Modern Orthodoxy: A Crisis in Leadership

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Not long ago, we celebrated Hag haShavuot, the Festival of Weeks, the holiday that traditionally commemorates the giving of the Torah at Mount Sinai. At that particular juncture in history, the wandering, newly freed slaves went through a transition from being the Sons of Jacob to becoming the People of Israel. Translated into modern terms, they converted to Judaism. Prior to that time, they were halakhically considered to be Noahides, *Benei-Noah*. Interestingly enough, according to the rabbis, this national conversion was forced upon them. The Sages tell us that God suspended Mount Sinai over the Israelites and said: "If you accept the Torah, then that's all well and good. Otherwise, this is going to be your graveyard." (The rabbis go on to say that at a later point in history, in the time of Mordekhai and Esther, the Jews finally accepted God's commandments of their own volition.) What the Sages are telling us here is that there was a transition in identity. The Israelites didn't really know what they were getting into; the Torah had not yet been given to them. Nevertheless, the people said, "*na'aseh ve-nishma*," we will do it, and we will learn what to do.

In this story, the Israelites took upon themselves the obligation to become different people without actually going through any formal conversion, a process we now call *giyyur*. It is on Hag haShavuot that we also read the story of Ruth, a beautiful tale in which we hear how Ruth takes upon herself a new identity to become part of the Jewish people. As she said in her famous words, "Where you go, I will go, your people will be my people, your God will be my God," and so forth. Ruth, like the Israelites at Sinai, did not really know what she was getting into. She didn't ask questions as to what sort of commandments she would need to follow, how many sets of dishes she would need, or whether she would need to purchase separate dishtowels for milk and meat. She simply wanted to be a part of the Jewish people, and she took upon herself a new identity.

It is these sorts of sources, along with talmudic discussions, that led Maimonides to his formulation of the requirements of conversion to Judaism. He says that when a person comes to convert, he or she should first be discouraged. We say: “Do you really know what you're getting into? Surely it's easier to be a non-Jew. You can eat whatever you want; you can act more or less as you wish.” However, if the potential convert nonetheless says, "No, this is what I really want," then we teach that person a sprinkling of the laws, some of the more difficult commandments and some of the easier ones—and then we accept him or her as a Jew. The convert goes to a Bet Din, a religious court, which needs only to consist of three laymen (unlike today’s requirement for a convert to attend a Bet Din consisting of three rabbis). Maimonides goes on to say that if after the conversion process, the convert becomes an idolater, he or she has the status of an apostate Jew. In other words: Once a Jew, always a Jew. Maimonides’ position finds different formulations in subsequent sources, such as in a responsum of the Tashbetz, R. Simeon b. Tzemah Duran (vol. 3, no. 44). There is no way to retroactively revoke a conversion, regardless of the actions of the convert.

One of the great authorities of the beginning of the early twentieth century was Rabbi Hayyim Ozer Grodjinsky, the author of the Ahiezer Responsa. Rabbi Grodjinksky argued that the basic requirement for a conversion to Judaism is a renunciation of the convert’s former religious identity. Therefore, a person converting to Judaism need not immediately take on all the commandments; he or she doesn’t even need to know all of the commandments! Indeed, in earlier generations there were no classes for would-be converts. Rabbi Akiva Eger, for example, regarded such classes as inappropriate, since one is not permitted to teach Torah to a non-Jew. Even if nowadays we do not hold such a position, it is clear that in the past, at any rate, such future converts were not expected to have a detailed knowledge of halakha.

The conversion situation today is completely different. In Israel, in Europe, and in the United States, Orthodox Batei Din are very stringent. They make the conversion process an obstacle course for a person who wants to become Jewish: One needs to go through long courses of instruction. One must be adopted, as it were, by an Orthodox Jewish family in order to experience what it means to have a Jewish life. One must prove one’s knowledge and commitment to all of the commandments. And, after all of this work, the would-be convert *might* be accepted. This process—without a guarantee of acceptance—takes many, many years.

Let me relate a story. Some time ago in Israel in the city of Ashdod, a woman came to get a divorce, a *get*, from the local Bet Din. The judges of the Bet Din examined her case, and they noted that the woman had converted to Judaism almost ten years earlier. When asked whether she observed the commandments, the woman answered honestly, "No, not so much nowadays." One of the judges then said, "In that case, your conversion is retroactively annulled." He then wrote a long response, in which he gave all the reasons for his decision. He argued that since the woman’s conversion has been retroactively annulled, she was never Jewish. She therefore was never married by Jewish law and would not require a religious divorce. The woman was shocked. One can imagine how she, who for a decade had believed herself to be a Jewish person, raising a Jewish family, suddenly is told that she and her children are not Jewish—and never had been! The woman appealed this ruling before the rabbinic Supreme Court, which had dissenting opinions. Some of judges in this court overruled the Ashdod decision. But three of the judges confirmed it—and went even further than the original judge in Ashdod, calling into question *all* the conversions that had been done by the Bet Din of Ashdod where this woman had been converted. This Bet Din was established in 1994; thus fifteen years’ worth of conversions were now cast into doubt. We're talking about more than 10,000 people who had been converted over that period of time in the Bet Din of Rabbi Druckman. The rabbinic Supreme Court judges who wrote this opinion added something I believe is completely preposterous: They argued that one of the reasons the Bet Din was invalid was because Rabbi Druckman was an apostate Jew! Why? Because his position on the issue of conversion was a liberal one, one different from their own.

Anybody who knows Rabbi Druckman personally knows that he's a wonderful, warm, pious, charismatic person.

The argumentation put forward by these three judges is problematic. First, slandering another person in a court ruling is unacceptable. Second, it is by no means clear whether one Bet Din can invalidate the ruling of another Bet Din. The reasons the judges gave were largely trivial and can be demolished by any basic rabbinic scholar. Moreover, the whole question of whether it's possible to retroactively annul a conversion is itself also questionable. Still, despite the holes in this ruling, it had an immediate and enormous impact on the Jewish community.

Ironically, this decision came to the public eye on Erev Shabbat of the Parashah in which we read of *inui hager*, the prohibition against afflicting a convert. Imagine families sitting around the Sabbath table not knowing whether they are Jewish or not; husbands uncertain whether they have lived for a decade with a non-Jewish wife; children who are educated in Jewish schools, not knowing whether they are Jewish or not; young women and men engaged to be married, wondering whether the Bet Din will accept them as Jews—or whether they will need to cancel their weddings. We are not talking about a single family. We're talking about thousands of families, perhaps even more than 10,000, who had undergone this whole process over more than a decade. Rabbi Druckman had been appointed by the government, by the Prime Minister's office to be in charge of the *minhal ha-giyyur*, the official government organization that deals with conversion. This government institution has two distinct courts that deal with conversion and are independent of the other Batei Din. One comes under the jurisdiction of the Ministry of Justice, for personal status law; the other under the jurisdiction of the Prime Minister's office. There has always been a tension between these two courts. The normal Batei Din always thought of themselves as the sole arbiters of Jewish law, and therefore they felt that they were a cut above the dayanim, the rabbinic judges, who dealt with conversion. Hence, there was political tension as a background to this particular problem; but it came to a head in this particular issue.

This conversion affair created a furor on the part of Modern Orthodoxy. Rav Amar, the head of the rabbinic Supreme Court, is the only person who has the authority to overrule this ruling, and he found himself in a very difficult situation. On the one hand, he was aware of the complete injustice of this court's ruling. On the other hand, he had gotten his appointment through the lobbying and support of the Hareidi community. He therefore felt, in a sense, subservient to that community and its leadership. After much hesitation, Rav Amar came out with a statement that he does recognize all these conversions. Nonetheless, the damage was done. The Hareidi community will not accept these converts or let their children marry Jews from families that include converts from the Bet Din in Ashdod.

In order to get to the heart of this issue, we need to understand what has happened to the rabbinic court system over the past few decades. Judges in the rabbinic court system are appointed by a special committee. This committee has been monopolized by the Hareidi community, since members of this community have a majority of votes. Unfortunately, everything in Israel is politicized—including religion. Over the past several years, this special committee has consistently appointed Hareidi rabbis to serve as dayanim. About a year ago, there were over a hundred young rabbis who had taken the examinations for the dayanut, and who were eligible for a position of dayan. There were only about six places available—and all of them went to Hareidim. This is also true of the previous period of some four years earlier. Representatives of the Modern Orthodox community went to the Supreme Court and argued that this discriminatory appointment process was unacceptable, and they demonstrated that there were other candidates who were no less eligible, according to their examination results. The Supreme Court then passed the issue over to the Minister of Justice, urging him to reconsider these nominations. The Minister did reconsider them, and eventually confirmed them all. After a great deal

of pressure from the Modern Orthodox community, other positions were made available. Still, most of Israel's Batei Din are ruled by dayanim that come from the Hareidi camp and who have very little general secular knowledge.

Many of you are acquainted with the *agunah* problem, in which women with recalcitrant husbands who refuse to grant them a *get*, or religious divorce, are "chained" in their unwanted marriages. We know that there are solutions to this problem, and there are solutions in Israel that are readily available because the law permits the exertion of social or monetary pressure to force a husband to give a *get* to his wife. The recalcitrant husband's professional license may be taken away; his bank accounts may be frozen; he may even be jailed. However, the religious courts today do not use the authority vested in them because they are afraid of what is called a *get me'useh*, an enforced divorce. This seems strange, because according to halakha, one is permitted to force a person to give a divorce! Nevertheless, the dayanim, most of whom are functioning under the influence of Hareidi leadership, are not willing to use their authority because the way of Hareidi halakha is one of stringency, of *humrot*, rather than leniency.

In order to understand even more fully the situation that is emerging, let me relate to you yet another story. The head of the Bet Midrash at the Institute of Advanced Torah Studies at Bar Ilan University brought to my attention a ruling that was published by the rabbinic courts in Israel in the year 2000. The case was as follows: A young woman came to register for marriage. The Bet Din in Jerusalem—and we know who the dayanim are—looked into the case and noted that the bride-to-be's mother had been a widow. This woman's first husband had been blown up in a tank during the Yom Kippur War. In the Shulhan Arukh, in the section that deals with the question of *agunot*, it is stated that if a husband vanishes, and we do not know what happened to him (we do not find the majority of his body, or his face), then he is declared missing, and we cannot definitely declare him as dead. Even if we find his clothing, we cannot identify the corpse by this clothing because it is possible that somebody else borrowed those clothes. The court in Jerusalem that dealt with this subject stated that this former husband who had been blown up in a tank, and whose body had not survived, could not be definitively identified as being dead. Consequently, his wife was now presumed to have been an *agunah*, and since she had remarried, in accordance with the ruling of the army Bet Din, and subsequently gave birth to this daughter, her daughter has the status of a *mamzeret*, an illegitimate child. The 2000 ruling declared: "We advise [the mother of the bride-to-be] to go to such and such a court, a Bet Din that has dayanim who are God-fearing people!" Such a slur upon the military Batei Din is absolutely unconscionable.

The dayanim in this case were apparently unaware of what happens in a tank. When a tank is blown up, nothing much remains in that tank: maybe slivers of bone, maybe bits of charred flesh, stains of blood on the metal walls. The soldier's identity tags will probably survive, and there are always at least two, one which he has around his neck, and the other which he keeps in a little slot in his leather boot—but his body and his face will not survive. Unfortunately, I know this all too well because during the Lebanese War, I witnessed first-hand the picking up of the remnants of bodies in blown up tanks. I know how one climbs into a burnt tank, scrapes the walls, and picks up little bits and pieces, and puts them into plastic bags, and brings them for identification. One asks neighboring tank units to give additional testimony, and the bits of body parts that do remain are then examined for their DNA. This is the process of identification—and there is no doubt as to the identity of the killed soldiers. Apparently the dayanim in this "learned" Jerusalem Bet Din had absolutely no idea what the identification process entails. And what did they do? They declared the woman an *agunah*, and a possible adulteress, and her daughter as a possible *mamzeret*.

There are two areas in halakha where the law states very clearly that you *always* should take a lenient position: One of these is in the case of an *agunah*. Our sages went so far as to change the laws of testimony in the case of the *agunah*: One can rule on the basis of one single witness and not two. One can accept a woman's testimony, which is normally not accepted. One can receive hearsay as evidence, and so on and so forth. Maimonides states very clearly that even though it may look as though this is a serious issue of *arayot*, forbidden marriages, and one may justly ask why halakha should have gone so far to change the laws of testimony, it is in order to free an enchained woman, and to do this we must do everything we can to take the lenient path.

The other area in which the halakha goes out of its way to reduce a person's pain, anguish, and stigma, is, of course, the issue of *mamzerut*. The Talmud tells a story of a woman whose husband went abroad for a year. At the end of that year, the woman gave birth to a baby. How did she give birth to a baby if her husband was not there for a year? We are told to suspect that she was pregnant for the full twelve months. Now, medically this is not a likely scenario. Nevertheless, the rabbis, who were fully aware of this vast improbability, were willing to go so far in order not to create the stigmatic situation of a *mamzer*. Furthermore, one of the great authorities of the Gaonic period rules that if a man went away from his wife for eighteen months or two years, and she gives birth after that period of time, we should suspect that the husband came back secretly without telling anybody but his wife, unless he states clearly that he did not do so. In other words, the rabbis were willing to go to all sorts of lengths in order to save the child from the situation of *mamzerut*. Many generations of rabbis would find solutions for cases of suspected *mamzerut*. But what did this Jerusalem Bet Din do? In one single sentence, based on a complete lack of understanding of the situation in the army, they cast doubt upon the legitimacy and the validity of the ruling of the military Bet Din, they declared the woman an *agunah*, and her daughter a *mamzeret*.

Thus far, we have seen the way the Hareidi leadership has delegitimized the conversion system of the rabbinate and the decisions of the military rabbinic courts. We have also seen how the Hareidi authorities have instituted halakhically unnecessary stringencies in cases of *agunot* and possible *mamzerut.* And again, just as an example of what is happening now: less than a year ago, at the onset of Sabbatical year, the Hareidi authorities created a situation that caused numerous Jews to transgress laws of Shemitah. Rav Kook came out with a ruling in 1912 to bypass the problems presented by the Sabbatical year, problems that would create enormous social and economic hardships, and probably endanger the continuity of the yishuv. He permitted the selling of the arable land in Israel to a non-Jew during the Shemitah year. This ruling, called *heter mekhirah*, has been accepted for nearly a century. Every seven years, the government of Israel sells the arable land of Israel to a non-Jew in order to avoid the problems of working the land during the Shemitah year.

For the recent Sabbatical year, for the very first time, the longstanding policy of Rav Kook was challenged. When the current Chief Rabbi was appointed through a majority that came about through the lobbying of the Hareidim, there was a condition made that he had to accept, namely that he would not sanction the *heter mekhirah*. Thus, when the Shemitah year came along, the Chief Rabbinate could no longer carry out this particular rabbinic procedure. You have to understand what the implications for the people of the State of Israel would be if there were no *heter mekhirah*. In the Diaspora, one may not be so acquainted with all the ins and outs of the Shemitah. But in Israel, without a *heter mechirah*, any produce that is grown during the Sabbatical year is deemed to have the status of *kedushat shevi'it*, the sanctity of the Sabbatical year. There are numerous laws regarding *kedushat shevi'it*. One cannot buy produce of the land in a regular way. One cannot pay for it in a normal fashion in a supermarket. One cannot even weigh this produce in the normal fashion. One cannot cook the food as one usually does. The leftover Sabbatical produce cannot be simply thrown away, but must be put in a separate receptacle and disposed of in a special fashion.

At least 80 percent of the population of Israel has no understanding of Shemitah. Whether Orthodox or non-Orthodox, most Jews haven't learned these complicated laws; Jews in Israel have previously functioned according to the *heter mekhirah*. The direct result of not having a *heter mekhirah* is that the majority of the population of Israel would be doing more and more sins on a daily basis. Every time they bought, every time they paid, every time they weighed, every time they cooked, every time they threw away leftover food products, there would be a ritual transgression connected in some way with *kedushat shevi'it*. This is a completely unacceptable situation.
Again, in this instance, there was a considerable outcry from the Modern Orthodox rabbis who felt that the halakha had been hijacked by the Hareidi leadership, and that the rabbinate was not functioning in the best interests of all Jews. We have here an anomalous situation. Non-Orthodox Jews are generally not interested in the rulings of the Chief Rabbinate. If fact, the Batei Din and their rabbis all too often act in such a way that they repel many non-Orthodox people. The truth is that many Orthodox Jews would also prefer not to have to go through the Hareidi Chief Rabbinate's procedures. The Hareidi community itself does not need the Chief Rabbinate; it has its own community rabbis and local Batei Din. So the only people who are truly affected by the State Batei Din and Chief Rabbinate are members of the Modern Orthodox community. Ironically, this community is not serviced by the Chief Rabbinate, whose stance on most issues reflects a Hareidi outlook and a rejection of Modern Orthodox ideology and halakhic principles.

In fact, Modern Orthodoxy in Israel feels itself beleaguered on all sides. It has been marginalized and delegitimized by the Hareidim, while at the same time, the non-Orthodox community and governmental authorities are not exactly friendly toward it. It was only a few months ago that the Minister of Education, Professor Yuli Tamir, declared that there would be no funding for the Sherut Le'umi program, a national service program for Modern Orthodox women in lieu of army service. The program would need to be cancelled. Over two and a half thousand Sherut Le'umi women, who every year for the past many years have been serving the community in a remarkable fashion, in hospitals, in schools, in all walks of life, would no longer be able to function. Fortunately, in this particular case, there was sufficient pressure brought about within the governmental framework by relevant parties that at the last moment they agreed to find the necessary budget. Although this problem was averted, it is clear that the Modern Orthodox community and religious worldview is being attacked from all sides.

One should bear in mind that this problem is not only an Israeli one. The Council of European Rabbis met a few months ago, after the scandalous conversion affair in Ashdod became publicized. These rabbis came to a decision that only those Batei Din that are sanctioned by the Edah Hareidit, headed by Rabbi Eliashiv, would be acceptable to them. Therefore any conversion that was carried out by a Bet Din that was not recognized by the Hareidim and their leadership would not be recognized in Europe. Many American rabbis are also taking increasingly stringent positions on conversion. Hence when any Diaspora Jew comes to Israel with a document of conversion, if the rabbi who was involved in the conversion is not on the "approved list," he/she will find himself/herself with considerable problems. Children will not be able to register for marriage. There will be a question as to their status as a Jew. Basically, this issue threatens Modern Orthodox society all over the globe.

To some extent, we, the Modern Orthodox, are at fault for these woes. We are at fault because we have not been sufficiently stalwart in our own convictions. We have not given our Modern Orthodox rabbis sufficient support. We have not been sufficiently unified, unlike the Hareidi community which functions largely as a unified mass, politically and in other ways. We are not proud enough of our own convictions, and perhaps we are not always certain that our ideology is the correct one. We need to be much more definite that our way of halakha, our way of religious life, is a completely legitimate one, one which should be supported and confirmed and affirmed. We do not have strong, authoritarian leadership, perhaps because we are too individualistic. We have to support those institutions that propagate Modern Orthodox ideology. I think that Bar-Ilan University is probably the largest single

organization or institution in this world with an ideology that promotes Modern Orthodoxy. That does not mean that all the students are Orthodox; not even all the teachers are. But its ideology is one of inclusiveness, one of welcoming everybody within our congregation, one in which everybody should and can feel at home, in a pluralistic, religiously oriented environment. We need to develop a cadre of learned and well-educated independent-thinking rabbis, who will lead their congregations along this path of "client-friendly" halakha, and whose voice will be heard even more strongly and forcefully as a counterbalance to the Hareidi juggernaut.

We, at the Institute of Advanced Torah Studies, at Bar Ilan University, are involved in just such an initiative, through training and placing brilliant young academically qualified students with a rich Torah background in key communities, hoping they will be models to be replicated throughout even more congregations. Bet Morashah in Jerusalem is involved in similar such activities on a lesser scale. Such initiatives require massive support in order to succeed and really stamp a new cultural imprint on Modern Orthodox society. If we do not support organizations such as Bar-Ilan, and Tzohar, an organization of over 400 independent Modern Orthodox rabbis in Israel (and such efforts as the Institute for Jewish Ideas and Ideals and the International Rabbinic Fellowship in the United States)—if we do not give them the full and massive support they require, then we will not be able to confront with strength and with authority the challenges that are being placed before us by the monopolizing Hareidi leadership which is marginalizing and delegitimizing us, our congregations, our leaders, our schools, our courts, and our religious authority. For must we really buy and eat only food products with a Hareidi hekhsher? Isn’t the hekhsher of rabbanut Yerushalayim equally acceptable for us? The Hareidi community is bombarding us with “kosher” cell phones, and is deciding which kind of music we are permitted to hear. Avraham Fried will no longer receive their hekhsher, and his discs will be banned! Must women be told the absolute requirements for the length of their sleeves and the height of their collars?

It lies with us, the people, the grassroots to create a new awareness of the dangers, to confront those dangers, and to support a leadership that will be able to bring us out into the right and proper light. Then we will be able to have a religious leadership that will be welcoming, inclusive, a leadership that will not repel people, pushing them away from Orthodoxy, but one that will draw them in. And, as I reiterate, it is up to the grassroots community to create the infrastructures, whatever they be, to ensure that future generations will be able to successfully confront this major challenge for the Modern Orthodox community.