

Should the Kashrut of Conversions Be Investigated?

RABBI JOEL ROTH

This paper was adopted as the Majority Opinion on February 15, 1984 by a vote of 7-4-3. Members voting in favor: Rabbis David M. Feldman, David H. Lincoln, George Pollak, Mayer E. Rabinowitz, Morris M. Shapiro, Henry A. Sosland and Alan J. Yuter. Members voting in opposition: Rabbis Kassel Abelson, Isidoro Aizenberg, Edward M. Gershfield and Barry S. Rosen. Members abstaining: Rabbis Salamon Faber, Morris Feldman and Israel N. Silverman.

Note: "A Teshuvah on the Subject of the Investigation of Conversions Today," a paper by Rabbi Novak, was adopted as the Minority Opinion on February 15, 1984 by a vote of 6-6-2. It appears following this article.

SHE'ELAH

Rabbis are being called upon with ever-increasing frequency to perform marriages in which one or both of the partners is a convert. In these circumstances, should the rabbi investigate the kashrut of the conversion before performing the marriage?

TESHUVAH

There is one statement in the Gemara that seems to respond to the quandary quite directly. In *Yevamot* 46b a *baraita* is quoted that states clearly that one who asserts that he is a convert is not to be accepted unless and until he can provide proof (witnesses) of his conversion. His own assertion of his conversion is not sufficient for his acceptance as a legitimate convert. The *baraita* reads:

מי שבא ואמר גר אני יכול נקבלנו (רש"י: לא נצריכנו הטפת דם ברית וטבילה) ?
ת"ל אתך (ויק' יט: לג) — כמוחזק לך. בא ועדין עמו מנין (רש"י: שנאמן) ? ת"ל
וכי יגור.

From the *baraita* itself one would draw no distinction between a convert about whom we had the prior knowledge that he had been a gentile and a

convert about whose prior gentile status we had no knowledge.

The Tosafot (*Yevamot* 47a, s.v. "*bemuḥzak*") make this distinction in the name of Rabbenu Tam. They claim that a convert must provide evidence of his valid conversion only if we have prior knowledge of his gentile origin. When we have no such knowledge, however, the person should be accepted as a valid convert on the grounds that he could have claimed to be a natural-born Jew if he had wished to. That is, the convert has a claim of *miggo*.

Should we deduce from this distinction that a modern rabbi should accept as valid, by presumption, the conversion of one who informs him that he is a convert, but about whom the rabbi had no prior knowledge of his gentile status? It seems to me that the question must be answered in the negative.

What underlies the acceptability of the *miggo* claim? Surely, it is the presumption that, once accepting the claim of convert status, it is reasonable to assume that the conversion itself was done as required. Were there genuine suspicion that the act of conversion was suspect, the Tosafot would surely have claimed that the convert had weakened the status of the presumption, and an investigation into its validity would be required. (I shall offer support for the claim that a weakened presumption warrants investigation.) In our day, regrettably, any presumption of valid conversion is *eo ipso* weakened by the reality that so many conversions are performed in violation of halakhic standards which require *hattafat dam* and *tevilah*. If the convert cannot provide proof or verification of a valid conversion, we can no longer reasonably assume that the conversion was validly conducted. Thus, even if the rabbi had no prior knowledge of his gentile state, he should investigate the kashrut of the conversion, and insist on compliance with the norms governing conversion if he finds that they were not fulfilled.

The support for the contention that a weakened presumption warrants investigation of its validity is not hard to find. The Gemara in *Pesahim* (3b) speaks of two cases in which weakened presumption led to investigation of their validity.

In one case, three priests described the size of the portion of show-bread that they had received at the time of the change of the priestly *mishmar*. One described his portion as "the size of a chameleon's tail." When his priestly status, presumed valid until now, was investigated, a *shemetz* of disqualification was found. In response to its wonderment at the very fact of the investigation, since it appeared to violate the norm of the Mishnah (*Kiddushin* 4:5), which asserts that serving at the altar is sufficient proof of kashrut, the Gemara answers,

שאני התם דאיהו דארע אנפשיה.

Should the Kashrut of Conversions Be Investigated?

The investigation was warranted because the priest himself had weakened the presumption of his kashrut by the way he described the portion of show-bread.

The second case deals with a non-Jew who had obviously passed himself off as Jewish and eaten from the paschal sacrifice. Later he boasted in the presence of Rabbi Yehuda ben Bathyra that he had eaten from the finest part of sacred food in direct violation of biblical prohibitions against the eating of the paschal sacrifice by foreigners or the uncircumcised. Rabbi Yehuda, resorting to trickery because (according to Rashi) he could not himself have him executed, urged the gentile to ask for a portion from the fat part of the tail the next time. The impersonator did so and was obviously told that he could not have anything from the fat part of the tail since it is burned on the altar. When he was asked who had told him to ask for that portion and he responded that Rabbi Yehuda ben Bathyra had, an investigation of him was initiated. He was discovered to be non-Jewish and was executed. In this case, too, the presumption of his Jewishness was weakened by his request -- a request that would have been unthinkable for a Jew.

Lest we miss the point of the cases, Rashi comments that they are both told because they share the common characteristic of being about individuals whose actions warranted an investigation of the validity of their presumed status.

As regrettable as the fact may be, it is virtually undeniable that a presumption of a halakhically valid conversion without proof or verification thereof is radically weakened today by our reality. Therefore, an investigation of its kashrut is not only desirable, but necessary even if we had no prior knowledge of the gentile status of the convert.

There is yet another category of converts whose conversion was presumed valid. A convert who is observant is presumed to have been validly converted. As Rambam puts it in *Hilkhos Issurei Bi'ah* 13:9:

גר (גיורת) שנוהג (נוהגת) בדרכי ישראל תמיד כגון שטובל לקריו (שתטבול לנדחה) ועושה כל המצוות הרי אלו בחזקת גרי אמת, ואע"פ שאין שם עדים שמעידין לפני מי שנתגיירו.

It behooves us, in my opinion, to note that mere affiliation with a synagogue or the Jewish community, or even the observance of some rituals, would not fall under the category of *noheg bedarkhei Yisrael tamid*. As the Maggid Mishnah explains *ad locum*, the presumption of valid conversion is based on the premise that the degree of observance of the convert makes it virtually impossible to believe that the conversion was performed invalidly. That is, if the degree of observance of the convert is great enough to ensure that he had heard and understood that conversion

requires *tevilah* and, perhaps, *hattafat dam*, he can be presumed to have been validly converted. We should note that membership in a synagogue, or even the observance of some rituals like candlelighting or recitation of Kiddush would hardly qualify as *noheg bedarkhei Yisrael tamid*.

But Rambam (followed by the Shulhan Arukh, *Yoreh De'ah* 268:10) adds that even where this presumption applies, the convert should not be allowed to marry a Jew(ess) until either proof of valid conversion is brought or reconversion is carried out. Indeed, even when the convert's claim of conversion should be adequate because of the principle *hapeh she'asar hu hapeh shehittir* (Rambam, *Issurei Bi'ah* 13:10), Rambam requires proof of valid conversion because of *me'alah asu beyuhasin*.

We, too, must bear in mind the principle of *me'alah asu beyuhasin*. An observant convert need not be investigated to allow him to be counted in a minyan, or receive an *aliyyah*, or count to a *zimmun*, etc. But, because the negative consequences of the marriage of a Jew to one improperly converted are very great, we too should insist on proof or verification of a valid conversion before performing the marriage -- *me'alah asu beyuhasin*.

Regarding the children of converts, the salient case in the Gemara (*Yevamot* 47a) reads as follows:

Once a convert (whose conversion was under the presumption of validity) came before Rabbi Yehuda and said: "I converted privately (i.e., without the presence of a Beit Din)." Rabbi Yehuda asked: "Do you have witnesses (i.e., to the fact that your conversion was private)?" He answered: "No." Rabbi Yehuda responded: "You can disqualify yourself, but not your children."

It follows from this precedent that if the convert had witnesses to his inadequate conversion, his children would also be disqualified. He would not disqualify them in the case in point only because he had the presumption of valid conversion and his own admission made him legally a gentile who is not acceptable to testify. Therefore, the presumption of the validity of the children's status as Jews remained. A parallel case in our day would be, for example, when a convert who has a certificate attesting to valid conversion claims that it was falsified, and that he had not been appropriately converted. He could be believed about himself, but could not impugn the validity of the Jewish status of his children. But when no proof of valid conversion exists, and the presumption of valid conversion is weakened because of our reality, surely the Jewish status of the children is also suspect. If they, too, were converts, they would need reconversion. Furthermore, the offspring of a converted Jewess, even if born after her conversion, would require conversion. Indeed, both the Beit Yosef and the Bah (Tur, *Yoreh De'ah* 268) quote Rabbi Meir Halevi Abulafia to the effect

Should the Kashrut of Conversions Be Investigated?

that if there is reasonable doubt about the validity of the conversion of a parent, the status of the child is open to question.

CONCLUSION

Based particularly on the premise that *me'alah asu beyuhasin*, it seems appropriate that a rabbi should ask of a couple seeking his services as the officiant at their wedding whether the parents of both are Jewish born. As a rabbi would obviously wish to know whether either of the spouses is divorced, so he should wish to find out whether either of the spouses is non-Jewish.

It goes without saying that the rabbi must exercise great care, caution and diplomacy in the manner in which he informs a person of the "incompleteness" of his or her conversion, or informs a person of his or her need for conversion because of the "incompleteness" of the conversion of the person's mother. He should surely not traumatize the person by telling him that he is not Jewish. As Rabbi David Novak pointed out at the end of his responsum entitled "The Status of Non-Halakhic Conversions," converts are as likely as not to thank the rabbi for helping them "complete" the conversion, leaving their future status and identity totally clear and unambiguous. The requirement of compliance with halakhic norms does not reflect insensitivity to human feelings.

We add as a postscript that the need for investigation of the kashrut of a conversion flows either from the direct statement of one who claims to have been converted or from widespread knowledge of the convert status of an individual. If neither of these is present, as, for example, when a member of the rabbi's congregation or community "offers" the rabbi information otherwise unknown in the community by informing him that a certain person's mother or maternal grandmother was a convert, we do not feel that the rabbi should pursue the matter. When legitimate grounds for suspicion concerning the validity of a conversion exist, the rabbi is duty-bound to investigate; when the suspicion is based on mere rumor, the suspicion must be considered illegitimate and the rabbi is duty-bound to ignore rumors. In such a case, the rabbi should assuage any anxiety he may experience because of fear that the "rumor" he ignores may be true by remembering the dictum of Rabbi Yitzhak (*Kiddushin* 71a):

צדקה עשה הקב"ה עם ישראל שמשפחה שנטמעה, נטמעה.

