YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**Laws of Conversion and Circumcision**

**Rav David Brofsky**

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

This shiur is dedicated *l'ilui nishmas*

Yoel Eliezer ben Akiva Tuvia

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

***Giyur Ketanim* – The Conversion of Children (4)**

**The Conversion of Children Raised by Non-Religious Families**

In previous *shiurim*, we discussed the halakhic foundations of “*giyur ketanim,*” the conversion of minors. We noted that according to the Talmud (*Ketubot* 11a), despite a child’s inability to fully accept upon himself the yoke of Torah and *mitzvot*, *beit din* has the authority to covert a minor “*al da’at beit din*,” as the conversion is assumed to be beneficial (a *zekhut*) for the child. We dedicated a *shiur* to analyzing the halakhic mechanism through which this conversion is performed.

The Talmud also teaches that unlike adults who convert (i.e., those above twelve or thirteen), children may “protest” their conversion and repeal their conversion. In the previous *shiur*, we discussed the mechanism, as well as different definitions of *mecha’ah*, and questioned whether it is effective in all conversions of minors.

This week, we will discuss the conversion of children raise by non-observant parents. This question was first explicitly discussed by *Acharonim* in the 19th century, as intermarriage became increasingly prevalent among European and Sephardic Jews. In the 20th century, as the adoption of non-Jewish foundlings become increasingly common, halakhic authorities questioned whether non-observant Jewish parents may convert their adopted children. In recent years, this question has become increasingly relevant, as some prominent rabbis have begun to promote the conversion of non-Jewish children as a partial solution to the rising percentage of non-Jews in Israel due to the immigration of non-halakhically Jewish immigrants from the former Soviet Union.

Modern *poskim* discuss whether such conversions are valid, whether they are advisable, and whether the child’s non-observant lifestyle is considered a “protest” (*mecha’ah*) of their conversion.

**The Conversion of Minors – *Zekhut*?**

As we discussed previously, the *Rishonim* disagree regarding the mechanism of *giyur ketanim*. The Talmud (*Ketubot* 11a) teaches that a child may convert “with the consent of the court” (*al da’at beit din*), as “it is a privilege for the minor to convert,” in accordance with the principle that “one may act in a person’s interests even in his absence.” However, numerous *Rishonim* note that this legal mechanism is not generally applied to children and non-Jews. This led some (see Tosafot, *Ketubot* 11a s.v. *matbilin*) to conclude that the conversion of minors is only *mi-derabbanan*. Most *Rishonim* reject this view and suggest alternate explanations and understandings of the principle of “*zakhin.*”

In addition, some *Rishonim* maintain that although that the conversion is performed while the convert is still a minor, there is still a requirement of *kabbalat mitzvot*, like in the conversion of adults. Therefore, when the child becomes an adult, he must accept upon himself the *mitzvot*. Tosafot (*Sanhedrin* 68b, s.v. *katan*) explains that if the child becomes an adult without protesting, that is a sufficient form of *kabbalat* *mitzvot*. The Ritva (*Ketubot* 11a) assumes that the child must also be informed of the reward and punishment for *mitzvot*, implying that the child undergoes a more formal process of *kabbalat mitzvot* upon reaching adulthood. Although some *Acharonim* mention this view, it appears to have been rejected by the majority of *Rishonim* and the *Shulchan Arukh*. Therefore, *kabbalat mitzvot* does not appear to be a part of *giyur ketanim*.

The Talmud (ibid.) also implies that in some cases – for example, when a child converts with his father – the conversion is not *al da’at beit din*, but the *beit din* are instead merely agents of the parent, who has the right to convert his children because “they are content (*neicha* *lei*) with whatever their father does.” In a previous *shiur*, we discussed whether and in which cases this principle is applied.

Is it considered to be in the interest of a child to convert is he will be raised in a non-observant household and if it is unlikely that he will grow-up to be fully observant? This question is difficult to answer and may depend upon one’s overall religious outlook. In addition, the question of whether to perform conversions in general and conversions of children in particular was often an expression of how a particular community grappled with the consequences of intermarriage. In this regard, we may find differences between different authorities and between different areas among European and Sephardic communities.

Many authorities objected to converting a child who will be raised by a non-Jewish mother in a non-observant home. R. Mordechai Horovitz (Hungary, 1844-1910), rabbi in Frankfurt am Main, published a letter he sent in 1888 to R. Yitzchak Elchanan Spector (1817-1896), Chief Rabbi of Kovno and a leading 19th century *posek*. R. Horowitz relates at length how he has been approached numerous times by Jewish men married to non-Jewish women who wished to circumcise and convert their children. After ruling on this matter three times, he decided to articulate his thoughts and seek the guidance of R. Spector.

R. Horowitz raises both halakhic and broader communal arguments. For example, he argues that technically, a Jewish father has the right to convert his child even without the “consent” of *beit din*, and the principle of “*zakhin*” is thus not employed. Furthermore, even when the conversion is based on the principle of “*zakhin*,” the Talmud was clearly not concerned that the child might not observe the *mitzvot* upon reaching adulthood, as the *gemara* refers to a case in which the parents are not even Jewish! Finally, he argues that at times, not converting the child may unintentionally cause others to sin, as this child will most likely be raised in the Jewish community, marry a Jew, and be including in Jewish ceremonies, and the community will be unaware that he is not halakhically Jewish. Incidentally, R. Horowitz does not relate to the concern of *mecha’ah*, i.e., that the child may repeal his conversion upon reaching adulthood.

R. Spector, however, disagreed with R. Horowitz’s arguments. In his brief reply, he wrote, “In this case, the father has left the majority [of the Jewish People] and is considered to be an apostate (*mumar*) regarding the entire Torah. Therefore, in this case it is not considered to be beneficial (a *zekhut*) for the child, but rather, detrimental (a *chova*).” R. Horowitz sent another letter asserting his view and requested that R. Spector reconsider his position, but R. Spector apologetically responded that due to his advanced age and illnesses, he was unable to even read his letter, much less respond (see *Mateh Levi* 44 -45).

Similarly, R. Yictzhak Yaakov Rabinovitch (1854–1919), in his *Zekher Yitzchak* (1:2), relates that he was asked (Chanuka 1900) regarding the circumcision of a son born to a Jewish father and a non-Jewish woman. He rules that the child should not be converted, as “since we know that he will certainly violate all of the prohibitions of the Torah because he is raised in this household, it is not a privilege for him, but rather a detriment, and in this case is seems that he should not be circumcised.”

R. David Menachem Meinish Babad (Galicia, 1865–1937), in his *Chavatzelet* *Ha-Sharon* (1:75), also objects to converting the child of a Jewish man and his non-Jewish wife, and further argues that when the child reaches adulthood, his lack of observance will retroactively undermine the entire conversion, which may have undesirable consequences. R. Babad concludes, however, that he is wary about taking responsibility for possibly rejecting “a soul who wishes to seek shelter under the wings of the Divine.”

This position was subsequently adopted by R. Yechiel Yaakov Weinberg (1884–1966) in his *Seridei Eish* (1:46), who argues that in this case, the conversion is not considered to be a *zekhut* for the child. He therefore should not even be circumcised, lest the community mistakenly believe that he is Jewish. Similarly, R. Avraham Yizchak HaKohen Kook (1865-1835) writes: “If it is apparent that it is not their intention to observe and to be careful regarding the Torah’s prohibitions, what do we accomplish by entrusting the *beit din* to convert the child? This seems no better than if he would approach the *beit din* himself in order to convert through circumcision and immersion; since there is no *kabbalat mitzvot*, this does not count as a conversion at all.” Interestingly, R. Weinberg and R. Kook reference the view of Tosafot, who maintain that even the conversion of minors entails *kabbalat mitzvot*. As we mentioned previously, this view is rejected by most *Rishonim*.

More recently, authorities such as R. Yitzchak Yaakov Weiss (1902–1989), in his *Minchat Yitzchak* (3:99), and R. Moshe Sternbuch (*Teshuvot Va-Hanhagot* 2:512) adopted this position.

Based on this position and the fear of condoning intermarriage by enabling the children of such couples to convert, many rabbinic organizations will only convert a child who is raised by an observant family and who receives a religious education.

Despite the *Acharonim* cited above, the Talmud implies that the ability to convert a child is not dependent on his upbringing. In addition to the source for the conversion of minors (*Ketubot* 11a), which implies that a *beit din* may convert a child even if his parents are not Jewish, some point to a passage in the Talmud (*Shabbat* 67b) that relates to a person who “has forgotten the essence of Shabbat, performed numerous *melakhot* on numerous *Shabbatot*, [and] is obligated to bring only one sin-offering.” The *gemara*, troubled by the notion of a person who is completely unaware of Shabbat, explains that this passage refers to a “a child taken captive [and raised] among non-Jews, and one who converted among non-Jews.”

Some *Rishonim* (Tosafot, *Shabbat* 68a, s.v. *ger*; Ritva, *Shabbat* 68a, s.v. *rav*) explain that the *gemara* refers to a person who converted while living among non-Jews. The *beit din* never explained the *mitzva* of Shabbat to him, and he did not learn Sabbath observance from his non-Jewish neighbors. The Rambam (*Hilkhot Shegagot* 7:2), however, explains that the *gemara* refers to a person who converted as a child. The *Kesef Mishneh* (ibid.) explains:

One might ask why our teacher wrote that [the *gemara* refers to] a child who converted, as it is possible that even an adult who converted was unaware of Shabbat? It seems, however, that while one who converts as an adult is certainly informed of the *mitzva* of Shabbat, one who converts as a child is immersed *al daat beit din* and it is not necessary to inform him of the *mitzvot*.

If so, the Rambam clearly envisions a scenario of a child converted into a completely unobservant family, who are not even aware of Shabbat.

Some *Acharonim* argue that under certain circumstances, the conversion of a minor who will be raised in a non-observant household may be a *zekhut*. Furthermore, as we shall see, some even support the conversion of children who continue to live with their Jewish father and non-Jewish mother. For example, in addition to R. Mordechai Horowitz, cited above, R. Yitzchak Schmelkes (Galicia, 1828–1906), in his *Beit Yitzchak* (EH 9), asserts that “it is beneficial for the convert, although he will be punished [for his sins], for he has a portion in the World to Come.” He explains, however, that since it may not be a “*zekhut gamur*” (i.e., an absolute benefit), the convert retains the right to protest his conversion upon reaching adulthood.

R. Chaim Ozer Grodzinsky (1863–1940), in a responsum discussing the conversion of a non-Jewish spouse (*Achiezer* 3:28), explicitly agrees with R. Schmelkes and further argues that even if “he will violate the Shabbat and other sins [upon reaching adulthood], this is not considered to be a protest of his conversion (*mecha’ah*). Rather, he merely sins like other Jews, and he is certainly considered to be a convert.” R. Grodzinsky concludes that an upstanding *beit din* (*beit* *din kasher*) should not engage in these types of conversions. However, he “did not deem it appropriate that the rabbis of the generation should make noise and publicly protest this conversion, as in the eyes of the ignorant Jews this appears to be a *chillul* *Hashem* that [the rabbis] will not permit the [non-Jewish] women to convert, especially regarding the child, as, in truth, in accordance to the law, it is possible to convert them.”

Interestingly, a similar question arose in a slightly different context in the 19th century. In 1864, Rabbi Bernard Illowy (1814–1871), a local rabbi in New Orleans, declared that any *mohel* who performed a circumcision on children of Jewish fathers and non-Jewish mothers would be disqualified as a *mohel*. This decree made waves around the world, and in 1865, R. Zvi Hirsch Kalischer (1795–1874) responded, writing that not only is there no prohibition to circumcise a non-Jew, but in this case, by circumcising the young males after birth, it will be easier for this person to later decide to finish his conversion by accepting the *mitzvot* and immersing in the *mikveh*. Furthermore, he insists that there is a special and unique obligation to encourage these children to convert, as they are *zera kodesh –* descendants of Jews – even if their mothers remain non-Jews and they themselves are not halakhically Jewish. R. Kalischer’s responsum is found in the Responsa of R. Azriel Hildesheimer, who responds to his ruling.

R. Azriel Hildesheimer (1820-1899) disagrees and argues that it is only permitted to circumcise a non-Jew during the process of conversion. Furthermore, he not only disagrees with R. Kalischer’s halakhic analysis, he also fundamentally rejects R. Kalischer’s assessment and rejects the description of these children as “holy seed” (*Teshuvot Ha-Rav Azriel Hildesheimer* 229).

R. Moshe Feinstein addressed this question in numerous contexts. In an early responsum, written in 1941 (*Iggerot Moshe* YD 1:158), he expresses a doubt whether a convert converted as a minor should immerse again upon reaching adulthood, as it is not clear that his conversion as a child, in a country with so few observant people, is valid. He appears to conclude however, that “it seems more reasonable that it is a *zekhut* [to be converted as a child]; however, in order to avoid all doubt, it is best if he remembers to immerse again when he reaches adulthood.” In a later responsum, written in 1974, he rules that a child who will attend a Jewish day school may be converted:

It is common for the children to be observant when the grow up and is appears that it is a *zekhut*, even for the evil Jews, that he has the sanctity of a Jew, and that the *mitzvot* which they fulfill are considered to be *mitzvot* and their sins are considered to be *shegagot* (unintentional sins), this is still more beneficial than being a non-Jew.

He repeats this idea in his novellae, *Dibberot Moshe* (*Shabbat* 68).

This question was also discussed by leading Sephardic *poskim*. R. Matzliah Mazuz (1912-1971), a rabbinic judge and Rosh Yeshiva in Tunisia until he was assassinated in 1971, dedicated several responsa to this question. In his *Ish Matzliach* (3:41), he relates that the custom of rabbinic courts in Tunisia was “to convert the child in accordance with the request of his non-Jewish mother, even though she does not convert with him.” In the subsequent responsum (42), he further argues that there is no harm done to the child by converting his in his youth, even if his family is not religiously observant.

The opposite is true! We have now opened an entrance to a *mitzva*, and the choice is in his hands when he reached adulthood to turn in either direction; if he chooses life and behaves as a Jew (*minhag Yahadut*), we have evidence that in his good will he accepted upon himself the conversion. And if he protests – he protests… And therefore, even in a place where he will not receive proper [Jewish] education, we should still not refrain from converting him, as it is not detrimental to him.

This approach is also recorded and endorsed by R. Yosef Messas (Morocco, 1892–1974) in his *Mayim Chaim* (OC 2:117) and R. Masoud HaKohen (1893–1948) in his *Pirchei Kehuna* (YD 37). Interesting, R. Shalom Messas (1909-2003), in his *Shemesh* *U-Magen* (YD 3:62), strongly opposed converting a child who is to be raised by his non-Jewish mother. He writes: “Converting a young child and leaving him to be raised by his non-Jewish mother has never been done.” This appears to contradict that which appears in the writings of other leading Moroccan authorities.

More recently, R. Ben-Zion Meir Hai Uziel (1880-1953), first Sephardic Chief Rabbi of the Land of Israel, strongly asserted that the father should convert a child born to a non-Jewish mother, if the mother permits, “in order to ensure that the child will be educated in the Torah of Israel and will act in accordance will Jewish practice (*minhagei ha-Yahadut*).”

R. Ovadia Yosef (*Yabi’a Omer*, EH 2:4) discussed this question is a responsum written in Cairo in 1948. He was asked whether the child of a *Kohen* and a non-Jewish woman may be converted. He rules that while the woman should not be converted, as a convert may not be married to a *kohen*, if the mother agrees, the child may be converted. However, R. Ovadia concludes that if the *beit din* suspects that the child will violate the Shabbat and the Festivals upon reaching adulthood, it is proper (*nakhon*) not to convert him. Nevertheless, “if [the *beit din*] accepted them, what is done is done.” In other words, the conversion is valid. This position appears to be similar to that of R. Chaim Ozer Grodzinsky, cited above.

**The Conversion of Minors in the State of Israel**

As mentioned above, in recent years, numerous rabbis have suggested that the position espoused by R. Schmelkes, R. Grodzinsky, R. Feinstein, and others be adopted in the State of Israel. Over the past few decades, due to the massive immigration from the former Soviet Union, hundreds of thousands of Israelis are currently registered as “without religion,” either because they are unable to prove that they are Jewish or because only their father or a grandparent is Jewish. Furthermore, many children born abroad are adopted by childless Israeli parents, and at times, Israelis marry non-Jewish women abroad and return to live in Israel. There are therefore thousands of non-Jewish Israelis, many even born and raised in Israel, who fully identify as Jewish, serve in the Israeli Army, and over time have begun to observe many Jewish practices, such as *kashrut*, not working on Shabbat, observing the Festivals, fasting on Yom Kippur, etc. As we have discussed in previous *shiurim*, Israeli conversion courts grapple with the extent to which they may convert those who commit to a limited scope of religious observance.

While the conversion of adults is somewhat more complicated, as it entails a level of *kabbalat ha-mitzvot*, some have suggested that, minimally, rabbinic courts should strive to convert non-Jewish children raised as Jews in the State of Israel, as over time, they will marry Jews and fully integrate into the somewhat traditional environment of the Jewish State. There is no fear that these children will be raised to observe a different religion and converting them seems to remove a significant stumbling block from present and future generations. Furthermore, there is no significant fear that these children will “protest” their conversion to Judaism, in accordance with the understanding of R. Grodzinsky.

R. Nachum Rabinovitch ([*Siach Nachum* 68](http://www.ybm.org.il/Admin/uploaddata/LessonsFiles/Pdf/9626.pdf)), former Rosh Yeshiva of Yeshivat Birkat Moshe in Maaleh Adumim, argued forcibly in favor of converting non-Jewish children in Israel. He argues:

What detriment could there be here? It is clear that conversion is a great merit (*zekhut gedola*), as he enters under the wings of the *Shekhina*, and therefore he is included in that which we learned (*Makkot* 3:16): “The Holy One, Blessed be He, sought to confer merit upon the Jewish people; therefore, He increased for them Torah and mitzvot, as each *mitzva* increases merit, as it is stated: ‘It pleased the Lord for the sake of His righteousness to make the Torah great and glorious’ (*Yeshayahu* 42:21).” The Rambam explains: Being that the Holy One gave us so many commandments, it is impossible that over the course of a lifetime one not do a single one in a full and proper manner, and in doing so their soul will live through that act.

Regarding the sins that one who does not receive a religious upbringing will undoubtably commit, he explains that they are considered to be like those raised among the non-Jews, who are not accountable for their sins.

R. Rabinovitch further explains that among those *Acharonim* who questioned whether one may perform such conversions, the main fear related to the need to deter Jewish men from marrying non-Jewish women. Indeed, this is explicitly mentioned by R. Yechiel Yaakov Weinberg in his *Seridei Eish* (see above). However, while this may be true in the Diaspora, he argues that there is nothing to gain by adopting a stringent approach in the State of Israel, and converting these non-Jewish children will actually prevent intermarriage.

This approach, rooted in the *Acharonim* cited above, is supported by R. Shlomo Daichovsky (*Lev Shome’a Li-Shlomo* 24) and other halakhic authorities, and it led to the establishment of the [Giyur K’Halacha](https://www.giyur.org.il/%d7%9e%d7%90%d7%9e%d7%a8%d7%99%d7%9d/) conversion courts.

\*\*\*

This is the final *shiur* of our series on conversion. Over the past two years we discussed the Halakha’s attitude towards converts and the laws of conversion, including the role of *beit din* in conversion, circumcision, *tevila*, and *kabbalat mitzvot*.

*Giyur* has always been viewed as both beautiful and challenging on an individual and communal level. Our generation, due to intermarriage, immigration to Israel, adoption, and surrogacy, is faced with a great challenge and responsibility. It is our hope and prayer that our rabbinic leaders act both properly and responsibly, rising to the unique challenges of our generation.