

HALACHIC AND HASHKAFIC ISSUES IN

CONTEMPORARY SOCIETY

222 - CONVERSION - PART 4: MODERN CHALLENGES

OU ISRAEL CENTER - SUMMER 2021

- In Parts 1, 2 & 3 we looked at the halachic and hashkafic underpinnings of conversion, and began to examine some of the modern challenges that the Jewish community faces in this area.
- In this shiur we will examine in more detail the two most controversial questions in the conversion debate - (i) to what extent does the convert have to be observant in Torah and mitzvot, and how could non-observance affect the validity of the conversion? and (ii) to what extent do other motivations for conversion, eg marriage, prevent the conversion from proceeding?

A] THE ROLE OF MOTIVE IN CONVERSION

- We have seen that there are 4 essential components to halachic conversion: (i) mila; (ii) tevila; (iii) korban (where possible); and (iv) kabbalat hamitzvot. The first three are fairly easily definable; the last is not.
- In the main source in Chazal¹ on conversion, which we saw as ruled in the Rambam² and Shulchan Aruch³, the conversion candidate is asked two fundamental questions - are they prepared to join the Jewish People and do they accept Torah and mitzvot⁴. For most of Jewish history these were inseparable, but this is no longer the case.
- Even if the candidate IS prepared to join the Jewish people and keep mitzvot, do we care about their underlying motivation?

1. מתני'. הנתען על השפחה ונשתחררה, או על העובדת כוכבים ונתגיירה - הרי זה לא יכנס, ואם כנס - אין מוציאין מידו ... גמ'. הא גיורת מיהא הויא. ורמינהי: אחד איש שנתגייר לשום אשה, ואחד אשה שנתגיירה לשום איש, וכן מי שנתגייר לשום שולחן מלכים, לשום עבדי שלמה - אינן גרים, דברי ר' נחמיה. שהיה רבי נחמיה אומר: אחד גירי אריות, ואחד גירי חלומות, ואחד גירי מרדכי ואסתר - אינן גרים, עד שיתגיירו ... כבזמן הזה. הא איתמר עלה, א"ר יצחק בר שמואל בר מרתא משמיה דרב: הלכה כדברי האומר כולם גרים הם. אי הכי, לכתחלה נמי!! משום דרב אסי, דאמר רב אסי: (משלי ד-כד) הַסֵּךְ מִמֶּךָ עֲקוּשׁוֹת פֶּה וּלְזוֹת שְׁפָתַיִם [הַרְחַק מִמֶּךָ]. ת"ר: אין מקבלין גרים לימות המשיח. כיוצא בו לא קבלו גרים לא בימי דוד ולא בימי שלמה.

במות כד:

Chazal present two views on the effect of motivation on conversion. R. Nechemia is strict and rules that conversion which has ulterior motives is invalid. These motives may include love (to marry a non-Jew), dreams (such as superstition where they were told by a psychic etc to convert), fear ('gerei arayot' - such as the Samaritans who converted since they were being attacked by lions⁵, or conversion during the time of Mordechai), or honor and power (such as conversion during the time of David and Shlomo or in the future in the times of Mashiach). The Rabbis are lenient and rule that all of these types of conversion ARE valid, at least bedieved. But, lechatchila, one should not convert them. The halacha follows the Rabbis.

- How do we assess 'motivation'? Normally, we are NOT interested in mental motivation - the concrete act speaks for itself.

2. אבל המוכר סתם, אף על פי שהיה בלבו שמפני כך וכך הוא מוכר, ואף על פי שנראים הדברים שלא מכר אלא לעשות כך וכך, ולא נעשה, אינו חוזר. שהרי לא פירש, ודברים שבלב אינם דברים.

שולחן ערוך חושן משפט הלכות מקח וממכר סימן רז סעיף ד

The general principle in halacha is 'devarim shebelev einam devarim'. If someone does or says something which appears binding, we cannot undo that act based on what they were thinking.

- *Devarim shebelev einam devarim* applies in many areas of halacha, including: business, marriage and nedarim although there ARE situations in which internal thoughts do impact on these halachic actions and statements.⁶ Why does R. Nechemia not apply this concept to gerut?

1. An unusually long and detailed Beraita in Yevamot 47a.

2. Hilchot Isurei Biah 14:1-6.

3. YD 268:2.

4. Embodied by Rut's statement to Naomi (Rut 1:16-17) - "Your people will be my people and your God my God".

5. See Melachim 2 Chapter 17.

6. See <https://www.etzion.org.il/en/talmud/seder-nashim/massekhet-kiddushin/devarim-she-belev>

3. ולפ"ז היכא דל"ה מוכח לכל העולם שכונתו לשם אישות ויש מקום להסתפק דכונתו להתגייר בלב שלם, ודינו ככל ספק אומדנא דמוכח דהוי דברים שבלב וי"ל לר' נחמיה דשאני גירות מכל הקנינים. דעצם קבלת המצות והגירות הוי דברים שבלב. וכל זמן שלא נתגייר בלב שלם ל"ה גר

שו"ת אחיעזר חלק ג סימן כו

R. Chaim Ozer Grodzinsky explains that gerut (at least according to R. Nechemia) is fundamentally different, since it rests on the acceptance of mitzvot, which is also mental. As such, the mixed motivation is an indication that the intention to accept mitzvot was not sincere.

4. יד שהמצוה הנכונה כשיבא הגר או הגיורת להתגייר בודקין אחריו שמא בגלל ממון שיטל או בשביל שררה שיצוה לה או מפני הפחד בא להפגיס לדת. ואם איש הוא בודקין אחריו שמא עיניו נתן באשה יהודית. ואם אשה היא בודקין שמא עיניה נתנה בבחור מבחורי ישראל. אם לא נמצא להם עלה מודיעין אותן ככד על התורה וטרח שיש בעשייתה על עמי הארצות כדי שיפראשו. אם קבלו ולא פראשו וראו אותן שיחזרו מאהבה מקבלים אותן שפאמר (רות א"ח) ותרא פי מתאמץ היא ללכת אתה ותחדל לדבר אליה.

טו לפיכך לא קבלו בית דין גרים כל ימי דוד ושלמה. בימי דוד שמא מן הפחד חזרו. ובימי שלמה שמא בשביל המלכות והטובה והגדלה שהיו בה ישראל חזרו. שכל החוזר מן העפ"ם בשביל דבר מהבלי העולם אינו מגרי הצדק. ואף על פי כן היו גרים הרבה מתגיירים בימי דוד ושלמה בפני הדיוטות. והיו בית דין הגדול חוששין להם לא דוחין אותן אחר שטבלו. מכל מקום ולא מקרבין אותן עד שתראה אחריתם:

יז גר שלא בודקו אחריו או שלא הודיעוהו המצות וענשן ומל וטבל בפני שלשה הדיוטות הרי זה גר. אפלו נודע שבשביל דבר הוא מתגייר הואיל ומל וטבל יצא מפלל העפ"ם וחוששין לו עד שיתבאר צדקותו. ואפלו חזר ועבד עבודה זרה הרי הוא כישראל מומר שקדושיו קדושיו. ומצוה להחזיר אבדתו מאחר שטבל נעשה כישראל.

רמב"ם הלכות איסורי ביאה פרק יג

The Rambam rules⁷ like the position of the Rabbis and NOT like R. Nechemia. As such, the Bet Din is required to look into the question of motivation of a conversion candidate, and if they discover an ulterior motive, they should not convert them. But if people with ulterior motives WERE converted, they are considered full converts, except that the Beit Din should be 'skeptical of them' [choshashin lahem] - until their motivations were clear.⁸

• What does 'choshashin' mean in this context? Different understandings of the Rambam include: (i) that the convert is a 'safek ger' until we have clarity on their motivation⁹; or (ii) the conversion is indeed conditional and the conversion will only be valid if it later becomes clear that they accepted mitzvot¹⁰; or (iii) most Acharonim¹¹ rule that, even according to the Rambam, the conversion is not conditional nor viewed as a safek. Rather, the convert is completely Jewish upon completing the conversion process, but should be monitored and not brought closer to the Jewish community until their motivations are clarified.

5. גר שקיבל עליו כל דברי תורה חוץ מדבר אחד אין מקבלין אותו. ר' יוסה בי ר' יהודה אומר אפילו דבר קטן מדקדוקי סופרים.

תוספתא מסכת דמאי (ליברמן) פרק ב הלכה ה

However, as we noted previously, Chazal also stated that if a conversion candidate rejects even one detail of Torah, possibly even of Rabbinic law, they may not be accepted. Does this mean that the conversion of such a candidate is also invalid, even retroactively.

• Interestingly, this halacha - that a candidate who rejects even one detail of Torah may not be accepted - is NOT explicitly ruled by the Rambam or Shulchan Aruch in relation to the case of a ger tzedek.¹² Nevertheless, we will see that this the position of most poskim over the last 200 years.

• If a Beit Din is required to reject a conversion candidate with improper motivations, how are they meant to judge those inner motivations?

7. This is also ruled by the Shulchan Aruch YD 268:12.

8. We have not dealt in this shiur with the complex issue of conversion for children. Clearly, there is no requirement for a child to accept Torah and mitzvot nor any relevance to their motivation. The question is how religiously committed the parents must be in order to satisfy the Beit Din that the child will be raised in an observant Jewish home.

9. R. Chaim Ozer Grodzinsky (1863-1940, Achiezer 3:26:3), distinguishes between a "true ger" and a "legal ger." He rules that while the halacha is indeed that those who convert for other reasons ARE considered to be valid converts, that is because there is a *chazaka* (a presumption) that they accepted upon themselves the mitzvot. However, if they did not sincerely accept the mitzvot, then the conversion will be invalid. Thus, the Rambam's view is that this conversion is viewed as a *safek* until their motivations are clear. R. Moshe Feinstein (Igrot Moshe YD 3:106) agrees with this position.

10. Mordechi Yevamot #110 - על פי שמתחלה עושים לשם אישות ולא על פי שמתחלה עושים לשם אישות.

11. See Rav Kook (Da'at Cohen 153) and R. Yitzchak Herzog (Heichel Yitzchak EH 1:20).

12. The Rambam (Hilchot Isurei Biah 14:8) actually rules that this applies to a Ger Toshav - a non-Jew who does not fully convert but lives as a Noachide in Eretz Yisrael. Nevertheless most poskim understand that this must also apply to a Ger Tzedek, and that if the conversion candidate rejected any part of Torah, the conversion is invalid, even bedieved. See below from R. Chaim Ozer Grodzinsky and R. Moshe Feinstein, Igrot Moshe YD 2:124.

6. והכיה דפרק שני דשבת (לא). דאתא לקמיה דהלל ואמר גיירני על מנת ליטעות כהן גדול, בטוח היה דסופו לטעות לשם שמים. וכן הכיה דהתכלת (מנחות מד). דאתא לקמיה דרבי ואמר גיירני על מנת שאנשא לאותו תלמיד ומכאן יש ללמוד דככל לפי ראות עיני בית דין.

בית יוסף יורה דעה סימן רסח

The Beit Yosef raises the question of various conversion candidates mentioned in the Gemara who were accepted as gerim even though their motivations seemed suspect. He quotes the famous cases of the non-Jews who came to Hillel to convert on strange (and frivolous) conditions - that they could become the Cohen Gadol, learn all the Torah while standing on one leg, accept only the Written Law and not the Oral law. In each of these cases, Hillel read between the lines and understood that these candidates would actually become sincere. As such, the Beit Yosef concludes, crucially, that everything depends on the understanding of the conversion Beit Din at the time of the conversion. The Beit Yosef also quotes a case from Menachot (44a) where a female conversion candidate was accepted, even though this was to marry a young Jewish man.

7. מעשה באדם אחד שהיה זהיר במצות ציצית, שמע שיש זונה בכרכי הים שנוטלת ד' מאות זהובים בשכרה. שיגר לה ארבע מאות זהובים וקבע לה זמן. כשהגיע זמנו, בא וישב על הפתח. נכנסה שפחתה ואמרה לה: אותו אדם ששיגר לך ד' מאות זהובים בא וישב על הפתח. אמרה היא: יכנס, נכנס. הציעה לו ז' מטות, שש של כסף ואחת של זהב, ובין כל אחת ואחת סולם של כסף ועליונה של זהב. עלתה וישבה על גבי עליונה כשהיא ערומה, ואף הוא עלה לישב ערום כנגדה. באו ד' ציציותיו וטפחו לו על פניו. נשמת וישב לו ע"ג קרקע ואף היא נשמטה וישבה ע"ג קרקע. אמרה לו: גפה של רומי, שאיני מניחתך עד שתאמר לי מה מום ראית בי. אמר לה: העבודה, שלא ראיתי אשה יפה כמותך. אלא מצוה אחת ציונו ה' אלהינו וציצית שמה, וכתוב בה אני ה' אלהיכם שתי פעמים - אני הוא שעתיד ליפרע ואני הוא שעתיד לשלם שכר, עכשיו נדמו עלי כד' עדים. אמרה לו: איני מניחך עד שתאמר לי מה שמך ומה שם עירך ומה שם רבך ומה שם מדרשך שאתה למד בו תורה. כתב ונתן בידה. עמדה וחילקה כל נכסיה - שליש למלכות ושליש לעניים ושליש נטלה בידה, חוץ מאותן מצעות, ובאת לבית מדרשו של ר' חייא. אמרה לו: רבי, צוה עלי ויעשוני גיורת. אמר לה: בתך, שמא עיניך נתת באחד מן התלמידים? הוציאה כתב מידה ונתנה לו, אמר לה: לכי זכי במקחך. אותן מצעות שהציעה לו באיסור הציעה לו בהיתר

מנחות מד.

This extraordinary Gemara is a very important source on the question of Jewish sexual ethics.¹³ But, for our purposes, it shows that everything depends on context. In this case, even though the non-Jewish woman clearly wished to convert to marry a Jewish man, R. Chiya concluded that her teshuva was sincere and she should be accepted.

• How far does the discretion of the Beit Din go? The Rambam¹⁴ wrote a responsum concerning a Jewish man who was suspected to be in a relationship with a non-Jewish servant in his household. He then wished to free her so that she would become Jewish and could then marry him.

8. וצריכים בית דין אחר זאת השמועה אשר לא טובה להוציאה או ישחררה וישאנה לאשה? אעפ"י שיש בזה כעין עברה, לפי שהנטען על השפחה ונשתחררה אסור לו לישאנה לכתחלה, לפי שכבר פסקנו פעמים אחדות בכגון אלו המקרים, שישחררה וישאנה. ועשינו זאת מפני תקנת השבים ואמרנו מוטב שיאכל רוטב ולא שומן עצמו. וסמכנו על דבריהם ז"ל (תהלים קיט:קכו) עַתְּ לַעֲשׂוֹת לָהּ הַפְּרוֹ תִנְרְתֶךָ. ומסייעין לו לישאנה בעדינות וברוך, ויקבעו לו מועד לישאנה או להוציאה, כמו שעשה עזרא ע"ה. והאלהים יתעלה יתקן קלקולנו, כמו שהבטיח ואמר (ישעיהו א:כה) וְאַסִּירָהּ כָּל-בְּדִילָךְ. וכתב משה.

שו"ת הרמב"ם סימן ריא

The Rambam accepted that, even though it is not really correct (lechatchila) for a man to free his non-Jewish maid in order to marry her, in this case he understood that, since the man would no doubt continue the relationships in any event, conversion and marriage were the lesser of two evils. As he puts it - 'better he should be the gravy and not the fat itself'!

• This psak of the Rambam has been influential on more lenient approaches to 'conversion for marriage' over the last 150 years¹⁵.

B] NEW APPROACHES TO CONVERSION - OUTSIDE ISRAEL: LAST 200 YEARS

• As we saw above, the halachic requirements for conversion require certain 'technical' actions - mila/tevila/korban - and two major commitments on the part of the convert - to join the Jewish people and to keep Torah and mitzvot. Until the early 19th century, these were inseparable; the only Jewish community was one which was committed (in principle) to Torah and mitzvot.

• As such, even if the convert's knowledge of or exposure to Torah and mitzvot was limited - eg convert 'who converted among the non-Jews'¹⁶, as long as it was clear that their commitment to join the Jewish people was strong, the conversion was sound.

13. It contrasts with the more famous Gemara in Avoda Zara 17a dealing with Eliezer ben Dordaya who is involved in a very similar episode but which ends every differently. In that story, the sexual encounter ends very unpleasantly and Eliezer ben Dordaya is only able to achieve teshuva through his own death. For a development of these themes see *A Jewish Sexual Ethics*, R. Eliezer Berkovitz, Essential Essays on Judaism.

14. Shu't Rambam 211.

15. It is not directly comparable since the Rambam is dealing with the freeing of a shifcha kena'anit (which makes the woman fully Jewish) and not with a formal conversion by Beit Din.

16. גר שנתגייר בין הגוים - see Part 1 for interpretations of that concept.

- Over the last 200 years the concept of 'Jewish community' has radically changed. Now there are communities which are not mitzva observant. If someone converts to join that community, is the conversion valid?
- The tensions surrounding halachic conversion over the last 200 years are directly tied in with the question: Is there any validity to the non-observant Jewish world as a legitimate Jewish community. This question is fundamental to Jewish identity in the modern world.
- As is well known, two different approaches developed over the 19th Century concerning Orthodox attitudes to the non-observant Jewish world - a more rejectionist approach by poskim such as the Chatam Sofer and others¹⁷, and a more inclusivist approach by poskim such as R. David Tzvi Hoffman¹⁸ and others¹⁹. These were reflected in different approaches to conversion.
- Before looking at these different approaches however, we must revisit the original prohibition in the Mishna - that where a man is suspected of being in a relationship with a non-Jew, she should not convert so that they can marry. What exactly is the concern?

9. לא ישאנה - משום לעז שלח יאמרו חמת היה הקול הראשון.

רש"י יבמות כד:

Rashi understands that, if she converts and they marry, people will suspect that the original rumors were true and they were indeed in a previous relationship.

10. חלל משום לזנות שפתיים (משלי ד:כד) - שלח יאמרו שזו לא נתגיירה חלל לשם זנות וזה לא כנס חלל לשם זנות

חידושי הרשב"א יבמות כד:

The Rashba understands the concern to be that people will suspect that the conversion was sham and only for the marriage.

- According to this, what will be the halachic position if the couple were already married under civil law before the conversion, or she was already pregnant, or they had a child. According to Rashi, there is no concern of suspicion about the relationship - everyone knows that they were together! On that basis, maybe the conversion can go ahead. But, according to the Rashba, the problem is the fake nature of the conversion, and this is still very much an issue!

B1] STRICT: INSISTENCE ON FULL COMMITMENT TO TORAH & MITZVOT

11. ומוכח דעכ"פ בעי שיקבלו בלב שלם המצות. משא"כ אם מגייר רק לפנים, ולבו בל עמו להחזיק במצות, ואנו יודעין כונתו שגם אח"כ יהי' בועל נדה ומחלל שבת ואוכל טריפות לא הוי גר כלל. ולא שייך לומר בזה 'דברים שבלב אינם דברים' וכיון שאומר בפה שמקבל עליו עול מצות מה לנו בכונתו, כמ"ש הפמ"ג בא"ח סי' תמ"ח במג"א ס"ק ח' בהפקיר חמץ ולבו בל עמו דמהני ע"ש. שהאריך קצת דשם שאני שהוא בין אדם לחבירו, וכשאומר בפה שהוא מפקיר חבירו מצי זכי ביה, ובין אדם לחבירו דברים שבלב אינם דברים. משא"כ מה שמגייר ומקבל עליו עול מצות ואם בלבו שלא יקיימם רחמנא לבא בעי ולא נעשה גר. וכמו דאמרינן בבכורות ל' נכרי שבא לקבל דברי תורה חוץ מדבר אחד אין מקבלין אותו. רבי יוסי בי רבי יהודה אומר אפילו דקדוק אחד מדברי סופרים. ה"ה אם בלבו שלא לקיים מד"ת, אפילו דבר אחד, אין מקבלין אותו. ולפ"ז גרי דידן אשר בעו"ה מגיירים במדינת אשכנז ויודעים שגם אח"כ לא יתנהגו כמנהג ישראל הכשרים, אך יהיו בועלי נדה ואוכלי טריפות כמו בשאלה דידן, לפמ"ש לא הוי גר, אף שאומרת בפיה אם ילמדו אותה לשקר שתקבל הכל עליה, אבל בלבה שלא לקיים צ"ע לכאורה.

שר"ת בית יצחק יורה דעה ב סימן ק

R. Yitzchak Shmelkes (19C Poland) set out (in a 1876 teshuva) the contemporary maximalist approach of many poskim. If a Jew purports to accept upon themselves Torah and mitzvot, but we can reasonably expect that they will continue to live a life of non-observance (he flags Shabbat, kashrut and taharat hamishpacha), the conversion is invalid from the start.²⁰

- This has been the consistent position of most poskim²¹, including Rav Kook, R. Yitzchak Herzog²², R. Yechiel Weinberg²³, R. Moshe Feinstein²⁴, R. Yaakov Breisch²⁵ and others.

17. Notably R. Eziel Hildesheimer, R. Isaac Bernays and R. Tzvi Hirsch Chajes.

18. Shu't Melamed Lehoil YD 83 and 85, EH 10.

19. Notably R. Tzvi Hirsch Kalischer, R. Shlomo Kluger (see below) and the *Imrei David* - R. David Horowitz of Stanislav.

20. R. Shmelkes would agree that, if it seemed clear to the conversion Beit Din that the convert would be fully observant, but they later stopped keeping mitzvot, the conversion would be valid.

21. See *Parameters and Limits of Communal Unity from the Perspective of Jewish Law*, R. J. David Bleich, Journal of Halacha and Contemporary Society VI (Fall 1983) p5, particularly pp 13-15.

22. Printed in Chelkat Yaakov YD 151. See also Heichal Yitzchak EH 1:21.

23. Seridei Eish 3:100, although see also Seridei Eish 3:50.

24. R. Moshe Feinstein wrote many teshuvot on the issue and consistently opposed the validity of conversions carried out by Reform and Conservative bodies, or the burial of such converts in a Jewish cemetery. See Igrot Moshe YD 1:157,159,160; 2:125,128, 194; 3:77; EH 1:135; 2:4,17; 3:2,3,4, 27. Rav Moshe acknowledged that, in America, conversion for marriage was permitted by some Orthodox Rabbis. He was not comfortable with this (YD 3:106) but was prepared to validate it where there was a genuine acceptance of Torah and mitzvot by the convert (YD 1:157). He agreed however that it was not necessary to teach the convert all the mitzvot (YD 1:159)

25. Chelkat Yaakov YD 150.

אל כבוד מעלתם אגודת הרבנים בשוויץ, שלום וברכה

12.

..... והואיל ובארצכם יש לכם מלחמה כבדה נגד הגירות וכו' ... תחזקנה ידיכם שגדרתם הפרצות, שהגירות הזאת שלא לשם שמים היא שמרבה נשואי תערובות והוא כרקב לבית ישראל. והחובה על כל בי"ד שבכל דור ובפרט על הבי"ד של המדינה כולה לגדור את הפרצות בדת קדשנו ובעם ה' שאע"פ שנפסקה ההלכה שבדיעבד גם המתגיירים לשם דברים אחרים, לא לשם שמים, גרים הם, יש לי סברא חזקה מאד מאד שבזמן הזה אין הדין כד! הואיל ולפנים היה כמעט כל יהודי מוכרח לשמור את המצוות, כי אחרת היה נמאס ונבזה בעיני עמו כפושע ישראל. וע"כ היו מחזקים בכך את האומדנא, שגוי זה שבא להתגייר, באמת החליט בדעתו לשמור את השבת וכו' וכו', כי אחרת יהיה קרח מכאן וקרח מכאן ואוי ואבוי לו. אבל בזמננו שנשתנה המצב ואפשר להיות מנהיג בישראל ומחלל שבת ואוכל נבילות וטרפות בפרהסיא וכו', מאין האומדנא שבאמת גמר הגוי בדעתו על כל פנים בשעת ההתגיירות לשמור את היהדות. ומה גם שרובא דרובא, ואפשר כולם, של הגרים ממין זה, אינם מתחילים אפילו לשמור את עקרי הדת. חזקו ואמצו - והמקדש את ישראל בקדושתו יברך את מעשי ידיכם לחזוק הדת ולשמירת קדושת ישראל, ונוכה במהרה לראות בישועת ד' מציון ובציון לישראל עם קרובו במהרה בקרוב. ידידם מוקירים מאד, החותם בברכת התורה והארץ המצפה לישועה. (חתימת הרב הראשי לארץ ישראל).

שר"ת חלקת יעקב יורה דעה סימן קנא

In a teshuva to the Agudat HaRabbanim in Switzerland²⁶, R. Herzog is very strident in his opposition to any leniency in gerut, in light of the battles being fought in the Jewish community on this issue.

- In many Syrian communities, an absolute ban on conversion was enacted at various points during the 20th Century²⁷ to prevent intermarriage and assimilation.

B2] LENIENT: ACCEPTANCE OF GENERAL COMMITMENT TO TORAH & MITZVOT

- A different approach of some poskim in the late 19th and early 20th Century recognized that conversion was no longer needed to enable marriage, since people could marry in a civil ceremony. As such, preventing conversions would NOT prevent intermarriage.²⁸
- Their focus was more on preventing Jews from leaving the Jewish faith and people, and the responsibility to all Jews, even if non-observant. This especially included the Jewish children of a mixed marriage, who deserved to be raised as Jews.
- Some poskim were concerned that being strict on conversion would simply push the couple into the arms of the Reform movement²⁹. If the convert were able to commit to basic mitzva observance - Shabbat, kashrut and mikve - then performing the conversion, even for the explicit purpose of marriage, was seen as the lesser of two evils, following the precedent set by the Rambam (above).
- Some poskim also differentiate between regular non-Jews and children born of a Jewish father and non-Jewish mother. Although such children are definitely non-Jewish in halacha, some poskim designate them as *zera Yisrael* - from Jewish blood³⁰. Since these people often regard themselves as Jewish and may wish to marry Jews, this approach would encourage their conversion where possible.
- The position of many Sefardi poskim in the 20th Century was also more lenient.³¹ R. Benzion Uziel ruled frequently that leniency was required in gerut to avoid assimilation³², and out of concern for the Jewish AND non-Jewish children of intermarried couples. R. Ovadia Yosef was also lenient in some gerut situations.³³
- The stricter poskim rejected these considerations on a number of grounds: (i) we have no (or at least less) responsibility to Jews who wish to be non-observant and threaten to marry out; (ii) there is no benefit, and significant detriment³⁴, to converting Jews who will not keep mitzvot; (iii) the status of *'zera Yisrael'* blurs lines between matrilineal and patrilineal descent; (iv) leniency may encourage people to enter into civil marriages, knowing that this will increase their chances of conversion.³⁵

26. The case concerned the decision by the Swiss rabbinate not to appoint a woman as teacher in a Jewish school whose father was not Jewish and mother was a born Jew who later converted to Christianity and raised her daughter as a Christian. Technically, the teacher was Jewish but, nevertheless, R. Herzog opposed her appointment given the assimilationist climate in Switzerland.

27. R. Shaul Setton made such a ban in Argentina in 1922, R. Jacob Kassir in New York in 1935. Bans were reiterated in 1972, 1984 and 2006.

28. See R. Shlomo Kluger in in *Shu"t Tuv Ta'am Veda'at* Laws of Conversion 230, regarding a Jewish soldier who returned home with a non-Jewish partner. R. Kluger permitted the woman to convert and move to be with her husband's Jewish family. He saw this as sufficient evidence of her wish to adopt Judaism 'leshem Shamayim' and was concerned that, if the conversion were not allowed, the man would move to be with her non-Jewish family. He writes, "one should not be stringent on this when there is a concern that he will go out to an evil culture." Some other Acharonim (Maharsham 6:109, Pri Sadeh 2:3) were prepared to define 'leshem Shamayim' in this lenient manner. Many others were not - see *Minchat Elazar* 3:8.

29. This was the position of R. David Zvi Hoffman (*Melamed LeHoil* YD 83).

30. This was the position of R. Benzion Uziel (*Mishpetei Uziel* YD 1:14) and has been picked up by subsequent poskim, such as R. Hayim Amsalem.

31. For example, R. Elyahu Chazan (Chief Rabbi of Alexandria, 1888-1908) wrote that the policy in Alexandria was to allow the non-Jewish woman to convert. R. Raphael Aharon ben Shimon, in his *Nehar Mitzrayim* (*Hilchot Gerim*, p. 111), confirms that this was the practice in Egypt. Other Sefardi poskim such as the *Yisa Beracha* (EH 7) and *Pri Sadeh* (EH 7) supported this policy.

32. See *Mishpetei Uziel* YD 1:14 which was issued when R. Uziel was a Rav in Salonika, and EH 20

33. See *Yabia Omer* 8:24.

34. We discussed in Part 3 the concerns of *lifnei iver*. Ironically, the hardline approach that a conversion is simply invalid if the convert does not observe mitzvot may alleviate some of the concerns of *lifnei iver*. Since the candidate never becomes halachically Jewish, they will never be breaking mitzvot. There are still however the concerns of them mixing with and marrying Jews.

35. See R. Shimon Greenfield (Hungary 1860-1930) (*Maharshag* YD 34).

13. (ד) והנה בנ"ד שמתגיירת ע"מ להנשא היה מקום לפקפק אף אי"נ דמתגיירת בלב שלם. דהא מבואר בבכורות ל"א נכרי שבא לקבל דברי תורה חוץ מדבר אחד אין מקבלים אותו ר"י בר"י אומר אפילו דקדוק אחד מד"ס. וכ"פ הרמב"ם פ"ד מה' א"ב ה"ח. וכיון שרצונה להנשא לו ולעבור על דקדוק אחד מד"ס אין מקבלים אותה. ... נראה דדין זה דנכרי שבא להתגייר ולקבל עליו כל המצות חוץ מדקדוק אחד מד"ס דאין מקבלין אותו, היינו במתנה שלא לקבל ושיהיה מותר לו דבר זה מן הדין. בזה אין מקבלים אותו דאין שויר ותנאי בגירות ואין גירות לחצאין. אבל במי שמקבל עליו כל המצות, רק שבדעתו לעבור לתיאבון אין זה חסרון בדין קבלת המצות.

ומה"ט נראה ... דאין לחוש לזה כיון דמקבל עליו כל המצות אף שחושב לעבור על איזה מהמצות אח"כ לתיאבון, מ"מ אין זה מניעה לקבלת המצות. ודוקא היכא שמתנה שלא לקבל עליו זהו חסרון בקבלת המצות דמעכב. אולם היכא שברור הדבר שבדאי יעבור אחרי כן על איסורי תורה - חלול שבת ואכילת טריפות - ואנו יודעים בבירור כונתו שאינו מתגייר רק לפנים ולבו בל עמו, הרי אומדנא דמוכח שמה שאומר שמקבל עליו המצות לאו כלום הוא. א"כ זהו חסרון בקבלת המצות דמעכב. [ועיין בשו"ת חמדת שלמה חיו"ד סי' כ"ט וסי' ל' דהודעת המצות וקבלת המצות שני ענינים הם. דקבלת המצות הוא בסתם שקבל עליו לכנוס בדת יהודית. והודעת המצות להודיע לו ענין המצות ושכרן ועונשן, וזה אינו מעכב. ולעולם קבלת המצות בסתם מעכב דזהו עיקר הגירות וכמש"כ הרמב"ם דבעי קבלת המצות בשלשה יעו"ש].

שו"ת אחיעזר חלק ג סימן כו

R. Chaim Ozer Grodzinsky³⁶ (Lithuania, 1863-1940) sets out a different approach. He understands that there are two different elements of mitzva acceptance in conversion. The critical acceptance is the the convert is entering into the Jewish religion. This can be done 'stam' without much knowledge of the mitzvot and even in the full knowledge that the convert would be likely to break mitzvot due to temptation, yetzer hara etc. If the convert explicitly rejected a mitzva as non-binding on them, then this would disqualify the conversion. Similarly, if it is clear to the Beit Din that the candidate will not be observant of key mitzvot - Shabbat, kashrut etc - then this is a firm indication that the 'stam' acceptance of Judaism is insincere. Aside from this 'stam' acceptance to joint the Jewish religious, there is a separate obligation to educate the candidate in specific mitzvot. The latter not critical to the conversion.

14. ... הרי לך מפורש שלא נאמרו דברים אלה אלא למי שאומר שאינו מקבל דבר מדברי תורה, או מדקדוקי ספרים. אבל אם קבל כל התורה ושכרן ועונשן של מצות אלא שהוא נמשך בדברים שהרגיל בהם בגיותו, הרי זה גר חוטא ואין נמנעים מלקבל אותו משום כך. תדע מדאמרין: ומודיעים להם מקצת מצות חמורות מאי טעמא. דאי פריש נפרוש. דאמר מר קשים גרים לישראל כספחת. פירש"י: שאוחזים מעשיהם הראשונים ולומדים ישראל מהם או סומכין עליהם באסור והיתר. וכן כתב הרמב"ם ז"ל. ומפני זה אמרו קשים גרים לישראל כנגע צרעת, שרובן חוזרין בשביל דבר ומטעין את ישראל (הלכות אסורי ביאה פ"ג ה' יח).

שו"ת משפטי עוזיאל כרך ב - יורה דעה סימן נח

R. Benzion Uziel, in a 1947 teshuva addressed to a Rav of the Jewish community in Colombia agree with the position of R. Grodzinsky. The conversion is invalid ONLY if the candidate explicitly rejects a mitzva. But if they genuinely undertake in principle to keep Torah and mitzvot, but continue in practice to act in many areas as they did before they converted, they are considered to be a Jew who is sinning, and the validity of the conversion is not in question.³⁷

C] NEW APPROACHES TO CONVERSION - INSIDE ISRAEL: LAST 75 YEARS

- With the establishment of the State of Israel, the conversation³⁸ on gerut has moved in a new direction.
- 1950 Law of Return³⁹: "Every Jew has the right to come to this country as an oleh". The meaning of 'Jew' was not defined.
- 1952 Citizenship Law⁴⁰: "Every oleh under the Law of Return 5710-1950 shall become an Israeli citizen by virtue of return."
- 1956 Poland eased restrictions on Jews emigrating to Israel and 45,000 arrived. Around 10% were not halachically Jewish.
- 1958 Yisrael Bar-Yehuda⁴¹, Minister of Internal Affairs, instructed the state registrar to officially register as Jewish any person who proclaims, in good faith, that he is a Jew, and does not follow any other religion. Parents were entitled to call their children Jewish if they wished. This subjective definition of 'Jew' caused uproar and the National Religious Party - Mafdal - threatened to bring down the coalition.
- 1958 David Ben Gurion sent a letter to 51 leading Jewish intellectuals⁴². Although Ben Gurion favored a more secular and 'national' definition⁴³, most responses favored a traditional halachic definition that a Jew is someone who was born of a Jewish mother or who converted. The instructions to the registrar were changed to match this traditional approach.

36. R. Grodzinsky was also prepared to rely on the lenient approach of R. Shlomo Kluger (Achiezer 3:28).

37. His proof from Rashi and Rambam is compelling. They both interpret the statement of Chazal that converts are as difficult for the Jewish community as leprosy to mean that many converts revert to their old ways and, as Jews, influence the other Jews around them. There is no suggestion that their reversion to non-observance in any way invalidates their gerut.

38. The conversion of non-Jews in Israel has been defined as a 'national mission' by Chief Rabbis, political leaders and Prime Minister Ariel Sharon.

39. Law of Return 5710 - 1950 S.H. 5710,159; 4 L.S.I. 114 Sec 1.

40. Citizenship Law 5712 - 1952 S.H. 5712,146; 6 L.S.I. 50 Sec 2.

41. He belonged to the secular Achdut Ha'Avoda party.

42. See <https://www.tabletmag.com/sections/arts-letters/articles/david-ben-gurion-who-is-a-jew>. All 51 were men. 20 of the scholars lived in Israel; 31 in Europe and the United States. One-third were Orthodox rabbis; one-third were Jewish scholars affiliated with liberal trends in Judaism; and one-third were secularists, among them literary and other cultural figures. 46 of the 51 answered the letter. The majority of the responses to Ben-Gurion were brief and to the point. The two most extensive and detailed letters were from Chaim Cohn, the legal adviser to Ben-Gurion's government, and R. Shlomo Goren. The responses are written up and presented in *Jewish Identity: Who is a Jew?* Baruch Litvin (Author), Sidney B. Hoenig (Editor) 2012 and *Jewish Identities: Fifty Intellectuals Answer Ben-Gurion*, Eliezer Ben-Rafael (2002) - <https://brill.com/view/title/7675>.

43. Ben Gurion was in favor of a national rather than religion definition of a Jew, especially when it came to the 330,000 Holocaust survivors who sought to immigrate to Israel between 1948-51. Among them were some with non-Jewish spouses or non-Jewish mothers. Ben Gurion's son, Amos, married a non-Jewish girl, Mary Callow, from the Isle of Man. She was his nurse following injuries sustained fighting in the British Army in WWII. She was quickly converted by a Reform Rabbi before the marriage, which took place in England.

- 1962 The Brother Daniel Case. A Jewish born Carmelite friar applied for Israeli citizenship under the Law of Return on the grounds that he was Jewish born. The Supreme Court ruled 4-1 that, as an apostate, has have severed his connection to the Jewish people and was not eligible to enter under the Law of Return.⁴⁴
- 1970 The Shalit Case⁴⁵. The Supreme Court ruled 5-4 that any child living in Israel whose parents view him as a Jew can be registered as a Jew by nationality, even if the mother is not Jewish. After a public outcry Golda Meir relented.
- 1970 The Law of Return was amended by the legislature⁴⁶. It now defined 'Jew' to mean 'anyone born of a Jewish mother or converted'. But it did NOT define conversion! The law was also changed to include the right of return for family members⁴⁷ of a Jew, even if those members were not Jewish.
- 1970s/80s Chief Rabbis Isser Yehuda Unterman⁴⁸ and Shlomo Goren were very proactive in pushing forward the agenda for conversion of Russian and other immigrants.⁴⁹ Rabbi Goren established special 'batei din legiyur' under the jurisdiction of the Chief Rabbi and apart from the regular rabbinical courts.
- 1980s Ethiopian aliya.⁵⁰
- 1983 R. Goren ceased his term as Chief Rabbi. The subsequent Chief Rabbi, R. Avraham Shapira, was less radical on the issue of conversion and moved more towards the mainstream Charedi position.
- 1984 A letter⁵¹ was issued by senior Charedi poskim - Rav Schach, Rav Yaakov Kanievsky, Rav Eliyashiv and R. Shlomo Zalman Auerbach concerning the dangers of improper conversions in Israel.
- 1990s One million people emigrated to Israel from the Former Soviet Union. Due to the very high intermarriage rate in the USSR, over 25% of these were not Jewish. Over the following decade that increased to over 50%. Many of these people expressed very little interested in observing mitzvot or converting to Judaism. The debate shifted from 'Who is a Jew' to 'Who is a convert'. Increasingly the secular drive seen in the 50s and 60s dissipated and all sides were focused on Orthodox conversion as the solution. But the debate has been reframed as those proposing a strict definition of Orthodox conversion in Israel against those proposing a more lenient definition.
- 1995 The Supreme Court recognized a Reform conversion. The religious parties objected and the Ne'eman Commission was set up to investigate how conversion should be taught and approved.
- 1995 Chief Rabbi Bakshi Doron asked R. Yisrael Rosen, founder of the Zomet Institute, to set up the Conversion Administration. Rabbinic Conversion Courts under the auspices of the Chief Rabbinate were set up. The Conversion Administration was later transferred by Rabbi Yisrael Meir Lau to the Ministry of Religious Affairs. The Nativ IDF conversion program was set up.
- 2004 PM Ariel Sharon transferred the Conversion Authority to the Office of the Prime Minister and R. Chayim Drukman was appointed as its head.⁵² Rabbinic support for the Conversion Authority came from R. Dov Lior, R. Tzefania Drori, R. Yaakov Ariel, R. Shaar Yashuv Cohen, R. Shlomo Daichovsky, R. Hayim Amsalem and others.⁵³
- 2007 Beit Din HaGadol in Yerushalayim declare as invalid retroactively a conversion 16 years early by R. Drukman and state that R. Drukman and his co-dayan on the Conversion courts were invalid as dayanim for conversion.
- 2015 Giyur K'halacha⁵⁴ was set up by R. Nachum Rabinowitz, R. Seth Farber and others to offer an alternative Orthodox conversion route independent of the Chief Rabbinate. Many prominent Israeli Rabbis⁵⁵ are connected to the organization but its conversion are not currently recognized by the Chief Rabbinate. The conversions have however been recognized by the Israeli secular courts⁵⁶ by the State of Israel⁵⁷.
- 2021 The new coalition government in Israel has proposed a Chok Giyur which will overhaul the system of conversion in the country and enable the local Rabbanuyot to be independently responsible for conversion.⁵⁸

44. See R. Aharon Lichtenstein's essay *Brother Daniel and the Jewish Fraternity*, Leaves of Faith Vol 2.

45. H.C. 58/68 Shalit v. Minister of the Interior 23(2) P.D. 477. The petitioner, Binyamin Shalit, a Jew, was born in Haifa, Israel in 1935. In 1958, while studying in Edinburgh, Scotland, he married Anne, a non-Jewish Scotswoman who did not convert to Judaism. In 1960, he returned to Haifa with his wife. On March 14th, 1964, a son, Oren, was born to them and Oren was circumcised but not in accordance with the halacha. On February 15th, 1967, a daughter, Galya, was born to them. When the petitioner, who had become an officer in the Israel Navy, came to register his son in accordance with the Registration of Inhabitants Ordinance, 1949, which required that the particulars regarding his son's *dat* and *le'um* be given, he declared nothing for *dat* because he and his wife considered themselves atheists and their son was being raised without religion, and declared 'Jewish' for *le'um*. The registration officer changed the petitioner's declaration and registered the son as to *dat*, "Father Jewish, Mother Non-Jewish", and as to *le'um*, wrote "no registration". For a full report see

https://www.canlii.org/en/commentary/doc/1970CanLIIDocs7#!fragment/zoupio-_Tocpdf_bk_5/BQCwhgziBcwMYgK4DsDwszIQewE4BUBTADwBdoAvbRABwEtsBaAFx2zhoBM AZgl1TMArAEoANMmlyCEAIqJCuAJ7QA5KrERCYXAnmKV6zdt0gAynlIAhFQCUAogBI7ANQCCAOQDC9saTB80KTSIJAA

46. Law of Return (Amendment No.2) 5730 - 1970 S.H. 5730,34; 24 L.S.I. 28.

47. Section 4A includes spouse, child (and their spouse), grandchild (and their spouse), unless any of them have converted to another religion.

48. See his essay *The Laws of Conversion and their Implementation* (Heb), Torah Shebe'al Peh 13 (1974). In that essay R. Unterman explains why his approach to gerut was different when he was a Rav in Liverpool, England to when he was Rav, and then Chief Rabbi, in Israel. Another relevant factor is that, in *chul*, the convert joins a specific community with its own halachic and hashkafic standards. In Israel, the convert is unlikely to be a member of a specific community. This is also a problem, in that the convert can easily drift away into the general population and lessen their overall level of observance.

49. For analysis of there position and also an overview of the topic, see *From 'Who Is a Jew' to 'Who Should Be a Jew': The Current Debates on Giyur in Israel*, Arye Edrei, Conversion Intermarriage and Jewish Identity, The Orthodox Forum (2015) p 109, especially pp129-137.

50. The halachic issues surrounding the status of Ethiopian Jewry are complex and will be H be the subject of a separate shiur.

51. Published in the newspapers June 15 1984.

52. He held this post until 2012.

53. Between 1999 and 2007 the average annual number of converts through the Conversion Authority was around 1,750 plus around 450 through the IDF. This a small number in the bigger picture, although many of the converts were young women. It is estimated that there are 400,000 Israelis today who identify as Jews but have questionable halachic status.

54. In the preparation of this shiur, the on-line shiurim of my friend and neighbor R. David Brofsky were extremely helpful, as was his insight into current issues concerning gerut in Israel. R. Brofsky serves as the Rabbinic Liaison for Giyur K'Halacha - see <https://etzion.org.il/en/series/laws-conversion-and-circumcision-2>

55. These include Rabbi Hayim Amsalem, Rabbi Re'em HaCohen, Rabbi Shlomo Riskin, and Rabbi David Stav who serve as judges in Giyur K'Halacha rabbinical courts located in Alon Shevut, Be'erot Yitzchak, Efrat, Lavie, Ma'ale Gilboa, Shoham, and Tel Aviv. See <https://www.giyur.org.il/en/about-giyur-khalacha/>

56. <https://www.timesofisrael.com/in-first-israeli-judge-recognizes-conversion-to-judaism-by-private-court/>

57. So that the individual can have 'Jewish' registered in their Teudat Zehut. This will NOT however enable them to get married through the Rabbanut in Israel.

58. They are also trying to change the composition of the selection body for the new Chief Rabbi (to be appointed in 2023) in order to increase the possibility of the appointment of a Religious Zionist candidate.

- Largely the key questions are: (i) what exactly does the convert have to 'accept' for the conversion to be valid?; (ii) is the main focus of conversion 'joining the Jewish nation', or 'joining the Jewish religion', or 'accepting the observance of Torah and mitzvot' and, if the latter, to what degree?; (iii) the classic statement of the halacha is that conversion should not be carried out in order for a Jew and non-Jews to (inter)marry. But how does this apply if they are already married!?
- The hashkafic worldviews of the Charedi and Religious Zionist also view this problem in different ways. From the Charedi perspective, the 'national goals' of the Jewish people in Israel are far less important. Each case will be viewed as an individual who is applying to convert and, on that basis, previous pre-State paradigms of conversion are still fully relevant. Encouraging conversion of individuals who will not observe mitzvot is considered invalid and highly problematic⁵⁹.
- From the Religious Zionist perspective, there is also a pressing need to recognize the nationhood of the Jewish people, not in place of religious commitment, but as a major factor alongside it. It may be in the national interest of Israel as a Jewish State to encourage conversion so that there will not be significant non-Jewish population in the State. Also, olim who are not Jewish but who fight in the IDF, build the country and are targeted by terrorists because they are Israelis cannot simply be sidelined as 'non-Jews'. If these people are killed in action or in attacks, is it a simple matter to bury them in a non-Jewish cemetery, possibly separated from other family members?
- The halachic approach of the Conversion Authority was: (i) to insist that the convert went through a significant study course and then interview and to ensure that they accepted Torah and mitzvot. They would not convert a candidate where they believed this acceptance was simply a facade; (ii) not to consider motivation for conversion as a significant factor on the basis that this did not invalidate the gerut; (iii) not to check up on subsequent observance on the basis that this did not invalidate the gerut.
- The Chief Rabbinate has been criticized in recent years for having rejected the validity of conversions from certain Orthodox Batei Din⁶⁰ outside Israel.

15. The primary and decisive process in conversion is becoming part of the Jewish people and that the Jewish people accept the convert into the community. This finds expression in that the court, which is empowered by the people, decides to accept him By becoming part of the Jewish people, the God of Israel becomes her God. This is the essence of conversion. The rest is commentary - go study It is explicit in the words of Ruth when she said 'Your people will be my people' that the main aspect of conversion is leaving the people from whom he [the convert] came and entering the Jewish people.

R. Shaul Yisraeli, Chavat Binyamin vol 2 p 411, 413

16. The Conversion Administration was established out of a sense of mission and challenge that interfaced with the stages of redemption that have come to expression in the ingathering of hundreds and thousands of distant remnants of Israel. These flowed into Zion from behind the iron curtain (from the Former Soviet Union) and from beyond the legendary Sambatyon River (from Ethiopia). Those involved in conversion sensed in the beginning days the words of R. Tzadok of Lublin that the verse, 'And it shall come to pass on that day, that a great horn shall be blown; and they shall come that were lost in the land of Assyria, and they that were dispersed in the land of Egypt' (Isaiah 27:13), speaks about conversion of the souls that assimilated and were distanced and lost in their many exiles.

R. Yisrael Rosen, Ve-Ohev Ger p 26

17. In truth, if we push them off for this reason, besides all of the damage that might come as a result of intermarriage and assimilation, we will also find that we will transgress the rebuke of the prophet Ezekiel (34:4): 'You have not brought back that which was driven away, nor have you sought that which was lost'.

R. Hayim Amsalem, Vecheilyam Yegaber p 7

18. it was stated in the Gemara that 'They say to him: Do you know that currently Israel is afflicted In our contemporary spirit [it would be] 'Do you know that your desire to become part of the Jewish people will obligate you to serve in the Jewish army, to place yourself in danger and even perhaps to die', and if he nevertheless replies: 'I know and accept this upon myself' - is not this reason enough to accept him as a convert; do we not value and understand his relationship to the larger group as the acceptance of the yoke of the commandments?

R. Hayim Amsalem, Vecheilyam Yegaber p 5

59. There is also a general inclination in many Charedi Batei Din to be machmir in gerut even though, historically, this was not the approach in many locations.

60. This became something of an embarrassment in 2016 when it was revealed that one of the batei din rejected by the Chief Rabbinate was that of R. Haskel Lookstein, who officiated over the conversion of Ivanka Trump.