YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Before Sinai: Jewish Values and Jewish Law**

**By Rav Dr. Judah Goldberg**

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**Shiur #11: Jewish Peoplehood (4): Is There a Back Door to Judaism?
Part One**

**Is Conversion Contingent Upon Acceptance of *Mitzvot* (*Kabbalat Ha-Mitzvot*)?**

 In earlier *shi’urim* we described the fundamental principle that Jewish conversion involves the entrance of the convert to both *berit Avot* and *berit Sinai* simultaneously. At once, the convert both assumes the responsibility of mitzva observance and recasts his identity as a member of the Jewish people. What, though, is the precise relationship between these two elements? Is conversion first and foremost about pursuing a spiritual yearning and only secondarily about joining the people to whom God revealed Himself, or is it fundamentally about entering the Jewish nation, with responsibility towards *mitzvot* either a prerequisite or a consequence?

 This question has been raised most frequently with regard to the Rambam’s description of conversion. Whereas *Tosafot* and Ramban (*Yevamot* 45b) view an explicit pledge to observe *mitzvot* (*kabbalat ha*-*mitzvot*) as a discrete, independent stage of conversion, the Rambam’s conversion process does not rely upon such a pledge and is not even absolutely contingent on the judges’ declaration of mitzva obligation: “A convert whom [the judges] did not investigate or whom they did not inform of the *mitzvot* and their punishments, and who was circumcised and immersed in front of three laymen – he is a convert” (*Hilkhot Issurei Bi’a* 13:17). Is the Rambam thus downplaying the element of personal religious commitment in conversion?

 Recent scholars took opposing views in answering this question. R. Joseph B. Soloveitchik, quoting his father, R. Moshe Soloveichik, stressed that religious aspiration ultimately serves as the driving force behind conversion:

I once heard from my father that Maimonides did not intend to say that a convert who converted with the intention of not fulfilling the *mitzvot* is considered a true convert. Such a notion would uproot the entire concepts of conversion and *kedushat yisrael* [sanctity of the Jewish people], which [derive] from our obligation to observe the *mitzvot* of God. (*Kol Dodi Dofek*: Listen—My Beloved Knocks, 110n)

*Kabbalat ha-mitzvot* may not be a specific step in the conversion process, but living in response to God’s command is nonetheless both the initial motivation and the ultimate goal of conversion—in the Rambam’s words, “to come under the Divine canopy.” An overarching commitment to *mitzvot*, therefore, is indispensable.

 R. Shaul Yisraeli, in contrast, placed joining the Jewish people at the center of conversion, with commitment to *mitzvot* only a prerequisite to the convert’s proposed integration: “It is possible—and let us not falter in our words—that the entire content of conversion is integration into the Jewish nation, only that this integration is not possible if [the convert] is not ready to fulfill the Torah and its *mitzvot*.” The convert seeks rebirth, axiologically, not through direct confrontation with the Divine, but through admission to His chosen people.[[1]](#footnote-1) *Mitzvot*, however, are their currency, and they will deny entry to those who will not commit to their way of life.[[2]](#footnote-2) Ultimately, though, conversion is not contingent upon the convert’s earnest acceptance of *mitzvot*, at least according to the Rambam. If a *beit din* embraces him despite an uncertain commitment to *mitzvot*, R. Yisraeli suggests that he is absorbed into the Jewish people and will share their yoke of *mitzvot*, however reluctantly, as a result (*Chavot Binyamin* 2:67).

 To summarize, R. Soloveitchik sees *berit Avot* and *berit Sinai* as two independent aspects of conversion, even prioritizing the latter to the former. R. Yisraeli, on the other hand, views entrance into *berit Avot*—that is, achieving membership in the Jewish nation—as the critical act of conversion, with responsibility towards *berit Sinai* only a result. Commitment to *mitzvot* may be part of the “application” for citizenship, but the convert’s metamorphosis lies solely in his joining the nation.

 At stake in this discussion are not only competing conceptual frameworks for conversion, but also the very possibility of conversion without acceptance of *mitzvot*. In a day when Jewish identity and Jewish observance are no longer synonymous, Jewish communities worldwide and in Israel especially must handle candidates for conversion who eagerly embrace Jewish destiny but whose readiness to observe the totality of *berit Sinai* is doubtful. Can conversion unaccompanied by a sincere commitment to *mitzvot*—whether pursued intentionally or revealed only in hindsight—be valid?[[3]](#footnote-3)

**Looking for Answers in the Exceptions**

Admittedly, the Rambam’s formulation above is sufficiently malleable to allow scholars to continue to debate the possibility of conversion without acceptance of *mitzvot* in his view, and further dissection of it is unlikely to yield a definitive answer to this question. Perhaps we can glean insights by turning our attention elsewhere—again, to exceptional cases that can teach us about the mainstream. Regarding several situations, various opinions entertain the possibility of conversion that does not entail volitional acceptance of *mitzvot*. Close analysis of these cases, including the Rambam’s rulings, may add a different dimension to our understanding of the exact relationship between *berit Avot* and *berit Sinai* in the context of conversion.

***Eishet Yefat To’ar* (A Captive Woman of Beauty)**

 One of the striking exceptions to the Torah’s overall approach to intermarriage is the “e*ishet yefat to’ar*”(captive woman of beauty). As the Torah records in the opening to *Parashat Ki Teitzei*:

When you go out to war against your enemies, and Hashem your God delivers them into your hands and you take of them captives, and you see among the captives a woman of beauty and you desire her, you may take [her] for yourself as a wife.[[4]](#footnote-4) You should bring her into your house[[5]](#footnote-5)… and she should cry for her father and her mother for a month, and after that you may come to her and have relations with her, and she shall be for you a wife. (*Devarim* 21:10-13**)**

To be sure, the Talmud itself takes note of the extraordinary nature of this law, commenting that “the Torah only responded to the evil inclination,” which is presumed to have the upper hand in the heat of battle.[[6]](#footnote-6) This explanation, though, only highlights how unique this law is, in that the Talmud senses the need to isolate it and provide a case-specific justification.

 Just how unusual the pathway of a captive woman is, not only in concept but in actual procedure, is a matter of debate. According to the first opinion in a *beraita*, the procedure outlined in the verses above is only one of two options for the captive woman:

“And she should cry for her father and her mother, etc.” Regarding what was this said? Where she did not accept [Judaism] upon herself. However, if she accepted [Judaism] upon herself, he immerses her [in a *mikveh*] and is permitted [to marry] her immediately.” (*Yevamot* 47b)

The Gemara thus clarifies that the Torah omits the most obvious mechanism by which a captive woman may become permitted to her captor—classic conversion. If she is ready to “accept upon herself” the Jewish faith—voluntarily undergo standard conversion to Judaism—then she completely circumvents the laws of *eishet yefat to’ar*, which demand the month-long waiting period and other strictures. The process described in the verses, on the other hand, is intended for a captive who does not readily submit to her changed reality and does not want to embrace a new identity.

 What, then, is this secondary pathway to Judaism? According to the Rambam, it is essentially a protracted variation of the first one:

If she accepts upon herself to enter under the Divine canopy, he immerses her for the purpose of conversion immediately. But if she does not accept [Judaism], she must live in his house for thirty days, as it states, “And she should cry for her father and her mother for a month,” and she also cries over her religion, and he does not stop her… He is patient with her the whole thirty days **in order that she will accept [Judaism]**. If she accepts and desires it, **she converts and immerses like all converts**…

If she did not want to convert, he is patient with her an entire twelve months. If she still does not want, she accepts upon herself the seven Noahide laws, and he sends her on her own. (*Hilkhot Melakhim* 8:5, 7)

The process the Torah describes is not another route to Judaism, but a formula for procrastination. It gives the woman a chance to adjust to her new surroundings and to overcome her initial reluctance to convert, and it gives her captor the opportunity to reconsider his relentless pursuit of her as well. However, whether upon capture, after thirty days or after a full year, **the only way for the captive woman to become Jewish is through voluntary acceptance of the Jewish faith**.

 The Ramban, however, diverges completely from the Rambam with regard to the Torah’s explicit pathway for the *eishet yefat to’ar*:

The reason behind this passage is because she converts against her will, and we do not ask her if she desires to leave her religion and to become Jewish, as we do with [usual] converts, but the husband tells her that she must observe the Jewish Torah against her will and abandon her own faith. (Commentary on *Devarim* 21:12)

According to the Ramban, the *eishet yefat to’ar* never needs to embrace Judaism. Though she protests all along, her captor can somehow confer Jewish status upon her, obligating her in the *mitzvot* and ushering her into his household and into the Jewish people as a whole.[[7]](#footnote-7)

 This disagreement between the Rambam and the Ramban is not only about process but also about outcome. What happens to a woman who is ultimately rejected, as the Torah subsequently describes, “And if you no longer want her, then you should send her on her own” (*Devarim* 21:14)? According to the Rambam, this captive woman has undergone standard conversion and should therefore be subject to *Chazal*’s principle that conversion is irreversible (*Yevamot* 47b; see Rambam *Hilkhot Issurei Bi’a* 13:17). The Ramban, however, while confirming the general principle, raises the extraordinary possibility that the *eishet yefat to’ar*’s Jewish status and obligation in *mitzvot* is contingent:

And it says, “And you should send her on her own,” that she should do as she likes and we will not force her to observe Mosaic law and Jewish practice. For one who converts willfully we will force to observe the Torah, and if she desecrates Shabbat she is stoned, and if she eats pork she is lashed, like any Jew who has apostatized. Indeed, had [the captive woman] accepted conversion without coercion, we would not “send her on her own,” for even if we think that her conversion was out of fear, her status is that of a full-fledged Jewess.

In other words, the novelty of the *eishet yefat to’ar* lies not only in her process of conversion but also in her whole relationship to Judaism. She experiences and participates in Judaism only in the context of her captor’s house, but once she leaves she reverts back to her original gentile status.

Similarly, the Ramban infers that “she does not need a *get* [bill of divorce]from [her captor]. Rather, the Torah considers her an *eishet ish* [married woman] while she is with him, but when he hates her, he dismisses her as one who has been ravaged” (Commentary on 21:14). The Ramban subsequently notes that this is true only if the captor rejects the *eishet yefat to’ar* after their first sexual union. If he wishes to divorce her at a later point, “she has already become his wife, and, behold, she is a Jewess and is divorced through a *get*,” and, presumably, she remains permanently obligated in *mitzvot* as well. Once she is entrenched in Judaism, her conversion has been solidified; prior to that, her status evaporates upon leaving her host context.

**Social Conversion**

To summarize, the Ramban proposes two tracks for conversion for the *eishet yefat to’ar*:

1. Standard conversion – in which the captive woman accepts Judaism of her own will. This conversion is irreversible.
2. Atypical conversion – in which the captive woman is forced to practice Jewish law. She is considered Jewish as long as she dwells in her captor’s house, but if she is quickly dismissed, her Jewish status dissolves. If, however, they remain married for a prolonged period, her conversion takes on a permanent character of its own.

The first track is quite familiar to us, but how should we interpret the second one? How can we understand a conversion that is not a transformative moment, but rather an initially tentative way of life whose force accrues over time?

 Perhaps this second track of conversion is a “social conversion.” **The *eishet yefat to’ar* observes *mitzvot* not out of personal commitment to the Jewish faith, but solely because she has been absorbed into a Jewish home**, such that no trace of Judaism follows her if she leaves.While the typical convert must, perhaps, commit separately to both Jewish faith and Jewish nationality, the *eishet yefat to’ar* comes to *mitzvot* only through her Jewish social experience. Furthermore, while a genuine spiritual journey by definition requires willful participation, the force of social processes can overwhelm personal identity.[[8]](#footnote-8) At first, her socialization is reversible, but as time passes, her new way of life takes root. Part of the novelty of the *eishet yefat to’ar* is that she becomes independently Jewish purely through social integration, even though she never actively embraces Jewish faith and practice.

The Rambam, however, rejects any such notion regarding the *eishet yefat to’ar*. Conversion must mean following a spiritual yearning (“to enter under the Divine canopy”) while only concomitantly, or secondarily, joining a social unit.

 Finally, a narrow Tannaitic dispute regarding one phrase in the verses of *eishet yefat to’ar* might hint at these two divergent understandings of her journey:

The Rabbis taught: “And she should cry for her father and her mother” (*Devarim* 21:13). Rabbi Eliezer says: “‘Her father’—her literal father; ‘her mother’—her literal mother.” Rabbi Akiva says: “‘Her father’ and ‘her mother’—this is pagan worship, and so it says, ‘They say to a tree, ‘You are my father,’ etc.’ (*Yirmiyahu* 2:27).” (*Yevamot* 48a-b)

Rabbi Eliezer and Rabbi Akiva disagree about what the captive woman primarily mourns for—that is, what she is primarily separating from. Rabbi Eliezer contends that her transition is fundamentally a social one, evoking the Ramban’s position. She is crying for her family, her community, her peoplehood, etc. as she is forced to take on a new identity. Rabbi Akiva, however, believes that her transition must be a spiritual one. Thus, the Rivan rules that “according to Rabbi Akiva, she must reject pagan worship before she has relations with [her captor],” and *Tosafot* insightfully add that “it is not in accordance with Rabbi Akiva, that which it says earlier, ‘Regarding what was this said? Where she did not accept [Judaism] upon herself’” (48b).[[9]](#footnote-9)

**Conclusion**

Regarding the *eishet yefat to’ar*, the Ramban introduces a form of conversion that seems to be driven by social absorption; the Rambam rejects this notion, at least in this context. In the following *shiur*, we will consider other examples of atypical converts before returning to our original question of the relationship between *berit Avot* and*berit Sinai* in conversion.

**For Further Thought:**

1. In addition to Rabbi Eliezer and Rabbi Akiva’s argument about “she should cry for her father and her mother” (*Devarim* 21:13), the Talmud quotes another argument between them about “she should fix her nails” (21:12). Rabbi Eliezer believes that the captive woman should trim her nails, whereas Rabbi Akiva maintains that she should grow them (*Yevamot* 48a). Is there a logical connection between these two arguments?

**Questions or Comments?**

Please email me directly with your feedback at judahlgoldberg@gmail.com!

1. Also see R. Shlomo Goren: “The truth is that every conversion, at its root, is the joining of the convert to the Jewish nation. The acceptance of the yoke of Torah and *mitzvot* that precedes the conversion is a condition for conversion and not the actual conversion itself” (“*Kefira Be-Am Yisrael Le-inyanei Giyur*” [*Shana Be-shana*, 5743 [1983]], 150). [↑](#footnote-ref-1)
2. This model perhaps recalls the response of Ya’akov’s sons to Shekhem that circumcision is a prerequisite for marrying Jewish women (*Bereishit* 34:15-16). [↑](#footnote-ref-2)
3. R. Yisraeli’s own position on this issue has been hotly debated. See, for instance, R. David Bass, “*Tokefo shel Giyyur Be-di’avad im Ha-ger Eino Shomer kol Ha-mitzvot*,” *Techumin* 23 (5763), 186-202 (available at http://www.zomet.org.il/?CategoryID=263&ArticleID=254&Page=1), including the response of R. Yisrael Rozen and especially note #10; and Prof. Aryeh Edrei, “*Ve-ein Achrayutam Aleinu*?” *Akdamot* 24 (*Nissan* 5770), 182n. Also see Responsa *Be-mar’eh Ha-bazak* 3:89, 4:96. [↑](#footnote-ref-3)
4. See Ramban (21:13), who discusses whether this phrase is part of the introductory clause or the consequences. The Talmudic dispute whether a first act of intercourse is allowed at the time of captivity or whether this is prohibited until the full process of *eishet yefat to’ar* has been completed (*Yerushalmi Makkot* 2:6) might depend on this point. [↑](#footnote-ref-4)
5. Similarly, on whether this phrase is a continuation of the prior verse or a separate statement, see Ramban (21:13) and *Tosafot* and Ramban *Kiddushin* 21b-22a. [↑](#footnote-ref-5)
6. This concept has specific legal ramifications. First, it teaches that even a *kohen* may have initial relations with an *eishet yefat to’ar*, even though he is more limited in his marriage choices in general and also cannot take the *eishet yefat to’ar* as a permanent wife because she is a convert (*Kiddushin* 21b; Rambam *Hilkhot Melakhim* 8:4). Second, the Rambam writes that a soldier may have relations with an *eishet yefat to’ar* only “if his inclination takes hold of him” (8:2). In other words, the force of the evil inclination is not just a general explanation for the law but a necessary condition in each and every case. [↑](#footnote-ref-6)
7. Also see Ritva *Yevamot* 47b. [↑](#footnote-ref-7)
8. R. Soloveitchik poses a similar distinction between *berit Mitzrayim* (or *berit Avot*) as a “Covenant of Fate” and *berit Sinai* as a “Covenant of Destiny” in his *Kol Dodi Dofek*: “What is the Covenant of Fate? Fate signifies in the life of the nation, as it does in the life of individual, an existence of compulsion” (*Kol Dodi Dofek*: Listen—My Beloved Knocks, trans. David Z. Gordon, 52). In contrast, “What is the Covenant of Destiny? In the life of a people (as in the life of an individual), destiny signifies an existence that it has chosen of its own free will and in which it finds the full realization of its historical existence” (65). [↑](#footnote-ref-8)
9. Admittedly, both the Rambam and the Ramban seem to embrace both of these opinions. See *Hilkhot Melakhim* 8:5 and Commentary on *Devarim* 21:12, respectively. [↑](#footnote-ref-9)