

A Concurrence: Rabbi Joseph Prouser's Ana Ger Ana: May a Convert to Judaism Serve on a Bet Din?

Rabbi Avram Israel Reisner – June 10, 2012

This paper was submitted, in June 2012, as a concurrence to Ana Ger Ana: May a Convert to Judaism Serve on a Bet Din?" by Rabbi Joseph Prouser. Dissenting and concurring papers are not official positions of the CJLS.

I congratulate Rabbi Prouser for his cogent response to the harsh position taken by Rabbi Broyde and the Beth Din of America. We should fully accept and enfranchise converts, and attempting to resuscitate ancient prejudices that have fallen into disuse in our community is wrong-headed.

To that end, there are two comments that I would make concerning Rabbi Prouser's teshuvah.

First, Rabbi Prouser begins by reviewing the pedigree (*yichusin*) concerns of the tannaim and amoraim. When they spoke of a "kehal gerim" a congregation of converts, they were referring to full Jews who were descended of converts, a category that we have abandoned. Thus in the Talmud texts that he cites a ger refers not only to one who has himself converted (or herself, henceforth I will use masculine terms generically) but also to born Jews whose parents were converts. Thus the text, still maintained in the Shulchan Arukh, refers to a "ger whose mother is Jewish." In current parlance we would understand such a person as a born Jew. In our movement, which has affirmatively argued that it will not hear evidence of mamzerut (Mamzerut, Rabbi Elie Spitz, 2000), we clearly do not wish to judge the status of a born Jew by the conversionary status of his parents. Thus while Rava would prohibit the son of converted parents from a *Bet Din* of *chalitza*, we would not. Indeed, Rabbi Prouser, in adopting Rava's ruling with regard to *chalitza* intends it only to prohibit one who is himself a convert from serving on such a *Bet Din*, and not the son of converts, as Rava himself intended.

Secondly, while I am prepared to accept the limitation to a born Jew of kingship (comparable to a similar limitation in American law with regard to the Presidency), and I can accept it even of judging in capital cases, because both are no longer extant institutions, I am loathe to see such a limitation applied to converts in our day, and a *Bet Din* of *chalitza*, though rare, is a contemporary occurrence. Rabbi Hammer wishes to limit this ONLY to kingship on the basis of rejection of Rava's dictum. That is problematic in that it rejects out of hand a dictum that has been codified in both Rambam and Shulchan Arukh. Rabbi Prouser, therefore, concludes that it must be maintained. I wonder whether it is not possible to extend an argument that Rabbi Prouser brings in his list of leniencies and apply it to the matter of *Bet Din* of *chalitza*.

Rabbi Prouser argues, that one approach to allowing converts on courts judging *Dinei Mamonot* (monetary cases) is to recognize that the community may accept a judge upon itself. This argument is based upon comments of Knesset haGedolah as reflected in a responsum of Eliezer Waldenberg (Tzitz Eliezer 19:47). This does not, indeed, need to be the whole community, explains Rabbi Waldenberg, but it suffices that it should be the duly recognized leaders of the community, "ונקרא על זה דעת הקהל" -- this is called the opinion of the community. Since the exclusion of converts from courts of *chalitza* is based on the limiting verse "ונקרא שמם בישראל" -- and their name will be called in Israel (Deut. 25:10),

and the converts we are considering for the *Bet Din* are Rabbis, duly ordained by recognized seminaries to lead the community, whether their participation should not be considered recognized in Israel?

Rabbi Prouser feels that that is not a sufficient case upon which to base such a leniency. I present it here for colleagues to consider.