

Addendum II on: May a Conversion Obtained Through Deceit be Annulled?

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In this paper I will advance a halakhic reason as to why Joshua did not nullify the Gibeonite conversion. Let me submit that even though conversion requires a *Bet-Din* of three, its function is to judge that it was done *k'halakha* rather than to accept (even though the Talmud uses the term “acceptance” מקבלין). Therefore, the concept of nullification does not apply. In other words, the *Bet-Din* may not say: “should we have known his or her origin we would not have accepted him or her.” For the *Bet-Din* does not convert, but merely ascertains. That explains Joshua’s dilemma.

The *Bet-Din* Does not Convert It Ascertains

Let me cite the sources I believe support this position.

In *Yevamot* 45b we learn:

עבדיה דרבי חייא בר אמי אטבלה לה היא עובדת כוכבים לשם אנתתא אמר רב יוסף יכילנא לאכשירי בה ובברתה. בה כדרב אסי דאמר רב אסי מי לא טבלה לנדוטה.

The servant of Rabbi Hiyya bar Ammi immersed a gentile girl to be his wife. Rav Yosef say: I can validate both her and her daughter. Her in accord with Rav Assi’s dictum: “Has she not immersed after her periods?”

Rashi: יכילנא לאכשר בה להיות גיורת גמורה ואע”פ שלא טבלה לשם גירות.

Tosafot (s.v. Mi) asks: Does not conversion require a *Bet-Din* of three? Two answers are given: (1) The requirement of a *Bet-Din* is for קבלת המצות (acceptance of the commandments) only. (2) ויש מפרשים דכיון דידעו – לכל שטבלה כאילו עומדים שם דמי דמי – there are those who say that public knowledge that she had immersed is considered as if they were there.

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.

Tosafot here is quite clear that the function of the *Bet-Din* is that of knowing.

The Rif asks the same question as *Tosafot*:

ואי קשיא לך ההיא דרבי יוחנן דאמר גר צריך שלשה וכו' וק"ל דהלכתא היא לא קשיא הא דרב אסי ודרבי יהושע בן לוי דיעבד הוא דלא פסלינן לבריה הואיל וטבל לשם קריו וכו': והא דרבי יוחנן לכתחילה דלא נהגין ביה מנהג גר ולא מנסבינן בת ישראל עד דטבל בפני ג'.

If you ask about Rabbi Yohanan's dictum that a convert requires three [people], which we understand is the halakha – Ravi Assi and Rabbi Yehoshuaa ben Levi's dictum that we do not find [an unattested convert's] son invalid since he immersed after his sexual emissions is after the fact whereas Rabbi Yohanan's requirement is *ab initio* – that we don't treat him as a convert, do not allow him to marry a Jewish woman, until he immersed before three.

Note, the Rif does not say *בפני בית דין של ג'* – before a court of three.

The *Magid Mishnah* is of the opinion that the Rambam is in accord with the Rif. The *Magid Mishnah* quotes the *Halakhot Gedolo*, expressing the same analysis as the Rif.

ובהלכות אמרו גבי מעשים אלו ואי קשיא לך ההיא דרבי יוחנן דאמר גר צריך שלשה מ"ט משפט כתיב ביה וק"ל דהלכתא היא ל"ק הא דרב אסי ודריב"ל דיעבד . . . והא דרבי יוחנן לכתחילה . . . וקרובים דבריהם לדברי רבינו (הלכות אסורי ביאה פ. יג הל. ט)

In *Halakhot Gedolot* they said of these matters . . . And their words resemble the words of Maimonides *Hilkhot Issurei Bi'ah*.

In *Yevamot* 24b we learn:

אין מקבלין גרים לימות המשיח. כיוצא בו לא קבלו גרים לא בימי דוד . . .

There will be no proselytization at the the time of the Messiah. Similarly, they did not accept converts in the time of David.

Tosafot asks:

אבל קשה דאמרינן בהערל (דף עט) גבי מעשה דגבעונים דבימי דוד נתוספו גרים על ישראל ק"ן אלף. וי"ל דמעצמן נתגיירו כדאשכחן גבי מרדכי ואסתר.

This problematic in light of what we say concerning the Gibeonites, that 150,000 converts were added to Israel. One could say that they converted on their own, as [in the days of] Mordekhai and Esther.

Tosafot's answer: דמעצמן נתגיירו requires elucidation!

In *Yevamot* 47a we learn.

א"ר יהודה גר שנתגייר בב"ד הרי זה גר בינו לבין עצמו אינו גר.

Says Rav Yehudah: A convert in court is a [valid] convert. Privately he is not a [valid] convert.

I suggest that *Tosafot* is in accord with the ruling of the Rambam: (*Hikhot Issurei Biya* 13:15)

לפיכך לא קבלו בית דין גרים כל ימי דוד ושלמה . . . ואעפ"כ היו גרים הרבה מתגיירים בימי דוד ושלמה בפני הדיוטות.

The courts did not accept converts in the time of David and Solomon, nevertheless there were many converts in those days before laymen.

There is a disagreement between the *Magid Mishnah* and the *Kesef Mishnah* as to the meaning בפני הדיוטות (before laymen). The *Magid Mishnah* holds it to mean before a *Bet-Din* of הדיוטות (laymen). The *Kesef Mishnah* maintains:

אלא שאם קבלו אותם גרים הדיוטות שאינם ב"ד הרי הם גרים (הלכות איסורי ביאה פ' יג הל' טו)

If they were accepted as converts by laymen who do not constitute a court, they are converts.

In 13:17 the Rambam rules:

גר שלא בדקו אחריו או שלא הודיעוהו המצות ועונשן ומל וטבל בפני ג הדיוטות ה"ז גר. ואפילו חזר ועבד כו"ם הרי הוא כישראל מומר שקידושיו קידושין. ולפיכך קיימו שמשון ושלמה נשותיהן ואע"פ שנגלה סודן.

A convert who was not checked out thoroughly, or whom they did not advise of the commandments and the punishments, but was circumcised and immersed before three laymen – he is a convert. Even were he to revert to idolatry, he is like a Jewish apostate whose marriages are valid. That is why Samson and Solomon kept their wives even after their privacy was compromised.

The Rambam is quite explicit here: ואע"פ שנגלה סודן (even though their privacy was compromised).

CONCLUSION

We may now conclude that the covenant Joshua made with the Gibeonites was a political alliance. And, therefore, the Radak rightly asks why didn't he nullify it. The conversion was done על ידי עצמן (on their own).

Should we accept Rabbi Moshe Feinstein's ruling:

ואף אם אמר בפיו שמקבל המצות אם אנן סהדי שאינו מקבל עליו באמת אינו כלום.

Even if he said that he accepts the commandments but we can attest that he does not truly do so, it is invalid.

Then we would have to question many of our conversions.