

דובב שפתי ישנים [אטינגר] – ר' איסר יהודא אונטרמן

תביא אותם לקבל עול היהדות למעשה. אחרי שהם מלאים מרורות מהיחס האכזרי שהראו ה"אתאיסטים" לסוגיהם, בין אלה שדכאו אותם ובין אלה שעמדו מרחוק ולא רצו להגן עליהם. תקפה זו מבוססת על השכל הישר ועל הרגשות מעומק הנפש. לא כן בנוגע לאלה שבאים מארצות הרווחה ורוצים להתגייר. שם אם אין הכל "חלק" בנוגע לקבלת עול מצוות הרי יש להם אפשרויות להפרד זמ"ז (בלי צורך לגט פיטורין) ולסדר חייהם כראוי, וכפי שפירש הרמב"ם גבי עבד עברי שנמכר לישראל, שאם אין לו אפשרות לפדות עצמו אין הקרובים מחויבים לפדותו ואין בי"ד מצווים לעשות מאמצים יתרים כדי לבצע פדיונו.

ב"ה כי הסבר זה נתקבל אצל השואל ונחה דעתו מהשקפה זו בכלל. יתן ה' שנוכח להיגאל מיד כל השונאים והמציקים לנו בחומר וברוח, בכח זה אשר נקבל בתוקף את עול התורה והמצוות, לעבוד את הקב"ה אדון העולמות ולא לתת כל אפשרות להשתעבד ברוחנו לפורקי עול באיזה סוג של שעבוד, כדרשת חז"ל: — "עבדי הם ולא עבדים לעבדים".

גומר אני את ההערות בדין עבד עברי ברעיון מוסרי שעלה על לבי ונוגע הוא עכשיו למעשה. דנים עכשיו במצב שיתהווה בע"ה, כשיפתחו את השערים ברוסיה ואתב"י המדוכאים שם ברוחם יבואו למדינת ישראל באה"ק, לבנות מחדש את חייהם וחיי זרעם ולהדק את הקשרים בינם ובין עם ישראל ע"י שמירת דת קדשנו וארחות החיים של תורתנו הנצחית. הבעיות אשר תבאנה לפנינו הן המשפחות שנתערבו בהן זרים ויש צורך לטהרם ע"י גיור כהלכה.

בנדון זה נשאלתי מתלמיד חכם אחד לפי תומו שאלה הדורשת תשובה. האיך זה אפשר כי נתאמץ להכנס בעובי הקורה. למצוא בהלכה דרכים נכונות להקל על הגרים הבאים מרוסיה יותר מאשר לאלה שבאים מארצות הברית מאמריקא או ממ" קומות אחרים? כדי לענות על שאלה זו הראיתי לו את דברי רבנו הרמב"ם ז"ל בהלכות עבדים פרק ב' הלכה ז', ואלו הם דבריו: "הנמכר לעכ"ם אם לא השיגה ידו לגאול קרוביו פודין אותו וקרוב קרוב קודם, שנאמר או דודו או בן דודו יגאלנו, ובי"ד כופין את קרוביו לפדותו שלא יטמע בעכ"ם. לא פדאהו קרוביו או שאין ידם משגת — מצוה על כל אדם מישראל לפדותו וכו'. אבל הנמכר לישראל אין הקרובים פודין אותו ואין לה גואל ואינו גואל לחצאין. אלא כיצד דינו אם השיגה ידו ליתן כפי השנים הנותרות נותן ויוצא ואם לאו לא יצא". עכ"ל.

גם להמשפחות שיבואו מעמק הבכא ונדבקו בהן זמורות זר צריך להיות יחסנו כמו לעבד שנמכר לעכ"ם. עלינו לעשות מאמץ גדול לקרבם ליהדות ולגייר לפי הדין כל מי שאפשר לגייר, אחרת דוחים בזה משפחות יהודים, שכבר ישנם ילדים לבעלי התערובת ואי אפשר להפריד אותם. וקרובה מאד היא התקוה, כי גרות זאת

# PARDES REVISITED



Danny Sinclair

See RAV UNTERMAN'S  
RAV GOREN'S  
LAST PAGE.

## RABBINIC DISCRETION IN SELECTING CANDIDATES FOR CONVERSION

Lecturer in Jewish Law at Tel Aviv University and Associate Research Fellow of the Hebrew University Institute for Research in Jewish Law, Danny Sinclair, LL.B., LL.M., D.Jur., teaches Jewish law, ethics and philosophy at Pardes.

Formerly rabbi of the Edinburgh Jewish Community, Danny is the author of *Tradition and the Biological Revolution* (Edinburgh University Press, 1989), on the application of Jewish law to the treatment of the critically ill.

### 1 Talmud, Codes and Medieval Responsa

From an examination of the *responsa* literature, it becomes evident that rabbinic discretion plays an important role in conversion *halacha*. Indeed, the exercise of such discretion with regard to the acceptance of converts to Judaism is to be found in the *Talmud*. Thus we find in *Yevamot* 24b, certain categories of people which are unacceptable as converts to Judaism, e.g. those converting for the sake of a Jewish partner or in order to gain wealth. Nevertheless, there are two accounts in the *Talmud* of great authorities who converted individuals belonging to both of these categories.

In *Shabbat* 31a, Hillel converted a non-Jew who wished to become a high priest and wear garments of gold and silver. Only after Hillel had instructed him in Torah — including the prohibition on someone not descended from a priestly line having anything to do with the priesthood — did the convert give up his ambition.

In another case, R. Hiyya converted a woman who had explicitly informed him of her intention to marry one of his students (*Menahot* 44b). The circumstances of the case were rather special. The woman was a prostitute whose interest in the student was stimulated by his last-minute decision to refrain from having sexual intercourse with her as a result of being reminded of the sinfulness of such an act by the *tzizit* (ritual fringes) that he wore. Impressed by his religious strength, the woman gave up her harlotry, followed him to his *beth midrash*, and asked R. Hiyya to convert her to Judaism and marry her to the student, which he did. Clearly, this was no ordinary woman converting for the sake of a man. Nevertheless, in terms of the categories laid down in *Yevamot*, R. Hiyya's action remains questionable.

In order to resolve the contradiction between the conversions carried out by Hillel and R. Hiyya and the basic

*halacha* in *Yevamot*, Tosafot, medieval glossators on the *Talmud*, conclude that both were convinced that the individuals before them “would eventually practice Judaism for the sake of Heaven” (Tosafot, *Yevamot* 24b, s.v. *velo*). In such circumstances, the conversions were legitimate even in the first instance. On the basis of this conclusion, R. Joseph Karo (1485-1575) formulated a general principle that in cases involving ulterior motive, “everything depends upon the view taken by the *beth din*” (Beth Yosef, *Yoreh Deah* 268). This principle is also cited in the classical commentary *Sifte Cohen* on the *Shulhan Aruch* (*Yoreh Deah* 268:23). The exercise of discretion in the process of selecting candidates for conversion is, therefore, a well-established halachic principle.

There is an additional problem in the case of a conversion for the sake of a Jewish partner, since marriage between a convert and the Jew with whom he or she was involved prior to conversion is prohibited by the *Mishna* (*Yevamot* 2:8); although if it does take place, it need not be dissolved. This prohibition did not stand in R. Hiyya's way in the above-mentioned case. Thus, it may be inferred that the principle of discretion also applies to the ban on marriages between converts and their Jewish partners from pre-conversion times. Clear evidence for this inference is available in a *responsum* of Maimonides (1135-1204) concerning a gentile slave-girl and her Jewish master who were living together in the same courtyard (no. 211). Maimonides was prepared to sanction the conversion of the slave girl to Judaism and her marriage to the Jewish man. In dealing with what was obviously a widespread and patently ineradicable social phenomenon (*Responsa Rambam* nos. 353,372), Maimonides clearly felt that the best course was to sanction these relationships and to ensure the formal unity of the Jewish community. His decision became an important precedent in this area of *halacha* and undoubtedly influenced the development of a relatively lenient approach to conversion-motivation among Sefardic authorities.

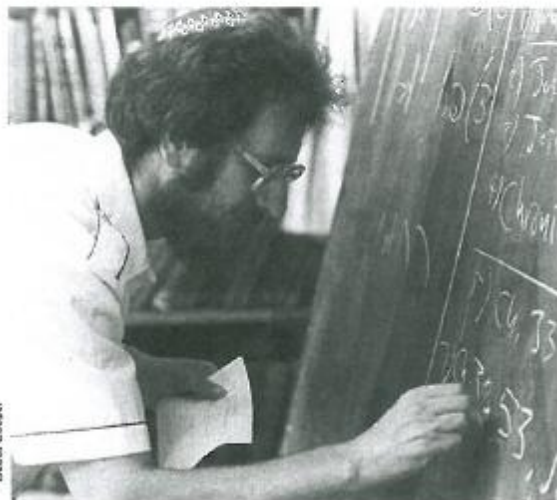


## 2 European Responsa in the Post-Emancipation Period (late 18th C. — mid 19th C.)

Rabbinical discretion in accepting converts to Judaism is a pervasive theme in the *responsa* literature of the post-Emancipation era. The dramatic change in the social status of European Jews in this period meant that they could serve in the armies of the states in which they lived. R. Solomon Kluger of Brody (1785-1869) begins his *responsum* with a reference to this “new order” as a result of which a Jew became a soldier, fell in love with a non-Jewess and, on his return home, wished to have her converted to Judaism. R. Kluger permitted the conversion on the basis of the general principle that “everything depends upon the view taken by the *beth din*,” and on the argument that since sexual relations have already taken place, “inclination is no longer the overriding factor.” Therefore, it is not for the sake of a man but for the sake of Heaven that the non-Jewess is converting to Judaism. R. Kluger also permits their marriage after the mandatory three-month waiting period, “Since he threatens to become an apostate, it is definitely permitted to sanction the marriage, as I have already indicated.”

## 3 The Divergence between East European and German Authorities Regarding Conversion Policy (mid 19th C. — early 20th C.)

In the middle of the nineteenth century, the focus of attention in conversion *responsa* shifted from the issue of ulterior motive to commitment of the candidate to *halacha*. This concern for the quality of Jewish life following conversion came about as a result of a changing perception on the part of East European authorities of the quality of Jewish life in countries such as Germany, which was at a much lower level of intensity than in Eastern Europe. R. Isaac Schmelkes of Lemberg (1828-1906) represents the East



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European school. He wrote a lengthy *responsum* on the case of a German Jew who wished to convert and marry his non-Jewish maid-servant after the death of his wife (*Responsa Beth Yitzhak, Yoreh Deah* no. 100). He had, in fact, been living with the servant during his wife's lifetime, and she had given birth to his child. Should the *beth din* not accede to his request, he would continue living with the non-Jewish woman and marry her in a civil ceremony. R. Schmelkes argues that if a candidate for conversion has no genuine intention of accepting the commandments, the conversion is invalid even at the post facto level. This is derived from a statement in *Bekhorot* 30b that “if a heathen is prepared to accept all of Torah, except for one religious law, he may not be received as a convert.” R. Schmelkes' emphasis constitutes a reaction to the German phenomenon of insincere conversions. His *responsum* set the pattern for East European halachists in this area of Jewish law, although the strictness of his position on the post facto status of insincere converts was ameliorated by R. Hayyim Ozer Grodzinski in a decision to be discussed below.

The chief exponent of the more lenient German school is R. David Zvi Hoffman of Berlin (1843-1926) who issued a number of rulings on this issue. Typical of these is his decision in relation to a Jewish woman who had married a non-Jew in a civil ceremony and was carrying his child (*Responsa Melamed Leho'il* 2, no. 83). R. Hoffman begins by citing the general principle that in this area, “everything is in accordance with the view adopted by the *beth din*.” This is followed by the argument that if the couple is already living together, then it may be assumed that conversion is not for the sake of marriage but for the sake of Heaven. He then points out that unless the conversion is performed, the Jewish woman will transgress the Biblical injunction on living with a non-Jew, and it is therefore “better that we accept him as a convert than have her remain married to him in defiance of this prohibition.” There is, however, a Talmudic dictum, “One does not tell a person: sin, in order that your neighbor may gain [spiritual merit] thereby” (*Shabbat* 4a), i.e. one is not required to transgress even a minor prohibition for the sake of saving someone from a more serious one. Although there are certain exceptions to this rule, it certainly does apply where the person who will be saved from the stricter sin deliberately set out to commit a transgression (becoming involved with a gentile) (Tosafot, *Shabbat* 4a, s.v. *vekhil*). Why, then, should the *beth din* commit the minor transgression of accepting a candidate with an ulterior motive in order to save her from the serious sin of marrying a non-Jew?

R. Hoffman provides two solutions to this difficulty. First, he argues that in her pregnant condition, the Jewess has no practical option to marry anyone other than this non-Jew. Deprived of any real choice with regard to marriage, she ought to be treated as a victim of duress, a category which, according to the Tosafot, constitutes an exception to the general principle that one does not tell a person to “sin in order that your neighbor may gain thereby.” Secondly, any



children born to the couple in question will be Jewish. This being the case, everything possible should be done in order to ensure that they receive a Jewish upbringing. "It is therefore better for the *beth din* to transgress the minor prohibition of accepting the convert in order to train him in the Jewish religion, so that his children will become good Jews." In conclusion, R. Hoffman recommends that the *beth din* require the convert to make a solemn declaration to the effect that he will observe the commandments of the Torah, especially the Sabbath and the dietary laws.

In another *responsum*, R. Hoffman cites the argument that if potential converts are rejected by an Orthodox *beth din*, they will go to Reform rabbis and gain recognition as converts to Judaism, even though such conversions are halachically invalid. He does, however, qualify this argument with the requirement that a female convert undertake to keep the laws of family purity, since the offence of living with a non-Jewess carries a lesser penalty than that of living with a Jewess who disregards these laws (*Responsa Melamed Leho'il* 2, no. 85).

R. Hoffman's concern with sincerity of commitment to *halacha* following conversion is articulated in his instructions at the end of these *responsa* to the effect that the candidates should make a solemn declaration that they intend to keep the basic commandments. Nevertheless, R. Hoffman follows the classical line of reasoning and builds his decision on the basis of the principle of discretion. Clearly, he prefers preservation of formal Jewish identity to the religious integrity of conversion, and the discretionary principle provides the framework for translating this preference into halachic terms.

The difference between East European and German authorities, therefore, is that the former ignored the discretionary element in traditional conversion *halacha* because of their desire to preserve the religious integrity of the conversion process. The German rabbis, however, preferred the value of preservation of halachic identity among the community as a whole, and developed a lenient conversion policy based upon the original discretionary position. Here it is important to emphasize that even the most uncompromising of East European authorities on conversion take care to leave some room for maneuver and do not state unequivocally that insincere converts remain gentiles.

In this context, the position adopted by R. Hayyim Ozer Grodzinski of Vilna (1863-1940), one of the outstanding halachic authorities of Lithuanian Jewry in the pre-World War II period, is noteworthy. In a *responsum* on the question of a gentile woman who was married to a Jew in a civil ceremony in the United States and who now wished to convert to Judaism, R. Grodzinski follows the line of reasoning developed by R. Isaac Schmelkes and analyzes the nature of the intention required in order to make acceptance of the divine commandments valid. He cites the distinction made by R. Schmelkes between ulterior motive and sincerity, but he qualifies the latter as follows:



...we do not accept the convert in a case in which he specifically provides that he will not keep a particular commandment, and will be legally exempt from it...however, a candidate who accepts all the commandments but has it in his mind to transgress because of his own weakness, is not considered insincere in relation to his acceptance of the commandments (*Responsa Ahiezer* no. 26).

Clearly, this distinction between articulated and inarticulated insincerity is a considerable amelioration of R. Schmelkes' position. It stems from the fact that R. Schmelkes maintains that the Talmudic interdiction on admitting a candidate whose acceptance of the commandments is defective is operative even on a post facto level, whereas according to R. Grodzinski, it only applies in the first instance (R. Abraham Cahane, *Responsa Dvar Avraham* 3 no. 28).

A fine illustration of the clash between rabbinic policies is the exchange between R. Mordekhai Yaakov Breisch and R. Menahem Mendel Kirschbaum in the early part of the twentieth century. R. Kirschbaum, *dayyan* of the general community in Frankfurt, begins with the proposition that since, in the final analysis, even an insincere conversion, and not only one based upon an ulterior motive, is valid, it is preferable to refrain from asking the candidates pressing questions regarding motivation in order to avoid their becoming Reform converts, thereby destroying any common basis for determining Jewish identity in the community. R. Kirschbaum cites various precedents for his approach in the general area of relaxing minor prohibitions for the sake of preventing the breach of more major offences, including Maimonides' celebrated *responsum*.

On the basis of the balance of sinfulness, R. Kirschbaum concludes that since there is a legitimate, vested interest in carrying out the conversion, "it may be better not to ask the



candidate about his or her acceptance of the commandments but merely to have them accept them according to the Torah." In relation to the dictum that a person is not told, "sin, in order that your neighbour may gain thereby," R. Kirschbaum follows R. Hoffman in treating candidates of this type as being under duress, and he also makes the point that in relation to rabbinical prohibitions, this dictum is traditionally relaxed. His final recommendation, therefore, is that the converts in question be sent to a special *beth din* with instructions as to how to carry out a halachically valid conversion so that, post facto at least, they will be converts according to the *halacha*. R. Kirschbaum also rules that the traditional three month waiting period between conversion and marriage be dispensed with (*Responsa Menahem Meshiv* no. 42).

R. Kirschbaum's *responsa* was strongly criticized by R. Mordekhai Yaakov Breisch, who had received the former's collection of *responsa* as a gift. R. Breisch's main contention is that in an era in which the candidates are only concerned to become converted so that they can marry "national Jews," i.e. Jews who have no meaningful commitment to Torah, there is no basis for applying the permissive precedents of the past. The only context in which it makes any sense whatsoever to do so is one in which "they sincerely intend becoming proper converts but their motivation is marriage." However, when there is no sincerity of intention to accept the commandments, but merely to become national Jews without such acceptance, then, notwithstanding their sincere intention to become Jewish, the conversion is invalid, even on a post facto basis. In his reaction to R. Kirschbaum, R. Breisch reflects a typically East European approach to conversion policy. Indeed, he writes quite explicitly that "the rabbis who live in the cities of immorality in Western Europe cannot deceive themselves with respect to what is perfectly obvious, i.e. that the vast majority of such converts ... will never adhere to the tenets of the Jewish religion" (*Responsa Helkat Yaakov* 1, no. 13).

#### 4 The Contemporary Situation

In the second half of the twentieth century, the division between Eastern and Western Europe that existed in the early part of the century appears to have shifted to the Diaspora and Israel. In a *responsum* written in 1968 in the U.S., the late R. Moses Feinstein reiterated an earlier decision in which he held that where it is evident that a candidate will not observe the commandments, the conversion is null and void (*Responsa Igrot Moshe, Even Ha'ezer* 3, no. 4). He also indicates that should such a "convert" marry, the marriage would be regarded as a nullity, and the Jewish partner would be free to marry without a *get*.

In contrast to this uncompromising position, R. Isser Yehuda Unterman (1886-1976), one of the Ashkenazic Chief Rabbis of Israel, was prepared to make generous concessions in the case of gentile spouses of Soviet *olim*, a large

number of whom were expected to arrive in Israel during the sixties. R. Unterman, however, begins his essay with the observation that during his rabbinate in England, his criteria for conversion were very strict. The reasons for this difference were two-fold. First, any leniency in the Diaspora would encourage intermarriage and lead to the eventual assimilation of the entire Jewish community into the gentile environment. Secondly, Diaspora converts remained in non-Jewish surroundings, and were unable to dissociate themselves entirely from their past. Neither of these reasons were applicable in Israel, hence, a more lenient policy may be adopted there. R. Unterman also made the point that those who endured suffering in order to become citizens of the State of Israel ought to be considered as fitting candidates for conversion, even if their religious convictions were less than satisfactory. In addition to these policy arguments, R. Unterman bases his views upon R. Grodzinski's understanding of the Talmudic requirement of commandment acceptance analyzed above, and on the classical discretion principle in this area of *halacha* ("Hilchot Vederekh Bizuan," *Noam* [5731] 1).

The "Israel factor" in conversion cases became even more pronounced in the decisions of R. Unterman's successor, R. Shlomo Goren. R. Goren draws upon both Talmudic and Midrashic sources, and on sociological arguments similar to those advanced by R. Unterman, in order to justify a lenient conversion policy in Israel with regard to candidates tainted by ulterior motive and lack of sincerity. One disadvantage of this approach, however, lies in the local nature of its justification. In a recent article ("Valid for Israel Only," *Jerusalem Post*, March 3, 1989), R. Goren attempted to justify the non-recognition of a female convert as a Jew by the *beth din* in London on the grounds that her certificate of conversion issued by an Israeli *beth din* was "invalid outside Israel." This qualification had been introduced by R. Goren and was consistent with his general approach to conversion. The notion of a geographically limited conversion is, however, both novel and startling, and may not be the wisest possible solution to the problem of balancing the preservation of Jewish identity against the disadvantages of insincere conversions. In the final analysis, the classical discretion principle, coupled with the policy considerations articulated by R. Unterman, might have provided a more elegant resolution to this type of case than conversion certificates stamped "valid in Israel only."

#### Postscript

Conversion is a fine example of an area of Jewish law in which discretion is a well-entrenched element. Hopefully, the rich tradition of discretionary principles in the *responsa* literature on conversion will commend itself to those involved in both the study and practice of halachic conversions in the contemporary world. In this way it could provide an intellectual framework for a concept which has become an emotive slogan rather than a serious exercise in *halacha* at its best. ■