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THE CONVERSION OF CHILDREN BORN TO GENTILE MOTHERS AND JEWISH FATHERS

No rationale need be spelled out for a consideration of our topic. Current estimates are that one third of all marriages among American Jews involve a gentile partner, and few of them undergo a halakhically valid conversion. All halakhic authorities reject the notion of patrilineal descent, and the question naturally arises as to what our attitude should be toward Jewish men married to gentile women who want their children raised as Jews fully accepted by the halakhic community.

The key Talmudic text that deals with this issue is *Ketubot* 11a:

> R. Huna said: A minor proselyte is immersed by the knowledge of *(al da-at) beit din.* What does this teach us? That it is an advantage for him [to be a Jew] and one may act for a person in his absence for his advantage. We have learned [this already]: One may act for a person in his absence for his advantage but one cannot act for a person in his absence for his disadvantage! [Here, though,] you might have supposed that an idolator prefers a life without restraint [unbridled by Jewish law] because it is established for us that a slave certainly prefers a dissolute life; therefore he (R. Huna) tells us that this is said [only in the case] of a grown up person who has already tasted sin, but [in the case] of a minor it is an advantage for him [to become a Jew].
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> It seems that [the preceding Mishna] supports him (R. Huna). [It speaks of] "a woman proselyte, a woman captive and a woman slave who have been redeemed, converted or freed (when they were less than three years and one day old)." Must they not have been immersed by the direction of *beit din?* No; here [the Mishna] treats the case of a proselyte whose sons and daughters were converted with him, so they are satisfied with what their father does.
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> R. Yosef said: "When they come of age they can protest [against their conversion].

Rabbi Cohen's forthcoming *Intermarriage and Conversion: Halakhic Solutions* (KTAV Publishing) will include an expanded version of this article.

A simple reading of the text is that a *beit din* may convert an infant gentile. The rationale is that being Jewish is considered a privilege, a *zekhut,* and one may confer an advantage upon a person even without his knowledge. This principle is recorded in the *Shulhan Arukh* (*Yoreh De'ah* 268:7) as the authoritative halakhah.

Yet straightforward as the Talmudic text appears, this basic halakhic principle was not accepted universally at face value.

In 1864, Rabbi Bernard Illowy of New Orleans, a former student of the Hatam Sofer, ruled that sons born to Jewish fathers and gentile mothers could not be circumcised by a *mohel.* His rationale was that since such sons were not Jewish, the circumcision might cause people to mistakenly identify them as Jews. To solicit support for his halakhic position, R. Illowy presented his case publicly in *Der Israelit* (an Orthodox Journal published in Germany), requesting the European Rabbinate to respond. Of major pertinence to us is the public exchange of views between Rabbi Zvi Hirsch Kalischer (1795–1894) and Rabbi Ezriel Hildesheimer (1820–1899). R. Kalischer permitted such a circumcision as well as the conversion of children born to gentile mothers, while R. Hildesheimer disputed his ruling and prohibited such conversions.[1]

R. Kalischer made the following comments regarding the Talmudic discussion in *Ketubot:* Rashi contended that R. Huna's dictum that the *beit din* may convert a minor relates to a case where the mother alone brought the child to *beit din* for conversion. The Talmudic text further contends that when the parents convert together with the child, R. Huna's dictum is not applicable. This seems to suggest that in the original instance the mother did not herself convert when she brought her child to *beit din* for a conversion. Even though the child would be reared subsequently by a gentile mother, R. Huna permitted the *beit din* to conduct the conversion. As such, concludes R. Kalischer, if a *beit din* may convert one who will be reared by a gentile mother, considering it a privilege (*zekhut)* for the child, so much more so when the child's father (a Jew) brings his son for conversion: the child wishes to emulate his father and we have good reason to expect the child to grow up Jewishly.

R. Hildesheimer retorted that we have no way of being certain that the gentile mother posited by Rashi intended to raise the child herself; perhaps either the child would be reared by observant Jews or it is known definitely that the gentile mother would rear the child according to the dictates of Torah and not *avodah zarah.* In the modern case of a gentile mother and Jewish father bringing their child to be converted, however, we cannot automatically apply R. Huna's principle.

In 1949, when Rabbi Yechiel Yaakov Weinberg (the last Rosh Yeshiva of the Hildesheimer Berlin Rabbinical Seminary) was asked his opinion in a case wherein a Jewish father and gentile mother brought their child to *beit din* for conversion, he did not focus on the argument as outlined here, but instead quoted the basic guideline which to this day serves as the pivotal negation of most child conversions:[2] The Talmud in *Ketubot* rules that a *beit din* has the authority to convert a child; this is because being a Jew is a privilege *(zekhut)* and one may confer a *zekhut* without another's knowledge. But to have a Jewish child grow up in a home that transgresses basic Jewish beliefs and observances is not deemed a *zekhut,* he said; it is rather a disadvantage and liability. Accordingly, a *beit din* has no authority to implement such a conversion. This guideline basically invalidates the legitimacy of the conversion of any child raised in a non-observant milieu. (Indeed, this principle has a far-reaching effect in another social issue: adoption. Jewish families seeking to adopt children are faced with a number of obstacles. Should they attempt to adopt a Jewish child, rabbinic authorities require exact data about the parents of the child to mitigate concerns about illegitimacy;[3] frequently, the exact information is difficult to acquire. Accordingly, many people prefer to adopt a gentile child and convert the child during infancy. Yet, if the adopted parents of such a child are not themselves observant, a *beit din* may not convert the child.[4])

Though the argument mandating an observant familial milieu in order to validate a conversion may appear straightforward and logical, with all due respect and reverence, it seems that a fine reading of our text in *Ketubot* does not force such a conclusion. Consider the following questions:

1. Rashi notes that R. Huna's ruling relates to a situation in which the mother brought her child to a *beit din* for conversion, suggesting that had the father been present the legal process of conversion might have differed. But, what is the pragmatic halakhic distinction between a mother and a father in this matter?

2. R. Huna states "*Ger katan matbilin oto al da'at beit din*—through the knowledge of *beit din.*" The phrase "*al da'at beit din*" connotes a special role for the court in the conversion of a child separate and distinct from its function during the conversion of an adult. What is this additional role?

3. Rashi states that "*beit din* becomes a surrogate father during the conversion of a child." Why is such a status necessary and what purpose does it serve?

4. The Talmud states that R. Huna's dictum may not be derived from the Mishna, as the Mishna refers to a case wherein the parents converted with the child. In that situation, the child is assumed to

approve of the actions of his parents. Yet, the pragmatic distinction between the two cases is unclear. The implication is that R. Huna's case is an innovative role for *beit din*. What is that role?

5. A valid halakhic conversion requires four integral elements: *Kabbalat Mitsvot* (the awareness of and commitment to observe the commandments[5]); *Milah* (circumcision for a male convert); *Tevilah* (immersion in a *mikveh*); and *Beit Din* (the presence of a Rabbinical Court). Should any one of these factors not be present, the conversion is not proper. A child certainly cannot (and does not) comprehend the meaning of *mitsvot* or the need for their observance; nor can he or she possess the ability to make a commitment to observe *mitsvot* in the future. As such, the entire conversion should be deemed invalid for it lacks the essential element of *kabbalat mitsvot*.

To resolve these difficulties it is necessary to posit a new frame of reference which sets guidelines for the discussion.

Shita Mekubbetset on our text poses the latter question regarding the lack of *kabbalat mitsvot* at the conversion of a child. He cites Ritva and *Shita Yeshana* who contend that *kabbalat mitsvot* is a vital element of the conversion process only in those cases where such commitment is physically possible to ascertain. In cases where the potential convert has the physical and intellectual capacity to be aware of *mitsvot* and make a commitment to observance, then and only then is this essential for a legal conversion. In such instances, the lack of *kabbalat mitsvot* would invalidate the conversion. For an infant or child, however, where *kabbalat mitsvot* is beyond the child's physical capability of comprehension, this element is deemed non-essential to the conversion process. In other words, any consideration of *mitsvot* is not germane to the validity of such a conversion. Consequently, R. Huna's rule and the Talmudic discussion do not make any reference to observance. Indeed, to infuse the concept of *kabbalat mitsvot* into our text is contrary to Ritva's position and a misreading of the discussion. The issue, it seems, concerns a completely different concept.

We suggest that the Talmud is concerned with the issue of *consent* and not observance. A *beit din* is not permitted to coerce anyone, adult or child, to involuntarily accept conversion. The process must be a voluntary one, accepted willingly by the potential convert. Should the conversion be coerced, then it is deemed invalid.[6]

The Talmud contends that R. Huna's principle is not applicable to a case in which parents convert together with their child. For in such a case, "the child consents to [join] the action of his parents." In other words, an act which emulates the action of parents—the role models—is deemed implied consent to the conversion process. The conversion has legal standing even should one dispute R. Huna's

principle, that *beit din* may convert a minor. R. Huna's case is different; he deals with a situation in which parents are not converting together with their child. In such a case, the problem of consent looms as a major issue. What authority does *beit din* have to convert a child without any concern as to whether there is consent to such a process? To this R. Huna innovates the concept that the conversion process is conferred "*al da'at beit din.*" It is not the authority or power of *beit din* which is invoked, but rather *da'at*—knowledge, consent. That is, *beit din* affirms consent for the child, for being a Jew is a privilege, and one may confer a privilege upon another even without his or her knowledge. With *beit din* thus affirming consent for the child, the conversion is thereby presumed to be a voluntary process. This is the meaning behind Rashi's comment that the *beit din* becomes a surrogate father for the child; it becomes a surrogate parent for purposes of consent. Of interest is that this commentary of Rashi is cited by the *Beit Yosef* [*Yoreh De'ah* 268] who notes that the *beit din* "becomes the father of the child who is converted through their hands." In other words, the court has a unique role to play in the conversion of a child distinct from that performed at the conversion of an adult. In the former case, they guarantee consent to legitimize the conversion.

Of concern are the particulars of the case in which R. Huna presents his principle. It is clear that R. Huna is not dealing with a situation where parents converted with the child. The *Tosefot Rid* [*Ketubot* 11a] suggests that R. Huna deals with a case of either an orphaned, destitute gentile youth or a child who was captured; the *Shita Mekubbetset* presents other options. Yet Rashi maintains that R. Huna is dealing with a case of a mother who brings the child to *beit din.* Indeed, it is Rashi's view that must be seriously considered above and beyond that of other authorities, for it is Rashi's position which is officially recorded in the Codes (see *Yoreh De'ah* 268:7).

The implication of Rashi's interpretation is that had the father brought the child to the *beit din,* R. Huna's principle would not be operational. Indeed, the Bah specifically notes that when the father brings the child for conversion, *da'at beit din* is not necessary.[7]

Rashi apparently is of the opinion that no proper conversion can occur without the precondition of consent. Just as a child who converts with his parents consents to performing a similar act, a father has the authority to grant consent to a *beit din* for the conversion of his child. The determination of the religion of the child is the father's prerogative. Consequently, when the father grants consent to convert his son, the *beit din* is not needed to utilize its good offices for consent.

There are two options for interpreting Rashi's position on the role of the mother:

1. Rashi believes that *beit din* has no authority to convert orphan children. *Beit din* cannot presume that the concept of *zekhut* is sufficient to imply consent. Consequently, only the wishes of a mother together with the concept of *zekhut* can enact a legitimate conversion.

2. Rashi feels that only a father and not a mother has the authority to grant consent; a mother's views are immaterial (see glosses of R. Yaakov Emden).

Regardless of which interpretation we accept, the specific language of the *Shulhan Arukh* supports our general position: If a gentile child has a father, the father may convert him; and if he does not have a father and (himself) seeks to be converted or his mother brings him to be converted, then *beit din* converts him, "for it is [deemed] an advantage to him (the child) and one may confer an advantage even without the beneficiary's presence" [*Yoreh De'ah* 268:7]. In the opening section, "the father may convert him." In the latter section (where the father is not present), "*beit din* converts him for it is a *zekhut.*" The concept of *zekhut* is applicable only in the absence of a father bringing the child for conversion.

The text of the *Shulhan Arukh* forces us to understand that the entire aspect of *zekhut* is a material issue only when *beit din* must utilize the principle of *da'at beit din.* In such an instance, the consent of *beit din* is granted only when there is an assurance of observance of *mitsvot.* Otherwise, *beit din* does not authorize consent for the conversion. In an instance of a parent bringing his child to *beit din, da'at beit din* is not necessary for the conversion. Parental consent is sufficient and it may even be deemed a complete *zekhut* without any consideration of *kabbalat mitsvot.* Fathers have personal rights over their children, and children consider it important to emulate their fathers. Observance of *mitsvot* in no way affects this principle. The *Shulhan Arukh* clearly notes a distinction between the cases and rules that the concepts of *zakhin* and *da'at beit din* are not applicable when a father brings his son for conversion.

The above analysis argues against R. Weinberg's halakhic challenge to the legitimacy of the conversion of children born to an irreligious Jewish father and a gentile mother, for in such an instance, the concept of *zekhut* is not germane. Indeed, since the conversion is valid without the principle of *zakhin* or *da'at beit din,* any question as to whether it is in fact a *zekhut* or a liability is immaterial to the conversion process.

This suggests that the debate between R. Kalischer and R. Hildesheimer may have been more subtle than we thought.

R. Hildesheimer contended that R. Huna dealt with a case where either the mother gave the child to *beit din* to rear according to Torah values or it was certain that the gentile mother would insure that the child observed *mitsvot*. In other words, since according to Rashi and the *Shulhan Arukh* approval of the mother is not sufficient to provide consent for a conversion, and *beit din* must therefore use the principle of *zekhut,* then the mother's commitment for the child's observance is necessary for *beit din* to assume that the process is indeed a *zekhut* and not a liability. But if the father brings the child to *beit din,* no commitment for observance is necessary. Parents cannot assume the commitment of *kabbalat mitsvot* for their children. The only reason parental consent may be necessary is to insure that the conversion was not coerced. To assume that the Talmud discusses a case where *beit din* assumes total responsibility for the child is simply far-fetched. Or, one may conjecture that since a gentile mother's commitment for observance is meaningless, *beit din* would not provide consent *al da'at beit din* unless it also assumed responsibility to rear the child. Again, such extra precautions would only apply when the conversion was *al da'at beit din.*

R. Kalischer contended that if the *beit din* could convert a child and return that child to the gentile mother's home, it certainly should permit a child of a gentile mother to be reared by a Jewish father. When a gentile mother alone brings her child to a *beit din,* the principle of *zakhin* is applicable. *Beit din* must then manifest concern that religious observance transpires so that no future disadvantage results. But when the father brings the child to *beit din,* the principle of *zakhin* is immaterial and, therefore, concern for observance is totally extraneous to the issue.

Now, what difference is there whether a gentile father or a Jewish father presents his child to *beit din* for conversion? To the extent that "consent" of a parent is all that is necessary in such a case, there should be no difference in law. The original proposal to have Jewish fathers present their non-Jewish children to *beit din* for conversion appears to be based upon solid halakhic grounds. Since, moreover, *kabbalat mitsvot* is not necessary in this instance, the procedure would be readily acceptable to even the most non-observant Jew.

One possible criticism must be noted. According to Halakhah, gentiles follow patrilineal descent while Jews observe matrilineal descent. This means that from a halakhic view, the Jewish father of a child born to a non-Jewish woman is not the halakhic father of the son. The Jewish father may not have the right to express "consent" for a child that is not his halakhic son.

This criticism suggests that a gentile father but not a Jewish father may grant consent. But consent is simply a *gilui da'at,* an expression of approval which must be elicited from the father of a child. Indeed, a child knows that a certain person is his father. To the child, there is no difference between a halakhic father or a biological father. The concern is basically who has responsibility to make decisions for the child. If the child is sick, for example, a parent has the authority to sign "consent" for an operation. In ancient times, perhaps only the father could exercise comparable authority. In our society, the biological father has legal jurisdiction over a child; he may make a decision for the child relating to life and death. He, therefore, should have the authority to assume consent on actions for purposes of conversion for his child. Indeed, many *aharonim* have accepted this line of reasoning.

Rabbi Moshe Schik also discussed the propriety of converting a child born to a Jewish father and a gentile mother. He cited *Tosefot Yom Tov* [Mishna *Ketubot,* 4:3, and *Kiddushin* 3:13] who rules that *beit din* should not convert gentile children. R. Schik suggested that *Tosefot Yom Tov* relates to a case of a Jewish father and gentile mother; since the male is not the halakhic parent of the child he has no authority to submit such a child to *beit din* for conversion. R. Schik disagreed with this position. He suggested, rather, that a court, *lekhat'hila (ab initio),* has no authority to convert gentile children, for the conversion process is a form of robbery from a gentile. To the extent that gentile children inherit their fathers, the conversion takes the child away from the family. As such, he reasons, the conversion is prohibited without parental permission. Yet, where parents consent, one may definitely convert the child.[8] At no time does he discuss any need for observance of *mitsvot.*

Rabbi David Hoffman briefly cited this responsum and added the comment that "since according to the law of the government this father has authority over his son, even though he is not a son according to *Din Torah,* it is not a form of theft. As such, perhaps even *lekhat'hila* one may convert the child, but certainly *bedi'avad* it is valid."[9]

Rabbi Avraham Yitshak HaKohen Kook also discussed this issue.[10] He too maintained that even though a Jewish father is not the halakhic father of a son born to a gentile mother, he still has the authority to submit the child to *beit din* for conversion. He utilized *Ketubot* 11a as substantiation for this principle. There the Talmud implies, according to Rashi, that when parents convert with their children, such children consent to the process. The Talmud makes no distinction as to whether the father converted prior to the conversion

of the children or whether the father and children simultaneously converted. If the former is correct, then once the father converted he is no longer a gentile, but a Jew, and is no longer the halakhic father of his son. However, he still has authority over his children to submit them to *beit din* for conversion. This proves, contends R. Kook, that even a Jewish father has authority over his non-halakhic son. R. Kook notes that such authority may not depend on biology but may relate to anyone who is responsible for the rearing of a child.

(In terms of *pesak,* however, R. Kook required that the gentile mother should not protest the conversion. In addition, he refused to sanction such a conversion where *kabbalat mitsvot* is lacking. Though he suggested that Tosafot, *Sanhedrin* 68b, imply that *kabbalat mitsvot* is not required for the conversion of a child, he still felt that it is wrong to convert a child in a milieu where there is no probable opportunity for *kabbalat mitsvot.* Of interest is that R. Kook does not discuss the text of the *Shulhan Arukh* (*Yoreh De'ah* 268:7) which grants the father authority to submit his child to *beit din* for conversion without utilizing the principle of *zekhut* or any consideration of observance. As the *Shulhan Arukh* is the standard code, its conclusions should be granted halakhic priority over those of other scholars.)

It is clear that the requirement of "consent" is simply a means of preventing an involuntary conversion. It has nothing to do with a commitment to observe *mitsvot.* For this reason R. Yosef rules in our Talmudic text that upon maturity, such children converted during youth or infancy have an opportunity to renounce the conversion. Since such forms of conversion lack *kabbalat mitsvot,* the children are yet granted an opportunity to engage in this essential factor. This means that *kabbalat mitsvot* becomes necessary only when children have the capacity for such a commitment. Prior to maturity, a renunciation is not halakhically acceptable and upon the age of maturity the child is assumed to be automatically Jewish. When does the child have the opportunity to manifest either rejection or acceptance of his religious status?

Three options to express renunciation are presented by *Shita Mekubbetset* to our text in *Ketubot.*

1. Tosafot contend that upon the age of maturity the child is informed about the need to observe *mitsvot.* Should the child reject commitment, then he loses his Jewishness.

2. Ritva contends that R. Yosef speaks of a youngster who as a minor renounced his Jewishness, protesting his or her status as a Jew. Should this rejection persist until after the age of maturity, the child's conversion is invalidated.

3. Rosh notes that the child is observed at age of maturity. Should he observe Jewish customs, then he is deemed Jewish. Should he not be observant, his status is invalidated.[11]

Kabbalat mitsvot may not be essential or even germane to the conversion of a child, but it is vital to the ultimate status of such a convert. *Beit din* is not absolved from its obligations upon the formal conclusion of the rituals performed in youth. It must convene at the child's age of maturity to assess the status of the convert. For this reason Tosafot note that the child must be informed of the need to observe *mitsvot*. That is, *beit din* must convene and formally request *kabbalat mitsvot*. This procedure is a formal "act of *beit din*."

It is apparent that Ritva does not require a formal act of *beit din* to extract a commitment of *kabbalat mitsvot*. According to Ritva, the child retains his Jewishness as long as he does not reject it as a youth and persist in his rejection till maturity. This suggests that the concern has nothing to do with *kabbalat mitsvot*. Ritva does not require any assessment of observance. This may be due to his theory that once *kabbalat mitsvot* is not feasible (e.g., at the conversion of an infant), the entire concern for *kabbalat mitsvot* is never material to that particular conversion. The concern is, rather, one of "consent." For this reason as long as the child does not reject his Jewish status, the "consent" factor is implied and the child retains his Jewishness till maturity.

The position of Rosh is that *kabbalat mitsvot* is immaterial to the conversion of a child only because the child is unable to make such a commitment. This merely temporarily withholds such a requirement till a date when the commitment is physically and legally able to be assessed. Yet, no formal convening of *beit din* or *kabbalat mitsvot* is necessary. As long as the child is observed to follow Jewish customs, it is deemed sufficient to legitimize the conversion.

Hatam Sofer cites numerous opinions, including that of Bahag, who contend that if parents bring their child to *beit din* for conversion, even though the parents themselves do not convert, the child may not subsequently renounce the conversion, for the parents "accept the condition of the conversion for him."[12] The subsequent need of *kabbalat mitsvot* is nonessential. Once consent is provided for the conversion, it remains valid even without a subsequent *kabbalat mitsvot*.

In 1934, Rabbi Hayyim Ozer Grodzinski modified the above *pesak* of Hatam Sofer by contending that only children who are reared as observant Jews may not subsequently renounce their Jewish status. However, if during minority they violated Jewish law, then they retain the option of renunciation. But violation of Halakhah alone is not tantamount to renunciation; a formal renunciation

is required. Though he felt that a *beit din* should preferably not be involved in such cases, he explicitly suggested that the rabbis should not publicly "storm" against such conversions and denigrate them, for according to Halakhah the conversions are valid.[13]

Whatever the final rule on the renunciation process, it is a problem to be resolved within the halakhic community as to the most desirable or practical, pragmatic procedure. This concern in no way invalidates or questions the principle that a Jewish father may legally convert his offspring from a gentile mother. Logic, moreover, could extend this concept to permit a non-observant Jewish father to halakhically convert an adopted gentile child. Since the concern is not for the observance of *mitsvot,* but rather for consent, even a non-biological father who is a surrogate father as a result of state law and responsible for the rearing of the child should have the halakhic authority to grant "consent" to a conversion.

Coupled with the above analysis there is another principle that sharply mitigates the charge that to be reared in a non-observant home is a liability and not a *zekhut.*

Rabbi David Halevi Horowitz, a distinguished scion of a Rabbinic family and Rav of Stanislav (1862–1935), was posed, in 1930, the exact question discussed herein by his son, Rabbi Moshe Halevi Horowitz of Vienna. The case involved a man who had married a gentile woman through the civil courts and subsequently had a son. A scholar forbade the couple to circumcise or convert the child. The rationale was that it is not a *zekhut* or advantage but a distinct disadvantage for a child to be reared in a non-observant home. Accordingly, any conversion would be invalid. R. Horowitz disagreed, maintaining that *beit din* had a *mitsvah,* an obligation, to perform the conversion. The contention that probable future non-observance disqualifies the *zekhut* of the present and therefore invalidates the process was discounted for the following reasons:

1. Since the *Shulhan Arukh* and early commentaries did not mention such a concern, we should not presume to be wiser (or more cautious) than they.

2. The Talmud states (*Rosh Hashana* 16b) that a person is judged according to his deeds at the moment. (Rashi notes that this is applicable to a person who will eventually do evil.) Substantiation is the verse that "God has heard the voice of the lad there where he is" (*ba-asher hu sham;* Genesis 21:17 and Rashi's commentary). Thus, even though Ishmael was subsequently to pillage and murder, he was still saved, for God judges each person at the moment of prayer without a view towards what will be in the future. This principle teaches us that a future disadvantage or liability does not invalidate

the present. Indeed, to discount the present due to the future is a violation of this concept.

3. Every man may yet do *teshuvah.*

4. The *zekhut* of circumcision cannot be denied because of future transgressions. The Talmud notes that circumcision is great in that it is blessed with thirteen covenants [*Nedarim* 31b]. This *zekhut* is not to be discounted.[14]

Thus the concern that non-observance invalidates the *zekhut* of being a Jew is negated as an innovative apprehension not supported by Halakhah.

Support for the position that qualms over a child's future observance of *mitsvot* do not invalidate the halakhic status of a conversion may be derived from Tosafot, *Ketubot* 11a. Tosafot discuss the propriety of utilizing the concept of "*zakhin le-adam she-lo be-fanav* (acting for a person in his absence to his advantage)" to validate the conversion of a gentile child. They suggest that the principle of *zakhin* is deemed rabbinic in nature only in cases where a probable liability may occur. One may, therefore, not utilize *zakhin* to set aside *terumah* on behalf of another person, for any allocation above the bare minimum may be more or less in amount than the other wished to allocate, and the action may therefore entail a potential liability. In the case of a conversion, however, which is a complete advantage (*zekhut gamur)* the concept of *zakhin* may be applied even from a Biblical perspective. (This means that children converted by a *beit din* are classified as complete Jews even according to biblical law.)

This response requires clarification as to why the case of *terumah* is deemed a liability and that of conversion classified as a clear *zekhut.* It is possible that a person may subsequently express approval for any *terumah* allocations made on his behalf. At the same time, it is also possible that he may reject such actions. Does not the case of conversion also contain these potential dual, contrary reactions? The child may subsequently either renounce the conversion or accept it willingly. Where is the distinction? A suggested solution is that the principle of *zakhin* does not relate to subsequent reactions or considerations. It deals with the psychological state of mind at the very moment of the action considered. At the moment a certain quantity of *terumah* is set aside, it is conceivable that one may consider such quantity excessive and therefore not approve of the action. This possible consideration of a liability at the moment of action (setting aside *terumah*) is sufficient to declassify it from a biblical viewpoint from being a complete *zekhut.*

At a conversion, however, there is no conceivable liability at the very moment of the conversion itself. A potential, subsequent

rejection of the process does not enter into the considerations at the moment of conversion. Children have no liability in becoming Jewish, especially infant children. Since at the moment of conversion no liability exists, conversion is therefore deemed a complete advantage.

Thus according to Tosafot qualms over the irreligious milieu of a child convert cannot and should not invalidate the *zekhut* of the conversion even when *beit din* utilizes the concept of *zakhin.* To an infant child, at the moment of conversion the religious observance or non-observance of parents is immaterial. Accordingly, a future liability should not invalidate a clear, present *zekhut.*[15]

The issue of converting children born to gentile mothers has, of course, been treated by contemporary *posekim.*[16] Of special interest is the position of *gedol doreinu,* Hagaon Rav Moshe Feinstein,[17] of blessed memory. This writer some time ago sent a draft of this paper to R. Feinstein for his comments and criticism. His grandson, Rabbi Mordechai Tendler, who acted as his assistant and spokesman, wrote a response, dated Rosh Hodesh Kislev 5746 (November 14, 1985), in which he stated:

> Though within your *pilpul* there are items [with which], perhaps, we do not agree, the basic approach is apparent to us and on numerous occasions we have so ruled. Yet in all cases we try, whenever it is possible, to set up arrangements for the observance of *mitsvot.* [That is] that the parents should agree to provide a Jewish education for the child, or that they should agree to eat only kosher [food] in the home, or that they will not violate Shabbat publicly or all [these conditions]. This orientation was noted by *mori u-zekeni,* in his responsum [*Iggerot Moshe*] *Yoreh De'ah,* Part I, No. 158.
>
> Concerning an adopted child, it is not so simple to consider one who rears him to be like a father in this matter according to Din, but most likely such is the case.[18]

More recently, R. Feinstein's last volume of *Iggerot Moshe* included a responsum to teachers at a day school where a substantial number of the students had gentile mothers who had not been properly converted. His advice was to convert the children:

> They do not need *kabbalat mitsvot* and can be converted *al da'at beit din.* It is a *zekhut* for them; inasmuch as they are learning in a religious school under the tutelage of pious teachers, they will probably grow up to be *shomerei Torah;* while this is not certain, it is certainly a *zekhut.* And even if they do not grow up to be *shomerei Torah,* it seems logical that it is still a *zekhut,* as even Jewish sinners have *Kedushat Yisrael*—the *mitsvot* that they do are *mitsvot,* and their sins are to them unintentional. Thus they have a greater *zekhut* than being gentiles.[19]

Orthodox Jewry is becoming a fortress separated from the general Jewish community. We feel it should not simply write off vast

numbers of transgressors as outcasts. As long as Halakhah provides a device to properly convert children of intermarriage, this device should be utilized aggressively to make contact with vast numbers of Jews. It is an opportunity to crystallize rabbinic initiative and leadership. Should, for example, the *beit din* require a day school education as the essential requirement for conversion, then such children, at least, have a probable chance of becoming true Torah Jews. A public policy of conversion before a proper *beit din* places the process of conversion exactly where it should be: in the sphere of competent *benei Torah* knowledgeable of Halakhah.

Our concern is not to suggest authoritative halakhic policy on either side of the issue. It is, rather, to present an option that requires the forum of halakhic dialogue by scholars. We hope that this discussion will serve as a frame of reference for the decision.

NOTES

1. R. Illowy's call was published in *Der Israelit,* 1864, No. 52. R. Hildesheimer's position was published in *Der Israelit,* 1865, No. 5. In the same year, R. Kalischer wrote a personal responsum to R. Hildesheimer concerning this issue. In the *Festschrift zum vierzigjahrigen Amtsjubilaum des Herrn Rabbiner Dr. Salomon Carlbach in Lubeck* (July 16, 1910), Dr. Meier Hildesheimer brought as his contribution to the volume a correspondence between his father Dr. Ezriel Hildesheimer and R. Hirsch Kalischer of Thorn. This exchange was subsequently included in the Responsa of R. Ezriel Hildesheimer, Nos. 229, 230 [London, 1969].

   Each of the disputants was a great Torah scholar. R. Kalischer was internationally known as a harbinger of the Zionist idea. Though his most famous work, *Derishat Tsiyyon,* was an attempt to legitimize Zionist concerns within the religious community, he also published two major halakhic volumes entitled *Even Bohan* and *Moznayim la-Mishpat.* He was the rabbi of Thorn and as a youth was a disciple of two universally acclaimed masters of Halakhah: R. Akiva Eiger of Posen and R. Yaakov of Lissa (Lorberbaum).

   R. Hildesheimer was the Rav of the Adas Yisroel Orthodox Congregation of Berlin. In 1873 he established a Rabbinical Seminary of which he was Rosh ha-Yeshiva. This yeshiva became a central institution for the training of Orthodox rabbis in Europe. As a youth he studied under R. Yaakov Ettlinger of Altona, the acclaimed scholarly author of the *Arukh la-Ner* commentaries on Talmud.
2. *Seridei Esh,* Vol. II, *Yoreh De'ah,* Responsa, 95–96.
3. See *Iggerot Moshe, Yoreh De'ah,* No. 162; also R. Yosef Henkin, *Hapardes,* Sept. 1965, p. 7.
4. Dayan Yitshak Yaakov Weiss, Responsa *Minhat Yitshak,* Vol. III, No. 99.
5. See R. Shlomo Kluger [Responsa *Tuv Ta'am va-Da'at,* Vol. 2, 111] who rules that *kabbalat mitsvot* without *milah* and *tevilah* is meaningless. Yet, *milah* and *tevilah* even without a prior *kabbalat mitsvot* is sufficient to validate the conversion from a Biblical viewpoint. Indeed, he notes that the requirement of *kabbalat mitsvot* prior to other rituals is but a Rabbinic law.
6. Bah, *Tur, Yoreh De'ah,* 268.
7. *Tur, Yoreh De'ah,* 268.
8. Responsa Maharam Schik, Vol. II, *Yoreh De'ah* 248.
9. Responsa *Melammed le-Ho'il, Yoreh De'ah* 87.

10. Responsa *Da'at Kohen,* Nos. 147–148.
11. See *Arukh ha-Shulhan, Yoreh De'ah* 268:13, who cites all three theories.
12. Responsa *Hatam Sofer, Yoreh De'ah* 253.
13. Responsa *Ahiezer,* Part III, No. 28.

    One scholar suggests that when a Jewish father brings his child (born to a gentile mother) to *beit din* for conversion, subsequent renunciation of the conversion is not permitted. His rationale is as follows:

    Rambam permits Jewish soldiers during a war, under certain circumstances, to have sexual relations with gentile women (*Hilkhot Melakhim* 8:1). Such women, moreover, are granted an option to convert to Judaism and remain as wives of their Jewish husbands (*ibid.,* 8:5). In the event that such women refuse to convert, they have permission to remain in Jewish households for a maximum of twelve months (*ibid.,* 8:7). Should one such woman become pregnant as a result of her original sexual encounter with the Jewish soldier, *beit din* may convert the child while he is yet a minor (*ibid.*, 8:8). *Kesef Mishneh* notes that this is based on R. Huna's dictum permitting *beit din* to convert minor children (*Ketubot* 11a). It is important to note that Rambam makes no reference to the option of renunciation when the child matures. (See *ibid.*, 10:3, where Rambam rules that a minor convert may renounce the conversion upon maturity.) Indeed, even scholars who contend that when parents convert together with their children the option of renunciation is not applicable, do not cite this ruling of the Rambam (*ibid.*, 8:8). The distinction may be that when a Jewish father brings his child to *beit din,* such a child has "part Jewish blood" in his lineage, and no renunciation is permitted (Responsa R. Avraham Moshe Fingerhut No. 16 [former head, Beit Din Paris, Jerusalem 1963]).

    It should also be noted that R. Meir Simcha of Dvinsk rules that parents have an inherent right to convert minor children because they sustain and support the children's existence [*Meshekh Hokhmah, Parashat Bo*]. Therefore, reasons R. Shmuel Katz, Av Beit Din, Rabbinical Council of Southern California, such children may not subsequently renounce their conversion upon maturity. Renunciation is an option only when conversion occurs through the principle of *zakhin.* In an instance, however, where a father brings his son to *beit din* for conversion, such a concept is not applicable. The authority for the conversion is the inherent right given to parents who sustain children [*Devar Shemuel,* Responsum I, 1986].
14. Responsa, *Imrei David,* 172b.

    Imrei David's ruling that present actions should not be disqualified because of premonitions over future observance may be bolstered by the following:

    > The Talmud (*Berakhot* 10a) records that King Hezekiah was informed by the prophet, "Set thy house in order, for thou shalt die and not live" [Isaiah 38:1]. What is the meaning of "thou shalt die and not live?" Thou shalt die in this world and not live in the world to come. He [Hezekiah] said to him, "why so bad?" [Isaiah] replied, "Because you did not try to have children." He said, "The reason was that I saw by the Holy Spirit that the children issuing from me would not be virtuous." [Isaiah] said to him, "What have you to do with the secrets of the All-Merciful? You should have done what you were commanded, and let the Holy One, Blessed be He, do that which pleases Him."

    From this we derive the rule that man must strive to do a *mitsvah* even though the future result may be ominous. Man's role is to observe a present *mitsvah* and not detract from such observance due to premonitions over the future. The same applies to the conversion of a child. Its present status of a *mitsvah* may not be disqualified because of qualms over probable future observance. The commentators contend that although Hezekiah's children may be evil, his children's children may yet be righteous [See *Iyyun Yaakov, Ein Yaakov, Berakhot* 10a]. Similarly, a convert may grow up in an irreligious home but feel pride in his Jewishness. He, or even his child's child, may yet return to Torah. The "Baal Teshuvah" movement throughout the world substantiates this concept.
15. This explanation challenges the position of Rabbi J. David Bleich that the Talmud itself negates the validity of child converts reared by unobservant parents. His argument is as follows:

    Referring to our Talmudic text, R. Bleich suggests that should one conceive of a situation wherein sin took place, then it is evident that the conversion is not a *zekhut.* A

child reared in an irreligious home certainly tasted sin and should be comparable to a slave who prefers a dissolute life.

Yet, even this objection R. Bleich counters by noting the position of Tosafot, *Sanhedrin* 68b, that the *ger* converts himself and does not need the principle of *zakhin.* Accordingly, the fact that the conversion is not a complete *zekhut* should not invalidate the process [*Hapardes,* Vol. 58, No. 2, Nov. 1983, pp. 17–19].

This position simply may not be derived from the text.

A. The Talmud in *Ketubot* deals with minor children, including a child of seven or ten years of age. (Indeed, the *Shulhan Arukh [Yoreh De'ah* 268:7] rules that R. Huna's dictum relates to children who come to *beit din* by themselves.) Such children have been reared in a gentile home prior to conversion. They have not observed commandments prior to conversion. They could conceivably be described as "living in sin." Yet, the Talmud still makes the distinction between a minor and an adult. It says a minor has "not tasted sin"; namely, a minor's experience with sin is not equal to that of an adult. His judgment valuing sin over commandments is not granted validity.

The fact that all minor children regardless of age are acceptable for conversion, clearly indicates that the milieu of the child convert has no bearing on the legitimacy of the conversion.

B. Just as the past of the child has no negative overtones, neither does the future. R. Huna is concerned only with the psychological state at the moment of conversion. The fact that the child may subsequently renounce the conversion does not retroactively invalidate the conversion while he is still a minor. The *zekhut* of conversion relates only to the conditions at the time of the conversion. Since all children are deemed to be in a state of innocence, the conversion is considered a complete *zekhut.*

Rabbi Elya Pruzhiner notes that the principle of *zakhin* has legal standing for a minor only if at the moment utilized there is a clear privilege accruing to the minor [*Halikhot Eliyahu,* Part I, *Even ha-Ezer,* 33]. R. Pruzhiner's theory has been erroneously cited as specifically relating to conversion, i.e., that the privilege must be evident at the time of conversion and not be based upon the possibility thereof in the future. [See R. Melech Schachter, "Various Aspects of Adoption," *Journal of Halakha and Contemporary Society,* Vol. IV, Fall 1982, p.101; he cites ch. 31.] *Halikhot Eliyahu* articulated a general rule and never explicitly related it to conversion. Indeed, as noted, the halakhic status of innocence of a minor deems all actions on his behalf as a complete *zekhut* at the time of conversion.

16. Rabbi Shelomo Goren, in his capacity as Chief Rabbi of Israel, ruled that *beit din* may convert the minor child of a Jewish father even in an instance where the mother does not convert herself and remains a gentile. He, moreover, openly declared that *kabbalat mitsvot* is not applicable in the conversion of a minor. In the event that *tevilah* must be postponed to a date subsequent to the circumcision (e.g., for an infant) he maintained that such a child should be registered in Israel as "*mityahed*" (becoming Jewish). However, when all rituals are completed, such a child may be registered as a full-fledged Jew ["*Efsharuyot le-Gerut shel Ketanim,*" *Shana be-Shana,* 5744, pp. 151–155]. At no time does R. Goren even suggest that the conversion may be invalidated because of the status of the mother or the irreligious milieu of the family. This appears to corroborate the thesis presented.

17. See *Iggerot Moshe, Yoreh De'ah,* Vol. I, No. 158, where R. Feinstein rules:

1. The concept of *zakhin* is not applicable when a father brings his son to *beit din* for conversion.

2. A Jewish father may bring his child born to a gentile mother to *beit din* for conversion. Even though such a person is not the halakhic father, he yet has the authority to convert his child.

R. Feinstein also adds a nuance of pragmatic importance relating to the conversion of children. He suggests that it would be proper *(nakhon hadavar)* to re-immerse child converts in a *mikveh* when they reach maturity. Why? In our country it is not so certain, he writes, that conversions of children are a complete *zekhut* since it is probable that the children will not observe *Shabbat* and may violate other prohibitions. Notwithstanding such concerns, the conversion is still a *zekhut,* for Jewish sinners are deemed better than gentiles. In addition, perhaps the *zekhut* is simply the fact that a child consents to do that which his father requests. Also, when the mother converts, the *zekhut* is complete. As such, it is probable that the conversion of children is, indeed, a *zekhut.* Yet, to eliminate any qualms over the matter, it is advisable to re-immerse the child at maturity.

18. To insure that the contents were fully understood, I called Rabbi Mordechai Tendler to review the letter. I noted that he used the phrase "*anu mishtadlin* (we try)" to acquire a commitment for *mitsvot* and questioned him as to the halakhah should such endeavors be impossible to achieve. His response was, "We do not invalidate the conversion."
19. [*Iggerot Moshe, Even ha-Ezer,* Vol.4, Responsum 26].