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**

**Shiur #12: Jewish Peoplehood (5): Is There a Back Door to Judaism?
Part Two**

 The last shiur began with a question regarding the national and spiritual aspects of conversion: Does the convert confront each one separately, or does conversion mean acceptance into the nation, which only secondarily results in obligation towards *mitzvot*? In addressing this question, we left the familiar territory of standard conversion in order to explore some atypical cases. The last shiur focused upon the *eishet yefat to’ar* (captive woman); we now turn our attention towards the Canaanite slave.[[1]](#footnote-1)

**Conversion of a Canaanite Slave**

 In the last shiur, we discussed at length the first opinion in the*beraita* in *Yevamot* 47b, which posits that standard conversion is the only way to bypass the Torah’s protocol for a captive woman. However, the *beraita* then quotes a second opinion, which suggests another option:

Rabbi Shimon the son of Elazar says, “Even though she did not accept [Judaism] upon herself, he forces her and immerses her for the purpose of enslavement, and then immerses her again for the purpose of emancipation, and [then] he is permitted to [marry] her immediately.”

According to Jewish law, a Canaanite slave is considered Jewish in some respects and is therefore obligated in most of the *mitzvot*. Becoming a slave, then, amounts to a kind of conversion that is mediated through immersion in a *mikveh*. Emancipation completes the slave’s Jewish status, leaving her a free woman and the equivalent of a convert. What allows Rabbi Shimon to make use of this mechanism here is that he believes that the conversion of a slave can be performed coercively. A captor can thus choose to turn his captive into a slave and then immediately free her, thereby circumventing the Torah’s prescription for an *eishet yefat to’ar.* The Sages, however, reject this possibility.

 Later (48a), Rav Pappa comments that both sides agree that a slave, “who is connected to *mitzvot*” does not need to accept *mitzvot* at the time of emancipation. The Sages only object that this still would not solve the problem of the *eishet yefat to’ar*, “who is not connected to *mitzvot*.” What does it mean that a Canaanite slave is “connected to *mitzvot*,” in contrast to an *eishet yefat to’ar*?

R. Yitzchak Alfasi (Rif) explains that the slave “already accepted [Judaism] upon himself in the beginning” (16b), referring to the time of his initial conversion. According to the Sages, the Rif maintains, a slave’s initial conversion involves his willful acceptance of Judaism. That is why they cannot embrace Rabbi Shimon’s approach, which calls for forced conversion of the captive woman from beginning to end.

 Rashi, on the other hand, believes that even the initial conversion of a slave is not voluntary and that both Rabbi Shimon and the Sages share this view. Why, then, do the Sages dispute Rabbi Shimon’s forcible conversion of the captive woman? Rashi explains that the problem is the instantaneousness that Rabbi Shimon seeks. He wants to circumvent the waiting period for an *eishet yefat to’ar* by transforming her into a slave and then immediately emancipating her into full Jewish status. But what allows the slave to be emancipated without acceptance of *mitzvot* is that the slave “has remained with [his master] for some time, and [the master] has accustomed him to the *mitzvot* that slaves practice!” In other words, Rashi explains, the Sages maintain that there is no shortcut to a life of *mitzvot*. Conversion requires either the outright acceptance of *mitzvot* or slow acculturation to them over time, but Rabbi Shimon’s approach has neither.

 Stepping back, what can this involved discussion about Canaanite slaves tells us about conversion and absorption into Jewish peoplehood generally? According to the Rif’s ruling, as well as that of the Rambam (*Hilkhot Issurei Bi’a* 13:12, 14:9),[[2]](#footnote-2) there is no “back door” to Judaism for the slave. His path to conversion necessarily involves full acceptance of Jewish ritual, just as the Rambam maintained for the *eishet yefat to’ar*. For Rashi, however, as well as for the rejected opinion of Rabbi Shimon, the slave is led on a road to Judaism that bypasses acceptance of *mitzvot*. How can we explain this phenomenon?

 At least two possible approaches to forced conversion exist:

1. Even forced conversion involves the acceptance of *mitzvot*. In the case of a slave, however, who is under the authority of his master, the master essentially commits to Judaism on his behalf.[[3]](#footnote-3) This approach is recorded in the name of R. Soloveitchik.[[4]](#footnote-4)
2. Conversion of a slave does not involve willful acceptance of *mitzvot* at all. Rather, as with the Ramban’s approach to *eishet yefat to’ar* (discussed in last shiur), the slave encounters *mitzvot* by being absorbed into a Jewish household.

Each approach has strengths and weaknesses. The first approach preserves the critical element of acceptance of *mitzvot* in conversion. However, it also risks diluting the concept by stretching it beyond its usual meaning. The second approach foregoes an outright acceptance of *mitzvot*, but, similarly, further stretches the concept of a social conversion. The captive woman is conceivably brought into *berit Avot* just by joining her captor’s family and through that experience ultimately participates in *berit Sinai.* But can we claim that a slave shares in Jewish nationhood? At most, perhaps we can propose that there are concentric circles of people connected to the Jewish nation, and slaves are in an outer orbit. Still, they come to Judaism primarily through a process of social absorption rather than through spiritual commitment (of their own or of their masters).[[5]](#footnote-5)

 Finally, how would each approach interpret Rashi’s explanation of the Sages’ opinion that forced conversion requires a period of religious acculturation? Proponents of the first approach might say that a slave’s responsibility in *mitzvot* ultimately emanates from a combination of his master’s commitment and his own acculturation. Proponents of the second approach could draw a parallel (though imperfect) to our suggestion regarding the *eishet yefat to’ar*. Since the slave’s entire conversion depends upon his social acculturation, this becomes an indispensable part of the process. Alternatively, we could suggest that according to Rashi, the Sages and Rabbi Shimon argue precisely about the two approaches outlined above. Rabbi Shimon holds that a master can commit his slave to *mitzvot*, while the Sages believe that the master can, at best, absorb the slave into his household, with the *nafka mina* (practical ramification) being the need for a period of acculturation.

**The Rambam’s View of Canaanite Slaves**

 Until now, we have drawn a parallel between *eishet yefat to’ar*, as the Ramban interprets it, and the Canaanite slave, in that both may undergo a conversion that is primarily social in nature and only secondarily relates to *berit Sinai.* The Rambam, however, takes the exact opposite view of the Canaanite slave. By emphasizing the slave’s personal commitment to *mitzvot*, on the one hand, and his exclusion from Jewish peoplehood, on the other, the Rambam shifts the balance and articulates an entrance into *berit Sinai* that is not accompanied by a parallel entrance into *berit Avot*.[[6]](#footnote-6)

 As mentioned above, the Rambam follows the Rif and views the slave’s initial conversion as a full religious conversion.[[7]](#footnote-7) The slave is not asked why he wants to join the Jewish people, but, rather, if he wants to be one of the “upstanding,” presumably a religious designation. If he agrees, he is informed of the “fundamentals of the faith, and some light and weighty *mitzvot*, and their punishment and reward, **just as we inform the convert**” (*Hilkhot Issurei Bi’a* 14:9). However, the Rambam is also explicit that “the slaves, who have been immersed for the purpose of enslavement and **who accepted upon themselves the *mitzvot*** that are incumbent upon slaves, **have left the midst of gentiles but have not yet entered the midst of Israel**”(12:11). They participate in the Jewish religion, but they do not belong to the Jewish people.

 At the point of emancipation, the Rambam requires another immersion in front of three judges, for “through it will his conversion be completed, and he will be equivalent to a [native] Jew.” While some medieval commentators maintain that this second immersion is only rabbinically mandated,[[8]](#footnote-8) the Rambam stresses its fundamental significance. However, this immersion is not accompanied by an acceptance of *mitzvot*, as the Rif already explained. *Mori ve-rabbi* R. Mosheh Lichtenstein explains that through this second immersion, the slave enters the Jewish people and completes the missing element of his identity. It seems that the *beit din* must be primarily mediating his entrance into *berit Avot*, as no acceptance of *mitzvot* takes place.[[9]](#footnote-9)

**An Exception for the Rambam?**

 In contrast to other medieval commentators, the Rambam maintains at every turn that conversion must involve willful participation. The “back door,” it would seem, is closed. However, R. Chayyim Soloveitchik noted one exception.[[10]](#footnote-10) The Rambam writes that “a Jew who seized a non-Jewish child or who found a non-Jewish youngster and immersed him for the sake of conversion – he is a convert” (*Hilkhot Avadim* 8:20). Specifically regarding a child, who lacks a mature, autonomous will, a custodian is able to chart his destiny for him.[[11]](#footnote-11) For an adult gentile, however, the only road to Judaism, according to the Rambam, is through volitional acceptance.

**Summary**

 The last two *shiurim* evaluated the possibility of a “back door” to Judaism that does not necessitate volitional acceptance of Judaism as part of the conversion process. What can these cases tell us about conversion more generally? I propose the following three conclusions:

 First, R. Shaul Yisraeli’s model of conversion as primarily a social process has strong precedent in the Ramban’s understanding of the *eishet yefat to’ar*. At the same time, the truly unique nature of the *eishet yefat to’ar* leaves us wondering whether it should serve more as an example or as an exception. According to R. Yisraeli’s approach, the primary difference between standard conversion and *eishet yefat to’ar* (according to the Ramban) is the degree of voluntariness on the part of the convert, but the essential process of absorption is maintained. According to R. Soloveitchik’s approach, *eishet yefat to’ar* is an extraordinary exception that bypasses the direct confrontation with *berit Sinai* that lies at the heart of standard conversion.

 Second, even according to the opinions that countenance “social conversion” in limited circumstances, outright acceptance of *mitzvot* must be substituted by a period of acculturation.[[12]](#footnote-12) Both the *eishet yefat to’ar*, as described in the Torah, and a Canaanite slave, as Rashi stresses, have a mandatory waiting period of initiation into Jewish life before they can fully join the community. In response to the rejected opinion of Rabbi Shimon, who suggests that conversion can bypass both explicit acceptance and a period of induction, the Sages could conceivably invoke one of *mori ve-rabbi* R. Yehuda Amital’s favorite aphorisms that “there are no shortcuts” (“*ein patentim*”). If there is anything to learn from Rashi and the Ramban, it seems to be that *berit Avot* can be an indirect pathway to *berit Sinai*, but not a substitute for it.

 Third, we remind ourselves that the Rambam emphatically rejects social conversions for either the *eishet yefat to’ar* or the Canaanite slave. With regard to each of them, his formulations stress the element of *kabbalat ha-mitzvot*, even though his rulings regarding standard conversion are less explicit.[[13]](#footnote-13) In retrospect, the Rambam stands out as a champion of *kabbalat ha-mitzvot*, demanding its presence even in exceptional circumstances when others are willing to tolerate its absence. R. Soloveitchik’s contention that acceptance of *mitzvot* for the Rambam is “an overriding characteristic theme in the conversion process that is predicated upon acceptance of the responsibility for observing *mitzvot*” (*Kol Dodi Dofek: Listen—My Beloved Knocks*, 110n), while difficult to prove solely from Chapter 13 of *Hilkhot Issurei Bi’a*, emerges from a wider reading of the Rambam that considers the full scope of his rulings.

**Conclusion**

To a certain degree, the *eishet yefat to’ar* and the Canaanite slave challenge conventional notions about conversion. While the Rambam effectively sidesteps the issue by presuming *kabbalat ha-mitzvot* in each case, others respond by reimagining the realm of possibilities for entrance into Judaism. Even if these alternative pathways have little direct relevance to mainstream conversion, they help highlight the constituent elements present in every conversion and, ultimately, in our collective Jewish identity.

It may be that even the Rambam, who rejects these more creative interpretations, does so only partially. He may readily acknowledge the social, national aspect of conversion but simply assert that it cannot replace a direct, personal confrontation with the command of God. In other words, **recognition of the power and meaning of social integration demands more of a convert, not less**. It does not offer a back door to Judaism, but instead insists that a convert simultaneously commit to the dual demands of *berit Avot* and *berit Sinai*.

 Finally, with regard to a Canaanite slave, the Rambam does acknowledge an “unbalanced” conversion process, but in the opposite direction of what we have until now considered. Rather than undergoing a social conversion, the Canaanite slave engages *berit Sinai* while still excluded from *berit Avot*, raising the intriguing possibility that it is actually *berit Avot* which is least accessible, sometimes even when full religious commitment and obligation are present. We will explore this notion further in the next shiur.

**For Further Thought:**

1. Several other questions arise regarding the conversion of a Canaanite slave that may reflect on its essential nature. Briefly:

* **Does a slave’s immersion require three judges?** Ramban (*Yevamot* 46a) quotes an opinion that a slave’s immersion does not require the presence of three judges. However, he sides with the Rambam, who rules that “a slave only immerses in front of three [judges] and during the day, just like a convert, for this is a partial conversion” (*Hilkhot Issurei Bi’a* 13:11).
* **Who recites the blessing upon a slave’s immersion?** Ramban (*Yevamot* 46a) quotes the opinion of R. Yehuda of Barcelona[[14]](#footnote-14) that the master recites the blessing upon immersion when his slave converts. The Ramban argues, “for the slave is the one who is performing the mitzva and is entering under the Divine canopy with regard to some *mitzvot*” (compare to footnote #3 above). Me’iri quotes these two opinions, then adds, “It seems to me that if [the conversion] is done with the slave’s cooperation, then he recites [the blessing], but if it is done against his will, then the master recites [the blessing].”
* **What is the status of a runaway slave?** R. Natronai Gaon ruled that a slave cannot be held accountable for transgressions he performed after escaping from his master:

A slave is akin to an animal: As long as he is under his master’s rule, [the master] must direct him in all the *mitzvot* and abstentions that are relevant to slaves, just as a Jew is obligated in *mitzvot* relevant to his animal. Once [the slave] has run away, he is not obligated in *mitzvot*. (Gaonic Responsa *Sha’arei Tzedek* 3:6:9)

A different Gaonic position held that a runaway slave is similar to a Jewish apostate, who remains Jewish despite his dissociation from Judaism.[[15]](#footnote-15)

Can we relate any or all of these questions to the various understandings of a Canaanite slave’s conversion?

2. In [*shiur* #8](https://etzion.org.il/en/halakha/studies-halakha/philosophy-halakha/jewish-peoplehood-1-conversion-and-community-1), we discussed the Rambam’s position that a convert may recite the words “that You took us out of Egypt” and other similar phrases. What would the Rambam instruct a Caananite slave to say?

3. *Yevamot* 46a states that a slave must be under the authority of his master at the moment of immersion; otherwise, the slave can decide to immerse for the sake of standard conversion, thereby rendering himself a full convert and a free man. R. Yehoshua Trunk of Kutna (*Yeshu’ot Yisrael Choshen Mishpat* 3:2) observes that the *beit din*, apparently, cannot protest. What does this say about the role of *beit din* in conversion, both of slaves and of free gentiles?

**Questions or Comments?**

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

1. Admittedly, halakhically endorsed slavery (as well as the laws of a captive woman, for that matter), is an uncomfortable subject that raises important philosophical questions, regarding both the halakha’s internal ethic in this area as well as our own perceived distance from it. I refer the interested reader to some general remarks by *mori ve-rabbi* R. Aharon Lichtenstein in “The Human and Social Factor in Halakhah,” *Leaves of Faith: The World of Jewish Learning*, 176-185: One passage I find particularly relevant for our purposes. Even if a contemporary scholar, regarding a specific law, would “candidly assume that what had been apt and perhaps even necessary in a given sociohistorical setting was no longer ideally suited to his own,” R. Lichtenstein notes that “the assumption would certainly not exempt him from **mastering the relevant halakhot nor dim his enthusiasm for analyzing the nuances of *devar Hashem*** [the ‘word of God’] as, in accordance with Hazal’s authoritative exegesis, initially formulated” (176). Even more so, if examining the laws of slavery can enrich our understanding of conversion narrowly and Jewish identity more generally, then we will do so wholeheartedly and without apology and leave other questions for another context. [↑](#footnote-ref-1)
2. The Rambam characteristically follows the Rif, as noted here by the Ramban (47b). [↑](#footnote-ref-2)
3. See Ramban 47b, who asks how the slave “can enter under the Divine canopy without [his] intent?” He answers, “Rather, the Torah gave permission to the master to do with his slave what he wants in this regard.” While at first glance his words support the first approach, they can alternatively be interpreted as explaining the legal justification for forced conversion, though not necessarily its mechanism. [↑](#footnote-ref-3)
4. *Reshimot Shi’urei Maran Ha-Grid Ha-Levi*, *Yevamot*, 515-517. R. Soloveitchik also proposed the same mechanism as a possible explanation for the Ramban’s position regarding *eishet yefat to’ar* (discussed in the previous shiur), as well as for the conversion of a fetus together with its mother (522). Also see *Chiddushei Ha-Gram Ha-Levi, Hilkhot Avadim* 9:5. [↑](#footnote-ref-4)
5. A different formulation might suggest that a Canaanite slave is not absorbed into the nation as a whole, but only into the home of his master. Either way, the second approach must also presume that Canaanite slaves are not mere property of their owners (see *Yevamot* 66a), but also participate in the social unit of the broader household. The requirement to circumcise slaves (*Bereishit* 17:12-13), as well as the inability to offer the Pesach sacrifice until one has done so (*Shemot* 12:44; see *Rambam Hilkhot Korban* *Pesach* 5:5), might be relevant to this point. [↑](#footnote-ref-5)
6. I heard this interpretation of the Rambam from *mori ve-rabbi* R. Mosheh Lichtenstein. He references it in an exchange with R. Chaim Iram in *Daf Kesher*, issue #1149 (6 *Elul* 5768 [2008]), 8 (available at http://gush.net/dk//5768/1149maamar6.html). [↑](#footnote-ref-6)
7. According to R. Chayyim Soloveitchik (*Chiddushei Rabbeinu Chayyim Ha-Levi al Ha-Rambam*, *Issurei Bi’a* 13:12), a slave ought to be able to establish marital ties with a Jewish woman, but his enslaved status prevents this. Thus, a slave who has been freed by his master but who has not yet immersed a second time could betroth a woman. [↑](#footnote-ref-7)
8. See, for instance, Ritva *Yevamot* 47b. [↑](#footnote-ref-8)
9. However, see R. Joseph B. Soloveitchik (*Kol Dodi Dofek: Listen—My Beloved Knocks*, trans. David Z. Gordon, 101-102n), who relates the slave’s second immersion to the completion of his obligation in *mitzvot*. Also see *Chiddushei Rabbeinu Chayyim Ha-Levi al Ha-Rambam*, *Issurei Bi’a* 13:12 and *Reshimot Shi’urei Maran Ha-Grid Ha-Levi*, *Yevamot*, 518-521. [↑](#footnote-ref-9)
10. Quoted by his son R. Moshe Soloveichik in *Chiddushei Ha-Gram Ha-Levi, Hilkhot Avadim* 9:5. [↑](#footnote-ref-10)
11. Contrast with *Kessef Mishneh*. [↑](#footnote-ref-11)
12. Thus the *beraita* in *Yevamot* 48a plainly states, “A convert and a slave purchased from a gentile alike,” who have no such prior experience with Jewish practice, “must accept [the *mitzvot*].” [↑](#footnote-ref-12)
13. The Rambam also mentions acceptance of *mitzvot* in *Hilkhot Issurei Bi’a* 12:17, 13:12, 14:8 and *Hilkhot Melakhim* 8:10, 10:9. [↑](#footnote-ref-13)
14. Author of *Sefer Ha-ittim*. [↑](#footnote-ref-14)
15. See Gaonic Responsa *Sha’arei Tzedek* 3:6:3, quoted in *Tur Yoreh Dei’a* 267. Regarding a Jewish apostate, see upcoming shiur #14. [↑](#footnote-ref-15)