the cases together because of their disparate rulings and the need to determine a consistent precedent.

On Wednesday, February 25, 1987, the Supreme Court heard the oral argument for *Shaare Tefila Congregation v. Cobb*. In it, the justices' questions and responses to the lawyers indicated what the justices thought about the legal parameters of "religion" and "race" as civil rights categories. The justices engaged religion and race in relation to how these topics have been previously addressed in legal contexts. Pervasive legal discourses included these points: the idea that religion mainly has to do with belief and is a choice, as opposed to race, which is fixed and permanent; the concept that race can be determined based on skin color and by common knowledge; and the implication that one definition of race has the capacity to account for all types of racism.

At stake in the oral argument was the question of where race is located, in bodies or in perceptions of bodies. The lawyers presented different approaches to this question: Is the "race" at stake in the quest for legal protection embodied or is it discursively constructed? Thus, must the synagogue members prove that they are part of a Jewish race or only that the vandals perceived them to

be members of a race? This issue becomes complicated by a history of judicial reliance on common knowledge conceptions of race to legitimate race-based claims.<sup>21</sup> Jews were not commonly perceived to be members of their own race in the 1980s, which meant that Shaare Tefila had to make a different type of claim to race-based protection to succeed in convincing the court.

The proceedings began with Chief Justice Rehnquist asking Shaare Tefila's lawyer, Patricia Brannan, to state her argument. She commenced by presenting the central issue: whether a "complaint that alleges racially motivated discrimination and harassment against Jews may state a claim under Title 42 of the United States Code, Section 1982."<sup>22</sup> Brannan's overarching contention is that because the vandals committed a racist *act*, the congregation can claim protection under Section 1982. As the oral argument began, Brannan explained the racial significance of the Nazi and Ku Klux Klan ideologies, which the words and images spray-painted on the synagogue represented.<sup>23</sup> She asserted that the act was racist based on the racist ideologies evident in the symbols and phrases that the vandals wrote and on their perceptions that Jews are members of an inferior race.<sup>24</sup>

In contrast, the vandals' lawyer, Deborah Garren, claimed that Jews cannot claim protection on the basis of the act because Jews are not "in fact" a race. Brannan countered that courts should not be deciding or defining the boundaries between races at all. Rather, race and racism should be determined by examining cultural practices and histories of racial discourses. Brannan emphasized that not only are Jews not a race but also that the court should not engage in determining the boundaries or definitions of racial subcategories. In explaining her approach, she asserted: "at all costs we would want the courts to avoid the issue of defining race in order to determine coverage."<sup>25</sup>

In Brannan's argument, civil rights protection on the basis of race equates with protection against racism. In other words, the congregation did not need to prove that Jews are a racial group, only that they had been targeted on the basis of racial bias. In response to a question about whether people who voted for the statute thought that Jews were racially distinct, she explained: "For our purposes, we don't believe that that even would matter. That what really matters, if persons who discriminate against Jews, Arabs, or other minorities now, who do that because they view them as racially distinct, that that conduct should be covered."<sup>26</sup> The "factual" qualifications of race, for Brannan, were immaterial.

Brannan rejected the common knowledge test, based on the evidence from this vandalism incident that not all racist actions follow dominant views of race and racial divisions and that other discourses about race continue to

inform identity-based crimes. In direct contrast to what Garren would later state, she asserted: “We think perhaps it goes without saying that it would be a completely inappropriate exercise for the district courts to undertake trying to figure out who is white and non-white in some objective, anthropological, or scientific test; that that simply would not be an appropriate approach for the courts to take.”<sup>27</sup>

Brannan requested that the court define racism in terms of the mental approach or intention that informs how an individual operates when he or she commits a crime. In effect, Brannan aimed to move the court away from the common knowledge test toward a test still based on perception but one that would allow for other narratives and perceptions of racial differences besides the socially dominant view. In regard to the vandalism, she pointed out: “Given the content of the message that they put up on the walls of Shaare Tefila, it really evokes a racist history.”<sup>28</sup> In her argument, historical movements that espoused racism and subversive racial discourses form a noteworthy component of how the court should define racism.

The strength of Brannan’s argument is her emphasis on racism rather than on proven racial characteristics or factual racial distinction. This reasoning accounts for and requires legal coverage for the variety of discourses that depict Jews as essentially inferior. Whereas Garren’s argument reified a particular myth prevalent in the 1980s—that Jews are white and a religious group—Brannan’s argument allowed for protection against a wide variety of identity-based attacks on Jews.<sup>29</sup> Following her reasoning, the statute would cover anyone who commits a crime against Jews on the basis of any supposed quality that Americans might associate with the category of race. This reasoning implicitly deconstructs the normative assumptions associated with the category. Rather than assuming either that a factual definition of race and its subcategories exists or that Americans necessarily share the very same conceptions of race, Brannan’s approach accounted for the diversity of discourses about Jews that could inform crimes committed against Jews.

Deborah Garren asserted that the congregation cannot claim protection under Section 1982, originating in the Civil Rights Act of 1866, because the statute provides the same rights to “all citizens” as to “whites.” Because the congregation members are white and members of a religious group, she claimed, this law does not cover them. Garren’s argument regarding Jewish identity relied on the dominant conception in the 1980s that Jews are white. This conception was also evident in the perspectives of the lower court judges who dismissed the case on the basis that Jews are white. For instance, she

stated that, in contrast to Jews, “there are certain groups in our society that are commonly defined as non-white. Those groups would be entitled to protection, and if an individual is subjected to discrimination because he is perceived to be a member of such a group, then he would be covered.”<sup>30</sup>

And later in the oral argument, she elaborated on how the distinction between whites and non-whites would be made: “Well, I think one obvious way in which he would be identified as a non-white person would be by reference to immutable physical characteristics such as skin color.”<sup>31</sup> In her argument, Garren also assumed that one narrative—the idea that Jews are white and are defined as a religious group—fully encompasses the different types of marginalization that Jewish Americans have faced. Justice Scalia reminded Garren that “years ago, and of course it’s still prevalent in some areas, there was prejudice against Jews. That was known in our society. There was a lot of antisemitism.” He asked: “How would you characterize that prejudice?” She replied: “Prejudice that was based on their religion . . . that is what in fact defines the group.”<sup>32</sup>

Garren insisted that racial discrimination is nonexistent in the defacement. She urged that race should be determined on the basis of common perception and on the basis of observation, which she implied that any court could capably do. She explained: “One evaluates whether these individuals—you look at the individual, first of all, and you evaluate whether that individual is identified as white or is identified as non-white in our society, in some sense.”<sup>33</sup> This opinion, theoretically, should be the same opinion that any “common person” would have; in other words, the justices are not expected to be experts on race. The argument relied on dominant discourse because the common person knows what race is by living in U.S. society, in which certain understandings of race predominate. Garren’s argument further necessitated that this common person could distinguish between someone who is “white” versus someone who is “not white.” This premise implies that white is something common people can “see,” and we can see it correctly because we know what physical characteristics make someone white or not white.<sup>34</sup>

Garren’s argument required that Jews seeking legal protection prove that dominant discourse about Jewish identity is factually wrong. According to Garren, a judge could look at a person and determine her whiteness, which would then prove her ability to claim that the defendant targeted her on the basis of her not-whiteness. Garren based this argument on the premise that everyone “sees” race in the same way or that some universal code exists that allows a person to know immediately how to categorize another person.

Garren asserted that Jews can be identified only as a religious group and, correspondingly, that Jews are not, in fact, a race. She did not provide reasoning for what specifically makes Jews religious; in other words, she did not define religion and demonstrate how Jews fit that category. Instead she simply noted: “that is the category that defines them.”<sup>35</sup> Furthermore, Garren pointed to the synagogue, a religious building, as evidence that the vandalism attacked Jews for being members of a religious group and not for any other reason. The synagogue, in this case, stands for religion, since it serves a religious function. In her argument, the larger legal category at stake is religion, and the subcategory in question is Judaism. Like the lower court judges, she examined not the content of the graffiti or the historical associations between it and Ku Klux Klan or Nazi ideologies of Jewish inferiority but the dominant discourse of the 1980s that defined Jews as members of a religious group.

Brannan’s argument regarding Jewish identity precluded any need to categorize Jews according to either religion or race. Rather, her approach focused on the incident itself and the narratives that informed the vandals’ actions. This approach drew on the legal history of civil rights cases that address the harm committed and the use of the Thirteenth Amendment to eliminate the “badges and incidents of slavery.”<sup>36</sup> The categorization of Shaare Tefila members as religious is immaterial to Brannan’s argument.

The Supreme Court justices queried Brannan repeatedly about whether she thought that Jews would have been considered a separate race at the time that the Civil Rights Act was passed. These questions might have seemed particularly odd, had not the Shaare Tefila case been heard in conjunction with *St. Francis College v. Al-Khazraji*. Brannan rejected the application of Al-Khazraji’s argument, that Iraqis were considered a race in 1866, to Shaare Tefila, however, in accordance with the congregation’s desire not to be legally categorized as members of a particular race.

Significant for the purposes of considering how the case situates Jewish identity in terms of race were exchanges between the justices and the lawyers on the topics of skin color, a Harlem synagogue, and a country club. In these interactions, longstanding discourses about race emerged. As a side note, a number of the issues that the justices raised have not yet been addressed in American government policy, including the problematic relationship between ethnic categories, such as Japanese or Latino, and racial categories, such as Asian and white.<sup>37</sup> The skin color discussion involved multiple discourses and mixed legal definitions of race, such as the association of race with color and the “one-drop” rule.

When Justice Thurgood Marshall asked Deborah Garren how she would classify his father after describing his skin color and features, she stated that he would be considered white and would have no cause of action under the statute. In response, he retorted: "Oh, but he did. He was a Negro."<sup>38</sup> Such a classificatory conundrum recalls *Plessy v. Ferguson*, in which a man who looked white but was legally black revealed his black identity and had to move to the "Negro" car on the train.<sup>39</sup> These conflicting narratives about whether race refers to color or to ancestry or to both demonstrate the shifting boundaries of race as a continually reinvented and redefined category. Justice Marshall's point implied that although the Shaare Tefila congregation members looked white, they nevertheless could be the victims of race-based discrimination.

Later in the oral argument, Justice Marshall posed a hypothetical example in which vandals deface a synagogue in Harlem and asked Brannan what argument she would make in that situation. When she explained that she would construct it in the same way, he replies, "Well, you couldn't do it on race, could you?"<sup>40</sup> He then noted that "there are no Jews in that synagogue" before realizing that he had made a mistake, based on the assumption that Jews are white. He corrected himself and stated: "There are no white Jews, I would say."<sup>41</sup> His response clearly revealed his initial assumption that the white/black racial distinction trumped or negated the argument that antisemitism is racism. This assumption reflects the dominant discourse of race in the 1980s United States, in which race referred specifically to blacks and whites and to the relationship between them. Justice Marshall's query about the Harlem synagogue conveys the complexity of contemporary narratives about race and the predominance of the black-white distinction as the salient form of race.

The myth of the "Jewish race" never gained the same rhetorical or imaginative power in the United States as it did in Nazi Germany and in other parts of Europe, even though the racialization of Jews was significant enough to result in incidents such as the Leo Frank affair and in a widespread but now largely defunct perception of Jews as racially distinct.<sup>42</sup> In other words, although Jews did not "become white," a significant shift in the dominant discourse did occur after World War II, such that Jewish "difference" continually receded.<sup>43</sup>

In the 1980s, the dominant discourse did not support the idea of a Jewish race. Hence, in the Harlem synagogue example, the confusing intermingling of discourses is evident: is race about blacks and whites, in which race can refer only to color, or is race also about an attack on a synagogue, regardless of the color of the Jewish congregants, that highlights historical discourses of Jewish racial inferiority? The former discourse prevails to the extent that the latter one becomes silenced.

Jews as raced becomes salient again at the level of popular discourse only in seemingly random incidents, such as the defacement of Shaare Tefila, even though many congregation members had experienced other instances of antisemitism. In effect, discourse depicting Jews as a race or as essentially different from other white people remained submerged as a type of subversive discourse that emerged only in interpersonal interactions or in instances of violence against Jews that specifically targeted Jewish identity. In dominant discourse, however, as reflected by the rulings in the lower court cases, Jews were white and no racial problem existed.

Toward the end of the oral argument, Justice Antonin Scalia interrogated Deborah Garren regarding her claim that Jews are a religion only and, therefore, cannot claim race-based protection. He noted that over the years, and “it’s still prevalent in some areas, there was prejudice against Jews. That was known in our society. There was a lot of antisemitism. How would you characterize that prejudice?”<sup>44</sup> He interrupted her response to say: “You wouldn’t call it racial prejudice?” Garren stated: “Prejudice that is based on their religion.” He asked: “Do you think it was based entirely on their religion?” To which Garren answered: “That is the characteristic that defines them. There is no racial characteristic that in fact defines people of the Jewish faith. It is a religion.” He then asked: “Do you think that would be the proper characterization in Germany when it was so virulent?” Garren responded: “No, sir. But again that was the deviant perception of a couple of organizations in the society that had run rampant. It wasn’t a common perception in the society. They weren’t commonly identified.”

Then Justice Scalia inquired whether Garren thought that the origin of the prejudice in this country was “entirely religious.” Garren stated: “I have every reason to believe that religion in part motivated the prejudice, because that is what in fact defines the group.” Justice Scalia asked: “It didn’t extend to Jews who were atheists, nonbelievers? Do you really think that was the case?” When Garren expressed uncertainty, he continued: “I mean, do you think that the prejudice that existed against Jews in this country was only against believing Jews, and so long as the Jew said, I really no longer believe in the religious tenets of Judaism, the prejudice no longer existed and that person would have been able to get into all sort of country clubs and whatnot?” Garren answered: “No, sir, but I do think that the discriminators define the group by their religious beliefs. They may not know in each individual instance whether that Jewish person follows his faith or not.”

In Scalia’s interrogation, Garren recognized his affront to her argument and agreed that nonbelieving Jews did not gain access to discriminatory



country clubs otherwise prohibited to them, but she maintained that the discrimination in question pertained to belief. She noted: “They [the discriminators] may not know in each individual instance whether that Jewish person follows his faith or not.” Her response acknowledged that someone could *be* a Jewish person without “follow[ing] his faith,” which, in effect, undermined her argument and supported Scalia’s point that Jewish identity need not rely on belief. Scalia’s questioning, however, also highlighted the association of religion with belief as well as the problem of how to categorize nonbelieving Jews in relation to religion. It raised the issue of what religious discrimination entails. According to Scalia’s logic, discrimination not based on belief must not be religious discrimination. A nonbeliever is not religious, therefore, how should the court categorize nonbelieving Jews? Scalia implied that Jews who reject the tenets of Jewish faith remain Jewish but that Jewish identity, then, did not remain within the bounds of the legal category of religion. This example illustrates both that Scalia assumed that religion is primarily defined in terms of belief and that Jews faced discrimination for other reasons.

In these examples from the oral argument, it is evident that Jewish identity does not neatly fit the available categories of legal protection—religion and race—as the court understands them. Belief is central to the category of religion, and because Jews have experienced discrimination whether or not they were religious, the court could conclude that religion does not encompass all of the facets of Jewish identity. Neither, for a number of reasons, did the court find that Jews fit the category of race. For one thing, the dominant discourse describes race in terms of color, particularly in terms of colors other than white. The Shaare Tefila members, however, look white. Furthermore, neither lawyer argued that Jews are a race. Patricia Brannan carefully emphasized, in contrast, the racism rather than the “actuality” of race apparent in the incident; in other words, she located the violation of rights in the racism rather than in the identity of the members themselves.

The Supreme Court’s conceptions of religion and race drew on the dominant discourse of the 1980s but also engaged more nuanced views of historical narratives that have shaped Jewish identity. The lower court rulings had relied on the discourse that describes Jews as a religious group and as white and had neglected the racial content of the vandalism and its historical references. In contrast, the Supreme Court acknowledged the marginalization that Jewish Americans have experienced that is not based in belief as well as the racist ideologies that informed the vandalism itself. Nevertheless, the court did not base its unanimous decision on Patricia Brannan’s argument, but instead

grounded its reasoning in the perceptions of race presumably held by the 39<sup>th</sup> Congress when it passed the Civil Rights Act of 1866. The court thus avoided the tricky prospect of defining Jewish identity in relation to religion or race in contemporary times and set a precedent that widened the scope of the statutes at stake to apply them to groups typically deemed “ethnicities” in the 1980s.

The judicial proceedings of the case reconstructed Jewish identity by reaffirming particular discourses about Jewish identity and discounting other ones. The new version of Jewish identity upheld in *Shaare Tefila* accounted for the historical marginalization of Jews and rejected the legitimacy of anti-semitic vandalism but neglected to construct a picture of Jewish identity in the present. Notably, *Shaare Tefila* did not define Jewish legal identity in a general or conclusive way. The *Shaare Tefila* decision reaches into the past to determine the intentions behind a law passed in 1866. In applying that law to the present via the legislators’ intentions, the court acknowledged that racism against Jews still occurs today; however, it did not conclude, as a result, that Jews are a race.

The U.S. system of mapping race, as expressed in the census categories, does not include a particular social location for Jews. Rather, according to dominant U.S. views, Jews are associated with the racial categories that they appear to occupy: white, Asian, black, American Indian, Native Hawaiian or other Pacific Islander, or with the “ethnic” category Latino or Hispanic. Hence, Justice Marshall’s confusion about how Brannan’s argument would apply to a synagogue on Lenox Avenue in Harlem: he wonders, how could race-based protection apply to Jews who are black in the same way that it applies to Jews who are white?<sup>45</sup> That the current categories of race, listed above, do not include “Jewish” provides only one example of the fact that Jewish is today not considered a race in the United States; however, generally suppressed myths associated with KKK and Nazi ideologies remain salient in U.S. culture to the extent that antisemitic and racist incidents, such as the defacement of Shaare Tefila, continue to occur. For these and other reasons, Jewish social location(s) in relation to race remain difficult to situate.

Although the Supreme Court’s decision in *Shaare Tefila* did not explicitly reframe contemporary Jewish identity, in that it did not situate contemporary Jews in relation to the categories of religion and race, it did grant protection due to the conclusion that Jews were not considered white in 1866 when the Civil Rights Act in question was passed. Thus, in effect, the decision reframed the contemporary myth of Jews as white in a larger historical context, highlighting a historical moment in which Jews were not white.

In my examination of the *Shaare Tefila* case, I have focused on the significance of defining religion and race as legal categories used to situate Jewish social location. I have argued that the Supreme Court justices grappled with how to situate Jews and with whether or not to grant Jews race-based civil rights protection because Jewish identity does not neatly fit into either category as it is conceptualized in legal terms or in dominant American discourse. Reviewing the historical development of the relationship between the evolving conceptions of race and Jewish identity reveals why the justices struggled: intersecting religious, scientific, and nationalist narratives on these topics developed in both American and European contexts. In my analysis of the Supreme Court oral argument, the evolving character of these conceptions in American and European discursive systems is central to my assessment of the lawyers' arguments and the justices' questions.

Ultimately, determining the legality of race-based civil rights protection for Jews involved attention to historically and geographically informed narratives about what "Jewish" means and entails. Indeed, the Supreme Court justices unanimously decided in favor of the synagogue at least in part because of their recognition that Jews' racial status has shifted depending on time and place. Even if passably white in the 1980s, Jews had not only suffered discrimination, marginalization, and genocide in recent history, but also have continued to be targets of race-based crimes. In 1987, the U.S. Supreme Court finally acknowledged that "who is a Jew" is a racialized issue as well as a religious one and that, as a result, Jews can claim race-based protection.

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## NOTES

<sup>1</sup> Philip Kurland and Gerhard Casper, *Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law, 1986 Term Supplement* (Frederick: University Publications of America, 1988), 172:417.

<sup>2</sup> *Ibid.*, 417.

<sup>3</sup> *Ibid.*

<sup>4</sup> Maurice Potosky, interview by author, July 2008; Marshall Levin, interview by author, July 2008.

<sup>5</sup> Levin, interview by author, July 2008.

<sup>6</sup> Marjorie Hyer, “Jewish Leader Seeks Action on Vandalism,” *Washington Post* (November 4, 1982).

<sup>7</sup> Marshall Levin, interview by author, July 2008.

<sup>8</sup> Michael Kernan, “The Specter of Anti-Semitism, The Unending Web of Fear,” *Washington Post* (December 1, 1982).

<sup>9</sup> See Irene Silverblatt, *Modern Inquisitions: Peru and the Colonial Origins of the Civilized World* (Durham: Duke University Press, 2004), 27, specifically, and 3–27 more generally.

<sup>10</sup> *Sentencia Estatuto de Toledo*, 1449.

<sup>11</sup> See Jeremy Cohen, *The Friars and the Jews: The Evolution of Medieval Anti-Judaism* (Ithaca: Cornell University Press, 1982), 16.

<sup>12</sup> On the genealogy of modern race theory, see the sources compiled in Robert Bernasconi and Tommy L. Lott, eds., *The Idea of Race* (Indianapolis: Hackett, 2000).

<sup>13</sup> G. W. F. Hegel, “Anthropology,” *Encyclopedia of the Philosophical Sciences*, in *The Idea of Race* (ed. Robert Bernasconi and Tommy L. Lott; Indianapolis: Hackett, 2000), 40.

<sup>14</sup> On the connections between modern race theorists, Enlightenment-era philosophy, and aesthetics, see Cornel West, *Prophesy Deliverance: An Afro-American Revolutionary Christianity* (Louisville: Westminster/John Knox Press, 2002 [1982]), 47–68.

<sup>15</sup> Johann Friedrich Blumenbach, *On the Natural Variety of Mankind* in *The Idea of Race* (ed. Robert Bernasconi and Tommy L. Lott; Indianapolis: Hackett, 2000), 31.

<sup>16</sup> See the Nuremberg Race Laws.

<sup>17</sup> See David R. Roediger, *The Wages of Whiteness: Race and the American Working Class* (rev. ed.; London: Verso, 1999 [1991]), 19–25. See also Thomas F. Gossett, *Race: The History of an Idea in America* (New York: Oxford University Press, 1997 [1963]).

<sup>18</sup> See Jonathan D. Sarna and David G. Dalin, *Religion and State in the American Jewish Experience* (Notre Dame: University of Notre Dame Press, 1997), 45–53, for a discussion of religious categories in respect to legal rights, specifically.

<sup>19</sup> See Michael Omi and Howard Winant, *Racial Formation in the United States from the 1960s to the 1990s* (2<sup>nd</sup> ed.; New York: Routledge, 1994), 66.

<sup>20</sup> 481 U.S. 604 (1987).

<sup>32</sup> For a discussion of the legal history of common perception or common knowledge tests as the basis for determining race and citizenship, see Ian Haney Lopez, *White by Law: The Legal Construction of Race, Tenth Anniversary Edition* (New York: New York University Press, 2006), 66–72.

<sup>22</sup> 481 U.S. 615 (1987). Note: This section of the U.S. legal code is derived from the Civil Rights Act of 1866.

<sup>23</sup> Kurland and Casper, *Landmark Briefs*, 673–74.

<sup>24</sup> Brannan’s knowledge of their perceptions was based on statements made in their depositions.

<sup>25</sup> *Ibid.*, 677.

<sup>26</sup> *Ibid.*, 674.

<sup>27</sup> *Ibid.*, 687.

<sup>28</sup> *Ibid.*, 679.

<sup>29</sup> For an argument for the necessity of reframing legal evaluations of racism to account for the racist content of the action rather than the racial “status” of the victim, see Linda A. Lacewell and Paul A. Shelowitz, “Beyond a Black and White Reading of Sections 1981 and 1982: Shifting the Focus from Racial Status to Racial Acts,” *University of Miami Law Review* 41 (1987): 823–54.

<sup>30</sup> *Ibid.*, 690.

<sup>31</sup> *Ibid.*, 691.

<sup>32</sup> *Ibid.*, 694–95.

<sup>33</sup> *Ibid.*, 702.

<sup>34</sup> Garren’s argument reflects Omi and Winant’s assertion that race in the post-civil rights era is largely defined by the “color line.” See Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s* (2<sup>nd</sup> ed.; New York: Routledge, 1994), 66.

<sup>35</sup> 481 U.S. 615 (1987).

<sup>36</sup> For a useful discussion of the “badges and incidents of slavery” in the Thirteenth Amendment, see William M. Carter Jr., “Race, Rights, and The Thirteenth Amendment: Defining the Badges and Incidents of Slavery,” *U.C. Davis Law Review* 40 (April 2007): 1311. For an analysis of the Thirteenth Amendment by civil rights lawyers in the 1930s and 1940s, see Risa L. Goluboff, “The Thirteenth Amendment and the Lost Origins of Civil Rights,” *Duke Law Journal* 50 (2001): 1609–85. For an examination of the potential to vastly expand civil rights protection under the Thirteenth Amendment, see Alexander Tsesis, “A Civil Rights Approach: Achieving Revolutionary Abolitionism through the Thirteenth Amendment,” *U.C. Davis Law Review* 39 (2006): 1773–849.

<sup>37</sup> For instance, see the changes made periodically in the U.S. census and Victoria Hattam’s analysis of these changes and their drawbacks. See Victoria Hattam, *In the Shadow of Race: Jews, Latinos, and Immigrant Politics in the United States* (Chicago: University of Chicago Press, 2007), 78–82, 93–94, and 106–10.

<sup>38</sup> 481 U.S. 615 (1987).

<sup>39</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896).

<sup>40</sup> 481 U.S. 615 (1987).

<sup>41</sup> *Ibid.*

<sup>42</sup> See Eric Goldstein’s excellent historical account of the changing narratives situating Jewish identity in relation to race in the United States. See Eric Goldstein, *The Price of Whiteness: Jews, Race, and American Identity* (Princeton: Princeton University Press, 2006).

<sup>43</sup> See Karen Brodtkin, *How Jews Became White Folks and What That Says about Race in America* (New Brunswick: Rutgers University Press, 1998). In Brodtkin’s argument that Jews became white, she delineates the changes in Jewish social rights after World War II, such as the removal of university quotas and the increasing acceptance of Jews in country clubs and hotels.

<sup>44</sup> 481 U.S. 615 (1987).

<sup>45</sup> *Ibid.*, 681.

# Who Is a Jew? Reflections of an American Jewish Lawyer on the British Supreme Court Ruling Invalidating Jewish Religious Law

Steven J. Riekes

For several millennia, Jewish religious law, halachah, has determined Jewish identity (that is, who is a Jew) by using a matrilineal test. Under traditional Jewish practice, to be considered a Jew, one must be a child of a Jewish mother, unless one became a Jew by conversion.

However, the British Supreme Court ruled that this Jewish practice constituted unlawful racial discrimination under Britain's Race Relations Act of 1976 in *R (on the application of E) v. Governing Body of the Jewish Free School and others* (2009) UKSC 15.

In this case, a young man (identified only by his initial, "M") was denied admission to a very prestigious and popular Jewish secondary school, known as the Jewish Free School (JFS), founded in 1732. The school's admissions policy was governed by the Chief Rabbi of the British Commonwealth, who was then Lord Jonathan Sacks. The student's father was born a Jew. His mother was born an Italian Catholic. She converted to Judaism under the auspices of a Masorti (Conservative) rabbinical court. Masorti Jews constituted only 1.5 percent of the British Jewish population. On the other hand, 60.7 percent were identified as Orthodox and constituted the primary constituency of the office of the Chief Rabbi.<sup>1</sup> Since the Chief Rabbi did not recognize a non-Orthodox conversion, the boy's mother was considered non-Jewish; therefore, the school refused to admit him.

As a result, the boy's father sued the school and others, arguing that this was unlawful racial discrimination. The term "racial" is seen here as embracing ethnicity as that term is defined under the Race Relations Act.<sup>2</sup>

The initial judicial ruling was in favor of the school. The father appealed, and the Court of Appeals reversed. Further appeal to the newly constituted British Supreme Court (formerly the House of Lords) resulted in a 5 to 4 decision sustaining the ruling in favor of the father and against the school.

All nine Law Lords wrote separate opinions. With some differences, the majority held there was discrimination based upon ethnic origin. The majority view was expressed by Lord Phillips, President of the Court. He reasoned that the student was to be regarded as ethnically Jewish, even if Orthodox Jews

would not regard him as religiously Jewish. On the other hand, the Jewish religious test was based upon “genetics,” having nothing to do with religious beliefs. Combining these two points, Lord Phillips held that there was racial discrimination.

To hold a Jewish religious school guilty of ethnic discrimination by denying admission to a Jewish student is, by its very proposition, something that sounds like it belongs in an *Alice in Wonderland* other worldly dimension. Indeed, Lord Phillips was not entirely comfortable with his own holding. He stated, “there may well be a defect in our law of discrimination.”<sup>3</sup> Further, he apologized by saying, “Nothing that I say in this judgment should be read as giving rise to criticism on moral grounds of the admissions policy of JFS in particular or the policies of Jewish faith schools in general, let alone as suggesting that these policies are ‘racist’ as that word is generally understood.”<sup>4</sup>

Other justices expressed the same sentiments. Lady Hale, also in the majority, reasoned as follows:

Is the criterion adopted by the Chief Rabbi, and thus without question by the school, based upon the child’s ethnic origins? In my view, it clearly is. M was rejected because of his mother’s ethnic origins, which were Italian and Roman Catholic. The fact that the Office of the Chief Rabbi would have over-looked his mother’s Italian origins, had she converted to Judaism in a procedure which they would recognise, makes no difference to this fundamental fact. M was rejected, not because of who he is, but because of who his mother is. . . . Because his mother was not descended in the matrilineal line from the original Jewish people . . . he was rejected. This was because of his lack of descent from a particular ethnic group. In this respect, there can be no doubt that his ethnic origins were different from those of the pupils who were admitted. It was not because of *his* religious beliefs. The school was completely indifferent to these. They admit pupils who practise all denominations of Judaism, or none at all, or even other religions entirely, as long as they are halachically Jewish, descended from the original Jewish people in the matrilineal line.<sup>5</sup>

Lord Rodger, who wrote a dissenting opinion, rejected Lady Hale’s reasoning. He said that the only thing that mattered was that the mother: had not converted to Judaism under Orthodox auspices. It was her resulting non-Jewish religious status in the Chief Rabbi’s eyes, not the fact that her ethnic origins were Italian and Roman Catholic, which meant that M was not considered for admission. The [school] automatically rejected M because he was descended from a woman whose religious status as a Jew was not recognised by the

Orthodox Chief Rabbi; [the school] did not reject him because he was descended from a woman whose ethnic origins were Italian and Roman Catholic.<sup>6</sup>

Let us assume, Lord Rodger said, there were two boys, both of whose mothers were Italian and Catholic origins, but one mother converted under Orthodox supervision and the other converted under non-Orthodox supervision:

The question then is: did the governors [of the school] treat M, whose mother was an Italian Catholic who had converted under non-Orthodox auspices, less favourably than they would have treated a boy, whose mother was an Italian Catholic who had converted under Orthodox auspices, on grounds of his ethnic origins? Plainly, the answer is: No. The ethnic origins of the two boys are exactly the same, but the stance of the governors varies, depending on the auspices under which the mother's conversion took place. . . . In other words, the only ground for treating M less favourably than the comparator is the difference in their respective mothers' conversions—a religious, not a racial, ground.<sup>7</sup>

In my opinion, the dissenter, Lord Rodger, more correctly framed the issue and arrived at a more correct result. Essentially, a majority of the British justices has characterized Jewish religious law, at least on this issue, as being racially discriminatory in their interpretation of the Race Relations Act. However, for a civil court in a democratic state to have arrived at such a conclusion is more than disturbing.

It has also been observed that the majority imposed Christian concepts of religion upon Judaism. Professor J. H. H. Weiler observed that the opinion is underwritten by a profoundly Christian understanding of religion and religious membership. It is shaped by the fundamental Christian idea of the New Covenant in which the "old" covenantal boundaries of Israelite peoplehood were dissolved, and a universal salvific message was extended to any *individuals* regardless of the people to whom they belonged. To quote Paul, "There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in Christ Jesus." On this view, you are Christian if and only if you believe in Christ. This idea of religion as a matter of doctrinal conviction has shaped the Western sensibility as to what religious membership means. It is to be respected. But it is not the Jewish understanding of religious belonging. In fact it originated in a rejection of Judaism. (Paul also spoke of being circumcised in the heart rather than the flesh.) One can, as a Jewish religious proposition, belong to the Jewish people even if you have lost your faith.



What is troubling about the Majority is its sheer incomprehension and consequent intolerance of a religion whose self-understanding is different than that of Christianity. Their anthropological reading of ethnicity is suitable in the circumstances for which the Race Relations Act was intended. But when the law makes an exception for religion and the religion in question is Judaism, it should be understood on its own terms, not on Christian (or, more precisely, Protestant) terms.<sup>8</sup>

Thus, for the sake of combatting discrimination, the British Court has discriminated.

While some non-Orthodox Jews may feel vindicated by the majority's opinion in abolishing the matrilineal test, victory may come at a terrible price. If civil courts can intrude in the internal affairs of the Orthodox Jewish community, then those courts may also intrude in the affairs of the non-Orthodox community and the internal affairs of those of other faiths as well. The right of a religious community to define membership for itself is crucial to that community's religious existence. If a civil court can determine who may or may not attend a religious school, it may also have the right to determine who can belong to a synagogue, whether Orthodox or non-Orthodox, or a church, a community center, a men's club, or a burial society.

This leads me to a renewed appreciation of the First Amendment to our Constitution that provides Congress should make no law respecting an establishment of religion or prohibiting the free exercise thereof. In Jefferson's famous aphorism, the amendment builds "a wall of separation between church and state." Had these concepts been embedded in the fundamental laws of England, I believe its courts would never have interfered with who may or may not attend a religious school or attempted to make a determination as to who is and who is not a Jew.

Lord Hope stated: "It has long been understood that it is not the business of the courts to intervene in matters of religion." Notwithstanding that remark, however, that is exactly what the majority opinion has done. Lord Hope placed the public policy issue on the law as laid down by Parliament: "However distasteful or offensive this may appear to be to some, it is an issue in an area regulated by a statute that must be faced up to. It must be resolved by applying the law laid down by Parliament according the principles that have been developed by civil court."<sup>9</sup> In my opinion, Lord Hope's reasoning would never succeed in American courts. The separation between religion and state in America is so fundamental that the courts could simply not cross this gulf by blaming the legislature.

While there may be no wall of separation between religion and state in Britain, nevertheless, the recognition that interference by civil courts on religious matters is bad public policy should have been more than sufficient for the majority of the British judges to think more than twice about what they were doing. The right of self-definition of a religious group is basic to religious liberty.

As an example of the reasoning of American courts, the Court of Appeals of North Carolina recognized that “membership in a church is a core ecclesiastical matter. The power to control church membership is ultimately the power to control the church. It is an area where the courts of this State should not become involved.” *Tubiolo v. Abundant Life Church, Inc.*, 605 S.E.2d 161, 164 (N.C. App. 2004). The Court further recognized that this principle is based on the separation of church and state: “A church’s criteria for membership . . . are core ecclesiastical matters protected by the First and Fourteenth Amendments of the United States Constitution.”<sup>10</sup> This principle can be found throughout American jurisprudence.

Yet, there are those on the right of American politics who deny that there should be a separation between church and state. Indeed, the Republican Party of Texas adopted as part of its platform the notion that we are a Christian nation. While most American Jews would abhor such concepts, there are some who are willing to either tolerate such notions or actually accept them. An Orthodox rabbi told me that Jews were safer with America being a Christian nation because Christians respect Jews.

While many Christians do indeed respect Jews, that is not the point. The majority of the British Supreme Court did not act out of disrespect for Jews. Rather, they felt empowered to interfere with Jewish religious affairs because there is no legal barrier, such as our First Amendment, in so acting.

In addition, as a Jew, I feel safer with the power of the Constitution protecting my rights than relying on someone else’s good will. The rabbi’s position reminds me of the woman in the play, *A Streetcar Named Desire*, who must “depend upon the kindness of strangers.” It is only the Constitution that protects the rabbi’s right to determine who may belong to his congregation from interference either by the legislature or the courts or both, not the tolerance of our Christian neighbors.

It is bad public policy to have civil courts deciding religious matters because they are not equipped to do so and these are not matters suitable for a public forum. For example, members of the Jews for Jesus movement regard themselves as not only being Jews, but “fulfilled” Jews at that. What if they were

to claim that they have a right to use a Jewish community center as much as any other Jewish organization? They would love to make their arguments before a court. On the other hand, most Jews would feel very uncomfortable having a civil court entertain such an argument. It would be a circus, not a lawsuit.

While I believe that the majority opinion of the British Supreme Court was wrong and that it is very bad public policy for a civil court to intrude upon Jewish religious affairs, nevertheless the Jewish community does have serious problems regarding who is a Jew. The British Law Lords noticed what to them appeared to be an anomalous situation. Under the matrilineal test of who is a Jew, the Jewish school could grant admission to students who might have been raised as Lutherans, Muslims, or nothing at all, so long as their mothers were Jewish under the Chief Rabbi's definition. On the other hand, M, who was raised in a Jewish home and very concerned about his Jewish identity, was denied admission because his mother was converted by Conservative rabbis rather than by Orthodox ones. Such a result also partakes of an *Alice in Wonderland* dimension.

It is odd that a Catholic priest with a Jewish mother can be counted as part of a minyan, at least in some Orthodox circles, but a man converted by Reform, Conservative, or Reconstructionist rabbis, no matter how pious or Jewishly involved, cannot be counted as a member of an Orthodox minyan. A Jew for Jesus with a Jewish mother could be counted as part of a minyan, but a pious Jewish woman, no matter how Orthodox, can never be counted.

Maybe the question is not "Who is a Jew?" but "Who is a rabbi?" As the Israeli rabbinate moves ever to the right, even some Orthodox rabbis in the Diaspora have not been recognized by them as authorized to perform conversions.<sup>11</sup> As the standards for conversion by the Orthodox become ever stricter, the result may be to fracture the Jewish people into demographic oblivion.

While the definition of who is a Jew should not be one for civil courts, the Jewish people, leaders, and rabbis ought to be asking some very serious questions about how we define who we are and the possible consequences of that definition. How we define who we are will determine what we will become.

## NOTES

<sup>1</sup> *R (on the application of E)*, Lord Mance, 96.

<sup>2</sup> 11. 1. Racial discrimination:

(1) A person discriminates against another in any circumstances relevant for the purposes of any provision of this Act if –

(a) On racial grounds he treats the other less favourably than he treats or would treat other persons . . .

3. Meaning of “racial grounds . . .”

(1) in this Act, unless the context otherwise requires—

“racial grounds” means any of the following grounds, namely colour, race, nationality or ethnic or national origins;

“racial group” means a group of persons defined by reference to colour, race, nationality, or ethnic or national origins;

(2) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group for the purposes of this Act.

Lord Phillips, 11.

<sup>3</sup> Lord Phillips, 9.

<sup>4</sup> *Ibid.*, 220.

<sup>5</sup> Lady Hale, 66.

<sup>6</sup> Lord Rodger, 228.

<sup>7</sup> *Ibid.*, 220.

<sup>8</sup> J. H. H. Weiler, “Discrimination and Identity in London: The Jewish Free School Case,” *Jewish Review of Books* (Spring 2010): 46.

<sup>9</sup> Lord Hope, 157, 160.

<sup>10</sup> *Ibid.*, 165.

<sup>11</sup> Marc D. Angel, “The Conversion Crisis,” *Ideas, Website of the Institute for Jewish Ideas and Ideals*, February 28, 2008, <http://www.jewishideas.org>.



# Inventing Jewish History, Culture, and Genetic Identity in Modern New Mexico

Judith Neulander

In the 1980s, New Mexican Hispanic folkways were widely touted in the popular press and media as “secret” or “crypto-Jewish” folkways by a small group of local academics, none a trained folklorist. I arrived in New Mexico in 1992 to create the first scholarly documentation of these folkways for a doctoral dissertation at The Folklore Institute at Indiana University. But upon investigation, claims of a significant crypto-Jewish heritage were not supported by the folkways placed in evidence.<sup>1</sup> Of necessity, that anomaly became the focus of the dissertation; the doctorate was awarded in 2001.

In 2004 I learned that an independent genetic study conducted at Stanford and New York Universities had refuted academic claims of a significant crypto-Jewish component among New Mexican Hispanics;<sup>2</sup> this doctoral dissertation strongly supported my ethnographic findings. But the ethnographic sophists who promote the crypto-Jewish discovery have historically dominated the popular press and media, while snail-paced publication in peer reviewed journals cannot compete for equal recognition. When this happens; which is to say, when naïve ethnographic sources become the public face of ethnographic authority, and their demonstrably unfounded claims are given as facts, their claims will be accepted as facts at the popular level. Because regional crypto-Jewish claims are still given and taken as factual, it is newly troublesome that the same academics have now fortified pseudo-ethnography with pseudo-science, inventing demonstrably unfounded, malignant genetic signatures for global Jewry, the better to ferret out “hidden Jews” among unsuspecting Hispanics. Such claims warrant a response consistent with twenty-first century scholarship norms and fieldwork ethics, since the claims have never contributed useful information, but are now repatriating the most menacing cultural and scientific fictions of the nineteenth century.

Because regional crypto-Jewish claims are still given and taken as factual, it is newly troublesome that the same academics have now married pseudo-ethnography to pseudo-science, inventing demonstrably unfounded, malignant genetic signatures for global Jewry, the better to ferret out “hidden Jews” among unsuspecting Hispanics. Such claims warrant a response consistent with twenty-first century scholarship norms and fieldwork ethics, since the claims contribute no useful information, but simply reiterate the most menacing cultural and scientific fictions of the nineteenth century.

## NINETEENTH CENTURY ADVENTURISM IN THE TWENTY-FIRST CENTURY

In 1878 Sir Francis Galton, cousin of Charles Darwin and father of eugenics, devised a means of sweeping together photographic images of Jewish adolescents to create a singular, composite image of the Jewish racial “type.” Daniel A. Novak, Director of Jewish Studies at Louisiana State University, notes that “Galton would make photographic fiction into photographic science—a non-existent body into a type derived with scientific accuracy—a photographic *science fiction*.”<sup>3</sup> Twelve years later, Sir James Frazer would also produce as academic scholarship the first in twelve volumes of *The Golden Bough*; 500,000 words of little current value, given his conflation of superficial cultural similarities into false cultural composites—an ethnographic cultural fiction.

More than a century later, a handful of New Mexican academics would follow Frazer, sweeping together ambiguous Hispanic and Jewish folkways into a false secret- or crypto-Jewish composite. Promoting this as academic scholarship, and following Galton’s notion that he could register types of the racial and diseased—or more precisely, that disease could be used as a Jewish ethnic marker—New Mexican academics performed a truly remarkable feat: they resurrected nineteenth century race science in the age of the human genome.

As part of this project, the lead proponent of crypto-Jewish claims published a book in 2005, titled *To the End of the Earth*.<sup>4</sup> The book is useful to the extent that it collates items already documented in the history of secret- or crypto-Jews in colonial Spanish America. But when it focuses on the subject of its subtitle: *A History of the Crypto-Jews of New Mexico*, it regresses to a time of ethnographic and genetic sophistry, when untested assumptions could be supported by sweeping into one, overgeneralized “Jewish” category select instances that upon investigation have no such connection and when disease could go unchallenged as a Jewish ethnic marker. Not surprisingly, the book’s highest praises are found in reviews written by fellow crypto-Jewish claims-makers, not in reviews written by specialists in the academic disciplines required for knowledgeable critique. This may reflect the fact that such specialists are small in number, but happily, they are not impossible to find and they include Aviva Ben-Ur, Associate Professor of Judaic and Near Eastern Studies at Amherst, a recognized specialist and respected author on Spanish Jews in the Americas. Ben-Ur reviewed the book’s crypto-Jewish assertions, as follows:

The real problem is not historical plausibility but rather methodology. . . . It is specifically in this sense that *To the End of the Earth* is unsettling. This is a book that often places the horse behind the cart: the evidence is tailored to the interpretation. Moreover, the bulk

of the author's arguments represent leaps of logic, circular reasoning, conjectures built upon conjectures, and conclusions based on unverifiable oral testimony and material culture.<sup>5</sup>

The major downfall of New Mexican crypto-Jewish claims seems to be a lack of specific training in the theories, methods, and techniques that developed over the course of the twentieth and twenty-first centuries in ethnographic and genetic studies, as suggested by a consistent mismatch of research backgrounds to research topics among New Mexican investigators; for example, a sociologist without folkloristic training paired with a historian without folkloristic training and someone from women's studies without folkloristic training, all attempting to do the work of a trained folklore specialist. Others cited in the book as co-investigators include a high school Spanish literature teacher to do the work of an ethnomusicologist<sup>6</sup> and a medical internist to conduct research in population genetics.<sup>7</sup>

Other recurrent problems in crypto-Jewish reporting include attempts to discredit critics personally, rather than address criticism, and the use of literary devices like pseudepigraphy: falsely ascribing self-supporting statements to others who never made them. In the aforementioned book, for example, I appear as "folklorist Judith S. Neulander, who has dismissed any crypto-Jewish presence in New Mexico, either historical or contemporary."<sup>8</sup> Ascribing to me an indefensible (and therefore discrediting) position can be corrected by reading anything I've ever written, but most notably by reading my best known essay on this topic, which the book itself references. That essay opens and closes with these statements:

It is significant that I have never disputed the existence of historical crypto-Judaism in other parts of the world. Nor have I ever stated anywhere that New Mexican crypto-Judaism cannot exist. I have simply pointed out that the evidence given to justify claims of a New Mexican crypto-Jewish past is unfounded.<sup>9</sup> I have consciously avoided suggesting that a crypto-Jewish presence never existed in New Mexico.<sup>10</sup>

The general public is not held to academic standards in the strategic and creative ways it may choose to reconstruct the past, interpret the present, or otherwise make sense of the world. Moreover, anyone can make a mistake, and since humans are imperfect beings, we may all do so from time to time. But when academics consistently fail to test their assumptions in any valid or reliable context, when they consistently adjust facts to support their assumptions, and when they consistently misrepresent others to promote their own credibility, they are producing something other than scholarship. At best, they are at risk of



doing what Galton and Frazer did in the nineteenth century: inventing what they want to find, rather than discovering it.

### INVENTING A CRYPTO-JEWISH PAST IN NEW MEXICO

Documented history not only provides a critical frame of reference for trained ethnographic investigation—particularly with regard to objects in material culture—but it also provides the best example of how easily unrelated cultural items can be swept into false cultural relatedness with no frame of reference to prevent it. For example, assuming a complete lack of any historical context, one could plausibly conclude that swastikas woven into nineteenth century Navaho blankets were woven by “Navaho Nazis” [Fig. 1]. The absurdity is apparent for one reason only: we already possess a well-documented historical context that clearly refutes it. Conversely, far fewer people have any frame of reference for symbols like the hexagram, or six-pointed star, a representative example among copious



Fig. 1. The absurdity of the notion that swastikas in this nineteenth century Navaho blanket were woven by “Navaho Nazis” is apparent only because we already possess a historical context that clearly refutes it. Photo by author.

New Mexican artifacts naively mislabeled “crypto-Jewish” in New Mexico. Because hexagrams are widely recognized as Jewish and perhaps because Judaism is older than Christianity, it was apparently assumed that hexagrams found in Christian context must have been borrowed from Judaism and placed in New Mexico by hidden Jews. But if the hexagram is instead placed in historical context, we learn that the history of the symbol is the other way around: the hexagram was prolific in Christian décor,<sup>11</sup> appearing in Christian contexts across the vast expanse of Europe and throughout the lands of European conquest for centuries before it gained any Jewish religiosity.

According to renowned Judaicist, Gershom Scholem, the hexagram is not a historically Jewish symbol, much less “the” symbol of Judaism, and he



Fig. 2. Claims that the six-pointed stars in this seventeenth century church were carved by colonial crypto-Jews are a less recognized absurdity, since few know the star was for centuries a Christian icon, lacking any Jewish specificity until the mid-nineteenth century. Photo by author.

adds that until the years flanking the turn of the twentieth century “no one even dreamt of such meaning”; he identifies naïfs who see “signs” of Judaism in Christian hexagrams as “members of the far-flung clan of Interpretobold Symbolizetti Allegoriovitch Mystificinski.”<sup>12</sup> Clearly, the appearance of hexagrams in New Mexico’s Christian mainstream—as in the seventeenth century Church of San Felipe de Neri, in Santa Fe [Fig. 2]—is no evidence of a significant component of colonial crypto-Jews among New Mexico’s first (and doomed) seventeenth-century settlers, nor among the eighteenth-century founders of today’s Hispanic community. In addition, a wide variety of Christian congregations have historically made prolific use of hexagrams in both Catholic and Protestant church décor, as well as on gravestones.

At least one other item in gravestone iconography, prolific in the southwest and across the nation (a three-pronged stamen in the center of flowers ubiquitous in tombstone design), is similarly touted as a “secret crypto-Jewish” grave-marker because it looks like a Hebrew letter. But the Christian hexagram can be swept into overgeneralized crypto-Jewish identification only if one remains innocent of the history of the symbol, while the three-pronged stamen can be identified as a Hebrew letter only by selective attention to a superficial likeness, completely overlooking the obvious: any symbol in widespread use among all religions is useless as a means to distinguish one from any other.

Nevertheless, an equally naïve media and popular press can spread highly sensationalized mis- and disinformation faster, farther, and wider than good information could hope to do in professionally vetted, peer-reviewed publications. Thus, as early as 1994, as far away as Gibraltar, a participant at an international conference written up in a Turkish newsletter suggested that “visiting Albuquerque could be considered a pilgrimage for Jews, since the early crypto-Jewish settlers of the city left indications of their Jewish roots in their churches and cemeteries.”<sup>13</sup>

Because accuracy is the only goal in normative academic research, one’s assumptions are first tested and are then adjusted to fit the facts. Conversely, when trained academics violate scholarship norms by adjusting facts to fit their assumptions, it suggests either an ignorance of academic scholarly norms or an undisclosed agenda more valued than accuracy.

#### AGENDA-DRIVEN RESEARCH IN NEW MEXICO

One of the first academics to assert a crypto-Jewish presence in New Mexico provides us with a textbook example of agenda-driven research, stating: “Rather than seeking information to verify [a] crypto-Jewish presence, I assumed that crypto-Jews or their heirs had settled in New Mexico”; then, in order to support an assumption never-to-be-tested, he sets out “to determine whether cultural elements exist which can most plausibly be interpreted as remnants of crypto-Jewish strands within New Mexican Indohispano culture.”<sup>14</sup> But as folklorist Henry Glassie writes: “It is no test of the scholar or his craft to invent a theory and pop bits of information into it. . . . There must be, then a strategy . . . that moves vigorously, *not by means of hypothesis about particular cultures or things*, but by means of *theories of inquiry* not tied to particular cultures or things.”<sup>15</sup> In this case, the New Mexican investigator follows no theory of inquiry. Instead of testing his assumption for accuracy, he simply cherry-picks select instances to support it. The agenda-driven strategy is the only way to ensure discovery of what he wants to find, whether it be Navahos, Nazis, or descendants of crypto-Jews. From a trained folkloristic point of view, such dilettantism is extremely serious, not only because it defeats the purpose of folkloristic scholarship, but because it falsifies the raw data of folklore; such falsification contaminates the field beyond recovery, denying access to the culture rather than providing it and erasing the documented past.

Documented history is an essential research context, or frame of reference, for testing what can, and can’t, be logically concluded about New

Mexico's ethnic past. It confirms, for a start, that the State of New Mexico was once part of the Spanish Empire and became an American territory in 1846; statehood followed in 1912, and the modern state is now located on the American side of the border with Mexico. But before assuming that New Mexico's founding fathers included a significant component of secretly professing Spanish Jews, it is important to note that New Mexico's Hispanic ancestors left Spain after the Jews had already been expelled; they were an identical slice of the Spanish population that remained there *after* the Jews were gone. This is a critical piece of information. Certainly, an indeterminate number of Jews converted in order to remain in Spain after the expulsion, and by 1492, an equally indeterminate number of Spanish Christians were long unaware of having past Jewish ancestry. But the notion that descendants of Jews who remained in Spain after 1492 comprised a secretly professing, significant component of the mainstream Spanish population is inconsistent with documented history. Moreover, according to documented history, the Iberian population that generated, modified, and maintained crypto-Judaism on the Peninsula was not Spanish.

#### HISTORICAL CRYPTO-JEWS ON THE IBERIAN PENINSULA

Regardless of religious commitment, or lack thereof, all peninsular Spaniards were officially Christian by August of 1492, and the Holy Office of the Spanish Inquisition, according to its charter, was charged with bringing strays back into the fold. Although its persecutory travesties are chilling, it was not a Jew-baiting organization; it wielded unwelcome persecution against any (and only) transgressing Christians, including heretics of all stripes and other assorted miscreants. It is generally accepted that not all who admitted to heresy under torture, or who named others under torture, can be believed.

But more importantly, Spanish converts were neither the primary source nor the primary carriers of crypto-Judaism on the Iberian Peninsula. Rather, the folk religion known as crypto-Judaism emerged independently in Portugal. The historical record has similarly confirmed that New Mexican heritage is proudly Spanish,<sup>16</sup> while it is well documented that crypto-Judaism in Spain was predictably sparse, idiosyncratic, and short-lived. The work of the eminent Spanish historian and anthropologist Julio Caro Baroja confirms that across postexilic Spain, crypto-Judaism was both shallow and fleeting.<sup>17</sup> David Gitlitz, emeritus professor of Hispanic Studies and a recognized authority on Iberian crypto-Judaism, concurs that by 1540, Spanish converts "had been absorbed into the culture of Spanish Catholicism"<sup>18</sup>; the time frame is confirmed yet again

by Judeo-Spanish specialist Miriam Bodian, who describes Castile by 1540 as a place where “Crypto-judaizing lived on as a reality—with fateful consequences—mostly in the Spanish Catholic imagination.”<sup>19</sup> There are exceptions to every rule, but without an overarching rule to depart from, exceptions could not exist. By definition, directing attention only to exceptions overlooks the rule and distorts the historical record.

The first Spanish conquest of New Mexico did not occur until 1599, more than fifty years after Spanish crypto-Judaism had effectively disappeared from the parent population. Almost all of these original settlers were slaughtered in the Pueblo Revolt of 1680, after which all Europeans were expelled from the territory for more than a decade. Little scholarly credence is given to accusations of crypto-judaizing that were hurled with political and personal animus in that early, doomed settlement. Such accusations forced the Holy Office in Salinas to invest much time and energy there, but to no avail; they found no crypto-judaizing in that community.<sup>20</sup> The accuracy of respected scholar France V. Scholes, the primary investigator of these events, is contested in *To the End of the Earth*—but even if that assertion is correct, the issue is a distraction not worth pursuing, since none of the accused in that early settlement, nor any of their relatives, were among the founding fathers of today’s Hispanic community. But a different episode in American history might have contributed the significant component of crypto-Jews that purportedly entered the region among the eighteenth-century Spanish founders of today’s New Mexico. Being pertinent, this does warrant investigation.

There is ample documentation that during the Portuguese expulsion of 1497, Jewish children were seized by authorities; parents were forced to convert to recover their children and were then forbidden to leave the realm.<sup>21</sup> Unlike converts in Spain, the forced Portuguese converts would face no Inquisition for forty years, allowing them to cohere as a community, to worship underground, and to identify as secretly Jewish. Thus, on the Iberian Peninsula, the Portuguese—and the Portuguese alone—developed a crypto-Jewish folk religion of historic and ethnographic significance, one that was to leave its mark across the Spanish Americas, although not in New Mexico.

Portugal routinely expelled its judaizing heretics to Brazil, some of whom found their way to Chile and Peru, but in 1580, Spain overthrew Portugal and opened the Spanish Americas to all Portuguese nationals. Seymour Liebman, perhaps the foremost authority on crypto-Jews in the Americas, notes that so many crypto-Jews left Portugal to flee the incoming Spanish Inquisition that “in the seventeenth century, especially in the New World,

the word ‘Portuguese’ was synonymous with ‘Jew.’”<sup>22</sup> In colonial Mexico, where the Spanish Inquisition was uninterested in Portuguese newcomers, Portuguese crypto-Jews professed quietly but openly, even maintaining a free-standing synagogue in Mexico City.<sup>23</sup> But when Portugal regained its sovereignty, all Portuguese nationals were rounded up for deportation, and Portuguese crypto-Jews were processed by the Holy Office in Mexico City, culminating in the grand *auto da fé* of 1649. Survivors were expelled to Spain, but “only two of the 100 sentenced to prison in Spain ever arrived, and these two never served jail terms.”<sup>24</sup>

Rather, members of this population turn up where one would logically anticipate them: some in the British Caribbean, a stopping place for water before crossing the Atlantic, where all passengers were allowed to disembark and where Great Britain gave sanctuary; others show up again in Europe, in Leghorn and Salonika, for example, and in Amsterdam, some dispatched from Amsterdam to investigate trade with Sephardi communities in America’s British colonies.<sup>25</sup> The pattern is clearly one of seeking personal security and mercantile opportunity—important because Portuguese crypto-Jews of the 1640s onward would have been well aware of Spanish New Mexico as a sparsely populated backwater with no economic prospects; a hotbed of vicious judaizing accusations routinely investigated by the same Inquisition responsible for their own persecution and expulsion.

Not surprisingly, when New Mexico’s new state historian announced that a significant number of New Mexican Hispanics descend from eighteenth century crypto-Jews, no one pointed to potential remnants of the expelled Portuguese crypto-Jews so well documented in the seventeenth century. Instead—since Hispanics in New Mexico are indisputably of Spanish, not of Portuguese descent—they pointed to a significant component of eighteenth century purportedly “Spanish” crypto-Jews, on which history and culture are mutually silent. The notion of a historically and culturally significant crypto-Jewish settlement, as purportedly indicated by ubiquitous statewide folkways, is not only inconsistent with ubiquitous statewide folkways, but also with the history of modern New Mexico’s founding fathers. Predictably, it also contradicts New Mexico’s Hispanic DNA profile.

## HISPANIC NEW MEXICO’S GENETIC HERITAGE

Historically, migration to the new world was predominantly male, and colonial males built families with women already there; DNA data confirms, and it is generally accepted that maternal heritage in the Spanish Americas is predominantly

Native American. In New Mexico, male descendants of the Spanish founding fathers specifically self-identify as either Hispanics or Spanish Americans, as distinct from Mexicans and other populations in the region. An independent genetic study published in 2006<sup>26</sup> found the DNA profile of males in modern Spain to be identical to that of males who identify as Hispanic or Spanish American in modern New Mexico; both modern communities perfectly representing the genetic makeup of Spain after the Jews were expelled. Percentages of all other factions of the modern Spanish male population (5 percent Berber, for example) are also identical in both populations; the only difference between New Mexico and Spain is a 2.2 percent Native American admixture in New Mexico.

Human beings carry no genes for religious affiliation, but ancestral origins and migrations can be traced according to genetic mutations, or markers, that are distinct to certain geographical areas. On this basis, Wesley Sutton found the frequency of Middle Eastern ancestry at 10 percent among males in both modern Spain and modern New Mexico. But this 10 percent will necessarily represent all Middle Eastern populations that left a significant genetic imprint in Spain—Phoenicians and Arabs, for example, as well as Jews—complicated by the fact that we can rarely distinguish Arabs from Jews using DNA. Because the region has a Middle Eastern component at 10 percent, and because this population is not entirely Jewish, that means *more than* 90 percent of males in modern Spain and in Hispanic New Mexico have no Jewish ancestry whatsoever. Moreover, it is impossible to say if any actual instance of Sephardi descent in New Mexico is also crypto-Jewish. That determination would require historical and cultural evidence of a crypto-Jewish tradition, neither of which has been found in New Mexico.

Knowing the profile of postexilic males with Middle Eastern ancestry is identical in both Spain and New Mexico, Sutton concluded that *if* the purportedly “significant” component of professing crypto-Jews had been added to the Spanish founding fathers of modern New Mexico, there would be a higher percentage of Middle Eastern ancestry in New Mexico than in Spain. But the percentage is identical in both populations, refuting the claim that any additional (let alone significant) component of Spanish crypto-Jews entered the territory with the founding fathers, or for that matter, at any time afterward. Descent from a significant settlement of eighteenth century crypto-Jews appears to be an origin myth imposed upon New Mexico’s Hispanic community, without evidence, and by sheer power of academic fiat.

## NEW MEXICO: MULTIPLE PEOPLES, MULTIPLE ORIGIN MYTHS

Folklorists, like other academic researchers, are also reliant on accurate historical frames of reference. But oral history, as given by a people in their own

words, is constructed in an entirely different way and for different purposes than academic scholarship. That is, a people's own reconstruction of the past is sacrosanct in folklore studies because it is the substance of their self-made collective identity. A community's own reconstruction of the past, including ideas it may choose to adopt and adapt from outside influences, will always serve its own best interest, expressed according to its own values and aesthetics, aspirations and animosities; that is, supporting its own distinct worldview. The historical accuracy of a peoples' reconstruction of the past is of no consequence whatsoever to folklorists, since (historically accurate or not) the narrative will always give us access to the community's values and aesthetics, aspirations and animosities, the entire worldview of those who hold it in tradition, and it will do so with unrivaled accuracy. New Mexico is no exception.

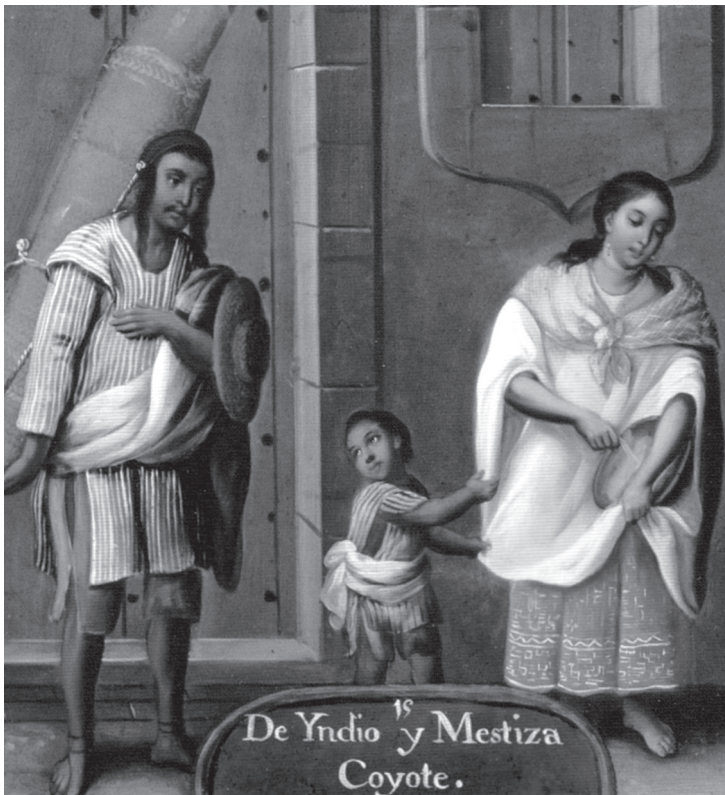


Fig. 3. Spanish colonials were divided into 22 color-coded castas, or castes, in descending order from Iberian-born Spaniards through increasingly mixed degrees of color-coded heritage.



By the turn of the eighteenth century, Spanish Americans already had a richly mixed ancestral heritage, but they bore it under the burden of Spanish colonial racism. Regional ancestry was configured in New Mexico according to twenty-two caste divisions, lavishly illustrated in descending order from “pure” (white) Spaniards, along a downward spiral of increasingly mixed heritage and color-coded devaluation.<sup>27</sup> [Fig. 3] Spanish Jews were conspicuously absent from the painfully ostracizing New Mexican caste system, a strong indicator that they were, in fact, absent from New Mexico. But to best avoid social marginalization in what was visibly a population of mixed heritage, New Mexico’s internal origin myth generated belief in communal descent from “pure” Spanish conquistadors.<sup>28</sup> The aristocratic prestige lineage, like all internally generated origin myths, served the best interests of the (physically and visually diverse) community that held it in tradition. That is, regardless of appearances, everyone’s purported aristocratic descent lay beyond proof or disproof by anyone else, so no one could discriminate against anyone else with absolute certainty—at least not on the basis of appearance alone—an ingenious strategy for limiting the negative effects of the colonial caste system.

But when people are stripped of the right to self-identify, they are forced to sublimate their own best interests to those of supposedly “better” authorities and to express their new, superimposed identity (along with its new social status, or lack thereof) in terms consistent with those wielding the power to redefine them. It is never in the best interest of any community to lose its autonomous power of self-definition; this is something Jews have learned at an exorbitant cost. Under certain conditions, as Jews well know, the nature of a subjugated peoples’ positive or negative definition, particularly by a hostile dominant culture, can too easily become a matter of life and death. Spanish and Anglo-Europeans who colonized the Americas certainly made that clear according to the “savage” identity they imposed upon native peoples, thereby justifying European savagery in the name of civilization.

## NEW MEXICO AND THE LOST TRIBES ORIGIN MYTH

There is no record of modern New Mexico’s founding fathers defining themselves as Jews or as descendants of Jews. But, like most European colonials, they clearly defined Native Americans as Jews, or “lost tribes of Israel,” an origin myth for which there is a wealth of documentation.<sup>29</sup> The imposition of that identity, and the status assimilated to it, was typically imperialist and self-serving. For example, Alejandro Mora, a resident of Bernalillo, New Mexico in 1751, gave what was then a socially acceptable explanation for beating an Indian slave:



Fig. 4. Photo of a San Juan Pueblo woman titled “A New Mexican Rebecca” by Philip E. Haroun, Nov. 1896. Courtesy Palace of Governors Photo Archives (NMHM/DCA), neg. no. 12422.

“God has given me life,” said Mora, “so that I might do to these Jews what they did to our Holiest Lord.”<sup>30</sup>

In the 1800s, Anglo-Americans arrived sharing the same beliefs about Native American origins. By the time railroads and motor cars were bringing tourists to New Mexico’s strikingly biblical wilderness, the habitual association of lost, exotic Jews with New Mexico’s wilderness landscape and its tribal peoples was prolific in local rhetoric as well as travel literature.<sup>31</sup> In 1896, a contestant won ten dollars from the Eastman Kodak Company for a photo of an Indian woman carrying a traditional water jug [called an *olla*], titled “A New Mexican Rebecca” [Fig. 4], clearly a reference to the biblical Rebecca at the well. Travel writing reflects the same habitual “orientalizing” or association of New Mexico’s

tribal peoples with ancient Israelites, describing Indian farmers using “digging sticks of Moses” and Indian women as “Maids of Palestine.”<sup>32</sup> Writing in 2002, Michael P. Carroll, then chair of Sociology at the University of Western Ontario, a respected author with a specialty in religious cultures of New Mexico, notes that New Mexican crypto-Jewish claims have gained tremendous appeal “independent of evidence”; he attributes this phenomenon, at least in part, to a well-documented history of “orientalizing” in Anglo discourse about New Mexico.<sup>33</sup> With the establishment of the State of Israel in the 1940s, the orientalized “Maids of Palestine” would become “Olla Maidens,” but unsettling social shifts, and a subsequent bout of newly racialized identity-switching, would come to orientalize New Mexican Hispanics, in their place.

The stage was probably set in 1932, when Cecil Roth’s bestseller, *A History of the Marranos*, ignited wild speculation on modern survivals of lost, hidden Jews in the Spanish Americas. Naïve ethnographic amateurs on the Mexican side of the border were quick to “discover” that Protestant Sabbatarian, self-termed “Mexican Indians” were descendants of purportedly Spanish crypto-Jews. Lauded folklorist and ethnologist, Raphael Patai, refuted these

claims in the 1940s, and again in the 1960s, noting that to relieve marginalization by the Spanish-American caste system, “It is a frequent phenomenon for an Indian to claim to be a *mestizo* [of mixed race], and for a *mestizo* to claim pure Spanish descent,” adding, “Spanish descent, even Jewish-Spanish descent, means a step up on the social scale.”<sup>34</sup>

Patai may have reached the scholarly community, but rumor and gossip prevailed at the popular level, where Judeo-Spanish ancestry had long been dogma in the Spanish-speaking branches of Saturday-worshipping Anglo-Israelist churches that first attracted followers in Mexico, and later in the Spanish-speaking southwest. As Patai noted, these are congregations that define themselves as lost tribes of Israel, redeemed by accepting Christ and therefore comprising the “true” spiritual Jews (unlike the “fleshy” traditional Jews of Israelist imagination). Native Mexican congregations claim to have long preceded Cortéz to America and to have become the “Mexican Indians.” Similar origin myths, foregoing association with Indians, persist in southwestern Spanish-speaking variants of Israelist churches, judging by an extant congregation in Texas. This congregation is periodically “discovered” to descend from crypto-



Fig. 5. Amateurs still mistake Spanish-speaking variants of Anglo-Israelist congregations as “descendants of crypto-Jews,” although the claim was long ago refuted by lauded ethnologist Raphael Patai. Photo, “Iglesia de Dios Israelita” by Janice Rubin. Courtesy *Jewish Folklore and Ethnology Review* 15:2 (1993): 141.

Jews by succeeding generations of ethnographic amateurs, recycling the same naïve views that surfaced in the 1930s regarding the original Mexican-Israelist congregations.<sup>35</sup> [Fig. 5].

Unsettling shifts in self-definition among New Mexico's Hispanics of mixed heritage first began in the 1970s, when Father Angelico Chavez, a well-respected New Mexican priest, published a detailed genealogy of the founding fathers that refuted the people's ingenious, racially neutralizing "conquistador" myth.<sup>36</sup> At roughly the same time, buoyed by the strong egalitarian movements of the 1960s to 1970s, New Mexican Native Americans asserted their civil rights, throwing off the yoke of Spanish and Anglo imperialism that had long disenfranchised them and taking back the power of their own self-definition. To their successful art markets they would add a cultural center and museum in the major city of Albuquerque, taking authorship of their own history, identity, and public display.

But in the process, they left the land empty of long lost Israelites, a tradition likely to be missed in association with a biblical wilderness that had historically defined its natives as exotic, lost tribes. If not missed for that alone, the lost, hidden Jews would almost certainly be missed as lost tourist revenue. Thus, in 1980, shortly after the traditional Hispanic prestige lineage was disconfirmed, New Mexico hired a state historian whose doctoral dissertation had focused on crypto-Jews in colonial Spanish America (although not in New Mexico). He reported a spate of the same rumors and gossip addressed by Raphael Patai, still circulating at the popular level on both sides of the border.

Hearing the same information as Patai, but lacking Patai's ethnographic training, he naïvely concluded that ubiquitous statewide folkways (e.g., six-pointed stars and gravestone stamens) indicated a significant crypto-Jewish settlement in New Mexico, and gave this unexamined conjecture to the popular press and media as a scholarly research finding. Since no ordinary journalist or journalistic fact-checker knew enough to challenge the "breaking news," it was almost globally celebrated. Back in New Mexico, however, this pseudo-ethnographic, academically imposed prestige lineage was striating a formerly cohesive Hispanic community along old colonial fault lines of color-coded prejudice,—but this time, reinforced through the imperial eyes of an Anglo ruling class that classified Jews with overvalued whites, and New Mexicans with peoples of color. The most vulnerable (or perhaps the most opportunistic) New Mexicans soon began "whitening" their ancestral heritage, substituting ersatz Jewish-Spanish descent for the old, protective conquistador origin myth.

By the 1980s, the Anglo-American population had come to outnumber Hispanics in New Mexico, and the new minority was redefined accordingly. Reduced to “ethnics” on their own turf, New Mexican Hispanics became the newly orientalized replacement Jews. Uprooted from their land, their cultural heritage, and now from the power of autonomous self-definition, the vast majority of Spanish Americans elected to move on, at least unburdened by resurgent colonial racism. But the media ignored them. Instead, a tiny but vocal minority was almost hysterically celebrated in the international press and media, having suddenly “recovered” memories of an ennobling and martyred Jewish past, a past that allowed subscribers to deflect outrage at historical Anglo abuses onto a safe inquisitional villain, to ingratiate themselves to an ascendant Anglo hegemony, and to gain protective status according to their new, religiously empty but racially redefining prestige lineage.

At first, the tiny number of Hispanics sufficiently traumatized to assert crypto-Jewish descent, or sufficiently opportunistic to try and benefit from the assertion, backed their claims with memories of purported crypto-Jewish practices that contradicted history, culture, and each other so transparently that one could claim credibility only by attempting to malign the other. It took years of academic interviews conducted as wholesale tutelage, and years of media massaging, for purported crypto-Jewish memories to gain any stability, let alone credibility. The process clearly demonstrates what Mary Louise Pratt called “instances in which colonized subjects undertake to represent themselves in ways that *engage with* the colonizer’s own terms.” This was hardly an unusual circumstance, she wrote, but rather “a widespread phenomenon . . . important in unraveling the histories of imperial subjugation and resistance as seen from the site of their occurrence.”<sup>37</sup> New Mexican Hispanics had no shortage of help to represent themselves in the same terms used by those who would redefine them as lost, hidden Jews.

## HELP TO RECOVER CRYPTO-JEWISH MEMORIES

To maintain the effectiveness of the interview process, as well as prevent abuses of academic power, the directional flow of information in ethnographic fieldwork moves primarily one way: from the expert to the non-expert; that is, from the well-informed, expert insider, to the uninformed, ethnographic outsider. According to the conduct of trained fieldwork, the ethnographer’s obligation is to learn about the peoples’ worldview from the people who hold that worldview (thus, the experts), taking great care to respect their worldview

in exactly the same way one would respect a religious affiliation, similarly taking great care to do no harm in the process of interacting, and to avoid threatening the peoples' self-defining understandings in any way, (whether one shares those understandings or not). Of necessity, reversing the role of "expert" in fieldwork is to reverse the direction of information-flow; an abuse of hegemonic power, and a strict violation of scholarship norms, as well as fieldwork ethics. Above all, one's primary goal in ethnographic fieldwork is to leave the research site unchanged—or as unchanged as possible—by one's presence there.

Reversing the role of expert, and the direction of authoritative information flow, could not be more socially disruptive, or more evident, than in the self-appointed role stated by a leading proponent of the crypto-Jewish canon: to "help New Mexicans today understand the complexity and rich diversity of their Hispanic and Jewish past."<sup>38</sup> But it is the ethnographer who is supposed to be helped to understand the complexity and rich diversity of the community's past, according to its indigenous expressive behaviors and its own, autonomous self-definition. As already noted, a people's oral history can be accurate or not; it makes no difference to an ethnographer. A people's own narrative of "the way things are" gives us direct access to the spirit and mentality of the community that generates, modifies, and maintains it. But, the academic imposition of an erroneous reconstruction of the ethnic past, imposed upon a people unequipped to refute such hegemonic power, can only give access to the spirit and mentality of the academics doing the erroneous reconstructing—not the people whom they seek to redefine.

In the exchange below, the process of "helping" a New Mexican today "understand . . . [her] Hispanic and Jewish past" is laid bare. Here we see the interview process diverted from its academic purpose, used instead to strip the *expert* of her *better* knowledge and to massage her memory into conformity with the interviewer's agenda-driven reconstruction of the same events. The interview was conducted in a low-income area of Albuquerque by a leading proponent of the crypto-Jewish canon, who had invited me to sit in and tape the interview.<sup>39</sup> I did try to intervene once in this exchange; thus, "A" stands for the academic who conducted the interview, "P" stands for the person being interviewed, and "N" appears once, for me (Neulander). Notably, the interviewer opened the topic of local butchering traditions by violating one of the first principles of fieldwork inquiry: he set her up with what "everybody else" was supposedly doing or saying, a classic means of eliciting complicity:

A: Since I talked to you last I talked to many, many other people. And they also talked about slaughtering the lambs—the sheep. And they also would say a prayer.

P: Yes, my Dad always did.

A: But they remembered what the prayer was. And it ran something like [Instructs her on the prayer]: *Tè pido la vida para sostener la nuestra* [I ask for your life to sustain ours].

P: I don't know what my Dad used to say. He used to say things, you know, and he did—

A: [interrupts her, and again instructs] He said it in a different language.

P: [repeats, as instructed] In a different language.

A: Would you recognize the language if someone said it?

P: I probably would. You know, some words, yeah.

N: What words? [I tried to learn if she had any independent recall before he instructed her]

A: [interrupts before she could answer, and instructs]:

Like: [he recited a portion of the kaddish, the mourner's prayer, in Hebrew]

P: I remember that.

A: [continues instructing, reciting the kaddish in Hebrew]

P: Yes, some of the words. Yeah, some of the words.

A: Yeah . . . Did he have a name for God besides Jesus? Do you know a name for God that wasn't Jesus?

P: Yeah. No. He didn't pray to Jesus, my Dad. He prayed to God.

A: Do you remember what word he used?

P: He used to call Him *Señor* [Lord], and then he used to call Him *Padre* [Father]. Father, he used to call Him. Hmmm. He used to call Him other names. He used to call Him "the lamb." The *borrego* [lamb], he used to call Him—no! That was Jesus. But he used to say something *borrego* sometimes. I can't remember.

A: [instructs her] Adonai?

P: Huh?

A: [repeats instruction] Adonai?

P: [no response, waits for further instruction]

A: [instructs again] Yahweh?

P: [repeats the instruction] Yahweh, yeah! He used to call Him Yahweh. Uh huh. In fact, a lot, he used to call Him that.

A: [instructs her] *Porque es el nombre en hebreo para dios* [Because it is the name in Hebrew for God].

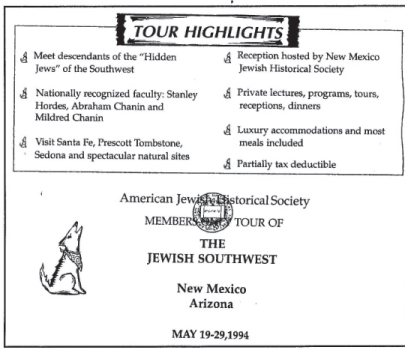


Fig. 6. Academics promoting the crypto-Jewish canon were among the first to promote crypto-Jewish tourism in the Southwest. Courtesy of the New Mexico Jewish Historical Society.

Except for the informant's contribution on the God names her father used in prayer (*all* consistent with Christian prayer, but not all consistent with Jewish prayer), the entire exchange is a one-sided academic tutorial. It is important to note, as seen here, that at the lower end of the region's socioeconomic and ethnic hierarchies, reconstruction of an informant's racially redefining crypto-Jewish past was often a cooperative effort. As Patai noted, even Jewish-Spanish descent can be a step up on the social scale, especially since the new Jewish prestige lineage (unlike the old conquistador heritage) is not inclusive; it striates the formerly cohesive society

into old colonial, color-coded divisions according to who accepts the crypto-Jewish fiction, and who does not, or who thinks they can or can't be counted in according to physical appearance, or skin color. As one darker-skinned sister of a lighter-skinned brother stated, "He can get away with it, but not me. I don't think I look the part."

Yet for many Hispanics—let alone those who are socially marginalized in New Mexico—there are numerous encouragements to comply; it can be exciting to be interviewed by journalists (if not academics), to have your picture appear in *The New York Times*, in local magazines, and on TV. For the sufficiently entrepreneurial, Hispanic or not, it can also be a business opportunity. Academic proponents of the crypto-Jewish canon, for example, were among the first to promote crypto-Jewish tourism, charging tourists to "meet descendants of the 'Hidden Jews'" [Fig. 6], "descendants" like the woman we just saw being "helped to understand . . . [her] Hispanic and Jewish past."

Massaging of Hispanic memory was so endemic on the street, in the media, and in quasi-academic contexts like documentary films, speaking engagements, and as well as local conferences preaching to an ever-growing choir, I quickly learned that when someone informed me of crypto-Jewish descent, I could not assume the information was privileged Hispanic knowledge. Rather, upon investigation, knowledge of crypto-Jewish ancestry was categorically absent from everyone's family history narrative.



Hispanics were most often convinced of their Jewish descent by academic conflations of perceived Jewish symbols, or “motifs” with familiar, but ambiguous folkways, for example, by conflating a Hebrew letter with a superficially related design on tombstones across all faiths, by pointing to hexagrams in local church décor, or by pointing to the ubiquitous New Mexican gambling top, although this Roman-Iberian artifact is historically and culturally unrelated to the Yiddish dreydl—an Ashkenazi toy never used in Sephardi (Iberian Jewish) tradition, that was borrowed from a pagan winter solstice top, spun in England and Germany.<sup>40</sup>

In this connection, a retired school teacher proudly shared with me a child’s assignment that dates back more than 30 years. In 1981, pupils in her largely Hispanic fourth grade class had been asked to illustrate a family tradition and to describe it in Spanish and English. One child described her grandfather’s use of the local “trompo,” the traditional Roman-Iberian gambling top, which according to the child, was taught to her grandfather by a friend of his father’s. The teacher—convinced by the crypto-Jewish canon that the child must belong to a secretly Jewish family—“corrected” the child’s paper by following the local academic lead, sweeping into one overgeneralized category of false Jewish relatedness, the Iberian top and the Yiddish dreydl, and having the child conflate the two by giving her a dreydl template, instructing her to add the image of a dreydl to her description of her grandfather’s tradition, and to add Hebrew letters, as well as rewrite the word “trompo” as “dreydl” [Fig. 7]. It is hard to say how influential this type of instruction is, or is not, but it is probably safe to say that for more than 30 years, countless New Mexican Hispanics have undergone continuous sabotage of their own rich heritage by crypto-Jewish identity-tweaking, almost always from an authority figure like a teacher, a doctor, or someone important enough to be given a public forum in print or in the media.

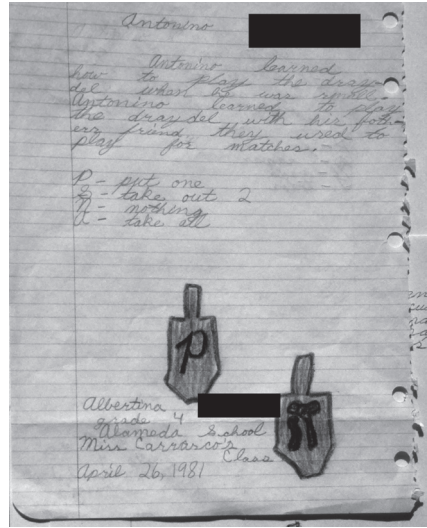


Fig. 7. A teacher “corrects” a Hispanic child, instructing her to add an Ashkenazi dreydl to her drawing of New Mexico’s ubiquitous (Roman-Iberian) gambling top, misrepresenting the toy (and the child) as having crypto-Jewish origins.

One woman's experience reflects the impact of identity-tweaking information that she—like most people—was in no position to judge as anything but “informative and well documented,” given the lofty academic source. Notably, she is also typical in having “contemplated being of Jewish background” for some time before her final revelation, confirming that like all purported descendants in the 1990s, no such information was handed down to her by her family. Notably, her construction of Hispanic heritage is so self-consciously color-coded, that Spanish Jews in her narrative (considered white) cannot also be Hispanic (considered non-white); thus, in her narrative, she herself becomes “a non-Hispanic entity” because of an alleged Jewish pattern or (white) “paradigm” in ubiquitous local traditions. Once the quest for (racially meaningful and religiously empty) Jewish descent begins in New Mexico, family history narratives are adjusted as part of the process, which we'll see shortly. But in the 1990s, revelation of Jewish ancestry was still uniformly reported as coming from a handful of academics, outside the family. In her account, the academic “evidence” she is given consists of nothing more than superficial, unexamined, cultural similarities, between “specific [Jewish] indicators” and local [Hispanic] traditions<sup>41</sup> (my italics):

I heard Stan Hordes speak for the first time about four years ago. He was speaking in Colorado Springs about Crypto-Jews of the Southwest. I saw the notice in the newspaper and decided to attend the session. His talk was informative and well documented. After his presentation I was reflecting on the extent and magnitude of my own personal ruminations. . . . *The result of the quest is that the individual identifies specific indicators relative to traditions . . . that culminate in a non-Hispanic entity that reflects a Jewish paradigm.* (emphasis added)

By the 1990s, purportedly Jewish “indicators” relative to Hispanic “traditions” were in wide circulation and had become habitually associated with crypto-Jewish ancestry in New Mexico. Thus, crypto-Jewish reporting is often formulaic, using these same “motifs” over and over to indicate Jewish heritage. There were two Jewish motifs frequently assimilated to home butchering, for example; one was the humane use of a sharp knife for slaughter. But like institutionalized graveyard art, use of a sharp knife is not Jewish private property and is too widely practiced to serve as a crypto-Jewish marker. Nevertheless, like the hexagram, tombstone stamens, and everything else purportedly crypto-Jewish, the sharp knife serves as a crypto-Jewish motif in New Mexico. Thus, with local academic support it is popularly used as an indicator of the crypto-Jewish ethnicity it does not actually indicate.

The second butchering motif is the distinctly Jewish, and therefore ethnographically useful, practice of draining and discarding the animal's blood rather than consuming it.

It is important to note that in her study of crime reporting in the late nineteenth century, Anne B. Cohen found that ballad formulae—specifically the habitual repetition of oral motifs in different murdered sweetheart ballads—were used to mold different narratives into teaching the same moral lessons. According to Cohen, these literary motifs proved powerful enough to shape newspaper reports of real crimes involving young women murdered by their boyfriends.<sup>42</sup> Cohen's research found that these motifs affected journalistic memory of crimes to the point where "there was a tendency to interpret events in terms of [them] . . . even when distortion was required to accomplish it."<sup>43</sup> Cohen attributes this narrative tendency to "tension between fact and formulae," or what Albert Lord first called a "tension of essences,"<sup>44</sup> whereby narrative motifs, like sharp knives and spilled blood, "go with" crypto-Jewish butchering to such a habitual extent that memories of New Mexican butchering will be adjusted, or as Cohen writes, "distorted" to accommodate them.

We can see this process at work in a butchering account by two different generations of the same family. First we hear from the informant whose interview on butchering we read above, elaborating further on the subject of her father's butchering ritual, which included bleeding the animal and using the blood for family consumption. As occurred earlier in the interview, she contradicts herself if and when she realizes her recall is in conflict with Jewish motifs, as when she stated of her dad: "He didn't pray to Jesus, my Dad" except, it seems, when he prayed to Jesus as the *borrego*, or lamb of God (see also, "It tasted *good* . . . but I didn't like it" below). But a year later, her son would describe his grandfather's butchering techniques for *Palacio Magazine*, incorporating the region's two formulaic crypto-Jewish motifs: humane use of a sharp knife and draining the blood to avoid consumption.

The original informant described the family's collection and consumption of blood, as follows:

Well my Dad used to kill animals, and you know, he used to like sheep a lot. He would always bleed the animal . . . and so my Mom would keep the blood and clean intestines and you know, make *guatejada* [blood sausage] with *la sangre* [the blood] . . . like jello . . . and then cook it with the intestine, oh, a bit of meat. It tasted *good* . . . but I didn't like it! . . . it's a great sin, you know.<sup>45</sup>

It is not clear that the informant's son ever witnessed his grandfather's butchering, but the grandfather's recitation of a prayer survived

in the young man's memory, either as observed by him or as recalled from his mother's accounts of family history. Yet, in his adjusted family narrative, all memory of using blood for consumption is deleted. In its place are the two popular crypto-Jewish butchering motifs: a sharp knife (which may have been an accurate memory, but is not the crypto-Jewish marker it is taken for) and the distinctly Jewish motif of blood-spilling. But his grandfather's butchering process, as we know from his mother's firsthand account, included collecting the blood for consumption. The young man's memory (whether he witnessed his grandfather butcher animals or not), has been adjusted, or distorted, to accommodate crypto-Jewish motifs (my italics): "He said a prayer and cut the throat with an un-nicked knife. *He drained the blood to the ground.*"<sup>46</sup>

This is the memory the young man will pass on to his children, and they to theirs. In this same manner, a favorite pot used exclusively by someone's aunt for a special stew would eventually become "evidence" of a secretly kosher kitchen. Similarly, place-name and surname mythologies, transparently inconsistent with history, culture and academic etymology, have become the substance of countless, demonstrably unfounded, crypto-Jewish genealogies.<sup>47</sup> Whether susceptible individuals assume they descend from crypto-Jews because they have been told as much by supposedly "better" authorities, or whether they are complicit in reconstructing a racially protective prestige lineage (or both), local history and culture are equally subsumed to the power of misguided (and misleading) academic authority. This disenfranchises all non-compliant members of what was formerly a cohesive society, distorting local memory and making it impossible for subsequent generations, or future researchers, to recover the history and culture being destroyed—some of which might have revealed crypto-Jewish traditions, if indeed they were there. The loss is incalculable; it is precisely what "contamination of the field" is named after.

In 1996, my one detailed publication on this topic was published. But rather than adjusting their assumptions to fit the facts, New Mexican academics redoubled their efforts to legitimate crypto-Jewish claims, incorporating nineteenth century race-science into crypto-Jewish reporting.

#### RACE SCIENCE IN THE NINETEENTH CENTURY: THE JEW AS A SITE OF ULTIMATE PROJECTION

The idea that Jews comprise a distinct biological subspecies of humanity, or "Jewish race," first gained traction in the nineteenth century, when science asserted that Jews comprised an isolated, historically monogamous, people.

Christians agreed on the basis that Jews were an anti-Christian people that had historically excluded themselves from the Christian mainstream; Jews agreed on the basis that Christians were an anti-Semitic people that had historically excluded Jews from the mainstream. The supposed isolation of the “Jewish race” never came into dispute—not because it was indisputable—but largely because the purportedly isolated “race” was a handy basis on which conflicting ideological groups could justify their own self-serving points of view.<sup>48</sup> In this sense, race-science in the nineteenth century reduced the Jew to a blank screen; what Lyotard called an “ultimate site of projection.”<sup>49</sup> A century later, the same nineteenth century dilettantism would enable naïve, agenda-driven academics to project seriously ill Hispanics onto the same *tabula rasa*, identifying them as “Jewish-by-disease.”

After the racist genocide of WW II, after science of the mid-20th century exposed race as a biologically irrational concept, and after the media exposed the ignorant, hate-twisted face of southern racism during the civil rights movements of the 1960s-70s, understanding of human differences began to change, but that understanding remains unevenly distributed. Today, few college students could seriously entertain the notion that biological races exist, except as ill-conceived social categories constructed less well-educated persons, or even by highly-degreed, but earlier-educated academics. Hence, at this time, it is not clear that scientific understanding prevails across all Americans, regardless of how far they went in school. With the completion of the Human Genome Project in 2004—given the great gap between old racialized and new genomic constructs of human difference—America was once again caught in an information-gap typical of the late nineteenth century; that is, caught between ground-breaking discoveries (e.g., photography in the 1800s; the human genome in the 2000s) and the ability to make good sense, let alone good use of them. In times of such widespread sophistry, not enough can be known fast enough to counter, anticipate, or prevent forays into academic adventurism, providing the best possible environment for agenda-driven research to proliferate. Not surprisingly, this was the time when academics in New Mexico began legitimating crypto-Jewish claims by inventing genetically “Jewish diseases” and—with no training in ethnography or genetics—began using disease as a Jewish ethnic marker.

## THE FALLACY OF DISEASE-BASED JUDAISM

The first disease cited as Jewish in New Mexico—that I know of—was Niemann-Pick, which I learned of in 1992. The term Niemann-Pick refers to a group of

“storage” disorders in which waste materials accumulate in human tissue and cause it to deteriorate. Since these disorders are found among Jews and Hispanics (as well as in other populations overlooked by selective inattention), proponents of the crypto-Jewish canon assumed they could identify Hispanics who suffer from these storage disorders as descendants of Jews. As it turned out, even the most rudimentary investigation shows that Jews carry only Niemann-Pick types A and B, while Hispanics carry only type C, different disorders at both the biological and chemical levels.<sup>50</sup> More importantly, if Hispanics and Jews were biologically related, a strict division between the two biological types of Niemann-Pick could not occur between them. Rather, the fact that they inherit only biologically unrelated forms of this heritable disease indicates that the two populations are themselves biologically unrelated. After that revelation, use of disease as a crypto-Jewish marker should have come to an end in New Mexico. But cherry-picking of diseases found at high frequency in both populations (the same or higher frequency in other populations selectively overlooked), would continue in an unabated effort to conjure up “scientific” evidence of significant Hispanic descent from Spanish crypto-Jews; a variant of Galton’s Jewish science fiction.

In winter of 1992, in an Albuquerque coffee house, a young man convinced of his crypto-Jewish past recounted for me a Jewish-by-disease narrative in which an unidentified Hispanic woman was told by an unidentified rabbi in Colorado that her mother was Jewish, because she had a “Jewish” disease.” Ten years later, the narrative would gain academic legitimacy according to Janet Liebman Jacobs, a specialist in Women’s Studies, who heard the tale and published it as a medically sound historical account. But apparently inspired by a sensationalized outbreak of Mad Cow disease—a form of Creutzfeldt-Jakob Disease (CJD)—the illness used in the Liebman Jacobs variant was a heritable form of CJD; one with an unusually high frequency in Libyan Jews. Failing to establish a link between descendants of Spanish Jews and CJD, and lacking specific training in folk narratives, Liebman Jacobs missed that fact that there is no such link, and also missed the earmarks of what was unmistakably a legend. Instead, she framed the tale as an accurate crypto-Jewish discovery, further legitimating the fiction as fact by publication in a university press.

A detailed discussion of the CJD narrative and its treatment in her book appears in an article I published in 2006.<sup>51</sup> What matters here is that no case of CJD had ever been recorded in the region, either among Hispanics or anyone else, and the mother—both alive and suffering during the daughter’s purported encounter with the rabbi—was proclaimed “Jewish” on the basis of a disease that, at the time, could only be diagnosed after death.

Much more disturbing, however, was Liebman Jacobs's conformity to pseudo-ethnographic and pseudo-scientific reporting, typical of her colleagues in her consistent presentation of conjectures as academic research findings, and her use of pseudepigraphy to legitimate demonstrably unfounded claims. For example, she referred to her informant as a "descendant" although she never secured or verified the evidence given for that claim, while her preamble both mis- and disinformed her readers instead of educating them: "In this case the descendant's mother suffered from Creutzfeldt-Jacob [*sic*] disease, a degenerative disease of the central nervous system that has been linked specifically to Sephardic ancestry."<sup>52</sup> But high incidence of CJD is linked only to Libyan Jews, who have no Sephardi or any Iberian connection whatsoever. In addition, she gave a publication by Richard M. Goodman<sup>53</sup> as the source of the "specific link" to Sephardic ancestry. But Goodman—a recognized expert on genetic diseases found among Jews—discussed heritable CJD under the chapter heading *Misconceptions*, stating that CJD is not heritable; this is exactly the opposite of what Liebman Jacobs ascribed to him. He attributed the Libyan outbreak to consumption of infected sheep's eyes, a culinary delicacy in Libya. Neither CJD's heritability nor any link to "specifically Sephardic ancestry" was ever mentioned or even considered by Goodman.

The academic of greatest note in promoting disease-based claims of crypto-Jewish descent is the author of *To the End of the Earth*. In 2009, when I happened to be in New Mexico, he was using local TV news to promote the idea that Hispanics can be Jewish-by-disease.<sup>54</sup> In addition, he is coauthor with a local New Mexican internist of a paper using a heritable blister rash called Pemphigus Vulgaris (PV) to show that Hispanics descend from crypto-Jews;<sup>55</sup> their entire paper is reprinted in the appendix of *To the End of the Earth*. Notably, a year before the book was published, Ron Loewenthal, Director of the Tissue Typing Lab at Chaim Sheba Medical Center in Israel (cum laude 1985, M.D. 1987 Hebrew University; Ph.D., Cambridge University 1993, a specialist and prolific author on medical biochemistry, molecular biology and genetic tissue typing), found that disease haplotypes for PV are neither of ancient, nor of Middle Eastern origin. Loewenthal et al. found that PV haplotypes, or markers, are relatively recent and originate with a Mediterranean forebear.<sup>56</sup>

Regarding Spaniards and Jews, the study found "the distance between the two PV cohorts is relatively short, but the distance between Jewish patients and Jewish controls is greater compared to the distance between Spanish patients and Spanish controls."<sup>57</sup> Hence, the ancestral condition appears to have occurred first in Spaniards and then spread to Jewish populations. Moreover, as Sutton showed



Fig. 8. Mystery Rock, Los Lunas, New Mexico, is a flawed rendition of the Ten Commandments using letters from many different ancient alphabets, from many conflicting time periods, naively touted as an ancestral “Hebrew” text. Photo by author.

in 2006, the paternal profile of the vast majority of New Mexican Hispanics is significantly different from that of all Jews, including Iberian Jews, and at the same time is indistinguishable from Mediterranean Spaniards.<sup>58</sup> Therefore, the more logical conclusion is that high incidence of PV among New Mexican Hispanics does not indicate descent from Jews, but reflects instead descent from the same Mediterranean forebears who spread PV to Jews.

In 2009 I was in New Mexico doing IRB-approved research, funded by the National Institutes of Health and The Center for Genetic Research Ethics and Law. I was concerned that New Mexican Jewish-by-disease claims would breathe new life into the old saw that Jews are a contaminated and contaminating “race.” On the way to the research site I shared my interest in “Jewish” diseases with a fellow traveler in the Chicago airport. She referred me to a Hispanic co-worker in New Mexico who was told her family carries a Jewish disease. During my subsequent interview with the co-worker, I was informed that one parent belonged to a large group of siblings with a high rate of mental illness. The mental health professional handling the case first informed the family they descend from crypto-Jews because Jews have a



higher rate of mental illness than other people, a common and unsubstantiated antisemitic refrain. The doctor also told the family their descent from Spanish crypto-Jews is confirmed by coming from the general area of northern New Mexico and southern Colorado—a crypto-Jewish demographic fiction wholly attributed to the crypto-Jewish canon. The doctor further explained that the first mental institution in New Mexico had to be built in that region, because “that’s where the Jews were.” Antisemitic rhetoric like this, built upon local Jewish-by-disease claims, was not hard to find in New Mexico. This instance is an important example, in part because it comes from the highest tier of New Mexican society, and in part because it has become so prolific, I was directed to it before I even got there.

### PUTTING AN END TO JEWISH-BY-DISEASE CLAIMS

Almost coincidental with that interview, “Jewish” cancer claims were featured on an Albuquerque news program, endorsed by the author of the erroneous Jewish-by-disease paper reprinted in the appendix of his book, which as we have seen, is similarly error-riddled on the topic of crypto-Jews. The TV news chose to first establish local crypto-Jewish ancestry by using a local geological landmark. We may recall (although the program did not), that Native Americans were the original purported Jews and they left a legacy of inscriptions in the form of copious cryptic petroglyphs. Perhaps it was inevitable that a purported “sign” of the ancestral Hispanic replacement Jews would similarly be discovered in New Mexico, also as a cryptic petroglyph. That purpose is currently served by a stone known as “Mystery Rock,” located in the desert west of Los Lunas, New Mexico [Fig. 8].

First noticed in the 1930s (when the inscriptions were probably created), the rock was originally said to be a rendition of the Ten Commandments in Phoenician. Since almost no one in New Mexico knows what Hebrew looks like, let alone Phoenician, the stone was later assimilated to the crypto-Jewish canon as a “Hebrew” text carved by ancestral crypto-Jews. Perhaps because there is more mileage to be gained by mystifying than clarifying, academic promoters of the canon have spent more than thirty years maintaining silence or shrugging unknowingly when approached for scholarly clarification of the rock’s inscriptions. Thus, the news program was able to cite Mystery Rock as a crypto-Jewish landmark, the better to reinforce a spate of pseudoscientific cancer babble, mislabeling catastrophically ill Hispanics as “Jewish by disease.”<sup>59</sup>

My investigation began with the rock. A five-minute Internet query led me to Jo Ann Hackett, well-known Hebrew epigrapher and linguistic scholar,

then at Harvard on her way to the University of Texas at Austin, to revise the *Brown-Driver-Briggs* lexicon. "I wish things were always so easy," she responded, explaining, "This isn't ancient Phoenician or Hebrew or anything else."<sup>60</sup> Rather, it is a concoction of unrelated letters taken from ancient alphabets of many different languages in conflicting historical periods, as are sometimes found in cheap printouts of ancient alphabets, but are never found written together in legitimate historical texts. In addition, according to Hackett, the rock's text is partially incomplete, some letters are written backwards or upside down, and some words are misspelled. Thus, it appears that whoever made this effort was an amateur, making no pretense whatsoever at either Hebrew, or Phoenician, but clearly involved in a fanciful linguistic lark.

That same summer, similarly based on misdirection by local academics, museums in both Albuquerque and Santa Fe were planning crypto-Jewish exhibitions, and a major crypto-Jewish festival was planned in Albuquerque, promoted by Father Bill Sanchez, a Catholic priest featured on the Jewish-by-disease news program—a priest either deliberately misled or himself deliberately misleading.

The news segment opened with the statement: "Secrets are being revealed!" and moved from there to Mystery Rock. "Some people think this is just a hoax," the journalist stated, "But . . ."; having titled his piece "Hidden Heritage Exposes Cancer Risk," he used Mystery Rock to firmly establish New Mexico's crypto-Jewish heritage, ignoring (as did Father Bill) any qualified source on Hebrew epigraphy. Having himself misrepresented the text as Hebrew, Father Bill is seen shrouded in the sacred trappings of Jewish worship, laying his hands on the amateur alphabetical concoction and chanting Hebrew prayers. "Just like the prayer, the words are written in Hebrew," the TV journalist reiterated, after which Father Bill added the biologically impossible statement: "Eighty percent of my DNA is Sephardic Jewish." Following a number of similarly invalid and unreliable statements, he is seen in church, establishing the same knowledge base for members of his flock, exploiting their naiveté (as his was possibly exploited) and effectively leaving them no choice but to redefine themselves as descendants of crypto-Jews.

The program then moved on to use disease as a crypto-Jewish marker. The disease in current vogue is breast cancer, based on mutations in BRCA 1/2; "BRCA" stands for "breast cancer" and 1/2 stands for two genes that normally produce tumor-suppressing proteins in the human body. Because BRCA 1/2 mutations inhibit these proteins, individuals with these mutations are at greater risk of developing certain cancers. Among the many hundreds of mutations in BRCA 1/2, three have been associated with Ashkenazi (Germanic, east European) Jews. In New Mexico, the discovery of

one or more Ashkenazi mutations in the local Hispanic population is now given as evidence of Sephardi descent by asserting that these mutations emerged before the Ashkenazi-Sephardi split; a way to claim that frequency in one group applies equally to the other. But estimates for the origins of these mutations vary greatly among equally respected geneticists. Some lean toward emergence as late as the twelfth to fourteenth century, long after the Ashkenazi-Sephardi split.<sup>61</sup> More importantly, confidence intervals for the origin of these mutations are so uncertain that no scholar can assert anything conclusive at this time at this time. Thus, the New Mexican assertion—stated as a fact—is only a conjecture. At the same time it ignores the fact that Ashkenazi Jews and Hispanics have been living side by side in New Mexico for roughly 175 years, which means we should expect to find Ashkenazi admixture in the Hispanic gene pool; a modern admixture that does not indicate premodern Sephardi descent.

Estimates vary slightly, but the mutations in question occur among Ashkenazi Jews at roughly 2.5 percent, using the two most recent studies.<sup>62</sup> In the popular view, these mutations are attractive as a Jewish ethnic marker because their frequency in non-Jews is significantly lower, at roughly 0.5 percent. But even though these mutations have a higher frequency among Jews, the non-Jewish population is so enormous, and the Jewish population so tiny, the vast majority of people with these mutations will always be non-Jews. This should not suggest to anyone that these mutations are therefore “Christian” disease markers—such labeling employs the same skewed logic as “Jewish” disease labeling. Rather, these numbers teach us that simply having BRCA 1/2 mutations can tell us nothing—absolute zero—about which population an affected person belongs to, with one exception: given the disproportionate ratio of Jews to non-Jews, there is a roughly 90 percent chance that any American walking into a doctor’s office with BRCA 1/2 mutations is not descended from Jews.

We can see that New Mexico’s naïve, agenda-driven research has labeled “Jewish” three mutations of unknown frequency among Sephardi Jews that do not occur in approximately 98 percent of Ashkenazi Jews. But even more importantly, it overlooks the fact that wherever Jews constitute a minority, no disease shared with non-Jews can ever be used as a Jewish ethnic marker. Since the non-Jewish population will always be so significantly larger in size, the vast majority of affected people will always be non-Jews, even when frequency of the disorder is higher in the Jewish minority.

The Albuquerque news program moved quickly from Father Bill to very briefly quote a geneticist—but just enough to suggest that BRCA 1/2 can be

used as a Jewish ethnic marker, instead of making it clear that it cannot be. This was followed by testimony from a Hispanic woman whose family is riddled with disease, her response both reflecting and reinforcing the belief being inculcated in the audience: “That confirmed that we really *were* Sephardic Jews!”

The focus then turned to the former state historian, spearhead of the crypto-Jewish canon, introduced according to his role as a university professor and author of *To the End of the Earth*. But rather than contribute academic enlightenment on Mystery Rock or, better yet, on BRCA 1/2, he emphasized with hand gestures what he called “intersecting” claims made on the program that supposedly “coalesce” into evidence of a significant crypto-Jewish settlement in New Mexico: “It’s absolutely fascinating to see the intersection of the historical, and the cultural, and the genetic, and the genealogical that all seem to coalesce”; this, despite the fact that claims of a significant crypto-Jewish settlement are categorically refuted by the historical, cultural, genetic, and genealogical records. “We have an opportunity to save some lives here,” he added, “and that to me is the most exciting part of the whole research.”

But no one explained the excitement or health benefit of inventing demonstrably unfounded, malignant genetic signatures for global Jewry or of convincing non-Jews they descend from Jews based on disease frequencies that show just the opposite. Rather, while this imperial gaze appears innocent—even benevolent in its accompanying rhetoric—it actually redefines all it surveys according to its own agenda, an agenda imposed upon the cultural landscape by sheer power of academic authority and in consistent violation of academic scholarship norms. It is a gaze described by Mary Louise Pratt as that of “he whose imperial eyes look out and possess”; of one who seeks to secure his innocence in the same moment as asserting hegemony;<sup>63</sup> a gaze well-documented in every colonial reconstruction of the history and heritage of subjugated peoples, over time and across space.

It is impossible to estimate the power of media to support demonstrably unfounded and socially menacing assertions that implode identities of whole populations for the benefit of unstated, agenda-driven interests more valued than accuracy. In the news program described—one in a barrage of such programming for more than thirty years—the authority of Church (through the agent of a priest), the authority of Science (through the agent of a geneticist), the authority of State and Academy (through the agency of a state historian and university professor), are all endorsed by the most powerful information-generating institution in the modern world: the news media. The ordinary person—in New Mexico or anywhere else—has no recourse whatsoever

against such hegemonic authority or its power to redefine an entire people's "historical, and cultural, and genetic, and genealogical" identity—all of these assertions demonstrably unfounded as well as uninvited by the vast majority of the population being redefined.

As we have seen, New Mexico's crypto-Jewish claims comprise a demonstrably unfounded canon; a reckless foray into ethnographic and genomic sophistry that discredits academe, deals a punishing blow to critical thought, and has contaminated a valuable research site beyond recovery. It snobs multidisciplinary research by assuming anyone trained in the specialties required for specific types of investigation can be replaced by academics unqualified in those areas of specialty. Its social consequences are entirely negative, estranging Hispanic family members and imploding friendships, fraying trust between communities and their supporting institutions (e.g., public schools and mental health facilities), and usurping the Hispanic community's far superior ability to define itself in its own best interest. It has eroded the history and cultural boundaries of Jews and New Mexican Hispanics alike, reviving colonial color-coded racism in the region, and contributing to anti-Semitism. At the same time, it has dealt a daunting blow to Jewish education by diverting much needed Jewish philanthropy from legitimate Jewish causes.

## CONCLUSION

What if the twentieth century never happened? What level of academic sophistication would prevail and how would that play out in our best attempts to make genetic and ethnographic sense of the world? If we were to rely on nineteenth century scholars displaced into modern academe—the place where everyone must inevitably turn for accurate information—my best guess is that we would not get accurate information. If the twentieth century never happened, we'd get both Frazer's cultural fiction, and Galton's science fiction. In short, we'd get the crypto-Jewish canon.

We now live in a world of increasingly well-informed, multidisciplinary twenty-first-century specialists, where a nineteenth-century construct like New Mexico's crypto-Jewish canon can only survive at a disturbing level of academic and social dysfunction. No one has ever taken issue with the fact that some small percentage of Hispanics in Spain—as in the American southwest—are likely to have Jewish ancestry. But that is very different from the existence of a significant eighteenth century community of Spanish crypto-Jews, as purportedly evidenced in statewide New Mexican folkways, and in being "Jewish-by-disease." Thus, it should raise concern that a new Sephardic/

Crypto-Jewish program at the University of Colorado at Colorado Springs (UCCS) recently issued the mission statement quoted below. It was emailed to me in 2013 at my request, by the Program Director. The original text included definitions of Sephardic Jews and crypto-Jews in parentheses, which I've edited out for clarity (my italics): "In particular, this endeavor aims to foster collaborative scholarly research on Sephardic Jews and crypto-Jews in the greater Southwest United States and the world."

Like the global academic community, I would welcome any new Program that generates research according to academic scholarship norms and fieldwork ethics. But a mission statement that explicitly validates a historically and culturally significant settlement of secretly-professing Spanish Jews, for which there is no historical or cultural evidence, and which is refuted by the same genetic evidence given to support it, promises to legitimate pseudo-ethnography, bad science and quack medicine as modern academic scholarship; the legacy of nineteenth century sophistry as exemplified in the crypto-Jewish canon.

## NOTES

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<sup>8</sup> *Ibid.*, 221.

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# “Jewish Genes”: Ancient Priests and Modern Jewish Identity

Wesley K. Sutton

In most of the world's religions, changing or abandoning one's religion means that one is no longer a member of that faith group. Contrary to the norm of other religions, if a person leaves the Jewish religion, one is still usually perceived as being Jewish, especially by the non-Jewish community. Throughout history, Jewish identity has been understood as more than accepting the tenets and observing the traditions of the Jewish religion.

Historically and today, paternal and maternal parentage (one or both) has been used to determine identity as a member of the Jewish people. For this reason, among others, the Jewish people have often been considered a “race,” with the explicit biological meaning of that term. Notions of Jews as a biologically distinct group, or a race, have variously been used to establish legal parameters for Jewish identity both by elements in the Jewish community and by non-Jews. The use of the word “tribe” in the context of the Jewish people also has an implicit connotation of relatedness, setting the Jewish people apart from other populations.

In addition, both Jewish and non-Jewish populations have developed, and continue to generate, a multiplicity of folk traditions on “Who is a Jew?” On a more formal basis, scholars have been considering oral traditions, archeology, and historical records in order to answer the same question. Inevitably, these data are often incomplete, unstable over time, and are not always congruent. The recent addition of genetic data to the question of Jewish identity is important and exciting and can add new insights as well as supplement and clarify our understanding.<sup>1</sup>

A critical aspect of these new data, however, is that criteria need to be established for dealing with the inevitable discrepancies between genetic data and previous research based on those oral traditions, archeology, and historical records. The question then arises as to what, or if, genetic data can contribute to questions of Jewish identity.

When genomic science does not support traditional, and often cherished, assumptions, problems may occur in integrating and interpreting these data.<sup>2</sup> Scientists, in the interest of accuracy, strive to gain congruent, scientifically accurate information. But particularly in the larger community, when traditional concepts of Self and Other are challenged by new information from

the genome, the impetus can shift—even inadvertently—by adjusting facts to fit assumptions, inevitably resulting in incongruent, scientifically inaccurate information (scientists, of course, are also liable to misinterpreting new data.). The worst atrocities in human history have been driven, at least in part, by such misuse of scientific data, and much tragedy might have been prevented with better and more widely accepted information.

One such assumption, supposedly verified by genetic research, is that Jewish identity is expressed in “Jewish genes,” and more specifically, that there is a “Jewish Priest gene” that traces to the biblical Aaron, the founder of a priestly lineage. Following the etymology of the name Cohen from the Hebrew word for “priest” [*kohen*], this purported lineage marker was originally termed the “Cohen Modal Haplotype” (CMH), and it caused great excitement at the popular level. Much of the excitement regarding the genetic data came from its seeming to support biblical accounts of the origin of the kohanim. This popular reconstruction of the genomic past—although scientifically intriguing in a number of ways, and not to be dismissed entirely—lacks validity and will be challenged here.

## THE COHEN MODAL HAPLOTYPE

Our recent ability to determine the sequence of DNA in human genomes has given us access to a vast repository of new information about our biological heritage.

In our genome, the Y chromosome is unique, as it is inherited by males only, directly from their fathers. For genealogical purposes, therefore, it can be used for (and is limited to) identifying paternal lineages. In a well-known story, in 1997 Karl Skorecki recognized the implication of the mode of inheritance of the Y chromosome for the paternally inherited Kohen status among Jewish populations. Working with a team of geneticists, DNA samples were collected from self-identified kohanim, and data from the Y chromosome were analyzed.<sup>3</sup> One result of this study was the claim to have found a genetic motif (a defined set of genetic markers) on the Y chromosome that was exclusive to kohanim. Named the Cohen Modal Haplotype, later studies seemed to support this finding.<sup>4</sup> The popularization of these findings has even led some males with no familial history of Judaism to claim Jewish identity, basing their claim on their having this genetic motif on their Y chromosome.

Here we examine the scientific validity of such claims, asking: (1) Are there genetic motifs unique to the Jewish people or any subset of the Jewish population (for example, the CMH); and (2) can DNA be used to distinguish Jewish populations from other Middle Eastern populations?

In order to evaluate the validity of the CMH and the claims made for it, we need to understand the genetic basis of the CMH.

## THE GENETICS OF THE COHEN MODAL HAPLOTYP

Contrary to popular understanding, the CMH is not actually a gene. By far the largest portion, approximately 98 percent, of the human genome is noncoding; that is, most DNA does not determine the production of proteins. Formerly called "junk DNA," recent research has shown that much of this noncoding DNA serves some function, although we still have much to learn about it. For several reasons having to do with the ability to accurately reconstruct genetic history, we preferentially look for markers of ancestry in the noncoding DNA, not in the genes.

Our DNA accumulates mutations naturally over time, and if a mutation occurs on the Y chromosome of an individual male, all of his male descendants will carry that mutation. Therefore all males who have a particular mutation, called a "marker," can be identified as descended from a single male ancestor. By looking at different markers, relationships between males can be identified. Another way to think of it is that a particular marker, or set of markers, found on the Y chromosome identifies a specific male lineage in the same way that a surname does in a traditional Western culture.

## HAPLOGROUPS

Genetic mutations to our DNA occur at different rates. One type of rare mutation identifies older (and therefore usually larger) groups of related individuals, or lineages.<sup>5</sup> These are called "haplogroups" and they determine the groups we are becoming familiar with, such as J, its subgroups J1 and J2, and literally hundreds of others (for example, E3b and R1b). Haplogroup J1c3 (formerly J1e), defined by a mutation known as P-58, is the focus of a recent major study by Michael F. Hammer and colleagues.<sup>6</sup> This haplogroup is the basis for what they describe as the "Extended Cohen Modal Haplotype" (described below).

Methods have been developed for determining the approximate time of origin of a lineage, and researchers assigned letters to the major Y chromosome haplogroups, with the oldest known given the letter A, the next oldest B, and so on.<sup>7</sup> For example, the P-58 mutation defining haplogroup J1c3 has an estimated date of origin that varies widely, both because of the different methodologies used and because of the large margins of error inherent in these estimates; Hammer et al. (2009) published a date range from 13,400 to 24,600 years ago, centering around 19,000 years ago.<sup>8</sup> The J, incidentally,

has nothing to do with “Jewish,” it was simply the letter assigned to the haplogroup after I and before K.<sup>9</sup>

Haplogroup J1c3 cannot be used by itself to determine Jewish identity, for two obvious reasons. First, although the dates for the origin of this lineage vary widely, they are all well before the origin of the groups we call Jewish, or Arab, or even Semitic. Second, because the lineage is so large and widespread, it does not distinguish between the modern groups of interest. For example, Hammer et al. (2009) found this haplogroup in 21.2 percent of their Jewish subjects (46.1 percent in kohanim), but at even higher frequencies in other Middle Eastern populations; as high as 67 percent in Bedouins and Yemenis.<sup>10</sup>

It is important to note that this haplogroup does not identify Jewish populations specifically; rather, it identifies a probable Middle Eastern paternal ancestor.

## HAPLOTYPES

Another type of mutation occurs much more frequently, and these often vary between individuals. Therefore they can be used to identify smaller, more closely related lineages. They are called “haplotypes.” A haplotype is usually defined by several of these mutations. By using several of these markers, we can even distinguish between individuals, as is done in “DNA fingerprinting.”

Haplotypes can then be used to further subdivide the larger haplogroups into smaller, more limited, lineages. Unlike haplogroups, they are not necessarily unique. In other words, although membership in two haplogroups simultaneously is not possible unless one is a subgroup of a more inclusive haplogroup, many people, not necessarily closely related, can have the same haplotype. For example, one may belong to haplogroups J and J1 (but not both J1 and J2), and J1c3. An important aspect of this methodology is that two individuals may have the same haplotype, but unless they belong to the same haplogroup, they are not closely related for the markers in question.

Individuals sharing a haplotype are likely to share an ancestor, provided that they also belong to the same haplogroup. An analogy is that of two individuals having the same first name but different last names. In other words, two individuals, one belonging to haplogroup J1 and the other to haplogroup J2, are not in the same lineage (in terms of their Y chromosomes), even if they share the same haplotype.

## THE VALIDITY OF THE COHEN MODAL HAPLOTYPE

With this background in genetics, let’s review the well-known Cohen Modal Haplotype and some of its less well-known aspects, as it relates to Jewish iden-

tity. As described above, in the mid-1990s, several researchers in Canada, the United States, and England began collecting DNA samples from Jewish populations in order to test whether the paternally inherited kohen status would be matched by the paternally inherited Y chromosome.

Their first results, published in 1997, supported this relationship.<sup>11</sup> Continuing to collect and test DNA samples, and adding to the markers identified, several of the same researchers and colleagues published a paper showing that a set of six (fast-evolving) markers was identical for most of the self-identified kohens in their sample, and this became known as the Cohen Modal Haplotype.<sup>12</sup> The proposed CMH became the basis for identifying Jewish ancestry in several populations, under the assumption that if the CMH was found in significant numbers in a population, that population included Jewish ancestors.<sup>13</sup>

The work was excellent for the time, but the research results had some weaknesses. Even as the concept (usually misnamed in popular accounts as the "Jewish Gene" or "Jewish Priestly Gene") achieved widespread influence and became fixed in the popular literature, criticisms appeared in the scientific literature.<sup>14</sup>

As more populations were tested, the proposed CMH was found in significant frequencies in non-Jewish populations, especially in the Middle East among Arabs and Kurds. Recognizing this, several members of the original research group, working with additional researchers, published a new study, rejecting the validity of their original CMH. As they stated, "A survey of our database confirms that [Y] chromosomes carrying the original CMH are not specific to either Cohanim or Jewish populations."<sup>15</sup>

Adding substantially to their database and incorporating studies from other researchers, they proposed an "Extended Cohen Modal Haplotype," based on the much larger sample and including non-Jewish populations and many more markers.<sup>16</sup> The extended CMH is a motif of twelve fast-evolving markers in the lineage defined by haplogroup J1c3-P58. In other words, males carrying the haplotype defined by sharing those twelve markers can be considered part of the same lineage only if they also share the haplogroup J1c3-P58.

The Extended CMH demonstrates greater specificity than the original CMH, being more limited in its distribution. As the researchers state,

The extended CMH and its two related haplotypes are observed only among Cohanim (29.8%) and Israelites (1.5%) (i.e., it is completely absent from the Levites and non-Jews surveyed here). We also performed a search of the current literature . . . and found a similar pattern: the original CMH is present in several Near Eastern populations, while the extended CMH is extremely rare outside of Jewish populations.<sup>17</sup>

After noting that the J1c3/P-58 lineage is by far the largest lineage in their sample, they note that twenty other haplogroups are represented, although most of them are quite rare, and conclude, “Evidence [from our study] supports the formulation that males from other remote lineages also contributed to the Jewish priesthood, both before and after the separation of Jewish populations in the Diaspora.”<sup>18</sup>

## INTERPRETATION BIASES

Genetic data are reality based, but are not always easy to interpret, and interpretations may differ, even among highly qualified researchers, for completely valid reasons. The Hammer et al. (2009) study shows that approximately 30 percent (with a 95 percent confidence interval of between 23 percent and 36 percent) of the tested self-identified kohanim carry an identical chromosome (the extended CMH),<sup>19</sup> and some researchers may focus on that result to argue that the kohanim lineage is descended from one paternal ancestor and may even relate that ancestor to the biblical Aaron.

Other researchers may argue that because 70 percent of the tested kohanim do not have that chromosome, and in fact kohanim in this sample carry twenty-one different haplogroups, kohanim cannot be considered as a single lineage, and so kohen status should be treated simply as tradition, with no true basis in ancestry.

## THE COHEN MODAL HAPLOTYP IN THE PUBLIC UNDERSTANDING

The excitement and widespread popularization of the original CMH mean that there have been many articles, websites, and books including it in their discussions. Many of the authors of this material, understandably unfamiliar with the science, tended to emphasize the story, often perpetuating misinformation in the process. As with many concepts based on science, when the original research is superseded and the earlier research results are no longer valid, public understanding often lags behind that of the scientific community.

Scientists are used to, and embrace, new research and new understanding. So when research showed that the original CMH was flawed and new research supplanted it, scientists typically accepted the new results immediately. A search of the public literature reveals, however, that most of it is still based on the original CMH; even new articles and websites continue to use the now discredited original CMH.

## OTHER ISSUES OF IDENTITY

The question, then, is what can the CMH contribute to our understanding of Jewish identity? If we accept that approximately 30 percent of modern self-identified kohanim are descended from a single paternal ancestor who lived between 2,100 and 4,280 years ago,<sup>20</sup> does this mean that only those kohanim carrying this particular Y chromosome should be considered "true" kohanim?

David Goldstein and colleagues estimated that 4–5 percent of male Jews today are kohanim,<sup>21</sup> and that (using an estimated worldwide Jewish population of 13 million, half of them males) there are perhaps 260 to 325 thousand kohanim. Testing all of them would show, based on the figures given, that 70 percent (180 to 225 thousand) will not possess the CMH. Should they lose their status? Who decides?

Conversely, using a DNA-based criterion, should we now consider the significant number of Israelites (1.5 percent in Hammer et al. 2009, equaling perhaps 100,000 males)<sup>22</sup> who have this chromosome to be kohanim, even though they have no tradition of that status?

The main thrust of this paper has been to argue that it is inevitable and necessary that the increasing amount of genetic data be taken into account concerning Jewish identity, but it would be unwise to rely on it exclusively, and the ramifications must be considered carefully and thoughtfully.

Clearly, the CMH is neither sufficient nor necessary to establish kohen status in the Jewish community. Possession or nonpossession of the CMH in one's genome may be of interest, but incorporating it into the definition of a kohen carries a very real danger, that of a hierarchy. If a Jewish male has a family tradition of kohen status and the CMH, does that make him more of a kohen, or a better kohen? Conversely, does possession of the CMH automatically confer kohen status, or even Jewish identity, on a male? Should everyone possessing the CMH be granted the Right of Return, whether or not they have any knowledge of Jewish ancestry?

## THE ORIGIN OF THE COHEN MODAL HAPLOTYPE

As described above, haplogroup J1c3 has been estimated to have originated between 13,400 and 24,600 years ago, with a date centering around 19,000 years ago.<sup>23</sup> Clearly, this date is well before the origin of the Jewish people. This haplogroup probably originated in either Anatolia or the Middle East, most likely in eastern Anatolia.<sup>24</sup>

But what about the CMH? Because the markers used to define it are of the fast-evolving type, the origin of this haplotype could be much more recent,



and analyses support a more recent origin. All analyses require some prior assumptions (for example, generation time and mutation rate) and changing these parameters will affect the results. For example, various studies have used generation times of 25, 30, and 33 years; changing them will have a significant effect on the time we assign for the origin of a lineage.

Hammer and colleagues, using calculated mutation rates for this type of mutation,<sup>25</sup> estimated that this lineage arose between 2,100 and 4,280 years ago, with a date centering around 3,190 years ago, excitingly near the estimates for the date of the First Temple.<sup>26</sup>

### THE KOHEN LINEAGE AND MODERN KOHEN STATUS

Kohen status today is generally based on tradition, passed down from generation to generation. Because it is, as a practical matter, impossible to prove direct lineal descent, kohen status is usually accepted if one claims to be a kohen. As stated by Yaakov HaKohen Kleiman, codirector of the Center For Kohanim, Jerusalem:

*A Kohen Muchzak is one who has a family tradition that he is a Kohen, with no known reason to suspect otherwise. If one claims to be a Kohen, his claim is generally accepted, unless there is reason to suspect otherwise. . . . Presently, being unable to establish who is a Kohen of pure descent, all Kohanim have the status of Kohen Muchzak. . . . Halakha—Jewish religious law—sanctions modern-day Kohen status without proof of patrilineal heritage through the use of the halakhic concept of *Chezkat Kehuna*. This means that a person's claim to be a Kohen is enough to give one the halakhic status of a Kohen if the claim cannot be disputed. There are dissenting views in halakhic sources as to the status of modern-day Kohanim. Some insisted that we should consider a modern-day Kohen a *Safek Kohen*, or Kohen of doubtful status, because no proof exists as to his lineage. Others insisted that because of *Chezkat Kehuna*, we are able to consider a Kohen a *Vadai Kohen*, or Kohen of certain status, in all respects.<sup>27</sup>*

### THE COHEN MODAL HAPLOTYPE AND THE BIBLE

We also need to consider the kohen lineage as described in the Bible. In modern terms, what would the genetic consequences be and what would we find in the DNA of modern self-identified kohanim? According to the account in Exodus, Jacob had twelve sons, giving rise to the twelve traditional Jewish tribes. Moses and his brother Aaron were Levites, direct paternal descen-

dants of Levi, third son of Jacob. Aaron the Levite and his descendants were appointed to their priestly duties, becoming the kohanim of tradition.

Based on our modern understanding of genetics and inheritance, all Levites would therefore share the identical Y chromosome, whether kohanim descended from Aaron or not. In addition, all descendants of Abraham (via Isaac and Jacob) should have the identical Y chromosome.

Therefore, if we accept the evidence from studies of the Y chromosome, showing the extended CMH in kohanim but not in Levites and in only a small percentage of Israelites, the biblical account of descent and relationships cannot be a true account.

This result does not invalidate kohen status because kohen status, much less Jewish identity, does not depend exclusively on genetic makeup. Two respected geneticists, David Goldstein and Harry Ostrer, have each written books on the topic of Jewish identity in the DNA era. While recognizing distinctive patterns of genetic markers in Jewish populations, they concur on this. Goldstein states: "All I can do is echo what Tudor Parfitt has written: 'Jewishness is not a matter of DNA.'"<sup>28</sup> Oster has written that "there is no rigorous genetic test for Jewishness. . . . Moreover, such a test would not replace the religious definition of who is a Jew."<sup>29</sup>

## BEYOND THE COHEN MODAL HAPLOTYPE

Since the CMH was first described, new genetic data have been accumulating rapidly. In addition to more Y chromosome data (more than 600 Y chromosome markers have been published), data from mitochondrial DNA (mtDNA) have been studied. Mitochondrial DNA, being inherited maternally, gives information about maternal lineages corresponding to, and complementing, data from the Y chromosome.

Even more striking, with the technology developed for the Human Genome Project, it has become possible to analyze the much larger amount of DNA in the rest of the human genome. Thus, rather than identifying a maternal lineage (accounting for .0005 percent) of our genome or the paternal lineage (accounting for 2 percent of a male's genome), something approaching the entirety of our ancestors' contribution to our personal genome is becoming known.<sup>30</sup>

Clearly, although vast amounts of data have been collected and analyzed, the research, and our understanding of the genetics of human populations, are still in their early stages. We will certainly learn more about the history of the Jewish people and will coordinate it with our traditional historical methods. It

is also clear that the distribution of the CMH cannot be explained by simple chance; however, in my view, the explanations so far advanced, although appealing, are not correct.

Research into Jewish DNA has contributed greatly to our understanding of Jewish history and relationships, and new studies will surely continue to add to our knowledge. Further research and analysis will probably provide better explanations for the origin of the CMH, and one thing we can expect for sure is to be surprised at some of the future findings.

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# Conversion in Transition: Practical, Conceptual, and Halachic Changes in Israel

Naftali Rothenberg

The “Who is A Jew?” public debate in Israel of the fifties has had constitutional ramifications but no influence on the situation of conversion applicants.<sup>1</sup> Arguments in the newspapers and at the Knesset struggled with the legal definition of the law that allows automatic citizenship to every Jew in the entire world. At the same time the rabbinical courts [*batei din*], converted to Judaism thousands of applicants in a process that took no more than a year.

The condition of the conversion applicants’ population in today’s Israel is entirely different. The process in rabbinical courts has become four to five times longer than in the past; and many applicants are waiting an extended period of time, sometimes years, for authorization to begin with the process. All this has an effect on a large population in Israel.

In this article I will introduce a general picture of the conversion status in contemporary Israel and a brief summery of the bureaucratic factors in the current crisis. Views of different streams in Israeli society, like ultra-Orthodox and religious Zionists, will be briefly referred to.

My main focus will be on the radical halachic changes regarding conversion that took place in rabbinical courts. I will deal with questions flowing from and related to these changes through meta-halachic discourse.

Halachic transformations and differences between rabbinical courts that acted from the fifties to the seventies and rabbinical court activity in the last thirty years generate a description of two entirely different systems. The essential understanding of this change is critical to the study of “Who is a Jew?” in contemporary Israel.

## IN BETWEEN: THE INDIVIDUAL AND THE COLLECTIVE

In France at the beginning of the 1940s, Madeleine Ferraille, a young French woman of about twenty, married with a son, felt a strong attraction to Judaism—an attraction that led her on an extraordinary life’s journey. Not long after she married, she separated from her husband, became active in the French Resistance, and helped save Jews. Later she studied literature, history, and philosophy at the University of Toulouse and at the Sorbonne. When she was in her thirties, she and her son converted to Judaism and began living as fully

observant religious Jews. She made aliyah [immigrated to Israel] and found her place in an ultra-Orthodox community; her son enrolled in a yeshivah.

In the summer of 1965, when she was in her forties, Madeleine, by then going by her Jewish name of Ruth Ben-David, was at the center of a major uproar within the *Eda Haredit* [the separatist non-Zionist ultra-Orthodox community] in Jerusalem. This fierce debate, which triggered a countrywide media festival, erupted when she became engaged to the venerable leader of the anti-Zionist *Neturei Karta* movement, Rabbi Amram Blau, a 71-year-old widower.<sup>2</sup> The religious court of the *Eda Haredit* summoned Rabbi Blau to appear before it and instructed him to call off the engagement and not to marry the convert. The court's ruling was quite exceptional and, what is more, was not couched in standard halachic language: "This court decrees that no one among the heads of the Eda Haredit and its leadership, and certainly not an exalted person like Rabbi Amram, may marry a convert, because of the dissolute ways of the generation and for a number of other reasons that we keep to ourselves."<sup>3</sup>

Stringent attitudes or reservations about the acceptance of converts can be found in the halachic literature from the Talmudic era to the present and have been amply described by scholars.<sup>4</sup> An interesting meta-halachic question related to this issue, one that has been discussed at length, is whether conversion is primarily an acceptance of the obligation to observe the precepts or admission to the Jewish collective. The conversion process itself has three halachic elements: circumcision (for males), immersion in a ritual bath, and becoming acquainted with or taking on the precepts. The last of these stands at the center of a halachic and exegetical debate that has raged for generations and that has intensified in the modern age, especially in the last three decades. The meta-halachic question about the essence of conversion is linked to this dispute. In practice, the standards for the acceptance of converts were set by each local community for itself; some were more stringent and other more lenient. In general, though, and except for extraordinary cases, converts and their descendants have always been accepted not only in their own communities but throughout the Jewish world, even by communities that had reservations about accepting converts.<sup>5</sup>

Is the approach described in the meta-halachic literature, which sees conversion as the assumption of the obligation to observe the precepts, necessarily more stringent than that which sees conversion as joining the Jewish collective? The position taken by the rabbinical court of the *Eda Haredit*, in view of the possibility that one of its leaders might marry a convert, removed

the acceptance of a convert from the standard halachic envelope. The court's ruling stemmed from a desire to preserve the boundaries of the collective by imposing restrictions on a leader. Rabbi Blau was perfectly aware of this, of course. He announced that he was determined to marry his fiancée and would disregard the rabbinical court's ruling. The man who had never gone outside the Jerusalem city limits since he was a child left the jurisdiction of the rabbinical court and moved to Bene Beraq, where he married the convert Ruth Ben-David.

Thus the idea that conversion is an act of joining the Jewish collective depends on the collective community interest or on what the rabbinical court deems to be the interests of the entire Jewish people. The court in one community may adopt a lenient stance toward the acceptance of a particular convert, whereas in a similar case the court in another town may reject the applicant. The differences between these two attitudes have to do primarily with the perceived role of the rabbinical court in the conversion process. If the essence of conversion is joining the Jewish collective, the court has broad discretion that goes far beyond the bounds of halachic formulas. What is more, the rabbinical court, as a central institution that represents the entire community, must decide in accordance with the norms, limits, and interests of the community, even before it tries to determine the candidate's intentions. The obligation to observe the commandments and the willingness to do so become secondary matters or are merely instrumental to preserving and strengthening the collective. By contrast, if the essence of conversion is acceptance of the obligation to observe the precepts, the religious court has only limited discretion. As the halachic literature states explicitly, if a candidate stubbornly insists on converting, despite repeated rejections by the rabbinical court, the court no longer has the right to turn him away and must accept him. All other considerations are irrelevant.

The differences also relate to the community's involvement in the conversion process. The idea that conversion means joining the collective expands the rabbinical court's discretion but at the same time gives the community a standing in the proceedings, starting with the selection of judges who are committed to the collective interests and running to the actual participation of community institutions, in various ways, in the process itself (teaching the candidates, attempting to influence the judges to accept them after the completion of their studies, and so on). The halachic literature hardly recognizes such community participation. It describes the conversion process as a dialogue between the candidate and the rabbinical court, with no outside



involvement. Today, in fact, the bulk of the conversion process takes place outside of the courtroom and candidates are fully prepared for the actual act of conversion before they face the judges.

## THE CONVERSION TRANSFERRAL

In the second half of the twentieth century, we have witnessed a drastic and rapid change in the conversion process.<sup>6</sup> From the end of World War II through the 1970s, thousands of converts, most of them women,<sup>7</sup> were accepted in Israel and in Orthodox communities throughout the world. The process included the court's interrogation of candidates, as described in the sources: the court told them that they would be better off not converting;<sup>8</sup> that one can be a righteous gentile and observe only the seven Noahide precepts. If the candidate insisted and returned to the court a second or third time, he or she was converted. The entire process was completed in three sessions and lasted an average of ten months. This was the traditional route, the same as had been followed in Jewish communities from time immemorial. Many of the new converts came from secular communities like *kibbutzim* and returned there. No one imposed any conditions on them. All the judges on these courts, without exception, were *haredim* [ultra-Orthodox].

Starting in the mid-1970s, however, the conversion process became more complicated and protracted.<sup>9</sup> Candidates were required to attend a lengthy conversion course—at first six months, later a year or two or even more. They had to persuade the rabbinical court that they were planning to live in a community where it would be possible to observe the Sabbath and other precepts. They were also required to have an observant foster family to help them through the process. None of this was motivated by an intention to make the candidates miserable; the reasons were bureaucratic. The rise in immigration to Israel, chiefly from the Soviet Union, placed a great burden on the limited number of rabbinical courts that served the entire population in all matters of personal status: marriage, divorce, inheritance, and so on.

To cope with the problem, Rabbi Shlomo Goren, the then Ashkenazi Chief Rabbi of Israel, established conversion preparatory seminars to assist in the process. Representatives of these seminars began to appear in the court to testify about their graduates' *bona fides*. The rabbinical courts fell into the habit of going beyond the questions of principle mandated by the *Shulhan Arukh* and quizzing candidates on the material they had studied at the conversion preparatory seminar. As a result, programs that were intended to facilitate the acceptance of converts actually made things much more difficult for them

and swiftly altered the standard halachic procedure for the acceptance of converts. It bears note that these seminars were institutions of National Religious Zionism, which generally favors the acceptance of converts for nationalist and ideological motives.

The mass immigration from the former Soviet Union in the 1990s made it necessary to add a new bureaucratic element to the conversion process. The Conversion Administration was set up to carry out most conversions in special courts with panels consisting of national-religious Zionist *dayanim* [judges] because the regular rabbinical courts collapsed under the load. The administration coordinated between the conversion academy system and the special courts. But this system, founded with the best of intentions, turned into a depressing trap for most conversion candidates. The stipulations for the acceptance of converts, starting with their preparatory education, continuing with the topics on which they were examined by the rabbinical courts, and culminating in the added demands, created something new and totally different, a model of conversion that had never previously existed among the Jewish people.

It is necessary to look carefully at one interesting fact: the outcome of national-religious rabbis' involvement and participation in conversion processes as initiators of the preparatory seminars and as *dayanim* in the rabbinical courts did not simplify the process for the candidates but complicated it. We can of course blame the bureaucracy described above, but it is only part of the story. To achieve a comprehensive understanding, we need to look profoundly at what is standing beyond bureaucracy: ideology and national-religious identity.

To the analysis of the national-religious ideology we need to anticipate a note on the *haredi* position. The *haredi* view toward converts is nonideological and a very simple one. In principle, it based on the classical halachic way of conversion in the rabbinical court with no special preparations and of course without conversion preparatory seminars. The *haredi* communities themselves are not inclusive to converts as we have seen from the extreme case of Ruth Ben-David. These two components, a simple, nonideological, and nonbureaucratic *haredi* approach to conversion on the one hand, and an exclusive communal policy on the other, have made the *haredi dayanim* easy for the candidates. As noted above, this has allowed them to receive in a simple traditional process thousands of converts to Judaism from after the Holocaust until the 1970s.

Contrary to the *haredi* view, the national-religious spiritual leadership supports conversion because of religious and political ideology and as an outcome of the concept of the modern return to Zion as a religious process.<sup>10</sup> The

change from a communal conversion to a state conversion is problematic and basically unacceptable from the *haredi* point of view. For national-religious rabbis it is an important and even essential implementation of their ideology.

But precisely in the halachic-practical field the national-religious position is more detailed than the *haredi* view, more comprehensive, and less flexible. In most cases, the ideological national viewpoint doesn't allow more easy expression of the conversion process for the individual candidate. There are those who explain that the national-religious rabbis feel that they have to prove to themselves and others that they are acting in accordance to halachah, while the *haredi* rabbis don't have to prove anything to anyone.

I tend to believe that the strictness is authentic, and it flows and strengthens from the religious-national ideological approach. It is precisely the religious stream that is interested in principle in the acceptance of converts, mainly those who immigrated to Israel, that has shown many times practically less openness and flexibility in the conversion process. This argument presents the question of convert acceptance in Israel in a different way than it appears in public discourse. The common way of understanding it is as a *haredi*-Zionist religious dispute. It looks like the problem originates from the religious Zionist position or at least from the view of a few streams and rabbis within religious Zionism.

We need to look a little more carefully at the way described above of Rabbi Goren's actions on conversions. On the one hand, he came from a *haredi* background that allows him to see the conversion process in its traditional halachic simplicity. On the other hand, he adapted and developed national-religious ideology.<sup>11</sup> Unlike the national-religious *dayanim* after his time, he converted in a simple and short process; for example, the accelerated and simple conversion process in the IDF rabbinical court under Rabbi Goren's leadership (and his followers Rabbis Piron and Navon who continue his conversion method) is incomparable to the process conducted by the Zionist-religious IDF chief rabbis in the past seven years.

#### REDEFINING CONVERSION: FROM COMMUNITY PROCESS TO GOVERNMENT ACT

The conversion authority, this vast apparatus, is a government agency—and not just one more government agency, but a department in the Prime Minister's Office.<sup>12</sup> Ever since David Ben-Gurion, and especially in the last two decades, Israeli prime ministers have viewed the conversion of tens (and if possible hundreds) of thousands of non-Jewish immigrants as a national chal-

lenge. In their eyes, conversion is an important tool for absorbing immigrants in Israel, for their socialization and acculturation, and makes a direct contribution to bolstering the Jewish majority in the nation-state.<sup>13</sup> They could not leave such an important matter in the hands of the religious affairs ministry.

But the political decisions by secular prime ministers also had far-reaching halachic implications. They did not carry out their policy through a secular conversion apparatus in the spirit of a proposal floated by former minister Dr. Yossi Beilin;<sup>14</sup> instead, they established a religious system to serve this policy. (Note that the major secular parties in Israel have never been interested in the separation of religion and state. Quite the contrary, religion has always been an instrument in the service of their policy and remains so today.) This system, as noted, comprises observant Jews, most of them rabbis affiliated with the National Religious stream, who as a matter of principle want to complete the immigrants' naturalization by their conversion to Judaism. In fact, the Conversion Administration was unable to handle the burden and became an obstacle to the conversion of thousands of persons.<sup>15</sup>

About ten years ago, the government shut down the original Conversion Administration and replaced it with a new version. The second avatar, headed by Rabbi Haim Druckman, was staffed by National Religious rabbis who were graduates of the same yeshivas as the rabbis of the first Conversion Administration. This Conversion Administration Mark II endeavored to speed up the conversion process and simplify the requirements, but with no great success. The reaction was not long in coming, in the form of a challenge to the authority of the rabbis of the second Conversion Administration and the rejection of their converts by a panel of the Supreme Rabbinical Court. The general media in Israel presented the conversion controversy as an ideological clash between the ultra-Orthodox and the religious Zionists. The sad truth, however, is much simpler. This is not an ideological debate at all, but a battle for power and money and rabbinic authority, mainly within the National Religious rabbinic camp. However, ultra-Orthodox rabbis see themselves as the defenders of the ramparts and take part in the public debate, expressing views that totally ignore the past rulings of their own predecessors.

In a theocracy, the state establishments vacuum the religious communities from different religious authorities. Sometimes they delegate part of these authorities back to the communities. But Israel is not a theocracy but a nation state and a secular democracy. As a result of its constitutional history, the State of Israel does not practice a total separation between state and religious establishments. The rabbinate is part of the government system, and

rabbinical tribunals are part of the courts system. The outcome of this situation is a creation of a complicated reality in issues related to citizens' personal status.

As noted above, rabbis disagree along generational lines whether conversion is primarily an acceptance of the obligation to observe the precepts or admission to the Jewish collective. The first is an individual move; the second is considered to be a communal act in the public arena. We also noted the fact that the requirements were different from one community to the other. The requirements weren't equal for all conversion candidates sometimes in the very same community.

As observed earlier, the basic halachic requirement is simple: circumcision (for males), immersion in a ritual bath, and becoming acquainted with or taking on the precepts. In other words, there are not unified, clear, and explicit halachic standards for the acceptance of converts. This situation is very problematic from the state law point of view, which requires clear and explicit definitions. What kind of conversion process does the secular legislator intend? The fact is that the Knesset definition for who is a Jew for the purposes of the Law of Return—"who was born to a Jewish mother or converted"—leaves the process, the standard, undefined from the state point of view. The simple significance of the law is that every conversion should be recognized by the state for the implementation of the Law of Return. As a result of this, everyone converted by any Jewish community in the Diaspora is recognized as a Jew and will enjoy an automatic citizenship by the Law of Return. Inside the State of Israel, the law practically granted this authority of the definition of the personal status only to the official rabbinate, as it does in marriage and divorce.

The result of the transition from a communal conversion to a state conversion is that every particular case tends to be a common and general one. Every conversion becomes "a solution" given to a private citizen by the state.

One might expect that the position that sees conversion as an admission to the Jewish collective will prevail over the position that sees conversion as a personal obligation by the convert to observe the precepts. In the first decades of statehood the former was the dominant direction. Thus, identification with the state-like service in the IDF influenced the rabbis' conceptual approach to acceptance of converts, both in Israel (Rabbi Goren<sup>16</sup> and others<sup>17</sup>) and in the Diaspora (Rabbi Louis Bernstein<sup>18</sup> and others<sup>19</sup>). During the last thirty years, demands that the candidates for conversion in Israel convert into an Orthodox community and be fully observant upon completion of conversion grew more unexpectedly. Not only this, but the transition to state conversion opened the gate to conversions abolitions<sup>20</sup> or nonrecognition of conversions such as those

conducted by the IDF rabbinate. These phenomena were almost unknown in the history of communal conversions.

The conversion process occurred through generations within communities who were different from one another in their culture, traditions, and norms. Common standards between these communities was limited to the acceptance of converts converted in one community in all or most others. This was also true for those communities that avoid all conversions. The significance of the transition from communal conversion to state conversion is standardization of the conversion process as a whole. By itself, this is a far-reaching change. This change was not only an internal issue of the state but also generated an alteration in communal conversions throughout Orthodox communities in the Diaspora that were required to adopt the standards of the state conversion.

In a situation of no separation between religion and state on issues of personal status related directly to the legal situation of the individual, we usually hear an argument that in a democracy it is appropriate to limit individual freedom to freedom from religion. But a no less serious question requires consideration: does the dependence of a religious law on secular law not damage its religious status? Does the implementation of Torah law rely on the foundation of Knesset legislation? Aren't we witnessing the phenomenon of secularization of the religious community?

As described above, the traditional conversion process included the court's interrogation of candidates, as it written in the halachic canonical literature:<sup>21</sup> As noted earlier, the court told them that they would be better off not converting; that one can be a righteous gentile and observe only the seven Noahide precepts. If the candidate insisted and returned to the court a second or third time, he or she was accepted.

In the dialogue with the candidate in the traditional conversion the community court used to note Shabbat observant, Kashrut, and for woman candidates, Shabbat candle lighting. The assumption was that the convert would more or less fit himself or herself to the standards and the norms of the relevant community. Sometimes it happened. Many times converts became very strictly observant and in other cases partly observant or not at all. As noted, the state conversion during the past thirty years has become based on a comprehensive preparation of the candidates by special seminaries. The prior halachic knowledge required from the candidates became more and more extensive and detailed. Not only the details of the laws of Shabbat and holy days, Kashrut, and purity but also details of rules and of prayer customs. Not

only did the preparatory process become more complicated but it also developed a selective method that allows only those with learning skills and enough free time to study to be included.

Conflict provides an inexhaustible source of creative inspiration. The short-term processes described here have generated a halachic and pseudo-halachic literature that endeavors to buttress the many different positions and reinforce them against their rivals. Several volumes on the nullification of conversions have been published in the last three years, some supporting the concept and some totally opposed to it. It is not important whether the dominant position in the new halachic literature tends to leniency or stringency. What matters is that the relatively simple halachic and community domain of the acceptance of converts, which prevailed for generations and especially during the past two hundred years as part of the autonomous community framework, has morphed into a complicated process carried out exclusively by the state authorities.

## SUMMARY AND CONCLUSIONS

This article presents some of the far-reaching changes in the contemporary conversion process in Israel during the past thirty years. Initially, conversion was a simple internal process that occurred within a community and was limited to a few meetings with the participation of the candidate and the members of the local rabbinical court. This transformed into a long process of learning and social and cultural training with the involvement of the state establishments. The alteration was expressed with a whole new standardization of the process in Israel as well as the engagement of most Orthodox communities in the Diaspora with the new normative framework.

The essential transition includes two principal changes:

- The process of learning and prerequisite of knowledge in Judaism in general and in halachah and customs in particular change the conversion into a test of knowledge. This excludes candidates who for various reasons can't engage themselves in a learning process.
- A practice of almost full observance in accordance with Orthodox standards and norms prior to the conversion itself.

Somewhat surprisingly the national-religious spiritual leadership that supports conversion because of religious and political ideology contributes to these changes by being sometimes even more detailed, more comprehensive, and less flexible in the halachic-practical field. At the same time they become a factor in the development of a new halachic system for conversion.

The dependence of the rabbinate and the rabbinic tribunals system on the secular state law develops many paradoxes and difficulties and raises a few unsolved inquiries for both the state and the rabbinic authorities. This article addressed only a few of these complexities and raised a few questions:

Can the state be the conversion service provider as a bureaucracy and as a democracy?

What are the halachic significances of dependence on the secular law? Can we see here a secularization of the halachic authorities?

The second question may open meta-halachic inquiry on the subject. It is an attempt at meta-halachic clarification that stands at the center of this paper. I logically assumed that the conversion change from a communal act to a state service will clarify the old meta-halachic dispute whether conversion is primarily an acceptance of the obligation to observe the precepts or admission to the Jewish collective. I was wrong.

It is possible that the government will streamline the process and make things easier for candidates. There is no doubt that in Israel in 2014, converts have to satisfy demands that are quite different from those made of converts in the 1950s, 1960s, or 1970s. These demands represent a significant change in the conversion process and in converts' identities.

## NOTES

<sup>1</sup> Charles Hoffman, *The "Who is a Jew" Crisis: Retrospect and Prospect* (Jerusalem: The American Jewish Committee, Israel office, 1990); M. Samet, "Who is a Jew (1958–1977)," *The Jerusalem Quarterly* 36 (1985): 88–108; see also Eliezer Ben-Refael, *Jewish Identities: Fifty Intellectuals Answer Ben-Gurion* (The Ben-Gurion Research Institute, Ben-Gurion University of the Negev, 2001).

<sup>2</sup> For the entire story, see Kimmy Caplan, "'Cheeky Dirty Convert': The Marriage of Amram Blau and Ruth Ben-David," in *Iyunim Bitkumat Israel, Studies in Zionism, the Yishuv and the State of Israel* (ed. Avi Bareli and Gideon Katz; vol. 20; The Ben-Gurion Research Institute, Ben-Gurion University of the Negev, 2010).

<sup>3</sup> Naftali Rothenberg, Preface, *Identities: Journal of Jewish Culture and Identity* 3 (2013): 4.

<sup>4</sup> See, for example, Zvi Zohar and Avraham Sagi, *Transforming Identity: The Ritual Transition from Gentile to Jew—Structure and Meaning* (London: Continuum, 2007).

<sup>5</sup> Zvulun S. Lieberman, "A Sephardic Ban on Conversion," *Tradition* 23:2 (1988): 22–25.

<sup>6</sup> For a comprehensive review of conversion development and changes, see Netanel Fisher, "Conversion and the State: Israel's Policy on Conversion to Judaism, 1948–2004" (Ph.D. dissertation, the Hebrew University of Jerusalem, 2011) [Hebrew].

<sup>7</sup> On the implications of the fact that the majority of converts are women, see Daphna Hacker, "Inter-Religious Marriages in Israel: Gendered Implications for Conversion, Children and Citizenship," *Israel Studies* 14:2 (2009): 178–97.



<sup>8</sup> Tractate *Gerim*, chapter A halkha a'.

<sup>9</sup> On the change in halachic perspectives see Shmuel Shilo, "Halakhic Leniency in Modern Responsa Regarding Conversion," *Israel Law Review* 22:3 (1988): 353–64.

<sup>10</sup> E. Birenbaum, "Bnai Menashe and their Return to the Nation of Israel," 30 (2007): 1–10.

<sup>11</sup> Rabbi Shlomo Goren wrote widely on conversion. See, for example, "Conversion in the Light of Halakah," *Mahanym*, 92 (1975): 8–12 [Hebrew]; "Acceptance of Converts," *Thumin, Alon Shvut* 23 (2003): 171–74. On his religious-national views, see "The State of Israel as a Stage in the Vision of the Prophets," in *Torat Hamedinah* (Jerusalem: Haidra Raba & Mesorah La'am, 1996).

<sup>12</sup> In May 2013, the Knesset transferred the responsibility to the Ministry of Religious Services.

<sup>13</sup> Michal Kravel Tovi, "The Exchange of Identities between the Jewish State and Jewish Converts" (Ph.D. dissertation, the Hebrew University of Jerusalem, 2009).

<sup>14</sup> Yossi Beilin, *The Death of the American Uncle* (Tel Aviv: Yediot Sfarim publishers, 1999) [Hebrew].

<sup>15</sup> The State Comptroller annual report, 2013 [Hebrew].

<sup>16</sup> See note 11.

<sup>17</sup> Haim Amsalem, "On the Conversion of IDF Soldiers" (Jerusalem: The Knesset, 2010).

<sup>18</sup> Louis Bernstein, *The Emergence of the English Speaking Orthodox Rabbinate* (New York: Yeshiva University Press, 1977); see also "U.S. Orthodox Groups Clash over Knesset Vote on Conversions," *JTA*, New York, August 9, 1972.

<sup>19</sup> Marc Angel, *Choosing to Be Jewish: The Orthodox Road to Conversion* (New York: Ktav, 2005).

<sup>20</sup> Shimon Ya'akobi, *Conversion Abolition Due to Insincere Acceptance of the Precepts* (Jerusalem, Hanalat Batei Hadin Harabaniym, 2009); Haim Amsalem, *On Conversion Abolition, Comments to Rabbi Shimon Yaakobi's Report* (Jerusalem: The Knesset, 2010).

<sup>21</sup> Maimonides, *Laws of Forbidden Relations*, ch. XIV; *Tur Yore Deah*, ch. 268 (ה"ט); *Shulch.*

# Who Is a Jew in Israel?

Netanel Fisher

## INTRODUCTION

The aim of this article is to examine if and how the State of Israel has influenced the shaping of the Jewish identity. The main claim I will present here is that the leaders of the state attempted, at the time of its establishment, to shape a specific Jewish status that would be valid in a variety of contexts in order to ensure the existence of a broad Jewish common denominator. This identity was based on defining Jewishness according to formal religious criteria of Jewish status and not on subjective feelings that remained under debate.

The Israeli attempt to establish a broad common Jewish status proved to be successful for the early decades; however, in recent years we have witnessed its decline. This is due to the changes in social reality and law. My claim is that as long as the legal platform of the Jewish status suited the social and demographic state of the Jewish People in Israel and in the Diaspora, it held out. However, once the social picture had changed, even the high-level institutionalization of the Jewish identity was not able to stop the social processes, forcing the legal definitions of Jewish identity to change accordingly. The article concludes with the assumption that this trend will increase in the coming years.

## “MINIMAL JEWISH COMMON DENOMINATOR”— JEWISH IDENTITY AS A FORMAL STATUS

According to halachah and the Jewish tradition, a Jew is whoever was born to a Jewish mother or has converted. This halachah actually formed the idea that Judaism is not a matter of subjective self-identification but rather conditional on objective criteria. In this context, following Peter Berger, David Ellenson and David Gordis justly distinguish between two important concepts: identity and status.<sup>1</sup> As opposed to identity, which is based on psychological-emotional feelings of affiliation with a certain group, status is the definition of a person's state by law. Status, being a formal factor, may possibly change depending on statements of solidarity or a sense of belonging to a certain community, but once statutory status has been decided, it stands on its own, detached from subjective feelings and emotions, sincere and powerful as they may be.

Traditionally, Judaism has been determined by a statutory definition. The religious criteria determining Judaism are indifferent to anyone's subjective Jewish identity, Jew and non-Jew alike. Jewish status is granted to whoever has a Jewish mother or has converted, and it is an absolute and unchangeable status. In this sense Jewish identity is minimalistic, since it relies on a number of basic tenets that depend neither on developed personal consciousness or on an agreement regarding any ideological or educational principles. Thus, for example, it has been determined that "A Jew, even if he has sinned, is a Jew." In other words, personal identification with the principles of the Jewish religion and practical observance of its laws are irrelevant to Jewish status. So much so that even a Jew who has actively converted to a different religion, who totally identifies with another religion, and has even taken the active step of proselytization for that religion, cannot change his Jewish status as far as halachah is concerned; he remains a member of the Jewish community. At the same time, a person who was not born to a Jewish mother or did not convert in accordance with the formal procedures will not be considered a Jew even if he feels Jewish, believes in God, and observes Judaism's religious commandments.

For most of history, there was an overlap between Jewish identity and subjective halachic status. The main role of religion in the general society as in Jewish society in the premodern era was to promise that Jews who had a Jewish identity were indeed Jewish also according to their formal status. Jews lived within closed and homogeneous communities, and religious norms dictated their lifestyle and created a safety net of sorts, promising Jewish continuity. The prohibition on the marriage of a Jew to a non-Jew ensured that both parents would always be Jewish; as a result, their offspring were spared the dilemma of choosing the identity of one of the parents. In order to avoid the possibility of marriage to a non-Jew, many halachic rules were designed so as to minimize social contact between Jews and non-Jews. In the positive sense, the family system that was established *kedat Mosheh ve'yisrael* [according to the law of Moses and of Israel] was considered to be sacred, and all other sorts of coupledness were rejected. Anyone who deviated from these norms was harshly punished, and in certain cases the offspring were even considered bastards.

This set of rules created what I call "the minimal Jewish common denominator." This minimum, based on objective status definitions and on the safety net that ensured the persistence of this status, created a basic common denominator for all Jews anywhere on the globe. Different Jews

from all over the world could establish communities, create social ties, and marry among themselves, regardless of their personal and subjective views about the definition of Jewish identity. They were all Jewish since they were born of Jewish mothers or converted. This definition of Judaism based on “minimal Jewishness” was extremely important. The fact that formal Jewish status allowed for belonging to the Jewish religion and to the Jewish community, at one and the same time, promised Judaism’s continuity over hundreds and thousands of years. The Jewish community and Jewish religion were two sides of the same coin, and both were based on an objective Jewish status.

Modernity unraveled this unique Jewish linkage. For the first time in history the enlightened countries opened new possibilities before the Jews, including civil and social affiliation with the non-Jewish community. At the same time, the rise of enlightenment, Bundism, Zionism, and reform movements, side by side with the loosening ties within the Jewish religious and communal settings, allowed the Jews new definitions of identity. However, as long as Jews met the criteria of Jewish status in terms of the minimal Jewish common denominator, not much importance was attached to their subjective choices. Bundist Jews, enlightened Jews, Reform and ultra-Orthodox Jews could continue living together and marrying each other, despite the gulf that opened up between them. It was not in vain that preserving that Jewish common denominator was considered to be a supreme interest of all Jewish denominations, since it ensured Jewish solidarity. And indeed only after many years did various Jewish groups, headed by the Reform movement, dare to suggest new criteria for determining Jewish status.

#### NATIONALISM AND THE ZIONIST IDEA AS AN ALTERNATIVE TO THE DEFINITION OF RELIGIOUS IDENTITY

Right from the start, the Zionist leadership pondered the possibility of changing the rules of Jewish status and redrawing the boundaries of the national collectivity. Seemingly there was no place for debate. According to the common national definition, religion no longer had a role in determining the rules of national affiliation. Nationality, classically interpreted as the “new modern religion,” defined itself on principle by using civil definitions based on ethnic origin and shared culture.<sup>2</sup> In most Western nation-states, religious affiliation became separated from national affiliation despite religion’s important role in the cultural heritage. As far as determining civil

status for emigration purposes, naturalization, registration, and personal status, religion became a private issue.

In the Zionist national movement, though, it was difficult to adopt the separation between religion and state. The deep historic connection between the Jewish religion and Jewish ethnicity, and the overlap between belonging to the Jewish religion and membership in the Jewish community, made it difficult for the founders of the state to accept the national model that was common in other nations. The religious narrative, also needed in order to drum up the masses, had to receive a respectable place in the public arena. As a result, even prior to the establishment of the state, some legal arrangements were made with the explicit purpose of anchoring religion's unique status in its Orthodox sense as a means of preserving the minimal Jewish common denominator.<sup>3</sup>

#### THE STATE OF ISRAEL: THE FEAR OF THE JEWISH NATION'S POSSIBLE DIVISION INTO TWO PARTS

This trend was apparent in the famous letter from the Jewish agency's directorate to Agudath Israel, the ultra-Orthodox party, just before the establishment of the state in 1947. Known as the "status quo" letter, David Ben Gurion, Israel's first prime minister, wrote in it concerning the question of marriage: "All the members of the directorate comprehend the seriousness of the problem and the great hardships it entails, and on the part of all the entities represented by the Jewish agency, everything possible will be done to prevent the division of the House of Israel in two."<sup>4</sup> The fear of the Jewish nation splitting in two and branching off into separate communities was one of the guiding principles in the emerging agreement. The idea that a minimal Jewish common denominator must be preserved in order to ensure Jewish cohesion and solidarity was the basis for the agreement of the secular majority to subordinate part of the state's laws to those of halachah. And indeed until the end of the 1950s a formal legal framework was established, aimed at ensuring that the status of Israel's Jewish citizens be determined by Orthodox norms. In addition, the legal framework also included halachic rules to serve as safety nets to strengthen this Jewish orthodox minimum.

First, the State of Israel decided to register its citizens' religious status according to halachic rules. In other words, anyone born to a Jewish mother or converted was registered as Jewish in religion and nationality, regardless of his or her religious observance. This registration, done at the time of

birth, was extremely important beyond statistical issues or the state's wish to fulfill the religious needs of its citizens. This religious registration dictated in advance the religious format with which the personal status of its holder would be dealt. National registration, defined by the religious criterion as well, also entailed obligations (army service) and rights (land leasing, for example) endowed to Jews in Israel.

Second, immigration and naturalization in the state of Israel according to the Law of Return were limited to Jews only. The entrance of non-Jews and their options of naturalization were limited. Contrary to other states, no emigration law was enacted in Israel to ensure the possibility for entrance of mixed families and other people, even if they were interested in joining the Jewish people and could have strengthened the Jewish majority in the State of Israel.<sup>5</sup> Indeed, at the time the Law of Return avoided defining the term "Jew," it is known that also quite a few interreligious families also entered Israel under its auspices. However, since interreligious marriages were not common in the Diaspora and the law stated explicitly that only Jews could immigrate to Israel, the great majority of immigrants were Jewish also according to their religious status.

Third, personal status issues were subordinated to the religious rules and all Israel's citizens (Jews and non-Jews alike) were required to marry and divorce within the religious framework to which they were automatically assigned. This situation preserved Jewish endogamy by preventing the performance of mixed marriages. In addition, the possibility of civil marriage, the halachic status of which was in question, was blocked out. In this context the religious Jewish framework was Orthodox, and non-Orthodox religious marriages were not recognized.

These rules opposed the accepted national model prevailing in other states and severely impaired basic civil rights, first and foremost the freedom from religion. In order to justify this, the government heads claimed it was essential for the sake of preserving the minimal Jewish common denominator. For example, Ben Gurion explained why the government determined that the rules of marriage be subordinated to the religious establishment:

Why did we accept the law of marriage and divorce? Do we believe that a divorce may be given only in Aramaic? We accepted this law so as not to cause a schism in the nation of Israel, so a religious Jew will be able to marry the daughter of a non-religious Jew. We accepted this with love. We did not do it as a favor to the religious, but rather, we did what the leaders of the Jewish nation must do.<sup>6</sup>

One may doubt the sincerity of Ben Gurion's words. He himself married civilly outside of Israel (in the United States), but the fact that Ben Gurion the politician used these arguments publicly reflects his understanding that they lean on broad public consensus.

To summarize, we might say that during the first decades of Israel's statehood, a framework preserving a Jewish common denominator was formed based on religious boundaries. This system not only preserved the minimal Jewish common denominator but also worked to protect it. As a rule, only Jews entered Israel and were naturalized in it. Jews married only Jews in religious marriage. The procedure of civil registration was done according to the rules of halachah. Whoever was registered as a Jew in his or her identity card was indeed Jewish also according to the rules of the religious establishment. Needless to reiterate, this Jewish minimum existed side by side with ongoing fierce ideological debates that went on splitting Jewish society, but this was its charm. Despite the ideological and social schisms, in Israel of the 1950s and on, it was possible to assume that "all are Jewish"—besides of course the Arab citizens, who were kept out by clear-cut boundaries.

Despite various cracks in this policy (such as, for instance, the practical permit for mixed families' entrance), the secret of this move's success leaned not only on legislative acts but also on a clear social and demographic reality. In those years the ratio of mixed marriages in the entire Jewish world was quite low, and many Jews, including those who did not observe the religious way of life, considered it important to marry within a religious framework. As a result, the ratio of mixed families requesting permission to enter Israel was quite low. In this sense, the unique set of laws formed in Israel actually reflected the face of Israeli Jewish society, as well as that of the Diaspora.

The question arises: could the state have continued to base its collective identity on religious-Orthodox definitions after they lost their social legitimacy? This paper's main claim is that the answer to this question is negative. In the absence of a social foothold and with no anchorage in the Jewish demography, the legal framework began to crumble and the rules of affiliation with the Jewish collectivity began to change gradually. The high religious institutionalization that the State of Israel established with regard to the preservation of the minimal common Jewish denominator did not withstand the social, religious, and secular trends that evolved over the years.

## THE 1980S: THE TURNING POINT

Cracks in the system became apparent from the 1960s on, although the breaking point came only at the end of the 1980s, when Jewish status definitions began diverging to the extent that the continuity of the common Jewish minimum was put into question. What brought about this change?

First, in the late twentieth century the ratio of mixed marriages between Jews and non-Jews increased significantly, rising above 50 percent in the majority of communities in the Diaspora. As a state absorbing Jewish immigration, Israel was of course affected by these demographic changes. And indeed when the Iron Curtain was raised and immigrants from the former Soviet Union entered Israel en masse, it was only natural for mixed families to immigrate to Israel as well. This group, consisting of hundreds of thousands of people, brought about a decisive change in Israeli Jewish society. These immigrants and their children who were born in Israel actually formed a new Jewish status: “non-Jewish Jews.”<sup>7</sup> This group, which immigrated to Israel on the basis of immediate familial relations to a Jew (usually a father or grandfather), integrated into the general Jewish society, the IDF, the work force, and all other realms of life, creating for the first time in modern Jewish history a large non-Jewish group within the Jewish collectivity.

It must be stressed that the definition of this group as “non-Jewish” is based on the religious status adopted in the context of the Law of Return, which determined that “A Jew is one whose mother is Jewish or who has converted.” However, from the viewpoint of many non-Jewish immigrants, their Jewish ethnic origin and identification with the Jewish people and the State of Israel, and not the religious definition, are the criteria that should determine their national Jewish status. The expansion of this group, which is also typified by high levels of secularization, has deepened the rift between religious status and national Jewish status.

Another factor contributing to this change was the secular and non-Orthodox majority’s opposition to the religious definitions. After decades of acceptance on the part of the secular majority, the 1990s brought about a broad resistance to the Orthodox monopoly. This resistance originated in secular activist circles that wished to come up with liberal alternatives to collective Jewish identity definitions, as well as in non-Orthodox circles, especially from the Reform movement, which attempted to promote religious pluralism in Israel similar to that prevailing in American Jewish communities. These groups began promoting alternatives to the



Orthodox monopoly by broadening possibilities in the realms of marriage and coupledness as well as recognition of non-Orthodox conversion. In addition to these ideological trends, the intensification of the “practical” and a “day-to-day” secularization, which was based on the growth of the consumerist and capitalist society in Israel, contributed to the acceleration of these trends.<sup>8</sup>

Changes within religious society also influenced this trend significantly. For many years the religious-Zionist community enjoyed hegemonic status within the religious camp. The ultra-Orthodox camp, which traditionally held more strict positions, was relatively small and lacking in significant political power. With time, the ultra-Orthodox camp grew demographically as well as in its self-confidence, gaining considerable political power. As a result, ultra-Orthodox rabbis serving within the Israeli religious establishment began applying stricter religious approaches, which would have been unthinkable during the state’s earlier years.<sup>9</sup> For our purposes, we note that these rabbis gradually began doubting the conversion certificates issued by the ministry of the interior, although they were based on the religious definition of the term “Jew.” Since the 1990s, a procedure had been formed by which the rabbinate itself examined the validity of the Jewishness of any person who arrived from abroad, even if he or she has immigrated under the Law of Return as a Jew—for fear of forgeries and in face of claims that the state issued certificates that were not duly substantiated. In this process, termed “clarification of Jewishness,” the rabbinate began invalidating the Jewishness of many people who were registered as Jews in the citizens’ census, although this registration was done, as we have mentioned, according to the rules of halachah.

This process did not stop with concerns about certificates issued by the state’s secular entities; it seeped into the rabbinical system itself. During the 2000s, many rabbis began refusing to recognize conversions performed by their rabbi colleagues, some even invalidating them entirely.<sup>10</sup> In addition, the Israeli rabbinate began to doubt certificates issued by Orthodox rabbis in the United States, claiming that these rabbis were too liberal and could not be trusted. The overall meaning of this process was that the religious establishment began designing an alternative definition to the term “Jew.” The common Jewish minimum, it appeared, was too low for these rabbis, and they wished to create higher religious standards. These standards were higher not only than those of the secular state entities but also than those of part of the religious establishment itself.

## THE JUDICIAL-LEGAL CHANGES

These social changes could not have occurred without parallel changes taking place in the legal and judicial systems.

As for marriage, back in the early 1960s the court had already ruled that even couples civilly married outside of Israel were to be registered as married. This trend accelerated from the 1980s on, with the high court of justice beginning to adopt a clearly activist secular liberal stance. In a series of rulings the court deepened its recognition of civil marriage and gave its civil registration a status close to that of recognition as actual marriage. At the same time, the court employed a radical interpretation for the term “common law marriage,” endowing this form of coupledness a far-reaching status, practically equating it with full recognition as a married couple. Of course, these rulings weakened the need for religious marriage and enabled the existence of interreligious cohabitation and marriage.<sup>11</sup>

A similar step was taken by the court with regard to civil registration. Already in the late 1960s the court ruled that even people who had only a Jewish father be registered as Jewish. Responding to this verdict, the Knesset amended the law and obliged registration according to the rules of halachah. However, the court continued exercising its influence over the registration policy in additional ways. In a series of rulings from the late 1980s, the court ruled that those who underwent non-Orthodox conversions be registered as Jews. From this point on, whoever converted abroad or in Israel through Reform, Conservative, or other denominations was registered as Jewish. The registration of Jewishness based on a common denominator was gradually being eroded.<sup>12</sup>

The essential change pertaining to immigration and naturalization was made through primary legislation in the Knesset in 1970. As noted above, the original Law of Return (1950) stated that only Jews could immigrate to Israel. However, the law abstained from defining the term “Jew.” This situation changed dramatically in 1970 when the Laws of Return and Naturalization were altered as a reaction to the high court’s ruling. The new law stated that Jewish status is to be determined only according to religious parameters (“one whose mother is Jewish or who has converted”). However, in order not to hinder the unification of families (many families from behind the former Iron Curtain were expected to come), the Knesset determined that relatives of Jews, including their children and grandchildren, may also immigrate under the Law of Return. This amendment put Israel in line with other nation-states who had set their emigration laws based on

“blood law,” that is, repatriation on national-ethnic basis.<sup>13</sup> Interestingly, at the time, the amendment to the Law of Return, which coupled the definition of Jewish identity with that of halachic status, was actually considered to be an achievement for the religious parties, which initiated it as a reply to the court ruling. But this apparent pinnacle for the religious establishment later turned out to have been the start of its fall.

First, since the introduction of the conversion issue into the law, a powerful struggle ensued regarding the question of the validity of non-Orthodox conversions. The Reform and Conservative movements, originating in the United States, demanded that the State of Israel recognize their conversions. Their demand was finally accepted by means of the high court ruling, which, as stated above, ruled that those converted through non-Orthodox conversion were also authorized to immigrate to Israel, where they would be registered as Jews according to the Law of Return. From here on, the status of “Jew” in the context of the Law of Return, which is not defined according to the rules of Orthodoxy, was separated from Jewish status in the context of personal status issues, entrusted to the rabbinate.

Second, and this is the crucial point: the amended Law of Return opened the way for the mass immigration of people of Jewish origin who are not considered Jewish according to the rules of the state that, as mentioned above, followed the halachic criterion. Indeed, in order to cope with this situation Israel launched a state conversion project aimed at helping and encouraging these immigrants to convert, thus preserving uniformity between the religious definition and the national-secular definition, but up until the present this project has failed and the vast majority of these immigrants and their descendents have not converted.<sup>14</sup>

#### SUMMARY: WHO IS A JEW IN TWENTY-FIRST CENTURY ISRAEL?

The State of Israel has failed in its attempt to establish a uniform Jewish status, on the statutory level as well as in the social sense. Anyone attempting to find an answer to the question “Who is a Jew” in the laws of the State of Israel and in its authorities’ conduct is bound to be disappointed.

As far as personal status matters, the law did indeed recognize religious marriage as the sole option for marriage, but the high court opened up a variety of options for recognition of civil marriages and other forms of coupledness, and these are indeed proliferating, as is the rate of interreligious marriages. In matters pertaining to immigration and naturalization, the

state adopted a national-ethnic definition and opened its gates to hundreds of thousands of (halachically) non-Jewish immigrants and their children. On the other hand, the state has refused to register them as Jews, since registration was determined according to the halachic rules. At the same time, the rabbinical establishment has stopped recognizing the validity of this registration and carries out a “Jewishness examination” and a parallel registration, according to stricter religious parameters.

Demographically, among most of Israel’s Jewish citizens the overlap between national status and religious-Orthodox status still remains intact, but the minimal Jewish common denominator is gradually dissolving. In the 1940s Ben Gurion warned of the “division into two of the House of Israel,” and today this fear is becoming a reality as the common denominator sought by the founders of the state is slowly dissipating.

These are gradual processes that are often hidden from view, but they will undoubtedly have a dramatic impact on Israel’s Jewish character. Will there be bold rabbis who will step forth and suggest halachic solutions to enable the continued overlap between the religious definition and the national one? Will the State of Israel stop being a “Jewish state” in the religious-Orthodox sense and adopt a secular definition? Will the national solidarity hoped for by the founders of the state dissolve, so that in Israel, as in the Diaspora, there will exist a multitude of Jewish communities, each defining its Jewishness differently?

It is difficult to answer these questions conclusively, but the question “Who Is a Jew” will surely continue to accompany the State of Israel for many years to come.

## ACKNOWLEDGMENT

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## NOTES

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<sup>2</sup> Liah Greenfeld, “The Modern Religion?” *Critical Review* 10:2 (1996): 169–91.

<sup>3</sup> Shlomo Avineri, *The Making of Modern Zionism: Intellectual Origins of the Jewish*

*State* (New York: Basic Books, 1981); Gideon Shimoni, *The Zionist Ideology* (Hanover: Brandeis University Press, 1995).

<sup>4</sup> Menachem Friedman, "And These Are the Origins of the Status Quo: Religion and State in Israel," in *HaMaavar me'yishuv lemedina 1947–1949: retzifut utmorot* (ed. V. Pilovsky; Haifa: University of Haifa, 1990), 47–79 [Hebrew].

<sup>5</sup> Amnon Rubinstein and Barak Medina, *The Constitutional Law of the State of Israel* (Jerusalem: Shoken, 1996), 396–409, 1071–80 [Hebrew].

<sup>6</sup> Proceedings of the Government of the State of Israel, July 5, 1953 (The Israeli State Archives).

<sup>7</sup> Asher Cohen and Bernard Susser, "Jews and Others: Non-Jewish Jews in Israel," *Israel Affairs* 15:1 (2009): 52–65.

<sup>8</sup> Guy Ben-Porat, *Between State and Synagogue: The Secularization of Contemporary Israel* (Cambridge: Cambridge University Press, 2013).

<sup>9</sup> Asher Cohen and Bernard Susser, "From Accommodation to Decision: Transformations in Israel's Religio-Political Life," *Journal of Church and State* 38:4 (1996): 817–39.

<sup>10</sup> Chaim I. Waxman, "Multiculturalism, Conversion, and the Future of Israel as a Modern State," *Israel Studies Review* 28:1 (2013): 33–53.

<sup>11</sup> Daphne Barak-Erez, "Law and Religion Under the Status Quo Model: Between Past Compromises and Constant Change," *Cardozo Law Review* 30:6 (2009): 2495–2507.

<sup>12</sup> Rubinstein and Medina, *Constitutional Law*, 1081–85.

<sup>13</sup> Alexander Yakobson, "Joining the Jewish People: Non-Jewish Immigrants from the Former USSR, Israeli Identity, and Jewish Peoplehood," *Israel Law Review* 43:1 (2010): 219–39.

<sup>14</sup> Michal Kravel-Tovi, "National Mission: Biopolitics, Non-Jewish Immigration and Jewish Conversion Policy in Contemporary Israel," *Ethnic and Racial Studies* 35:4 (2011): 737–56; Netanel Fisher, "A Jewish State? Controversial Conversions and the Dispute Over Israel's Jewish Character," *Contemporary Jewry* 33:3 (2013): 217–40.

# Who *Should* Be a Jew? Conversion in the Diaspora and in the Modern Nation-State

Michael J. Broyde and Mark Goldfeder

The problem of how to define a Jewish person is, from a historical perspective, a relatively new one, but there is a tremendous amount at stake for a variety of communities and considerations.<sup>1</sup>

Until the modern era, both Jews and gentiles alike considered someone Jewish as long as the person fit into categories defined by religious criteria and religious criteria alone. A halachic definition of membership in the Jewish people is and always has been available: according to Jewish law, a Jewish person is someone who is born of a Jewish mother or who converts according to a halachically sanctioned conversion process.<sup>2</sup> In modern nation-states, citizenship and religion are usually formally independent of one another: one can be a British, French, or American citizen and still be Jewish with no inherent contradiction. With the founding of the modern state of Israel, however, and Ben-Gurion's famous assertion that Israeli citizenship is a right "inherent in being a Jew," the conceptual question of how much religious "Jewishness" one needs in order to gain the secular benefits of citizenship has taken on new and important significance.

The argument to create a broader definition for Jewish status turns on the desire to foster a more pluralistic national perspective, weighted against finding a solution that will keep as many people as possible under one tent. Because Israel is a Jewish and a democratic state, what is at stake here is not only the purity of lineage but the practicality of laws; since the 1950 Law of Return states that every Jew has the right to immigrate to Israel and become a citizen, Jewish nationality is one way of determining Israeli citizenship, with all of its associated rights, duties, and privileges. In addition, because Israel follows the Millet or confessional community system for matrimonial and family law, with each community coming under the jurisdiction of its own religious authorities, the question of who is a Jew makes a difference for all kinds of important daily life questions. This has led to the desire to have different definitions depending on the context; one for sociological Jewry, one for ethnic Jewry, and one for religious Jewry.

Meanwhile, from an Orthodox Jewish perspective, keeping nationality and personal status determinations strictly halachic for the secular state of Israel has historically been viewed as important because such determinations define and delimit proper marriage partners, giving the attendant legitimacy

to children resulting from such unions. Any doubts or confusion in people's unequivocal halachic Jewish status (likely to happen in the event of multiple Jewish definitions) could end up dividing the community into small endogamous groups.<sup>3</sup> All of the above concerns reflect the need for a well-grounded and accepted definition of who is a Jew.<sup>4</sup>

As Orthodox Jews, we believe that halachah is both divine and eternal. While the practical applications of halachic norms sometimes change, both in response to social needs<sup>5</sup> and in recognition of new realities,<sup>6</sup> the fundamental principles very rarely change.<sup>7</sup> As such, although we recognize the pressing needs for an inclusive definition, if a workable solution to the question of who is a Jew can be found, it must conform to accepted normative halachic standards or the State of Israel will have to separate the secular definition from the Jewish law one—an unprecedented task, although one that has been considered before.<sup>8</sup> Since matrilineal descent as a phenomenon does not really present any factors that can be reexamined, the discussion of necessity turns to one of conversion as a means for widening the tent.

There are three options that immediately present themselves. The first is to change the secular law and indeed separate the state and the religious definitions of conversion. Under such a system, just as a halachically non-Jewish spouse married to a Jewish person receives Israeli benefits under the Law of Return (benefits ostensibly reserved for Jewish people), halachically non-Jewish converts could have their conversion secularly recognized and receive those same state benefits. This is already the case to a certain extent, in that a non-Orthodox convert from America is treated as fully Jewish for citizenship purposes. The reason this has not caused unrest is that those numbers are in fact quite trivial. We believe that such an approach is a poor choice for the majority of the state because when applied to the much larger numbers of halachically non-Jewish but Jewishly identified citizens already living in the country,<sup>9</sup> it will undoubtedly generate unrest and angst in Israeli civil society.

The second option is to change the Jewish law standard and adopt the minimum halachic criterion for conversion, relying in places on controversial minority opinions to craft a system that is more amicable to more people, while still maintaining some claim of fidelity to the religious tradition. We do not advocate this proposal either because the watering down of halachic norms for political opportunism does not do justice to the dignity of either the halachic process or the civil society.

The third option is to craft a middle ground; that is, to find a precedent-ed, normative solution that effects the maximum amount of change in society

with the minimum amount of change to the status quo. While such a solution may not be able to solve every problem, an answer that stays within the system escapes the harsh bite-back that any proposed radical change would inevitably face. We believe that the benefit of maintaining a status quo that has, for better or for worse, managed to last for sixty-five years is quite a substantial gain in a country as delicately balanced as Israel. We believe that such a middle ground exists, in the doctrine of the “minor convert.”

There are two central Talmudic sources that address the process of conversion, one a Tosefta in *Demai*<sup>10</sup> and the other a discussion in *Yevamot*.<sup>11</sup> The two are somewhat different in character, with *Demai* focusing on substance and *Yevamot* focusing on form. While *Demai* requires the convert’s substantive acceptance of the commandments [*kabbalat hamitzvot*],<sup>12</sup> *Yevamot*, with its intricate procedural discussion of circumcision and immersion, does not mention this aspect of the conversion process at all. The *Shulhan Arukh*,<sup>13</sup> following the *Tur*, sews these two Talmudic paradigms together, promoting the well-known and accepted tripartite standard for conversion in our times; circumcision (for men), immersion, and acceptance of the commandments.<sup>14</sup> While there is a dispute (based on the two above-mentioned sources) amongst the early commentators regarding which stages of conversion must be done before the rabbinic court, most if not all agree that all three components are at least required in some form for a conversion to be considered valid.

The problem with conversion in modern-day Israel is not about immersion. In fact, it’s not even about circumcision; for the half of the population that would even need to undergo the procedure, a one-time surgical proceeding with deep cultural significance and possible health benefits is not a terrible amount to ask as a price for long-term national and religious acceptance. The struggle lies in the third component, the requirement that a convert accept the commandments and the corresponding commitments of Jewish law. Practically speaking, if we tried to convert everyone according to halachah, which could in theory solve the problem, what exactly is the relationship between the acceptance of commandments required of a convert and his or her subsequent lack of actual mitzvah observance? How much acceptance does one need, and does violative ex post facto behavior retroactively annul or undo the conversion?

The answer to these questions is a complex, nuanced dispute amongst the *Rishonim* and *Acharonim*. Particularly important to us are the views of several modern-day *poskim*, who, like us, lived and operated in a world where fidelity to Jewish law was neither necessarily culturally normative nor the popular sine qua non of Jewish identity. While in the past these questions were not



examined in as much depth, as it would have been unthinkable for a member of the Jewish community (especially a newly opted-in one) not to follow the commandments, mostly because following the commandments was part and parcel of the definition of being a member of the community, the reality on the ground has led some to examine the possibility that the traditional understanding of “acceptance of mitzvot” required of a convert; that is, complete halachic observance, might not be the minimum requirement.

Our quest begins with Maimonides’s understanding of the process of conversion. In “The Laws of Forbidden Relationships,” Maimonides describes it as follows:

And so in [all] future generations, when a non-Jew wishes to enter the covenant and to come under the wings of the *Shechinah* [Divine Presence], and will accept upon himself the yoke of Torah, he must then go through the process of *milah* [circumcision] and *tevilah* [immersion].<sup>15</sup>

And he continues a few paragraphs later:

A convert whose motives were not investigated or was not informed of the commandments but was circumcised and immersed in the presence of three laymen, is a proselyte. Even if it becomes known that he became a convert for some ulterior motive, he has exited from the Gentile collective, because he was circumcised and immersed.<sup>16</sup>

While the first description clearly represents the ideal conversion and includes an acceptance of the commandments, some have argued that the subsequent halachah waives the requirement for commitment, at least after the fact.<sup>17</sup>

The Magid Mishna writes that it is simply not essential, while Rabbi Shlomo Kluger notes that accepting the commandments “is only a means [*machshir*] . . . if he [the convert] was circumcised and immersed for the sake of conversion, even if he didn’t first accept the commandments, he is a convert according to Torah law with certainty; accepting the commandments first is only rabbinical.”<sup>18</sup> Ben-Zion Meir Hai Uziel, who was the Sephardi Chief Rabbi of the British Mandate from 1939 to 1948, and of Israel from 1948 to 1954, goes even further. He writes:

From here it explicitly follows that we do not require of him to observe the commandments and the court need not even know that he will observe them. For were this not true, converts would never be accepted, for who can guarantee that this non-Jew will be faithful to all the commandments of the Torah? We inform him about some of the commandments so that he may abandon [the conversion], if he so desires, and so that he not be able to say later that had he known, he would never have converted. This is the ideal, but after the fact, the failure to inform him

does not invalidate [the conversion]. We learn from all that has been stated that accepting the observance of the commandments is not an indispensable requirement for conversion, even in the ideal.<sup>19</sup>

While it is true that this is a minority opinion—and the vast majority of Jewish law authorities rule that Jewish law requires acceptance of commandment—and it is also true that at first glance the idea of conversion without accepting the commandments seems somewhat radical, it is quite possible that instead of a dispute in the laws of conversion, what we are seeing reflected in this discussion is a debate about the duality of Jewish identity; that is, is Judaism a nation based upon community or covenant? For Maimonides, whose nationalistic tendencies lead him to envision and codify the rules for a rebuilt Israel and a resurgent autonomous Jewish nation, the idea of Jewish peoplehood turning on national identity is not so farfetched. For the *Tur* and *Shulhan Arukh*, writing in a Diaspora setting and mindset for Diaspora Jewry, no such vision was readily available. They choose not to codify laws for an imagined future state.

Following the Baalei Tosafot,<sup>20</sup> and Nachmanides,<sup>21</sup> who insist on an acceptance of the commandments, the only Judaism they know is one that does not have a homeland; as such, the only thing that makes people Jewish is their acceptance of Jewish law. The conversion process by necessity is less a citizenship ritual than it is a theological initiation. To use an American immigration analogy, in the melting pot that is our country, with no real distinctive nationality other than the laws we have created, what completes the naturalization for a new member is passing a test on the legal fundamentals and taking the Oath of Allegiance in front of a judge. Accepting the commandments (in front of a court) is just that: a basic measure of fidelity to the greater Jewish mission.

For the Baalei Tosafot, living in a world where the Jew is not allowed nationalistic expression, conversion can consist only of one coming *tachas kanfei haShechina* [under the wings of the Divine Presence], and affiliating with the likeminded observant community—it is a religion and not a nationality.<sup>22</sup> Until today normative halachic practice has generally followed this view (as described in the *Shulhan Arukh*), requiring the religious commitment. Still, if this approach were true and the difference between the two opinions is a question of how one affiliates as Jewish, then the only time in history it might make sense to rely on Maimonides would be in the modern state of Israel, where the dream and vision of a restored *Kahal Yisrael* [community of Israel] has been fulfilled. Unlike anywhere else in the world, one can be nationalistically Jewish, identifiably part of the *am hanivchar* [chosen nation], without accepting the commandments.

An opinion along this line of thinking can be found in the writing (and indeed in the actions) of former Chief Rabbi Shlomo Goren. In accordance with the statement in *Mesekhet Geirim* 4:3, “Beloved is the Land of Israel, for it is receptive to converts,” Rabbi Goren felt that the changed historic reality in the refounding of the state led to a change in the way prospective converts should be dealt with in the land of Israel. Rabbi Goren believed that in Israel, where conversion entails national as well as religious identification, even if converts do not have the proper intentions at the time of their conversion, nevertheless they automatically fall into the category of those for whom it can be said, “their end will be for the sake of heaven.”<sup>23</sup>

Residence in the state of Israel was a decisive factor in allowing prospective converts to be accepted into the Jewish fold, even when it appeared unlikely that they would observe the commandments, because the decision to live in the Jewish state was the decision to be part of Jewish destiny. It was a decision in which Jewish identity would be reinforced for the convert and their descendants not by Jewish practice but by Jewish surroundings. The strength of his conviction on this matter, and on the difference between Israel and everywhere else, was borne out in the fact that during his tenure as chief rabbi, certificates of conversion stated that these conversions were valid only in the state of Israel, and not in the Diaspora.<sup>24</sup>

Even if we do not take this radical approach—that Jewish national identity can entirely take the place of Jewish observance—at the very least, Rabbi Uziel<sup>25</sup> and Rabbi Goren can be understood as saying that even when we know that actual observance will generally be lacking, the requirement of acceptance is minimally acceptable so long as there is an acknowledgement and acceptance by the convert of the theoretical obligation to observe mitzvot and the recognition that the nonobservance of mitzvot is sinful. In fact, some in this group might even be making a more complex claim; namely, that a clear and direct articulated acceptance of commandments in front of the *beit din* is sufficient after the fact, even if the rabbinical court knows that this acceptance of commandments is insincere.<sup>26</sup> In our immigration analogy, an oath or a contract can be binding even if the person taking it was actually insincere or ignorant.

Moving even further back from the radical edge toward the more generally accepted opinion that we do need a real *kabbalat hamitzot*, there is still some room to talk about what exactly that looks like in practice. Rabbi Hayyim Ozer Grodzinski, for one,<sup>27</sup> was of the opinion that *kabbalat hamitzot* need not be accompanied by full and complete observance, but instead needs to be accompanied by observance of significant cultural features of Orthodox

Jewish life (such as Shabbat, kashrut, and family purity [*tabarat ha-mishpaha*]). It seems R. Grodzinski could well imagine converting a person to Judaism whose intellectual fidelity to Jewish law is complete but whose observance is not.<sup>28</sup>

The Chazon Ish<sup>29</sup> understands the “acceptance of the commandments” in its theological rather than its practical sense; a convert must accept the chosen uniqueness of the Jewish people as it relates to our role in this world. Actions, however, are still very important even if not determinative, since conduct consistent with Jewish law is an external measure of an internal religious orientation, while refusal to obey the mitzvot is an indication of a lack of acceptance of the nature of the Jewish people as a whole.

The most widely accepted view is still that of Rabbi Moshe Feinstein,<sup>30</sup> who conservatively argues that *kabbalat hamitzvot* has to be understood as requiring a genuine desire for full and complete observance. Anything short of that level of commitment is indicative of a fraudulent acceptance. Of course, this view recognizes that converts, no different from anyone else, will most likely end up sinning—sometimes out of ignorance and sometimes from temptation. But, R. Feinstein asserts, a conversion cannot be valid unless at the time of the conversion the convert sincerely intends to obey Jewish law in all of its facets, as the convert understands it at that moment.

While it is possible that many of the people living in Israel, where holidays like Passover, Sukkot, and even Shabbat are part of the cultural milieu and where Judaism is the underlying state religion, could fall into the categories proposed by Rabbi Grodzinski, and certainly by Rabbi Goren, one would be hard pressed to persuade the general Orthodox community that for sake of national unity we should adopt a nontraditional standard. The above-mentioned opinions therefore, while nice in theory, have not proven to be effective in the difficult struggle to find a uniting way through the complex problem of establishing a broader Jewish identity.

But maybe there is another entry point, accepting of all and that all can accept.

Unlike the conversion of an adult (which certainly does require at least some level of *kabbalat hamitzvot* by the convert according to normative views of Jewish law), the conversion of a minor certainly does not require acceptance of mitzvot, but may be done with the consent of the rabbinical court—*al da'at beit din*.<sup>31</sup> While the exact parameters of what this means is subject to significant dispute, Rav Moshe Feinstein—the very same almost universally accepted decisor whose view of adult conversion is the strictest—actually posits the most liberal view of the requirement in this area. He maintains

that since from a theological perspective it is always better for the child to be Jewish, the *beit din* is allowed to act for the unknowing child for his or her benefit at the time of the conversion and accept the yoke of Judaism for them on their behalf. Thus, all children, when brought before the *beit din* at a young age, are eligible for conversion, even if they will not be religious when they become adults.

The idea behind Rabbi Feinstein's view—the conceptual difference regarding children and the reason why the *beit din* cannot just convert even fully grown adults for their own good—can be understood as follows. While it is true that every person is theologically better off being Jewish, conversion to Judaism generally does require acceptance of mitzvot, and most people, even if they wanted to be Jewish at some level, are not in fact prepared to accept that level of commitment. The vast majority of people, therefore, are not eligible for conversion, and indeed the sinning associated with violating Jewish law that would inevitably occur if such a person were to become Jewish would in fact make conversion impossible for the majority of society, since they can not fulfill the basic requirements of observance. Minors, however, cannot sin so long as they are minors, and so at the time of their conversion they only stand to benefit from being Jewish.

There are several assumptions underlining Rabbi Feinstein's position. Obviously, the first is the supposition that the rabbinical court need only determine whether the conversion is of benefit to this child at this very moment in time, without pondering into the uncertainties or even probabilities of the child's religious future. This view, which does seem to be consistent with the general parameters of the rules of *zakhin le-adam she-lo be-fanav*,<sup>32</sup> is not particularly problematic.

As we noted above, despite the fact that in general there is a three-step process for conversion, when one of the factors cannot occur the procedure is allowed to go forward with only the remaining and applicable parts. Since a minor child is not considered to have the intellectual capacity to make life-altering decisions on his or her own behalf, the requirement for acceptance of commandments is of necessity waived during their conversion and the *beit din* can do it for them. This, too, is at first glance uncontroversial, and yet no less than four views have emerged on whether and when a rabbinical court ought to consent to act for the minor.

The first is the view of former Chief Rabbi Rav Kook.<sup>33</sup> He explains that a *beit din* ought not to convert a child to Judaism unless it is fairly certain that the child will grow up to be religious; the consent of the rabbinical court to

allow a conversion to go through is, in this view, a direct place-filler or substitute for the assumed consent of the child, and no rational person would ever consent to be converted and become subject to the law unless they actually expected to be observant. The second school of thought is that of R. Hayyim Ozer Grodzinski, who also advises not to perform such conversions unless the child will grow up to be religious, but recognizes that there will be situations where a conversion can still be validly done even if the children will not grow up observant.<sup>34</sup>

The third view is the initial stance taken by Rabbi Moshe Feinstein, which permits conversions for minors *al daat beit din* when the child will attend an Orthodox day school, since in such a case, and with such exposure, it is at least likely that the child will be somewhat religious.<sup>35</sup> The final view is the concluding view of Rabbi Feinstein, which we quoted, in which he avers that it is always better for a person who is not obligated in mitzvot to be Jewish, and thus the conversion of any minor child would be valid.<sup>36</sup> It should be noted that Rabbi Joseph B. Soloveitchik adopted a view that reaches the same conclusion as the more liberal view of R. Feinstein, albeit with a completely different mechanism. Rabbi Soloveitchik is of the belief that the authoritarian principle of *kibush* would allow for parents (and the *beit din* acting on their request) to convert a child without asking and rear him or her in their own faith.<sup>37</sup>

What is fascinating about the *ger katan* is the fact that it also represents an in-between point in regard to the dispute mentioned above; that is, the dual nature of Jewish identity. It is generally assumed that when the minor attains majority and the accompanying capacity, he must be told of his conversion and has the ability to renounce his Judaism completely. This is the opinion of the Rashba, citing the Baalei Tosafot.<sup>38</sup> However, when Maimonides records the law of a minor convert, he makes no mention of telling him.<sup>39</sup> Perhaps this is because for Tosafot, the conversion cannot really be complete until the new adult accepts his religious responsibility and ensuing affiliation. For Maimonides, however, even a child can be part of a nation, with or without capacity. The *Kahal* includes all men, women, and children, the righteous and the sinners alike.<sup>40</sup> For both though, at least during the period before majority, the theory is the same: the children are Jewish because they are part of something greater than themselves, and childhood is all about being swept along for the ride.

Despite the fact that there are many who feel differently, as mentioned, the weighty view of Rabbi Feinstein, combined with the other above-mentioned viewpoints that require a lower threshold for acceptance of the

commandments in general, as well as the view that in Israel national identity is at least a mitigating factor, all lead us to recommend the practice of converting minors as a method for balancing practical ideals in Israeli society within a strong halachic framework. If we were to accept and follow Rabbi Feinstein's more permissive stance on child conversion, a large aspect of the problem of "who is a Jew" would quickly fall away. The regular conversion of minors into Judaism would create, after the passage of but one or two generations, a society in which all those who think they are Jewish, actually are.<sup>41</sup> All children of parents who identify as Jewish and who wish to have their children raised as Jewish (even if the parents themselves are not halachically Jewish) would simply have their children converted to Judaism by a *ger katan* program. Perhaps, if we wanted to be extra strict and follow the first opinion of Rabbi Feinstein, these parents would be expected to send their children to the *mamlakhti dati* [religious public] day school system. Of course, even if the children did not attend a Jewish school, we would have the later opinion of Rabbi Feinstein and the opinion of Rabbis Uziel and Goren to rely on. Over the course of a generation, this type of program could potentially solve the identity crisis in Israel, resulting in a more unified, while still halachic, Jewish family.

## NOTES

<sup>1</sup> See generally, Michael J. Broyde and Shmuel Kadosh, "Transforming Identity: The Ritual Transition from Gentile to Jew—Structure and Meaning," *Tradition* 42:1 (2009): 84–103.

<sup>2</sup> *Kiddushin* 66b, *Shulchan Aruch*, *Even Ha'ezer* 4:19.

<sup>3</sup> The "Who is a Jew" debate can also affect entire communities: the native Karaites and both the *Bene Yisrael* (India), and *Falasha* (Ethiopia) groups that have immigrated in large numbers to Israel have all faced this question in one form or another. Several chapters in this volume discuss these and other groups.

<sup>4</sup> It should be noted that halachah is not always the limiting factor; in the famous Brother Daniel case (*Rufeisen v Minister of the Interior*, [1962] 16 PD 2428) a Polish Jew who had been born to a Jewish mother and after the Holocaust had converted and become a Christian monk applied for immigration under the Law of Return. He claimed that although he was not Jewish religiously, he was still a Jew in the national sense. Despite the fact that he was halachically Jewish, the minister of the interior rejected his application based on the Government Ordinance 20/7/58, which holds that only a person who declares in good faith that he is Jewish and does not belong to another faith may be registered as such. The Supreme Court affirmed this decision.

<sup>5</sup> See BT *Gittin*, 36a, and the institution of the *pruzbul*.

<sup>6</sup> See BT *Yoma* 86b, and the institution of prayer as a sacrificial surrogate.

<sup>7</sup> Perhaps the best example of a fundamental change in principle is the shift in family law attributed to the ban of Rabbeinu Gershom in the Middle Ages, by which Judaism

moved decisively away from both polygamy and unilateral divorce. In doing so, it went so far as to permit things that had otherwise been prohibited, such as remaining married to a barren wife. See Mark Goldfeder, “The Story of Jewish Polygamy,” *Columbia Journal of Gender and Law* 22:2 (2013).

<sup>8</sup> See Steven V. Mazie, *Israel's Higher Law: Religion and Liberal Democracy in the Jewish State* (Washington, DC: Lexington Books, 2006).

<sup>9</sup> Roughly four percent of the population. See Ludmilla Oigenblick, “Problems of Mixed Families Israel: Results of a Sociological Survey Conducted by the Association for the Rights of Mixed Families in Summer 2008,” [http://www.il.boell.org/downloads/Mixed\\_families\\_booklet.pdf](http://www.il.boell.org/downloads/Mixed_families_booklet.pdf).

<sup>10</sup> 2:4–5.

<sup>11</sup> 46a–48a.

<sup>12</sup> A convert who accepted upon himself all matters of Torah, excepting one thing, should not be accepted [by the *beit din*]. R. Jose son of R. Judah says: this includes even a small matter enacted by the scribes. See also BT *Bekhorot* 30b.

<sup>13</sup> *Yoreh Deah* 268.

<sup>14</sup> Note that when one factor is impossible, such as in the case of a woman, that factor is not required. The truth is that there is also the requirement for a convert to bring a sacrificial offering, but in a Temple-less era that too is waived.

<sup>15</sup> *Mishneh Torah*, “Laws of Forbidden Relationships,” 13:4–5.

<sup>16</sup> *Ibid.*, 13:17.

<sup>17</sup> See *Bet Meir*, Responsum 12; see also Bach, *Yoreh Deah* 268; *Shut Melamed LeHoil* 2:87; *Heikhal Yitzhak Even HaEzer* 1:13; *Divrei Yatziv Even HaEzer* 102; *Tzitz Eliezer* 15:66.

<sup>18</sup> *Shut Tuw Taam VaDaat Telitaah* 2:111. Support for such an opinion can also be found in BT *Keritot* 9a, which states that “Our forefathers entered the covenant [at Sinai] via circumcision, immersion, and sprinkling of the blood [of the sacrifice]”—without mention of *kabalat mitzvot*. See Yehuda Henkin, “On the Psak Concerning Israeli Conversions,” *Hakirah* 7 (2009): 19–23.

<sup>19</sup> *Piskei Uzi'el*, no. 65.

<sup>20</sup> BT *Yevamot* 45b.

<sup>21</sup> Chiddushim on *Yevamot*.

<sup>22</sup> The difference in approach plays out on other levels too. For Maimonides, conversion is a communal experience, the visible joining of a nation, and once one converts he prays like any other member of the nation; i.e., he says our God, and the God of our fathers. For Tosafot, however, the conversion process is personal and internal, so the convert cannot necessarily say things like “the God of our (collective) fathers,” when in some sense that is not true.

<sup>23</sup> See J. David Bleich, *Contemporary Halakhic Problems* (vol. 4; Hoboken: Ktav, 1995), 293. In practice, Rabbi Goren used this reasoning to convert a woman living on a secular Israeli kibbutz (the famous Helen Seidman case) and a few years later to invalidate the Diaspora-based conversion of a man who had never undertaken to observe Jewish law (the famous “Langer siblings” case).

<sup>24</sup> See Shlomo Goren, *Mishnat HaMedinah*, “Conversion in the Land of Israel and in the Diaspora.” (Jerusalem, 1999).



<sup>25</sup> See *Mishpetei Uzziel* YD 2:48–55.

<sup>26</sup> That seems to be the view of the Gra commenting on YD 269:12.

<sup>27</sup> Responsa Ahiezer 3:26.

<sup>28</sup> See also Rabbi David Zvi Hoffman (Responsa *Melamed le-Ho'il* EH 3:8), and R. Shmelkes (Responsa *Bet Yitshak*, YD 2:100), who hold that there are situations in which a convert may be accepted even though he or she will not keep a particular matter (such as the prohibition against a *kohen* marrying a convert), so long as their acceptance of Jewish law is generally complete.

<sup>29</sup> YD, 119:2.

<sup>30</sup> *Iggerot Moshe*, YD 1:157 and 1:160.

<sup>31</sup> *Shulhan Arukh*, YD 268:7.

<sup>32</sup> For more on this issue, see “Zakhin le-adam she-lo be-fanav,” *Encyclopedia Talmudit* 12:135–197.

<sup>33</sup> *Dat Kohen Milah ve-Gerut* 147–48. A similar view is taken by R. Elyashiv in *Kovets Teshuvot* YD 2:55.

<sup>34</sup> See Ahiezer 3:28.

<sup>35</sup> R. Ovadiah Yosef indicates agreement with this first view of *Iggerot Moshe* in his *Yabi'a Omer* EH 2:3 and 2:4.

<sup>36</sup> For both of these views, see *Iggerot Moshe* EH 4:26 (3) and see also *Iggerot Moshe* YD 1:158.

<sup>37</sup> He bases this view on Rambam, *Mishneh Torah Hilkhot Avadim* 8:20. See R. Joseph B. Soloveitchik, *Community, Covenant and Commitment: Selected Letters and Communications* (New York: Ktav, 2005), 21–22.

<sup>38</sup> To BT *Ketubot* 11a.

<sup>39</sup> *Hilhot Issurei Biah* 13:7. In *Hilchos Melachim* 10:3 he writes that if the minor does protest, he still does not go back to being a full-fledged gentile, but rather becomes a *ger toshav*, a Noahide-law-abiding resident.

<sup>40</sup> The same distinction probably explains why Maimonides omits the category of “a non-Jew that converted amongst non-Jews” (and is forced to reinterpret the passage in BT *Shabbat* 68a) while Tosafot can readily explain it.

<sup>41</sup> The proposal in this section has already been noted in print by R. Jack Simcha Cohen, *Intermarriage and Conversion: A Halakhic Solution* (Hoboken: Ktav, 1987)—note, as well, the approbation of R. Moshe Feinstein in this work. Of course this would not solve every problem; adults may need conversion too. Still, as noted above, it would solve most of the problems, with nominal costs.

# Who Is a Samaritan?

Menachem Mor

On January 25, 1988, on the occasion of the inauguration of the newly created Philip M. and Ethel Klutznick Chair in Jewish Civilization at Creighton University in Omaha, I gave a lecture as the first holder of the chair. The title of the inauguration lecture was “Why Study Ancient History?”<sup>1</sup> The lecture was an answer to one of the many questions I was asked during my interview for the position: “Can you teach History 105: Introduction to Western Civilization, or other courses in modern history?”

In the lecture I argued that Israel is a paradise for historians. What makes this country so special to an historian? On the one hand, the past is nearly 3000 years old and permeates the atmosphere with antiquity. On the other hand, Israel is a young state that was, at the time of the lecture, only forty years old, and according to Bernard Lewis, “increasingly anxious about its quest for roots, for an historical background to the Jewish identity as a territorial nation, to statehood, and at a lower level, anxious also, for military heroes. But above all, for political, national and territorial continuity.”<sup>2</sup>

For Israelis, the past is related to many aspects of everyday life such as the Jewish calendar year and festival days, education, the written and electronic media, and even political and military decisions. The national passion for archaeology in Israel is symbolic of the need for linking the past with the present day as an essential element in the national myth-making.<sup>3</sup> At that lecture I affirmed: “Today I will briefly examine how past and present are interwoven in Israel.” At that time I did not realize that a few years later I would be personally involved in an affair that demonstrates how past and present are interrelated in Israel.

My lecture today closes a full circle of twenty-five years. As an historian who is interested in the ancient world, I was supposed to lecture on the history of the Samaritans in the Second Temple period. Today, however, I will devote only a few minutes to the ancient Samaritans; the lecture itself will be assigned to the Samaritans in modern times.

In antiquity the dilemma of who was a Samaritan and the question of the origin of the Samaritans were issues of major interest; they were passionately disputed in ancient Jewish sources throughout the ages. And for the last twenty-five years they have also been a foremost issue on the agenda of modern scholarship on Samaritanism. Recently a few major works were published in different places.

In the year 2000 a Danish scholar Ingrid Hjlem published a book on the relations between the Samaritans and the Jews.<sup>4</sup> Benjamin Tsedaka, the head of the A. B. Institute for the study of Samaritanism in Holon, Israel, published a Samaritan version of their origins and history.<sup>5</sup> Robert T. Anderson and Terry Giles wrote on the history of the Samaritans, using the name that the Samaritans use to call themselves: שמררים Keepers.<sup>6</sup>

In 2003, I published a book in Hebrew, titled *From Samaria to Shechem*, concentrating on the history of the Samaritans in antiquity.<sup>7</sup> In 2009, Magnar Kartveit, a Norwegian scholar, published a book of 405 pages that focused on the question of the origin of the Samaritans.<sup>8</sup> The same year Reinhard Pummer, an Austrian-Canadian scholar, published a book on Josephus and the Samaritans and an article about the character of Samaritanism.<sup>9</sup> Most recently, Gary Knoppers once again brought up the question regarding the origin of the Samaritans.<sup>10</sup>

The word שומרונים (Samaritans) is a *hapax legomenon*, occurring only once within the Bible, at 2 Kings 17:29; however, the reference here is to the autochthonous inhabitants of Samaria, and not the Samaritans of our interest. In biblical literature there are two key sources that are used by scholars in an attempt to understand the origins of the Samaritans and the biblical approach towards them.

### 1. 2 KINGS 17: 24–41

This source describes the destruction of the Northern Kingdom by the Assyrians in 721 BCE. From the description given there, the impression is that the Assyrians left behind an empty land through a total exile of the northern Israelite population to various places, which generated the myth of the “Ten Lost Tribes.”<sup>11</sup> As part of their two-sided deportation policy, they brought people from various cities in the Assyrian Empire and settled them in the empty land.<sup>12</sup>

The new settlers continued worshiping the idols they brought with them. The local god punished them and sent lions against them. At this troubled time they asked for help, and an exiled Jewish priest returned to instruct them how to worship the local god in order to stop the plague of lions. However the author of the chapter says that though the settlers worshipped the local god, at the same time they continued worshiping the idols that they had brought with them.

The chapter raises many questions, but time does not allow me to deal with all of them. However, we cannot avoid the issue of the empty land. Assyrian sources mention large numbers of exiles, which prevents us from accepting the empty land interpretation.

Were the new settlers in the former Northern Kingdom of Israel the Samaritans?<sup>13</sup> Josephus, who associated this chapter with the origins of the Samaritans, picked up the name of one of the cities, Cutah, and used it as the term for the Samaritans: “Kutim.”<sup>14</sup> This approach attributes their origins to non-Israelite settlers.<sup>15</sup>

## 2. EZRA 4:1–5 AND 6–23

This source is dated to the sixth century BCE, immediately after the Cyrus declaration of 539 BCE and the beginning of the return to Zion.

According to chapter 4, two groups, named Am Haaretz (עַם הָאֶרֶץ) and the adversaries of Judaea and Benjamin (צָרֵי יְהוּדָה וּבְנֵימִין), approached Zerubbabel the Jewish leader, requesting permission to participate in the building of the Temple. They do not conceal their origins; on the contrary, they inform him that they were exiled from their homeland by the Assyrian king Esarhaddon (681–669 BCE). However, since then, they have been worshipping God as the Jews, and therefore they want to take part in building the Temple.

Zerubbabel rejected their wishes, although he did not associate the rejection with a religious reason. He answered them: “You have no part with us in building a temple to our God. We alone (יָחֵד) will build it for the Lord, the God of Israel, as King Cyrus, the king of Persia, commanded us.”<sup>16</sup>

The outcome of the refusal was: “Then the people of the land weakened the hands of the people of Judah, and troubled them in building. And hired counselors against them, to frustrate their purpose, all the days of Cyrus king of Persia, even until the reign of Darius king of Persia.” The building of the temple was thus delayed until 521 BCE.

Can we identify these groups as the Samaritans?<sup>17</sup> The vagueness of the above sources directed the scholars to a variety of interpretations regarding the origins and definition of who and what a Samaritan is. Recently, Reinhard Pummer summarized the different possibilities for the definition of Samaritanism:

1. Are the Samaritans a Jewish sect?
2. Is Samaritanism an independent form of Yahwism?
3. Or is it Northern Yahwism versus the Yahwism in the South?<sup>18</sup>

Again time limitation does not allow me to discuss major developments in Samaritan history on issues such as Alexander the Great and the Samaritans,<sup>19</sup> the Samaritan temple that existed over 200 years,<sup>20</sup> or the many references to the Samaritans in the Talmud.<sup>21</sup>

I shall now turn to the end of *Tractate Kutim*, in which the anonymous editor asked a question concerning the Samaritans: “When shall we take them back?” From

the patronizing tone of the question came the answer: “When they renounce Mount Gerizim and confess Jerusalem and the resurrection of the dead. From this time forth he that robs a Samaritan shall be as he who robs an Israelite” (ch. 2, Halakhah 8).

According to this saying, in order to return to Judaism the Samaritans need to fulfill three prerequisites:

1. Deny the holiness of Mount Gerizim.
2. Accept the sanctity and centrality of Jerusalem.
3. Accept the belief in the resurrection of the dead.

However, these preconditions were challenging. The Jews of Elephantine, and later of Leontopolis in Egypt, had their own temples; nevertheless, their Judaism was never questioned.<sup>22</sup> Even though the Sadducees never accepted the resurrection of the dead, they were never removed from Judaism.<sup>23</sup> It is very clear that the editor considered the Samaritans as Jews who in the past had relinquished Judaism. The conditions that he set for their return to Judaism also reflect his view that the Samaritans were a sect that stems from Judaism—a Jewish sect.

I now turn to the modern Samaritans and the questions about their status in the State of Israel.

The Israeli Declaration of Independence stated that its aims were:

1. The establishment of a Jewish State in Eretz Israel.
2. The State of Israel will be open to immigration (עלייה = Aliyah) and to the ingathering of the exiles.

These statements represent two basic constitutional principles of the State of Israel:

1. Israel is a Jewish State.
2. The right of Jews from all over the world to immigrate to the State of Israel. Therefore, Jews all over the world are potential citizens of the State of Israel. And it pronounces the natural right of every Jew to live in his State.

To implement the above principles the Knesset (כנסת), or Israeli parliament, legislated on July 5, 1950, the Law of Return (חוק השבות) saying:

1. Every Jew has the right to come to this country as an Oleh (עולה = new immigrant).
  - a. Aliyah (היכל = immigration) shall be by an Oleh immigration permit.
  - b. An Oleh immigration permit shall be granted to every Jew who has expressed his desire to settle in Israel.

Lack of time does not allow me to deal intensively with the issues raised by the Law of Return. The major problem raised by the Law of Return is the question

of our symposium, the definition of “Who is a Jew.” The second problem is the preference of Jews over non-Jews.<sup>24</sup>

#### HOW DO THE SAMARITANS RELATE TO THE LAW OF RETURN?

In 1948 the Samaritans resided in two centers: In Israel in Holon near Tel Aviv and in Nablus (Shechem) in Jordan. Yitzhak Ben-Zvi, the second president of Israel (1952–1963), was a historian who investigated the remnant of the Lost Tribes<sup>25</sup> and published a book in 1935 on the Samaritans.<sup>26</sup> Ben-Zvi’s interest in the Samaritans led him into a very close friendship with the Samaritan community. He took the opportunity, as a member of the first Knesset, to ask the following question:

Is it known to the Government that a number of Samaritans living in Shechem, who according to their tradition are related to the seed of Abraham, Isaac and Jacob and believe in the Torah of Moses according to the unique Samaritan Version, would like to return to the borders of the State of Israel? What will be the legal status of those Samaritans who want to return to the borders of Israel?

During a meeting of the Knesset on September 12, 1949, Moshe Sharett, the first Israeli foreign minister (1949–1956),<sup>27</sup> responded as follows:

In answer to the question about the Samaritans who reach the borders of Israel, I declare that their status is the same as the status of every Jewish immigrant from any Arab country.<sup>28</sup>

This reprieve announced by the foreign minister was no doubt influenced by the involvement of Ben Zvi, a lifelong friend of Sharett and the Samaritans.

The legal consequence was that Samaritans who had emigrated from Nablus and settled in Israel were given the status of an Oleh. Later on, according to the Law of Return of 1950, they received all the rights of an Oleh and were listed in the Registration of Inhabitants (מְרַשֵּׂם הַיֹּשְׁבִים) as Jewish Samaritans.

Let us review some statistics about the Samaritans:

On January 1, 2012, the total number of Samaritans was 751 members: 391 were living in Holon, Israel, and 360 in Kiryat Luza on Mount Gerizim, in the West Bank.<sup>29</sup>

#### Gender Division

Males: 396 ( 190in Kiryat Luza, 206 in Holon).

Females: 355 ( 170in Kiryat Luza, 185 in Holon).

Married person:s350 (160 in Kiryat Luza, 190 in Holon).

Single Males: 215 (104 in Kiryat Luza, 111 in Holon).

Single Female:153 (70 in Kiryat Luza, 83 in Holon).

Widowers: 7 (4 in Kiryat Luza, 3 in Holon).

Widows: 23 (15 in Kiryat Luza, 8 in Holon).

Divorced Men: 2 in Holon.

Divorced Women: 1 in Holon.

Marriages between Samaritans and Non-Samaritans

1. 21 Women in Holon:

17 Jewish/Israeli Women.

2 Muslim women from Azerbaijan.

2 Nonreligious from Ukraine.

2. 5 Women in Kiryat Luza:

All Nonreligious from Ukraine.

How many left the Samaritan sect?

32: 10 Males, 22 Females.

Since 1948, how many Samaritans crossed the borders from Nablus/Kiryat Luza to Holon, Israel, for permanent residence?

1948–1967: 52 for family unification.

1967–1970: 77 for economic reasons.

1970–2012: 12 marriages.<sup>30</sup>

Since 1949, the Samaritans from Nablus/Luza continued to immigrate to the State of Israel according to the Law of Return and actually received all the rights of a new immigrant. In the population registry they were listed under the article of nationality as Jews or Samaritan Jews and in a few cases as Samaritan.

We look again at the Law of Return. The Law of Return was amended a few times:

1. 1<sup>st</sup> Amendment in 1955 to deny the Oleh status to a person with a criminal past or someone likely to endanger public welfare.

2. 2<sup>nd</sup> Amendment in 1970.

(4A) The rights of a Jew under the Law of Return and the rights of an Oleh under the Nationality Law, 5710–1950, as well as the rights of an Oleh under any other enactment, are also vested in a child and grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion.

(4B) For the purposes of this Law, “Jew” means:

A person who was born of a Jewish mother.

Or has become converted to Judaism.

And who is not a member of another religion.

Amendment 4b was added in reaction to two decisions of the Supreme Court, referred to in Hebrew as BAGATZ (the acronym of *Beth Mishpat Gavoah LeTzedek*), in which the Supreme Court ruled as a court of first instance, primarily in matters regarding the legality of decisions of the State authorities.

## 1. BAGATZ RUFEBISEN

Samuel Oswald Rufeisen was a Polish Jew who converted to Catholicism during the Holocaust and became a Carmelite brother named Brother Daniel. He immigrated to Israel in 1958 and applied to be recognized as an Oleh according to the Law of Return. Although his religion was Christianity, he still considered himself a son of the Jewish nation. In addition he argued that according to Halakah and his feelings he is a Jew, since he was born a Jew. His petition was rejected since he converted to Christianity and had become a member of a different religion.

In 1962 he petitioned BAGATZ (No. 72/62): Rufeisen against the Minister of Interior Affairs. His petition was denied by a majority of 4 against 1. He was naturalized through a different process and was granted citizenship and an Israeli identification card without registering the item of nationality. The preliminary verdict gave a new interpretation to the Law of Return. A Jew is defined as a son of the Jewish nation, not according to Jewish Orthodox interpretation.<sup>31</sup>

## 2. BAGATZ SHALIT

In the late 1960s Benjamin Shalit, a major in the Israel Navy, married a Scottish woman, Ann Gedes, who was a Christian by birth, did not convert to Judaism, and declared herself as nonreligious. Shalit requested that his two children, Oren and Galia, who were born in Israel, be registered as having no religion, but with the right to obtain Jewish nationality. His request was rejected by the clerks of the Interior Ministry.

In 1968 he petitioned BAGATZ (No. 58/68) in his name and in the name of his children, Oren and Galia Shalit, against the Minister of Interior Affairs and the registration clerk of the Haifa Region. He justified his petition by arguing that he planned to live in Israel and to raise his children as Jews.

BAGATZ accepted Shalit's petition with a majority of 5 against 4 and decided that the Interior Ministry should register the children as Jews. The reasoning of the Supreme Court ruling was that the term Jew in the item Nationality is in its nature secular, and therefore there is no need for a religious interpretation. Whoever declares that he is Jewish and is not a member of another religion should be registered as a Jew.

However in 1972, Shalit again petitioned BAGATZ (No. 18/72), requesting the registration of his third son as a Jew in the nationality category. This petition was rejected in light of the changes in the Law of Return and in the Law of Population Registration of 1970.<sup>32</sup>



These two BAGATZ decisions were the background for the 2<sup>nd</sup> Amendment in 1970 (4B):

For the purposes of this law, “Jew” means:

1. A person who was born of a Jewish mother.
2. Or has become converted to Judaism.
3. And who is not a member of another religion.

Surprisingly, the question, “Who is a Samaritan,” emerged once again in modern times.

Though there were not many Samaritans from Shechem and Kiryat Luza who moved from Jordan until 1967, and later from the West Bank to Israel, they had utilized their right of the Law of Return; during the year 1992, without giving advanced warning to the Samaritan community, the population registry began rejecting requests of Samaritans who emigrated from Nablus to Israel and denied them the right to obtain the *Oleh Hadash* (new immigrant) status. Their reasoning was that the Law of Return does not apply to the Samaritans. On the basis of the amendments of 1970, the Samaritans were not considered as Jews, but as being of a different religion.

The Samaritans met with Mr. David Efrati, director of the population registry, who explained that the change was at the direct instruction of Mr. Aryeh Deri, the Minister of Interior. In 1984, Deri together with Rabbi Ovadiah Joseph, the former Israeli Sephardic chief rabbi, had founded the Sephardic ultra-orthodox party called *Shas*.<sup>33</sup>

Taking advantage of the Israeli political system, *Shas* grew from a small ethnic political group to a major factor in Israeli politics by joining several coalition governments with both major parties, Labor and Likud. For example, they typically held multiple cabinet posts and were considered as “the unchallenged kingmakers of Israeli politics.”<sup>34</sup>

From December 22, 1988, until September 14, 1993, Deri served as the minister of internal affairs in the Yitzhak Shamir and Yitzhak Rabin governments. One of his last resolutions before his resignation as a result of standing trial was on the Samaritan matter.<sup>35</sup>

The Samaritans continued trying “to remove the evil command.” Their last attempt was a letter to Prime Minister Rabin, in which they asked him to continue to acknowledge Samaritans who immigrate to Israel as *olim hadashim* with the rights that were granted to them since 1949.

The answer was written by Eitan Haber, Rabin’s advisor and cabinet director. He affirmed that the considerations of the minister were explained to the prime minister. However, since the issue was the responsibility of the minister of internal affairs, the prime minister did not plan to intervene in this matter.

This response led to a Samaritan petition to BAGATZ (4200/93).

The petitioners were:

1. The committee of the Samaritan community in Holon.
2. Mr. Ron Sassoni, the chairman of the committee of the Samaritan community in Holon.

Both were represented by Professor Michael Corinaldi, Attorney. The petition was addressed to:

1. Yitzhak Rabin, Prime Minister.
2. Rabbi Aryeh Deri.
3. Mr. David Efrati.

All three were represented by the State Attorney-General. The petition:

A petition for a conditional order (order nisi) directed to the responders asking them to present themselves and to justify why an Oleh visa is not given according to the Law of Return of 1950 to the people of the Samaritan community who are coming to Israel.

In the petition, Corinaldi's main argument was to reject the claim that the Samaritans are considered as belonging to a different religion. The Samaritans, from 1950 until 1992, were considered as Jews according to the Law of Return. And, Corinaldi asked, what had occurred in 1992 that suddenly brought about this change?

Various religious sects and parties in Israel who reject the rabbinic tradition, such as the reform movement and the Karaites, are included within the framework of the Law of Return of 1950 and its amendments. Since the Samaritan tradition follows the Torah of Moses, therefore they should not be excluded from the Jewish people.

In the State of Israel, those who were part of the Jewish nation, including the Samaritans, were recognized as Jews without considering their religious traditions.

The petitioners emphasized that the term "Jew" in the Law of Return is not interpreted according to rabbinic standards, but through other criteria, as presented in general in legal rulings, particularly those in BAGATZ No. 265/1987—Gary and Shirli Nersford against the Ministry of Interior. The couple were part of the community of Jews for Jesus; because of their belief in Jesus Christ, they were considered as people who believed in another religion.

The decisive examination of this issue should be the one used by Justice Aharon Barak: the Secular, Liberal, and Dynamic. By examining the claim that the Samaritans are members of a different religion through these criteria, the judges should dismiss the argument since the Samaritan religious tradition is based on the Torah of Moses which is the common denominator for all the Jews, but is not related to the Law of Return.<sup>36</sup> Following the petition in August 1993, Justice Barak published a

conditional order against the three responders, asking them to explain their refusal to grant *Oleh Hadash* status to the Samaritans who immigrate from Shechem.<sup>37</sup>

In addition to the detailed petition, the petitioners asked for two written accounts about the origins and the history of the Samaritans. One was given by the late Shemaryahu Talmon, a world-renowned biblical scholar from the Department of Biblical Studies at the Hebrew University.<sup>38</sup> The second one was given by me as chairman of the Department of Jewish History at the University of Haifa. At that point in time I was involved in research about the Samaritans in ancient times, which later led to the publication of a book, *From Samaria to Shechem: The Samaritans in Ancient History*.<sup>39</sup>

Talmon, in the conclusion of his statement, wrote:

The Sages never considered the Samaritan as a different religion. They approached them as a branch of Am Israel that, for historical reasons, had developed differently. This development established their traditions, which led to a total separation from Knesset Israel. Although the differences were listed at the end of *Tractate Kutim*, the Sages were ready to accept the return of the Samaritans to the bosom of Judaism.<sup>40</sup>

In my statement, I argued that the Samaritans should be considered as Jewish Samaritans in every aspect, particularly in regard to the Law of Return:

The Samaritans are a small community (comprising about 600 people in March 1993). They are the remnant of a group that never left the land and continued to live in their traditional sites; a remnant that in the fourth and fifth centuries included around a million people who had been persecuted throughout history by Christians and Muslims, until a much smaller number of survivors were left. Some of those living in Holon are married to Jewish women, their children are circumcised by Jews, and they serve in the IDF. And I do not see any changes in Samaritan behavior in 1992/3 that could have been the reason for any change in their status regarding the Law of Return.<sup>41</sup>

Our two statements were the topic of an article written by Yaira Amit of the Department of Biblical Studies at Tel Aviv University. She wrote:

The Samaritans' attorney, Michael Corinaldi, sought the advice of two academic experts: Professor Shemaryahu Talmon . . . and Professor Menachem Mor . . . But since the experts were chosen by the Samaritans' representative, it is quite clear that they sought for experts who were known for their pro-Samaritan approach.

She blames Talmon in particular:

There is no doubt that Talmon's choice of sources from the Bible and from the Sages' literature and his interpretation in the response he submitted led to a political rather than a scholarly opinion. . . .

In this, Talmon was following the approach of Yitzhak Ben-Zvi and the Israeli government of the early days of the State, who applied to the Samaritans the Law of Return and categorized them as Jews. In so doing he opposed the political motivation of an extremist political group which suddenly, in 1992, tried to take away these rights from the Samaritans.<sup>42</sup>

In March 1994, the representative of the Samaritan community and Uzi Fugelman, an attorney for the state attorney's office, reached an agreement that is considered as a court ruling.

The new arrangement was that:

A Samaritan, who comes to settle in the State of Israel will be entitled to receive an Oleh Hadash immigration permit according to the Law of Return dated to 1950.

He will be treated in the same way as the members of the Samaritan Community were treated when they immigrated to Israel from the establishment of the State till the year 1992.

I feel a great deal of personal satisfaction for my small contribution to the Samaritan community in being reinstated to their previous civilian status and receiving the rights they had enjoyed since 1949. My involvement in this affair, which I have described above, exemplifies for me in a personal manner how our past constitutes part of our present existence. If in my inaugural address for the Chair described above my lecture was academic and theoretical, dealing with the interweaving of the past with our daily life, in the case under discussion, which concerns the status of the Samaritans, I was given the opportunity to link the past with the present. This is an opportunity that historians dealing with ancient times are not often granted.

## APPENDIX

Legal Opinion on the Application of the Law of Return to the Samaritans  
(Appendix to the Memoranda of Ron Sassoni)

Haifa, 22/2/1993

Dr. Menachem Mor  
5 Marc Chagall Street  
Ramat Eshkol

To:

Professor Michael Corinaldi, J.D.  
36 Keren Hayesod Street  
Jerusalem 92149

Dear Professor Corinaldi,

I read with great interest the legal petition (File No. 4200/93) submitted by you to the Supreme Court at one of its sittings.

The petition was presented by:

1. The Samaritan Community
2. Ron Sassoni

Responders to the petition were:

1. Mr. Yitzhak Rabin, Prime Minister of Israel
2. Rabbi Aryeh Deri, Minister of the Interior
3. Mr. David Efrati, Director of Population Administration

Subject of the petition:

Why should an immigration permit not be given in accordance with the Law of Return, 1950 to members of the Samaritan Community arriving in Israel.

I am a senior lecturer and chairman of the Department of Jewish History at the University of Haifa. Since 1971 my research has been focused on the history of the Jewish-Samaritan community and their way of life. I have already published a series of studies on the history of the Samaritan Jews and my articles have appeared in:

Alan Crown, ed., *The Samaritans*, Tübingen: J.C.B. Mohr, 1989. I am also at the final stages of writing a comprehensive work entitled: "The History of the Samaritans in the Ancient World" to be published by Yad Yitzhak Ben Zvi. The book sheds much light on the central events in the history of the Samaritan Jews. In addition, I maintain friendly ties with some of the Samaritan Jews living in Holon.

My academic background, my knowledge, and my relations with the Samaritan Jews grant me the authority to express my views that those people who are called Samaritans are Jews. We have here a small community of about six hundred persons, half of which lives in Shechem and the other half in Holon. This community is a minority still remaining in the country and that have never left the site of their traditional settlement. They represent a remnant of a people that had numbered about a million inhabitants during the fourth and fifth centuries, a minority sect persecuted for many long years by Christians and

Muslims for being Samaritan Jews. The historical continuity of this community since the time of conquest of the country by Joshua should be emphasized. The community at present marry Jewish women, their sons are circumcised by Jewish mohels, and those living in Holon serve in the Israel Defense Forces.

However, before giving a reasoned and detailed opinion, I am in accord with your comments on the issue under discussion that the status of the Samaritan Jews at the end of 1993 does not differ from their status determined at the opening session of the First Knesset on the 18<sup>th</sup> of Elul, September 12, 1949. At this session, responding to a question by MK Yitzhak Ben Zvi, the Foreign Minister, Moshe Sharett said: "In response to the question regarding the Samaritans who arrive at the borders of Israel, I hereby announce that they are to be legally accepted in the same way as any Jew who arrives in Israel from one of the Arab countries." As a result, members of the community coming from Shechem to Israel were recognized as immigrants according to the Law of Return.

From my familiarity with the Samaritan Jewish community, I am sure that since the decision made in 1949 regarding the status of Samaritan Jews who wish to return to Israel, no cause has been given, at least on their part, for any change in their status on this issue during the year 1992. I do not recall any incident that might have impugned the above-mentioned decision. Moreover, even after the amendment of Paragraph 4b of the Law of Return in 1970, no change has occurred in the status of the Samaritan Jews.

As I noted above, during the years that have passed since 1949, the Samaritan Jews living in Holon have the same rights and duties as all the other Jews living in Israel. Also, since 1967, the ties have tightened between the Samaritan Jews living in Shechem and their brethren residing in Holon. In my opinion, the community which is split between Shechem and Holon should be considered as Samaritan Jews in all respects, and should therefore continue to be recognized as Jews with regard to the Law of Return.

As you requested, I shall soon send you my detailed and reasoned opinion to prove the Jewishness of the petitioners.

Yours sincerely,  
Dr. Menachem Mor

#### ACKNOWLEDGMENT

I kept the paper in the lecture style and added endnotes to it. I would like to thank Leonard J. Greenspoon, the current holder of the Klutznick Chair, who invited me to the 25<sup>th</sup> annual symposium, a series that I established in 1988.

## NOTES

<sup>1</sup> The lecture was published in the *Omaha Jewish Press*, January 22, 1988.

<sup>2</sup> Bernard Lewis, *History, Remembered, Recovered, Invented* (Princeton: Princeton University Press, 1975), 30.

<sup>3</sup> See for example Anne E. Killebrew, “Who Owns the Past? The Role of Nationalism, Politics, and Profit in Presenting Israel’s Archeological Sites to the Public,” in *Controlling the Past Owning the Future: The Political Uses of Archeology in the Middle East* (ed. R. Boytner, et al.; Tucson: University of Arizona Press, 2010), 123–41. See also Nachman Ben-Yehuda, *The Masada Myth: Collective Memory and Mythmaking in Israel* (Madison: Wisconsin University Press, 1995).

<sup>4</sup> Ingrid Hjlem, *The Samaritans and Early Judaism: A Literary Analysis* (Sheffield: Sheffield Academic Press, 2000).

<sup>5</sup> Benjamin Tsedaka, *Summary of the History of the Israelite-Samaritans* (Holon: A. B. Institute for the Study of Samaritanism, 2001) [Hebrew].

<sup>6</sup> Robert T. Anderson and Terry Giles, *The Keepers: An Introduction to the History and Culture of the Samaritans* (Peabody: Hendrickson Publisher, 2002).

<sup>7</sup> Menahem Mor, *From Samaria to Shechem: The Samaritan Community in Antiquity* (Jerusalem: The Zalman Shazar Center for Jewish History, 2003) [Hebrew].

<sup>8</sup> Magnar Kartveit, *The Origin of the Samaritans* (Leiden; Boston: Brill, 2009).

<sup>9</sup> Reinhard Pummer, *The Samaritans in Flavius Josephus* (Tubingen: Mohr Siebeck, 2009); Reinhard Pummer, “Samaritanism: A Jewish Sect or an Independent Form of Yahwism,” in *Samaritans—Past and Present; Current Studies* (ed. M. Mor and F. V. Reiterer; Berlin: De Gruyter, 2010), 1–24.

<sup>10</sup> Gary N. Knoppers, *Jews and Samaritans: The Origins and History of Their Early Relations* (New York: Oxford University Press, 2013); Gary N. Knoppers, “Samaritan Conceptions of Jewish Origins and Jewish Conceptions of Samaritan Origins: Any Common Ground?” in *Die Samaritaner und die Bibel: historische und literarische Wechselwirkungen zwischen biblischen und samaritanischen Traditionen* [The Samaritans and the Bible: Historical and Literary Interactions between Biblical and Samaritan Traditions] (ed. J. Frey, et al.; Berlin: De Gruyter, 2012), 81–118.

<sup>11</sup> Ziva Shavitsky, *The Mystery of the Ten Lost Tribes: A Critical Survey of Historical and Archaeological Records Relating to the People of Israel in Exile in Syria, Mesopotamia and Persia Up to ca. 300 BCE* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2012); Avigdor Shacham, *In the Footsteps of the Lost Tribes* (trans. Laurence Becker; Jerusalem: Devora Publications, 2007).

<sup>12</sup> On the Assyrian exile policy, see Oded Bustenay, *The Early History of the Babylonian Exile* (8<sup>th</sup>–6<sup>th</sup> Centuries B.C.E.) (Haifa: Pardes, 2010) [Hebrew]. The English-language version of this book bears the title *Israel and Judah’s Exile in Assyria and Babylon*. For an earlier study, see Oded Bustenay, *Mass Deportation and Deportees in the Neo-Assyrian Empire* (Wiesbaden: Reichert, 1979).

<sup>13</sup> Jerome T. Walsh, “2 Kings 17: The Deuteronomist and the Samaritans,” in *Past, Present, Future; the Deuteronomistic History and the Prophets* (ed. J. C. de Moor, et al.; Leiden: Brill, 2000), 315–23; K. Lawson Younger, Jr., “The Repopulation of Samaria (2 Kings 17:24, 27–31) in Light of Recent Study,” in *The Future of Biblical Archaeology; Reassessing Methodologies and Assumptions* (ed. J. Hoffmeier, et al.; Grand Rapids: Eerdmans, 2004), 254–80;

Gary N. Knoppers, "Cutheans or Children of Jacob?: The Issue of Samaritan Origins in 2 Kings 17," in *Reflection and Refraction: Studies in Biblical Historiography in Honour of A. Graeme Auld* (ed. R. Rezetko, et al.; Leiden: Brill, 2007), 223–39; André Lemaire, "A Reference to the Covenant Code in 2 Kings 17:24–41?," in *Let Us Go up to Zion: Essays in Honour of H.G.M. Williamson on the Occasion of His Sixty-Fifth Birthday* (ed. I. Provan, et al.; Leiden: Brill, 2012), 396–405.

<sup>14</sup> József Zsengellér, "'To be or not to be . . .': An historical interpretation of 2 Kings 17 in Josephus' Antiquities," in *Flavius Josephus: Interpretation and History* (ed. J. Pastor, et al.; Leiden: Brill, 2011), 413–30; Peter Höffken, "Einige Beobachtungen zum Juda der Perserzeit in der Darstellung des Josephus, Antiquitates Buch 11," *Journal for the Study of Judaism in the Persian, Hellenistic and Roman Period* 39:2 (2008): 151–69.

<sup>15</sup> *Jewish Antiquities* 9: 288–91; Pummer, *Josephus*, 67–79.

<sup>16</sup> Shemaryahu Talmon, "The Sectarian שַׁמְרִי —A Biblical Noun," in *The World of Qumran from Within* (Jerusalem: Magnes Press, 1989), 53–60.

<sup>17</sup> Lisbeth S. Fried, "The 'am ha'ares' in Ezra 4:4 and Persian Imperial Administration," in *Judah and the Judeans in the Persian Period* (ed. O. Lipschits, et al.; Winona Lake: Eisenbrauns, 2006), 123–45.

<sup>18</sup> Pummer, *Sumaritans*, 1–17.

<sup>19</sup> Reinhard Pummer, "Alexander und die Samaritaner nach Josephus und nach samaritanischen Quellen," in *Die Samaritaner und die Bibel: historische und literarische Wechselwirkungen zwischen biblischen und samaritanischen Traditionen* [The Samaritans and the Bible: Historical and Literary Interactions between Biblical and Samaritan Traditions] (ed. J. Frey, et al.; Berlin: De Gruyter, 2012), 157–79.

<sup>20</sup> Gary N. Knoppers, "The Samaritan Schism or the Judaization of Samaria?: Reassessing Josephus's account of the Mt. Gerizim Temple," in *Making a Difference: Essays on the Bible and Judaism in Honor of Tamara Cohn Eskenazi* (ed. D. J. A. Clines, et al.; Sheffield: Sheffield Phoenix Press, 2012), 163–78.

<sup>21</sup> Emmanuel Friedheim, "Some Notes About the Samaritans and the Rabbinic Class at the Crossroads," in *Samaritans—Past and Present: Current Studies* (ed. M. Mor, et al.; Berlin: De Gruyter, 2010), 193–202.

<sup>22</sup> For a possible additional YHWH temple in Khirbet el-Qôm in northern Idumea in the fourth century BCE, see André Lemaire, "Nouveau temple de Yaho (IV s. av. J.-C.)," in *Basel und Bibel: Collected Communications to the XVIth Congress of the International Organization for the Study of the Old Testament, Basel 2001* (ed. M. Augustin, et al.; Frankfurt: Peter Lang, 2004), 265–73; André Lemaire, "New Aramaic Ostraca from Idumea and their Historical Interpretation," in *Judah and the Judeans in the Persian Period* (ed. O. Lipschits, et al.; Winona Lake: Eisenbrauns, 2006), 416–17.

<sup>23</sup> Andreas Lehnardt, "Massekhet Kutim and the Resurrection of the Dead," in *Samaritans—Past and Present; Current Studies* (ed. M. Mor, et al.; Berlin: De Gruyter, 2010), 175–92.

<sup>24</sup> See Na'ama Carmi, *Immigration and the Law of Return* (Tel Aviv: Tel Aviv University Press, 2003) [Hebrew].

<sup>25</sup> Y. Ben-Zvi, *The Exiled and the Redeemed* (Philadelphia: Jewish Publication Society of America 1953).



<sup>26</sup> Yitzhak Ben Zvi, *The Book of Samaritans: Their History, Settlements, Religion and Literature* (Tel Aviv: A. Y. Shṭibel, 1935). For a revised edition, see S. Talmon and I. Gafni, eds., *The Book of Samaritans* (3<sup>rd</sup> ed.; Jerusalem: Yad Ben Zvi, 1976).

<sup>27</sup> Gabriel Sheffer, *Moshe Sharett: A Biography of a Political Moderate* (New York: Oxford University Press, 1996).

<sup>28</sup> See: Ben Zvi, *Book of Samaritans*, 365.

<sup>29</sup> The Samaritans lived in Shechem until the outbreak of the First Intifada in December 1987. With the increase of violence in the city, they gradually transferred their place of residence to Kiryat Luza on Mount Gerizim. Today the entire Samaritan population in the West Bank lives in Kiryat Luza.

<sup>30</sup> Interestingly (though not related to our issue), between the years 1948–2012, only one woman moved from Holon to Nablus/Luza for permanent residence; after 1967, she returned to Holon. I would like to thank Benyamin Zedaka for supplying the above statistics.

<sup>31</sup> Nechama Tec, *In the Lion's Den: The Life of Oswald Rufeisen* (New York: Oxford University Press, 2000); Michael Stanislawski, "A Jewish Monk?: A Legal and Ideological Analysis of the Origins of the 'Who is a Jew' Controversy in Israel," in *Text and Context: Essays in Modern Jewish History and Historiography in Honor of Ismar Schorsch* (ed. E. Lederhendler, et al.; New York: Jewish Theological Seminary, 2005), 547–77.

<sup>32</sup> A few years later Shalit left Israel and divorced his wife. See Eliezer Don-Yehiya, "Religion and National Identity in Legislation, Law and Politics: The Shalit Affair and the Controversy about the Issue 'Who is a Jew,'" in *The Third Decade 1968–1978* (ed. Z. Zamert, et al.; Jerusalem: Yad Yitzhak Ben Zvi, 2008), 379–400 [Hebrew].

<sup>33</sup> For a collection of articles about Shas, see Aviezer Ravitzki, ed., *Shas: Cultural and Ideological Perspectives* (Tel Aviv: Merkaz Itshak Rabin le-ḥeker Yiśra'el: 'Am 'oved, 2006) [Hebrew].

<sup>34</sup> In the 8<sup>th</sup> Knesset, the members of the 32<sup>nd</sup> Cabinet (31/3/2009–18/3/2013) under Prime Minister Benjamin Netanyahu included four ministers of the Shas party: Eli Yishai, Deputy Prime Minister and Minister of Internal Affairs; Ariel Atias, Minister of Housing and Construction; Ya'akov Margi, Minister of Religious Services; and Meshulam Nahari, Minister without Portfolio.

<sup>35</sup> Mordechai Gilat, *The Deri Curse* (Or Yehuda: Kineret, Zemora Bitan, 2012).

<sup>36</sup> See Michael Corinaldi, *The Enigma of Jewish Identity: The Law of Return, Theory and Practice* (Srigim-Lion: Nevo Publishing House, 2001), 37–49 [Hebrew].

<sup>37</sup> *Ibid.*, 123–35.

<sup>38</sup> For Talmon's statement in Hebrew, *ibid.*, 233–37; *A. B. The Samaritan News* 169 (2 February 1995): 33–34. For an English version, see Yaira Amit, "The Samaritans—Biblical Positions in the Service of Modern Politics," in *Samaritans—Past and Present: Current Studies* (ed. M. Mor, et al.; Berlin: De Gruyter, 2010), 261–64.

<sup>39</sup> See above note 9.

<sup>40</sup> See above, notes 5–6.

<sup>41</sup> For the Hebrew, see *A. B. The Samaritan News* 169 (15 February 1995): 35–37. For an English version, see the appendix below.

<sup>42</sup> Amit, "The Samaritans."

# The Bene Israel and the “Who Is a Jew” Controversy in Israel

Joseph R. Hodes

On May 14, 1948, Israel became a sovereign nation and opened its borders to Jews from across the globe. Between May 1948 and December 1951, approximately 684,000 immigrants poured into the new country. Never before had so many diverse cultures, languages, and ethnicities come together in such a tiny geographical area over such a short period to form a new collective. While the new nation opened its borders to Jews from across the globe, it never specified, until almost a decade later, what a Jew was.

One of the smallest communities to become part of the new nation was the Bene Israel, from India. Unlike virtually any other community that became part of the state, they had lived under neither Christian nor Islamic hegemony, and they had never been persecuted as Jews during the Diaspora. Yet they were subject, upon entering Israel, to a unique form of bias and prejudice. The chief rabbinate created prohibitions making it extremely difficult for them to marry other Jews in Israel.

The Bene Israel, a tiny Jewish population that according to its own tradition has lived in India for over 2,000 years, is the largest of the three major Indian Jewish communities, the other two being the Cochin and Baghdadi Jews. The Bene Israel, numbering 20,000 at the height of their population in India, began to make aliyah in 1948, and by 1960, there were approximately 8,000 community members in Israel. Today, there are 75,000 Bene Israel in Israel and approximately 10,000 in India, living mostly in Mumbai. For centuries they lived in India and self-identified as both Indian and Jewish.

## THE “WHO IS A JEW” CONTROVERSY

Although Israel was created as a state for Jews, but not as a Jewish state, religious Zionism envisioned a theocratic state where Jews could live complete religious lives, guided by religious leaders who had the political power to ensure the theocratic integrity of society and the state.<sup>1</sup> Immediately after Israel’s creation, the religious parties, such as Mizrachi, HaPoel Ha Mizrachi, Agudat Israel, and Polei Agudat Israel, worked to secure a stronghold in the government and to establish a firm halachic basis for life in the state.

The first task for these religious bodies was, therefore, to widen the power and authority of the rabbis.<sup>2</sup> In 1949, the four above-mentioned religious parties

formed a temporary coalition for the first Knesset election, receiving 12 percent of the vote. The religious parties in the coalition were soon given such ministries as Religious Affairs, the Interior, and Welfare, where they began to impose religious rules on nonreligious citizens. The religious camp began to move in the direction of religious coercion of the broad secular public. Initially this occurred very slowly without arousing suspicion or opposition. They first quietly expanded the jurisdiction of the rabbinical courts. As the first Supreme Court was being created in 1948, the religious parties demanded that at least one of the five judges be a rabbi. This was accepted without opposition. Rabbi Simhah Assaf was named and then confirmed by the provisional State Council. Judge Isaac Olshan, another Supreme Court judge, said of Assaf: "We had to guide him along in connection with the application of various laws in cases brought before us. Cases that had a bearing upon questions of personal status, falling under the purview of religious rules, were decided in religious courts; the instances in which we in the Supreme Court had anything to do with them were few. With respect to the majority of the cases, we had to explain to Rabbi Assaf the secular law."<sup>3</sup> Therefore, Israel's first Supreme Court had a judge with little understanding of nonhalachic law.

Judge Assaf had resigned by 1953, and the religious parties demanded that another rabbi be appointed in his place, lobbying for the appointment of the Sephardic judge, Elyahue Elyashar. The members of the Supreme Court, however, fed up with the burden of explaining secular law to a Supreme Court judge, insisted that nominations be based solely on the qualifications of the candidate without religious considerations. Although members of the Supreme Court were thereafter elected on merit, the religious parties had learned that they could infiltrate powerful positions in the new state, and they succeeded in influencing numerous areas of Israel's day-to-day life. Municipal Sabbath laws were passed to close shops, theaters, offices, and public transportation for the day. Nonkosher meat was banned, followed by a ban on pig breeding and the sale of pork products in 1954. Soon the Ministry of Religious Affairs, the chief rabbinate, and the religious councils and courts had wide-ranging powers.

The divide between the religious parties and the government came to a head on March 10, 1958, when the minister of the Interior, Israel Bar-Yehudah, instructed marriage registrars countrywide that a declaration of being Jewish was enough, and no additional proof was required. This instruction went against halachah, which states that if the mother is not Jewish (in a mixed marriage) the child is not Jewish. This seemingly small act had enormous implications, as Bar-Yehudah felt that an administrative order issued by the government had authority over religious law.

In 1950, however, the chief rabbinate had issued directives that to perform marriages and execute divorces, rabbis had to investigate the couple's background thoroughly. On March 12, 1958, two days after Bar-Yehudah's instruction was issued, the minister of Religious Affairs, Zerach Wahrhaftig, gave the first indication of the impending crisis, stating that a Jew cannot be defined in a haphazard, free-for-all fashion. Jewish law had long determined who was a Jew and who was not, and he made it clear that this task could not be performed by a secular Jew. Soon religious elements complained that "the antireligious attitude of the Ministry of the Interior [had] treated religion and the religious councils with contempt."<sup>4</sup>

The problem connected to Jewish identity was the overlapping of three jurisdictional issues. The first was that of citizenship, the second of nationality, and the third of personal status. The problems concerning citizenship were complex in that Israeli citizens included Jews, Christians, and Muslims, all of whom had equality under the law with some exceptions, such as the Arab exemption from the army. The second issue of nationality influenced the way in which citizenship was acquired. Israel was a Jewish state in practice, which meant that the doors were open to all Jews, yet the Law of Return had failed to define the term Jew in its national sense. Without clarification, people suspected of being non-Jews could be denied citizenship. The crucial concern, however, was connected to personal status in regards to marriage and burial, as both were controlled by the religious authorities. There was no civil marriage in Israel: those not married by a state-approved rabbi according to halachah were not legally married. If they lived together without a ceremony in a common law marriage, their children had no Jewish status and could face considerable difficulties when their turn came to get married.

Although the Mapai party still had a majority government, Ben-Gurion attempted to placate the National Religious Party (NRP):

The government has no intention of laying down Religious law and it does not consider itself authorised to do so. . . . In the declaration of independence however, we announced freedom of religion and conscience and we did not decide that the Jewish state would be governed by Religious Law, and that the rabbis should rule it. On the contrary, we proclaimed that it would not be a theocratic state. . . . The government did not consider itself authorised to decide who is a religious Jew. The question it had to consider was "who is a Jew by nationality"?<sup>5</sup>

The religious parties were unimpressed, however, and called upon Jews across the globe to protest the government's action. They alleged that the state may

declare who is a citizen, but not who is a Jew. Israel had to face the issue of whether Jewish nationality could be separated from Jewish religion. Many felt that Israel was a secular state and that if the government could not determine who was to be regarded as of Jewish nationality for purely secular and security purposes and if the criteria of Orthodox law were to apply, then Zionism would have failed to disengage Jewish nationhood from the traditional bonds of religion.<sup>6</sup> The question really became not who was a Jew but who would govern Israel. Ben-Gurion introduced a resolution to appoint a special committee that would invite the opinions of Jewish sages both in Israel and abroad on this question.<sup>7</sup> Until the opinions of the sages had been obtained, Bar-Yehudah's instructions would be put on hold, and the religious parties accepted the compromise. When the results were received, the majority of the sages had indicated that they felt the state could not infringe on the traditional halachic interpretation of Jewish nationality. The NRP rejoined the government and, feeling obliged to accept the opinion of the sages, Ben-Gurion allowed new regulations to be issued in 1960. Those issues would be disastrous for the Bene Israel. According to the new regulations, a person could be registered as a Jew by nationality or religion only if the criteria of halachah were fulfilled. This gave the religious parties the right to tell the marriage registrars what the criteria for marriage were. The religionists had won an unequivocal triumph.<sup>8</sup>

In 1960, the new minister redirected the Bureau of the Registration of Inhabitants to define a Jew by administrative fiat as "a person born of a Jewish mother who does not belong to another religion, or one who has converted in accordance with religious law."<sup>9</sup> While this did not initially change the life of most Israelis, it would have enormous ramifications for the Bene Israel. The Bene Israel community was specifically and officially targeted by Chief Sephardic Rabbi Yitzhak Nissim, who questioned the authenticity of their Judaism on the grounds that they did not practice *chalitzah* [ceremonies to be performed before the remarriage of childless widows] in India. In October 1960, Nissim refused to declare that the Bene Israel were acceptable for the purpose of marrying Jews outside of their own community in Israel.<sup>10</sup>

The following description of events is based on Samson J. Samson's recollections from interviews conducted in 2008, as well as primary documents found in various archives throughout Israel.

## HISTORICAL BACKGROUND

Long before the Bene Israel community began to immigrate to Israel, a number of outsiders investigated and commented on whether or not the commu-

nity came from authentic Jewish ancestry and tradition. One of the dignitaries in the congregation of Cochin, Rabbi Ezekiel Rehavi, investigated and found in 1767: "According to the ritual and customs which they observed that they were Jews and that they do not mix with the non-Jews. When a Jewish visitor comes into view they greet him and receive him with great affection and are philanthropic both to him and the Holy Land."<sup>11</sup> In 1843, the Baghdadi Jewish community in Calcutta, having recently arrived in India, turned to their sages in Baghdad and asked about marrying their sons and daughters into the Bene Israel community. One of the leaders of the Calcutta congregation, Ezekiel Judah, wrote: "They give birth to sons and circumcise them as we do and when they grow up, they teach them Talmud-Torah with our children. They are exactly as we, without any difference, and we always call them to the Sefer Torah in accordance with the custom of the Jewish people. May we give them our daughters and may we take their daughters?"<sup>12</sup> Unfortunately, there is no record of the response by the rabbis in Baghdad.

In 1883, Rabbi Solomon David Sassoon wrote that "because the Hebrew and religious education is so neglected and has become almost unknown in the Bene Israel community, and because of the abysmal ignorance and lack of caution concerning essential religious observances, Jews who come from other places, under an erroneous assumption, conclude that the Bene Israel have assimilated with the native Indians."<sup>13</sup> While in India in 1859, Rabbi Shmuel Abe of Safed wrote that: "the Bene Israel observe all the mitzvoth of the written law and the oral law and all of the halachic ordinances of the Jewish people."<sup>14</sup> In 1870, rabbis in Tiberias wrote that "it is a great mitzvah to be close to them [the Bene Israel]" and cautioned against those who sought to keep them apart.<sup>15</sup> When the establishment of the State of Israel drew near, the issue was raised once again, this time by the Jewish Agency, which wanted to establish offices in India. In 1938, the Mandate rabbinate, in reply to an inquiry about the community, said that "not only were they Jews and to be brought close to the community but it was permitted for Jewish women to marry them."<sup>16</sup> In 1944, Ashkenazi Chief Rabbi Isaac Herzog discussed and clarified the matter for all, unequivocally coming to the judgement that the Bene Israel were halachically Jewish in every respect.

Despite all the inquiries and evidence supporting the Jewish authenticity of the Bene Israel community, in 1960, Rabbi Itzhak Nissim, then the Chief Sephardic Rabbi of Israel, prohibited their marrying other Israelis. At the time this prohibition was made, Rabbi Nissim had uncontested rabbinical authority in the state, as the position of chief Ashkenazi rabbi remained vacant from

Rabbi Isaac Herzog's death in 1959 until 1964, when Isser Yehuda Unterman became chief rabbi.

Rabbi Nissim gave several explanations for his ruling and thus set the Bene Israel as a people apart. His report stated:

1. There is a concern that they intermarried with non-Jews.
2. There is a concern that their divorces were not in accord with the law.
3. There is a concern that there were among them forbidden marriages between close relatives.<sup>17</sup>

These assertions are problematic, in that India's caste system is so strict that it would be very difficult for an Indian to marry into the Bene Israel community. Furthermore, divorce is relatively unheard of in India, certainly in the villages on the Konkan coast, where women, traditionally, had few civil rights and sometimes could not even leave their villages unaccompanied by a man.<sup>18</sup> In fact, Rabbi Nissim's own written work, *Bene Israel: Halachic Decisions and the Sources for the Investigation of Their Laws and the Question of Their Origins*, indicates that even when a marriage was not amicable, instead of divorce the woman would be sent back to her father's house where she would remain and live like a widow.<sup>19</sup>

Because the Bene Israel, however, had been cut off from world Judaism for so many centuries, Nissim was unsure that they practiced their faith in accordance with Jewish law and assumed that they had either married non-Jews, producing non-Jewish offspring, or had practiced divorce without a proper rabbinical *get*.<sup>20</sup> According to halachah, a Jewish couple can be divorced only if the husband writes a bill of divorce, a *get*, which he hands to his wife, saying, "This is thy *get*, thou art divorced and permitted to marry whomsoever thou wilt." If there is no *get* and the woman remarries and has children, those children are considered illegitimate [*mamzerim*]. According to Jewish law a *mamzer* is the child of a married woman and a man to whom she is not married, including the child of a woman whose previous marriage had not been ended according to Jewish law. For the Bene Israel community, this assumption called into question the legitimacy of their Jewish identity. This community, which had lived as Jews in India for almost two millennia without prejudice, was now being told that they were not Jewish, or not Jewish enough to marry other Jews according to Jewish law.

The question that remains is, why was the Bene Israel community singled out as the community of *mamzerim*? Almost every community that had existed in the Diaspora had faced incredibly difficult times as a persecuted minority. The concerns regarding the Bene Israel would hold true for many

communities in the Jewish Diaspora. Did no Jew outside of India have sexual relations with the wife of his brother or the wife of his neighbor? The idea that there were no children born of adulterous or incestuous unions in other Diaspora communities is difficult to accept. One does not need to look to India to find a Jewish community that might be deemed problematic and one does not need to look to the Bene Israel to find *mamzerim*. They might be found in every community. (It is much more likely that the Ashkenazi communities in eastern Europe, which suffered countless pogroms where women were undoubtedly raped, produced "misbegotten" offspring.) Therefore, why single out the Bene Israel?

### THE BENE ISRAEL COMBAT THE RABBINATE

Whatever his reasons, Rabbi Nissim refused to declare the Bene Israel acceptable for marriage to the non-Bene Israel. Immediately, the community sprang into action to combat this gesture of oppression. The highly educated Bene Israel were not yet organized or united in Israel. To organize themselves and combat Nissim's ruling, they had first to create a body from which to act. The community then contacted one of their own, a man named Samson J. Samson, who would go on to fight and win their battle for religious equality (although he would never admit that he played such an important role, maintaining that the community fought together). Samson's relative, Isaiah Samson, had been a judge in India, and his uncle, David Samson, had been a land owner and active in public service within his community.<sup>21</sup> Nevertheless, Samson, who had arrived from India with his family in 1954, had no special status, political clout, or access to anyone in a position of power in Israel.

In December 1960, Samson agreed to become involved with the struggle. Along with other members of the community, he then began to contact community leaders of the synagogues in India to gain as much information as possible to build a case.<sup>22</sup> News of this inquiry reached Dr. Michael Neer in the Israeli government's Office for Religious Affairs, who became the first government member to make contact with the Bene Israel community about the issue.<sup>23</sup>

On May 6, 1961, a weekend-long meeting of the Bene Israel community was held in Haifa, bringing together two or three representatives from every Bene Israel community in Israel.<sup>24</sup> From here they formed an action committee. This committee included Asher Kollett, as chairman, Haim Reuben from Haifa, Sassoon Ashton from Be'er Sheva, Ezekiel Ashtamkar from Rishon LeTsiyon, and Samson J. Samson from Jerusalem as both honorary secretary



and treasurer.<sup>25</sup> It was decided that only Samson could make statements to the press, the public, and the government, in agreement with the rest of the committee. This put Samson at the heart of the issue, making him a leader in the community. Samson, a shrewd and clever man, did not like the spotlight and had no interest in personal accolades. He did not desire the position of leader, nor was he interested in cutting deals to make his own life easier. He proved an ideal candidate for the job and a fierce opponent of the rabbinate.

That same month, the Indian press printed a series of articles highlighting the discrimination against Indian Jews in Israel. They were printed in *The Indian Express*, *The Times of India*, *The Free Press Journal*, *The Hindustan Times*, and *The Maratha*.<sup>26</sup> An editorial in *The Hindustan Times* stated: "It is intriguing to find the Rabbis of Israel set upon social ostracism of the Indian Jews after all these years. Their policy amounts to the establishment of a new kind of ghetto in Israel. Now the proverb is truly borne out, that he who would cheat a Jew must be a Jew."<sup>27</sup>

Among the Bene Israel community, the feeling of being othered had far-reaching emotional, political, and religious repercussions. Community member Daniel Ezekiel commented that "the community felt isolated from the rest of the population. The rabbinate said that it had reached its initial decision [not to sanctify marriages] after laborious research. Thus by the stroke of a quixotic pen, the reputation of a whole community of harmless, peace-loving citizens was irreparably damaged. Whole ties of blood and ancestry were bastardized."<sup>28</sup> Another community member interviewed in 2008 said that he had attended synagogue all his life, but stopped attending after the directives were issued. He added: "I go back to visit family in India when I can and always attend synagogue there. But in Israel it seems like big business, and I don't feel welcome."<sup>29</sup>

In response to the government's inaction, the action committee implicated the Israeli government and the Jewish Agency in the affair. In an article in the community organ, *Truth, the Voice of the Bene Israel Action Committee*, they wrote: "We accuse the Jewish Agency. The question we ask now is, why did the Jewish Agency uproot hundreds of families and bring them to the Holy Land to face religious discrimination by the so called 'pure Jews'? Does it think that this small and politically unimportant eastern community can be suppressed and repressed?"<sup>30</sup> In the absence of any government effort to intervene on their behalf, the community decided, under Samson's leadership, that it was under no obligation to cooperate with the government.<sup>31</sup>

The action committee began meeting regularly, and the government wanted a representative of its own to attend the meetings, but was refused

entry. By the end of 1961, the issue was receiving growing attention among the press and the international Jewish community, and the Bene Israel began receiving support from all corners of the Jewish world. Nahum Goldman, president of the World Jewish Congress (WJC), an international organization whose mission is to address the interests and needs of Jews and Jewish communities throughout the world,<sup>32</sup> sent a telegram to Arieh Tartakower, chairman of the Israel Executive of the WJC, urging that something be done about all the bad publicity.<sup>33</sup> Tartakower duly arranged a meeting<sup>34</sup> with Nissim and Zerach Warhaftig, minister of Religious Affairs, the ministry responsible for all matters related to the provision of religious services, including the allocation of funding for yeshivas and all Torah study institutions.

Subsequently, a meeting was arranged between Tartakower, Samson, and Kollette in an attempt to resolve the issue. According to Samson, at the meeting, Tartakower told them that Nissim complicated the issue by giving an explanation that had no bearing on what the community understood the problem to be. Nissim had explained to Tartakower that the problem was that the Bene Israel in Bombay had Reform rabbis. If these were replaced with Orthodox rabbis, he would endorse the community in Israel and not stand in the way of marriage outside of their own community.<sup>35</sup> Samson and Kollette were shocked. Their community had been ostracized by the rabbis in Israel, and now a power struggle in India was being recommended to redeem it. Nissim's words seemed to add insult to injury. But at the meeting, despite no intention of agreeing to the proposal, Samson told Tartakower that "if we agree we need written confirmation from you."<sup>36</sup> Tartakower then made Kollette and Samson swear secrecy and promise to say nothing about what had transpired in the meeting, nor any propositions he had made.<sup>37</sup> Samson asked him to put his request in writing. To Samson's great surprise, he agreed. Samson duly promised to remain silent himself, knowing full well that the Jewish communities in India would make the document public. When Tartakower sent the letter, which was duly forwarded to India, the community there was outraged and the issue became public knowledge. To Tartakower's accusation that he had broken his promise, Samson replied: "I did remain quiet but I can't keep an entire community quiet."<sup>38</sup> It seemed that this incident cemented a relationship of mistrust between the two men who would have to deal with each other frequently in the following years. The Bene Israel community in India, upon receiving this news, decided to support the action committee and refuse the demands of the rabbinate.

When Nissim's request became public, the *Jerusalem Post* published the following condemnation: "According to the spokesman of the rabbinate, even if an Orthodox rabbi were appointed for the community in India, it would not affect the members already in Israel. At the same time, so long as no ruling is made in regards to the community now here, Bene Israel immigrants arriving even after an Orthodox rabbi is appointed would be in the same position as those already here."<sup>39</sup> If this is truly the case, then even adherence to Nissim's suggestion would have accomplished nothing.

As a result, no change was made to the rabbinical structure in India. No Reform rabbi was asked to leave his post, and no Orthodox rabbis brought in, nor were any positions created for them. On the ground in Israel, nothing had changed, and Rabbi Nissim did not grant endorsement to the community. The only change was the public awareness of the meeting and its outcome, casting Nissim in a negative light and providing further support for the Bene Israel community among sectors of the Israeli and international public.

#### THE GOVERNMENT BECOMES INVOLVED

The failed attempt by Warhaftig, the Religious Affairs minister, to resolve the issue and the ensuing bad press received by the rabbinate now brought the issue to the attention of the highest offices in Israel. The entire action committee was asked to meet with Prime Minister Ben-Gurion on July 2, 1961.<sup>40</sup> Ben-Gurion immediately put them at ease. He was, in Samson's words, "the quintessential politician. He made us feel comfortable and said that the situation was a shame, and that it was shameful for the entire Yishuv that the rabbinate behaved as they did."<sup>41</sup> Ben-Gurion inquired about the history of the Bene Israel, and they recommended he read Samuel Kehimkar's book.<sup>42</sup> Despite the Prime Minister's charm, however, the action committee sensed that the meeting was very much business as usual and straight-up politics. According to Samson, the prime minister made all kinds of promises, assuring the group that all would be resolved in the near future. Samson felt that he was delivering the empty promises of a master politician.<sup>43</sup> For the entire time that Ben-Gurion spoke, the copy of Tartakower's controversial letter, placed in front of him by the action committee, lay untouched and unacknowledged. By the end of the meeting, however, Samson noticed that the prime minister, whom he referred to as the "cunning old fox," had slipped the letter into the desk.<sup>44</sup> Although Samson had other copies, he suspected that the prime minister, hoping it was the only copy, sought to silence the uproar through sleight of hand.

Nothing came of this meeting, and further meetings were arranged. Samson and the community were becoming increasingly frustrated, as they felt they were getting nowhere. Dealing with this had become a full-time job for Samson on top of his full-time job in the library at the Hebrew University of Jerusalem. The next important meeting between Nissim and Samson was arranged by Moshe Sharett for September 17, 1961. Samson said he would appear without a *kippah* [skull cap] to reciprocate the rabbi's show of disrespect, but Sharett asked Samson to soft peddle it, in other words, to be respectful and civil. Sharett's exact words were "C'mon, play cricket,"<sup>45</sup> reflecting his awareness of India's passion for the sport, and he reassured Samson that Nissim considered the Bene Israel to be pure Jews and was keen to solve the problem.<sup>46</sup> In the end Samson wore a *kippah* to the meeting.

When Samson arrived for the meeting, Nissim was alone and waiting for him. According to Samson, Nissim quickly launched into an argument. He demanded to know why the Baghdadi Jews in India refused to marry the Bene Israel. Samson, however, maintained that it was in fact the Bene Israel who refused to marry the Baghdadis. This confrontation went on for some time. At the end of the meeting, Nissim acquiesced, saying, "You are 100% Jewish."<sup>47</sup>

Why Nissim changed his stance at this point is unclear. Did he come to this conclusion on his own or in response to pressure from politicians such as Ben-Gurion and Sharett? Or could he no longer face Samson's opposition, since it was by now obvious that Samson would not be intimidated or bullied? When discussing the meeting years later, Samson described Nissim as a "lovable bastard," who seemed "more like a merchant than a religious man." Others had this impression, too, and the action committee referred to Nissim behind his back as the *Soheir Rashi* [chief merchant].<sup>48</sup>

On October 4, 1961, Nissim suggested that Samson meet the Rabbinical Council. The following day, the five members of the action committee met with the council, which was comprised of Rabbis Y. M. Aaronberg, A. Goldshmidt, S. Tana, and A. Koshlovsky.<sup>49</sup> These rabbis examined the concerns regarding the origins and customs of the Bene Israel community. After considering all aspects of the issue, they concluded that marriage with the Bene Israel was permissible. They came to this conclusion in accordance with the decisions, responsa, and historical sources that had been presented to them. Rabbi Nissim and the Rabbinical Council promised to authorize marriages and to send the directive to do so to rabbis all over the country. Rabbi Aaronberg ended the meeting saying, "May it be that we will merit the good fortune to witness in the near future those scattered among the nations, those far flung

about the earth, gathered into the bosom of the Lord. And may Israel dwell in quiet response, with none to make her afraid.”<sup>50</sup>

The directives to be sent to rabbis throughout the country were:

1. There are no doubts concerning the Judaism of the Bene Israel, from the earliest period they were bound closely to and maintained relationships with the seed of Israel. But because they were cut off for an extended period from the centres of Torah, there arose halachic concern over the manner and laws of their marriage and divorce practices that prevail among them.
2. The council had before it the response of the Chief Rabbis Ben Zion Meir Chai Uziel, z”l, and Itzhak Herzog, z”l, dealing with several specific cases of marriage among the community, and they permitted marriage in those cases.
3. On the basis of those responsa and as a result of basic and extensive halachic research recently conducted, the Council has decided that there is no basis for forbidding marriages of the Bene Israel, and therefore marriage with them is permitted. It is the responsibility of the rabbis registering the marriages to conduct proper investigations in each case in accordance with the instructions of the chief rabbinate. In each case where doubts arise they are to present the case to the district *beit din*, as it is customary in all cases concerning the registration of marriages.
4. Chief Rabbi Yitzhak Nissim will circulate the decision of the chief rabbinical council to the rabbis registering marriages and will enclose the attached explanations.
5. This decision of the Chief Rabbinical Council has no connection with the problems of the marriage of the Karaites, for that decision is totally different and is clearly explained in the *Shulcan Aruch*, “Even Ha-ezer,” section 4.<sup>51</sup>

On October 18, these directives were allegedly issued to rabbis across the country, and the matter was thought to be over. The Bene Israel community had been deemed halachically sound and its members could marry any other Jew in Israel. The action committee was pleased and brought the news back to their community. It seemed like a time of victory. On October 19, Samson met with Nissim again to make sure everything was in order, and the atmosphere was jovial. Nissim allegedly joked with Samson, saying, “The Bene Israel are like all other Jews except that the Bene Israel attacked me, which makes them different from all other Jews.”<sup>52</sup> It was said in a humorous way, but dark humor. It seemed that the two men had ended their dealings in a cordial manner and were unlikely to have any further contact.

On October 24, 1961, however, the newspaper *Ma'ariv* sent the reporter Raphael Bashan to meet the action committee for a follow-up story. He informed them that he had just had word that the ultra-Orthodox Agudat Yisrael Party had publicly rejected the Rabbinical Council's decision to recognize the Bene Israel as legitimate Jews for marriage with other Israelis.

While this came as a surprise to the action committee, who thought the matter had been closed, they were mobilized and ready to continue the struggle. On November 4, 1961, a new organization, the Bene Israel Association, was formed in Lod to address this as well as all other social issues.<sup>53</sup> Before the marriage prohibition, the Bene Israel had been without political representation or leadership. It was felt that the action committee had been so successful that they should continue to fight for better housing, employment, and education opportunities until the end of 1962,<sup>54</sup> when the Bene Israel Association would assume those roles. Upon its creation, the association assumed that the marriage problem had been resolved, even if the Agudat Yisrael would not recognize the directives of the Rabbinical Council.

## THE STRUGGLE INTENSIFIES

Shortly after the creation of the Bene Israel Association, Samson received a phone call from a Rabbi Goldman (first name not given), who worked in the office of the chief rabbinate. Goldman said he had been upset that Nissim raised the marriage problem and that he was on the side of the Bene Israel. He went on to explain that a positive report on the Bene Israel had been received by the council six years earlier and suppressed and that Nissim had not sought the signatures of the Rabbinical Council for his new directive regarding the Bene Israel. News of the suppressed report, coupled with the fact that Nissim had not sought council endorsement, suggested to Samson that the matter might not be resolved. He wondered if the Agudat Yisrael stance was an indication of more going on and was grateful for Goldman's inside information.<sup>55</sup>

Sure enough, when Rabbi Nissim's new directives were published on February 18, 1962, the wording was changed and additional text had been added. Previously, the concern had only been with those Bene Israel who seemed to have problematic backgrounds in that, when questioned, they could not prove Jewish ancestry. Now the wording made it clear that the entire Bene Israel community was suspect. In addition to what had been agreed upon by the action committee and the Rabbinical Council, the directives now read:

When a request is advanced to register a marriage between a member of the Bene Israel community and a person not belonging to that community, it is incumbent upon the registering rabbi:

1. To search and investigate whether the mother or grandmother, and as far back as it is possible to trace the lineage, of the perspective bride or groom of the Bene Israel community was a Jewess and whether or not she came from a family into which intermingling with non-Jews or proselytes had occurred.
2. To search and investigate whether the parents or the grandparents, as far back as it is possible to trace the lineage, of the person seeking marriage, were married after a divorce or whether there was in the family a kinship marriage such as is forbidden by Jewish law.
  - a. The rabbi registering marriages being certain that there are no doubts concerning the cautions listed above, he shall marry the couple.
  - b. There being an area of doubt from among the cautions listed above, the rabbi registering marriages is to refer the matter to the district *beit din*. The *beit din* will judge the case and determine whether the marriage is permitted or not and if permitted, if proselytization or immersions are required or not.<sup>56</sup>

At the publication of these additional directives alongside the others, the Bene Israel community was furious. They felt Rabbi Nissim had deceived them. Having come from India there was a tendency to interpret things as having caste-like patterns, and according to these directives, the Bene Israel had been outcast and set as a people apart. The entire community would now be unable to marry their children to other Israeli families without encountering huge problems from the rabbinate. The new directives had made things worse than they were before. The community began to make accusations about the rabbinate and the government, shouting slogans that included the words “discrimination,” “apartheid,” and “Nuremberg laws.”<sup>57</sup> They shouted these slogans, reported them to the media, and wrote letters to government offices.

At this point, the vast majority of the Israeli population seemed to be on the side of the Bene Israel and opposed to the directives.<sup>58</sup> The public became concerned that doubt might be cast on their own ethnicity and religious backgrounds. As one new immigrant put it, the case of the Bene Israel was everyone’s problem. By calling into question religious identity, national identity was also, by implication, called into question. As an immigrant, if one is not Jewish, what is one’s relationship to Israel?

Samson’s official response to the media was that the government was at fault. He said, “A government that cannot protect its citizens is to blame.”<sup>59</sup> He further stated that Rabbi Nissim was also to blame and described the issue

as a matter of antisemitism. After receiving the open letter to the government and the articles that were emerging in the press, Warhaftig requested a meeting with the action committee. At the meeting, a furious Samson cornered him and demanded an explanation. He held nothing back, declaring, "Why didn't you tell us before making aliyah? We wouldn't have come!"<sup>60</sup> It was a very legitimate question from the representative of a population that had never been persecuted in India. Warhaftig had no response, or at least none that was satisfactory to the committee. His only explanation was the same as the official government line, which was to repeat and assure the Bene Israel community that there was no problem. "You are the minister and you are encouraging racism,"<sup>61</sup> Samson told him. The meeting, like so many others, accomplished little.

While they tried to remain optimistic, 1962 proved to be a very difficult year for the Bene Israel community. Many marriage requests were denied by rabbis throughout the country. When a rabbi in Ashkelon refused to grant a marriage license to a young Bene Israel woman from Kiryat Gat that January, Samson made sure that the decision received plenty of publicity. This resulted in harassment of the rabbi by the press and the Bene Israel community, after which a license was issued but was granted with a clause stating that she was able to marry only a member of the Bene Israel community.<sup>62</sup> On February 15, a rabbi in Herzliya refused to officiate at a Bene Israel wedding on the grounds that he had not received instructions from the chief rabbinate permitting mixed marriages.<sup>63</sup> On March 16, a rabbi in Jerusalem refused to grant a marriage license to Mordecai Yehezkiel and S. Sassoon on the grounds that he had not received any instructions from the chief rabbi.<sup>64</sup> In September, Rabbi Zalman Diskin refused to marry Mr. Aharon Sharpurkar of the Bene Israel community to Miss Ruhama Sassoon of the Indian Baghdadi community.<sup>65</sup> By mid-March, the marriage certificates for the Bene Israel in Israel were actually being changed. Marriage licenses in Israel normally specified the category Levi, Cohen, or Israel. In the case of the Bene Israel, these words were being replaced with "Bene Israel, Indians."<sup>66</sup> The entire community, both in Israel and India, became increasingly outraged. The official statement from the action committee to the press reflected this anger and frustration:

The policy pursued by the Rabbinate of Israel smacks of South Africa's apartheid. There have always been three groups of Jews, viz. Cohen, Levi, and Israel. Is it now necessary to make a fourth group, known as the Bene Israel Indian? And why is it necessary to mention the individual's nationality before immigration, when this is not done for other immigrants? Are the Bene Israel not Israelis by nationality? The only answer is intentional discrimination of



the most absolute kind. Like the South African government, which does not bother about a negro marrying a negro, the Rabbinate could not care less when a Bene Israel marries another Bene Israel. The only difference between the two is that South Africa practices apartheid openly, whereas Israel practices it under the cloak of religion.<sup>67</sup>

On May 21, 1962, Rabbi Nissim suggested appointing a special marriage registrar for the Bene Israel,<sup>68</sup> which drew an outcry from the community. Samson told the press that “we can no longer rest on the matter which affects our community’s honor—and I might add, the honor of Israel and the Jewish people.”<sup>69</sup> Tensions increased, and the implications of the struggle reached further and further into the Jewish community worldwide. On May 25, the annual meeting of the World Conference of Conservative Judaism publicly offered the Bene Israel their full backing. On May 31, the conference passed a resolution in support of the Bene Israel, under the leadership of B. B. Benjamin.<sup>70</sup> But Benjamin suggested that the campaign of the Bene Israel be directed against the rabbinate, not the State of Israel. While happy for the support from the Conservative movement, Samson rejected this suggestion, however, maintaining that a government that fails to protect its people is at fault.

On July 16, Samson met with Menachem Begin, leader of the Herut Party, who had given the Bene Israel his full support by saying that the community was 100 percent Jewish.<sup>71</sup> He made clear that the Liberal, Mapam, and Communist Parties in the Knesset all supported the Bene Israel community and opposed the rabbinate’s directives.<sup>72</sup> Despite this, however, Nissim said that instead of withdrawing the directives, the government was going to adopt the device of institutional regional registrars, to whom local registrars could refer if they had scruples against performing a marriage.<sup>73</sup> The Bene Israel were horrified: if the registrars were to operate only in the case of the Bene Israel, it constituted yet another measure of discrimination. To confront this issue, 800 members of the Bene Israel gathered in Be’er Sheva on July 21 to express their anger.<sup>74</sup> The following resolutions were unanimously adopted:

1. The community strongly denounces the stand in parliament by the government in dealing with the Bene Israel problem. It demands the immediate cancellation of Rabbi Nissim’s infamous directives which are an insult to the whole community and to India itself.
2. The community rejects the appointment of regional registrars and considers the arrangement a move to evade the issue.
3. The underhanded attempt made by the Ministry of Religious Affairs in trying to meet those who did not represent the com-

munity with a view to causing a split in its ranks is very strongly condemned.

4. The community is deeply grateful to the Liberal, Herut, Mapam, and Communist Parties for their bold stand in supporting its struggle against tyranny and injustice when the question was taken up by the Knesset. It also conveys thanks to members of the Ahdut Ha Avoda who abstained on the vote in favour of regional rabbis.
5. It asks for the punishment of those rabbis refusing to grant marriage licenses to members of the community.
6. Secretaries of all centres are requested to prepare lists of persons willing to join in strikes and passive resistance demonstrations.
7. The action committee is requested to continue its struggle against the directives and regional registrars and is promised the wholehearted support of the community.<sup>75</sup>

By this time, the community was becoming impatient and feeling paralyzed. Their children were unable to marry in Israel and were not sure they would ever be allowed to. A number of Bene Israel in Israel were giving serious thought to converting to Christianity, for the practical reason of having their children accepted within a community. *Truth* published an article, stating: "A number of Bene Israel families in Israel are on the verge of converting to Christianity, what a fate! That those who kept their religion for 2000 years without any outside guidance and help should even think of converting themselves to Christianity after coming to Israel is a tragedy of tragedies. We have stated and re-stated that conversion is no solution to our problem and that we must continue to fight to its bitter end."<sup>76</sup> Time was running out for the community, and the pressure on the action committee to resolve the issue was now overwhelming.

Without the ability to marry other Jews in the state of Israel, the community felt there could be no future there. This was a very painful issue as so many of the community members had made tremendous sacrifices to become Israeli. Most of the other community members had also given up their lives in a country that was not a place of persecution and had gone through difficult ordeals to come to Israel. They were proud of that. To be robbed of their future hopes and dreams was extremely painful. The Bene Israel began to organize peaceful protests and hunger strikes.

The first six months of 1964 brought all these things to a head, leading to a meeting between Samson and Gabriel Doron, the Israeli consul in India, on June 24. Doron suggested that the president meet the action committee, and he arranged a meeting for July 15. On that day the action committee met with President Zalman Shazar and Minister Warhaftig to discuss the directives.<sup>77</sup>

On July 31, Samson was unexpectedly called to Gabriel Doron's office. When he arrived, Doron informed him that he was to meet President Shazar, Chief Rabbi Nissim, Minister Warhaftig, and Chief Ashkenazi Rabbi Isser Yehuda Unterman, who would be joining the meeting over the telephone. Samson was told that the meeting would be held later that day. This gave him the impression that they did not want him to have time to prepare for it. He was glad to have enough time to go home and change his clothes. He described the hours between leaving Doron's office and returning as hours of tremendous anxiety, saying that he was shaking like a leaf.<sup>78</sup> This meeting would not be between the action committee and the officials, but with him alone. He would be made to stand as sole representative of the Bene Israel community. He recounted that he "felt unequipped in a way to stand up to these combined forces."<sup>79</sup> He was frightened that they would apply pressure on him to act or agree to something that he would later regret. Samson had, and still has, tremendous respect for the office of the president, and the meeting caught him so seriously off guard that his knees were shaking as he returned to Doron's office.<sup>80</sup>

As the meeting began, Nissim confronted Samson about Bene Israel practices in India, implying that there were *mamzerim* in the community. Samson strongly refuted the attack and added that if the rabbi was concerned with *mamzerim* he needn't look to the Bene Israel; every community had plenty of them. Samson then focused on the directives, saying: "It has been two years since the directives were issued and no cases have been found against the Bene Israel. Stop the directives." Allegedly, Nissim retorted with "Stop the strike!" to which Samson reiterated the need to stop the directives, and Nissim allegedly paused and quietly asked, "What do you want?" This is what Samson had been afraid of. He was without the support of the action committee and was being led down a road where he would become the fall guy for a government that could claim that he had made an agreement. He told them that he would have to ask the people. The president, who had barely spoken until then, said firmly: "But what do YOU want?"<sup>81</sup> Clearly Nissim and the government believed he was in complete control of his community and the hunger strike, neither of which was true. And it appeared that the government wanted to cut a deal with him to put an end to the protests, strikes, contacting of foreign governments, and media coverage. To their displeasure, Samson insisted that he could not act alone.

On August 2, because of the continued protests, hunger strikes, and failure to resolve the marriage issue, a press conference was called. When the press conference finished, an emergency meeting of Bene Israel members from

across the country was held. Samson suggested that they organize their own large protest. The community unanimously supported the idea and began to make arrangements for August 5. Immediately, members of the community began to complain that three days was not enough time to prepare, but Samson insisted. He estimated that between 100 and 300 people would show up for the protest and that they would all be from the Bene Israel community.

On August 5, between 2,000 and 3,000 people from across the spectrum of Israel's population showed up.<sup>82</sup> They arrived with huge placards, and a few of them had images and stuffed dolls of Nissim, which they wanted to burn in effigy. Samson discouraged them from doing this, and in most cases he was successful. In one case, Samson saw men urinating on Nissim's effigy, which, although he did not condone, he did find slightly amusing.<sup>83</sup> The demonstration went extremely well. Women were dressed in blue, green, and red saris, including some protesters who were not from the Indian community. Celebrities such as Yigal Yadin, the famous archaeologist, and Emma Talmi, an elected member of the Knesset from the Mapam party, attended, as well as official representatives of the Be'er Sheva Municipality and the chairman of the League for the Abolition of Religious Coercion.<sup>84</sup> The demonstration marched to the headquarters of the chief rabbinate on King George Street. Many speeches were made, with Samson giving the concluding one. When he finished his speech, he called for the Israeli national anthem, *Hatikvah*, and everyone stood and sang in unison. Benjamin Israel, a scholar from the Bene Israel community, wrote, "The procession was one of the most impressive demonstrations held in Jerusalem since the birth of the State of Israel, and for the first time, Mapai, the largest party in Israel and the backbone of the government, came out in favour of the Bene Israel cause, as did the Histadrut, isolating the National Religious Party as the only supporter of the chief rabbinate."<sup>85</sup> The members of the Bene Israel were quite pleased and felt they had the support of the Israeli people.

Eleven days later, on August 16, Samson presented himself for *milluim* [army reserve service] but was sent home. Prime Minister Levi Eshkol wanted him free because a special Knesset meeting was about to take place. Despite a recess of the Knesset, Eshkol called an emergency session to deal specifically with the Bene Israel matter.<sup>86</sup>

The prime minister addressed the Knesset, stating that "The government repeatedly declares that it sees the Bene Israel community of India as Jews in all respects without qualification, not differing from all other Jews and having equal rights, including those of personal status."<sup>87</sup> He went on to say:

The complaint made by the representatives of the community, based on the closing phrases of the decisions, refers to the marriage directives issued by the Chief Rabbinate. It has been shown that the Bene Israel community and large segments of the Jewish population of Israel are opposed to the continued existence of the directives. A feeling of discrimination has made the matter a question of acute public interest deserving our attention. After decisions in two cabinet meetings, the government expresses the opinion that it is imperative that the rabbinate bow to public opinion and find a way to remove the factors causing a feeling of under privilege and discrimination.<sup>88</sup>

After clarifying the specific issues and the government demands, Eshkol moved to the broader subject of the Israeli people.

He made it clear that he feared persecuting any single community as it could mean the eventual destruction of the entire Jewish people. He asserted:

There is one people of Israel in the world. There are Jews who returned to their homeland and all are equals, and dear to us. Members of the Knesset, for our generation the most important contemporary historical condition is the rebirth of Israel and the ingathering of exiles. We look forward, and justly so, to a solution based on the love of Israel, a solution which, will enable us to gather the exiled unconditionally without obstacles. For reasons pertaining to Judaism as a whole, our laws have placed matters of personal status, in relations to the Jews, in the hands of the rabbis. But this grant has its conditions: The rabbinate must fulfil the greatest commandment of our generation, to enable the nation to live its life and gather all its exiles. The rabbis must take the burden of this commandment upon themselves, to foresee the future and avoid a conflict with serious consequences, between rabbinic law and the needs of a nation reborn, a conflict which may undermine their unique position and their authority, which we have appointed, to organise matters of the personal status of Jews.<sup>89</sup>

The prime minister asserted the authority of the state over the authority of the rabbis. By maintaining that the power of the rabbinate is conditional, he implied that its authority could be taken away, just as it had been granted by the government. This veiled threat asserted pressure on the rabbis to adhere to the government's decision that the Bene Israel are equal and Jewish in every respect. Couching the threat in the context of the creation of the State of Israel and the ingathering of the exiles gave it particular weight. Having clearly asserted the government's desire for the abolition of the directives and the possible consequences to the authority of the rabbinate if those wishes were not met, he spoke directly to the Bene Israel community. He stated, "And now a

few words from the podium of this house to the Bene Israel themselves. You are our brethren; to us you are the people of Israel. It is the strong desire of all of us to see you among the builders of our homeland, among all Jewry. Everything possible shall be done in order that every public body and every individual in the nation shall acknowledge such recognition. The Israeli public shall stand with you in this matter."<sup>90</sup>

When Samson heard the speech, he was moved to request that the hunger strikers and protesters return home, which they did.<sup>91</sup> Between the prime minister's speech and the thousands of people who had showed up to the protest, the political pressure on the rabbinate was overwhelming. On August 31, the rabbinate made an official statement conceding that marriages to the Bene Israel should not be prohibited. It was decided that instead of the words "Bene Israel" in the above directives, the following would now be written, "Anyone concerning the ritual purity of whose family status any suspicion or doubt arises."<sup>92</sup> To the Bene Israel, the wording was not strong enough, but it was still seen as a victory. The community had taken on one of the most powerful institutions in the country and through nonviolent resistance had emerged victorious.

As of 2009, the Bene Israel community has intermarried with most communities in Israel and is Israeli and Jewish in every sense of the word. The chief rabbi, however, does not have jurisdiction over all the rabbis in the country, and they did not all follow the rabbinate when the directives were changed on August 31, 1964. As these words are being written, over forty years after the struggle for religious equality was supposed to be over, the chief rabbi of Petah Tikva, Rav Baruch Shimon Solomon, still refuses to perform marriages for the Bene Israel.<sup>93</sup>

## NOTES

<sup>1</sup> Itamar Rabinovich and Jehuda Reinharz, *Israel in the Middle East: Documents and Readings on Society, Politics and Foreign Relations*. (New York: Oxford University Press, 1984), 50.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid., 51.

<sup>6</sup> Howard Sachar, *History of Israel from the Rise of Zionism to Our Time* (New York: Knopf, 2007), 605.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid., 606.

<sup>9</sup> Ibid.

- <sup>10</sup> Benjamin Israel, *The Bene Israel of India: Some Studies* (Hyderabad: Orient Longman, 1984), 88.
- <sup>11</sup> Itzhak Nissim, *Bnei Yisrael: Piskei Halakkah* [Bene Israel: Halachic Decisions and the Sources for the Investigation of Their Laws and the Question of Their Origins] (Jerusalem: Government of Israel, 1962).
- <sup>12</sup> Ibid.
- <sup>13</sup> Ibid.
- <sup>14</sup> Ibid.
- <sup>15</sup> Ibid.
- <sup>16</sup> Ibid.
- <sup>17</sup> Ibid.
- <sup>18</sup> Ibid.
- <sup>19</sup> Ibid.
- <sup>20</sup> Ibid.
- <sup>21</sup> Samson J. Samson, interview by Joseph Hodes, June 2008, Jerusalem.
- <sup>22</sup> Ibid.
- <sup>23</sup> Asher Kollette, "Report to The Bene Israel Action Committee," personal archives of Samson J. Samson, Jerusalem.
- <sup>24</sup> Samson J. Samson, interview by Joseph Hodes, June 2008, Jerusalem.
- <sup>25</sup> Ezekiel Ashtamker, personal archives of Samson J. Samson, Jerusalem.
- <sup>26</sup> Ibid.
- <sup>27</sup> Editorial, *Hindustan Times* (May 5, 1961).
- <sup>28</sup> Daniel Ezekiel, "A Letter to The Bene Israel Action Committee," personal archives of Samson J. Samson, Jerusalem.
- <sup>29</sup> Member of the Bene Israel (name withheld by request) interview by Joseph Hodes, Petah Tikva, June 2008.
- <sup>30</sup> Ezekiel Ashtamker, ed., "We Accuse the Jewish Agency," *Truth, the Voice of the Bene Israel Action Committee*, September 1961, 1.
- <sup>31</sup> Samson J. Samson, interview by Joseph Hodes, June 2008, Jerusalem.
- <sup>32</sup> "About the WJC," *World Jewish Congress*, <http://www.worldjewishcongress.org/en/about>.
- <sup>33</sup> "Telegram from the World Jewish Congress," personal archives of Samson J. Samson, Jerusalem.
- <sup>34</sup> Ibid.
- <sup>35</sup> Samson J. Samson, interview by Joseph Hodes, June 2008, Jerusalem.
- <sup>36</sup> Ibid.
- <sup>37</sup> Ibid.
- <sup>38</sup> Ibid.
- <sup>39</sup> *Jerusalem Post* (June 5, 1961).
- <sup>40</sup> Ezekiel Ashtamker, ed., *Truth, the Voice of the Bene Israel Action Committee*, September 1961, 12.
- <sup>41</sup> Samson J. Samson, interview by Joseph Hodes, June 2008, Jerusalem.
- <sup>42</sup> Ashtamker, *Truth*, 12.
- <sup>43</sup> Samson J. Samson, interview by Joseph Hodes, June 2008, Jerusalem.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ashtamker, *Truth*, 5.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> "Minutes from the Meeting with the Rabbinical Council," personal archives of Samson J. Samson, Jerusalem, Israel.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Samson J. Samson, interview by Joseph Hodes, June 2008, Jerusalem.

<sup>53</sup> Ibid.

<sup>54</sup> "Report from the Bene Israel Action Committee," personal archives of Samson J. Samson, Jerusalem.

<sup>55</sup> Samson J. Samson, interview by Joseph Hodes, June 2008, Jerusalem.

<sup>56</sup> Yitzhak Nissim, "Directives," personal archives of Samson J. Samson, Jerusalem.

<sup>57</sup> Ashtamker, *Truth*, June 1963, 16.

<sup>58</sup> Ibid., 19.

<sup>59</sup> "Copy of Press Release," personal archives of Samson J. Samson, Jerusalem.

<sup>60</sup> Samson J. Samson, interview by Joseph Hodes, June 2008, Jerusalem.

<sup>61</sup> Ibid.

<sup>62</sup> Ashtamker, *Truth*, Feb-Mar. 1962, 1.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> *Jerusalem Post* (September 7, 1962).

<sup>66</sup> "Report by Asher Kollette to the Bene Israel Action Committee," personal archives of Samson J. Samson, Jerusalem.

<sup>67</sup> "Statement to the press by Samson J. Samson," personal archives of Samson J. Samson, Jerusalem.

<sup>68</sup> "Bene Israel Plan to Renew Drive Against Discrimination," *Jerusalem Post* (September 4, 1962).

<sup>69</sup> Ibid.

<sup>70</sup> Ashtamker, *Truth*, June 1962, 14.

<sup>71</sup> Ibid.

<sup>72</sup> Ashtamker, *Truth*, September 1963.

<sup>73</sup> "Bene Israel Plan to Renew Drive Against Discrimination," *Jerusalem Post* (September 4, 1962).

<sup>74</sup> Ashtamker, *Truth*, September 1962, 4.

<sup>75</sup> "The Following Resolution Was Adopted Unanimously," *Truth*, September 1962, 5.

<sup>76</sup> Ashtamker, *Truth*, June 1963, 5.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.



<sup>82</sup> Israel, *The Bene Israel of India*, 93.

<sup>83</sup> Samson J. Samson, interview by Joseph Hodes, July 2008, Jerusalem.

<sup>84</sup> Israel, *The Bene Israel of India*, 95.

<sup>85</sup> Ibid.

<sup>86</sup> Levi Eshkol, speech to the Knesset on August 17, 1964, Knesset Archives.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Samson J. Samson, interview by Joseph Hodes, July 6, 2008, Jerusalem.

<sup>92</sup> "Statement of the Chief Rabbinical Council, Aug 31, 1964," personal archives of Samson J. Samson, Jerusalem.

<sup>93</sup> Mathew Wagner, "Chief Rabbi of Petah Tikva Rejects Bene Israel as Jews," *Jerusalem Post* (September 2, 2005).

# Have We Ever Known What a Jew—or Judaeen—Is?

Ori Z. Soltes

The answer to the question “Who is a Jew?” or “What is a Jew?” is one with a very long history. Part of its problematic is that the criteria and conditions of definition have continued to shift over time, thus shifting the actual nature of the question, as well, therefore, as its answer.

In the centuries preceding the birth of Jesus of Nazareth, the term “Judaeen” offered a good deal of complication to those interested in defining it. It could and often did refer to an individual claiming descent—in other words, bloodline ethnicity—from the tribe of Judah or, more likely, Judah or Benjamin, since these were the tribes that survived the Assyrian debacle of 722–21 BCE and the disappearance from history of the other ten Israelite tribes. It could also refer to someone who was ethnically other than Judaeen, but worshipped the God of Israel, whose primary cult center was the Temple in Jerusalem. After all, late in the second pre-Christian century, the Hasmonaeen-led Judaeans had force-converted Itureans as well as Idumaeans to the cult of YHVH.<sup>1</sup> Herod himself, who extirpated the Hasmonaeans and became king of Judaea in 37 BCE, was Idumaeen on his father’s side—and Nabataean on his mother’s side—but followed his father and grandfather in embracing the God of Israel that his grandfather, Antipater, had accepted under duress.<sup>2</sup>

Even more than the Hasmonaeans had been in their heyday, Herod was a successful conqueror of nearby territories. Thus many of the eventual inhabitants of a greater Judaea were pagan—most of the population of the coastal town of Straton’s Tower, which Herod transformed into the major port city of Caesarea, were pagan—and would thus be called “Judaeen” for geographic reasons: it’s where they lived. Conversely, Judaeans by ethnicity/bloodline or by religion could live anywhere from Rome to Babylon and still be called “Judaeen.” The complication in understanding the term would not be simplified by the advent of Jesus of Nazareth, the Judaeen revolt against Roman power that led to the destruction of the Temple five years later (70 CE), or the eventual bifurcation of the Judaeans into two groups: those who embraced Jesus as the “anointed” [*mashiah/christos*] and those who did not.

Both groups would initially be thought of by outsiders—and would think of themselves—as Judaeans. Both groups would consider themselves to be the True Israel [*Verus Israel*] and consider the other to be missing the spiritual boat and missing the proper connection to everything that the God

of Israel had come to represent as a universal, all-everything God. Both groups competed in the first few centuries after the time of Jesus for new adherents—therefore adding ever-increasing numbers to their respective forms of the True Faith—who became Judaeans by religion regardless of their ethnicity or their nationality. The two groups competed, furthermore, for the particular status with regard to political legitimacy that Judaeism had gained in 63 BCE from the Roman conqueror, Pompey, and that had been reaffirmed by his successors, from Julius Caesar to Marc Antony to Augustus and the rest of the Julio-Claudian line.<sup>3</sup>

That *religio licita* status acknowledged and protected the Judaeian religion and its concomitants—such as the sacred status of the annual half-shekel contribution from around the Judaeian world sent to Jerusalem for the upkeep of the Temple. It is a considerable irony to realize that, while Roman legionnaires were besieging the Temple Mount in their efforts to suppress the political revolt of the Judaeians, other legionnaires were protectively shepherding those sacred funds toward Jerusalem as a symptom of Judaea's accepted religious status.

The two Judaeian groups asserting their legitimacy as automatic heirs to that status would eventually—perhaps by the early second century—come to be known as Jews and Christians. With the emergence of these two distinguishing terms a second layer of definitional complications asserts itself. On the one hand, the most obvious distinction between the two groups is a series of religion-based issues. Jews understand prophecy and with it, divinely inspired textuality, to have ended by the time of Ezra (444 BCE), and Christians understand it to have continued for many centuries after. As a consequence, the eventual canon of the Jewish Bible (ca 140 CE) would include the Torah, Prophets, and Sacred Writings, whereas the earliest widely accepted Christian canon (ca 395 CE) would view those same texts as only the preliminary part—the Old Covenant—of the Bible, updated by the intertestamental material that includes books like First and Second Maccabees and Judith and both updated and significantly improved by the material in the New Testament: the Gospels, Acts, Epistles, and book of Revelation.

The second, even more fundamental difference is their embrace or rejection of Jesus of Nazareth. That distinction will become more acute by the early fourth century, when, at a council of several hundred bishops that took place at Nicaea in 325 CE, over which the Emperor Constantine presided, the perspective of Athanasius and Bishop Alexander was embraced over that of Bishop Arius. Arius asserted that Jesus, by then viewed by most

Christians as God's Son, was born, grew up, and died—and was therefore not the same as the eternal, unchanging Father. Athanasius asserted that the two are of one substance: *homoio-ousia*. Thereafter, the simultaneous divinity and humanity of Jesus and, more fully, the triune nature of God, became the only acceptable (nonheretical) understanding of God for Christianity—an understanding antithetical to the Jewish view of God as never assuming any sort of physical form.

What this means for our discussion is that Judaism was coming to be understood during the first few centuries CE as a religion, as distinct from either Christianity or paganism as religions. It is thus definitionally distinguished both from Christianity and from the Judaeism that preceded it, which is the parent of both Christianity and Judaism. Not only are the ethnic/bloodline and the political/national issue theoretically eliminated by the active proselyzation in which Jews, like Christians, are engaged during this early period, but the very elements that will come to define the two faiths as distinct from each other—the concept of God and the concept of Bible—are taking shape only gradually.

The same will be true of other defining aspects of the two emerging faiths. Thus, for instance, the oral tradition of interpretation of and commentary on the Israelite-Judaeen sacred texts begun during the last few pre-Christian centuries continued. That tradition would be embraced and furthered within the Jewish community as the rabbinic tradition—albeit not formally organized until the early third century CE by Judah the Prince. Eventually, a range of such literatures would evolve: aggadic and halachic, midrashic and Talmudic—the latter offering *mishnaiot* upon which separate groups of amoteric discussions would be visited in Judaea/Palestine and Babylonia.

Within the rabbinic tradition, in fact, there is a rather astonishing discussion that highlights how important the question of deciding and defining who is and who is not a Jew had already become—as well as suggesting how proselytism and conversion were common enough to warrant addressing the issue. The particular discussion that I have in mind is found in order *Nashim* [Women], tractate *Yebamoth* [Widows] 97b and focuses on the obligations associated with Levirate law: whether it applies to the case of two brothers whose mother converted to Judaism, when one of them was conceived before she converted but was born after she converted and the other was both conceived and born after she converted. The heart of the issue pertains to what qualifies someone to be considered fully Jewish and therefore obligated by strictures that apply only to Jews.<sup>4</sup>

Conversely, as Christianity took identifiable shape, it rejected rabbinic commentary in favor of its own, authored by a diverse range of patristic scholars in the West and in the East, such as Origen (184/5–254/5) and Augustine (354–428). The two faiths looked at Jerusalem as the center of faith, but where Jews looked to it through a lens focused on the Temple Mount and its aggadic resonance back to Mount Moriah and the *akedah* [the binding of Isaac (Gen. 22)], the Christian lens focused on Mount Golgotha, the site of the crucifixion, and in the absence of certainty as to its location, the site of Jesus' interment, over which the Church of the Holy Sepulcher would eventually be built. All of these defining issues would continue their developments and expansions as the centuries moved on.

Meanwhile, the emerging distinction between a definable Judaism and a definable Christianity offered an entirely different level of complication for the pagan Roman authorities. Most significant is that the word that I have rendered in English as "Judaean" and "Jew"—pointing to distinctions between these two that affect our understanding of and definition of both these terms as well as of "Christian"—cannot be distinguished in the languages that the Romans would have used or that the Judaeans and early Jews and Christians would have used. In Latin, *iudaeus*; in Greek, *ioudaios*; in Hebrew, *yehoodi*; and in Aramaic, *yehouday*—are all translatable as either "Judaean" or "Jew." This means that, as time pushed forward and the Judaean community bifurcated, eventuating as Judaism and Christianity, not only would it take time for the community itself to make the distinction between its two parts with regard to terminology, but more to the point, the Romans would not only have the same difficulty, but, should they be in a position of choosing to which community to accord *religio licita* status, they would simply accord it to the Jews, not the Christians. The Jews would appear to be the simple continuation of Judaeism while the other, with its entirely new name (once that name became known), would appear to be something completely different.

The pagan Romans are not likely to have known much if anything about the theological differences between the two groups, but would have been limited to the name distinction. Even that awareness would be slow in arriving. This is clear from the brief, confused references to Christians and Jews made by the Roman historiographers Tacitus (ca 115 CE) and Suetonius (ca 120 CE) in referring back to events during the reigns of Claudius and Nero.<sup>5</sup>

As a practical historical matter, then, it should not surprise us that the Romans continued to treat Judaism in a nonoppressive manner, with the exception of the aftermath of the Bar Kokhba Revolt (132–5 CE), when the

Emperor Hadrian determined that the most effective way to suppress Jewish political ambitions was to undercut Jewish religious sensibilities. During the reign of his successor, Antoninus Pius, however, that policy was abandoned. Meanwhile, Christianity was ignored for the most part until the third century and then endured intermittent persecution, the severity of which seemed to increase from the time of Septimius Severus (205 CE) to that of Maximinus Thrax (235–38 CE) and Decius (249–51 CE) to that, most notoriously, of Diocletian (284–305 CE).

It is important to keep in mind that the Roman motive for such persecutions was not religious, but political. As a polytheistic pagan society well familiar with Greek culture and its stories of individuals suffering at the hands of one goddess or god while being favored by another, the Roman tendency was to embrace them all: better to embrace a powerless or even nonexistent deity than to eschew one that exists and has power. On that basis, there was a steady flow of new forms of worship making their way across the empire over the centuries, from mother goddesses to the Olympians, from Osiris and Isis from Egypt to Mithra from Persia. Thus the issue of tolerating or persecuting Judaism or Christianity was based solely on political or administrative concerns, not on spiritual ideology.

This would change in the course of the fourth century. Constantine eliminated faith-directed persecution with his edict of Milan, in 313—Christianity was now placed on an even playing field with Judaism and paganism. For reasons beyond this discussion, by ca 380, Emperor Theodosius had made Christianity the official religion of the empire. In practical terms, this meant, first of all, that all other forms of faith, be they pagan or Jewish, were in effect outlawed. Second, it meant that the proselytic outreach of Judaism, to whatever extent it had continued since the first century, now came necessarily to an absolute halt.

What it also therefore meant was that, if on the one hand the definition of Judaism had been largely reduced to that of a religion (as opposed to an ethnicity or a nationality) during the previous few centuries—paralleling, in effect, the understanding of Christianity and reflecting the distinction both between the two of them and between them and the various pagan denominations with regard to their respective senses of divinity and the concomitants of those senses—the definition of Judaism, by paradox, experienced a slight expansion over the next few centuries. Because circumstances caused—forced—Judaism to assume an increasingly exclusive stance (“you couldn’t join us even if you wanted to”), over against the all-inclusive ambitions of Christianity (and a

few centuries later, Islam); because of its increasing place within Christendom (and to a lesser extent, the Muslim world) as a people apart; and because of its distinctly different customs (most obviously, male infant circumcision), a definitional understanding of Judaism gradually set in as somehow ethnically and not merely religiously based.

There is ambiguity in this, rather than clarity—from both inside and outside the increasingly dispersed Jewish community—and variation according to time and place. Aside from endlessly diverse interpretations of rabbinic law, halachah, there were some communities, such as that in Ethiopia or even more emphatically that of the Karaites, that altogether ignored the rabbinic tradition. The religion of Judaism was far from monolithic. The story, most obviously, of the Khazars—both their mass conversion to Judaism in the eighth century and the eventual demise of their vast kingdom in the early eleventh century, together with their putative, substantial migration up into eastern Europe, where they would have sooner rather than later encountered and intermingled with Jews fleeing east from the Rhineland as the era of the Crusades set in—means that medieval ethnographic identity was, to say the least, mixed. Nonetheless, the image of Jews as a definable monolith not only persisted, but was also paradoxically and retroactively reasserted as Judaism entered the modern era.

We may time that entrance any number of ways. One way would be to begin with the so-called, popularly misunderstood, “heretical” Spinoza, in the mid-seventeenth century, but it’s probably simplest to take it from the late eighteenth century—the era of industrial, scientific, and political revolutions and of emancipation—since that would be the point at which definitional complications begin their new, widely felt expansion. Emancipation itself would assume divergent forms as it was articulated in diverse ways at different times across parts of central and western Europe. Even the terminology of emancipation—and thus the external view of what Judaism and Jews are—was subtly different from this place to that.

We can, for instance, examine the Edict of Tolerance issued by the Hapsburg Emperor, Joseph II, on January 2, 1782. It refers to the Jews as a nation [in German: *Nazion*], whereas the decree of the Emancipation of the Jews of France, released by the French National Assembly on September 28, 1791, refers to “individuals of the Jewish persuasion.” This is an assertion that Judaism is a religion and that therefore Jews in France “who take the civic oath” shall henceforth be defined as Frenchmen who happen to be Jews rather than Jews who happen to reside in France.

Of course neither of these formulations came without complications. In “secular” France, for instance, where nonetheless schools and shops were closed on Sunday—the traditional Christian “Lord’s Day”—an emancipated French Jew would be in a quandary: having defined himself as a Jew by religion alone, whose children were now free to attend a public school and neither restricted to or desirous of attending a traditional Jewish *cheder*, he would need to decide what his children should do on Saturday, the Jewish Sabbath. Not attend school? Attend but not write? Write only in the case of an exam? And what about his little shop on Main Street? It was closed by mandate on Sunday. Should he keep it open on Saturday, thereby abrogating the Sabbath, or close it, losing one sixth of his business—and no doubt going out of business, thanks to his Christian shopkeeper colleagues’ six-day-a-week competition?

These complications became yet more complicated under Napoleon, who, pushed by the rather anti-Jewish Count Mole, directed an official query in 1806–07 to the Jewish communal leadership regarding self-definition. Napoleon’s educational and other reforms effectively tightened the strictures on how to be a Jew in France. Over in Prussia by about this time (1810–11) in a few communities such as Hamburg, Jewish leadership altogether reshaped—reformed—Judaism, “modernizing” its religious parameters. Thus, travelling by vehicle to the synagogue on the Sabbath and relegating primary Sabbath observance to Friday night, for example, were practical changes designed to make it more possible for Jews to integrate themselves into Christian (mainly Lutheran) society. Prayer services were reorganized along lines that stylistically imitated the Lutheran model. Ideologically, the turn from calling synagogues “synagogues” to calling them “temples” reflected an assertion that “we are not in exile, awaiting the messianic advent and with it the ingathering of the exiles and the rebuilding of God’s Temple in Jerusalem.”

This reformation, too, is not without its definitional and other complications. Within the Jewish community of Prussia there was pushback from the traditionalists. They were soon called Orthodox, from the Greek words *doxa*, meaning “belief” and *ortho*—meaning both “correct” and “narrow.” This second element proved doubly useful, then: to the Orthodox, theirs is correct belief; to the Reformers, the Orthodox practice offers overly narrow belief. Within another decade a still more stringent and “modern” reformist Judaism responded to Orthodoxy and, in a sense, to Reform Judaism. It called itself “the Science of Judaism” [*Die Wissenschaft des Judentums*].<sup>6</sup> If its practitioners saw it as the consummately modern form of Judaism, stripped of its out-of-date medievalist aspects, its critics understood it to have thrown the baby out



with the bathwater: they viewed the elimination of the spiritual aspects of Judaism as eliminating its heart and soul.

Nor was the issue any less problematic from the outside. In Prussia, emancipation rights were offered, taken back, offered, and taken back again several times in the first half of the century. One consequence of this was that, in 1824, six-year-old Karl Marx was converted to Protestantism by his upwardly mobile father, who was convinced that his son would have no future as a Jew in Prussia. Young Karl grew up as a nominal Protestant, but spent his summers with his very Orthodox grandparents—both grandfathers were rabbis, in fact. It is not unreasonable to suppose that Marx grew up rather confused as to his Jewish/non-Jewish identity, and it is perhaps no surprise, further, that, as a recent PhD, one of the first essays that he wrote in 1843–44 was “On the Jewish Question.” The essay was in response to a pair of essays by his former mentor, Bruno Bauer, asserting that Jews should not complain that they did not possess full civic rights.

What is important for our purposes is that, on the one hand, Marx seemed to defend Judaism with regard to its demands for full emancipation—or at least to criticize Bauer for his inconsistent views, particularly with regard to separating politics from religion where Christianity is concerned but not where Judaism is concerned. On the other hand, in the second part of the essay he speaks of how all of society must be emancipated—from Judaism, which he equates with huckstering and money worship. So he has clearly absorbed a long-held Christian prejudice regarding Jewish preoccupation, turning it into a definition of Judaism. Moreover, he makes a further definitional distinction between what he calls “Sabbath Jews” and “everyday Jews,” and it is the latter who are, in his words, “actual, secular” Jews, who are worshippers of money.<sup>7</sup> So religious Jews are at least marginalized, if not altogether defined out of existence.

Moreover—and this is rather ironic, given the issues delineated in the previous paragraph—Marx would be referred to by some of his own acolytes, later on (notably, Mikhail Bakunin, excoriatingly), as a Jew. In other words, he who had been nominally Christian by religion since the age of six and who both defended Jewish demands for full emancipation and criticized Judaism as a virtual business was still viewed (and perhaps viewed himself) as a Jew by ethnicity/bloodline, decades later.<sup>8</sup> By then the racialization of Judaism that had been expanding across the century had reached a new level. Specifically, in 1879, a Prussian political philosopher and pamphleteer, Wilhelm Marr (1819–1904), in his campaign to remarginalize Jews in the modern era, extracted a term from the century-old academic discipline of linguistics—a

term that had been applied to a group of languages that includes Hebrew, Arabic, Aramaic, Akkadian, and Ethiopic, among others—and applied it to the Jews: Semitic/Semites. Marr's intention was to suggest that all Jews came ultimately from the Middle East and are not Europeans: they are eternal foreigners, who should not and cannot be integrated into the European world in any meaningful way.<sup>9</sup>

This sort of racial/ethnic/bloodline understanding of Judaism, which became increasingly popular with the expansion of anthropology as a discipline and its intertwining with post-Christian, still-Christian prejudices, was recognized as fallacious by Jewish thinkers like Franz Rosenzweig.<sup>10</sup> On the one hand, Rosenzweig observes in an October 22, 1905, letter to his parents that, in the Jewish fraternity that he was considering joining at the university, the members failed as a group to conform to a Jewish, other-than-German "type."<sup>11</sup> On the other hand, he turned back at the last moment from converting to Christianity—a conversion that would have been based not on spiritual conviction but on sociophilosophical considerations.

His turning back was based, in fact, on his sense of spiritual uncertainty at least—and at most, outright rejection of the notion of a God such as Jews and Christians both embraced. In turning back he articulated an understanding of Judaism as a cultural (that is, neither religious nor racial/ethnic) phenomenon—and why, he reasoned, would he abandon the cultural reality in which he grew up and with which he was so familiar in favor of one that was altogether foreign to him, unless he had been subject to a spiritual transformation?

The question of defining Judaism as a religion or as an ethnicity, as it twisted toward a view of Jews as a group of immutable foreigners, contributed to yet another definitional direction: of Judaism as a nation. Moses Hess had first explored this systematically in his 1862 work, *Rome and Jerusalem*. Hess was inspired most obviously by the Italian nationalist *Risorgimento* and specifically by Giuseppe Mazzini's articulation of the possibilities for Italian nationalism to lead a unified nation back to the sort of glorious role it had once played on the world stage as the center of a world-conquering imperium. Hess's work offered an analogous ambition for Judaism. The most obvious difference between his vision and Mazzini's was that the Israelite-Judaeen past had played out back in the Middle East, not in the Europe in which most of Hess's intended audience was living and had been living for centuries.

Theodore Herzl—a highly assimilated and very secularized Austrian Jew with a strong sense of his own secular messianic potential, who had, like Rosenzweig, once joined a fraternity (it was a Christian fencing fraternity that

ultimately shocked him with its antisemitic outbursts during an 1888 fifth anniversary marking of Richard Wagner's death)—would pick up the nationalist thread more than a generation after Hess had written his book. Herzl's 1896 pamphlet, *Der Judenstaat*, sought both to define the functional and not just theoretical parameters of a Jewish state and also to solve the problem of antisemitism as largely economically based by removing a critical mass of Jews from Europe and from economic competition with their Christian neighbors. In addition, Herzl sought to address Judaism as a nationality-based problem by making it clear to the larger Christian community that Jews who chose to remain in their European homes were emphatically French, German, Italian, or whatever, who just happened to attend synagogues on Saturday rather than churches on Sunday, for they had chosen France, Prussia, or Italy over the Jewish state.<sup>12</sup>

The nascent Zionist movement that grew from Herzl's efforts and those of others addressed the question of defining Jews and Judaism obliquely by addressing the question of what the movement's ambitions should be. Should it be to establish an autonomous (or semi-autonomous) polity as a place of refuge from the antisemitism that was flourishing with devastating violent effect particularly in eastern Europe or to shape an idea that would resuscitate a Judaism that was seen to be spiritually floundering in the face of the fractionization of Judaism as a religion across the nineteenth century? If Herzl's obsession with saving Jews led him to accept almost any geographic option that he could negotiate in which to create a Jewish state—most famously, Uganda, briefly, in 1903—others, most notably Ahad Ha'am (the pen name of Asher Ginsberg), were focused on saving Judaism; for them, no place besides *Eretz Yisrael* could serve, regardless of whether it was governed by the Ottoman Turks or anybody else.<sup>13</sup>

A quickly developing subset of spiritual Zionism was culturally focused. This attracted no less a figure than the not-yet-famous Martin Buber—an Austrian who had himself been a highly assimilated, secularized Jew—who became interested in Jewish spirituality by way of his academic study, first, of Hinduism and Buddhism, which led him to an interest in Chasidism, which led him to an interest in Zionism. He observed that a full sense of Jewish national identity could not be shaped without including (secular) literature, art, and music within its fabric. He was a lynchpin in promoting the idea of establishing an arts school in Jerusalem. When, under the directorship of the Lithuanian-born Jewish sculptor and painter Boris Schatz, the Bezalel School opened its doors in 1906, it had as a centerpiece of its mandate to define and shape Jewish national art forms.<sup>14</sup>

During this same period, hundreds of thousands of Jews were managing to migrate to the United States. On these shores the battle between Reform and Orthodox—with “parallel” definitional debates distinguishing Ashkenazim from Sephardim—reached a head in the 1880s with the graduation of the first class of American-born rabbis from the nascent Hebrew Union College (HUC) in Cincinnati, the notorious *trayfah* banquet of 1883 that celebrated the ordination of those rabbis, and the Pittsburgh Platform of 1885. As both groups sought to attract constituents from the waves of incoming eastern European Jews, an alternative to both, which presented itself as a compromise between them, was shaped. The Conservative movement reflected the sort of pragmatism that the French philosopher, Alexis de Tocqueville, had, a generation earlier, associated in particular with Americans.<sup>15</sup>

Two generations after the development of Conservative Judaism, an important rabbinic leader from that movement (he had grown up as an Orthodox Jew and shifted away from his father’s overly traditional religious stance as he moved toward adulthood) would argue that all of these “movements” within Judaism were too narrowly conceived in that they all defined Judaism, one way or another, as a religion. Mordecai M. Kaplan, in his lengthy 1923 work, *Judaism as a Civilization: Toward a Reconstruction of American Jewish Life*, sought to amplify the elements of Jewish life that might be called cultural (its arts and crafts, its language and literature). Also amplified were Judaism’s spiritual elements—but with the Torah viewed not as a revelation from God to be obeyed as such, but as the primary text of the millennia-long Jewish tradition, to be studied as such. Also recognized were national elements—but with the Diaspora world, particularly of America, as equally important as *Eretz Yisrael* (like the spokes of a wheel of which Israel is the hub; both hub and spokes are necessary for the wheel to function). In this way, Kaplan articulated the idea that Judaism is most effectively defined as a civilization analogous to Roman or Christian civilizations.

The United States was becoming arguably the most active center of Jewish life across the world by this time, and two obvious developments within the next generation would intensify the issue of defining what and who Jews are. The Holocaust presented a Nazi-articulated affirmation of Judaism as a race; all one required was one Jewish grandparent to qualify for a one-way ticket to Auschwitz, according to the “scientific” definition derived from the analysis of racial traits and qualities pioneered by Alfred Rosenberg, Hitler’s key ideologue in such matters. In the midst of this debacle, Joseph R. Soloveitchik’s signal work, *Halakhic Man*, was written (1944). His book—in which, oddly, not a

word of reference to the Holocaust is offered—argues, in effect, that the true Jew is one whose life is governed by an awareness of rabbinic laws and how those laws offer prescriptions with regard to every conceivable aspect of or event within nature.<sup>16</sup> It is a kind of handbook for how to be both modern and Orthodox and thus furthers the religiocentric approach to the definition of Jews and Judaism.

The second development during the middle of the century, the establishment of the State of Israel as a “Jewish state,” raised the question of defining Jewishness at a different practical level from that presented by Hitler—and related obliquely to the implied definition by Soloveitchik: what sort of individual is definable as fit to be accorded the automatic Israeli citizenship to which every Jew is entitled by the Israeli Constitution? This issue, over time, would offer diverse complications. In the 1970s and again the late 1980s and 1990s, Jews in large numbers coming from the Soviet Union turned out, in many cases, to be half-Jewish. In such cases the question of which parent was Jewish and which one was Russian, say, or Ukrainian or Byelorussian became an issue for an Israel struggling between its self-definition as a secular democracy akin to England and the United States and as a theocracy subject to the constraints of Jewish religious Orthodoxy.

During the same period, more or less, there was an upsurge in immigrants to Israel from the United States (and to a lesser extent, Argentina, Canada, and elsewhere in the Americas and Europe), many of whom had refound a traditional religious Jewish identity—but a critical mass of whom came either from Reform or Conservative backgrounds or even from Christian backgrounds. Thus a point was reached where “proof” of one’s Judaism, and in the case of converts, of the fact that the conversion had been performed by an Orthodox rabbi, was required in order to be considered a Jew and thus to qualify for automatic citizenship rights. So, too, the advent of a large number of Ethiopian Jews, mostly through Operation Moses (1984) and Operation Solomon (1991) reinforced the issue. If the advent of the Ethiopians further undercut the notion that Jews may be defined by race, the fact that their Judaism had developed virtually without reference to the rabbinic tradition permitted the Israeli rabbinate to question whether or not they could even be considered Jews. This is apart from the question of how to define those who came from a mixed parentage or had become Jewish by conversion when the possibility of leaving Ethiopia for Israel began to present itself.

This range of definitional possibilities and problems for Jews and Judaism in varied contexts occasioned by emancipation, but with underpinnings

as old as Judaism itself, has remained unresolved during the past more than two centuries—and is perhaps unresolvable. The implications are as rich as the inherent question is complicated. Every noun to which one attaches the adjective “Jewish” becomes a definitional challenge, exponentially more challenging than that same noun without the adjective. Thus if we speak of “Jewish thought,” we need not ask only whether we mean by that rubric “thought expressed by a Jew” or “thought that focuses on Jewish issues” but also what exactly we mean by “Jewish.”

Surely Talmudic thought is “Jewish thought” by definition: it focuses on how to live one’s life as a Jew in a non-Jewish world and its authors are rabbis. And we may say the same of Soloveitchik’s *Halakhic Man*. But is Buber’s *I and Thou* a work of Jewish thought? He is a Jew, but his focus is broadly one of religious existentialism and not specifically Jewish. What of Marx’s “On the Jewish Question”? The subject seems to be by its very title, but the conclusions hardly seem to be those of a Jew—and what is Marx’s identity, after all? He was converted as a child from Judaism but a philosophical admirer would think of him, excoriatingly, as a Jew.

What of the German Jew Hannah Arendt, forced to leave Nazi Berlin behind and to take up a new life in America? Most of her essays (like “What is Freedom?” written in the 1970s) are, like Buber’s *I and Thou*, broadly focused—but arguably her best-known work is *Eichmann in Jerusalem: A Report on the Banality of Evil*. Her reflections on the trial of the gray bureaucrat accused of authoring all the details of the Final Solution to the Jewish Problem for Hitler’s regime was criticized in many quarters for its failure to distinguish between victims and victimizers—for its lack of sympathy for the former and excessive sympathy for the latter—to the point that she has been referred to as a self-hating Jew. Does “Jewish thought” include thought by Jews who resent the fact that they are Jewish? How does one define such a Jew—as mired in her inescapable ethnicity or race regardless of how far she attempts to pull herself away from her religion or culture?

We can in fact apply this problematic to all sorts of cultural expressions. The criteria for defining “Jewish music” or “Jewish visual art” offer the same double complications: are we referring to the content of the work—in which case, what aspects of it: style, purpose, symbolic language? Or to the identity of the artist? In the latter case—we have come full circle—how are we defining the artist as “Jewish”? And does the artist, musician, writer—creator in whatever medium—have to be consciously thinking of creating Jewish art, music, literature, or can it be an unconscious element in his or her work?

Defining Jews, Jewish, and Judaism—if answering the question, “Who or what is a Jew?”—has a long history and a particular intensity in the modern era, but the process of defining—or trying to do so—is itself fundamentally “Jewish.” Asking questions that have difficult answers or no answers at all and that, moreover, produce further questions rather than producing answers or at least well before they produce them, this is an emphatically Jewish approach to the world. Certainly an important aspect of what it means to be Jewish is to ask what it means to be Jewish; one definition of “Jewish” across the ages, but particularly in the era since emancipation, is “the condition of being obsessed with the question of what ‘Jewish’ is.”

## NOTES

<sup>1</sup> See Josephus, *Antiquities of the Judaeans*, 13.1.1 regarding the Ituraeans; 13.9.1 regarding the Idumaeans.

<sup>2</sup> John Hyrcanus (son of Simon, last of the five “Macabbee” Hasmoneans), having defeated the Idumaeans, gave them the choice of having themselves circumcised and embracing the Judaeian religion—or exile or destruction. His son, Aristobolos, followed that model when he defeated the Ituraeans.

<sup>3</sup> To make a long story short, Pompey arrived in Judaea, in part, to adjudicate the quarrel between John Hyrcanus II and his brother, Antigonus, regarding the Judaeian throne. One of the outcomes of this, for reasons beyond this discussion, was his conferral of *religio licita* status on the Judaeans and their faith; this policy continued from one Roman leader to the next—even during the period when Rome was suppressing the Judaeian political revolt in 65–73 CE. See Josephus, *Antiquities* 14.3.4 and 14.4.4; and *Wars of the Judaeans*, 1.7.4–5; see also Dio 37.16 and Strabo 16.40.

<sup>4</sup> The mishneh under discussion is, in part: “The sons of a female proselyte who become proselytes together with her neither participate in Halitzah nor contract Levirate marriage, even if the one was not conceived in holiness [i.e., before the mother converted], but was born in holiness [i.e., after the mother converted], and the other was both conceived and born in holiness.”

Not only does there follow a lengthy amoraitic discussion of the mishneh, but also the larger context of the whole chapter—ultimately reflecting on the role of the mother in determining Jewish identity and other related issues—could hardly be richer.

<sup>5</sup> See Suetonius, “Life of Claudius,” 25; Tacitus, *Annales* XV. 14.

<sup>6</sup> The *Verein für Cultur und Wissenschaft der Juden* [Society for Jewish Culture and Science] was founded in 1819 by Eduard Gans, a pupil of Hegel, together with Heinrich Heine, Leopold Zunz, Moses Moser, and Michael Beer. The society’s goal was to shape an understanding of Jews as a *Volk* [people] in their own right, independent of their religious traditions—and thus to validate secular cultural Jewish traditions as equal to those adduced by Johann Gottfried Herder and his followers for the German people. This would have underscored a national/ethnic distinction between Jews and Germans—virtually the opposite of what the Jews in France had achieved as a self-definition in the previ-

ous generation. The Society more or less failed, but Zunz began a spin-off movement in that same year, *Die Wissenschaft des Judentums*, which stressed subjecting Jewish literature and culture to analysis that used the instruments of modern scholarship.

<sup>7</sup> “The God of the Jews has been secularized and has become the god of the world. The bill of exchange is the Jew’s actual god.” Loyd D. Easton and Kurt H. Guddat, *Writings of the Young Marx on Philosophy and Society* (Garden City: Anchor Books, 1967), 246. Interestingly, the translators chose to render “God” as “god”; all nouns in German are capitalized, so Marx’s view on this issue is not obvious.

<sup>8</sup> Writing in 1871, regarding a quarrel he was having with Marx, Bakunin observed: “a Jew himself, Marx is surrounded—in London and France, but especially in Germany—by a crowd of little Jews, more or less intelligent, stirring up intrigue, troublemakers, as is the case with Jews everywhere.” See Michel Bakounine, “Rapports personnels avec Marx,” in *Archives Bakounines* (ed. and trans. Arthur Lehning; Leiden: Brill, 1963), 1:124–125.

<sup>9</sup> In his pamphlet of that year, *Der Weg zum Siege des Germanenthums über das Judenthum* [The Way to Victory of Germanicism over Judaism], he introduced the idea that Germans and Jews were locked in a longstanding conflict, the origins of which he attributed to race. He argued that emancipation resulting from German liberalism had allowed the Jews to control German finance and industry and that, since conflict between Germans and Jews was based on the different qualities of the two races, it could not be resolved even by the total assimilation of the Jewish population. Marr renounced his anti-Jewish views toward the end of his life, but the tenor of his pamphlet would have obvious far-reaching implications both for internal and external perspectives regarding the definition of Jews and specifically for Hitlerian ideology a few generations later.

<sup>10</sup> For an excellent discussion of the combination of anthropological with prejudicial religious thinking, see Maurice Olender, *The Languages of Paradise: Race, Religion, and Philology in the Nineteenth Century* (Cambridge: Harvard University Press, 1992).

<sup>11</sup> “Very few typically Jewish-looking young men [were there], some of the handsome racial type, about half without marked traits. The prevailing tone exactly the same as among the Christian students. . . . After this test, racial anti-Semitism seems to me more senseless even than before. These people are, at least at their present age, as completely ‘German students’ as can be imagined.” Nahum Glatzer, *Franz Rosenzweig: His Life and Thought* (New York: Schocken Books, 1953), 2–3.

<sup>12</sup> See *Der Judenstat* (Vienna: M. Breitenstein, 1896). See also Herzl’s article of the same year in *The Jewish Chronicle* on “A Solution of the Jewish Question,” in which he anticipates by a few months most of the points made in his pamphlet.

<sup>13</sup> See in particular Ahad Ha’am’s 1902 essay, “The Spiritual Revival,” most of which is reproduced in English translation in Leon Simon, trans. and ed., *Selected Essays of Ahad Ha’Am* (New York: Meridian Books and the Jewish Publication Society, 1962), particularly 253–58.

<sup>14</sup> There is a growing library of sources on early Bezalel, among them Nurit Shilo Cohen, “Hebrew Style of Bezalel, 1906–1929,” *The Journal of Decorative and Propaganda Arts* 20 (1994): 140–63; and Dalia Manor, *Art in Zion: The Genesis of National Art in Jewish Palestine* (New York: Routledge Curzon, 2005).



<sup>15</sup> At the “Trayfa Banquet,” shellfish and other nonkosher foods were served. Subsequently, the Pittsburgh Platform dismissed observance of both ritual commandments and Jewish peoplehood (as opposed to religion) as “anachronistic.” In response, in 1886, the prominent Sephardic rabbis Sabato Morais and H. Pereira Mendes founded the Jewish Theological Seminary in New York City as a more traditional alternative to HUC. The seminary’s brief affiliation with the traditional congregations that established the Union of Orthodox Congregations in 1898 was eventually severed due to the Orthodox rejection of the seminary’s academic approach to Jewish learning. (The movement had a kind of proto-version in the 1840s–1850s in Germany, led by Rabbi Zecharias Frankel.) De Tocqueville’s comment appeared in his two-volume study of the United States, *De la democratie en Amerique* [On Democracy in America], published in 1835 and 1840.

<sup>16</sup> Soloveitchik compares halakhic man with both cognitive man and *homo religiosus*. The first simply observes or tries to figure out how all of the universe is governed and ordered by intelligible laws; the second is awestruck by the unfathomable mystery [*mysterium tremendum*] of it all. Halakhic man approaches everything “with his Torah, given to him at Sinai, in hand,” which instructs him in how to apply halakhah to the phenomena that he or she encounters.

# Will the “Real” Jew Please Stand Up! Karaites, Israelites, Kabbalists, Messianists, and the Politics of Identity

Aaron J. Hahn Tapper

## A LONG-LOST JEWISH SECT . . . IN SAN FRANCISCO?

Truth be told, my Ashkenazi-centric perspective was coloring things before I had even left my house. When a friend asked me what time the community’s prayer service began, my instinct was to answer something along the lines of, “Shul starts at 9:30, but my contact told me there wouldn’t be a minyan until 10:00.” Though I caught myself from saying “shul,” a Yiddish term for synagogue, a word I had been raised with that this group undoubtedly did not use, I stumbled nonetheless in saying the latter half of the sentence. My friend gently hinted that they didn’t necessarily follow the rabbinic idea of a minyan, an edict found in the Talmud that requires a quorum of ten adult males (or, in many contemporary communities, males and females) in order to recite specific prayers. I planned to arrive a few minutes after 10:00 in an attempt to be inconspicuous. If I showed up a little late, I figured I could slip in unnoticed. But this turned out to be a silly plan. Not only was the synagogue small, but there were no more than a dozen people there when I arrived. And everyone knew one another. It was clear that I was a stranger to the community.

At first glance, Congregation B’nai Israel seemed like any other synagogue I’d ever been to, with such things as announcements about prayer services and communal gatherings and the word “Shalom” displayed outside the building’s main entrance. But as I entered the foyer this thought quickly dissipated. In the antechamber to the main prayer room were ten or so pairs of shoes in individually designated shelves. Having visited a number of Buddhist, Hindu, Muslim, and Sikh houses of worship, the ritual of taking off one’s footwear prior to entering a prayer space was not unusual to me. But I had never seen this done in a space identified as Jewish. After putting my shoes on one of the shelves and grabbing a siddur [prayer book], I proceeded to walk into the building’s central room, where a group of practitioners were already engaged in prayer, standing shoeless on overlapping prayer rugs. Listening to the community’s prayers (mostly composed in Hebrew, almost exclusively taken directly from the Hebrew Bible)<sup>1</sup> and watching them fully prostrate on

the ground when approaching the ark, the experience was oddly both familiar and strange.

When it came down to it, this group was extraordinary. They were Karaite Jews. In existence for centuries, this now almost-extinct Jewish sect has commonly been described as surfacing in opposition to Jews who accepted the authority of “the rabbis.” Indeed, since their beginnings some Jews have rejected them as heretics. But here I was—in 2011—in a Karaite synagogue in Daly City, a small town just south of San Francisco more famous for being the inspiration of the renowned 1960s Pete Seeger Billboard hit “Little Boxes” than for housing some of the last descendants of an ancient Jewish community.

### ARE THERE BOUNDARIES TO THE JEWISH COMMUNITY?

This leads us to a critical question. If Jews are so diverse—culturally, ethnically, nationalistically, politically, racially, religiously—can anyone be Jewish? What are the community’s boundaries? Take, for example, the definition for “Jew” of the only Jewish-majority country in world, the only self-proclaimed “Jewish state,” Israel. On October 27, 1958, a little over a decade after the country’s establishment, Prime Minister David Ben-Gurion sent a letter out to some forty-five preeminent Jewish communal leaders all over the world, asking them to answer one of the most loaded questions for any group: who should be counted as one of us and who should not? Specifically he wanted to know how the new self-proclaimed Jewish state should define a Jew.<sup>2</sup> The Jewish state had been in existence for ten years; it permitted Jewish immigrants to become citizens for ten years, but had not yet conclusively defined the identity of a Jew!

So, where does this leave us? Because Jews are so diverse, is it inaccurate to definitively say what a Jew is? In the postmodern era, can one be part of a group merely by proclaiming affiliation? Does the fact that in the twenty-first century there are so many characterizations of a Jew mean that anybody can be Jewish simply if she identifies as such?<sup>3</sup> Or does a person need to be perceived as part of a group by those in the group in order to lay claim to a particular identity? And what about those outside the group? Don’t they also need to see the person in the same light?<sup>4</sup>

### “HALF JEWS”?

In 1990, many in the American Jewish community were shocked to learn that more than 50 percent of their number were marrying non-Jews, a phenomenon commonly referred to as intermarriage or out-marriage. In northern California this statistic was as high as 70 percent.<sup>5</sup> Although the major denominations

reshaped their respective policies to deal with this growing pattern—Reform institutions choosing to embrace Jewish/non-Jewish couples, while Orthodox ones generally did not (and Conservative groups often encouraged the non-Jew in the partnership to convert)—the trend of out-marriage wasn’t new, only the rate at which it was happening. For the Reform movement, which had changed its policy to defining a Jew as someone born to a Jewish mother or father and raised Jewish (or converted under Reform standards) in 1983, their open-arms outreach strategy made perfect sense; whether or not a child’s parents were a Jewish/non-Jewish couple or a Jewish/Jewish one made no difference in terms of the Reform understanding of Jewishness, because as long as one parent was Jewish the child was Jewish as well.

But for Conservative and Orthodox institutions, aside from those who went through a ritual conversion, a person is defined as a Jew only if she is born to a Jewish mother. In other words, these latter two denominations saw people born to a Jewish father and non-Jewish mother as non-Jews.

But most American Jews are not committed to full halachic observance. Most people do not know that patrilineal descent is the standard in the Torah, nor that it was the Mishnaic and Talmudic rabbis who changed the definition of a Jew to matrilineal descent sometime around the first centuries before or after the common era. Before they were called Jews this community was called Judeans and Israelites (and before that Hebrews). In terms of social identities many contemporary Americans refer to themselves as racially or ethnically “mixed” and for Jews this is no different.

But what about someone born into a Jewish family who later adopts another religion? Jewish Americans have a number of hybrid identities such as Jubus (Buddhist Jews) and Hinjus (Hindu Jews), and more. For a number of years, northern Californians have been using the term Jubus, in part because some of the most renowned Buddhist Americans of the twentieth and twenty-first centuries who have identified as Jews live in the Golden State.<sup>6</sup> Hinjus are somewhat less known than Jubus. (Christian Jews are a different category altogether—see below for more on this identity.) Many in these situations don’t see a contradiction between holding multiple identities, whether cultural, ethnic, or religious, at the same time. Over the years, some people who fall into this category have referred to themselves as “half Jews,” despite there being nothing in halachah supporting the idea that someone can be 50 percent of a Jew. Jewish law adjudicates that you are either Jewish or not. A large number of them don’t see themselves as half this and half that, but 100 percent both. But what about those communities who fully identify with a single cultural-religious identity that is linked to Jews? Where do they fall in this discussion?

## BOUNDARY CHARACTERISTICS

One way to better understand a community's dominant norm is to look at its margins. Although a group's fringe does not necessarily define its narrative or vice versa, it also does not exist only in terms of binary opposition. Some communities have multiple centers and margins simultaneously, which likewise inform one another. There is a deep relationship between a group's norm and its outliers. In defining what they are, communities commonly include a self-understanding of what they are not, implicitly and explicitly. Likewise, those on the margins, whether by choice or not, exist in a liminal space in relation to a community's dominant truth. Sometimes communities are quite candid—even rigidly so—about what they are not more than what they are. This is not a mere intellectual exercise. Definitions regarding social identity play a central role in shaping a people's status in society, which in turn effects how people interact with one another every day. For minorities, such as Jews, discussions regarding definitions of identity have had life and death consequences in a number of historical instances.

In an effort to deepen our understanding of twenty-first century Jewishness, including the seemingly porous nature of this community's boundaries, this chapter examines three "boundary characteristics," attributes found within particular groups linked to the mainstream Jewish community that distinguish them from it insofar as their Jewishness is either questioned, suspected, or even rejected outright. Through this endeavor we also further explore the question of whether or not there are any boundaries at all to being a Jew.

These three boundary traits are as follows: those claiming to be the authentic descendants of the biblical Israelites those who reject rabbinic authority and those whom others say are Jews although they themselves deny it. Each characteristic is embodied in at least two communities in existence today. In an effort to better illustrate each characteristic, for each accompanying group I will offer a brief historical background, including a description of the boundary community's dominant narrative and how it bumps up against that of the mainstream Jewish community; describe some of the scholarly opinions regarding the community's connection to normative Jews; and exploration of how the group's Jewishness is understood by the Israeli government. As the only nation-state that grants automatic citizenship to those they deem to be Jews, Israel is also the only country where Jews adjudicate as to the legal Jewishness of others, something that often has serious ramifications. This will help us better understand some of the reasons why these groups are connected to and shunned by the mainstream Jewish community. I also intend to shed light on ambiguities regarding social identity

generally and Jewish identity specifically, pointing to some of the ways in which Jewish identity is dependent on self-description as much as acceptance from nonmainstream Jews and non-Jews.

A final point before we begin. Each one of these communities has its own belief system, its own dominant narrative. Likewise, scholars have proposed various theories as to the origins and other details surrounding each group. My goal is not to pass judgment on the factual nature of any group’s particular theology. Similarly, I do not intend to weigh in on which scholars’ hypotheses are more probable than others. In framing things this way, I potentially run the risk of presenting distinct theories about these communities equitably, thereby creating a moral relativity that puts communal convictions on the same ground as judicious academic scholarship and substandard research. For those scholars for whom the stakes over these matters involve professional loyalties of the highest regard, this is no doubt problematic.

This chapter’s purpose is something else entirely. I am presenting boundary characteristics to shed light on whether or not there is a line in the sand between the definitions of Jews and non-Jews. Further, dominant truths are more important to my research than dominant facts. I am not making an argument for what constitutes the authoritative definition of a Jew. Rather I intend to illustrate how boundary characteristics, *de facto* and in some cases *de jure*, play a role in separating us from them, showing ways that Jews distinguish themselves from the 99.8 percent of the world that it is not Jewish.

## AUTHENTICITY—WHO ARE THE REAL ISRAELITES?

Claims of authenticity are a common component of communal identity construction. One way that people attempt to give their identity legitimacy is by laying out a familial connection, a so-called bloodline. For example, many in the contemporary Jewish community maintain that this group can trace itself some three millennia, all the way back to the biblical Israelites and Hebrews. A dominant Jewish narrative is that those referred to in the Torah as *b’nei yisrael* [the sons of Israel] are the ancestors of today’s Jews.<sup>7</sup> We do not know definitively when Israelites shifted into Jews, nor do we know for sure if specific Israelite tribes are the antecedents of twenty-first century Jews. In fact, Jews aren’t the only community that claim to be the contemporary progeny of the Israelite tribes of the ancient Middle East. Aside from Jews, groups such as Afghani Pathans, British Israelites, the Church of Latter Day Saints of Jesus Christ (also known as adherents of Mormonism), and Rastafaris are but some of those claiming to be the true descendants of the biblical Israelites. The Samaritans and the

African Hebrew Israelites of Jerusalem, both of whom live in Israel and Palestine, also make this assertion. Though none of these declarations can be proved one way or another, in declaring they are the real Israelites, Samaritans,<sup>8</sup> and African Hebrew Israelites of Jerusalem are simultaneously denying the authenticity, and even identity, of Jews, no small thing, in particular because they are doing so in the biblical land of Israel, the “homeland of the Jews.”

### AFRICAN HEBREW ISRAELITES OF JERUSALEM

Similar to Samaritans, African Hebrew Israelites of Jerusalem,<sup>9</sup> also known as Black Hebrews, claim to be the real descendants of the ancient biblical Israelites.<sup>10</sup> Recently, this group has claimed to be the descendants of Judeans rather than Israelites. But unlike Samaritans, who scholars trace back to at least the fifth century BCE Middle East, African Hebrew Israelites are linked to the mid-twentieth century United States. According to their tradition, in the early 1960s, a Chicago-based leader named Ben Carter, a charismatic individual steeped in Black Nationalism,<sup>11</sup> was visited by the angel Gabriel. Following his prophetic vision, in an effort to reconnect with the community’s biblical roots, Carter gathered together a group of African Americans to begin adopting ritual customs loosely similar to those observed in the normative Jewish community. Thereafter, Carter, who later changed his name to Ben Ammi Ben Israel, and a few hundred of his devotees moved to Liberia, fleeing contemporary Babylon (that is, the United States) for the Promised Land. In December 1969, after a few years in West Africa, they relocated to the state of Israel.<sup>12</sup>

It is not that Ben Ammi and the African Hebrew Israelites say that they, and they alone, are the authentic descendants of the biblical Israelites. Rather, their belief is that all African Americans fall into this category. And they are not alone in making this claim.<sup>13</sup> According to this tradition, following the destruction of the Second Temple (c. 70 CE) a group of Jews—who themselves were descendants of the biblical Israelites—fled to Africa. Some of them eventually made their way to the western part of the continent. Centuries later, the progeny of this group were kidnapped and forced to travel to North America as slaves.<sup>14</sup> Ben Ammi extends this conviction, contending that there are a number of communities in existence today that trace themselves back to the biblical Israelites, contemporary Jews among them.<sup>15</sup> Some who promote this doctrine add that “Caucasian Jews” first converted to Judaism in the eighth century CE, making black Jews—self-identified as African Hebrew Israelites to distinguish them from “white European Jews”—the only group that can trace their lineage directly back to the biblical Israelites.<sup>16</sup>

Initially arriving in Israel on three-month tourist visas, Ben Ammi and his followers settled in the region of Dimona, a town located in southern Israel. Currently there are about 2,000 African Hebrew Israelites living in the Village of Peace in Dimona, with communal members living in a few other Israeli cities as well. In addition, fifty or so African Hebrew Israelites reside in Ghana, where they run a number of businesses.<sup>17</sup> This community observes a set of rituals largely interpreted and authorized by Ben Ammi, some of which are based on laws described in the Hebrew Bible and the New Testament.<sup>18</sup> In minor ways, the foundation of their ritual practices are similar to those of other minority Jewish Israeli groups, such as Samaritans and Karaites, insofar as they only observe holidays described in the Hebrew Bible rather than those developed centuries later.<sup>19</sup> They also have unique practices, such as a strict vegan diet, holistic health care, and allowing men in their community to have more than one wife (though polygyny is illegal in Israel).<sup>20</sup> Like most, if not all, religious communities, they have had shifts in the components of their belief system over the last forty years.<sup>21</sup>

Unsurprisingly, they have never been accepted as Jews by the mainstream Jewish community in Israel or the United States. It is likely that their early stance regarding their exclusive Jewish authenticity didn't help in this process. When they first arrived in the Jewish state, African Hebrew Israelites attempted to become Israeli citizens under the Law of Return, something the government rejected outright. But they went further than claiming a Jewish identity, adding that Jewish Israelis are not legitimate descendants of the biblical Israelites. They said such things as, "The people of this land now are mostly European converts who adopted the ways of the ancient Israelites. There is no link between these people and the biblical Israelites, who were black."<sup>22</sup> Much of this rhetoric has been kept to a minimum since then.

For more than two decades their application for Israeli citizenship was denied. Finally, in 1990 they began a new strategy, to apply for permanent Israeli residency, a legal status not as strong as citizen but more stable than being a mere tourist.<sup>23</sup> In July 2003, their residency application was finally approved, though not under the Law of Return (the Israeli law granting citizenship to "Jews"). The reasons behind the government's change of heart are unclear. However, one speculation is that an event from January 17, 2002, created this opening, when the first Israeli-born member of the African Hebrew Israelites, Aharon Ben-Israel Elis, a 32-year-old musician, was killed along with five others by a Palestinian gunman.<sup>24</sup> In mourning Elis, Jewish Israeli leaders and lay people publicly championed the African Hebrew Israelite community, the first time such a public



outpouring of support had ever occurred. Among other notables who attended Elis's funeral were the mayor of Dimona, a member of the Israeli Parliament, and the two chief rabbis of Hadera. The chief Sephardi rabbi of Dimona also came, proclaiming, "You have just sealed one of the most difficult pacts with our Israeli society."<sup>25</sup> This sentiment was echoed by members of the African Hebrew Israelite community as well, including Elis's sister, Aviva,<sup>26</sup> and Ben Ammi himself.<sup>27</sup> During this time Dimona's mayor also publicly said, "It's time to grant the Black Hebrew community the full rights of the citizens of Israel."

Since then, a number of other things have taken place that reflect general acceptance of the group as Israelis, albeit not necessarily Jewish Israelis. In 2006, for example, the Israeli Ministry of Foreign Affairs began publicly posting information about the African Hebrew Israelite community on their website, depicting them in a positive light:

Today, [African Hebrew Israelite] community spokespersons are effective contributors to the national public relations effort, speaking to audiences on behalf of the State of Israel. . . . Presently, more than 100 of their youth are serving in the Israeli Defense Forces in regular units; they operate a vegan eatery in Tel Aviv; their musicians perform across Israel and around the world, touring the United States, Europe and Africa either solely with their own members or as a parts of other Israeli groups. They have created their own music genre which they call Songs of Deliverance producing CDs. In sports they have represented the nation at home and in Europe in track and field and national softball events, including the Maccabiah games. Their students have represented Israel in international academic competitions. Twice they have represented Israel in Eurovision, the international music competition.<sup>28</sup>

Two years later, Israeli President Shimon Peres visited the Village of Peace on the occasion of his eighty-fifth birthday.<sup>29</sup> Given the tumultuous experiences the community had in the 1970s, let alone their other residency issues that continued through the 1990s, the president's visit was incredibly significant.<sup>30</sup>

#### AUTHORITY—CAN YOU DENY RABBINIC AUTHORITY?

All communities have at least one authoritative body, an individual or group who has the power to make decisions on behalf of the collective. It is common for groups to split into subgroups over disagreements regarding decision-making. In the Jewish community, there have been numerous authorities for millennia. In fact, since the time of the Torah the Israelites have had multiple centers of power. As described in Numbers 16:1–40, for example, a man

named Korah rebelled against Moses, his first cousin. Throughout the prophets there are schisms within the Israelite community over authority, as when the northern Israelites reject King Solomon's son, Rehoboam, as their new king, choosing instead a man named Jeroboam (1 Kings 12).

This pattern continued for centuries thereafter, such as in the first century CE, when there were Jewish centers of authority in a handful of places in the Middle East, including Alexandria and Palestine.<sup>31</sup> Among the subgroups jockeying for power during this time were the Pharisees and Sadducees, the former most often associated with being the rabbis described in the Mishnah and Talmud, and the latter usually called the priests. The historical accuracy of these groups' identities aside,<sup>32</sup> these were but two of the many Jewish groups fighting for power within the Jewish community at that time.

In the modern and postmodern periods this pattern has continued. Perhaps the most important Jewish group that rejects rabbinic authority—insofar as they maintain that halachah is not obligatory and not because they reject the rabbinic canon of halachic opinion—has been the Reform movement. What began in nineteenth century Germany in the form of minor attempts to reshape prayers and rituals to be more “modern” or “Western” soon developed into a distinct Jewish denomination with its own synagogues and rabbinical schools in Europe and North America, offering a new approach to Jewish belief and practice.

One of their innovations is to no longer require Jews to accept rabbinic authority as binding. Though Reform doctrine advises that Jews observe halachah, to this day reform leaders do not argue that it is obligatory.<sup>33</sup> Despite the point of view of many within the Orthodox movement, the Jewishness of Reform Jews is widely accepted. Perhaps one reason this is the case is that more Jews affiliate with the Reform movement than any other. The Reform movement is simply too large a group to ignore or marginalize. But what about smaller groups identifying as Jews that don't fully accept rabbinic authority, such as Karaites and Messianic Jews? Why are these groups either suspect or rejected outright?

## KARAITES

In existence for centuries, this now almost-extinct sect of Jews is commonly described as surfacing in opposition to Jews who followed “the rabbis”—in Karaite parlance known as Rabbanites—whose traditions are primarily based in texts like the Mishnah and Talmud. Most contemporary Jews have never heard of Karaites; those who have usually assume they evaporated into history,

like other Jewish communities no longer around today. As in the case of the Samaritans, clear indications of their peak numbers have been lost to history. Elevated estimates are that today there are 50,000 Karaites worldwide,<sup>34</sup> most of whom are of Egyptian descent and live in Israel, making them a minority within a minority. At best they are .003 percent of Jews worldwide (.00067 percent of humanity).

Like Samaritans and, to some extent, African Hebrew Israelites, Karaites believe their understanding of Judaism is authoritative. According to one Karaite source, “Karaism is the original form of Judaism commanded by God to the Jewish people in the Torah . . . around since God gave His laws to the Jewish people.”<sup>35</sup> But Karaites don’t actually have a single tradition regarding their origins. Rather than dating themselves back to the biblical Hebrews, one of their theories links them to an unnamed sect of Jews who lived around 1 CE, a group for whom the Dead Sea Scrolls may have been their central sacred text. Other Karaite traditions connect them to the same era but without a tie to sacred texts found in the Qumran caves,<sup>36</sup> claiming instead that they are either the descendents of the Sadducees or emerged in reaction to the Pharisees and Sadducees.<sup>37</sup>

Contemporary scholars largely challenge these notions, arguing that the Karaite community began sometime between the eighth and tenth centuries in the area around today’s Iran and Iraq.<sup>38</sup> Some add that Karaites developed a narrative of their origins retroactively, professing an unbroken lineage between them and Jewish communities from centuries past in an effort to challenge other Jewish authorities and give themselves more authenticity. As to why they appeared when they did, some contend that the Karaites surfaced due to a confluence of a number of trends within the Jewish community, including the public censuring of a Jew named Anan ben David by eighth century Iraqi rabbinic authorities; in reaction, Anan developed a new faction of Jews.

Others say that Anan established this group after being passed over to become leader of the Babylonian Jewish community. There are those who dismiss these claims, arguing that it is highly unlikely that a new Jewish sect began solely because of Anan’s public humiliation.<sup>39</sup> Still others say that Karaism did not really take off until the ninth century, when a Persian-born Jew, Daniel al-Kumisi, expanded the group’s membership with a missionary’s zeal, dismissing Anan’s importance along the way.<sup>40</sup>

Origins aside, if twenty-first century Jews know anything about Karaites, they are likely aware that the primary contention with their Jewish adversaries was over communal authority. This has led to the widely held notion that

Karaite have had ongoing feuds with other Jewish groups for centuries, especially those they call Rabbanites. However, according to documents dating back to the eleventh through thirteenth centuries that were unearthed from the Cairo genizah, although there have been differences between Karaite and non-Karaite Jews in terms of juridical interpretations, there also have been a number of things the two groups have agreed upon.<sup>41</sup> It was not uncommon for Jews to leave a so-called Rabbanite synagogue and join a Karaite one or vice versa, pointing to a lack of strict boundaries demarcating where one community ended and the other began.

This said, there is also evidence to support the fact that it was not uncommon for there to be discord between Karaite and non-Karaite Jews. Sometimes these groups disagreed on fundamental components of ritual observance,<sup>42</sup> which usually led to the prohibition of Karaite/non-Karaite Jewish marriages.<sup>43</sup> For some Karaites, non-Karaite Jews were the other, and, of course, there are examples of the converse.<sup>44</sup> In short, there is evidence reflecting how Karaites worked together with non-Karaites—as members of the same Jewish community (for example, even as recently as the early part of twentieth century Egypt)<sup>45</sup>—and how they fought with one another, episodes that, as with the Samaritans, sometimes led to physical violence.<sup>46</sup>

One major distinction between normative Jews and Karaites is in their distinct definitions of a Jew (interestingly enough, something not focused upon in most scholarship on the Karaites to date). Whereas Orthodox and Conservative Jews define a Jew as someone birthed by a Jewish mother or converted to Judaism according to Jewish law, and Reform Jews widen this definition to include patrilineal descent, Karaite Jews have historically defined a Jew based on patrilineal descent alone, thereby excluding matrilineal descent.<sup>47</sup> (Karaite practices regarding a ritual conversion are also much less stringent than those observed by Orthodox or Conservative Jews.)<sup>48</sup> Even today, the chief rabbi of the Karaite community in Israel maintains that a child’s Jewish identity is based solely upon whether the father is Jewish.<sup>49</sup> Though some contend that patrilineal descent was the norm in defining a Jew in the period leading up to the destruction of the Second Temple, delineating a Jew via matrilineal descent has been the dominant position of non-Karaite Jews for centuries.

But identity also exists beyond the borders of a given community. Though it is critical for there to be intracommunal discussion regarding who is in and who is out, when considering the identity of historically marginalized and oft-times oppressed groups like Jews it is perhaps just as important to look at how non-Jews have weighed in on the issue of “who is a Jew.” This helps us

better understand the extent to which boundary characteristics play a role for and are defined by non-Jews. In eleventh century Palestine, for example, when the Crusaders reached Jerusalem they slaughtered Karaite and non-Karaite Jews alike,<sup>50</sup> which also happened in eleventh and twelfth century Byzantine-controlled Constantinople.<sup>51</sup>

During World War II, when one-third of the world's Jewish population was wiped out through genocide, paradoxically enough, non-Jews determined the authenticity of Karaites' Jewishness in ways that sometimes protected them. For example, when the Nazis began their systematic mass murder, Karaites were largely ignored. In places like German-controlled Crimea,<sup>52</sup> France, Poland, and Lithuania, the Nazis allowed Karaites to live because they were not perceived as part of the "Jewish race." In some of these situations, Nazi authorities even asked non-Karaite Jews to determine the Jewishness of the Karaites.<sup>53</sup> (The Nazis developed a similar policy with other Jewish communities, such as the so-called Mountain Jews of the Caucasus.) This said, Nazis and their collaborators, such as Vichy France, did not have consistent policies. At times they also murdered Karaites for being Jewish.<sup>54</sup>

Less than a decade later, in the 1950s, at the same time that the Egyptian government was persecuting Karaites for being Jews and the Israeli government was involving Karaites in espionage operations on behalf of the new Jewish-majority country,<sup>55</sup> the Israeli rabbinic authorities rejected Karaite Egyptians' requests to immigrate under the Law of Return.<sup>56</sup> Though this policy was sporadic and eventually the majority of Karaite Egyptians were granted Israeli citizenship, these episodes of intracommunal opposition reflect the tensions that preceded the twentieth century. To this day, Karaite and non-Karaite Jews in Israel continue to have independent communities, particularly in terms of decisions related to religious law and court adjudication (that is, they have different *battei din* [religious courts of law]). And though the Israeli government now accepts Karaites as Jews under the Law of Return (not a marginal factor given the advantages Jews have in the Jewish-majority state), at the same time they are unable to legally marry non-Karaite Jews,<sup>57</sup> thereby insuring a social separation. The situation for Karaite Americans is quite different.<sup>58</sup>

## MESSIANIC JEWS

Without question, for normative Jews the Messianic Jewish community is the most controversial of the communities discussed in this essay. For starters, perhaps the only thing that mainstream Jews can agree on with regard to Jewish identity and how to answer the question "who is a Jew"—regardless of

their affiliation (or lack thereof)—is that Messianic Jews are not *real* Jews.<sup>59</sup> Although Orthodox, Conservative, Reform, Renewal, and Reconstructionist Jews disagree on many aspects of Jewish belief and practice, both formally and informally these movements unanimously maintain that Messianic Jews should not be accepted into the mainstream Jewish community. Some Jews call them heretics, apostates, or even members of a cult, whereas others simply ignore their existence altogether. And unlike the policy with regard to other controversial groups, the Jewish institutional world has established a number of organizations with the sole intent to combat Messianic Jewish outreach toward mainstream Jews.<sup>60</sup>

But *de jure*, the issue of Messianic Jewish rejection of rabbinic authority is a bit more complicated. Take, for example, the idea found in mainstream Jewish tradition regarding a belief in the messiah. During the process of conducting research on this group, one ultra-Orthodox rabbi I approached did not understand the term Messianic Jew. “What’s a Messianic Jew?” he asked. “Isn’t it already part of the Jewish tradition to believe in the coming of the Messiah?”<sup>61</sup> This was an especially poignant question given that it was coming from a rabbi who is part of the Lubavitch community of chasidic Jews, more commonly known by the name Chabad. Aside from the fact that over the last half-century members of the Lubavitch community have vocalized the belief that their leader, Menachem Mendel Schneerson, was the messiah, belief in the coming of a messiah is a doctrine that can be found in Jewish tradition for at least two millennia. In fact, since the time of Jesus there have been a number of individuals that Jews have believed were the messiah.<sup>62</sup>

But the label Messianic Jews does not refer to normative Jews who believe in the idea of the messiah. Rather, Messianic Jews are individuals who identify as Jews and believe that Jesus<sup>63</sup> is the Messiah (that is, he came and will return). Mainstream Jews do not accept Jesus as the Messiah. Some of the reasons the majority of Jews reject Jesus include rabbinic arguments, such as: (a) Jesus did not fulfill the messianic prophecies found in the Prophets; (b) Jesus did not embody the personal qualifications of the messiah as described in the Talmud; (c) Biblical verses discussing the messiah that are said to refer to Jesus are misinterpretations; and (d) Jewish belief is based on national revelation rather than revelation to a few individuals only.<sup>64</sup> Arguably, a belief in Jesus is the normative Jewish community’s red line, the virtual border that separates Jews from non-Jews, “us” versus “them.” In this sense, Jews who accept Jesus as the Messiah are maintaining a position contrary to rabbinic Judaism, as from the Talmud until today rabbinic authorities have rejected Jesus.

A number of groups fall under the umbrella of Messianic Jews, including, but not limited to, Hebrew Christians, Jewish Christians, Messianic Christians, and Jews for Jesus, perhaps the most well known within this tent.<sup>65</sup> Some Messianic Jews identify as both Jews and Christians, whereas others do not.<sup>66</sup> They generally observe Jewish rituals, simultaneously maintaining that they are following the practices of Jesus's disciples. For instance, it is common that they call their communal leaders "rabbi" and places of worship "synagogues"; they have an ark containing a Torah scroll in their main prayer space; many of their congregants wear *kippot* [head coverings] and *tallitot* [religious prayer shawls]; they attach *mezuzot* [small rectangular boxes containing parchments of biblical verses] to the doorways of their synagogues; six pointed stars are commonly found in their prayer spaces; and they do not celebrate Christian holidays such as Easter or Christmas. All of these rituals are also the norm within Jewish communities. But in contrast to normative Jews, Messianic Jews accept the Christian Bible in addition to the Hebrew Bible, and most Messianic Jewish prayer services include traditional Hebrew liturgy with the important difference of referring to Jesus, or *Yeshua* (his Hebrew name), as God.<sup>67</sup>

Estimates regarding their worldwide population run the gamut. Some maintain that the two countries with most of the world's practitioners, the United States and Israel, have close to 200,000 and 6,000-15,000 devotees, respectively.<sup>68</sup> (Estimates for the number of worldwide Messianic Jewish congregations also vary. Some say there are 73,<sup>69</sup> others 142.<sup>70</sup>) One of the problems in delineating precise numbers comes back to our original question: how do we define the term Jew? Because Messianic Jews contend they are Jews, many within their community do not make a distinction between themselves and normative Jews. As a result, the process of solidifying such statistics becomes more difficult.<sup>71</sup>

As for the movement's origins, their devotees commonly date their community back to the time of Jesus, contending that their practices are the true, pure, and original form of Christian Judaism. Some add that their movement was marginalized during the first few generations after Jesus was crucified because of increased tensions between Jews who believed in Jesus, Jews who did not, and the larger non-Jewish community (more specifically, the larger non-Jewish Middle Eastern Roman world), tensions that worsened after the destruction of the Second Temple.<sup>72</sup>

Though some scholars argue that the modern movement of Messianic Judaism emerged in the 1800s,<sup>73</sup> most date the Messianic Jewish movement to twentieth century America, often describing them in this way: "Messianic Judaism is a Protestant movement that emerged in the last half of the twenti-

eth century among believers who were ethnically Jewish but had adopted an Evangelical Christian faith. . . . By the 1960s, a new effort to create a culturally Jewish Protestant Christianity [had] emerged."<sup>74</sup> (Jews for Jesus, for example, began in the early 1970s.<sup>75</sup>) Some point to Israel's military success in the 1967 war as a watershed moment in the rise of Messianic Jewry, an event some members of their community interpreted as a sign that the redemption of the biblical land of Israel was at hand.<sup>76</sup>

As for how they are understood by the Israeli government, in 1989 the Israeli Supreme Court definitively rejected citizenship for Messianic Jews applying under the Law of Return. In their 100-page brief, the high court argued that the belief in Jesus as the Messiah is the definitive separation between a Christian and a Jew. They added that this ruling applies to those who are born Jewish according to halachah yet believe in Jesus' messiahship.<sup>77</sup> Interestingly, most Jewish Israelis have disagreed with the high court's position as well as their definition of a Jew.<sup>78</sup>

Perhaps the two main reasons normative Jews are adamant in their rejection of Messianic Jews are that they are known for missionizing toward mainstream Jews and Messianic Jewish doctrine is linked for many, if not most, Jews to Christianity, historically a religious tradition that has had a precarious relationship with Jews. There is no doubt that the underlying dominant narrative among Jews regarding historical proselytization toward and persecution of Jews by Christians plays a role in this rejection.<sup>79</sup> Adding to Messianic Jews' challenges is the fact that they are also commonly rejected by normative Christians, primarily because they identify as Jews. Whereas Jews label them Christians, Christians label them Jews.

#### OUTSIDERS LOOKING IN—WE ARE NOT JEWS (NO MATTER WHAT YOU THINK)!

In his renowned treatise, *Anti-Semite and Jew*, Jean-Paul Sartre famously wrote that "the *Jew is one* whom *other* men consider *a Jew*: that is the simple truth from which we must start."<sup>80</sup> Although Sartre's thesis has its shortcomings, those outside a community play a role in a community's identity. Identity is not limited to insiders alone. For instance, Jews are not the only ones who have the power to answer the question of who is a Jew. Non-Jews also have this power, especially given the minute population of Jews worldwide, something that has sometimes had life and death consequences. In fact, if a dominant group deems a subordinate people a particular identity, such as the case of Nazis and Karaites during World War II or West Bank Palestinians and Samar-



itans, where the former perceive the latter to be Jews, it can often be difficult, if not altogether impossible, to dissuade dominant group members otherwise.<sup>81</sup> This holds true even if the subordinate group adamantly denies that they are Jewish, such as with West Bank Samaritans. But unlike the Samaritans, there are also cases of communities having clear connections to the Jewish collective, but claiming otherwise, such as the Kabbalah Centre.

## THE KABBALAH CENTRE

In contrast to the Karaites, Samaritans, and African Hebrew Israelites, members of the Kabbalah Centre—publicly, at least—profess not to have a connection to the Israelite or Jewish communities. In fact, their leaders and some of their most famous devotees deny even the weakest of relationships between the Centre and Judaism. Similarly, members of the normative Jewish community rarely, if ever, claim the Centre to be part of the Jewish collective; this explicit contempt is more a reflection of their disdain for the Centre than anything else. Mainstream Jews even charge the Centre with manipulating authentic Jewish expressions in order to profit financially. Some label the Centre’s practices a form of “deception”<sup>82</sup> or describe their practices using such pejoratives as “charlatanism,” “superficiality,” “commercialism,” and even “brainwashing.”<sup>83</sup> Part of this aversion is due to the fact that the Kabbalah Centre is one of the largest organizations in the world promoting Jewish mystical practices.

There are a number of obvious linkages between the Centre and the Jewish community. For starters, the Centre’s core sacred text, the *Zohar*, composed by a number of Jews, including the thirteenth century Córdoba Jew Moshe de Leon, is central to the Jewish mystical tradition; the Centre’s founder, his wife, and two of his sons all identify as Orthodox Jews; and many of the Kabbalah Centre’s communal rituals have been practiced in the Jewish community for centuries, such as the observance of Shabbat.<sup>84</sup>

First established as the National Institute for Research in Kabbalah, the Kabbalah Centre was founded by Rabbi Philip Berg in 1965. Born Shraga Feival Gruberger, Berg<sup>85</sup> studied Jewish mysticism with a disciple of Yehudah Ashlag, a rabbi and kabbalist who spent most of his life trying to popularize the *Zohar* among Jews living in Palestine and Israel in the 1940s and 1950s.<sup>86</sup> Like his teachers before him, Berg received rabbinic ordination from an Orthodox seminary. (Two of his sons, Michael and Yehuda, who play central roles in the Centre’s leadership, also received Orthodox rabbinic ordination.) But Berg modified Ashlag’s teachings,<sup>87</sup> with his most influential innovation being his decision to bring the message of Kabbalah to non-Jews.

From the 1980s onward, he and his wife, Karen, established Kabbalah Centres across North America, simultaneously training their students to establish and direct the new centres. By the 1990s, they decided to make the Los Angeles Centre their world headquarters.<sup>88</sup> During this same period, Berg wrote numerous books on Kabbalah, gearing them toward a wider audience than the Jewish community alone. In this effort, he began removing the terms “Jew” and “Judaism” altogether from his writings, unfactually suggesting that kabbalistic texts such as the *Zohar* have historically existed independent of Jewish tradition. From that time through 2010 or so, when he stopped teaching publicly on a regular basis, Berg presented the *Zohar* as a universal text without any connection to Judaism, despite historical evidence to the contrary.

Interestingly, Berg’s separation of Judaism from the Kabbalah Centre actually began as early as the 1970s, albeit in much subtler ways. During this time he began presenting specific aspects of Judaism as spiritual practices and rituals that were for people of all backgrounds. For example, he taught that the mitzvot [biblical directives], understood within halachic circles as obligatory, were actually suggestions. Though this teaching is found in marginal Kabbalistic texts predating the twentieth century,<sup>89</sup> it also breaks from centuries of normative Jewish belief and practice. This led Orthodox rabbis in North America and Israel to publicly censure and repudiate Berg, his teachings, and the Kabbalah Centres.<sup>90</sup>

Berg did not stop with merely separating the *Zohar* from its historical connection to the Jewish community. Over time, he presented Kabbalah Centre rituals such as traditional Jewish prayer services, in particular those coinciding with Jewish holidays—whether observed once a year, like Rosh Hashanah and Yom Kippur, or every week, like Shabbat—as times for meditation, as if the syncing of these particular prayer services with the Jewish religious calendar was coincidental.<sup>91</sup> Needless to say, this has only given his detractors more fodder.

At first glance, it might seem odd that the Kabbalah Centre has claimed there are no connections between itself and the Jewish community. American music legend Madonna, for example, perhaps the most well-known Centre devotee, has integrated Jewish and kabbalistic images into her videos and has had Hebrew letters tattooed on her body such as the biblical name Esther, described in an important text called the Scroll of Esther.<sup>92</sup> Yet in her capacity as an outspoken supporter and devotee of the Centre, she has explicitly professed there is no link between Kabbalah Centre practices and the Jewish tradition. In one instance, when asked by an interviewer if studying Kabbalah was a step on her way to becoming Jewish, she responded:

Oh, no, please. Don't make me sick! I'm never gonna be Jewish, and I hate that phrase. And I have not converted to Judaism and I am not a member of any religion. . . . [Kabbalah]'s not religion. It is, you know, it's a belief system that has been around, a philosophy or body of wisdom that has been around for thousands of years, and it pre-dates religion. And in fact most, a lot of religious beliefs get their ideas from the Kabbalah. . . . It's actually quite fascinating and amazing to realize how many people were actually studying Kabbalah over the last thousand years, or the last couple of thousand years.<sup>93</sup>

Despite these comments, according to Karen Berg, “[Madonna] keeps a kosher home, she observes Shabbat, she circumcised her son and had her husband circumcised.”<sup>94</sup> What may seem like an obvious case of cognitive dissonance to those outside the Centre works for Madonna and other Kabbalah Centre devotees.

For the Centre's instructors, there is also a clear separation between what they teach and its relation to Judaism. They emphasize that it was not Jews or Jewish mystics who wrote kabbalistic texts like the *Zohar*, but rather “kabbalists,” implying that these mystics were not Jewish. Centre teachers also say that Judaism is a false construct that has been manipulated over the course of centuries, a “calcified or shallow religious belief and observance” that the Centre leaders “believe wholeheartedly was also shared by [previous generations of] kabbalists.” The Centre's dominant narrative scorns Jewish ethnicity. It is seen as a type of false pride in terms of ownership over kabbalistic texts and Jewish leaders who have historically attempted to suppress the dissemination of Jewish mystical thought.<sup>95</sup>

In this sense, the Centre leadership has, to some degree, redefined a number of ideas and terms, including the signifiers Jew and Judaism. At the same time, they maintain a distinction between Jews and non-Jews in Centre practices, however minor. For example, there are a number of rituals conducted during Jewish prayer services that, according to Jewish law, can be carried out only by Jews, such as saying the blessings before and after one reads from the Torah; the Centre follows this tradition. At the same time, they permit anyone to join the communal service itself, regardless of whether they are Jewish or not.<sup>96</sup>

Paradoxically, despite the Centre's disassociation from many aspects of traditional Judaism and Jewish ethnicity, many of the Kabbalah Centre's devotees are, in fact, Jews.<sup>97</sup> Karen Berg has even said that the Centre has been quite successful at re-engaging Jews with the Jewish tradition: “The people who come in are Jewish. 90-99 percent are from backgrounds where they have nothing, they never learned anything Jewish, they were so turned off. . . . Now

they marry Jewish, observe Shabbat, the whole works.”<sup>98</sup> Strangely, although the Centre claims their practices have no connection to Judaism, statements like these imply that one of their goals is for their Jewish devotees to return to the practice of traditional Jewish rituals (as they understand them to be observed), a variant on the phenomenon of *ba’alei teshuvah* [understood by some to mean born-again Jews].

## CONCLUSION—WHO IS A JEW AND WHO IS NOT?

There are countless responses to the question, “Who is a Jew?” from those inside and outside of the Jewish community. This essay looks at three boundary characteristics, traits found among communities linked to normative Jews in some capacity. The first of these characteristics, those who identify as Israelites, is found among Samaritans and African Hebrew Israelites of Jerusalem. Though African Hebrew Israelites have, at times, claimed to be Jews (for example, repeatedly applying for Israeli citizenship under the Law of Return), both of these communities maintain that they are the authentic Israelites. Samaritans continue to make this assertion today, whereas African Hebrew Israelites have been much less public in making such proclamations over the past decade, especially since the death of a member of their community, Aharon Ben-Israel Elis, and their subsequent permanent residency status in the Jewish state.

A fascinating caveat to this category is that it seems one reason the latter group was accepted as Israeli (though not Jewish) was that a member of their community was killed in an action overtly linked to the Israeli-Palestinian conflict. Perhaps only in death was this group finally embraced by the Jewish state. Or perhaps Jews in Israel and elsewhere do not seem to be threatened by the claims of African Hebrew Israelites and Samaritans because they both have an infinitesimal population and because the latter group prohibits out-marriage, making them, by some accounts, the most inbred community in the world.<sup>99</sup>

The second boundary characteristic, those who identify as Jews but reject rabbinic authority, is found among Karaites and Messianic Jews. Maybe because there are so few Karaites left, the former group is not particularly controversial. But for halachically observant Jews, especially those living in Israel, where the largest population of Karaites reside, their law prohibits them from marrying anyone in this nonmainstream Jewish sect. For non-Karaite Jews, especially Israeli citizens, this isn’t a problem in terms of communal continuity. But for Karaites, because of their dwindling numbers, this has serious potential health repercussions,<sup>100</sup> also moving them toward potential extinction.

Messianic Jews, on the other hand, continue to raise ire among normative Jews, Orthodox or otherwise. This is due in part to their missionary efforts, as they engage in regular attempts to bring Jews who do not believe in Jesus into their community. Some Jewish leaders say that this negative communal stance is connected to the Messianic Jewish belief in a messiah. Yet virtually no normative Jews publically opposed the Lubavitch community for believing their former leader, Menachem Mendel Schneerson, was the messiah. And most normative Jewish communities include prayers about the messiah (or messianic age). As such, the core point of contention seems to be not that Messianic Jews profess just anyone to be the messiah, but claim that Jesus is the Messiah. Perhaps this position is the boundary separating Jews from the largest religious community in the world, Christians. Maybe this is the line in the sand demarcating what is Jewish from what is not.

As for those born into the normative Jewish community who later join a Messianic Jewish community—by some accounts, a sizeable subgroup among Messianic Jews<sup>101</sup>—the normative Jewish community commonly tries to bring these individuals back into mainstream Judaism. In Israel though, the Supreme Court has adjudicated that such individuals are, legally speaking, non-Jews, despite numerous halachic opinions otherwise. Nonetheless, it is clear that many Israeli Jews consider them Jews regardless.

The third boundary characteristic is those others identify as Jews, despite the fact that they don't claim this identity. Two groups fall into this category, Samaritans and Kabbalah Centre devotees. The former group may be the only community in the world that is called Jewish despite their own objections and historical data to the contrary. Given the politics of identity in terms of the Israeli-Palestinian conflict, it may seem counterintuitive that West Bank Palestinians live in coexistence with a group perceived to be Jews. Regardless, Samaritans reject the term Jew, giving Jews no reason to challenge Samaritans as to their Jewishness.

As for Kabbalah Centre devotees, some normative Jews have expressed dismay regarding the Centre's leaders' claim that the community is not linked to the Jewish community in any way. But in general, despite the Centre's explicit distancing from Jews and Judaism, normative Jews do not get overly upset with the Kabbalah Centre. Perhaps this is because the problem the Jewish institutional world has with them lies not in their being perceived as non-Jews calling themselves Jews, but rather Jews calling themselves non-Jews. Or perhaps it is due to the fact that because of the Centre's outreach efforts, more unaffiliated Jews are coming back into the Jewish fold (that is, insofar

as the Centre's leaders are Orthodox rabbis, the community's main text is a definitive Jewish book), albeit in a roundabout way.

Looking at all three of these characteristics helps illuminate potential boundaries between Jews and non-Jews in the twenty-first century. Although all Jewish identity is a construct, the rubber meets the road when groups with these boundary characteristics interact with normative Jews, creating opportunities for the issue of authenticity to emerge again and again. Ultimately, it is likely that the way one answers the question "Who is a Jew?" speaks more to one's affiliation within the Jewish community than anything else. But because identity is so central to human existence, it is also likely that conflicts between groups with these boundary traits and the normative Jewish world will continue.<sup>102</sup> As for the future, it is not uncommon for today's fringe to become tomorrow's center. Only time will tell.

## NOTES

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<sup>1</sup> See Mourad El-Kodsi, *The Karaite Jews of Egypt: 1882–1986* (2nd ed.; New York: self-published, 2007), 156–60, 366–69, 375–81; Daniel Frank, "Karaite Prayer and Liturgy," in *Karaite Judaism: A Guide to its History and Literary Sources* (ed. Meira Polliack; Boston: Brill, 2003), 559–89; *An Introduction to Karaite Judaism: History, Theology, Practice, and Custom* (Troy: The al-Qirqisani Center for the Promotion of Karaite Studies, 2003), 128–43.

<sup>2</sup> Sidney B. Hoenig, ed., *Jewish Identity: Modern Responsa and Opinions on the Registration of Children of Mixed Marriages* (New York: Feldheim Publishers, 1970), 11–15.

<sup>3</sup> Linda Nochlin and Tamar Garb, eds., *The Jew in the Text: Modernity and the Construction of Identity* (London: Thames and Hudson, 1995).

<sup>4</sup> Laurence J. Silberstein and Robert Cohn, eds., *The Other in Jewish Thought and History: Constructions of Jewish Culture and Identity* (New York: New York University Press, 1994).

<sup>5</sup> See "Defining and Calculating Intermarriage," *The Jewish Federations of North America*, [www.jewishfederations.org/page.aspx?id=46252](http://www.jewishfederations.org/page.aspx?id=46252).

<sup>6</sup> People like Leonard Cohen, Allen Ginsberg, and Adam Yauch, to name a few.

<sup>7</sup> See Shaye J. D. Cohen, *The Beginnings of Jewishness: Boundaries, Varieties, and Uncertainties* (Berkeley: University of California Press, 2001).

<sup>8</sup> The original version of this paper included an entire section on the Samaritans, perhaps the only group in the world said to be Jews (by West Bank Palestinians) despite

their own claims otherwise. As this edited volume includes other essays on Samaritans, it was decided that this section would be removed.

<sup>9</sup> Note that the African Hebrew Israelites described herein are distinct from and not part of those American-based groups who also identify as Black Hebrews (e.g., the Black Hebrew Nation of Yahweh). Aside from the former group's distinguishing itself by immigrating to the biblical Land of Israel (and no longer using the label Black Hebrews), the latter groups are often overtly antiwhite and anti-Zionist, as is evident in their public proclamations: Henry Goldschmidt, *American Ethnologist* 33:3 (2006): 378–96; A. Paul Hare, ed., *The Hebrew Israelite Community* (New York: University Press of America, 1998), 1; John L. Jackson, Jr., "All Yah's Children: Emigrationism, Afrocentrism, and the Place of Israel in Africa," *Civilisations* 58:1 (2009): 101–07; Martina Konighöfer, *The New Ship of Zion: Dynamic Diaspora Dimensions of the African Hebrew Israelites of Jerusalem* (Berlin: Lit Verlag GmbH, 2008), 107–18. In fact, the African Hebrew Israelites have used various terms to describe themselves. According to one scholar, Ben Ammi does not address his followers as African Hebrew Israelites or another name of this type, but more commonly refers to them as the Children of Israel; in everyday parlance they are referred to in Israel as *hakushim haivrim*, a Hebrew term that best translates into English as Black Hebrews (Konighöfer, *The New Ship of Zion*, 76–77).

<sup>10</sup> Recently, this group has claimed to be the descendants of Judeans rather than Israelites.

<sup>11</sup> See Ben Ammi, *God, the Black Man, and Truth* (Takoma Park: Communicators Press, 2008).

<sup>12</sup> Hare, *The Hebrew Israelite Community*, 2; Lounds, *Israel's Black Hebrews*, 2. See also various introductions to Ben Ammi's books, such as Ben Ammi, *Everlasting Life: From Thought to Reality* (Washington, DC: Communicators Press, 1994), vi–ix; Ben Ammi, *God and the Law of Relativity* (Takoma Park: Communicators Press, 2008), 1–3; Ben Ammi, *Yeshua the Hebrew Messiah or Jesus the Christian Christ* (Washington, DC: Communicators Press, 1996), 4–6.

<sup>13</sup> Rather than rooting this claim in academic scholarship, the community utilizes the Hebrew Bible as their primary source of evidence (Fran Markowitz, "Israel as Africa, Africa as Israel: 'Divine Geography' in the Personal Narratives and Community Identity of the Black Hebrew Israelites," *The Hebrew Israelites*, 42–44). It is important to note that some African American Jewish communities, most of which claim to have returned to Judaism over the last century, assert a similar connection to the biblical Israelites, arguing that in converting via halachic ritual immersion they are "reverting" to their original roots more than "converting" to a new community. Len Lyons, "Black Jews Gain Wider Acceptance," *The Jewish Forward* (July 23, 2012), <http://forward.com/articles/159587/black-jews-gain-wider-acceptance/?p=all>.

<sup>14</sup> One scholar describes this tradition as a hybrid of the so-called Jewish and African diasporas (Konighöfer, *The New Ship of Zion*, 11–27). See also Ben Ammi, *God, the Black Man, and Truth*; Hare, *The Hebrew Israelite Community*, 1–3; Ella J. Hughley, *The Truth about Black Biblical Hebrew-Israelites (Jews): The World's Best-Kept Secret!* (Springfield: Hughley Pubproductions, 1982); Jesse Nemerofsky, "The Black Hebrews," *Society* 32:1 (1994): 72–77.

<sup>15</sup> Ben Ammi, *God, the Black Man, and Truth*; Ben Ammi, *Yeshua the Hebrew Messiah or Jesus the Christian Christ*, 27–35. See also Lounds, *Israel's Black Hebrews*, 33–41.

<sup>16</sup> Yosef A. A. ben-Jochannan, *We the Black Jews, Volumes I and II* (Baltimore: Black Classic Press, 1993); Hughley, *The Truth about Black Biblical Hebrew-Israelites (Jews)*, 10, 35, 45. Some scholars note that the African Hebrew Israelites merely replaced the Eurocentric perspective of the dominant Jewish narrative with an Africancentric worldview (Jackson, "All Yah's Children," 93–112).

<sup>17</sup> Konighöfer, *The New Ship of Zion*, 56–64.

<sup>18</sup> See, for example, Ben Ammi, *God and the Law of Relativity*; Ben Ammi, *God, the Black Man, and Truth*; Ben Ammi, *The Messiah and the End of this World* (Washington, DC: Communicators Press, 1991).

<sup>19</sup> According to one analysis, aside from the Sabbath, the African Hebrew Israelites do not follow any of the holidays described in the Hebrew Bible (Lounds, *Israel's Black Hebrews*, 61).

<sup>20</sup> Hare, *The Hebrew Israelite Community*, 2; Israel Ministry of Foreign Affairs, "The Hebrew Israelite Community"; Konighöfer, *The New Ship of Zion*, 11–12; Lounds, "Hebrew Israelites/Black Jews," 6; Lounds, *Israel's Black Hebrews*, 58–68. For a detailed description of their rituals see Hare, *The Hebrew Israelite Community*; Konighöfer, *The New Ship of Zion*.

<sup>21</sup> For example, though this has not always been the case, some within the community currently refer to Ben Ammi as the "Messianic Leader of the Kingdom of God" (Ben Ammi, *The Messiah and the End of this World*; Ben Ammi, *Yeshua the Hebrew Messiah or Jesus the Christian Christ*).

<sup>22</sup> *The Jerusalem Post* (January 9, 1973), qtd. in Lounds, "Hebrew Israelites/Black Jews," 8.

<sup>23</sup> "Legal status came about in May 1990 with first B/1 visas, followed by temporary residency a year later. That status was extended until August 2003 when the Ministry of Interior granted them permanent residency" (Israel Ministry of Foreign Affairs, "The Hebrew Israelite Community," <http://www.mfa.gov.il/mfa/facts%20about%20israel/people/the%20black%20hebrews>).

<sup>24</sup> Another potential reason why the African Hebrew Israelites finally received permanent Israeli residency is that the minister of the interior at the time, Avraham Poraz, had a political inclination more suitable to approving this request than any of his predecessors (Haim Shadmi, "Poraz to Grant Black Hebrews Permanent Residence," *Ha'aretz* (July 28, 2003), <http://www.haaretz.com/print-edition/news/poraz-to-grant-black-hebrews-permanent-residence-1.95492>). Poraz was a member of the Shinui political party, which was more liberal in its position on naturalization and citizenship than the party whose representative was the minister of interior previously. I'd like to thank Netanel Fisher for suggesting this theory to me (personal conversation, October 28, 2012). See also Curtis Lawrence, "Finding a Home in the Promised Land," *Chicago Sun-Times* (August 21, 2003). On another note, because of the central role that Jewish-Palestinian relations play in Israeli and Palestinian societies it is worth noting the Palestinian identity of the gunman who killed Elis, opening fire at a crowd attending a Bat Mitzvah celebration in the northern Israeli town of Hadera.

<sup>25</sup> Stephen Franklin, "Death Bridges Gap for Black Hebrews" *Chicago Tribune* (January 21, 2002), [http://articles.chicagotribune.com/2002-01-21/news/0201210160\\_1\\_hebrews-palestinian-gunman-bat-mitzvah](http://articles.chicagotribune.com/2002-01-21/news/0201210160_1_hebrews-palestinian-gunman-bat-mitzvah).



<sup>26</sup> In her own words, “My brother’s death shows that we share the tragedy of facing terror with the Israelis” (Uri Dan, “Bat Mitzvah Terror Touches Ex-U.S. Black Hebrews,” *The New York Post* (January 20, 2002).

<sup>27</sup> Lawrence, “Finding a Home in the Promised Land,” 6.

<sup>28</sup> Israel Ministry of Foreign Affairs, “The Hebrew Israelite Community.” Contrary to this government statement, one scholar maintains that it is illegal for members of the African Hebrew Israelite community to serve in the Israeli Defense Forces, though they are permitted to perform National Service (Konighöfer, *The New Ship of Zion*, 119). Another says that 2006 was the first time an African Hebrew Israelite was inducted into the IDF (Jackson, “All Yah’s Children,” 107).

<sup>29</sup> Andrew Esensten, “Once Reviled, Black Hebrews Now Fêted,” *The Daily Jewish Forward* (March 18, 2009), <http://forward.com/articles/104067/>.

<sup>30</sup> Shaleak Ben-Yehuda, *Black Hebrew Israelites: From America to the Promised Land* (New York: Vantage Press, 1975); I. J. Gerber, *The Heritage Seekers: American Blacks in Search of Jewish Identity* (Middle Village: Jonathan David Publishers, 1977); Hare, *The Hebrew Israelite Community*, 1–3; Markowitz, “Israel as Africa, Africa As Israel,” 46–59; Robert G. Weisbord, *Judaism 24:1* (1975): 23–38, <http://www.shomronim.com>.

<sup>31</sup> Michael Fishbane, *Judaism: Revelation and Traditions* (San Francisco: HarperSan Francisco, 1987), 4, 30–37.

<sup>32</sup> See, for example, Daniel Boyarin, *Border Lines: The Partition of Judaeo-Christianity* (Philadelphia: University of Pennsylvania Press, 2003); Shaye D. Cohen, *From the Maccabees to the Mishnah* (2nd ed.; Louisville: Westminster John Knox Press, 2006); Shaye D. Cohen, “The Significance of Yavneh: Pharisees, Rabbis and the End of Jewish Sectarianism,” *Hebrew Union College Annual* 55 (1984): 27–53.

<sup>33</sup> Eugene Borowitz, *Reform Judaism Today* (2nd ed.; New York: Behrman House, 1995); Mark Washofsky, *Jewish Living: A Guide to Contemporary Reform Practice* (New York: UAHC Press), 2000; Mark Washofsky, “Reform Halakhic Texts: Reform Judaism is More Halakhic than You Think,” *MyJewishLearning*, [www.myjewishlearning.com/texts/Rabbinics/Halakhah/Modern/Reform.shtml](http://www.myjewishlearning.com/texts/Rabbinics/Halakhah/Modern/Reform.shtml).

<sup>34</sup> *An Introduction to Karaite Judaism*, 39–43. This figure was also relayed to me by Abraham Massuda, president of the Board of Directors of the Karaite Jews of America (personal conversation, November 15, 2011). Others estimate that in Israel alone the number of Karaites ranges from 15,000 to 30,000. Though people agree that there are more Karaites in Israel than any other country, there are ongoing disputes over the Israeli population of Karaites because the official government census doesn’t list Karaites as a distinct category and the community abides by an ancient Jewish legal prohibition on conducting direct censuses. See Joel Beinin, *Dispersion of Egyptian Jewry: Culture, Politics, and the Formation of a Modern Diaspora* (Berkeley: University of California Press, 1998), 182. In the preface to one comprehensive guide of scholarship on the Karaites, the author estimates that there are 20,000 Karaites worldwide (Polliack, Preface to Polliack, *Karaite Judaism*, xvii). See also Beinin, *Dispersion of Egyptian Jewry*, endnote on page 298: “The lower figure [of 15,000] is that of Nathan Schur, *History of the Karaites* (Frankfurt am Main: Peter Lang, 1992), 142. The higher figure [of 30,000] is the one usually given by Karaite spokespersons. Schur’s work is informed by traditional anti-Karaite biases and is not particularly perceptive or reliable.”

<sup>35</sup> Lichaa, Gordon, and Rekhavi, *As It Is Written*, 7–8. This tradition is echoed in most texts written about the Karaite community by Karaites (see *An Introduction to Karaite Judaism*; El-Kodsi, *The Karaite Jews of Egypt*, 1–3).

<sup>36</sup> Some link Karaites to the Saducees. The latter group, like the Karaites, disagreed with the Pharisees regarding rabbinic authority (Lichaa, Gordon, and Rekhavi, *As It Is Written*, 9). Others claim that the Karaites are descendants of a Jewish sect from around 1 CE that is different from the Pharisees or Saducees. See Daniel J. Lasker, "The Dead Sea Scrolls in the Historiography and Self-Image of Contemporary Karaites," *Dead Sea Discoveries* 9:3 (2002): 281–94, especially 285–86. In Lasker's article, he also notes that there are variations within the worldwide Karaite community regarding their lineage, distinctions that can largely be attributed to three Karaite communities: the Karaites of Israel, the Karaites of Islam, and the Karaites of Christendom. Nineteenth century academics, in particular Julius Furst, played a role in perpetuating some of these Karaite traditions (Roshwald, "Marginal Jewish Sects in Israel (I)," 223).

<sup>37</sup> Yoram Erder, "The Karaites and the Second Temple Sects" in Polliack, *Karaite Judaism*, 119–43; Revel, *The Karaite Halakah and Its Relation to Sadducean, Samaritan, and Philonian Halakah*, 6–8.

<sup>38</sup> Many contemporary scholars note that some of the ideas put forth by Anan ben David inspired the Jewish community that eventually became the Karaites. Those who challenge such academic arguments point to the alleged existence of a document dated to 641 CE in which the first Islamic governor of Egypt, Amr Ibn Al-As, ordered the Rabbanite Jews not to interfere in the communal rituals of the Karaites, a time that predates Anan ben David. Unfortunately this document is no longer in existence (El-Kodsi, *The Karaite Jews of Egypt*, 2). In an effort to distance the Karaites from Anan ben David and his followers, others point to the rabbanite influence on ben David, despite some of his public proclamations otherwise, something later Karaites, such as Daniel al-Qumisi, utilized to marginalize ben David from the community retroactively (*An Introduction to Karaite Judaism*, 27).

<sup>39</sup> Roshwald, "Marginal Jewish Sects in Israel (I)"; Roshwald, "Marginal Jewish Sects in Israel (II)." See also Astren, *Karaite Judaism and Historical Understanding*; Moshe Gil, "The Origins of the Karaites" in Polliack, *Karaite Judaism*, 73–118.

<sup>40</sup> Hoffman and Cole, *Sacred Trash*, 156–57. See also, 154–64.

<sup>41</sup> Roshwald, "Marginal Jewish Sects in Israel (I)," 223. Evidence also suggests that in places like medieval Egypt, distinct lines between Karaites and Rabbanites did not exist; one could move between subcommunities fluidly. As one scholar puts it, "Rabbanites and Karaites coexisted peacefully and totally flouted any principle of social segregation. They formed partnerships in business and long-distance trade, contributed jointly to communal causes and shared the burdens of Jewish organizational life. They married one another either despite their religious differences or precisely because those differences brought social advantages to husband, wife and their immediate families, and they devised marriage contracts protecting each spouse's religious customs. The differences devolved upon intimate matters indeed, great sums of money to be paid to the poor of both groups. Karaites pursued cases in rabbinical courts, and the rabbis who ran those courts wrote contracts according to Karaite formulae when asked to do

so. Despite the fact that Karaites rejected rabbinic religious authority, they nonetheless offered their support to rabbinic leaders. Rabbinic leaders of the eleventh and twelfth centuries were hardly as jumpy about the taint of non-rabbinic heresy. . . . Even if the doctrinal and behavioural boundaries between the groups were sharp, they were frequently crossed" (Marina Rustow, "Karaites Real and Imagined: Three Cases of Jewish Heresy," *Past & Present* 197:1 [2007]: 42–43). See also Marina Rustow, *Heresy and the Politics of Community: The Jews of the Fatimid Caliphate* (Ithaca: Cornell University Press, 2008).

<sup>42</sup> "The Karaites had different customs from the Rabbanites. The main areas of variance that were noticeable related to fixing the festival calendar, the laws of ritual slaughter and foods in general, marriage laws and the laws of incestuous relationships, inheritance laws, and the overall perception of the world, especially, regarding Palestine and their attitude toward it" (Elinor Bareket, "Karaites Communities in the Middle East" in Polliack, *Karaite Judaism*, 242). According to a number of rabbanite halachic authorities, Jews are prohibited from taking their shoes off before entering a Jewish sacred space, such as a synagogue or *beit midrash* [house of study]. According to one authority, one of the reasons for this prohibition is to ensure Rabbanite Jews do not engage in a Karaite Jewish practice (Daniel Landes, personal email correspondence, January 26, 2012).

<sup>43</sup> Some scholars assert that members of these two Jewish groups never intermarried despite passages from the Cairo genizah that reflect otherwise. See Yosef Algamil, "Hahakham tuviah simha levi babovitch: aharon hakhmei kehilat hakara'im bemitzrayim," *Pe'amim* 32 (1987): 49 [Hebrew], in Beinun, *Dispersion of Egyptian Jewry*; Tzvi Zohar, "Bayn nikur Leahvah: nisu'im bayn kara'im lerabanim 'al pnei hakhmei yisra'el bemitzrayim beme'ah ha'esrim," *Pe'amim* 32 (1987): 32 [Hebrew], in Beinun, *Dispersion of Egyptian Jewry*.

<sup>44</sup> Saadiah al-Fayyumi, better known as Saadiah Gaon, one of the most respected rabbanite figures of the ninth and tenth centuries, renowned for translating the Torah into Arabic among other things, was a vehement opponent of Anan ben David and the Karaites. He wrote more texts dismissing these non-Rabbanites than perhaps any other figure of his era. Simply put, he argued that they were heretics (Samuel Poznański, "The Anti-Karaite Writings of Saadiah Gaon," *Jewish Quarterly Review* 10:2 [1898]: 238–76).

<sup>45</sup> El-Kodsi, *The Karaite Jews of Egypt*, 8.

<sup>46</sup> Perhaps the varied relations between Karaites and Rabbanites are best embodied by the disparate views of two twentieth century Egyptians. Tuvia Babovich, who, between 1934–1956, served as the last chief Karaite Rabbi of Egypt, said that Karaites who marry Rabbanites have excluded themselves from the former community. Renowned Egyptian figure Murad Farag, also a Karaite Jew, countered Babovich by calling for active Karaite-rabbanite marriages (Algamil, "Hahakham tuviah simha levi babovitch," 49; Zohar, "Bayn nikur Leahvah," 32). See also El-Kodsi, *The Karaite Jews of Egypt*, 4, 31–32.

<sup>47</sup> *An Introduction to Karaite Judaism*, 226–27; Astren, *Karaite Judaism and Historical Understanding*, 164. Astren notes that in this passage he is referring to medieval Karaites in particular (Fred Astren, personal email correspondence, December 29, 2011).

<sup>48</sup> *An Introduction to Karaite Judaism*, 225–30.

<sup>49</sup> Rabbi Moshe Firrouz, personal email correspondence via Daniel Lasker, January 1, 2012 [Hebrew].

<sup>50</sup> Abraham Danon, "The Karaites in European History: Contributions to Their History Based Chiefly on Unpublished Documents," *Jewish Quarterly Review* 15:3 (1925): 291; Yoram Erder, "The Mourners of Zion" in Polliack, *Karaite Judaism*, 233.

<sup>51</sup> Data indicates that in Palestine and Constantinople Karaites were murdered or mistreated precisely because non-Jews perceived them as Jews, rather than deeming them guilty of merely being non-Christian (Danon, "The Karaites in European History," 285–360). Some argue otherwise, asserting that in these situations Jews were not necessarily killed because they were Jewish, but rather because they were not Christians of the type with which their attackers identified (Astren, personal email correspondence, June 7, 2012).

<sup>52</sup> For Crimean Karaites, identifying as non-Jews predated World War II by more than two centuries. In the eighteenth century, members of the Crimean Karaite community asked Catherine the Great to be delineated as non-Jews so as not to be legally given this inferior classification, which mandated that Jews could not own property and had to pay double taxes. Because of the empress's decision to agree to the Karaites' request, when German Nazis arrived in Crimea a few hundred years later, the Karaites living there were permitted to live; they were already understood to be non-Jews. Some believe the Crimean Karaites were in collusion with the Nazis (Emanuela Trevisan Semi, "The Birth of the Karaite 'Edah in Israel" in Polliack, *Karaite Judaism*, 436n18; note that Karaites are sometimes called *Kar'a'im* (Polliack, Preface, xxiii; Karina Firkavičiūtė, "The Musical Heritage of Lithuania's *Karaim*" in Polliack, *Karaite Judaism*, 855–67). Some of the last remaining Karaties in Crimea today continue to claim that they have no connection to the Jewish community, an assertion echoed by non-Crimean Karaites as well. See El-Kodsi, *The Karaite Jews of Egypt*, 8n16; Warren Green, "The Fate of the Crimean Jewish Communities: Ashkenazim, Krimchaks, and Karaites," *Jewish Social Studies* 46:2 (1984): 169–76; Warren Green, "The Nazi Racial Policy Toward the Karaites," *Soviet Jewish Affairs* 8:2 (1978): 36–44; Alexander Lesser, "Don't Call Us Jews," *The Jerusalem Report* (June 18, 1992): 36–38.

<sup>53</sup> Lesser, "Don't Call Us Jews," 36–38. See also, Kiril Feferman, "Nazi Germany and the Karaites in 1938–1944: Between Racial Theory and Realpolitik," *Nationalities Papers* 39:2 (2011): 277–94; Kiril Feferman, "Nazi Germany and the Mountain Jews: Was There a Policy," *Holocaust: Genocide Studies* 21:1 (2007): 96–114; Green, "The Fate of the Crimean Jewish Communities," 169–76; Green, "The Nazi Racial Policy Toward the Karaites," 36–44. Some maintain that the rabbanite Jewish authorities told the Nazis that the Karaites were not Jewish because they knew it would save the Karaites' lives, rather than basing their decision on halachic interpretation.

<sup>54</sup> Donna F. Ryan, *The Holocaust and the Jews of Marseille: The Enforcement of Anti-Semitic Policies in Vichy France* (Chicago: University of Illinois Press, 1996), 38; in Judy Scales-Trent, "Racial Purity Laws in the United States and Nazi Germany: The Targeting Process," *Human Rights Quarterly* 23:2 (2001).

<sup>55</sup> Some Egyptian mistreatment of Karaites was undoubtedly due to the Egyptian government's capture of Moshe Marzuq, a Karaite Jew accused of spying on behalf of Israel, who was ultimately executed in 1955 for his role in Operation Suzannah. This is also known in Israeli history as the Lavon Affair (Beinin, *Dispersion of Egyptian Jewry*, 90–117; Shabtai Teveth, *Ben Gurion's Spy: The Story of the Political Scandal that Shaped Modern Israel* [New York: Columbia University Press, 1996]).

<sup>56</sup> On one occasion, in referring to Karaite immigration to Israel, the Israeli Ashkenazi chief rabbi even said, “Heaven forbid that we should bring this deadly plague into Israel’s vineyard” (Tom Segev, *1949: The First Israelis* [New York: The Free Press, 1986], 144, in Sumi Elaine Colligan, “Living Liminality: Karaite Jews Negotiate Identity and Community in Israel and the United States,” in Polliack, *Karaite Judaism*). See also Colligan, “Living Liminality,” 454–57.

<sup>57</sup> The state of Israel made an explicit exception to this law when Joseph Marzuq, the brother of Moshe Marzuq, requested permission to marry a Rabbanite woman (Roshwald, “Marginal Jewish Sects in Israel (I),” 232). See also Semi, “The Birth of the Karaite ‘Edah in Israel,” 435–45. According to one scholar, two rabbinical authorities in Israel who originally arrived there from Egypt permitted Karaite-rabbanite intermarriages without requiring a ritual conversion of either party (Corinaldi, “The Problem of the Patrilineal or Matrilineal Secent and Inter-Marriage According to the Samaritan and Rabbinic Halakah,” 180).

<sup>58</sup> In the San Francisco Bay Area, which has the largest population of American Karaites as well as the country’s only Karaite synagogue, Karaites have not had problems with the normative Jewish community. In fact, in the 1950s, the San Francisco Federation, an institutional hub of the Jewish community, sponsored several Egyptian Karaite families to move to the area as refugees, thereby guaranteeing their asylum (*An Introduction to Karaite Judaism*, 42). The largest percentage of Karaite Jews is nonetheless infinitesimal. Best estimates are that there are about 1,000 Karaites living in the United States, about 450 of whom live in the San Francisco Bay Area (Beinin, *Dispersion of Egyptian Jewry*, 185; Abraham Massuda [personal conversation, November 15, 2011]). This makes Karaites .018 percent of American Jewry.

<sup>59</sup> In January 2012, I conducted an informal survey of rabbis at eight synagogues of various normative movements in San Francisco. One of the questions I asked was “Is it your opinion that ‘Messianic Jews’ are not Jews” (i.e., are not Jews in the way you understand and define the term “Jews”)? Rabbis from all eight synagogues answered yes to this question, with minor caveats noted for case examples of individuals who are born Jewish according to halachah but believe in Jesus Christ.

<sup>60</sup> These groups include Jews for Judaism, which is self-described as the “Jewish community’s leading response to the multi-million dollar efforts of cults and evangelical Christians who target Jews for conversion” (“About Jews for Judaism,” [http://www.jews-forjudaism.org/index.php?option=com\\_content&view=category&layout=blog&id=20&Itemid=464](http://www.jews-forjudaism.org/index.php?option=com_content&view=category&layout=blog&id=20&Itemid=464)). See also Yaacov Ariel, *Evangelizing the Chosen People: Missions to the Jews in America, 1880–2000* (Chapel Hill: University of North Carolina Press, 2000), 264; Derech Emet, <http://groups.yahoo.com/group/antimissionaryhangout/message/1810>; Jerusalem Institute of Bible Polemics, <http://jibp.israel.net/index.html>; Outreach Judaism, <http://www.outreachjudaism.org>; Yad L’Achim’s Counter Missionary Department, <http://www.yadlachimusa.org.il/?CategoryID=196>. These groups commonly track missionary activities carried out toward Jews, reach out to Jews who “convert” to Messianic Judaism, and even confront missionaries directly using a range of strategies. In addition, major Jewish organizations that don’t explicitly aim to counter missionary work commonly have prepared brochures or books for their leaders and lay people alike focusing on how to

deal with missionaries. They also utilize books written by other Jews on how to counter missionary work. See Ariel, *Evangelizing the Chosen People*, 252–69; Aryeh Kaplan, *Real Messiah: A Jewish Response to Missionaries* (New York: Mesorah Publications, 1976); Samuel Levine, *You Take Jesus, I’ll Take God: How to Refute Christian Missionaries* (Los Angeles: Hamorah Press, 1980); Asher Norman, *Twenty-Six Reasons Why Jews Don’t Believe in Jesus* (Los Angeles: Black, White, and Read Publishing, 2008); Gerald Sigal, *The Jew and the Christian Missionary: A Jewish Response to Missionary Christianity* (New York: Ktav, 1981).

<sup>61</sup> San Francisco-based rabbi, personal email correspondence, January 12, 2012.

<sup>62</sup> Harris Lenowitz, *The Jewish Messiahs: From the Galilee to Crown Heights* (New York: Oxford University Press, 1998).

<sup>63</sup> Messianic Jews usually refer to Jesus by his Hebrew name, *Yeshua*.

<sup>64</sup> Shraga Simmons, “Why Jews Don’t Believe in Jesus,” *Aish Hatorah*, March 6, 2004, <http://www.aish.com/jw/sl48892792.html>.

<sup>65</sup> See Cohn-Sherbok, *Messianic Judaism*.

<sup>66</sup> H. Bruce Stokes, “Gentiles in the Messianic Movement” (1996), [http://www.hbrucestokes.com/images/Gentiles\\_in\\_the\\_Messianic\\_Movement.pdf](http://www.hbrucestokes.com/images/Gentiles_in_the_Messianic_Movement.pdf). In this piece Stokes argues that there are five basic types of people who affiliate with Messianic Jews, only one of which is an authentic Messianic Jewish group.

<sup>67</sup> Cohn-Sherbok, *Messianic Judaism*, 87–166. Some of the more important Messianic Jewish organizations, each of which explains its core beliefs, are as follows: Chosen People Ministries (<http://www.chosenpeople.com>); the International Alliance of Messianic Congregations and Synagogues (<http://www.iamcs.org>); Jews for Jesus (<http://www.jewsforjesus.org>); Messianic Jewish Alliance of America (<http://www.mjaa.org>); and the Union of Messianic Jewish Congregations (<http://www.umjc.org>).

<sup>68</sup> Fox, “Messianic Judaism”; Tim McGirk, “Israeli’s Messianic Jews Under Attack,” *Time*, June 6, 2008, <http://www.time.com/time/world/article/0,8599,1812430,00.html>; David H. Stern, *Messianic Judaism: A Modern Movement with an Ancient Past* (Clarksville: Lederer Books, 2007), 197. See also Jeffrey S. Wasserman, *Messianic Jewish Congregations: Who Sold the Business to Gentiles* (New York: University Press of America, 2000), ix. Wasserman contends that according to Kajær-Hansen’s and Skjøtt’s 1999 book, *Facts & Myths*, from 1948 through 1999 the number of Messianic Jewish congregations grew from 2 to 81 and the number of Messianic Jewish adults from 200 to 2,178 (Kai Kajær-Hansen and Bodil F. Skjøtt, *Facts & Myths: About the Messianic Congregations in Israel* [Jerusalem: Caspari Center for Biblical and Jewish Studies, 1999], 17) in Wasserman, *Messianic Jewish Congregations*.

<sup>69</sup> Union of Messianic Jewish Congregations, <http://www.umjc.org/resources-main-menu-101/congregations-mainmenu-64>.

<sup>70</sup> International Alliance of Messianic Congregations and Synagogues, <http://www.iamcs.org/Directory.php>. According to Jews for Jesus, which does not identify with UMJC or IAMCS, there are twenty-four Jews for Jesus branches worldwide (<http://www.jewsforjesus.org/branches>). See also Stern, *Messianic Judaism*, 197; Wasserman, *Messianic Jewish Congregation*, ix. According to another source, as of 1996 there were 300 Messianic Jewish congregations worldwide (1996–1997 *International Messianic Directory* [Virginia Beach: Messianic Bureau International, 1996], 3, in Wasserman, *Messianic Jewish Congregations*).

<sup>71</sup> Though Messianic Jewish groups have been accused of exaggerating their numbers, Jewish antimissionary organizations have been charged with inflating these numbers as well (Wasserman, *Messianic Jewish Congregations*, ix, 46).

<sup>72</sup> Natalia Yangarber-Hicks, "Messianic Believers: Reflections on Identity of a Largely Misunderstood Group," *Journal of Psychology and Theology* 33:2 (2005): 128.

<sup>73</sup> Stokes, "Gentiles in the Messianic Movement," 2.

<sup>74</sup> J. Gordon Melton, *Encyclopedia of Protestantism* (New York: Facts on File, 2005), 373; See also Pauline Kollontai, "Messianic Jews and Jewish Identity," *Journal of Modern Jewish Studies* 3:2 (2004): 195–205.

<sup>75</sup> See <http://www.jewsforjesus.org/branches>.

<sup>76</sup> Cohn-Sherbok, *Messianic Judaism*, 1.

<sup>77</sup> Associated Press, "Israeli Court Rules Jews for Jesus Cannot Automatically be Citizens," *New York Times* (December 27, 1989), <http://www.nytimes.com/1989/12/27/world/israeli-court-rules-jews-for-jesus-cannot-automatically-be-citizens.html>.

<sup>78</sup> One year prior to this landmark decision, the Israeli Dahaf Research Institute conducted a study in which Jewish Israelis were asked to weigh in on what they thought the parameters should be in terms of beliefs when applying for Israeli citizenship under the Law of Return. According to the results, most Jewish Israelis maintain that if someone was born to a Jewish mother but didn't believe in God, belonged to a religion other than Judaism, or identified as a Messianic Jew (i.e., believed that Jesus is the Messiah), the individual should be allowed to legally immigrate to Israel under the Law of Return (Walter Riggins, "Messianic Judaism and Jewish-Christian Relations: A Case Study in the Field of Religious Identity" [Ph.D. Dissertation, University of Birmingham, 1991], 335–40, in Cohn-Sherbok, *Messianic Judaism*).

<sup>79</sup> For missionary activities aimed at normative Jews, see, for example, Ariel, *Evangelizing the Chosen People*; Eichhorn, *Evangelizing the American Jew*.

<sup>80</sup> Jean-Paul Sartre, *Anti-Semite and Jew: An Exploration of the Etiology of Hate* (trans. George J. Becker; New York: Schocken, 1995), 69.

<sup>81</sup> When interviewing Samaritan representative Husney W. Cohen in June 2011, I was with a group of Palestinians from the area. After Cohen said that his community does not identify as Jews, I turned to one of my Palestinian colleagues to confirm what he had just said. Along with a number of other Palestinians, she said that he had misunderstood my question; he was Jewish. I thereby turned back to Cohen to ask him the same question a second and final time, to which he responded, loud and clear, that neither he nor anyone in his Samaritan West Bank community identified as Jewish (Husney W. Cohen, personal conversation, June 22, 2011). In other words, even when confronted with the words of a Samaritan leader, the Palestinians I was with had a great deal of difficulty in understanding the Samaritans as anything other than Jews. To them, this issue had been solidified prior to this point and was not up for debate.

<sup>82</sup> Yossi Klein-Halevi, "Like a Prayer: Kabbalah Goes Hollywood," *The New Republic*, May 10, 2004, <http://www.tnr.com/article/politics/prayer>.

<sup>83</sup> All of the following citations are found in Boaz Huss, "All You Need is LAV: Madonna and Postmodern Kabbalah," *Jewish Quarterly Review* 95:4 (2005): 623nn39–40; Rabbi Yosef Ovadiah's decree against the Kabbalah Center is found in "She'elot utshuvot yehave de'ah," *Yeshivat Bnei N'vi'im Online*, <http://www.koshertorah.com>; a collection of articles

about the Kabbalah Center is found in the Ross Institute’s anticult website, <http://www.rickross.com/groups/kabbalah>; interview with Yoseph Dan in *Ma’ariv*; interview with Moshe Idel, *Ba-mah*, April 27, 1989 [Hebrew].

<sup>84</sup> One scholar notes that although setting aside sacred time each week between Friday and Saturday evening is a habitual ritual practiced by the Centre (i.e., where the Centre staff observe the halachic observances connected to Shabbat, such as ceasing from carrying out actions of “work”), most within the Orthodox Jewish community who are unaffiliated with the Centre are not aware that Centre devotees practice these rites. It is reasonable to assume that Jews unaffiliated with the Centre would be even more upset with the Centre for “reappropriating” Judaism if they knew this (Jody Myers, personal email correspondences, April 22 and April 24, 2012).

<sup>85</sup> It is not uncommon for Jews to change one or more of their names when moving to or living in Israel. Phillip and his second wife, Karen, changed their first and last names in this process; their first names were changed from Shraga Feival and Tova, respectively. See Jody Myers, *Kabbalah and the Spiritual Quest: The Kabbalah Centre in America* (Westport: Praeger, 2007), 16–38, 51.

<sup>86</sup> Though Ashlag arrived in Palestine in 1921, he never had more than a few disciples, even in the 1940s and 1950s (Myers, personal email correspondence, April 22, 2012).

<sup>87</sup> Myers, *Kabbalah and the Spiritual Quest*, 72–73; Myers, personal email correspondence, April 22, 2012.

<sup>88</sup> Myers, *Kabbalah and the Spiritual Quest*, 50–54, 66–68, 109–10. See also, Huss, “All You Need is LAV,” 622–24; Boaz Huss, “The New Age of Kabbalah: Contemporary Kabbalah, the New Age, and Postmodern Spirituality,” *Journal of Modern Jewish Studies* 6:2 (2007): 107–25.

<sup>89</sup> Myers, “Kabbalah for the Gentiles.”

<sup>90</sup> This is despite, or perhaps due to, the fact that then and now Berg and his family follow an Orthodox interpretation of Jewish law in terms of day to day religious practices.

<sup>91</sup> Myers, *Kabbalah and the Spiritual Quest*, 54–73, 115–21.

<sup>92</sup> Huss, “All You Need is LAV,” 611–24.

<sup>93</sup> Terry Gross, “Fresh Air from WHYY: Interview with Madonna,” *NPR*, November 23, 2004, <http://www.npr.org/player/v2/mediaPlayer.html?action=1&t=1&islist=false&id=4183844&m=4183845>.

<sup>94</sup> Myers, *Kabbalah and the Spiritual Quest*, 123.

<sup>95</sup> Myers, personal email correspondence, March 14, 2012.

<sup>96</sup> Myers, personal email correspondence, March 13, 2012.

<sup>97</sup> Myers, *Kabbalah and the Spiritual Quest*, 75.

<sup>98</sup> *Ibid.*, 125.

<sup>99</sup> Bonné-Tamir, “Genetics,” 98–99.

<sup>100</sup> In terms of homozygosity.

<sup>101</sup> Kollontai, “Messianic Jews and Jewish Identity,” 197.

<sup>102</sup> “To some degree, all conflicts are about the relationship between power and identity. As individuals and communities, we enact a constructed sense of identity, or self, through our behavior, which in turn is shaped by cultures, value and belief systems, histories, and narratives. Conflicts commonly intensify when a person’s or group’s identity is taken away,



threatened, or violated.” See Aaron J. Hahn Tapper, “The War of Words: Jews, Muslims, and the Israeli-Palestinian Conflict on American University Campuses,” in *Muslims and Jews in America: Commonalities, Contentions, and Complexities* (ed. Reza Aslan and Aaron J. Hahn Tapper; New York: Palgrave Macmillan, 2011), 71.

# German-Jewish Identity: Problematic Then, Problematic Now

Steven Leonard Jacobs

The thousand year history of German Jewry has come to an end.

—Rabbi Leo Baeck (1873–1956)

Society confronted with political, economic, and legal equality for the Jews, made it quite clear that none of its classes were prepared to grant them social equality, and that only exceptions from the Jewish people would be received.

—Hannah Arendt (1906–1975)

The duality of German and Jew—two souls within a single body—would preoccupy and torment German Jews throughout the nineteenth century and the first decades of the twentieth century.

—Amos Elon (1926–2009)

The emancipation of the Jews meant above all their acceptance within the legal framework of European states, as citizens equal before the law; but, except in rare cases, it did not mean their undifferentiated acceptance by society within those states.

—Saul Friedländer (b. 1932)

## INTRODUCTION: THE PRESENT MOMENT

The past is always present, so much the more so when addressing the question of German-Jewish identity both historically and contemporarily. The brief period known as the Holocaust/Shoah, 1939–1945 (or, if one prefers, 1933–1945, beginning with Adolf Hitler's ascension to the chancellorship of Nazi Germany), has reframed the entire discussion of identity somewhat and caused a refocusing in some circles about *die Judenfrage* [the Jewish question] before the twentieth century but in the aftermath of the eighteenth century Enlightenment as well as in the years since 1945. For ease of analysis, I wish to periodicize this discussion as follows:

- Pre-Enlightenment (before the eighteenth century)
- Enlightenment and early modernity (eighteenth to twentieth centuries)
- The Holocaust years (1933/1939–1945)
- Post-Holocaust to the present (1945 and beyond)

Before doing so, however, I want to interject four terms that seem to me critical to this discussion as well as to the larger question of Jewish identity whenever and wherever discussed. First is the Hebrew term *galut* [exile], the self- and communal perception that one individually and the group collectively are living (at best temporarily) outside the land of origin and birth due to circumstances inflicted upon them and that a change of fortunes or circumstances will reverse this reality. Second is the Hebrew term *t'futzah* [dispersion], which, while perhaps initially the result of negative historical realities, quickly evolves into, again initially, making peace with one's present residential location, quite quickly changes into a positive acceptance of this new reality and moves generationally forward so that one or two generations later the original negativities are all but forgotten. Third is the term "integration," which, when viewed positively, applauds the successful interweaving of the minority into the larger society so that former obstacles such as places of residence, occupations or professions, or marital partners no longer present themselves as difficulties. Integration also presents the tantalizing possibility that one's parochial identity need not be surrendered in the process of acceptance, but, under the right set of circumstances, might very well prove an additional, if somewhat exotic, "plus factor."<sup>1</sup> Finally, and fourth, is "assimilation," which, while paralleling the same theoretical trajectory as integration, carries with it a loss of parochial identity and a surrendering of those distinctive elements of the individual and group that formerly set them apart as unique and that are now, for a whole host of reasons (for example, economic, social, political) willingly or unwillingly surrendered but surrendered nonetheless. I would therefore suggest that these four terms—exile, dispersion, integration, and assimilation—have all been relevant to discussions regarding Jewish identities since the biblical period and remain every bit as current today as when they first surfaced more than two thousand years ago.

Finally, by way of introduction and before proceeding historically, two items of note, two assessments if you will, of the current situation. First, the fastest growing Jewish community on the European continent is that of Germany, strongly affirmed by repeated defensive postures of the German government and its population and institutions police protected. One measure of its continuing presence and success is the production of an English-language quarterly newspaper, *Jewish Voices from Germany*, with an initial print run of 30,000 copies in 2012 and sent to readers in Germany, the United States, Canada, Great Britain, and Israel. Its publisher is the successful author and journalist Rafael Seligmann (b. 1947), who returned to Germany with his

parents from Israel in 1957 and is thoroughly committed to the rebirth of German-Jewish life. Interviewed by Ofer Aderet for *Haaretz* in January of this year, Seligmann stated:

If I only wrote about the Shoah and the Nazis, I would run out of readers. . . . The subject of the Shoah is, in a way, similar to drugs: it causes such strong emotions. But people are also interested in other parts of Jewish history, literature and culture. . . . The German press was very excited, but the Jewish press chose not to mention us. That's all right. The public will decide whether to read us, notwithstanding what they write or don't write. . . . I have a dream. It is for a rebirth of German-Jewish life. Albert Einstein, Thomas Mann, the historian Theodor Mommsen and the painter Max Libermann all symbolized a unique flowering of the arts, culture and of the economy. . . . It [the newspaper] will connect Jews with Gentiles, Germany with the world. We want to communicate the long history that Jews and Germans share with each other. Here in Germany, we are witnessing the fastest growing Jewish community in the world. We have Jewish artists, Jewish writers and Jewish businessmen. Berliners opened their hearts to Daniel Berenboim and Michael Blumenthal, the director of the Jewish Museum. Israelis and Jewish tourists flooded the capital.<sup>2</sup>

Yet, despite his positivity and his optimism, as well as that of the German Foreign Minister Guido Westerwelle also quoted in the inaugural issue (see note below), all is not as it would at first appear. Seligmann also chose to include a brief piece in that first issue by Professor Moshe Zimmermann, Director of the Richard Koebner Minerva Center for German History at the Hebrew University of Jerusalem, titled "German Jews or Jews in Germany? No Chance of Becoming a Decisive Factor Again." He wrote: "The prognosis is clear but frustrating: There will be no re-birth of German Jews. Jews in Germany have no chance of becoming a decisive factor again in the development of the Jewish religion or history. They cannot compete either with the largest Jewish diaspora, in the United States, or with Israel."<sup>3</sup>

Statements such as these, by Seligmann, Westerwelle, and Zimmermann echo well those of Jews alive during the Enlightenment period who perceived themselves, at last, on the road to successful integration despite other more critically negative voices worried about that same future.

The second somewhat discordant note is a response to the current "circumcision crisis" initiated by the Cologne Regional Court this past June. This court ruled that doctors who perform such surgeries for religious reasons can be accused of committing bodily injury. (Irony of ironies, Jews, Muslims,

and other Germans have joined together in protest!) This “event” provided the impetus for a six-part series in *Der Spiegel*, from July to September of this year, which included the former chairperson of the Central Council of German Jews, Charlotte Knobloch, who has now questioned her own positivity in a recent editorial, titled “Do You Still Want Us Jews?”<sup>4</sup> For Deidre Berger, executive director of the Berlin office of the American Jewish Committee, “Germany’s ability to give legal protection to circumcision [is] a litmus test for Jewish life in Germany.”<sup>5</sup>

Thus stated, an additional word now enters into the discussion of the first four, a word that resonates far back into German-Jewish history and carries with it currency into the present moment and possibly into the future as well. And that is, “ambivalence” (the psychic dilemma of “yes and no,” or “yes . . . but”), and not only on the part of the Jews of Germany but German non-Jews as well. And, therefore, it is appropriate to go back into history, into the periodization I suggested at the outset.

Before doing so, however, I want to bring to your attention one equally disturbing item of information:

In January 2012, the *Bundestag* [German Parliament] released its report, titled *Antisemitismus in Deutschland* [Antisemitism in Germany], which, according to the website [www.holocausttaskforce.org](http://www.holocausttaskforce.org),

found that anti-Jewish feeling is “significantly” entrenched in German society, and that there is “a wider acceptance in mainstream society of day-to-day anti-Jewish tirades and actions.” The report identified latent antisemitic attitudes in 20 percent of the population, and indicated that more than 90 percent of antisemitic crimes are committed by offenders who identify with the right-wing political spectrum. It was noted that the Internet played a key role in spreading Holocaust denial, far-right, and extreme Islamist views. . . . The experts stated that a comprehensive strategy for combating Antisemitism does not exist in Germany, and that such a strategy should invest in long-term and sustainable measures made in close cooperation between government institutions and social organizations.<sup>6</sup>

## PRE-ENLIGHTENMENT (BEFORE THE EIGHTEENTH CENTURY)

Germany became a nation-state in the modern sense of the term only in 1871 under the “Iron Chancellor,” Otto Eduard Leopold, Prince of Bismarck, Duke of Lauenburg (1815–1898). For ease of analysis and comment, we may, therefore, subcategorize this pre-Enlightenment first period, somewhat unevenly, as follows: (1) earliest history to the Crusades, and (2) Crusades to Moses Mendelssohn.

The first authentic document regarding a “Jewish presence” in the area dates from 321 CE and references the town of Cologne on the Rhine River. The Jews of that earliest period appear to have enjoyed a reasonably tolerant relationship with their non-Jewish neighbors, mildly restricted politically and civilly (for example, they could not hold public office), but free to engage in the same occupations as their fellow citizens. The impact of the Roman Catholic Church during this same period seems to be one of “polite disregard.” Given the Jewish religious traditions of the time, we are on reasonably safe grounds to assume that they saw themselves in *galut/exile*—rather than in the *tʹfutzah/dispersion*—but more or less comfortably so; issues of both integration and assimilation were irrelevant during this first stage of settlement and encounter. At best in this context, Jews were “tolerated,” and thus thoughts of surrendering their Jewish identities in exchange for the Christian one of their neighbors were not part of their collective mindset.

This initially positive scenario would continue under the King of the Franks, Charlemagne (“Charles the Great,” 742–814) and what would later be called the Carolingian Empire. During his reign, Jews were not permitted to become part of the military, but were, otherwise, unrestricted in commerce and settled wherever they chose to do so. Cologne, Worms, and Mayence were their three primary cities of residence. Again, a religious sense of *galut/exile* more than *tʹfutzah/dispersion* appears to have been the norm, but storm clouds were slowly beginning to appear on the horizon as the church continued to flex its own muscles in the Germanic lands and the times of the various Crusades were just around the corner:

- First Crusade:1095–1099
- Second Crusade:1147–1149
- Third Crusade:1187–1192
- Fourth Crusade:1202–1204
- Fifth Crusade:1217–1221
- Sixth Crusade:1228–1229
- Seventh Crusade:1248–1254
- Eighth Crusade:1270
- Ninth Crusade:1271–1272

Whatever we may say about the Crusades—and they continue to fascinate both European and religious historians—these nine campaigns were a low water mark for Jews; from their very beginnings in 1095 until their conclusions in 1272, Jews would suffer collectively and unmercifully not only in Germanic lands but throughout the European continent as the Crusaders made their way toward the Holy Land in their attempts to wrest Jerusalem

from the Arab-Muslim “infidels.” The war cry *Hierosolyma est perdita!* [Jerusalem is lost!] would bring fear and death to the Jews who heard it. A true and foreboding sense of *galut*/exile would dominate Jews: their vulnerability was self-evident; their fate lay in the hands of those far more powerful and unwilling to now regard them as fellow citizens, but fully responsible for the death of their Christ. Deicide [god killers] as a reference to the Jews was the order of the day. The great German-Jewish historian Heinrich Graetz (1817–1891), whose multivolume *Geschichte der Juden* [History of the Jews] remains unsurpassed even today (with the possible exception of Salo Wittmayer Baron’s [1895–1989] eighteen-volume *A Social and Religious History of the Jews*, 1952–1983), reminds us that one could map the path of the Crusaders by pinpointing the Jewish villages destroyed and the Jews massacred.<sup>7</sup>

From the end of the Crusades onward, Jews would continue to remain vulnerable, and the charges against them would multiply: host desecration, ritual murder, treason, and well poisoning, including responsibility for the Black Death (1348–1350), all encouraged by the church itself. During the fourteenth and fifteenth centuries, power over the Jews would pass from the emperor to the various lesser sovereigns. Jews would find themselves with three options: ghettoization, subject to violence but dependent on their rulers; flight if possible though more often than not an unrealistic option; and conversion into the arms of a willing church but reluctant population. Again, as before, *galut*/exile remained the norm. Questions of Jewish identity were externally imposed. Jews remained Jews with little opportunity to do otherwise. As cold as life was outside the ghetto walls, the dynamism of Judaism flourished inside the walls. Jewish holy days were celebrated, sacred Jewish texts were studied, and Jewish life-cycle moments were marked appropriately. For those Jews inside the ghettos, no matter what the future held in store for them, their Judaism was their badge of nobility; their sacred covenant with God, their blessing.

Slowly, the sixteenth and early part of the seventeenth centuries would bring a slight amelioration of their plight as some of the Germanic kingdoms continued their negative ways, while others attempted to chart a new course. Under Emperor Leopold I (1640–1705), Jews were expelled from Vienna and Austria, at the same time that Friedrich Wilhelm of Brandenburg (1620–1688), known as The Great Elector [*Der Große Kurfürst*] because of his military and political prowess, mandated a toleration of all religious communities within his realm.

An important sour note in this discussion was the role played by Martin Luther (1483–1546), who would later be recognized as both the founder of

Lutheranism and the “spark” that would set in motion the Protestant Reformation. A Roman Catholic priest, Luther was originally committed to holding out the hand of friendship to open the church’s doors to the conversion of the Jews instead of having them forcibly detained and subject to lengthy sermonic harangues denigrating Judaism. When they rejected his overtures as well, he wrote not one but two scurrilous tracts, the more well-known *Von den Juden und Ihren Lügen* [On the Jews and Their Lies] and the lesser-known *Vom Schem Hamphoras und vom Geschlecht Christi* [On the Holy Name and the Lineage of Christ], both published in 1543. As he would write in the first text:

To save our souls from the Jews, that is, from the devil and from eternal death. My advice, as I said earlier, is:

First, that their synagogues be burned down, and that all who are able toss sulphur and pitch; it would be good if someone could also throw in some hellfire.

Second, that all their books—their prayer books, their Talmudic writings, also the entire Bible—be taken from them, not leaving them one leaf, and that these be preserved for those who may be converted.

Third, that they be forbidden on pain of death to praise God, to give thanks, to pray, and to teach publicly among us and in our country.

Fourth, that they be forbidden to utter the name of God within our hearing. For we cannot with a good conscience listen to this or tolerate it.

Antisemites have been drawing inspiration from Martin Luther’s words ever since.

## ENLIGHTENMENT TO EARLY MODERNITY (EIGHTEENTH TO TWENTIETH CENTURIES)

By the time of Moses Mendelssohn (1729–1786), the plight of the Jews in Germany had begun to change course, in large measure due to the Protestant Reformation coupled with the Enlightenment, both of which overthrew the stranglehold of the Roman Catholic Church and elevated rational thought and scientific achievement to the forefront of Western consciousness, along with a begrudging awareness of similarities rather than differences among the various communities. France would grant its Jews citizenship between 1789 and 1791 and the Germanic fiefdoms shortly but reluctantly thereafter. With citizenship came increasing economic success and university access, and Jews fled the ghettos throughout Germany, especially in and to Berlin, which they regarded as the seat of German culture. Christian religion, while very much in



evidence, was and remained part of the cultural identity not only of the masses but the elite as well, and conversion and marriage, even without sincere belief, was perceived by some as the road to equality.

For the vast majority of Jews, however, Judaism remained central to their identity and conversion and marriage to non-Jews “beyond the pale.” But too many among the economic and cultural elites of the Jewish community were all too ready and willing to surrender their Jewish identity as the price of admission to the “New Germany,” and with it a rejection of a Jewish religious tradition that they equated with a sterile orthodoxy and that they had already forsaken. Deborah Hertz’s important text, *How Jews Became Germans: The History of Conversion and Assimilation in Berlin*, details the story of such conversions and inter-, mixed, or conversionary marriages during the period 1645–1833.<sup>8</sup> In so doing, she also biographically tells the individual stories of many of those who, while seemingly leaving the Jewish religious tradition and community, ultimately did not leave but remained tethered to it and disappointed by their failure to successfully both integrate and assimilate into the larger German Christian society.

Among the more well-known of them was Rahel Levin von Varnhagen (1771–1833), a *littérateur* who presided over her own salon and whose own distancing from her Jewish past and identity never accomplished what she had hoped—even after her late-in-life marriage to her lover Karl August Varnhagen von Ense (1785–1858). Composer Jacob Ludwig Felix Mendelssohn Bartholdy (1809–1847) was baptized a Lutheran, but nonetheless earned the ire of Richard Wagner (1818–1883), who regarded his creative work as little more than stolen and copied from German genius. Heinrich Heine (1797–1856), master of German poetry, saw his regretful and unhappy conversion to Christianity as the “price of admission” to insure his literary success. For Ludwig Börne (1786–1837), journalist and unfulfilled academic, contemporary and critic of Heine, conversion brought no peace. Then there was Eduard Gans (1797–1839), a brilliant jurist and one of the very few whose conversion resulted in a successful academic appointment. In addition, there were other members of prominent Jewish families (for example, Arnsteins, Beers, Itzigs, Liebmanns, Mendelssohns, Schlegels), ready and willing to convert—but their journeys out of Judaism remained problematic all their lives, as they were unable to fully break free from their past and from the perspective of others, and largely resented for attempting to do so.

Thus, for these German Jews their *galut*/exile was from themselves, attempting to erase a past and present that they could not overcome despite all

their attempts to so. For any number of them, despite whatever economic success their families achieved, despite the splendor of the mansions in which they lived, despite the parties they hosted (their invitations were, more often than not, not reciprocated), their Jewish identities would haunt (and stalk) them. Both assimilation and integration were impossible at that moment in history.<sup>9</sup>

## THE HOLOCAUST YEARS (1933/1939–1945)

The economic and political upheavals towards the end of the eighteenth and early part of the nineteenth centuries in Germany (and worldwide) and the trauma of World War I reveal an increasing vulnerability on the part of Germany's Jews. Legally very much a part of the nation-state, Jews continued to be discriminated against in public service, the military, and academia. Prior to the Nazis' ascension to power, the Jewish population of Germany remained relative stable between 1871 and 1933, hovering around 500,000 persons.

Jewish participation in World War I was exploited and propagandized by the Nazis against Germany's Jews. In fact, 100,000 Jews served in the Germany army during the years 1914–1917; 12,000 fell in battle, many of them as well as the survivors earning awards for their bravery and courage.<sup>10</sup> In its aftermath, in the shaky days of the ill-fated Weimar Republic (1919–1933), no Jew was more symbolic of Jewish involvement and hope for the future than Walther Rathenau (1867–1922), a wealthy assimilated Jew, somewhat ambivalent about his distance from his Judaism, who would serve as foreign minister only to be assassinated by far rightists who saw him as ultimately responsible for the “selling out” of Germany in the aftermath of the Treaty of Versailles in 1919. (He insisted that Germany fulfill its obligations under the treaty.) Jewishly, Rathenau, a committed nationalist, was a strong advocate for Jewish assimilation and integration and an opponent of Zionism; his family believed such was the best way to overcome German antisemitism.<sup>11</sup>

With the coming of the National Socialist German Workers Party (NSDAP) into power, Nazism under Hitler charted a new direction in the Jewish identity question, and Germany's Jews now found themselves bereft of other options. Formerly, we may characterize “the journey of antisemitism” in the following manner: initially a form of cultural and social antisemitism (“We do not like those who are different from us but will tolerate them if we must”), superseded in the West by religious and theological antisemitism (“We reject those responsible for the murder and death of our Lord and Savior, and will exile, ghettoize, and, if warranted, murder them”), to its newest manifestation, racial and biological antisemitism (“Our enemies are physically

different from us and cannot change who they are; it is their very Judaism that infuses their physicality and it and they must be destroyed”). Translating that *weltanschauung* (world perspective) into reality would result in the infamous Nuremberg Racial Laws of 1935 and close the doors to escape for the vast majority of Jews, at the same time rendering problematic those persons of mixed identity with no connection to the Jewish community, the so-called *mischlinge* [literally “mixed lines,” though contextually better understood pejoratively as “mixed-” or “half-breeds”]. Such attitudes would be reflected, for example, in the following two sections of the “Law for the Protection of German Blood and Honor,” of September 15, 1935:

1.1: Marriages between Jews and citizens of German or *kindred blood* are forbidden.

1.2: Sexual relations between Jews and nationals of German or *kindred blood* are forbidden (emphasis added).

Jews were thus to be defined as follows:

Full or three-quarter Jews: Those having all four or three of four grandparents as Jews and/or connected to the Jewish community.

Half-Jews: Those having two grandparents as Jews but *disconnected* to the Jewish community (that is, Protestants or Roman Catholics). (*Mischling* 1<sup>st</sup> degree)

One-quarter Jew: Those having one grandparent as a Jew but *disconnected* to the Jewish community (that is, Protestants or Roman Catholics). (*Mischling* 2<sup>nd</sup> degree).<sup>12</sup>

With the start of World War II and the invasion of Poland on September 1, 1939, as the vise-like grip of the Nazis expanded, those who thought they, too, were fleeing to safety did so only to cruelly learn such was not the case (for example, those who fled to France, Belgium, and the Netherlands). The first group of those who fled did so between 1933/34 and 1939; among them were such intellectual luminaries as political thinker Hannah Arendt (1906–1975), scientist Albert Einstein (1879–1955), scholar of mysticism Gershom Scholem (1897–1982), critical theorist Theodor Adorno (1903–1969), and philosophers Martin Buber (1878–1965) and Leo Strauss (1899–1973).<sup>13</sup>

As the noose continued to tighten and death became the new normal, escape lessened and some Jews would now find themselves in a place never visited before: those who went to their deaths affirming their Jewishness (that is, those who were murdered *al k'dushat ha-Shem*, those who died for the sanctification of God’s Holy Name), though unwilling martyrs to be sure; and those shocked into a terrible new reality of identifying with a people with whom they had no connection, either the result of their own attempted escape

or one chosen for them by parents or grandparents in previous generations. By war's end—May 8, 1945—more than six million Jewish children, women, and men would lose their lives for no other reason than that of their Jewish identities and what fate had apparently cruelly decreed for them. For the Jews of Germany and Western Europe, the continent had become a sprawling graveyard, and those who could would flee to Palestine, the United States, Canada, South America, Australia, wherever doors were opened to them. Not all, however, would leave.

#### POST-HOLOCAUST TO THE PRESENT (1945 AND BEYOND)<sup>14</sup>

It has now been estimated that as many as 16,000 Jews may have survived the war years in hiding throughout Germany, hidden by non-Jewish family members or friends and colleagues.<sup>15</sup> After the war itself, some would return, having nowhere else to go, and settle in both West Germany and East Germany. Today, after the reunification of Germany in 1990, the Jews of Germany consist of three interrelated and interconnected communities, at times relatively harmonious, at other times relatively discordant: the children of those who survived the Holocaust/Shoah, whose parents have died or are dying; Russian Jews who fled after the downfall of the former Soviet Union in 1991; and, somewhat surprisingly, Israelis who have opted for a safer and seemingly more prosperous standard and style of living away from the stirred-up cauldron of the Middle East for themselves and their children.

The Jewish communities of Germany number today about 200,000 and are largely resident in the major cities (for example, Berlin and Potsdam). Both Orthodox and Liberal/Reform seminaries ordain graduates to serve the communities; as in the past, however, tensions between these two religious communities of Jews remain, and some regard healing this division as among the most pressing of intracommunity issues. Holocaust denial is a punishable offense. The Jewish Museum of Berlin continues to attract visitors as does the Shoah Memorial itself. Judaic studies are an important part of many university curricula. Founded in 1950, the Central Council of Jews in Germany continues to serve all Jews.

In 2006, Israeli Ambassador Shimon Stein warned that Jews in Germany feel increasingly unsafe; they “are not able to live a normal Jewish life,” and security of persons and institutions, especially synagogues and community centers, is all too apparent.<sup>16</sup> Thus the question of German-Jewish identity remains a complex one, not only for those who are Jews but for their neighbors as well. Terms such as *galut* [exile], *ifutzah* [dispersion], assimilation,

integration, and ambivalence remain part of this unresolved equation not only of “what it means to be a Jew in Germany today,” but also what it means to carry the historic label of German-Jewish identity on into the future. Only time will tell.

## CONCLUSIONS

What, then, is to be learned from this German-Jewish journey and the question of Jewish identity of an historic Jewish community that all but disappeared and is today becoming somewhat resurrected? I suggest that there are four possible lessons to be derived from the telling of this story.

First, that the larger societies in which Jews find themselves throughout history and even currently have yet to make their own peace with the minorities within their midst. Jews remain, for better or for worse, though all-too-often for worse, the bellwethers of the health and vitality of their host societies, the proverbial canaries in the mineshaft, fated to live or die. How a nation-state treats its Jews and how the Jews resident in those nation-states regard themselves and their identities (safe? vulnerable? successful? threatened?) remain the key questions.

Second, for Jews, given the Christian history of the past 2,000 years for these same Western nation-states, attempts to shed one’s birth and rearing identities may be largely illusory in the minds of those who attempt to do so. Integration and assimilation of those initially outside the group but later brought into the group remain sociologically difficult, and the story of the Jews is a case in point. Insiders do not automatically welcome outsiders even if they provide the vehicles for doing so (that is, conversion). All of the markers of identity (language, culture, legal status, even birth itself) remain problematic when focusing on group dynamics. Converts are not automatically members of their new religious communities. Naturalized citizens or citizens by governmental fiat are not automatically embraced by the larger society. Even those who significantly contribute to the larger society’s cultural endeavors are not automatically welcomed for their gifts; indeed, they may even be initially perceived as threatening and akin to thieves stealing from those same societies, as was the case in German Jewry’s past during the Enlightenment and post-Enlightenment periods.

Third, antisemitism seemingly remains always at the periphery but sometimes at the center in such societies. Transforming outsiders into insiders and welcoming them are parts of a slow process of acculturation whereby parties to the relationship each fully understand they have something to gain and are fully

committed to doing so. The German-Jewish case with hindsight at best appears one-sided: for the Jews, social and economic benefits; for others, far less so.

Fourth and finally, the Jewish solution to the question of identity within the context of the larger society appears to suggest not to rid oneself of it, but, rather to embrace that identity and its diversity of perspectives and options (religious, secular, Zionist) and to use it as the very “launching pad” into societies willing to overcome their own past. The American community is one such example, Jews having been part of the journey and the story since 1654, despite a history of antisemitism though somewhat more muted and less violent than Europe.<sup>17</sup> The Roman Catholic Church and the “sea change” in Jewish-Christian relations in the aftermath of *Nostra Aetate* in 1965, despite two thousand years of Jewish vulnerability and worse, is a second such example. Taken together, they may yet prove to be beacons of light in what for Jews focusing on the past must appear to be one long dark night.

The past is no guarantor of the present nor predictor of the future. What was once the German-Jewish story told with alacrity and framed by sadness and horror mandates neither that present nor that future. The unpredictability of both suggests that human beings in their infinite plasticity are fully capable of redirecting their energies away from what was towards what could potentially be. For Jews, I would suggest, it is this very possibility of an unheralded new beginning, despite all the evidence to the contrary, that continues both to nourish and to sustain Jews and Judaism in Germany and elsewhere as well.<sup>18</sup>

## NOTES

<sup>1</sup> One thinks here in the American context of non-Jewish movie royalty or political royalty (e.g., Chelsea Clinton, daughter of Bill Clinton and Hillary Clinton) marrying Jews in what can only be described as a “quasi-Jewish religious ceremony” with rabbinic officiating.

<sup>2</sup> Ofer Aderet, “Welcome to the Fastest-Growing Jewish Community in the World: Germany” (July 27, 2012), [www.haaretz.com](http://www.haaretz.com). Also quoted in the article and taken from the first issue of *Jewish Voices from Germany* was German Foreign Minister Guido Westerwelle, who wrote:

This publication shows the world the new blossoming of Jewish life in Germany. Jewish life has once again become an integral part of our society. Seven decades after the Shoah, many different branches of Judaism are again ordaining rabbis in Germany, synagogues are being built, and Jewish schools and preschools opened . . . our Jewish community in an inextricable part not only of our history, but also—above all—of our future. . . . We need people who are engaged with and knowledgeable about Jewish history in Germany and who have a vision for the future, and we need media to convey and elucidate this vision.

<sup>3</sup> Moshe Zimmermann, "German Jews or Jews in Germany: No Chance of Becoming a Decisive Factor Again," *Jewish Voices from Germany* (January 2012): 4.

<sup>4</sup> "Jews Question Their Future in Germany," *Der Spiegel Online* (10 September 2012); "Do You Still Want Us Jews?" (5 September 2012); "Protests Continue over Berlin Anti-Semitic Attacks" (3 September 2012); "Attack on Rabbi in Berlin Draws Outrage" (30 August 2012); "Germany Considers Jewish History for UNESCO Heritage" (2 August 2012); "Circumcision Debate Has Berlin Searching for Answers" (25 July 2012). On September 5, 2012, in an interview on *Spiegel Online* in advance of her eightieth birthday, Charlotte Knobloch further stated:

I'm no longer prepared to go along with the sham in which people are talking about a new, fresh, flourishing Jewry in Germany, to give the Germans the feeling that time can heal even the greatest conceivable wound. The fact is that German Jewry has never gotten over the Shoah. The few who survived it are marked and defined to this day by the absence of that Jewish life that existed at the start of the twentieth century.

<sup>5</sup> Donald Snyder, "Germany Debates Proposal to Protect Circumcision as Jews Fret Over Religious Tolerance," *The Jewish Daily Forward*, New York (October 12, 2012), 5.

<sup>6</sup> "German Bundestag Publishes Report on Antisemitism," January 26, 2012, [www.holocausttaskforce.org](http://www.holocausttaskforce.org). On a somewhat lesser note, perhaps, was the awarding of the Theodor Adorno Prize by the City of Frankfurt this fall to Jewish anti-Zionist professor and critical theorist Judith Butler (b. 1956) of the University of California, Berkeley, supposedly for her contributions to scholarship. The irony of the award was not lost on her critics, of whom there were many, Jews as well as non-Jews, who reminded their readers that the prize was named in honor of a Jew forced to flee Germany from the Nazis before his arrival in New York. While acknowledged as a founder of the discipline of critical theory, Adorno was himself most strongly supportive of the Jewish state. See, for example, the website of Scholars for Peace in the Middle East ([www.spme.org](http://www.spme.org)), which includes not only condemnatory articles and essays but newspaper accounts of the whole flap as well. Butler chose to answer her critics indirectly with a lengthy piece in the anti-Zionist website [www.mondweiss.net](http://www.mondweiss.net). Why Frankfurt would choose to do so (ironically, Frankfurt has a Jewish mayor, who, however, was uninvolved in this decision), knowing that it would provoke enmity among Jews, remains an unanswered question.

<sup>7</sup> Baron regarded Graetz's pioneering effort as too focused on what he called "a lachrymose view of Jewish history," all pain and suffering without equally emphasizing its celebratory aspects.

<sup>8</sup> (New Haven: Yale University Press, 2007). Two other relevant and important (and fascinating!) texts are Jean-Claude Schmitt, *The Conversion of Herman the Jew: Autobiography, History, and Fiction in the Twelfth Century* (trans. A. J. Novikoff; Philadelphia: University of Pennsylvania Press, 2010); and Michael T. Walton, *Anthonius Margaritha and the Jewish Faith: Jewish Life and Conversion in Sixteenth-Century Germany* (Detroit: Wayne State University Press, 2012).

<sup>9</sup> There is also a rather large literature dealing with the concept of *Jüdischer Selbsthaas* [Jewish self-hate] from a variety of perspectives: biographical and autobiographical, historical, psychological, and sociological. See, for example, Sander L. Gilman, *Jewish*

*Self-Hatred: Anti-Semitism and the Hidden Language of the Jews* (Baltimore: The Johns Hopkins University Press, 1990); and the relatively recent contribution to this ongoing discussion, David Mamet, *The Wicked Son: Anti-Semitism, Self-Hatred, and the Jews* (New York: Schocken Books, 2006). One can also mine the annual yearbooks of the Leo Baeck Institute, New York, for numerous articles regarding German Jews and Jewish self-hatred.

<sup>10</sup> See, for example, Greg Caplan, *Wicked Sons, German Heroes: Jewish Soldiers, Veterans, and Memories of World War I* (Berlin: VDM Verlag, 2008); David J. Fine, *Jewish Integration in the German Army in the First World War* (Berlin: Walter De Gruyter, 2012); Tim Grady, *The German-Jewish Soldiers of the First World War in History and Memory* (Liverpool: Liverpool University Press, 2012).

<sup>11</sup> See, for example, Shulamit Volkov, *Walther Rautenau: Weimar's Fallen Statesman* (New Haven: Yale University Press, 2012).

<sup>12</sup> This last two categories under Nazi hegemony were far more porous than might at first be realized. Brian Mark Rigg, *Hitler's Jewish Soldiers: The Untold Story of Nazi Racial Laws and Men of Jewish Descent in the German Military* (Lawrence: University of Kansas Press, 2002), makes this quite transparent.

<sup>13</sup> See Steven E. Ascheim, *Beyond the Border: The German-Jewish Legacy Abroad* (Princeton: Princeton University Press, 2007), for the impact of these thinkers on contemporary Western thought.

<sup>14</sup> Among the many books focusing on German-Jewish life and identity in the post-War period are the following: V. Michal Bodemann, ed., *Jews, Germans, Memory: Reconstruction of Jewish Life in Germany* (Ann Arbor: University of Michigan Press, 1996); V. Michal Bodemann, *A Jewish Family in Germany Today: An Intimate Portrait* (Durham: Duke University Press, 2005); Michael Brenner, *After the Holocaust: Rebuilding Jewish Life in Postwar Germany* (trans. B. Harshav; Princeton: Princeton University Press, 1997); Michael Cohn, *The Jews in Germany, 1945–1993: The Building of a Minority* (Westport: Praeger, 1994); Leo Katcher, *Post-Mortem: The Jews in Germany Today* (New York: Delacorte Press, 1968); Norbert Muhlen, *The Survivors: A Report on the Jews in Germany Today* (New York: Thomas Y. Crowell, 1962); Jeffrey M. Peck, *Being Jewish in the New Germany* (New Brunswick: Rutgers University Press, 2006); Lynn Rapaport, *Jews in Germany after the Holocaust: Memory, Identity, and Jewish-German Relations* (Cambridge: Cambridge University Press, 1997); Shlomo Shafir, *Ambiguous Relations: The American Jewish Community and Germany Since 1945* (Detroit: Wayne State University Press, 1990); Peter Sichrovsky, *Strangers in Their Own Land: Young Jews in Germany and Austria Today* (trans. J. Steinberg; New York: Penguin Books, 1986); Susan Stern, ed., *Speaking Out: Jewish Voices From United Germany* (Chicago: edition q, 1995).

<sup>15</sup> See, for example, Leonard Gross, *The Last Jews of Berlin* (New York: Simon and Schuster, 1982), as well as the more public story of professor of literature Victor Klemperer (1881–1960), who was married to a non-Jew and survived inside Germany during the Second World War. He wrote a three-volume diary of those years and its aftermath: *I Shall Bear Witness: The Diaries of Victor Klemperer 1933–41* (trans. M. Chalmers; London: Weidenfeld and Nicolson, 1998); *To the Bitter End: The Diaries of Victor Klemperer 1942–45* (trans. M. Chalmers; London: Weidenfeld and Nicolson, 1999); *The Lesser Evil:*



*The Diaries of Victor Klemperer 1945–59* (trans. M. Chalmers; London: Weidenfeld and Nicolson, 2003).

<sup>16</sup> “Berlin Police Say 16 Arrested During Neo-Nazi Demonstration,” *International Herald Tribune* (October 22, 2006).

<sup>17</sup> See Steven Leonard Jacobs, “Religion and Theology,” in *Antisemitism in North America: Theory, Research, and Methodology* (ed. Steven K. Baum, et al.; Leiden: Brill, forthcoming).

<sup>18</sup> A full bibliography of consulted sources may be obtained by writing directly to Steven Leonard Jacobs at [sjacobs@bama.ua.edu](mailto:sjacobs@bama.ua.edu).

# “I Sometimes Think That I Grew Up on a Different Planet”: The Assimilated Jewish Community of the Warsaw Ghetto in the Letters of Wanda Lubelska and Hala Szwambaum

Katarzyna Person

In my paper I will discuss the story of assimilated, acculturated, and baptized Jews, a small group among the numerous political, cultural, and national identities that formed the population of the Warsaw Ghetto. Unwilling to integrate into the Jewish community and unable to merge with the Polish one, they formed a group of their own, remaining throughout the interwar period in a state of suspension, on the border of national and cultural identities. In 1940, with the closure of the Jewish Residential Quarter in Warsaw, their identity was chosen for them.

Whether assimilation, understood by Todd Endelman as a process encompassing acculturation, integration, emancipation, and secularization, could ever take place in interwar Poland is still far from resolved in the scholarship. Undoubtedly, the influence of the very strong traditional Polish Jewish community and the rise of antisemitism throughout central eastern Europe did hinder this process to the extent that it could never take the shape that it did in western Europe. It would be farfetched to say, however, that the process of assimilation taking place in Polish lands throughout the nineteenth century was utterly stopped in its tracks. On the contrary, as will be demonstrated, the interwar Polish Jewish community included a group that, while retaining an awareness of their Jewish origin, increasingly identified with their Polish rather than Jewish environment. Yet, as they never could merge with the outside community to the extent to which it took place in the West, the historian Aleksander Hertz famously referred to them as the “caste” of assimilated Jews: a group suspended between the Polish and Jewish communities.<sup>1</sup>

For the purpose of this paper this group will be defined as predominantly identifying with Polish culture and language, even though some of them also cultivated certain aspects of their Jewish identity.<sup>2</sup> It will therefore include people already born into assimilated families, in some cases baptized at birth, as well as those who as adults made a conscious decision to break their ties with the traditional Jewish community for various reasons, including career advancement or intermarriage. There were also those for whom

assimilation or acculturation was a lifelong process, a result of their education in Polish schools and immersion in a mixed Polish-Jewish environment. It can be claimed that the only way to define “Jewish Polishness” in the turbulent surroundings of interwar and wartime Poland is to see it as an expression of constant changes in various components of self-identity. My paper will show this journey through the example of two young women, inhabitants of the Warsaw ghetto, who both described their experiences in their letters sent to the “Aryan” side of Warsaw between 1940 and 1942.

The first young woman was Wanda Lubelska. She was born in 1923 and came from a well-to-do family living in the modern, middle-class district of Żoliborz. Her mother was a violinist, her father was a high-level bank employee. She attended a Polish high school, where she excelled in mathematics and art and was an active member of the Polish scouting movement.<sup>3</sup> The second young woman’s name was Hala Szwambaum. We do not know much about her prewar life. Only that she was born in 1921, so was two years older than Wanda, and also lived in Żoliborz. As is evident through her letters, she came from a similar background.<sup>4</sup>

Both young women were representative of a new generation of Warsaw Jews. They were educated in elite Polish schools, studying a syllabus imbued with patriotism, they spoke Polish as their first language, and in their letters did not exhibit any familiarity with the traditional life of the Polish-Jewish community. Writing about the Warsaw environment of assimilated Jews, Todd Endelman described it as a heterogenous mix of converted and unconverted (but indifferent) Jews, with a sprinkling of unconventional Poles.<sup>5</sup> Recipients of letters on which I base my paper support this claim. Halina Grabowska, whom Wanda corresponded with, was an activist in the scouts movement and member of the Polish underground. Hala Szwambaum on the other hand wrote to her former school teacher, Stefania Lillental, who, also of Jewish origin, remained with her young son in hiding on the “Aryan” side. The two women would first exchange letters when meeting at the ghetto walls and later passed them through acquaintances who were able to enter and leave the ghetto.

What did it mean for assimilated Jews to leave their prewar neighborhoods, understood as both a physical environment and also a mixed Polish-Jewish community, and enter the new, Jewish one? As we meet both women when they are already in the ghetto, we do not know how and why their families made the decision to move there and whether they had any opportunity of staying on the “Aryan” side or even leaving Warsaw. Most likely, as was the case with those assimilated families who did leave their recollections, the

sheer speed of events between the announcement of the ghettoization decree on October 12 and the end of resettlement on November 15, 1940 did not give them much time for reflection. As a result, only a small number of Jews, mainly from intellectual or artistic circles, decided at that stage to risk an illegal existence with forged papers bearing "Aryan" names: live "on the surface," go into hiding in Warsaw, or leave the city. These were mainly people who were very strongly linked to the Polish environment, most often by marriage. The rest, irrespective of their national and cultural identity, began their lives as citizens of the "closed quarter."

As the surviving correspondence between Hala and Stefania dates from 1941, the first reflections of the ghetto reach us through the eyes of Wanda. In December 1940, two weeks after the closure of the ghetto, Wanda wrote to her friend: "You cannot have any idea of what is happening here. It has to be seen to be understood. There is nothing left out of me. I don't know how long it will last, for now I have lost all hope and the will to do anything. Only now do I see and understand what someone feels who is torn out of their environment and thrown into an alien, unknown one."<sup>6</sup>

Shocked reactions to life in the ghetto—its noise, overcrowding, surrounding poverty, and enclosure—appear in almost all diaries irrespective of their authors' backgrounds, yet the girls' letters exhibit other problems that were specific to their community. One of them is a lack of familiarity with their new surroundings. If Wanda's family was similar to others from the same background, we can assume that she had very little knowledge of the topography of the traditional, rather impoverished Jewish part of Warsaw, where the ghetto was established. It is not unlikely that her parents made a point of keeping her away from it, immersing her instead in the Polish or assimilated Jewish environment. Another clear issue was language. As comes across clearly from the letters, both girls spoke Polish as their first language and were studying a number of foreign languages. However, at the moment the Jewish quarter was closed, Yiddish was the language most often heard on the ghetto streets, despite the fact that a growing number of Warsaw's Jews possessed a good knowledge of Polish.

Prewar Warsaw represented the largest Yiddish-speaking community in Europe, and the everyday life of the ghetto reflected this. Yiddish was the language "of the street" as well as of a group of intelligentsia gathered around the *Aleynhilf* [self-help in Yiddish] and most famously members of the Underground Archive of the Warsaw Ghetto.<sup>7</sup> The latter group used Yiddish as part of a new secular culture created in the ghetto, which they hoped would

form the basis a postwar Jewish society in either the Diaspora or in Palestine. According to activists, Yiddish, as the true language of the ghetto, had every right to replace Polish, a language associated with the snobbery of the assimilated classes and identified with “ignorance, disdain and ill-will towards the common man and his needs, and with a lack of understanding, in the literal sense of the word, of the Yiddish-speaking masses.”<sup>8</sup>

However, assimilated Jews were often brought up in an environment that equated Yiddish with a low status and lack of culture, in which the language was little more than unintelligible jargon. Being the “official” language of the ghetto, Yiddish came to symbolize the alienation assimilated Jews felt in the new society that they were plunged into. Polish was therefore sentimentally regarded as one of the few links to a prewar life, and they sought to preserve it wherever possible. Unsurprisingly, in one of her first letters sent from the ghetto, Wanda described “keeping her accent intact” as something of the uttermost importance for her family, and she complained about the manner in which the ghetto society spoke Polish. She wrote: “I wanted so much to see a familiar face from Żoliborz and speak to someone in a humane way, that you can’t even imagine. Here as you know (because I already told you) everyone is ‘singing’ in a horrible manner, and myself, and in particular my mother, want to keep my Polish accent intact. Now, as they are locking us in, it may be difficult.”<sup>9</sup>

The issue of speaking Polish correctly is just one example of how, despite physical separation, Poles and the “Aryan” side of Warsaw were omnipresent in the life of the ghetto-assimilated community. Describing her emotional state in the ghetto, one of its assimilated inhabitants wrote: “I was never ‘Here’ [in the ghetto], I was always ‘There’ [on the “Aryan” side].”<sup>10</sup> Similar sentiments are expressed by both women. In February 1941, three months after the closure of the ghetto, Wanda wrote: “You ask me if I am curious as to what is happening ‘there.’ You’d better not ask me, because I think about your life ‘there’ all the time, what you’re doing, what you’re discussing, what our friends do. Life here is so dark in its everyday grayness, that you have to keep your thoughts away from it to cope with it.”<sup>11</sup>

For many of the inhabitants of the ghetto, both assimilated and not, prewar Warsaw became the symbol of their lost life, presented in clear contrast to the reality of the ghetto. Talking about her wish to go to the “Aryan” side, Hala wrote: “During recent months I have been thinking of you the way prisoners or emigrants think of their close ones who stayed behind in their native land. I wish I could walk out of here and go to you, to Warsaw.”<sup>12</sup> In another letter she explained how “Krakowskie Przedmieście [a Warsaw street] is as far away

as the Champs Elysees or the Piazza San Marco."<sup>13</sup> Even though for the vast majority of ghetto inhabitants the sentiment toward prewar Warsaw did not extend to "Aryan" Warsaw under Nazi occupation, seen as an increasingly dangerous place, Wanda, who ventured to the "Aryan" side to meet up with her school friends, still referred to her brief escapes as "time spent in paradise."<sup>14</sup>

Among assimilated and acculturated ghetto inhabitants, in particular those coming from families who at least partially recognized their Jewish roots, were those whose Jewish identity was strengthened or even reestablished in the ghetto. This kind of development can be for instance witnessed in Hala's letters. Even though she was brought up in a clearly assimilated community, her letters hint at the antisemitism that she might have encountered when at school. At the end of 1941, Hala reflected in a letter to a former teacher on the lack of contact with her former school friends: "I sometimes think that I grew up on a different planet—that's how differently our lives developed and made different people out of us. And it's not even five years since we left the same nest, from the care of the same people and the same ideas. We had much in common, even similar marks in the final exams. We have the same mother tongue; we were shaped by the same books, the same school bench, the same city. Now, each of us thinks differently as if we grew up in different hemispheres and there is even some enmity between us. I can't help feeling that they are all happy with the fate that has befallen us."<sup>15</sup>

In the ghetto, even though she remained socially linked to her prewar acquaintances, she also made a number of new friends from varied backgrounds, one of whom she began dating. In her letters we witness a gradual, yet perceptible, integration with the wider Jewish society based on a shared common fate. With passing time, she increasingly referred to herself in her letters as Jewish, calling herself in October 1941 a "woman on a reservation of the vanishing Semitic tribe in Central Europe."<sup>16</sup>

We do not come across such reflections in the letters of Wanda, perhaps because she was born into a family that was more fully assimilated into the Polish culture and national identity. Even in the ghetto, the group Wanda's family belonged to remained within a closed circle comprised of those of a similar background. The testimony of many of them offers proof that the division between the two parts of society remained as deep as before the war. When in her letters Wanda complained about the Jewish youth in the ghetto, comparing them unfavorably to her Polish friends,<sup>17</sup> her negative feelings were no doubt to a large degree reciprocated. It can be safely stated that the vast majority of the ghetto population had a decisively negative attitude toward

assimilated Jews and in particular the 2000-strong baptized community, whose members, among them prominent intellectuals, scholars, lawyers, physicians, and top-ranking officials,<sup>18</sup> almost immediately reached the top layers of ghetto life, creating the feeling of a mutually supportive Catholic “clique.”

In many documents preserved in the Underground Archive of the Warsaw Ghetto, converted, assimilated, and highly acculturated Jews are put in one category, viewing assimilation as an apostasy and the last step before baptism. In the eyes of many of the ghetto inhabitants the vast majority of the assimilated community remained in the “grey zone” of moral responsibility, as their prewar professional standing, financial situation, and especially contacts on the “Aryan” side created the impression that they were in a much more fortunate position than others around them. In many cases there were grounds for such a view. In the best situation were those members of the assimilated community who were well-off before the war and were not cut off from their prewar assets, which could be adequate to sustain them through two years of living in the ghetto and which in some cases even allowed them to keep up the pretence of the prewar way of living.

Among this group were the most prominent members of the assimilated and acculturated community, members and employees of the Jewish Council, the Judenrat, described by its enemies as a “nest of disgusting assimilation.”<sup>19</sup> As a result of its overblown bureaucratic structure, the Judenrat became a crucial job provider for the educated, assimilated strata of the ghetto, though those with adequate contacts were also able to find employment in other branches of the ghetto administration. Members of the assimilated intelligentsia, officers from the Polish Army, and lawyers were also definitely overrepresented among recruits to the ghetto police—the Jewish Order Service, led by a convert and prewar Polish State Police officer Józef Szeryński.

However, the two sets of letters demonstrate to the contrary that the vast majority of assimilated and acculturated ghetto inhabitants fully shared the general fate of the impoverished intelligentsia, especially as the comparatively good living situation of even the most fortunate members of the assimilated community started to change from mid-1941. The girls’ fate confirms the view of historian Israel Gutman, himself a Warsaw Ghetto survivor, that from that point there was no longer a class system in the ghetto, only an overall slide towards poverty.<sup>20</sup> In March 1941, Wanda’s father died of typhus. Her mother fell ill in the autumn of 1941 and though she recovered, her health remained very fragile. Care for the family was left to the children. Her younger brother took on the responsibility of the main provider for the family by becoming a rickshaw

driver—an occupation that was extremely taxing physically and provided only a meager income, which could barely keep the family fed. Wanda earned additional income by tutoring, cleaning apartments, and selling stockings.

Just as for the majority of the assimilated intelligentsia, an important source of money for assimilated families was their contacts outside the ghetto. While some of them may not have had significant assets that were left on the "Aryan" side, they were helped financially by their Polish friends and former colleagues. Through her contacts with friends outside the ghetto, Wanda became the driving force in selling the family's belongings, ranging from her mother's concert dresses to the library. Selling books proved particularly difficult for her to bear. In a letter to a friend she wrote: "All I ask of you is to please start from foreign language books, and in any case leave the encyclopedia for the end. Maybe by then the tables will have turned."

Hala's situation was marginally better, yet she too had given up paying for private French lessons in June 1941, though her teacher continued to give them to her for free. At that point she began working as a librarian, a job that required carrying heavy suitcases full of books between private apartments. Even though she admitted in her letters to physical exhaustion, she also wrote that since she could afford soups in the communal kitchens, she ate "almost adequately." It was also most likely this job that allowed her to widen her social circles and that affected her view of the community surrounding her. Moreover, both young women were strongly affected by the general impoverishment around them. In the winter of 1942, Hala wrote of barefooted children on the ghetto streets, while Wanda described the fate of hopeless refugees wandering aimlessly through the closed quarter.

There is nothing in the letters of either of the young women that hints at their being affected by the changes in the perception of Poles taking place among the general ghetto population in 1942 as the situation in the ghetto worsened and contact with the "Aryan" side declined. For the vast majority of the ghetto population, whose relationship with Poles, unlike that of both young women, was restricted to economic relations, with no physical contact being possible, the principal source of information about the "other side" was tales and rumors, and these were mainly concerned with the spread of *szmalcownictwo* [blackmailing].<sup>21</sup> Only those of the ghetto inhabitants who had enough money and contacts on the "Aryan" side to leave the ghetto were to face the reality of living in wartime Warsaw. As the young underground activist Vladka Meed noted, the painfully high cost of remaining in hiding and constant fear of denunciation meant that "the assimilated Jewish intelligentsia,



the erstwhile merchants and social figures, were transformed into distressed, bewildered paupers.”<sup>22</sup>

For many members of the assimilated community it was the experience of hiding on the “Aryan” side that made them reconsider their affiliations to Poles. Fear of denunciations became a unifying factor shared between all of those in hiding, irrespective of their prewar status, background, or financial situation. Jundenrat clerk Stefan Ernest, commenting on the experience of thousands of mainly assimilated Jews living on the “Aryan” side of Warsaw, noted that “the only thing they share is a fear of informers, an anxious anticipation of the end—and the fact that they are Jewish.”<sup>23</sup>

Wanda never became Jewish. Together with her mother and brother and with no money left, she was among the first to be sent to Treblinka. Her letters indicate that despite the growing persecution and increasingly threatening news reaching the quarter from other Jewish communities, the Gross-Aktion, the deportation of the Warsaw Ghetto inhabitants to Treblinka, caught her family, like countless others, unaware. We do not know how Hala survived the deportations, but we can surmise that she was helped by the young man whom she began dating in the ghetto. As she complained in one of the letters, she did not have enough money to get out of the ghetto and did not know anyone who would take her in. As her letters stop at the onset of the deportations, we can only guess that, like the majority of politically active young people who found themselves in the ghetto, she joined one of many Zionist pioneering youth groups.

As underground organizations conducted outreach activities aimed at the middle-class acculturated group in an effort to counteract their Polonization, she would not have been alone. As the memoirs of two Zionist youth leaders, Zivia Lubetkin and Yitzhak Zuckerman, demonstrate, the ghetto kibbutzim became a home not only for activists from around the country but also for people very far from the ideology, and indeed even for those who had never heard of it.<sup>24</sup> Yet as the objectives of the youth organizations changed and military training supplanted the cultural activities, the few assimilated boys and girls who cooperated with the armed underground worked mainly as messengers—a task that required flawless Polish and “good” looks. We do not know if this was also Hala’s path. The only information we have is that she stayed in the ghetto until its last days and died alongside her boyfriend in the Warsaw Ghetto Uprising.

The great educator Janusz Korczak wrote in his Warsaw Ghetto diary: “Long after the war, men will not be able to look each other in the eyes without posing the question: How did it happen that you survived? How did you

do it?"<sup>25</sup> These questions were especially difficult for the so-called "victims of privilege," as the stories told by the assimilated ghetto inhabitants could not match those of the underground fighters. They were more likely to be tried for collaboration than regarded as heroes. They were remembered as the members of the Judenrat, members of the Jewish police, the crowds in cafes and ghetto theatres. As a result, those assimilated Jews who published their testimonies shortly after the war often chose to underline the Jewish aspect of their ghetto experience, writing as "Jewish Holocaust victims."<sup>26</sup> Others decided to remain Polish and only many years after the war, if at all, recounted their ghetto experiences.

The experience of the assimilated community, a community in exile, with their memory of various aspects of Polishness serving as a way of escapism and to some extent even spiritual resistance, became very much lost. It is only through documentation written then and there, such as the letters of Wanda Lubelska and Hala Szwambaum, that its voice and the complexity of their experience can be recovered.

## NOTES

<sup>1</sup> On this term, see Aleksander Hertz, *The Jews in Polish Culture* (trans. Richard Lourie; Evanston: Northwestern University Press, 1988). For more on assimilation in interwar Poland, see among others Anna Landau-Czajka, *Syn będzie Lech . . . Asymilacja Żydów w Polsce międzywojennej* (Warszawa: Neriton, 2006); Katrin Steffen, *Jüdische Polonität. Ethnizität und Nation im Spiegel der polnischsprachigen jüdischen Presse 1918–1939* (Göttingen: Vandenhoeck & Ruprecht, 2004); Sean Martin, "Jewish Youth Between Tradition and Assimilation: Exploring Jewish Identity in Interwar Kraków," *The Polish Review* 46:4 (2001): 461–77.

<sup>2</sup> Historian Todd Endelman defines four changes in Jewish behavior and status that are usually encompassed by the term assimilation: acculturation (the acquisition of the cultural and social habits of the dominant non-Jewish group), integration (the entry of Jews into non-Jewish social circles and spheres of activity), emancipation (the acquisition of rights and privileges enjoyed by non-Jewish citizens/subjects of similar socioeconomic rank), and secularization (the rejection of religious beliefs and the obligations and practices that flow from these beliefs). See Todd Endelman, "Assimilation," in *The YIVO Encyclopaedia of Jews in Eastern Europe* (ed. G.D. Hundert; vol. 1; New Haven: Yale University Press, 2008), 81.

<sup>3</sup> Letters published in Zofia Borzymińska, ed., "Dziesięć listów z warszawskiego getta," *Biuletyn Żydowskiego Instytutu Historycznego w Polsce* 1–2 (1984): 151–67.

<sup>4</sup> Letters located in the Jewish Historical Institute in Warsaw Archive, Kolekcja Bernarda Marka no. 546 (Listy Hali do Pani Stefanii).

<sup>5</sup> Todd Endelman, "Jewish Converts in Nineteenth-Century Warsaw: A Quantitative Analysis," *Jewish Social Studies* 4:1 (1997): 50.

<sup>6</sup> “Dziesięć listów z warszawskiego getta,” Letter of December 22, 1940, 153–54.

<sup>7</sup> Ewa Geller, “The Jews of Warsaw as a Speech Community. Homage to Warsaw Yiddish,” in *Żydzi Warszawy: Materiały konferencji w 100. rocznicę urodzin Emanuela Ringelbluma* (ed. E. Bergman; Warszawa: ŻIH, 2000), 115.

<sup>8</sup> Hersz Wasser, “Yiddish Culture Organization ‘YIKOR,’ Warsaw Ghetto, 1940–1942,” in *To Live With Honor and Die with Honor: Selected Documents from the Warsaw Ghetto Underground Archives* “O.S.” [“Oneg Shabbath”] (ed. J. Kermisch; Jerusalem: Yad Vashem, 1986), 442.

<sup>9</sup> “Dziesięć listów z warszawskiego getta,” Letter of November 25, 1940, 152.

<sup>10</sup> Antonina Gurycka, *Nigdy nic nie wiadomo . . .* (Warszawa: WIP, 2001), 24. Qtd. in Joanna Nalewajko-Kulikow, *Strategie przetrwania. Żydzi po aryjskiej stronie Warszawy* (Warszawa: Neriton, 2004).

<sup>11</sup> “Dziesięć listów z warszawskiego getta,” Letter of February 23, 1940, 154.

<sup>12</sup> Listy Hali do Pani Stefanii, Letter of June 25, 1942.

<sup>13</sup> Listy Hali do Pani Stefanii, Letter of January 11, 1942.

<sup>14</sup> “Dziesięć listów z warszawskiego getta,” Letter of August 21, 1941, 160.

<sup>15</sup> Listy Hali do Pani Stefanii, Letter of November 23, 1941.

<sup>16</sup> Listy Hali do Pani Stefanii, Letter of October 20, 1941.

<sup>17</sup> “Dziesięć listów z warszawskiego getta,” Letter of February 23, 1941, 156.

<sup>18</sup> The official newspaper of the ghetto, *Gazeta Żydowska*, claimed in May 1941 that as of January 1, 1941 there were 1540 Catholics, 148 Protestants, 30 Russian Orthodox, and 43 other Jews of non-Mosaic faith in the ghetto—altogether 1761 Christian Jews. Peter Dembowski, author of the only comprehensive study of the subject, estimates their number was closer to 5,000. Peter F. Dembowski, *Christians in the Warsaw Ghetto: An Epitaph for the Unremembered* (Notre Dame: University of Notre Dame Press, 2005), 66. See also Havi Ben-Sasson, “Christians in the Ghetto: All Saint’s Church, Birth of the Holy Virgin Mary Church and the Jews of the Warsaw Ghetto,” *Yad Vashem Studies* 31 (2003): 153–73.

<sup>19</sup> Emanuel Ringelblum, *Ksiovim fun geto* (vol. 1; Varshe: Yidish Bukh, 1961), 232.

<sup>20</sup> Daniel Blatman and Israel Gutman, “Youth and Resistance Movements in Historical Perspectives. Yisrael Gutman talks to Daniel Blatman,” *Yad Vashem Studies* 23 (1993): 20.

<sup>21</sup> See, for example, Helena Szereszewska, *Memoirs from Occupied Warsaw 1940–1945* (trans. A. Mariańska; London: Vallentine Mitchell, 1997), 150.

<sup>22</sup> Vladka Meed, *On Both Sides of the Wall* (trans. S. Meed; Tel Aviv: Beit Lohamei Hagetaot, 1972), 182.

<sup>23</sup> Stefan Ernest, in *Words to Outlive Us: Voices from the Warsaw Ghetto* (ed. M. Grynberg; trans. P. Boehm; New York: Henry Holt, 2002), 307.

<sup>24</sup> Zivia Lubetkin, *In the Days of the Destruction and Revolt* (trans. I. Tubbin; Tel Aviv: Hakibbutz Hameuchad Publishing, 1981), 21; Yitzhak Zuckerman, *A Surplus of Memory: Chronicle of the Warsaw Ghetto Uprising* (trans. B. Harshav; Berkeley: University of California Press, 1993), 70.

<sup>25</sup> Janusz Korczak, *The Ghetto Years 1939–1942* (trans. J. Bachrach; Tel Aviv: The Ghetto Fighters House, 1980), 174.

<sup>26</sup> See Zoë Waxman, *Writing the Holocaust: Identity, Testimony, Representation* (Oxford: Oxford University Press, 2006), 158.

# Creating a Community: Who Can Belong to the Reform Synagogue?

Mara W. Cohen Ioannides

I endorse the approach that says, “Do what you think is best for the Jewish people” and stop worrying about the rest. For me, welcoming interfaith families in any way possible is the best thing for the Jewish people.

—Rabbi Edwin C. Goldberg<sup>1</sup>

It is far more important to have a strong commitment from a smaller group than a vague commitment from a large number who are at the very periphery.

—Rabbi Walter Jacob et al.<sup>2</sup>

## HISTORICAL BACKGROUND

Who is a Jew, who is a member of the community, is a question that dates back to the early biblical period. A description or law is usually set in place because of a need. Hence this community must have had problems with membership. In Genesis and Exodus, the Israelites are described as descendants of certain people: Jacob in Genesis 35:9–12 and the descendants of Jacob’s sons in Exodus 3:10, 3:16. Thus, Jews were then defined genetically or through heredity. However, there were non-Jews who were members of the community. The Exodus story tells of a “mixed multitude” who left Egypt with the Israelites (Exod. 12:38). There are times when these members were counted in the community and times when these people were differentiated from the Jews. For example, the son of Shelomith bat Dibri is pointed out as the son of an Israelite and an Egyptian (Lev. 24:10–12). The point here is that Shelomit’s son’s father was not an Israelite, yet Shelomit’s son is counted as one; thus, one could conclude that matriliney was the standard of the day. Thus, even in this period one could be a member of the community without necessarily being an Israelite, which at this time was more a tribal or ethnic indicator than a religious one. In fact, Leviticus 19:33–34 commands that “the stranger who resides with you shall be to you as one of your citizens; you shall love him as yourself.” Numbers 1:2, many rabbis believe, points out the patrilineal nature of Judaism by requiring that the “census of the whole Israelite community”

should be listed by “names, every male, head by head.” If this is the case, then Shelomit’s son is not an Israelite, but is a member of the community.

Later during the postexilic period, Ezra is clear on what defines the community. He laments that “the holy seed has become intermingled with the peoples of the land” (Ezra 9:2). However, the book of Ruth presents us with the first convert, after Abraham and Sarah; the first person to change their belief system and customs to someone else’s. Ruth declares: “Your people shall be my people, and your God my God” (Ruth 1:16). This shows that by this time, being an Israelite or Jew was not necessarily hereditary, now it could be a belief system. In fact, Isaiah 56:7 reminds us that “my house [the synagogue] shall be called a house of prayer for all peoples” regardless of their belief system.

In the Middle Ages, a different concept of membership developed. Maimonides presents the Thirteen Principles of Judaism and declares, “When a man believes in all these fundamental principles . . . he is then part of that ‘Israel.’”<sup>3</sup> Thus, the concept of genetics had morphed into one of faith. However, Maimonides is also clear that “any gentile who joins us unconditionally shares our good fortune, without, however, being quite equal to us.”<sup>4</sup> Thus, there is still a hereditary factor. This isn’t surprising. While converts are accepted by the Talmudic rabbis, they were definitely given a different place in the Jewish hierarchy—as Jews, but not the same as Jews by birth. This is a carryover from the biblical period. Even Ruth, who is so highly respected by the rabbis as a convert, calls herself “a foreigner” (Ruth 2:10). Then again, one has to wonder about the rabbis who question a convert’s place in the hierarchy when Ruth, the quintessential convert, was the great-grandmother of King David (Ruth 4:17).

While the definition of who is a Jew didn’t really change in the Middle Ages, one’s membership in a congregation was tied to the communities from which one’s ancestors came. Thus, synagogues followed the Italian, Polish, Spanish, or other rite. Rabbis, like Moses di Trani, were asked to determine membership in synagogues from communities far away<sup>5</sup> just as they would issues of kashrut. Thus, congregational membership was not open to just any Jew, but to specific Jews.

## MODERN PERIOD

In the modern period, the definition of Jewishness changed from religion to nationhood and back again. Jacob Klatzkin explains this clearly: “in the past . . . Judaism resets on a subjective basis, on the acceptance of a creed . . . the Jewish people [are] a denomination . . . and a community of individuals . . .

a third has now arisen. . . . To be a Jew means the acceptance of neither a religious nor ethical creed,” rather it is a common history.<sup>6</sup> One of the keys to unlocking the question of acceptance as a Jew, membership into “the club,” has to do with the Emancipation. As Jews were accepted into the larger gentile community, self-definition became more important. Until the Emancipation, Jews were often defined by the external community rather than internally. For example, the first law in the Castilian Seven-Part Code defines a Jew as “a party who believes in, and adheres to the law of Moses . . . as well as one who is circumcised, and observes the other precepts commended by his religion.”<sup>7</sup> There were also laws all over Europe forcing Jews to wear certain clothes, declare themselves members of a synagogue, live in specific neighborhoods, work in defined careers, and so on. However, other than the ability to prove one’s ancestors’ lineage or seeking a rabbi’s guidance for conversion, a rare occurrence, there were no definitions of Jew instituted.

In the late 1700s, with the growth of assimilation and emancipation, Jews and gentiles started to blend. Theodor Herzl remarked in the 1890s that intermarriage was the greatest impetus towards assimilation.<sup>8</sup> Additionally, the leaders of the early Reform movement realized that there had to be some delineation between themselves and the gentiles, who in many respects they sought to emulate; otherwise, Jews would disappear. Being Jewish had become a private matter, rather than a public or communal one. Some argue that the longer Jews were in contact with Americans, the more they lost touch with Judaism.<sup>9</sup> Jonathan Sarna calls this “the cult of synthesis,” where Jews intermix their Judaism and their Americanism.<sup>10</sup> Therefore, in 1885 the American Reform movement under the auspices of the Central Conference of American Rabbis (CCAR) created a code of self-description: “We consider ourselves no longer a nation, but a religious community.”<sup>11</sup> This redefinition allowed political nationalists to include Jews as citizens with a different religion rather than as resident aliens (the movement towards emancipation). However, only a decade or so later Theodore Herzl viewed the conflict between the assimilated and unassimilated Jew as a question of nationhood: is the Diasporic Jew part of the nation in which they live or the nation of Judaism?<sup>12</sup> Therefore, despite the statement of the CCAR, the question was still being debated.

Klatzkin, only a quarter of a century later, made an entirely different statement that Jews do not have to have a shared belief system, rather a common history, to make the Jewish community.<sup>13</sup> Jacob Rader Marcus saw the American Jew as a new Jew. He saw Jews as a “religioethnic community” where by the end of the twentieth century most of the ethnic differences had

disappeared and the community had created its own American ethnic Judaism.<sup>14</sup> This in itself is controversial, since in the last decade there has been a remarkable growth in the study of the Mizrahi communities of the United States; however, there is something to be said for an icing of commonality over the multilayered cake of American Judaism.

## POST-HOLOCAUST PERIOD

In the latter half of the twentieth century, post-Holocaust, Jews around the world came to this realization: even though they had been a minority before, with the majority of the Jewish communities in Europe erased Judaism could disappear entirely. Hindsight proves most interesting here because 1940 was the highpoint of American Judaism; American Jews were at their highest percentage of the American population ever, at 3.68 percent. After that, even though the actual population grew slightly and then leveled off between 5,300,000 and 6,000,000, the percentage of Jews that made up the American population dropped every decade until it returned to the turn of the twentieth century levels of 2.2 percent.<sup>15</sup> (The problem of defining who is a Jew is not particular to North America.<sup>16</sup> However, as North America has the largest Jewish community in the world, it is the leader in creating tradition.) Some of this may be due to the dropping fertility and high intermarriage rates of American Jews.<sup>17</sup>

Interestingly, the 1950s saw “the highest rate of synagogue membership in the twentieth century.”<sup>18</sup> The modern American Jew was less concerned with the denomination or theology than with the location of the community. Samuel Heilman suggests that membership in a synagogue, regardless of the denomination, has much to do with the strict separation of church and state in the United States. Without the defining term of “Jew,” people lost their sense of community and so returned to the synagogue for a sense of self-definition.<sup>19</sup> In fact, modern “Americans choose a synagogue because it is convenient or because they like the rabbi; because they want a cantor or they don’t; because they want more singing or less; because they want two days of religious school or three. They rarely ask about the belief system to which the synagogue subscribes or the philosophy to which it adheres.”<sup>20</sup> After all, the Union for Reform Judaism (URJ) reminds its member congregations that “a synagogue is a community’s precious possession, the most influential institution for the preservation of Judaism. It must be nurtured by the present generation so that it survives, strengthens, flourishes, and provides sustenance to the next.”<sup>21</sup>

The religioethnic concept of Judaism was expanded upon by the CCAR in the 1976 document “A Centenary Perspective,” which emphasized diversity and that individuals can be Jews either by birth or choice; it “spoke of the need to secure the survival of the Jewish people,” which was most poignant after the Holocaust.<sup>22</sup> Around this time, the redefinition of a Jewish family began to take place in the Reform movement, one where both parents did not need to be Jewish.<sup>23</sup> In the 1997 document, “Reform Judaism and Zionism,” the Reform movement switched its emphasis to Jewish continuity. However, the CCAR is very clear that “by calling ourselves a *Jewish* community, we necessarily draw lines and establish boundaries that flow from and reinforce our identity as Jews.”<sup>24</sup> As a side note, it is interesting here that the word used is “community.” Jews are not defined by the CCAR as a nation or a religioethnic group. “Community” is a softer term. This leads us to the heart of this paper: What role can non-Jews play in the synagogue—or even what is a non-Jew?

As the twentieth century drew to a close, the Reform movement, the largest Jewish denomination in North America, addressed the question Jews had asked since early biblical times, but the new century required new questions as well. Not only did they answer who is a Jew (from all over the world, any person born into or who chooses the faith and with any way of expressing their faith<sup>25</sup>), but they also had to ask who could be a member of the community, just as did the Hebrews who left Egypt. They are not alone in their inquiry. All of mainstream Judaism is addressing this issue, as the recent Bechol Lashon Conference highlights.<sup>26</sup> Klatzkin, by taking away the importance of faith, only opened this question at the beginning of the twentieth century.<sup>27</sup> The latest iteration of Reform theology, “A Statement of Principles for Reform Judaism,” addressed these questions,<sup>28</sup> but did not avoid controversy. In fact, it was so controversial that the organization’s journal, *The CCAR Journal*, devoted a whole issue to the topic of trying to define who belongs to the Jewish community.

## INTERFAITH MARRIAGES

The Reform movement recognized the high rate of interfaith marriages among their adherents as a serious problem. The 1909 CCAR stand on intermarriage is “that mixed marriage is contrary to the Jewish tradition and should be discouraged,”<sup>29</sup> and this was supported by the rabbinic community because only a minority of American Reform rabbis officiated at mixed marriages in the late nineteenth century.<sup>30</sup> This issue was revisited in 1947, the late 1950s,<sup>31</sup> and 1973, when rabbis were strongly encouraged to perform interfaith



weddings,<sup>32</sup> because “this concern became particularly acute after the popularization of the concept of the ‘vanishing American Jew’ in the 1960s, based on evidence from community studies of increasing rates of intermarriage.”<sup>33</sup> In 1970, the North American Jewish Data Bank announced that intermarried couples were 9.2 percent of American Jewish married couples, that the rate of intermarriage between 1966 and 1972 had risen to 31.7 percent, and that, significantly, more Jewish men marry out than Jewish women. The rate of the non-Jewish wife converting to Judaism is higher than that of the non-Jewish husband.<sup>34</sup> However, the 1973 statement, while admitting that rabbis can make their own decisions regarding this practice, suggests that it “include a requirement to raise children exclusively within the Jewish faith.”<sup>35</sup> Marc Lee Raphael noted in a small study he conducted that “intermarriage jumped dramatically between 1985 and 1995 [and] this trend . . . continued in the years 1995-1998.”<sup>36</sup> While intermarriage is discouraged by the CCAR, the raising of children of such marriages within Judaism is highly encouraged.<sup>37</sup>

## JEWISH DESCENT

By encouraging children of intermarriage to be raised Jewishly, the CCAR had to reevaluate how Jewishness was passed through the generations. The 1947 proposal on Mixed Marriage and Intermarriage states that “the declaration of the parents to raise them [their children] as Jews shall be deemed sufficient for conversion.”<sup>38</sup> Therefore, in 1983 the CCAR Committee on Patrilineal Descent declared:

the child of one Jewish parent is under the presumption of Jewish descent. This presumption of the Jewish status of the offspring of any mixed marriage is to be established through appropriate and timely public and formal acts of identification with the Jewish faith and people. The performance of these *mitzvot* [commandments] serves to commit those who participate in them, both parent and child, to Jewish life.<sup>39</sup>

Rabbi David Polish believed that patrilineality was already “the common law of our conference.”<sup>40</sup> One could go even further and return to the Bible and say that patriliney has always been the Jewish way. These two factors could have contributed to the latest iteration on community definition.

As Rabbi Daniel Alexander pointed out, the language of the CCAR’s 1999 statement is vague. He highlights the importance of the statement’s “saying ‘opening doors,’ rather than opening *all* doors, one is left with the opportunity to leave some doors shut.”<sup>41</sup> These “doors” are under discussion here, as is the “Jewish communal integrity” that Alexander also believes is

controversial in “The Statement of Principle.”<sup>42</sup> Thus each congregation had to figure out what “inclusive” means to its non-Jewish members “who strive to create a Jewish home.”<sup>43</sup> This is particularly difficult for small communities who continuously struggle to survive. In fact, more than half of the membership congregations to the Union for Reform Judaism (URJ) are small (with fewer than 250 member units).<sup>44</sup> Many of the congregations serve large geographic areas that are underpopulated. Thus, even though the congregation is aligned with the URJ, their members do not necessarily align themselves with the URJ.<sup>45</sup> Most small Jewish communities fall in the Midwest, South, and West of the United States and so include almost 70 percent of the American Jewish population and most of the interfaith couples reside in these regions. Most small Jewish communities, in fact most American Jews, are Reform and most Jews by choice choose Reform Judaism.<sup>46</sup>

The latest CCAR statement has a very broad definition of both Jews and membership in the community. Rabbi Howard Greenstein notes the original Pittsburgh Platform “was unquestionably a statement of exclusivity” while “the present statement rests upon almost an unqualified reverence for . . . inclusivity.”<sup>47</sup> What was presented in the CCAR’s 1999 Statement is in direct conflict with a number of CCAR responsa written in 1983, when the Responsa Committee wrote “that non-Jews should not become formal members of a congregation . . . the membership and the voting rights should be limited to the Jewish spouse” and non-Jews’ leadership on committees should be limited.”<sup>48</sup> The committee is very clear in this matter that “a non-Jewish partner is welcome to the fellowship of the congregation and is encouraged to participate in all of its activities; however, the non-Jewish spouse may not serve on the board, hold office, become chairman of any committee or have the privilege of voting at congregational or committee meetings.”<sup>49</sup> However, by 1990 the Commission on Reform Jewish Outreach admitted that it had to readdress the issue of the gentile in the synagogue. Especially because it realized what Goldstein pointed out, that by the mid-1980s 45 percent of Jewish weddings were interfaith.<sup>50</sup>

To the CCAR, Jews are a “religious[ly] and cultural[ly]” pluralistic group that is “an inclusive community opening doors to Jewish life to people . . . including the intermarried, who strive to create a Jewish home.”<sup>51</sup> Rabbi Eric Yoffie strongly believes that drawing boundaries around the Jewish community is “a waste” because it only “keep[s] the maximum number of people out.”<sup>52</sup> After all, “the rise in mixed marriage and the embrace of Jews of patrilineal descent (children of one Jewish parent who were raised as Jews) had changed the demographics of the Reform Movement” as the world entered the twenty-first century.<sup>53</sup> This is quite true. The CCAR Committee on Patrilineal Descent believed that “one of the most

pressing human issues for the North American Jewish community is mixed marriage.”<sup>54</sup> Goldstein points out that in 1990, of the 210,000 persons born Jewish, but currently following another religion, “a majority are offspring of intermarriages.”<sup>55</sup> In 1990 the Union of American Hebrew Congregations (UAHC), the new iteration of the URJ, published *Defining the Role of the Non-Jew in the Synagogue*, in which Rabbi Alexander Schindler, then president of the UAHC, admitted that “intermarriage will remain a reality of American Jewish life,” so the Jewish community needs to “involve them [the couple] in Jewish life.”<sup>56</sup>

## NON-JEWS IN THE SYNAGOGUE

At the 1994 CCAR 150<sup>th</sup> convention, Rabbi Joan S. Friedman spoke on exactly this topic: “The Role of the Non-Jew in the Synagogue: Challenges and Choices.” She makes two important comments:

1. In a synagogue it matters whether you are a Jew or not. The question is: when does it matter, how does it matter, and why does it matter?
2. We . . . cannot define the role of the non-Jew in the synagogue until we define the role of the Jew in the synagogue.<sup>57</sup>

I will address the first point and present how others address the second.

*For the Sake of Heaven: Committees in Congregational Life* outlines the roles of the various committees that congregations should have; included in the description of the outreach committee: “Welcome non-Jewish partners of members and interfaith households; plan programs to educate and support outreach issues for interfaith couples, Jews-by-choice and their families, and parents of children who have intermarried,”<sup>58</sup> thereby showing that congregations will have interfaith families.

The URJ has a support network for its member congregations; since it has many small congregations, in 1999 it began a discussion board KolKatan,<sup>59</sup> which later became SmallTalk, where they “share ideas, solve or try to solve problems and find common ground.”<sup>60</sup> In fact, the question of non-Jews being members of congregations and their role in the congregations they belong to was addressed numerous times under various guises.<sup>61</sup>

The discussions covered three distinct, but related topics: (1) Can non-Jews be members of a synagogue? (2) If they can, what role do they play in the governance of the community? (3) If they can, what role do they play in the religious practices of the community? These three questions are of a crucial nature to the continuity of the Jewish community, especially in the United States. Some communities address these issues only at a crisis moment; others as a continuous part of their membership discussions.

## NON-JEWISH MEMBERSHIP

The question of membership has become so profound for the movement that Rabbi Eric Yoffie, then president of the URJ, discussed it at the 2005 Biennial in his sermon. He labels non-Jewish spouses who are active members in their synagogues as “heroes . . . of Jewish life.”<sup>62</sup> They are often the parent that participates more in synagogue activities and has a stronger influence on the children. Yoffie sees the outreach to non-Jewish spouses as “strengthen[ing] our destiny as a holy people.”<sup>63</sup> Thus, the question of membership of the non-Jewish spouse is supported by the umbrella organizations and the rabbis. In a sense, they must support non-Jewish spousal membership because almost every congregation has non-Jewish members.<sup>64</sup> Judy Alexander, Director of Congregational Education at Temple Sinai in Burlington, Vermont, cautions that by being so accommodating “the line is so blurry . . . we don’t know where to draw it any more” when deciding who is a Jew and what non-Jews may do.<sup>65</sup> However, this decision ultimately rests with the governing board of the individual congregation.

One of the early leaders of the American Reform movement, Rabbi Kaufmann Kohler, refused interfaith couples membership in his congregation, and he would not allow the Jewish party in such a marriage to belong. He could never get the CCAR to agree to his stance.<sup>66</sup> Rabbi Samuel Cohon (chair of Theology at Hebrew Union College, Cincinnati, from 1923–1963) in 1945 warned against allowing synagogues to become social clubs; a fear he had that the Indianapolis Hebrew Congregation was headed towards by allowing non-Jews to become members.<sup>67</sup> The Hebrew Congregation defined membership as persons who uphold “the principles and purposes” of Judaism, which allowed the congregation to grow to large proportions by 2008.<sup>68</sup>

Some congregations currently decree that a household membership includes non-Jewish spouses,<sup>69</sup> while others do not allow non-Jewish spouses to be members.<sup>70</sup> The occasional ones “have always allowed non-Jews to become members [even] where neither partner is Jewish.”<sup>71</sup> Mandy Van Ostran of Temple Israel in Springfield, Missouri, finds the idea of non-Jews as members “uncomfortable” because “it is like putting the cart before the horse . . . membership implies a public commitment to joining the Jewish people not the building.”<sup>72</sup> Geri Copitch of Temple Beth Israel in Redding, California, suggests that perhaps her congregation is more lenient about membership because they are so small.<sup>73</sup> Some congregations felt that being welcoming and encouraging was sufficient; membership wasn’t necessary.<sup>74</sup> Other congregations waited until 2005 to really address this issue. West End Temple in Neponsit, New York, decided to target interfaith families because of falling membership.<sup>75</sup>

## NON-JEWISH MEMBERS' ROLES

For those congregations who accept non-Jews as members of the congregation, the question of what roles they can play in the governance and religious practice of the congregation has to be addressed. Such issues as voting at congregational meetings, sitting on the board, teaching, or directing activities were each considered separately, as was participating in any portion of the religious service. This was never an easy discussion. Those who participated in the online discussion called the process of writing the policy very emotional<sup>76</sup> because of the multisectarian nature of these small synagogues. One even explained that trying to make policy about non-Jewish roles in the congregation caused a splinter group to “form its own congregation [and] their move [did] reduce conflict.”<sup>77</sup> Another noted that “tempers flared and feelings were hurt”; once the policies were created, “a few of the more conservative (small ‘c’) members have not rejoined” and some more liberal members were turned off by the “non-inclusiveness” of the policies.<sup>78</sup>

A few congregations do not allow their non-Jewish members any formal role in governance, though they “are extremely active” in other ways.<sup>79</sup> Some congregations provide each household with two votes at the congregational meeting, regardless of the religion of the adults in the household.<sup>80</sup> There are some congregations that restrict what non-Jews can do. For example, some allow non-Jewish members all roles except sitting on the board.<sup>81</sup> Some extend that to any role other than leading the board or other committee.<sup>82</sup> Some allow non-Jews to sit on the board and chair committees, but not have a position on the board.<sup>83</sup> Others put no restrictions at all on what role the non-Jews may play<sup>84</sup> because their “congregation has a large number of interfaith couples and if we didn’t allow this, we would definitely be the losers.”<sup>85</sup> However, the majority of UAHC congregations that allow non-Jews to be members do not permit them to hold positions that regulate religious practice<sup>86</sup> because they understand what Rabbi Joseph Glaser, executive vice president of the CCAR, means about non-Jews making policy on religious practice.<sup>87</sup> Rabbi Harvey Fields feels that this makes the service a “playtime.”<sup>88</sup>

## NON-JEWISH MEMBERS' RELIGIOUS ROLES

This is a separate issue from participation in the religious side of the community. Religious practice is a touchy issue because of tradition, law, and family desires. The URJ does have a set of guidelines that some congregations use without alteration.<sup>89</sup> The CCAR responsa for the issue of a non-Jew participating in a service, especially *b'nai mitzvah*, are clear. The non-Jewish parent

cannot participate in most of the service, they cannot recite any prayer that includes the idea of being part of Judaism, and they cannot pass the Torah when it is taken from the ark.<sup>90</sup> The argument for this is based on the idea that the Torah is “a powerful symbol of the divine covenant with Israel” and allowing a non-Jew to handle the Torah in any way breaks this covenant.<sup>91</sup> However, the responsa are also clear that a non-Jewish parent should participate in some way.<sup>92</sup> Rabbi Lawrence Hoffman is very supportive of non-Jews participating in religious services. He sees it as “a sign of how far we have come in the grand experiment of pluralism.”<sup>93</sup> Additionally, he makes the point that people interpret liturgy in different ways.

For some congregations this was a multifaceted discussion where members, the ritual committee or board, and finally the rabbi had some say. Some congregations give their rabbis the final say, having almost no real policy in place.<sup>94</sup> For others, the rabbi chose not to be the final say for the community.<sup>95</sup>

Communities have been most creative in creating peace among the various factions. Some congregations will not allow non-Jews to lead the service.<sup>96</sup> Beth El Congregation “extend[s] all of the privileges of membership to him/her except ‘recitation alone and aloud from the bimah of prayers that contain language declaring that the speaker is a member of the Jewish people.’”<sup>97</sup> Some will not allow the non-Jewish parent of *b’nai mitzvah* [Jewish children who have reached adulthood] to participate in the Torah service in any way.<sup>98</sup> Rabbi Raquel Kosovske of Bet Ahavah of Northampton, Massachusetts, commented that allowing the non-Jewish spouse to hold the Torah “is often transformative for the families . . . it can be a powerful affirmation of the prior 13+ years or so in which the non-Jewish parent has been dedicated . . . to raising a Jewish child or having a Jewish home.”<sup>99</sup> Others will allow the non-Jewish parent to stand on the *bimah* [raised platform where the Torah is read] behind the Jewish parent when they are participating in the Torah service during the *b’nai mitzvah* service.<sup>100</sup> During the new ritual of *LaDor V’Dor* [passing the Torah from generation to generation] some congregations will allow only Jewish family members to participate; others, like Temple Beth El in Riverside, California, allow both Jewish and non-Jewish family members, but instead of passing the Torah, the rabbi taps each person in line with the Holy Scroll and gives it to the last person, who must be a Jew, who then gives it to the *b’nai mitzvah*.<sup>101</sup> Still others have no restrictions.<sup>102</sup> Alexander adds another note of caution: if non-Jews are given *aliyot* [a blessing to say over the Torah], then Jews by choice will start to question their need to convert.<sup>103</sup> Rabbi Friedman is concerned that the whole idea of what is Judaism and who is a Jew will change. Already,

she notes, congregants rate each other on Jewishness through the definition of practice.<sup>104</sup> Each congregation has chosen according to what it believes the significance of the religious text is, which is what Hoffman suggests.<sup>105</sup>

Victoria Romero of Temple Beth Or in Everett, Washington, believes that acceptance of non-Jewish members has much to do with who was involved in the formation of the congregation. The congregation to which she belongs had non-Jewish founders, among them herself, and so they have always been an important part of the community.<sup>106</sup> Rabbi Friedman is concerned that such a large number of non-Jews would influence, purposely or not, the language of the service—what is to be done with the prayers that refer to “the Jewish people,” for example.<sup>107</sup> There is a feeling in some congregations that if one limits the role non-Jews can play, then they will not participate as fully as they might otherwise.<sup>108</sup> Others suggest that “we only damage our communities if we reject those who would otherwise help to raise the next generation of Jews.”<sup>109</sup>

## CONCLUSIONS

Rabbi Victor S. Appell, the small congregations specialist at the URJ, was very pleased by the discussion taking place on line (part of the purpose of the discussion group). He supports “each synagogue[’s] . . . endeavor to create guidelines that are uniquely well-suited to its community” and reminds the group that “the Union for Reform Judaism respects the autonomy of each congregation in matters of governance.”<sup>110</sup> Thus, these congregations were approaching the problems appropriately, as best needed by their community, and working through the process, which Appell and Hoffman believe to be equally as important. The process of acceptance must be working because American Jews still rate Jewishness as important in their lives.<sup>111</sup> Rabbi David Frank notes that “how to balance perpetuation of Judaism with perpetuation of the Jewish people themselves” is a serious dilemma that Reform Jews must be aware of.<sup>112</sup> Van Ostran raises interesting questions about defining Jewry: “What about someone born of a Jewish mother or father but who has practiced another religion and now want to be Jewish? And, what about someone born of a parent who was not raised Jewish but is descended from a Jewish grandparent?”<sup>113</sup> We know that Jewish law stipulates that in the first case the child is a returning Jew; this was addressed in the early 1500s by leading rabbis when dealing with the expelled crypto-Jews. The second is murkier.

Heilman warns that non-Jews in Jewish families are “not going to disappear” and that somehow Jews must find a place for them in the Jewish

community.<sup>114</sup> The Reform movement has addressed this issue over time; as its constituents' attitudes have changed, so has the philosophy of the movement. What seems most evident is exactly what Marcus suggests: "synthesis is the essence of Jewish history."<sup>115</sup> The American Reform movement is a prime example of this, redefining how one may belong to the community in order for the community to continue to exist. The CCAR has been careful to maintain the essence of Judaism (the idea of community and the religious practices), while making sure that most people can be a part of the community in an effort to encourage continuity. That each community enforces these guidelines according to its wishes is very Jewish and encouraged by the movement. That the Jewish community continues to exist flies in the face of the naysayers of the early to mid-twentieth century. That this is controversial is not surprising.

When we restrict Torah we only lower ourselves.

—Rabbi Irwin Huberman<sup>116</sup>

We may be a small part-time congregation, but we are full-time Jews.

—Rabbi Ellen Jay Lewis<sup>117</sup>

## ACKNOWLEDGMENT

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## NOTES

<sup>1</sup> Edwin Goldberg, "Welcoming the Interfaith Family," *Union for Reform Judaism*, March 28, 2011, [http://blogs.rj.org/blog/2011/03/28/welcoming\\_the\\_interfaith\\_famil/](http://blogs.rj.org/blog/2011/03/28/welcoming_the_interfaith_famil/).

<sup>2</sup> Walter Jacob, et al., "149. Rabbi Officiating at a Mixed Marriage," *American Reform Responsa* (2007), <http://ccarnet.org/responsa/arr-467-470/>.

<sup>3</sup> Isadore Twersky, *A Maimonides Reader* (1st ed.; New York: Behrman House, 1972), 422.

<sup>4</sup> *Ibid.*, 47.

<sup>5</sup> Solomon B. Freehof, *A Treasury of Responsa* (Philadelphia: Jewish Publication Society, 1963).

<sup>6</sup> Jacob Klatzkin, "Jewish Nationalism," in *The Zionist Idea: A Historical Analysis and Reader* (ed. Arthur Hertzberg; Philadelphia: Jewish Publication Society, 1997), 316–17.

<sup>7</sup> *Las Siete Partidas—Laws on Jews, 1265*, [http://www.icsresources.org/content/primary\\_sourcedocs/ics\\_psd\\_jh\\_concerningjews.pdf](http://www.icsresources.org/content/primary_sourcedocs/ics_psd_jh_concerningjews.pdf).

<sup>8</sup> Arthur Hertzberg, ed., *The Zionist Idea: A Historical Analysis and Reader* (New York: Temple Book, 1981).



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- <sup>10</sup> Jonathan Sarna, "The Cult of Synthesis in American Jewish Culture," *Jewish Social Studies* 5:1–2 (1998/1999): 52.
- <sup>11</sup> "Declaration of Principles," *Union for Reform Judaism* (1885), <https://www.ccarnet.org/rabbis-speak/platforms/declaration-principles/>.
- <sup>12</sup> Hertzberg, *The Zionist Idea*.
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- <sup>14</sup> Jacob Rader Marcus, *The American Jew, 1585–1990: A History* (Brooklyn: Carlson, 1995).
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- <sup>16</sup> Alex Joffe, "From the Four Corners," *Jewish Ideas Daily* (May 24, 2011), <http://www.jewishideasdaily.com/888/features/from-the-four-corners/>.
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# The Birthright Israel Generation: Being a Jewish Young Adult in Contemporary America

Matthew Boxer and Leonard Saxe

Jewish identity is complex and multifaceted, and there are multiple views of what it means to be Jewish. Although Jewish life has always been characterized by a diversity of perspectives, the rapid pace of social change exacerbates this state of affairs, particularly for young adults. The focus of this chapter is on the nature of Jewish identity for contemporary American young adults and how, for many, it has been altered by an educational experience in Israel.

To frame this discussion, we would like to situate Jewish identity theoretically. Following the dictum of Kurt Lewin, one of founders of the discipline of social psychology, that “nothing is so practical as a good theory,”<sup>1</sup> it is important to understand how and why Jews develop their identity. One framework, devised by Hebert C. Kelman, explains the development of identity as a process that moves from compliance, to identification, to internalization.<sup>2</sup> There are other ways to describe identity formation, but Kelman’s model is a useful heuristic. We use it in this chapter as a means of explaining how the Taglit-Birthright Israel program has affected the Jewish identity of a generation of Jewish young adults.

## KELMAN’S STAGES OF DEVELOPMENT

Just as there are many theoretical frames that can be used to explain identity formation, there are also many explanations for Taglit’s impact. However, Kelman’s three processes by which attitude and identity change can occur are particularly helpful. Kelman referred to the first of these processes as “compliance.” A compliant person is one who accepts the influence of another person who is important to him or her out of a desire to please that person. This adoption takes place under circumstances in which the important other person is observing the compliant individual; otherwise there is no motivation for the individual to act. Thus, for example, a Jewish young adult who is influenced via compliance may attend services on the High Holy Days with his or her parents or friends not out of any deeply held conviction but simply because doing so will make these important others happy.

The second process is called “identification.” A person who is affected by identification accepts the influence of others who are important to him or

her in order to maintain a satisfying relationship with them. The content of the influence may not be important to the person being influenced; the key feature is that the content is important to the significant others. Therefore, one accepts their influence because of the satisfaction derived from being classified as similar to them in some particularly salient way. Although the influencers do not necessarily need to be watching for the person affected by identification to accept their influence, the conditions must be salient to the individual's relationship with the influential party or parties. Thus, a Jewish young adult who is influenced via identification may attend services on the high holy days in order to be with or near other people who are important to him or her and for whom attendance is significant.

The third process is called "internalization." A person who is affected by internalization accepts the influence of others primarily because the content of the influence is congruent with the individual's deeply held values, regardless of whether he or she is being observed by important others or whether accepting the influence will solidify group ties. Thus, a Jewish young adult who is influenced via internalization may attend High Holy Day services, not because doing so will please others or to solidify ties to his or her community, but rather he or she truly feels that doing so is an authentic expression of his or her innermost self.

### JEWISHNESS AS AN ACHIEVED OR ASCRIBED ROLE

Kelman's model evolves from an analysis of roles, the expected behaviors or sets of behaviors associated with a given status or social position.<sup>3</sup> Being Jewish, or the role of being a Jew, used to be considered an ascribed role. An ascribed role is assigned to an individual as a result of traits he or she possesses that are beyond his or her control, regardless of merit. Race and gender are classic examples of ascribed roles—we are born with them, we live our entire lives being classified by them, and we cannot easily drop the labels once they have been attached to us. For much of modern Jewish history, this is exactly how it was to be a Jew—you were born a Jew, you lived as a Jew, and even if you wanted to divest yourself of your Jewish identity, it was not easy to do so.

This is no longer the case. Our world is one in which Jews can be as assimilated or acculturated as they want to be. In the United States, as in many Diaspora communities, Jews blend in with everyone else so well that they cannot be easily identified as members of their own separate and distinct ethnic group. In the parlance of contemporary American ethno-racial classification, American Jews, particularly third- or fourth-generation American Jews,

have become generic “white folks.”<sup>4</sup> As a result, being a Jew is increasingly an achieved role, one that individuals must choose for themselves.

One of the fundamental goals of Jewish educational programming, particularly for children and young adults, is to strengthen participants’ Jewish identities. In the context of role theory, it encourages them to “achieve Jewishness”—to choose to identify more strongly as Jews and seek closer personal connections with the Jewish community by progressing through Kelman’s stages of development, from compliance to identification to internalization. The organized Jewish community’s concern with continuity has resulted in many new programs over the past twenty years that seek to encourage young adults to choose to identify more strongly as Jews. Such programs provide natural grounds in which to evaluate the content of Jewish identity; indeed, following the words of Lewin, “if you want truly to understand something, try to change it.”<sup>5</sup>

#### TAGLIT-BIRTHRIGHT ISRAEL: A LARGE-SCALE EXPERIMENT IN JEWISH IDENTITY

One such program is Taglit-Birthright Israel.<sup>6</sup> Taglit<sup>7</sup> was established out of concern about the assimilation of Jewish young adults. It provides free, ten-day, informal, educational trips to Israel for Jewish young adults aged 18–26 who have not already had a peer-group experience in Israel. Since its inception in December 1999, approximately 350,000 Jewish young adults from over fifty countries have participated, with about 240,000 of them from North America (mostly the United States). Taglit’s large scale makes it an ideal setting in which to study the processes by which Jewish education can affect individual Jewish identity across a diverse young adult population and, further, how such an intervention can affect the entire Jewish community.

Taglit dramatically changed the scope and character of educational tourism to Israel in three key ways. First, instead of focusing on adolescents, as most prior programs did, Taglit brought young adults to Israel. This was a critical programmatic decision; the ages of 18–26, sometimes referred to as “emerging adulthood,” are a period of personal development in which individuals explore their life options and make decisions about personal values that typically influence the rest of their lives.<sup>8</sup> Accordingly, this age range was ideal for affecting participants’ Jewish identities in lasting ways.

Second, where previous educational tours of Israel were predominantly run by sectarian groups and attracted primarily participants who were already highly engaged in Jewish life, Taglit’s tour organizers were predominantly nonsectarian,



including tour companies and not limited to not-for-profit organizations. They recruited large numbers of secular participants, the population about which the organized Jewish community was most concerned and the one for which there were few attractive options for peer-group educational tours of Israel.

Third, whereas previous programs were paid for by participants or their families, Taglit was made available as a gift. Given the expense of flights to and from Israel, accommodations and transportation, food, and admission to sites, the cost of an educational tour of Israel could be prohibitive to some families and many young adults. The willingness of philanthropists, supported by the government of Israel and communal organizations, to make the trip free for participants removed a significant obstacle to participation for applicants who otherwise could not afford to participate in such a program.

#### THE JEWISH FUTURES STUDY: LONG-TERM IMPACT OF TAGLIT PARTICIPATION

Since Taglit's launch, the Cohen Center for Modern Jewish Studies at Brandeis University has been collecting data about both participants in the program and people who applied but ultimately were not able to go on a Taglit trip. We have extensive documentation on the impact of the trip in the short-, medium-, and long-term. In this chapter, we present data from the third wave of the Jewish Futures Study,<sup>9</sup> our long-term follow-up study of Taglit participants and applicants.

From the database of Taglit applicants, we selected a stratified random sample of 3,503 people, 2,119 of whom went on a Taglit winter trip between the winter of 2000–2001 and the winter of 2005–2006 and 1,384 of whom applied for a trip but ultimately did not go. Between December 2011 and April 2012, six to eleven years after the participants went on their Taglit trips, our research team sent invitations to these individuals to complete a survey that included questions about Jewish educational and family background; attitudes toward Israel, Judaism, and the Jewish community; involvement with Jewish organizations and associated activities; and dating, marriage, and children. An in-depth module on travel to Israel was also included. The survey was conducted via telephone and over the Internet. Ultimately, 1,990 respondents completed the survey for a response rate of 57 percent (approximately 64 percent among Taglit participants and 46 percent among nonparticipants).<sup>10</sup> Because there were no statistically significant differences at the time of application to Taglit between eventual participants and nonparticipants, any observed differences between participants and nonparticipants can be attributed to Taglit participation.

Below, we focus on the kind of data that can be collected from a long-term panel such as this one, tracking respondents as they form families, join communities, and become adult members of the Jewish community; in doing so, we can gauge the long-term impact of the Taglit-Birthright Israel program.

## CONNECTION TO ISRAEL

One element of the current discussion of Jewish identity is debate over Jewish young adults' connection to Israel. The role of Israel in Jewish young adults' lives has been at the forefront of recent scholarly and communal discourse.<sup>11</sup> Some have promoted the "distancing hypothesis," which posits that young adult American Jews are losing their connection to Israel as a result of a confluence of factors, one of the most important of which is the mismatch between the predominantly liberal politics of young American Jews and the policies of an increasingly right-wing Israeli government, particularly in regard to the conflict with the Palestinians and matters of religion and state.<sup>12</sup> This phenomenon is described as a "birth cohort effect," that is, the degree of attachment survey respondents feel toward Israel is a function of when they were born in that successive generations of American Jews have developed progressively weaker ties to Israel. Other scholars, including ourselves, have argued that examination of multiple data sets collected over time reveals that young adults have always reported lesser connection to Israel than their elders on surveys and that connection to Israel appears to be subject to a "life-cycle effect";<sup>13</sup> that is, connection to Israel strengthens over time as a function of life experiences.

Regardless of how one views the attachment debate, one of the goals of Taglit is to promote greater affinity for Israel among participants. And, indeed, the program has a profound effect on participants' connection to Israel. As figure 1 illustrates, Taglit participants are 42 percent more likely than nonparticipants to report feeling "very much" connected to Israel and about half as likely to report feeling "not at all" connected. Participants are also 22 percent more likely to feel "somewhat" or "very confident" in explaining the situation in Israel. Their greater connection to Israel and understanding of contemporary circumstances appear to be associated with having developed a greater personal connection to the Land of Israel and to Israeli people, as well as to the resultant development of greater interest in following current events that affect Israel.

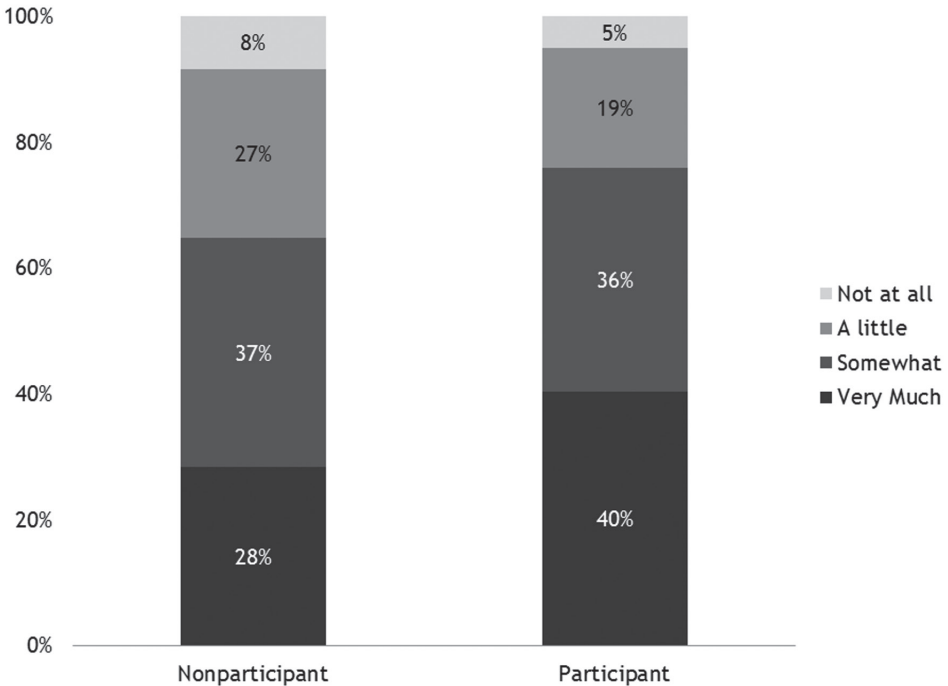


Fig. 1. Feeling connected to Israel by Taglit participation (predicted probabilities). Note: “To what extent do you feel a connection to Israel?” Respondents not raised Orthodox. Predicted probabilities from an ordinal logistic regression model controlling for Taglit participation and parental inmarriage. Odds ratio = 1.72,  $t(1, 727) = 4.12$ ,  $p < .001$ .

## INMARRIAGE

Along with attitudes to Israel, the Jewish community has also been centrally concerned with the intermarriage rate. Some scholars have argued that intermarriage is a threat to the cohesiveness of the Jewish community, if not its very survival.<sup>14</sup> Although we believe the focus on intermarriage is misplaced and that, instead, the concern should be on Jewish education,<sup>15</sup> marriage to a Jew is a leading indicator of one’s commitment to remain part of the Jewish community as an adult. Previous findings indicated that Taglit participation had a significant effect on participants’ attitudes toward inmarriage and raising Jewish children,<sup>16</sup> but the third wave of the Jewish Futures Study provided sufficient data for a more in-depth examination.

Taglit participants were less likely to be married than nonparticipants (35 percent vs. 43 percent), a finding that we can report preliminarily has been

replicated in the fourth wave of the study.<sup>17</sup> This finding seems to be related to seeking a Jewish partner and the greater importance Taglit participants place on being part of a Jewish family. And among those respondents who were married and were not raised Orthodox,<sup>18</sup> Taglit participants were 45 percent more likely than nonparticipants to be married to another Jew.

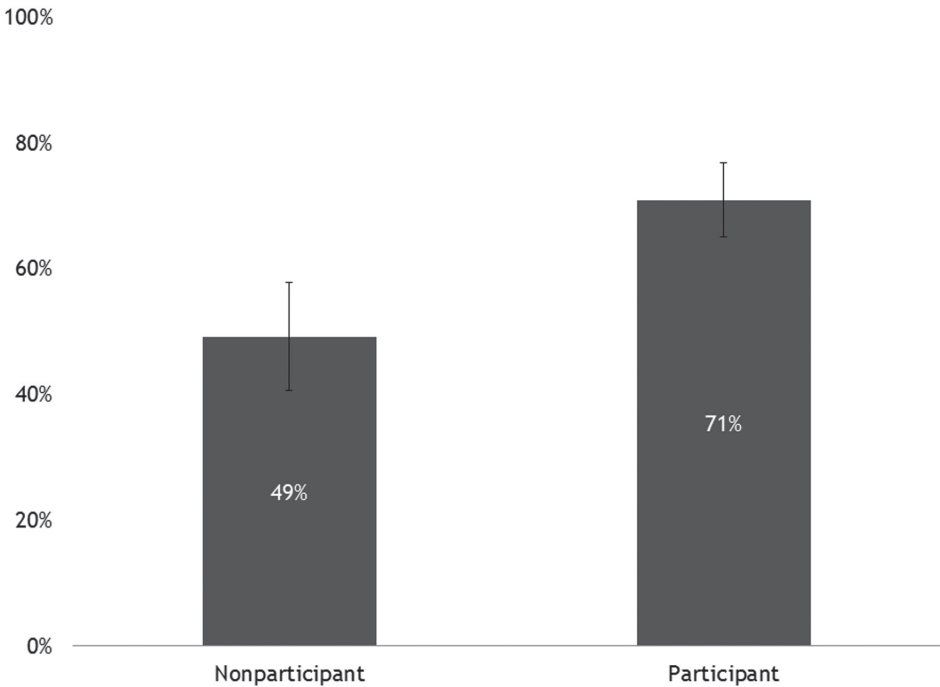


Fig. 2. Inmarriage by Taglit participation (predicted probabilities). Note: Respondents not raised Orthodox and married after Taglit application. Predicted probabilities from a logistic regression model controlling for Taglit participation and parental inmarriage. Odds ratio = 2.52,  $t(742) = 4.02$ ,  $p < .001$ .

The impact of Taglit participation appears at all levels of experience in formal Jewish educational settings. Figure 3 shows the rates of inmarriage for both participants and nonparticipants at different levels of Jewish education, as measured by hours of formal Jewish education in grades 1–12.<sup>19</sup> The bars at the bottom of the chart represent the proportion of (non-Orthodox raised) respondents in the sample with a given amount of formal Jewish educational exposure. Thus, 22 percent had no formal Jewish education, 18 percent had some formal Jewish education but no more than 500 hours, and so on. Very few had more than 2,000 hours. The dashed lines represent likelihood of inmarriage for Taglit

participants and nonparticipants. Although the gap between participants and nonparticipants appears to narrow slightly at higher levels of formal Jewish education, the difference is not significant. Indeed, at all levels of formal Jewish education, Taglit participation made respondents more likely to be married to a Jew. This represents a significant Taglit effect on choice of spouse.

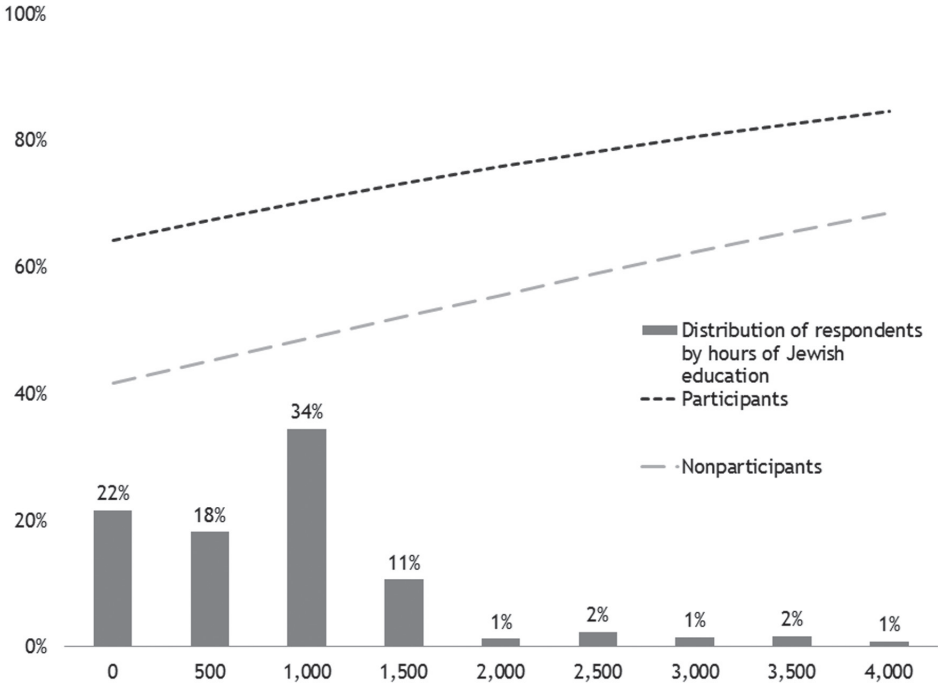


Fig. 3. Inmarriage by hours of Jewish education and Taglit participation (predicted probabilities). Note: Respondents not raised Orthodox and married after Taglit application. Predicted probabilities from a logistic regression model controlling for Taglit participation, parental inmarriage, and hours of formal Jewish education in grades 1-12. Odds ratio = 2.51,  $t(738) = -3.98$ ,  $p < .001$ .

## IMPORTANCE OF RAISING JEWISH CHILDREN

The impact of Taglit participation on family formation is not limited to inmarriage. Study respondents are beginning to form their families, and we now have enough data to begin to describe the impact of Taglit participation on parenting choices. As more time passes and additional Taglit participants and nonparticipants begin raising children, we expect these findings to become more robust.

Of the respondents who were not raised Orthodox, Taglit participants were less likely than nonparticipants to have at least one child (17 percent vs. 31

percent). This difference is explained primarily by three factors: first, nonparticipants are slightly older than participants; second, among married respondents, nonparticipants had been married slightly longer than participants (about 4 years compared with about 3.6 years); and third, as was previously mentioned, participants were less likely to be married. About 40 percent of parents had more than one child. Of all parents, 82 percent reported at the time they completed their surveys that their oldest child was younger than five years old.

Virtually all endogamous respondents reported that they were raising their oldest child Jewish. Intermarried Taglit participants and nonparticipants were about equally likely to be raising their oldest child Jewish; however, because Taglit participants were far less likely to be intermarried, overall Taglit participants were more likely to be raising their oldest child Jewish. And among respondents who did not have children at the time of the survey, Taglit participants were 23 percent more likely than nonparticipants to view raising their children Jewish as “very important.”

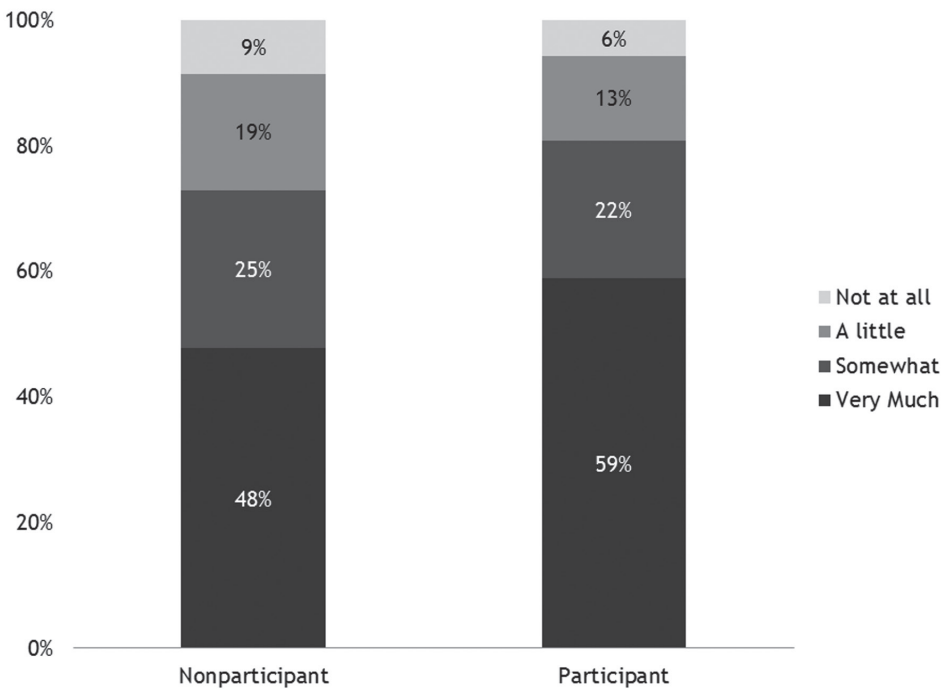


Fig. 4. Importance of raising children Jewish by Taglit participation (predicted probabilities). Note: “Thinking about the future, how important is it to you to raise your children Jewish?” Respondents not raised Orthodox and with no children. Predicted probabilities from an ordinal logistic regression model controlling for Taglit participation and parental inmarriage. Odds ratio = 1.57,  $t(1,193) = 2.83, p < .01$ .

## SYNAGOGUE MEMBERSHIP

Membership in a synagogue, temple, minyan, *chavurah*, or other Jewish congregation has long been used as a measure of Jewish identity.<sup>20</sup> Whether or not one has children is strongly predictive of joining a synagogue;<sup>21</sup> accordingly, because Taglit participants are less likely to have children thus far, our analysis controls for having a child. As illustrated by figure 5, for both parents and childless respondents, Taglit participation predicted membership in a synagogue, temple, minyan, *chavurah*, or other Jewish congregation. Among parents, 52 percent of Taglit participants had joined a congregation, compared with 41 percent of nonparticipants. For nonparents, 22 percent of Taglit participants and 16 percent of nonparticipants had joined. Although the difference was small, Taglit participation was also predictive of increased frequency of attending Jewish religious services. However, Taglit did not have a statistically significant effect on participants' confidence in their ability to follow along in services.

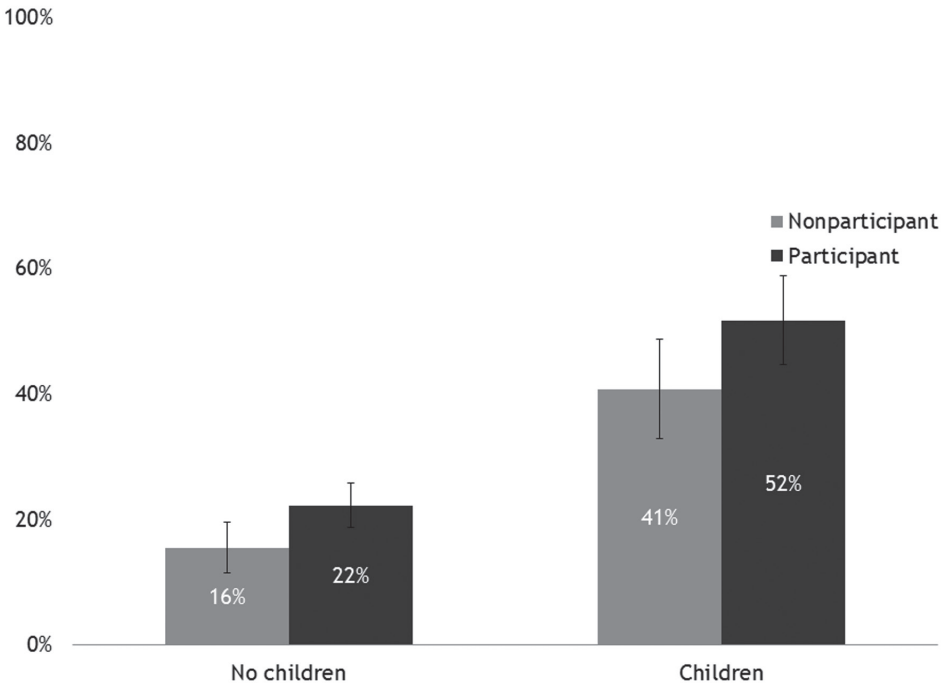


Fig. 5. Jewish congregational membership by Taglit participation and having children (predicted probabilities). Note: Respondents not raised Orthodox. Predicted probabilities from a logistic regression model controlling for Taglit participation, parental inmarriage, and having children. Odd ratio = 1.56,  $t(1, 720) = 2.62$ ,  $p < .01$ .

### JEWISH HOLIDAY CELEBRATION

Finally, we examined whether Taglit participation resulted in differences in celebration of Jewish holidays and Shabbat. Overall, participants are more likely than non-participants to observe Jewish holidays in some way, as well as to have a special meal on Shabbat. It is interesting, however, that celebration of Hanukkah and Passover are nearly universal among both Taglit participants and nonparticipants, and the vast majority of both participants and nonparticipants also celebrate Rosh Hashanah.

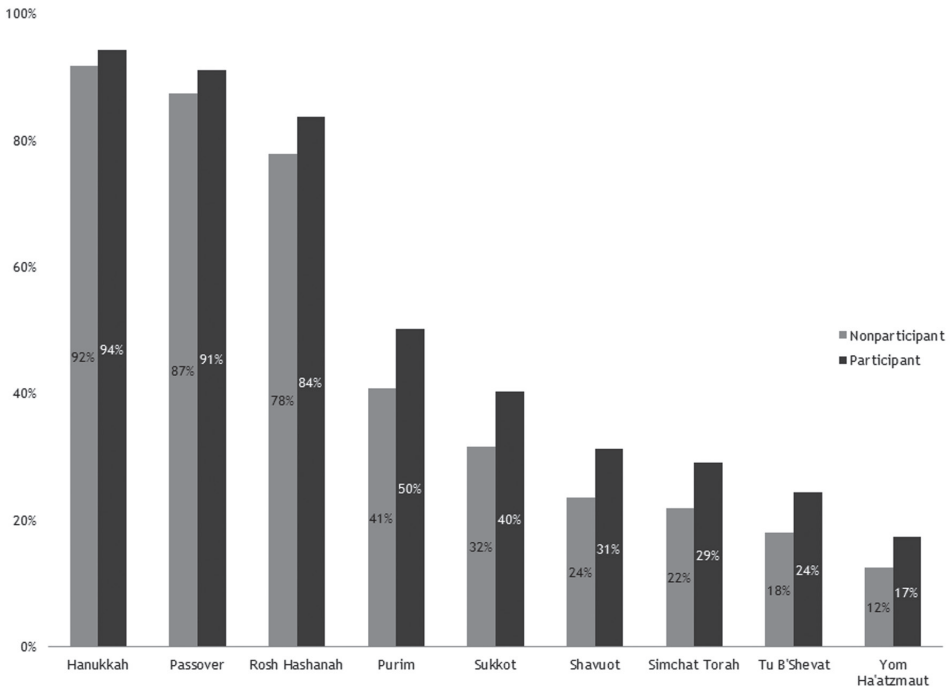


Fig. 6. Jewish holiday celebration by Taglit participation (predicted probabilities). Note: Respondents not raised Orthodox. Mokken scale cumulative percentages. Predicted probabilities from an ordinal logistic regression controlling for Taglit participation and parental inmarriage. Odd ratio = 1.48,  $t(1, 730) = 3.14, p < .01$ .

### KELMAN'S PROCESSES OF INFLUENCE EXPLAIN WHY TAGLIT WORKS

Following Lewin's maxim that a phenomenon can be truly understood only by trying to change it, it is apparent that Taglit, which profoundly affects the Jewish identities of its participants, provides an excellent window to understanding the content and character of Jewish identity.



Taglit affects participants' Jewish identities by punctuated equilibrium, by fundamentally changing the way they think about Jewish life and their connection to Israel over the course of a ten-day trip. In Kelman's terms, Taglit tends to alter the way participants identify as Jews, taking them from "compliance" or "identification" with Judaism and shifting them into "internalization." As a result, Judaism becomes more salient to participants in nearly every aspect of their lives.

The literature on emerging adulthood makes it clear that the time from the late teens through the mid- to late 20s is critical for solidifying young Jews' sense of themselves as members of the Jewish collective and their attachment to it. That Taglit participants tend to feel more connected to Israel, are more likely to marry Jews and be concerned with raising Jewish children, join synagogues, and celebrate Jewish holidays than nonparticipants, even years down the road, confirms that their participation in Taglit made their Jewish identities more salient to them and that the effects are likely to be lasting.

For Judaism to flourish in the twenty-first century, it is necessary to educate Jews—especially young adults—about their heritage and the ways in which engagement in Jewish life as part of a community can give their lives meaning. As the data suggest, the question of assimilation and intermarriage leading to the inevitable decline of Jewish civilization should be turned on its head—how can the Jewish community engage all Jews, including the highly assimilated and the children of intermarriage, in authentic ways that drive interest in Jewish life and can revitalize the Jewish community? What are the educational and lived experiences that lead people to internalize their Jewish identities and accept themselves as citizens of the Jewish world? By looking to Taglit, perhaps the largest experiment ever attempted to influence Jewish identity, the Jewish community can find some answers to these questions that will enable it to continue to help its members explore the boundaries of Jewish life and internalize their Jewish identities.

## NOTES

<sup>1</sup> Kurt Lewin, "The Research Center for Group Dynamics at Massachusetts Institute of Technology," *Sociometry* 8 (1945): 126–35.

<sup>2</sup> See Herbert C. Kelman, "Compliance, Identification, and Internalization: Three Processes of Attitude Change," *Conflict Resolution* 2 (1958): 51–60; Herbert C. Kelman, "The Place of Ethnic Identity in the Development of Personal Identity: A Challenge for the Jewish Family," in *Studies in Contemporary Jewry, Volume 14* (ed. Peter Y. Medding; New York: Oxford University Press, 1998).

<sup>3</sup> For a complete review of role theory, see Bruce J. Biddle, “Recent Developments in Role Theory,” *Annual Review of Sociology* 12 (1986): 67–92.

<sup>4</sup> Several scholars have written on this subject. See, for example, Karen Brodtkin, *How Jews Became White Folks and What That Says about Race in America* (New Brunswick: Rutgers University Press, 1998); Matthew Frye Jacobson, *Whiteness of a Different Color* (Cambridge: Harvard University Press, 1998).

<sup>5</sup> Attributed to Lewin. See Charles W. Tolman, *Problems of Theoretical Psychology* (Toronto: Captus Press, 1996).

<sup>6</sup> For full details about the program’s inception and impact, see Leonard Saxe and Barry Chazan, *Ten Days of Birthright Israel* (Lebanon: Brandeis University Press, 2008), or the Taglit Publications page on the website of the Cohen Center for Modern Jewish Studies at Brandeis University, <http://www.brandeis.edu/cmjs/researchareas/taglit-publications.html>.

<sup>7</sup> Taglit is the Hebrew name of the organization, meaning “discovery.” In the United States, the program is generally known as “Birthright Israel.”

<sup>8</sup> Jeffrey Jensen Arnett, “Emerging Adulthood: A Theory of Development from the Late Teens through the Twenties,” *American Psychologist* 55 (2000): 469–80.

<sup>9</sup> At the time this is being written, we are closing in on the end of data collection for the fourth wave of the study. Although we have preliminary data from the fourth wave, we will not report specific findings from it in this chapter.

<sup>10</sup> For full details on the methodology of the survey, see Leonard Saxe, et al., *Jewish Futures Project: The Impact of Taglit-Birthright Israel: 2012 Update* (Waltham: Maurice and Marilyn Cohen Center for Modern Jewish Studies, Brandeis University, 2012).

<sup>11</sup> The October 2010 issue of *Contemporary Jewry* was devoted to debating the “distancing hypothesis.”

<sup>12</sup> See, for example, Peter Beinart, “The Failure of the American Jewish Establishment,” *The New York Review of Books* (May 12, 2010); Steven M. Cohen and Ari Y. Kelman, “Thinking About Distancing from Israel,” *Contemporary Jewry* 30 (2010): 287–96.

<sup>13</sup> See, for example, Theodore Sasson, Charles Kadushin, and Leonard Saxe, “Trends in American Jewish Attachment to Israel: An Assessment of the ‘Distancing’ Hypothesis,” *Contemporary Jewry* 30 (2010): 297–319; Leonard Saxe and Matthew Boxer, “Loyalty and Love of Israel by Diasporan Jews,” *Israel Studies* 17 (2012): 92–101.

<sup>14</sup> See, for example, Steven M. Cohen, *A Tale of Two Jewries: The “Inconvenient Truth” for American Jews* (New York: Jewish Life Network/Steinhardt Foundation, 1996); Jack Wertheimer and Steven Bayme, “Real Realism about Mixed Marriage,” *Forward* (September 9, 2005).

<sup>15</sup> Fern Chertok, Benjamin Phillips, and Leonard Saxe, *It’s Not Just Who Stands Under the Chuppah: Intermarriage and Engagement* (Waltham: Maurice and Marilyn Cohen Center for Modern Jewish Studies, Brandeis University, 2008).

<sup>16</sup> See Leonard Saxe, et al., *Generation Birthright Israel: The Impact of an Israel Experience on Jewish Identity and Choice* (Waltham: Maurice and Marilyn Cohen Center for Modern Jewish Studies, Brandeis University, 2009); Leonard Saxe, et al., *Jewish Futures Project: The Impact of Taglit-Birthright Israel: 2010 Update* (Waltham: Maurice and Marilyn Cohen Center for Modern Jewish Studies, Brandeis University, 2011).

<sup>17</sup> Leonard Saxe et al., *Jewish Futures Project: The Impact of Taglit-Birthright Israel: 2013 Update* (Waltham: Maurice and Marilyn Cohen Center for Modern Jewish Studies, Brandeis University, forthcoming).

<sup>18</sup> Nearly all respondents who are married and were raised Orthodox are married to another Jew, regardless of Taglit participation.

<sup>19</sup> Respondents indicated for how many years they had attended Jewish day schools and Hebrew schools. Day schools were equated to 600 hours of Jewish instruction, while Hebrew schools were equated to 100 hours. These figures are modifications of Harold Himmelfarb's formula, which has been used by dozens of researchers in statistical models assessing the impact of various aspects of Jewish background on Jewish identity. See Harold Himmelfarb, "The Non-Linear Impact of Schooling: Comparing Different Types and Amounts of Jewish Education," *Sociology of Education* 50 (1977): 114–32.

<sup>20</sup> See Marshall Sklare, *America's Jews* (New York: Random House, 1971). Questions about synagogue membership have been staples of Jewish demographic surveys on the national and community level since at least 1945; see National Jewish Welfare Board, *A Study of the Jewish Population: Atlanta, Georgia* (Atlanta: Jewish Community Council of Atlanta, 1947).

<sup>21</sup> Ira M. Sheskin and Lawrence Kotler-Berkowitz, "Synagogues, Jewish Community Centers, and Other Jewish Organizations: Who Joins, Who Doesn't?," *Journal of Jewish Communal Service* 82 (2007): 271–85.