

Examining a Controversial Heter: A Woman Converted as an Infant Marrying a Kohen— The Novel Approach of Rabbi Ephraim Greenblatt (Rivevos Efraim)

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Introduction

Leniencies, by definition, adopt a version of halachah not commonly practiced in the community, often by reading traditional sources differently than commonly understood. In broad terms, they raise questions of when and why halachic authorities allow a lower standard.

Here, we take up a leniency of the *Rivevos Efraim*, R. Ephraim Greenblatt, א"ת, who allowed a woman adopted at birth from a non-Jewish family—halachically a *goyores*, a convert, and therefore traditionally understood to be disallowed from marrying a Kohen—to marry one nonetheless.¹ It caught our attention because it seemed so counter the general and accepted practice as well as the recorded halachah. We wondered whether this was an example of a halachic authority struggling, perhaps a bit too hard,² to help a family in a difficult situation.

¹ This *teshuvah* circulated far and wide unpublished for almost twenty years, but was recently published by Dr. Marc Shapiro, under his Hebrew name, Melech, in a volume called *Iggeros Malchei Rabbanan* (Scranton, 5779) at pp. 149–150. (A prior version of the *teshuvah* is found in *Rivevos V'Yovelos* chapter 224, although that version is much less clear. This may be because this work was not exclusively authored by Rabbi Greenblatt.)

² See for example, Rabbi Elchanan Naftali Prince, *Shu"t Arnei Derech* 16:177 who rejects the conclusion of this *teshuvah*/responsum as a viable option:

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Eight volumes of *Rivevos Efraim* and his lifelong relationship with his teacher, R. Moshe Feinstein, ז"ל, more than qualified R. Greenblatt to take such a daring position. The pressure for leniency came and comes from two directions. First, the rise in adoptions in the Jewish community³ has increased the sheer number of child converts, some of whom do not know of their status. The more such women out there, the more frequently some will meet and decide to marry a Kohen. In addition, the numerous times the Torah stresses the obligation to love the convert creates halachic pressure to help them. R. Moshe Feinstein is on record including in this obligation a rabbi's responsibility to find the most lenient possible rulings, part of easing converts' way in the Jewish world.⁴

Second, less happily but still important for halachic decisors to consider, some couples will marry regardless of what a rabbi says, at the cost of leaving Orthodox observance and affiliation. While obviously not ideal, rabbis must take this into account as they rule and/or set halachic policy in their communities. Such considerations explicitly underlay the thinking of many halachic authorities—dating back to the Rambam⁵—that it is better to convert non-Jews for the sake of marriage rather than let people leave Judaism as they select a spouse.

Our confusion as to how R. Ephraim Greenblatt justified what seems prohibited—the marriage of a Kohen and a woman who converted as an infant—led us to investigate whether other authorities adopted his view, and to see the extent to which this view has penetrated the halachic discourse of *poskim*. To our surprise, we found more than a few recent decisors of high repute who issued the same or similar rulings, for his reasons and more. Rather than a one-time leniency by a recognized authority, this turns out to be an issue bubbling under the surface of halachic discourse,

במה ששאלת האם ניתן לסמוך על פסק ההלכה שהתיר נישואי גירות לכהן כשהתגיירה מתחת לגיל שלוש. לענ"ד אין לסמוך על כך.

³ Particularly, as in the case he addressed, with hidden adoptions, where children are not told they are adopted until they become adults—in this case until her parents informed her she could not marry the Kohen to whom she was already engaged.

⁴ *Shtu"t Iggerot Moshe, Yoreh Deah* 4:26, cited below.

⁵ *Pe'er HaDor* No. 211 where Rambam notes that it is better to perform a less than ideal conversion than to do nothing and accept an intermarriage. In the case of a man who was intimate with his maidservant and wanted her to convert so he could marry her, Rambam states:

As we have already ruled other times, he should free her and then marry her, and we do this in order to give him room to repent (*takanas hashavim*), as “it is better to eat the sauce of prohibited fat, and not the fat itself.” And we rely upon the rabbis, who said, “A time to do for the Lord; they have made void Your Torah.”

halachic decisors finding room to allow these marriages, *bedi'avad*, after the fact or under significant pressure.

To start, we share Rabbi Greenblatt's *teshuvah* in Hebrew and English. We then review the Talmudic sources, where we find one Talmudic opinion—a minority—who allows such a convert to marry a Kohen. Of the Rishonim, Rashi provides the most room for leniency, perhaps suggests the prohibition is rabbinic. We then turn to *Shulchan Aruch*, the codified halachah, and later authorities which clearly oppose such marriages. We then review other authorities who reached the same or similar conclusions as R. Greenblatt, who allow this kind of marriage, under certain circumstances.

From there, we will briefly discuss the broader question of accommodation, when halachic authorities ratify a less clear halachic path (with downsides of its own) to help a Jew who finds the usual one difficult in some way. As we do so, we will familiarize ourselves with one basic question of halachic rulings: the decisor's evaluation of when the questioner's situation justifies extraordinary measures. By the time we conclude, we hope to have shed light on how *poskim* allowed some adopted women to marry a Kohen. We hope also to have added a bit to our understanding of the values they bring to their decisions on whether to follow halachah as it is codified or to add a new path to those books.

A necessary caveat before we begin: We do not come here to imply, indicate, or intimate any position on whether converts should or may be allowed to marry a Kohen. First, halachah, Jewish law, is not legislated in popular journals. Second, as the sources we will examine show, the consensus against such marriages *l'chatchillah* is clear. The *poskim* who allow such marriages do so in *bedi'avad* situations. It is never the general rule to allow it, but rather an accommodation to extenuating circumstances.

Part I: The Letter from Rabbi Ephraim Greenblatt

בס"ד ג' טבת תשס"ב

נשאלתי מאחד שהוא ואשתו אימצו ילדה, ובהיותה בערך כשבוע הם לקחוה לבית דין וגיירו אותה כהלכה בטבילה.

ועד כה לא אמרו לבת שהיא מאומצת והנה היא פגשה בחור ומוכנים להתחתן אבל הוא כהן ואז הודיעו לה שהיא גיורת ותשובתה אם רב דתי לא יחתן אותם הם יתחתנו בערכאות. הדבר קשה שהיא הבת היחידה שלהם ואם תתחתן בערכאות תרחק מהם והפסידו אותה, יתכן שההלכות שהיא והבחור שומרים הם יפסיקו לשמור.

והנה התעמקתי בשאלה לראות אולי יכולה להנשא לכהן.

זה חשבתי יתכן שאמה הייתה יהודית ואין שאלה לגמרי אבל יתכן דהייתה גויה.

הנה ביבמות יש מחלוקת בין חכמים לרשב"י [רבי שמעון בן יוחאי] דחכמים סברו דאף פחותה מג' [שלוש] שנים אם נתגיירה אסורה לכהן ורשב"י סובר אם נתגיירה פחות מבת שלוש שנים מותרת לכהן.

בשולחן ערוך אבן העזר סימן ו' סעיף ח' פסק כחכמים ועיין שם במפרשי השו"ע [שולחן ערוך] שמביאים הטעם שאוסרה הוא לא שזינתה אלא טעמים שונים או משום דבאה מן העכו"ם דשטופין בזימה או משום דכתוב מבתולות זרע ישראל יקחו או מקרא דזונה האמורה בתורה, לכאורה יש פה איסור.

אבל במקום דיש חשש שתנשא בערכאות ותרחק מיהדות יש תשובה ביגדיל תורה דר' חיים עוזר זצ"ל לקח על עצמו להתיר בנתגיירה פחותה מבת שלוש שנים כדי שתשאר ביהדות ולא לעשות בני ישראל חללים, ועיין בגליון השולחן ערוך בחכמת שלמה דסברתו גם כן דיש מקום להתיר בשעת הדחק אם כן מוטב להתיר בשעת הדחק ולא לאסור דיצאו משפחות מקולקלות.

וגם כן מורי ורבי מורנו הרב הגאון ר' משה פיינשטיין זצ"ל בשאלה כעין זאת אמר לי דאני יכול להתיר ולא לבייש בת ישראל ומשפחתה שיהיו חללים בישראל. ובשעת הדחק כמצב שנשאלתם אפשר לפסוק כרשב"י דאם נתגיירה פחות מג' שנים מותר לה להינשא לכהן. הנה כמובן צריך שהדבר ישאר בסוד לא לפרסם כי כל פעם יבוא אחד ויערער... מה עשית, והבנים שיולידו בזמן שיצטרכו להתחתן יהיה עליהם שהם חללים. וכן בספר עדות ישראל יש תשובה שסמך להתיר בנתגיירה פחות משלוש שנים להנשא לכהן כדי שלא לצער את ההורים שלה שלא תהיה חופה וקידושין כשרים ויביאו לדראון לב. לקחתי על עצמי לבא לצד היתר ומי שלא רוצה לנשא אתה, לא ינשא אבל פה הכהן רוצה ויש להם היתר ממני. וטלפנתי פוסק גדול בארץ ישראל בשבוע שעבר והסכים להיתר שנתתי, אבל ביקש שלא אפרסם שמו. וכן אני לא מפרסם שם הבחורה והוריה כדי שבזמן שאדפיס תשובה זו בחלק ט' מספרי רבבות אפרים הם לא יבואו לידי בושא והעלמתי השמות. וכן שם הרבנים שמסכימים לחתן אותם אני משמיט. ויתחתנו ויחיו כדת משה וישראל. והנלע"ד כתבתי והתמתי שמי בתאריך ה"ל

הרב אפרים גרינבלאט

3 Tevet 5762 [December 18, 2001]

I was asked about a man and his wife who adopted a baby girl. When she was about a week they brought her to *beis din* and converted her in accordance with halachah, with immersion in a *mikveh*.

They had not told her until now that she was adopted. She now met a young man, and they are prepared to marry. However, he is a Kohen, so then they [the parents] told her she is a convert [and ineligible to marry him]. Her reply was that if an Orthodox rabbi would not marry them, they would get married in a civil ceremony. The matter is very difficult [for the parents], for she is their only daughter, and if she marries civilly, she will become distanced from them, and they will lose her, and it is likely she and the young man will cease to observe [halachah].

As such, I have pondered in great depth if perhaps it may be permissible for her to marry a Kohen.

One thought I had was that perhaps her biological mother was Jewish and therefore there would be no question [she could marry him]. But it is likely that she was not Jewish.

In *Yevamos*, there is a dispute between the Sages and Rabbi Shimon bar Yochai. The Sages rule that even a girl younger than three, if she converted, still may not marry a Kohen, and Rabbi Shimon bar Yochai rules that if she was converted before the age of three then she may marry a Kohen.

In *Shulchan Aruch Even HaEzer* 6:8, he ruled like the Sages. Consult the commentaries there, who cite the reason he prohibits her is not that she had disqualifying sexual relations, but for other reasons, either that she comes from a gentile environment that is saturated with sexual immorality, or because the verse requires “of virgins of Jewish stock they shall take,” or because of the verse of *zonah* in the Torah. It certainly appears that it is prohibited.

However, in a situation where there is a concern she will get married civilly and become distant from Judaism, there is a responsum [we can rely on] in [the journal] *Yagdil Torah* by Rabbi Chaim Ozer Grodzinski, זצ”ל,⁶ where he took it upon himself to permit a woman who converted below the age of three to marry a Kohen so she would remain part of Judaism and not make Jews *challalim* [Jews not allowed to marry a Kohen]. Furthermore, see the comments of *Chochmas Shlomo* on *Shulchan Aruch* who also saw reason to permit in a situation of great need. As such, it is better to permit it in a time of need and not forbid it in a way that produces problematic families.

And also, my teacher and master, our teacher, the great Rabbi Moshe Feinstein, זצ”ל, in a case similar to this, told me that I can permit it so as not to embarrass a Jewish woman and her family and to avoid *challalim* in

⁶ We are not aware of the exact reference, but suspect it relates to the material found in *Shu”t Achiezer* 3:28, where R. Grodzinski questions the practice of not converting a non-Jewish woman married to a Kohen, because the Kohen will then be transgressing the prohibition of marrying a *zonah*. R. Grodzinski thinks it no worse than his current situation of living with a non-Jewish woman, although he is sympathetic to the problem of inducting the woman into a world where she will now be violating the Torah. In the end, he notes the practice has already become to accept her conversion because it is more likely to keep the Jews involved closer to Judaism. Rabbi Shlomo Goren, “Converting a Woman Who Is Living with a Kohen,” *Techumin* 23:180 (5760) at pp. 182–185, agreed this is the correct reading of the responsum.

the Jewish people. In a situation of need, like the one about which you were asked [the rabbi who brought the case to R. Greenblatt], it is possible to rule like Rabbi Shimon bar Yochai, that if the woman converted before the age of three she may marry a Kohen.

It is obvious the matter must remain secret and not be publicized, because each time [people hear of it], one person will come and object “what have you done,” and the children the couple has will be told they are *challalim* when it is time for them to marry.

So, too, in the work *Eidus Yisrael* there is a responsum that found room to allow a woman who converted before the age of three to marry a Kohen so as not to cause distress to her parents, who will see her marry without *chuppah* and *kiddushin* [the elements of a halachic wedding], and come to shame.

As such, I have taken it upon myself to take the position of leniency. Whoever does not want to marry her need not marry her, but here we have a Kohen who does want to and they have a ruling of permissibility from me. I also called a great decisor in Israel last week and he agreed with the permissive ruling I had given, but asked to remain anonymous.

So, too, I will not share the name of the woman in question or her parents so that when I print this responsum in volume nine of my book *Rivevos Efraim*,⁸ they will not be embarrassed, so I left the names out. I am also omitting the names of the rabbis who agreed to marry them. Let them marry and live a proper Jewish life.

This is my humble opinion and I affix my signature to it on this day.

Rabbi Ephraim Greenblatt

To summarize: Rabbi Greenblatt rules that in a time of urgent need, halachah allows one to follow the view of the Tanna Rabbi Shimon bar Yochai and allows a Kohen to marry one who converted under three and the resulting children are then not actually *challalim*.⁹

⁷ We are not aware of the reference here and we have looked with some diligence. See also the second paragraph in note 39. Dr. Shapiro, cited in note 1, also cannot identify the references. It is worth adding that the core of Rabbi Greenblatt's analysis is not driven by these sources, but by the idea that the view of Rabbi Shimon bar Yochai can be relied upon in a time of need.

⁸ We note R. Greenblatt never published this responsum, although he had opportunities. The omission could have been for ancillary reasons, or could show he meant it as a one-off, because of specifics of this one case.

⁹ Furthermore, should a question arise in the future, this couple's possession of this *teshuvah* will allow them and their children to function as Kohanim. Even *poskim* who disagree with a ruling do not generally second-guess a specific *psak* over a specific couple by a well-known authority.

To understand R. Greenblatt's position, let us retrace his halachic steps, starting, as all halachic discourse does, with the verses in the Torah.

Part II: Who May and May Not Marry a Kohen

1. Introduction

The Torah (*Vayikra* 21:7) states:

אִשָּׁה זֹנָה וְחִלְלָה לֹא יִקְחוּ, וְאִשָּׁה גְרוּשָׁה מֵאִישׁ לֹא יִקְחוּ:	They [Kohanim] shall not marry a woman that is a harlot, or profaned; neither shall they take a woman divorced from her husband.
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R. Greenblatt argued a convert adopted as a baby might not be considered a *zonah*, a word inexactly translated as harlot. We see the ambiguity of her membership in that group by looking at the other categories of women the Torah prohibits to a Kohen. *Zonah*, *challalah*, and *gerushah* are each technical terms whose definitions we find in *Shulchan Aruch* and many other places.

Even HaEzer 6 starts with a *gerushah*, a woman divorced after either stage of marriage—*erusin* (betrothal) or *nisuin* (full-fledged marriage). As with any Biblical matter, being a possible *gerushah* creates halachic concerns, for example, where we are not sure the *get* was given effectively and afterwards the husband died, making her perhaps an *almanah*, widow, permissible to a Kohen. *Rei'ach haget*, the appearance [lit: smell] of a *get* when the document turns out to be ineffective, may exclude her from marriage to a Kohen, as does—according to Rema (EH 6:1)—a *get* given to counter even a baseless widespread rumor that she had been married. The following paragraphs in *Shulchan Aruch* discuss which kinds of rumors require a *get* that makes her a halachic *gerushah* (unless she proves otherwise), and which do not.¹⁰

Shulchan Aruch Even HaEzer 7:12 defines a *challalah* as the daughter of a relationship between a Kohen and a woman prohibited to a Kohen (such as the *gerushah* we just discussed, or a *zonah*). If a Kohen marries a divorcée, any daughter is a *challalah* and may not marry a Kohen.

Zonah, our topic, has clear and unclear elements. *Shulchan Aruch, Even HaEzer* 6:8 defines it as a woman who had relations with a man she may

¹⁰ The question of how not fully effective marriages and divorces affect a woman's ability to marry a Kohen is discussed in *Shu"t Yabia Omer* EH 10:34, 11:32, and many other places.

not marry because of a general prohibition.¹¹ Relations with an animal do not make her a *zonah*, because her partner was not human; nor do relations when she is a *niddah*, despite those being prohibited at a *karet*/excision level, because she is allowed to marry the man (as soon as she is no longer a *niddah*.) A woman who has a sexual relationship with a non-Jew does become a *zonah* (since she cannot marry that man), and thereafter may not marry a Kohen.

Halachah at first glance includes converts in the *zonah* category, regardless of age at conversion or prior sexual conduct. Some attribute this to an assumption about non-Jews' promiscuity. Others think her *zonah* status comes regardless, with or without an act of sexual relations, willed or coerced. Her having been born non-Jewish is enough to make her a *zonah*. (In this view, *zonah* does not imply anything about her conduct or character; it is a fact of birth, relevant only to her possible marriage to a Kohen). Conversion before age three highlights the point, because she seems to be considered a *zonah* despite the lack of intercourse prior to the age of three.

The halachic idea of *zonah* does not necessarily carry a connotation of prostitution as implied by its usage in Modern Hebrew. A woman raped by a man prohibited to her—i.e., when she is a married woman—becomes a *zonah*, without any implication she was in the wrong. Moreover, for women married to non-Kohanim, the issue has no impact on the propriety of that marriage—the raped married woman, now officially a *zonah*, was not unfaithful to her husband, and halachah hopes the couple stays happily married. Her status as a *zonah* will matter only should her husband pass away and she thinks of marrying a Kohen.

This brief summary shows *zonah* status is a matter of the special rules of the priesthood and need not reflect a negative judgment about the woman.

2. Convert as *Zonah* in the Talmud

Two Talmudic texts provide the background for how the issue of *zonah* applies to a convert. Read independently, these texts are at some tension with each other, an issue later authorities strive to resolve, albeit in different ways. The first is *Yevamos* 60b, where the discussion seems to leave unresolved the question of a child convert marrying a Kohen.

תניא ר' שמעון בן יוחי אומר גיורת פחותה מבת שלש שנים ויום אחד כשירה
לכהונה שנאמר (במדבר לא, יח) וכל הטף בנשים אשר לא ידעו משכב זכר החיו

¹¹ As opposed to a woman who has relations prohibited because of *keburnah*. A divorcée who marries a Kohen becomes a *challalah*, not a *zonah*.

לכם והרי פנחס עמהם. ורבנן לעבדים ולשפחות... ההוא כהנא דאנסיב גיורת פחותה מבת שלש שנים ויום אחד אמר ליה ר"נ בר יצחק מאי האי אמר ליה דאמר רבי יעקב בר אידי אמר ר' יהושע בן לוי הלכה כר"ש בן יוחאי אמר ליה זיל אפיק ואי לא מפיקנא לך ר' יעקב בר אידי מאונך.

A *baraisa* states Rabbi Shimon bar Yochai rules: A female who converted before the age of three is allowed to marry a Kohen since the Torah states “But all the female children that have not been intimate with a man keep alive for yourselves” (*Bamidbar* 31:18), and Pinchas [Aharon’s grandson, a Kohen] was with them [and included in “keep alive for yourselves”]. And the Sages [explain that these women can be kept as] slaves and servants [but not as wives]... A certain Kohen married a convert [who had converted] younger than three. Rabbi Nachman bar Yitzchak said to him: What are you doing? [I.e., this is a violation of the halachah!] The Kohen replied, “[It is permitted for me to marry her since] Rabbi Yaakov bar Idi said Rabbi Yehoshua ben Levi said halachah follows the view of Rabbi Shimon bar Yochai [who permits such marriages]. Rabbi Nachman replied to him: Divorce her. And if not, I will remove from you Rabbi Yaakov bar Idi as an authority you can follow (by excommunicating him).

Were this the only source, we could argue about how conclusive it is. Is R. Nachman b. Yitzchak more authoritative than R. Idi in the name of R. Yehoshua b. Levi? Maybe the normative law follows Rabbi Nachman and the relationship is prohibited or maybe it follows Rabbi Yehoshua ben Levi and is permitted, although the latter claim would force us to explain why the Talmud included a story whose conclusion runs counter to the halachah.

We have another Talmudic passage, however. *Kiddushin* 78b–79 recounts the same basic dispute albeit with a different understanding of the verses and textual process of deriving the rule. The Gemara is discussing the permissibility of converts and children of converts marrying priests, High Priests, or—at the other end of the spectrum—ordinary Jews.

תניא רבי שמעון בן יוחאי אומר גיורת פחותה מבת שלש שנים ויום אחד כשרה לכהונה שנאמר (במדבר לא, יח) וכל הטף בנשים החיו לכם והלא פינחס היה עמהם ורבנן החיו לכם לעבדים ולשפחות וכולן מקרא אחד דרשו (יחזקאל מד, כב) אלמנה וגרושה לא יקחו להם לנשים כי אם בתולות מזרע בית ישראל... רבי שמעון בן יוחאי סבר מי שנזרעו בתוליה בישראל.

A *baraisa* states: Rabbi Shimon bar Yochai rules: A female who converted before the age of three is fit to marry a Kohen since the Torah states “But all the female children [that have not been intimate] keep alive for yourselves (implying some kind of relationship, such as marital)” (*Bamidbar* 31:18). Was not Pinchas [Aharon’s grandson and a Kohen] with them [and included in the permission to marry these

women]? And the Sages [would respond] *bachayu lachem*, keep alive for yourselves, [means only these women can be kept] as slaves and servants [but not wives]. All of them [the Tannaim who discuss whether child converts may marry a Kohen] derived their conclusions from the same verse, *Yechezkel* 44:22, “Neither shall they [the Kohanim] take for themselves as wives a widow, nor a divorcée; solely virgins of the seed of the house of Israel”... Rabbi Shimon bar Yochai understands the verse to require a woman whose virginity was established [which happens at age three] when already Jewish.

The Talmudic sources allow for five possible conclusions:

1. A convert may not marry a Kohen since she is defined as a *zonah* regardless of evidence of intimacy, regardless of age of conversion. This assumes halachah completely rejects the view of Rabbi Shimon bar Yochai.
2. A convert is defined as a *zonah*, by Torah law where she had sexual relations prior to conversion, by rabbinic law where she did not. Either way, she may not marry a Kohen, a conclusion that assumes halachah *accepts* the view of Rabbi Shimon bar Yochai as a matter of Torah law and the verses in *Yechezkel* as articulating a rabbinic prohibition.
3. A convert may not marry a Kohen since the verses in *Yechezkel* mandate that a Kohen marry only one of Jewish descent. This view assumes the view of Rabbi Shimon bar Yochai is rejected and the Gemara in *Kiddushin* is followed.
4. A convert may not marry a Kohen because of her *zonah* status only if she is converted after the age of three, and then either as Torah law or rabbinic decree. A girl converted before age three, in this reading, may marry a Kohen. This assumes halachah follows Rabbi Shimon bar Yochai.
5. A convert may not marry a Kohen if she converted above the age of three since the verses in *Yechezkel* mandate a Kohen marry only one of Jewish descent. This view assumes the halachah follows Rabbi Shimon bar Yochai, as presented in *Kiddushin*.

Part III: Convert as *Zonah* in the Rishonim

The presence of two Talmudic sources in tension led to many positions among Rishonim; none accept Rabbi Shimon bar Yochai’s view as normative. Rif, Rambam, and Rosh all seemingly understood *zonah* status to apply to all converts—any female convert is a *zonah* as a matter of Jewish law, albeit for different reasons. Raavad and Rashba took the opposite view, a convert is not a *zonah* at all, but a Kohen must marry a woman

whose parents were Jewish, based on the verse in *Yechezekel*. Rashi is not quite clear in his presentation, although he may be read that only a convert who engaged in illicit sexuality is a *zonah*. Since a convert below the age of three presumptively did not, she cannot be a *zonah*.

Let us see their views in turn, to ground ourselves for the discussion to follow.

1. Rif, Rambam, and Rosh: Convert Is a *Zonah*

Notwithstanding the uncertainty of the Talmudic sources, Rambam, Rif, and Rosh agree on how to read them. As Rif states:¹²

תניא ר"ש בן יוחאי אומר גיורת פחותה מבת שלש... כשרה לכהונה וליתא
לדר"ש בן יוחאי דאמרינן ההוא כהנא דנסיב גיורת פחותה מבת שלש... א"ל רב
נחמן... א"ל זיל אפיק ואי לא מפיקנא לך ר' יעקב בר אידי מאוניך:

A baraisa states, Rabbi Shimon bar Yochai rules: A female convert under age three is fit for a Kohen. **The view of Rabbi Shimon bar Yochai is disregarded**, since we are told of the incident of a Kohen who married a convert who converted before she was three. Rabbi Nachman said to him... [as we saw earlier] Rabbi Nachman replied to him: Divorce her. If not, I will remove Rabbi Yaakov bar Idi from being an authority you can follow...

Rambam agrees in *Mishneh Torah, Issurei Bi'ah* 18:3:

וכן הגיורת והמשוחררת--אפילו נתגיירה ונשתחררה פחותה מבת שלוש שנים--
הואיל ואינה בת ישראל, הרי זו זונה ואסורה לכוהן.

Similarly, a female convert or freed servant—even if she was converted or freed when she was less than three years old—since she is not a native-born Jewess, she is deemed a *zonah* and is forbidden to [marry] a Kohen...

Rambam labels the convert a *zonah* seemingly without any claim of prior sexual activity.¹³

¹² *Yevamos* 19a, in the pages of Rif. Note that *Shulchan Aruch* introduced his code with the declaration he would always follow these three authorities, Rif, Rambam, and Rosh when they agreed, and the majority of the three when they did not.

¹³ A group of Rishonim argue, based on Rambam *Issurei Bi'ah* 16:1–2 (the *petzu'ah daka* case discussed in the next section) that Rambam thinks this is a rabbinic prohibition. See for example, Rabbi Avraham min Hahar, *Yevamos* 76a, Ritva *Yevamos* 76a s.v. *Hadar amar*. See also *Aruch LaNer Yevamos* 76a s.v. *Achen ba-ikar*. R. Ovadiah Yosef seems to have accepted this reading of Rambam as well, since he writes (*Yabia Omer* EH 7:11):

Similar ideas are found in Rosh, *Tosafos*, and many other Rishonim. Rosh's language in *Yevamos* 6:6 is particularly explicit. He writes:

...ואף על פי שלא נבעלה קרויה זונה לפי שהמצרים שטופי זמה הם ובניהם ילדי זנונים המה והלכתא כחכמים.

... and even though she has not had relations, she is called a *zonah*, because the Egyptians are soaked in sexual immorality,¹⁴ they and their children are all born of sexual immorality. And the halachah accords with *Chachamim*.¹⁵

2. Raavad and Rashba: Convert Is Not from Jewish Parents

Raavad dissents from Rambam's ruling:

כתב הראב"ד ז"ל אינה משום זונה אלא משום דכתיב בתולות מזרע בית ישראל והכי איתא בקידושין.

Raavad wrote: [the baby convert's prohibition to a Kohen] is not because she is a *zonah*, but because it is written (in *Yechezkel*) "virgins of Jewish descent" and thus we have it in *Kiddushin* [78].

Rashba¹⁶ and others agree with Raavad, posit that the driving idea is the verses in *Yechezkel* and not Biblical verses.

3. Rashi and Others: Sexuality Invalidates a Convert as a *Zonah*

Rashi linked R. Shimon bar Yochai's permitting a Kohen to marry a woman who converted before she turned three to the Talmudic assumption that intercourse before that has no legal impact. For Rashi, the prohibition for a convert to marry a Kohen seems linked to the convert's prior sexual conduct. Some examples of Rashi's view:

רש"י יבמות עו. כהן - [אבל כהן] כשר אסור בגיורת ומשוחררת משום זונה שנבעלה מקודם.

ולפי דרכנו למדנו שעל כל פנים לא יצאנו ממחלוקת הראשונים בדבר, שרש"י והרמב"ם נראה דסבירא להו שאיסור גיורת לכהן מדרבנן, ושאר פוסקים סבירא להו דהוי דאורייתא,

According to our way of reading we learn that in any event we have not escaped a dispute among Rishonim on this matter, Rashi and Rambam seeming to hold the prohibition of a convert to a Kohen is rabbinic, and the other decisors holding it is Biblical.

¹⁴ He is adapting a phrase from Talmudic literature, such as *Yevamos* 98a, but he means all non-Jews.

¹⁵ Rosh is working to bridge the gap between Rambam and Raavad since his understanding of *zonah* makes it very similar to the Raavad—it is driven by ancestry problems.

¹⁶ *Yevamos* 60b. See also Meiri, *Kesubos* 30a and *Yevamos* 60b.

Rashi *Yevamos* 76a: A Kohen: [But] a proper [Kohen] is prohibited to a convert and a freed slave because she is a *zonah*, since she had prior sexual relations.

רש"י קידושין כא: כהן - אסור בגיורת שהיתה זונה קודם.

Rashi *Kiddushin* 21b: Kohen: Is prohibited to marry a convert because she was a *zonah* beforehand.

רש"י קידושין עח: רש"א...הרי ארבע מחלוקת בדבר... ור' שמעון אפי' גיורת עצמה מכשיר ובלבד שלא תהא ראויה לביאה בגיורתה דתיפוק לה מכלל זונה.

Rashi *Kiddushin* 78a: R. Shimon says...There are four discrete views on the matter...and R. Shimon permits even the convert herself as long as she was not eligible for intercourse when she was a non-Jew, for that removes her from the category of *zonah* [clearly hinging *zonah* status on the issue of her sexual activity.]

While Rashi's meaning is not completely clear, many pick up on his repeated reference to the woman's sexual activity before she converted as the predicate for her being labeled a *zonah* after conversion according to the *chachamim*—she was intimate with a non-Jew prior to conversion—and that is the reason R. Shimon bar Yochai allowed her to marry a Kohen, since she has a technical inability to have halachically meaningfully intercourse younger than three.¹⁷ With older women, Rashi seems to assume a rabbinic decree defines all non-Jews as *zonos*, despite our lacking definite knowledge of problematic sexual intercourse. Wherever we do have such knowledge, her *zonah* status would be Biblical when she converts above three.¹⁸

Before he gives what he considers the better reading of Rashi (harmonizing Rashi with Rambam, which also might be rabbinic), Ritva articulates the assumptions behind this one:¹⁹

¹⁷ For example, a 15-year-old woman who is tragically raped by her brother may not marry a Kohen but a 2-year-old girl horribly raped by her brother may. See *Shulchan Aruch* EH 7:9 which confirms that this is the rule for illicit sexuality. *Chelkas Mechokek* 5:1 and *Beis Shmuel* 6:20 both affirm that Rashi is to be understood as limiting *zonah* to a convert who had in fact been intimate with a non-Jew before her conversion.

¹⁸ See, for example, Rabbi Shlomo Drimmer, *Yesbaresh Yaacov*, *Yevamos* 76a (volume 2, p. 61, revised edition, 5770) who explicitly reads Rashi to mean a convert is not prohibited to a Kohen unless she had intercourse. So, too, many others, as cited in *Encyclopedia Talmudis*, entry on *Zonah* at 12: column 49, text accompanying notes 50 to 80.

¹⁹ Ritva, *Kiddushin* 78a, s.v. *Tanya R. Shimon*. He eventually claims Rashi's view was similar to Rambam's, see the next note. Regarding Rambam, Ritva contradicts

1. R. Shimon bar Yochai thinks non-Jews are considered *zonos* because they have had intercourse with non-Jews.
2. The intercourse of those younger than age three does not leave a lasting mark and therefore does not make her a *zonah*. Even more so, a convert who never had intercourse is not a *zonah* by Torah rule.
3. Rashi understood those who rule that a girl who converted young is also a *zonah* to have articulated a rabbinic rule based on the general promiscuity of the non-Jewish world according to the Rabbis.²⁰

We seem to have three possible views in the Rishonim: 1) A convert is a *zonah* because of presumed problematic sexual activity, in which case there is room to argue the status for a young convert is rabbinic or even permitted when we are certain she had not had sexual relations, 2) a convert is a *zonah* regardless of her sexual history, as a legal category, 3) a convert may not marry a Kohen because of a separate issue, that she is not of *zera beis Yisrael*.²¹

Part IV: *Tur*, *Shulchan Aruch*, and Commentaries

By the time the *Tur* wrote his code of Jewish Law in the 14th century, the normative rule seemed clear and unequivocal, even if the exact reason was uncertain. *Tur Even HaEzer* 6 states simply:

himself as to whether Rambam thinks *zonah* is a Torah prohibition, compare Ritva on *Yevamos* 60b with *Yevamos* 76a. R. Moshe Feinstein, *Shu"t Iggeros Moshe Even HaEzer* 1:11, and R. Ovadiah Yosef, *Shu"t Yabi'a Omer* 7:11 both discuss the issue.

²⁰ *Tosafos* to *Yevamos* 61a, s.v. *Ein zonah* seem to agree, because they attribute the young convert's *zonah* status to her coming from the promiscuous non-Jewish world. Ritva is not ultimately satisfied with that reading of Rashi, however, and eventually aligns Rashi with Rambam, who ruled converts are counted as *zonos* regardless of sexual relations. The passage in *Kiddushin* says all parties to the debate derived their view from *Yechezkel* 44:22, who restricts Kohanim's prospects for wives to *zera beis Yisrael*, the seed of a Jewish household. A girl born non-Jewish is not *zera beis Yisrael*, which Rambam assumes is a subcategory of *zonah*, probably because he was sure *Yechezkel* came to clarify the Torah rather than legislate on his own. *Maggid Mishneh* points out Rashba to *Yevamos* 60a accepts Raavad's view, and notes other places where the Gemara explicitly says *Yechezkel* revealed an idea previously known only orally and gave it Scriptural expression.

²¹ *Encyclopedia Talmudis*, vol. 12, *Zonah*, starting at column 49, has more opinions on the issue, none of which will be relevant to the discussion here.

כהן הדיוט אסור מן התורה בגרושה זונה והללה... גיורת משוחררת אפילו נתגיירו ונשתחררו פחותות מבת ג' שנים ויום אחד הויין כזונות ואסורות לכהונה:
A Kohen is Biblically prohibited to marry a divorcée, *zonah*, or *challalah*... A female convert and a freed slave, even if converted or freed when less than three years and a day are treated as *zonos* and prohibited to marry a Kohen.

Beis Yosef, Rabbi Yosef Karo's magisterial supplement of the sources of *Tur's* rulings, summarizes what we discussed in the previous section as follows:

בפרק הבא על יבמתו (ס:) תניא רבי שמעון בן יוחאי אומר גיורת פחותה מבת שלש שנים ויום אחד... והרי פינחס עמהם... אמר רבי יעקב בר אידי אמר רבי יהושע בן לוי הלכה כרבי שמעון בן יוחאי וכתבו הרי"ף (יט.) והרא"ש (ס' ו) וליתא לד' שמעון בן יוחאי... וכתב הרא"ש (שם) ואף על פי שלא נבעלה קרויה זונה לפי שהגויים שטופי זמה... נראה מדבריו דמשום זונה מיפסלא וכן כתב הרמב"ם בפ"ה מהא"ב (ה"ג) והראב"ד כתב עליו אינה משום זונה אלא... (יחזקאל מד כב) בתולות מזרע ישראל. וכתב הרב המגיד... שהרשב"א (ס:) ד"ה אמר רשב"י) הסכים לדברי הראב"ד ורש"י (שם ד"ה כשרה לכהונה) הסכים לדעת הרמב"ם ושכן נראה עיקר:

Yevamos 60b... states "We have a *baraisa* saying Rabbi Shimon bar Yochai says a convert [who converted] before the age of three... and Pinchas was among them... Rabbi Yaakov bar Idi said that Rabbi Yehoshua ben Levi said halachah is in accordance with the opinion of Rabbi Shimon bar Yochai. Rif and the Rosh wrote Rabbi Shimon bar Yochai is not normative... and Rosh wrote that even if the woman had not been intimate, she is called a *zonah* since the Gentiles²² are enmeshed in immorality... from his words, it appears she is deemed unfit for him because of the *zonah* prohibition. Such is also found in Rambam, *Issurei Bi'ah* 18:3. Raavad glossed his ruling [a convert may not marry a Kohen] not because of *zonah*, but [because of]... (*Yechezkel* 44:22) [the requirement of] virgins of Jewish seed. *Maggid Mishneh*... notes that Rashba [*Yevamos* 60b s.v. *Amar Rashbi*] agrees with the words of Raavad and Rashi [*Yevamos* 60b s.v. *kesherah l'kehunah*] agrees with Rambam and that that seems the principal view.

Neither *Beis Yosef* nor any other commentary on *Tur* adopts Rabbi Shimon bar Yochai's claim that an infant convert is different than an adult one, nor are we aware of any code that does. *Shulchan Aruch, Even HaEzer* 6:8 uses *Tur's* formulation, a girl who converted younger than three still counts as a *zonah*, since her parents were not Jewish, and she may not marry a Kohen:

²² Note the switch from Egyptians, as Rosh had written.

אי זו... זונה כל שאינה בת ישראל או... שנבעלה לאדם ש... אסורה לינשא לו
איסור השה לכל או... וכן הגיורת והמשוחררת, אפילו... פחותה מבת שלש...
הואיל ואינה בת ישראל הרי זו זונה ואסורה לכהן.

Who is... a *zonah*? Anyone not a daughter of a Jewess or... had a sexual relationship with a man whom she is prohibited to marry in a general prohibition or... So, too, a female convert or freed slave, even if... before the age of three, since she is not the daughter of a Jewess, is a *zonah* and prohibited to a Kohen.

Shulchan Aruch seems clear as to the lack of a distinction between infant and adult, intimate or not, although he blurs the question of whether it is because she is a *zonah* (like Rambam) or not a *bas Yisrael* (like Raavad). *Beis Shmuel* [6:20] does cite Rashi as taking the position a convert is not called a *zonah* without prior intimacy and is presumably not prohibited to marry a Kohen as a matter of Torah law. After he quotes other views among Rishonim we saw earlier, he concludes with a reference to *Even HaEzer* 5:1, an examination of which helps us understand his view.

The passage discusses a man with damaged genitalia (*petzua daka*), whom the Torah prohibits from marrying an ordinary Jewess. It reads:

אבן העזר ה:א פצוע דכא וכרות שפכה אסורים לישא ישראלית ומותרים בגיורת
ומשוחררת. ואפילו כהן... פצוע דכא מותר לישא גיורת ומשוחררת, לפי שאינו
בקדושתו.

Even HaEzer 5:1: A *petzua daka* and a *krus shafchah* are prohibited from marrying a Jewess, and permitted to [marry] a female convert or freed former slave, even a Kohen who is a *petzua daka* is permitted to marry a convert and a freedwoman, since he is not in his sanctity.

The ruling opens the question of the extent of the Kohen-eunuch's exemption from the usual rules. For example, may he also marry a *challalah* or a divorcée,²³ or is the leniency unique to a convert? *Beis Shmuel* elaborates in 5:1. After explaining the view of Rambam, he notes:

והא דכהן פ"ד מות' בגיור' ואסור בממזר' לפי שאין מפורש לאו גירות בתורה גם
הוא לאו שאינו שוה בכל... ואין לנו להתיר אלא מה שמנו חז"ל כ"כ המגיד ולישא
גרופה וחללה אסור דהא מפורש בתור' אף על גב אף גיורת אסורה משום זונה
וזונה מפורש בתורה מ"מ... ילפינן מקר' דיחזקאל דגיורת בכלל זונה, וע"ש במגיד
פי"ח הא"ב דין ג' לדעת הראב"ד ורשב"א ילפינן מקרא דיחזקאל בתולת מזרע
בית ישראל ואינה בכלל זונה...

That... a eunuch Kohen can marry a female convert, but not a *mamzeres*, is because the prohibition for a Kohen to marry a convert is

²³ Who is also a convert or a freed slave, of course, since *Shulchan Aruch* has already clearly said a eunuch can marry only a convert or a *mamzer*.

not explicit in the Torah and is also a negative commandment not equally applicable to all... It is not for us to permit more than enumerated by the Talmudic rabbis, thus wrote *Maggid Mishneh*. To marry a divorcée or *challalah* is [therefore] prohibited, since it is explicit in the Torah. Even though a convert is prohibited due to the *zonah* prohibition and the *zonah* prohibition is explicit, still...we derive the idea a convert is included in *zonah* from the verses in *Yechezkel*, and see there in the *Maggid [Mishneh]*, *Issurei Bi'ab* 18:3, for the view of Raavad and Rashba, we learn from the verse in *Yechezkel* [a new rule excluding converts] virgins of Jews parents, not including her in *zonah*.

For *Beis Shmuel*, the *petzua daka* Kohen may marry a convert (but not a *challalah* or divorcée) because the prohibition of a convert to a Kohen is not explicit in the Torah. The prohibition of a *zonah* is explicit, but the convert's inclusion in that category derives only from *Yechezkel* and is therefore of a lower level. He seems to think the convert's inclusion in *zonah* is not Biblical, where she has not had the kinds of sexual relations that make her a *zonah* independent of her lineage.

Even his approach does not explicitly distinguish women who convert when younger than three—who therefore could not have had valid sexual intercourse before conversion, since halachah discounts such physical acts—and those who convert older. Rabbi YM Epstein, *Aruch HaShulchan*, *EH* 6:22, makes the point of concern to us, and rejects the distinction:

...וגיורת ומשוחררת אפילו פחותה מבת ג' שנים ויום אחד להרמב"ם והרא"ש היא זונה דאורייתא אף על פי שלא נבעלה משום דאתיין משטופי זמה ואף שלמדנו מקרא דיחזקאל כמ"ש בסימן ה' סעי' ו' מ"מ ס"ל דמן התורה נאסרו לכהן ואתא יחזקאל ואסמכינהו אקרא כהרבה דינים... [זבחים י"ה ב] והראב"ד והרשב"א סוברים דאין איסורן מן התורה... ודעת רש"י ז"ל נ"ל דכשהיא יתירה מג' שנים ויום אחד איסורה מן התורה ופחותה מזה הוי מדרבנן...

...a female convert and a freed slave, even younger than three, Rabbam or Rosh hold her to be a *zonah* as a matter of Torah law, even though she has never been intimate, since she came from those enmeshed in sexual immorality. Even though we inferred this idea from the verse in *Yechezkel* as I explained in *Even HaEzer* 5:6, they still held [such women] are prohibited to a Kohen as a matter of Torah law, *Yechezkel* only having given it explicit Scriptural reference as is the case with many other laws... [*Zevachim* 18b]. Raavad and Rashba hold the prohibition of such women is not Biblical... and the view of Rashi seems to me that when she is over three there is a Torah prohibition and below that, it is rabbinic...

Were *Aruch HaShulchan* the final word, one would say most halachic authorities find no room for leniency in this matter since this is a Torah prohibition. Only according to Rashi—rejected by most Rishonim but cited by *Beis Shmuel*—and some readings of Rambam could we contemplate leniency, since one reading of each of those Rishonim sees them as treating it as a rabbinic prohibition.

Part V: The Approach of Rabbis Ephraim Greenblatt, Zalman Nechemiah Goldberg, Shlomo Amar, Pinchas Toledano, and Surprisingly Many Others

As explained in our introduction, a seemingly novel position to this question is taken by Rabbi Ephraim Greenblatt, a leading authority of Jewish Law who lived most of his life in Memphis, retired to Jerusalem, and passed in 2014. Let's recall the heart of his *teshuvah*:

נשאלתי מאחד שהוא ואשתו אימצו ילדה... ועד כה לא אמרו לבת שהיא מאומצת והנה היא פגשה בחור ומוכנים להתחתן אבל הוא כהן ואז הודיעו לה שהיא גיורת... ואם תתחתן בערכאות תתרחק מהם והפסידו אותה, יתכן שההלכות שהיא והבחור שומרים הם יפסיקו לשמור... בשעת הדחק כמצב שנשאלתם אפשר לפסוק כרשב"י דאם נתגיירה פחות מג' שנים מותר לה להינשא לכהן.

I was asked about a man and his wife who adopted a baby girl ... They had not told her until now that she was adopted. She now met a young man and they are prepared to marry. However, he is a Kohen, so then they [the parents] told her she is a convert [and ineligible to marry him]... If she marries civilly, she will become distanced from them, and they will lose her, and it is likely she and the young man will cease to observe [halachah]... Therefore, in a situation of need, like the one about which you were asked, it is possible to rule like Rabbi Shimon bar Yochai, that if the woman converted before the age of three she may marry a Kohen.

We emphasize that (unlike other authorities we will cite shortly) Rabbi Greenblatt quotes no Rishonim and is clear he wished to rely on a Tanna (and not Rashi). He seems far more comfortable adopting the view of Rabbi Shimon bar Yochai, who is clear and directly on point, than adopting a possible read of a Rishon, Rashi. Furthermore, the Talmud indicates that many Tannaim and Amoraim thought this view was correct. One can infer that Rabbi Greenblatt preferred relying on a clear statement of a Tanna, than a statement of a Rishon which is open to debate.

We suggest that when Rabbi Greenblatt said that we can rule in accordance with Rabbi Shimon bar Yochai in a *she'as hadechak*,²⁴ a situation of extraordinary pressure, he is writing imprecisely or maybe offering a leniency un-needed in most cases, as he is not (we assume) referring to an infant who was raped prior to her conversion. Rather, we think he meant something similar to the possible reading of Rashi we noted above, and the *Chochmas Shlomo*, that we are discussing a child who would have been eligible to marry a Kohen had she been Jewish.²⁵ There is strong foundation for the idea that we may adopt the view of a single authority in a time of urgent need—and particularly when there is a fear that people will leave Orthodoxy over the rejection of their marriage choice, as we will discuss in a section of its own.²⁶

Furthermore, our search uncovered more than a few contemporary authorities of stature who agree with R. Greenblatt's conclusion and sometimes his reasoning. The halachic authority who takes the same tack as Rabbi Greenblatt in accepting R. Shimon bar Yochai as a view to rely upon in practice is Rabbi Pinchas Toledano; his *Bris Shalom* EH 3:6 adds an appendix to a *teshuvah* he wrote discussing this topic. There, he writes:

ועוד מאחר שכבר נשא, כדאי הוא רבי שמעון בן יוחאי שמתיר בפחותה מבת ג'
שנים לסמוך עליו בנידון דידן. ועוד הרי אמרינן שם בגמרא, אמר רבי יעקב בר
אידי אמר רבי יהושע בן לוי הלכה כרבי שמעון בן יוחאי.
ועוד נראה שזו היא דעתו ג"כ של רבינו הקדוש שהרי אמרו שם בשם רבי יהושע
בן לוי עיר אחת היתה בארץ ישראל שקרא עליה ערער, ושגר רבי את רבי רומנוס
ובדקה ומצא בה בת גיורת פחותה מבת ג' שנים ויום אחד והכשירה רבי לכהונה
ע"כ. ופירש רש"י, והיינו שהניחה תחת בעלה כהן. ועוד הנה בגמרא לא נאמר

²⁴ R. Greenblatt is discussing a difficult case, where there is much pressure to prospectively allow such a marriage, known in *halachah* as a *she'as hadechak*. The next responsum we discuss, by R. Toledano, discusses a *bedi'avad*, a situation where the couple is already married. While these are distinct concepts, they are frequently lumped together, as any research into the terms will show. In addition, where authorities would permit one and not the other, it is usually *bedi'avad* that is more accepted, since it has already happened; most of the authorities we cite here are allowing *she'as hadechak*, implying they would also accept *bedi'avad*. We have not seen any authorities who make that distinction here. The classical source for this is *Tiferes Yisrael's* Introduction to *Erubin*. There are literally hundreds of applications of this principle in the responsa literature.

²⁵ As we have noted, some read this as the view of Rambam as well as Rashi. The more Rishonim one thinks adopted the view, the more plausible it becomes as a way to act in practice.

²⁶ See *Taz* YD 393:4; *Shach Nekudos HaKesef* YD 293:3 and *Shu"t Iggeros Moshe* OC 1:51, discussed below.

בפירוש הלכה כמאן, או כרבנן דאסרי או כרשב"י שמתיר, ונראה שלענין פסק הלכה הינחו הדבר פתוח.

וגם רבינו הרמב"ם ומרן שאסרו בפחותה מבת ג' שנים לא פסקו הכי אלא מדיוקא, דהכי אמרו בגמרא ההוא כהנא דאנסיב גיורת פחותה מבת ג' שנים ויום אחד. אמר ליה רב נחמן בר יצחק מאי האי? אמר ליה דאמר רבי יעקב בר אידי אמר רבי יהושע בן לוי הלכה כר"ש בן יוחאי. אמר ליה זיל אפיק ואי לא מפקינא לך רבי יעקב בר אידי מאונך ע"כ. ומכאן למדו רבותינו הרמב"ם הרא"ש ומרן דהלכה כרב נחמן בר יצחק. ואולי היינו טעמא דפסקו כוותיה ודלא כרבי יהושע בן לוי משום שהלכה ככתראי. אך עתה בני"ד שכבר נשא אותה יש להניחה תחת בעלה, מאחר דראינו שרבי שמעון בן יוחאי ורבינו הקדוש מתירים גם לכתחילה.

Furthermore, since he has already married her, Rabbi Shimon bar Yochai—who permits a girl (that converted) under the age of three—is worthy to rely upon in our case. Additionally, it says in the Talmud: 'Rabbi Yaakov bar Idi said that Rabbi Yehoshua ben Levi said that the halachah is in accordance with Rabbi Shimon bar Yochai.'

It appears that this is also the opinion of *Rabbeinu HaKadosh* (Rabbi Yehudah HaNasi), since it says there in the name of Rabbi Yehoshua ben Levi: 'there was a city in the land of Israel where a dispute arose, and so Rebbi (Rabbi Yehudah HaNasi) sent Rabbi Romnus there. He checked and found a female convert under the age of three years, and Rebbi permitted her to marry a Kohen.' Rashi explained that this means that he allowed her to remain with her Kohen husband. Furthermore, the Talmud does not say explicitly who the halachah is in accordance with, whether in accordance with the Sages who prohibited it or Rabbi Shimon bar Yochai who permitted it. It appears that with regard to the final halachah they left the matter open.²⁷

²⁷ Rabbi Pinchas Toledano is *Chacham*-Emeritus (Chief Rabbi) of Amsterdam and of the Spanish and Portuguese Jews of the Netherlands. He was also the official Chief Rabbi of the Beth Din in The Netherlands. The *teshuvah* is taken from the third volume (confusingly called *Chelek 2*) of *Shu"t Bris Shalom*. It is worth putting this appendix in context. Towards the end of a *teshuvah* in *Chelek 1 Even HaEzer 5*, Dayan Toledano quotes the Maharashdam, based on the Rivash, about the doubtful lineage of Kohanim today, our uncertainty about whether men know their ancestry well enough to be sure they are Kohanim (meaning we are never sure they are bound by the restrictions of Kohanim).

In the following *teshuvah*, he invokes Rabbi Ovadiah Yosef, who said this can be used as one of the doubts to construct a *sfeik sfeika*, a double doubt fueling a leniency. This is true even if its conclusion is contrary to the position of Rabbi Karo in *Shulchan Aruch*. In *Chelek 2 Even HaEzer 46*, Dayan Toledano discusses

And also our Teacher the Rambam and Our Master [R. Yosef Karo, the author of the *Shulhan Arukh*], who prohibited when she [converted when she was] less than three years old, only ruled that way based on an inference because this is what they said in the Talmud, a certain Kohen who married a convert [who converted] less than three years and a day, R. Nahman bar Yitzhak said to him, what is this? He said R. Ya'akov bar Idi said in the name of R. Yehoshu'a b. Levi the law agrees with R. Shimon b. Yohai. [R. Nahman bar Yitzhak] said to him, go remove [her], and if you don't I will take R. Ya'akov bar Idi out of your ear. From there our teachers the Rambam and the Rosh and Our Master learned the halakhah is in accord with R. Nahman bar Yitzhak. And perhaps this is the reason they ruled according to him and not according to R. Yehoshu'a b. Levi because halakhah is like the [chronologically] later ones. But in our case, where he already married her, it is proper to leave her with her husband, since we have seen that R. Shimon b. Yohai and Our Holy Teacher [R. Yehudah Ha-Nasi], allow it even prospectively.

It is worth noting that Rabbi Toledano wrote “since he already married her...” which is slightly more “after the fact” than Rabbi Greenblatt’s situation of “going to marry in a secular court if they cannot find a rabbi.” One already happened, the other not yet.

Another halachic authority who sees much room to think a girl who converted below three may marry a Kohen is Rabbi Zalman Nechemiah Goldberg, זצ"ל, who died in 2020 and served for many years as the *av beis*

the case of a Kohen with a physical characteristic rendering him unfit for sacrificial service (*mum*) marrying a woman who converted as a minor. He makes clear he follows the view of Rif and Rambam (i.e., unlike Rashi).

Having explained this, we can turn to his *teshuvah* in *Chelek 2 Even HaEzer 6*, where he records the original *teshuvah* (from 5756) where he forbids the marriage, and the latter addition (section 9) where he applies a *sfeik sfeika*: i) Perhaps we accept Rashi’s view she is not prohibited to a Kohen, and ii) we have a doubt as to whether he is a Kohen. He then adds iii) Perhaps we can accept the view of Rabbi Shimon Bar Yochai. Remember that Dayan Toledano ruled to prohibit originally, and then chose to append a further thought, after the fact. This makes section 9 less authoritative but certainly very interesting.

din of the Rabbinical Court of Appeals in Jerusalem.²⁸ He finds the explanation of *Shulchan Aruch* mentioned above unconvincing. In a *teshuvah* written under his direction, he wrote:²⁹

²⁸ The most extreme view on this question was suggested by R. Berel Wein, in his *עיונים במסכתות התלמוד*, Volume 2, commentary on the Talmud, *Kiddushin*, p. 252. He originally suggests outright that since sexual relations under the age of three have no halachic significance, a woman who had converted when that young could not be a *zonah*, and could marry a Kohen. He backtracks, however, because R. Akiva Eiger had understood there to be a rabbinic prohibition on such a marriage, nonetheless. He surprisingly notes:

הדין בעובדא של כהן הרוצה לישא גיורת דהוה בחזקת זונה דנבעלה קודם ליהדותה, אבל אם אמצוה כשהיתה תינוקת פחותה מבת ג' שנים ויום אחד, אזי יש להתיר לדבריו של הבית שמואל "דאם היא פחותה מבת ג' לא הוי ביאה ומותרת אפילו לכהן". אבל עיין בתשובות רע"א סימן קעב דכתב דאף בפחותה מבת שלש דלאו ביאה היא, מ"מ לכאורה יש איסור דרבנן ... והרבה מן האחרונים מקילים, אבל קשה לחלוק עליו בדין זה ולכן כהן לכתחילה לא ישא שום גיורת אפילו כשאמצוה קודם שהיתה בת שלש שנים ויום אחד.

...And this is also the law in a case of a Kohen who wants to marry a female convert, who is assumed to have the status of a *zonah* due to having had relations prior to her conversion. But if they adopted her when she was a baby under the age of three then we should permit (the marriage) according to the words of the *Beis Shmuel*, 'if she was under the age of three, it is not considered to be halachic intercourse and she is even permitted to a Kohen.' But see the responsa of R. Akiva Eiger, 172, who wrote even less than three, where intercourse does not have halachic significance, nonetheless there appears to be a rabbinic prohibition...and many later authorities rule leniently, but it is difficult to disagree with him on this rule, and therefore a Kohen should not marry any convert, even one adopted when she was younger than three years old.

²⁹ The volume is entitled *Shu"t Binyan Ariel* (unnumbered final responsa) at pages 205–216; the selection here is on pp. 208–209. A reviewer of this article suggested that this *teshuvah* is so new and novel (the reviewer used the phrase "certainly wrong") that it must be a case of תלמיד טועה—that these *teshuvos* were written by a student and not reflective of Rabbi Goldberg's view. That approach is difficult since (1) this work was published in 5765 when Rabbi Goldberg was still vibrant and active; had it been an error, he would have issued a retraction and (2) In Rabbi Goldberg's forward to this work, he notes directly that he had delivered these responsa orally for members of the institute (which he headed) to write down, and that he had reviewed them all. On the other hand, footnote 4 of this *teshuvah* notes that it was "worked over" orally by a number of members of the Ariel Institute and presented as a proposal to be studied. Furthermore, while this book presents itself as written by Rabbi Goldberg, in volume 19 of *Techumin* it is presented as authored by one of the people listed as an editor and not Rabbi Goldberg. The matter cannot then be easily resolved, although we have no reason to doubt its authenticity as his view due to reason (1).

דעתו של השו"ע שנויה במחלוקת בן החלקת מחוקק לבין הבית שמואל שכתב באבן העזר סימן ו' סעיף ח: "איזו היא זונה, כל שאינה בת ישראל, או בת ישראל שנבעלה לאדם שהיא אסורה לו וכו' וכן הגיורת והמשוחררת אפילו נתגיירה ונשתחררה פחותה מבת ג' שנים, הואיל ואינה בת ישראל הרי זו זונה ואסורה לכהן."

שאלת כפל של המחבר "אינה בת ישראל" ו"גיורת" מביא את החלקת מחוקק להסביר שהמחבר לא הכריע במחלוקת הראשונים והבית שמואל מעמיד את דברי המחבר או כדברי הרמב"ם שכל גיורת היא בכלל הלאו של זונה, או כדעת רש"י שמדובר בגויה שזינתה או בזמן גיורתה או לאחר שהתגיירה ואז היא נקראת זונה, (על כל פנים אם זינתה דעתו של המחבר שיש איסור תורה ודאי, ובלא זינתה לא מוכח מהי דעתו של המחבר). יש לציין שלדעות הסוברות שאין דין זונה אם לא זינתה כמו רש"י, או לדעות הסוברות שהאיסור גיורת הוא מדברי קבלה, מנחת חינוך (מצווה 266) ערוך השלחן (אב"ה סימן ו' סעיף כ"ב). יש נפקא מינא להלכה שאם יש ספק הנודע ביהודה (מהדורא תנינא יו"ד סימן קמ"ו ואב"ה סימן ח) כותב שספקו נחשב כספק רבנן לקולא.

The opinion of the *Shulchan Aruch* is disputed between the *Chelkas Mechokek* and the *Beis Shmuel*; for he (*Shulchan Aruch*) wrote (E.H. 6:8) "Who is considered a *zonah*? Any woman who is not a Jew or a Jew who had relations with a man who is forbidden to her. So, too, a convert and a freed slave, even if they were converted or freed below the age of three, since they are not considered Jews, they have a status of a *zonah* and are forbidden to a Kohen."

The question of the doubled wording in *Shulchan Aruch*, namely, with the words "not a Jew" as well as the words "a convert," led the *Chelkas Mechokek* to explain that the *Shulchan Aruch* did not take a side in the dispute among the Rishonim. The *Beis Shmuel* connects the view of the *Shulchan Aruch* as either agreeing with the words of Rambam, that every convert is included in the prohibition of *zonah*, or like the opinion of Rashi, that we are discussing a non-Jewish woman who had relations either while she was a non-Jew or after she converted. (In either case, *Shulchan Aruch*'s view is that if she had relations, there is a definite Biblical prohibition, but he does not make clear what he holds about a woman who had not had relations.³⁰ It should be noted that according to the view that the woman does not have the status of a *zonah* if she did not have relations, like Rashi, or according to the view that the ban on a Kohen marrying a convert is rabbinic, as is the view of the *Minchas Chinuch* (mitzvah 266) and *Aruch HaShulchan* (E.H. 6:22). There is a halachically signif-

³⁰ If she had had relations, *Shulchan Aruch* rules that marrying her is a Biblical prohibition; if she had not, there is room to argue about *Shulchan Aruch*'s view. As we have said before, this is also the view of Rashi taken in the *Chelkas Mechokek* 5:1.

were raised only when she sought to marry.³³ Sadly, the issue is not uncommon in either the United States or Israel, both because of the arrival of many undocumented Russian Jews and because of Reform conversions.

The common solution, have the bride convert just in case, is not so simple if she is engaged—or already married—to a Kohen, as was the case here.³⁴ Look closely at what Rabbi Amar says:

...מדובר בבת שנולדה כיהודיה במשפחה יהודית ומעולם לא עלה על דעתם ספק בזה... וגם נוהגת בצניעות ושומרת מצות ככל בנות ישראל הכשרות, ובדאי שאין... חשש שנבעלה לגוי ועבד ח"ו. ועל כן לדעת הפוסקים שאיסור גירות תלוי בבעילת גוי, אין... שום חשש ומותרת היא, גם אם יתברר בבירור גמור שהיא גויה וצריכה גירות גמורה מן הדין, מ"מ אין לחוש לה דבכה"ג אין חשש זנות ולא נאסרה לכהן.

ועוד דגם לדעת החולקים וסוברים שגירות אסורה מפני שלא בת ישראל היא, ואפילו בודאי שלא נבעלה אסורה לכהן, מ"מ יש מחלוקת אם... מן התורה או מדרבנן. ולדעת הסוברים שאיסורה הוא דרבנן, יש להתיר בזאת... שיש ספק אם הטעם הוא משום שאינה בת ישראל או... חשש דשמא נבעלה, וזאת שכאמור בודאי שאין בה חשש זה בכלל, ...הוא ספיקא דרבנן, שלמ"ד שכל האיסור הוא מחשש שזינתה, בזאת אין חשש, ואפילו שיש סוברים דאיסורה לא תלוי בזה, מ"מ הוא ספיקא דרבוותא, והוי ספק בדרבנן ולהיתירא. ובפרט דנראה מהענין שהיא יהודיה גמורה, וא"צ גיור כלל.

...we are discussing a woman who was born a Jew into a Jewish family and never had any doubts about it... She conducted herself modestly and observed the mitzvos like all other observant women. She certainly did not have relations with a Gentile or slave, Heaven forbid. Therefore, according to the view the ban on a Kohen marrying a convert is dependent on whether or not she had relations with a Gentile, there would be nothing to worry about and she is permitted to marry him. Even if it were to be determined with certainty she is actually a Gentile, and would now require a proper conversion, there would still be nothing to worry about since she did not have improper relations and is therefore not forbidden to a Kohen.

Furthermore, even according to those who disagree, who hold a convert is forbidden to marry a Kohen because she was not born Jewish, even where she definitely did not have relations, there is still a dispute whether such a marriage is forbidden by Torah or rabbinic law.

³³ *Shma Shlomo, Even HaEzer* 7:1 at s.v. *vehinei* at p. 161. Of course, when discussing the final conclusion, he adds many other factors to be lenient, including the status of Kohanim and the unique facts in this particular case.

³⁴ See Rabbi Chaim Amsalem, *Torah Chaim* 38 at p. 239 for an argument that a woman whose father was Jewish may marry a Kohen after conversion, when her mother was not Jewish. This is not a topic we are addressing here.

According to the view the prohibition is rabbinic we can permit the marriage (even if it turns out that she is a Gentile and requires conversion) based on the doubt as to whether the matter is dependent on being born a Jew or dependent on having had relations with a Gentile. With this woman, when it is clear there is no worry at all [that she had relations with a Gentile]... it is a matter of doubt in a rabbinic matter. For the view that everything is dependent on whether or not she had relations with a Gentile (and we have no such worry), even though some hold that her status is not dependent on this, nevertheless it is a matter of doubt between rabbis, and we rule leniently in matters of rabbinic doubt. Especially in this case since it appears that she is fully Jewish and does not need a conversion.

To understand his claim, remember Rishonim had three basic views about when a convert would be prohibited to a Kohen, and at what halachic level. Chief Rabbi Amar's view seems to be that any time two of these three views overlap, the convert can marry the Kohen, at least *bedi'avad*.

Although R. Amar does not make a point of it, we already noted *Beis Shmuel* (6:20) was sure Rashi to *Yevamos* 61a invalidated a convert only if she actually had engaged in sexual relations, at a Biblical level, or could have had relations while not Jewish, at a rabbinic one.³⁵

³⁵ *Beis Shmuel's* is not the only reading of Rashi, but that reading does support R. Amar's view. In contrast, *Aruch HaShulchan* argues this cannot be, since Rashi himself in *Kiddushin* 78a says she is only permitted according to Rabbi Shimon bar Yochai under the age of 3 when she isn't suitable for *bi'ah*, but when she passes the age of 3, she is forbidden even if she hasn't actually had sexual intercourse. The Gemara itself is explicit on this point in *Yevamos* 60b, that her status does not depend on having had sexual intercourse. Thus, the *Aruch HaShulchan* says Rashi holds that marrying a convert over the age of 3 is a Torah prohibition, and under the age of 3 there is a rabbinic prohibition (irrelevant of *bi'ah*). *Beis Shmuel* clearly does not agree and envisions a scenario of a virgin child convert permitted to a Kohen according to Rashi.

This is widely believed to be the view of *Chochmas Shlomo* (EH 6:8) as well. *Chochmas Shlomo's* conclusion to the nearly 900-word note is hard to determine, so we have not addressed it here. What is clear is his certainty that Rashi is of the view a convert under three is prohibited to a Kohen only if she has had *bi'ah*, in line with R. Amar's analysis.

We have thought of two other ways to support R. Amar's (and R. Greenblatt's) view, not found explicitly in their works. It seems clear Rabbi Shimon bar Yochai permits a woman who converted below the age of three to marry a Kohen even though she had relations while not Jewish, since *Kiddushin* 78a–b cites him as requiring only *nizre'u betulehah b'Yisrael*, that she be Jewish from the age

Other views of the Rishonim provide support for R. Amar's position even if they clearly disagreed with his conclusion. Raavad and Rashba, for example, say the topic is governed by a verse in *Yechezkel*, making the issue of converts' inability to marry a Kohen a matter of post-Biblical law, and in such laws, there is more room to follow a minority lenient view. As *Minchas Chinuch* (268) points out, Raavad and Rashba quite possibly think the prohibition is not *zonah* driven, it is a matter of her lacking Jewish

of three (when her status as a virgin is established). When Rishonim understand the Gemara to rule against Rabbi Shimon bar Yochai, then, it might only be where she had relations below three. This is exactly what *Chochmas Shlomo* and *Beis Shmuel* thought Rashi was saying.

Of course, Rosh clearly adopts the idea this is really a status issue, any convert is prohibited to a Kohen because she comes from a non-Jewish family, but we have no indication Rif or many others do. Furthermore, and as we saw above with Rabbi Zalman Nechemiah Goldberg, logic inclines one to think Rambam and Rashi do not adopt the view of the Rosh either—they think *zonah* has to denote some sexual conduct. This completes the circle R. Goldberg started to draw.

As additional support for the idea that a girl who converted when she was less than three years old and had not had sexual relations may marry a Kohen, we note *Pri Megadim* (*Pesichab Kolleles* 2:21) regarding a half-slave and half-free woman. His formulation seems to assume a convert below three is only not allowed to a Kohen because we are suspicious or afraid she had been intimate. When we are certain she was not, he seems to think there is no problem marrying a Kohen. We have not seen anyone quote this passage in support for this leniency. He writes:

ואני מסופק אם הא דאמרו... [כתובות כט, א] שפחה נשתחררה יתירות מבת שלש בחזקת בעולה, אם חצי שפחה וחצי בת חורין אמרינן כן או דמשמרה נפשה כיון דחציה בת חורין, נפקא מינה... וכי תימא איך יצויר שקידשה בקטנותה פחות מג' שנים דהא לית לה אב, הא כבר אשכחנא פתרי דליהוי חצי שפחה וחצי בת חורין ויש לה אב, ישראל כשר שבא על חצי שפחה וחצי בת חורין דיש לה אב והולד כמותה כמו שכתבתי לעיל בסמוך [אות כ]. גם אם בא כהן עליה אי הוולד חלל ואין להאריך.

I am unsure if their statement...[*Kesubos* 29a] **a maidservant freed over the age of three is assumed to have had relations**, extends to a half maidservant, half freed woman, or **she guards herself** [from inappropriate sexual relations] **because half of her is free**, the distinction relevant to...[various halachic situations]...

The whole formulation assumes the question of her status depends on the fact of her having had sexual relations. His idea that *בחזקת בעולה* כיון דחציה בת חורין, she guards herself (from relations) because she is half-free, makes most sense if a woman who is factually a virgin remains allowed to marry a Kohen, as his final words in bold imply. Rabbi Amar used similar logic for the woman who converted very young.

parents,³⁶ at least when she converts under age three. We think this was Rabbi Amar's point above.³⁷

Another example of a permissive approach can be found in *Dibros Eliyahu* 10:137 by Rabbi Eliyahu Abergel, a retired member of the Jerusalem Rabbinical courts. He advances numerous doubts, including the issue of the halachic status of Kohanim nowadays (which we will discuss shortly). For now, we want to focus on his analysis of the prohibition for a Kohen to marry a woman who converted below the age of three.

Rabbi Abergel combines ideas we have already seen, such as the dispute about whether the prohibition is Biblical or rabbinic, with the issue of whether her never having had relations is an additional opening for leniency. He writes:

... בדבר הנערה שהתגיירה בהיותה בפחות משלוש שנים... ובן הזוג הוא כהן...
תשובה: פסק הרמב"ם בפרק ח"י מאיסורי ביאה הלכה ג'... אפילו נתגיירה
ונשתחררה פחותה מבת שלוש שנים הואיל ואינה בת ישראל הרי זו זונה... עכ"ל
וכן פסק מרן השו"ע באהע"ז סימן ז' סעיף ח' ע"ש...
ונחלקו הפוסקים... דלהרמב"ם והרא"ש איסור דאורייתא גם בפחותה משלוש
שנים אע"פ שלא נבעלה והראב"ד והרשב"א סוברים דאין איסורה מן התורה...
מ"מ לכו"ע גיורת פחותה משלוש שנים אסורה מדאורייתא או מדרבנן... אולם
בהיותי בזה ראיתי בשו"ת יביע אומר ח"ז אהע"ז סימן י"א כעין נידון דידן ממש
והעלה להקל... הואיל ויש פוסקים הסוברים שדין גיורת... לכהן אם לא נבעלה
לגוי הוא איסור דרבנן ושכן נראה דעת הרמב"ם ע"ש...
המורם מכל האמור הלכה למעשה: מותר להשיא כהן זה עם הגיורת שנתגיירה
פחות מגיל שלוש שנים ובצירוף כל הני ספיקי ובפרט לאלו דסברי דהוא איסור
דרבנן וחזקת כהונה היום ללא ספר יוחסין אינה חזקה ושכן הורה גבר הגאון
הגרי"ע בספרו יביע אומר ובשו"ת היכל יצחק.

... with regard to the young woman who converted under the age of three, and now wants to marry a *Kohen*...

My response: The Rambam (*Issurei Bi'ab* 18:3) ruled... even if she was converted or freed when she was less than three years old, even if she had not had relations, she may not marry a Kohen, since she

³⁶ He speculates that *were* such a convert to marry a Kohen, the child would not be a *challalah*, the product of a sexual relationship prohibited to a Kohen. The problem is the mother/convert's *lineage*, not her person, and therefore the child is not the product of Kohen-illicit relations. That does not fit the model of thinking of her as a *zonah*.

³⁷ To put it another way: R. Amar is saying there are those who reasonably rule that any possible issue is rabbinic when the woman was converted as a child; since there are those who hold there is *no* prohibition if she was a virgin (Rashi according to the *Beis Shmuel*), the matter becomes a *safek d'rabbanan*, an unresolved question of rabbinic law, and therefore we can be lenient.

is not a *bas Yisrael*, she is a *zonah*... this is also ruled by the *Shulchan Aruch* (EH 6:8)... The *poskim* argued as to whether this prohibition is Biblical or rabbinic. According to the Rambam and Rosh, it is Biblically prohibited even by such a woman who converted under the age of three, and even if she never had marital relations prior to her conversion... Raavad and Rashba are of the opinion... this prohibition is not Biblical... Nevertheless, everyone agrees that one who converted under three years of age is forbidden by either Biblical law or rabbinic law...

However, while involved in this matter, I saw in *Shu"t Yabia Omer* (EH 7:11)³⁸ of Rabbi Ovadiah Yosef, a very similar case to ours, and he suggested to be lenient because there are authorities who hold that the prohibition of a Kohen marrying a convert is rabbinic when she did not have marital relations with a Gentile prior to her conversion. It appears that this is the opinion of the Rambam...

The final ruling based on all the above is that it is permitted for this Kohen to marry this woman who converted under the age of three. This is based on the combination of these doubts, and especially according to those who hold that it is only a rabbinic prohibition to do so, plus the fact that the status of Kohanim today is not well-established without a written lineage. This was how the great Rabbi Ovadiah Yosef ruled in his responsa *Yabia Omer*, as did responsa *Heichal Yitzchak*.

³⁸ We are uncertain of the accuracy of his claim. In the referenced responsum, Rabbi Yosef writes:

ואילו היה ספק ממש לפנינו לפני הנישואין ... היינו צריכים לומר העמד האם על חזקתה שהיתה גויה, והשתא הוא שנתגיירה, (כלומר אחר לידת המבקשת), והמבקשת פסולה לכהונה.

Were the doubt before us **before** the wedding... we would have to say leave the mother [of the bride] in her status of non-Jewishness [until we know otherwise], and she only converted now [when we know of a valid conversion], meaning after the birth of the woman asking the question, and that makes the woman asking the question excluded from [marrying] into a priestly family.

He seems to limit his ruling to one who is *possibly* a convert. See also the final footnote to this article about children from IVF. The same criticism could be voiced to his citation of Rabbi Yitzchak Isaac Herzog's responsa, *Heichal Yitzchak* 1:18 which is discussing a case of a person who only may be a Kohen.

In addition to the question about the status of all Kohanim, which we still have to discuss, he adds the view the whole prohibition is only rabbinic when the convert is under age three and has never been intimate, enough to permit the marriage.³⁹

³⁹ A similar analysis is found in Rabbi Eliyahu HaLevi, *Shu"t Maagalei Eliyahu* EH 2:1–2. Although not entirely clear, he seems to conclude that such a couple should not get married, but need not divorce if they did. He compares it to a woman who is the child of two converts. She is not considered a *zonah* though she is not truly a “*bas Yisrael*” either. As such, she should not marry a Kohen, but if she did, they need not get divorced. We are aware as well of anonymous *Shu"t Orchoscha Lamdeni* 2:99 who discusses a similar case, but reaches a different result while validating this as a possible result.

In addition, we have a copy of a *teshuvah* from 1989 by Rabbi Yitzchok Yisrael Piekarski (the author of the nine volumes of *חוקרי הלכה*) permitting the marriage of a child convert to a Kohen. (Rabbi Menashe Klein refers to it in *Shu"t Mishneh Halachos* 14:18 as a respectable opinion, although he does not concur; Rabbi Piekarski was known to some as *Even Yisrael*, perhaps whom Rabbi Greenblatt meant when he wrote *Edus L'Yisrael*, although this is quite speculative.) Rabbi Piekarski's letter discusses a case very similar to Rabbi Greenblatt's, of a child not told she had been adopted and converted into a religious home. Grown, the woman is engaged to a Kohen and neither wants to end the engagement. Rabbi Piekarski notes that “if we prohibit them from marrying, we do not know what will be with the couple.”

He then makes three points. First, Rabbi Shimon bar Yochai and the *chachamim* dispute the existence of any prohibition for a Kohen to marry such a woman. Second, while all the Rishonim agree the marriage is prohibited, there are three views about whether the prohibition is Biblical or rabbinic: Rambam and Rosh with one view; Raavad and Rashba, another; and Rashi, yet another. For a virgin child convert, the majority hold the prohibition is rabbinic. Third, there are two grounds to doubt the presence of any prohibition here. The bride's mother might have been Jewish (adoption records were sealed and did not record the religion of the mother) and the groom might not be a Kohen (most Kohanim today have some uncertainty in their lineage). Although each option is unlikely, so we would not treat this as a *sefeka sefeka*, a double doubt, R. Piekarski cites a famous Ran (commenting on Rif, *Chulin* 21b), who argued that two unlikely doubts do still create one full *sefeka*, putting our prohibition in doubt. By this logic, this marriage is *possibly* prohibited, not definitely so, making it easier to rely on other leniencies. He concludes (in loose translation) that since “according to most views this is a rabbinic doubt, and rabbinic doubts are resolved leniently, one can perform the marriage in this case.” Appended to this as an approbation is an even broader claim by Rabbi Avraham Shlomo Katz, the *av beis din* of Satmar, that any child convert who grows up religious may marry a Kohen. (Rabbi Piekarski does not take a clear position on a woman whose mother was unquestionably not Jewish, whereas Rabbi Katz seems to permit even such a case.)

Rabbi Ben-Zion Uziel suggested another avenue of leniency, that if the father is Jewish and the mother is a Gentile, the converted daughter would be enough of a *bas Yisrael* to be allowed to marry a Kohen. Some propose relying on that.⁴⁰

Regularly mentioned in these *teshuvos* is another significant path to leniency, the question of whether the man in question is necessarily a Kohen. For example, Rabbi Moshe Feinstein argues that a person who comes from a non-religious family lacks the formal halachic credibility to transmit to his children that they are Kohanim. For the first of two examples, he writes, *Shu"t Iggeros Moshe EH 4:11*:

בדבר אחד שהחזיק עצמו לכהן ונתברר שכל ידיעתו היא מאביו שבעת שקראו אותו לשמחת הבר מצוה אמר שהוא כהן אבל אביו אינו שומר תורה כלל וגם שברה מבית אביו בילדותו... שלפי הדעת לא היה לו לידע כל כך דבר כזה שלכן אין לו שום נאמנות לזה שהוא כהן...

Regarding one who considered himself a Kohen, and it became clear his knowledge [of his status] relied solely on his father having had him called up to the Torah as a Kohen at his bar mitzvah. But the father was completely nonobservant and had run away from home as a child... when logically he would not have known so much about this, meaning he has no believability on the issue.

Shu"t Iggeros Moshe EH 4:39 is even clearer:

...בדבר... בעל תשובה אחרי שכבר נשא נכרית ע"י השפעת חברי חב"ד והוא ממשפחה... לא היה להם שום ידיעה בתורה ויהדות... גם זקנו שבא מזלאטאפאלא... שמשלו שם כבר הקאמוניסטן... ונספחו להם גם ברצון לענין הרשעות... ומכיון שלא חנך את בנו אף במקצת הדברים הוא עצמו ודאי היה מהם ובה כבר רשע גמור... וא"כ אין לו שום נאמנות לומר שהוא כהן...

Regarding a Jew who returned to observance under the influence of Chabad Chasidim, and was already married to a non-Jew, and he is from a family without knowledge of Torah or Judaism... and his grandfather came from... where the Communists were already in power... and he joined them willingly in their evil... since he did not educate his son about any matters, he was certainly one of them [the Communists] and counts as a complete evildoer... and if so, he has no credence to say he is a Kohen...

We append the full text of this *teshuvah* at the end of this article, since, to the best of our knowledge, it has never been published.

⁴⁰ See Rabbi Chaim Amsalem, *Toras Chaim* 38 at page 239. See *Shu"t Mishpetei Uzziel* II:52 and *Heichel Yitzchak, Even HaEzer* 1:16 for a clear and direct rebuttal.

In the United States, three factors are raised to argue that a particular man is not the Kohen he thinks he is:

1. A person who is not observant of Jewish law, especially if he does not keep Shabbos, has no halachic credibility and is therefore halachically incapable of identifying his son as a Kohen.⁴¹
2. The reality in the United States is that even many people connected to the halachic community (and certainly those who are not), who would never commit adultery once married, who certainly do not plan on intermarrying, experiment sexually while single, including with non-Jews. Studies show that sexuality in college is overwhelmingly normal and that many women—even who do not think they would intermarry—nonetheless leave college ineligible to marry a Kohen. All their children would be *challalim*, not Kohanim. This is a change from the 1950s and earlier.⁴²
3. The halachic view of Maharashdam (EH 235), Rivash (94) and *Yam shel Shlomo* (*Bava Kama* 5:35) that modern day (Ashkenazi) Kohanim have insufficient proof of lineage to be considered certain Kohanim, are rather only *Kohanei chazakah* or less, people with a presumption of being Kohanim but no solid evidence.⁴³

⁴¹ Rabbi David Cohen of *Gvul Yaabetz* writes as much in a responsum in our possession:

לפני כמה שנים שמעתי מפיו של מרן הגר"מ פיינשטיין זצ"ל שמי שבא ממשפחה שאינה אדוקה או לא היתה אדוקה לכמה שנים שאין למשפחה נאמנות להחזיק את עצמה כמשפחה של כהנים. ומטעם זה היתר לכמה בעלי תשובה שתפסו שהם כהנים לפי מסורתם לישא נשים שאינן כשרות לכהונה.

A few years ago, I heard from our teacher the great Torah scholar R. Moshe Feinstein, זצ"ל, that one who comes from a nonobservant family, or that wasn't observant for a few years, that the family has no credibility to hold themselves to be a family of Kohanim. For this reason, he allowed several returnees to observance, who had a family tradition they were Kohanim, to marry women a Kohen may not marry.

⁴² Michael Broyde has repeatedly heard Rabbi Mordechai Willig note this fact as a central halachic reason to treat Kohanim as not restricted to marrying only those fit for Kohanim in modern times. *Shu"t Iggeros Moshe* EH 4:39 hints at this as well when he states גם בשאלות כאלו אירע שכבר נשאו הוריהם לנשים פסולות לכהונה כשעברו הרבה דורות, an ancestor had married a woman not allowed to Kohanim [rendering all descendants in that line *challalim*, and no longer bound by the strictures of being a Kohen].

⁴³ Indeed, this is the view of the late great *av beis din* of the Beth Din of America, Rabbi Gedalia Dov Schwartz, זצ"ל. At the end of a *teshuvah* Michael Broyde wrote on a related matter, R. Schwartz appended:

Without any fanfare, this reasoning has been used to allow many men who thought of themselves as Kohanim to marry women ineligible to marry Kohanim. Indeed, many halachic authorities seem to be of the view that anyone who is descendant from new returnees to the faith fits this bill.

Conclusion and Summary to this Part

We summarize the approaches we have found among authors of the last fifty years to permit a man who represents himself as a Kohen to marry a woman who converted below three and was never intimate with a man who would make her ineligible to marry a Kohen.

1. A significant school of thought—led by Rabbi Moshe Feinstein—holds that Kohanim nowadays cannot establish their status sufficiently to have it be a barrier to their wedding; this idea might even be *l'chatchillah*, in that a reputable halachic authority could determine there was insufficient evidence of a man's priestly status, and allow him to marry a woman a Kohen could not.
2. Rabbi Greenblatt and Rabbi Toledano allowed relying on the view of Rabbi Shimon bar Yochai that a convert below three can marry a Kohen in a case of urgent need. It is even more possible to rely on this view for a child-virgin convert. This idea is clearly *bedi'avad*.
3. Rabbi Amar and perhaps Rabbi Goldberg consider the possibility—and Rabbi Amar rules this way—halachah follows the view that a *zonah* is limited to a woman who has actually had an illicit sexual relationship or is presumed to have done so. One who converted below three and is raised as a Jew is then permitted to marry a Kohen.

גם אני מסכים עם הפסק הנ"ל ועיקר יסוד שאין לו חזקת כהונה ע"פ ההוראה הידועה של מרן ר' משה פיינשטיין זצ"ל... במקום שאין לו נאמנות על חזקת כהונה, אין כאן ראי' שהוא כהן. וגם שייך בעובדא דידן ליצרף שיטת המהרשד"ם דכהנים בזמן הזה מוחזקין הן ולא מיוחסין ובנידון דידן אפ"י חזקה זו לא שייך כלל.

I agree with this ruling, the principle foundation of it that the man has no presumption of being a Kohen, based on the well-known ruling of R. Moshe Feinstein, *ש"ת*... that wherever he has no credibility about his Kohen status, we have no proof he is a Kohen. It is relevant to add in this case the view of Maharashdam that Kohanim in contemporary times hold their status by presumption not by established lineage, and in the case here, the presumption is not relevant, either.

4. Rabbi Abergel is prepared to combine all the ideas above and permit a person who is thought of as a Kohen to marry a child convert although he is unclear as to whether the children that result would be considered Kohanim, or we require the man to have concluded he is not a Kohen to enter this marriage.

Part VI: Underlying Issues of Leniencies

1. Where the Talmud Did Not Rule

With all the justifications we have seen, the *poskim* who rule leniently still seem to be adopting less-than-well-grounded positions in the name of accommodating the people asking the question. Why? Aside from the general concern with treating converts well (as we noted earlier), three other issues are relevant here. One is universally accepted, the other two are both ideas credited to *Taz*, in different contexts.

First, people of a certain level of authority have the right to their reading of a topic, regardless of the consensus. R. Binyamin Tabory, ז"ל, once related a conversation with R. Yehuda Amital, ז"ל, the rosh yeshivah of the yeshivah where R. Tabory taught,⁴⁴ Yeshivat Har Etzion (Gush). R. Amital advised him to rule a certain way, and R. Tabory expressed his surprise at its divergence from the ruling of *Shulchan Aruch*. R. Amital said, “R. Tabory, *atab mefached min baShulchan Aruch?* (You’re afraid of the *Shulchan Aruch?*)”

Rulings out of step with the consensus require expertise and self-confidence, but are not uncommon. When a Torah scholar of rank—a blurry standard we do not aim to define here, and is probably a function of the person’s knowledge, self-image, and how people around react to him—comes to believe the ruling on an issue should be resolved logically in a certain way, the people for whom he rules have the full right to follow that ruling. The rest of the Torah world will then evaluate whether they accept the claim, hold onto it as a known leniency for situations of difficulty or discard it as mistaken.⁴⁵

Some of the authorities whose ideas we studied may have decided the reading of Rashi which takes him as saying the whole issue of a *giyores* is only where there is a possibility of the woman having had intercourse was *correct*, and therefore, by rights, a young convert may marry a Kohen.

One step less assertive, decisors here may have depended on the Talmud itself not having ruled definitively. In such cases, *Taz* held one may follow any Talmudic opinion in cases of urgent need, even in matters of

⁴⁴ And where Gidon Rothstein studied. Rabbi Tabory related this event to him.

⁴⁵ As for example, *Responsa Avnei Derech* 16:177 does.

Torah law. He made the claim while grappling with how Jews in Europe ate grain planted and harvested after one Pesach and before the next. The easiest reading of the Talmud has it that the prohibition of *chadash*, not partaking of new grain until after the second day of Pesach, applies to such grain, despite being grown outside of Israel and by a non-Jew.

Taz notes the Talmud does not reach a conclusion, and the reasoning of the authorities who assume the prohibition applies outside of Israel is not ironclad. Therefore, he says:⁴⁶

...ואם כן יש לנו לדון... דבמדינות אלו שהוא שעת הדחק דחיי של אדם תלוי בשתיית
שכר שעורים ושבולת שועל כדאי הוא התנא קמא לסמוך עליו בשעת הדחק כיון דלא
איפסקא הלכה בפירוש בגמרא כר"א"א...

...If so, we can legitimately argue that in these countries when it is a situation of great pressure—because each man's life depends on drinking barley and oat beer—the **Tanna Kama is sufficient to rely on in pressing circumstances, since the law was not explicitly set in the Talmud in accordance with Rabbi Eliezer.**

*Shach*⁴⁷ disagrees with *Taz*, but his view still provides some support for our permissive *poskim*. He says halachah allows following minority opinions for rabbinic issues, despite the general rule to follow the majority.

...לא הועיל כלום, דמלבד סתם מתניתין דערלה... דדווקא בהך דנדה דגזרת מעת
לעת היא מדרבנן אמרינן הכי, וכן בגטין דדבר תורה הוי גט לכולי עלמא כדמוכח
בש"ס שם...

This [*Taz*'s idea we follow any opinion where the Talmud did not rule] did not help at all, because aside from the anonymous Mishnah in *Masechet Orlah*... [clear Talmudic sources assume *chadash* applies outside of Israel; in addition, *Shach* has elsewhere proved, to his satisfaction, the idea of following minority opinions works only for rabbinic issues] because only in the case of [tractate] *Niddah* [a case *Taz* cited], where the 'decree of twenty-four hours' is rabbinic, do we say so, and so too in *Gittin* where according to Torah law it is an effective divorce document according to everyone, as clear from the Gemara there...

As we have seen,⁴⁸ many authorities think the prohibition of marriage to a Kohen for a convert who never had relations is only rabbinic. *Taz* and *Shach* would agree such authorities could follow the minority view of R. Shimon bar Yochai or Rashi.

R. Moshe Feinstein combined the two lines of reasoning:⁴⁹

⁴⁶ *Taz*, *Yoreh Deah*, 293:4.

⁴⁷ *Nekudos HaKesef* (his glosses on *Taz*), *Yoreh Deah* 293:3.

⁴⁸ Above, *Dibros Eliyahu* 10:137 in the name of Rabbi Ovadiah Yosef.

⁴⁹ *Shu"t Iggeros Moshe*, *Orach Chaim* 1:51.

ועוד יש להתיר בשעת הדחק כזה... דיש לסמוך אר' יהודה במגילה דף כ"ז... דכיון
 דלא איפסק בגמ' הלכה כחכמים בפירוש רק משום שהלכה כרבים **כדאי הוא**
היחיד לסמוך עליו בשעת הדחק באיסור דרבנן כמפורש בש"ך יו"ד ס"ס רמ"ב
 בהנהגות הוראת או"ה.

Furthermore, in pressing circumstances like this we can allow it... because one can rely upon Rabbi Yehudah in *Megillah* (27)... since the Gemara does not explicitly conclude the halachah is in accordance with the Sages, and we follow them only because [of the general rule] the halachah accords with the majority view **an individual opinion is sufficient to rely upon in pressing circumstances in a rabbinic prohibition**, as stated in *Shach Yoreh Deah* end of 242, regarding the decision principles in matters of ritual law...

For R. Moshe Feinstein, to permit a convert to marry a Kohen seems to require both principles, the case is rabbinic law and the Talmud did not rule.

2. Accommodating the Threat of Greater Sinfulness

We suggest *poskim* on our issue are also affected by the impact of their ruling on the adoptee and her family, especially the concern a prohibitive ruling will lead her to leave observance. A similar question came up in *Yoreh Deah* 334, where a ruling of Rema's became a flashpoint that nicely frames our issue as well. Rema codified the view of *Terumas HaDeshen*, where a Jew deserved *nidui*, communal shunning, for a wrong he committed. He ruled that the court should declare the ban, despite a likelihood it will lead the Jew and his family to leave observance.⁵⁰

Taz disagreed vigorously, highlighting what he considered fatal flaws in *Terumas HaDeshen's* cited proofs, offering counterexamples of where rabbinic authorities ruled leniently to avoid people leaving the religion. Were we to follow *Taz*, here, too, we would seek to do all we can for a woman who intends to marry her Kohen regardless.

The disagreement has not been conclusively decided, as far as we can tell. As *Pischei Teshuvah Yoreh Deah* 334:1 collates, many agreed with *Nekudos HaKesef's* rejection of *Taz's* idea, because accepting it would lead to **בטלה דין ישראל**, courts could not work (as is true in our days, when most rabbinic courts lack meaningful enforcement power).

On the other hand, Radvaz and Chasam Sofer—who fundamentally agreed with Rema—pointed out downsides of an absolutist stance.

⁵⁰ Rema's phrase is *yeitzei l'tarbus raah*, he will go to a bad culture.

Radva⁵¹ accepted Rema's idea, then cautioned the leader of a generation to recognize that not all sins are the same, nor all sinners. Chasam Sofer⁵² thought children might adjust the calculus, because being strict with the father could lose the children.

This basic question has come up in other communally important areas, too. Talmudic and pre-modern rabbinic consensus seems to agree non-Jews should not be converted in order to marry Jews, yet there has always been the practice—now fairly common—of doing these conversions in situations where the alternative is leaving the community,⁵³ seeking ways to produce a viable conversion in the hopes of keeping the future family closer to Judaism.

For the woman adopted as a baby, the possibility she will leave observance is only one of many concerns. She may have reason to think this is her last chance at marriage while still of childbearing years, a stance which likely would elicit more sympathy from a decisor; or, experience may have told her she cannot have confidence she will ever find another man interested in marrying her.

Whatever the reason given, *poskim* will have to evaluate where and when those reasons justify adopting the leniency we have laid out here, accepted by more than a few reputable authorities, each in a pressured situation. As *poskim* consider their cases, they will obviously have in mind the other side of the coin, each time they allow following what is not the ideal law, they weaken the consensus around and adherence to the ideal. The more common it is for adoptees to marry Kohanim, the more likely it is for people to assume it is perfectly acceptable rather than a yielding to circumstance.⁵⁴

A factor we started with deserves to be repeated, to be sure we absorb its message. Rabbi Moshe Feinstein famously recommends including the

⁵¹ *Shu"t Radva* 1:187.

⁵² *Shu"t Chasam Sofer* 2:322.

⁵³ This was not a *universal* consensus; *Shu"t Rambam* 211 records Rambam's having many times allowed Jewish men to convert their maidservants and marry them, although he is clear that is not the *proper* course of action; it is a violation of the law in order to preserve as much as possible.

⁵⁴ We have generally not discussed the situation addressed by Rabbi Yehudah Leib Tsirelson, *Maarabei Lev*, no. 72, which is when can one be lenient in this matter out of fear of anti-Semitism and the resulting violence. (For more on his specific case and responses to his ruling, see *Kuntres Gaalei Kehunah* and Rabbi Gedaliah Felder's *Nachalas Tzvi*, 1:103–106, an essay worth reading.)

mitzvah to love a convert in our considerations of how to resolve questions about converts and their place in the Jewish community:⁵⁵

אבל למעשה יש לידע, שהמצווה של ואהבתם את הגר (דברים עקב י' י"ט) מחייבת אותנו לקרבם ולהקל בכל עניינים אלו. ולפיכך אחר ישוב גדול נראה...

But, as a matter of normative practice, one should know that the mitzvah to love the convert (Deut. 10:19) obligates us to bring them closer and to be lenient on all these matters. Therefore, after considerable contemplation it seems...

Rabbi Feinstein is telling us he shaped his answer differently for a convert than he might have for someone born Jewish. When there is more than one reasonable approach to a halachic topic that impacts a convert, he is sure one should adopt the view (of both facts and law) that shows love for, brings closer, and further integrates the convert. When a reasonable person can see more than one halachic, logical, or factual approach to a problem, one should adopt the approach that favors integration, since this fulfills the mitzvah to love the convert. Rabbi Feinstein's words ("Therefore, after considerable contemplation") tell us one needs to ponder these matters intensely and repeatedly.⁵⁶


Conclusion

This article has shown that a surprising approach by R. Ephraim Greenblatt turns out to be a reasonably well-known leniency among contemporary halachic decisors. Faced with a woman adopted as a young girl, these authorities aver that it is better to allow her to marry a Kohen than to risk the new couple leaving rabbinic Judaism, either because of questions about the certainty of his status, because the rule against her marrying a

⁵⁵ *Shu"t Iggeros Moshe Yoreh Deah* 4:26. We do not mean to imply Rabbi Feinstein agreed with the approach of Rabbi Greenblatt, notwithstanding the latter's indication he did. See also *Mesoras Moshe* 4: 354.

⁵⁶ Even if one rejects the analysis here completely, it can play a significant role in cases of surrogate motherhood when either the egg donor or the gestational mother is Jewish. Well-established practice in the halachic community is to treat the child as doubtfully Jewish, to perform a conversion just in case. Girls born this way present even more of a reason to allow them to marry a Kohen, because they might be Jewish, and even if not, we have all the leniencies noted here. There is some literature on this topic, usefully discussed by Rabbis Yitzchak Avi Roness & Joel B. Wolowelsky, "A Convert Who Is Jewish from Conception," 32 *B.D.D.* 7–15 (2017), and R. Aryeh Katz, *Shu"t Shaagas Kohen* 1:43, especially at p. 268. See also *Kovetz Teshuvas* of Rabbi Elyashiv 3:180 who notes that sometimes one should do a conversion as a stricture and yet the convert can marry a Kohen.

Kohen is rabbinic, or because R. Shimon bar Yochai's view carries enough weight to allow following it where deeply needed or other reasons.

We explained it here with the intent of expanding our understanding of this halachah, and of the workings of halachah in general. In this and all cases, factors besides the consensus come into play, forcing decisors to make delicate decisions about when carving out new halachic room is appropriate in a particular case, despite its effects on the community as a whole. We hope to have added to the needed nuance in any such conversation. 

Appendix
The Unpublished Teshuvah of Rabbi Piekarski

יום ב' כ"ה למב"י תשמ"ט לפ"ק.

לכבוד הרב החו"ב התמים כו' כו' כש"ת מוה"ר לוי יצחק סודאק, שליט"א.
בדבר השאלה ילדה אדאפטירם ונתגיירה פחותה מבת ג' עפ"י ב"ד כדת וכדין
ונתגדלה בבית (פרום) ועתה אודות שידוך שמדברים לה עם אברך כהן ונתקשרו זל"ז
שאי אפשר להתפרד בנקל, ועוד אפשר שאם יאסרו אין אנו יודעים מה יהי ע"כ בבקשתו
אם יכול להיות מסדר קידושין עכ"ל השאלה.

הנה ביבמות ד' ס' ע"ב תניא ר' שמעון בן יוחי אומר גיורת פחותה מבת ג' שנים
ויום אחד כשרה לכהונה שנאמר וכל הטף בנשים אשר לא ידעו משכב זכר החיו לכם
והרי פנחס עמהם ורבנן לעבדים ולשפחות וכו' א"כ לר"ש פחותה מבת ג' מותרת לכהן
ולרבנן אסורה לכהן.

והנה בשו"ע אה"ע סימן ו' סעי' ח' וכן הגיורת והמשוחררת אפילו נתגיירה
ונשתחררה פחות מבת ג' שנים הואיל ואינה בת ישראל הרי זו זונה ואסורה לכהן. והנה
בבית שמואל הביא שם שיטת רש"י דאיירי דנבעלה לעכו"ם, ותוס' והרמב"ם והרא"ש
ס"ל אפי' לא נבעלה אסורה לכהן אפילו פחותה מבת ג' שנים קיי"ל דאסורה לכהן ועיין
ר"ס ס"ו וטעמם לפי שבאה מן העכו"ם השטופין בזמה. ולדעת הראב"ד והרשב"א ילפינן
מקרא ד"חזקאל בתולות מזרע בית ישראל כמ"ש סוף קידושין וכן הוא דעת התוס' שם
ד' ס"א ולדעת הרמב"ם ילפינן מקרא זונה האמורה בתורה ומקרא ד"חזקאל ילפינן דפ'
הקרא כך ועי' מ"ש המגיד ר"פ ט"ו גיורת אין מפורש בתורה ונ"מ למ"ש בסימן רס"ה
ע"י שם.

ולפי זה לשיטת הרמב"ם והרא"ש היא זונה דאורייתא אפילו פחותה מבת ג' שנים
ואפי' לא נבעלה משום דאיתין משטופי זמה והראב"ד והרשב"א סוברין דאין איסורין מן
התורה, ודעת רש"י אמרו האחרונים דס"ל דכשהיא יתירה מג' שנים ויום אחד איסורה
מן התורה ופחותה מזה הוי דרבנן, עי' בספר חכמת שלמה דמשמע כן, ועי' בספר ערוך
השלחן שאסר ג"כ דפחות מג' שנים לרש"י הוי דרבנן עכ"פ מבואר דהראב"ד והרשב"א
סוברין וגם שיטת רש"י דפחותה מג' שנים הוי דרבנן ולשיטת רש"י בעי נבעלה לעכו"ם.
א"כ הרוב שיטת דהוי דרבנן וגבי מעשה דידן יש ספק שמא באתה מישראלית א"כ
הוי ספק דרבנן ואזלינן לקולא דמותרת לכהן ואע"פ דמדרבנן מ"מ אסור לעשות ספיקא
דרבנן לקולא כאן בשעת הדחק הוי כדיעבד דמי.

אך דא עקא הא רוב גוים ורוב עכו"ם א"כ מצד הרוב באתה מנכרית ולא שייך
ספיקא דרבנן לקולא, אך יש לומר דהנה במהרש"ם חלק רביעי סימן צ"ז ד' נ"ו ע"א ד"ד
שהביא שם דעת מהרשד"ם דכהני בזמן הזה הוי כהני ספק ואפילו לדעת החולקים עליו
מודו דעכ"פ מיעוט איכא בתוכם שאינם כהנים, וכבר נודע מ"ש הר"ן פא"ט בהא
דלוקחים ביצים מן הנכרים דתרי מיעוטה מצטרפים לפלגא עיי"ש היטב.

א"כ כאן דאע"פ שרוב עכו"ם מ"מ מיעוט הוי ישראלים א"כ יש מיעוט שבאתה
מישראלית וגם כהנים בזמן הזה ג"כ יש מיעוט דלא הוי כהנים מצטרפים לפלגא שוב
הוי ספק ורוב דעות דהוי דרבנן אמרינן ספיקא דרבנן לקולא ויכול להיות מסדר קידושין
כנלענ"ד.

רק אם יסכימו לזה שני רבנים מובהקים בהוראה אז אני מצטרף להתיר
הדו"ש
ישראל יצחק פיעקארסקי

ועל דבר הבתולה שטבלה ונתגיירה לשם גרות ע"י ביד"צ שקנה את הילד ובשנה
ראשונה טבלה על הב"ד והיא נתגדלה בבית צנועים ובביגדי מלבושי יהדות כדת של
תורה אם תוכל להנשא לכהן אין ספק כי דינה כישראל ממש ומותרת לישא לכהן.
הנני ידידו דושת"ה באהבה רבה.
אברהם שלמה כ"ץ