

What Does It Take to Become a Jew? - The Conversion Controversy in Modern Jewish Law – Lesson 3

Conversion for Ulterior Motives – Part 2

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We left off in our last lesson with the teshuva of Rambam in which he took a lenient stand with regard to case of a man suspected of cohabiting with a non-Jewish woman. He asserted that the proper solution in such an instance was for the woman to convert and then marry the man. The Rambam's ruling was controversial because it explicitly contradicted the Mishnah in Yevamot and in spirit contradicted the Talmud on that same Mishnah. Rambam was quite aware of the controversial nature of his ruling, justifying his actions with serious reasons.

Let's just review what Rambam was up against in the Mishnah and Talmud. The Mishnah rules that a non-Jewish woman who is suspected of cohabiting with a Jewish man (or visa versa), if converted should not be allowed to marry the man (l'hatchila – before the fact). The Talmud ultimately cites this as the reason for this ruling so that the conversion will not be suspect of being other than for purely religious reasons.

The Talmud also includes a debate over whether a conversion for ulterior motives should be recognized. Rabbi Nehemiah, a Tanna (a sage from the period of the Mishnah) says no while Rav, a first generation Babylonian Amora (a sage from the period of the Talmud) who had studied with Rabbi Yehuda HaNasi, the compiler of the Mishnah rules that "b'deavad" (after the fact) such a convert should be accepted.

Now you see what Rambam was up against. Does Rabbi Nehemiah make a legitimate case? From the religious vantage point, I would say so. After all, he is looking for loyalty and fealty to the ideas and ideals of the religion for which the candidates are looking to be accepted. He does not want people who want to become Jewish because it is advantageous. I imagine he fears that their attachment to Judaism will not be pure. As a consequence, he wants to close the doors until such a time where there is no advantage to being Jewish. Then, he assumes that people will convert for the right reasons.

Rav is a bit more open. He does not close the doors to converts but is only willing to open the doors to converts with ulterior motives once they have converted. The halacha is codified like Rav but the spirit of Rabbi Nehemiah is clearly in the background. We will see his "spirit" in some of the opinions of those who disagree with the Rambam's teshuva.

What should we make of the Rambam? What would make him rule not only against the Talmud but also against what he codified in his own law code (according to his words more than once). Perhaps, Rambam sees the idea of Jewishness as more than just an issue of religion – perhaps he sees it also as a matter of peoplehood. In that case, he might assume that said convert would be positively absorbed

into the Jewish people. We must also note here that he has taken for himself substantial discretion in making this decision. In part, Rambam could do this because he had “gravitas” or in more common parlance – he had broad shoulders. His opinion could also serve as precedent for liberal opinions even though his opinion is quite radical.

One other thing we want to note about Rambam’s decision. He does not reinterpret the sugya in the Talmud in order to shape his decision. Rather, he supersedes the decision in the Talmud using other considerations.

Rambam’s capacity to allow the court independent judgment on this question is reminiscent of another medieval approach to this question found in the commentary of the Yevamot passage that we covered known as Tosafot. (The Tosafot were French and German commentators in the period immediately after Rashi.

והיה דפ"ב דשבת (דף לא.) ההוא דאתא לקמיה דהלל ואמר גירני ע"מ לעשות כ"ג בטוח היה הלל דסופו לעשות לשם שמים

Like the story recounted in Shabbat where [a potential convert] came before Hillel and said: ‘Convert me on the condition that I become the High Priest’. Hillel [converted him] since he was sure that in the end he would do it for the sake of Heaven.

The author of this commentary quotes a famous story about Hillel (which we will deal with later) where Hillel is confronted by someone who wants to convert for seemingly ulterior motives. He acts in a manner which is at odds with the approach of this sugya (Talmudic argument), accepting the convert. He presumably concludes that he can adequately access a person’s motives.

With time, there were those who built on Rambam’s reasoning and still others who found other possibilities in the sugya on which to base leniencies. (I only want to note that of all of the issues involved in the question of gerut (conversion), this particular question exercised rabbis more than any other.)

The first teshuva that I want to examine was composed by Rabbi Shlomo Kluger (18th century Poland). R. Kluger introduces two new issues into the discussion. Let’s examine two excerpts from one of his collection of teshuvot, Tuv Taam v’Daat (330) on this question:

He was asked regarding: “One whose son was a soldier stationed among non-Jews who fell in love with a non-Jewish woman and cohabited with her a number of times, afterwards returning to his father’s house together with her with the intention that she convert.” After examining the issue in depth, R. Kluger raises two new issues in his discussion.

1. Regarding the strength of what is written in Yevamot 24 regarding rumors about cohabiting with a non-Jewess who then converts that he should not marry her... It arose in my heart to say since it states explicitly there in the Talmud and in Rashi that the prohibition is on account of that people will say the rumors concerning their relationship were true – that refers to where there is no certainty that they had relations but where it is known that they had relations there is no

room to be concerned with rumors of this sort. It would therefore be permitted to allow them to marry. (adapted translation)

2. Since the prohibition is only from the sages on account the rumors, where there is concern that he might leave the Jewish fold (tarbut raah -literally 'bad culture') even for this it would be permitted for him to marry her, but where there is certainly that he will leave the fold, there would be no room to be lenient.
3. One must trust our assessment since if he had wanted to he could have stayed in her place and converted out since no one forced him to return to his father's house...
4. He ends with a comparison to the case of the "Yefat Toar" – where soldiers went off in a war of conquest and fell for a woman from the other side – the Torah permitted her to him with certain rules: "[Just like in that case] there is sufficient proof that where there is fear of a serious transgression, it is right to permit a less serious transgression especially if it is only a rabbinic transgression.

Questions to consider

1. How does R. Kluger contend with the Talmudic source? How is approach the same or different from that of Rambam?
2. Are his concerns purely religious? What other factors might be involved?

In one particular case, Rabbi Moshe Feinstein (20th century United States) made a similar ruling on a case where a Jewish man was civilly married to a non-Jewish woman (Igrot Moshe Even Haezer 1:27):

Regarding a man who married a non-Jewish woman and lived with her publically for many years and now converted, is there a prohibition against marrying them on account of the discussion in the Talmud Yevamot 24.

Regarding my discussion of the sugya where I noted the difficulty in the opinion of the Nimukei Yosef who asserts that even where it is a certainty that they had cohabited that their marriage is forbidden based on the Tosefta as opposed to the understanding of the opinion of Rashi for whom it would be prohibited only where there was a rumor [of said behavior]... this is only prohibited because of the rumor (because it is done secretly) but where there is marriage, live together publically as man and wife and have children – there is nothing more public than that [in this case] there should not be a prohibition to marry then - Since there was no need to convert in order for her to marry because their marriage was already recognized by the civil authorities – for the very reason for the prohibition is to prevent people from saying that their conversion was for the sake of marriage – for the law is like one who says: 'all are converts'. (abridged and adapted)

Questions to Consider

1. What new nuance does Rav Moshe add to the discussion?
2. Trace the logic of his opinion.

Interestingly enough, most of the opinions on this subject amongst later authorities are lenient with one caveat mentioned almost universally among the authorities closest to our day. I bring this caveat as it is stated by Rabbi Eliezer Waldenberg (20th century Israel) in his teshuvot, Tzitz Eliezer 15:62:

א) מן הראוי להדגיש כי יש להבחין בין מי שבא להתגייר ואיננו מוכן לקבל עליו לקיים כל מצוות התורה דאזי הו"ל זה גורם הפרעה בעצם התגיירותו, ז"א, שזה עיכוב בעצם הגירות, לבין מי שבא להתגייר בשביל מטרה ידועה אבל הוא מקבל עליו עבור כן לקיים כל המצוות, דבכה"ג אין זה עיכוב בעצם הגירות כשלעצמו אלא דבר זה מהוה גורם עיכוב על המקבלו, שלא יקבל אותו לגיירו, אבל אם עבר וקיבלו הר"ז גר.

It is appropriate to emphasize that one should distinguish between someone who comes to convert but is unwilling to fulfill all of the commandments of the Torah for this causes interference to the essence of conversion, that is to say, that this hinders the conversion but someone who converts for a known reason but is willing for this purpose to fulfill all of the commandments, in so doing, this is not a hindrance to the conversion itself but is a hindrance to the one who accepts him, that he will not accept him for conversion. However, if he did accept him, the person is a convert.

Questions to Consider

1. What dilemma does Rabbi Waldenberg express?
2. Is his concern legitimate?

Of course, not everyone was of one mind with the Rambam and this Tosafot with this line of thinking. We now want to take some time to examine some of the voices who opposed the lenient approach to this question. Those who opposed leniency on this question were largely driven by their concern that the conversion might be the product of ulterior motives. This viewpoint is expressed most ardently by the famous posek of the Edah Haredi in Jerusalem, Rabbi Yitchak Weiss (20th century Israel):

[In our community] we refrain from conversion since in most cases there are two concerns: 1. Lest after the conversion, the convert will not fulfill the laws of Israel (mitzvot) since they are conversion for their own reasons and 2. Since we do not accept converts who convert in order to marry or for another reason, as noted in Yevamot 24 and according to the Mishnah there where it says that he should not marry her.

He goes on in a specific case where the couple already led a pious life that if there was certainty of the couples intention to lead a pious life that the second condition could be superseded.

Questions to Consider

1. What is the driving source for Rabbi Weiss?
2. What is the extenuating circumstance that would cause him to rule leniently?
3. What underlying reasons might make him rule differently than the other poskim?