

May a Conversion Obtained Through Deceit Be Annulled?

RABBI STEVEN SALTZMAN

This paper was adopted on June 14, 1989 by a vote of eleven in favor and eight opposed (11-8-0). Members voting in favor: Rabbis Amy Eilberg, Dov Peretz Elkins, David Feldman, Arnold Goodman, David Lincoln, Mayer Rabinowitz, Avram Reisner, Joel Roth, Steven Saltzman, Israel Silverman, Gordon Tucker. Members voting in opposition: Rabbis Kassel Abelson, Ben Zion Bergman, Richard Eisenberg, Howard Handler, Lionel Moses, Joel Rembaum, Seymour Rosenbloom, Morris Shapiro.

שאלה

The director of the Center for Conversion to Judaism has requested that the Committee on Jewish Law and Standards address a problem as described by the following excerpts from a letter.

In November 1985 a couple came to see me with regard to conversion. The man, A, told me that he was an Israeli Jew of Georgian origin who had worked for the border police. The wife B told me she was an Arab Muslim from the West Bank. They had apparently met when she was in Jerusalem on a visit to her family. She said that she had been divorced from an Arab man after living in Brooklyn with him for many years and had, I believe, five children. They studied with me for a year, Mr. A attending most classes. Despite a long sojourn in the United States, her English was very poor and Mr. A would translate into Arabic . . . Mrs. B was converted in October 1986.

A few weeks after our program began, Mr. A . . . told me he had met an Arab man who was fed up with Arab nationalism. This man, C, wanted to convert to Judaism. Mrs. D came to see me in December 1985. She told me that her husband Mr. C, had been divorced from a Spanish woman . . . Mr. C studied with me for a year and was converted in December 1986.

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

Earlier this year (1988), I received a call from a journalist in Israel . . . It seems that Mrs. B was indeed married but her husband was Mr. C and not Mr. A. Apparently Mr. A, a shrewd Israeli had arranged an elaborate scam so that the Couple B, C could return to Israel as Jewish citizens under the Law of Return in order to dwell in their home on the West Bank . . . *Yediot Aḥronot* printed a subsequent interview with C in which he spoke positively of his and his wife's commitment to Judaism and their desire to grow even more Jewish. The only problem with the statement is that they live in *Bet Hanina*, a totally Arab village where the practice of Judaism is hardly possible. Furthermore, C lied about the circumstances under which he and his wife came to me . . .

Currently, the situation is this: The Israeli consul, *Hover*, has been contacted by the Ministry of Interior to make the following request of me: Can I see my way clear to annul these conversions since they deceived me in such basic ways with regard to their marital status? . . . Thus my question to the Committee on Jewish Law and Standards of the Rabbinical Assembly is: Can the conversion of these two people be annulled because of the deception they practiced? An ancillary question . . . is: If annulment is possible, would it make sense to annul these conversions in view of the fact that C claims in an interview . . . that he is and wants to remain a sincere Jew?

תשובה

An answer to these questions must take into consideration the notion of intentionality within the conversion process. Can the prospective convert's intentions nullify a conversion when those intentions are flawed or fraudulent? Let us, however, begin our inquiry by trying to ascertain, if possible, the precise point in the conversion process when a Gentile becomes a Jew. Once we have determined the ritual(s) or act(s) which transforms the Gentile into a Jew, then we can investigate the importance of intentionality in that specific ritual or act.

Rabbi Eliezer (ben Hyrcanus), Rabbi Joshua (ben Ḥananiah) and the Rabbis attempt to identify the crucial, determinative ritual or act of conversion. There are three candidates:

(1) The acceptance of Torah and mitzvot: (2) the act of circumcision: (3) the ritual of immersion in a *מקוה*. The following *ברייתא* is taken from *Yevamot* 46a.¹

Our Rabbis taught: If a proselyte was circumcised but did not immerse, Rabbi Eliezer says that indeed this is a (valid) proselyte, for thus we have found regarding our fathers, that they were circumcised but did not immerse. If he (the proselyte) immersed but was not circumcised, Rabbi Joshua says that indeed this is a (valid)

proselyte. For thus have we found regarding our mothers, that they immersed but were not circumcised. But the sages say: If he (the proselyte) immersed but was not circumcised, or was circumcised but did not immerse, he is not a (valid) proselyte until he is circumcised and immerses.²

Acceptance of Torah and Mitzvot

Interestingly, the affirmation accepting the Torah and mitzvot, or in other words, the acceptance of correct ideas and beliefs does not in and of itself make someone Jewish. This is not very surprising considering that according to a ברייתא in B. *Yevamot* 47a-b we do not exactly overburden the proselyte with the details of the Jewish faith or of its observance.

Our rabbis taught . . . We make known to him a few of the lighter commandments and a few of the weightier commandments and we make known to him the penalty for transgression of gleaning (the poor man's share), the forgotten (sheaves), the corner, and the poor man's tithe. And we make known to him the punishment for violating the commandments . . . And just as we make known to him the punishment for violating the commandments, so too we make known to him the reward for their observance . . . We are not too lengthy with him nor are we too detailed. If he accepts this we circumcise him immediately. And two scholars stand over him and make known to him some of the lighter and some of the weightier commandments . . .³

The one essential subject specifically singled out for teaching the proselyte is the mitzvah of *tzedakah*,⁴ but beyond this no syllabus is either outlined or suggested. The convert must in principle accept the totality of both the oral law and the written Torah as taught in *Tosefta Demai* 2:5:

We do not accept a convert who has accepted upon himself all the laws of the Torah but one. Rabbi Yose ben Judah says: Even a minor law of the subtleties of the scribes (i.e. rabbinic ordinances).

This acceptance, however, is a literal נעשה ונשמע ("We will do and we will listen"). Clearly, the proselyte will have only a vague intellectual understanding of that which he has so categorically embraced. Nevertheless, the affirmation made on the basis of this understanding does not make the individual Jewish. The act of accepting Torah and mitzvot does play an important role in the conversion process, but only in conjunction with the decisive rite.

Circumcision

ברית מילה (circumcision) according to Genesis 17:6-11, is a physical covenant sign which attests that the individual is part of a larger group who function in an environment in which the rights and obligations conferred by the covenant are in force.⁵ A Canaanite slave may partake of the קרבן פסח (Paschal offering), on condition that he is circumcised. This circumcision does not make the slave either Jewish or free. It simply enables him to join a covenanted community for the sacrifice which re-enacts the covenantal drama of the exodus from Egypt. Interestingly, the *Mekhilta* links מילה (circumcision) with קרבן פסח (Paschal offering), by asserting that the People of Israel fulfilled two covenant commandments in Egypt, the fulfillment of which merited the redemption:

Therefore, the Holy One, blessed be He, assigned them, (the People of Israel), two duties: the duty of the paschal sacrifice and the duty of circumcision, which they should perform so as to be worthy of the redemption.⁶

Slaves were undoubtedly forcibly circumcised to enable them to function within a Jewish environment. Ritual defilement, participation in the פסח (Paschal offering), and יין נסך (wine used for idolatrous libations) are all issues that make it economically and socially even if only in the most peripheral way. Although by tannaitic times circumcision was a voluntary procedure it in and of itself did not make the slave Jewish, because circumcision is not the covenant itself, but only the sign of the covenant.

It would seem that the acceptance of the Torah and its mitzvot naturally leads to circumcision, but circumcision would be a senseless act for a proselyte were it not preceded by some intellectual and emotional commitment to Judaism. Infant circumcision presupposes by virtue of family ties subsequent commitment to the covenant. Interestingly, a Jew by birth does not lose his fundamental identity as a Jew if he is not circumcised. Fundamental Jewish identity is mediated by biology, i.e. a person is born Jewish and nothing including heresy (deviant ideas and beliefs) or apostasy (deviant practices) can change that biological fact.⁸ If a Jew by birth fails either to accept the Torah or to be circumcised, he remains Jewish, because his basic identity as a Jew is biological in nature. A Jew by choice is in a metaphysical sense being born again.⁹ The rituals of conversion are designed to give the Jew by choice that which a Jew by birth already possesses by virtue of birth. The ritual which most resembles birth is immersion in a מקוה. I must agree with Rabbi Joshua in the ברייתא who believes that immersion is the decisive act of conversion.

Furthermore, Rabbi Eliezer's position is clearly reflected. מילה cannot be the decisive act of conversion. The Tur Y.D. 268 explains that at the מקוה ceremony, the blessing is recited by the proselyte after he emerges from the מקוה. The *Bet Yosef*¹⁰ explains:

The proselyte may not recite "...who has sanctified us by His commandments and commanded us to..." because he is not yet commanded to perform the mitzvot.

Were מילה the determining ritual act, as Rabbi Eliezer would have us believe, the proselyte would recite the blessing in the מקוה before immersion, because he would already have undergone circumcision and would indeed be commanded to perform the mitzvot.

Conversion: The Rite of Immersion

The type of immersion under discussion is not simply purificatory in nature; it is initiatory as well.¹¹ Immersion as an initiatory rite is well documented in connection with a Canaanite slave.¹² Immersion and the intent with which it is done determines the legal status of the slave. The slave is purchased, circumcised and immersed with the intent of making him a slave. The male slave is now a Jew who must observe all the commandments except these positive imperatives with a time-bound component (מצות עשה שהזמן גרמא).¹³ This limitation on the slave's observance is a function of his servitude. In other words, personal freedom appears to be the *sine qua non* for being fully observant. Slavery may impinge on his Jewish identity (in terms of observance) but not on his fundamental identity as a Jew. When the slave is freed he is again immersed and takes his place as a free functioning member in Jewish society.¹⁴

Circumcision followed by immersion with the intent of slavery is a type of conversion rite. Immersion as an initiatory rite appears to require a "trigger" to determine its effect. In the case of a slave, there are two triggers: (1) circumcision and (2) intent that he remain a slave. The two triggers are, however, in some measure contradictory. Circumcision implies a willingness to live among the covenanted people who live as free individuals paying homage to the One who created them all. The intent to have this person remain a slave within the covenanted community of Israel creates a person who owes allegiance to two masters, to the one who bought him and the One who created him. B. *Yevamot* 45b-46a warns Jewish slaveholders to forcibly immerse slaves, and so prevent them from breaking away or speaking during the immersion rite. If a slave does break away and immerse himself with the intent of being freed, he does indeed gain his freedom.

The second immersion which a slave undergoes when he is freed does not have anything to do with making him Jewish. This second immersion is what I would call an immersion for civil purposes, i.e., it is an immersion to remove the yoke of slavery and induct him as a free citizen. After all, the slave has been observing the mitzvot, and has been functioning in a Jewish environment requiring ritual purity and has really been a part (albeit a peripheral part) of Jewish society. The trigger in the second rite of immersion removes the slavery imposed by the first immersion and as a side effect obligates the slave to observe those commandments for which he had an exemption as a slave. This change in observance obligations is a function of freedom and not a function of change in his fundamental Jewish identity, an identity that was assured after the first rite of immersion.

The Order of the Conversion Process

If (circumcision) *מילה* and accepting the yoke of God's kingdom" (*קבלת עול מלכות שמים*) serve as the "triggers" for *מקוה* which is the determinative ritual act in the conversion process, then both of the "triggers" are preparatory to *מקוה*. One may argue against this presumption by claiming that each of the three rituals, *מילה*, *קבלת עול מצוות*, and *מקוה* are equally necessary for conversion. Each individual ritual contributes to the conversion process which remains incomplete so long as one of these acts has not yet been properly performed. In this model, no single ritual act of the three is preparatory for the others, rather each stands on its own and may even require its own intentionality. A diagram of the two competing models follows:

1. *מילה* – *קבלת עול* = Intentionality > *מקוה*
2. Intentionality > *קבלת עול*
Intentionality > *מילה*
Intentionality > *מקוה*

The *Yev. 46a* cited above may be arguing the efficacy of each of these two models. Rabbi Eliezer asserts that *מילה* is the determinative ritual act in conversion so that even where there is no *מקוה* the conversion is valid. Clearly, *מקוה* does not carry an equally determinative role in the conversion process. Rabbi Eliezer rejects model #2 which understands each of the three rituals to be equally determinative in the conversion process. Both Rabbi Eliezer and Rabbi Joshua agree that only one ritual is the fundamental act in the process but they disagree as to which ritual it is. Rabbi Joshua rejects *מילה* as the central ritual and argues for *מקוה* claiming that even in a case where there is no *מילה* the conversion is valid just as it would be if the proselyte were female.

The rabbis of the ברייתא, on the other hand, argue in favor of model #2 asserting that both מילה and מקוה are both equally necessary for conversion. Neither ritual act is fundamentally determinative; rather, both are equally determinative.

The *Maggid Mishnah*¹⁵ notes the Ramban who argued that the established order of מילה followed by מקוה is not such that if it is reversed then the conversion is invalid. In other words, breaking the established order of conversion does not invalidate the process. מילה generally precedes מקוה, explains the Ramban, because it is personally a more traumatic experience for the proselyte and may dissuade him from completing the conversion.

The Ramban seems to support model #2 which does not regard any one ritual in the process as determinative. However, the Rama, in *Darkay Moshe*¹⁶ referring to the same Ramban writes: If מקוה precedes מילה, the conversion is valid בדעבד (after the fact).

The use of “after the fact” disturbs me. If מקוה and מילה are really independent of each other, neither being preparatory to the other, and if מילה precedes מקוה only because it is a more traumatic ritual for the proselyte, why validate a conversion where the order is reversed only *post facto*? Surely, *ab initio* it should be valid.

Speculatively, I would like to argue that *ab initio* מילה should precede מקוה not only because it is physically more demanding for the proselyte, but also because it is a preparatory act of intentionality for the מקוה. When the order is reversed and מילה follows מקוה there is still enough intentionality by virtue of עול מצוות to validate the מקוה *post facto* just as we would were the proselyte female.

The *Nimukei Yosef*¹⁷ disagrees with the Ramban asserting that if מקוה precedes מילה, the מקוה is invalid even בדעבד. For him, מילה is fundamentally preparatory to מקוה, and although in the case of a female proselyte עול מצוות is sufficient to establish intentionality for the מקוה, a male proselyte requires both עול מצוות and מילה to establish valid intentionality for the מקוה ritual. Both the Ramban and the *Nimukei Yosef* accept model #1 but disagree over the sufficiency of intentionality in the case of a male proselyte where מילה follows מקוה.

Modern Conversion

Hopefully, the dynamics of conversion as we practice it today are clear. The acceptance of Torah and mitzvot by the proselyte with מילה for a male act as the triggers for the מקוה ceremony. It is incumbent upon the rabbi and his court to examine the intentionality of the proselyte to guarantee the integrity of the triggers which determine the efficacy of the מקוה ceremony. That is why the *Shulhan Arukh Yoreh De'ah* 248:12

insists that we search for what may be ulterior motives for the conversion. Although an individual may begin the process of conversion with an ulterior motive in mind, by the end of the process that proselyte's belief in Judaism should ideally have become an independent conviction. In cases where the triggers for the *מקוה* are flawed, there is room to argue that there is no efficacy to the *מקוה* ceremony.

How is it possible, then, to determine the integrity of the trigger mechanisms?

Intentionality

“מרכיח סופו על תחילתו” (“the end testifies to the beginning”) is clearly an inoperative presumption in determining the convert's original intentions. The *Shulhan Arukh* reads:

As soon as the immersion is completed, the individual shall be considered Jewish. Should he then return to his ways of old, he shall be considered to be a Jewish apostate whose *kiddushin* is valid.¹⁸

Were it not for this exclusion, one could easily argue that the convert's intentions were dishonorable from the very beginning and therefore there was no *מקוה* and so no conversion. This type of reasoning is categorically disallowed and for good reason. No convert would ever feel safe from the prying eyes of those who are looking for any excuse to void the conversion. “מרכיח סופו על תחילתו” (“the end testifies to the beginning”), would destabilize the entire practice of conversion. The rabbinical court is charged with the task of investigating the proselyte's intentions, talking to and spending time with that individual in an attempt to truly understand the proselyte's motives and intentions.¹⁹ If as the process draws to a close, the rabbis feel that the intentions and convictions of the proselyte are misguided, they will deny the proselyte's petition for conversion.

Where the rabbinical court failed to investigate the intentions of the proselyte and even failed to give him the proper Jewish education, and proceeded with the rites of conversion, that individual shall be considered Jewish even if subsequently it was shown that the conversion was for an unacceptable ulterior motive.²⁰ There are two issues involved here. The court and the sponsoring rabbi were clearly negligent in their duties and responsibilities. It was incumbent upon them for the integrity of the conversion as well as for sake of the proselyte himself to educate and investigate. The mismanagement of the conversion is not the proselyte's fault. Secondly, it is quite possible that the proselyte's intentions were good *ab initio*, and that even under investigation they would have been acceptable. In order to discredit the proselyte's original

intentions, we need make use of *מוכיח סופו על תחילתו* (the end testifies to the beginning), a presumption which has been rendered inoperative.

Intentionality in this area may be determined only by the actions and comments of the proselyte as he or she moves through the conversion process up until the completion of the *מקוה*. For example, if a female proselyte immersed herself in a *מקוה*, not specifically for the purpose of conversion, but rather for the purpose of *נידה*, the *Shulḥan Arukh* states that she shall be considered to have converted and is to be regarded as Jewish.²¹ A fundamental intentionality which articulates an abiding belief in Judaism, Torah and mitzvot. Immersion for *נידה* is derivative of a first order set of beliefs which affirm her Jewishness and her acceptance of rabbinic law. The trigger for *מקוה*, in this case *נידה*, is sufficient for conversion as well. We judge her intentions not by any post-*מקוה* action or statement, but rather by what her mind-set was prior to the *מקוה*.

Our Case

It is impermissible to discredit this couple's pre-conversion intentionality on the basis of the facts that they moved to the West Bank, reclaimed lands, and live in an all Moslem village. It is tempting to argue that these ulterior motives were the real reasons behind the conversion, but *מוכיח סופו על תחילתו* (the end testifies to the beginning) is inadmissible. It is however, acceptable to argue that their intentions were dishonest and fraudulent *ab initio*. This we deduce not from any subsequent actions or statements, but from actions oral and written statements, which preceded the actual *מקוה* ceremony. Should it be clear to the *בית דין* of review from what they said and did prior to the *מקוה* ceremony that their petition for conversion was a lie, and that the rabbi involved in this case was diligent in his investigation of the proselytes' intentions and his instruction in Jewish practice and thought was thorough, but he was no match for this very sophisticated scam, then there was no conversion, because there is no valid *מקוה* ceremony without proper intentionality. In such a case the triggers to *מקוה* were flawed.

CONCLUSION

As rabbis who teach and accept converts, we have a right to honesty during the process. Where it can be clearly demonstrated that the proselyte acted dishonestly, withholding information vital to our ability to make a coherent decision, then the conversion may be considered null and void.

NOTES

1. See Bamberger, B., *Proselytism in the Talmudic Period.*, New York: Ktav, 1968, pp. 51f.
2. The difference between the Babylonian and Jerusalem versions is explained by D.W. Halivni, *משוואות ומסורות: נשים*, Tel Aviv: Dvir, 1968, p. 55, note 6.
3. See *Yoreh De'ah* 268:2.
4. Schiffman, L., *Who Was a Jew*, Hoboken, N.J.: Ktav, 1985, p. 22.
5. Licht, L., "Milah," *אנציקלופדיה מקראית* IV, pp. 896-8.
6. *Mekhilta de-Rabbi Ishmael*, translation, introduction and notes by Jacob Z. Lauterbach, 3 volumes, Phila./; JPS, 1976, vol. I, p. 33f.
8. See Schiffman, pp. 41-49.
9. See *Yoreh De'ah* 269:1-3
10. Y.D. 268 s.v. *v'ayn marbin*.
11. Rowly, H.H., "Jewish Proselyte Baptism and the Baptism of John," *HUCA* 15 (1940), pp. 313-334.
12. Bamberger, pp. 127-129.
13. The implications for Jewish women are obvious and disturbing.
14. Schiffman, p. 38.
15. MT *Hilkhot Issuray Biah* 14:5; also see *Shulhan Arukh* Y.D. 268:1.
16. Tur Y.D. 268:20.
17. Cited by the *Darkay Moshe*, Tur Y.D. 268:20, also see the Gra to Y.D. 268:5 referring to the *Tosafot* in *Yevamot* who agree with the Nimukay Yosef.
18. *Yoreh De'ah* 248:2 (end).
19. *Yoreh De'ah* 248:12.
20. *Yoreh De'ah* 248:12.
21. *Yoreh De'ah* 248:3.