The Status of Non-Halakhic Conversions

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Note: A resolution was adopted on February 23, 1983 by a vote of 8-3-3. The resolution reads as follows: "We reaffirm the norms involved in giyyur according to halakhah, that in a case bede'avad, where the person has undergone conversion and has lived as a Jew for a period of years, we need not re-evaluate the manner of his/her original conversion, but will accept him/her as a member of the Jewish community."

The adoption of that motion was followed by the adoption of two papers on February 15, 1984, both bearing on this subject: "Should the Kashrut of Conversions Be Investigated?" by Rabbi Joel Roth, adopted as the Majority Opinion by a vote of 7-4-3, and "A Teshuvah on the Subject of the Investigation of Conversions Today" by Rabbi Novak, adopted as the Minority Opinion of the Committee by a vote of 6-6, with 2 abstentions. Both of these papers appear following this article.

SHE'ELAH

The Committee on Jewish Law and Standards of the Rabbinical Assembly has been asked on several occasions about the status of persons converted to Judaism in a non-halakhic manner, that is, men who did not undergo milah and/or tevilah and women who did not undergo tevilah. This question has assumed rather dramatic proportions in recent times due to the attempt in the State of Israel to amend the "Law of Return" (Hok Hashevut) so that only those who have undergone halakhic conversions (giyyur kehalakhah) are entitled to automatic Israeli citizenship. Also, in America the whole issue of a pluralistic Jewish community, which most Conservative Jews recognize as both a fact and a desideratum, raises the question of the status of numerous persons who consider themselves bona fide members of the Jewish community and are considered as such by others, yet who did not undergo the prescribed procedure for conversion. The question therefore

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calls for renewed attention.

TESHUVAH

On November 13, 1940 the Law Committee ruled: "The status of a Gentile woman who was converted by a Reform rabbi was discussed. It was held that such a woman could not be deemed a Jewess unless she had submitted to the ritual established by traditional Jewish law." This opinion was reiterated in a Digest of Answers issued for the year 1949.

Nevertheless, on January 27, 1955 the then-Chairman of the Committee, Rabbi Arthur H. Neulander, wrote to Rabbi Herman Kieval, "The Committee has also decided long ago that a conversion ceremony performed by a Reform rabbi may be recognized by a Conservative congregation." Rabbi Neulander reiterated this opinion in answer to a question from Rabbi Arnold A. Lasker on November 7, 1955 and again in answer to a question from Rabbi Theodore Steinberg on November 8, 1956.

However, Rabbi Akiba Lubow, the Secretary of the Law Committee, informed me in a letter dated November 13, 1981, "Although he (Rabbi Neulander) writes that this is a long-standing ruling of the Law Committee, I have been unable to find any materials in the Archives prior to this correspondence to serve as a basis for this opinion."

In a digest of the answers presented at a meeting of the Committee held on April 13-14, 1959, it was stated, "Proselytes who have been converted by Reform rabbis shall be recognized as full-fledged Jews providing that if the proselyte be male, he be circumcised." 1

On December 1, 1965 Rabbi Eli Bohnen presented the following opinion for the consideration of the Committee:

The Talmud reports a debate which took place in the latter part of the first century or early in the second century, between R. Eliezer and R. Joshua on the subject of the rites of conversion. The question at issue was whether a conversion could be regarded valid if tevilah was lacking...The Gemara, while reporting the difference of opinions between the Tannaim, assumes that the halakhah requires tevilah...The fact is that the halakhah required tevilah. The poskim are unanimous.2

Nevertheless, he concludes his opinion as follows:

We recognize the fact that in some instances it may not be possible, or even advisable, to insist that tevilah must be accomplished. It is conceivable that a great traumatic hurt could be inflicted on converts who have been loyal to the Jewish faith for years...Indeed, we have been informed of cases where, in extraordinary circumstances, outstanding Jewish authorities accepted evidence of having bathed in
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the sea as fulfillment of the requirement of tevilah.

The minutes of this meeting record Rabbis Aaron Blumenthal, Eli Bohnen, Max Davidson, Leon Fink, Morris Fishman, Max Gelb, Benjamin Kreitman, Seymour Panitz and Max Routtenberg as being in favor of this opinion. Rabbis David Feldman, Isaac Klein and Wilfred Shuchat opposed it.

Rabbi Bohnen seems to be arguing that tevilah is most certainly required ab initio, but that in certain circumstances, where "reconversion," as it were, would cause great embarrassment and anxiety, we might accept any accidental immersion ex post facto.

In an opinion written a short time later, Rabbi Aaron Blumenthal, although having originally voted in favor of Rabbi Bohnen's opinion, seems to want to go even further than it. In this opinion he was joined by Rabbi Leon Fink, who also had originally voted for the Bohnen opinion:

Earlier decisions of this Committee have stipulated that we recognize all conversions in which the good faith of the proselyte is demonstrated....

We find no cogent reason for changing the original decision of this Committee....There have been no new developments, no significant changes of circumstance to warrant a retreat from our earlier position. Conversely, the increase in the rate of intermarriage suggests that we should strive to embrace as many of these couples as possible within the Jewish fold.

This does not mean that the Conservative rabbi is to desist from the commendable attempt to have the family conform to our standards. It does mean that such converts and their children may not be excluded from our congregations. They are to be accorded all the rights and privileges of gerei tzedek.3

The point of difference between the respective opinions of Rabbi Bohnen and Rabbi Blumenthal is not major. Both seem to agree that tevilah is required ab initio and that it can be waived ex post facto. The only difference seems to be that whereas Rabbi Bohnen would only waive the requirement in cases of great hardship, Rabbi Blumenthal would waive it in all cases of non-halakhic conversion.

Since Rabbi Blumenthal neither cites nor even alludes to any classical halakhic sources, I cannot comment on his opinion in the context of a responsum.4 On the other hand, Rabbi Bohnen does cite halakhic sources in the first part of his opinion and alludes to halakhic sources in the second part. A halakhic analysis is therefore required.

In commenting on Yevamot 46a, Rabbi Bohnen states that, "The question at issue was whether a conversion could be regarded as valid if tevilah was lacking." The text there reads:
The parallel text in J.T. *Kiddushin* 3:12 (64d) reads:

In summarizing these texts, the late Rabbi Bernard J. Bamberger, in his justly famous study of conversion, insightfully notes, "More simply, the point at issue was: At what moment in the procedure of conversion does the convert cease to be a heathen and become a Jew? This is of considerable practical importance." 5 Rabbi Bamberger then cites a number of cases where the determination of the exact point of full conversion affects one's marital status and the Jewish status of his or her children. He concludes his analysis of the texts as follows:

In all such cases, R. Eliezer declared that the man is a convert from the time he is circumcised. R. Joshua, according to the Palestinian Talmud, declares that he does not have the status of the Jew until baptism has also taken place.6

In other words, both R. Eliezer and R. Joshua require *milah* and *tevilah*, their point of difference being at what exact point in the whole conversion process the *ger* actually becomes a Jew in the specific legal sense. However, neither Tanna eliminated either of the two requirements.

Rabbi Bohnen did not cite those "outstanding Jewish authorities" who regarded any subsequent full immersion in a natural body of water to be sufficient *tevilah* ex post facto. I assume he is referring to *Hullin* 31a, which reads:

However, this accidental or incidental *tevilah* only applies to a *niddah*. It does not apply to any other situation requiring *kavvanah*. Maimonides clarifies this essential difference in *Hilkhot Mikvaot* 1:8:

Rabbi Yosef Karo further clarifies this in the *Kesef Mishneh* hereto:
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This proviso is crucial because conversion would certainly be inconceivable by anyone's criteria without the element of intention. An unintentional conversion is an absurdity. Thus, for example, a child, who by definition is not a ben da'at, when converted by others during his or her childhood, has the right upon reaching adulthood to retroactively nullify this conversion if it is not his or her present intention to be a Jew. Moreover, even in the case of a niddah, the Rashba rejects the efficacy of any tevilah without proper kavvanah in his note to Hullin 31a:

This is quoted by R. Yosef Karo in the Beit Yosef (Tur, Yoreh De'ah 198, end) approvingly, although in the Shulhan Arukh, Yoreh Deah 198:48, he follows the opinion of Maimonides. R. Moses Isserles, on the other hand, brings the opinion of the Rashba and cites other authorities who agree with it.

It would seem that the de jure acceptance of accidental or incidental tevilah in the case of a niddah is taken to be analogous with the following two rulings brought in Yevamot 45b:

In Tosafot thereto (s.v. mi) the specifics are spelled out:

Alfasi attempts to qualify these two rulings even ex post facto, namely, they only apply in the full sense to the status of the children of such questionable converts:

For this he has precedent in Yevamot 47a, which reads:

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Maimonides qualifies the talmudic source even further by regarding these and other immersions as evidence of a general commitment to Judaism, but insists on another tevilah for the sake of conversion under all circumstances. In Hilkhot Issurei Bi’ah 13:9, he writes:

Interestingly enough, R. Vidal of Toulouse quotes Nahmanides as being in agreement with Alfasi and Maimonides in the Maggid Mishneh thereto:

Nevertheless, at the end of his note to Yevamot 45b, Nahmanides seems to accept incidental immersion ex post facto, quoting J.T. Kiddushin 3:12 (64d):

Nahmanides writes:
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Why R. Yosef Karo only quotes the beginning of Nahmanides' remarks is puzzling. Did he not have a complete text of Nahmanides' novellae to Yevamot? Moreover, in the Shulhan Arukh (Yoreh De'ah 268:3), he codifies the law according to the view of Nahmanides:

לכפי אוわ עשה ס '>לד לוח עד לש ידוהו עלא איו

Can we generalize from the Bavli and the Yerushalmi as read by Nahmanides and codified in the Shulhan Arukh? I think not.

It would seem that this type of proof of conversion, retroactively as it were, requires that the female convert be strictly observant of the details of the laws of family purity, laws most frequently violated throughout Jewish history, and certainly in our own day.13

As for male converts, aside from the question of whether previous circumcision for purposes other than conversion is valid (a subject I have already discussed in another responsum prepared for the Committee on Jewish Law and Standards and which appears elsewhere in this volume), the question of tevilah after a seminal emission is quite problematic.14 It has not even been legally required since the early amoraic period. We read in Berakhot 22a:

ונא רביה האל אひとり וחזרה מקפלה ישמה. כי איה דיערי

Along these lines I cannot accept the opinion of Rabbi Benjamin Z. Kreiman.16 He argues that the Talmud, as we have just seen, indicated that immersion for a man's seminal emission suffices for a man's conversion. The Talmud also ruled that this need not be the same as immersion for a woman, which requires a fully kosher mikvah, as we read in Berakhot 22a:

ונא רביה. כעל קר שישנה עליה תשעה קפיא מים מאה.

Perhaps, then, the standard for a man's tevilah for conversion is not as stringent as that for a woman. Nevertheless, the Talmud only recognizes one type of tevilah for both male and female converts. That tevilah must be in a kosher mikvah, as we read in Yevamot 47b:

アイ רבי גא הער יושייר. המסקנה שערה נוכלת נך זה ענער משוחיר טובכל.

Therefore, it is clear from both the Bavli and the Yerushalmi that such incidental immersions were in a kosher mikvah for specifically religious purposes (leshem kedushat Yisrael). Without this intent they do not suffice for conversion even ex post facto.

Finally, a conversion which deliberately omitted tevilah, as is the case in most Reform conversions (happily, not in all of them in recent years), cannot be said to fulfill the very essence of giyur, namely, kabbalat ol shel mitzvot. Such omission by design is in direct violation of the rule brought in Tosefta Demai 2:4 (ed. Lieberman, 69) and Bekhorot 30b:

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This does not mean that the convert is expected to observe every aspect of Jewish law -- clearly an impossible demand, intellectually, morally and religiously. Rather, it means that conversion must involve an unconditional acceptance of the valid authority of Jewish law and an initial rejection of none of its specifics. This general acceptance is not invalidated by subsequent laxity in the observance of specific commandments.

CONCLUSION

I find no cogent basis in halakhah for accepting, even ex post facto, converts who did not undergo specific tevilah for the sake of conversion, unless it can be shown that they are strictly observant Jews, particularly scrupulous in the use of a mikvah. The fact that they may have been taken to be Jews by themselves or by others does not change the need for tevilah for the sake of conversion. The fact that most of these conversions have been conducted under Reform auspices makes the matter especially difficult because of the cordial relationships which exist between Conservative and Reform rabbis and lay people. Nevertheless, this halachic requirement is not meant as a public rebuff to the Reform movement. If a Reform rabbi conducts giyyur kehalakhah, I accept his converts as bona fide Jews. I might also add that I do not accept the converts of non-Reform rabbis if the conversion was not conducted according to objective halachic criteria.

These objective halachic criteria, which alone protect the purity of Jewish identity, should not be compromised in the interests of an ultimately meaningless Jewish unity. However, rabbinical experience has taught me that a Conservative rabbi can exercise compassionate tact in urging proper tevilah in these cases. I do not tell such converts that their conversions are invalid, but rather, that they were incomplete, for even the most liberal conversion involves study, thus minimally fulfilling hoda'at mitzvot. I tell them that they inadvertently overlooked an important specific. At the tevilah I ask them to reconfirm their kabbalat ol malkhut shamayim and kabbalat ol shel mitzvot. In the overwhelming majority of these cases, the converts have thanked me for helping them to legally assure their unambiguous Jewish identity.

One of the most famous converts in Jewish history was the king of the Khazars, who converted to Judaism in the seventh century C.E. along with his whole nation. At the very beginning of R. Judah HaLevi's theological masterwork, Kuzari, where the king is one of the two main characters in the dialogue, the initial motivation for his ultimate conversion to Judaism is seen as his response to a troubling dream. In the dream an angel tells him, "Your intention is acceptable to the Creator, but your action is not." When
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the king learns about Judaism and its practices from a rabbi he seeks out, he is able to remove this contradiction in his life by conversion. Along the lines of HaLevi's dramatization, I would say that anyone who refuses to rectify his or her halakhically invalid conversion has thereby shown that he or she never intended to accept the Torah anyway. Conversely, a true ger tzedek should welcome the opportunity to consummate once and for all what was his or her true intention from the beginning, to make both intention and practice truly consistent.

NOTES

1. RALA #041359 (Minutes of the April 13-14, 1959 Meeting).
4. As our teacher, Professor Saul Lieberman, admonished his students who participated in the Conference on Halakhic Process held in New York in November 1979, the Mishnah (Peah 4:1) states:
   באשה שנחת ממבר ליקרה...aminey התשעש אתאימ לארח לאpanies לול
   שמיעין, האמר חלקלקל.
6. Ibid.
8. See Ketubbot 11a, and M. Eruvin 7:11; Maimonides, Hilkhot Melakhim 10:3; Sanhedrin 68b, Tosafot, s.v. "katan"; David Novak, Law and Theology in Judaism II (New York, 1976) p. 196, n. 89.
9. For the question of why a slave had to marry a Jewish woman, since he was legally entitled to marry a gentile woman, see Tosafot, s.v. "atavlah" a la Niddah 47a and Tosafot, s.v. "masar". Cf. M. Sukkah 2:1.
10. See Kiddushin 78b. For the attempt to be more lenient in matters of status involving subsequent generations, note Kiddushin 71a top:
    אֵין יְרֵי זֶרֶם זֵרֵם הָעֵשׁ הָקִבֶּה הַבַּנַּיְא שְׁמוֹדֶהוּ שֵׁמֶר הַנֶּבֶרֶךְ;
    רָאָר וְיִשְׂרָאֵל עַל עַל הָאָדָם עַל עַל הַמַּעֵשֶׁה שֶׁסְּלָבָה מְנָעַת.
11. For another example of an irregular conversion being accepted, see Shabbat 68a and Tosafot, s.v. "ger" and Hiddushei Rashba thereto.
12. See Shakh thereto.
13. See Kiddushin 68a.
17. See, e.g., Nahmanides' comment on Deut. 27:26. Perhaps this is why instruction in the commandments for conversion is deliberately random. See Yevamot 47 atop.
18. See, e.g., T. Demai 2:4; T. Bechorot 30b; Kiddushin 17b bottom.