

Converting the Children of a Non-Converted Mother

A young Jewish man had married a non-Jewish woman. They have twin sons. Since the time of their marriage the Jewish man has gradually become more observant. He now brings his sons to the synagogue every Shabbat and has enrolled them in a Hebrew School. The father would now like the boys to convert to Judaism and his wife has agreed. She is willing to keep a kosher home but she herself is unwilling to convert. Is it permissible to convert the children without the conversion of the mother?

The Talmud (*Shabbat* 31a) tells of three prospective converts who presented themselves to the great sages Shammai and Hillel. Each gentile wished to convert to Judaism, but conditioned the conversion with seemingly unacceptable demands or hedges—acceptance of the Written Torah only without the Oral Law, learning the entire Torah while he stood on one foot, or converting on condition of being named High Priest (which is expressly forbidden by the Torah). In each case Shammai rejected the candidates, while Hillel accepted them. The thrust of the group of stories is to praise the patient Hillel who had drawn these three converts under the wings of the Divine Presence. Hillel's actions, however, do raise some questions (see the comments of Rabbi Yehuda Leib Zirelson, *Responsa Ma' arkhei Lev* section *Yoreh De' ah*, no. 55, pp. 98–99).

The Talmud (*Bekhorot* 30b) determines that a prospective candidate who accepts the entire Torah except for one law is not to be accepted. As RaShI (*Shabbat* 31a, s.v. *hotsio benezifa* and s.v. *gayyereih*) explains, Hillel did not contravene this dictum, presumably since in these cases the gentiles did not explicitly reject one or another mitzvah, but only implicitly did so. Still, these three people would not

appear to be the most desirable candidates for conversion. In this regard, we note especially the one interested in becoming High Priest. Although we may excuse his condition from a theological viewpoint, he still contravenes the rabbinic dictum (*Yevamot* 24b) that, at least *ab initio*, we are not to accept converts who wish to convert for some material reward. Both RaShI (cited above) and the Tosafot (*Yevamot* 24b, s.v. *lo biyemei David* and 109b, s.v. *ra' ah ahar ra' ah*) explain that Hillel was convinced that these candidates would eventually come to a proper understanding of the Torah and become proselytes for the Sake of Heaven, and therefore he accepted them right away. (See also Rabbi Yosef Engel, *Sefer Gilyonei haShas*, vol. 1, p. 81c, s.v. *ba' lifnei Hillel gayyereih*, who adds the important point that Hillel assumed that the convert would be around other Jews and eventually come to realize the proper view.)

In the light of the explanation of RaShI and Tosafot, this discretion exercised by Hillel was enshrined as a general principle in the laws on conversion; That "everything depends on the perspective of the court" (*hakol lefi re'ut eini bet hadin*), a principle accepted by the major codifiers (Rabbi Yosef Karo in *Bet Yosef* on Tur, *Yoreh De' ah* 268, s.v. *ger sheba' ve' amar nitgayarti* [end of paragraph] and Rabbi Shabbetai haKohen in *Siftei Kohen* on Shulhan Arukh, *Yoreh De' ah* 268, par. 23). In other words, there is built into the classical halakhic approach to conversion an element of subjectivity relative to the prospective candidate. If the case so warrants, the rabbi may exercise considerable flexibility regarding the educative process prior to conversion, and even more strikingly, in the key ritual step of *kabbalat 'ol mitzvot*, the acceptance of the commandments. The other two obligatory rituals, circumcision and immersion, as concrete physical acts, leave no such room for flexibility.

What exactly is the court supposed to "see" in its deliberations? As we have noted, the Hillel-Shammai stories as understood by the *poskim* bid us to consider the ultimate spiritual maturity of the candidate. From the nineteenth century onward, the responsa which have dealt with various aspects of the issue of conversion have explicitly widened the "perspective of the court" to include various social and communal factors in exercising leniency or stringency. Compare, for example, the views of the late chief rabbis of Israel, Ben Zion Meir Hai Uziel (*Responsa Mishpetei Uziel* [Jerusalem, 1964], *Even ha' Ezer* no. 20 and *Yoreh De' ah* no. 14) and Rabbi Isaac Halevi Herzog (*Responsa Heikhal Yitzhak*, *Even ha' Ezer* no. 21) on the advisability and the permissibility of accepting as converts the civilly married spouses of Jews. Rabbi Uziel finds that even *ab initio* (*lek-hathila*) we may accept such converts, even though we have sincere doubts whether the convert will observe the *mitzvot*. Rabbi Herzog, however, finds that in the changed circumstances of Jewish society, where significant numbers of Jews no longer observe *mitzvot*, even where the convert declares his intent to observe the

mitzvot, there is a severe doubt whether such a convert should be accepted. Nevertheless, Rabbi Herzog himself suggests several circumstances where such converts could be accepted, leaving the final decision to the discretion of the local rabbi to whom the candidate had applied for conversion. In general, the phenomena of civil marriage and intermarriage have placed an even weightier responsibility on the shoulders of rabbis in their deliberations in cases of conversion. They must "see" the individual candidate, his or her prospective spouse, their children, and beyond the immediate family under consideration, the ultimate spiritual health and integrity of the wider Jewish community. We note in passing that all of these factors are legitimate considerations within the realm of *halakhic* conversions, and have nothing to do with the so-called "who is a Jew?" debate of the past few decades. We speak here of conversions carried out by traditional rabbis, and performed according to halakhic criteria.

The present question under consideration has in one way or another been dealt with by a number of rabbis over the past 150 years or so. (See the material collected by Rabbi Gedaliah Felder, *Sefer Nahalat Tzvi*, part 1, pp. 73–76; Rabbi Moshe Halevi Steinberg, *Hukkat haGer*, pp. 61–62, especially pars. 3–5; Prof. David Ellenson, "A Jewish Legal Decision by Rabbi Bernard Illowy of New Orleans and Its Discussion in Nineteenth Century Europe," *American Jewish History*, vol. 69, no. 2, December 1979, pp. 174–195, especially pp. 183ff.; see also Rabbi J. Simcha Cohen "The Conversion of Children Born to Gentile Mothers and Fathers," *Tradition* vol.22, no.4 [Winter 1987],pp.1-17) Interestingly enough, the questions on this issue usually dealt with the issue of circumcising the male child born of an intermarried couple where the mother was not Jewish. Once the permissibility of circumcising the child was established, the rabbis regarded as self-understood the necessity of convincing the father to ritually immerse the child, that is to complete the conversion process (see e.g., Rabbi Yehuda Leib Zirelson, *Responsa Atzei Levanon, Yoreh De'ah*, no. 64). Those rabbis who opposed the circumcision of such a child based their view, among other things, on the likelihood that the father would not complete the conversion process, and people might mistakenly regard the ritually circumcised child as a full Jew. Even where the conversion would be completed, the rabbis believed that such parents would not provide a proper Jewish environment for the converted child (see e.g., Rabbi Avraham Hakohen Kook, *Responsa Da'at Kohan*, no. 147 and no. 149). Writing at the beginning of the present century, the rabbis who adopted the stricter views regarded the intermarried Jew as a conscious rebel against the tradition and traditional society who had little trustworthiness in ritual matters, hence circumcising or converting the child would basically be a farce. Those rabbis who permitted the circumcision or the conversion of the child saw the very act of presenting the child for conversion as an act of contrition, as a voluntary act to

maintain contact with the Jewish community which the father was in no way obligated to do yet did so, or even as an opening for the ultimate repentance of the father himself. Another legitimate consideration was the loss of the offspring of a Jew (*zera' kodesh*) to the Jewish people. Finally rabbis on both sides of the issue had to square their views with the explicit statement of the Shulhan Arukh (*Yoreh De'ah* 268.7) that the *Bet Din* should accept as a convert a minor child whose gentile father presents him to the *Bet Din* for conversion, since this is something to the child's advantage (*zekhut hi' lo*). The Shulhan Arukh also notes that if there is no father, then the mother alone may present the child as a potential convert.

After considering the body of literature on this question and related issues, a common denominator of basic concerns emerges. First, a full conversion must be performed, not just ritual circumcision, and all necessary acts must be performed for the purpose of conversion (*leshem gerut*). Second, the child should be raised in a Jewish atmosphere, receive a Jewish education, and be exposed to the life of the Jewish community. Third, the Jewish parent must be an interested and serious Jew, and not an indifferent Jew just seeking some quick ritual "fix" to the fact that his offspring are not considered Jewish without conversion.

And fourth, the gentile mother should give her consent to the conversion (as in the Shulhan Arukh *loc. cit.*). Since this is not the optimal situation for raising a Jewish child, it would seem obvious that the involvement of the mother in the conversion process should be more than a *pro forma* consent, but rather a serious undertaking regarding the identity of her child, and a willingness to cooperate in whatever way possible in providing a supportive home atmosphere.

In the case under consideration here, it would seem on the surface at least that these concerns have been met. In the final analysis, though, this presentation of the halakhic material and concerns remains theoretical. As said above, everything depends on the perspective of the *Bet Din*. It is the local rabbi, familiar with all the relevant facts about the family in question, who has the weighty responsibility to decide if these twins should be admitted into the Covenant. This is indeed a *zekhut* for these twins, but we must try to the best of our ability to be sure that this will not be a liability (*hova*) for the Jewish people in the long run. If, after careful review of the situation, the local rabbi finds that the concerns articulated by the classical Jewish sources and more recent rabbis have been met, then ample precedent exists for proceeding with the conversion. May He who grants man wisdom and understanding endow us with the ability to "see" all the relevant factors and come to a decision in accordance with His Torah.

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