

The Conversion Crisis is a Crisis of Halakhic Imagination

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Another year, another [crisis](#) over conversion (*giyur*, גיור) in Israel. This one involves the reforms in the conversion process advocated by Religious Affairs Minister Matan Kahana, which would authorize municipal rabbis to supervise conversions outside the control of the Chief Rabbinate. The Chief Rabbi, as to be expected, is not amused, and he threatens to withhold his approval of *any* conversions in Israel (such approval is necessary under the law) unless Kahana shelves his proposal. The presenting issue is an administrative question (“who’s in charge of conversions?”). But the real issue of this and of *every* conversion crisis in Israel, cuts deeper, to the very definition of conversion itself and to the nature of rabbinic legal thinking in the era of sovereign Jewish statehood.

The problem is quite personal for several hundreds of thousands of Israeli citizens who immigrated from the former Soviet Union or from Ethiopia (i.e., the Falash Mura community). Though they identify as Jews and are recognized as Jews by the state (under the Law of Return) and by the majority of Israel’s Jewish population, the state rabbinate denies their Jewishness owing to various halakhic impediments. These individuals cannot marry under the auspices of the rabbinate, which controls the law of marriage and divorce for Israel’s Jews, and they suffer other forms of religious discrimination as well.

The obvious solution, of course, is to have these individuals convert to Judaism under the auspices of the Orthodox rabbinate.^[1] The solution fails, however, because the Orthodox authorities insist that the prospective Jew-by-choice be committed to living a fully Orthodox lifestyle, and very few of these hundreds of thousands are interested in meeting that condition. Orthodox conversion in Israel is therefore not a realistic option for this large community of Israelis who wish to live as full Jewish citizens of the Jewish state.

“But wait,” you say. “Isn’t conversion a *religious* process, defined by *halakhah*? How can we fault the Orthodox rabbinate for insisting on the observance of *halakhah* as they understand it?” You have a point... up to a point. Yes, for most of its over two- millennia history, *giyur* has been a quintessentially religious act, a rite marking the entry of a non-Jew into the covenant of Sinai. During that time there was no reason to conceive of conversion in different terms. But the modern era, which saw the rise of secular understandings Jewish identity alongside the traditional religious ones, radically transformed this reality, as the Jewish world itself was radically transformed with the creation of a sovereign state, a *m’dinah*, that defines itself as “Jewish” in a national-ethnic^[2] as opposed to a religious sense. The majority population of the state identifies as Jewish in that national-ethnic sense, and these hundreds of thousands of Israeli citizens share that identification. Yet the process of *giyur*, which is the only way that they can be “naturalized” so as to fully join that majority, is effectively closed to them. Clearly, it is time for the official rabbinate of the Jewish state to show some halakhic imagination and to devise rules for conversion that fit the reality of a modern sovereign Jewish state.^[3]

For that matter, conversion is not the only area of Orthodox Jewish law that hasn't awakened to the reality of Jewish national sovereignty. We hasten to add that the *halakhah* itself is not to blame for this situation. Jewish law developed during the Middle Ages and most of the modern age as the law of a *k'hilah*, a community organized along religious lines existing within a surrounding majority non-Jewish culture, rather than that of a *m'dinah*. Thus, the *poskim* were not generally called upon to address questions relating to national sovereignty - those legal issues were handled by the Gentile government - and the *halakhah* as expressed in codes and responsa has very little to say about those questions. Since there was no practical need to tackle these questions, Jewish law simply did not develop a response to the questions raised by statehood: the halakhic political theory of national sovereignty, the power of taxation, the running of an army and the waging of war, the judicial system and the police power, the structure of the welfare state, consumer protection, environmental policy, the treatment of non-Jewish minorities within the state, and many more. Then there was the problem of Shabbat: how can the government function and provide essential public services when all the actions necessary to do so involve *hillul Shabbat* according to traditional *halakhah*? The silence of the rabbinical establishment on these questions spoke (and continues to speak) volumes. One wonders whether the Orthodox rabbinate believes that Jewish law can in fact provide for the existence of a sovereign Jewish state under the conditions of modernity.

It's vital to remember that silence is a *choice*; it's not the only possible rabbinical response to the challenge of statehood. Some rabbis and public intellectuals have indeed turned their attention to it. These include Rabbi Isaac Halevy Herzog,⁴ Rabbi Eliezer Yehudah Waldenberg,⁵ Rabbi Shaul Yisraeli,⁶ Rabbi Shlomo Goren,⁷ Professor Yeshayahu Leibowitz,⁸ and others who have produced groundbreaking work in the field of what we might call "the *halakhah* of sovereignty." Unfortunately (but not unexpectedly), their efforts made little impression upon the established rabbinate. To this day, the codified Orthodox *halakhah* stands in most respects exactly where it stood prior to 1948: it is the law of the *k'hilah*, ignoring the reality of the *m'dinah*. It's little wonder, then, that this not-so-benign rabbinical neglect has prevented a realistic solution to the conversion crisis.

Still, the work of those foresighted halakhic thinkers demonstrates that change *can* happen, that progress *is* possible, and that these problems, including conversion, *can* be solved from within the resources of the Jewish legal tradition. All it requires is halakhic imagination, a determination by the rabbis that the time has come for some bold and creative Jewish legal thought.

How likely are we to get *that* from *this* rabbinate?

[1] Non-Orthodox conversions don't address the problem. While the Israel Supreme Court has [ruled](#) that conversions administered in Israel (and outside of it) by recognized non-Orthodox streams of Judaism are sufficient to allow the Jew-by-choice (*ger*) to claim Israeli citizenship under the Law of Return, the Orthodox rabbinate does not accept the halakhic validity of those conversions. This non-recognition is based, officially, upon two objections. The first is that Reform or Conservative rabbis are regarded by Orthodox rabbis as *apikorsim*, or "heretics," which disqualifies any conversion court (*beit din*) of which they are members. The second is that conversion under

halakhah requires that the *ger* or *giyoret* accept the obligation of the *mitzvot* (*kabalat hamitzvot*, קבלת המצוות), and contemporary Orthodoxy interprets this requirement to mean “the acceptance of *all* the *mitzvot* according to their Orthodox interpretation” - i.e., they must be Orthodox in their practice. *Gerim* who enter the covenant through non-Orthodox conversions presumably do not meet this requirement.

[2] An attempt to translate the Hebrew לאומי (*l'umi*) which carries the sense of “peoplehood.”

[3] Can such rules be devised within the constraints of *halakhah* as interpreted by Orthodox rabbis? We think that the answer is “yes,” but that’s a discussion for another time.

[4] In his three-volume *T’hukah l’yisrael al-pi hatorah* (Jerusalem: Mosad Harav Kook, 1989).

[5] *Hilkhot M’dinah* (Jerusalem: Mosad Harav Kook/Mizrahi Olami, 1951).

[6] *Amud Hay’mini* (Jerusalem, 1966). Yisraeli was also the editor of and a leading contributor to the journal *Hatorah v’ham’dinah* (1949-1962), which published much ground-breaking research into halakhic issues raised by the establishment of Jewish statehood.

[7] See the articles collected in Shlomo Goren, *Mishnah ham’dinah* (Jerusalem: Ha’idra Rabah/M’sorah La’am, 1999). He addresses the conversion issue on pp. 181-190.

[8] His 1951 article [“Hashabbat bam’dinah.”](#) reprinted in Yeshayahu Leibowitz, *Yahadut, al y’hudi, um’dinat yisrael* (Jerusalem: Schocken, 1979), pp. 108-12, rehearses many of the themes stated here and makes some important suggestions.