

Voluntary and Involuntary Acceptance of the Torah

Rabbi Mordechai Willig

Rosh Yeshiva, RIETS

Rabbi, Young Israel of Riverdale

Shavuot is described by Chazal as the time of the giving of our Torah, *z'man matan Toraseinu*.

Why isn't it called *z'man kabbolas Toraseinu*, the time of our acceptance of the Torah, paralleling *z'man cheiruseinu* and *z'man simchaseinu*, the time of our freedom and the time of our joy, of the other holidays?⁶⁸

Perhaps it is because our acceptance was incomplete:

The verse states "And they stood under the mountain," R. Avdimi b. Chama b. Chasa said: This teaches that Hashem hung the mountain over them like a barrel and said to them "If you accept the Torah, good, but if not, this will be your burial ground." R. Acha b. Ya'akov said: from here we have a strong protest against the Torah. Rava said: nevertheless, they accepted it again during the days of Achashverosh.

Shabbos 88a

ויתיצבו בתחתית ההר אמר רב אבדימי בר חמא בר חסא מלמד שכפה הקדוש ברוך הוא עליהם את ההר כגיגית ואמר להם אם אתם מקבלים התורה מוטב ואם לאו שם תהא קבורתכם אמר רב אחא בר יעקב מכאן מודעא רבה לאורייתא אמר רבא אף על פי כן הדור קבלוה בימי אחשורוש.
שבת פח.

Therefore, we focus on that fact that Hashem gave us the Torah, rather than on our questionable acceptance.

Why were we punished for our sins during the period between Sinai and Purim? After all, we accepted the Torah under protest. The *Meshech Chochma*, Shemos 19:17, offers a remarkable answer. The Gemara states:

Why was the first Beis Hamikdash destroyed? Because of three things that existed: idol worship, incest and murder.

Yoma 9b

מקדש ראשון מפני מה חרב מפני שלשה דברים שהיו בו עבודה זרה וגלוי עריות ושפיכות דמים.
יומא ט:

⁶⁸ Numerous answers have been offered to this question. See *Beis HaLevi, Parashas Yisro*, s.v. *l'havin*.

These three sins are punishable even for non-Jews. The fact that our acceptance at Sinai was under protest in no way mitigates our culpability, since these sins preceded Sinai. They are among the seven Noachide laws for which all human beings are subject to punishment, even without any acceptance.

The *Meshech Chochma* supports his idea with a statement of the Rambam:

A Noachide who converted through circumcision and immersion and afterwards wants to turn away from Hashem and be a non-Jewish law abiding citizen as he was previously, we don't allow him. Rather, he must either be a full-fledged Jew or be put to death. If he was a minor when the rabbinic court converted him, he may protest when he becomes an adult and will be a non-Jewish law abiding resident. If he doesn't protest upon becoming an adult, he no longer has the right to protest and is considered a convert. Therefore, if a Jew has relations with a minor that was converted by the rabbinical court, the money of her kesubah, or the penalties for rape or seduction, will remain in the hands of the rabbinical court until she becomes an adult and does not protest her conversion out of concern that she will take the money and protest upon becoming an adult and it turns out that she is using funds that she is only entitled to according to Jewish law.

Rambam, Hilchos Melachim 10:3

בן נח שנתגייר ומל וטבל ואחר כך רצה לחזור מאחרי ה' ולהיות גר תושב בלבד כשהיה מקודם, אין שומעין לו, אלא יהיה כישראל לכל דבר או יהרג, ואם היה קטן כשהטבילוהו בית דין, יכול למחות בשעה שיגדיל ויהיה גר תושב בלבד, וכיון שלא מיחה בשעתו שוב אינו מוחה אלא הרי הוא גר צדק, לפיכך אם בא ישראל על קטנה שהטבילוהו בית דין, כסף כתובתה או קנס אונס או מפתה יהיה הכל תחת יד בית דין עד שתגדיל ולא תמחה בגירות, שמא תטול ותגדיל ותמחה ונמצאת זו אוכלת בגיותה מעות שאין לה זכות בהן אלא בדיני ישראל.
רמב"ם הלכות מלכים י:ג

According to the Rambam, even after one who was converted as a minor protests, he remains a *ger toshav* (non-Jewish law abiding citizen). The same applies to *Am Yisrael* who accepted the Torah under protest. They were punished for the three cardinal sins, which are incumbent on a *ger toshav* as well.

The language of the Rambam raises five powerful questions:

- 1) Why, indeed, is a minor who protests his conversion considered a *ger toshav*? Shouldn't he be considered a non-Jew who has not accepted the seven Noachide mitzvos?
- 2) Elsewhere, in the laws of conversion (*Isurei Biah* 13:7), the Rambam records the law of a minor convert, but omits his ability to protest upon maturity, as does the Rif (*Yevamos* 47b). Why is the ability to protest omitted in the laws of conversion where it apparently belongs?
- 3) The Rambam opens this set of laws by stating that an adult *ger* who wishes to renege is killed. The Brisker Rav (at the very end of *Chidushei Maran Riz HaLevi* on the Rambam) asks: If he is guilty of death because he committed a capital offense, it is obvious that he is killed. Why must the Rambam state the obvious?
- 4) If a woman protests about her conversion as a minor, it emerges that she consumed as a non-Jew money to which she was entitled only by Jewish law. Why, after protesting, is she still entitled to the money according to Jewish law? Assuming that her protest renders the conversion invalid retroactively, as the *Hagahos Oshri* (*K'subos* 1:23) rules, she should **not** be entitled to the money by Jewish law. This led some to suggest that according to the

Rambam, the conversion of the minor is nullified only after he protests, but not retroactively.⁶⁹ This suggestion is unprecedented and counterintuitive.

5) The Rambam never states that a minor convert who later protests is not Jewish. Why?

To answer these questions, we return to the *Meshech Chochma*, who explained that *Am Yisrael* was not punished for violating the mitzvos that they accepted at Sinai under protest.

Nonetheless, it is unthinkable to consider all of *Am Yisrael* as gentiles in the period between Sinai and Purim. Their protest served only to relieve them of punishment for failure to observe the laws accepted at Sinai during that period.

Similarly, a minor convert who protests is relieved of punishment for his sins. We punish only those who accepted the mitzvos willingly, namely adult converts or born Jews who are bound by the national acceptance of the Jewish people.

Therefore, the Rambam cites the ability of the minor convert to protest only in *Hilchos Melachim* which deals with punishment. The death penalty for an adult convert for a capital offense, while obvious, is an appropriate introduction. Only he is killed, as opposed to a minor convert who protests.

Even after he protests, the minor convert remains Jewish, and the Rambam never stated otherwise. Moreover, in the laws of conversion he omits the ability to protest entirely, as does the Rif, indicating that the conversion of a minor is valid in all circumstances, even if he later protests.

Finally, the Rambam implies that the minor female convert who protests is entitled to the money in Jewish law, since she is in fact Jewish. However, since she might conduct herself as a non-Jew, it is not appropriate that she receive the money, and it is withheld until she matures and can no longer protest.

The male convert who protests is treated like a *ger toshav*. Since, in reality, he is Jewish, we must preserve his life and property and treat him with the same respect and kindness as we relate to a *ger toshav* (Rambam, *Hilchos Melachim* 10:12).

All of the five aforementioned questions are now resolved.⁷⁰

As we have seen, the *Meshech Chochma* compares the lack of punishment of *Bnai Yisrael* for sins beyond the seven Noachide laws and the lack of punishment of a minor convert who protests. Nevertheless, one can distinguish between punishment at the hands of man in *Beis Din* and punishment at the hands of heaven.⁷¹

Precedent for one who is halachically Jewish, but never accepted mitzvos, not being punished in *Beis Din* can be found elsewhere. The Ramban states regarding the *eishes yefas to'ar* (beautiful woman who is captured during war):

⁶⁹ See R. Nachum Pertzovit's essay in *Ohel Avraham, Kesubos* pg.543.

⁷⁰ The *Bach, Yoreh De'ah* 268, interprets "he may protest" that we do not punish him, but denies that he is Jewish. For an analysis of the underlying dispute between the Rambam and the other Rishonim, whether the minor's conversion can be nullified by his protest, see *Beis Yitzchak* 24 pp. 100-103.

⁷¹ R. Asher Arieli of Yeshivas Mir in a conversation on Chanukah 5764.

The operating principle is that the entire law is because of the coercion. However, if she wants to convert willingly in a rabbinical court according to Jewish law, she is permitted to marry him immediately and permitted to marry his father or brother. This is what the Rabbis stated in Yevamos: [the verse states] "And she should cry for her father and mother for a month," when does this apply? When she has not accepted [mitzvos] upon herself. However, if she accepted [mitzvos] upon herself, she can immerse and she is permissible immediately. It is possible that this applies to all captives of war because out of fear, they will want to convert. It says "And you shall send her on her way" that she can do what she wishes and we do not force her to observe the Torah. Because one who converts willingly we compel her to observe the Torah. If she violates Shabbos she is stoned, and if she eats pig she receives lashes like a non-observant Jew. This [captive woman] as well, if she states that she is interested in conversion without compulsion, we do not send her on her way, because even if we think that her conversion was out of fear, she is a full-fledged Jew, because we already mentioned that "the law is that they are all considered converts."

Ramban, Devarim 21:12

ועל הכלל כי זה כולו בעבור ההכרח, אבל אם רצתה להתגייר בחפץ נפשה בבית דין כמשפט הרי היא מותרת מיד גם לו גם לאביו ולאחיו. וכך אמרו בפרק החולץ ובכתה את אביה ואת אמה ירח ימים, במה דברים אמורים שלא קבלה עליה אבל קבלה עליה מטבילה ומותרת מיד. ואפשר כי בכל השבויות במלחמה נעשה כתורה הזאת, כי מפני היראה תאמרנה להתגייר. ואמר ושלחתה לנפשה - שתעשה כרצונה, ולא נכריחנה לשמור דת משה ויהודית. כי המתגיירת ברצון נכריח אותה לשמור התורה, ואם תחלל השבת תסקל, ואם תאכל החזיר תלקה כדין ישראל המשתמד. וגם זאת אם הודית בפיה הגירות בלא הכרח לא נשלח אותה לנפשה, שאפילו נחשב שהיתה גירותה מפני היראה דינה כישראלית גמורה, שכבר העלינו הלכה כולם גרים הם.

רמב"ן, דברים כא:יב

We do not compel the beautiful woman who did not accept the mitzvos willingly to observe Torah and mitzvos. Only if she converts willingly do we force her and punish her if she sins. Otherwise she is not punished by *Beis Din*, even though she is Jewish. This is a valid precedent for the minor convert who protests according to the Rambam.

At present, we are all bound by the totally voluntary acceptance of Torah by our Jewish ancestors.⁷² Nevertheless, in order to appreciate and celebrate Shavuot properly, we should accept it once again personally. For us, now, it is assuredly a time of acceptance of our holy Torah.

⁷² See *Meshech Chochma* Devarim 33:4.