

## Section 1: Early history to modern times

### Earliest Form of "Conversion" was Assimilation

The Biblical Israelites had no concept of religious conversion because the notion of a religion as separate from a nationality was incoherent. The words "Jews" and "Judaism" did not exist. Abraham was called an *ivri*, a Hebrew, and his descendants were known either as Hebrews, Israelites (the children of Israel), or Judeans. These words are nationalistic terms that also imply the worship of the God of Abraham.

While there were no "conversions," many non-Israelites joined the Israelite community. If female, they did so by marriage or, for male and female, acceptance of the beliefs and practices of the community. In this sense, assimilation is the earliest form of conversion. Abraham and his descendants absorbed many pagans and servants into their group, greatly increasing the size of the Israelite people. We also assume the males were circumcised.

Following the giving of the Torah at Sinai, the tribes were circumcised. The assumption was that the children of the non-Israelites who joined the nation as it left Egypt also were circumcised and accepted into the nation. Next they increased their numbers from among non-Israelite peoples as they conquered the land as quoted from Deuteronomy 21:10-14:

“When you go out to war against your enemies, and the LORD your God gives them into your hand and you take them captive, and you see among the captives a beautiful woman, and you desire to take her to be your wife, and you bring her home to your house, she shall shave her head and pare her nails. And she shall take off the clothes in which she was captured and shall remain in your house and lament her father and her mother a full month. After that you may go in to her and be her husband, and she shall be your wife. But if you no longer delight in her, you shall let her go where she wants. But you shall not sell her for money, nor shall you treat her as a slave, since you have humiliated her.

However, we have no mention as to how they were treated commonly except as “the stranger” or “Ger” as defined in the Torah. In that sense Ger may best be translated as “Resident Alien”.

Gerim often assimilated into the Israelite people by intermarriage. For instance, pagan women who married Jewish men automatically adopted their clan, and thus their religious views. The marriages that resulted were seen as positive because pagans would turn from idolatry to God through such marriages.

Of course our best example of this comes from the acceptance and process of conversion in the **Book of Ruth** where she says, "Entreat me not to leave you, or to turn back from following you; For wherever you go, I will go; And wherever you lodge, I will lodge; Your people shall be my people, and your God, my God. Where you die, I will die, and there will I be buried. The LORD do so to me, and more also, if anything but death parts you and me." (Ruth 1:16–17 NKJV)

Once someone becomes a ger (sometimes translated as Proselyte) they could become one of two types:

*[Ger tzedek](#) (righteous proselytes, proselytes of righteousness, religious proselyte, devout proselyte)* A **righteous proselyte** was a [Gentile](#) who had converted to Judaism, was bound to all the doctrines and precepts of the Jewish economy, and was considered a full member of the Jewish people. They were to be [circumcised](#) and immersed in a [mikvah](#) should they wish to eat of the [Passover](#) sacrifice.

*[Ger toshav](#) (resident proselyte, proselytes of the gate, limited proselyte, half-proselyte)* A **gate proselyte** was a "resident alien" who lived in the [Land of Israel](#) and followed some of the customs. They were not required to be circumcised nor to comply with the whole of the [Torah](#). They were bound only to conform to the seven precepts of Noah, the [Noahide Laws](#): do not [worship idols](#), do not [blaspheme God's name](#), do not [murder](#), do not commit [immoral sexual acts](#), do not [steal](#), do not [tear the limb from a living animal](#), and do not fail to establish [courts of justice](#).

## Forced conversions

Forced conversions are rare, but are reported to have happened under the [Hasmonean Empire](#). The Gentile Galileans, Samaritans and Idumaens were forced to convert to Judaism, either by threats of exile, or threats of death, depending on the source as reported by Josephus, and Aristobulus. Of course, it is likely that forced converts were also subjected to circumcision.

## Second Temple Period

As we get into the late Second Temple period, interest in and conversion to Judaism became a widespread phenomenon possibly because the economic conditions were better within the Israelite Kingdom than without. Hence, there were more people interested in becoming Jewish. By the year 0, there were estimated to be 5 million Jews in the world. By the year 1000 C.E., there were estimated to be only one million.

## In the Talmud

Following the destruction of the Second Temple, our earliest Sages (70-220CE) the Tanna'im began to formalize the procedure by which gentiles could become Jews. Although there was disagreement among the Sages as to what was ritually required for conversion, the ultimate conclusion was circumcision for a male and ritual immersion for a female both under the supervision of a rabbinical court of 3. The court would also determine the nature of the proselyte's religious commitment and would instruct him or her in certain Laws of the Torah. (BT Yev. 46a-47a). The thrust of the tradition was to equalize the status of the convert; "There shall be one law for the citizen and the stranger" (Ex 12:49).

The [Amora'im](#) (200-500 C.E.) followed the tanaim and, who continued the development of the [Talmud](#), set out three requirements for a [conversion](#) to Judaism ([Keritot](#) 8b), which must be witnessed and affirmed by a [beth din hedyot](#) composed of three Jewish males above the age of thirteen (they do not need to be rabbis):

[Circumcision](#) ([Brit milah](#) or [hatafat dam brit](#)) for men<sup>[3]</sup>

- Immersion ([tevilah](#)) in a ritual bath ([mikveh](#)) for both men and women.
- Offering a certain sacrifice ([korban](#)) in the Temple (the [Beit Hamikdash](#)) – this requirement is deferred until the Temple is rebuilt.

Subsequently, although not stated in the Talmud, the consensus of *halakhic* commentators also required a convert to understand and accept the duties of the [halakha](#), the classical Jewish religious law. THIS IS A BIG POINT from a historical perspective that reverberates today as we shall see.

## Early debate on requirement for circumcision

According to the [Jewish Encyclopedia](#) article on circumcision of [proselytes](#),<sup>[18]</sup> in the 1st century CE, before the [Mishnah](#) was edited, the requirement for circumcision of [proselytes](#) was an open issue between the [zealots](#) and liberal parties in ancient Israel. [R. Joshua](#) argued that besides accepting Jewish beliefs and laws, a prospective convert to Judaism must undergo immersion in a [mikveh](#). In contrast, [R. Eliezer](#) makes circumcision a condition for the conversion. However, the opposing view is supported in the [Babylonian Talmud](#): "A male convert who has been immersed but not circumcised, or circumcised but not immersed, is a convert."

## Over the Centuries

For centuries, conversion was not an issue in Judaism because conversion to Judaism was prohibited by Law. For example, in 1215, the Fourth Council of the Lateran as convened by Pope Innocent III prohibited a Jew from converting Gentiles. In many Moslem lands; it was a capital crime to convert a Moslem. So conversions were rare until the 19<sup>th</sup> century as a result of the Enlightenment movement.

## Section 2: Modern Days

The operative principal for generations was that a potential convert went to a Rabbi (who was Orthodox until modern times) to be accepted into the community. Based on Naomi telling Ruth to return to her people three times, Rabbi's rejected an applicant three times. Nowadays, most rabbis no longer follow this tradition. Neither the [Rabbinical Council of America](#) nor the [Rabbinical Assembly](#), the leading American [Orthodox](#) and [Conservative](#) organizations, suggest taking this action in their conversion policies, while the [Central Conference of American Rabbis](#) (CCAR) and [Union for Reform Judaism](#) (URJ) actively oppose its practice. If the applicant persisted, they were brought into the process of education and experiencing the community; ultimately brought before a Bet Din of three rabbi's and or respected individuals within the community; and were either accepted or rejected mostly on the say of the initial sponsoring Rabbi's opinion.

## Denominational Viewpoints

# How do the various branches of Judaism approach conversion today?

## Conservative

[Conservative Judaism](#)'s approach to the validity of conversions is based on whether the conversion procedure follows the traditional view of the Rabbi as decisor (Mar d'atra) relying on his or her judgement, his knowledge of the published responsa within the Rabbinical Assembly and conversations with other Rabbi's and members of the Laws and Standards Committee. The Conservative approach does not rely on standardized rabbinic norms or the nature of the obligations the convert undertakes. Specifically, their requirements include:

1. Circumcision and Mikveh are required
2. Conversion classes are common and often of one year's length
3. Conversion for the purpose of marriage is valid.
4. A candidate for conversion is not invalidated where there is suspicion that he (she) will not observe all the commandments.
5. A Bet Din composed of Rabbi's is preferable.
6. In response to the tremendous variations that exist within the Reform communities, the Conservative Jewish movement attempted to set a nuanced approach. The Conservative [Committee on Jewish Law and Standards](#) has issued a [legal opinion](#) stating that Reform conversions may be accepted as valid only when they include the minimal Conservative halachic requirements of milah and t'vilah, appearance before a Conservative Bet Din, and a course of Conservative study. (*Proceedings of Committee on Jewish Law and Standards: 1980–1985*, pp. 77–101.)
7. Rabbi Reuven Hammer has authored a Teshuva on Conversion that has been approved by the Law and Standards Committee that goes into some detail to explain the Conservative position in keeping consistent with halacha, It is attached as Appendix 3.

## Reform

The requirements of [Reform Judaism](#) for conversions are different. The denomination states that "people considering conversion are expected to

study Jewish theology, rituals, history, culture and customs, and to begin incorporating Jewish practices into their lives. The length and format of the course of study will vary from rabbi to rabbi and community to community, though most now require a course in basic Judaism and individual study with a rabbi, as well as attendance at services and participation in home practice and synagogue life." This further was confused when the Reform movement recognized that Judaism could be brought down through the paternal line as well as the maternal one. Thus, American Reform Judaism does not require ritual immersion in a mikveh, circumcision, or acceptance of mitzvot as normative. Appearance before a [Bet Din](#) is recommended, but is not considered necessary. Converts are asked to commit to religious standards set by the local Reform community.

## **Reconstructionist**

Reconstructionist Judaism values the symbolism of the conversion ritual and encourages those who were not born of Jewish parents and who wish to convert to undergo this rite of passage. The course of study for a prospective convert, which is determined by the rabbi and congregation the individual is working with, includes history, observance and beliefs, and learning how to make educated choices. The completion of the process is marked by ritual immersion for men and women; circumcision or "hatafat dam brit" (symbolic drop of blood) for men (unless there exists an extraordinary physical or emotional hazard); a Bet Din - a dialogue with three knowledgeable Jews, at least one of whom is a rabbi; and often a public welcoming ceremony.

## **Orthodox**

In general, branches of Orthodox Judaism consider non-Orthodox conversions either inadequate or of questionable halachic compliance, and such conversions are therefore not accepted by these branches of Judaism. They require many stipulations beyond circumcision, immersion, and a Beit Din. They are summarized in a policy statement published by the Rabbinical Council of America in 2007 titled "Geirus Policies and Practices". Significant excerpts from that policy are attached as Appendix 1 and, for purposes of this discussion, should be reviewed at this point. For those considering living in Israel, this document is the primary policy for those who have or wish to convert.

## **Chabad**

Chabad uses the local orthodox Beth Din structure, but there are other issues that affect whether a potential convert from Chabad channels will be accepted by the Beit Din. These include viewing Rabbi Schneerson as the Messiah and an even more extreme view that believing he is G-d. If so, the potential convert is rejected. Also, a Chabad Rabbi can be the sponsoring Rabbi, but generally, no Chabad rabbi's are allowed to serve on the Beit Din. Also, because there are many Chabad oriented places where someone can learn how to respond to a question from the Bet Din that will attempt to cushion their enthusiasm for Rabbi Schneerson, potential converts from Chabad are scrutinized carefully.

Conversely, both Conservative and Reform Judaism accept the stringent Orthodox conversion process as being valid. However, Since 2008, Haredi Orthodox religious courts in Israel have been rejecting conversions from some other Orthodox rabbis, in addition to Reform and Conservative conversions, as not being stringent enough. This is a whole other quandary which we shall now discuss.

### **Section 3: Attempts to resolve the "Who is a Jew?" issue and clarify conversions**

With the arrival in the 1880's and the beginning of Zionism, the question of who is Jew began to move to the foreground. Under the British Mandate as Jewish settlement increase, this question was posed to Rabbi Avraham Isaac Kook, the first Ashkenazic Chief Rabbi of the British Mandate for Palestine (1865-1935) (and a religious Zionist. Based on arguments in Talmud, In the opinion of Rav Kook, a convert must be willing to undertake a life of Mitzvot; in other words, an Orthodox lifestyle. His successor was Rabbi Yitzhak Herzog who, from 1936-1948 was [Ashkenazi](#) Chief Rabbi of the [British Mandate of Palestine](#) and similarly of [Israel](#) after its independence in 1948 to 1959'. He was also a religious Zionist and felt about conversion similar to Rav Kook. Hence they both looked somewhat askance at potential converts. On the other hand, Rabbi Ben Zion Uziel was from 1937-1948 the Sephardi Chief Rabbi of the [British Mandate of Palestine](#) and after its

independence in 1948 until 1954. He took an opposing position that conversion was the best tool to avoid the sin of intermarriage and ruled that it was a requirement of a Beth din to convert someone even though it was for the purpose of marriage so as to avoid intermarriage and out of interest of the future children. He even went further in that he did not require, although he did encourage the potential convert to live an orthodox lifestyle provided the children were raised as Jews

With the actual establishment of the state of Israel, the question of Who is a Jew became a real “boots on the ground” issue as Jews from around the globe came to the land from many different traditions, places and theologies. For example, Ethiopians had no knowledge of the Talmud. Or what about Russian Jews who had no knowledge of Judaism other than a family history? In specific, the issue has become even more timely as hundreds of thousands of immigrants from the Former Soviet Union (FSU) who are not Jewish according to *halakhah* (Jewish religious law) came to live in Israel. These immigrants were accepted under the Law of Return, which allows any prospective immigrant with at least one Jewish grandparent or with a Jewish spouse to be registered as a Jew for purposes of citizenship. These immigrants, therefore, are "Jewish" by nationality, but not according to religious law. The answer is that they are still searching for the answer. And, there of course, politics enters in. For example: Because in Israel these newcomers are not considered halakhic Jews--even though they oftentimes experienced anti-Semitism in the FSU--they cannot be married by a rabbi or be buried in a Jewish cemetery. Civil marriage, such as a proxy wedding by mail or a trip to Cyprus can be arranged, yet they feel themselves ostracized. Especially poignant testimony to their fringe status are the stories of immigrant soldiers, killed during military service in the Israel Defense Forces, who died for their country but must be buried in the non-Jewish section of the cemetery.

Since those early years, many efforts have been made to find common ground. The first was in 1950.

## **1950s: proposed joint beth din**

In the 1950s Rabbi [Joseph Soloveitchik](#) and other members of the [Rabbinical Council of America](#) engaged in a series of private negotiations with the leaders of Conservative Judaism's [Rabbinical Assembly](#), including [Saul Lieberman](#); their goal was to create a joint Orthodox-Conservative



national beth din for all Jews in America. It would create communal standards of marriage and divorce. It was to be modeled after the Israeli Chief Rabbinate, where all the judges would have been Orthodox, while it would have been accepted by the larger Conservative movement as legitimate. Conservative rabbis in the Rabbinical Assembly created a *Joint Conference on Jewish Law*, devoting a year to this effort.

For a number of reasons, the project did not succeed. According to Orthodox Rabbi Bernstein, the major reason for its failure was the Orthodox rabbis insisted that the Conservative Rabbinical Assembly expel Conservative rabbis for actions they took before this new beth din was formed, and the RA refused to do so. According to Orthodox Rabbi Emanuel Rackman, former president of the RCA, the major reason for its failure was pressure from [haredi](#) Orthodox rabbis, who held that any cooperation between Orthodoxy and Conservatism was forbidden. In 1956, Rabbi [Harry Halpern](#), of the *Joint Conference* wrote a report on the demise of this beth din. He writes that negotiations between the Orthodox and Conservative were completed and agreed upon, but then a new requirement was demanded by the RCA: The RA must "impose severe sanctions" upon Conservative rabbis for actions they took before this new beth din was formed. Halpern writes that the RA "could not assent to rigorously disciplining our members at the behest of an outside group." He goes on to write that although subsequent efforts were made to cooperate with the Orthodox, a letter from eleven Rosh Yeshivas was circulated declaring that Orthodox rabbis are forbidden to cooperate with Conservative rabbis.

## **Some of the other efforts included:**

### **1978–1983: Denver program**

From 1978 to 1983 in [Denver, Colorado](#), a joint Orthodox, Traditional, Conservative and Reform Bet Din was formed to promote uniform standards for conversion. Over a five year period they performed some 750 conversions to Judaism. However, in 1983 the joint Beth Din was dissolved, due to the unilateral American Reform Jewish decision to change the definition of Jewishness to include patrilineality. In addition, the designation of Denver as a pilot community for a new Reform out reach effort to recruit converts, convinced the Traditional and Conservative rabbis that they could no longer participate in the joint board.

## **1980s: proposed Israeli joint beth din**

In the 1980s Orthodox Rabbi Norman Lamm, Rosh Yeshiva of [Yeshiva University](#), along with other American and Israeli Orthodox rabbis, worked with Conservative and Reform rabbis to come up with solution to the "Who is a Jew?" issue. However, this effort fell apart.

## **1989-1990: Prime Minister Yitzhak Shamir**

In 1989 and 1990 Israeli Prime Minister [Yitzhak Shamir](#) spearheaded an effort to create a solution to the "Who is a Jew?" issue. A plan was developed by Israeli Cabinet Secretary [Elyakim Rubenstein](#), rabbis from Conservative, Reform and Orthodox Judaism, and Norman Lamm the Preident and Rosh Yeshiva of Yeshiva University. The goal was to create a joint panel that interviewed people who were converting to Judaism and considering making *aliyah* and would refer them to a beth din that would convert the candidate following traditional halakha. All negotiating parties came to agreement that

1. Conversions must be carried out according to halakha
2. the *beth din* (rabbinic court) overseeing the conversion would be Orthodox, perhaps appointed by the Chief Rabbinate of Israel, an
3. there would be three-way dialogue throughout the process.

Many Reform rabbis took offense at the notion that the *beth din* must be strictly halakhic and Orthodox, but they acquiesced. However, a number of leading haredi rabbis issued a statement denouncing the project, condemning it as a "travesty of halakha" effectively destroying this effort

## **1997: Neeman Commission proposal**

In 1997 the issue of "Who is a Jew?" again arose in the [State of Israel](#), and Orthodox leaders such as Rabbi [Norman Lamm](#) publicly backed the Neeman commission, as chaired by Prof. Yaacov Ne'eman. The Ne'eman Commission decided that a conversion institute would be established jointly by members of the Reform, Conservative, and Orthodox movements.

Teachers would come from all three streams, but the actual conversion would be left to the Orthodox courts. And so the Institute for Jewish Studies was born, which today offers 500 classes to help encourage Jewish study as well as conversion. These classes educate both Jews and non-Jews. The final step of conversion, however, is moving slowly and is bottlenecked, with only a few hundred FSU immigrants being converted annually.

## **Section 4: The 2000s: Controversy, Conversion Annulments and Confusion**

So, this all came to a head in 2008 in a Haredi-dominated [Badatz](#) (Court of Justice) in Israel annulled thousands of conversions performed by the [Military Rabbinate](#) in Israel. For many years, the Haredi element had difficulty with the state sponsored Conversion Authority headed by Rabbi Haim Druckman. However, The [Chief Rabbinate of Israel](#), which is the only legal authority, backed by one of the major Rabbis Rabbi [Ovadia Yosef](#), ruled against this haredi decision, making it invalid. Of course, this added more controversy.

While that controversy flared, Friday, May 02, 2008, the Conversion Crisis Boiled Over: As reported on Israeli Television and in newspapers headlines across the country:

“All conversions performed since 1999 by Rabbi Chaim Avior and Rabbi Chaim Drukman, who heads the [Israeli Conversion Court](#), must be disqualified,” the Supreme Rabbinical Court in Jerusalem concluded earlier this week, while discussing an appeal made by a woman whose 15-year-old conversion was annulled by the Ashdod Rabbinical Court, thus naming her children non-Jewish. This is referred to as the Sherman decision after Judge Sherman.

In the 50-page verdict, Judges Sherman, Izirer and Scheinfeld it said: "First, all conversions performed since 1999 by Rabbi Chaim Avior and Rabbi Chaim Drukman must be disqualified; second, conversions can be retroactively annulled for those who are not observant."

As a point of information, [Rabbi Haim Drukman](#) began working for the Prime Minister's Office as head to the conversions court on February 9, 2004. His employment contract was renewed periodically and ended on December 31, 2009. He was noted for his contribution to promoting conversions in Israel and for his willingness contribution to promoting

conversions in Israel. Under his authority close to 50,000 conversions have been made, However, he was the target of many Haredi Rabbi's who disagreed with on his methodology for conversion and his unwillingness to accept the concept of annulment. Here are his views on the situation:

“There are people who won't let the facts confuse them,” he angrily said of the Lithuanian haredi claim that most military converts do not go on to maintain an observant lifestyle, which would prove their intent was not pure and therefore their conversions should be annulled.

“There is no such data, and even if there were, it wouldn't change the validity of the conversions. Conversions are a one-way operation. A convert who does not keep mitzvot will be punished like a Jew who does not keep mitzvot,” he said “All our conversions are according to pure Halacha, as passed down from generation to generation,” Druckman stressed. “Whoever comes to undergo a conversion does it because he or she really wants to be Jewish. They are not lacking anything [as Israelis].” He was speaking of immigrants from the former Soviet Union who made aliya under the Law of Return but were not Jewish according to Halacha.

"Society isn't pushing them to convert," he continued. "They already received the benefits of olim."

Druckman accused doubters among the haredim of “caring only about their own,” and not about the Jewish people. “Their sons and daughters won't ever marry a convert anyway,” he said.

Now enter a number of rabbi's on either side of this issue hurling opinion pieces back and forth. One of the most noted is Rabbi Haim Amsalem who published two massive and erudite volumes on conversion, *Zera Yisrael* (Seed of Israel) and *Mekor Yisrael* (Source of Israel). These books are *sefarim* (traditional rabbinic texts). The former work contains Amsalem's halakhic discussion of a host of conversion-related matters, while *Mekor Yisrael* is an invaluable anthology that reproduces in full the halakhic writings and responsa of the more than 120 rabbinic authorities upon whom Amsalem drew in writing *Zera Yisrael*.

What makes Rabbi Amsalem's position on these matters so important is his prominence on the Israeli political scene. He is the 52-year-old Algerian-born Shas party politician who has in the past couple of years outraged other ultra-Orthodox Jews, including the spiritual head of the party he represents, Rabbi Ovadia Yosef, with his heterodox views. He has, for instance, denounced the "shameful" state-subsidized studies of young adult Haredi (ultra-Orthodox) men who remain in yeshiva despite having little talent for Torah study. And he has characterized Rabbi Sherman's position as halakhic grandstanding "at the expense of thousands of converts from the seed of Israel, whom he offends, particularly IDF soldiers who give their lives, even for him." For such heresies, Amsalem has been subjected to a torrent of abuse from the Haredi world. He was repudiated by Rabbi Yosef and expelled from the Shas party in November 2010, but, as we shall see, he has by no means left the public stage.

As Amsalem emphasizes, the Russian immigrants with whom he is most concerned speak Hebrew and lead lives that are indistinguishable from secular, or even moderately traditional, Israeli Jews. What worries him is that marriages between these immigrants and those who are indisputably Jewish "multiply daily." He fears that this sociological fact will soon produce a distinction between what it is to be an Israeli and what it is to be a Jew within the State of Israel, forcing a potentially catastrophic split between the categories of nationality and religion in the country.

Focused as he is on an Israeli problem, Rabbi Amsalem confines his analysis and proposals of *Zera Yisrael* to the Israeli situation. He does not consider them to be applicable to the Diaspora, nor to persons born of two Gentile parents anywhere, but only to Israelis born of non-Jewish mothers and Jewish fathers, whom he applauds for choosing to shape and share the destiny of the Jewish people. Describing them as *zera yisrael* (seed of Israel), he argues that their act of *aliyah* (immigration to Israel) bespeaks their desire to "return to the rock from which they were cleft." Consequently, he argues that Jewish law holds that it is "fitting to love them and bring them near" when they come to convert, and this attitude "obligates us to be as lenient as possible within the parameters of Jewish law" in admitting them into the Jewish people. Moreover, he convincingly demonstrates that retroactive annulment is virtually unprecedented in the history of halakha.

Rabbi Amsalem believes that the present situation constitutes a halakhic "state of emergency." At such moments, many earlier authorities have relied

upon Maimonides in applying more lenient legal standards *de jure* that might otherwise only be applied *de facto*. Amsalem cites the ruling of famed proto-Religious Zionist Rabbi Zevi Hirsch Kalischer who, in 1864, labeled children born of Jewish fathers and non-Jewish mothers as *zera kodesh* (holy seed) who should be converted to Judaism at the directive of the father. He also cites a responsum from the 16<sup>th</sup>-century sage Rabbi David ben Zimri, known as the Radbaz. In dealing with the descendants of *anusim*, or Marranos, who had been forcibly converted to Christianity but secretly retained an attachment to Judaism, the Radbaz ruled that full "acceptance of the commandments" was not required.

### **Amsalem on Conversion for Marriage**

*Zera Yisrael* also addresses the problems that arise when a conversion is sought "for the sake of marriage." While Jewish law seemingly forbids such conversions for an ulterior motive (see *Shulchan Arukh, Yoreh Deah* 268:12), Amsalem points out that a number of rabbis have permitted conversion in such cases. Those who do so rely in part upon the Talmudic story told of R. Hiyya who allowed the conversion of a beautiful courtesan who admitted that she was converting to marry one of his students. As do others, Rabbi Amsalem couples this story from tractate Menachot with the tale in Berakhot 31a about Hillel permitting a man to convert though he had come with the outrageous (and impossible) motive of becoming the High Priest. The Tosafot (medieval commentators on the Talmud) explain that both R. Hiyya and Hillel were able to overlook such non-spiritual motivations because they recognized that the converts in question would ultimately come to embrace Judaism wholeheartedly and selflessly. Consequently, a legal principle, "All depends upon the judgment of the rabbinic court," emerged that grants a rabbinic court broad discretion in matters of conversion, and Amsalem shows that this principle has been widely invoked by rabbinic authorities throughout history in cases of conversion.

### **Amsalem on partial acceptance of the commandments**

Amsalem addresses the question of whether Jewish law can possibly rest content with a "partial acceptance" of the commandments on the part of the would-be convert. In a remarkable paragraph, he states that the requirement of "acceptance of the commandments" is actually "not a part of the conversion process in the same way that circumcision and immersion are."

Rather, each rabbinic court convened for purposes of conversion must consider what the circumstances are that motivate each would-be proselyte to convert to Judaism. While there is surely no obligation on the part of the rabbinic court to perform a conversion in every instance, the case of Hillel cited above as well as decisions rendered by many rabbis, including 19<sup>th</sup>-century authorities Rabbi Eliyahu Guttmacher of Hungary and Rabbi David Zevi Hoffmann of Berlin, show that great rabbis have allowed conversions when they believed them to be in the best interests of the Jewish people even in instances where they knew that such converts were unlikely to become fully observant.

On this view, such a convert must certainly affirm the oneness and unity of God as well as reject idolatry and his former religion. Furthermore, in accord with the classic Talmudic discussion of conversion in tractate Yevamot 47a-b, the convert must receive instruction in "some of the minor and some of the major commandments," but he or she need not understand that this entails a commitment to observe all the commandments, nor is the convert obligated to make an explicit declaration to that effect during the conversion process. Amsalem does say that if it is understood that the aspiring proselyte has a principled intent not to observe the commandments *at all*, then he should not be converted. Nevertheless, even here he notes that if such a conversion is performed, then it is *de facto* valid and cannot be annulled. Here, along with the *Shulchan Arukh*, he relies upon Maimonides:

A convert whose motives were not investigated or was not informed about the commandments and their punishments, but was circumcised and immersed in the presence of three laymen, is a convert. Even if it becomes known that he became a convert for some ulterior motive, he has exited from the Gentile group once he was circumcised and immersed. However, he should be regarded with skepticism until his righteousness becomes apparent. Even if he returns to worshiping idols, he is an apostate Israelite, whose betrothal is valid. (Laws of Forbidden Intercourse 13:17)

Although it seems clear that Maimonides is categorically rejecting both the absolute necessity of accepting all of the commandments and the possibility of retroactive annulment, Rabbi Sherman and his rabbinic allies manage to read this passage as vindicating their position.

Rabbi Amsalem concludes that "in our time there are important and weighty reasons" for performing conversions for Israeli citizens who are the descendants of Jewish fathers alone—the unity of the entire Jewish nation depends upon the performance of such conversions. "Therefore, rabbinic courts are now obligated to accept these converts even when we know that they will not fulfill all of the commandments." This will facilitate the entry of Russian immigrants and their children into the Jewish people "under the wings of the Divine Presence." The courts, meanwhile, should "hope that the light that is in Torah will shine upon them" and ultimately bring these Jews to a full observance of the commandments.

And while Rabbi Amsalem is very careful in his works to circumscribe the application of his research and rulings to converts born of a Jewish father and non-Jewish mother who live in Israel, the force and substance of his arguments and scholarship extend far beyond these limits, and could well allow other Orthodox rabbis in the Diaspora as well as in Israel to follow the logic of his arguments to justify a more accommodating approach to conversion in general.

### **Opposition to Rabbi Amsalem**

Whether that will in fact be the case surely remains to be seen. Rabbi Amsalem's opponents, however, have already made known their fierce disagreement with what he has written in *Zera Yisrael*. On May 20, 2010, *Yated Ne'eman*, the house organ of the United Torah Judaism party, ran on its front page a circular signed by the heads of the Ashkenazic Edah Ha Chareidis (ultra-Orthodox community) asserting that there was no halakhic justification whatsoever for Amsalem's positions. The authors contended that only a complete acceptance of the yoke of the commandments would permit inclusion into the Jewish people. A "convert," the circular maintained, who fails to make such an affirmation, regardless of any conversion ceremony performed under the aegis of any rabbi or rabbinic court, remains "a complete Gentile" (*goy gamur*) whether both parents are Gentile, or whether "the mother alone" is a non-Jew. Anyone who offers an opinion to the contrary is, by definition, incompetent (*eino bar hora'ah klal*). Indeed, such a man is "a complete heretic" (*apikoros gamur*). Although Rabbi Amsalem was not mentioned by name, an editorial, printed immediately under the declaration, reported that the *gedolei yisrael* (the great Torah Sages of our time) had expressed unalterable opposition to Amsalem's claim that Jewish law possesses sufficient latitude to sanction



conversion based on a "partial acceptance of the commandments." Significantly, the newspaper refused to identify Amsalem as a rabbi, choosing instead to refer to him simply as "MK." (Member of Parliament)

### **The Impact of the Arguments**

Although it might seem that the argument between Amsalem and his Haredi opponents can be reduced to a political struggle over the mechanisms of conversion in Israel, I think that it actually represents much deeper disagreements about Judaism, Jewish peoplehood, and the Zionist enterprise. From the perspective of Amsalem's Haredi opponents, we Jews are a people only by virtue of our Torah. Conversion to Judaism is, therefore, only possible when a Gentile embraces the duty thrust upon all Jews, forever, to observe all the 613 commandments that our tradition asserts were revealed by God. Anything less is unacceptable.

There is intellectual and historical precedence for this stance. As my teacher Jacob Katz pointed out in a brilliant chapter of his *Out of the Ghetto*, some of the 19th-century predecessors to contemporary Haredi authorities were tempted to rule that Jews who rejected the classical Jewish religious belief in revelation at Sinai along with halakhic practice were not Jews at all. They would have resolved their disputes with these heretics by defining them as beyond the borders of the Jewish people. However, the "quandary" these rabbis confronted was that Jewish law clearly states that one born of a Jewish mother is uncontrovertibly a Jew, and, as the Talmud states in tractate Sanhedrin, "A Jew, even when he sins, remains a Jew." Katz entitled the chapter "Conservatives in a Quandary." In the case of would-be converts, the same quandary does not exist, at least for present-day Haredi authorities.

### **Conclusion**

His supposed heresy notwithstanding, Rabbi Amsalem, no less than the Haredim who savage him, affirms the belief that God revealed the Torah—both Written and Oral—to the Jewish people. Indeed, this is why Amsalem would never countenance the acceptance of conversions conducted under the supervision of Reform, Conservative, or Reconstructionist rabbis. But this should not obscure the fact that he has a substantively broader conception of Judaism than do his Haredi colleagues. For Amsalem, not only religion, but peoplehood is an indispensable component of Judaism. As the paradigmatic proselyte Ruth states to her mother-in-law Naomi when she embraces

Judaism in the Book of Ruth, "Your people will be my people, your God my God." This is what allows a traditionalist with Zionist commitments such as Amsalem to view the Russian immigrants, who have pledged their very lives and those of their children to share in Jewish fate and destiny as citizens of the Jewish state, as being of the seed of Israel.

He encourages and tries to facilitate the conversion of non-Jews of Jewish ancestry to Judaism because his conception of the indivisibility of *leum* (nationality) and *dat* (religion) compels him to be inclusionary. His internalization of a Zionist ethos causes him to regard immigrants who constitute *zera yisrael* as part of the warp and woof of the Jewish people and he therefore holds that the need to convert them under religious auspices to Judaism is a necessity fully in keeping with Jewish law.

In *Zera Yisrael* and *Mekor Yisrael*, Rabbi Amsalem leaves no doubt as to what a clear-sighted view of conversion in Israel requires or where the present disastrous policies are leading. Though expelled from Shas, he has not retreated from politics. Instead, he has become the founder of a new party, Am Shalem (The Whole People). When Amsalem established this party, he wrote:

At a time like this, another type of leadership is required [in the Orthodox community] . . . Reality requires us ... to struggle with the challenges that stand at the threshold of the State of Israel . . . The Am Shalem Movement promises to return sanity and moderation to the Haredi community.

## **While all this is going on Rabbi Druckman's Conversions Upheld:**

On 4 -25-2012, The Israeli Supreme Court ruled that the state will accept all conversions by Rabbi Haim Druckman and the special conversion courts in Israel.

However, this ruling will likely not stop the argument. One unique methodology to get away from the difficulties of conversion particularly for those from the former Soviet Union is for organizations like Shorashim to verify their Jewish identity by sending envoys to the various cities to search records and interview people particularly looking for birth, marriage and

death records. It takes 3 pieces of evidence to confirm one as a Jew in Israel. Because this evidence can be used to prove a number of relatives, it is a very expeditious method and is much quicker than the conversion process. Lurking behind the whole process is the fact that over 1.1 million self acknowledged Jews left the Soviet Union, many with no documentation even though they survived 70 years of official communist restraints on religious practice. Now only to find themselves in a religious environment that could result in the negation of them and their children as Jews. Hopefully, the more enlightened Rabbis like Rabbi Amsalem will be successful in compelling the State of Israel and the religious population to a complete resolution of this problem sooner than later as too much time has passed already.

In Appendix 2, I have placed an article on this whole subject by a Yeshiva student whose mother had a conservative conversion, When he went to Israel to study, he had to undergo an Orthodox conversion, I find his perspective most interesting and hope that you will read it.

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“Loving Truth and Peace,” Rabbi Marc Angel

Geirus Policies and Standards

Governing The Network of Regional Batei Din for Conversion under the auspices of The Rabbinical Council of America and The Beth Din of America

Adopted April 30, 2007 Revised November 28, 2007

Book of Ruth

Etz Chayim pg 1382

The Rabbinical Assembly website; articles on conversion

The Rock from Which They Were Cleft

by [DAVID ELLENSON](#) as copied from The Jewish Review of books site

ResponsaForToday.com; Rabbi Tuvia Friedman

Approved Unanimously 5749 Schechter Institute and the RA

Jewish Reconstructionist Federation.com

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“A Charitable Approach”, The Jerusalem Post, Feb 2-9, 2012

This paper has been prepared by Lowell Cordas for a drash at Congregation B’nai Torah, Olympia, Wa.; a conservative congregation, 5-28-2012

## **Appendix 1: Geirus Policies and Standards, excerpted Governing The Network of Regional Batei Din for Conversion under the auspices of The Rabbinical Council of America and The Beth Din of America**

**Adopted April 30, 2007 14 page original document  
Revised November 28, 2007**

**1. Introduction:** The Rabbinical Council of America (RCA) and the Beth Din (religious courts) of America (Beth Din of America) proposed that conversions follow Halacha, allow for consistent implementation, registration, policies and procedures, while avoiding unnecessary confusion and anguish. It is essential that RCA rabbis and their communities have a clear understanding as to which conversionary practices and standards are, or are not, recognized by the RCA/BDA, and by extension by other rabbinic bodies. What is here described is the result of a full consultation and cooperation between the RCA/BDA and the Chief Rabbinate of Israel.

The GPS Committee of the RCA/BDA will amend these standards in the future, as necessary, in consultation with the appropriate offices of the Chief Rabbinate of Israel.

b. the RCA/BDA will endorse conversions only if they have been performed in the framework of the expanded network of Regional Batei Din le’Giyur. Under the general umbrella of the Beth Din of America, Regional Batei Din will strictly follow all RCA/BDA standards. Rabbis, OTHER BATEI DIN and lay people who carry out conversions outside of this framework should know that they cannot be assured of recognition by the RCA/BDA with respect to such conversions.

iv. All halachically significant forms and teudot will need to be approved by the RCA/BDA, so that there can be a unified and consistent set of halachically operative documents. Thus, each Beit Din will submit its various intake and reporting forms, questionnaires, and records of completed conversions to the RCA/BDA for review. The RCA/BDA will maintain a database of these documents, and any revisions thereof,

for ongoing reference.

**d. Who may serve as a Dayyan for Conversion on a Regional Beit Din:**

i. Every Dayyan must be an Orthodox rabbi, with a semicha acceptable to the RCA. Although he need not be a member of the RCA, he must currently function at least part-time as one of the following klei kodesh; communal rabbi, chazzan, mechanech, mohel, shochet, chaplain, kiruv professional, or other recognized rabbinic position. This information will be distributed to the members of the GPS committee, and members of the committee will have the opportunity to voice any objection to the participation of any potential Dayyan.

**e. Mohelim**

i. Using appropriate halachic standards, each regional Beit Din will select mohelim suitable for conversion-related activities.

ii. To prevent a candidate from shopping around for a more amenable Beit Din, all regional Batei Din will tell the BDA, and one another, the names of candidates who have been rejected, and the reasons for that.

i. Each year, the BDA will conduct a review of the conversion-related activities of all of the regional Batei Din.

**h. Converts who Come from Elsewhere**

i. The RCA will expect each of its chavirim to refer an individual claiming to be a halachic convert from a Beit Din other than those described here to the regional Beit Din in the chaver's area or to the BDA in order to clarify that individual's status.

**4. The Sponsoring Rabbi**

**a. Who may be a Sponsoring Rabbi?**

i. Any Orthodox rabbi may serve as a Sponsoring Rabbi; i.e., the rabbi who recommends an individual as a potential candidate for conversion.

**c. Final Approval for Conversion**

i. Although three independent dayyanim of the regional Beit Din will make the final decision to convert each candidate, the Sponsoring Rabbi must concur with the Beit Din's decision to give his candidate final approval and may serve as a Dayyan at the mikveh at the time of conversion. He will also submit a form, attesting to the level of the candidate's shemirat ha'mitzvot.

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**a. Where the Conversion is Primarily for the sake of Marriage**

i. The Beit Din must be

convinced that if the potential spouse were to disappear from the candidate's life, his or her commitment to the Jewish faith and people would not waver. These factors inevitably prolong the process and make examination of the prospective convert more intense. Indeed, should the couple mention a proposed wedding date as a deadline or goal, the Beit Din should respond that the process will take significantly longer than that.

b. **Where a Jewish Couple wishes to Convert an Adopted non-Jewish Child**

i. The premise on which conversion for a child is based is that it is a zechut (benefit) for that child to convert. While some have argued that simply becoming Jewish is a zechut, others believe that only in circumstances where observance of mitzvot is likely to be part of the child's life as an adult is it really a zechut to convert an underage person.

ii. Therefore, a Jewish couple that has adopted a child to be converted must:

- belong to an Orthodox synagogue within walking distance of their home, and
  - commit to 12 years of Orthodox day school education for that child. The Bet Din should set criteria for what it considers to be schools in which the child will receive a serious Orthodox day school education, and
  - In addition, full observance of elements such as Shabbat, Kashrut, holidays, etc., should be part of the adoptive family's lifestyle. To that end, the sponsoring rabbi and the converting Bet Din should use the opportunity to encourage the family to accept a complete standard of observance. However, where this can not be accomplished, then at the very minimum, if there is
    - significant observance of Shabbat
    - complete observance of Kashrut
    - a positive attitude towards full mitzvah observance and commitment to Halacha within the basic family unit,
- . after consultation with the RCA/BDA and after writing an explanatory memo that will be included in the conversion file explaining the circumstances, giyyur katan (conversion of the child) may be allowed.

c. **Requirements of Other People in a Candidate's Life**

i. When a candidate is previously intermarried or is converting for the sake of an individual Jew (as per above), the spouse's observance level and attitudes must be consistent with the present and future Torah

observance of the candidate and not be a source of conflict or opposition to the convert's adopting a halachic lifestyle. The Beit Din should also consider whether other significant individuals in the candidate's life such as parents, or any existing minor children, will have an impact on the success or failure of the process and the aftermath of conversion.

e. **Confirming the status of a Candidate Reared as a Jew.** Each case of possible conversion of someone raised as a Jew requires exceptional psychological and pastoral sensitivity as well as careful halachic analysis since calling into question someone's previously firm Jewish identity can have a strong, unpredictable impact on that person. This said, when there is no doubt that a previous conversion is invalid, even though the candidate has lived as a Jew, the regional Beit Din should proceed to convert the candidate in appropriate cases. However, if there is even a small doubt, the regional Beit Din should first consult with the BDA. If there is a clear conclusion that such a conversion is necessary, then it may often be done more expeditiously than in other cases.

c. **Exposure to Communal Life by Living in an Orthodox community**

- i. As far as the halacha is concerned, conversion involves the creation of a transformed, fully reborn, new person. Becoming fully part of the Jewish family, one literally acquires a new family, a new life and as such one reorients one's entire being. The candidate will be expected to cultivate new friendships, new relationships, new social activities, new Torah commitments. Moreover, as with any Jew, the growth and learning process continues throughout one's life.
- ii. As a result, a candidate must come to reside in a Torah observant community.

e. **Interim Meetings**

- i. The amount of time for a convert to be prepared for conversion varies from case to case. A minimum of two years of study and experiential growth is generally recommended though individual circumstances may vary in this regard. During this time, and as a rule not less than every six months (i.e., usually 4-5 interactions), the candidate will be in communication with the Beit Din to review his or her progress, and make any necessary adjustments or decisions as to the remaining course of study and personal growth. These should include at least two face-to-face meetings. There should also be regular communications between the Beit Din, the mentor, and the Sponsoring Rabbi, to monitor progress.

f. **The Decision to Convert**

- i. If and when the Beit Din is satisfied that the candidate has acquired sufficient knowledge to live as a mitzvah observant Jew, can be relied

upon to live up to the commitments of the yoke of mitzvot, and identifies with the Jewish people and its destiny, it will agree to proceed with the actual conversion procedures.

ii. Prior to assenting to the conversion procedures, the regional Beit Din should inform the candidate of the specific mitzvah commitments that are expected of him or her, as they are of all candidates.

## **7. After the Conversion**

### **a. Review Mechanism**

i. One year after the conversion the sponsoring rabbi shall provide the regional Beit Din with a one paragraph report on how the person is progressing in his or her religious development. If the regional Beit Din hasn't heard from the Sponsoring Rabbi, the regional Beit Din shall pursue the matter through the sponsoring rabbi or on its own. This one-year follow up will be used for self-evaluation of the regional Beit Din.

### **b. A Converted Minor and the Need for Re-Affirmation**

i. In cases of conversion of minor children it is essential that the regional Beit Din ensures that children converted as minors be informed prior to becoming bar/bat mitzvah that they were converted, and that they have the opportunity at such time either to renounce their conversion or demonstrate their commitment to Judaism by continuing to practice a fully committed Jewish life. As long as this disclosure has been made to a child in a timely fashion, their continuing identification with Judaism at the time of their bar/bat mitzvah shall preclude any possibility of undoing the conversion in the future. There shall be no need at the time of bar/bat mitzvah for the child to express a formal acceptance of Mitzvot before a newly convened Bet Din, but rather this informal process shall be deemed sufficient in accordance with time-honored traditions of Jewish law and practice.

### **c. What to Expect/Do when Moving to a New Jewish Community**

i. A ger, or family of gerim, should inform the local rabbi of their status shortly after moving into the community. This is especially important where a woman converted after she had children (and the children converted together with her), or, as is not uncommon, where the female converted in a non-Orthodox manner before marriage and/or children, and later converted ke'halachah. As the female children in such a situation could not usually marry kohanim, this fact would be important for them – and for the rabbi – to know. If circumstances warrant, the regional Beit Din shall indicate in the conversion document that a female convert was pregnant at the time of conversion.







## **Appendix 2: My Random Diatribes (Michael Makovi's Random Thoughts)**

**Monday, November 16, 2009**

Just one left-wing Modern Orthodox yeshiva student's musings and thoughts.

### **Conversion of the Non-observant: Mimeticism and Textualism**

Much has been written about permissive rabbinic opinions which justify the conversion of the non-observant. Most of these discussions center around Rabbi Uziel, and interpretations of the Gemara and the rishonim. I do not wish to enter this territory of textual interpretation of the halakhic literature in and of itself, to determine what it says in and of itself, taken objectively and dispassionately. I list sources for such discussions [here](#).

Rather, I wish to remove myself from the literature taken in and of itself, and argue based on a different tack. Those who believe (like e.g. Rabbis Yitzhak Shmelkes and Avraham Sherman) the Gemara and rishonim rule out conversion of the non-observant, they often fail to grapple with actual real live Rabbinic decisions (responsa, *shu"tim*) which take a more lenient approach than they do. Even if these lenient authorities have misread the Gemara and rishonim, nevertheless, they are real live rabbis with real live traditions and *mesorot*. This fact cannot be ignored.

First, Rabbi Uziel is far from the only figure to hold his position that the non-observant can be converted. Professor Marc Shapiro on the Seforim Blog, has ([here](#)), as is his Rav Ovadia Yosef-ian manner, brought forth a slew of rabbis I've personally never heard of (but which he claims are prominent and well-known), all evincing the Rabbi Uziel-ian position.

And see the Jewish Ideas and Ideals excerpt of Professors Zohar and Sagi ([www.jewishideas.org/responsa/halakhic-conversion-of-nonreligious-candidates](http://www.jewishideas.org/responsa/halakhic-conversion-of-nonreligious-candidates)), in which Rabbis Uziel, Raphael Aaron ben Shimon of Cairo, and Moshe ha-Kohen of Jerba (and later Teveria) all say that *qabalat mitzvot* is satisfied if the convert accepts the punishments of the *beit din*, even without a promise to be observant. These rabbis either define "kabbalat ha-mitzvot" to be simply an acceptance of the *beit din*'s jurisdiction, and/or they are content to warn the convert about the mitzvot and halakhot, and extract a promise from the convert, but without being overly meticulous whether the convert is

being ingenuous and sincere.

I am not learned in this subject, but I read a *teshuva* of Rabbi D. Z. Hoffman's (*Y.D.* 83) in which he basically said that since the gentile man in question has already married (civil marriage) the Jewish woman in question (and so they could have just continued living together anyway), therefore, if the two come to the *beit din* to be converted, it is clear that they have *some* spiritual motive in mind, thereby permitting their conversion. Now - and this is me, not Rabbi Hoffman talking now - one could say that this logic does not apply today, since someone today might convert in order to move to Israel for purely material motives, with no spiritual motives at all whatsoever. But even so, we must realize that Rabbi Hoffman's "spiritual motive" is far from a full-blown acceptance of observance! The closest Rabbi Hoffman comes to demanding actual observance is in the very end of the *teshuva*, almost as an afterthought, when he says that in any case, the *beit din* should warn the couple about the importance of Jewish law, and extract an oath from the gentile man. But Rabbi Hoffman says this almost as an afterthought, and he never mentions investigating the gentile man's oath, or investigating the gentile man's observance after his conversion, etc. It seems he is happy to receive a promise from the gentile and let it be that. And keep in mind that this is 19th century Germany; if there was ever a time to doubt someone's promise to be observant, this was it! Rabbi Hoffman never explicitly mentions whether she is observant or not, but presumably she is not, because (1) if she were, there'd be no need for a responsum, and (2) this was 19th century Germany, so in case of doubt, assume the person is not observant! Rabbi Hoffman, dealing with the case of a non-Jew marrying a Jew, seems to believe that coming to the Orthodox *beit din* is sufficient *qabalat mitzvot* to warrant a conversion.

Update: [Menachem Mendel](#) just sent me Shmuel Shilo, "Halakhic Leniency in Modern Responsa Regarding Conversion", *Israel Law Review*, vol. 22 no. 3, 1988. It will take me some time to digest this article and incorporate its findings into my writing. But suffice it to say for now, based on my skimming it cursorily: Professor Shilo adduces many individual rabbis who were willing to convert the non-observant.

**Actually, it seems that all of these rabbis were not troubled at all by the convert's non-observance. What concerned them more was the procedural details incumbent on the *beit din*.** To use the terminology of Rabbi Michael Broyde ("[Review Essay: Transforming Identity by Avi Sagi and Zvi Zohar](#)", by Michael J. Broyde and Shmuel Kadosh, *Tradition* [42:1](#)), these judges were concerned not with the convert's *shemirat ha-mitzvot* (the convert's keeping the *mitzvot* after the conversion), but rather, what concerned them was the *beit din's* *hoda'at ha-mitzvot* (informing the convert of the *mitzvot*) and the convert's *kabbalat ha-mitzvot* (which Rabbi Broyde defines as the convert's verbal acceptance of the *mitzvot*, not to be confused with *shemirat ha-mitzvot*). In other words: these rabbis had very little problem with the convert's non-observance per se. What concerned them was how the *beit din* was to conduct itself. The question is more about the operation of a *beit din* than it is about convert him- or herself.

Many opposed to conversion of the non-observant have cited Rabbi Broyde's article (ibid.), believing that it upheld the view that conversion of the non-observant is not possible. I have spoken to a few rabbis and professors and *talmidei hakhamim* about Rabbi Broyde's article, and they all believed that he was arguing that conversion of the non-observant was not possible. I was not able to get in touch with Rabbi Broyde himself, but in my conversion with a personal associate and colleague of his (who wishes to remain anonymous), it seems that I (as well as everyone else I've talked to about his article) has (have) fundamentally misunderstood his thesis. Rabbi Broyde was *not* arguing that conversions of non-observant candidates are invalid. That is, he was *not* being a Rabbi Sherman-ian and advocating annulment of the conversions of those who are not observant. Rabbi Broyde uses the terms (1) *hoda'at ha-mitzvot*, (2) *kabbalat ha-mitzvot*, and (3) *shemirat ha-mitzvot* as I have defined them, and in turns out that contrary to everyone (that I know)'s interpretation that he was arguing about #3, in truth, he was only arguing about #2. Obviously, everyone agrees that #1 is necessary, and Rabbi Broyde says he agrees that conversion without #3 is possible (whether #3 is desirable and justifiable is a different issue; we are only talking feasible and possible). So his entire debate is about #2. That is, how much must the convert promise? But, for example, says Rabbi Broyde in his article, according to many, an insincere promise is also valid for conversion. So Rabbi Broyde's article is discussing #2, the procedural conduct of the *beit din*, and not #3, concerning the convert himself and his observance (or lack thereof).

Rabbi Yehuda Herzl Henkin's "[On the Psak Concerning Israeli Conversions](#)", *Hakira* volume 7, also distinguishes between the convert him- or herself and the *beit din*'s procedural details. He discusses those authorities who say that conversion of the non-observant is valid, and then he goes onto a separate discussion of what kinds of promises the *beit din* must extract from the convert. Again, the convert's non-observance (lack of *shemirat ha-mitzvot*) is entirely separate from the *beit din*'s *hoda'at ha-mitzvot* and the convert's *kabbalat ha-mitzvot*.

So now, to return to our main subject, that school of thought and tradition which allows the conversion of the non-observant (at least after the fact)...

So those who interpret the Gemara and rishonim to preclude the possibility of the conversion of the non-observant: let us suppose that every textual inference they make is correct (as I said, I will not question them on textual grounds). Let us further suppose that every textual inference made by Rabbi Yitzhak Shmelkes and those of his school is correct. Nevertheless, does this not scream of "[The Lost Kiddush Cup](#)" (Professor Menachem Friedman)? Perhaps the Noda bi-Yehuda is even correct, but as Rabbi Hayyim Palache responded, it is enough for us to keep by what our ancestors did. As the

Meiri said, he who comes to institute a new *humra* should question himself. As the *Mitnagdim* said to the *Hasidim* regarding *shekhita*, "What is wrong with what our ancestors did?". (For all these, see [here](#).)

I believe their approach evinces the shift from mimeticism to textualism studied by Professor Haym Soloveitchik ([here](#)). Let me give forth my own view: new *humrot*, new stringencies, new halakhic discoveries are fantastic, provided they **help** people! For example, if one is troubled by the law against eating fish and meat together, considering it to be a violation of reason (I consider the intellect to be no less important than the body, and it makes no difference against which the inconvenience is), then Rabbi Avraham ben ha-Rambam's ruling (as well as that of Magen Avraham, if I'm not mistaken?), following Rambam, that the prohibition against fish and meat being an outdated and false piece of medical advice (and therefore no longer obligatory) is a boon. But when what is traditional is most helpful, then what need have we for new innovations? The *kiddush* cup of our ancestors is fantastic, and so is eating 1/3 to 1/2 of a *matzah* in five minutes or so; what need have we to double our cups and eat 2 sheets of *matzah* in 2 minutes?

I am troubled by their elitist textual approach, because even if every single one of their inferences from the literature is correct, they are exhibiting that very pernicious and lamentable shift from mimeticism to textualism. If it was enough for Rabbis Uziel and Hoffman and countless others (see Shapiro above) to convert without demanding observance, then who are we to question them?

This is especially because their opinion is exactly what is needed in Israel today (both "*Medinat*" and "*Am*"). Rabbi Akiva Yosef Schlesinger advocated that *Austritt* include not only an institutional succession - with this Rabbi Hirsch agreed - but even a socioreligious succession; let the Reformers be buried in the cemeteries of the gentiles they love so much, and let us do nothing for kiruv! (Professor Michael Silber, "The Emergence of Ultra-Orthodoxy: The Invention of a Tradition", in *The Uses of Tradition*.) But is this really what we need? People keep saying that we need *giyur l'humra*, the strictest standard. I rather think that we need the most lenient standard, *giyur l'kula*. When so many people reject Orthodoxy because Orthodoxy's doors are shut before them, does it not behoove us to open as many doors as the halakhic literature permits?

Think about it: because of this conversion scandal, we are coming ever closer to having Reform and Conservative conversions recognized in Israel, having the Rabbinut's monopoly on marriage and divorce rescinded, etc. What sense does it make to take a principled stand on *giyur l'humra*, and watch everything else crumble? Does it not make far more sense to have the most lenient conversion standard permitted by *halakhah*, and thereby endear ourselves to the non-observant, and thereby retain the Orthodox monopoly in Israel? Rabbi Yitzhak Herzog, despite his view on conversion, held it proper to equalize men and women in matters of inheritance, so that the technical law would be halakhic (even if an unorthodox halakhic one, lower-case "o" on "unorthodox"), thereby maintaining the technically halakhic nature of inheritance. The Ashkenazim all balked, and so what do we have? Inheritance in Israel is in the hands of the civil courts. (See

[here](#).) What a wonderful accomplishment! We keep a hard-line halakhic standard, and thus, nobody in Israel keeps *halakhah*! Would it not have been preferable to keep to a lenient halakhic standard, so that everyone in Israel would at least be keeping something?

And these strict textualists: I wonder, have they actually spoken to someone with a Jewish father and non-Jewish mother? Do they know what it is like to identify with the Jewish people, to wholeheartedly see every fiber of your being as Jewish, and then to have the door to Israel shut in your face? When I read Rabbi Dr. Eliezer Berkovits's article on this subject (see *Crisis and Faith* and *Essential Essays on Judaism*, and see [here](#)), I see nothing remarkable in his ardent and passionate feelings of *ahavat yisrael* and the unity of *am yisrael*. His sentiments to me seem perfectly unordinary; I cannot imagine anyone with a heart feeling differently than him. (Of course, I've learned in Rabbi Kook *yeshivot*, so such *ahavat yisrael* is par and *de rigueur* for me. However, Rabbi Kook's view on *giyur* of course concerns us not here.)

My mother had a Conservative conversion, and has been growing in her halakhic observance, but still, no one will consent to convert her. She has said to me that she doesn't care whether or not G-d will be satisfied with her halakhic observance; *Gan Eden* or *Gehinom*, she wants to be Jewish, and if she dies without having had an Orthodox conversion, then life will have been nothing to her. If she's not Jewish in G-d's eyes, she said to me, then she has nothing. If she's not a part of the Jewish people, then she has no one.

When I was preparing for my own Orthodox conversion, people would ask me, "why?"; given my mother's lack of Orthodox credentials, why didn't I just retain my non-Jewishness and have a grand life? I always answered in much the same way my mother did: I'd rather have an Orthodox conversion and die immediately than to live a full life as a non-Jew. The Jewish people are my people, and if I'm not one of them, then I have no one. I've tried to imagine, for example, marrying a non-Jew. I cannot even conceive of it. Not because there is anything wrong with gentiles - G-d forbid!; Rav Meir Kahane used to say that if anyone refuses to intermarry for anything but purely religious reasons, then one is a racist. Rather, I cannot contemplate how I'd choose a mate, what my standards would be, if she wasn't Jewish. Every time I think I what I want in marriage, how I want to raise my children, invariably, Judaism is at the center. People ask me where I want to live, and I answer that it depends on which Jewish day school I send my children to. Do not take this lightly: everything I've said has nothing, absolutely nothing, to do with Judaism making me happy. I highly identify with Rabbi Soloveitchik's view that Judaism is anything but an opiate; better to be a skeptical rationalist than to be a romantic who bases religion on his own inner emotional desires, says Rabbi Soloveitchik. (See Rabbi Emanuel Rackman, "Orthodox Judaism Moves with the Times: The Creativity of Tradition", *Commentary*, June 1952.) I can honestly say that I was far happier before I became observant. Before then, I was getting perfect grades in chemistry and computer science, I could have gone to Rochester Institute of Technology, lived a grand life in America, carefree and easy. Now, instead, I've limited myself to 0.25% of the world's women, I have to learn a new language in Israel, and I have an entire new field of knowledge (Torah) to become competent in. Not to mention how depressing all the news

about the Orthodox in the media, how the Orthodox are distorting Judaism, driving a knife into my heart every time! Believe you me, Judaism has not made me happier. But if I were to try to stop being Jewish, I'd have fire within my bones, and I cannot keep it within. (See [here](#).)

And these sentiments, give or take, are not peculiar to me. I have a friend that only her father is Jewish, and she has expressed profound dismay at the fact that Israel will not accept her. She works for a Jewish organization for crying out loud, editing articles of Jewish interest! She could have gotten a job in journalism anywhere, but she chose a Jewish organization with no prestige! Every time she goes into an Orthodox venue, everyone scorns her, and it hurts her every time profoundly, but what does she do? She keeps working for this Jewish magazine! See her own words [here](#).

I have another friend that he left a six-figure paying job in America to come to Israel and become Jewish, and then the beit din in Israel told him that he was coming to Israel only for material motives, and they denied him a conversion. He is living in Israel, married to a Jewish woman (he got a private non-recognized conversion), but he is not allowed to work in Israel. This man was a skilled medic for the United States Army, and Israel refuses to let him work in a hospital in Israel because they think he came to Israel only for material motives!

I ask those strict textualists: does any of this make sense? Are these the kinds of people who want to exclude from the Jewish people by consciously utilizing stringent *shitot* and eschewing the lenient ones that exist?

What is wrong with what our ancestors did? Does it make sense for us to be more stringent than they were? Perhaps the strict textualists' inferences are all correct. But is it not sufficient for us to rely on Rabbis Uziel and Hoffman and others, especially when their halakhic *shita* is precisely that which is needed to redeem Orthodoxy and the Jewish people alike? Why should we shoot ourselves in the foot and create new stringencies that only hurt our cause? Should we really aspire to the untraditional and even anti-traditional non-mimetic textualism studied by Professor Soloveitchik, even when it is to our own detriment? Are we masochists?

Throughout the course of their strict-constructionist elite textual approach, they never once seem to grapple with the fact that actual real rabbis disagreed with them. They make all of their textual derivations, but they never seem to take serious cognizance of the fact that prominent *gedolei ha-dorot* disagreed with them; they never openly and transparently discuss the fact that their interpretation is a stringency beyond what traditional rabbis of previous years demanded. This is highly suspect in my eyes and not a little haughty.

Posted by Mikewind Dale (Michael Makovi) at [11:37 AM](#) 

Labels: [agi sagi](#), [conversion](#), [giur](#), [giyur](#), [matrilineal](#), [michael broyde](#), [michael j. broyde](#), [transforming identity](#), [zvi zohar](#)

## Appendix 3

(Note: I was unable to copy the Hebrew. All English translations are identified by quotation marks. Also, to maintain original page integrity, most pages are shortened. There is a total of 47 pages in this document so, if you end at an earlier page number, you may have missed some pages in this appendix)

### **On Proving Jewish Identity (YD 268:10.2011 )**

#### **Rabbi Reuven Hammer**

*This paper was approved on May 24, 2011, by a vote of fifteen in favor (15-1-0). Voting in favor: Rabbis Pamela Barmash, David Booth, Elliot Dorff, Baruch Frydman-Kohl, Susan Grossman, Reuven Hammer, Joshua Heller, Jeremy Kalmanofsky, Jane Kanarek, Adam Kliffeld, Jonathan Lubliner, Daniel Nevins, Paul Plotkin, Elie Spitz, and Loel Weiss. Voting against: Rabbi Gail Labovitz. d'ly*

If an individual claims to be Jewish, either by birth or conversion, what proof if any is required before recognizing that individual as a Jew and permitting him or her to exercise the rights and privileges of a Jew for such matters as marriage, synagogue membership, participation in religious ceremonies, religious school and burial?

#### **1. Reality of Jewish Identity At This Time**

Today, perhaps more than at any other time in Jewish history, we are confronted with problems concerning the status of individuals claiming to be Jews. The problem is especially acute in Israel where Jewishness is essential for aliyah rights and where official marriage is controlled by the government-sponsored Chief Rabbinate. The Law of Return permits children and grandchildren of Jews (one grandparent is sufficient), as well as their spouses, to come on aliyah. Often those who enter Israel under that law claim to be Jewish but have difficulty proving it to the religious authorities. Furthermore, the proof of Jewishness that is sufficient for aliyah is not identical to that needed for halakhic purposes. The massive aliyah from the former Soviet Union has brought more than a million people to Israel. Reliable estimates indicate that at least a third of these are not Jews according to halakhah and by their own admission.

Many immigrants who claim to be Jewish have difficulty proving their Jewishness to the satisfaction of the Chief Rabbinate because of the lack of reliable documentation.

Ketubot have been largely non-existent among Russian Jews for over half a century.

There have also been cases of forged documents. The result has been that often people who sincerely consider themselves Jews cannot prove that fact and are turned away by the official rabbinate when they wish to be married. Similar problems occur for American olim and others in Israel as well.

The well-known journalist Gershom Gorenberg wrote an article on such a case for the New York Times entitled “How Do You Prove You’re a Jew?”<sup>1</sup> in which he states that in previous times in Europe “Trust was the default position. One reason was that Jews were

1. New York Times Magazine, March 2, 2008. See also his article “Israeli Life: Oops, You’re Not Jewish” in Hadassah Magazine, November 2008, Vol. 90 No.3.

#### **Jewish Identity 2**

a persecuted people; no one would claim to belong unless she really did. The leading ultra-Orthodox rabbi in Israel in the years before and after the state was established, Avraham Yeshayahu Karlitz (known as the Hazon Ish, the name of his magnum opus on



religious law), held the classical position. If someone arrived from another country claiming to be Jewish, he should be allowed to marry another Jew, ‘even if nothing is known of his family,’ Karlitz wrote. Several trends have combined to change that.” This situation has been further compounded by a decision of the Israeli Chief Rabbinate in 2010 to require documents proving the Jewishness of one’s mother, grandmother, great-grandmother and great-great-grandmother when applying for marriage. Needless to say this is a near impossibility for most people.

The problem of proving Jewishness is not confined to Israel but exists in the United States and all other diaspora communities as well. As more children are born to single mothers, for example, and as there are significant numbers of couples who live together and establish families, there are numerous cases in which young people have no mother’s ketubah available for examination. There are also more and more people born to mothers who ‘converted’ to Judaism. Since different groups have different standards for conversion, not all conversions are acceptable to the Rabbinical Assembly.<sup>2</sup> A further complication has resulted from the fact that American Reform Judaism accepts those with a Jewish father and a non-Jewish mother as Jews. Therefore we often encounter young men and women with non-Jewish mothers who were brought up in Reform congregations, sincerely believe themselves to be Jews and identify themselves as such. In an era of intermarriage, having a ‘Jewish name’ means nothing, just as having a non-Jewish name means nothing. The question arises: when someone comes to us identifying him/herself as a Jew, do we adopt the ‘default position’ of trust? If so, under what conditions, and, if not, what proof do we require?<sup>3</sup> In order to answer these questions we should first examine the sources in our history that deal with these issues.

## **2. Biblical Sources**

Biblical sources are not particularly helpful in answering our question since the definitions of Jewishness that are accepted by traditional halakhah were unknown in early Biblical times.<sup>4</sup> Therefore the question of proving one’s Jewishness (or better: Israeliteness) is not addressed in Biblical sources. It is only in the later books of Ezra and Nehemiah that we encounter the problem of those who claim to be Judeans and are not recognized as such by Jews or of foreign wives who have to be put away because they are not Jews.<sup>5</sup> The option of conversion as we know it is nowhere mentioned in the Bible.

2. The lack of a central registry for our own converts only adds to the problem.

3. We also encounter so-called “Messianic Jews” or “Jews for Jesus” who consider themselves Jews, many of them born as Jews to Jewish mothers. That issue, however, will not be dealt with here since it has a different set of halakhic issues. A separate teshuvah is required.

4. See *The Beginnings of Jewishness: Boundaries, Varieties, Uncertainties* (Hellenistic Culture and Society) by Shaye J. D. Cohen

5. See Ezra 9-10.

## **Jewish Identity 3**

In the early Torah narratives the Israelites - *b’nai yisrael* - are viewed simply as the biological descendants of Jacob-Israel. The criterion established later, that the child follows the identity of the mother, is not at all clear in the text of the Torah. The possibility of children of non-Israelite women being considered Israelites seems to exist. Traditional halakhah, however, does not recognize patrilineal Jewishness, and this stance has been reaffirmed frequently by the CJLS.<sup>6</sup> In Biblical times non-Israelites could also

be added to the family of Jacob-Israel by a process of gradual acculturation and acceptance into the community.

Although the general question of how one becomes recognized as an Israelite is never spelled out in Scripture, certain individuals and groups are prohibited from “coming into the assembly of the Lord” (Deut.23:2-9) either completely or until a certain number of generations has passed. As our colleague J.Tigay has shown, the “assembly of the Lord” was the “national governing assembly of the Israelites...meeting in plenary session...”<sup>7</sup> “Entering” it is the equivalent of full citizenship and included the right to marry an Israelite woman. How people would prove their eligibility for membership is not discussed. As the Israeli Biblical scholar Y.Kaufman wrote, “For generations ‘conversion’ was conditioned on territorial and cultural assimilation. It is so in P [Priestly source], in the book of Ruth (1:16ff), and in the story of the Samaritans who become quasi-Israelites by virtue of their settlement in the land.”<sup>8</sup> The subject of the development of conversion is beyond the scope of this responsum and has been dealt with by Rabbi Tuvia Friedman in his *Teshuvah on Conversion*.<sup>9</sup>

By the time of the return from the Babylonian exile, the process of entering into the Jewish People seemed to harden. Although the Torah prohibited only the taking of wives from the Canaanite nations (Exod.34:16, Deut.7:3), there is now the demand to send away all “foreign women” and their children (Ezra 10:3).<sup>10</sup> Similarly this is the first time that we find a requirement for kohanim to prove their status; see Ezra 11:61-63, where the genealogy of the priests and their fitness for serving as priests is under scrutiny. Although the matter under discussion there was confined to proving one's fitness to serve as a priest, it may indeed have served as a precedent for proving one's status as a Jew altogether. Both of these actions were heavily influenced by the experience of the exile and the felt need for Israelites (now known as Jews) to distance themselves from others in order to prevent assimilation into alien cultures.<sup>11</sup>

6. This is a standard of practice of the Rabbinical Assembly (1986). See the following Teshuvot: 102656, 110658B, 041459B, 013061, 042375.

7. The JPS Torah Commentary: Deuteronomy, Philadelphia 1996, p.210.

8. The Religion of Israel, University of Chicago Press, Chicago, 1960, p.301. There are some who consider the Book of Ruth to have been a protest against the actions of Ezra.

9. “Conversion According to Halacha,” in Responsa of the Va'ad Halacha of the Rabbinical Assembly of Israel, Vol.3 5748-5749, Jerusalem, p.59ff (Hebrew). See also J.Tigay, op cit, Excursus 21, p.477ff.

10. Ezra (9:12) seems to base this on the Torah's command “You shall not intermarry with them: do not give your daughters to their sons or take their daughters for your sons” (Deuteronomy 7:3) although the original context referred specifically to the Canaanites who had long ceased to exist. Ezra was indeed a scribe in the sense of an interpreter of the sacred text. In this case his interpretation and application were actually an innovation.

11. See Shaye J.D. Cohen, *From the Maccabees to the Mishnah*, Philadelphia, 1987, p.21, p.50-59.

#### Jewish Identity 4

### 3. Rabbinic Sources

In rabbinic sources, from the Mishnah to modern Teshuvot, the question of establishing Jewish identity has been dealt with both directly and indirectly. The following are several issues that have a bearing on our question:

#### a. ESTABLISHING ONE'S IDENTITY AS A KOHEN

Middot 5:4 continues the practice cited above in the book of Ezra of examining the fitness of priests to serve in the priesthood.

“The great Sanhedrin convened in the Hall of Hewn Stones and judged matters concerning the priesthood. A priest in whom a flaw was found would don black clothing, wrap himself in black and depart, going on his way. One in whom no flaw was found would don white clothing, wrap himself in white and go and serve in the Temple with his fellow priests. They would make a celebration since no flaw had been found in the offspring of Aaron the priest. Thus would they say, “Blessed is the Almighty, blessed is He in that no flaw had been found in the offspring of Aaron the priest. Blessed is He who chose Aaron and his sons to serve before the Lord in the Holy of Holies.”

The sanctity ascribed to the priesthood and the fact that the Torah gives kohanim rights and privileges denied to others, including presiding at the Temple’s sacrificial service, resulted in the practice of scrutinizing a kohen’s claim to his special status lest a *zar - xf* - a lay person - eat holy items (Leviticus 22:10-16; Exodus 29:33) or offer incense, which is forbidden in the Torah and was said to lead to that person’s death (Numbers 17:5). This intense scrutiny was restricted to kohanim.

How their fitness was determined is discussed in Ketubot 2:7-8.

“In the case of two men, each of whom says, “I am a kohen,” they are not believed. If they give testimony for each other, they are believed. R. Judah says: One is not

## Jewish Identity 5

granted the status of a kohen on the basis on the testimony of one witness. Rabbi Elazar says: When is this? Where there are those who question it, but if there are none who question it, one is granted the status of a kohen on the basis on one witness. Rabban Shimon b. Gamliel says in the name of R. Shimon the son of the Chief of the Priests: one is granted the status of a kohen on the basis on one witness.

*Even in the case of proving one’s fitness to serve as a priest, where a thorough investigation was made, leniency was shown in that one witness was sufficient as long as there were none who questioned it. See Ketubot 24a and the discussion in 25b where the rabbis were lenient in regard to lesser things (eating terumah) but not in regard to*

*marriage. Sometimes there was even a presumption of fitness - such as when the priest has been regularly performing certain priestly duties.*

#### b. DETERMINING FITNESS FOR MARRIAGE

Kiddushin 4:4 contains the requirement in regard to marriage to check a woman's genealogy back several generations.<sup>12</sup>

“One who is marrying a woman of priestly descent must investigate her family back through four generations of females, that is eight women: her mother, her mother's mother, her mother's father's mother and her mother, her father's mother and her mother, her father's father's mother and her mother. Levites and Israelites add one more generation. “

The subject of the case, i.e., the man who wishes to marry a woman, is not specified. Therefore this mishnah has been understood in two different ways: either that the reference is to a Kohen who wishes to marry a woman or that it refers to all men.<sup>13</sup> In either case, what is being checked is the woman's fitness to be married to this individual, either in regard to her priestly or Levitical descent or mamzerut.

The following Mishnah (Kiddushin 4:5) further states that there were limitations to these examinations:

“We make no investigation from the altar and upwards, from the dais and upwards, nor from the Sanhedrin and upwards. “

That is, if it was found that in the family ancestry of the woman being investigated there was a priest who had served in the Temple, or a Levite who sang in the Temple, or a

<sup>12</sup>This was probably the source of the Israeli rabbinate's new requirement for marriage.

<sup>13</sup>See Albeck's note on page 414 of his edition of the Mishnah. See also Lieberman's discussion in his *Tosefta Kifshuta Kiddushin* page 974.

#### Jewish Identity 6

member of the Sanhedrin, there was no need to investigate further through the entire number of generations specified above.<sup>14</sup>

In the Talmud (Kiddushin 76a) the question is asked: Why investigate the mother and not the father? The answer is that questions of birth and background frequently come up in discussions and quarrels among men, but not among women. In other words, the examination is not required when it is assumed that if any problem existed it would already have been known.

The discussion in the Talmud (76b) of the mishnah (4:4) offers several possibilities concerning the origins of this mishnah:

1. The mishnah is the view of one teacher, R.Meir, while the opinion of the majority of Sages is “All families stand in the presumption of fitness. “
2. The mishnah concerns a case where there is a rumor that there is a blemish. Otherwise

no investigation is necessary.

3. The Sages too would agree that if there is a dispute, there should be an investigation. Thus despite the words of the Mishnah, in the Talmud there is agreement that according to the Sages one need not investigate every woman before marriage. Only in special cases where there is reason to suspect a problem, and even then not through all the degrees mentioned if other factors show her fitness.

The Rambam in Isurei Biah 19:17 cites the rule in Kiddushin 76b above and states: “All families stand in the presumption of fitness and may enter into marriage from the very beginning. “

He adds that if there is something that would lead to suspicion concerning their fitness, including lack of proper *middot*, one should avoid them, and if there is testimony against them, one should investigate back “10 mothers” (19:18).

In his commentary to this Mishnah the Rambam states very clearly:

“All of this applies only in the case of a family whose status has been questioned in that two people have said that this family is unfit, but in the case of a family that is not suspect, there is no need to examine them since we accept the general rule that all families stand in the presumption of fitness.”

Siftei Kohen to Shulhan Arukh Even Ezer 2:2 repeats this

14. See also Pesahim 3b

## Jewish Identity 7

All families stand in the presumption of fitness and are permitted from the very beginning.

He qualifies this by adding that this is so only when the family is known, otherwise we suspect them.

Bartinura to Kiddushin 4:4 explains that the only time one must investigate a family’s fitness is when someone has questioned it. Otherwise not, since “All families stand in the presumption of fitness.”

It should be stated that all of these cases concern ‘fitness’ and not ‘Jewishness.’ One could be Jewish and yet not ‘fit’ for marriage because of mamzerut or other questions. Jewishness does not seem to be the question. Nevertheless the general rule

“All families stand in the presumption of fitness “

has been understood to mean that their Jewishness is not questioned unless there is reason to do so.

This is the stance of R. Ovadia Yosef. There he brings together many sources discussing the question of believing one who says he or she is Jewish and comes to the conclusion

that when it is said in the Mishnah that witnesses are needed for marriage it refers to questions of fitness - yuhasin - regarding the priesthood - but that regarding marriage in general this is not needed. Rather we rely on the fact that the Sages said that:

“All families stand in the presumption of fitness. It happens daily that we permit a man to marry a woman even though we do not know him and we hold him in the presumption of being a proper Israelite. “

*This statement, the presumption of fitness of all families, has thus become a basic principle in determining Jewish identity.*

#### c. JEWISH IDENTITY OF A FOUNDLING CHILD

A case directly related to establishing Jewish identity is found in the Mishnah Makhshirin 2:7 and discussed in the Talmud. It concerns the identity of an abandoned child.

The Mishnah states (Makhshirin 2:7):

“When an abandoned child is found, if the majority of the majority population there is gentile, the

## Jewish Identity 8

child is considered gentile, if Israelite, [the child is] considered an Israelite. If the numbers are equal, the child is considered an Israelite. R. Judah says: We decide according to the identity of the majority of those who abandon [children].

Since at that time (2nd-4th centuries C.E.) there were many localities in the land of Israel where Jews and Gentiles lived together, there was no assurance that a foundling child was Jewish. On the other hand, the child might well be Jewish. Therefore the decision was made that if such a child is found in a town where the majority are Jews, the child is considered Jewish; if the majority are gentile, the child is considered gentile, if the population is half and half, the child is Jewish (Ket. 15b).

Although the Sages might have required a *giyyur l'humrah* in order to eliminate all doubt, they did not. Since there was absolutely no physical or biological proof of the child's Jewishness, there was always a possibility that the child was not of Jewish parentage, yet once this decision was made, such a child and that child's descendants were not questioned, but accepted as Jews for all purposes.

*A reasonable assumption of Jewishness can be made even where there is no actual proof, taking into account the demographic reality but inclining toward declaring the child Jewish where there is nothing specific that would disprove it.*

#### d. ACCEPTING JEWISH IDENTITY WITHOUT REQUIRING PROOF

A discussion of “Jewish identity” is found in Pesahim 3b in an anecdote that has serious

halakhic consequences in later literature. Following the discussion of a priest whose pedigree was investigated and found to be blemished (see Middot 5:4 cited above), the Talmud relates the following story:

“There was an Aramean who would go and eat of the Paschal lambs in Jerusalem. He said, “It is written, “No foreigner shall eat of it” (Exodus 12:43) “No uncircumcised person may eat of it” (Exodus 12:48) but I eat from the very best part of it!” Rabbi Judah b. Betayra said to him, “Did they give you the fat-tail?” He replied, “no.” [He told him] “When you go there, tell them, ‘Give me the fat-tail.’” When he went he said to them, “Give me the fat-tail.” They said to him, “The fat-tail belongs to the Most High! Who told you to say this?” He said to them, “Rabbi Judah b. Betayra.” They wondered, “What is this we have here?” They investigated and discovered that he was an Amamean and they killed him. “

Who killed him and under what authority is not discussed nor is this germane to our discussion. Even the historical accuracy of this tale is unimportant. What is relevant and what is frequently referred to in later halakhic sources is the clear implication that no

## Jewish Identity 9

attempt was made to check the Jewish identity of those who ate the Pesah in the Temple. One who claimed to be an Israelite - in this case not by a verbal declaration but by his action - was accepted automatically without further investigation. It would seem that indeed “trust was the default position.” Only when there was reason to doubt the individual’s Jewishness was an investigation undertaken and action taken against him. Although this story belongs more to the realm of *aggadah* than *halakhah*, medieval sources used this story as the basis for halakhic rulings.

The Maggid Mishneh (Vidal of Toloso 14th century Spain) to Rambam Mishneh Torah Kedusha Isurei Biah 13:10 writes:

“We do not investigate any person who says, “I am an Israelite.”

He specifically bases his ruling on the story cited above in Pesahim 3b. Since no one checked the Jewishness of those coming to eat the Pesah, we infer that “If one says ‘I am an Israelite,’ we do not investigate him.”

Tosafot to Yebamot 47a - again on the basis of the story in Pesahim 3b - reiterates that if one claims to be a Jew, he is believed. Tosafot qualifies this ruling to apply to a place where most people are Jews, but Tosafot’s conclusion is that most people who come to us: “are considered to be within the definition of Israelites. “

*Medieval sources accept the story in the Talmud as creating a principle that one who presents him/herself as a Jew is accepted with no further investigation unless there is*

*cause to be suspicious.*

e. THE RELIABILITY OF TESTIMONY ONE GIVES ABOUT ONESELF

Another issue that has bearing on our question is the question of when an individual is to be believed or not in regard to his or her status. When do we take a person's word without requiring further proof?

This is discussed Kiddushin 4:10-11:

“A man and his wife went to a far off land and they returned with children, and he said, “This is my wife who went with me to a far off land and these are her children.” He need bring no proof regarding either the wife or the Jewish [If he says] She died and these are her children,” he must bring proof concerning the children, but not concerning the wife.

Jewish Identity 10

“11. I married a woman in a far off land and this is she and these are her children,” he must bring proof concerning the woman but not concerning the children. “She died and these are her children,” he must bring proof concerning the woman and her children. “

To what exactly is he testifying? That she is his wife, that they are her or his children? That she is *zqgein*? (so Albeck). See Talmud Kid.80a. This is also discussed in T. Kid.5:6-8:

“A man who goes to a far off land with a woman and children and says that she is his wife and that these are her children need bring no proof concerning the wife or the children. [If he testifies] that she died and these are her children, he must bring proof concerning the children but not concerning the wife. If a woman testifies that these are her children she is believed and she need not bring proof concerning the children. A woman is believed when she says, “These are my children.” “

Ketubot 2:5 relates to a similar matter.

“If a woman says, “I was married and I am divorced,” she is believed, for the mouth that forbade is the mouth that permits. But if there are witnesses that she was married and she says, “I am divorced,” she is not believed. If she says, “I was taken captive but I am pure,” she is believed for the mouth that forbade is the mouth that permits. But if there are witnesses that she was taken captive and she says, “I am pure” she is not believed. But if the witnesses came after she had married, she does not leave (her marriage). “



When the matter would not have been known had she not said it, she is believed. But otherwise she is not believed and must prove it. The principle here - known as *miggo* is: “The mouth that forbade is the mouth that permits. Since there would have been no problem had the person not made an admission, we assume that what that individual says subsequently is to be believed and accepted. “

The Talmud (Ketubot 22a) brings a *bereita* that if a woman says “I am married” and then says “I am not married” she is believed. The Gemara explains that this is when she can

### Jewish Identity 11

give a plausible explanation for what she said. If not, she is not believed. (See other instances of being believed or not in the Mishnah there). See also T. Kid. 2:2. In Y. Ketubot 2:5 (26c), however, a case is recorded in which R. Yohanan accepted the testimony of such a woman even though it would have been possible to bring witnesses from another location.

Obviously the Sages in these cases were taking a lenient position, not demanding witnesses and proof in many cases where they might have done so. In the case where witnesses came after she had already married, they permitted her to remain married without requiring that she bring proof. The consequences of their not doing so were considered worse than taking the risk of believing her.

The position of the Jerusalem Bet Din of the Chief Rabbinate on these matters has been that regardless of the position of the Sages and earlier *poskim*, they do not believe anyone coming from Russia without specific proof. Rather they must see a birth certificate and that of the person’s mother. In one case the court was satisfied with the Ketubah written by the father of his mother to his wife who was a convert, because the conversion had witnesses and seemed authentic.

In another case of a child who, during the Shoah, was given to a Christian to raise and then came to Israel and was educated in an Orthodox institution, the court was not willing to accept the testimony of the non-Jew that the child was Jewish and required the child to undergo a full conversion. These decisions were taken in full knowledge that the Talmudic precedents would have permitted them to rule otherwise.

*There are cases in rabbinic literature when an individual’s testimony about himself and his family is accepted with no need for further evidence.*

### f. THE JEWISH IDENTITY OF A CONVERT

A *bereita* cited in Yebamot 46b is based on the word *itkha* - 'with you' in Lev.19:33 - "If a *ger* dwells *with you*," states:  
"The Rabbis taught: If one comes and says "I am a convert," is he to be believed? The verse says: "with you" - *only* if he is well known to you."

However if he has witnesses with him, he is always accepted, even if they did not witness the conversion. Thus:  
"Rav Sheshet said, "Where they state 'We heard that he converted at such and such a Bet Din' we might have thought that we are not to believe them, ['with you'] indicates that we do." (Yebamot 47a). "

## Jewish Identity 12

"R.Judah says that only in the land of Israel is proof needed, while the Sages say it is needed both in and outside the land. "

In Sifra Kedoshim 8:1 only R.Judah's opinion is cited.

The matter hinges on the fact that there is benefit to being a Jew in the land of Israel but not outside it.

"The expression "in your land" [If a proselyte sojourn...in your land Lev.19:33] is required to teach that proselytes may be accepted even in the Land of Israel. As it might have been assumed that there they become proselytes only on account of the prosperity of the Land of Israel, and at the present time also, when there is no prosperity, they might still be attracted by the gleanings, the forgotten sheaf, the corner and the poor man's tithe. Therefore this was taught. (Yebamot 47a) "

The implication of this is that today when being a Jew can allow one to acquire citizenship in Israel and has other benefits, some proof of conversion (or of Jewishness) is needed.

In Masechet Gerim 4:5, on the other hand, we read that in the Land of Israel a convert who says that he is a convert is immediately accepted, whereas outside of Israel he needs to bring witnesses. This is explained as being because of the importance of the Land of Israel which "atones for sins.." The reason here is quite different from that in Yebamot above.

"The Land of Israel is precious because it certifies converts. If someone in the Land of Israel says, "I am a convert" we accept him immediately. Outside of the land we do not accept him unless he has witnesses. The Land of Israel is precious because it atones for all sins and transgressions. "

In the Mishneh Torah, Hilkhos Kedusha Isurei Biah 13:7, the Rambam rules that witnesses must be brought to establish that one is a convert, but in 13:9 he states that if the convert fulfills the mitzvot, acting like a Jew, then even without witnesses he 'is

considered a righteous convert” . In the same section cited the Rambam teaches that one who was not known to be a convert, who reveals that he is and that he was converted in a court, is believed because of *miggo*. However he limits this ruling to the Land of Israel at “that time” (i.e., when Jews were the majority)

For marriage, however, there must be witnesses or immersion. In 13:10 the Rambam rules that if one who was not known as a convert says “I was anon-Jew but converted,”

### Jewish Identity 13

he is believed on the basis on *miggo*. Rabbenu Tam agrees with this. See Tosafot in Yebamot 47a.

Outside the land, the ‘convert’ would have to provide proof in order to marry a Jewess. The Maggid Mishneh explains that this is a *humrah* added by the Rambam since the cases cited in the Talmud were in Israel and furthermore since he was a convert, the rule *The Sages teach: all families stand in the presumption of fitness* (Kiddushin 76b) does not apply since as a convert he has no family!

The Shulhan Arukh, Yoreh Deah 268:10 follows the Rambam’s opinions as stated above. “A male or female gentile who comes and states, “I was converted in the Bet Din of so-and-so officially,” is not trusted to come into the community until bringing witnesses. But if they are seen to be acting as Jews and performing all the mitzvot, then they are considered to be righteous proselytes even if there are no witnesses who can testify before whom they converted. Nevertheless if they want to become part of Israel, we do not marry them until they bring witnesses or until they undergo immersion before us since they are considered to be Gentiles. But one who comes and says that he was a Gentile and converted in a Bet Din is believed since the mouth that forbade is the mouth that permitted. And the Rambam wrote: What are we speaking about? When this is in the Land of Israel in these days since everyone there is considered to be Jewish. But in the Diaspora, one must bring proof and only afterwards marry a Jewish woman. “

The question of accepting a convert’s Jewishness was discussed at length by two Teshuvot of the CJLS in 1984, the majority opinion written by Rabbi Joel Roth, “Should the Kashrut of Conversions Be Investigated” and the minority opinion written by Rabbi David Novak, “A Teshuvah on the Subject of the Investigations of Conversions Today (Hebrew).” Although the argumentation in the two Teshuvot is different, the conclusion of both is that any couple coming to get married should be asked if they are Jewish or not and any conversion should be investigated. Neither delineated what proof was needed. *Concerning converts, the weight of opinion is that if someone who was thought to be a Jew reveals that he is a convert, he may be believed since he had no obligation to reveal that fact. Under certain circumstances, moreover, the Sages accept a convert’s word even without witnesses to the actual conversion. The Rambam would accept someone without witnesses who has been living a Jewish, mitzvah-observant life. However in*

*places where there was an advantage to be gained by being Jewish, proof was required, especially for purposes of marriage.*

## Jewish Identity 14

### Summary

Based on the rabbinic sources cited, we may deduce the following concepts as a basis for our halakhic decision:

- a. Even in the case of proving fitness to serve as a priest, where a thorough investigation was made, leniency was shown in that one witness was sufficient as long as there were none who questioned it. Thus a more thorough investigation was made only when a question was raised. Sometimes there was even a presumption of fitness - *dwfg* - such as when the priest has been regularly performing certain priestly duties.
- b. Regarding marriage there was a presumption of the fitness of all families which became a basic principle in determining Jewish identity.
- c. In the case of a child of unknown identity, a reasonable assumption of Jewishness can be made even where there is no actual proof, taking into account the demographic reality. The sages inclined toward declaring the child Jewish where there is nothing specific that would disprove it.
- d. Medieval sources accept the story in the Talmud of a non-Jew who ate of the Pesah at the Temple since no one questioned his Jewishness, as creating a principle that one who presents him/herself as a Jew is accepted with no further investigation unless there is cause to be suspicious.
- e. In certain cases an individual's testimony about himself and his family may be accepted with no need for further evidence.
- f. Concerning converts, the weight of opinion is that if someone who was thought to be a Jew reveals that he is a convert, he may be believed since he had no obligation to reveal that fact. Under certain circumstances, moreover, the Sages accept a convert's word even without witnesses to the actual conversion. The Rambam would accept someone without witnesses who has been living a Jewish, mitzvah-observant, life. However in places where there was an advantage to be gained by being Jewish, proof was required, especially for purposes of marriage.

### **PSAK HALAKHAH**

1. Based upon the principle that "all families are considered to be fit" (Kiddushin 76b) which was taken to mean that they are all considered to be within the definition of Israelites, all who claim to be Jews are under the presumption of Jewishness (Tosafot to Yebamot 47a, Ovadia Yosef).

As has been stated, One who says "I am a Jew" need not be investigated (Maggid Mishnah). Where one is part of a Jewish

## Jewish Identity 15

community and has been living as a Jew there is no need to instigate an investigation into that person's Jewishness. We affirm that trust is the default position in these matters.

Therefore we do not question one's Jewishness unless there is reason to be suspicious.

2. However, in view of the many difficulties cited above concerning Jewish identity today and in order to avoid singling out individuals, it is appropriate to determine anyone's eligibility for synagogue membership, religious school, burial and, especially marriage, for example, by asking for the person's Hebrew name and that of his/her father and mother. If it becomes obvious that the mother and the mother's mother were born Jewish, there should be no need for further questioning.<sup>15</sup>

3. If, however, the person or the family is not known to us or if there is reason to suspect that one is not Jewish, further investigation is needed. This can be done through questioning the individual, through testimony of those who know the person or knew the family, or, if available, documents that indicate a Jewish background. In many cases, especially concerning those coming from the former Soviet Union, it is understood that documentary evidence will be difficult to produce, and therefore we may rely on the evidence of friends or neighbors and on the impression made by the individual.

Questioning is to be done in a sensitive way so as not to violate the honor due to human beings and not to shame the individual.

4. For matters that do not seriously affect *klal yisrael*, such as a visitor to a synagogue being granted an aliyah to the Torah or other synagogue honors, it is not necessary to investigate individuals who state that they are Jewish unless one knows that this is not so or has very good reason to suspect it.

5. Where a conversion is involved either of the individual or of that person's mother, because of variations of practice among streams of Judaism and among individual rabbis, one should investigate if the conversion included the rudimentary elements of immersion and, for a male, circumcision. If not, those should be performed in order to complete the conversion.<sup>16</sup> If the mother's conversion was not valid, the individual will require a conversion, but if the individual was brought up as a Jew, it should be done as efficiently and discretely as possible within the requirements of halakhah. As stated in previous teshuvot on this matter, the rabbi must use great tact in approaching this issue, indicating that we are completing the process that was begun previously or adding the halakhic requirements to the individual's Jewish identity..

6. In places where there is a Bet Din, questions of Jewishness should be brought to the 15. I thank Rabbi Danny Nevins for this suggestion.

16. The CJLS has in the past adopted two contradictory positions on this. According to O22383B if the person has lived as a Jew for a period of years "we need not reevaluate the manner of his/her original conversion but will accept him/her as a member of the Jewish community." A teshuvah by David Novak in Proceedings of the CJLS 1980-5 pp.77-86 takes a different view and states that "these is no basis for accepting, even b'di'eved, converts who did not undergo specific tevilah for the sake of conversion." This teshuvah adopts the second position.

## Jewish Identity 16

Bet Din, which is the final authority. Its decision concerning the Jewishness of a person is final and is acceptable throughout the Rabbinical Assembly. Where there is no Bet Din, the individual rabbi is the final authority. It is incumbent upon the Bet Din or the rabbi to exercise good judgment and common sense on these matters, relying on the halakhic principles cited above.