

MENACHEM FINKELSTEIN, הגיור: הלכה ומעשה (*Proselytism: Halakhah and Practice*). Ramat Gan: Bar-Ilan University Press, 1994. Pp. 433.

In Jewish theological thought, conversion to Judaism is viewed as miraculous in nature. The change in status from Noahide to Israelite involves a change from subjection to seven commandments to that of 613 duties, prohibitions, restrictions, and responsibilities. Furthermore, it brings about a veritable transformation in the person of the convert. The rule “a ger [convert] is like a new-born babe,” is understood literally: a convert has a new father, Abraham, and a new mother, Sarah. The male convert is no longer married to his wife; they must remarry (on the condition that she too was converted). His children are halakhically not his own; they must now be adopted by him if the obligation to support them is to devolve upon him. His sister is no longer forbidden to him under the laws of incest should she be converted to Judaism. The law of Scripture would theoretically allow them to marry each other (only a rabbinic amendment proscribes such a marriage). In a word, theology has overpowered biology. Thus, racial theories based on “blood” can have no place in halakhic Judaism.

This observation is a fitting introduction to Colonel Menahem Finkelstein’s masterful study of conversion in halakhah. One-time Chief Military Solicitor of the Israeli Defense Forces, subsequently its Chief Military Prosecutor, Finkelstein serves today as a judge in the Military Court of Appeals. A lawyer by profession, he has written a non-pilpulistic jurisprudential analysis of a significant aspect of Jewish law. The practical application of halakhic theory is treated consistently throughout the study. Two chapters are concerned with postbiblical historical questions: semiconverts (III, 4) and conversion lacking *bet din* supervision and authorization (IV, 2). The last chapter (V, 3) is devoted to contemporary problems such as the Langer case in Israel, and Conservative and Reform conversions.

An halakhic conversion is comprised of four elements, one subjective in nature and three objective. The first and most important element—the very essence of conversion—is the twofold commitment to Judaism: a “religious” one, the acceptance of the *mišwot* of the Torah, and a “national” one, the acceptance of membership in the Jewish nation. The acceptance of both is absolutely essential. Israeli secularism, the author points out, is a singular attempt at creating the possibility of gaining access to membership in the Jewish nation without the acceptance of the *mišwot*. His treatment of “the fearers of Heaven” or “the fearers of the Lord,” who lived during late Hellenistic and early Roman times (i.e., before and after the destruction of the Second Temple) in and outside of Palestine, concerns itself with their partial

acceptance of the commandments, but leaves us wondering whether there were any examples of individuals who accepted the *mišwot in toto* but considered themselves apart from the Jewish people. Are there any rabbinic attempts to characterize the Samaritans in the time of Ezra and Nehemiah in a similar fashion?

The second element is the verbal articulation of this commitment before a Jewish court. The third and fourth elements are the circumcision of the male and the immersion of the male and female (upon which, of course, the Christian baptism is based).

In this book, each element is subjected to a careful and comprehensive analysis: What is the status of a convert whose commitment to Judaism is made with reservations or without the knowledge of what the *mišwot* are? Must the convert be committed to all the *mišwot*, or only some of them? And if so, which ones? What is the nature of the court? Who are the judges? Must they be the rabbis with talmudic ordination? May there be laymen on the bench? Is the nature of the proceedings legal, judicial, declarative, or constitutive? What is the status of a candidate for conversion who undergoes circumcision but not immersion; immersion but not circumcision; or neither?

Addressing himself to each question, Finkelstein cites a formidable mass of halakhic literature: Mishnah, Gemara and Midrash; commentaries, codes, and responsa of the Ge'onim, Rishonim, and Aḥaronim. Latter-day halakhic authorities are often cited, most interestingly Rabbi Moshe Feinstein, whose comments are characterized by originality. Each question is approached in two ways: which are the desirable requirements and which are the indispensable ones, the nonfulfillment of which invalidate the conversion. Sources are not merely cited and catalogued; they are analyzed as to their logical, consistent coherence, and their implications for the interpretation of the talmudic precedent. Opinions are compared and contrasted. Finally, the dominant ruling is formulated, but the dissent and reservations of other rabbinic scholars are also given their due.

An example of the analytical jurisprudence of the author is his analysis of the elements of conversion. It parallels the classical understanding of *qinyan*. A *qinyan* is a formal act of (1) acquisition of ownership or possession by purchase-sale, barter-exchange, deposit-bailment, hire, or theft; (2) undertaking a (contractual) obligation; or (3) change of status, as in a marriage. Thus, *qinyan* is a most pervasive phenomenon in Jewish law (for details cf. *EJ*, s.v. "Acquisition").

There are two major elements in the halakhic *qinyan*: *gemirut da'at* and *ma'aseh qinyan*. *Gemirut da'at* is the heart and soul of the halakhic transaction involving acquisition, obligation or change of status. It is variously translated as "final," "deliberate," or "perfect" intention to distinguish it from intention as to a future act (even two minutes hence); and it is the substantive content subjectively felt when a person declares "I hereby . . ." (cf.

EJ, s.v. “Contract”). The “I hereby . . .” declaration is insufficient, however. There must also be a *ma^caseh qinyan*, a formal physical act that either clinches or demonstrates the *gemirut da^cat*. (There are some exceptions, but these are rare.)

This, briefly, is the biblical law of transactions as received and perceived by the rabbis. Finkelstein applies these ideas and their terminology to the elements of conversion. The two-fold commitment to Judaism—to the Torah and to the Jewish people—is the subjective *gemirut da^cat*, the very essence of conversion, that must be behind the “I hereby . . .” declaration. The acts of circumcision and immersion are, in effect, the *ma^casah qinyan*, for they are the outward signs that either indicate or produce the *gemirut da^cat*. Circumcision precedes immersion because the hardships involved in it serve as a greater indication of the *gemirut da^cat* that is so necessary.

The book is replete with similar analyses which endow the entire conversion procedure with meaning, coherence, and depth. The style of writing is very clear. It is, however, somewhat technical; a nonspecialist would find it difficult. This evaluation is not meant to be taken pejoratively; the subject matter demands nothing less than the scholarly treatment it receives at the hands of the author. Apparently aware of this, Finkelstein has appended a thirty-page chapter of “Summary and Implications.” This chapter, incidentally, is very valuable, and should be explicated, translated, and published in English.

Jewish legal scholarship owes Colonel Finkelstein a debt of gratitude for his distinct contribution to halakhic literature.

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