Retroactive Annulment of Giyyur (Conversion)?

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I will begin by presenting a fictitious case, closer perhaps to current halakhic reality in certain circles than many would like to believe:

18-year-old Mary undergoes giyyur in an Orthodox Beit Din and becomes Miriam. Soon
after, she marries Reuven, a biologically-born Jew, and they have a son Yehuda and a daughter Sarah. Yehuda grows up, studies in Israeli yeshivot, settles in Israel
and becomes a rabbi. While still a yeshiva student, he is invited to serve as a witness at marriages of quite a few friends – sometimes signing the ketubba, sometimes witnessing the kiddushin, sometimes, both. After getting semikha, he not infrequently serves as a member of a court conducting giyyur (as
son of a giyyoret, he relates positively to people choosing to be
Jewish). He studies for dayyanut, and then begins sitting as dayyan (rabbinical judge) on various cases. Meanwhile, Sarah gets married early, at 17, to a Cohen. They have three boys, who grow up as Cohanim, bless the congregation, get called up for the first aliyya, etc. When the boys are in their
teens, Sarah and her husband decide to move to Israel
to be near Yehuda and his family. Under Yehuda’s influence, the three boys are sent to yeshivot; they too serve on occasion as witnesses for various halakhic matters, receive pidyon for first-born infants of their peers, and the
like.

Miriam, now nearing sixty, has been working secretly for several years on an autobiography – and it is accepted for publication. When published, the public is informed about matters that her husband and close friends have known all along: Miriam opted for giyyur because of Reuven, whom she wanted to marry. She declared acceptence of mitzvot during her giyyur procedure, but was never really convinced that the commandments were ordained by G-d and revealed to Moses, and her observance of halakha, never consistent even at the beginning, soon become spotty, then totally haphazard. She has no problem with the fact that her son Yehuda has adopted a religious lifestyle, and indeed keeps a kosher home for his sake, and when Yehuda and his family come to visit in the U.S.,Miriam and Reuven make sure that everything is halakhically meticulous. But when they are alone, they are not religiously observant.

Miriam's good friend Maureen knows someone at the New York Times, and Miriam is interviewed. She tells the reporter how happy she is to be Jewish, and how she really identifies with the Jewish People and the Jewish values of social justice, warm community and family ties, etc. However, she confides, the ritual parts of Judaism – such as Shabbat, kashrut, taharat hamishpaha – never really attracted her, and she doesn't personally observe them. The interview is picked up by HaAretz, and published in Hebrew in Israel.

Rabbi Axeman, a well-known rabbi who has authored several volumes of responsa, hears about Miriam's interview. He obtains a copy of HaAretz, and after reading with his own eyes what Miriam said, he immediately concludes that Miriam is really not, and has never been, a Jew. He calls up Yehuda's Rosh-Yeshiva, whom he knows well, and reveals to him the facts about Yehuda's mother. They both realize, that since Miriam is not Jewish, neither Yehuda nor Sarah are Jews. Therefore, they have never been married to their spouses. Sarah's children are not Cohanim – indeed, they are not Jewish at all. Even should Sarah now undergo giyyur, she can never remarry her husband, because he is a Cohen. Halakhically, her children are not related at all to their 'father', whether or not they choose giyyur. All those times they were called up to the Torah for the first aliyya – were in vain; all the first-born for whom they received pidyon now have to be located and have the ceremony re-performed – this time, with a 'real' Cohen. Kiddushin and Ketubbot witnessed by Sarah's children, and by her brother Yehuda are invalid; the relevant couples must be located and informed, the marriages re-performed (and what if one of the parties now refuses to do so?). And what of those gerim

who became Jews under the auspices of a court in which Yehuda was a member? Well, they are not Jewish, of course, because a giyyur that was not conducted by a court is invalid, and a gentile cannot serve as a dayyan. Similarly, matters of divorce etc. decided by a court in which Yehuda participated are now lacking halakhic validity; if he was witness to a divorce, the marriage may never have been terminated, the woman still eshet ish. If she remarried, her children are deemed to be illegitimate.

Indeed, the more rabbi Axeman and his peers think about this, the more they realize that the possibilities of discreditation are unlimitted. True, the rabbis of old seem to have been unaware of these options; thus, they allowed Jews by birth to marry a woman proselyte, and permitted a Cohen to knowingly marry the daughter of a female proselyte and a Jewish man. They relied upon the testimony of proselytes for all halakhic matters, including marriage and divorce; counted proselytes for minyan … they were seemingly oblivious to the notion that giyyur might be revealed to be invalid. But this gives Axeman et.al. no pause: makom heinihu lanu raboteinu le-hitgader bo. The rabbis of earlier times left room for us to discover and apply novel halakhic rulings, and the well of halakhic creativity has not dried up. And if someone were to object: what of the Torah's repeated injunctions to treat a ger with great consideration, and to refrain from distressing him in any way?#_ftn1" title="_ftnref1" name="_ftnref1">

[1]

The response would be clear and swift: our ruling with regard to annulment of giyyur in no way contradicts these supremely important commandments! Rather, all we said relates to persons who are not really proselytes at all, but were only posing as such; while the commandments of Torah relate to authentic, true proselytes – whom we too would treat with great respect and kindness. That is: if such a person should ever be discovered to exist in our times.

[2]

But is all this possible? Of course -- if one accepts that giyyur can be retroactively annulled. Indeed, if it is possible to retroactively annul even one giyyur based upon subsequent conduct of a ger, then we can NEVER rely upon the Jewishness of ANY person who underwent giyyur, nor upon the Jewishness

of any descendent of a female proselyte. The Jewishness of all such persons is eternally contingent, always liable to being undermined by some future revelation. Knowing this, other Jews should always refrain from having gerim or the descendents of female giyyorot serve as witnesses, rabbis, Cohanim … they cannot be counted for a minyan, for a zimmun etc… and of course,
no one will ever agree to marry them. In fact, the most reasonable conclusion for any Orthodox rabbi to draw is that it is better never to accept anybody for giyyur – for who can really know what is in a person's heart, and how he/she will behave in the future? And of course, once it gets around to persons who have been planning to undergo Orthodox giyyur that they and their children will always be only conditionally Jewish – they will surely revise such ill-considered plans. Who would knowingly place themselves and their families in such a terrible bind?

However, there is no justification
for anyone to hold, that halakha enables retroactive annulment of giyyur based upon the proselyte's future conduct. This determination is based upon several grounds. One is that the normal position of halakhic tradition is, that ritual acts (in general) and ritual acts affecting an individual's personal status (in particular) are valid, irrespective of the subjective intent of the parties involved and irrespective of their subsequent conduct. Another is, that the central and major halakhic sources go out of their way to stress the point, that giyyur is valid immediately and irrevocably, however the proselyte subsequently chooses to conduct himself.

The Autonomy of Ritual

In western culture, especially in the context of Protestant Christianity, the autonomy of
ritual may seem strange; is not religion a matter of belief, a matter of the heart? However, in many cultures and many religions, performance of certain prescribed acts in the proper way results in an outcome possessing validity and force. This is true also within many areas of western culture, e.g., law, economic transactions – even in artistic and dramatic contexts. Focusing on Judaism, the general rule within the framework of halakha is, that commandments performed without conscious religious intent are valid (mitzvot einan tzerikhot kavvana).#_ftn3" title="_ftnref3" name="_ftnref3">

[3]

By way of illustration, let us consider the case of Jewish marriage.

Marriage is an event that entails a major change of status, with dramatic consequences for both parties. Because of these consequences, it seems to be the case that in all known societies, the decision to marry is regarded as a serious commitment, not to be lightly undertaken. Indeed, we do our best to educate our children that marriage should be undertaken only with the right person, for the right reasons. The words harei att mequdeshet li kedat Moshe ve-Yisrael should be uttered by the groom with heartfelt intention, love, and deep commitment – and they should be heard and accepted by the bride in like spirit. Therefore, no person should agree to witness an act of kiddushin if not convinced that it is being undertaken by the bride and groom in the proper spirit.

Now, imagine a case in which Shimshon, a young Jew with rich parents, is seduced by Gomer, a Jewish woman of low morals who is interested in his money. He was interested in her only for sex, and never intended to continue the relationship. But she threatens to sue him if he doesn't marry her, and he agrees to do so. However, he is afraid of his parents, and therefore agrees to betroth her only by 'secret' kiddushin. They call over two yeshiva teenagers loitering nearby, who (foolishly) agree to serve as witnesses, and he hands her a ring and recites the proper formula. The next day, they reveal to each other that they never wanted to be married: he says that he only went through the motions in order to appease her, and she says that she only wanted to hurt him, and never intended to be his wife. Both of them agree to behave as if the kiddushin never happened, and they have no more contact with each other. He moves to Israel and marries a suitable wife, and she moves to Australia and marries a rich Jewish barrister. They have no problem in doing so, for the kiddushin were secret and each easily provides the local rabbinate with confirmation that they are unmarried.

So: Shimshon and Gomer say that they never really wanted to marry each other; they participated in the ritual of kiddushin for really reprehensible reasons; and their subsequent behavior confirms that they did not regard themselves as married to each other. But the witnesses were kosher witnesses, the ring was his, they heard him utter the words clearly and saw him put the ring on her finger – and she kept the ring on, and even smiled. Would any rabbi say that the couple's

subsequent behavior “reveals” that they did not have the proper intent when performing the kiddushin and therefore the marriage is invalid and they are both eligible bachelors? Is there any halakhic doubt that Gomer’s “marriage” to the barrister is invalid, and that any child she has with him is a mamzer? The answer to both questions is in the negative. Once kiddushin has been performed ‘by the book’, the motivation that led each of the partners to undergo that process is irrelevant. So too, the subsequent conduct of one or both of the partners will have no effect upon their halakhic status as husband and wife. Gomer has undergone a radical transformation of status from penuya (an unmarried person) to eshet ish, with all that entails: under Torah law, sexual relations she has with anyone but Shimshon is adultery, and any child she conceives out of such relations is a mamzer, who will face almost insurmountable obstacles in his/her quest for a Jewish marriage. All because of an ill-considered decision to participate in a one-minute ritual act!

The case of kiddushin, so clear to anyone familiar with the halakhic tradition, illustrates the autonomous power and force of ritual.

The sources on giyyur cited below reveal the same ritual logic: Once giyyur has been performed, the motivation that led the Gentile to undergo that process is irrelevant. So too, the subsequent conduct of the proselyte will have no effect upon his/her halakhic status as a Jew. The proselyte has undergone a radical transformation of status from nokhri (a non-Jew) to Yisrael (Jew/ess), with all that entails: as a Jewess, she is now party to the Jewish People’s Covenant with G-d, and bound to obey that Covenant, whether or not she knows anything about its contents (similar to a biologically-born Jew).#_ftn4" title="_ftnref4" name="_ftnref4">

[4]

She may not marry a Gentile, and if she does, the marriage is automatically invalid; she may marry only a Jew, and if she does, her marriage is valid however she behaves or regards herself. As a Jewess her status is non-contingent upon her fulfillment of the Covenant, or upon her continuation of any contact with Judaism or Jews. Let us now consider the sources themselves – beginning with the rock-bottom definition of Jewishness as deriving from birth.

Jewishness, Birth and Giyyur

According to halakha, any person born
to a Jewish mother is a Jew. To most Jews, that sounds quite reasonable. However, such a determination is far from self-evident. Consider a counter-example: if a person was born on a kibbutz, and her two parents are members of the kibbutz, she is not automatically a member. Rather, upon reaching a certain age, she must decide if she wishes to apply for membership. If she applies, her application comes up for discussion by the kibbutz assembly, who then decide the matter by a vote. While it is reasonable to assume that a child born and raised on the kibbutz will be accepted for membership if she applies, it is not automatic. The important point (in the current context) is that her membership is contingent upon at least two decisions: her decision to apply, and the assembly's decision to accept her. By contrast, Jewishness is not contingent
upon any person's decision, but is regarded by tradition as a 'fact of birth'. The sources of this self-understanding are very ancient: in the Bible, the Israelites are the "Children of Israel", i.e., the lineal descendents of the Patriarch Jacob and his twelve sons. In the Bible, then, the People of Israel are made up of persons born into a (very) extended family.

Some notions accepted in Biblical
times were abrogated or modified by the Oral Torah (Torah she-b'al peh); significantly, the concept of the familial nature of Jewishness was not only retained, but also even reinforced. Not only is Jewishness acquired by birth according to Rabbinic tradition, but it is permanent and irrevocable. In other words, if a person born as a Jew chooses to relinquish all contacts with his Jewishness, and (furthermore) to join another faith community out of sincere and deep belief in a totally non-Jewish theology (e.g., Hare Krishna) – that person nevertheless remains a Jew, in the eyes of halakha. He is an apostate – but, an apostate Jew. The main practical halakhic implications of this
are twofold.

First: If at
any point this person decides to join the Jewish community – all he has to do is to recant, and resume Jewish praxis. No conversion is required, for in the eyes of halakha he has 'really' been Jewish all along.#_ftn5" title="_ftnref5" name="_ftnref5">

[5]

Second: If our
devout Hare Krishna apostate places a ring on the hand of a Jewess in the presence of two valid Jewish witnesses and while doing so recites the halakhic formula: “You are betrothed to me by this ring according to the law of Moses and Israel” – the couple is now halakhically husband and wife.#_ftn6" title="_ftnref6" name="_ftnref6">

[6]

As
Maimonides writes:

If an apostate
Israelite performs a betrothal, even if he has freely chosen an alien religion, the betrothal is fully valid and [for the wife to be released from that union] she requires a bill of divorce.#_ftn7" title="_ftnref7" name="_ftnref7">

[7]

This is also the clear-cut ruling of
rabbi Joseph Caro in his Shulhan Arukh.#_ftn8" title="_ftnref8" name="_ftnref8">

[8]

But … how do Maimonides and Rabbi
Caro know this? Surprisingly, it is nowhere stated directly in the Talmud that an apostate Jew remains a Jew. Rather, both Maimonides and Rabbi Caro derive the absolutely non-contingent Jewishness of a Jew by birth who willingly left the fold, from the Talmudic ruling with regard to a Gentile who became a Jew and immediately recanted.#_ftn9" title="_ftnref9" name="_ftnref9">

[9]

Rabbi
Shelomo Cohen writes,#_ftn10" title="_ftnref10" name="_ftnref10">

[10]

that
this is an a-fortiori (qal va-homer) inference: if a person who
was not born as a Jew, but became a Jew via giyyur and then reverted to a Gentile life and faith, is nevertheless halakhically an apostate Jew and can perform a valid betrothal – then surely a person who was born as a Jew and

chooses a non-Jewish life and faith is still halakhically Jewish (albeit, an apostate).

But in fact,
postulating such a hierarchy is not logically or textually necessary. Rather, what the Tannaitic text states is that immediately after giyyur the status of the former Gentile is equivalent to that of a Jew by birth.
Here is the entire text, a Baraita cited in Yevamot 47b:#_ftn11" title="_ftnref11" name="_ftnref11">

[11]

Our
Rabbis taught: If a prospective proselyte comes to undergo giyyur in the present era, we#_ftn12" title="_ftnref12" name="_ftnref12">

[12]

say to him: “What did you
see that made you come to seek giyyur? Do you not know that nowadays the Jewish people are afflicted, oppressed, downtrodden and harassed and that hardships come upon them?” If he responds: “I know, and I am unworthy [of joining them],” we accept him immediately. And we inform him of some minor commandments and some major commandments. And we inform him of the sin [of the
neglect of the commandments] of Gleanings, of the Forgotten Sheaf, of the Corner, and of the Poor Man's Tithe#_ftn13" title="_ftnref13" name="_ftnref13">

[13]

. And we
inform him of the punishment for the transgression of the commandments. We say
to him: “Be aware, that before you reached this situation, if you ate [forbidden] suet you were not punishable by Karet [extinction by Heaven]; if you profaned the Sabbath, you were not punishable by stoning; but now [after giyyur],
if you eat suet, you will be punished by Karet, and if you profane the Sabbath, you will be punished by stoning.” Just as we inform him of the punishments for [transgressing] the commandments, we inform him of the rewards [for observance]. We say to him: “Know, that the world to come is not made except for the righteous. And, in the present era the Jewish people cannot receive an

abundance of good or an abundance of calamity.” We do not overwhelm him, nor are we strict with him. Once he received,#_ftn14" title="_ftnref14" name="_ftnref14">

[14]

we
circumcise him immediately. If shreds that impede a valid circumcision remain, we circumcise him again. Once he has healed, we immerse him immediately. And two rabbinic scholars stand over him, and inform him of some minor commandments
and some major commandments. Once he has immersed and come up, he is like a Jew
in every respect.#_ftn15" title="_ftnref15" name="_ftnref15">

[15]

The
Talmudic sages ask with regard to the phrase “Once he has immersed and come up,
he is like a Jew in every respect” – “What is the implication of this statement?” and answer:

[The implication is], that if the proselyte reverts [to a
Gentile life], and performs a ceremony of kiddushin [halakhic betrothal] with a Jewish women, we regard him as an apostate Jew, and the kiddushin are valid.#_ftn16" title="_ftnref16" name="_ftnref16">

[16]

Kiddushin
is a ceremony in which a Jewish woman becomes betrothed to a Jewish man, a condition that continues until the death of one of the partners or their divorce. According to Talmudic halakha, if one of the partners to such a ceremony is not Jewish, the ceremony has no effect whatsoever. To state that a person following a totally Gentile lifestyle can be a partner to a valid kiddushin is equivalent to stating that she is unconditionally a Jewess. The Talmud thus indicates that our Baraita is a statement about membership in the Jewish collective. Any person who has undergone a process of giyyur is irrevocably a member of the Jewish collective, and is equal to a person biologically born as a Jew; both remain a Jew regardless of how they behave.

A similar position is found in
Bekhorot, in the framework of the Talmudic interpretation of a Baraita originating in Tosefta Demai. The Tosefta states:

A proselyte who took upon himself all matters of Torah, and
is suspected [of non-observance] with regard to one matter, even with regard to the entire Torah – behold, he is like an Israelite apostate.#_ftn17" title="_ftnref17" name="_ftnref17">

[17]

And
how is he like a Jewish apostate? The Talmud answers thus: “If he performs kiddushin,
his kiddushin is valid”.#_ftn18" title="_ftnref18" name="_ftnref18">

[18]

On the
basis of Bekhorot alone, one might imagine that perhaps some minimal period of time must elapse between the giyyur and the apostasy, for the person to
be considered irrevocably Jewish. However, Yevamot makes it very clear, that Jewishness becomes irrevocable immediately upon the completion of the giyyur ritual: “Once he has immersed and come up, he is like a Jew in every respect”. In other words, if upon emerging from the waters of the mikveh our newly-Jewish acquaintance resonates to the drumbeat of an idolatrous procession in the adjacent thoroughfare, rushes outside, joins the procession and disappears from our view never to be seen again – he remains a Jew for evermore.

Maimonides illustrates this by referring to the case of
King Solomon’s idolatrous wives. He explains, that (pace the plain meaning of the biblical text#_ftn19" title="_ftnref19" name="_ftnref19">

[19]

),
Solomon never married non-Jewish wives. Rather, every time he found a Gentile woman whom he wished to marry, he convened an ad hoc ‘court’ of three laymen who conducted a giyyur ritual through which the woman became a Jew – and he then married her. True, her only motivation for giyyur was
for the sake of marriage, she knew nothing about any of the commandments, and

–
furthermore – devoutly believed in alien gods before, during and after undergoing giyyur. Her subsequent behavior confirmed this, for after her giyyur she continued to worship these gods, using her husband's resources to construct and maintain sites of idolatrous activity. Nevertheless, she was a Jewess, and therefore her marriage to King Solomon was completely valid. Here is how Maimonides puts it:

Do not imagine that Samson, the savior of Israel,
or Solomon, king of Israel,
who was called "the beloved of the Lord," married foreign women while they were still Gentiles. Rather, the secret of this matter is as follows… since Samson had women undergo giyyur and them married them; and Solomon had women undergo giyyur and then married them. And it is known that they became Jewish only for a purpose, and their giyyur was in defiance of the [official] court. Therefore, Scripture considered them as-if Gentiles. In addition, their subsequent behavior revealed their original mindset, that they worshipped their alien gods. And they constructed high-places for those gods, and Scripture attributed to Solomon as-if he had built them, as it says (Second Kings XI:7): "Then did Solomon build a high-place".#_ftn20" title="_ftnref20" name="_ftnref20">

[20]

According
to Maimonides, it is worse to be involved in an intermarriage than to be married to an apostate Jewess. Therefore, giyyur of a person who never even considered abandoning pagan belief and worship and who becomes a Jew only for the sake of marriage is preferable, if the concrete alternative is a Jew living with that same person without giyyur. Clearly, this entire scenario is possible only if a ritual of giyyur performed under such circumstances is efficacious – and Maimonides stresses that such is indeed the case:

A proselyte whose motives were not
investigated or was not informed about the commandments and their desserts, but
was circumcised and immersed in the presence of three laymen, is a proselyte. Even if it was known that his becoming a proselyte is for some utilitarian purpose, he has exited from the Gentile group once he was circumcised and immersed. However, he should be regarded with reservation until his righteousness becomes apparent. Even if he once again worships idols, he is as

an apostate Israelite, whose betrothal is valid. And we are commanded to return his lost property to him. Because he immersed, he is an Israelite. That is why Samson and Solomon kept their wives, even though their wives' secret was manifest.#_ftn21" title="_ftnref21" name="_ftnref21">

[21]

It is obvious from this text that once a person underwent giyyur, her Jewishness is completely non-contingent upon her subsequent praxis or beliefs, or indeed, upon her praxis and beliefs at the very moment of giyyur. It is therefore clear that whatever the phrase "he should be regarded with reservation" means,#_ftn22" title="_ftnref22" name="_ftnref22">

[22]

it does not refer to the existence of any doubt regarding the validity of the giyyur itself: if such doubt were to exist, no valid kiddushin could have occurred, and Maimonides would have failed to rescue Samson and Solomon from the charge of intermarriage. Indeed, if the validity of the giyyur of these women was in any way contingent upon on their behavior or beliefs during or after their giyyur, they would have been considered Gentiles because "their secret was manifest" namely, at no stage did they forsake their idolatry.

To make my argument as strongly as the sources warrant: at no point between the Talmudic period and the 19th century did any rabbi rule that an individual proselyte's sinful behavior or pagan beliefs after immersion for giyyur would invalidate his Jewishness. Furthermore, at no point between the Talmudic period and the 19th century did any rabbi rule that an individual proselyte's inappropriate motivation, inner disposition or beliefs during the process of giyyur itself – would invalidate the efficacy of the ritual.#_ftn23" title="_ftnref23" name="_ftnref23">

[23]

Giyyur as Birth

As I noted above, the irrevocability of giyyur is consonant with the general halakhic position regarding the autonomy of ritual acts affecting personal

status. According to all major halakhic sources, the halakhic efficacy of any specific ritual process of giyyur
is dependent only upon the empirically verifiable performance of certain acts (or: occurrence of certain events).

Furthermore, I noted that with regard to giyyur all major
halakhic sources posit the irrevocability of the Jewish status of a ger and the Jewish status of a Jew-by-birth. Therefore, there is an inseparable halakhic link between the (irrevocable) Jewishness of a proselyte and the (irrevocable) Jewishness of a Jew by birth, whatever they believe and however they act.#_ftn24" title="_ftnref24" name="_ftnref24">

[24]

This inseparable link is not merely a formal correlation, but
derives from the core metaphor of Jewishness as kinship, in which membership is acquired in only one way: birth. For a person to be a Jew, he must be born into that status. That is the basis for the religious-cultural halakhic logic, of considering giyyur as equivalent to birth. Indeed,
the rabbis explicitly compare a ger to a newly-born Jew, stating: “A proselyte who has undergone giyyur is
as a newborn child.”#_ftn25" title="_ftnref25" name="_ftnref25">

[25]

This
equivalence of giyyur with birth applies not only to the irrevocability of a proselyte’s Jewishness – but also to other very basic aspects of his identity. As a newly-born person, all the proselyte’s prior kinship ties are regarded as dissolved from the moment of giyyur. If several members of a Gentile family underwent giyyur, each one is now regarded as a discrete, unrelated individual. This entails powerful halakhic consequences, such as:

1) The [newly
unrelated] proselytes were allowed by Torah law (de-Oraita) to marry one another: the [biological] father might marry his daughter, the mother her son, a brother his sister, and so forth. #_ftn26" title="_ftnref26" name="_ftnref26">

[26]

2) If a father and son both underwent giyyur, the
son does not inherit his father upon the

latter’s death.#_ftn27" title="_ftnref27" name="_ftnref27">

[27]

3) While
according to halakha the testimony of relatives is not acceptable in court, persons who were related prior to giyyur may [after undergoing giyyur] testify in court on behalf of each other.#_ftn28" title="_ftnref28" name="_ftnref28">

[28]

The
radical implications of these laws can hardly be overemphasized, for they subvert the most basic foundations of social order and of morality by upsetting family ties ostensibly grounded in biological reality. Undoubtably, this is a high price to pay. But since Torah regards Jewishness as deriving only from birth, the only other avenue open to halakha would be, total rejection of the possibility of giyyur. But the G-d of Israel
loves proselytes; indeed, G-d is characterized as Ohev Ger
(Deuteronomy/Devarim
10:18). Therefore, giyyur
IS possible – and it is possible only as birth into the Jewish kinship. Thus, a former Gentile who immerses
in water for the sake of giyyur is
transformed and recreated. Emerging from the waters of the mikveh, he is newly-born, as an infant emerging from a mother’s
womb – a Jewish mother’s womb. That is why he is as irrevocably Jewish
as is a Jew by [biological] birth: “Once he has immersed and come up, he is like a Jew in every
respect”. Birth cannot be retroactively annulled.

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[1]

Bava
Metziah 59b, Mishne Torah Hilkhot Mekhirah 14:15-17, Shulhan Arukh
Hoshen Mishpat 248:2

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[2]

But the
existence of such a person would be a rare event, indeed, because “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”. Rabbi Gedalya Axelrod, 'Observance of Commandments as a Condition for [Valid] Giyyur' (Hebrew), in Shurat ha-Din (The Letter of the
Law), Vol. 3 (Jerusalem, Sha’ar
ha-Mishpat Institute of the
Directorate of Rabbinical Courts, 1995), pp. 175–90. The quote is from p. 189.

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[3]

There
are certain specific exceptions to this general rule, but that is what they are: exceptions. One exception: Fulfillment of the mitzvah of prayer requires one to recite the ‘amida, consisting (on normal weekdays) of 19 benedictions. One should attempt to attend to the meaning of the words of the prayer, however, if one failed to do so, one has nevertheless fulfilled the mitzvah of prayer – if at least during the first benediction one did attend to it’s meaning. I.e., reciting the ‘amida with attention to the first 5% of the words is fulfillment of intention required for the mitzvah. Cf. Shulhan Arukh Orah Hayyim 101:1.

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Cf.
Shabbat 68a where the Talmud refers to a Gentile who underwent giyyur without ever hearing of the existence of Shabbat.

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[5]

This is
the original halakha. In medieval times it became customary in Europe

for returning apostates to undergo a ceremony analogous to giyyur, although this was not formally necessary. Cf. Shulhan Arukh Yoreh De’ah 268:12.

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[6]

A Jewish marriage can be contracted only between a man and a woman, both of whom are Jewish.

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[7]

Hilkhot Ishut 4:15.

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Shulhan Arukh Even HaEzer 44:9.

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[9]

Cf. Yevamot 47b. For this being the source of Maimonides’ ruling, cf. Maggid Mishne ad.loc. For this being the source of rabbi Caro’s ruling, cf. the following commentators ad.loc. : Be’er HaGolah #90; Beiur HaGra #16 (who concurs and adds a second source, Bekhorot 30b, that also relates to a recanting ger). Interestingly, rabbi Moshe Feinstein holds that the impossibility of a born Jew changing his identity and becoming a Gentile requires no source text at all, as it is absolutely self-evident (Responsa Iggerot Moshe Even HaEzer IV:83). However, an examination of the history of halakha reveals that the matter was not regarded as self-evident. Rather, it was seriously debated in early medieval times and there were Geonic authorities who held that if a born Jew abandons Torah to the extent of joining another religion and publicly desecrating the Shabbat, he is no longer a Jew even for purposes of marriage (cf. Responsa of Rashi #169; Responsa Tashbetz III:43; Responsa Yakhin uBoaz II:31).

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[10]

Responsa MaHarShaKh, 3:102. Rabbi Cohen lived in the 16th century Ottoman Empire.

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Translated by Sagi and Zohar in Transforming Identity (Continuum Press, London and New York, 2007).

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[12]

The grammatical structure of the talmudic text is ambiguous regarding the subject addressing the prospective proselyte: the phrase Omrim lo [say to him] is in present tense plural, but the subject can equally be translated as we or you (pl.), or they. Our use of “we” is not definitive.

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These are commandments instructing farmers to leave portions of the crop for the poor. Cf., e.g., Leviticus 19,7 and 23,22.

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[14]

The Hebrew word kibbel is ambiguous. We translate it here as “receive,” but it can also be translated as “agrees” or “accepts.” This ambiguity enables multiple interpretations, as Avi Sagi and I discuss in Transforming Identity.

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[15]

Yevamot 47b. Our translation here is based on
the Schottenstein edition of the Talmud Bavli, New York,
Mesorah Publications, 1999. However, we have emended the translation in several
places to give what we see as a better rendition of the sense of the original text.

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[16]

Yevamot
47b.

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[17]

Tosefta
Demai 2:4 (p. 69 in the Lieberman edition). Our translation.

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[18]

Bekhorot 30b.

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Cf.
Second Kings XI.

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[20]

Mishne
Torah, Hilkhot Issurei Biah, XIII:14-16.

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Ibid.,
XIII:17.

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Much
ink has been spilled by rabbis in recent times to explain this. For our interpretation, see Transforming Identity pp. 168-169.

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[23]

For the sake of clarity: this is true not only with
regard to those rabbis who held that a valid giyyur is possible without kabbalat mitzvot, but also with regard to those rabbis who held that kabbalat mitzvot is a sine qua non for a valid giyyur. This is so
because, however those rabbis understood that phrase, they never identified it as an internal disposition but as an event that is empirically verifiable at the moment it occurs.Some understandings of that event were: the proselyte's reception of information about the commandments, as conveyed to him by the court; the proselyte's willingness to become a Jew; the proselyte's commitment to proceed with the giyyur ritual (= circumcision and immersion) after hearing about the commandments; the proselyte's declaration of commitment to observe the commandments. See: Transforming Identity, chapters 9, 10,
11, 12.

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Undermining the status of a person who underwent giyyur because of how he conducts himself logically entails undermining the status of a person who was born to a Jewish mother, because of how he conducts himself. Indeed, it is my personal opinion that this is the 'deep logic' that underlies the common custom in haredi circles to reject the propriety of marriage between "frum from birth" haredim and Jews who were born to non-haredi families and later chose to adhere to a haredi lifestyle.

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ger she-nitgayyer ke-katan she-nolad --
Yevamot 22a, and parallel texts.

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It
should be noted that such marriages between relatives of the first degree have been forbidden by rabbinic enactment. However,
marriages between relatives of lesser closeness are permitted to proselytes, although they are forbidden between Jews born to a Jewish mother. On all this see Code of Maimonides, Laws of Forbidden Intercourse, 14:11 and ff.

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[27]

See Code of Maimonides, Laws of
Original Acquisition and Gifts 1:6.

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[28]

See Code of Maimonides, Laws of
Evidence 13:2.