

# THE RETURN OF SECOND GENERATION APOSTATES

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*The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.*

## שאלה

May a member of the Rabbinical Assembly officiate at the marriage of a person born of a Jewish mother who was raised in the church but who now disavows that affiliation?

## תשובה

This question should be seen in the context of halakhic literature treating the general matter of rabbinic officiation at the marriage of an apostate who disavows the apostasy and proceed by inference to the child of an apostate. The first issue has already been dealt with both in the classic halakhic literature and by the CJLS.

## Background

The sources consider the קידושין of a Jew who committed apostasy, notwithstanding that act of apostasy, to be valid:

ישראל מומר שקידש קדושו קדושין גמורים, וצריכה ממנו גט. ואפילו זרעו שהוליד משהמיר אם קידש אותו זרע ישראלית, קדושו קדושין.

An Israelite who committed apostasy and then married, his marriage is valid and necessitates a גט when divorcing; and even when his offspring, born after his apostasy, marries a Jewish woman, his marriage is valid.<sup>1</sup>

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<sup>1</sup> E.H. 44:9.

This halakhah is based on discussion in the Gemara of Yevamot 47b and B'horot 30b the conclusion of which was subsequently summarized in a responsum of Rashi that:

המשומד הרי הוא כישׂראל חשוד לכל דבר שאמר. חטא ישׂראל אע"פ שחטא, ישׂראל הוא – ואין לחלקי מידת ישׂראל.

An apostate is regarded as a suspect Israelite in all matters, because it is said that “[a]n Israelite who has sinned is regarded as an Israelite, and we do not separate him from the religion of Israel, [and his marriage is valid].”<sup>2</sup>

It is noteworthy how Rashi changed his understanding and explanation of the phrase, “An Israelite who has sinned is regarded as an Israelite.” The phrase originated in the Talmudic statement: *אמר רבי אבא בר זבדא: אע"פ שחטא ישׂראל הוא* – “Rabbi Abba Bar Zabda said, even though he sins, he remains an Israelite.”<sup>3</sup> Rashi *ad locum* quotes the Biblical proof text: Since it does not say that in Joshua, chapter 7, “the people sinned,” but rather, “the people committed a trespass (וימעלו), concerning the sacred thing,” *קידוש* still is applied to the people of Israel. Rashi’s commentary in Sanhedrin therefore explains the classic phrase as applying to the *collectivity* of Israel and not to *individual* Israelites.

Jacob Katz posits that the change in interpretation from the collective to the individual occurred because by the time of Rashi, apostasy had generally become compulsory.<sup>4</sup> In order to ease the readmission of those forced to apostatize to Christianity, Rashi shifted his own understanding of the original source. In contrast to the earlier Gaonic tradition, Rashi began to emphasize the power of *תשובה* for the errant Jew: “An *individual* Israelite who has sinned is nevertheless regarded as an Israelite.”<sup>5</sup>

### Application of Halakhic Sources to the Apostate

If Katz’s general thesis is correct, then we have a case when the original reason for the law may no longer be valid and thus we are free to alter the halakhah, when compelling new circumstances warrant.

Jews who apostatize today are no longer coerced, but do so willingly. The reasoning of Rashi which stimulated lenient treatment of apostates is no longer a basis to regard the *קידושין* of a contemporary apostate as automatically valid, or for a rabbi to “solemnize” that marriage by officiating.

What should be done with such a person who wished to marry back into the Jewish community? The Shulhan Arukh explains:

ואפילו חזר ועבד עבודת כוכבים, הרי הוא כישׂראל מומר שקידושי קידושי.

And even when he reverted and worshipped idols he is to be

<sup>2</sup> Responsa of Rashi: no. 173.

<sup>3</sup> B. Sanhedrin 44a: *ישׂראל אף על פי שחטא*.

<sup>4</sup> *Gershom G. Scholem Jubilee Volume* (Jerusalem: Hebrew University, 1958), pp. 77-91 (in Hebrew).

<sup>5</sup> Emphasis mine. This reversal even went so far as: “An apostate kohen who did teshuvah shall participate in dukhanen and shall be called first to the Torah, for if you rule that he shall not participate in dukhanen and not be called first to the Torah, you are weakening the hands of the repentant and it is not correct to do this.” Jacob Katz, quoting the Teshuvot of Rabbenu Gershom M’Or Hagolah as followed by Rashi, cited in *ישׂראל אף על פי שחטא* in *Scholem Jubilee Volume*, p. 87.

regarded as a suspect Israelite for all matters and his marriage is valid.<sup>6</sup>

To which the Rama adds:

ישראל מומר שעשה תשובה אינו צריך לטבל רק מדרבנן יש לו לטבול.  
ולקבל עליו דבר בפני שלשה.

When an apostate Israelite repents of his or her apostasy, there is no need to require טבילה, but מדרבנן he should immerse himself and accept upon himself his statement of sincerity before a bet din.

Clearly, a formal ceremony of readmission is a Rabbinic, not a Toraitic stricture. But in our time, because the circumstances prompting Rashi's leniency are no longer valid, we should adhere to the rabbinic חומרה and insist on טבילה and bet din (and circumcision or ברית דם הטפת if it was not done at birth or at a previous conversion) prior to the marriage of such a person to another Jew.

Perhaps it was these considerations which prompted Rabbi Boaz Cohen to write in 1949:

A repentant apostate must first undergo immersion in a מקווה, and then make a solemn declaration affirming his sincere desire to return to his original faith and to abide by the precepts of Judaism. This avowal must be made in the presence of a bet din consisting of the rabbi and two prominent laymen of the congregation. This טבילה is done without the ברכה.<sup>7</sup>

### ***The Child of an Apostate Raised With Full Commitment and Socialization in a Church***

On the other hand, the circumstance of the child of an apostate, raised in the Christian Church is different. A distinction should be made between two categories; the child who, in the judgment of the מרא דאתרא has been raised in the church with full commitment – i.e. in most cases, including baptism and/or Christian education.<sup>8</sup> On the other hand, there are children of apostates who, in the judgment of the מרא דאתרא, have accompanied their parents to a church but have not experienced full and formal socialization into the church. In the former case, since they have formally passed into another religion, a formal ceremony of readmission into Judaism would be required. This would include מקווה, and bet din, for a female. For a male who was uncircumcised, both מקווה and ברית מילה, which have been declared a Standard of Rabbinic Practice in the case of conversion, are required.<sup>9</sup> In the

<sup>6</sup> Y.D. 268:12.

<sup>7</sup> Committee on Jewish Law and Standards, 1949, with Digest of Answers (circular to Rabbinical Assembly membership, CJLS archives).

<sup>8</sup> It should be understood that various churches designate different stages at which the “unchurched” becomes “churched” and accepted into the particular Christian community. In one church acceptance depends on baptism in childhood; whereas in another on baptism as an adult; whereas still a third church may require an additional educational component. Because this threshold varies, this teshuvah uses the generalized wording, “full and formal socialization into a church,” which will differ according to denomination and should be gauged by the מרא דאתרא. In addition, even though the teshuvah addresses apostasy into the Christian church, its arguments and conclusions also apply to apostasy into any sect within Christianity or for that matter, any religion or sect other than Judaism.

<sup>9</sup> Joel Roth and Akiba Lubow, “A Standard of Rabbinic Practice Regarding Determination of Jewish Identity,” *PCJLS 80-85*, p. 178.

instance when there has been only an earlier medical circumcision, then the male should undergo *ברית מילה*. On the other hand, in cases where the male had *ברית מילה* as a child prior to the apostasy, then only *מקווה* and *bet din* are necessary for readmission.

A reality in our society is that some of these children of apostates who have been socialized into the church, may have already married Jewish spouses. In spite of the requirement of halakhic reentry requirements, their marriages to Jews, *בדיעבד*, should be considered as *תופסין* and a *גט* is necessary in the instance of divorce from that spouse. Also, after the reentry of the Jewish partner, the couple should also be encouraged to have a proper marriage, *כדת וכדין*.

### ***The Child of an Apostate Raised Without Full Commitment and Socialization in a Church***

In contrast, when a child has not experienced full and formal socialization into the church, a procedure of readmission, although necessary, need not be so halakhically stringent.

Since with apostasy itself, the requirement of *טבילה* and *bet din* is *מדרבנן*, there is no reason to be as demanding with the child of a Jewish mother who is an apostate. This child should be regarded in the halakhic category of: *תינוק שנשבה בין הגויים* – “a child who is in captivity against his or her will among the gentiles.” There is ample precedent in Jewish law to be more lenient in this situation than with someone who knowingly and intentionally violates Jewish law and tradition.

Thus, the Mishnah states that one who knows the commandment of Shabbat and violates it with multiple transgressions must bring a *קרבן חטאת*, a sin offering for each and every Shabbat violation. On the other hand: *כל השוכה עיקר שבת ועשה מלאכות הרבה בשבתות הרבה: אינו חייב אלא חטאת אחת* – “A person who is unaware of the essence of Shabbat, and violates it with many individual violations, is liable for only one (general) sin offering.”<sup>10</sup>

In the subsequent discussion in the Gemara, Rav and Shmuel contend that the transgressor in the latter case is responsible for only one sin offering because he or she is as a *תינוק שנשבה בין הגויים*. A more lenient opinion of Rabbi Yohanan and Resh Lakish contends that: *דוקא הכיר ולבסוף שכח אבל תינוק שנשבה בין הנכרים וגר שנתגייר לבין הנכרים: פטור*. “The requirement of one sin offering applies only when one knew of Shabbat and forgot, but a child who is captive among the gentiles, or a proselyte who became converted in the midst of gentiles (so that they never knew of Shabbat) is exempt.”<sup>11</sup> The halakhah follows Rav and Shmuel, but according to both opinions the principle is that the child of an apostate is treated with greater leniency than one who is aware of the structure of Shabbat and violates it.

This leniency is codified in Rambam who states that such a person: *אינו חייב אלא חטאת אחת* – “He is liable for only one sin offering since all individual transgressions result from one inadvertent error.”<sup>12</sup>

One who was born of a Jewish mother, but subsequently raised within a church without full commitment and socialization to that church, should be regarded as *תינוק שנשבה בין הגויים*. If that person disavows the church affiliation, and wished to marry a Jew, he or she should be allowed to do so without the totality of ceremonial encumbrance required of an apostate. It is important that the *מרא דאתרא* designate some formal tran-

<sup>10</sup> B. Shabbat 67b.

<sup>11</sup> B. Shabbat 68b.

<sup>12</sup> M.T. Hilkhhot Sh'gagot 7:2.

sition back into Judaism. מקווה is preferable. However, since מקווה is not required מדאורייתא, it may be substituted by other affirming acts, such as an educational program, similar to that of a convert; a letter of renunciation of the former religion and accompanying affirmation of faith in Judaism, and/or the recitation of the שמע before the ארון קודש. In our Movement we are aggressive in seeking to convert to Judaism those who are sincere and eligible for conversion. Simultaneously, we are attempting to recoup those born of Jewish ancestry whose parents have led them astray. Since those children of apostates are still technically Jewish, they should undergo symbolic acts of reentry into Judaism, but the מרא דאתרא may be flexible and creative in the specific nature of those acts. Of course, in the case of a male, he must undergo the essential ברית מילה or הטפת דם ברית, if not previously done.

### **Conclusion**

The CJLS has already ruled that an apostate seeking readmission into Judaism should undergo מקווה, טבילה and bet din (and ברית מילה or ברית דם הטפת דם when male, when not previously done). The child of an apostate who in the judgement of the מרא דאתרא has been formally committed to a church should undergo the same halakhic procedure when seeking readmission to Judaism and marriage to a Jew. The child of an apostate who, in the judgement of the מרא דאתרא was not formally committed to the Christian church should be resocialized into Judaism through any one or a combination of reentry mechanisms, preferably מקווה. Alternative possibilities which are acceptable are, a letter renouncing the former faith and affirming Judaism, the reading of the שמע before the ארון קודש, and an educational program such as we utilize with prospective converts. When this child is male, he must undergo ברית מילה or ברית דם הטפת דם, if not previously done. Once these requirements are fulfilled, the returnee is eligible for all obligations and rights of Judaism and the rabbi may officiate at the marriage of that person to a Jew. Of course, the child of a male apostate and a gentile woman who was raised in another religion, must undergo conversion through our standard procedure before the rabbi may solemnize his or her marriage to a Jew.