

The Status of Non-Halakhic Conversions

RABBI DAVID NOVAK

This paper was adopted on October 27, 1982 by a vote of 10-2-3. Members voting in favor: Rabbis David M. Feldman, David H. Lincoln, David Novak, Mayer E. Rabinowitz, Barry S. Rosen, Joel Roth, Morris M. Shapiro, Harry Z. Sky, Henry A. Sosland and Alan J. Yuter. Members voting in opposition: Rabbis Kassel Abelson and Israel N. Silverman. Members abstaining: Rabbis Ben Zion Bokser, Salamon Faber and Edward M. Gershfield.

*Note: A resolution was adopted on February 23, 1983 by a vote of 8-3-3. The resolution reads as follows: "We reaffirm the norms involved in giyyur according to halakhah, that in a case *bede'avad*, where the person has undergone conversion and has lived as a Jew for a period of years, we need not re-evaluate the manner of his/her original conversion, but will accept him/her as a member of the Jewish community."*

The adoption of that motion was followed by the adoption of two papers on February 15, 1984, both bearing on this subject: "Should the Kashrut of Conversions Be Investigated?" by Rabbi Joel Roth, adopted as the Majority Opinion by a vote of 7-4-3, and "A Teshuvah on the Subject of the Investigation of Conversions Today" by Rabbi Novak, adopted as the Minority Opinion of the Committee by a vote of 6-6, with 2 abstentions. Both of these papers appear following this article.

SHE'ELAH

The Committee on Jewish Law and Standards of the Rabbinical Assembly has been asked on several occasions about the status of persons converted to Judaism in a non-halakhic manner, that is, men who did not undergo *milah* and/or *tevilah* and women who did not undergo *tevilah*. This question has assumed rather dramatic proportions in recent times due to the attempt in the State of Israel to amend the "Law of Return" (*Hok Hashevut*) so that only those who have undergone halakhic conversions (*giyyur kehalakhah*) are entitled to automatic Israeli citizenship. Also, in America the whole issue of a pluralistic Jewish community, which most Conservative Jews recognize as both a fact and a desideratum, raises the question of the status of numerous persons who consider themselves bona fide members of the Jewish community and are considered as such by others, yet who did not undergo the prescribed procedure for conversion. The question therefore

calls for renewed attention.

TESHUVAH

On November 13, 1940 the Law Committee ruled: "The status of a Gentile woman who was converted by a Reform rabbi was discussed. It was held that such a woman could not be deemed a Jewess unless she had submitted to the ritual established by traditional Jewish law." This opinion was reiterated in a Digest of Answers issued for the year 1949.

Nevertheless, on January 27, 1955 the then-Chairman of the Committee, Rabbi Arthur H. Neulander, wrote to Rabbi Herman Kieval, "The Committee has also decided long ago that a conversion ceremony performed by a Reform rabbi may be recognized by a Conservative congregation." Rabbi Neulander reiterated this opinion in answer to a question from Rabbi Arnold A. Lasker on November 7, 1955 and again in answer to a question from Rabbi Theodore Steinberg on November 8, 1956.

However, Rabbi Akiba Lubow, the Secretary of the Law Committee, informed me in a letter dated November 13, 1981, "Although he (Rabbi Neulander) writes that this is a long-standing ruling of the Law Committee, I have been unable to find any materials in the Archives prior to this correspondence to serve as a basis for this opinion."

In a digest of the answers presented at a meeting of the Committee held on April 13-14, 1959, it was stated, "Proselytes who have been converted by Reform rabbis shall be recognized as full-fledged Jews providing that if the proselyte be male, he be circumcised."¹

On December 1, 1965 Rabbi Eli Bohnen presented the following opinion for the consideration of the Committee:

The Talmud reports a debate which took place in the latter part of the first century or early in the second century, between R. Eliezer and R. Joshua on the subject of the rites of conversion. The question at issue was whether a conversion could be regarded valid if *tevilah* was lacking....The Gemara, while reporting the difference of opinions between the Tannaim, assumes that the halakhah requires *tevilah*....The fact is that the halakhah required *tevilah*. The *posekim* are unanimous.²

Nevertheless, he concludes his opinion as follows:

We recognize the fact that in some instances it may not be possible, or even advisable, to insist that *tevilah* must be accomplished. It is conceivable that a great traumatic hurt could be inflicted on converts who have been loyal to the Jewish faith for years....Indeed, we have been informed of cases where, in extraordinary circumstances, outstanding Jewish authorities accepted evidence of having bathed in

The Status of Non-Halakhic Conversions

the sea as fulfillment of the requirement of *tevilah*.

The minutes of this meeting record Rabbis Aaron Blumenthal, Eli Bohnen, Max Davidson, Leon Fink, Morris Fishman, Max Gelb, Benjamin Kreitman, Seymour Panitz and Max Routtenberg as being in favor of this opinion. Rabbis David Feldman, Isaac Klein and Wilfred Shuchat opposed it.

Rabbi Bohnen seems to be arguing that *tevilah* is most certainly required *ab initio*, but that in certain circumstances, where "reconversion," as it were, would cause great embarrassment and anxiety, we might accept any accidental immersion *ex post facto*.

In an opinion written a short time later, Rabbi Aaron Blumenthal, although having originally voted in favor of Rabbi Bohnen's opinion, seems to want to go even further than it. In this opinion he was joined by Rabbi Leon Fink, who also had originally voted for the Bohnen opinion:

Earlier decisions of this Committee have stipulated that we recognize all conversions in which the good faith of the proselyte is demonstrated....

We find no cogent reason for changing the original decision of this Committee.... There have been no new developments, no significant changes of circumstance to warrant a retreat from our earlier position. Conversely, the increase in the rate of intermarriage suggests that we should strive to embrace as many of these couples as possible within the Jewish fold.

This does not mean that the Conservative rabbi is to desist from the commendable attempt to have the family conform to our standards. It does mean that such converts and their children may not be excluded from our congregations. They are to be accorded all the rights and privileges of *gerei tzedek*.³

The point of difference between the respective opinions of Rabbi Bohnen and Rabbi Blumenthal is not major. Both seem to agree that *tevilah* is required *ab initio* and that it can be waived *ex post facto*. The only difference seems to be that whereas Rabbi Bohnen would only waive the requirement in cases of great hardship, Rabbi Blumenthal would waive it in all cases of non-halakhic conversion.

Since Rabbi Blumenthal neither cites nor even alludes to any classical halakhic sources, I cannot comment on his opinion in the context of a responsum.⁴ On the other hand, Rabbi Bohnen does cite halakhic sources in the first part of his opinion and alludes to halakhic sources in the second part. A halakhic analysis is therefore required.

In commenting on *Yevamot* 46a, Rabbi Bohnen states that, "The question at issue was whether a conversion could be regarded as valid if *tevilah* was lacking." The text there reads:

תנו רבנן. גר שמל ולא טבל: רבי אליעזר אומר הרי זה גר . . . טבל ולא מל: רבי יהושע אומר הרי זה גר . . . וחכמים אומרים טבל ולא מל, מל ולא טבל, אין גר עד שימול ויטבול.

The parallel text in J.T. *Kiddushin* 3:12 (64d) reads:

תני. גר שמל ולא טבל, טבל ולא מל, הכל הולך אחר המילה: דברי רבי אליעזר. רבי יהושע אומר אף הטבילה מעכבת.

In summarizing these texts, the late Rabbi Bernard J. Bamberger, in his justly famous study of conversion, insightfully notes, "More simply, the point at issue was: At what moment in the procedure of conversion does the convert cease to be a heathen and become a Jew? This is of considerable practical importance."⁵ Rabbi Bamberger then cites a number of cases where the determination of the exact point of full conversion affects one's marital status and the Jewish status of his or her children. He concludes his analysis of the texts as follows:

In all such cases, R. Eliezer declared that the man is a convert from the time he is circumcised. R. Joshua, according to the Palestinian Talmud, declares that he does not have the status of the Jew until baptism has also taken place.⁶

In other words, both R. Eliezer and R. Joshua require *milah* and *tevilah*, their point of difference being at what exact point in the whole conversion process the *ger* actually becomes a Jew in the specific legal sense. However, neither Tanna eliminated either of the two requirements.

Rabbi Bohnen did not cite those "outstanding Jewish authorities" who regarded any subsequent full immersion in a natural body of water to be sufficient *tevilah* *ex post facto*. I assume he is referring to *Hullin* 31a, which reads:

אתמר. נדה שנאנסה וטבלה: אמר רב יהודה אמר רב טהורה לביתה, ואסורה לאכול בתרומה. ורבי יוחנן אמר אף לביתה לא טהורה. אמר ליה רבא לרב נחמן, לרב דאמר טהורה לביתה ואסורה לאכול בתרומה, עון כרת הותרה, איסור מיתה מיבעיא! אמר ליה בעלה חולין הוא וחולין לא בעי כוונה.

However, this accidental or incidental *tevilah* only applies to a *niddah*. It does not apply to any other situation requiring *kavvanah*. Maimonides clarifies this essential difference in *Hilkhot Mikvaot* 1:8:

כל הטובל צריך להתכוין לטבילה, ואם לא נתכוין עלתה לו טבילה לחולין. אפילו נדה שטבלה בלא כוונה כגון שנפלה לתוך המים או ירדה להקיר: הרי זו מותרת לבעלה. אבל לתרומה ולקדשים אינה טהורה עד שתטבול בכוונה.

Rabbi Yosef Karo further clarifies this in the *Kesef Mishneh* hereto:

ופסק רבינו כרב משום דמשמע בגמרא דרב נחמן בר יצחק סבר כוותיה. ועוד דבפרק אין דורשין (חגיגה יט, ע"א) סוגיין דרב דאמר חולין לא בעו כוונה, ולא מדכרינן התם דרבי יוחנן כלל.⁷

The Status of Non-Halakhic Conversions

This proviso is crucial because conversion would certainly be inconceivable by anyone's criteria without the element of intention. An unintentional conversion is an absurdity. Thus, for example, a child, who by definition is not a *ben da'at*, when converted by others during his or her childhood, has the right upon reaching adulthood to retroactively nullify this conversion if it is not his or her present intention to be a Jew.⁸

Moreover, even in the case of a *niddah*, the Rashba rejects the efficacy of any *tevilah* without proper *kavvanah* in his note to *Hullin* 31a:

ולענין פסק הלכה בנדה נראה לי דקיימא לן כרבי יוחנן, דכל רב ורבי יוחנן הלכה כרבי יוחנן (ביצה ד, ע"א). ורבא כרבי יוחנן סבירא ליה לכאורה מדמקשי ואזיל אע"ג דרב נחמן מתרץ לה ואמר דחולין לא בעו כוונה. מכל מקום הוה ליה רבי יוחנן לגבי רב, ורבא לגבי רב נחמן. וקיימא לן כרבי יוחנן. ועוד דבשל תורה הלך אחר המחמיר. (עבודה זרה ז, ע"א).

This is quoted by R. Yosef Karo in the *Beit Yosef* (Tur, *Yoreh De'ah* 198, end) approvingly, although in the *Shulhan Arukh*, *Yoreh Deah* 198:48, he follows the opinion of Maimonides. R. Moses Isserles, on the other hand, brings the opinion of the Rashba and cites other authorities who agree with it.

נדה שטבלה בלא כוונה כגון שנפלה לתוך המים או שירדה להקר: הרי זו מותרת לבעלה.

הגה. ויש מחמירין ומצריכין אותה טבילה אחרת. (בית יוסף בשם רשב"א ור' ירוחם ורוקח והגהות אשר"י)

It would seem that the de jure acceptance of accidental or incidental *tevilah* in the case of a *niddah* is taken to be analogous with the following two rulings brought in *Yevamot* 45b:

עבדיה דרבי חייא בר אמי אטבלה לההיא נכרית לשם אנתחא. אמר רב יוסף יכילנא לאכשורי בה ובברתה בה כדרב אסי דאמר רב אסי מי לא טבלה לנדוטה! בברתה: נכרי ועבד הבא על בת ישראל הולד כשר. ההוא דהווי קרו ליה בר ארמאה: אמר רבי יהושע בן לוי מי לא טבל לקריו!⁹

In Tosafot thereto (s.v. *mi*) the specifics are spelled out:

תימה דאמר לקמן (מו, ע"ב) דגר צריך שלשה . . . ויש לומר האי דבעינן שלשה היינו לקבלת המצות אבל לא לטבילה, אע"ג דאמרין לקמן (מו, ע"ב) דשני תלמידי חכמים עומדים מבחוץ, היינו לכתחלה דעדיף טפי. ויש מפרשים דכיון דידוע לכל שטבלה כאילו עומדים שם דמי . . .

Alfasi attempts to qualify these two rulings even ex post facto, namely, they only apply in the full sense to the status of the children of such questionable converts:

ואי קשיא לך ההיא דרבי יוחנן דאמר גר צריך שלשה (יבמות מז, ע"ב) . . . וקיימא לן דהלכתא היא. לא קשיא: הא דרב אסי ודרבי יהושע בן לוי דיעבד הוא דלא פסלינן לבריה הואיל וטבל לשם קריו, דאי לא גיורא הוא לא הוה טבל לשם קריו; והא דרבי יוחנן דלא נהגינן ביה מנהג גר ולא מנסבינן ליה בת ישראל עד דטביל בפני שלשה.

For this he has precedent in *Yevamot* 47a, which reads:

תנו רבנן. "ושפטם צדק בין איש ובין אחיו ובין גרו" (דברים א: טז). מכאן אמר רבי יהודה גר שנתגייר בבית דין הרי זה גר, בינו לבין עצמו אינו גר. מעשה באחד שבא לפני רבי יהודה ואמר לו נתגיירתי ביני לבין עצמי. אמר ליה רבי יהודה יש לך עדים? אמר ליה לאו. יש לך בנים? אמר ליה הן. אמר ליה נאמן אתה לפסול את עצמך ואי אתה נאמן לפסול את בניך.¹⁰

Maimonides qualifies the talmudic source even further by regarding these and other immersions as evidence of a general commitment to Judaism, but insists on another *tevilah* for the sake of conversion under all circumstances. In *Hilkhot Issurei Bi'ah* 13:9, he writes:

גיורת שראינה נוהגת בדרכי ישראל תמיד, כגון שתטבול לנדתה ותפריש תרומה מעיסתה וכיוצא בזה. וכן גר שנוהג בדרכי ישראל שטובל לקריו ועושה כל המצות: הרי אלו בחזקת גרי צדק, ואע"פ שאין שם עדים שמעידין לפני מי שנתגיירו. ואע"פ כן אם באו להתערב בישראל אין משיאין אותם עד שיביאו עדים או עד שיטבלו בפנינו הואיל והוחזקו נכרים.

Interestingly enough, R. Vidal of Toulouse quotes Nahmanides as being in agreement with Alfasi and Maimonides in the *Maggid Mishneh* thereto:

והרמב"ן ז"ל כתב דודאי לכתחלה צריך שלשה בין במילה בין בטבילה, ואילו נתגייר בינו לבין עצמו לגמרי ואפילו דיעבד אינו גר דנכרי גמור הוא . . . עד כאן דבריו ז"ל.

Nevertheless, at the end of his note to *Yevamot* 45b, Nahmanides seems to accept incidental immersion *ex post facto*, quoting J.T. *Kiddushin* 3:12 (64d):

אלא רבי יהושע בן לוי כהדא דתני בר קפרא דתני בר קפרא. גר שמל ולא טבל: הרי זה כשר שאין גר שלא טבל לקרויו. וקשיא עלת לו טומאה קלה מטומאה חמורה? אמר רבי יוסי בי רבי בון כיון שזו וזו לשם קדושת ישראל עלת לו.

Nahmanides writes:

והרב רבי משה בר מימון הספרדי ז"ל כתב כלשון הזה . . . ודברי תמה הם דאם כן הוה ליה למימר מי לא שמר שבת אחד ולא לימא מי לא טבל לקרויו, דיותר היה לו קל לידע ששמר שבת או נהג מצות מן הטבילה, שהרבה שלא טבלו לקרוין מעולם . . . ובירושלמי קידושין בפרק האומר . . . ויש לנו סמך לדבריהם.¹¹

The Status of Non-Halakhic Conversions

Why R. Yosef Karo only quotes the beginning of Nahmanides' remarks is puzzling. Did he not have a complete text of Nahmanides' novellae to *Yevamot*? Moreover, in the *Shulhan Arukh* (*Yoreh De'ah* 268:3), he codifies the law according to the view of Nahmanides:

מיהו דוקא לכתחלה אבל בדיעבד . . . אפילו לא טבל לשם גירות אלא איש לקריו ואשה שטבלה לנדתה הוי גר ומותר בישראלית.¹²

Can we generalize from the Bavli and the Yerushalmi as read by Nahmanides and codified in the *Shulhan Arukh*? I think not.

It would seem that this type of proof of conversion, retroactively as it were, requires that the female convert be strictly observant of the details of the laws of family purity, laws most frequently violated throughout Jewish history, and certainly in our own day.¹³

As for male converts, aside from the question of whether previous circumcision for purposes other than conversion is valid (a subject I have already discussed in another responsum prepared for the Committee on Jewish Law and Standards and which appears elsewhere in this volume), the question of *tevilah* after a seminal emission is quite problematic.¹⁴ It has not even been legally required since the early amoraic period. We read in *Berakhot* 22a:

תניא. רבי יהודה בן בתירא אומר אין דברי תורה מקבלין טומאה. כי אתא זעירי אמר בטלוה לטבילותא . . . כרבי יהודה בן בתירא.¹⁵

Along these lines I cannot accept the opinion of Rabbi Benjamin Z. Kreitman.¹⁶ He argues that the Talmud, as we have just seen, indicated that immersion for a man's seminal emission suffices for a man's conversion. The Talmud also ruled that this need not be the same as immersion for a woman, which requires a fully kosher mikvah, as we read in *Berakhot* 22a:

תנו רבנן. בעל קרי שנתנו עליו תשעה קבין מים טהור.

Perhaps, then, the standard for a man's *tevilah* for conversion is not as stringent as that for a woman. Nevertheless, the Talmud only recognizes one type of *tevilah* for both male and female converts. That *tevilah* must be in a kosher mikvah, as we read in *Yevamot* 47b:

אחד גר ואחד עבד משוחרר. ובמקום שנדה טובלת שם גר ועבד משוחרר טובלין.

Therefore, it is clear from both the Bavli and the Yerushalmi that such incidental immersions were in a kosher mikvah for specifically religious purposes (*leshem kedushat Yisrael*). Without this intent they do not suffice for conversion even ex post facto.

Finally, a conversion which deliberately omitted *tevilah*, as is the case in most Reform conversions (happily, not in all of them in recent years), cannot be said to fulfill the very essence of *giyyur*, namely, *kabbalat ol shel mitzvot*. Such omission by design is in direct violation of the rule brought in *Tosefta Demai* 2:4 (ed. Lieberman, 69) and *Bekhorot* 30b:

גר שקבל עליו כל דברי תורה חוץ מדבר אחד אין מקבלין אותו. רבי יוסי בי רבי יהודה אומר אפילו דבר קטן מדקדוקי סופרים.

This does not mean that the convert is expected to observe every aspect of Jewish law -- clearly an impossible demand, intellectually, morally and religiously. Rather, it means that conversion must involve an unconditional acceptance of the valid authority of Jewish law and an initial rejection of none of its specifics.¹⁷ This general acceptance is not invalidated by subsequent laxity in the observance of specific commandments.¹⁸

CONCLUSION

I find no cogent basis in halakhah for accepting, even ex post facto, converts who did not undergo specific *tevilah* for the sake of conversion, unless it can be shown that they are strictly observant Jews, particularly scrupulous in the use of a mikvah. The fact that they may have been taken to be Jews by themselves or by others does not change the need for *tevilah* for the sake of conversion. The fact that most of these conversions have been conducted under Reform auspices makes the matter especially difficult because of the cordial relationships which exist between Conservative and Reform rabbis and lay people. Nevertheless, this halakhic requirement is not meant as a public rebuff to the Reform movement. If a Reform rabbi conducts *giyyur kehalakhah*, I accept his converts as bona fide Jews. I might also add that I do not accept the converts of non-Reform rabbis if the conversion was not conducted according to objective halakhic criteria. These objective halakhic criteria, which alone protect the purity of Jewish identity, should not be compromised in the interests of an ultimately meaningless Jewish unity.¹⁹ However, rabbinical experience has taught me that a Conservative rabbi can exercise compassionate tact in urging proper *tevilah* in these cases. I do not tell such converts that their conversions are invalid, but rather, that they were *incomplete*, for even the most liberal conversion involves study, thus minimally fulfilling *hoda'at mitzvot*. I tell them that they inadvertently overlooked an important specific. At the *tevilah* I ask them to reconfirm their *kabbalat ol malkhut shamayim* and *kabbalat ol shel mitzvot*. In the overwhelming majority of these cases, the converts have thanked me for helping them to legally assure their unambiguous Jewish identity.

One of the most famous converts in Jewish history was the king of the Khazars, who converted to Judaism in the seventh century C.E. along with his whole nation. At the very beginning of R. Judah HaLevi's theological masterwork, *Kuzari*, where the king is one of the two main characters in the dialogue, the initial motivation for his ultimate conversion to Judaism is seen as his response to a troubling dream. In the dream an angel tells him, "Your intention is acceptable to the Creator, but your action is not." When

The Status of Non-Halakhic Conversions

the king learns about Judaism and its practices from a rabbi he seeks out, he is able to remove this contradiction in his life by conversion. Along the lines of HaLevi's dramatization, I would say that anyone who refuses to rectify his or her halakhically invalid conversion has thereby shown that he or she never intended to accept the Torah anyway. Conversely, a true *ger tzedek* should welcome the opportunity to consummate once and for all what was his or her true intention from the beginning, to make both intention and practice truly consistent.

NOTES

1. RALA #041359 (Minutes of the April 13-14, 1959 Meeting).
2. *Proceedings of the Rabbinical Assembly XXX* (1966) pp. 107-108.
3. *Ibid.*, pp. 109-110.
4. As our teacher, Professor Saul Lieberman, admonished his students who participated in the Conference on Halakhic Process held in New York in November 1979, the Mishnah (*Peah* 4:1) states:
הפאה נתנת במחבר לקרקע . . . אפלו תשעים ותשעה אומרים לחלק ואחד אומר לבז – לזה שומעין, שאמר כהלכה.
5. Bernard J. Bamberger, *Proselytism in the Talmudic Period*, rev. ed. (New York, 1968) p. 51.
6. *Ibid.*
7. See M. *Hagigah* 2:6.
8. See *Ketubbot* 11a, and M. *Eruvin* 7:11; Maimonides, *Hilkhot Melakhim* 10:3; *Sanhedrin* 68b, Tosafot, s.v. "katan"; David Novak, *Law and Theology in Judaism II* (New York, 1976) p. 196, n. 89.
9. For the question of why a slave had to marry a Jewish woman, since he was legally entitled to marry a gentile woman, see Tosafot, s.v. "atavlah" a la *Niddah* 47a and Tosafot, s.v. "masar". Cf. M. *Sukkah* 2:1.
10. See *Kiddushin* 78b. For the attempt to be more lenient in matters of status involving subsequent generations, note *Kiddushin* 71a top:
אמר רבי יצחק צדקה עשה הקב"ה עם ישראל שמשפחה שנמטעה נטמעה.
11. For another example of an irregular conversion being accepted, see *Shabbat* 68a and *Tosafot*, s.v. "ger" and *Hiddushei Rashba* thereto.
12. See Shakh thereto.
13. See *Kiddushin* 68a.
14. David Novak, "The Question of *Hattafat Dam Brit*," which appears elsewhere in this volume.
15. See Novak, *Law and Theology in Judaism II*, p. 138.
16. "May a Swimming Pool be Used as a Mikveh?" *Proceedings of the Rabbinical Assembly XXXIII* (1969) p. 219.
17. See, e.g., Nahmanides' comment on Deut. 27:26. Perhaps this is why instruction in the commandments for conversion is deliberately random. See *Yevamot* 47 atop.
18. See, e.g., T. *Demai* 2:4; T. *Bekhorot* 30b; *Kiddushin* 17b bottom.
19. See Nehemiah 9:1-2; 13:23-31; also, Jakob J. Petuchowski, "Plural

Proceedings of the Committee on Jewish Law and Standards / 1980 - 1985

Models Within the Halakhah," *Judaism* 19:1 (Winter, 1970), pp. 85-86;
and D. Novak, *Law and Theology in Judaism*, Vol. I, pp. 34-35.