

Rambam and the Jew by Choice: A Chapter in Progressive Halakhah

The Freehof Institute of Progressive Halakhah. 2020 / תש"פ

It may be the most famous *t'shuvah* in the history of the responsa literature: the letter of Rambam (Maimonides)[1] to a Jew by choice named Ovadyah.[2] Its celebrity rests chiefly upon the powerful affirmation that Rambam gives to the status of the *ger*, the proselyte, who by act of choice joins the Jewish people and shares in their life, fate, and destiny. But the responsum is important, too, because in two respects it is a classic twelfth-century example of progressive *halakhah* in action. First, Rambam arrives at what we would think is the right and just answer to Ovadyah's *she'elah*. And second, the way he reaches that answer has much to teach us about possibilities and alternatives in the interpretation of Jewish law.

The Question.

Ovadyah asks Rambam whether, as a convert to Judaism, he is allowed to recite during his prayer[3] such common phrases as *eloheinu velohei avoteinu* ("our God and the God of our ancestors"), *asher kid'shanu b'mitzvotav v'tzivanu* ("who has sanctified us with *mitzvot* and commanded us"), *ahser bahar banu* ("who has chosen/entered into a special relationship with us"), *shehotzeitanu me'erezt mitzrayim* ("who brought us forth from the land of Egypt") and others. It's obvious to the reader that this is no ordinary, technical halakhic inquiry. What unites all these passages is their expression of our common history and identity, and Ovadyah wants to know whether he fully shares in it. May he, whose biological roots do not stretch back to the Exodus and to Sinai, stand before God – and the community – and claim that history, that identity for himself? Is his Jewishness as authentic as that of the Jew by birth? Although he doesn't mention the circumstances that spurred this question, it isn't difficult for us to imagine them (discrimination / rejection by the community? self-doubt? a combination thereof?)

The Rhetorical Introduction.

Rambam wastes no time in answering the question: you may recite all of these passages, just as any Jew recites them during prayer; "don't change a word of it" (ואל תשנה דבר)! But at this point, where we would expect a halakhic argument to support his answer, Rambam launches into an extended sermon or *d'rashah*. This aggadic material takes up by far the bulk of his responsum; his formal halakhic argument, consisting of but a few lines, comes only at the end. We might be tempted to dismiss the *d'rashah* as mere "rhetoric," but that, as we'll see, would be a mistake.

The sermon covers a number of Biblical themes, but it sets its main focus upon the role of Abraham as the father of all who enter the community of Israel by choice.

ועיקר הדבר שאברהם אבינו הוא שלמד כל העם והשכילים והודיעם דת האמת וייחודו של הקדוש ברוך הוא ובעט בע"ז והפר עבודתה והכניס רבים תחת כנפי השכינה ולמדם והורם וצוה בניו ובני ביתו אחריו לשמור דרך ה' כמו שכתוב בתורה כי ידעתיו למען אשר יצוה את בניו ואת ביתו אחריו ושמרו דרך ה' וגו'. לפיכך כל מי שיתגייר עד סוף כל הדורות... תלמידו של אברהם אבינו ע"ה ובני ביתו הם כולם...

נמצא אברהם אבינו ע"ה הוא אב לזרעו הכשרים ההולכים בדרכיו ואב לתלמידיו וכל גר שיתגייר. לפיכך יש לך לאמר אלהינו ואלהי אבותינו שאברהם ע"ה הוא אביך ויש לך לומר שהנחלת את אבותינו שלאברהם נתנה הארץ שניב קום התהלך בארץ לארכה ולרחבה כי לך אתננה.

The essential point is that our ancestor Abraham was the one who taught the people, educating them in the true religion and the oneness of God. It was he who rejected idolatry and eliminated its cult, who brought many under the wings of the Divine Presence,[4] teaching and instructing them, and who charged his descendants to keep God's ways, as it is written (Genesis 18:19), "For I have entered into relationship with him, so that he will charge his descendants and his household after him to keep the way of Adonai," etc. Therefore, all who convert to Judaism, to the end of time... are called the students of our ancestor Abraham; they are all members of his household...

Abraham our ancestor is the father of all his descendants who keep the faith, and he is the father of his students and of every *ger* who converts to Judaism. Therefore, you may recite "our God and the God of our ancestors," for Abraham is your father. And you may recite "the land that you bequeathed to our ancestors," for the land was given to Abraham, as it is written (Genesis 13:17), "Rise; travel the land, the length and width of it, for I have given it to you."

The *ger*, the convert to Judaism, is the spiritual descendant of Abraham (and of Sarah[5]), who was the first to teach Torah and to bring people to Judaism. For this reason, proselytes may include themselves in the "we" language of Jewish prayer, for they enjoy equal status with all other Jews in the community of Israel.

Rambam spices this presentation with a few Biblical verses, such as Numbers 15:15-16 ("The community – one statute for you and for the *ger* who resides, an everlasting statute for your generations, for you and the *ger* alike before Adonai. There shall be one Torah and one law for you and the *ger* who resides with you"), which he interprets expansively as demanding equal treatment for the Jew-by-choice.[6] But it's clear that, for Rambam, the link to Abraham is what renders Ovadyah, like any other proselyte, truly "one of us."

The Halakhah

Following this extended "sermon," Rambam sets forth his halakhic argument. It begins with Mishnah *Bikkurim* 1:4, which lists those who do and do not participate in the ritual of the bringing of the "first fruits" (*bikkurim*)[7] of the land to the Temple (Deuteronomy 26:1-11).

הגר מביא ואינו קורא שאינו יכול לומר אשר נשבע ה' לאבותינו לתת לנו ואם היתה אמו מישראל
מביא וקורא
וכשהוא מתפלל בינו לבין עצמו אומר אלהי אבות ישראל וכשהוא בבית הכנסת אומר אלהי אבותיכם
ואם היתה אמו מישראל אומר אלהי אבותינו :

The proselyte brings (the *bikkurim*) but does not recite (the prescribed speech, *vidu'i*, Deut. 26:5-10), because he cannot say "the land that Adonai swore to our fathers to give to us." If his mother is Jewish, he brings the *bikkurim* and recites (the *vidu'i*).

When he prays privately, he recites “(our God and) the God of the ancestors of Israel.” And when he (leads prayer in) the synagogue, he recites “(our God and) the God of your ancestors.” If his mother is Jewish, he recites “the God of our ancestors.”

This *mishnah* speaks in an anonymous voice (*s'tam*), which suggests that there is no *mahloket* (dispute) over this law. It holds that the *ger* (Jew-by-choice) may be a Jew, but he is less than truly “one of us,” because he is not a biological descendant of the twelve tribes who were slaves in Egypt, who stood at Sinai, and who inherited the land of Israel. But Rambam reminds us of the tradition that the *s'tam mishnah* represents the view not of all the Sages but of Rabbi Meir in particular.[8] And in this case, the Talmud Yerushalmi (*Bikkurim* 1:4, 3b) cites another opinion.

תני בשם רבי יהודה גר עצמו מביא וקורא מה טעם? "כי אב המון גוים נתתיך." לשעבר היית אב לארם ועכשיו מכאן ואילך אתה אב לכל הגוים.
רבי יהושע בן לוי אמר הלכה כרבי יהודה. אתא עובדא קומי דרבי אבהו והורי כרבי יהודה.

A *baraita* in the name of R. Yehudah: The *ger* himself brings the *bikkurim* and recites (the *vidu'i*). What is the reason? “I have made you the father of many nations” (Genesis 17:5): formerly, you were the father of Aram, but now you are the father of all peoples. Rabbi Yehoshua b. Levi says that the *halakhah* follows R. Yehudah. A case came before Rabbi Abahu, who ruled in accordance with R. Yehudah.

On the strength of the rulings of the two Amoraim, Rabbi Yehoshua b. Levi and Rabbi Abahu, Rambam declares that the *halakhah* follows R. Yehudah and *not* the *s'tam mishnah* / R. Meir: the *ger* includes himself in those passages of the *t'filah* that refer to Israel as a collective “we.”

Why This is “Progressive” Halakhah

We suggested at the outset that this *p'sak* is an example of “progressive *halakhah*.” We say this not only because we like Rambam’s decision – we progressives will invariably favor inclusionary over exclusionary readings of Jewish law – but also and mainly because of how he goes about justifying it. First of all, he does not pretend that the sources compel him to reach *this* decision. His decision is a *choice* among the available readings. In this case, Rambam *chooses* the Talmud Yerushalmi’s reading of the *halakhah* (the *ger* is permitted to recite the words “our God and the God of *our* ancestors”) over that of the *s'tam mishnah*, which declares that he cannot recite those words.

It’s a “choice” because the Yerushalmi is very much a minority opinion. Every other classical Rabbinic text that mentions this issue - the Tosefta (which attributes the *s'tam mishnah*’s exclusionary ruling to Rabbi Yehudah) [10] the *Mekhilta*, [11] the *Sifrei*, [12] and the Talmud Bavli [13] – echoes the *s'tam mishnah* and holds that the *ger* does *not* recite the *vidu'i bikkurim* and does *not* recite “the God of our ancestors” in his prayer. Not a single one of these texts mentions the more inclusive opinion, that attributed to Rabbi Yehudah in the Yerushalmi. In other words, Rambam’s decision ignores the overwhelming consensus interpretation of the *halakhah* in the authoritative texts. He also ignores the major Geonic source that deals with this question, which adopts the consensus position.[14] It stretches credulity to assume that Rambam was unaware of these other rulings. He must have known of them, and he chose to ignore them.

Rambam would never have claimed his choice to be arbitrary, an act of sheer will in the face of the overwhelming weight of precedent. He justifies his choice as the better of two possible understandings of the place of the proselyte in Jewish history and community. The *s'tam mishnah*, the Bavli, the Tosefta, and the halakhic *midrashim* focus upon the aspect of biological descent. The *ger* is not truly “one of us” because he is not the lineal offspring of Abraham, Isaac, and Jacob who originally inherited the land of Israel. Rabbi Yehudah, on the other hand, defines the issue as one of *spiritual* descent. The *ger* is the spiritual child of Abraham, the progenitor of the Jewish people *and* the great teacher of converts, and thus he may include himself in the “we” language of Jewish prayer. The long sermonic introduction to his *t'shuvah* is therefore not a case of “mere” rhetoric; it's crucial to developing the *halakhic* argument that the opinion of R. Yehudah in the Yerushalmi is the better and morally superior understanding of the *ger's* place in Jewish life and history. It's rhetoric, yes, but it is the sort of rhetoric that aims to persuade, to gather a community of readers around *this* particular understanding of this question in particular and of Torah and *halakhah* in general.

We, of course, agree with Rambam's choice. We, too, believe that the best understanding of the tradition is that which is more inclusive, more welcoming of those who would otherwise dwell on the margins of the community. And we think that the *method* of this decision - its independence of precedent and its reading of the *halakhah* according to the best understanding of what the Torah's message of morality and justice asks of us – is how *halakhah* ought to be thought, read, and decided.

That's why we see it as a textbook case of progressive *halakhah* in action.

[1] *Resp. Rambam* (ed. Blau), no. 293.

[2] In all likelihood, he's not identical with another famous proselyte named Ovadyah, born in Italy of Norman decent (and hence called “[Ovadyah the Norman proselyte](#)”) who died in 1150.

[3] Whether he prays as an individual or as a *shaliah tzibur*.

[4] The theme of Abraham and Sarah as “missionizers,” bringing the word of the one God to the nations and converting them to Judaism, is prominent in the aggadic tradition. See for example *Bereshit Rabah* 39:14, *B. Avodah Zarah* 9a, and Onkelos and Rashi on Genesis 12:5.

[5] Rashi *loc. cit.*

[6] “Expansively,” because 1) the verses in their context refer specifically to requirements for bringing sacrifices and not to the *ger's* status relative to other Israelites, and 2) by *ger* the Biblical text means a “resident alien” and not a proselyte. The institution of conversion developed later, during the post-Biblical period, and Rambam is reading these verses through the lens of a culture that is long familiar with that institution.

[7] While the Deuteronomy passage describes the ceremony and the recitation, the term *bikkurim* (בכורים) isn't used there. It's found elsewhere (Exodus 23:16 and 19; 34:22 and 26; Leviticus 23:17; Numbers 28:26).

[8] *B. Sanhedrin* 86a.

[9] *B. Eruvin* 46b: רבי מאיר ורבי יהודה הלכה כרבי יהודה.

[10] *Tosefta Bikkurim* (Lieberman ed.) 1:2: ר' יהודה אומ' כל הגרים כולן מביאין ולא קורין.

[11] *Mekhilta, Mishpatim, Masekhta d'Kaspa, parashah* 20

ראשית בכורי אדמתך. למה נאמרה פרשה זו, לפי שני ולקחת מראשית כל פרי האדמה, אין לי אלא פירות דרך ביכורים, משקין מנין, תלמוד לומר תביא בית יי אלהיך, מכל מקום; ומה הפרש בין אלו לאלו, אלא אלו מביאין וקורין ואלו מביאין ואין קורין. אשר תביא מארצך. להוציא אריסין וחכורות והגזלן והסקריקון; אשר יי אלהיך, להוציא גרים ועבדים.

[12] *Sifre D'varim, Ki Tavo, piska* 299: כי באתי אל הארץ אשר נשבע ה' לאבותינו, פרט לגרים.

[13] *B. Makkot* 19a: [ה'] אלא אמר רב אשי: כיון דאיכא בכורי הגר, דבעי למימר אשר נשבע [ה'] לאבותינו ולא מצי אמר, לא פסיקא ליה.

[14] *Sefer Halakhot G'dolot*, ed. Hildesheimer (Jerusalem, 1987), vol. 3, p. 330:

(בכורים פ"א) ואילו מביאין ולא קורין, הגר מביא ואינו קורא שאינו יכול לומר (דברים כו, ג) אשר נשבע ה' לאבותינו לתת לנו, אם היתה אמו מישראל מביא וקורא. כשהוא מתפלל בינו לבין עצמו אומר אלהי אבות ישראל, כשהוא בבית הכנסת אומר אלהי אבותיכם, אם היתה אמו מישראל אומר אלהי אבותינו.

See also *Tosafot, Bava Batra* 81a, s.v. *l'ma'utei admat akum*, where Rabbeinu Tam adopts the position of the *s'tam mishnah*. R. Yitzchak of Dampierre, however, rules that "we hold according to the Yerushalmi."