

On Annulling a Conversion Obtained by Deceit – A Concurring Opinion

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This paper represents a concurring opinion to Rabbi Steven Saltzman's responsum, "May a Conversion Obtained Through Deceit be Annulled?" which was passed by the CJLS on 6/14/89 with eleven votes in favor, and eight opposed. I reach the same specific conclusion as Rabbi Saltzman, that "there is no valid mikveh ceremony without proper intentionality... Where it can be clearly demonstrated... (that) the proselyte acted dishonestly... the conversion may be considered null and void." I therefore voted in the majority. My reasoning, however, differed materially from Rabbi Saltzman's evidence necessary for a court to annul a conversion. Therefore this concurrence.

A Conversion is Usually Unappealable

The basic rule of conversion is that it is unappealable. A convert who returns to prior religious behavior is judged a Jewish sinner. Despite his renunciation of Judaism any marriage he had contracted would require a *get*.¹ As Rabbi Saltzman states clearly, the law does not allow future behavior to color a prior event *הוכיח סופו על תחילתו* ("the end testifies to the beginning") – at least not *לקולא* (leniency).² To allow that would leave every convert perpetually subject to attack, which is untenable. On its face it appears that a conversion cannot be annulled, as the minority of the committee would rule.

Rabbi Saltzman argues that prior fraud is an available and necessary exception to this apparently airtight rule. Prior fraud, even though discovered after the conversion, is not a future behavior affecting our perception of the conversion, but an anterior behavior, and one that calls into question the very nature of the conversion. To allow such fraud would demean the integrity of the court. In the event of provable fraud he would annul.

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.

It was argued, and I agree, that the category of prior fraud is insufficiently sensitive. Not every conceivable prior fraud materially affects the intentions of the convert at the time of conversion. Should the daughter of a known Mafia member seek to convert while hiding her lineage through a carefully planned subterfuge, that fraud, undertaken out of embarrassment, does not properly impugn or impeach the conversion itself. The court may be offended, but her conversion should stand. Only a fraud which indicates to the court that no intention to become Jewish was present should be allowed to annul a conversion.

Rabbi Shapiro argued for the minority that even in the case of a material fraud, precedent calls for honoring the conversion. He cites the case of the Gibeonites who entered into a treaty with Joshua under fraudulent terms, which fraud reached the very heart of the contract, and yet the contract was honored by Joshua and company (though not without repercussions). The Talmud and commentators³ treat this as a case of conversion, not annulled despite the fraud. This reverts to the basic ruling with regard to those who would convert for ulterior motive, that they should not be accepted for conversion, but once they convert they are to be treated as Jewish.⁴

It is tempting to agree with the minority that this ruling as illustrated by this case proves the ironclad rule that conversion once complete can never be annulled. Maimonides notes that the wives of Solomon and Samson fit this category. They surely converted (a rabbinically necessary, if historically dubious assumption) “and it is well known that they converted for ulterior motives . . . and furthermore, their future behavior testifies to their earlier doings for they worshipped their idols.” These women were kept as wives even though the scriptures recognize their true nature, referring to them as forbidden Gentiles. Thus Maimonides seems to advise that we cannot annul but should know in our hearts that these are not true Jews. Better yet, Tur Y.D. 268 rules in the name of the *Halakhot Gedolot* that we should treat such apostate converts as Gentiles except that we must be concerned about the technical validity of their marriages:

גר שחזר לסורו – יינו יין נסך ופיתו פת כותי . . . ובשאר כל דבריו כעכו"ם
ונראה לאו לכל מיילי קאמר . . . שהרי אם קדש בת ישראל קידושין קידושין אלא
לענין להרחיקו.

A convert who returned to his earlier faith-his wine is considered an idolatrous libation, his bread is gentile bread, and in all matters he is considered non-Jewish, but, it appears not in all matters, for if he married a Jewish widow, it is a valid marriage except that he is not to be associated with.

Incidentally, this ruling, if applied, would allow the Rabbinate in Israel to deny privileges under the Law of Return while accepting the position of the minority that the conversion cannot be annulled.

Are We to Be Bound by a Successful Scam?

Having said all this, why did I rule with Rabbi Saltzman that the conversion could be annulled? I found myself driven by the question: Granted that we must be extremely cautious in daring to overturn a conversion and that the intention of the convert at the moment of conversion is impossible to ascertain perfectly, withal, is there no fraud egregious and obvious enough that it would warrant the withholding of recognition? Fundamentally, if conversion is primarily a phenomenon of the soul finding its proper way to God through Judaism, how can we say of a conversion that we know to have been a fraud, never intended nor felt, with no change of heart or practice discernible at all, with no pious thought reasonably attributable to the convert though we try – how can we say that there has been a valid conversion? Are we simply trapped by a successful scam? Such cannot be nor may it be called conversion.

The source and fulcrum of this distinction in the law rests in the text of *Shulhan Arukh*, taken from Maimonides, which, when closely analyzed, opens the door. *Shulhan Arukh*, Y.D. 268.12 (= Maimonides, *Isurei Biah* 13.17) reads as follows:

אפילו נודע שבשביל דבר הוא מתגייר היאיל ומל וטבל יצא מכלל העכו"ם
וחוששין לו עד שתתברר צדקתו ואפילו חזר ועבד אלילים הרי הוא כישראל
מומר שקידושין קידושין.

Even if it is known that he had an ulterior motive in converting since he was circumcised and immersed he left the category of idolator. But we still doubt him until his righteousness is proven. And even if he reverted to idolatry he is considered to be like an apostate Israelite, in that his marriage is valid.

We are not in fact certain that there was a conversion in the case of such doubt, so we wait that the convert's righteousness should be proven. What constitutes proof? What happens should it not be proven? What is the point finally, waiting until the convert's righteousness be proven, if in any case, should the convert revert fully to idolatry (unrighteousness proven), the convert is nonetheless considered Jewish? This formulation begs the conclusion that should righteousness go unproven the conversion would be deemed null. Such a conclusion is in fact reached by the commentary *צפנת פניח* of Rabbi Yosef Rosen to Maimonides there. What would constitute proof of "righteousness"? Living and behaving as a Jew as a matter of choice. Observance of some

mitzvah as an act of distinctly Jewish religious affirmation. That would prove that the intention to convert was real, even if it was undertaken for advantage. But failing that, should there be no move on the part of the convert to live as a Jew, then it could be said that no conversion had taken place. But should the convert live as a Jew for a period, proving the reality of the conversion, then later revert; it is then that the final clause would apply and the convert would be considered an apostate Jew. This interpretation alone gives full weight to Maimonides' formulation.

Did They Ever Intend to Live as Jews?

How can this be given the precedents announced before? Precisely because in all the cases that came before the convert lived as a Jew in the midst of the Jewish people. This was true of Solomon's wives, as it is true of virtually all of those who convert for an ulterior motive. They may wish to achieve some goal by becoming Jewish, but it is their affirmative intent to become Jewish. The same is even true of the Gibeonites who, though motivated to save their lives, fully intended and did proceed to live in the very midst of the Jewish people. It does not matter what level of observance the convert maintains, only that the conversion is corroborated on the ground, as it were, in pragmatic acts of affiliation.⁵ Thus the case in question appears to differ from any of the cases cited in precedent, for here the converts appear to have perpetrated a fraud with no intention whatsoever to function as Jews, as indicated by their subsequent behavior, and could therefore be a candidate for annulment.⁶

There Must be Proof of Prior Intent to Defraud

It must be stressed that this is a very stingy opening. Since the law does not allow us to utilize subsequent behavior to invalidate prior activity, we must have indication of a prior fraud or reason to doubt that the conversion is being undertaken in good faith. This is Rabbi Saltzman's fraud test and Maimonides' ulterior motive. Then, in the presence of that suspicion, should it be proven to the satisfaction of the court that the convert failed upon conversion to undertake any⁷ affirmatively Jewish behavior that could be interpreted as indicative of the choice to become Jewish (save, of course any behavior undertaken simply to perpetrate the fraud upon the court), such a conversion, and such a conversion alone, may be annulled. If, *חס ושלום*, such an annulment should ever wrongly effect someone who truly wished to become Jewish but had not yet found the way, such a convert has before them the simple remedy of converting again properly and beginning to lead the Jewish life they choose.

NOTES

1. Sh.A., Y.D. 268.2/12, Maimonides, *Isurei Biah* 13.17.
2. *Hullin* 39b.
3. *Yevamot* 78b-79a and Rashi there.
4. Sh.A., Maimonides loc. cit.
5. The Gibeonites, of course, did not live among the Jews as a matter of free choice, and we would probably be inclined to reject such a conversion *ab initio*. But, as a historical fact they and others did join the Jewish people, a fact recognized by the tradition if not always appreciated. These were called גרי אריות, forced converts, who were debated but ultimately accepted (*Yevamot* 24b). Had they failed to integrate themselves into Jewish life, however, their conversions might not have been recognized, as *Tosafot* asserts clearly on *Hullin* 3b, s.v. קסבר.

אע"ג דאמר בסוף פ"ב דיבמות: אחד גרי אריות אחד גרי חלומות כולם גרים גומרים, היינו כשמתגייר לגמרי מפחד אריות. אבל כותים לא נתגיירו לגמרי.

Even though it is written at the end of chapter two of *Yevamot*: "Forced converts, and those converted on account of a vision are full converts," this refers to when a person converts completely in response to fear. But the Cutheans never fully converted.

Another point: It is clear from this presentation, as it is clear in Jewish law, that proof of the "righteousness" of a conversion does not require the perfect fulfillment of all 613 *mitzvot* in all their details. Despite recent right wing attempts to set such a requirement, the law requires only partial disclosure (Sh.A., Y.D. 268.2) and only the refusal to fulfill a *mitzvah* and not its non-fulfillment as a bar to conversion (*Bekhorot* 30b). An apostate convert clearly violates many *mitzvot*, yet he remains a Jew. Thus conversions are not threatened by this ruling even where the convert does not become fully observant, where the converts clearly and decisively affiliate with the Jewish community around them and live affirmatively as such, as is almost always the case, especially when the convert marries a Jew.

6. Rabbi J. David Bleich cites additional cases against the annulment of conversion in his "Review of Halakhic Periodical Literature" in *Tradition*, Vol. 12 from responsa by former Israeli Chief Rabbi A.I. Kook and Rabbi A.Y. Horowitz. Bleich claims that Horowitz's case is of a woman who "apparently reverted immediately to Christian practice," which would put Rabbi Horowitz on record against this ruling. This is not so, however. The husband there claimed to go to the *mikveh* to complete conversion, but that she never did. Rabbi

Horowitz finds the husband an unacceptable witness and believes, rather, that if a conversion was undertaken before a rabbi, and the husband himself cared to do that, then it must be assumed that the conversion was completed as called for with the intent to live as Jews. Rabbi Rosen in fact knows unnamed rabbis who would annul in such a case, but he prefers to assume a period of proper practice before any backsliding rather than assume that the demands of this tight exemption had been met. He does not indicate that he would have refused to annul even if the facts been more accessible to him, and he was certain that there had been an outright sham.

Similarly, Rabbi Kook is asked whether to accept converts at all given the prevalence of ulterior motives, and he cites Maimonides to suggest it would be better to avoid the problems. But of a specific case in Egypt to which he refers, he writes “I did not wish to join them.” He does not indicate that it would be halakhically improper to annul, only that in the context of his preference that such conversion never be done he chose not to participate in an annulment.

Rabbi Moses Feinstein (*Iggrot Moshe*, Y.D. I, 157) would annul any conversion wherein we feel the acceptance of mitzvot is insincere. He does not indicate what his criteria in this judgment would be, and this opens the Pandora’s box that the halakhah sought to close. He is further testimony, however, that annulment remains thinkable to some modern *poskim*. Rabbi Gedaliah Felder, in *נהלה צבי*, pp. 20-21, leans that way as well. The question always remains how to control against political and frivolous annulments. That some tightly controlled annulment is possible, as enunciated here, follows.

7. In discussing the status of one who claims to be Jewish where no testimony is available, some *poskim* speak of a *חזקת הנהגה* a presumption of Jewishness based on practice, which may be established after living as a Jew for 30 days (see Rabbi B. Zolti, *הפרדס* 47, no. 6, p. 10). That could be applied to the requirement of proving “righteousness,” however it appears to me that the 30 day presumption applies where no other indication of Jewishness exists. Here where an apparently valid conversion is known to exist and only seeks confirmation, any affirmative Jewish behavior should suffice to confirm the conversion and remove the convert from threat of annulment. A very restrictive ruling indeed.

Two addenda on “May a Conversion Obtained by Deceit be Annulled?” by Rabbi Morris Shapiro are included in the appendix , pp. 547-554.