Halakhic conversion of non-religious candidates

View PDF



By Prof. Zvi Zohar of the Shalom Hartman Institute in Jerusalem and Bar Ilan University

The Shulhan Arukh, composed by rabbi Joseph Caro in the 16th century, is a canonical code of Jewish Law. In this work, rabbi Caro writes that a ceremony of Giyyur (=‘conversion') is valid only if it includes Qabbalat Mitzvot. Rabbi Caro does not explain what this phrase means. The so-called "conversion crisis" results from the attempt to pressure all rabbis to adopt a specific interpretation of this requirement, i.e., to agree that Qabbalat Mitzvot means a whole-hearted commitment by the Ger (="convert" =‘proselyte') to fully observe all of the Mitzvot (commandments). On this view, if a person applying for giyyur intends to be a secular Jew, or even a ‘traditional' Jew who observes many (but not all) commandments, that person cannot be allowed to undergo a giyyur ceremony, because Qabbalat Mitzvot is lacking. This position has been strongly supported by ultra-orthodox haredi rabbis as the one-and-only correct interpretation of Qabbalat Mitzvot.

In fact, the meaning of this phrase in the context of Giyyur was not agreed upon during the 1000 years before rabbi Caro employed it, and was not agreed upon afterwards. As did many rabbis before them, leading Sephardic rabbis in the 20th century held other interpretations of this phrase. In the following text, the views of three such great Sephardic rabbis are discussed. In their view, Qabbalat Mitzvot means an acknowledgement by the Ger, that after they become a Jew they will be liable before G-d (as are all Jews) for their actions: if they sin, they may incur Divine punishment, while performance of mitzvot will earn merit and reward. According to this view, a valid halakhic giyyur is fully possible for persons who do not intend to subsequently follow a religious lifestyle.

The following is an excerpt from chapter 12 of a book entitled Transforming Identity, forthcoming in late 2007 from Continuum press. Written by Avi Sagi and Zvi Zohar (both are professors at Bar Ilan University), it has been characterized thus by rabbi Irving ‘Yitz' Greenberg:

This book is a tour de force, a rare combination of comprehensive scholarship, insight, fresh thinking and wisdom. This is by far, the best book on this topic in the English language.

Qabbalat Mitzvot as recognition of liability

According to this position, the content of a proselyte's declaration with regard to commandments does not relate to performance. Rather, she is required to acknowledge that as a Jewess, she will be subject to the halakhic system, and therefore be liable for the consequences of her future commissions and omissions. One scholar who holds this view is Rabbi Raphael Aaron b. Simeon,#_edn1" name="_ednref1" title="_ednref1">[1] who writes as follows:

The judges immersing the proselyte must be three... and they must immerse him in the daytime. While he is in the water, they notify him again about some of the more lenient and some of the harsher commandments. And it is our wont to ask him these questions briefly, after informing him of some of the lenient and harsher commandments, as he stands in the water:

- Are you are entering the religion of Israel wholeheartedly? And he says 'yes.'

- Is it the case that you have no ulterior motive, and you are undergoing giyyur only for the sake of Heaven? - 'Yes.'

- Do you willingly accept punishment for transgressing the lenient and harsher commandments we have explained to you when you accepted the religion of Israel? - 'Yes.'

... And he fully immerses before the judges. Once he has immersed and come up, he is like a Jew in every respect.#_edn2" name="_ednref2" title="_ednref2">[2]

This detailed dialogue between the court and the proselyte was composed by Rabbi Ben Shimon, and to the best of our knowledge it is the first time that such a detailed format is presented in halakhic literature. The proselyte is questioned with regard to his general attitude toward the Jewish religion, his motivation, and his acceptance of the negative consequences that might result from obligation to the commandments. He is not questioned as to whether he intends to observe

the commandments and abide by them. Moreover, despite the unprecedented detail in this text by Rabbi Ben Shimon, he does not require subjective religious intent on the proselyte's part. When explaining the policy of the Egyptian rabbinate with regard to the giyyur of Gentile women living with Jewish partners, he writes that although the women's motivation is not religious:

We overlook this and accept them... and this is what we do in such cases. We make a condition and explain to the woman proselyte that her intention must be that even if her husband does not wish to marry her after this, and abandons her, she voluntarily accepts the religion, and that the reason for her giyyur is not contingent upon her [interest in] marriage to him. And she says 'yes'. And although we know what is in her heart, we are not very meticulous.#_edn3" name="_ednref3" title="_ednref3">[3]

Rabbi Ben Shimon is clearly not pleased with the significant discrepancy between the proselyte's declaration and her inner intention. However, he holds that the validity of her giyyur is not thereby impaired, as long as her verbal pronouncements conform to halakhic requirements and she accepts her liability for punishment if she transgresses any commandment.

Another scholar who identifies acceptance of commandments in the same way is Rabbi Ben-Zion Meir Hai Uzziel.#_edn4" name="_ednref4" title="_ednref4">[4] He begins his discussion of this issue by noting that the Talmud holds that most proselytes will not observe the commandments after their giyyur. This is the assumption underlying the dictum: 'Proselytes are as hard for Israel [to endure] as a sore',#_edn5" name="_ednref5" title="_ednref5">[5] as understood by Rashi and Maimonides.#_edn6" name="_ednref6" title="_ednref6">[6] Uzziel therefore states:

Although we know that most proselytes do not observe the commandments after circumcision and immersion; nevertheless, they [the rabbis] did not refrain from accepting them because of that. Rather, they inform them about some of the harsher commandments, namely, the punishment for transgressing them, so that 'So that if he wants to withdraw - he can withdraw.' But if they do not withdraw, they are accepted, and each proselyte will be responsible for his [future] sin[s], and the people of Israel are not liable for his behaviour. All we have said, then, makes the following absolutely clear: if a proselyte has accepted the commandments and their punishment, then, even when it is known he will not observe them, he should be accepted after being notified about the lenient and harsher commandments, their reward and punishment.#_edn7" name="_ednref7" title="_ednref7">[7]

According to Rabbi Uzziel, the requirement that a proselyte should accept the commandments does not mean that he is required to commit himself to observe them. Rather, it means that he recognizes that after becoming a Jew, he will be under the jurisdiction of the halakhic system. Therefore, he alone will bear responsibility for the consequences of non-compliance. The proselyte's assumption of responsibility for the consequences of his giyyur enables the court to accept him without hesitation, even if the court has good reason to assume that after becoming a Jew he will not observe the commandments. This leads Rabbi Uzziel to conclude:

It follows, that according to Torah, we are allowed and commanded to accept male and female proselytes even when we know that they will not observe all the commandments... and if they do not observe the commandments, they will bear their sin and we are not liable. #_edn8" name="_ednref8" title="_ednref8">[8]

This view is also advocated by Rabbi Moshe HaCohen,#_edn9" name="_ednref9" title="_ednref9">[9] who writes concerning the possibility of accepting proselytes who would subsequently follow a secular lifestyle in Israel. He writes that prima facie it seems:

quite simple that he should not be accepted for giyyur, [because] the explicit halakhah in Bekhorot (30b) is: 'A proselyte who agrees to take upon himself all matters of Torah, excepting one thing, should not be accepted.'#_edn10" name="_ednref10" title="_ednref10">[10]

Yet, a detailed analysis of the meaning of the 'acceptance of the commandments' required from a proselyte led HaCohen to conclude that his prima facie analysis was incorrect, because:

[A]ccepting the commandments does not mean that he must commit himself to observe all the commandments. Rather, it means that he accepts all the commandments of the Torah in the sense that, if he transgresses, he will be liable for such punishment as he deserves... And if so, we do not care if at the time he accepts the commandments he intends to transgress a particular commandment and accept the punishment. This is not considered a flaw in his acceptance of the commandments.#_edn11" name="_ednref11" title="_ednref11">[11]

According to HaCohen, then, proselytes are required to acknowledge that after giyyur, the Torah's framework of reward and punishment will apply to them as it does to all Jews. Whoever agrees to this completely fulfils the halakhic requirement of acceptance of the commandments, even if in fact they

subsequently fail to observe the commandments, and even if the court knew at the time of giyyur that they would act in such a manner.

In another Responsum, Rabbi HaCohen describes a fundamental problematic posed by the secular reality of Israeli society:

Many Jews married Gentile women after the Second World War and have fathered sons and daughters with them. According to the law, the children's status follows that of their Gentile mother [i.e. they are not Jewish]. When they come to Israel, the husband brings the children [to the court] for giyyur, sometimes with their mother and sometimes on their own. The trouble is that they reside in places in which the people do not observe the tradition: they eat forbidden foods and desecrate the Sabbath and the holidays. It is clear that after giyyur they will behave similarly to the Jews among whom they live, since it is almost impossible for them to be observant. #_edn12" name="_ednref12" title="_ednref12">[12]

Rabbi HaCohen explains that his interpretation of acceptance of the commandments as recognition of liability provides the grounds enabling giyyur in secular Israeli reality.#_edn13" name="_ednref13" title="_ednref13">[13]

Notes

#_ednref1" name="_edn1" title="_edn1">[1] Chief Rabbi of Cairo, 1891-1921 (died in 1929).

#_ednref2" name="_edn2" title="_edn2">[2] Rabbi Raphael Aharon Ben Shimon, Nehar Mitsrayim (Alexandria, Farag Hayyim Mizrahi, 1908), p. 113a.

#_ednref3" name="_edn3" title="_edn3">[3] Ibid.

#_ednref4" name="_edn4" title="_edn4">[4] Born in Jerusalem in 1880, he was Sephardic Chief Rabbi of Eretz Israel from 1939 until his death in 1953.

#_ednref5" name="_edn5" title="_edn5">[5] Yevamot 47b.

#_ednref6" name="_edn6" title="_edn6">[6] For Rashi see Yevamot ibid., s.v. de-amar mar. For Maimonides see Hilkhot Issurei Biah 13:18.

#_ednref7" name="_edn7" title="_edn7">[7] B.-Z. H. Uzziel, Mishpatei Uzziel (2nd edition, Jerusalem, 1950), Yoreh De'ah, Vol. 1, # 58, p. 205.

#_ednref8" name="_edn8" title="_edn8">[8] B.-Z. H. Uzziel, Mishpatei Uzziel, Even ha-‘Ezer, # 20; Piskei Uzziel B'shelot Hazman (Jerusalem, Mossad HaRav Kook, 1977), # 68.

#_ednref9" name="_edn9" title="_edn9">[9] Jerba 1906 - Israel, 1966. A leading rabbi in the community of Jerba, he immigrated to Israel in the 1950s and served as a dayyan (judge) in the rabbinical court of Tiberias.

#_ednref10" name="_edn10" title="_edn10">[10] M. Hacohen, Responsa Ve-Heshiv Moshe (Jerusalem, 1968), Yoreh De'ah, #50.

#_ednref11" name="_edn11" title="_edn11">[11] Ibid.

#_ednref12" name="_edn12" title="_edn12">[12] Ibid., # 51.

#_ednref13" name="_edn13" title="_edn13">[13] Rabbi HaCohen's position is further explicated in ch. 4 of Transforming Identity.