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THE CONVERSION OF CHILDREN BORN TO GENTILE MOTHERS AND JEWISH FATHERS

No rationale need be spelled out for a consideration of our topic. Current estimates are that one third of all marriages among American Jews involve a gentile partner, and few of them undergo a halakhically valid conversion. All halakhic authorities reject the notion of patrilineal descent, and the question naturally arises as to what our attitude should be toward Jewish men married to gentile women who want their children raised as Jews fully accepted by the halakhic community.

The key Talmudic text that deals with this issue is Ketubot 11a:

R, Huna said: A minor proselyte is immersed by the knowledge of (al da-r) heit din. What does this teach us? That it is an advantage for him [to be a Jew] and one may act for a person in his absence for his advantage. We have learned [already]: One may act for a person in his absence for his advantage but one cannot act for a person in his absence for his disadvantage! [Here, though.] you might have supposed that an idolator prefers a life without restraint [unbridled by Jewish law] because it is established for us that a slave certainly prefers a dissolute life; therefore he (R. Huna) tells us that this is said [only] in the case of a grown up person who has already tasted sin, but [in the case of] a minor it is an advantage for him [to become a Jew].

It seems that the preceding Mishna supports him (R. Huna). [It speaks] of a woman proselyte, a woman captive and a woman slave who have been redeemed, converted or freed (when they were less than three years and one day old)." Must they not have been immersed by the direction of heit din? Not here! The Mishna treats the case of a proselyte whose sons and daughters were converted with him, so they are satisfied with what their father does.

R. Yosef said: "When they come of age they can protest [against their conversion]."
A simple reading of the text is that a beit din may convert an infant gentile. The rationale is that being Jewish is considered a privilege, a zekhut, and one may confer an advantage upon a person even without his knowledge. This principle is recorded in the Shulhan Arukh (Yoreh De'ah 268:7) as the authoritative halakhah.

Yet straightforward as the Talmudic text appears, this basic halakhic principle was not accepted universally at face value.

In 1864, Rabbi Bernard Illov of New Orleans, a former student of the Hatam Sofer, ruled that sons born to Jewish fathers and gentile mothers could not be circumcised by a mohel. His rationale was that since such sons were not Jewish, the circumcision might cause people to mistakenly identify them as Jews. To solicit support for his halakhic position, R. Illov presented his case publicly in Der Israelit (an Orthodox Journal published in Germany), requesting the European Rabbinate to respond. Of major pertinence to us is the public exchange of views between Rabbi Zvi Hirsch Kalischer (1795–1894) and Rabbi Ezriel Hildesheimer (1820–1899). R. Kalischer permitted such a circumcision as well as the conversion of children born to gentile mothers, while R. Hildesheimer disputed his ruling and prohibited such conversions.

R. Kalischer made the following comments regarding the Talmudic discussion in Ketubot: Rashi contended that R. Huna’s dictum that the beit din may convert a minor relates to a case where the mother alone brought the child to beit din for conversion. The Talmudic text further contends that when the parents convert together with the child, R. Huna’s dictum is not applicable. This seems to suggest that in the original instance the mother did not herself convert when she brought her child to beit din for a conversion. Even though the child would be reared subsequently by a gentile mother, R. Huna permitted the beit din to conduct the conversion. As such, concludes R. Kalischer, if a beit din may convert one who will be reared by a gentile mother, considering it a privilege (zekhut) for the child, so much more so when the child’s father (a Jew) brings his son for conversion: the child wishes to emulate his father and we have good reason to expect the child to grow up Jewishly.

R. Hildesheimer retorted that we have no way of being certain that the gentile mother posited by Rashi intended to raise the child herself; perhaps either the child would be reared by observant Jews or it is known definitely that the gentile mother would rear the child according to the dictates of Torah and not avodah zarah. In the modern case of a gentile mother and Jewish father bringing their child to be converted, however, we cannot automatically apply R. Huna’s principle.

In 1949, when Rabbi Yechezkel Yaakov Weinberg (the last Rosh Yeshiva of the Hildesheimer Berlin Rabbinical Seminary) was asked his opinion in a case wherein a Jewish father and gentile mother brought their child to beit din for conversion, he did not focus on the argument as outlined here, but instead quoted the basic guideline which to this day serves as the pivotal negation of most child conversions: The Talmud in Ketubot rules that a beit din has the authority to convert a child; this is because being a Jew is a privilege (zekhut) and one may confer a zekhut without another’s knowledge. But to have a Jewish child grow up in a home that transgresses basic Jewish beliefs and observances is not deemed a zekhut, he said; it is rather a disadvantage and liability. Accordingly, a beit din has no authority to implement such a conversion. This guideline basically invalidates the legitimacy of the conversion of any child raised in a non-observant milieu. (Indeed, this principle has a far-reaching effect in another social issue: adoption. Jewish families seeking to adopt children are faced with a number of obstacles. Should they attempt to adopt a Jewish child, rabbinic authorities require exact data about the parents of the child to mitigate concerns about illegitimacy; frequently, the exact information is difficult to acquire. Accordingly, many people prefer to adopt a gentile child and convert the child during infancy. Yet, if the adopted parents of such a child are not themselves observant, a beit din may not convert the child.)

Though the argument mandating an observant familial milieu in order to validate a conversion may appear straightforward and logical, with all due respect and reverence, it seems that a fine reading of our text in Ketubot does not force such a conclusion. Consider the following questions:

1. Rashi notes that R. Huna’s ruling relates to a situation in which the mother brought her child to a beit din for conversion, suggesting that had the father been present the legal process of conversion might have differed. But, what is the pragmatic halakhic distinction between a mother and a father in this matter?

2. R. Huna states “Ger katan matbilin oto al da’at beit din” through the knowledge of beit din.” The phrase “al da’at beit din” connotes a special role for the court in the conversion of a child separate and distinct from its function during the conversion of an adult. What is this additional role?

3. Rashi states that “beit din becomes a surrogate father during the conversion of a child.” Why is such a status necessary and what purpose does it serve?

4. The Talmud states that R. Huna’s dictum may not be derived from the Mishna, as the Mishna refers to a case wherein the parents converted with the child. In that situation, the child is assumed to
principle, that bet din may convert a minor. R. Huna's case is different; he deals with a situation in which parents are not converting together with their child. In such a case, the problem of consent looms as a major issue. What authority does bet din have to convert a child without any concern as to whether there is consent to such a process? To this R. Huna innovates the concept that the conversion process is conferred "al d'at bet din." It is not the authority or power of bet din which is invoked, but rather d'at—knowledge, consent. That is, bet din affirms consent for the child, for being a Jew is a privilege, and one may confer a privilege upon another even without his or her knowledge. With bet din thus affirming consent for the child, the conversion is thereby presumed to be a voluntary process. This is the meaning behind Rashi's comment that the bet din becomes a surrogate father for the child: it becomes a surrogate parent for purposes of consent. Of interest is that this commentary of Rashi is cited by the Beit Yosef [Yoreh De'ah 268] who notes that the bet din "becomes the father of the child who is converted through their hands." In other words, the court has a unique role to play in the conversion of a child distinct from that performed at the conversion of an adult. In the former case, they guarantee consent to legitimize the conversion.

Of concern are the particulars of the case in which R. Huna presents his principle. It is clear that R. Huna is not dealing with a situation where parents converted with the child. The Tosefot Ral [Ketubot 11a] suggests that R. Huna deals with a case of either an orphaned, destitute gentile youth or a child who was captured; the Shita Mekubbezet presents other options. Yet Rashi maintains that R. Huna is dealing with a case of a mother who brings the child to bet din. Indeed, it is Rashi's view that must be seriously considered above and beyond that of other authorities, for it is Rashi's position which is officially recorded in the Codes (see Yoreh De'ah 268:7).

The implication of Rashi's interpretation is that had the father brought the child to the bet din, R. Huna's principle would not be operational. Indeed, the Bah specifically notes that when the father brings the child for conversion, d'at bet din is not necessary.7

Rashi apparently is of the opinion that no proper conversion can occur without the precondition of consent. Just as a child who converts with his parents consents to performing a similar act, a father has the authority to grant consent to a bet din for the conversion of his child. The determination of the religion of the child is the father's prerogative. Consequently, when the father grants consent to convert his son, the bet din is not needed to utilize its good offices for consent.
There are two options for interpreting Rashi’s position on the role of the mother:

1. Rashi believes that **beit din** has no authority to convert orphan children. **Beit din** cannot presume that the concept of **zekhut** is sufficient to imply consent. Consequently, only the wishes of a mother together with the concept of **zekhut** can enact a legitimate conversion.

2. Rashi feels that only a father and not a mother has the authority to grant consent; a mother’s views are immaterial (see glosses of R. Yaakov Emden).

Regardless of which interpretation we accept, the specific language of the **Shulhan Arukh** supports our general position: If a gentile child has a father, the father may convert him; and if he does not have a father and (himsell) seeks to be converted or his mother brings him to be converted, then **beit din** converts him. “for it is [deemed] an advantage to him (the child) and one may confer an advantage even without the beneficiary’s presence” [**Yoreh Deah** 268:7]. In the opening section, “the father may convert him.” In the latter section (where the father is not present), “**beit din** converts him for it is a **zekhut**.” The concept of **zekhut** is applicable only in the absence of a father bringing the child for conversion.

The text of the **Shulhan Arukh** forces us to understand that the entire aspect of **zekhut** is a material issue only when **beit din** must utilize the principle of **da’at beit din**. In such an instance, the consent of **beit din** is granted only when there is an assurance of observance of **mitzvot**. Otherwise, **beit din** does not authorize consent for the conversion. In an instance of a parent bringing his child to **beit din**, **da’at beit din** is not necessary for the conversion. Parental consent is sufficient and it may even be deemed a complete **zekhut** without any consideration of **kabbalat mitzvot**. Fathers have personal rights over their children, and children consider it important to emulate their fathers. Observance of **mitzvot** in no way affects this principle. The **Shulhan Arukh** clearly notes a distinction between the cases and rules that the concepts of **zakhn** and **da’at beit din** are not applicable when a father brings his son for conversion.

The above analysis argues against R. Weinberg’s halakhic challenge to the legitimacy of the conversion of children born to an irreligious Jewish father and a gentile mother, for in such an instance the concept of **zekhut** is not germane. Indeed, since the conversion is valid without the principle of **zakhn** or **da’at beit din**, any question as to whether it is in fact a **zekhut** or a liability is immaterial to the conversion process.

This suggests that the debate between R. Kalischer and Hildesheimer may have been more subtle than we thought.

R. Hildesheimer contended that R. Huna dealt with a case where either the mother gave the child to **beit din** to rear according to Torah values or it was certain that the gentile mother would ensure that the child observed **mitzvot**. In other words, since according to Rashi and the **Shulhan Arukh** approval of the mother is not sufficient to provide consent for a conversion, and **beit din** must therefore use the principle of **zekhut**, then the mother’s commitment for the child’s observance is necessary for **beit din** to assume that the process is indeed a **zekhut** and not a liability. But if the father brings the child to **beit din**, no commitment for observance is necessary. Parents cannot assume the commitment of **kabbalat mitzvot** for their children. The only reason parental consent may be necessary is to ensure that the conversion was not coerced. To assume that the Talmud discusses a case where **beit din** assumes total responsibility for the child is simply far-fetched. Or, one may conjecture that since a gentile mother’s commitment for observance is meaningless, **beit din** would not provide consent **al da’at beit din** unless it also assumed responsibility to rear the child. Again, such extra precautions would only apply when the conversion was **al da’at beit din**.

R. Kalischer contended that if the **beit din** could convert a child and return that child to the gentile mother’s home, it certainly should permit a child of a gentile mother to be reared by a Jewish father. When a gentile mother alone brings her child to a **beit din**, the principle of **zakhn** is applicable. **Beit din** must then manifest concern that religious observance transpires so that no future disadvantage results. But when the father brings the child to **beit din**, the principle of **zakhn** is immaterial and, therefore, concern for observance is totally extraneous to the issue.

Now, what difference is there whether a gentile father or a Jewish father presents his child to **beit din** for conversion? To the extent that “consent” of a parent is all that is necessary in such a case, there should be no difference in law. The original proposal to have Jewish fathers present their non-Jewish children to **beit din** for conversion appears to be based upon solid halakhic grounds. Since, moreover, **kabbalat mitzvot** is not necessary in this instance, the procedure would be readily acceptable to even the most non-observant Jew.

One possible criticism must be noted. According to Halakhah, gentiles follow patrilineal descent while Jews observe matrilineal descent. This means that from a halakhic view, the Jewish father of a child born to a non-Jewish woman is not the halakhic father of the son. The Jewish father may not have the right to express “consent” for a child that is not his halakhic son.
This criticism suggests that a gentile father but not a father may grant consent. But consent is simply a *gilui da'\alpha*, an expression of approval which must be elicited from the father of a child. Indeed, a child knows that a certain person is his father. To the child, there is no difference between a halakham father or a biological father. The concern is basically who has responsibility to make decisions for the child. If the child is sick, for example, a parent has the authority to sign “consent” for an operation. In ancient times, perhaps only the father could exercise comparable authority. In our society, the biological father has legal jurisdiction over a child; he may make a decision for the child relating to life and death. He, therefore, should have the authority to assume consent on actions for purposes of conversion for his child. Indeed, many *aharonim* have accepted this line of reasoning.

Rabbi Moshe Schik also discussed the propriety of converting a child born to a Jewish father and a gentile mother. He cited *Tosefta Yom Tov* [Mishna Ketubot 4:3, and Kiddushin 3:13] who rules that *beit din* should not convert gentle children. R. Schik suggested that *Tosefta Yom Tov* relates to a case of a Jewish father and gentile mother; since the male is not the halakham parent of the child he has no authority to submit such a child to *beit din* for conversion. R. Schik disagreed with this position. He suggested, rather, that a court, *lekhat hila* (ab initio), has no authority to convert gentle children, for the conversion process is a form of robbery from a gentile. To the extent that gentle children inherit their fathers, the conversion takes the child away from the family. As such, he reasons, the conversion is prohibited without parental permission. Yet, where parents consent, one may definitely convert the child. At no time does he discuss any need for observance of *mitsvot*.

Rabbi David Hoffman briefly cited this responsum and added the comment that “since according to the law of the government this father has authority over his son, even though he is not a son according to *Din Torah*, it is not a form of theft. As such, perhaps even *lekhat hila* one may convert the child, but certainly *bedi'avad* it is valid.”

Rabbi Avraham Yitshak HaKohen Kook also discussed this issue. He too maintained that even though a Jewish father is not the halakham father of a son born to a gentile mother, he still has the authority to submit the child to *beit din* for conversion. He utilized *Ketubot* 11a as substantiation for this principle. There the Talmud implies, according to Rashi, that when parents convert with their children, such children consent to the process. The Talmud makes no distinction as to whether the father converted prior to the conversion of the children or whether the father and children simultaneously converted. If the former is correct, then once the father converted he is no longer a gentile, but a Jew, and is no longer the halakham father of his son. However, he still has authority over his children to submit them to *beit din* for conversion. This proves, contends R. Kook, that even a Jewish father has authority over his non-halakham son. R. Kook notes that such authority may not depend on biology but may relate to anyone who is responsible for the rearing of a child.

(In terms of *pesak*, however, R. Kook required that the gentile mother should not protest the conversion. In addition, he refused to sanction such a conversion where *kabhalat mitzvot* is lacking. Though he suggested that *Tosafot*, Sanhedrin 68b, imply that *kabhalat mitzvot* is not required for the conversion of a child, he still felt that it is wrong to convert a child in a milieu where there is no probable opportunity for *kabhalat mitzvot*. Of interest is that R. Kook does not discuss the text of the *Shulhan Arukh* (Yoreh De'ah 268:7) which grants the father authority to submit his child to *beit din* for conversion without utilizing the principle of *zekhut* or any consideration of observance. As the *Shulhan Arukh* is the standard code, its conclusions should be granted halakhah priority over those of other scholars.)

It is clear that the requirement of “consent” is simply a means of preventing an involuntary conversion. It has nothing to do with a commitment to observe *mitsvot*. For this reason R. Yosef rules in our Talmudic text that upon maturity, such children converted during youth or infancy have an opportunity to renounce the conversion. Since such forms of conversion lack *kabhalat mitzvot*, the children are yet granted an opportunity to engage in this essential factor. This means that *kabhalat mitzvot* becomes necessary only when children have the capacity for such a commitment. Prior to maturity, a renunciation is not halakhically acceptable and upon the age of maturity the child is assumed to be automatically Jewish. When does the child have the opportunity to manifest either rejection or acceptance of his religious status?

Three options to express renunciation are presented by *Shita Mekubbeset* to our text in *Ketubot*.

1. Tosafot contend that upon the age of maturity the child is informed about the need to observe *mitsvot*. Should the child reject commitment, then he loses his Jewishness.

2. Ritva contends that R. Yosef speaks of a youngster who as a minor renounced his Jewishness, protesting his or her status as a Jew. Should this rejection persist until after the age of maturity, the child’s conversion is invalidated.
3. Rosh notes that the child is observed at age of maturity. Should he observe Jewish customs, then he is deemed Jewish. Should he not be observant, his status is invalidated.11

Kabbalat mitzvot may not be essential or even germane to the conversion of a child, but it is vital to the ultimate status of such a convert. Beit din is not absolved from its obligations upon the formal conclusion of the rituals performed in youth. It must convene at the child’s age of maturity to assess the status of the convert. For this reason Tosafot note that the child must be informed of the need to observe mitzvot. That is, beit din must convene and formally request kabbalat mitzvot. This procedure is a formal “act of beit din.”

It is apparent that Ritva does not require a formal act of beit din to extract a commitment of kabbalat mitzvot. According to Ritva, the child retains his Jewishness as long as he does not reject it as a youth and persist in his rejection till maturity. This suggests that the concern has nothing to do with kabbalat mitzvot. Ritva does not require any assessment of observance. This may be due to his theory that once kabbalat mitzvot is not feasible (e.g., at the conversion of an infant), the entire concern for kabbalat mitzvot is never material to that particular conversion. The concern is, rather, one of “consent.” For this reason as long as the child does not reject his Jewish status, the “consent” factor is implied and the child retains his Jewishness till maturity.

The position of Rosh is that kabbalat mitzvot is immaterial to the conversion of a child only because the child is unable to make such a commitment. This merely temporarily withholds such a requirement till a date when the commitment is physically and legally able to be assessed. Yet, no formal convening of beit din or kabbalat mitzvot is necessary. As long as the child is observed to follow Jewish customs, it is deemed sufficient to legitimize the conversion.

Hatam Sofer cites numerous opinions, including that of Bahag, who contend that if parents bring their child to beit din for conversion, even though the parents themselves do not convert, the child may not subsequently renounce the conversion, for the parents “accept the condition of the conversion for him.”12 The subsequent need of kabbalat mitzvot is nonessential. Once consent is provided for the conversion, it remains valid even without a subsequent kabbalat mitzvot.

In 1934, Rabbi Hayyim Ozer Grodzinski modified the above pesak of Hatam Sofer by contending that only children who are reared as observant Jews may not subsequently renounce their Jewish status. However, if during minority they violated Jewish law, then they retain the option of renunciation. But violation of Halakhah alone is not tantamount to renunciation: a formal renunciation is required. Though he felt that a beit din should preferably not be involved in such cases, he explicitly suggested that the rabbis should not publicly “storm” against such conversions and denigrate them, for according to Halakhah the conversions are valid.13

Whatever the final rule on the renunciation process, it is a problem to be resolved within the halakhic community as to the most desirable or practical, pragmatic procedure. This concern in no way invalidates or questions the principle that a Jewish father may legally convert his offspring from a gentile mother. Logic, moreover, could extend this concept to permit a non-observant Jewish father to halakhically convert an adopted gentile child. Since the concern is not for the observance of mitzvot, but rather for consent, even a non-biological father who is a surrogate father as a result of state law and responsible for the rearing of the child should have the halakhic authority to grant “consent” to a conversion.

Coupled with the above analysis there is another principle that sharply mitigates the charge that to be reared in a non-observant home is a liability and not a zekhut.

Rabbi David Halevi Horowitz, a distinguished scion of a Rabbinic family and Rav of Stanislav (1862-1935), was posed, in 1930, the exact question discussed herein by his son, Rabbi Moshe Halevi Horowitz of Vienna. The case involved a man who married a gentile woman through the civil courts and subsequently had a son. A scholar forbade the couple to circumcise or convert the child. The rationale was that it is not a zekhut or advantage but a distinct disadvantage for a child to be reared in a non-observant home. Accordingly, any conversion would be invalid. R. Horowitz disagreed, maintaining that beit din had a mitzvah, an obligation, to perform the conversion. The contention that probable future non-observance disqualifies the zekhut of the present and therefore invalidates the process was discounted for the following reasons:

1. Since the Shulhan Arukh and early commentaries did not mention such a concern, we should not presume to be wiser (or more cautious) than they.

2. The Talmud states (Rosh Hashanah 16b) that a person is judged according to his deeds at the moment. (Rashi notes that this is applicable to a person who will eventually do evil.) Substantiation is the verse that “God has heard the voice of the lad there where he is” (ba-asher hu sham; Genesis 21:17 and Rashi’s commentary). Thus, even though Ishmael was subsequently to pillage and murder, he was still saved, for God judges each person at the moment of prayer without a view towards what will be in the future. This principle teaches us that a future disadvantage or liability does not in
present. Indeed, to discount the present due to the future
ation of this concept.
3. Every man may yet do *teshuvah*.
4. The *zekhut* of circumcision cannot be denied because of
future transgressions. The Talmud notes that circumcision is great in
that it is blessed with thirteen covenants [*Nedarim* 31b]. This *zekhut*
is not to be discounted.14

Thus the concern that non-observance invalidates the *zekhut* of
being a Jew is negated as an innovative apprehension not supported by
Halakhah.

Support for the position that qualms over a child's future
observance of *mitzvot* do not invalidate the halakhic status of a
conversion may be derived from Tosafot, *Ketubot* 11a. Tosafot
discuss the propriety of utilizing the concept of “*zakhin le-adam she-
lo be-fanan* (acting for a person in his absence to his advantage)” to
validate the conversion of a gentile child. They suggest that the
principle of *zakhin* is deemed rabbinic in nature only in cases where a
probable liability may occur. One may, therefore, not utilize *zakhin*
to set aside *terumah* on behalf of another person, for any allocation
above the bare minimum may be more or less in amount than the
other wished to allocate, and the action may therefore entail a
potential liability. In the case of a conversion, however, which is a
complete advantage (*zekhut gamur*) the concept of *zakhin* may be
applied even from a Biblical perspective. (This means that children
converted by a *beit din* are classified as complete Jews even according
to Biblical law.)

This response requires clarification as to why the case of
*terumah* is deemed a liability and that of conversion classified as a
clear *zekhut*. It is possible that a person may subsequently express
approval for any *terumah* allocations made on his behalf. At the
same time, it is also possible that he may reject such actions. Does
not the case of conversion also contain these potential dual, contrary
reactions? The child may subsequently either renounce the
conversion or accept it willingly. Where is the distinction? A suggested
solution is that the principle of *zakhin* does not relate to subsequent
actions or considerations. It deals with the psychological state of
mind at the very moment of the action considered. At the moment a
certain quantity of *terumah* is set aside, it is conceivable that one may
consider such quantity excessive and therefore not approve of the
action. This possible consideration of a liability at the moment of
action (setting aside *terumah*) is sufficient to declassify it from a
biblical viewpoint from being a complete *zekhut*.

At a conversion, however, there is no conceivable liability at the
very moment of the conversion itself. A potential, subsequent
rejection of the process does not enter into the considerations at the
moment of conversion. Children have no liability in becoming
Jewish, especially infant children. Since at the moment of conversion
no liability exists, conversion is therefore deemed a complete
advantage.

Thus according to Tosafot qualms over the irreligious milieu of
a child convert cannot and should not invalidate the *zekhut* of the
conversion even when *beit din* utilizes the concept of *zakhin*. To an
infant child, at the moment of conversion the religious observance or
non-observance of parents is immaterial. Accordingly, a future
liability should not invalidate a clear, present *zekhut*.15

The issue of converting children born to gentile mothers has, of
course, been treated by contemporary *posekim*.16 Of special interest
is the position of *gedol dorereinu*, Hagaon Rav Moshe Feinstein,17 of
blessed memory. This writer some time ago sent a draft of this paper
to R. Feinstein for his comments and criticism. His grandson, Rabbi
Mordechai Tendler, who acted as his assistant and spokesman, wrote
a response, dated Rosh Hodesh Kislev 5746 (November 14, 1985), in
which he stated:

> Though within your *pishul* there are items [with which], perhaps, we do not
agree, the basic approach is apparent to us and on numerous occasions we
have so ruled. Yet in all cases we try, whenever it is possible, to set up
arrangements for the observance of *mitzvot*. That is, that the parents should
agree to provide a Jewish education for the child, or that they should agree to
eat only kosher [food] in the home, or that they will not violate Shabbat
publicly or all these conditions. This orientation was noted by mori *a-zekhen*,
in his responsa [*Iggerot Moshe* Yoreh De'ah, Part I, No. 158].

> Concerning an adopted child, it is not so simple to consider one who
rears him to be like a father in this matter according to Din, but most likely
such is the case.18

More recently, R. Feinstein's last volume of *Iggerot Moshe* included
a responsa to teachers at a day school where a substantial number of
the students had gentile mothers who had not been properly
converted. His advice was to convert the children:

> They do not need *kabhatz mitzvot* and can be converted at *da'at beit din*. It is
a *zekhut* for them; inasmuch as they are learning in a religious school under
the tutelage of pious teachers, they will probably grow up to be *shomeret Torah*.
While this is not certain, it is certainly a *zekhut*. And even if they do not
grow up to be *shomeret Torah*, it seems logical that it is still a *zekhut* as even
Jewish sinners have *Kedushat Yisrael* - the *mitzvot* that they do are *mitzvot*,
and their sons are to them unintentional. Thus they have a greater *zekhut* than
being gentiles.19

Orthodox Jewry is becoming a fortress separated from the
general Jewish community. We feel it should not simply write off vast
numbers of transgressors as outcasts. As long as Halakhah provides a device to properly convert children of intermarriage, this device should be utilized aggressively to make contact with vast numbers of Jews. It is an opportunity to crystallize rabbinic initiative and leadership. Should, for example, the beit din require a day school education as the essential requirement for conversion, then such children, at least, have a probable chance of becoming true Torah Jews. A public policy of conversion before a proper beit din places the process of conversion exactly where it should be: in the sphere of competent beinor Torah knowledgeable of Halakhah.

Our concern is not to suggest authoritative halakhic policy on either side of the issue. It is, rather, to present an option that requires the forum of halakhic dialogue by scholars. We hope that this discussion will serve as a frame of reference for the decision.

NOTES

1. R. Bloch's call was published in Der Israelit, 1864, No. 52. R. Hildesheimer's position was published in Der Israelit, 1865, No. 5. In the same year, R. Kaischer wrote a personal response to R. Hildesheimer concerning this issue. In the Festschrift zum 30jährigen Antzjubiläum des Herrn Rabinbri Dr. Solomon Guttmach in Liebeck (July 16, 1910), Dr. Meier Hildesheimer brought his contribution to the volume a correspondence between his father Dr. Ezriel Hildesheimer and R. Hirsch Kaischer of Thorn. This exchange was subsequently included in the Responses of R. Ezriel Hildesheimer, Nos. 229, 230 (London, 1969).

2. Ezriel of the disputants was a great Torah scholar. R. Kaischer was internationally known as aobarber of the Zionist idea. Though his most famous work, Betzoh Tzioni, was an attempt to legitimize Zionist concerns within the religious community, he also published two major halakhic volumes entitled Even Bahan and Mezawyn la-Mishpah. He was the rabbi of Thorn and as a youth was a disciple of two universally acclaimed masters of Halakhah: R. Akiva Eger of Posen and R. Yaakov of Luthebaum.

3. R. Hildesheimer was the Ray of the Adas Yisroel Orthodox Congregation of Berlin. In 1873 he established a Rabbinical Seminary of which he was Rosh ha-Yeshiva. This yeshiva became a central institution for the training of Orthodox rabbis in Europe. As a youth he studied under R. Yaakov Eltinger of Altona, the acclaimed scholarly author of the Arukh ha-Ner commentaries on Talmud.

4. See Ligeret Mosi't, Yoreh De'ah, No. 162; also R. Yosef Hekin, Hasperos, Sept. 1965, p. 7.


6. See R. Selmono Klieger [Responsa Taur ha-Dor, Vol. 2, 111] who rules that khabbatat nissuvah without minah and teivah is meaningless. Yet, minah and teivah even without a prior khabbatat nissuvah is sufficient to validate the conversion from a biblical viewpoint. Indeed, he notes that the requirement of khabbatat nissuvah prior to other rituals is not a Rabbinic law.

7. Bah, Tub, Yoreh De'ah, 387.


10. See Arukh ha-Shulhan, Yoreh De'ah 268/13, who cites all three theories.

11. See Arukh ha-Shulhan, Yoreh De'ah 268/13.


14. The Stoned states that present actions should not be disqualified because of premonitions over future observance may be bolstered by the following:

The Talmud (Horakhot 11a) records that King Hezekiah was informed by the prophet, "Set thy house in order, for thou shalt die and not live" (Isaiah 38:1). What is the meaning of "thou shalt die and not live?" Thou shalt die in this world and not live in the world to come. He [Hezekiah] said to him, "why so bad?" [sulah] replied, "Because you did not try to have children," he said. "The reason was," he said, "the Halakha that the boy is issuing from me would not be a geburah." [Isaiah] said to him, "What have you to do with the secrets of the All-Merciful? You should have done what you were commanded, and let the Holy One, Blessed be He, do that which pleases Him."

From this we derive the rule that man must strive to do a mitsvah even though the future result may be ominous. Man's role is to observe a present mitsvah and not detract from such observance due to premonitions over the future. The same applies to the conversion of a child. Its present status of a mitsvah may not be disqualified because of future observance. The commentators content that although Hezekiah's children may be evil, his children's children may yet be righteous [see Yom Yom, Ein Yaakov, Berakhot 11a]. Similarly, a convert may grow up in an irreligious home but feel pride in his Jewishness, He, or even his child's child, may yet return to Torah.

The "Haal Eshuvah" movement throughout the world substantiates this concept.  

15. This explanation challenges the position of Rabbi J. David Bleich that the Talmud itself negates the validity of child converts reared by unobservant parents. His argument is as follows:

Referring to our Talmudic text, R. Bleich suggests that should one conceive of a situation wherein sin took place, then it is evident that the conversion is not valid. 

child reared in an irreligious home certainly tasted sin and should be comparable to one who prefers a dissolute life.

Yet, even this objection, R. Bleich counters by noting the position of Tosafot. Sanhedrin 66b, that the ger converts himself and does not need the principle of zekhut. Accordingly, the fact that the conversion is not a complete zekhut should not invalidate the process [Hajureves, Vol. 58, No. 2, Nov. 1983, pp. 17-19]. This position simply may not be derived from the text.

A. The Talmud in Ketubot deals with minor children, including a child of seven or ten years of age. Indeed, the Shulhan Arukh [Yoreh De'ah 268:7] rules that R. Huna’s dictum relates to children who come to beit din by themselves. Such children have been reared in a gentile home prior to conversion. They have not observed commandments prior to conversion. They could conceivably be described as “living in sin.” Yet, the Talmud still makes the distinction between a minor and an adult. It says a minor has “not tasted sin,” namely, a minor’s experience with sin is not equal to that of an adult. His judgment valuing sin over commandments is not granted validity.

The fact that all minor children regardless of age are acceptable for conversion, clearly indicates that the milieu of the child convert has no bearing on the legitimacy of the conversion.

16. Rabbi Elya Pruzhiner notes that the principle of zekhut has legal standing for a minor only if at the moment utilized there is a clear privilege accruing to the minor [Halakhot Elyahu, Part I, Even ha-Ezer, 33]. R. Pruzhiner’s theory has been erroneously cited as specifically relating to conversion, i.e., that the privilege must be evident at the time of conversion and not be based upon the possibility thereof in the future. [See R. Melech Schachter, “Various Aspects of Adoption,” Journal of Halakha and Contemporary Society, Vol. IV, Fall 1982, p.101; he cites ch. 31.] Halakhot Elyahu articulated a general rule and never explicitly related it to conversion. Indeed, as noted, the halakhic status of innocence of a minor deems all actions on his behalf as a complete zekhut at the time of conversion.

17. See Iggerot Moshe, Yoreh De’ah, Vol. 1, No. 158, where R. Feinstein rules:

1. The concept of zekhut is not applicable when a father brings his son to beit din for conversion.

2. A Jewish father may bring his child born to a gentile mother to beit din for conversion. Even though such a person is not the halakhic father, he yet has the authority to convert his child.

R. Feinstein also adds a nuance of pragmatic importance relating to the conversion of children. He suggests that it would be proper (nachum hadarav) to re-immense child converts in mikveh when they reach maturity. Why? In our country it is not so certain, he writes, that conversions of children are a complete zekhut since it is probable that the children will not observe Shabbat and may violate other prohibitions. Notwithstanding such concerns, the conversion is still a zekhut, for Jewish sinners are deemed better than gentiles. In addition, perhaps the zekhut is simply the fact that a child consents to do that which his father requests. Also, when the mother converts, the zekhut is complete. As such, it is probable that the conversion of children is, indeed, a zekhut. Yet, to eliminate any qualms over the matter, it is advisable to re-immense the child at maturity.