



I want to thank the many of you who read and commented favorably on the Fellows' summaries of the 2013 CMTL Summer Beit Midrash. It was an amazing summer of learning and growth for everyone involved, and we look forward to sharing more of it with you in the coming months. We are confident that this year's Fellows will develop into courageous and responsible Modern Orthodox leaders, and that the CMTL Summer Beit Midrash experience will have been a crucial contributor to their development.

**If you believe, as we do, that such leaders are vital for the flourishing of the Torah community you aspire to live in, and the Torah you aspire to live by, please consider a significant investment in the growth of our programs.**

The 2013 SBM Sh'eilah which you received last week focused on a woman whose Jewishness comes into question as the result of a conversation with her daughter. It might reasonably be thought that if the mother cannot be declared Jewish, the same is automatically true of the daughter - but such is not the case. The source of this potential split is a fascinating discussion on Yevamot 46b-47a, which is based in large part on a word from this week's parashah.

#### **דברים פרק כא:טו-יז**

כי תהיין לאיש שתי נשים – האחת אהובה והאחת שנואה –  
וילדו לו בנים - האהובה והשנואה  
והיה הבן הבכור לשניאה:  
והיה ביום הנחילו את בניו את אשר יהיה לו  
לא יוכל לבכר את בן האהובה על פני בן השנואה הבכר:  
כי את הבכר בן השנואה יכיר לתת לו פי שנים בכל אשר ימצא לו  
כי הוא ראשית אנו  
לו משפט הבכרה: ט

#### **Devarim 21:15-17**

If a man has two wives – one loved and one hated –  
and they bear him children – the loved and the hated –  
and the eldest son is the hated's  
on the day that he bequeath to this sons that which will be his  
he must not 'elderize' the son of the loved in the face of the son of the hated who is eldest.

Rather he must **recognize**=**יכיר** the eldest son of the hated so as to give him double in all that may be found of his  
because he is the first of his strength  
his is the status of the eldest.

A beraita understands “recognition” as a public act – “he must make others recognize him” (יכירנו)  
(לאחרים), which is reasonable when one considers that this recognition takes practical effect after the father’s death.

Rabbi Yehudah derives from this understanding that the father has general legal credibility about his children’s status; for example, a kohen father is believed when he says that his sons are not valid kohanim because of their mother.

How does he derive this? Most commentators explain that the father’s power to declare one child “eldest” carries with it the implication that an older child is not actually his son, and therefore is actually a *mamzer*. If the father can declare his son a *mamzer*, then a fortiori he can declare his son an invalid kohen.

Note: The Sages disagree with Rabbi Yehudah and say “he is not believed”. It is not clear how far the disagreement extends.

Here are three possibilities:

- a) They reject any notion that the verse confers any power on the father. Rabbi Yehudah thought that the existence of a prohibition against a specific “elderization” implied that the father otherwise was believed when he “elderized” a son. The Sages, however, think that the prohibition is simply intended to keep the father from trying.
- b) They agree that the verse gives the father the general power to ‘elderize’, or at least to be believed when he declares someone to be his eldest son, but reject the notion that this power carries any implications for any other status. For example, recognizing A as the eldest son of X does not require recognizing B as a *mamzer* even if B was born before A to a mother who had been married to X for the year prior to his birth.
- c) They agree that the verse gives the father the practical capacity to declare his son a *mamzer*, but only as a consequence of declaring an ‘eldest’; they reject extending this power to direct declaration of other statuses.

The Talmud suggests that this statement of Rabbi Yehudah contradicts his own practical ruling brought in a different beraita:

**ושפטתם צדק בין איש ובין אחיו ובין גרו –**  
**מכאן א"ר יהודה:**  
**גר שנתגייר בב"ד - הרי זה גר, בינו לבין עצמו - אינו גר.**  
**מעשה באחד שבא לפני רבי יהודה,**  
**ואמר לו:**  
**נתגיירתי ביני לבין עצמי.**

א"ל רבי יהודה:

יש לך עדים?

אמר ליה: לאו.

יש לך בנים?

א"ל:

הן.

א"ל: נאמן אתה לפסול את עצמך, ואי אתה נאמן לפסול את בניך.

“You must judge justly between each man, his brother, and his convert” (Devarim 1:16) –

Based on this, Rabbi Yehudah said:

A convert who converted in *beit din* - his conversion is valid; if he converted within himself – he is not a valid convert.

A case: Someone came before Rabbi Yehudah, and said to him:

“I converted within myself”.

Rabbi Yehudah said to him:

“Do you have witnesses?”

He said: “No.”

“Do you have children?”

“Yes”.

He said to him:

“You are believed to disqualify yourself, but you are not believed to disqualify your children.”

If Rabbi Yehudah gives fathers *carte blanche* credibility with regard to statuses, why would the father in this case not be believed to declare his son not Jewish?

Rav Nachman bar Yitzchak and Ravina offer different resolutions.

Rav Nachman bar Yitzchak explains that in this case the father is testifying that he is not Jewish, and the Torah only grants credibility regarding children’s statuses to Jewish fathers.

Ravina explains that Rav Yehuda’s grant of power does not extend to cases in which the son’s disqualification would also apply to already-born grandchildren.

The Talmud, as understood by Rashi, concludes that while Ravina is correct that the power of *yakir* even according to Rabbi Yehuda does not apply when it would disqualify extant grandchildren, the law follows Rav Nachman bar Yitzchak’s explanation of our case (which works according to both Rabbi Yehuda and the Sages), so that the father is not believed to declare his son not Jewish even if there are no extant grandchildren.

Now explanations grounded in *yakir* apply only to fathers, but Rav Nachman bar Yitzchak’s explanation should apply equally to fathers and mothers. Therefore, in the SBM *sh’eilah*, if Robin (the mother) is disqualified *on the basis of her own testimony*, and Catherine (the daughter) would be considered Jewish *if we disregard her mother’s testimony*, we may well be able to treat Catherine as Jewish even if we treat her mother as not Jewish.

How can this result be intellectually respectable? For now, I will set out two basic options:

- 1) We actually believe that both parent and child are Jewish, but the parent is obligated to accept the stringencies generated by his/her own statements as if they were true.
- 2) Halakhah follows its own procedures and epistemology, and to accept something as legal truth does not require accepting it as factual truth.

Each of these options is worthy of extensive nuanced development, but that will have to come some other week.

So we have concluded that Catherine can be treated as Jewish even if Robin cannot be, *so long as Catherine would be considered Jewish if we disregard Robin's story*. That makes sense in theory, but in practice, what evidence could Catherine have for her Jewishness other than being Robin's daughter? This of course raises the question of how one establishes one's Jewishness, and whether and under what circumstances there is a presumption of Jewishness. This discussion as well relates to a dispute between Rabbi Yehudah and his colleagues, as well a number of fascinating Talmudic narratives, and I look forward to sharing at least some of those with you next week.

Shabbat shalom  
Aryeh Klapper