

## **The Conversion Controversy in Modern Jewish Law – Lesson 7**

“Saving Jewish Seed”

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Judaism has always had to contend with intermarriage between Jews and non-Jews. The Talmud has already confronted many of these issues. Still, modern considerations (for instance: the large Aliyah from Eastern Europe and massive intermarriage in the western world), have brought the issue of conversion in such instances to a fore. As we have noted in past lectures, according to traditional Jewish law, a child born of intermarriage, where the mother of the child is Jewish is Jewish while a child born of a Jewish father and a non-Jewish mother is considered a non-Jew. In the past century and a half, a great deal of halachic discussion has centered on what to do with these children who have Jewish lineage who are nevertheless not halachically Jewish.

We have seen from previous lessons that on the one hand, there is a clear trend requiring the acceptance of the commandments and their observance as requisites of the process of conversion. On the other hand, we noted another more liberal trend represented in the stories of Hillel, giving leeway to the beit din to use its discretion in determining whether a person is fit for conversion. This combined with the response of Rambam which seemingly opened the doors to conversion for the sake of marriage under certain circumstances illustrate another voice in the tradition. In this lesson, we will examine the point/counterpoint discussion of this issue in a number of response (teshuvot) representing the different sides of this debate.

The questions we will contend with in this lesson will be contentious on two levels. For the more traditionally oriented, there might be a tendency to look cynically at the entire discussion, since it might appear to them that the couple has already made a conscious choice to reject the Jewish tradition in the very act of intermarrying. For the more liberal among us, there might be a tendency to look askance at the paternalism involved in much of the discussion, namely, the assumption that the rabbis involved in these discussions have the audacity to try to shape family life. With these caveats in mind, the issues we will undertake will be twofold: 1. When a couple has intermarried, is there any rabbinic obligation to save the couple from the sin of cohabiting with a non-Jewish person which the tradition considers a sin? 2. In addition, is there a place for the rabbis to attempt to create a more Jewish environment for the children who will be raised in that household? 3. Should the rabbis convert people who have a Jewish parent since they are of Jewish lineage (Zera Yisrael)?

The strict opinion will be represented by Rabbi Mordechai Yaakov Briesch (20<sup>th</sup> century Poland, Switzerland) in his Teshuvot "Helkat Yaakov" (Yoreh Deah 150). In this teshuva, he responds to a rabbi who makes the claim that one should be liberal in converting the non-Jewish partner in an intermarriage, otherwise, the couple will seek conversion through Reform rabbis who will convert without concern for halachic considerations like circumcision and mikveh. Similarly, the rabbi makes the claim that the converting rabbis should save the Jewish partner from the sin of cohabiting with a non-Jew.

The following excerpts will capture the crux of R. Briesch's argument against this liberal approach:

ובני"ד אנו יודעים בטח אף בשעת גירות שאין כוונתם להתגייר לגמרי, כיון שגם החלק השני, זה היהודי, מתלוצץ מכל ואינו רק יהודי לאומי, ומכל שכן שכלתו הנכרית הבאת להתגייר. ואף אם נאמין לה שכוונתה אמת להיות יהודית, לכל היותר כוונתה להיות לאומית בלי שבת נדה ושאר מצות כמו בעלה. וגירות כזו אף בדיעבד לא מהני

And regarding our subject, we know for sure that at the time of conversion, the intention is entirely not to convert, for the other partner, that is the Jew, scoffs at it all and is only Jewish by nationality, and more so his fiancé the non-Jewish woman who has come to convert. And even if we should believe her that her intentions to be a Jew are pure, at most her intentions are to be a Jew by nationality without Shabbat, Nidah (laws of Jewish sexual practices) and the rest of the commandments just like her husband. And conversion like this even after the fact has no effect.

ועוד אחרונים שכרכו בזה, אם מותר לגיירם לשם אישות דוקא באופן שיש לחשוב אשר כוונתם להיות גרים גמורים רק הסבה היתה לשם אישות, בזה יש לפלפל, אבל כשאינם רוצים להתגייר לגמרי, רק ליהודים לאומים בלא קבלת מצות, אף אם כוונתם אמת לא מהני הגירות אף בדיעבד.

And further, late authorities, who discussed whether it is permitted to convert them for the sake of marriage, precisely in the case where there was room to think that their intention was to be complete converts only that the impetus was for the sake of marriage. With regard to this, there is over what to debate. But when they do not want to be total converts, only Jews by nationality without any acceptance of commandments. Even if their intention is total, their conversion will be invalid even after the fact.

והנה מעיקר ההיתר של כמ"ה כיון דבלאה"כ ידורו באיסור, ובכה"ג אומרים לחברו חטא בשביל שיזכה חברך... דהיכי דפשע אין אומרים לחברו חטא בשביל שיזכה חברך.

And with regard to the essence of the leniency of the honorable rabbi since, nonetheless, they will live in sin (because they will not observe Jewish sexual practices), when, in this case, they say [to the beit din] sin for the merit of your fellow...where there is sin one does not say to one's fellow (the beit din) sin for the merit of your fellow.

## Things to Consider

1. What is the major theme of Rabbi Breish's argument?
2. Breish distinguishes between a religious, observant Jew and a Jew by nationality? What do you make of this distinction? Conversion to Jewish nationality has recently been raised by a prominent Reform Rabbi and a prominent expert on Jewish sociology. Is there room to consider such a category?

Rabbi David Tzvi Hoffman (19<sup>th</sup> century Germany), head of German Orthodoxy offered a different approach on this question. It is interesting to note that the sociology of German Jewry at the time was quite similar to the situation in the US today. In the following excerpt, we see his response to a similar situation (Milamed L'hoel 2:83):

והנה בנ"ד דכבר נשא היהודית בדיניהם והיא כבר הפקירה עצמה לו ומעוברת ממנו דבר ברור שתנשא לו אף שלא יתגייר, א"כ רגלים לדבר דעושה לשם שמים. ועוד דאם לא נקבלנו תנשא לו באיסור דאורייתא דיהודית לגוי אסורה מדאורייתא (ע' שו"ת מהר"ם שיק אה"ע סי' ל"ז וקנ"ה וי"ד סי' רמ"ט) וא"כ טוב שנקבלנו משתנשא לו באיסור. ואי קשיא הא אין אומרין לו לאדם חטא בשביל שיזכה חברך, ואיך יעשה ב"ד האיסור שיקבלו גר שלא נתגייר לש"ש כדי להציל את האשה מאיסור גדול מזה שכל ימיה באיסור הא היא פשעה בדבר, ע"ז י"ל חדא דאע"ג דתחילתה בפשיעה דהפקירה עצמה לנכרי מ"מ סופה כאונס דכיון דהיא מעוברת ממנו אינה יכולה לסבול בושטה שלא להנשא לו... ועוד דאם תנשא לגוי גם זרעה שמצד הדין הם יהודים גמורים יהיו נמשכים אחר אביהם לגיותו, ויהיו פושעים, ואלה הצאן מה חטאו, וע"כ טוב שיעשו ב"ד איסורא זוטא לקבל את הגר ולהרגילו בדת יהודית שיצא ממנו זרעא מעליא. ומ"מ יזהירו ב"ד את הגוי להשמר ולהזהר בכל דת יהודית ובפרט בשבת ובמאכלות אסורות, וטוב לקבל ממנו הבטחה במקום שבועה (איידעזשטאטטליכע פערזיכערונג) על זאת.

Behold, regarding our discussion where a Jewish woman has already married according to civil law and she has already given herself over to him and is pregnant from him, it is clear that she would marry him even without conversion. If so, there is reason to believe that the conversion is for the sake of Heaven. And further, if we do not accept him then she will be married to him by transgressing a Torah commandment (cohabiting with a non-Jew). And if it is a problem that we should not say to him (the beit din): 'Sin so that your fellow will merit.' – How can a court transgress in accepting a convert who did not convert for the sake of Heaven in order to save a woman from a transgression as great as this (cohabitation) – that all of her days are a transgression – behold she sins in this act? With regard to this there is to say, first, that even though, initially her deeds were in sin in marrying the non-Jew, in any case, in the end, her deeds were under duress since she is pregnant from him and cannot but be married to him...And even if she marries him, her children would, according to the law, be entirely Jewish, [still] they would follow their father's non-Jewish practice, and would therefore be sinners. And these sheep, what is their sin? Therefore, it is better that the beit din perform, a small sin to

accept the convert and to teach him the rudiments of the Jewish religion so that his children will be upstanding. In any case, the beit din should warn him to observe and take care with the Jewish religion and, in particular, regarding Shabbat, prohibited foods, and it is good to accept from him a promise rather than an oath regarding this.

### Things to Consider

1. Compare Rabbi Hoffman's opinion with that of Rabbi Breish.
2. What are Rabbi Hoffman's major considerations?
3. Why is it important to convert the woman's husband?
4. According to Hoffman, how is the husband's conversion important to his children?

The third opinion is that of Rabbi Ben Zion Uziel, the first Sefardic Chief Rabbi of the state of Israel. He expresses the lenient opinion most emphatically (Piskei Uziel 65):

והנני מעתיק פה מה שכתבתי בענין זה באותה שאלה עצמה: בענין קבלת גרים חדש מעכ"ת מסברא לומר שבזמן הזה שאנו רואים ויודעים והדבר מפורסם וגלוי שרובא דרובא דגרים אינן שומרים מצות התורה אפילו לזמן קצר, הלכך אין לקבל בזמן הזה וכן כתב במכתבו אלי מיום ג' שבט דנא. ואנא דאמרי אם כן נעלת דלת בפני גרים שלא לקבל בישראל גרים כלל אפילו אם יתברר בהחלט שהוא מתגייר לשם שמים אבל מדברי רבותינו ז"ל למדנו שמצוה לקבל גרים ולהכניסם תחת כנפי השכינה לפי שהקב"ה אוהב גרים וצוה על הונאתן (יבמות ק"ט ע"ב תד"ה רעה) ואל תשיבני ממ"ש שבימי שלמה לא קבלו גרים שהרי כתבו התוס' ד"ה לא וכו' וההיא דפ"ב דשבת וכו' בטוח היה הלל בסופו לשם שמים, מדבריהם מוכח דסופו לשם שמים סגי אעפ"י שאין סופו לקיים מצות התורה, ועכ"פ בסופו לקיים סגי אעפ"י שלא יקיים סמוך לגרותו, ולפי מסקנתם זאת יוצא שגם בימי דוד ושלמה קבלו גרים שידעו בהם שסופם לשם שמים,

And behold, I will copy here what I wrote on this subject regarding the question itself: regarding the acceptance of converts, the honorable sage asserted from reason saying that these days when we see and know and it is well known that most converts do not observe the commandments of the Torah even for a short time, therefore no converts should be accepted these days, and so it was written in the letter to me from the 3 of Shvat. And I say regarding this, if so you have locked the doors before converts so that Israel will not accept converts at all even if we ascertain that the conversion was entirely for the sake of Heaven. But from the words of the sages, we learn that it is a mitzvah to accept converts and to bring under the canopy of God's presence since God loves converts and he commanded a prohibition against misleading them. And don't answer me from what is taught that in the days of Solomon they

did not accept converts for the Tospahot note that Hillel was certain that it would be for the sake of Heaven. And from their words it is enough that in the end that it will be for the sake of Heaven even if in the end they do not observe the commandments of the Torah. In any case, in the end they will observe is sufficient even if at the time of the conversion, he does not observe. And according to that conclusion, even in the days of David and Solomon, they accepted converts for they knew that in the end it would be for the sake of Heaven.

וגדולה מזו אמרו רז"ל: לא הגלה הקדוש ברוך הוא את ישראל לבית האומות אלא כדי שיתוספו אליהם גרים שנאמר: וזרעתיה לי בארץ כלום אדם זורע סאה אלא להכניס כמה סאים (פסחים פ"ז). ובדורנו זה אחראית וקשה מאד נעילת דלת בפני גרים לפי שהיא פותחת שערים רחבים ודוחפת אנשים ונשים מישראל להמיר דתם ולצאת מכלל ישראל או להטמע בגוים ויש בזה משום אזהרת רז"ל: לעולם תהא שמאל דוחה וימין מקרבת (סוטה מ"ז). ואדם מישראל שנטמע או שנדחה מישראל נהפך לאויב ישראל בנפש, כמו שההיסטוריא מעידה על זה בהרבה מקרים והרבה דורות וגם אם לא נחוש ונאמר ילך החבל אחרי הדלי, מכל מקום לבניהם ודאי שאנו חייבים לקרבתם לא מבעיא אם הם בני ישראלית שבניה הם ישראלים גמורים אלא אפילו אם הם בני גוייה הרי מזרע ישראל המה, ואלה הם בבחינת צאן אובדות, וירא אנכי שאם נדחה אותם לגמרי על ידי זה שלא נקבל את הוריהם לגרות נתבע לדין ויאמר עלינו: את הנדחת לא השיבותם ואת האובדת לא בקשתם (יחזקאל ל"ד) וגדולה היא תוכחה זאת מאותה התוכחה של קבלת גרים (יו"ד סי' רס"ה סעיף י"ב) ועל כגון זה נאמר: הוי מחשב הפסד מצוה כנגד שכרה ושכר עבירה כנגד הפסדה (אבות פ"ב מ"א). מטעם זה הנני אומר מוטב לנו שלא נסור מדברי רבותינו שמסרו הלכה זאת לפי ראות עיני הדיינים שכוונתם לשם שמים.

And greater than this, the sages say: God did not exile Israel to the house of the nations except in order to collect for themselves converts, as it says: 'And I will sow her in the land as My own' (Hosea 2:25) – Does a man plant a seah except in order to harvest a number of seah? And in our generation, closing the door to conversion is very bad since the doors are wide open for men and women to change their religion and leave the Jewish people or become more among the nations (assimilate) and this is implied in the warning of the sages: One should push away with one's right hand and bring closer with one's left hand. And a Jew who assimilates and is rejected by the Jewish people turns into an enemy of the Jews, as history testifies in many cases through the generations. And even if we are not concerned and as it says: 'And the rope will follow the bucket,' in any case, with regard to their children, certainly we are obligated to draw them close, where they are the children of a Jewish mother, whose children are completely Jewish but even if they are children of as non-Jewish mother for they are "Jewish seed" and they have a sense of being "lost sheep", and I fear that if they are pushed away entirely by not accepting their parents as converts, we will be brought to judgment and He will say with regard to us: 'you have not brought back the strayed or looked for the lost.' And this reproach is great regarding the acceptance of converts. And regarding situations like this it is said: 'Reckon the loss against its reward.' For this reason I say: It is better for us that we do not turn away from

the words of our sages that passed to us this law that it is within the discretion of the court to determine if their intension is for the sake of Heaven.

### **Things to Think About**

1. What are Rabbi Uziel's innovations? In what way does he go even farther than Rabbi Hoffman?
2. According to Rabbi Uziel, what is the role of exile?
3. How would he solve the conversion crisis today?
4. What is his response to the issue of "the acceptance of the commandments" in conversion?
5. Which of the above rabbis gives the best answer regarding the conversion crisis? Why?