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MATRILINEAL DESCENT: A BACKGROUND CHECK

As is well known, Jewish affiliation from birth is determined matrilineally. That is, the offspring of a Jewess and a non-Jew is Jewish, while the child of a Jewish man and a non-Jewish woman is non-Jewish. This is the unquestioned practice used today by all halakhically conscious Jews. However, from a historical perspective, while the child of a non-Jewish woman was never considered Jewish, regarding a Jewish woman's child from a non-Jewish man the situation was far from monolithic. Examining the history of the halakha is useful for clarifying the nature and strength of these traditions against recent challenges, as well as for revealing residual effects of the long-ago debates.¹

The need to determine affiliation (religious, tribal, national, etc.) of a child arises in cases where the mother and father have different backgrounds. In a legally sanctioned Jewish marriage the child's status follows the father's affiliation (Mishna, *Kiddushin* 66b; *Shulhan Arukh*, Even ha-Ezer [hereafter E.H.] 8:1–3).² Thus, the son of a *kohen* and a *bat Yisrael* is a *kohen*,

¹ The content of this article has bearing on the ongoing debate in Israel regarding conversion of many of the immigrants from the former Soviet Union who are unquestionably not Jewish but were entitled to make *aliya* based on the Law of Return, and on Jewish unity in North America in light of the staggering intermarriage rate and the 1983 decision of the Reform movement to tamper with the age-old definition of “who is a Jew.” These sensitive, timely, and important topics will not be directly addressed. In 1985 Rabbi J. David Bleich explained why he thought this resolution of the Reform movement, following their prior abolition of divorce by *get* and acceptance of commitment-less conversion by an invalid *beit din*, will not increase the likelihood of a schism, and with 35 years of hindsight he seems to have been correct. R. Bleich's essay originally appeared in *Judaism* (Winter 1985) and was subsequently reprinted in his *Contemporary Halakhic Problems* (Ktav, 1989), vol. 3, 96–102.

² The exception to the rule is where the legal, sinless marriage involves two converts from nations with limits to their entry into the Jewish people (e.g., ancient Egyptian, Edomite, Moabite), in which case the offspring follow the status of the more restrictive of the two parents, whether it be the mother or father (*Shulhan Arukh*, E.H. 4:7–8; *Beit Shemuel* 4:6). In a marriage that involves a prohibition, yet is nevertheless still a binding marriage, the offspring acquire the “defect,” whether it is from the mother or the father. Thus, if an Edomite (first generation) convert marries

while the son of a *bat kohen* and a *levi* is a *levi*,³ and the child of a man from the tribe of Yehuda and a woman from Shimon is a member of Yehuda.

Mixed marriages of two non-Jews have the same patrilineal rule. The child of a male from Amon and a female “Egyptian” is an Ammonite (*Yevamot* 78b; *Shulhan Arukh*, E.H. 4:7). In summary, in halakha, paternal affiliation determines family membership. The Talmud declares “the family of the father [paternal relatives] is considered family, the family of the mother [maternal relatives] is not considered family” (*Bava Batra* 109b, based on Numbers 1:2). The Mishna (*Kiddushin* 3:12) notes that patrilineal determination applies when the union between the parents involved no sin.

When marriage between the parents is not halakhically valid, different rules apply.⁴ An example of a prohibited union in which national affiliation is at stake—the intermarriage between a Jew and a non-Jew—is the topic of this paper. The presumptive source for this prohibition is “You must utterly destroy them [the Seven Nations], do not make a treaty with them nor give them any consideration. Do not intermarry with them. Do not give your daughters to their sons and do not take their daughters for your sons. [If you do] they will turn your son away from Me, causing them to worship other gods” (Deuteronomy 7:1–4).⁵

a Jew in contravention of the law, the children are Edomite and prohibited until the third generation irrespective if it was the mother or the father who was the Edomite (*Shulhan Arukh*, E.H. 4:6).

³ The family lineage of the mother is relevant for the *halakhot* of *pidyon ha-ben*. The son of a *bat kohen* or *bat levi* is exempt from *pidyon ha-ben* just as the son of a *kohen* or *levi* is exempt. If a *bat kohen* has a child from a non-Jew, thereby defiling her “*kohen*” status (see *Yevamot* 68a; cf. *Tosafot Bekhorot* 47a, s.v. *ela*, that she even loses her status as a *levi*), the child has an obligation to redeem himself when he grows up. If a *bat levi* has a child with a non-Jew the child is exempt from *pidyon ha-ben* (*Shulhan Arukh*, *Yoreh De’ah* 305:18). The Maharam Shick (Responsa, *Yoreh De’ah* 299; and cf. *Hazon Ish*, E.H. 6:6 and 16:17) cites an opinion (which he rejects) that this child acquires his lineage from his Jewish mother and has the status of a “*levi pasul*” (see *Bekhorot* 47a) and thus his son would also be exempt from *pidyon ha-ben*. A related question is whether the firstborn son of a *bat kohen* and a *halal* (the product of a marriage that involves no prohibition but results in her losing her connection to her priestly roots) requires a *pidyon*. See R. Pinchas Shapiro, “*Bat Kohen she-Niseit le-Halal ve-Nolad Ben Bekhor*,” *Ha-Otzar* 17 (Tammuz 5778), 205–207. On what role the mother’s family lineage plays when the father’s affiliation cannot be applied see *Hiddushei Rabbeinu Hayyim HaLevi*, *Hilkhot Issurei Bi’ab* 15:9, s.v. *ve-benei*.

⁴ For example, the child of a *levi* and a *mamzeret* is not a *levi-mamzer* but a *mamzeret* who is not a *levi* and to whom no Levite status applies (*Arakhin* 33b).

⁵ A similar statement is found in Exodus 34:11–16. Netziv (*Ha’amek She’eila* 25 [p. 159]) suggests that the fear is that the non-Jewish woman will lead the Jewish man astray, but since women are not influenced as much by the husband there is less concern that a non-Jewish man will negatively influence a Jewish woman. The Talmud

Yet, these verses seem to limit the prohibition of intermarriage to the Seven Nations that dwelled in the Land when the Jews conquered it, although the rationale for the prohibition as stated could be equally applicable to all non-Jews. In the course of analyzing the various biblical and rabbinic prohibitions entailed in intermarriage, *Avoda Zara* 36b records a dispute between the Sages, who say that the prohibition is limited to the Seven Nations, and R. Shimon bar Yohai who holds that, because the rationale is more encompassing, the prohibition applies to all non-Jews. The Prophets testify that the Jews indeed ignored the warning in ancient Israel and the results were as predicted (see, e.g., Judges 3:6).

Rambam (*Issurei Bi'ah* 12:1 and cf. *Kesef Mishna*) rules in accordance with R. Shimon bar Yohai and cites Nehemiah (10:31) as supporting the broader-based prohibition. *Tur* (E.H. 16) disagrees and says that the prohibition in Deuteronomy applies specifically with members of the Seven Nations and, furthermore, only after they convert, for otherwise, as pointed out elsewhere (*Yevamot* 76a), there is no halakhic concept of “marriage” to a non-converted gentile. *Minhat Hinukh* (427), however, maintains that the intermarriage prohibition applies to all non-converted gentiles, and remains in effect for the Seven Nations even after conversion. *Shulhan Arukh* (E.H. 16:1) makes no mention of the Seven Nations and applies the biblical prohibition equally to all non-Jews.

Other potential sources for the prohibition of marrying a gentile are the story of Pinhas and Zimri (Numbers 25:6–8),⁶ Deuteronomy 23:18, and Malakhi 2:11–12.⁷ Whatever the source, intermarriage was clearly viewed by *Hazal* as scripture-based, and something to be avoided at all costs. This view led to the institution of numerous decrees against eating non-Jewish food items (bread, wine, cooked goods, etc.) that may lead to social mingling and eventually intermarriage.

(*Eruvin* 19a) suggests that a non-Jewish woman who cohabits with a Jew will try to conceal the sign of his circumcision, thereby hiding his Jewishness.

⁶ From this biblical story, the rabbis derived (*Sanhedrin* 82a; *Shulhan Arukh*, E.H. 16:2; Rema, *Hoshen Mishpat* 425:4) the ruling that if a Jewish man is caught in the act of cohabiting with a non-Jewish woman, “zealots may attack him.” Many authorities (see *Otzar ha-Poskim* to E.H. 16:2:8) view this as asymmetrical in applying only to a Jewish man, whose offspring will be non-Jews, but not to a Jewish woman whose child will be a Jew like her. The halakha rules that when a non-Jew forces himself on a Jewess it is not considered *giluy arayot* unlike when a Jewish man is forced into relations with a non-Jewish woman, which is *giluy arayot* for which one must forfeit his life (*Shulhan Arukh*, Y.D. 157:1; *Shakh*, Y.D. 157:12).

⁷ See *Yerushalmi Ta'anit* 3:4; *Sanhedrin* 82a; Rambam, *Commentary to Mishna, Sanhedrin* 9:6; Responsa *Maharam Schick* E.H. 37 and 155.

TRADITION

Matrilineal determination implies that in intermarriage the status of the child follows the Jewish or gentile status of the mother.⁸ Each of these instances needs to be examined independently.⁹

In the case of a non-Jewish mother there may be a biblical source regarding the status of the children. Ezra insisted that by Torah law non-Jewish wives and their children were required to be banished (Ezra 10:3). Clearly, including the children in the banishment indicates their own status as non-Jewish.

The rule regarding a non-Jewish mother is stated explicitly in the Mishna (*Kiddushin* 3:12; also implied in *Yevamot* 2:5), which establishes that a child of a non-Jewess and a Jew is not Jewish. The Gemara cautions, “your [grand]son by a Jewish woman is called your son, but your [grand]son by a non-Jewess is not called your son but *her* son.” (*Kiddushin* 68b, derived from Deuteronomy 7:3–4¹⁰).

A story where this rule was reiterated (*Yerushalmi Yevamot* 2:6 and *Kiddushin* 3:12; cf. *Bemidbar Rabba* 19:3, *Bereishit Rabba* 7:2) relates

⁸ There is a popular notion that halakha uses matrilineal descent because “the certainty of maternity must be set against the doubt of paternity, however small this doubt may be,” and “the mother’s bond with the child is, in some respects, firmer than the father’s” (Immanuel Jakobovits, *The Timely and the Timeless* [Valentine Mitchell, 1977], 202–203). This logic, known in the Roman-law system as *mater semper certa est, pater semper incertus est* (“the mother is always certain, the father is always uncertain”) has been utilized in a United States Supreme Court case (Miller v. Albright, 523 U.S. 420, 1998) as well. In defending a seemingly discriminatory citizenship law, Justice John Paul Stevens observed that the identity of the mother “is established at the moment of birth, no matter where the birth takes place” while there often are “a lot of questions that have to be resolved” about the father’s identity. R. Yehiel Yaakov Weinberg (addendum to *Seridei Eish*, vol. 4, p. 383) regarding “Who is a Jew?” says that various reasons have been suggested for matrilineal descent: biological connections of child to mother; the mother’s significant influence on the child’s development; and the certainty as to the identity of the mother. But, he states, ultimately, we do not know the reasons for the Torah’s rules. In addition, paternity clearly has halakhic relevance, as it is accepted in establishing *kehuna* and family status. In light of all of these “logical” explanations for the halakha of matrilineal descent in Judaism, it is interesting that Samaritans and Muslims utilize patrilineal identity. For a suggested explanation of why Judaism uses matrilineal descent see Meir Soloveichik, “The Jewish Mother: A Theology,” *Azure* 20 (Spring 2005), 99–115.

⁹ For some background material see: Israel Francus, “The Halakhic Status of Children Born from Mixed Marriages in Talmudic Literature” [Hebrew], *Sidra* 4 (1988), 89–110, and R. J. David Bleich, *Contemporary Halakhic Problems* (Ktav, 1983), vol. 2, 103–107.

¹⁰ See Rashi, Rabbeinu Tam, and Rambam (*Issurei Bi’ah* 12:7) for various explanations on exactly how this derivation works. The Gemara offers an alternative derivation from Deuteronomy 21:15, while *Mekhilta* (Exodus 21:4) offers yet another proof that the offspring of a gentile woman is not Jewish.

that Yaakov of *Kefar Nibboraya*, a third to fourth-generation Amora, was visiting *Tzur*, where he was asked whether the son of a non-Jewish woman and a Jewish man may be circumcised on Shabbat. That is, was the son Jewish? Based on Numbers 1:18, he contemplated permitting it until Rav Haggai corrected him and flogged him for his obvious incompetence.¹¹ Yaakov's position does not seem to be mentioned in the Bavli nor cited by any later authoritative source, and Yaakov, who also once absurdly ruled that fish require *shehita*, was clearly not presenting a legitimate position.

Another hint of an alternative understanding is found in Tosafot (*Yevamot* 16b, s.v. *oved kokhavim*) who explain a rejected opinion of Rav Assi that if there is any Jewish parentage, whether the mother or the father, the offspring is Jewish and is a *mamzer*. However, *Shulhan Arukh* (E.H. 8:5) unequivocally rules that the child of a non-Jewish woman is not Jewish.

Halakhically the Jewish father has no connection to his non-Jewish child. Even if the child subsequently converts, the father has not fulfilled his obligation of procreation (*Minhat Hinukh* 1:10).¹² The Rema (*Darkei Moshe*, E.H. 156:1, and Rema, E.H. 15:10) raises the possibility that, on a rabbinic level, the child is identified as the offspring of the Jewish father, and thus, for example, would bar the man's brother from performing *yibum* and require *halitza*. Later commentaries (Vilna Gaon, E.H. 15:16; *Helkat Mehokek*, E.H. 15:3; *Taz*, E.H. 15:9) expressed bewilderment at this position.

In recent centuries, the novel notion has been proposed that the child of a Jewish father (and non-Jewish mother) does have some Jewish connection. In the course of the 1864 debate regarding circumcision of males born to Jewish fathers and non-Jewish mothers, Rabbi Tzvi Hirsch Kalischer (1795-1874) stated that although he considered them non-Jews he thought it was a mitzva to circumcise such children. Based on Ezra (9:2), he said that such children are called "*zera ha-kodesh*"—holy seed. The verse states "for they have taken of their daughters for themselves, and for their sons: so that the holy seed have mingled themselves with the peoples of those lands."

¹¹ Rav Itzele Ponevezher (R. Yitzhak Yaakov Rabinovitch, 1854-1918; *Responsa Zekher Yitzhak* 1:2) in addressing the question of circumcising the son of a Jew and non-Jewess develops a creative explanation of Yaakov's logic. He posits that a father "owns" his son in the sense that when the son is a minor the father can sell him as a slave. He further suggests that this is true even when there is no legal familial bond such as a father who converts and has a non-Jewish son. In that case, according to Yaakov's logic, the non-Jewish son of a Jew and a non-Jewess "belongs" to the father and has the status of a "slave born of the household or purchased with silver" (Gen. 17:12) who would be circumcised on the eighth day even if it is Shabbat.

¹² This is so despite the fact that if a non-Jewish man and his non-Jewish children convert he has fulfilled the mitzva (*Shulhan Arukh*, E.H. 1:7; *Minhat Hinukh* 1:13).

R. Kalischer, perhaps homiletically, understood “holy seed” as referring to these children of mixed marriages. Rabbi Azriel Hildesheimer (1820-1899) took strong umbrage at that interpretation. Based on the simple reading of the text (see *Metzudat David*), and the only other occurrence of the phrase (Isaiah 6:13), it seems to clearly be referring to the Jewish individuals and not ascribing any holiness to the non-Jewish offspring.¹³

Rabbi Ben-Zion Meir Hai Uziel (1880-1953; Sephardic Chief Rabbi of Israel, 1939-1953) in several responsa written over seventy years ago, dealt with an issue still vexing the Israeli rabbinate: intermarried couples and their children making *aliya* under the Law of Return. While he stated definitively that the child of a Jewish woman and a non-Jewish man is fully Jewish, and the offspring of a Jewish man from a non-Jewish woman is absolutely not Jewish (e.g., *Piskei Uziel* 65; *Mishpetei Uziel* 2:65), nonetheless he held that the latter has the status of “*zera Yisrael*” and are viewed as “lost sheep.” The Jewish father, according to R. Uziel, is obligated to bring such a child as soon as he can to a *beit din* to convert him, distance the child from non-Jewish influences, and provide a Jewish education. And, he emphasizes, the *beit din* is required to convert him even if they suspect he will not fully keep the *mitzvot*. He saw evidence for this in the Talmudic debate (*Kiddushin* 78a based on Ezekiel 44:22) regarding who a *kohen* may marry and also based on a statement in *Megilla* 25a that the prohibition of *Molekh* (Leviticus 18:21) applies equally to a child born to a Jew from a non-Jewess (*Piskei Uziel be-She’elot ha-Zeman* 64–65 and *Mishpetei Uziel* (*Tinyana*) 7, E.H. 19–20).¹⁴ Writing in 1957, R. Avraham

¹³ *Responsa Rabbi Azriel, Orah Hayyim-Yoreh De’ah* 229 (pp. 267–275 in 5729 edition).

¹⁴ In a short, enigmatic responsum (*Mishpetei Uziel* 2, Y.D. 52) from 1939, R. Uziel invokes this notion in regard to the Jewishness of the father somehow playing a role regarding *kehuna* based on *Yevamot* 100b and *Kiddushin* 78a. It is difficult to understand exactly what he had in mind. At the end of a longer 1957 responsum, then member of the Paris *Beit Din*, R. Avraham Moshe Fingerhut (*Sheilot u-Teshuvot she-heshiv ha-Rav Avraham Moshe Fingerhut*, 16) cites (without attribution) this section from R. Uziel. They can be read as saying that a female convert whose father was a Jew may marry a *kohen*. This is not the accepted halakha, it is hard to see how that can be learned from the sources, and I do not believe that was R. Uziel’s intention. As further evidence that the Jewish father effects the child’s subsequent status, R. Fingerhut brings the example of Tamar the daughter of King David and an *esbet yefat to’ar* before her conversion (*Sanhedrin* 21a) and yet after Tamar converted she was deemed royalty and viewed as a brother to Amnon (II Samuel 13:2, 18; see, however, II Samuel 13:13 which suggests Tamar and Amnon could have married and therefore might not have been viewed halakhically as siblings). Regarding R. Uziel’s *pesak*, Rabbi Yona Reiss, *Av Bet Din* of the Chicago Rabbinical Council, in the course of a discussion about what sort of cases *beit din* should be more receptive than usual to accept a convert, expressed reservations to R. Uziel’s position (*Kanfei Yona* (2018), 129–131).

Moshe Fingerhut stated that such a child is “not like every other non-Jew, rather he has a Jewish side because he was fathered by a Jew.”

The use of the concept of “*zera Yisrael*” has in recent years been popularized and found a new proponent in the person of Rabbi Haim Amsalem. A former yeshiva head, city rabbi, and member of the Knesset for the Shas party, R. Amsalem is an advocate for liberalizing the conversion process and in particular for those with Jewish fathers. In defense of his position he published a large work on *giyyur* entitled *Sefer Zera Yisrael* (2010), containing an entire chapter (one out of nine) devoted to the topic of non-Jews with Jewish fathers. It is an attempt to advance his assertion that one should encourage their conversion and apply certain leniencies. In a companion work, *Sefer Mekor Yisrael*, he assembled all of the source material on which his thesis rests. His iconoclastic stance on *giyyur* among his other positions, contributed to R. Amsalem’s removal from his position in Shas. This use of *zera Yisrael* appears to be a modern invention and while many rabbis today are willing to welcome rather than discourage the conversion of individuals with Jewish fathers,¹⁵ particularly if they are involved with the Jewish community, most (unlike R. Amsalem) are not willing to apply leniencies to the conversion process based on it.

As seen, regarding the child of a non-Jewish woman there is little question that despite the father being Jewish the child is not Jewish. The status in the opposite case, a Jewish mother and a non-Jewish father, is far less clear in the rabbinic discourse, although, as will be seen, the final status as a Jew is universally accepted today. The only mishnaic statement regarding this scenario (*Yevamot* 7:5) says the child is [Jewish and is] a *mamzer*. The Tosefta (*Kiddushin* 4:16) records a disagreement on this point; the first opinion, agreeing with the Mishna and being in accordance with R. Akiva’s position (*Yevamot* 4:13), is that the child is a *mamzer*, while R. Shimon says the child is not a *mamzer*.

A third tannaitic source is the Sifra on the story of the blasphemer, described as the “son of an Israelite woman and an Egyptian man” (Leviticus 24:10). The Sifra (quoted by Rashi) says that the blasphemer converted, implying that his initial status was a non-Jew. It appears from this that there was a tannaitic opinion that a non-Jewish father causes the child to be non-Jewish.¹⁶

¹⁵ As an example, Rav Elyashiv is reported to have said that it is worthwhile to bring such children closer to Judaism; cited in Moshe Turetsky, *Yashiv Moshe* (1989), Y.D. 11, p. 144.

¹⁶ This position is so counter to the accepted halakha that Ramban (Leviticus 24:10) quotes French authorities who say that because the incident occurred prior to the giving of the Torah at Sinai, patrilineal descent was still the norm. Ramban himself

In numerous places in the Talmud, the tannaitic position given in the Mishna, that such a child is a *mamzer*, is recorded. Nonetheless, this position is rejected as normative halakha.

The question thus remains: what is the status of such a child? *Yevamot* 45a cites an opinion in the name of sages both from Babylonia and the Land of Israel that the child is “*kasher*” but some say that she is “*mekulka*” (“faulty”), and thus, as is known in the halakhic literature, “*pagum le-kebuna*,” may not marry a *kohen*. The interpretation of “*kasher*” is then subject to debate among the commentaries: 1) To be a Jew by birth one needs to have two Jewish parents. This child of a Jewish mother and non-Jewish father is eligible to convert and marry a Jew (but not a *kohen*), but is not a Jew by birth; 2) fit (“*kasher*”) to marry any Jew, i.e., she is a full-fledged, untainted Jew by birth, since Judaism is fully matrilineal; or 3) a non-*mamzer* Jew by birth but one who may not marry a *kohen*.

The Talmud concludes: “The halakha is that if a gentile or a slave cohabits with a Jewess, the offspring is ‘fit,’ both in the case of an unmarried woman and in the case of a married woman.” One of the earliest post-talmudic authorities, Rav Ahai Gaon (*She’iltot* 25), ruled exactly according to that conclusion. Despite the various opinions among *Rishonim* in the intervening years, *Tur* and *Shulhan Arukh* (E.H. 4:5, 4:19) also rule that a child of a Jewish woman (whether married or single) and a non-Jew is a “kosher” Jew, although *ab initio*¹⁷ should not marry a *kohen* (E.H. 7:17).

Maharsha (to Tosafot, *Kiddushin* 75b) finds both Rashi and Tosafot self-contradictory on this issue, but he leans to the position that the child is Jewish.¹⁸ R. Moshe Feinstein (*Dibberot Moshe*, *Yevamot* 1:13 [pp. 109–124]) analyzes in great detail the various, seemingly contradictory po-

says that the meaning is that he “converted” just like all other Israelites by accepting the Torah. Ra’avad suggests it was the blasphemer’s father who converted after the blasphemer was born.

¹⁷ How to define *ab initio* (*lebathila*) in this context is subject to debate. Rabbi J. David Bleich provides an overview of contemporary halakhic opinions in the context of discussing a case of such a couple who had already been living together for over a year and had “threatened” to continue living together with or without rabbinic sanction; see “Survey of Recent Halakhic Periodical Literature: Marriage of a Kohen and the Daughter of a Non-Jew,” *TRADITION* 40:2 (2007), 71–77. If a *kohen* and the daughter of a non-Jew are already married, the courts do not force them to get divorced (*Beit Shemuel* 4:2). *Tzitz Eliezer* (7, 40:8) lists several authorities who actually permit them to marry *ab initio*. *Avnei Nezer* (E.H. 16) rules that although the daughter of a gentile and Jewess may not marry a *kohen*, the granddaughter via a son may marry a *kohen*.

¹⁸ For other ways to deal with this seeming contradiction see sources in *Pithei Teshuva*, E.H. 4:1, and Responsa *Har Tzvi*, E.H. 19.

sitions and then applies his conclusion in an enigmatic responsum (*Iggeret Moshe* E.H. 1:8). He rules that a woman who arrived from France claiming that her mother was an apostate Jew who married a non-Jew and lived with him as non-Jews was not Jewish. He spends most of the responsum proving that the young woman is not to be believed that her mother is Jewish. In a short, final paragraph he says that even if the mother was born Jewish, this young woman is still not Jewish because the offspring of a non-Jewish man and a female Jewish apostate is not Jewish. It seems this position is not generally accepted (see the rejection in *Tzitz Eliezer* 13:93).

Piskei Tosafot (*Kiddushin* 142) rules that the offspring of a Jewess and non-Jew is a non-Jew. This opinion is cited by Rabbi Akiva Eiger to Y.D. 266:12 in regard to not circumcising such a boy on Shabbat. Maharam Schick (Y.D. 249 and E.H. 20) entertains the possibility that the child is “half-Jewish” then concludes that the son is fully Jewish and there is no need for a conversion. Nonetheless, he says the *brit* should not be performed on Shabbat because the mother is a *mumeret*. *Pithei Teshuva* Y.D. 266:14 quotes *Tiferet le-Moshe* who rules that the circumcision can certainly be done on Shabbat because the child is a kosher Jew.

Rambam in *Iggeret Teiman* (Mossad Harav Kook, 5747 ed. [p. 119]) says that Jesus was Jewish despite his father being a non-Jew because of our principle that if a non-Jew or a slave cohabits with a Jewess, the child is legitimate. Jesus is called a “*mamzer*” only to increase his shame (i.e., it is being used to disparage him, not a legal term).

Tosafot (*Sota* 41b, s.v. *oto ha-yom*) and possibly Rashi (according to Rashba *Yevamot* 102a, s.v. *amar Rava*) hold that even if a child of a Jewish mother and a non-Jewish father is Jewish, he still may not be crowned as a king of Israel unless both parents are Jewish. *Taz* (Y.D. 268:1, 10) notes that although we rule that he is Jewish, there is still a stigma attached as the person is known (based on *Yevamot* 45b) as “son of an Aramean [non-Jew],” and certain families would do as Rav and not take such a person as a son-in-law (*Yevamot* 45a). In response Rav Yehuda, who held the person is fully legitimate, suggested such a person go to another town where he is unknown and get married there.¹⁹

Rit (Rav Yom Tov) Algazi (18th century, Jerusalem), in his commentary to Ramban, *Hilkhot Bekhorot* 65 (found in the back of the standard

¹⁹ Based on that Gemara, *Mishneh Halakhot* (13:168) ruled that a child of a Jewish mother and non-Jewish father has no obligation to reveal his lineage. Rav Yaakov Yisrael Kanievsky, the Steipler (*Kehillat Yaakov*, *Yevamot* 44), agreed with that inference and extended the ruling such that an individual who had one testicle removed had no obligation to reveal that to potential suitors.

Vilna Shas, *Bekhorot* 56a) presents an unusual position. After a long, detailed analysis of the sources related to the child of a Jewish woman and a gentile man, he suggests that the child is something of a hybrid, containing elements of both parents and his status can only be determined retroactively.²⁰ He says that the position that the child is *kasher* even without conversion is in the case of a child fathered by a non-Jew who had no involvement in the youngster's life and then was raised by his mother as a practicing Jew. It is thus retroactively clarified that he was a Jew from birth. However, if the parents lived as a "married" couple, and the non-Jewish father raised him as a gentile, it becomes retroactively clear that the child was always a non-Jew and would require a full conversion in order to marry a Jew.

Pithei Teshuva (E.H. 4:1) quotes the unusual position of Rabbi Yaakov Lorberbaum of Lissa (1760-1832; *Hemdut Shelomo*, 2) who held that the child requires conversion, but following which he is considered related to the mother and is retroactively considered a born-Jew who may not marry a *mamzer*. *Hazon Ish* (E.H. 6:7) finds this to be a bizarre position. On the other hand, Rabbi Isaac Herzog (*Heikhal Yitzhak*, E.H. 1:17) wanted to include that position as one element in resolving a halakhic conundrum involving a *kohen* married to a possible convert.

Rabbi Naftoli Trop (1871-1928; *Hiddushei ha-Granat*, *Ketubot* 28) postulates that even according to those who hold that a child of a Jewish mother and a non-Jewish father requires a conversion, it is not because he is a true non-Jew. The opposite is true; he is a Jew but requires a conversion because he is lacking "*kedusbat Yisrael*" which is the "inherited" quality of Jewish sanctity, in the same way that one inherits the status of being a *kohen*, via one's father. In this case the non-Jewish father was unable to bequeath that sanctity to the child. Rav Chaim Ozer Grodzinski (1863-1940; *Abiezer*, Y.D. 2:29:6) says that, unlike a convert with two non-Jewish parents who following conversion has no halakhic relationship to either of them, a "convert" such as this case, whose mother is Jewish, is legally related to her.²¹

²⁰ Maharsha (*Yevamot* 16b) quotes a similar explanation in the name of Maharshal and expresses surprise at the suggestion that status can be impacted by behavior.

²¹ See R. J. David Bleich, *Contemporary Halakhic Problems* (Ktav, 1995), vol. 4, 260 ff. where he discusses this unusual position and points out its similarity to R. Sternbuch's position.

In a responsum dealing with appointing a convert as a *dayan*, *Tzitz Eliezer* 19:47(5-6), utilizes a feat of legal acrobatics to offer two possible justifications for the converts Shemaya and Avtalyon serving as judges. He quotes *Noda bi-Yehuda* as suggesting that a male descendant of Sennacherib fathered a child with a female from the Ten Tribes, who had been declared non-Jewish. The child indeed required conversion, but was nonetheless deemed as Jewish stock regarding serving as a judge by virtue of

The status of such a child is so unclear from the Talmudic sources that Rabbi Shlomo Kluger (*Hakbmat Shelomo*, E.H. 4:19) reports that he could prove both that the child does and does not require conversion. Moreover, R. Kluger argues he could prove that perhaps rabbinically the child is required to convert or maybe that only if the mother is married must he convert. In passing, R. Kluger does point out that he thinks that both Rashi and Tosafot hold the child is Jewish from birth.

Rav Ahron Soloveichik had a novel understanding of the status of the child of a Jewess and a non-Jew, an interpretation that he believed to be the position of Rashi and Tosafot. He postulates—with no doubts or hesitations—that the child is Jewish from birth and possesses *kedushat Yisrael*. However, just like a convert in the time of the *Beit ha-Mikdash* who, after circumcision and mikvah immersion, was fully Jewish but was not permitted to marry a Jew until he had brought a sacrifice, so too this child, owing to his non-Jewish father may not marry a Jew without “converting.” And indeed, his policy and that of the Merkaz HaRabbonim of Chicago at the time was to require *tevila* before Chicago Rabbis would officiate such a person’s wedding.²²

Despite the multiplicity of opinions in the medieval and early modern periods, *Hazon Ish* rules (E.H. 6:7) that the normative halakha, based on the Talmudic sources, is that the child of a Jewess and a non-Jew is Jewish with no need for conversion. The *Noda bi-Yehuda* (*Tinyana* E.H. 150) mentions in passing that the child is “according to all opinions a kosher Jew who is counted among the congregation of Israel for all Holy matters.” R. Uziel states (*Piskei Uziel* 65) that his eighth-day *brit mila* should be performed if it falls out on Shabbat.

The halakhic consensus is that Judaism is fully matrilineal—the status of the mother, be she Jewish or non-Jewish, is unequivocally determinative regarding the status of the child. In long ago periods, under very different circumstances, there were some who might have, to a greater or lesser degree, rejected the child of a Jewish mother and a non-Jewish father. For many centuries that has no longer been a question and such a person is accepted as a full Jew. The pendulum has swung so far that the child of a non-Jewish woman and a Jewish man who is clearly non-Jewish and who

his mother’s Jewish lineage. Alternatively, he quotes several sources that their mothers were Jewish, and their fathers not Jewish, but they were nonetheless called “converts” because of the non-Jewish fathers. And, he says, maybe they acted stringently and underwent a conversion like the opinions that require it in that situation.

²² R. Ahron Soloveichik, “*Ba-Inyan Mezabamin et ha-Vlad*,” *Ha-Pardes* 23:5 (February 1949), 16–19, especially 19, and “*Kedushat ha-Kelal ve-Kedushat ha-Perat*,” *Mesorah* 19 (January 2003), 48–64, in particular 59.

TRADITION

historically was even banished from the land by Ezra has recently seen a tentative welcome sign for purposes of conversion to Judaism under the title of “*zera Yisrael*,” a new, rather than a revitalized, concept that is being used to be more welcoming to those potential converts.