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## Review Essay

### *Transforming Identity: The Ritual Transition from Gentile to Jew—Structure and Meaning*

by AVI SAGI AND ZVI ZOHAR (CONTINUUM 2007)

#### INTRODUCTION

Authors Avi Sagi and Zvi Zohar undertake—in a time when many only ponder the minutiae—to examine one of the most complex problems confronting Orthodoxy: conversion to Judaism in modern times. The combination of massive Russian aliyah to Israel (including many who are not Jewish as a matter of halakha) and the significant intermarriage which has affected the Jewish community in America has made conversion to Judaism an important topic. However, after thoroughly reading this book, we conclude that the authors are mistaken in their central premise that conversion without a binding acceptance of *mitsvot* is possible as a matter of Jewish law, and that their conclusion is inconsistent with Talmudic, medieval, and modern Jewish law discourse.

This review will be divided into three sections. The first section examines the basic analytic insight of the book: that the two central Talmudic sources which discuss *giyyur* (conversion) are at odds with one another and that the halakha is uncertain which view is correct. The second section critiques specific but critically important source readings that the authors undertake, and the third argues that their basic framework for pondering acceptance of commandments is mistaken. The conclusion and postscript examine paths not taken.

Throughout this article, we will make reference to a number of closely related—but distinct—concepts, and we would like to clarify our terminology at the outset. *Hoda'at ha-mitsvot* refers to the education or

notification of the commandments to the potential convert. *Kabbalat ha-mitsvot* refers to the convert's acceptance of Jewish law as binding upon himself. *Asiyat* or *shemirat ha-mitsvot* refers to the convert's actual observance of the *mitsvot*.

(These three concepts are factually unrelated to each other. A person can observe *mitsvot* that they do not accept as binding, and a person can accept as binding *mitsvot* that they do not observe. A person can be informed of *mitsvot* without ever accepting that he has to keep them. At first glance, one who has not thought about conversion rigorously might wonder how a person can accept the commandments without being informed of them. The answer is analytically simple. One can accept that one must obey a law that one does not understand. Indeed, upon reflection one sees that the process of becoming, for example, an American citizen requires that one pledge obedience to American law, for without that oath one can not become a citizen. Yet, the courses that one needs to take and the knowledge that one needs to have to become a citizen is a much less significant matter, and certainly one can become an American citizen while being informed of much less than "all" of American law.<sup>1</sup>)

## I. IS THE "YEVAMOT PARADIGM" IN TENSION WITH THE "DEMAI PARADIGM"?

The basic intellectual predicate of Zohar and Sagi's book is that the two central Talmudic sources addressing conversion—one a Tosefta in *Demai*, the other a running Talmudic discussion in Tractate *Yevamot*—are in profound tension. The Tosefta in *Demai* emphasizes the convert's substantive acceptance of commandments ("*kabbalat ha-mitsvot*"). It states (Tosefta *Demai* 2:4-5):

A convert who accepted upon himself all matters of Torah, excepting one thing, should not be accepted [by the *Bet din*]. R. Jose son of R. Judah says: this includes even a small matter enacted by the scribes.

Bavli *Yevamot* (46a-48a), on the other hand, emphasizes the procedural components of conversion. It recounts a number of debates about the requirements of circumcision and immersion, without making any mention of *kabbalat ha-mitsvot*.

Sagi and Zohar maintain that these two *sugyot* are in tension with each other. The major thrust of their book is that a *bet din* can accept for conversion a person who has undertaken no *kabbalat ha-mitsvot* at all so long

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as that person has agreed to fulfill the *Yevamot* procedural paradigm of circumcision and immersion (or immersion alone for a woman). The authors attempt to divide the *Rishonim*, codes, and *Abranim* into two groups: those who accept the *Demai* paradigm and those who accept the *Yevamot* paradigm, and the authors argue that most authorities accept the *Yevamot* procedural paradigm. With this mechanism, they undertake to defend conversion to Judaism even when the convert has never accepted the *mitsvot*.

For example, they state:

Careful analysis of the sources led us to the understanding that there exist two variant voices on this issue in halakhic literature from Tannaitic time to the present. Each position considers *giyyur* under a different concept. According to one position, *giyyur* is a voluntaristic normative commitment by which one acquires membership in a society defined primarily by normative praxis. We refer to this view as the *Demai* paradigm. . . According to the alternate position, *giyyur* is a ritual process by which one acquires membership in a society defined primarily by kinship. We refer to this view as the *Yevamot* paradigm. . . As we shall see, both paradigms exist concurrently during the entire history of halakhic literature. . . (107)

Further on, the authors state:

We analyzed the *Yevamot* paradigm of *giyyur*. According to this paradigm, *giyyur* is a ritual process focused upon the body of the proselyte. This process consists of no more than two components: circumcision and immersion. (136)

The *Yevamot* paradigm, they claim, is conversion without any *kabbalat ha-mitsvot*. They repeat this basic view many times in the book and it is the thrust of chapters 5-11. The authors themselves have elsewhere noted that this is the basic theme of the book.<sup>2</sup>

This insight—that the Talmudic sources are in profound tension and that the *Rishonim* divide along the lines of the competing *sugyot*—is an unprecedented analysis of the Jewish law of conversion and, in our opinion, incorrect. The classic sources do not support the very existence of such a dispute. Eminent *Rishonim* who comfortably note in other places that *sugyot* in the Talmud are in tension, and found no difficulty in resolving such tension by picking one *sugya* over another, do not mention any dispute here. Thus, we find this fundamental distinction to be unsubstantiated and without halakhic support.

For example, let us examine the view that Zohar and Sagi consider to be the paradigm of this approach—Maimonides. Maimonides begins his discussion of conversion with what seems to be an unequivocal requirement for *kabbalat ha-mitsvot*. In *Hilkhot Issurei Biah* 13:4, he states:

So too in every generation, when a gentile wishes to enter into the Covenant and seek shelter under the wings of the *Shekhinah*, and he accepts upon himself the yoke of Torah, he needs circumcision, immersion, and bringing a sacrifice. . .

Later in the chapter, Maimonides discusses the wives of Samson and Solomon who converted despite their improper motivation for conversion (namely, marriage) and lack of observance. Maimonides concludes that while such conversions should not be done *ab initio*, after the fact, they are accepted. He writes (*Hilkhot Issurei Biah* 13:17):

A convert whose motives were not investigated or was not informed of the commandments but was circumcised and immersed in the presence of three laymen, is a proselyte. Even if it becomes known that he became a convert for some ulterior motive, he has exited from the Gentile collective, because he was circumcised and immersed.

Sagi and Zohar maintain that Maimonides adopts the *Yevamot* paradigm, and accepts conversion after the fact even without an acceptance of the *mitsvot*. They argue that halakha 4 (requiring *kabbalat ha-mitsvot*) represents the ideal conversion, while *halakhot* 14-17 (which they argue do not require a *kabbalat ha-mitsvot*) list the minimal requirements for conversion (166-170). Such a distinction is unfounded in the text, nor is it adopted by subsequent commentators.<sup>3</sup> Sagi and Zohar maintain that halakha 17 waives the requirement for *kabbalat ha-mitsvot*, at least after the fact. However, we are persuaded that a careful reading of halakha 17 indicates that Maimonides was only willing to waive the requirement of notifying the convert of the commandments (*hoda'at ha-mitsvot*); nowhere does Maimonides actually waive the requirement for *kabbalat ha-mitsvot* articulated in halakha 4. By steadfastly refusing to draw an obvious linguistic and substantive distinction between *hoda'at ha-mitsvot* (informing of the commandments) and *kabbalat ha-mitsvot* (acceptance of the commandments), Zohar and Sagi misunderstand the Maimonidean position.<sup>4</sup> In addition, many other difficulties are created within the view of Maimonides if we assume that *kabbalat ha-mitsvot* is not required for conversion even after the fact, not the least of which is why Maimonides would

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insist that *kabbalat ha-mitsvot* is needed by slaves (*Issurei Biah* 12:11) but not converts.

The authors compound this mistake with an out of context quotation of the *Bah* (Sagi and Zohar, at 170; *Bah*, YD 268, s.v. *ve-kol inyanav*). They quote the *Bah* as stating the following:

Maimonides . . . requires three only for immersion . . . for it is then that he becomes a proselyte . . . Our master Maimonides wrote that the *giyyur* is valid even if it was totally lacking in intent to accept the commandments. (*ellipses in original*)

In fact, when learned in its entirety, a very different picture of the *Bah* emerges. In this section, the *Bah* discusses the dispute between the *Ba'alei ha-Tosafot* and Rambam about the central judicial ritual of conversion. *Tosafot* posit that the central judicial ritual in conversion is *kabbalat ha-mitsvot* which must take place in front of a *bet din*, whereas circumcision and immersion need not take place before a rabbinical court. Rambam, on the other hand, posits that immersion in a *mikveh* (and perhaps circumcision for a man) is the central judicial framework for conversion and it is these rituals which must take place in front of a *bet din*. According to this view, *kabbalat ha-mitsvot* is merely a prerequisite for a valid conversion that is then consummated before a rabbinical court. The *Bah* summarizes this dispute as follows:

According to Rif, Rambam, and *Smag* . . . immersion requires three (and so it is according to the first answer of Maharam). This is unlike the approach of *Tosafot* and the second answer of Maharam. When there were three [judges] for the immersion, Maimonides wrote that it is valid, despite not having been done for the sake of *kabbalat ha-mitsvot* at all. The *Tosafot* and Rosh argue that the absence of *kabbalat ha-mitsvot* certainly invalidates conversion. They state that we should not marry him until he accepts the *mitsvot* in front of three.<sup>5</sup>

When read in its totality, it is fairly clear that the *Bah* is merely claiming that at the time of immersion, the *immersion* need not be for the sake of *kabbalat ha-mitsvot*. The *Bah* certainly does not say that a conversion can take place in the total absence of *kabbalat ha-mitsvot* and still be valid. Rather, the *Bah* requires acceptance of the *mitsvot* at some point, just not immersion for that purpose.

Furthermore elsewhere the *Bah* himself makes clear that *kabbalat ha-mitsvot* is required for conversion. In the previous chapter (*Tur*, YD 267), which deals with acquiring slaves, *Bah* repeatedly compares and contrasts

a slave, who does not require *kabbalat ha-mitsvot* in his view, with a convert, who does. Nowhere does the *Bab* indicate that a significant contingent of the prominent *Rishonim* (namely, Rambam, Rif, and *Smag*) disagree with this position and do not require *kabbalat ha-mitsvot* for converts, either.<sup>6</sup>

The only authority that Sagi and Zohar cite who unambiguously accepts the view that Rambam does not require *kabbalat ha-mitsvot* is the *Bet Meir* (Responsum 12). We are inclined to think that this citation is of little value because the *Bet Meir* makes this claim about the view of Rambam while explaining why normative halakha rejects this view, as he does himself. While it seems obvious to us, it may be worth stating that the intellectual value to normative Jewish law of the view of Maimonides as understood and rejected by the *Bet Meir* is close to none. One cannot, so to speak, rely on the *Bet Meir's* understanding of the Rambam, given that *Bet Meir* rejects Rambam's view.

More generally, while we acknowledge that there is a small group of *Abronim* who ponder the possibility that Rambam does rule that a conversion done without *kabbalat ha-mitsvot* is valid after the fact,<sup>7</sup> we are hard pressed to find a single such authority who both states that this is the view of Maimonides and rules that the halakha is like the view of Maimonides, a central measure of whether anyone actually rules that way. Even more generally, *Abronim*, when they encounter a *Rishon* that is difficult to categorize, will at times interpret that *Rishon* as a straw man so as to make clear that such an opinion is not normative such that it can be completely discounted. That seems to be what *Bet Meir* (and others) are doing here.

Sagi and Zohar (171) make a similar mistake in their analysis of Ritva. They begin by contrasting Ritva's words in *Ketubot* (11a, s.v. *Amar Rav Nachman, amar Rav Huna*), that notification of the commandments is not essential, with Ritva in *Yevamot* (46b, s.v. *u-shema minei, ein matbilin ger ba-layla*), that a court is necessary for the immersion, even post-facto. From this, they derive that "For Ritva, then, circumcision and immersion, and not acceptance of the commandments are the necessary components of giyyur" (172). Once again, it seems that Sagi and Zohar mistake notification of the commandments for acceptance. In fact, as Sagi and Zohar note in a footnote (176, n. 1), Ritva himself clearly does require *kabbalat ha-mitsvot*. Instead of adopting the simpler explanation (namely, that Ritva waived a requirement for notification, and not acceptance), they contend that "in maturity he became convinced of the superiority" of the procedural paradigm. In fact, Ritva is merely accepting the correctness of both paradigms, so to speak—each in a different place in the Talmud. Ritva fits simply into the model in which notification of the

commandments—but not their acceptance by the convert—is not needed for a valid conversion, just like Maimonides.

Sagi and Zohar (170-171) further compound their misreading of Rambam by seeking to relate him to the view of *Tosafot* that the conversion of a minor child can be performed without acceptance of *mitsvot*. They argue that this demonstrates that *kabbalat ha-mitsvot* is not needed for an adult, since it is not needed for a child. This logic is contrary to a basic axiom of Talmudic logic—that we do not analogize from circumstances where performance is impossible to circumstances where performance is possible. Thus, the Talmud rejects the argument that circumcision is unnecessary for male conversion because women are not circumcised. Similarly, *Tosafot* and Rosh accept that a man without a penis does not require circumcision for his conversion to be valid, because that would be impossible (*Tur* and *Bet Yosef*, YD 268). In a similar vein, *Tosafot* aver that a child, lacking the capacity to accept anything, may convert without *kabbalat ha-mitsvot* (*Tur*, *Bet Yosef* and *Bah*, YD 268). But just as the first view of *Tosafot* (that a man without a sexual organ need not be circumcised) is not proof to the proposition that circumcision is not generally needed for conversion, so too the latter position (that a child need not have *kabbalat ha-mitsvot* to convert) in no way supports a similar argument with regard to *kabbalat ha-mitsvot* for adults.

Indeed, Sagi and Zohar's central proposition—that the existence of a *Rishon* discussing the procedures of conversion while not simultaneously addressing its substance is an indication that there is a tension between the two approaches, and that the *Rishon* therefore accepts that the procedural component alone is enough—is unsupported by the Talmudic literature or the medieval codes.

Two obvious proofs can be put forward to further sharpen this observation. The *Shulhan Arukh* effortlessly sews together these two Talmudic paradigms in one seamless chapter of his code, and in his pre-code analysis of this topic (*Bet Yosef*, YD 268) it is never noted that the Talmudic sources, *Rishonim*, or the earlier medieval codes are in any tension on this issue. This certainly is not because such is not the style of the *Bet Yosef*—he was quite comfortable noting *sugyot* in tension and *Rishonim* disagreeing. That such a central dispute would elude the *Bet Yosef* is nearly impossible to believe.

Indeed *Tur* and *Bet Yosef* are acutely aware of a central disagreement that is in fact present between Rambam and *Tosafot*, but it is one which is a shadow of the dispute which Sagi and Zohar imagine. The actual dispute relates only to which stages in the conversion ritual require a court's presence. According to *Tosafot*, the court must be present for *kabbalat*

*ha-mitsvot*, while according to the Rambam, it must be present for circumcision and immersion. Of course, just as *Tosafot* acknowledge that a valid conversion requires all three components, and they merely discuss which parts must take place in front of the judges, Rambam also accepts that all three actions must take place, but merely disagrees about which one(s) require(s) the presence of a rabbinical court.<sup>8</sup>

Like the *Shulhan Arukh* after him, the *Tur* not only rules that *kabbalat ha-mitsvot* is needed, he is completely unaware of a view that *kabbalat ha-mitsvot* is not needed. Rather, he harmonizes the *Demai sugya* with the *Yevamot sugya* and sees only a dispute about what needs to be done before a rabbinical court. All the views, according to the *Tur*, require circumcision, immersion, and acceptance of *mitsvot*. The same should be said for the view of R. Caro in both the *Shulhan Arukh* and the *Bet Yosef*.

In general, unified theories of halakha are superior to fractured theories. The attempt by Sagi and Zohar to paint the rules of conversion as a grand dispute between two Talmudic *sugyot* and two camps among the *Rishonim* does not withstand rigorous textual analysis. Rather, what we have is merely two sides of the same conversion coin, approached from different directions and with different nuances by the Talmud, *Rishonim*, and *Abronim*.

Sagi and Zohar attempt to create a dispute between *sugyot* and *Rishonim* concerning whether *kabbalat ha-mitsvot* is needed or not, but in fact no such dispute exists. Rather, a much less important dispute is present—does a *bet din* need to be present for all three needed steps in the conversion process, or just one of them? Proof of this is simply that later *Rishonim* and codifiers do not mention this dispute at all. Neither Rosh nor Rashba among the later *Rishonim*, nor the *Tur* and *Shulhan Arukh* among the early codifiers, nor even *Arukha ha-Shulhan* and the many subsequent *Abronim* who discuss the precise parameters of *kabbalat ha-mitsvot* note the scope and magnitude of this alleged Talmudic dispute. The reason is because such a dispute simply does not exist. Indeed, all of these sources and many more clearly state that *kabbalat ha-mitsvot* is needed for conversion. No classical sources state directly that *kabbalat ha-mitsvot* is not needed in contrast to the plethora of classic sources that repeat the simple formulation of the *Shulhan Arukh* (YD 268:3) that “*kabbalat ha-mitsvot* is a necessary requirement [for conversion] and must be done during the day and in front of three judges.”

The reason no classical sources assert Sagi and Zohar’s tension is that, in fact, R. Joshua’s argument in *Yevamot* (46b) demonstrates the exact opposite—the basic unity of the *sugyot*. R. Joshua logically infers that immersion is a requirement of conversion, “for, otherwise, with what did

they [the women] enter under the wings of the *Shekhinah*?” Implicit in R. Joshua’s statement is that “entering under the wing of the *Shekhinah*” is a part of, and possibly defines, the *geirut* process.<sup>9</sup> Without entering into the debate as to the precise meaning of the phrase, it suffices to note that such a phrase carries with it theological connotations. The phrase “entering under the wings of the *Shekhinah*” conveys the sense that conversion involves a commitment to religious praxis (similar to “the yoke of heaven”) and is not merely a ritual process. Contrary to the assertions of Sagi and Zohar, *Yevamot* represents not merely a “ritual process focused upon the body of the proselyte” but also an awareness of the binding religious obligation that is part of conversion.<sup>10</sup>

## II. SPECIFIC TEXTUAL MISREADS BY ZOHAR AND SAGI

Aside from the issue discussed in Section I, this book suffers from a tendency to over-read, under-read, and occasionally even misread sources. Occasional ambiguity is intrinsic to the writing of law, and a secondary writer examining the literature should not parse ambiguities as anything other than ambiguous. Yet, consistently throughout this work, Sagi and Zohar over-read and under-read when it is not textually called for. Furthermore, they seem to do so with a bias in favor of diminishing the requirement of *kabbalat ha-mitsvot*.

One example of this can be found in Chapters 8 and 9 of this book. The authors cite a number of Geonim and *Rishonim* (including Rif) who simply state that a convert must be “*mekabbel*” (“accept”). They deduce from here that these authorities reject a requirement for *kabbalat ha-mitsvot*, simply because the term “*kabbalat ha-mitsvot*” is not used. In fact, Rif’s silence can at most be construed as ambiguous with regards to *kabbalat ha-mitsvot*. He could have used the term “*mekabbel*” as shorthand for “*kabbalat ha-mitsvot*,” or he could have been referring to something else entirely. It is a significant over-reading of Rif to argue that his silence proves that he rejects a requirement of *kabbalat ha-mitsvot*. Indeed, the *Shiltei Giborim* (commenting on this Rif) reads Rif to be saying the exact opposite of what Sagi and Zohar claim; he insists that Rif does not require a bet din, but does require *kabbalat ha-mitsvot*.

This tendency to over-read can also be found in the authors’ presentation of the *Shulhan Arukh*’s view (200-217). In YD 268:3, R. Caro rules, “The acceptance of the commandments invalidates [the conversion] unless performed in the daytime and before three [judges].” Nine para-

graphs later (*YD* 268:12), he writes:

When a person comes forth with the intention of becoming a proselyte, they [the judges] should investigate: perchance he comes to enter the religion in order to gain money, or to qualify for a position of authority, or out of fear . . . If they did not investigate his motivation, or did not inform him of the commandments and the punishment for transgressing them, but he was circumcised and immersed in the presence of three laymen, he is a proselyte. Even if it is known that he became a proselyte for some ulterior motive, he has exited from the heathen collective because he was circumcised and immersed.

Sagi and Zohar see tension between these two sections; paragraph 3, which requires *kabbalat ha-mitsvot*, accords with the *sugya* in *Demai*, while paragraph 12, which they argue does not require *kabbalat mitsvot*, is in line with *Yevamot* (201). They proceed to delineate three ways of resolving this “internal contradiction” in the *Shulhan Arukh*. Once again, Sagi and Zohar have failed to make the critical distinction between acceptance and notification of the commandments. The only requirement the *Shulhan Arukh* waives in paragraph 12 is the notification of the commandments—never the acceptance. Thus there is no tension in need of resolution.

A more troubling example of this under-reading can be found in the authors’ discussion of R. Moshe Feinstein’s view of conversion. R. Feinstein has no less than twelve *teshuvot* on the role of *kabbalat ha-mitsvot* in conversion.<sup>11</sup> In them, he articulates a highly complex and nuanced view of conversion, but it is one in which acceptance of the commandments is the central ritual. He unambiguously and definitively requires a *kabbalat ha-mitsvot*. For example, he writes in *Iggerot Moshe*, *YD* 1:157 that a convert who did not accept the *mitsvot* “is clearly not a convert, even after the fact.” Yet, Sagi and Zohar relegate R. Feinstein’s view to one peculiar quote of an anomalous *teshuva* that surely does not represent the full view of R. Feinstein in any way. The authors then summarize R. Feinstein’s view as saying, “Rabbi Feinstein assumes that there can be no *giyyur* without circumcision and immersion. This provides the ground enabling him to decide in favor of the first option: even if the acceptance of commandments is not full, the *giyyur* can be affected by the other two elements.” (113) They do so in order to argue that R. Feinstein would accept as valid a conversion done without full acceptance of *mitsvot*, and that R. Feinstein ultimately accepts their version of the *Yevamot* paradigm.<sup>12</sup> This position is stunningly wrong to anyone familiar with the details of R. Feinstein’s *teshuvot* dealing with conversion. This remarkably mistaken

analysis of a halakhic authority who, more than any *posek* in the last seventy-five years, closely analyzed the rules of conversion and developed them into a coherent theoretical framework, is an inexplicable lacuna in a book addressing modern conversion in Jewish law.

Another particularly egregious example of Sagi and Zohar's misreading can be found in their analysis of the *Bet Meir* (211-215). Sagi and Zohar present R. Posner (the author of the *Bet Meir*) as a major *posek* of modern times who reads the Talmud and codes as they do, and does not require *kabbalat ha-mitsvot*. They title their discussion of R. Posner's position "Rabbi Meir Posner: re-validation of the *Yevamot* paradigm." They quote Posner as saying that "the crux of accepting the commandments is in that she commits herself in the presence of the court to immerse for the purpose of *giyyur*." In a footnote (217, n. 22) at the end of the chapter, they note that Posner offers an alternate explanation that does require *kabbalat ha-mitsvot*, but maintain that he had a "clear preference" for the *Yevamot* paradigm. Sagi and Zohar's analysis of this *teshuva* is wrong and misleading. It is true that the *Bet Meir* suggests that *kabbalat ha-mitsvot* is unnecessary—as a *hava amina*, a hypothetical and ultimately rejected possibility! However, this tentative hypothesis is decisively rejected at the end of the same *respona* wherein R. Posner unequivocally states that *kabbalat ha-mitsvot* is necessary (*Respona Bet Meir*, 72-73). Indeed, this ruling is the basis of the ultimate *pesak* of the *responsum*—namely, that the conversion being discussed (which lacked a *kabbalat ha-mitsvot* in front of a *bet din*) is invalid. Sagi and Zohar have disingenuously taken a theoretical hypothesis of the *Bet Meir* and presented it as normative halakha, while relegating the actual conclusion to a footnote.

So too, we do not agree with the authors' reading of *Responsum 92* of Ra'anah R. Eliyahu B. Hayyim (197-198). Sagi and Zohar claim that Ra'anah is the "first halakhist who consciously weighs alternative modes of understanding *kabbalat ha-mitsvot*." We do not see such a concept in this *teshuva*. In fact, Ra'anah states clearly that *kabbalat ha-mitsvot* is needed and a conversion is void without it. He does speculate that it is possible that *kabbalat ha-mitsvot* can take place in the *mikveh* (and it is worth noting that contemporary practice directs *dayanim* to have the convert repeat *kabbalat ha-mitsvot* in the *mikveh* again), but he never states—as Zohar and Sagi claim he does—that "immersion for the purpose of *giyyur* constitutes, *ipso facto*, the required acceptance." Indeed, Ra'anah makes it completely clear that although *kabbalat ha-mitsvot* can take place before or after immersion, acceptance of the *mitsvot* is needed in every case. So too, the statement of Sagi and Zohar, that "acceptance

of commandments is a commitment made by the proselyte in the presence of the court to immerse for the sake of *giyyur*” is a woefully incomplete sentence. Ra’*anah* actually states that the reason immersion does not require a *bet din*—and only *kabbalat ha-mitsvot* does—is because (according to one *hava amina* that he puts forward) the *kabbalat ha-mitsvot* includes the intention that immersion will take place, but not that it is limited to merely immersing.

Another example can be found in Sagi and Zohar’s analysis (209) of R. Yechezkel Landau, who writes in his *Dagul Merevavah* commentary to *Shulhan Arukh* (YD 268:3) that there is a distinction between the conversion of a minor, where a *bet din* is required for circumcision and immersion, and the conversion of an adult, where such is not required. Sagi and Zohar write:

In this text, Rabbi Landau postulates two very different processes of *giyyur*. For adults, the crux of *giyyur* is cognitive—acceptance of commandments—while circumcision and immersion are merely formal terminations of the process. For minors, the crux of *giyyur* is physical—immersion—and there is no cognitive element at all. Adult *giyyur* follows the *Demai* paradigm, while minors become full proselytes under the *Yevamot* paradigm. On this view, Torah itself follows two divergent paradigms, one for adults and one for minors. Rabbi Landau therefore presents Torah as advocating two incompatible views of the meaning of *giyyur*. In fact, this weakness characterizes the position of any scholar who holds the *Demai* paradigm but acknowledges that the *giyyur* of a minor is valid under Torah law. (*notes omitted*)

Upon close analysis of the words of the *Dagul Merevavah*, however, one does not, as these authors present, see a tension between the supposed *Demai* and *Yevamot* paradigms, but a standard analytic distinction. All that R. Landau means to say is that the central ritual of conversion is acceptance of *mitsvot* and that both the *Demai sugya* and the *Yevamot sugya* are correct whenever both can apply—but when one *sugya* cannot apply, then of course it does not. For a child who cannot willfully accept the *mitsvot*, the court must instead witness some other act of conversion.<sup>13</sup>

Sagi and Zohar similarly misread Ramban. In their view, the “acceptance” that Nahmanides requires of the convert is not an acceptance of the yoke of commandments, but an acceptance to go through with the rituals of conversion, namely, to circumcise and immerse (187). In support of this contention, they quote Nahmanides (*Yevamot* 45b, s.v. *mi lo tavla*): “. . . If he was notified about some of the rewards and punishments

for the commandments and accepted upon himself in court to be circumcised and immerse. . .” This quote is supposed to support their contention that “acceptance” refers only to immersion. However, if one reads beyond this small excerpt of Ramban, it is clear that this is not what Nahmanides meant. Further along in that paragraph, Nahmanides writes, “Even a male convert that accepts prior to circumcision should accept again at the time of immersion.” Clearly, this acceptance at the time of immersion is not an “acceptance to immerse” as Sagi and Zohar claim. The convert is in the middle of immersing—he would scarcely need to verbally commit to perform an act that he is in the middle of performing! Sagi and Zohar compound this erroneous misread of Ramban when they claim (223-224) that this view (that acceptance means a commitment to immerse) is held by all the major halakhic authorities, including *Tosafot*, the *Tur* and *Shulhan Arukh*. The only authority they cite for this sweeping assertion is the *hava amina* of the *Bet Meir* which, of course, was subsequently rejected by the *Bet Meir* himself (as we explained above).

In this section, we have sampled a number of instances where it seems that Sagi and Zohar have misrepresented the various prooftexts they present throughout the book. In truth, the consistent misreading of sources undermines the basic value of the work itself. While every word they quote is in its place, the editing of quotes is done in a way that substantially misrepresents the meaning of the rabbinic works they quote.

### III. WHAT IS THE DISPUTE ABOUT ACCEPTANCE OF COMMANDMENTS?

Taking all of the above into account, there is no denying that there is indeed a dispute amongst *Rishonim* and *Abranim* concerning the nature of *kabbalat ha-mitsvot*. However, as we described above, the dispute is not the profound dispute Sagi and Zohar put forward as to whether *kabbalat ha-mitsvot* is actually necessary at all. Until the writings of R. Uzziel, there is not a single halakhic authority who states that *kabbalat ha-mitsvot* is not necessary.<sup>14</sup> In place of this deep schism that Sagi and Zohar suggest, there is instead a complex, nuanced dispute among *Rishonim* and *Abranim* concerning the relationship between the acceptance of commandments required of converts and their subsequent lack of observance of the commandments.

That such a dispute should exist seems reasonable. As R. Herzog notes (*Pesakim u-Khetavim*, *YD* 89, 92, as well as R. Abraham Dov Ber Kahana, *Devar Avraham*, vol. 3, no. 28.), in times of old, fidelity to Jewish law was culturally normative, and the notion that one could become

Jewish in a society in which all observed Jewish law but the convert would not observe was certainly farfetched. In modern times, fidelity to Jewish law is not the popular *sine qua non* of Jewish identity. Thus the question of whether acceptance of *mitsvot* needs to be understood as identical with observance is asked. A survey of the twentieth century *Abronim* reveals the full spectrum of possible answers to this question.

The first view is that of R. Moshe Feinstein (*Iggerot Moshe*, YD 1:157 and 1:160), who argues that *kabbalat ha-mitsvot* has to be understood as requiring a genuine desire for full and complete observance. Thus a convert cannot be accepted unless his acceptance is complete, and anything short of that is indicative of fraudulent or bogus acceptance. Of course, this view recognizes that converts, no different from anyone else, sin—sometimes out of ignorance and sometimes from temptation. But, R. Feinstein asserts, a conversion cannot be valid unless the convert sincerely intends to obey Jewish law as the convert understands it, in all its facets at the time of conversion, and that is measured generally by looking at practical levels of observance at the time of conversion.

The second view is that of the *Hazon Ish* who (YD, 119:2), who understands *kabbalat ha-mitsvot* not in its practical sense as R. Feinstein does, but rather in its theological sense. A convert must accept, the *Hazon Ish* avers, the chosen uniqueness of the Jewish people as it relates to our role in this world. In this view, conduct consistent with Jewish law is but an external measure of an internal religious orientation. The reverse is also true—refusal to obey the *mitsvot* is an indication of a lack of acceptance of the nature of the Jewish people as a whole.

The third view is that of R. Hayyim Ozer Grodzinski (*Responsa Abiezer* 3:26), as well as many others, who aver that *kabbalat ha-mitsvot* need not be accompanied by full and complete observance, but instead needs to be accompanied by observance of significant cultural features of Orthodox Jewish life such as Shabbat, *kasbrut*, and family purity (*tabarat ha-mishpaha*). It seems R. Grodzinski could well imagine converting a person to Judaism whose intellectual fidelity to Jewish law is complete but whose observance is incomplete. For example, a *bet din* may accept a potential convert who knows that gossip is a sin but confesses to the rabbinical court at the time of their conversion that they are one hundred percent certain that they will inevitably and regularly gossip at *kiddush* following Shabbat services even though they know such conduct to be wrong.

Another notable view among the *Abronim* is that of R. David Zvi Hoffman (*Responsa Melamed le-Ho'il* EH 3:8), allowed a woman to be converted even though he knew she intended to marry a man who is a

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Kohen (with whom she was already living). R. Hoffman holds, as does R. Shmelkes (*Responsa Bet Yitshak*, YD 2:100), that there are situations in which a convert may be accepted even though he or she will not keep a particular matter (such as the prohibition against a Kohen marrying a convert), so long as their acceptance of Jewish law is generally complete.<sup>15</sup>

It is even possible to point to a group of *Abronim* who could be understood as saying that even when we know that *shemirat ha-mitsvot* will generally be lacking, *kabbalat ha-mitsvot* is minimally acceptable so long as there is an acceptance by the convert of the obligation to observe *mitsvot* and the recognition that the non-observance of *mitsvot* is sinful. One could read such a view into the writings of R. Uzziel, R. Shlomo Goren, and others. In fact, some in this group might even be making a more complex claim, namely that a clear and direct articulated acceptance of commandments in front of the *bet din* is sufficient after the fact, even if the rabbinical court knows that this acceptance of commandments is insincere, since there is an articulated acceptance of *mitsvot*. That seems to be the view of the Gra commenting on YD 269:12.<sup>16</sup>

As with many matters of Jewish law, there is no firm resolution of this dispute, and individual halakhic authorities should function based on what they understand the normative halakha to be.<sup>17</sup> However, the claim by Sagi and Zohar that there is a stream of thought in the Jewish tradition that allows for conversion without the acceptance of *mitsvot* at all (for an adult who is mentally capable of accepting *mitsvot*) would seem to be without foundation in the classic sources, and the sources they cite for support of their position in the Talmud, *Rishonim*, and early codes do not in fact support such a view.

## CONCLUSION

*Transforming Identity* is a bold book that undertakes to examine from the perspective of halakha the most vexing problem of Orthodox Jewish life in Israel and one of the most challenging problems of Jewish life in America. It takes courage, wisdom, and an exquisite knowledge of rabbinics in all of its many facets to successfully write a persuasive analysis of Jewish law that addresses the topic of conversion. This book, while well-intentioned, ultimately fails in its reading of the rabbinic tradition and Jewish law. Its basic arguments—that the two Talmudic sources discussing conversion are in tension with each other, and that while some *Rishonim* accept one and require *kabbalat ha-mitsvot*, some accept the other source and do not require *kabbalat ha-mitsvot*—is without precedent and includes a glaring misunderstanding of the Jewish legal system.

## POSTSCRIPT

So what is the solution to the conversion conundrums in Israel and America?

We confess that there are times when Jewish law simply cannot achieve the result desired by some people, and we must therefore struggle on with our lives, seeking to obey our Creator's will even as the results do not appeal to us. This is not unique to Jewish law, but is endemic to every legal system with timeless principles. Within Jewish law, this situation is not limited to issues related to conversion and anyone familiar with Jewish law sees such results on occasion. Of course, we should struggle to reach the best result possible in every case, but the struggle has to be grounded in a proper understanding of the classic sources, and solutions which are not grounded in the sources ought not to be followed. In each and every situation, there are those who declare that communities committed to Jewish law should throw in the towel and abandon the halakhic system as an act of kindness to suffering human beings. Yet all Jews who believe that Jewish law derives from God's will and revelation understand that it supersedes our wants and wishes. So, in such cases we struggle on, seeking to do that which halakha demands of us and acting with compassion to all.

Yet in the area of conversion, there is perhaps a possible solution to what ails us, and it is on much firmer ground in Jewish law than the solution proposed in the book being reviewed. There is a large number of Russians in Israel who are culturally and socially, but not halakhically Jewish. The writing of R. Moshe Feinstein have shown the way to a realistic solution<sup>18</sup> to this and many other conversion problems, particularly in Israel where Jewish identity is a more central concern. R. Moshe permits the regular conversion of minors into Judaism, so as to create, after the passage of many years, a society in which all those who think they are Jewish, actually are. Unlike the conversion of an adult (which certainly does require *kabbalat ha-mitsvot* by the convert) the conversion of a minor certainly does not require acceptance of *mitsvot*, but may be done with the consent of the rabbinical court—*al da'at bet din* (*Shulhan Arukh*, YD 268:7). While the exact parameters of what this means is subject to significant dispute, R. Feinstein actually posits the most liberal view—that since it is always better to be a Jew, every child is eligible for conversion even if they will not be religious upon becoming an adult.<sup>19</sup>

Others contend that such a policy of conversion would be unwise, but it seems at least reasonable that once the conversion of a minor is done by a valid *bet din*, it is always a valid conversion.<sup>20</sup> Under this type

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of a conversion program, all children of parents who identify as Jewish and wish to have their children raised as Jewish (even if the parents themselves are not halakhically Jewish) would simply have their children converted to Judaism by a *ger katan* program (and perhaps would be expected to send their children to the *mamlakhti dati* school system).<sup>21</sup> Over the course of a generation, this type of program could potentially solve the current crisis developing in Israel.

## NOTES

1. See for example, “Mentally Disabled Citizenship Applicants and the Meaningful Oath Requirement for Naturalization,” 87 California Law Review 1017, 1054 (1999).
2. See, for example, Zvi Zohar, “Halakhic Conversion of Non-Religious Candidates,” [www.jewishideas.org/responsa/halakhic-conversion-of-non-religious-candidates](http://www.jewishideas.org/responsa/halakhic-conversion-of-non-religious-candidates).
3. This distinction has already been noted by the *Maggid Mishneh*, who comments that the proper distinction to be drawn in Maimonides is between requiring acceptance of the commandments and simply informing the convert of the commandments. See also *Hemdat Shlomo* 29, 30 who explicitly draws this distinction.
4. For example, in *Hilkhot Issurei Biah* 12:17, when Maimonides summarizes post-conversion status, he states “Every gentile when they convert to Judaism and accept all the *mitsvot* in the Torah. . . . They are like newborn Jews for every matter.” We do agree that Maimonides may not require actual performance of the *mitsvot* as a necessary component for conversion *be-diavad*, as is seen from the wives of Samson and Solomon who seemingly never ceased worshiping idols.
5. The original line in the *Bah* reads: “*u-ke-shehayu shelosha be-tevilah af al pi she-lo hayetah le-shem kabbalat ha-mitsvot kol ikar.*” There is some ambiguity in how to read “*le-shem.*” It could be read with a *tseirah* (“*le-shem*”), meaning “for the purpose of.” In this read, the *Bah* says that Rambam does not require immersion for the sake of *kabbalat ha-mitsvot*. Alternatively, it can be read with a *kamats* (“*le-sham*”), meaning “there,” or “at the time of conversion.” In this read, the *Bah* is stating that the immersion is valid, even though there was no *kabbalat ha-mitsvot* at the time of immersion.
6. See Encyclopedia Talmudit (vol. 6, page 440 at text accompanying note 233 s.v. *Geirut*), which reflects our read of the *Bah* by stating, “There are those who hold that for *kabbalat ha-mitsvot*, even though three judges are required *ab initio*, nonetheless, if there were three present at the immersion, the conversion is valid, even though there was not at the time of immersion any acceptance of the *mitsvot* at all.” See also *Iggerot Moshe YD* 2:127 and *Piskei Din Rabbanim* 10:193, File 1016.
7. Consider for example, the view of *Melamed le-Ho’il* 2:87, where R. Hoffman considers the possibility that Rambam accepts conversion without *kabbalat ha-mitsvot* after the fact, but in the end he concedes that “I do not have

- the time now to fully consider the matter.” See also, *Heikhal Yitshak* (Herzog) *EH* 1:13 sv. *Ve-hinei ha-Rambam*; *Divrei Yatsiv* (Halberstam) *EH* 102; *Tsits Eliezer* (Waldenberg) 15:66.
8. We suspect that in fact it is the view of both Maimonides and *Tosafot* that the four requirements for conversion—sacrifice, circumcision, immersion, and acceptance of the *mitsvot*—can each be waived in a situation in which they are factually impossible. That is why *kabbalat ha-mitsvot* is not required for a minor, circumcision is not required for a man with no penis, and the bringing of a sacrifice is not required in a Temple-less era. We could imagine a case where such could be true for immersion as well as a matter of halakhic theory (although the factual impossibility of immersion is quite rare) at least according to *Tosafot*, although such a case might be subject to a more complex halakhic analysis as the view of Rambam is that the immersion is the central judicial ritual. Although we have no source to prove this, logic would indicate that immersion according to Rambam is no different than acceptance of commandments according to *Tosafot*, and thus when impossible, can be waived—just as the obligation to bring a sacrifice is waived. This footnote raises a number of complex issues and will be, we hope, the subject of a future Hebrew article.
  9. Indeed, this terminology comes up frequently in reference to conversion. See, e.g., *Sanhedrin* 96b; *Shabbat* 31a; *Nedarim* 32a.
  10. The closest pre-modern halakhic authority we can find who seems to parse the *Yevamot* and *Demai sugyot* in some sort of tension is *Responsa Tuv Tam Ve-da’at, Hilkhot Gerim* 111 (at page 38), which is cited by R. Y. H. Henkin in *Bnei Banim* 2:36. R. Kluger resolves this tension by positing that *kabbalat ha-mitsvot* is merely a rabbinic obligation required for conversion. This view is very far from normative (indeed, we can find no others who agree with this analysis). In fact, even according to the view of those few *Abronim* who ponder (but do not rule) that Maimonides does not void a conversion done without *kabbalat ha-mitsvot* after the fact, this itself seems to acknowledge the basic unity of the two sources. Both *sugyot* are normative, this view claims, and should be followed in all cases. It is only after the fact that that one *sugya* is deemed more important than the other. No halakhic decisor rejects the *Demai sugya* as Zohar and Sagi claim.
  11. See *Iggerot Moshe YD* 1:157, 1:159, 1:160, 2:124, 2:127, 3:90, 3:106, 3:107, 3:108, 3:112, *EH* 2;4, 4:16.
  12. R. Feinstein’s responsa are replete with nuanced analysis of the relationship between full *kabbalat ha-mitsvot* followed by an incomplete *shemirat ha-mitsvot*—but it is clear that he requires full acceptance. See Menachem Finkelstein, *Ha-Giyyur—Halakha U-Masseh* 119-24, 356-60 (1994, Bar Ilan University Press, Ramat Gan, Israel).
  13. For more on this, see note 9.
  14. R. Ben Tzion Uzziel’s view is complex and somewhat contradictory. He lays out three views in his responsa, each of which he appears to endorse. One view is that conversion is proper if the convert undergoes a regular *kabbalat ha-mitsvot* even if the *bet din* in charge of the conversion knows that the convert does not actually intend to observe Jewish law. The second view he accepts is that the convert does not actually have to accept that *mitsvot* are

binding on him but does need to acknowledge that he understands that the rabbinical court has told him that Jewish law states that he will be punished for his violations of Jewish law. The third view is that the act of immersion is itself a pro-forma minimal *kabbalat ha-mitsvot* (this is the view that Sagi and Zohar accept as correct). See *Mishpetei Uzziel* YD 2: 48-55 for his many responsa on this topic.

15. R. Moshe Feinstein, although he rejects the specific conclusion of R. Hoffman with regard to this specific matter, puts forward a very similar rationale which is worthy of thought. He suggests that in modern times, given the general lack of observance of halakha in the Jewish world, it is possible that a convert might genuinely convert to Judaism with a sincere acceptance that Jewish law is binding while honestly thinking that the manner in which Orthodox Jews observe Jewish law is merely a stricture and not actually required by Jewish law. R. Feinstein ponders the possibility that such a conversion is completely valid, as the convert intends to keep Jewish law, but merely does not understand the content of Jewish law. See *Iggerot Moshe* YD 1:160 where R. Feinstein considers this view.
16. Shmuel Shilo, *Halakhic Leniency in Modern Responsa Regarding Conversion*, 22, *Israel Law Review*, 353, 353-64 (1988).
17. We see no reason to argue that Jewish law intrinsically mandates uniformity on standards of conversion (as it, for example, does on matters of Jewish divorce). Although at first blush one could argue that conversion, like divorce, are core status matters which thus demand a consensus. This is a mistaken read of the reasons why consensus developed in matters of divorce. In matters of divorce, possible *mamzerut* likely develops after a woman is given a divorce that is valid according to one view but not according to others and that possible illegitimacy is essentially uncorrectable. That is not the case in matters of conversion. A person who converts according to one understanding of halakha (which is rejected by other *poskim*) might not be Jewish according to all decisors, but the process of correcting that problem is relatively simple if the parties wish to correct it. For this reason, there has been no firm rabbinic tradition of consensus in many areas of status-changing halakha such as conversion or *halitsa*.
18. Our proposal in this section is not new or novel to us. It has been noted in print by R. Jack Simcha Cohen, *Intermarriage and Conversion: A Halakhic Solution* (Hoboken, 1987)—note, as well, the approbation of R. Moshe Feinstein in this work. One of these authors recalls hearing a *shiur* containing this proposal while a student at Yeshiva University, although after these many years it is difficult to recall who gave the *shiur*.
19. R. Feinstein's view is difficult to understand, but we think that the explanation is as follows. R. Feinstein avers that every person is better off being Jewish, but since conversion to Judaism generally requires acceptance of *mitsvot*, and most people, even if they wanted to be Jewish, are not in fact prepared to accept *mitsvot*, the vast majority of people cannot convert. Indeed, the sinning associated with violating Jewish law once one is Jewish makes conversion a bad idea for many people. Minors, however, can only benefit from being Jewish since they can not sin (as they are minors) at the time of their conversion, whereas the theological benefits of Judaism accrue to them

immediately even as they are not obligated in *mitsvot*. Obviously, underpinning R. Feinstein's view is the assumption that the rabbinical court need only determine whether the conversion is of benefit to this child at this very moment without pondering into the uncertain future, a view which seems to be consistent with the general parameters of the rules of *zakhin le-adam she-lo be-fanav*. For more on this issue, see "*Zakhin le-adam she-lo be-fanav*," Encyclopedia Talmudit 12:135-197. This issue is worthy of further analysis.

20. The conversion of a minor child is inherently different—as we have noted a number of times in this review, there clearly can be no obligation that a minor child accept *mitsvot*; rather, his conversion is done with the consent of the rabbinical court. No less than four views can be found on when a rabbinical court ought to consent. The first view is the view of R. Kook (*Dat Kohen Milah ve-Gerut* 147-148, and a similar view is taken by R. Elyashiv in *Kovets Teshuvot YD* 2:55) that a *bet din* ought not to convert a child to Judaism unless it is fairly certain that the child will grow up to be religious. The consent of the rabbinical court is a substitute, in this view, for the consent of the child, and no person would consent unless they expect to actually be observant. The second school of thought is that of R. Hayyim Ozer Grodzinski who also advises not to perform such conversions unless the child will grow up to be religious, but recognizes that there will be situations where a conversion can still be validly done even if the children will not grow up observant (see *Abiezer* 3:28). The third view is the initial view of R. Moshe Feinstein, which permits conversions when the child will attend an Orthodox school, since in such a case it is likely that the child will be religious. The final view is the concluding view of R. Feinstein, which is that it is always better for a person who is not obligated in *mitsvot* to be Jewish and thus the conversion of any minor child is valid. (For both of these views, see *Iggerot Moshe EH* 4:26(3) and see also *Iggerot Moshe YD* 1:158).

R. Ovadiah Yosef indicates agreement with the first view of *Iggerot Moshe* in his *Yabi'a Omer EH* 2:3 and 2:4. R. Joseph B. Soloveitchik adopted a view that reaches the same conclusion as the most liberal view of R. Feinstein, albeit with a completely different mechanism (*kibush*); see R. Joseph B. Soloveitchik, "Community, Covenant and Commitment" at pages 21-22. (2005) These authors have been told that some halakhic authorities have argued that conversions done according to Rabbis Feinstein and Yosef's view are not accepted even after the fact as valid by those who ascribe to R. Kook and R. Elyashiv's view, although we are aware of no published writings where this is explicitly stated. See *Be-Mareh Ha-Bazak* 1 page 140 n.3 which is contradicted by *Be-Mareh Ha-Bazak* 5 page 179 n.4. It might well be that which view one adopts depends on whether one thinks that such children can, in fact, reject the choice of Judaism made for them as children—when they become adults. For more on this, see *Shulhan Arukh YD* 268:7 and commentaries *ad locum*.

21. We are, to be frank, uncertain if such a program is needed in the United States at this time—Jewry in America is quite aware of the presence of significant numbers of gentiles in America and thus has not developed a need for this type of a conversion program, which can certainly be construed as far less than ideal.