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CONTEMPORARY ASHKENAZI PESAK REGARDING THE INVALIDATION OF CONVERSION

In this article, I will relate the positions of contemporary Ashkenazi Israeli posekim regarding conversion, the acceptance of mitsvot, and the nullification of conversion. I will begin by presenting the central *sugyot* and discussions, followed by various halakhic positions and contemporary policy considerations. If one reads between the lines of halakhic discourse, one will realize that many deeper issues are at play, especially given the topic's great sensitivity. It is thus crucial to begin from the same halakhic sources that contemporary *posekim* did, in order to understand and appreciate the process that led them to their final rulings.

Gemara, Rambam, and *Shulhan Arukh*

The issue of conversion is complex; this complexity is demonstrated in various internal contradictions in Rambam and *Shulhan Arukh*. These contradictions have led to diverse interpretations and conclusions by *posekim*, past and present.

The baraita in *Bekhorot* 30b states that a non-Jew who is willing to accept all but one detail of the Torah is not accepted for conversion:

The rabbis taught: One who wishes to accept all but one detail of the Torah is not accepted; a non-Jew who wishes to accept all but one detail of the Torah is not accepted. R. Yossi in the name of R. Yehuda says: Even one detail from the words of the Sages.

The Gemara (*Shabbat* 68a) discusses a convert who does not know about Shabbat. How is this possible? Rav and Shmuel explain that this situation might occur in the case of a baby who was abducted and raised among non-Jews, or a convert who lives in a community of non-Jews.

Tosafot (s.v. *ger she-nitgayer bein ha-nokhrim*) remark that clearly the conversion itself took place in front of three men as required, but they failed to inform him about Shabbat, for if he had converted alone his conversion is invalid.

Ramban (s.v. *ger she-nitgayer bein ha-nokhrim*) suggests another possibility, namely, that the rabbis failed to inform the convert about mitsvot altogether. This possibility implies that a person can convert without accepting mitsvot! Ramban's implication was explicitly stated by Rambam (*Hilkhot Gerim* 13:17): "Since he immersed and circumcised, he is no longer a non-Jew." The *Bah* (268 s.v. *ve-khol inyanav*) understands that this was Rambam's intention, and contrasts his position with that of Tosafot and Rosh, who believe accepting the mitsvot is a prerequisite to a valid conversion.

However, in other sources, Rambam explicitly writes that the acceptance of mitsvot is indeed a prerequisite to conversion (14:8: "If he rejects even one thing – he is not accepted"; 13:4: "If the non-Jew wishes to enter the covenant... and accept the yoke of Torah"; 12:17: "any non-Jew who converts and accepts all mitsvot... is like a regular Jew") and in *Hilkhot Melakhim* 10:9: "or if he should become a *ger tsedek* and accept all the mitsvot."¹ In fact, according to Rambam a non-Jew cannot even become slave to a Jew until he accepts the mitsvot.²

The *Shulhan Arukh* presents a similar contradiction. In *Yoreh De'ah* 268:3 the *Shulhan Arukh* states that the acceptance of mitsvot has to be done in front of three men, otherwise the conversion is invalid. On the other hand, he writes in 268:12 that if his intentions were not examined, or if he was not informed of the consequences of the mitsvot, but he went ahead and was circumcised and immersed in front of three men – his conversion is valid.

One possible resolution to the contradiction between sources in the Gemara is the distinction between informing the convert of the mitsvot and the acceptance of the mitsvot. Informing the convert of the mitsvot is expected from the outset; however, this does not invalidate the conversion *post factum*. On the other hand, not accepting the mitsvot invalidates the conversion even *post factum*. A convert might not be aware of the

¹ According to all positions, a convert should be informed of the mitsvot from the outset, and the convert's obligation in mitsvot is no less than that of a biological Jew. A convert is considered a Jew in every respect (Rambam, *Hilkhot Melakhim* 8:10).

² One might have thought that since a slave is converted against his will he must be expected to accept mitsvot more willingly than a convert; however, according to the Rambam the expectation is identical to that of a convert.

mitsvot and their consequences, but he still accepts God's commandments in general terms. This distinction is made by Ritva, who explains the abovementioned sugya: "He accepted before three and has converted in their presence; however, they failed to inform him of the mitstva of Shabbat, which does not impede the process. Then he went to live among non-Jews and never found out about Shabbat." Ritva added in *Yevamot* 47a: "If he was not informed this does not impede the conversion."

Resp. Hemdat Shlomo (Y.D. 29) used this distinction to explain the contradiction in Rambam's position. In his opinion, there is a difference between accepting mitsvot and being informed of the mitsvot. Rambam accepts the validity of a conversion where the convert was not informed of the mitsvot; however, the acceptance of the mitsvot – based, of course, on future study – would impede the process.

There is reason to discuss whether acceptance of mitsvot hinders the conversion process according to all halakhic positions.³ However, Orthodox Israeli rabbis are in unanimous agreement that acceptance of mitsvot is a crucial component of a valid conversion.

Acceptance of Jewish Nationality

The halakhic debate regarding conversion is not limited to the acceptance of mitsvot; there is also discussion about joining the Nation of Israel. The gemara (*Yevamot* 47a) and Rambam (*Issurei Bi'ah*, 14:1) discuss the desire to be part of the nation as part of the conversion criteria. *Yevamot* 47a adds the factor regarding identifying with the nation: "Why do you want to convert? Do you not know that Israel at the present time are persecuted, oppressed, despised, harassed and overcome by affliction?' If he says, 'I know and I am unworthy,' he is accepted immediately."

A non-Jew who accepts all mitsvot and believes in God but does not want to become part of Am Yisrael is not accepted. Conversion is not only contingent upon acceptance of mitsvot, but on becoming part of the nation, as well.

³ The *Beit Yosef* quoted the *Ritva*, and the *Rema* in *Darkhei Moshe* wrote that the *Tur* did not accept this distinction, since the acceptance of mitsvot has to be done before three men, implying that the acceptance of mitsvot impedes the process according to the *Tur*. The *Rema* did not distinguish between acceptance and being informed. The common position of Ashkenazi posekim follows the *Hemdat Shlomo*: the acceptance of mitsvot impedes the process, while not informing of mitsvot does not. (See R. Haim Amsalem, *Zera Yisrael* 1. Alternately, see a review of positions on acceptance of mitsvot: Prof. Menachem Finkelstein, *Ha-Giyur Halakhab l-eMa'aseh*, p. 93 ff.)

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Is acceptance of Jewish nationality without the acceptance of mitsvot sufficient? This possibility has been raised; however, current *pesak* among both Haredi and Religious Zionist rabbis today rules against this approach, and promotes the combination of acceptance of mitsvot along with acceptance of Jewish nationality.⁴ Additionally, all Orthodox *posekim* are in agreement that Reform conversion is unacceptable, since the Reform movement ideologically rejects many mitsvot. Reform conversion is not a valid conversion to Judaism.⁵

What, then, is the point of contention? Once we have determined that a convert must accept all mitsvot, the scope of acceptance needs to be discussed: does the acceptance of every detail of every mitzva need to be examined, or is a general acceptance of mitsvot sufficient? For example, does a woman have to be asked whether she will cover her hair? Would a negative answer indicate that she is accepting the Torah “aside from one detail,” disqualifying the conversion? If the question remains unasked she might fail to cover her hair but keep all other mitsvot, and that might be sufficient.

The concept of acceptance requires additional discussion. A person who accepts all mitsvot, but knows he might fail to maintain such a high standard – not because he objects to the mitsvot, but because of the failings of human nature – does such knowledge affect the conversion process?

Another question relates to a convert who accepts mitsvot but over time fails to observe all mitsvot: does this failure define his conversion as being invalid *post factum*? Is there a difference between failure to observe mitsvot immediately after conversion and several years later? These and other issues were addressed in a recent controversial *pesak*.

The Controversial *Pesak*

In 1988 a non-Jewish woman from Denmark who had a relationship with a Jew arrived in Israel. The woman expressed her desire to convert, and in 1991 she was converted in a certified Chief Rabbinate Beit Din headed

⁴ R. Yisrael Rosen rejects this approach: *Akdamut* 24, and *ve-Ohev Ger* 37-47. He also claims that R. Uziel rejected the approach, and believed that acceptance of mitsvot was crucial (on 248-251 he seems to imply that R. Uziel was lenient; however, in later writings he proved that R. Uziel demanded the acceptance of mitsvot). He contradicted what Z. Zohar and A. Sagi deduced from partial quotes of R. Uziel supporting conversion without acceptance of mitsvot in *Giyur ve-Zehut Yehudit*. See also *Ohev Ger*, 268.

⁵ See R. Ya'akov Ariel, *Tehumin* 17.

by R. Haim Drukman. She was married in an Orthodox ceremony, and the couple had three children.

On January 25, 2007 the couple decided to divorce. They approached the local Beit Din of Ashdod. R. Avraham Attia arranged the *get*. Upon realization that the woman was a convert, the dayyan asked the woman if she was observant. The dayyan reported that the woman attested to a traditional lifestyle, with the exclusion of Shabbat and the laws of family purity. The Beit Din proceeded to give the woman her *get*.

Several weeks after the *get* was issued, the local Beit Din issued a *pesak* deeming the conversion invalid, the *get* unnecessary, and the children not Jewish. The Beit Din inserted the children's names into a list of unmarriedable Israelis.

The annulment of the woman's conversion was based on two considerations: 1. The woman was not observant, and the lack of acceptance of mitzvot invalidated her conversion; and 2. R. Drukman's Beit Din converted the woman without informing her that she is obligated to observe mitzvot, invalidating the dayyanim who were involved in the process and declaring the conversion invalid.

The second consideration is implausible for several reasons, among them: (a) A Beit Din could contest the ruling of another Beit Din, but invalidating the dayyanim on the basis of such a disagreement is unheard of. The invalidation of the dayyanim was done on the basis of this one ruling; no one contested the fact that they are God-fearing and observant Jews. (b) Since there is an accepted halakhic disagreement among Orthodox *posekim* regarding the level of acceptance which is expected of the convert, invalidating the dayyanim on the basis of this ruling is preposterous. Halakhic disagreement is no justification for invalidating the dayyan personally; and (c) From a purely halakhic perspective, even a conversion which takes place in front of three laymen is valid!

Appeal to the Supreme Court

On Adar 9, 5767, Beit Din ha-Gadol in Jerusalem convened to discuss the appeal on the ruling of the Beit Din of Ashdod. The appellate court was comprised of R. Shlomo Deichovsky, R. Ezra Bar-Shalom, and R. Avraham Sherman. R. Deichovsky wanted to overturn the ruling of the Beit Din in Ashdod, and uphold the conversion, and R. Bar-Shalom supported his position. However, R. Sherman claimed that the Beit Din of Ashdod was correct, and the conversion should be nullified. He explained that the dayyanim are required to know for certain that mitzvot are accepted by the convert. In his ruling, he first discussed the gemara in *Shabbat* 31a,

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which relates the story of a non-Jew who wished to convert so that he could become a high priest. He initially came before Shammai, who threw him out; he then approached Hillel, and Hillel agreed to convert him, despite the fact that his intention in conversion was to attain the position of high priest. Subsequently, he quoted the gemara in *Menahot* 44a regarding R. Hiyya's pupil, who wanted to have relations with a prostitute. R. Hiyya converted the prostitute despite the fact that her intention in conversion was for the purpose of sexual relations. In both cases, the conversion ostensibly was not dependent upon the acceptance of mitsvot.

Tosafot in *Yevamot* 24,b s.v. *lo bi-yemei David* explained that Hillel knew the convert's heart would eventually be in the right place, and in time would become *le-shem Shamayim* [of pure intent, for the sake of Heaven]. Pure intent is not a prerequisite for conversion; it is sufficient to believe that in the future, mitsvot will be observed.

R. Sherman, responding to the claim of the Tosafot, commented that Hillel was convinced of the convert's proper intentions, since he believed that his desire to become a high priest stemmed from his recognition of the sanctity of the high priest. So, too, R. Hiya understood that the prostitute was awed by the powerful experience of his pupil being saved from sin by the power of his *tsitsit*. That awe translated into *yirat Shamayim*. Thus, the dayyan is required to ensure that the conversion is being done *le-shem Shamayim* - with pure intent; otherwise, the conversion is invalid, even *post factum*.

In his second ruling, R. Sherman wrote that the mitzva of conversion relates to helping someone achieve *avodat Hashem* (service of God); a conversion which does not result in keeping mitsvot is therefore not considered a conversion at all. Regarding the nullification of a conversion, R. Sherman attempted to prove that the conversion in question was completed too quickly, after only two months of study, which is insufficient for a real acceptance of mitsvot. However, R. Sherman's approach raises a halakhic dilemma, since R. Drukman's Beit Din validated the conversion, and one Beit Din cannot annul the decision of another (*Bava Batra* 132a). R. Sherman responded to this dilemma by stating that this rule does not apply to conversion, and one Beit Din can examine the rulings of another on this matter.

He supported his position by quoting a poster signed by various rabbinic figures, including R. Yosef Shaul Elyashiv and R. Shlomo Zalman Auerbach *zt"l*, which stated that "there is a severe prohibition against accepting conversions without conviction that they intend to accept Torah and mitsvot. Conversion without acceptance of Torah and mitsvot is simply

not a conversion at all, even *post factum*. We hereby warn all marriage certifiers that they are expected to examine anyone who presents them with a conversion certificate... to ensure that conversion was performed according to halakha.” R. Sherman derived from here that the abovementioned rule is not applicable in the case of conversion,⁶ since unobservant converts who want to get married need to undergo a “background check,” even if they were converted by the most prominent Beit Din.

Deriving a halakhic principle from a poster is, of course, a real innovation in halakhic ruling. In addition, R. Sherman claimed that the position of R. Haim Palachi in *Semikha Le-hayyim* is that today one Beit Din can annul the ruling of another; however, upon reading the source one discovers that the opposite might be true.⁷

R. Sherman reported, based on prior rulings in this case, that at the time of conversion the woman declared that she does not use electricity on Shabbat, but also does not make *kiddush* or *havdala*. She declared before the Beit Din that she accepts Torah and mitsvot. Four months later, the couple told the Beit Din that they use electricity on Shabbat, but observe the laws of family purity. The Beit Din asked whether the woman was aware at the time of conversion that she was obligated to keep Shabbat, and she responded, “yes, but it’s hard all at once.” R. Sherman contested the validity of the conversion based on this statement.⁸ In

⁶ One might say the opposite is true: Perhaps specifically in the case of a Conversion Beit Din there is no place to question the Beit Din. This depends upon the dilemma regarding the nature of the Conversion Beit Din. The Conversion Beit Din might be viewed as a regular Beit Din, and then in certain situations and under certain conditions there is room to question Beit Din’s judgment. However, a special Beit Din for Conversion might be viewed as a representation of Kelal Yisrael for the purpose of entering the convert into *Kelal Yisrael*. According to this view, the judgment of a Conversion Beit Din cannot be questioned, since if they decided (based on accepted halakhic principles) to accept the convert, the decision is irreversible. See R. Ya’akov Epstein, *Tehumin* 32. *Resp. Hatam Sofer* (VI:50) wrote that a Beit Din which announces the new month cannot be questioned. Possibly the reason lies in the acceptance of witnesses which cannot be challenged, but perhaps the real reason is that Beit Din represents Kelal Yisrael in this matter instead of serving as a judicial system. Similar logic might be applied in the case of conversion, which requires acceptance by *Kelal Yisrael*.

⁷ R. Haim Palachi discusses a case in which one Beit Din comes across an identical situation to one presented to another Beit Din; in this case, said R. Palachi, the second Beit Din is not obligated to rule in the same way as the first Beit Din. He does not imply that the second Beit Din may overturn the ruling of the first! R. Palachi himself explicitly wrote in *Resp. Haim Be-Yad* 45 that one Beit Din cannot overturn the ruling of another. See R. Yaakov Epstein, *Tehumin* 32.

⁸ The convert did not state that she was uninterested in observing the laws of Shabbat; on the contrary, she confessed that observing Shabbat was difficult. In other

addition, the woman's pregnant state, the hastiness of conversion, and her secular husband are all evidence to the insincerity of the conversion in her acceptance of mitsvot.

He quoted the position of *Resp. Devar Avraham* (III:28a), who stated that there is no reason to assume one will observe mitsvot in the future when living in a secular environment. Only in a religious environment can such an assumption be made.⁹ He quoted R. Moshe Feinstein (*Resp. Iggerot Moshe*, Y.D. III:106), who said converts for purposes of marriage cannot be assumed to accept mitsvot; he added that the convert herself testified later that she is aware today of the differences between Traditional and Orthodox; she can now define her acceptance of mitsvot as a Traditional, not Orthodox, Jew. According to R. Sherman, this is not a valid acceptance of mitsvot.¹⁰ Additionally, he criticized the Beit Din for accepting the conversion of a woman who had married a non-observant man in a civil ceremony. He wrote that when the reasoning behind the ruling of a Beit Din is unknown, the ruling cannot be annulled; however, when the reasoning is revealed – their ruling can be disputed (*Radbaz* I:279; *Resp. Hatam Sopher* VI:50).

Posekim have debated whether one Beit Din can disagree with another today. *Radbaz* (cited in *Resp. Avkat Rokhel* 21) believed that today this is possible, since the dayyanim are not sufficiently knowledgeable; however, *Beit Yosef*, *Urim ve-Tumim*, and *Shakh* (see *Pithei Teshuva C.M.* 19:3) stated that even today the ruling of a Beit Din cannot be disputed. R. Sherman believed if there is reason to question the judgment of another Beit Din, their ruling can be overturned.¹¹ In his opinion, *dayyanim* today lack expertise in this field, and can therefore be questioned.¹²

R. Deichovsky stated that the converting Beit Din should not be inspected if the dayyanim are known to be God-fearing, which he believed to be true in this case. R. Sherman wrote that this defies the ruling of *gedolei ha-dor* in the abovementioned poster. R. Deichovsky agreed that

words, she accepted the laws of Shabbat, but in practice was unsuccessful due to her difficulty.

⁹ *Abiezer* disagreed with *Devar Avraham*, and many posekim followed suit.

¹⁰ Once again, one might say the opposite is true: she accepted mitsvot fully, but lacked the knowledge of what that entailed. In other words, she initially accepted all mitsvot, and later changed her mind when she became aware of the possibility of Traditional Judaism.

¹¹ This issue requires further exploration. Situations in which one Beit Din questions another usually relate to a technical mistake or a mistake in judgment, not a controversy regarding procedure.

¹² R. Sherman's appendix to R. Epstein's article in *Tehumin* 32.

inspection should be conducted for a Beit Din outside the country or an unaffiliated Beit Din; however, a Chief Rabbinate Beit Din cannot be assessed by another Beit Din. R. Bar Shalom also agreed that the ruling of the Conversion Beit Din is untouchable.

R. Deichovsky wrote, based on Rambam, that a Beit Din of laymen can conduct a valid conversion. R. Sherman views this as an inaccurate reading of Rambam. He quotes the *Kesef Mishneh*, who wrote that the conversions were performed by knowledgeable dayyanim, who saw before them women who were committed to Jewish practices, whereas in our case the convert was not interested in a religious conversion, but in a national social process of joining Am Yisrael, as she attested to having wanted to be Traditional. R. Deichovsky disputes this point and explains that the *Kesef Mishneh* actually referred to laymen who “were not a Beit Din,” which could be proven from the source he relies upon (JT *Kiddushin* 4:1).

R. Deichovsky’s Position

R. Deichovsky discussed whether the acceptance of mitsvot is essential to conversion or a condition of conversion. He ultimately followed the *Shulhan Arukh’s pesak* (268:3), according to which the acceptance of mitsvot is essential to conversion. He also cited *posekim* who believed that the acceptance of mitsvot does not hinder the process; however, he did not accept this leniency.

R. Deichovsky’s main assertion is that the acceptance of mitsvot occurs in one moment, before immersion. If in that moment the acceptance was sincere, the conversion is complete and irreversible. The best assessors of the convert’s intentions are members of the converting Beit Din. Another Beit Din, especially one which convenes many years later, as in the present case, cannot possibly know the thoughts of the convert at the time of conversion!

Regarding unspoken thoughts, R. Deichovsky quotes R. Avraham Yitzhak Kook (*Da’at Cohen*, Y.D. 153) who believed that the dayyan must only consider what he is told; even if we were told by Elyahu that the convert’s words contradicted his thoughts, we are not permitted to take them into consideration. He also cites R. Moshe Feinstein (*Iggerot Moshe* Y.D. III:108) who added that a woman cannot undermine the status of her children based on what she claims to have thought at the time of conversion.

R. Deichovsky related to R. Sherman’s motion to invalidate the Beit Din, and explained that a Beit Din is in fact not required for the purpose

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of conversion; accepted halakha is that any three laymen could perform a conversion. The *Hazon Ish* (C.M. *Likkutim* 12:8) wrote that despite the requirement that the members of a Beit Din need to be *semukhin* (an ordination which does not exist today); even at a time when *semukhin* existed, conversion was valid without *semukhin*. This is supported by Rambam's position that conversions executed by Beit Din of laymen in the time of David and Shlomo were valid.

He added, that the *Griz* (based on *Mishnat Ya'akov* on the Rambam *Issurei Bi'ah* 13) posited that a Conversion Beit Din is not a regular Beit Din; whereas in a regular Beit Din the majority vote is accepted, in a Conversion Beit Din the agreement of all participants is required. This being the case, asked R. Deichovsky, how could the Beit Din be invalidated? Were they any less qualified than a Beit Din of laymen, whose conversion is valid? Additionally, the "evidence" used to declare the conversion invalid was all based on the testimony of the convert; based on the above and *Yevamot* 47a, how can she invalidate the status of her children? He added that *Resp. Abiezer* (III:27) discussed the possibility of accepting converts, even on the basis of the possibility of acceptance of mitsvot. He also added that the presumption of the children's Judaism is in itself an independent halakhic reality (Rambam *Issurei Bi'ah* 1:20-22). R. Sherman responded that this presumption is only valid if based upon observance.

R. Deichovsky remarked that *Resp. Abiezer* (III:27) disagreed with *Devar Avraham*; moreover, *Devar Avraham* tended to agree with the innovative position of *Abiezer*, according to which the acceptance of all mitsvot with the knowledge that one might be tempted into transgression is acceptable. Despite the *Devar Avraham's* stringency in practice, he wrote that this does not define the conversion as invalid *post factum*.

R. Deichovsky quoted the *Netsiv* (*Meshiv Davar* VI:46) who wrote that if a convert was accepted without accepting mitsvot, which was wrong, he is still considered Jewish by Torah law. He added that this is only true when the conversion was performed in front of observant Jews.

In conclusion: R. Deichovsky is of the opinion that acceptance of mitsvot is required; however, this requirement is fulfilled by a few seconds of acceptance during the immersion. If Beit Din attests to the desire of the convert to accept mitsvot, we can assume this was true at the time of immersion, even if shortly afterwards the convert changes his mind.

A Beit Din of laymen is valid as long as they are fully observant, and cannot be invalidated. A second Beit Din cannot claim to possess better knowledge than the initial Beit Din regarding the convert's thoughts. An

official Rabbinate Beit Din is presumed to act in accordance with Rabbinate rules, and should not be inspected, as in the case of an unaffiliated Beit Din.

R. Deichovsky did declare one conversion invalid *post factum* when he was convinced that the convert had no intention whatsoever at any time of observing mitsvot. The convert had held a plane ticket for the Shabbat following her conversion, and in fact left the country on that Shabbat. R. Deichovsky claimed that in this case there was a display of false intent from the outset.¹³

Decision of “I Do Not Know”

In the present case, the majority of dayyanim (i.e. R. Deichovsky and R. Ben Shalom) accepted the validity of the conversion, and rejected the *pesak* of the Beit Din of Ashdod. R. Sherman was outnumbered and R. Deichovsky expected him to accept the majority vote, as is the practice in any ruling.

However, R. Sherman asked R. Shlomo Amar, the presiding dayyan, to discuss the ruling in an expanded panel. R. Amar rejected the request, since it came from one dayyan and was unacceptable to the other two. He remarked, “the only way to reach a ruling is based on the majority, as per Torah law.”

R. Sherman refused to give in.¹⁴ Despite his well-known opinion on the matter, he decided to disqualify himself by saying “I do not know,” leaving a Beit Din comprised of only two dayyanim. In such a case, an additional dayyan is required to complete a Beit Din of three, which R. Sherman believed would lead to a more just ruling. He learned this concept from the *Urim ve-Tumim* (12:3), *Netivot* (12:2), *Shevut Ya’akov* (I 138) and *Havvot Yair* (147), and *Pithei Teshuva* (18:4).

R. Amar rejected R. Sherman’s attempt: *Pithei Teshuva* rejects the application of the *Shevut Ya’akov*’s *pesak*, and R. Akiva Eger (*Gilyon ha-Shulhan Arukh*) wrote that only one who joins *yoshevei keranot* (loiterers) is permitted to say “I do not know” for the purpose of uncovering a truer verdict. Finally, R. Amar stated that the dayyan can only say “I do

¹³ The Conversion Courts generally follow an approach similar to R. Deichovsky, and they too have nullified conversions: one case which was nullified involved a convert who was living with a non-Jew and purposely tricked the Beit Din (*Beit Din ha-Meyuhad le-Giyur* 5577; *Tehumin* 23).

¹⁴ In most cases, when the majority of dayyanim lean toward one position, the third dayyan joins their *pesak* even if he feels differently. This is common in all halakhic areas, including conversion. see for example *Tehumin* 23.

not know” when his opinion is not public knowledge; however, once he has unequivocally stated his opinion, and written dozens of pages on the matter, he cannot make the claim “I do not know.” The conversion was therefore accepted according to the ruling of R. Deichovsky and R. Ben Shalom.

R. Sherman continued to claim that their ruling was invalid, since two dayyanim cannot complete a decision alone (this halakha is contested by *Bab* 18:12 and *Shakh* 18:5, who wrote that the ruling can be issued by two dayyanim when the third says “I do not know,” and this contention is accepted by *Tumim* (18:4), *Netivot* (5:1) and *Shevut Ya’akov* (I H.M., 143). He also rejected R. Amar’s assertion that he cannot say “I do not know” in this case; since the rulings of his colleagues lacked sufficient explanation, he believed he could invalidate the judgment by stating “I do not know.” R. Amar did not accept R. Sherman’s position, and upheld the ruling of the other two dayyanim. R. Deichovsky testified that this was the lengthiest ruling they had ever issued, and that he had never encountered a dayyan using the claim of “I do not know” to avoid accepting the majority ruling. Despite all of this, R. Sherman’s refusal to accept the majority opinion discontinued the debate.

Disqualifying the Dayyanim

Halakhic disagreements are an ageless part of Jewish conduct. The novelty of the current disagreement is not merely the disagreement itself, but its intensity. The minority (R. Sherman) refused to accept the majority opinion, even when instructed by the Chief Rabbi to accept the majority opinion, and discontinued the debate by claiming “I do not know.”

One year after the debate was discontinued, on Adar 4, 5768 (February 10, 2008), R. Sherman convened a new Beit Din, comprised of R. Sherman, R. Hagai Ezerer, and R. Avraham Sheinfeld.¹⁵ The matter of the conversion was reopened; the Beit Din found in favor of the ruling of the Beit Din of Ashdod and annulled the conversion. However, whereas R. Sherman’s first *pesak* focused on declaring the conversion invalid, the second ruling focused mainly on disqualifying R. Drukman himself and the other dayyanim in his Beit Din, on the basis of “lack of adherence to accepted Halakha, that without the acceptance of mitsvot conversion is nullified,

¹⁵ I do not know how R. Sherman halakhically justified his actions of convening a new Beit Din, given that R. Amar did not accept his plea, but in reality he congregated another Beit Din on the basis of his presumption that the previous Beit Din did not act in accordance with Halakha.

even *post factum*, and the convert remains a non-Jew... since they are disqualified as a Beit Din, their conversions have no validity.”

In this piece I am presenting prevalent opinions on this matter, and not my personal opinion, so I will only remark that this type of communication is outrageous. R. Haim Drukman is a God-fearing and righteous man. Disagreeing with his judgment is one thing; disqualifying him from being a judge – or even a good Jew, since conversion overseen by three observant Jews is valid – is intolerable.

R. Aharon Lichtenstein *shlit”a* is not necessarily a supporter of the methods of the Conversion Beit Din, but he does believe their work is important and necessary. He intimated that R. Sherman’s comments about R. Drukman is a transgression of Torah prohibitions relating to *bein adam la-havero*, which disqualifies him from testifying or serving as a dayyan.

R. Drukman’s disqualification, which had nothing to do with his level of personal observance, demonstrates the magnitude of the dispute regarding conversion today.

Mass Disqualification *Post Factum*

In his ruling, R. Sherman quoted R. Moshe Sternbuch in *Resp. Teshuvot ve-Hanhagot* 230, where he ruled in the case of an observant “bearded convert with *peot*” who was converted in an Israeli Conversion Beit Din (most likely R. Drukman’s). R. Sternbuch wrote, “these dayyanim are evildoers... they destroy the sanctity of Am Yisrael... they are evil and disqualified.” R. Sternbuch wrote that, despite his complete observance of mitzvot, he would not offer the convert an *aliya*, since he is halakhically a non-Jew. R. Sternbuch did add that *post factum*, until the time the man can be converted properly, he can be treated as a Jew, since the Beit Din might be viewed as having acted unintentionally due to their misconception that they were performing a mitsva. He relies upon the concept in the *Shulhan Arukh*, C.M. 34:4, who states that people who bury their dead on the first day of Yom Tov are not delegitimized, since they believe they are doing a mitsva. *Rema* remarks, “this is the rule regarding any prohibition which can be attributed to a mistake.”

R. Sherman wrote that the dayyanim in our case are, nonetheless, disqualified even *post factum*; he explained that a person who transgresses in a matter unrelated to Beit Din can still be a qualified dayyan, if his intention was for the purpose of doing a mitsva. However, one who transgresses in a matter which damages the essence of his work as a dayyan disqualifies him from being a dayyan; for example, a dayyan who takes a bribe, or a dayyan

who rules against Halakha. Thus, the conversions of R. Drukman and his Beit Din are disqualified even if the people they converted are observant, since the Beit Din is disqualified.

R. Sherman believed that the dayyanim transgressed the imperative *lifnei ivver* (placing a stumbling block before the blind) toward people who assume the convert is Jewish and marriageable, and toward the non-Jew who believes the conversion gave him the status of a Jew, which will lead to inadvertent transgression.¹⁶ Therefore, he believed the conversions should be nullified *post factum*, regardless of the convert's level of observance. Even if the convert is fully observant, since the conversion was completed in a disqualified Beit Din the conversion is null and void. With this he was willing to disqualify thousands of conversions. In support of his ruling, R. Sherman quoted the poster with the signatures of *gedolei ha-dor* again and again, since their demand to examine every conversion before marriage denies the application of one Beit Din not contesting another. It is important to note that the poster refers to **any** Beit Din, even a haredi one.

Previous *Posekim*

The partial acceptance of mitsvot and the annulment of conversions when observance was not accepted have been debated for several generations. Many *posekim* relate a complex view of the matter, which has affected the rulings of present-day *posekim*.

1. *Abiezer*

The *Resp. Abiezer* III:27 discusses the case of a non-Jewish woman who was married to a Jewish man in a civil marriage, and wanted to convert in order to marry him halakhically. The dayyan who was asked, R. Passen, was stringent for two reasons: a. the purpose of the conversion was marriage; and b. the woman had no intention of observing mitsvot. The *Abiezer* added a third problem: the mishna in *Yevamot* 2:8 states that a man who had relations with a woman before her conversion may not marry her; since the purpose of this conversion was to transgress a prohibition

¹⁶ He bases this idea on R. Kook and R. Shlomo Zalman Auerbach; however, this is a point of contention. R. Kook wrote that the acceptance of mitsvot is imperative (see *Da'at Cohen* YD 147; *Resp. Zekher Yitschak* 2). *Resp. Beit Yitschak* states that becoming Jewish is significant, and even if one will transgress and be punished, this does not take away his great merit of being part of Kelal Yisrael; however, one who is unwilling to accept mitsvot from the outset still cannot be accepted. *Resp. Abiezer* (III 28) expressed similar sentiments. R. Feinstein (*Dibberot Moshe*, Shabbat 84, no. 11) deliberated this point as well.

by having the convert marry a man to whom she was prohibited, the conversion was invalid.

The position of the *Abiezer* is that the convert must accept the observance of all mitsvot. He was not willing to accept a convert who would accept “all *mitsvot* but one.” Additionally, according to the *Abiezer*, the lack of acceptance of mitsvot nullifies conversion even *post factum*. However, despite all this, the *Abiezer* introduced a leniency: he explained that “all but one” relates to a person who has an essential problem with one mitstva; not to a person who accepts the mitsvot but is willing to succumb to temptation - *aveira le-te'avon*. This latter type of transgression does not render the conversion invalid.

Which mitsvot are included in this category? *Abiezer* goes on to explain that there are limitations to this category. Ultimately *Abiezer* rejects the woman's conversion, but in the process he introduced the concept of accepting a convert who accepts the mitsvot with the assumption that he will transgress an *aveira le-te'avon*.

The reason *Abiezer* differentiates between a transgression controlled by temptation and the rejection of one mitstva can be understood in one of two ways: 1. *Aveira le-te'avon* does not affect the acceptance of mitsvot as long as the mitsvot are not essential to Jewish culture, such as Shabbat and Kashrut. Only failure to accept these essential laws would indicate a lack of acceptance of mitsvot. 2. *Aveira le-te'avon* does not affect the acceptance of mitsvot, since the true measure of sincerity in keeping mitsvot is whether the candidate is generally seeking a Jewish lifestyle, and essentially interested in observing mitsvot. Kashrut can be expressed in one avoiding unkosher food and separating meat from dairy, but not necessarily in being careful about bugs in food.

In any event, *Abiezer* argues that the essence of a true acceptance of Judaism and mitsvot is unaffected by the temptation to transgress.

The *Abiezer* states explicitly that his *pesak* relates to a Jew who intends to accept and observe all mitsvot; in a case of public rejection of a mitstva he might not be accepted. However, even in a case of acceptance of mitsvot we might assume that there will be details which are not observed properly (properly removing bugs from cauliflower or a woman who fails to cover her hair, to give two examples). Such a convert can be accepted since his intentions are to observe the mitsvot, despite the practical failure to observe certain details due to the weakness of human nature.¹⁷

¹⁷ This was the approach of R. Rosen (*Tehumin* 19; *Ohev Ger* 147) and other dayyanim in the Conversion Beit Din.

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It is interesting to note that the *Abiezer* wrote in another responsum (*ibid.* 28) that the Beit Din should not even consider converting a non-Jewish woman who is married to a Jew, since she is presumed not to observe mitzvot such as Shabbat and Kashrut after conversion; however, he added “I cannot find justification for the rabbis of the generation to make a fuss over this issue, and publically protest conversions, since simple people will regard the fact that women are not allowed to convert as a *hillul Hashem* (desecration of God’s name).”

It is important to note that *Resp. Abiezer* only applies this rule under specific conditions: (a) The convert must be willing to accept all mitzvot, despite the knowledge that in practice, if overcome by temptation, transgressions may occur. This is distinctly different from Reform conversion, since the Reform movement *objects* to some mitzvot on principle, and even an objection to a rabbinic ordinance nullifies conversion. (b) The convert must be willing to accept defining and essential mitzvot such as Shabbat and Kashrut (the category and scope of these mitzvot might change from generation to generation).

2. *Devar Avraham*

Resp. Devar Avraham 28 disagreed with *Abiezer*, and explained that the presumption that a convert will observe mitzvot does not stem from the convert’s decision; once he marries a Jewish woman he will be “forced” to observe mitzvot, since this is common practice in the community life he is about to enter. However, since today a Jew can live in a supportive environment without being expected to observe mitzvot, this presumption no longer applies, and conversion cannot be accepted. Many posekim argue against the *Devar Avraham*; see R. Ovadya Yosef’s article in *Torah She-be’Al Peh*, 13. Despite his stringent position, even the *Devar Avraham* only related to an *a priori* situation; regarding a *post factum* situation he wrote “I am indecisive in this matter, for I know sometimes there is a great need for various reasons, and it is better to be lenient; however, leniency in some cases might lead to damage to general policy...” In other words, the *Devar Avraham* ultimately leans toward leniency.

3. *Netsiv*

The *Netsiv* wrote extensively on this issue in the context of other halakhic issues which are beyond the scope of this essay. In reference to this discussion, he notes that the *Shulhan Arukh* (Y.D. 268:10) ruled that a non-Jew who testified that he was converted in “so-and-so’s Beit Din”

is not believed until he can provide witnesses; however, if he is seen “maintaining Jewish practices” he can be considered a valid convert even without witnesses. The *Netsiv* explains this to mean, in *Resp. Meshiv Davar* (V 46): “if we see him maintaining Jewish practices and observing all the mitsvot.” In other words, the observance of mitsvot is the determining factor.

However, the *Netsiv* wrote in *Meshiv Davar* (V:46) that the gemara which states that we do not accept a convert who accepts all but one mitsva relates to an *a priori* situation; once the convert was accepted – the conversion is irreversible, despite the illegitimacy of the conversion by the converting Beit Din.¹⁸

4. R. Kook

R. Kook was asked about an evil convert who married a Jewish woman and then maliciously disappeared, leaving his wife an *aguna*. The dayyanim wished to allow her to remarry on the basis of uprooting the conversion *post factum*. R. Kook in *Da'at Cohen* 153 discussed whether the convert's actions reveal his initial intentions, which were never really set on observing mitsvot. R. Kook rejected this idea, since a person's verbal acceptance of mitsvot validates the conversion. Even if a convert later comes and testifies that he had no intention of observing mitsvot, we abide by the rule “*devarim she-baLev einam devarim*,” and we can only relate to his statements at the time of conversion.

Rambam (*Issurei Bi'ah* 13:17) wrote that a convert who was not informed of all mitsvot, or was converted for external reasons “is suspected until his actions demonstrate his righteousness.” R. Kook explained that such a person is considered to be a convert until proven otherwise, and is only denied the privilege of being trusted in the matter of prohibitions; he is still obligated in mitsvot and his marriage is valid.

Another issue discussed by R. Kook is that of *gerei arayot* (lit. ‘lion converts,’ referring to those who converted out of fear rather than sincere motivations). *Tosafot* claim that these are not real converts; R. Kook explained that these converts never accepted the mitsvot fully, and the Beit Din of the time was fully aware of this fact. Since the Beit Din was aware at the time of conversion, the conversion was never valid. *Tosafot* and *Rosh* on *Nedarim* 28a explained that a fact which is clear to everyone present does not need to be verbalized for the sake of validation; however, if

¹⁸ See a similar approach posited by R. Kook (*Da'at Cohen* 152); *Iggerot Moshe* (YD III 106); R. Asher Weiss (*Moriah* 18: 105); *Minhat Asher* on *Shabbat* 68b.

there was reason to believe that *gerei arayot* were willing to accept the mitsvot, they would have been considered valid converts.

According to this logic, if the convert verbalized, and Beit Din truly believed that the convert was willing to accept the obligation of mitsvot, later transgressions cannot render a conversion invalid.

However, in another case recorded in *Da'at Cohen* 154 R. Kook wrote that a convert who is unwilling to accept the Torah in its entirety cannot be accepted. Furthermore, a convert who converted for marriage and was unwilling to accept mitsvot is not even considered a Jew *post factum* in the event that his conversion was accepted. R. Kook wrote that this is worse than the case of *gerei arayot*, and Rabbis who convert such people actively transgress *lifnei ivver* toward people who assume the convert is Jewish and marriageable, and toward the non-Jew who believes the conversion gave him the status of a Jew, which will lead to inadvertent transgression. It is noteworthy that R. Kook probably referred to rabbis who accepted converts who did not accept mitsvot, in which case the conversion is invalid from the outset.

5. R. Moshe Feinstein

R. Moshe Feinstein's formulations in various responsa also seem to be varied. He wrote in *Resp. Iggerot Moshe Y.D.* III:108 that the acceptance of mitsvot is imperative, and should be monitored after conversion. Similarly, he wrote in *Resp. Iggerot Moshe E.H.* III:4 that even if a convert verbalized his intentions to observe mitsvot, if the practical reality presents a lack of observance, his conversion is invalid.¹⁹

However, R. Feinstein also expressed his reliance upon the distinction between verbalization and thoughts: in *Y.D.* III:108 he was asked about a convert who during the process thought she might go to work on Shabbat because she was afraid of being fired; there, R. Feinstein claimed that her thoughts do not affect her conversion, since "*devarim she-baLev einam devarim.*"

However, this case is dissimilar to advance knowledge that mitsvot are not fully accepted, for only unequivocal evidence can be relied upon to

¹⁹ R. Feinstein (*Y.D.* III:108) rejected *Abiezer's* lenient position in a case of failing human nature; however, he enacted a leniency based on *ones* – compulsion. He considered one's financial situation a possible situation of *ones*; in other words, one who accepted mitsvot but was compelled to transgress based on financial situation is an acceptable convert. This is R. Feinstein's position even when the convert states at the conversion itself that he might fail to commit in a case of financial distress.

uproot a verbalized statement.²⁰ Therefore, if it was obvious from the outset that there was no intention to observe mitsvot; or if shortly after conversion the convert was viewed transgressing Halakha, we can assume that the acceptance of mitsvot was incomplete, which nullifies the verbal statement and nullifies the conversion. However, if there is no real evidence that mitsvot were not accepted, or if transgressions were observed after a significant amount of time – the conversion cannot be nullified, even if there is reason to believe that the convert did not accept mitsvot from the outset; this is only conjecture, not a certainty.²¹

In *Y.D. I:160*, R. Feinstein was even more lenient: he wrote that *post factum* one might say the conversion is valid if the convert verbalizes acceptance of mitsvot even if in practice there was no acceptance of mitsvot; the lack of acceptance in this case can be considered *devarim she-baLev*.²² Despite his personal sentiment that this is not the ideal way to convert, he is willing to accept a conversion under such conditions *post factum*.

Additionally, R. Feinstein defends a convert who does not accept mitsvot when the convert marries a non-observant Jew; the convert might assume in this case that she is accepting all she is required to accept, and being informed of the mitsvot does not hinder the conversion process *post factum*.

6. R. Yosef Shalom Elyashiv

R. Elyashiv presented a complex position. In *Ohr Yisrael*, (Monsey 9, year 3, 1:47) he ruled that a convert who verbalized his acceptance of mitsvot but thought differently is essentially a non-Jew. Beit Din needs to be convinced that the convert is accepting mitsvot; otherwise conversion is not even valid *post factum*: “Regarding the validity of conversion of a non-Jew who was unwilling to accept mitsvot, or said he accepted mitsvot but thought differently, is like a non-Jew for all intents and purposes...”

R. Elyashiv’s signature also appears on the abovementioned poster, which is prominent in R. Sherman’s ruling: “there is a severe prohibition

²⁰ R. Feinstein wrote that in this case there was no evidence that the woman did not fully accept mitsvot; he later explains that even if there was some minor reason to believe her acceptance was incomplete, as long as the evidence was not unequivocal the conversion would not be nullified. This is true even in a case of the convert’s testimony that she was insincere, as in the case brought before R. Feinstein.

²¹ R. Ovadya Yosef (*Tosbba* 13, p. 30) wrote that in this case one should rule based on the strength of the presumption.

²² The present case presents a better situation, since in the Conversion Beit Din most converts are known to go on to observe mitsvot.

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against accepting conversions without conviction that they intend to accept Torah and mitsvot. Conversion without acceptance of Torah and mitsvot is simply not a conversion at all, even *post factum*. We hereby warn all marriage certifiers that they are expected to examine anyone who presents them with a conversion certificate... to ensure that conversion was performed according to halakha.”

On the other hand, R. Elyashiv takes another approach in his comment regarding R. Shlomo Goren’s famous “Brother and Sister Ruling” (Chief Rabbinate 5733), in which R. Goren alleviated the status of *mamzer* from two siblings. Their mother married a man while halakhically she was still married to another man, who was a convert. R. Goren claimed that since the first husband did not adhere to the rulings of the Sages, his conversion was invalid. R. Elyashiv remarked that since today Jewish customs are different than what they once were, criteria for conversion should also be different: “Today there is reason to revisit the Jewish customs which determine the criteria for conversion, since this has changed. If we see that a convert acts like the Jews among whom he resides, attending synagogue on Shabbat and Yom Tov, buying kosher meat, avoiding work on Shabbat, etc. – this is sufficient to presume he is a convert, even if he transgresses one detail from the words of the Sages.” This opinion leads to stringency in certain cases, but also demonstrates that the issue is not clear-cut.

7. *Divrei Yatsiv*

Resp. Divrei Yatsiv (Y.D. 168) wrote that a convert who fails to accept all mitsvot cannot be accepted; however, in the event that he is accepted nonetheless, and there is no explicit contradiction during the process – the conversion is valid. Therefore, in the case of a convert who wishes to marry a kohen, conversion is invalid, since the transgression is explicit at the time of conversion; however, when there is no explicit transgression – conversion is valid.

Practical Application

Any contemporary responsum on this matter alludes to the abovementioned positions; however, each posek highlights the positions which support his viewpoint: R. Sherman quoted the *Devar Avraham*’s stringent position regarding a secular environment, whereas R. Deichovsky cited the lenient *Abiezer*, as well as the possibility for leniency mentioned by *Devar Avraham*. R. Sherman quoted the *Netsiv*’s assumption that a convert will observe all mitsvot, whereas R. Deichovsky cites the *Netsiv*’s position that the gemara in *Bekhorot*, which states that a convert is not

accepted unless he is committed to the observance of mitsvot, only related to an *a priori* situation, but after conversion, lack of observance cannot annul the convert's status. R. Deichovsky quoted R. Kook's statement that one does not consider what is in a person's heart, and verbal acceptance of mitsvot – even if the convert later attests to thinking otherwise – is sufficient for a valid conversion, while R. Sherman cites R. Kook's assertion that a Beit Din which accepts a convert who does not accept mitsvot transgresses *lifnei ivver*, which annuls the conversion (with the exception of stringency with regard to divorce; R. Kook was referring to rabbis who converted without acceptance of mitsvot). R. Deichovsky quotes R. Feinstein's position that words count, not thoughts, whereas R. Sherman cites R. Feinstein's claim that conversion for marriage is assumed to lack acceptance of mitsvot, and is invalid. R. Sherman quotes R. Elyashiv's call in the poster to annul a conversion which proves to be false due to the lack of observance in the future, while he fails to cite R. Elyashiv's *pesak* regarding the brother and sister, which concludes that conversion criteria might be different today.

What is the Source of Disagreement?

We have shown that Israeli Orthodox rabbis are in agreement that complete acceptance of mitsvot is required; they are in agreement that joining the nation of Israel is insufficient; what, then, is the source of disagreement?

Present or Future?

One of the crucial points of contention is whether the sincerity of the convert at the time of conversion determines the validity of the conversion, or whether future conduct reflects the validity of the conversion.

R. Sherman clearly believed in looking to the future, assessing whether the convert will observe mitsvot. Since the majority of converts are not observant, only a convert who is highly likely to be committed in the future should be accepted. R. Sherman believed that the convert's future transgressions are indicative of the initial Beit Din's mistaken judgment. Alternately, R. Deichovsky looked at the present instead of trying to guess the future: is the candidate currently committed to observing mitsvot? This approach accepts the convert's commitment and intentions regardless of future action, when observance of mitsvot turns out to be more difficult than expected (see R. Mestbaum, *Tehumin* 32). According to this approach, the few seconds of immersion, during which there is a sincere desire to accept mitsvot, is sufficient; the following reality cannot negate the

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intentions expressed to the converting Beit Din, and the convert can be accepted.

Religious Zionist conversion rabbis rarely suffice with the definition of a few seconds of intent, and require indications of true and long-lasting sincerity to observe mitzvot. The tears of excitement and true joy in accepting God's presence in the life of the convert are indications of such sincerity. However, Beit Din does not presume to foresee the future, which carries greater challenges for a convert. The Sages have stated long ago that such difficulties can drive a convert back to old habits (*Yevamot* 47b and 109b; *Kiddushin* 70b; *Niddah* 13a; Rambam, *Issurei Bi'ah* 13; *Pesikta Rabbati* 22; *Yalkut Shimoni*, Ruth, 601; see also Josephus, *Against Apion* II:1). This is not dissimilar to the experience of many Jews on Yom Kippur, when true atonement is sought through prayer and fasting, but where people sometimes return to old habits after the holiday is over.

This approach is predominantly based on Rambam, who states that a convert who later goes back to his previous conduct is still considered a Jew, in addition to the consideration of what is said rather than the thoughts of the convert. This approach is strengthened in the Midrash (quoted in *Da'at Kohan* 153) which states that this was the case at *Har Sinai*: "R. Meir says: They stood at Sinai and said 'we will do and we will hear,' but in their hearts they knew they would be tempted by idolatry..."

The *Shulhan Arukh* (268) supports this position as well, and states that even if a convert returns to previous actions immediately after conversion, his conversion is not nullified. Thus, dishonest intentions render a conversion invalid; honest intentions followed by contradictory actions do not. The mindset at the time of immersion and conversion is the determining factor.

National Responsibility

In 1970 the Law of Return was created, and defined a Jew based on maternal ancestry or valid conversion, as per halakhic requirements. However, an additional clause enables Israeli citizenship to: The child or grandchild of a Jew (even if the child or grandchild is not halakhically Jewish); the spouse of a Jew; and the spouse of the child or grandchild of a Jew.

After the dissolution of the Soviet Union, hundreds of thousands of immigrants arrived in Israel and were awarded citizenship based on the third criterion. Tens of thousands of these immigrants arrived at an age when they were still fertile. 80% of conversion applicants are fertile women. Traditionally, halakhic responsa deal largely with women who wish to

convert for the purpose of marriage,²³ or in order to ensure the Jewish status of their children.

Special Conversion Battei Din were established to deal with this new reality; all but one were overseen by Religious Zionist rabbis. Conversion candidates were obligated to undergo 500 hours of study before conversion. Teachers and instructors reported the level of seriousness shown by the candidate. Candidates studied in over 100 conversion classrooms, where they attended courses 2-3 times each week for one year. The effects of this reality might have changed accepted criteria for conversion, and herein lies the current disagreement regarding conversion criteria.

Various dayanim of the Conversion Battei Din emphasize the issue of national responsibility, which R. Sherman discounts.²⁴ R. Yehuda Priss wrote (Introduction, *Piskei Din u-Maamarim be-Inyanei Giyyur* I) that it is our national responsibility “as those who care for the spiritual and physical future of Am Yisrael.” R. Shalom Rosenfeld wrote (*Tehumin* 17:223-224) that ever since the establishment of the state of Israel mixed couples have arrived in Israel, and this “demands an implementation of *et la’asot la-Hashem* [extenuating halakhic circumstances which permit special leniencies].”

Similarly, R. David Bass, who is a dayyan in the Conversion Beit Din, wrote in *Tehumin* 20 that preventing conversion today creates assimilation, and that conversion has become a national responsibility, since the division of the nation is a threat to its existence. Leniency in conversion has become a way of caring for the spiritual future of Am Yisrael.

R. Sherman cites this as one of his main reasons for disqualifying the dayanim who are guided by national responsibility, despite the fact that the majority of converts in such Battei Din remain “as non-Jews in conduct

²³ This consideration, which was considered problematic to the conversion process in the Talmudic era, is today a reason for leniency, for the purpose of ‘saving’ the partner.

²⁴ This concept is the basis for many rabbinic disagreements. The gemara in *Yevamot* 45a discusses whether the child of a Jewish mother and non-Jewish father is Jewish; the gemara states that there is no dispute regarding the prohibition of such a child marrying a kohen. However, the gemara later states explicitly that the child of a Jewish woman and a non-Jew is Jewish; here the gemara fails to comment on the child’s status with regard to marrying a kohen. The *Shulhan Arukh* (4:5; 4:19; 7:17) rules that such a child may not marry a kohen. The majority of posekim are lenient *post factum* (*Helkat Mebokek*, E.H. 4:3 and 7:24; *Beit Shemuel* 4:2; 7:39 based on Ramban and *Magid Mishneh*). The practical applications were discussed by contemporary posekim: see *Resp. Yabia Omer* VII E.H. 9; *Resp. Teshuvot ve-Hanhagot* II 581; *Resp. Iggerot Moshe* E.H. I 5. This is a significant element in the enacting of *Shemita* laws as well.

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as they were before, aside from some traditional Jewish actions, which they perform without any religious conviction.”²⁵

However, even among those who are stringent, such as *Resp. Devar Avraham* III:28 who disagrees with the *Abiezer* and states that the rule regarding thoughts is invalid in the case of conversion, there is a recognition of extenuating circumstances which necessitate leniency: “I am indecisive in this matter, for I know sometimes there is a great need for various reasons, and it is better to be lenient; however, leniency in some cases might lead to damage to general policy...”

Resp. Abiezer (III 28) considered the *hillul ha-Shem* factor, and wrote that conversion should be done quietly, and sometimes leniency should be enacted to prevent *hillul ha-Shem*, especially in the case of children. This idea is based on Rambam (*Resp.* 211), who wrote that when the alternative to converting a spouse will be a Jew remaining married to a non-Jew, sometimes Beit Din is obligated to convert leniently.

It is noteworthy that the responsibility toward Kelal Yisrael sometimes requires opposing considerations. The gemara in *Yevamot* 47b states that a convert is warned of all the punishments for transgressing in order to scare him away, since converts are difficult to deal with. Tosafot explain that God’s presence is most common among families of lineage, and converts therefore damage God’s presence. Even if we are reluctant to accept the words of Tosafot, we can derive from here the reluctance to take in converts who do not intend to observe mitzvot, which damages the nation. The emphasis should therefore be on the needs of Am Yisrael, considering the following:

- a. The significance of conversion to Am Yisrael is specifically relevant in the Land of Israel.²⁶ There is no reason for leniency in conversion outside of Israel. Sometimes there are extenuating circumstances which necessitate leniency, such as a Jew married to a non-Jew; however, such leniencies should be given with great caution not to encourage people to marry and then convert, since they know marriage could promote an easier conversion. The problem in Israel is on a larger scale and has long-term effects. There are too many people in Israel who look and act Jewish, who study and live among us; if these are not converted, eventually marriages will take place, whether in this generation or down the line.

²⁵ R. Sherman devotes a lengthy discussion to conversion documents which were issued when not everyone who signed the documents was present at the conversion and privy to its details.

²⁶ R. Rosen, *Akdmut* 24; *Ohev Ger* 43.

- b. Acceptance of mitsvot is crucial, but so is national responsibility. The latter can have an impact on two parameters: 1. Conversion according to *Beit Hillel*, with a demand for acceptance of all mitsvot, but also an understanding that some mitsvot will not be observed for reasons of human weakness (and not for idealistic reasons); and 2. Conversion based on the present desire of the convert to become Jewish and maintain a Jewish lifestyle, instead of the future. If the convert stands before the Beit Din and convincingly verbalizes his intentions, he should be accepted, even if in the future he might falter. If the rabbis see a sincere desire and excitement regarding joining the Jewish people,²⁷ the conversion is valid.

Conclusion

Halakhic sources are filled with ambiguity regarding the requirement to accept mitsvot as a prerequisite for conversion. The overwhelming majority of posekim, and definitely the majority of Ashkenazi posekim in recent generations, believe that accepting mitsvot is a requirement. Clearly the convert has to be sincere in his willingness to accept mitsvot. They are also in agreement that conversion for national reasons is invalid unless it is accompanied by the acceptance of mitsvot.

Additionally, one who has converted and observed mitsvot but later stopped leading an observant lifestyle is still considered a Jew.

Rabbinic authorities are in agreement that under normal circumstances conversion standards should be high; however, in present day Israel, with hundreds of thousands of non-Jewish children being born, leniencies regarding conversion should be considered. The main points of contention are as follows:

1. Manner of acceptance: Should an effort be made to encourage conversion among Law of Return immigrants, or should their acceptance be made only cautiously, as in the case of regular conversion?
2. Difficulty in observing mitsvot: Is the Beit Din required to inform a conversion candidate of each and every mitsva, or is informing the convert of the central mitsvot sufficient? Does the likelihood of transgression of certain mitsvot for reasons of human weakness (as opposed to ideological reasons) invalidate conversion?

²⁷ Ibid.

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3. Present or future: Is a sincere acceptance of mitzvot at the time of conversion sufficient, or can a conversion be invalidated by future non-observance of mitzvot?
4. Behavior post-conversion: Does a failure to observe mitzvot shortly after conversion invalidate the conversion, or is conversion absolute once mitzvot were accepted at the time of conversion, even if practically mitzvot were not observed? Should conversion under false pretenses be nullified nonetheless?
5. Annulment by another Beit Din: Can conversion by one Beit Din be annulled by another, or do we assume that no one knows the intentions of the convert other than the converting Beit Din?
6. *Post factum* conversion: In a case of *be-diAvad* (*post factum*), do we assume that when conversion was performed by a valid Beit Din, the conversion applies even in a case of dispute regarding the appropriate procedure *le-khatehila* (*a priori*)?
7. Invalidation of a Beit Din: Can a Beit Din be disqualified even with regard to conversion, when conversion can be performed in front of three laymen?
8. Invalidation of a Beit Din as a result of invalidating a dayyan: Is a dayyan who converted a person with a high probability of not observing mitzvot in the future disqualified, since he transgressed *lifnei ivver*? Can a lenient dayyan be disqualified despite reliance on lenient halakhic opinions, and the belief that he is in fact performing a mitzva?
9. Automatic invalidation of additional conversions: Are all conversions overseen by such a dayyan automatically invalidated, or can we rely on the lenient opinions regarding conversion in this case?

Controversies have always existed within the Orthodox community. However, the dispute regarding conversion has crossed some red lines. A halakhic disagreement, which results in disqualifying decent Torah observant dayyanim is preposterous. Calling them sinners, evildoers and heretics poses a serious injustice.

Personal Note

While I was writing this article, a modest, fully observant, religious convert came to see me. She shared with me her story, from seeking God at twelve and seeing Shabbat candles for the first time at eighteen to her final decision to convert.

When I asked her where she was converted, she mentioned the Beit Din invalidated by R. Sherman. He believes this righteous woman who

acts in full accordance with halakha is not Jewish, not because of any detail which relates to her conversion, but because he believed the dayyanim, who are God-fearing and observant, are invalid due to a halakhic debate about other converts. God forbid this should be accepted! A red line is crossed when such people are called sinners, evildoers, and heretics. A red line is crossed when a dayyan refuses to submit to the majority position, and continues to do so after the head of the Beit Din rejects his position.

Possible Solution

An innovative suggestion might offer a solution for modern-day conversion.²⁸ A convert is generally converted only after attending *ulpan*, a course of study in Jewish life, for around a year. Throughout the year of study, candidates perform mitsvot, and are adopted by religious families who accompany the process so that they can experience a religious atmosphere. Perhaps the completion of conversion should be dependent on three additional months in this atmosphere, which would ensure that the convert continues to perform mitsvot for three months after conversion. Alternately, the conversion process can be completed after nine months, but the certificate only given after an additional three months of observance in a suitable atmosphere. The influence of the family and the experience might lead to continued observance, but even if not, there will be absolute proof that the convert led a religious life for several months after converting.²⁹

It is noteworthy that opinions vary among rabbis in the Religious Zionist sector. I have presented the mainstream position of Religious Zionist conversion rabbis, but variations in the formulation of each rabbi can significantly impact practical matters. Additionally, as with many halakhic issues, there is often a difference between halakhic theory and practical application. There is much to be discussed and debated toward improving the conversion system. It is important to recognize the attempts of God-fearing Torah scholars to resolve this issue with regard for Halakha alongside concern for the future of Am Yisrael and the next generations.

²⁸ This suggestion was made by my friend R. Ze'ev Weitman *shlit"a*.

²⁹ If the conversion process is completed after nine months, the convert will be legitimately Jewish from a halakhic perspective; however, the absence of official certification will motivate continued study and religious observance. Most converts lead an observant lifestyle throughout the study process, and there is good reason to believe they would continue to do so until they receive official certification.

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I have presented two positions on appropriate conduct regarding conversion within Orthodox circles. The common denominator is the requirement for a full acceptance of mitsvot; however, the scope of the controversy goes far beyond accepted halakhic standards, resulting in a battle regarding the approach toward converting rabbis and nullification of conversion, a lack of willingness to accept the majority opinion, etc. These differences stem from two different perspectives on the needs of the individual and the needs of the community, and the red lines each of these positions is unwilling to cross.