From Periphery to Core

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In this article, I survey and analyze major stages in the fascinating growth of extremist positions on conversion to Judaism (*giyyur*) within Israeli rabbinic circles in recent years, up to September 2010. (The current hot-spot of controversy, relating to *giyyur* within the Israeli Defense Forces, is still “in process” and thus not covered here.) Throughout the article I make some general observations, and toward the end I also make draw some conclusions as to what all this reveals. Hopefully, the reader will gain some insights into interesting aspects of the history and the contemporary reality of the Orthodox rabbinic world in Israel.

Background: The Appearance of Novel Views within Hareidi Halakha Before the 1980s

The *Shulhan Arukh* explains (*Yoreh De'ah 268:3*)that acceptance of the commandments is a stage of the *giyyur* process that should take place in the presence of three (i.e., a Bet Din). This might be taken to mean that if there was no discrete segment of the ceremony called "*kabbalat haMitzvoth*” (acceptance of the commandments), then, even if all other parts of the ceremony took place, the candidate—who entered the ceremony as a non-Jew—remains a non-Jew as before. This interpretation

of *Yoreh De'ah* 268:3was hotly debated by leading rabbis (see, for example, Avi Sagi and Zvi Zohar, *Transforming Identity*, 2007, ch. 11). In addition, even those rabbis who agreed that *kabbalat haMitzvoth* is absolutely required did not agree upon what this requirement means (see *ibid*., ch. 12–13. More recently, Rabbi Hayyim Amsallem has discussed and analyzed all these views in his magisterial *Zer'a Yisrael*, 2010, ch. 1–2).

In the late nineteeth century there developed within proto-Hareidi halakha a novel view of the requirement of *kabbalat haMitzvoth*. First formulated by Rabbi Yitzhak Schmelkes in 1876, this view held that the main event in any *giyyur* is an internal one: acceptance of the commandments means internal, subjective commitment by the candidate at the time of *giyyur* to practice all the commandments after becoming a Jew. This definition gave rise to an epistemological problem, which had not existed when acceptance was defined as a performative act: the event had to occur in the presence of the court, but—how could the court ascertain the occurrence of a completely internal and subjective intent?

Rabbi Hayyim Ozer Grodzinski (1863–1940) attempted to mitigate the problem by noting its limited scope. In general, he points out, halakha assumes correlation between a proselyte's declaration of commitment to praxis and her internal intent. Thus, *prima facie* any proselyte who makes such a declaration is considered to have the appropriate internal intent. Only in specific cases might this general rule be suspended, by the principle of confirmed presumption (*umdena deMukhah*). Since the event of *kabbalat haMitzvoth* must be part and parcel of the *giyyur* ceremony, such a confirmed presumption that during her declaration of *kabbalat haMitzvoth* the proselyte lacked proper internal commitment to do so, could applied by the court only if at the time of *giyyur* clear dissonance was apparent between the proselyte's life-context and her declaration of commitment (Responsa *Ahiezer,* vol. 3, #26). Non-performance of mitzvoth after the completion of the ceremony was completely irrelevant. In addition, toward the end of his Responsum, Rabbi Grodzinski stated that courts have discretion on such matters, and that if a court decided to rely upon the position of the great Rabbi Shlomo Kluger and to conduct a *giyyur* procedure to resolve a situation of intermarriage, this was halakhically sound.

In fact, it was extremely rare even for rabbis of this school to invalidate a proselyte who had already undergone *giyyur*.This is not surprising, for as

Menachem Finkelstein points out (in his book *Conversion: Halakha and Practice*, 2006), *ex post facto* invalidation of *giyyur* is in contradiction to the basic principle of the finality of *giyyur* once the proselyte has "immersed and come up" (see *Yebamoth* 47b).

The Axelrod Innovation: A Transformative Halakhic Development

However, in the latter part of the twentieth century, a revolutionary development took place (the following section is heavily indebted to ch. 14 of *Transforming Identity*). Several rabbis developed an innovative method to overcome the hypothetical character of the evaluation of the proselyte's inner intent. They argued that the proselyte's inner intent at the time of *giyyur* is reflected in her subsequent actual praxis. If after *giyyur* the convert does not observe the commandments, this serves as unimpeachable proof with regard to her original (defective) intent.

Available evidence indicates that the first rabbi to publish this position was Rabbi Yitzchak Brand, who wrote:

> Due to lack of acceptance the *giyyur* is totally annulled. This shall become clear over the course of time: if she subsequently fails to observe the commandments, she is considered an absolute Gentile. (*Briti Yitzhak*, 1982, p. 26)

Brand's analytical innovation does not seem to have had any public effect. However, such effect was achieved byRabbi Gedalya Axelrod, son of a leading Chabad rabbi, who in the early 1980s was a member of a rabbinical court in the city of Haifa, then served as *Av Bet Din* until retiring in 2001, and currently is a leading proponent of Chabad messianism. He, along with other Hareidi judges serving on rabbinical courts, was outraged by what they perceived to be the infringement of their jurisdiction in the realm of *giyyur* by Chief Rabbi Shlomo Goren, who in the late 1970s had established special courts to conduct ceremonies of *giyyur*. At the beginning of 1983, Rabbi Axelrod addressed a halakhic query to Rabbi

Yosef Shalom Elyashiv. Born in Jerusalem 1910, Elyashiv served as a judge in the Israeli rabbinic court system until 1974, and then established himself as a major leader of the ultra-Orthodox “Lithuanian” public in Israel. (Rabbi Axelrod’s query and Rabbi Elyashiv's *Responsum* appear in a photocopy appendix to a booklet titled *The Halakhic Value of A Certificate of Giyyur* (*Te’udat HaGiyyur beMivhan haHalakha*), edited by three rabbis (H. Pardes, A. Atlas, and G. Axelrod), and distributed to Israeli rabbinic marriage registrars on 24 Ellul 5743 (2 September 1983). In 1995 Rabbi Axelrod published a volume of his collected *Responsa* under the title *Migdal Tzofim* (Haifa, self-published), and in sections 29–31 therein printed much of the above material]. Rabbi Axelrod wrote:

It is known to me, that there are many persons who underwent a procedure of *giyyur* (*ma’aseh gerut*) in the Holy Land, by an Orthodox rabbi, but had no intent whatsoever to accept upon themselves the yoke of Torah and commandments. It is clear, that their declaration made in the presence of the rabbi overseeing the *giyyur* that they accept upon themselves to observe, to perform, and to uphold [the commandments]—was merely lip-service. Is it the duty of a rabbi registering them for marriage to investigate and to interrogate the proselyte who applies for marriage with a [born] Jew or Jewess, if they indeed intended to accept upon themselves Torah and commandments?

Although Axelrod provided no evidence for his contentions, Rabbi Elyashiv responded as follows:

It is very simple, that there is no [valid] *giyyur* without acceptance of Torah and commandments. And if the proselyte has no intention to really become a Jew, to take shelter under the wings of the *Shekhinah*, to observe the Sabbath without transgression, and to uphold the covenant, and his only objective is to attain his material goals and to fulfil his desires, the *giyyur* lacks all validity… and since—according to your question—many of the proselytes are of this type, there is a duty incumbent upon the rabbi registering the marriage to investigate and to interrogate before he issues a marriage permit for them. "So that Gentiles

will not mix in with the Holy Seed" [a clear allusion to Ezra 9:2].

The very existence of such an interchange is worthy of note: Rabbi Axelrod, a hard-core Chabad believer, addresses a halakhic query to Rabbi Elyashiv, a leading “Lithuanian” rabbi, at the same time that tensions between Rabbi Shakh (then the greatest Lithuanian authority) and Chabad were at their highest ever (leading to the 1983 split within Agudat Yisrael)! Axelrod brings no proof for his contention that Orthodox rabbis accept for *giyyur* persons who blithely lie about their intention to observe the commandments but simply states that this is “known to him,” He proposes a plan of action: placing the responsibility for the validation of these proselytes’ Jewishness upon the marriage registrars, who should check whether the proselyte had the proper internal positive intention—commitment to observethe commandments—at the time of *giyyur*.

However, unlike what Rabbi Axelrod suggested, what Rabbi Elyashiv ruled was that the registrars must check, if at the time of *giyyur* there had existed external circumstances that indicated internal *negative* intent of the proselyte invalidating her declared commitment to praxis (i.e., whether there were sufficient grounds for an “presumed assumption” at the time of *giyyur,* negating the validity of the acceptance of commandments). Eliashiv’s ruling was thus still within the conceptual framework proposed by Rabbis Grodzinsky et al., and he did not accept the more radical innovation proposed by Axelrod.

Nevertheless, the historical significance of Axelrod's initiative and Eliashiv’s response is tremendous. From earliest times, the members of the court of *giyyur* were entrusted with the function of guardians of the threshold of Jewishness: only if they accepted a non-Jew as a worthy candidate could he undergo *giyyur*. However, if they decided that a non-Jew was indeed worthy, and he underwent a process of *giyyur* under their auspices, he had irrevocably crossed the threshold into Jewishness and had become a Jew once and for all. Rabbi Axelrod—himself receiving a salary from the State of Israel—casts aspersion upon the Orthodox Batei Dinof Israel. He claims that they were worse than all previous courts, had betrayed their responsibility, and had failed to prevent the infiltration of Gentiles into the Jewish ranks. Since the courts of *giyyur* had fallen into the hands of the Zionists, a new line of defence was required. This line

would be manned by the (presumably Hareidi) marriage registrars, who would deny the possibility of marriage to “false” proselytes. This shifting of responsibility to the registrars was endorsed by Rabbi Eliashiv—until his retirement a dayanin the Israeli rabbinic system, but now acting as an overtly Hareidi authority.

Indefatigable Zealotry

Although Elyashiv did not agree with Axelrod that the criterion for determining such insincerity could be (non-) observance of the norms of halakha at the time of registration for marriage*,* this did not deter Axelrod. In 1983 he composed a halakhic treatise(later included in *The Scandal of the Forged Giyyurim* [*Sha’aruriyat haGiyyurim haMezuyyafim*], Jerusalem, The World Committee of Rabbis for Matters of *Giyyur*, 1989) in which he took a major step beyond previous positions. He argued that the criterion the registrars should apply was observance of a halakhic lifestyle at the time of registration. If a proselyte came to register for marriage but did not seem to be observing the commandments, the registrar should interpret this as reflecting lack of sincere *kabbalat mitzvot*. If so, the certificate of *giyyur* in the (so-called) proselyte’s possession had been obtained fraudulently, and he should not be considered a Jew. In this treatise, Rabbi Axelrod claimed that *ex post facto* invalidation of *giyyur* when the proselyte failed to consistently maintain a religious lifestyle is explicitly supported by the entire halakhic tradition, including the Talmud, Maimonides, the *Arba’ah Turim*, and the *Shulhan Arukh*.

Axelrod found three lesser rabbis—all serving as rabbinical judges in Israeli state courts!—who supported his novel position: Rabbis Joel Kloft (head of a rabbinical court in Haifa), Shlomo Teneh (head of a court in Tel Aviv)and Shlomo Shimshon Karelitz (a veteran judge from an important rabbinic family).Rabbi Kloft wrote to Axelrod three weeks after Elyashiv’s *Responsum*, arguing that since the great Rabbi Elyashiv has ruled on the matter, it is imperative to follow his guidance. According to Kloft the upshot is that “the registrar should investigate if the proselyte fully and completely observes the Torah of Israel, and if he is not observant, he is a

complete Gentile.” On 15 November 1983, Rabbis Teneh and Karelitz concurred. Karelitz wrote: “It is our duty to investigate and find out if indeed this proselyte who comes before the registrar is a real proselyte and observes what he promised at the time of the *giyyur*.” Teneh wrote that since Rabbi Elyashiv had ruled on the matter, it is incumbent upon the marriage registrars “to check at the time of registration if the proselyte **b** of Torah and commandments.” Failing to notice the disparity between Axelrod's contentions and Elyashiv's responsum, these three rabbis focus on the proselyte’s behavior at the time of registration for marriage as the crucial determinant of his Jewishness.

At this point it should be noted that serious knowledge of the halakhotrelating to *giyyur* were never part of the classic Lithuanian yeshiva curriculum, nor was such knowledge part of the material that students were required to master in order to receive *semikha* (rabbinic ordination). Thus, it is perfectly possible to become a dayan(rabbinic judge) and even an Av Bet Din(chief justice of a rabbinic court) without any systematic command of the halakhot relating to *giyyur*. In addition, while highly detailed works of halakha proliferated in the latter decades of the twentieth century with regard to almost all areas of religious life (as Haym Soloveitchik noted well in his classic "Rupture and Reconstruction"), no such systematic and rigorous work on *giyyur* was ever written by any rabbi until last year, when Rabbi Amsallem published *Zer'a Yisrael*. Therefore, rabbis who were ordained without significant knowledge of the realm of *giyyur* had no way to access such knowledge without devoting much independent study to the topic. But who had time for that? This at least partially explains why dayanimsuch as Kloft, Teneh, and Karelitz were open to accept Axelrod's self-declared expertise on the topic, and unable to note the nuances of difference between him and Elyashiv.

Be that as it may, Axelrod convinced two other rabbinical judges to form an action committee with him, and on 31 August 1983 they sent out copies of the treatise to all the marriage registrars in Israel. The purpose of the action committee was to enlist the registrars as guardians of the threshold of the Jewish people, i.e., even if the proselyte had “fooled” a rabbinical court into enabling him to undergo *giyyur*, his intent to join the Jewish people would be thwarted by his inability to marry a Jewish spouse. Subsequently, the committee conducted a campaign to force the Chief Rabbinate of Israel to disqualify all certificates of *giyyur* that had been issued to proselytes who failed to follow a halakhic lifestyle after

undergoing *giyyur*. They convinced 180 rabbis to sign a manifesto phrased as follows:

We the undersigned, rabbis and rabbinical court judges in Israel, request you to examine the lifestyle of hundreds and hundreds of proselytes in the kibbutzim, in the cities and elsewhere, and to ascertain if they observe the commandments—or if they received certificates of *giyyur* through deceit, and their *giyyur* is false.

The logical ground of Axelrod's innovation, clearly supported by the three rabbis' letters and this manifesto, is the existence of a dichotomy between two possibilities: Either the proselyte observes the commandments at the present time, or his *giyyur* is retroactively "discovered" to have been invalid and he is not Jewish. Now, not only does this not accord with all pre-Hareidi halakhic sources; it does not even accord with the positions of Rabbis Grodzinski et al., who raise the possibility of invalidating a *giyyur* only on the basis of a "confirmed presumption" with regard to the proselyte's mindset at the moment of *giyyur* itself. In brief, Rabbi Axelrod successfully initiated a transformational halakhic change.

Whose Turf?

Although an individual rabbi may come up with a novel interpretation purely as the result of an intellectual speculation, the willingness of many rabbis to support such an innovation may indicate that beyond halakhic reasoning per se, additional considerations have an effect. A close reading of Axelrod's treatise reveals at least some of these factors. He writes that in the past, *giyyur* had been in the hands of the regular rabbinic courts that could be relied upon to accept only worthy candidates. However, with the establishment of the preparatory schools (*ulpanim*) for *giyyur*, and the removal of a large number of *giyyur* processes from the jurisdiction of the [regular] rabbinic courts, the situation had taken a turn for the worse:

And the judges of the [regular] rabbinic courts had warned of this praxis in their conventions in 1979, 1980, 1982, 1983. And they had unanimously decided to turn to those responsible for *giyyur* in Israel, calling upon them ensure that *giyyur* would be performed only in the regular rabbinic courts… and that the *giyyur* of soldiers be performed not by the Israeli Defence Forces' rabbinate but transferred to the jurisdiction of the regular courts.

Clearly, a central concern expressed in this text is that of jurisdiction. A matter previously under the monopoly of the regular rabbinic courts had been transferred to the jurisdiction of "special" courts established for that purpose. What this text fails to mention is that the "special" courts were established in response to the perception that the regular courts were alienating and/or rejecting most candidates for *giyyur*. The regular courts were predominantly staffed by ultra-Orthodox rabbis, whereas the "special" courts were staffed by relatively moderate Orthodox rabbis. The campaign of the rabbinical judges is thus a campaign to preserve (or fully establish?) the hegemony of the ultra-Orthodox vision of the meaning of Jewish existence.

Significantly, while the Chief Rabbinate did not at that time change its policies on this matter, neither the Chief Rabbis nor the Israeli legal authorities took any disciplinary steps against the signers of the manifesto, nor against Axelrod himself. Such reticence would of course be unimaginable had 180 judges of the secular court system come out with a manifesto against, say, a decision by the Minister of Justice to transfer some legal matters to the jurisdiction of specialized courts. Thus, the case of *giyyur* reflects the general problematic of the Chief Rabbinate and the State authorities' relationship toward rabbinic statements—even when made by rabbis who were themselves civil servants.

Since Israeli law attributes legal validity to certificates of *giyyur* issued on the basis of *giyyur* ceremonies performed by the special rabbinical courts, marriage registrars are required by law to accept these certificates as evidence of Jewishness, and to register the bearers of such documents for marriage with a Jewish partner. This creates a conflict between the novel view of Axelrod et al. requiring the registrars to deny registration to many of these applicants, and the legal obligations of the registrars. Rabbi Axelrod addressed this problem directly:

When there is a conflict between [Israeli] law and halakha, the rabbi acting as marriage registrar is obligated by halakha and not by law, and he is obligated by halakha to refer the bearer of the certificate to the [regular] rabbinic court, and not to allow him to marry before clarification of his status.

Here, too, one might expect that as a civil servant, Axelrod would have been taken to task for inciting other civil servants to act against their legal obligations—and here, too, this did not occur. Indeed, five years after Rabbi Axelrod initiated his novel move, Rabbi She'ar-Yashuv Cohen, chief rabbi and chief rabbinical judge of Haifa (where Axelrod served as a rabbinical judge), attests (in his article "*Ger sheHazar leSuro veEino Shomer Mitzvot*" [A Proselyte who Retracted and who does not Observe the Commandments], *Torah SheB'al-Peh*29 (1988), 33–43)to the influence of Axelrod's innovation:

It is quite common in rabbinical courts, that proselytes who underwent *giyyur* according to halakha under the auspices of rabbinical courts and outstanding expert rabbis, are interrogated later on by rabbinical judges to check if they are actually observant of the commandments. Some of them admit to the judges that currently they are not observant, and it sometimes happens that the court casts retroactive doubt upon the validity of the *giyyur* and refuses to confirm that they are Jewish even if for a brief period after their *giyyur* they observed the commandments and only later "reverted [to a non-observant lifestyle]."

Rabbi She'ar-Yashuv Cohen argues that this position is halakhically incorrect; but by his own admission it is clear that rabbinic courts—at least those in Haifa—were operating against the express ruling of the city's chief rabbi. This itself demonstrates how quickly Axelrod's innovation was accepted by his peers.

A Vector of Extremism

With the passage of time, Rabbi Axelrod's position became even more extreme. His original formulation was that the marriage registrars are "required" to validate the certificates of *giyyur* on the basis of the proselyte's current religious praxis. However, in 1995 he published a "Responsum" in the official organ of the Israeli Rabbinical Courts ("Observance of Commandments as a Condition for [Valid] *Giyyur*" (Hebrew), in *Shurat haDin*(*The Letter of the Law*), Vol. 3 (Jerusalem, *Sha'ar haMishpat*Institute of the Directorate of Rabbinical Courts, 1995), pp. 175–190). When compared with his 1983 booklet, one major change that becomes apparent is that he now postulates that marriage registrars are *forbidden*by halakha to arrange *any* marriage for a proselyte, without first validating the *giyyur* on the basis both of current religious observance and of religious observance during the period immediately following the *giyyur* ceremony. The fact that the proselyte presents to the registrar a certificate of *giyyur* signed by the official Chief [Orthodox] Rabbinate of Israel is irrelevant for the purpose of determining her current status:

The certificate of *giyyur* is not considered by halakha as a certificate of Jewishness, but only as a certificate affirming that the bearer underwent circumcision and immersion in the presence of a court. But s/he nevertheless falls under the law that s/he "should be regarded with reservation until his righteousness becomes apparent."

The last sentence refers to Maimonides' *Mishneh Torah*, Laws of Forbidden Intercourse, 13:17. However, the original meaning of Maimonides' proviso is quite different from the meaning attributed to it by Axelrod, as no disqualification of *giyyur* is implied by this phrase. In addition, Maimonides applies this proviso only to proselytes who were not informed at all about the commandments and who underwent *giyyur*in an unofficial ad hoccourt of laymen. Axelrod applies it to all proselytes across the board.Axelrod explains that in the past, the presumption was that a person who underwent the process of *giyyur* would observe commandments, since the entire Jewish society was observant. However:

All the Responsa that we quoted above, and others that we did not cite, indicate that in our times the presumption is that the intention of those seeking to undergo *giyyur* is to mislead the court when they say that they will observe the commandments, while in their heart they are far from such intent… and the court has no permission to allow those seeking *giyyur* to fool them.

This paragraph contains two significant statements. One is that the general assumption with regard to all candidates for *giyyur* should be that they are cheaters. This is diametrically opposed to the entire halakhic tradition, including even the views of ultra-Orthodox rabbis from Grodzinsky to Eliashiv, who all hold that a proselyte's declaration is sincere unless proven otherwise. The second significant statement by Axelrod is that (*pace* Grodzinsky) the court has no discretion regarding candidates who are willing to profess commitment to religious praxis but may be misleading the court: all such candidates must be totally refused access to *giyyur*.

Rabbi Axelrod's novel analysis led him to outline unprecedented halakhic guidelines with regard to certificates of *giyyur*:

The [halakhic] consequence of our discussion is that the following wording must be added to certificates of *giyyur*:

> a. This certificate is valid only if its bearer observes Torah and commandments.
>
> b. The validity of this certificate is limited […] and must be renewed once a year.

On this view, not only can *giyyur* be retroactively disqualified, but it automatically becomes invalid if it is not renewed or if the proselyte fails to fully observant Orthodox lifestyle. Thus, only a person who was born to a Jewish mother is irrevocably Jewish. All others are on eternal probation, and their Jewishness is always completely contingent. Can one imagine a

position more diametrically opposed to that of the Talmud in Tractate *Yebamoth*, which goes out of its way to stress that even if the proselyte reverts to pagan behavior immediately after immersion “he is like a Jew in every respect”?!

Retroactive Annulment of *Giyyur* by Israeli Rabbinic Courts

State rabbinic authorities in Israel have not officially adopted this position of Axelrod *de jure*. However, they have also never stated that retroactive annulment of *giyyur* is contrary to halakha and out-of-bounds to state-employed dayanim. The ever-present possibility that a rabbinic court might retroactively cast aspersion upon a *giyyur* that happened many years earlier means that the finality of any specific act of *giyyur* is *de facto* eternally contingent. In February 2005 the Knesset Committee on Aliyah, Absorption, and the Diaspora was assured that for 15 years there had been no case of retroactive annulment of *giyyur* (Declaration by Rabbi Moshe Klein of the National Authority for *Giyyur* in the transcript of the committee’s 207th meeting online at http://www.knesset.gov.il/protocols/data/html/aliyah/2005-02-09-01.html). However, the facts were otherwise. Thus, in 2002 a special rabbinic court for matters of *giyyur* ruled that because of non-observance after becoming a proselyte, the *giyyur* of a certain Mrs X

is annulled because of doubt. We therefore rule that her status is that of “indeterminate proselyte.” The halakhic implication of this ruling is that Mrs X is forbidden to marry a Jew unless she undergoes a new process of *giyyur* and this should be made known to the marriage registrars. Similarly, she is forbidden to marry a Gentile. (The judges of this court were Rabbis Zvi Lifshitz, Judah Pris, and Moshe Ehrenreich. The official decision of the Rabbinical Court was signed by the above on the 17 Tammuz 5762 (27 June 2002) and confirmed by Rabbi David Mamo, Head Clerk, on 11 July 2002.)

On this view, continuous performance of halakha after the *giyyur* ceremony is a *sine qua non* for the Jewishness of the proselyte. Lack of performance at any subsequent time can be construed as undermining the validity of the *giyyur.* Should this occur the person may find herself in a much inferior position to where she was before: neither Jew nor Gentile, she is forbidden to contract marriage with any human being.

In 1992, a woman of Danish birth went through a yearlong process of *giyyur* under the auspices of the Israeli rabbanut (a result of which her original family disowned her). She then married a Jewish man in an Orthodox Jewish ceremony, and they had three children, all of whom were, of course, Jews by birth. Fifteen years later, in 2007, the couple reached a mutually agreed decision to divorce, and underwent a process of divorce in the Ashdod rabbinical court. When the woman later requested a document confirming that she was a divorcee, Rabbi Avraham Atiyyah of the Ashdod Rabbinical Court suspected that she was not religiously observant, and asked her if she observed halakha with regard to Shabbat and family purity. She replied in the negative, and Atiyyah said that she should go home and would in due course receive the proper document. Several months later, she received a nine-page decision authored by Atiyyah, from which it transpired that he had (unasked, of course) taken upon himself to determine if her *giyyur* was valid, and decided that it was not. Rabbi Atiyyah stated that since it was now clear that she had never been a Jew, her marriage had never been valid, and no divorce was required to terminate it. In addition, he declared that the children born to the couple were non-Jews. Significantly, the majority of sources quoted by Attiyah were composed by Axelrod.

Inter alia, the document contains a vitriolic attack upon the special courts of *giyyur* operating under the auspices of the Israeli Chief Rabbinate. Arguing that the rabbis serving on those courts are apostates, Attiyah states that in his view they are *ipso facto* halakhically disqualified from serving as judges and therefore, all procedures of *giyyur* conducted under their auspices are invalid, whether or not the converts were religiously observant!

Appeal to the Supreme Rabbinical Court—and the Court's Hard-Line Decision

The woman’s lawyers appealed this completely gratuitous decision to the Supreme Rabbinical Court of Israel. Chief Rabbi Amar appointed three of the court's judges to decide the case. Two were in favor of upholding the appeal, i.e., of ruling against Attiyah; one, Rabbi Abraham Sherman, wanted to reject the appeal. Sensing that he was in the minority and that his opponents would carry the day, Sherman declared "I can't make up my mind (*eini yode'a*).” This stymied the procedure. Subsequently, a new panel of three judges was appointed (in a manner contrary to the normal procedures of allocating such cases) with Sherman at its head and another judge, Rabbi Hagai Isirer, who held similar views. Rabbi Amar instructed the panel to withhold decision until he himself could deliberate upon the matter, but this time, Sherman had no difficulty in making up his mind. The court turned down the appeal and ruled (on February 10 2008), that Druckman et al. were illegitimate dayanim. Citing Hareidirabbis almost exclusively, refraining from citing any sources holding alternate views, receiving no witnesses, and without even hearing what Druckman had to say on the matter, Sherman stated these reasons for disqualifying Druckman and “his” courts:

1. They agreed to accept candidates whom they knew would not follow a religious lifestyle. And this was opposed to the entire halakhic tradition. A rabbi who rules against the entire tradition is ipso facto disqualified from serving as adayan.
2. By accepting such candidates, they were sinning against the Torah injunction not to place a stumbling block before the blind. Specifically, they intended to turn this person into a Jew, but, since he as a Jew would then not follow the mitzvoth, he would be punished by God, and thus his Jewishness was for him a stumbling block—placed there by the rabbis who “converted” him. Conversely, if the *giyyur* was invalid (due to lack of *kabbalat haMitzvoth*), Druckman et al. were placing a stumbling block before the general public, who would be mislead into thinking the “converts” were Jewish, while in fact they were still Gentiles. Such a sin disqualifies a person from serving as a dayan.
3. In addition, another rabbi had claimed that Druckman signed some conversion certificates despite not having been present at the *giyyur*. This

proves that Druckman is a liar—a sin that disqualifies him from serving as a dayan.

4. Furthermore, several halakhic articles written by rabbis associated with the special courts for *giyyur* revealed that they felt motivated to accept candidates for *giyyur* in order to act for the general good of the Jewish People, and to prevent intermarriage and assimilation. But such considerations, wrote Sherman, were foreign and extraneous to halakha: An individual could be accepted for *giyyur* only based on his individual merits, not because of general policy considerations. By employing such considerations, these dayan*im* were further disqualifying themselves from constituting a valid court.

   Since all the courts acting under Druckman's auspices were revealed to have been disqualified from at least 1999, and since there was reason to doubt their qualifications from the inception of their activities even before 1992, all *giyyurim* carried out by them could not be validated. Thus, all persons converted by them were either Gentiles or of doubtful, liminal status—perhaps Jew, perhaps not. The upshot was that none of these people or their descendents could be considered Jewish. (see this decision online at http://www.nevo.co.il/Psika_word/rabani/rabani-5489-64-1.doc).

   Rabbi Isirer added, in a concurring decision, that even if some of the converts had sincerely intended at the time of *giyyur* to observe some of the mitzvoth—such as Sukkoth, Pessah, fasting on the Day of Atonement, and the like—this had no bearing on their lack of *kabbalat haMitzvoth*. The reason for that is that there is no religious meaning at all to the observance of select mitzvoth; rather, what is required is absolute and unconditional subservience to God's command. Living as a “traditional” Jew has no halakhic value at all.

   Common to both Sherman and Isirer was a total disregard of the effect their ruling would have upon the specific woman whose *giyyur* they had undermined after 15 years, upon her three children who were suddenly declared non-Jews, and upon the thousands of persons converted by Druckman, as well as their spouses, children, family relations, and so forth. The main thing was, to get the law right, whatever the consequences: *yiqov haDin et haHar!* Although halakhists in the past would always extend themselves to the utmost to free even one *agunah*, and although Torah tells us that we must demonstrate the utmost kindness toward converts, here we have rabbinic judges on the Supreme

Rabbinic Court doing the exactly the opposite: selecting only sources that support an exclusivist agenda, placing thousands of persons in an *agunah*-like limbo, and behaving cruelly toward thousands of converts. Apparently, by the fiat of declaring these persons non-Jews, all norms requiring decency toward them were *ipso facto* suspended. Upon further consideration one realizes that of course, these poor persons were in fact but pawns in the zealous crusade to discredit Druckman and his Zionist band of apostate accomplices.

Needless to say, this decision, effectively denying the Jewishness of thousands of persons who had gone through the laborious and extended *giyyur* procedure required by the special courts—courts manned by dayanim chosen by the Chief Rabbis themselves—caused an uproar. Rabbi Amar was caught in a bind, between his public position as Chief Rabbi (and Chief Justice of the Supreme Rabbinical Court), his personal relation with his sponsor rabbi Ovadiah Yosef (who did not support Sherman, but did not censure him), and his deep fear of Rabbi Eliashiv, aged 99 and supreme doyen of all Hareidi rabbis in the world, the mentor of Rabbis Sherman and Isirer and fierce critic of the special courts (see rabbi Ben Shim'on's statement, below). Amar's situation was complicated by the fact that most legal minds agreed that according to law, there was no way open for the Chief Rabbi to overturn a decision of the Supreme Rabbinical Court—i.e., of Sherman and company.

In June 2008, the woman and her lawyers, together with many women's organizations and public organizations, appealed to the Supreme Court of the State of Israel, claiming that the Supreme Rabbinical Court had acted in ways that were opposed to basic equity, to human dignity, to Israeli law, to halakha, and to elementary rules of rabbinic court procedure and jurisdiction, and therefore the decision should be declared void. A most eloquent document, the appeal is available online atwww.kitrossky.org/proselytism/Bagatz.doc. At the time of this writing, the Israeli Supreme Court has not yet issued a final verdict on this matter.

Rabbi Nissim Ben Shim'on on the Totalitarian Character of Hareidi Halakhic Discourse

After much procrastination, Rabbi Amar decided to utilize a loophole in the Sherman decision: the fact that the court had not decided conclusively that the woman who appealed Atiyyah's decision was not Jewish, but rather, that her status was “indeterminate.” He therefore appointed (two years after the Sherman decision) a “special” court of three rabbis, to determine conclusively if she was Jewish or not. This court, led by Rabbi Nissim Ben Shim’on, focused exclusively on two specific questions: 1. Was the Druckman court disqualified at the time they converted this specific woman? 2. Could it be proven that at the time of *giyyur* the woman had not accepted the mitzvoth?

Answering both of these questions in the negative, Rabbi Ben Shim’on determined (in September 2010) that the original *giyyur* remained in force, and the woman was therefore a Jew. Pointedly refraining from taking a more general stand on issues of *giyyur* praxis and policy, Ben Shim’on explicitly stressed another vital matter:

A leading Av Bet Dinrecently told me that he supports [a certain interpretation favoring a slightly lenient view]. I do not want to publicize his name, lest his name be added to the list of the "burnt" (*haSerufim*) […] the situation is becoming intolerable: if a rabbi relies upon the Ahiezer [who conceded that a court may rely upon Kluger] he is considered to be the worst […] if a rabbi—who is a *rosh yeshiva*, a *gaon* and a great scholar—does not follow "The Line" and does not rule in accordance with the view of that rabbi whom "they" decided is "The Posek—there is none other than he (*haPoseq v'Ein Od miLevado*),” then he [the too-independent *rosh yeshiva*] is no longer called a rabbi and all his rulings are discredited, not only the *giyyurim* that he performed. In addition, "they" threaten rabbis whom they suspect might not rule in accordance with "their" will, that his name will be added to the list of the "burnt.” But we, thank God, are immune, and we do not fear the FI"RE (*haE"SH,* an oblique reference to either ***E****lya****Sh****iv* or ***A****braham****Sh****erman*) and we follow the rule "Scatter the FIRE yonder" (*v'et haEsh zre hal-ah* [BaMidbar 17:2]).

In this revealing passage, Rabbi Ben Shim’on, Av Bet Dinof a District Rabbinic Court, portrays the atmosphere of fear that now pervades Orthodox-Hareidi rabbinic circles. Certain zealots have decided to impose

a totalitarian vision of halakha, and to undermine and discredit (“burn") any rabbi who does not toe the line and follow the person crowned as the One-and-Only decisor (posek). Employing the classic rabbinic tool of literary allusion, Ben Shim’on compares these zealots to the 250 rebels who sought to illegitimate the leadership Moses and Aaron and replace them with Korah. So too, these zealots seek to undermine the duly appointed and authorized Chief Rabbinate, and also to force all rabbis to accept the dictates of a self-righteous usurper.

Comments

What can we learn from all this?

One thing that can be seen clearly, in retrospect, is that halakha has not frozen in some pre-modern state. Hareidi rhetoric aside, dramatic changes in the religious positions of completely Orthodox rabbis and in central areas of “Orthodox” halakha have occurred in the past 150 years. Arguably, more dramatic change has occurred within Hareidi halakha than within so-called “centrist” and “Modern Orthodox” halakha—and this may be one reason for (or symptom of) the obvious vitality of the Hareidi world.

Second, these changes did not occur overnight. Seemingly, a single dayanfrom Ashdod, in a single decision made in 2007, ruled that thousands of *giyyurim* were invalid—and suddenly, due to Sherman and Isirer's ruling in 2008, this became the official position of the Israeli Rabbinic authorities. However, anyone who monitored the discourse, trends, and activities of the Hareidi rabbinic world in Israel could have seen that far from appearing *ex nihilo*, certain tendencies had been building up steam since 1876, when rabbi Schmelkes first interpreted *kabbalat haMitzvoth* as an internal psychological event. For a hundred years, this school of thought gained vogue in certain Hareidi circles, but had virtually no practical application. This was because other halakhic views were (still) in vogue, and the refusal by Hareidim to convert *gerim* did not preclude acceptance by other Orthodox rabbis worldwide—and in Israel too. At first, true-blue Hareidi rabbis refused to serve in the

rabbinate of the Zionist state. But there were many Diaspora-educated rabbis who were not Hareidim, but Orthodox and pragmatic, and when they served in the Israeli rabbinate they realized full well that responsible persons in public office should follow a middle-of-the-road approach. Thus, when the mass immigration in Israel's early years brought many intermarried couples and their children to the shores of the Holy Land, these rabbis did their best, within traditional halakha, to facilitate their *giyyur*. Later, as Hareidiyeshivot in Israel expanded, a double change took place: More and more extreme attitudes became fashionable, and more and more graduates of the yeshivot needed jobs. Many of them—more ideologically extreme than the elder generation of Diaspora-educated rabbis—began to apply for positions within the Israeli rabbinate and rabbinical court system, becoming dayanim, town rabbis, and the like.

As a result of this gradual infiltration of the Israeli state rabbinate, less benign attitudes toward those applying for *giyyur* began to prevail. This led Rabbi Shlomo Goren (chief rabbi from 1973 to 1983) to establish special courts for *giyyur*—thus circumventing the regular courts of “his own” rabbinate. However, his term of office ended in 1983; significantly, it was in 1983 that Axelrod turned to Eliashiv with his innovative proposal. The time was now ripe for the Hareidi rabbis serving within the state rabbinical establishment to assert themselves against the establishment's official policies—and the rest, described above, is history.

Furthermore, Goren—and his Sephardic peer Rabbi Ovadiah Yosef—were both strong and self-confident men, not afraid of any other rabbis. Both of them had been steeled in adversity, branded as mavericks from an early age, and reached their positions despite whatever more conventional rabbis thought of them. In 1983, their term of office ended, and they were replaced by more accommodating men, who were not “into” confronting disarray within the ranks. Thus, when 180 rabbis and dayanimsigned a manifesto against official rabbinate policy, or when Axelrod's 1995 article called for placing all *gerim* on eternal probation, or when marriage registrars began to question the validity of the rabbinate's own certificates of *giyyur*—no action was taken against these manifestations, and it became quite clear that a Hareidi dayanor marriage registrar could speak up brashly and/or actively subvert rabbinate policies—and continue to draw an attractive salary from the coffers of the state.

The basically anomalous character of state-rabbinate relations in Israel heavily contributed to the flowering of Hareidi attitudes within the state rabbinate. To a great extent, this is because of the dichotomic character of the way Israelis map attitudes toward religion: either you are secular (*hiloni*) or religious (*dati*). In the eyes of the conventional Israeli secularist, religion is a matter for the *datiyyim*: Let them do their own thing in the realm allocated to them, as long as they don't bother us too much. The *datiyyim*, for their part, including the Zionist Mizrahi movement when it was in the ascendant, encouraged this attitude: don't you secularists mix in on our turf. Thus, civil service functionaries and secular political leaders bent over backwards to avoid taking a position on “internal” religious matters, and state authorities were much more reticent in disciplining state functionaries who were rabbis, than in disciplining any other state-employed personnel.

Finally,while rabbis serving on the “special” courts for *giyyur* were (and are) at heart in favor of encouraging *giyyur*, they never developed a serious *de jure* halakhic foundation for the *de facto* leniency they were practicing. When I tried to understand from them how they justified to themselves acceptance of converts who later would most likely not perform many ritual mitzvot, they tended to reply that "perhaps at the time of *giyyur* their intention was sincere" or that "over time they will come to observe many more mitzvoth.” In other words, these rabbis themselves were (and are) not at all sure, that the (historically novel) halakhic position of their Hareidi antagonists is mistaken. This is no less true of Rabbi Amar (not to speak of Rabbi Metzger, who was appointed as a placeholder by Eliashiv). How then could they convincingly rebut the Axelrod/Eliashiv damning critique of their leniency? Of course, as Rabbi Hayyim Amsallem has powerfully demonstrated in *Zer'a Yisrael*, the lenient position in *giyyur* is halakhically much stronger than the Hareidiconstruct invented in modern times—but to write such a megaesterial work of halakha one has to be a serious *talmid hakham* and—in addition—has to have independence of mind and the courage of one's convictions.