

On the Psak Concerning Israeli Conversions

By: YEHUDA HENKIN

I read the ruling of R. Avraham Sherman which delegitimized the network of special *batei din* for conversions, and called into question the conversions performed in such courts over the last decade. In addition, it personally attacked the head of the network, R. Chaim Druckman.

The ruling, fifty pages long, centered on two major points. First, that the absence of full and honest acceptance of the commandments, as proven by circumstances (*umdena demuchach*), totally invalidates a conversion. Second, that this is accepted halachah, and that those who act to the contrary are disqualified as witnesses and, consequently, as *dayanim* as well. Therefore, all conversions they perform are *ipso facto* null and void.

I think that R. Sherman is inaccurate in his arguments. He wrote a number of times that “all the *poskim*” and “all the *poskim, rishonim* and *achronim*” agree that the lack of a sincere acceptance of the commandments invalidates a conversion by Torah law. Yet there are those who disagree. The *Bach* (*Yoreh Deah* 268, *s. v. vechal inyanav*, end) explained the Rambam’s opinion as being that a conversion is valid even if “no *kabalat mitzvot* took place at all.”

Similarly, R. Shlomo Kluger in Resp. *Tuv Ta’am vaDa’at* (*Telitaah*, vol. 2, no. 111 in the second *teshuvah*) wrote that “*kabalat hamitzvot* is only a means [*machshir*]...if he [the convert] was circumcised and immersed for the sake of conversion, even if he didn’t first accept the commandments, he is a convert according to Torah law with certainty; accepting the commandments first is only rabbinical.” Support for such an opinion can be found in *Keritot* 9a, which is the source for the various components of the conversion process: “Our forefathers entered the covenant [at Sinai] via circumcision, immersion, and sprinkling of the blood [of the sacrifice]”—without mention of *kabalat mitzvot*.

Yehuda Herzl Henkin is the author of responsa *Bnei Banim* in four volumes and a number of works in English. A *talmid* of his grandfather, Rabbi Yosef Eliyahu Henkin ז"ל, he served as area rabbi of the Bet Shean valley in Israel. He now lives in Jerusalem.

In my opinion, the meaning of the Rambam is as the *Bach* understood it to be. In *Hilchot Issurei Biah* 13:14-16, Rambam wrote that Shlomo and Shimshon remained with their wives even though “their [wives’] secret was revealed (*nitgaleh sodan*).” Clearly, the “secret” was that they had not renounced idol worship when they converted, and there can be no greater lack of sincerity in accepting the commandments than this. Nevertheless, *b’dieved* their conversions were valid. I discussed this in *Bnei Banim* vol. 2, no. 36 (1) and vol. 4, no. 22 (1).¹

According to the Gra, as well, deceit in acceptance of the commandments does not annul the conversion. On the words of the *Shulchan Aruch* (268:12) “and even if he returned and worshipped idols, he is like an apostatized Israelite whose *kiddushin* take effect,” the Gra commented, expanding on the language of the Rambam, that “they remained with their wives even though their [wives’] secret was revealed, and their behavior in the end proved what their intention had been from the beginning (*bochiach sofan al techilatan*).” Thus, the meaning of the “secret” was that they did not renounce idol worship at the time of conversion. Even in such circumstances, where their subsequent behavior proved what was their intention from the beginning—and in spite of the fact that prohibition of idol worship is a fundamental tenet of Judaism²—their conversions were not annulled. The fact that they were insincere falls under “matters of the heart” which are of no legal consequence (*devarim shebaleiv einam devarim*).³

¹ *Shu”t Bnei Banim* is accessible online at www.hebrewbooks.org.

² Both Rambam (14:2) and *Shulchan Aruch* (268:2) stress this.

³ Without mentioning the Gra, R. Yitzchak Schmelkes in Resp. *Beit Yitzchak* (*Yoreh Deah* pt. 2, no. 100) argued that in matters of conversion, matters of the heart are indeed of consequence. Proof of this comes by reference to *gerei aryot*, the *Kutim*, who at the end of the First Temple period converted out of fear of marauding lions (*aryot*) but continued to worship idols alongside of *haShem*, as described in II Kings chap 17. According to one *Tana* in *Kiddushin* 75b and elsewhere, their conversion was invalid. But presumably, the *Kutim* did not tell the conversion court about their continuing to worship idols—otherwise the court would never have agreed to convert them. The idol worship remained *devarim shebaleiv*. Why, then, was the conversion invalid? Ergo, *devarim shebaleiv* in matters of conversion are, indeed, *devarim*.

It should be noted that *Bach's* interpretation of Rambam's position seems to be borne out by the *Mechilta* (*Mishpatim* 13): "When Israel stood at Sinai, they attempted to deceive G-d (*lignov da'at ha-Elyona*). They said, 'everything which *baShem* stated, we shall do and hear,' **as it were** (*keveyachol*)." According to the *Mechilta*, there was deceit on Israel's part in their very acceptance of the commandments at Sinai. Later *midrashim*⁴ make the same point. Yet this did not annul the acceptance of the covenant, which was the equivalent of conversion.

However, I think one must distinguish between two situations. The first is the absence of *kabalat hamitzvot* altogether. In this situation, *Bach's* view is that according to the Rambam, the conversion is valid nevertheless. But such an opinion is not mentioned in the *Shulchan Aruch*, and *Tosafot* and *Rosh* disagree with it, as *Bach* himself wrote.

The second situation is one in which *kabalat hamitzvot* was indeed a part of the conversion process, but such acceptance of the commandments was insincere, without intention to fulfill them. It is not explicit in the *Shulchan Aruch* that in such circumstances the conversion is invalid, as we see from the Gra's words. *Tosafot* and *Rosh* may indeed concur with Rambam on this. So, too, the *Mechilta* describes verbal but insincere acceptance.

I myself protested, in *Bnei Banim* vol. 2 p. 141, against a proposal to convert adopted children in *chutz la'Aretz* in non-observant homes, since they will grow up non-religious. However, one must distinguish between the situation in *chutz la'Aretz* and the situation in *Eretz Yisrael*

However, the above appears to depend on only one of a number of different interpretations by the *rishonim* of the *sugya* there, *q. v.* In addition, why posit that an expert court was involved, rather than one of laymen? It is not hard to imagine a scenario in which *bedyotot* might wish to convert Gentiles in spite of halachic considerations (similar to today!), and cf. Rambam (13:15).

⁴ *Shemot Rabab*, *parshah* 42; *Yalkut Shimoni*, *Tebelim* 820. One might explain that for this reason G-d employed *force majeure* at Sinai, thereby succeeding in coercing Israel to accept the Torah in spite of their inner reservations; see *Shabbat* 24a, *kafah aleihem bar k'gigit* and my *New Interpretations on the Parsha, Yitro*. However, the Scriptural peg for the coercion, in *Shemot* 19:17, antedates the statement "we will do and hear" in 24:7.

today, where in the absence of conversion non-Jews are being absorbed into the Jewish population, creating a stumbling-block. Few *achronim* discuss the status of conversion under such circumstances.

However, it is unnecessary to rule on the question of whether the change in circumstances in Israel today justifies a change in orientation to conversions. In his ruling, R. Sherman professes to disqualify R. Druckman from testimony and *dayanut* by categorizing him as a “*rasha*” and “*apikorus*.” This would nullify his conversions by dint of the technical-halachic reason of absence of a kosher court of three judges at the time of conversion.⁵

In fact, it is extremely difficult to disqualify a scholar from testimony and *dayanut*. In *Choshen Mishpat* (34:17), it is ruled that a *talmid chacham* has the presumption of being qualified until he is disqualified—that is to say, disqualified on proven charges and not merely out of doubt. This can also be learned by a *kal vachomer* from 34:23 in the Rema, which deals not with scholars but with laymen. The Rema writes, “Even if he [i.e., the witness] is disqualified by Torah law, one may not disqualify him except for proven reasons, but not [merely] on the basis of suspicion.” If the Rema’s statement is true for a layman, how much more so does it apply in the case of a scholar!

One may not say that the accusations against R. Druckman are strengthened because as a scholar, he certainly knows that “all the *poskim*” agree to annul insincere conversions, and if in spite of this he nevertheless countermanded their rulings, he is certainly disqualified as a “*rasha*.” This is not a true argument for as we have seen above, “all the *poskim*” do **not** agree to such annulment.⁶ Even if a scholar follows a minority opinion, where do we find that this is cause for personal disqualification?

⁵ R. Sherman repeatedly cites the Torah prohibition of *lifnei iveir*—placing a stumbling-block before the unwary—as grounds for totally disqualifying conversion-court judges who accept non-Jews as Jews (in his view). Yet in *Choshen Mishpat* 34:2, the Rema rules that a violation which does not incur the punishment of flogging entails only rabbinical disqualification, and such is *lifnei iveir*; see Rambam, *Sefer haMitzvot*, ninth *shoresh*, and *Sefer haChinuch*, no. 232.

⁶ See *Mishnat Avraham* (on the *Semag*), vol. 3, page 274, who concludes leniently in exactly the same case of those who convert without a complete *kabalat hamitzvot*.

Moreover, in *Choshen Mishpat* 34:4, concerning burial on the first day of *Yom Tov*, it is ruled that even one who blatantly violates a Torah prohibition, but does so in the mistaken belief that he is fulfilling a mitzvah, is not disqualified from testimony—not even when placed under a ban while still maintaining his mistaken opinion. And in par. 24, it is ruled that one should not disqualify a person as a witness by dint of a violation that most people do not characterize as a sin. This is certainly true in the case of conversions.

Halacha demands, therefore, that we conduct ourselves with a double measure of circumspection before disqualifying a *talmid chacham*, and certainly not to do so as a result of a disagreement in halacha or in public policy.

In his ruling, R. Sherman indeed mentioned some of these *halachot* from *Choshen Mishpat*, but in practice ignored them. Instead, he chose to follow what appear to be his personal prejudices, such as when he wrote that one may not assume that the *dayanim* of the special conversion courts are simply mistaken; rather “they are [guilty of] completely willful violations (*zadon gamur*).” Who revealed this to R. Sherman? It is precisely this point that is controversial.

It is even possible to absolve R. Druckman, as a scholar, of the most damning accusations made against him: that he affixed his signature as a *dayan* in cases where he was not even present. One could consider him guilty only of a lapse in administrative judgment. This question was brought to the attention of the former chief rabbis, R. Shapira and R. Eliahu. R. Sherman mentioned the fact of the referral, but did not mention what had been decided by the chief rabbis. Apparently, they did not invalidate the conversions. ❧