



Fate & Faith: The Ongoing Covenants

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Abstract: This article develops a paradigm that classifies the essential elements in the rabbinic understanding of who is and who no longer is a Jew. It outlines both the biblical universal and personal covenants to derive the basic definition of covenant and its associated implications. By adopting the dialectic of Rabbi Joseph B. Soloveitchik, it extends this investigation to characterize the twin covenants of fate and faith between the Jewish people, their God and each other. The article also explores primary rabbinic sources regarding apostasy, gauging boundaries of the covenant and Rav Soloveitchik's paradigm. Finally, it traces this covenantal thesis through the aforementioned themes, distinguishing between the male and female elements and the active and passive elements, classifies a Jew's relationships to his people and to God, and identifies which covenantal components can be cast off by choice and which are immutable from inception.

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The question of what makes a Jew manifests itself in countless arenas, most recently, in what constitutes a valid conversion for issues such as Israel's Law of Return¹ or Jewish marriage. This issue is at the heart of a recurring rift between and within, Israel, the Diaspora and those that consider themselves affiliates of world Jewry. In the past, these questions have primarily been asked with regard to individual cases such as "Brother Daniel"² or organizations such as "Jews for Jesus".³

In this article, however, I concentrate on a theoretical understanding of what comprises a Jew through the framing categories of fate as a core identity and faith as an associated affiliation. These categories are adapted from Rabbi Joseph B. Soloveitchik. I do not regard the offshoots of these ideas as less important—they are in fact very pertinent and I outline some of these implications at conclusion of these articles. Yet I believe that less attention has been devoted to the conceptual issues from which the corollaries stem. To appreciate these underpinnings, I attempt to return to the rabbinic sources and

investigate the concept of the biblical covenant between God and man, from its historic dawn to prospective dusk, i.e., from its general foundational initiation through to its potential future fulfillment. I explore apostasy as the most severe apparent option of termination. And in questioning who is *no longer* a Jew, I believe one better understands what comprises Jewish identity. I will outline Rabbi Soloveitchik's fate/destiny framing of the twin covenants with the Jewish people and test his theory in the uncharted area of apostasy. Incorporating a gender-based characterization I conclude that with regard to a Jew's passive national fate, "once a Jew, always a Jew." However, when a person actively divests himself of one's Jewish faith, he is consequently divested from specific aspects of the religious faith community.

I. Covenant: The Noahide Naissance and the Abrahamic Appropriation

The concept of *berit*, commonly translated as "covenant,"⁴ has influenced much of the historical landscape of theology, law and political theory. It is a term loaded with

1. In 1950 the "Law of Return" was passed in the state of Israel allowing every Jew to immigrate to Israel with associated citizenship and benefits.

2. The "Brother Daniel" case refers to Oswald Rufeisen, a Jew who converted to Christianity during the Nazi Holocaust and became a Carmelite Monk. In 1962, Rufeisen, now Brother Daniel, applied to immigrate to Israel and, after being denied, appealed to the High Court. The High Court ruled that even though he was born to a Jewish mother, he had since converted and should not be recognized as a Jew by the State of Israel.

3. Jews for Jesus is a Christian evangelical organization that considers itself Jewish but is not considered Jewish by normative Judaism.

4. This is the general translation of the term, though there are a number of etymological difficulties as noted for example in W. J. Dumbrell, *Covenant & Creation: An Old Testament Covenantal Theology* (Oxford: The Paternoster Press, 1984), p. 16.

5. In the Bible it represented an agreement similar to the ancient Near Eastern "suzerainty treaty" between a sovereign king and a subordinate king. See for example George E. Mendenhall, "Covenant Forms in Israelite Tradition," *The Biblical Archaeologist* 17, September, 1954, pp. 50–76; Klaus Baltzer, *The Covenant Formulary in Old Testament, Jewish, and Early Christian Writings*, trans. by David E. Green (Oxford: Blackwell, 1971).

multiple connotations,⁵ so much so that its usage has been sometimes avoided.⁶ As the source of this concept, however, the Bible mentions the term no less than 289 times in variant forms and a myriad of contexts. Thus, investigating the covenant through its classic inception with the two biblical characters, Noah and Abraham, allows us to gain a clearer appreciation of the social implications of the term before exploring its application to the boundaries of Jewish membership.

“Before Abraham, God was called “God of the heavens”; after Abraham, people called Him “God of the heavens and the earth”

The Bible begins with a comprehensive account of the creation of the world and continues with the history of ten generations, from Adam to humanity’s rapid descent into the spiritual abyss until the generation of Noah. Following the flood that destroys all life except Noah, his family and representatives of each animal species, God established a covenant with humanity. According to rabbinic tradition this covenant is built around seven Noahide laws consisting of fundamental moral precepts essential to human social order:

the six prohibitions against murder, theft, sexual immorality, idolatry, eating the limb of a live animal and blasphemy, and the positive injunction to establish systems of justice.⁷ This first *berit* established is signified by a rainbow as an eternal reminder.⁸

The next biblical covenant established between God and man occurred ten generations later: “God said to Abram, ‘go for yourself from your land, your birthplace and your father’s house, to the land that I will show you.’”⁹ These words are among the most consequential in the history of humanity and lie at the heart of covenantal theology. With this biblical summoning of one man, Judaism, Christianity and Islam were set in motion. In return for his journey into the unknown and allegiance to God, Abraham was promised fame, estate and the blessing to become the father of a great and populous nation. While the unique personal relationship began here, it was formalized with the “covenant between the pieces” and ratified soon after with the reiteration of the Land as a legacy.¹⁰ As with Noah, both partners benefited and assumed accountability. In return for the aforementioned privileges Abraham would attain, he became God’s emissary. Early rabbinic exegesis recounted that: “before Abraham, God was called “God of the heavens”; after Abraham, people called Him

6. It has been argued that the reason the term “covenant” is rarely found in rabbinic sources is due to its considerable usage by Christian counterparts, particularly with reference to distinguishing Christianity from Judaism, David Novak, “The Covenant in Rabbinic Thought,” in Eugene B. Korn, John Pawlikowski (ed.), *Two Faiths, One Covenant? : Jewish and Christian Identity in the Presence of the Other* (New York: Rowman & Littlefield Publishers, Inc., 2005), p. 65.

7. See BT *Sanhedrin* 56a; *Tosefta*, *Avodah zarah* 8:4; Maimonides, *Mishneh torah*, *Hilkehot melakhim* 9:1. See also Rabbi Joseph B. Soloveitchik, *Family Redeemed* (New York: Toras HoRav Foundation, 2000).

8. “I will establish my covenant with you and I will not cut off all of man again by the waters of the flood and never again shall there be a flood to destroy the world.” (Gen. 9:11). Thinkers have attempted to explain the symbolism of this sign. Perhaps the inverted bow is a semi-circle from the heavens that charges humanity with the task of completing the circle. The twentieth-century political scientist Daniel Elazar highlighted covenantal partnership, arguing that at its foundation the covenant contained the seeds of modern constitutionalism because it stressed the acceptance of limitations of power by both parties: humans commit themselves to the seven commandments and God commits to never again destroy the entire world with a flood. See Elazar, *Covenant & Polity in Biblical Israel* (New Brunswick, NJ: Transaction Publishers, 1998) p. 1.

9. Gen. 12:1.

10. Gen. 15.

‘God of the heavens and the earth.’”¹¹ Thus Abraham represented God’s presence in the world as His personal witness.¹² Abraham’s responsibilities later expand to include “doing charity and justice, in order that God bring upon Abraham” that which was promised.¹³ While the universal Noahide covenant was symbolized by a rainbow for all to see, the symbol for the personal covenant of Judaism was circumcision—an indelible private sign of sacrifice on the organ that signifies progeny.¹⁴ This intimate mark contrasted sharply with the universal nature of the Noahide covenant with all of humanity, perhaps because the Abrahamic covenant became particular in its command to the Jewish people alone.

Rabbinic theology considered the biblical covenant between God and Abraham’s descendants to be irrevocable and eternal

Another unique attribute of the biblical covenant was insinuated in the “covenant between the pieces.” After God extended his promise of the Land, Abraham became skeptical: “How will I know that I shall inherit

it?”¹⁵ This was uncharacteristic of the faithful Abraham, yet from a modern-day contractual standpoint Abraham’s considerations were rational. Contractual agreements assume that if either party does not fulfill its stipulated requirements, the other party is absolved of responsibility. When Abraham was promised posterity, he was certain that he would fulfill his commission as God’s ambassador; however he was unable to ensure that all his children would be worthy bearers of his legacy. According to rabbinic tradition, Abraham’s skepticism was partially warranted because some of his descendants (Ishmael and Esau) would leave the fold.

Rabbi Aharon Lichtenstein has suggested that this was because the religious experience of Abraham, Isaac and Jacob lacked a communal context.¹⁶ Just as God’s covenant with Noah did not preclude the possibility of partial destruction but only absolute extinction, this covenant did not warrant the continuity of all of Abraham’s immediate descendants, only a guarantee that he would have *some* spiritual successors. Part of the covenant ritual included a prophecy of Egyptian servitude and subsequent freedom for his offspring. This

11. *Sifre, Ha’azinu* 313.

12. As with Novak’s suggestion with regard to the concept of the covenant, Eugene Korn suggests that in response to Christianity’s adoption and popularization of the term “witness,” Jewish literature has shied away from using it. Like the term “covenant” however, the Bible itself employs the term freely as in Isa. 43:11-12 where God calls Israel “My witnesses.” See “The People Israel, Christianity and the Covenantal Responsibility to History,” p. 2 in *Covenant and Hope: Christian and Jewish Reflections Constructive Essays in Jewish-Christian Theology* (New York: Eerdmans, 2011). See also his “The Covenant and its Theology,” in this edition of *Me’orot*.

13. Gen. 18:19.

14. Gen. 17:11

15. Gen. 15:8.

16. “Brother Daniel and the Jewish Fraternity” in *Judaism: A Quarterly Journal of Jewish Life and Thought* 12, no. 3 (Summer 1963), p. 280, reprinted in Aharon Lichtenstein, *Leaves of Faith: The World of Jewish Living Volume II* (New Jersey: KTAV, 2004) p. 83 (Henceforth the latter source alone will be cited). R. Lichtenstein cited BT, *Pesahim* 117b, to intimate this as the reason that each of the forefathers is mentioned individually in the amidah of Jewish prayer. He further highlighted the fact that Jacob’s children were the intermediary individuals in the shift from individual to communal religious life, in the way they were enumerated, first as individuals with their children in Gen. 46:8–27 and later as heads of the future community in Ex. 1:1–3. Later, however, when this covenant is extended to a national context, it becomes all-encompassing, as will be discussed.

17. Names are descriptive in delineating a specific image. Throughout the ages different names reflecting different nuances have been used to describe the Jewish people. In the Bible itself many were used, for example, “Hebrews” (Gen. 40:15) or “the children of Israel” (Ex. 1:1). While certain sources I quote may make reference to different terms, for the sake of simplicity I will employ the epithet “Jewish people” or “Jew” in the singular.

suggests that the Jewish people¹⁷ will go through tribulations and triumphs, but their collective relationship as a people is not contractual; it is, rather, biblically covenantal. A human contract can be revoked if one party does not uphold its side, but the biblical covenant between God and Abraham's descendants as a people is considered by rabbinic theology to be irrevocable and eternal. This immutable relationship with God becomes a defining aspect of Jewish identity.¹⁸

Thus the Bible recounts the first two eternal covenants established through human beings with God as both a Partner and the Ultimate Guarantor. With Noah, God established a universal covenant with humanity and through Abraham, He established a personal covenant with the Jewish people, which was extended to each individual of the polity.¹⁹ While this covenant found in Genesis was revolutionary in its commitment between man and God, Exodus contains its enlargement with a genesis in national covenants. Hence the Torah itself contains more than one covenant between God and the Jewish people.

Confused Beginnings

The first use of the word "nation" (*goy*) in the Torah is as a promise from God, embedded within the command to Abraham of immigration to the Land: "and I will make of you a great nation... and you shall be a blessing."¹⁹ Later, when Abraham's grandson, Jacob, was renamed Israel, God said to him, "a nation and a congregation of nations shall descend from you..."²⁰ This promise of nationhood developed further still: "a wandering Aramean was my father, he descended to Egypt and sojourned there, few

in number; and there he became a nation..."²¹ This formation of the nation is forged through a covenant: "and I will take you unto Me for a people and I will be to you a God."²² A clear progression of the Abrahamic covenant has occurred, beyond an individual line of familial descendants through Isaac and Jacob, to the covenantal birth of the Jewish nation as a family writ large in association with their Egypt experience.

Are the Jewish people a nation bound by a collective pedigree and narrative, or a religion bound by common commandments and values?

In the wilderness of Sinai, God later challenged the Jewish people with His commandments and declared: "you will be for Me a kingdom of priests-teachers and a holy nation."²³ Here, Moses "took the book of the covenant... and he said, 'behold the blood of the covenant which the Lord made with you in agreement with all these words.'"²⁴ Yet if they were previously made a people in the Egyptian encounter, why was there a need to have another covenant with the revelation at Sinai? Further still, are the Jewish people a nation, bound by a collective pedigree and narrative, or a religion bound by common commandments and values?

II. The Covenant of Fate and the Covenant of Destiny

Rabbi Joseph B. Soloveitchik took up these issues, describing two distinct ways in which individuals can coalesce into a group.²⁵ He posited that the two different covenants need to be identified separately and a solution sought as to how they function together in

18. This belief is certainly questioned throughout Jewish history and will be dealt with at length at a later stage.

19. Joshua A. Berman, "God's Alliance with Man," *Azure: Ideas for the Jewish Nation*, no. 25 (Summer 2006), p. 80.

20. Gen. 12:2.

21. Gen. 35:11.

22. Deut. 26:5. This phrase contains semantic ambiguity and therefore can be translated in different ways. For example, Rashi, following a midrashic interpretation, rendered it as "an Aramean tried to destroy my forefather." However, the disagreement does not affect the purpose of its use here.

23. Ex. 6:7.

24. Ex. 19:6.

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order to fully understand the enigma of Jewish peoplehood.²⁶ The first covenant, the “covenant of fate,” insists that the Jewish people were formed with Abraham and reaffirmed amid the slavery in Egypt. A corollary of this covenant is not only a sense of

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amity within one’s own people, but the additional sense of enmity in relation to other people. This concept is reflected in the Bible when Balaam, a non-Jewish prophet, stated: “they [the Jewish people] are a nation that will dwell alone and shall not be reckoned among the nations.”²⁷ This unique covenant intrinsically binds each member of the Jewish people to the covenant regardless of one’s beliefs.²⁸

R. Soloveitchik defined the covenant of fate as “a strange force [that] merges all individuals into one unit. The individual is subject and subjugated against his will to the national fate existence, and it is impossible for him to avoid it...”²⁹

Since biblical times, no event in Jewish history has so starkly exposed the shared fate of the

Jewish people as the Nazi Holocaust in the twentieth century.³⁰ There were many cases of people who were Jewish only by birth. In every other respect they were assimilated German or Polish citizens, but the Nazi perpetrators nevertheless singled them out. These were some of the most enlightened and emancipated citizens and among the elite of all sectors of German society, but as R. Soloveitchik described, “even if a Jew reaches the pinnacle of social and political accomplishment, he will not be able to free himself from the chains of isolation.

Paradoxical fate watches over the isolation and uniqueness of the Jew, despite his apparent integration into his non-Jewish environment.”³¹ The differences among Jews was irrelevant: “the gas chambers at Auschwitz made no distinction between assimilators and traditionalists, believers and heretics, atheists and Jews of faith.”³² A Jew was a Jew, regardless of his external garb or internal allegiance. Subsequent to the Holocaust, the Jewish people became acutely aware of their fateful connection to one another, their belonging to what the twentieth-century Jewish philosopher Emil Fackenheim termed an “accidental remnant.”³³ This may provide a modern appreciation of the covenant that was first forged through the suffering of Egypt—the covenant of fate.

25. Ex. 24:7-8. There is another covenant in Deut 28:69 that is very similar in content and purpose.

26. These thoughts were originally articulated on the occasion of the eighth anniversary of Israel’s independence in 1956 and later translated in Rabbi Joseph B. Soloveitchik, *Kol Dodi Dofek: Listen—My Beloved Knocks* (New York: Yeshiva Univ., 2006).

27. While this word does not appear in all dictionaries, it seems to be a unique term coined in trying to describe the nature of the Jewish people. See Jonathan Sacks, *Future Tense: Jews, Judaism and Israel in the Twenty-First Century*, (New York: Schocken Books, 2009) p. 25 and Steven M. Cohen, Jack Wertheimer, “Whatever Happened to the Jewish People,” *Commentary*, no. 121, June 2006, p. 33–37.

28. Num. 23:9.

29. “Even though they sinned, they are still Israel.” BT, *Sanhedrin* 44a. According to most rabbinic opinions, this statement implied even an apostate remained a Jew. This is discussed later in this article.

30. Soloveitchik, *Kol Dodi Dofek*, p. 52.

31. Without delving into this complex period, I will simply utilize it as an example of shared fate due to its recent nature, relevance and magnitude.

32. *Ibid*, 53.

33. Jonathan Sacks, *One People? Tradition, Modernity and Jewish Unity* (London: Littman Library of Jewish Civilisation, 1993) p. 6.

R. Soloveitchik posited four facets of the awareness of this mutual fate: “first, the awareness of shared fate appears as that of shared experience,” whereby there are no distinctions of wealth, status, language and culture.³⁴ This implies an existential fate, and consequentially no part of the people bound by fate is exempt from collective survival: if one Jew is in danger because of his religion, all are.

The second is a by-product of the first, that is, a communal sense of suffering. Commentators of the classical era employed the metaphor of a two-headed man with a common body,³⁵ which R. Soloveitchik compared to the people of Israel.³⁶ Despite an appearance of disparity, they are described as “a single body³⁷ and a single soul ... when one is smitten, all feel pain.”³⁸ The third is an expression of shared suffering, a shared sense of obligation and responsibility.³⁹ This notion was enshrined in Jewish law, which never provides an individual complete dispensation from his obligation to fulfill a command unless every other member of the Jewish people has also fulfilled the obligation: “all Israel are legally responsible for one another.”⁴⁰

The final component in the covenant of fate is a sense of cooperation. When people feel bound by one another in a covenant of fate, they feel compelled to assist each other. This notion is highlighted in the concept of *tsedaqah*, a unique command loosely translated as charity but whose etymological root is *tsedeq*, justice. By implication, when one is bound by another, providing charity and welfare becomes an act

of justice. Thus R. Soloveitchik pinpointed the oppressive experience of Egypt as the birth of Israel as a nation, a unique people bound by a common pain, suffering and responsibility, expressed through cooperation in the covenant of fate.

When one person is smitten, all feel pain

R. Soloveitchik labeled the covenant at Sinai “the covenant of destiny.” Destiny implies a sense of mission that has been decided upon by choice. Whereas fate was inevitable and passive, a covenant created by circumstance, the covenant of destiny is “an active experience full of purpose, movement, ascension, aspirations and fulfillment.”⁴¹ According to the biblical narrative, Moses “took the book of the covenant and read it in the ears of the nation, and they said, ‘everything that God has said we will do and we will heed.’”⁴² The fact that action preceded understanding suggested that the Jewish people’s alacrity to subscribe to this covenant superseded their desire to hear all the particulars.⁴³ The nation became connected by both a common direction it actively decided upon and a voluntary determination to achieve common goals. Whereas the covenant of Egypt was initiated and imposed by God and circumstance, Jewish tradition maintains that God offered the covenant of destiny to many nations before the Jewish people accepted it of their own volition.⁴⁴ Destiny, therefore, embodies the concept of free choice and highlights a person’s ability to respond to

34. Emil Fackenheim, *To Mend the World: Foundations of Future Jewish Thought* (New York: Schocken, 1982), p. 308.

35. Soloveitchik, *Kol Dodi Dofek*, p. 55.

36. Tosafot on BT, *Menahot* 37a.

37. Soloveitchik, *Kol Dodi Dofek*, p. 57.

38. *Mekhilta de-rabbi shim'on bar yohai*, Ex., 19:6.

39. Soloveitchik, *Kol Dodi Dofek*, p. 58.

40. BT, *Shavu'ot* 39a. Another example of its usage can be found in *Ritva* on BT, *Rosh ha-shanah* 29a. There is a debate as to whether the correct reading of the phrase is all of Israel are legally responsible *zeh la-zeh* (for one another) or *zeh ba-zeh* (within one another), the latter perhaps implying an even more intrinsic connection. See Rabeinu Yonah on BT, *Berakhot* 12a.

41. Soloveitchik, *Kol Dodi Dofek*, p. 65.

42. Ex. 24:7.

43. For a rabbinic expansion on this topic see BT, *Menahot* 88b and commentaries.

44. See for example *Lamentations Rabbah* (Buber) 3:1.

circumstances, not be dictated by it. Here the Jewish people subscribed to a common destiny, guided by a common faith in the Torah. Historically, this is one of the only constitutional devices that defined them as a collective, despite all the natural obstacles and divisions, whether geographically and politically or through language and culture. It is in this light that the tenth-century Babylonian Jewish philosopher, Sa'adyah Ga'on, insisted that "our nation, the children of Israel, is a nation only in virtue of its religious laws."⁴⁵

Fate and Faith⁴⁶

According to this analysis of the emergence of the Jewish people, there are two distinct ways that individuals came together as a group. The first is the way of collective memory, a sense of shared ethnicity and ancestry. This is the bond that connects a family on a micro-scale and an ethnic group on a macro-scale—a community of fate. But while fate here invoked the past, the second attribute binding the group relates to the future. Here, they were united by a sense of vision and bound by virtues—a shared faith. With Sinai, fate and faith were intertwined as two strands of one covenantal thread. When answering the question of "what is a nation," the twentieth century political scientist Sir Ernest Barker combines both these ideas under the broader category of a spiritual society:

Neither a physical fact of common blood, nor a political structure of common law and order, a nation is essentially a spiritual society. It is what it is in virtue of a common mental substance resident in the minds of all its members—common memories of the past, common ideas in the present, common hopes for the future, and, above all, a common and general will issuing from the common substance of memories, ideas and hopes.⁴⁷

*We are community as well as a communion;
not only an ecclesia, but a polis*

R. Lichtenstein also notes the dual nature of the Jewish people:

It is a community as well as a communion, not only an ecclesia but a polis. As a religious body, it includes believers sharing a common faith and a joint commitment. As a social unit, it consists of individuals bound by national and/or ethnic ties and sharing a common history.⁴⁸

Through the covenant at Sinai, the Jewish people transcended their status as a nation and co-joined as a religion; they surpassed the covenant of fate with a covenant of faith.

45. Sa'adiah Ga'on, *The Book of Beliefs and Opinions*, trans. Samuel Rosenblatt (New Haven: Yale Univ. Press, 1948), p. 158.

46. R. Soloveitchik employed the term "destiny," but Rabbi Jonathan Sacks has more recently adapted this term as "faith," which supports my argument. See, for example, Jonathan Sacks, *Radical Then, Radical Now: On Being Jewish* (London: Continuum, 2008) p. 116. Though I interchange between the two terms and intend different meanings from the original usages, I maintain that destiny in this instance can still fall under the broader framework of faith.

47. Ernest Barker, "Christianity and Nationality," in *Church, State, and Education*, American ed. (Ann Arbor: 1957), p. 136.

48. Lichtenstein, *Leaves of Faith*, p. 69.

III. The Conversion Covenant: Circumcision and Circumscription

This dialectic of fate and faith is further explored through the conversion covenant. According to Jewish Law there are two modes of entry into the Jewish people—matrilineal descent or conversion.⁴⁹ While the former was biologically connected with the Sinai covenant, the latter traced back to the original generation that renewed the covenant on behalf of all future generations: “not with you alone do I seal this covenant and this imprecation, but with whoever is here ... and whoever is not here with us today.”⁵⁰ Ideally, conversion automatically allowed one to enter these covenants without discrimination “like Jews in every respect.”⁵¹ Thus, if the Jewish people conjoined through the covenants of fate and faith, the methods of conversion should contain elements of both of these paradigms respectively.

The Talmud outlines that the process of conversion must include a question, “do you not know that Israel at the present time are persecuted, oppressed, despised, harassed and overcome by affliction?” and a statement explaining a Jew’s commitment to the commandments.⁵² Essentially the question binds the convert to the fate of the Jewish people and the statement ensures that he will subscribe to the associated faith. These two

covenants are further etched into the consciousness of the convert through education, and following this, the conversion culminates with circumcision (for a male) and immersion in a *miqveh*. While the sign with which Abraham was bound in his covenant with God was circumcision,⁵³ this was fashioned on a national level with the offering of the paschal lamb in Egypt, about which it was stated, “no uncircumcised male may eat of it.”⁵⁴ A lasting mark is made on the organ of propagation in order to seal the male convert’s future with the fate of his newly embraced nation. Similarly, prior to the covenant of faith at Sinai, it has been understood that the Jews were commanded to immerse themselves in a *miqveh*.⁵⁵ The convert’s immersion in the *miqveh* mimics what took place prior to Sinai and symbolizes rebirth into the Jewish people. Thus, through both intellectual internalization and active ritual, each highlighting and re-enacting the covenants of fate and faith, the convert is able to undergo the transformative process of conversion into the Jewish people. This formula was succinctly stated by Ruth, the archetypal convert, in her moving statement to Naomi: “Wherever you will go, I will go; your people shall be my people and your God my God.”⁵⁶

Thus far I have presented entry into the Jewish people as being consolidated through covenants. I have traced the Jewish people

49. In addition to other places, matrilineal descent as the only birth membership into the Jewish people is largely based on the text cited in BT *Yevamot* 17a and 23a. Although this is the generally accepted view, it seems there were opinions that required both parents to be Jewish; see for example Rashi on BT *Yevamot*, 23a and Tosafot on BT *Qiddushin* 76b. It should also be noted that the requirement of biological birth to a Jewish mother can also be traced to the original covenant at Sinai which was viewed in Jewish Law as an act of personal and national conversion, see BT *Keritot* 9a. Similarly, conversion is traced back to the same covenant claiming that all converts were implicit participants at Sinai; see BT *Shabbat* 146a. Thus the Talmud ultimately linked all Jews to the covenant at Sinai.

50. Deut. 29:13-14; see Rashi ad loc.

51. BT *Yevamot* 47b; Maimonides, *Mishneh torah*, *Hilkhot issurei bi’ah* 12:7. There are certain areas however where a convert is treated differently.

52. BT *Yevamot* 47a.

53. Gen. 17:11.

54. Ex. 12:48.

55. See Ibn Ezra on Ex. 19:10.

56. *Ruth* 1:16. “your people shall be my people” connects her to the common fate while “your God shall be my God” connects her to the common faith.

from a revolution through Abraham, to an evolution with the covenants of a common passive fate rooted in the Egyptian slavery experience and a common active faith with Moses and the acceptance of the Torah at Sinai. Traditional membership in the Jewish people can occur only through biological birth to a Jewish mother traceable to these covenants or through a rejuvenated rabbinic enactment that combines these processes via the covenant of conversion.

IV. Race or Religion?

Since the two specifically Jewish covenants were established amid the Egyptian experience and revelation at Sinai, perhaps the period between these events is an appropriate area to investigate. The Bible states that when Moses ascended Mount Sinai, God told him “thus shall you say [*to'mar*] to the house of Jacob and declare [*taggeid*] to the children of Israel.”⁵⁷ There appears to be a redundancy in both declaring and saying this to the same people. Rashi provided an explanation based on

*The father confers functionalist status vis-a-vis
the rest of the Jewish people*

gender, explaining that the word “*to'mar*” referred to a “soft” saying to the women, while *taggeid* referred to a “firm” declaration to the men.⁵⁸ This presents a difficulty, since it implies two separate speeches but only one followed. The contemporary Jewish thinker, Rabbi Shlomo Fisher, developed the following important idea.⁵⁹ Quoting the fifteenth-century

author of *Tseror ha-mor*, he explained that the implication refers to two separate statements within one passage. The “soft” saying to the women was referring to the phrase “you have seen what I did in Egypt; how I raised you on the wings of eagles.... You shall be my treasured nation among all the peoples.”⁶⁰ The “firm” declaration to the men however was “and you shall be unto me a kingdom of priest-teachers and a holy nation.”⁶¹ It can be argued that the covenant of fate, associated with Egypt is linked to the mother, while the covenant of faith, forged at Sinai, is connected with the father.

In Jewish law there are two established spiritual inheritances. The first, nationality or fate, is projected from the mother. The matrilineal line defines whether or not a child is born Jewish. This may be what Rashi alluded to in referring to the mother with a “soft” tone, as the heritage is completely passive and requires no volition on the part of the recipient. This is relevant to the covenant of fate, traced by R. Soloveitchik to God’s choice of the Jewish people as “a treasured nation” in Egypt. On the other hand, the father confers functionalist status vis-à-vis the rest of the Jewish people.⁶² For example, one’s tribal standing within the three categories of Priest, Levite and Israelite, which presented a hierarchy of different sociological tasks, is determined by patrilineal descent. This requires an active task alluded to at Sinai in what Rashi called a “firm” description: “you shall be unto me a kingdom of priest-teachers and a holy nation.” The male/female, active/passive theme is an accepted principle in rabbinic literature.⁶³ This

57. Ex. 19:3.

58. Rashi ad loc.

59. Fisher, *Sefer beit yishai derashot*, pp. 74–78.

60. Ex. 19:4–5.

61. Ex. 19:6.

62. BT *Qiddushin* 66b.

63. BT *Yevamot* 65b: “It is the way of men to conquer; it is not the way of women to conquer” and Rashi, ad loc. It is also understood mystically through the analogy of conception whereby the father provides the active output and the mother’s womb serves as the passive nurturing receptacle. A full exploration of this topic is beyond the scope of this article. R. Soloveitchik also utilized male and female to represent the active and passive respectively. See *The Rav Speaks: Five Addresses on Israel, History, and the Jewish People* (New York: Toras HoRav Foundation, 2002) pp. 71–72.

could be a technical reason why the Talmud states that men, not women, are obligated with regard to commandments towards their son, as this is part and parcel of the active faith transmission.⁶⁴

These two covenants were not only established with the founding of the Jewish people, but are also conferred automatically with the birth of each individual Jew and theoretically are isolatable. Indeed, an analysis of Tosafot's opinion with regard to this matter conveys the premise of separate Jewish affiliations. The Talmud quoted the opinion that the product of a non-Jewish father and Jewish mother is "legitimate."⁶⁵ The Tosafot inferred from the word "legitimate," as opposed to the word "Jewish" for example, that the child still required conversion.⁶⁶ R. Fisher challenged this opinion, however, with ostensibly contrary Talmudic passages.⁶⁷ For example, the Talmud quoted the opinion that the first-born son of a female priestess who marries a gentile is obligated in a ceremony known as "the redemption of the first-born."⁶⁸ Since this ceremony is only applicable to and incumbent upon a Jewish child, the child must have been deemed Jewish, despite his gentile father. Thus, we can infer that the Tosafot maintained

an added aspect of "Jewishness" that still needed to be acquired, which would have otherwise been conferred through a Jewish father.⁶⁹

R. Fisher isolated the two aspects of affiliation between mother and father as "race" and "religion" or "familial" and "holy," which fit very well into the above-noted conceptual distinction of "fate" and "faith." It is physically impossible to change one's race, which is received at birth, but it is within the realm of free will to actively adopt a new religion. This,

*Should either or both of these links be severed,
is one's "Jewishness" revoked?*

then, is the innovation of Jewish conversion, whereby through the acceptance of the religious faith, the fate by-product is metaphysically limited because the convert is seen as reborn ("like a newborn child"⁷⁰). In the case of the Tosafot, it could be argued that the requirement for the first-born ceremony is inherited at birth as a national fate through the mother, deeming the child "legitimate," but the faith aspect was yet to be acquired as a legacy.

64. BT *Qiddushin* 29a. This point is strengthened when seen in light of some of the specific obligations incumbent upon the father, for example circumcision, which is the sign of propagation of the covenant; and Torah education, which is the literal propagation of faith. This notion may be further reflected in a discussion of whether or not women are biblically obligated to recite Grace after Meals; see BT *Berakhot* 20b. Rashi wrote that women may not be required on this level since they do not by natural law receive estate, which is stipulated in the Grace after Meals. Tosafot, however, suggested that the reason may be based on the fact that women are not necessarily biblically obligated in the commandments of circumcision and Torah study, which are also both stipulated in the Grace after Meals. Finally, in some of the momentous milestones of Jewish life, the male seems to take a more active role. For example, a male is required to have a circumcision at eight days, to say a blessing at thirteen when his son becomes a *bar mitsvah* and bring about his wife's dedication to him in the marriage ceremony. In contrast, the female is not required to perform the same actions at any of these occasions. Thus, the male and female differences are present not only in Jewish philosophy but also throughout both Jewish law and practice.

65. BT *Yevamot* 45b.

66. This is not the accepted opinion, but it contains philosophical repercussions for this article. See BT *Yevamot* 16b.

67. Fisher, *Sefer beit yishai derasbot*, p. 76.

68. BT *Bekhorot* 47a. Originally all first-borns had priestly status. However, following the worship of the golden calf, this title was stripped and now if an Israelite woman gives birth naturally for her first time to an Israelite boy, the son has to be "redeemed" from a priest. See *Shulhan arukh, Yerah de'ah*, 305. In this specific case, since the woman married a gentile, her priestly status was invalidated and she was treated as an Israelite.

69. Rabbi Fisher quoted a second example to prove his point whereby a mother converted following the conception of twin sons. Brothers are biblically forbidden to marry each other's wives if one were to divorce or pass away and in this case the rule was such, implying that they were considered brothers, albeit not paternally. See BT *Yevamot* 97b.

70. BT *Yevamot* 62a.

In sum, it would seem that the female passive acceptance denoted in the selection of the Jewish people as a nation with regard to the Egyptian experience is immutable; it required no effort. However the male active command conferred at Sinai requires a constant re-engagement and cannot necessarily be taken for granted. But can this be demonstrated to be germane with regard to the personal level of each individual Jew?

I have argued that one differentiating characteristic between the biblical covenant and modern contract is that the covenant is immutable. But is this an undisputed fact? If there are certain ways of converting into the covenant and forging association, are there ways of nullifying that link? Two separate stages have been pinpointed for the individual Jew, the prospective convert, and the original collective covenants of the Jewish people, which are perpetually projected through matrilineal descent—namely the national covenant of fate and the religious covenant of faith. Should either or both of these links be severed, is one's "Jewishness" revoked?

Conversion is generally considered a form of entrance into a religion and apostasy is often viewed as an exit from that religion. However, in relation to the Jewish people, these two processes are not perfect oppositional counterparts. Though the status of converts has been debated, no Jewish authority denied the practice as an option.⁷¹

There have been different views expressed on the topic of the apostate or *meshumad/mumar*⁷² in rabbinic literature. To appreciate the considerations and deliberations of the different proponents, it is essential to study the sources themselves. This would require, at the very least, an analysis of a few of the key primary talmudic sources, highlighting both the plain meaning of the sources and some of the ambiguities that leave room for divergent opinions. Membership is often defined by its boundaries that serve as "symbolic parentheses" to delineate a "shared cultural space."⁷³ Regarding who is no longer a Jew, one can better understand who is a Jew, what the Jewish people is and what aspects bind the individual with the covenantal collective.⁷⁴

71. Michael Walzer, Menachem Lorberbaum, Noam J. Zohar (ed.), *The Jewish Political Tradition, Volume One: Authority* (London: Yale Univ. Press, 2003), p. 314.

72. When referring to an apostate, one who has converted out of or turned his back on Judaism, the Babylonian Talmud and many published halakhic texts use the term *mumar* coming from the root *mor* meaning "change," while the Jerusalem Talmud and many manuscripts use the term *meshummad* coming from the word *shamad* meaning "destroy." Originally the term *meshummad* was used to refer to those who were forced to convert out of Judaism "at a time of destruction" or *sha'at ha-shemad* such as the persecution under Emperor Hadrian. However, over the years many opted out of the religion by choice or became informers to the Romans and later the Christian authorities, aiding the maltreatment of Jews. Hence the term *meshummad* became a term of contempt and it is for this reason that the censors of the BT and published halakhic texts changed the usage of this word to *mumar*, whereas the Jerusalem Talmud and other uncensored texts retained the original phrase. It is for this reason that the term has been confused among scholars who have not differentiated between pre-Hadrianic and post-Hadrianic periods or different texts, as both bring different connotations to the term apostate. For a discussion of this topic see S. Zeitlin, "Mumar and Meshumad," *The Jewish Quarterly Review* 54, no. 1, July 1963, pp. 84–86. I acknowledge the fact that there are five types of apostates, namely an individual whose motivation for sin stems from lust, one who is motivated by rebellion, one who transgresses the Sabbath intentionally after receiving the required warning, one who worships idols, and a heretic with regard to the entire Torah. Since my examination is focused on the way the person is viewed within Judaism, the term apostate will suffice to refer to someone who intentionally converts out of the faith and receives extreme exclusion.

73. Kai T. Erikson, *The Wayward Puritans* (New York: John Wiley & Sons, 1966), p. 10.

74. When non-religious behavior was an exception, transgressions were seen in a more extreme light and indeed a majority of Jewry was observant in the times that many of the following sources were written. Within the general sweep of Jewish history, the modern period is somewhat of an anomaly and therefore the following analysis cannot be seen to have halakhic consequences on the modern apostate or Jew that has lost his faith. For a contemporary perspective that sheds light on this topic see Yehuda Amital, "A Torah Perspective on the Status of Secular Jews Today," *Tradition* 23,4 (1988), pp. 1–13; Yehuda Amital, *Jewish Values in a Changing World* (New Jersey: Ktav, 2005), pp. 173–189. See also Jacob J. Schacter, ed., *Jewish Tradition and the Non-Traditional Jew*, (Northvale, NJ; Jason Aronson, 1990), and Adam Mintz, ed., *The Relationship of Orthodox Jews with Jews of Other Religious Ideologies and Non-Believing Jews* (New York and Jersey City, NJ: Yeshiva Univ./Ktav, 2010).

V. Intertwined Primary Sources: Three Strands of the Talmudic Thread

The first source from which the dominant opinion on apostasy seemed to draw its credibility is found in the following section of BT *Sanhedrin* 44a:

“Israel has sinned.”⁷⁵ Rabbi Abba Bar Zavda said, even though he has sinned, he is [still] Israel. Rabbi Abba said, thus people say, a myrtle that stands among willows, myrtle is [still] its name and people call it a myrtle... [The remainder of the biblical verse is quoted]⁷⁶Rabbi Ila said in the name of Rabbi Yehuda Bar Masparta, this teaches that Akhan transgressed the Five Books of the Torah, for it says “also” five times. And Rabbi Ila said in the name of Rabbi Yehuda Bar Masparta, Akhan was one who drew his foreskin [to conceal his circumcision]...⁷⁷

Although apostasy may mean that an individual has left the Jewish fold, based on the above cited passage, the dominant opinion is, “although he has sinned, he is [still] a Jew.” This may be likened to a child who states that he has given up his family and travels far away.

Regardless of his rebellious behavior and lack of geographical proximity, DNA will always trace him to his biological parents and this was the way that Rashi and his school read the text.⁷⁸

However this first text presents inter-ambiguity with a second Talmudic source from BT *Yevamot* 17a in reference to the exiled ten tribes:

When I mentioned it before Samuel, he said to me, your son that comes from a Jewish woman is called your son, but your son who comes from an idolatrous [and gentile] woman is not called your son, rather her son...There are those who say, when I mentioned it before Samuel, he said to me, they did not move from there until they made them [the exiled ten tribes] complete idolaters [and gentiles], as it says, “they betrayed God, for they have begotten strange children...”⁷⁹

The plain meaning of this text indicates that there was a body that had the power to divest one of their “Jewishness,” a questionable outcome as it inversely mirrors the conversion process. This source, in direct contradiction to the above text from *Sanhedrin* (44a), shows that Jewish membership is not inalienable. The third source for consideration was derived from a different section of BT *Yevamot* 47b and introduced a new dimension:

Once he [the soon to convert] has immersed [in a *miqveh*] and arisen, he is like a Jew in all matters. To what does this refer? If he retracted and marries a Jewish woman, we call him a non-conforming Jew [rather than a gentile] and his marriage is valid.⁸⁰

75. Jos. 7:11. The verse continues “and they also have transgressed My Covenant which I commanded them; and they also have taken from the ban and also have stolen and also have denied and they also have put in their vessels.”

76. Ibid.

77. BT, *Sanhedrin* 44a.

78. See for example Rashi, *Responsa Rasbi*, 171, 173, 175. This concept may also be likened to the way several countries treat citizenship, as irrevocable, even if the ex-patriot claims that they are no longer a citizen.

79. *Hosea* 5:7; BT, *Yevamot* 17a.

80. BT, *Yevamot* 47b.

The plain meaning of this text supports *Sanbedrin* 44a, in that a Jew remains a Jew even if he attempts to convert out. What differentiates this text is the fact that refers to marriage. The litmus test of measuring whether or not one is Jewish may be one's status vis-à-vis marriage and divorce.⁸¹ Indeed, on the basis of this text and another⁸² Maimonides and the vast majority of *poseqim* rule that an apostate marriage is binding in Jewish law.⁸³ This implies that other contexts of Jewish law may

The litmus test of measuring whether one is Jewish may be marriage and divorce

discriminate, and this distinction was certainly made. The thirteenth century commentator, Mordechai, noted that with regard to areas such as charity and usury an apostate is different. He explained that the source for this exclusion is found wherever Jewish law is based on the usage of the word *ah* (“brother”) with reference to commandments.⁸⁴ This implies that he is not completely outside of the pale of Jewry, but he is excluded from the community.

VI. Separating the Strands in Application

Practical distinctions between the regular Jew and apostate were certainly enforced in different laws, following the thought process of Mordechai. The thirteenth century author

of the *Or Zarua*, argued that “one who committed a capital sin and died wicked is not to be mourned” and substantiated his statement by citing Rabbenu Tam, one of the French Tosafists, whose logic was that if the apostate were alive he would have affected more consequential evil in this world.⁸⁵

The thirteenth century R. Menahem ha-Meiri made the same distinction, suggesting Jewish membership to be partially inalienable and wrote that if one “becomes a member of another religion [one] is regarded by us as a member of the religion that he has joined for all matters except divorce, marriage...”⁸⁶ In the second half of the ninth century, R. Natronai stated in another context to a question on the topic:

“an apostate does not inherit from his Jewish father. Once he has apostatized he is removed from the holiness of Israel and from the holiness of his father.”⁸⁷

One of his proof texts was the same as Pauline theology, namely the election of Isaac by Abraham. While Christianity expanded this notion, he limited it to inheritance and in other *Responsa* he clearly stated that an apostate can affect a valid marriage or divorce since he “retains his holiness.”⁸⁸ These distinctions suggest that regarding *Yevamot* 47b, marriage is indeed the litmus test of Jewish immutability: While a Jew may be stripped of his rights in certain areas, regarding the laws pertaining to marriage he may not.

81. The reason for this is obvious when viewed in light of potential implications. For example if a woman remarries without a valid divorce from her original marriage, her new children are *mamzerim* or “bastards” and deemed illegitimate. This is because she is still considered married to her original husband and her new union is adulterous in the eyes of Jewish law. This status carries tragic consequences, for example, the child may not marry a “legitimate” Jew. See Sacks, *One People?*, p. 183. Other reasons that suggest marriage as the litmus test for Jewish legality will be discussed below.

82. BT, *Bechorot* 30b.

83. Maimonides, *Mishneh Torah, Hilkhot Isurei Bi”a* 13:17 and *Hilkhot Ishut* 4:15.

84. *Hagabot ha-mordechai, Yevamot Perek ha-choletz*, 107.

85. Isaac ben Moses, *Or Zarua*, 2:428, B. Posner (ed.), *Or Zarua*, Jerusalem, 1887.

86. Menahem Meiri, *Beit Ha-Bechirah* on BT, *Horayot* 11a.

87. *Responsa Rav Natronai*, 369, Robert Brody (ed.), *Teshuvot Rav Natronai bar Hilai Gaon*, (Jerusalem: Ofef Institute, 1994), 369 p. 544. For a treatment of this *Responsa* see Blidstein, “Who Is Not A Jew?, *Israel Law Review*, p. 382–384.

88. *Ibid.*, with reference to *Responsa* 314 – 315.

R. Natronai's ruling on an apostate's lack of inheritance coheres with the thrust of this article, since inheritance in Jewish law stems from paternal descent.⁸⁹ Just as apostasy was isolated as an abandonment of the "male" category of law, this same law abandons him. This does not place the apostate into the category of a gentile but into a unique category. For example, committed Jews and gentiles were able to bring sacrifices, while the idolatrous apostate was not, indicating a separate social standing.⁹⁰

The apostate has chosen to deny the duty of faith, so the faith denies him its associated privileges

The contemporary thinker Gerald Blidstein has concluded, "in other areas—levirate, inheritance, [and] usury—the apostate was considered an alien by a respectable and large school."⁹¹ As one example, the Bible forbids a Jew to charge his Jewish "brother" interest.⁹² Most *poseqim* legislated that one could charge interest to an apostate because he is not included within "the brethren of commandments."⁹³

R. Isaac Arama wrote in the fifteenth century that "the transformation that the apostate underwent was not substantive but rather

accidental, such as a change in name or place or residence, because it is not within his power to transform his substance: he is a Jew."⁹⁴ This is similar to a modern-day woman who changes her name upon marriage. Her name change is indicative of her male association change from father to husband, but her essence and self definition remains intact.

In testing this thesis, if it is faith that is what unites in R. Soloveitchik's "community of the committed,"⁹⁵ then when that affiliation is shunned by the apostate, he should be shunned by that communal affiliation. Since the apostate has chosen to deny the duty of faith, the faith denies him its associated privileges. This line of thought is supported by Meiri who claimed that, "whoever has completely removed himself from the whole and becomes a member of another religion is regarded by us as a member of the religion that he has joined for all matters except divorce, marriage..."⁹⁶

Even the sixteenth century Talmudist Maharshdam, who had the most extreme of opinions in theory,⁹⁷ was reluctant in practice and in his *Responsa* quoted Sa'adyah Gaon as saying, "the general principle is that regarding [legal standing] we follow Sabbath observance,⁹⁸ whereas regarding [personal status in] marriage and divorce, we follow conception and birth... This is the law, and there is no doubt concerning this matter."⁹⁹

89. See *Numbers* 27: 6 – 11. Preceding these laws in *Numbers* 27: 1 - 5, there is an interesting exception of female inheritance due to a lack of male offspring.

90. BT, *Chullin* 5a. Two other such examples which distinguished apostates from gentiles, placing them in a separate category, can be found in BT, *Avodah zarah* 26a–b and *Gittin* 45b.

91. Gerald Blidstein, "Who Is Not A Jew?—The Medieval Discussion," *Israel Law Review* II, 1976, p. 389.

92. *Leviticus* 25:35–38.

93. See for example, *Tosafot* and *Rosh* on BT, *Avodah zarah* 26b or Ramban on BT, *Bava metsi'a* 71a.

94. Isaac Arama, *Aqedat Yitshak*, Jerusalem, 1961, p. 82a.

95. Lichtenstein, *Leaves of Faith*, p. 72.

96. Meiri, *Beit ha-behira* on BT, *Horayot* 11a.

97. While in practice he was reluctant to rely on his own argument, he stated that if a Jew committed a transgression that is equated to transgressing the entire Torah: "the name of Israel is no [longer] upon him. And just as we do not treat the marriage of a gentile as valid, so too his..." De Modena, *Responsa maharsdam*, *Even ha-ezer* 10.

98. The observance of the Sabbath implied belief in God and creation, and, therefore, its denial was highly significant. See Rashi on BT *Hullin* 5a. It should be noted, however, that since desecration of the Sabbath in modern times is not necessarily indicative of an underlying denial of God and creation, the law would perhaps not apply.

99. De Modena, *Responsa maharsdam*, *Even ha-ezer* 10.

VII. Identification & Identity

The distinction is clear: when one divests oneself completely of one's faith, one is divested from the faith community. However, in Judaism one can never be divested of one's fate—this is one's essence as defined by God alone through birth (to a Jewish mother) and re-birth (in the form of conversion). God, as the Talmud suggested, is compared to the ultimate parent regardless of the child's actions.¹⁰⁰ Whereas one has the active free-will to choose God in faith, God has chosen the Jew who is bound by passive fate.¹⁰¹

The Jewish fate is irrevocable; the human contract can be revoked if one fails to uphold his commitment

I have tried to demonstrate this halakhically regarding the denial of one's rights; however, it is also indicated affirmatively. If two Jews of the opposite sex elope and decide that they are married through a ceremony that has no witnesses, they have affected no change in personal status according to Jewish law.¹⁰² On the other hand, if a Jew lends his fellow money in private without witnesses, the borrower still owes him the money.¹⁰³ Witnesses are an integral element of creating marriage status, whereas from a biblical perspective, in monetary cases witnesses serve to corroborate, not legally implicate. As cited above, marriage is the ultimate litmus test. Whereas monetary law consists of a mutual commitment between

parties and witnesses serve to identify that commitment, Jewish marriage represents a change in status and witnesses are an imperative, serving as God's representatives to define the event. The former is merely a contractual moral agreement, whereas the latter builds the family unit and forms the basis of the covenantal Jewish people.

The *Mishnah* states explicitly, "prepare yourself to study Torah, for it does not come to you as a heritage (*yerushah*),"¹⁰⁴ while the Torah is labeled, "the legacy (*morashah*) of the congregation of Jacob."¹⁰⁵ In Hebrew, heritage and legacy are variants of the same etymological root; however this subtle difference reveals that while fate is perhaps a heritage, faith is a legacy. The difference can be compared to a hereditary title versus a family business; the former is automatic whereas the latter requires investment for increased revenue.¹⁰⁶ Whereas a Jew receives the covenant of faith at birth or upon conversion, the apostate rejects it: "just as [we include] the Jews who receive the covenant, so we include converts who receive the covenant, to the exclusion of apostates who do not receive the covenant."¹⁰⁷ Here the concept of covenants as explicated earlier in this article re-emerges. The Jewish fate, grounded the Biblical covenant between God and each Jew, is by definition irrevocable. The human contract, however, is entered into within the Jewish faith community and can be revoked if an individual member fails to uphold his implicit commitment. Hence as an apostate has divorced himself from Jewry, this aspect of Jewry is divorced from

100. BT, *Qiddushin* 36a.

101. A convert, as I have already argued, can join this fate, for example the Talmud includes converts in the original covenants, see BT, *Shabbat* 146a.

102. BT, *Gittin* 4a.

103. BT, *Qiddushin* 65b.

104. Mishnah, *Avot* 2:12.

105. *Deuteronomy* 33:4.

106. It is worth noting that the only other time the Torah used the word legacy was with reference to the land of Israel in Ex. 6:8. Perhaps this is indicative of the same notion, that while Abraham was guaranteed progeny, the estate of Israel was contingent upon its constant perseverance. See Jerusalem Talmud, *Bava batra* 8:2.

107. *Sifra*, *Torat kohanim* II on Leviticus 1:2.

him, or as R. Lichtenstein put it, “he remains a Jew without Jewishness.”¹⁰⁸ While areas such as marriage form the cornerstone of one’s identity as a Jew, different scholars localized different forms of identification to reflect one’s relationship to Jewry. This explains the virtual unanimity with regard to an apostate’s Jewish status in marriage and diversity of different opinions in the treatment of an apostate in other areas.

What does gender theory suggest about the fate/faith divide?

Regardless of specific application, the principle is clear: faith for a Jew is an integral identification, but fate for a Jew is an immutable identity. While in theory faith can be divorced from fate, ideally they are married—to be a Jew is a faithful fate. The implications of the explored covenants, linking the Jewish people with their God, represented more than a vertical relationship; they imply a horizontal sense of responsibility between Jews.

Jewish Inclusivity

Based on this understanding of covenantal conceptions, Jewish literature often built “peoplehood” with inclusivity at its foundation. The rabbinic worldview even saw sinners as an essential component of the Jewish tapestry. The *Mishnah* states that “all of Israel have a share in the world to come,”¹⁰⁹ citing a prophetic proof text labeling the entire nation righteous.¹¹⁰ According to the Talmud, a fast that does not include transgressors is not a fast.¹¹¹ Even the wicked were viewed as meritorious for it was said that “even the emptiest of Israel is as full of religious deeds as

a pomegranate is of seeds.”¹¹² These ideas are enshrined in biblical interpretation. When discussing Jacob’s blessing of Isaac while wearing Jacob’s clothes, the text testified, “Isaac smelled the smell of his garments and blessed him.” Rav Zera, a third generation teacher of the oral law, wrote: “read not ‘his garments [*begadan*]’ but his ‘betrayals [*bogedan*]’”¹¹³ implying that though Israel wears Esau’s clothes and bears the aroma of betrayal, he is still blessed. This inclusive philosophy was even extended through ritual observance. The four species taken on the *Sukkot* festival are said to represent the four different types of Jews, ranging from those who learn and perform good deeds to those who do neither and the *midrash* stated that God “declares that they should all be bound together as a single bunch so that they may atone for one another.”¹¹⁴ Note that the *midrash* does not say “so that the righteous may atone for the wicked,” but “so that they may atone for one another,” implying that even the wicked can redeem the righteous and thus all are needed to constitute the Jewish people. These are but a few examples within rabbinic literature that understand the idea of “peoplehood” as widely as possible and demonstrate that even extreme sinners are within the immutable covenant of fate.

VIII. Implications of the Fate/Faith Covenantal Conception

The arguments of this article have significant social, contextual, historical and political implications. The intricacies of these issues often give rise to differing interpretations, as illustrated throughout, and these complexities are augmented when viewed for practical application. We can ask one social question that is relevant to our contemporary context:

108. Lichtenstein, “Brother Daniel and the Jewish Fraternity,” p. 67.

109. *Mishnah, Sanhedrin*, 10:1.

110. *Isaiah* 60:21.

111. BT, *Keritot* 6b.

112. BT, *Berakbot* 57a.

113. BT, *Sanhedrin* 37a. This reading of different words with the same root is typical of rabbinic exegesis.

114. *Leviticus Rabbah* 30:12.

What does modern gender theory suggest about the fate/faith divide? On the one hand, it is possible to seek a pro-female reading, as Jewish fate and its propagation rest completely upon the mother. Whereas the male faith element requires active engagement, this female facet is innate, suggesting that women pertain to a more inherent holiness capacity. On the other hand, this can be viewed in the opposite light given its assumption of female passivity. While the rabbinic view sees certain male/female qualities as intrinsic, gender studies explore social and cultural “artificial” constructions of gender. Clearly further research is required to understand this delicate interplay amid the fate/faith dialectic.

Research is needed to redefine modern separation from the Jewish faith community

Contextually, the medieval milieu behind many of the views cited in this article is fundamentally different from today’s culture. While in earlier periods religious adherence was the norm, it is the exception in modern Jewry. The question of what defines someone attempting to divorce himself from the faith-community needs to be asked anew today. *Yevamot* 17a referenced the source “they betrayed God for they have begotten strange children...”¹¹⁵ as a sign of one divorcing oneself from one’s people. In today’s era, does this suggest that one who marries-out and begets ‘strange children’ is deemed as having divorced oneself from the faith community?

Conversely, separating oneself from the national identity of the Jewish people may

achieve the isolation of the shared faith or destiny. Maimonides wrote, “one who separates from communal ways, even if he did not commit any sins, but distinguished from the congregation of Israel ... and does not concern himself with their sufferings ... but goes in his own path, as though he were of another nation and is not part of them, has no share in the world to come.”¹¹⁶ Some argue that this applies to ultra-Orthodox Jews who separate themselves from much of the Jewish people’s modern triumphs and tribulations. Thus while Sabbath desecration is no longer the barometer of Jewish affiliation, research is needed to redefine what constitutes modern separation from the Jewish faith community.

IX. Conclusions

In terms of historical analysis, we should examine why the clear fate/faith classification, explored by twentieth century scholars such as Rabbis Soloveitchik, Fisher and Lichtenstein is only a relatively recent phenomenon. The underpinnings of this notion can be sought in the cataclysmic changes that modernity heralded. Prior to the Enlightenment and social-political emancipation of the past two centuries, Judaism was primarily confined to a communal context in which national fate and religious faith were nearly indistinguishable. This is clear in the previously quoted statement from Sa’adyah Gaon, which merged both nation and religion under the common rubric of Jewish law: “our nation, the children of Israel, is a nation only in virtue of its religious laws.”¹¹⁷ In the nineteenth century, however, the nation-state was born, individuality became a celebrated value, and faith became more choice oriented. Consequently, national and religious separate affiliations became

115. *Hosea* 5:7.

116. Moses Maimonides, *Mishneh torah, Hilkehot teshuvah* 3:11.

117. Sa’adyah Gaon, *Book of Beliefs and Opinions*, Trans. Samuel Rosenblatt (New Haven: Yale Univ., 1948) p. 158.

distinguishable. This provides important food for thought and suggests that the fate/faith theoretical paradigm among Jews emerged with clarity only recently due to the modern emphasis on freedom and autonomy, which resulted in a separation of the previously fused dual character of Jewish identity.

Politically, the conceptual framework suggested in this article, provides an important springboard for further research into the specific issues that face twenty-first century Jewry in both Israel and the Diaspora. I surveyed opinions on the common notion that “once a Jew, always a Jew,” including central proponents such as Rashi affirming this notion and rabbinic figures such as Maharshadam

The fate/faith theoretical paradigm emerged only recently due to the modern emphasis on autonomy

questioning its validity. This age-old debate has reared a modern face recently in Israel, where some rabbis have attempted to revoke the Jewish status of thousands of Israeli converts.¹¹⁸ The overarching question of whether or not one’s Jewish title can ever be revoked has received differing answers within the Orthodox world. At the heart of the issue however, is the question of what makes a Jew. This article provides a range of Orthodox opinions on what constitutes the faith covenant that a convert must adopt in order to acquire a Jewish fate. Beyond Orthodoxy in heterodox Jewish contexts, the question of who is a Jew is currently raging in both Israel and the Diaspora. This same question can be re-investigated within the fate/faith dialectic with regard to the Temple times.

This article suggests that the national fate covenant is more enduring than the religious faith covenant as seen through the case of the apostate. Many scholars have argued contrary to Sa’adyah Gaon, that it is the nation, not religion, that is the basis for the Jewish people all cases, including the reverse to apostasy and conversion:

The crucial element in conversion is joining the Jewish collective... [Ruth said:] “Your people are my people, and your God my God.” That is to say: by becoming part of the people of the Jewish people, the Jewish God becomes her God! This is the foundation of conversion...¹¹⁹

Similarly, Israel’s former Chief Rabbi, Shlomo Goren, stated “we are bound by the commandments as a result of being Jews; we are not Jews because we observe the commandments.”¹²⁰ Since the establishment of the State of Israel, there have been a number of halakhic authorities who have placed greater emphasis on this national connection, understanding army service, for example, as a sign of the covenant of fate. Thus the passive strength of the national covenant reflected in this article could help bolster its active utilization in today’s conversion crisis.

The rabbinic views on apostasy highlight the immutability of Jewish identity. Membership in this common fate has always been taken for granted, strengthening the notion of Jewish inclusivity. The foundation of this binding relationship between God and the Jewish people is compared to that of a parent and child. Even if the child chooses to opt out of his family, the original parent remains his biological progenitor forever. Here God is the active partner: “and I will take you unto Me for a people and I will be to you a God.”¹²¹

118. See for example Rabbi Yitzchak Brand, *Brit Yitshak*, (Bnei Braq: 1982) p. 26; Rabbi Gedalya Axelrod, *Migdal tzofim*, Haifa, sections 29–31.

119. Rabbi Saul Israeli, “*Ger she-nitgayer ke-qatan she-nolad: tochno u-muvano*,” *Torah she-b’Al Pe* 29, 1988, p. 26.

120. Rabbi Shlomo Goren, “*Ke’fira b’am yisrael le-inyanei giyyur*,” (*Shana b’shana*, 1983) p. 150. See also R. Elyahu Bakshi-Doron, *Responso binyan av* (Jerusalem, 1982) I:22.

121. Ex. 6:7.

However, faith is of a different nature as it implies “brotherhood in commandments.” If an individual chooses to disassociate from the faith community, the faith community can disassociate from him. Here God encourages the Jewish people to take action: “You will be for Me a kingdom of priests-teachers and a holy nation.”¹²² These two affiliations are rooted in the passive familial fate legacy, acquired through the mother as well in as the active functional faith heritage, conferred through the father.

These affiliations have been traced from the universal and particular biblical covenants—

rather than traditional contracts— with Noah and Abraham, through Rav Soloveitchik’s theory of the double national and religious gestations of the Jewish people.

Thus personal Jewish legal status is immutable, but apostasy is possible regarding functional practice. While specific faith identification is encouraged, a specific fate identity is required to be a member of the Jewish covenants. This conceptual framework is a unique paradigm to better understand the rabbinic conception of Judaism as a “fateful faith.” and explain the associated definitions of *who is* and *who is no longer* an organic member of the Jewish people.

122. Ex. 19:6.