

As against the "liberalism" of the preceding article, Rabbi J. David Bleich rejects some of the ingenious solutions proposed by leading rabbis to mitigate a conflict between religious law and modern values. Understandably, controversies involving questions of Jewish identity are not only of crucial Halakhic significance but are also highly charged emotionally. Rabbi Bleich is Rabbi of Congregation Bnai Yehuda in New York City, is Rosh Yeshivah at Yeshiva University and teaches philosophy at Stern College for Women. His widely acclaimed regular contribution to these pages, "Survey of Recent Halakhic Periodical Literature" will be resumed in our next issue.

THE CONVERSION CRISIS: A HALAKHIC ANALYSIS

"I am the one who drew Yitro nigh and did not repulse him. You, also, when a person comes to you to be converted AND COMES SOLELY FOR THE SAKE OF HEAVEN draw him nigh and do not repulse him."

YALKUT SHIM'ONI, YITRO, 268

The Jew today, no less than in the past, is the heir to an unbroken chain of tradition. Survival of the Jew is directly dependent upon preservation of the divinely sanctified identity of the community of Israel. The sanctity of Israel is a concomitant of Israel's acceptance of the Torah on Mount Sinai, a Torah which is an inseparable whole comprised of both Holy Writ and the Oral Law. Thus, for Judaism itself, the question "Who is a Jew?" can have but one answer: A Jew is one whom Halakhah defines as a Jew.

Jews, jealous of their identity, have always heroically resisted any and all attempts to compromise their ethnic purity. As the

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Midrash queries, "Why did Jeremiah compare Israel to the olive? All liquids intermingle with one another; oil is immiscible, and remains apart. Similarly, Israel cannot be assimilated among the nations of the world."¹ Our survival as a people may undoubtedly be credited to our tenacity in preserving inviolate the identity of the Jew.

Yet the peoplehood of Israel is not founded upon racist attitudes nor has Judaism suffered from the maladies of xenophobia. Jewish identity has always been a matter of membership in a specific and unique faith - community. As such Judaism has always welcomed all individuals seeking to embrace the tenets of the Torah. Indeed, the *ger zedek* (righteous proselyte) is extolled in Rabbinic literature and depicted as being the recipient of an extraordinary degree of Divine favor. The *ger zedek* is regarded with awe and wonder. Whereas the Jews who experienced the giving of the Torah at Mount Sinai were so overwhelmed by the difficulties attendant upon the observance of the commandments that they had to be coerced in order to secure their acceptance of the precepts of the Torah, the proselyte voluntarily accepts this discipline. "Had they not witnessed the sounds and the flames, the thunder and the voice of the *shofrot* they would not have accepted the yoke of the kingdom of heaven. Yet this [convert] did not witness a single one of these and joins himself to the Lord and accepts the yoke of the kingdom of heaven. Can there be anyone more beloved!"² The delight which God takes in such converts is reflected in the explicit halakhic obligation making it incumbent upon the rabbinical courts to accept sincere and committed candidates for proselytization.

However, in the demands which it makes upon the proselyte Judaism is uncompromising, Judaism is not merely a faith - community; its adherents are bound by a rigorous and demanding code of law governing every aspect of life. Commitment must be total. To be accepted as a member of the community of Israel the convert must not only subscribe to the beliefs of Judaism but must willingly agree to observe its precepts. Should the candidate refuse to accept any detail of this code, his conversion is *ipso facto* invalid.

In this Judaism is unyielding. The basic conditions of genuine

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conversion are clearly enunciated in Halakhah. As the guardians of a Divine mandate Jews must perforce refuse to recognize any conversion not performed in accordance with the norms of Halakhah. This stark reality cannot be altered by the fiat of any civil judicial body. Nor for that matter is any rabbinic court or other ecclesiastic body empowered to overlook the *sina qua non* of Jewish identity.

Present circumstances have added a new dimension to the "Who is a Jew?" problem. The high incidence of intermarriage both in Israel and the Diaspora has generated an unprecedented number of applications for conversion. Given the exigencies of the contemporary situation conversion may well be the solution to myriad personal, social and religious problems. On the other hand, improper procedure may not only reduce the conversion ritual to a meaningless charade but may also pose a threat to the very identity of the Jewish people.

The responsa literature of the modern period is replete with questions concerning the circumstances under which conversion is permissible and proper. These discussions are clearly germane to any attempt to find a resolution to the current conversion dilemma. The questions posed with regard to problematic contemporary conversions are threefold in nature: (1) Is it permissible for rabbinical courts to accept prospective candidates for conversion when it appears that application is made, not out of religious conviction, but as a matter of convenience, e.g., to facilitate marriage with a Jewish partner? (2) Is a conversion of convenience, i.e., one undertaken for marriage or other ulterior motive in which the petitioner obviously has no intention of abiding by the precepts of Judaism, a valid one? (3) Granting the validity and propriety of the conversion itself, is it permissible for the convert to enter into marriage with a Jewish spouse with whom the convert has consorted prior to conversion?

I

The Gemara (*Yevamot* 24b) cites the opinion of R. Nechemiah who maintained that any conversion based upon ulterior motivation is null and void. In addition to conversion for pur-

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poses of marriage, R. Nechemiah specifically refers to the recorded historical episodes of the conversion of the Samaritans predicated upon fear of lions,³ conversion by servants of King Solomon in anticipation of being appointed to high office in the royal court, and the mass conversions which are recorded in the Book of Esther⁴ as instances of invalid conversion. The Gemara rejects the opinion of R. Nechemiah as applied to conversions which are already a *fait accompli*.⁵ Once performed, such conversions are valid regardless of motivation. Nevertheless, Jewish law is unequivocal in stating that before the fact such candidates are not to be accepted. The *Bet Din* is constrained to reject applicants prompted by motives other than sincere religious conviction. Thus, *Hagahot Mordekhai, Yevamot*, sec. 110, writes that if it is known that the applicants are motivated by desire of personal benefit "they are not be accepted." Moreover, the Gemara flatly declares that proselytes will not be accepted in the days of the Messiah and in fact, were not accepted during the reigns of David and Solomon. The reason for blanket rejection of would-be converts during these historical epochs is that in periods during which the Jewish commonwealth is blessed with economic prosperity and prestigious social status there is ample room for suspicion that prospective proselytes are not prompted by reasons of sincere religious conviction.

Rambam,⁶ in his codification of these regulations, is even more explicit:

Let it not enter your mind that Samson, the deliverer of Israel, or Solomon, king of Israel, who was called "beloved of God," married foreign women while they were yet gentiles, but rather the secret of the matter is as follows: The proper performance of the precept is that when a male or female proselyte comes to be converted, he is to be investigated⁷ perchance he seeks to enter the [Jewish] religion in order to acquire money or in order to achieve a position of authority or because of fear. In the case of a man, he is to be investigated perchance he has set his eyes upon a Jewish woman; in the case of a woman, [she] is to be investigated perchance she set her eyes upon one of the youths of Israel. If no motive is found in them, the heavy weight of the yoke of the Torah is to be made known to them and the burden which there is for gentiles in its observance. Therefore, the *Bet Din* did not accept proselytes throughout the days of David and

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Solomon. In the days of David, lest they rejected [idol worship] because of fear and in the days of Solomon, lest they rejected [idol worship] because of the sovereignty, the prosperity and the greatness which Israel then enjoyed. For whosoever forsakes heathenism for the sake of some worldly vanity is not a righteous proselyte. Nevertheless, many proselytes were converted in the days of David and Solomon by ignorant persons and the Great Court accorded them doubtful status, not rejecting them . . . and not drawing them nigh until such time as their subsequent conduct could be observed.

It is quite evident that prospective converts are to be rejected even if proof positive of ulterior motive is lacking. The mere suspicion of impure motive is grounds for rejection of the applicant's candidacy; the burden of proof with regard to sincerity is upon the prospective convert.⁸ Apparently, when it is obvious that material benefit or personal gain would accrue to the proselyte, protestations of religious conviction are unacceptable.

There is, however, one exception to this principle. The Gemara records several instances of converts who were accepted despite self-avowed ulterior motivation. In *Shabbat* 31a it is reported that Hillel accepted a proselyte who approached him with the declaration, "Convert me in order that you may appoint me High Priest." Similarly, *Menachot* 44a reports that R. Chiya accepted the candidacy of a woman who wished to convert in order to become the wife of one of his students. *Tosafot, Yevamot* 24b, resolves the apparent incongruity by postulating that Hillel and R. Chiya were certain that the respective candidates would ultimately accept Judaism "for the sake of heaven."⁹ All authorities agree that an application for conversion may justifiably be entertained only if the *Bet Din* is satisfied that upon conversion the candidate will become a God-fearing Jew and will scrupulously observe the commandments of the Torah. It is clear that, according to Halakhah, certainty of future religious observance is a necessary condition for acceptance of a prospective convert.

In a letter written in response to a question submitted on behalf of the Sephardic community of Buenos Aires, Rabbi Meshullam Roth¹⁰ declares that the candidacy of a prospective proselyte cannot under any circumstances be considered unless

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the candidate assures the *Bet Din* that he will observe the precepts of Judaism, particularly the laws of the Sabbath, family purity and the dietary code. If, in the opinion of the *Bet Din*, it is "virtually certain" that he will fulfill his pledge and the *Bet Din* feels that ultimately the conversion will be "for the sake of heaven," they may then perform the conversion ritual. Rabbi Roth notes, however, that the percentage of converts whose intention is for the "sake of heaven" is so minute that in actuality it "approaches zero."

Some authorities grant considerable leeway in determining sincerity of purpose. R. Shlomo Kluger¹¹ discusses the propriety of sanctioning the conversion of a young man who threatened to become an apostate if his non-Jewish mistress would not be accepted as a proselyte. Rabbi Kluger rules that under such circumstances the conversion cannot be considered as having been undertaken on account of marriage, since the couple will continue to live together as man and wife in any event. Hence, the conversion may be deemed to be "for the sake of heaven" and not "for the sake of man." A similar view was voiced by R. Eliezer Deutsch and by R. Yechiel Yaakov Weinberg.¹² This contention is also cited by R. Chaim Ozer Grodzinski,¹³ and applied by him to the case of a couple who had undergone a civil ceremony and were living together as man and wife. This opinion is, however, by no means universally accepted. R. Meir Arak¹⁴ rejects this view arguing that ulterior motivation is indeed present in that the husband may well wish to legitimize his marriage and not continue an illicit relationship. There is evidence that R. Chaim Ozer himself later reversed his position with regard to this matter and adopted a more stringent attitude. In a responsum dealing with a similar problem dated some twenty-two years later and published in Vol. III, no. 28, of the same work, *Teshuvot Achi'ezer*, R. Chaim Ozer regards conversion under similar circumstances as being undertaken for the sake of marriage and, hence, prohibits it. Even though the couple were not only living together as man and wife but had also sired children without having contracted a valid marriage, R. Chaim Ozer rules that the prospective proselyte was, even in this instance, motivated by reasons of marriage. The dim view expressed by these

authorities regarding the permissibility of conversion despite an already existent conjugal relationship merely echoes in greater detail the succinct but unequivocal decision of a much earlier authority, R. Yaakov Ettlinger.¹⁵

An argument frequently advanced in favor of the acceptance of converts, regardless of motivation, is that their rejection by an Orthodox *Bet Din* is often followed by acceptance into the Jewish faith by Reform or liberal clergymen. Conversions conducted under such auspices are clearly invalid. As a result individuals converted in this manner are inadvertently accepted by the Jewish community as *bona fide* Jews and are unlawfully permitted to contract marriages with other Jews. If the alleged convert is a female, children born to her are, of course, not Jewish; if a male, the children, while Jewish, are of tainted lineage. Rabbi Mendel Kirshbaum,¹⁶ who served as Dayan in Frankfort, argues that in light of this consideration such candidates should be accepted for conversion. The Gemara (*Yevamot* 47a) states that a prospective proselyte is to be investigated with regard to his motives for conversion and is to be informed of selected *mitzvot* of both lesser and greater stringency and of the punishments incurred upon their transgression. "For what reason?" queries the Gemara. "So that if he changes his mind, let him change his mind." Rashi, in his commentary on this text adds, "For if he should change his mind [and decide] not to convert, let him change his mind *and it is of no concern to us.*" Rabbi Kirshbaum contends that one may infer from this comment that if the conversion were to be of concern to Jewry no attempt at discouragement should be made. In instances in which considerations such as those previously stated are operative encouragement of conversion is indeed a matter of positive concern to us. Consequently, argues Rabbi Kirshbaum, under these circumstances the convert should be accepted, even if his decision to seek conversion is prompted by impure motives.¹⁷ This contention was rejected by the late R. Yaakov Mordecai Breish of Zurich in a letter written to Rabbi Kirshbaum upon the publication of *Menachem Meshiv*.¹⁸ Rabbi Breish states that the consideration raised is a specious one and that there need be no fear that the candidate will be erroneously

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accepted as a Jew. In the course of the usual investigation before any prospective marriage it should become clear that the conversion was performed by a Reform rabbi and hence is invalid. Furthermore, adds Rabbi Breish, it is forbidden for the members of the *Bet Din* to participate in a conversion for the sake of marriage and this prohibition devolves directly upon the rabbis involved. Accordingly, they are forbidden to commit this transgression even in order to prevent a more severe transgression on the part of others.¹⁹

II

There is strong reason to question the validity of conversion, even as a *fait accompli*, when undertaken for purposes of marriage or, for that matter, in order to obtain benefits accruing to Jews granted Israeli citizenship under the Law of Return. As previously noted, the definitive rule of the Talmud is that conversions once performed are valid even if entered into for reasons other than religious conviction. In analyzing the rationale governing the validity of sincere conversions, the most obvious reason which presents itself is the Halakhic principal that mental reservations cannot invalidate an overt act — *devarim she-be-lev ainam devarim*. Hence, even if the act were to be mentally nullified, the conversion would be efficacious. Accordingly, the conversion cannot be invalidated by reservations or insincere motives which remain *in pectore*. However, a quite different line of reasoning explaining the validity of such conversion is presented by the Ritva and Nemukey Yosef in their commentaries on *Yevamot* 24b. These authorities state that all conversions stemming from ulterior motivation are not merely lacking in sincerity, but in a sense, are not undertaken in free will and embody an element of coercion. Nevertheless, conversion as a *fait accompli* is valid even under these circumstances because such coercion ultimately engenders a firm decision to accept the obligations attendant upon acceptance of Judaism. The candidate for conversion recognizes that his desired goal can be achieved only by making such a commitment and accordingly accepts the obligations incumbent upon a member of the Jewish

faith. Since Ritva and Nemukey Yosef are intent upon dispelling the notion that mental reservations exist in instances of insincere conversion we must infer that mental reservations, when and if they *are* present, would, according to these authorities, invalidate the conversion. The ramifications of this crucial issue are discussed by R. Isaac Shmelkes. In his *Bet Yitzchak*,²⁰ he explains that mental reservations do serve to invalidate conversion because, in his opinion, the general principle that mental negations are ineffective applies only with regard to matters affecting interpersonal relationships such as financial transactions and the like. Matters such as conversion are essentially ritual in nature and “the Lord desires the heart.” Hence, it is the ultimate intention which prevails. The Talmud²¹ states that a non-Jew who refuses to accept even a single commandment or a single Rabbinic ordinance, must be rejected, since such non-acceptance invalidates conversion. Accordingly, argues *Bet Yitzchak*, converts who have reservations with regard to the acceptance of the dietary laws and laws of family purity cannot be regarded as Jews even if they falsely declare that they are willing to fulfill all the precepts of Judaism. Rabbi Schmelkes declares that such conversions should not be performed not only because the conversions are themselves farcical in nature but also because they leave in their wake spurious proselytes who are commonly accepted as Jews. These invalid conversions subsequently lead to unions between Jews and individuals who are gentiles in the eyes of Halakhah.

R. Chaim Ozer Grodzenski²² agrees that mental reservations with regard to performance of *mitzvot* nullify the efficacy of ritual conversion. He cites as evidence for this position the terminology of Rambam:

A convert who has not been investigated . . . who has been circumcised and has immersed himself in the presence of three ignorant persons is a proselyte, even if it be known that he has converted on account of some consideration . . . he is accorded doubtful status until his righteousness becomes clear.²³

The “doubtful status” of a proselyte prompted by ulterior motivation, explains R. Chaim Ozer, arises from the fact that

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actual conversion is ultimately a matter of intent. If the candidate does indeed accept Judaism with all its ramifications he is deemed to be a Jew regardless of motivation; but if these considerations do not ultimately lead to a wholehearted acceptance the conversion is invalid. When no extraneous considerations are present there is no reason to doubt the validity of the conversion: when such considerations *are* present, the status of the proselyte remains in doubt until such time as his "righteousness is demonstrated," i.e. until such time as his general comportment testifies to ultimate acceptance of the norms of Jewish conduct.²⁴

An explication of the concept of mental reservation in this context is formulated by R. Chaim Ozer²⁵ who notes a fundamental distinction between *acceptance* of precepts and *observance* of precepts. The stipulation that a prospective convert must accept all commandments of the Torah means simply that he must accept their binding force. Recognition by the candidate that he is lacking in moral stamina or the requisite willpower to withstand temptation does not invalidate a conversion. R. Chaim Ozer adds, however, that when it is evident that the prospective convert intends to desecrate the Sabbath and to partake of forbidden foods as a matter of course the conversion is invalid. Such an attitude on the part of the candidate is indicative of non-acceptance of these prohibitions in principle and hence nullifies the act of conversion.

R. Chaim Ozer's basic distinction between acceptance and observance of precepts is challenged by the one-time Chief Rabbi of Kovno, Rabbi Abraham Dov Ber Kahane. In his collected responsa, *D'var Avraham*,²⁶ Rabbi Kahane contends that acceptance of the "yoke of commandments" coupled with clear intention to transgress is a self-contradiction and cannot be termed "acceptance" at all.²⁷ While disagreeing with regard to what may constitute mental reservations both authorities concur that when mental reservations *are* present, the conversion is invalid.

The necessity for the convert's acceptance of the "yoke of mitzvot" as a *sine qua non* of his conversion raises certain difficulties in our generation. As noted earlier the rationale ad-

vanced by numerous authorities in defense of the *ex post facto* validity of insincere conversions is the consideration that in such instances there is ultimately a determined, albeit reluctant, acceptance of the obligations incurred through the acceptance of Judaism. In the absence of anticipated benefit a candidate lacking deep religious commitment might not wish to incur such responsibilities. Yet weighing the pros and cons of the situation determination to accept the tenets of Judaism is reached by the convert upon recognition that only by the acceptance of such obligations will the benefits attendant upon membership in the Jewish faith-community accrue to him. It is, in a sense, a bargain in which the desire for certain benefits forces acceptance of concomitant disadvantages. Rabbi Kahane argues that a changed social and religious climate no longer demands such a decision on the part of a convert. A convert lacking sincerity of motivation is forced to accept the obligations incumbent upon members of the Jewish faith only if he lives in a society which demands that he conform to the normative standards of Jewish life. In such a milieu the desired benefits can be obtained by the convert only by accepting the tenets of Judaism. Hence, the resolution to embrace Judaism, even if motivated by self-serving considerations, constitutes a valid acceptance. In contemporary society, however, pressure for religious conformity does not exist. Consequently, declares Rabbi Kahane, nowadays in cases where a deeply-rooted commitment of faith is not the moving factor there is no reason to assume that ulterior motivation mandates even a "coerced" acceptance.

Similar misgivings concerning the status of such conversions in our day are echoed in the relatively recent writings of numerous Halakhic authorities. Particularly forceful are the strictures expressed by the late Chief Rabbi of Israel, Rabbi Isaac ha-Levi Herzog. In a letter addressed to a Swiss rabbinic body he writes:

. . . even though the halakhic decision has been formulated that, after the fact, even those converting for ulterior purposes and not for the sake of heaven are converts, I have exceedingly strong reason [to assert] that in these times the law is not so. Since in former times virtually every Jew was forced to observe the commandments, otherwise he would have been disdained and despised as a renegade, this therefore strengthened the supposition that the gentile who comes to

