

# **“Except for One Thing”: Halakhic Considerations for Conversion into Judaism of Gay, Non-Celibate Men**

*Rabbi Ben Greenfield*

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# “Except for One Thing”: Halakhic Considerations for Conversion into Judaism of Gay, Non-Celibate Men

Rabbi Ben Greenfield

## Introduction

David is a non-Jewish man who has fallen in love with Torah and Mitzvot. He feels spiritually called to Hashem; he longs to place his life destiny with that of the Jewish people; he wants to raise Jewish, Torah observant children; he has studied for five years, learned all the necessary Halacha and lifestyle changes, bought a home walking distance to shul and has been living an Orthodox life for three years. David is a model conversion candidate and has done every last thing necessary to complete the process.<sup>1</sup>

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<sup>1</sup> This study was produced with the assistance and advice of teachers, friends, and colleagues. Thank you. I am grateful to Yeshivat Chovevei Torah, under which I did the bulk of this research; Bais Abraham Congregation and the Greenpoint Shul, where as a pulpit rabbi, I was able to develop some of these ideas; to members of the Torat Chayim rabbinical organization, who offered helpful feedback; to a number of Talmidei Chachamim who looked over this work.

Most of the Torah sources come from my research and study, though some of the more obscure references come from secondary sources (Torah articles and academic books on conversion). I have tried to credit those authors for finding and calling my attention to these Torah sources, but I know I may have missed a few credits.

Those secondary sources are:

- R. David Bass and R. Yisrael Rosen, *Techumin* 23, תוקפו של גיור בדיעבד אם הגר אינו שומר את כל המצוות
- R. Kalman Pesach (Chuck) Davidson, *Hakira* 23, גיור ללא כוונה לשמור תורה ומצוות כהלכה, (Unless otherwise noted, references to R. Davidson are to this work.)
- R. Kalman Pesach (Chuck) Davidson, דברי רבותינו בסוגיית הגיור, ואהבתם את הגר: [available here](#)
- R. Michael Broyde and R. Shmuel Kadosh, *Tradition* 42.1 (Spring 2009), Book Review of *Transforming Identity* (Avi Sagi and Zvi Zohar)
- Dr. Menachem Finkelstein, *Conversion: Halacha and Practice* (Gefen)
- R. Chagai Izirer\*, *Koveitz Avnei Mishpat* 3, קבלת מצוות בגיור, (In n. 53\*, I cite a related Psak Din from R. Izirer. Unless otherwise noted, references to R. Izirer are to the above article, not the Psak Din.)
- R. Yair Veitz, הסוברים כדעת האחיעזר והחולקים עליו, [available here](#)
- R. Chaim Iram, לבירור תשובת האחיעזר בענין קבלת מצוות וכנות הרצון, [available here](#)
- R. Tzvi Lifshitz, הגדרת קבלת מצוות בגיור, [available here](#)
- Beit Midrash l'Horaa u'Mishpat, גירות בנישואי תערובת, (April 19, 2019), [available here](#)
- R. Haim Amsalem, *Mekor Rishon*, קריאת השכמה לרבנות, (I also refer to his *Sefarim*, *Sheirit Yisrael* and *Zera Yisrael*.)
- R. David Brofsky, *The Beit Din L-Giyur*, [available here](#)

Unfortunately, the book length treatment, *Transforming Identity*, by Drs. Avi Sagi and Zvi Zohar, came to my attention towards the end of this research. I look forward to addressing their approach at a future time.

Except for one thing. David is gay and, while he admires other gay men who strive for Halakhic celibacy, he can't choose that for himself. Shabbat, kashrut, tzedaka, boreir, day school tuition, no shaving during Sefira, Davening with a minyan three times a day, setting time for Torah study, volunteering each week at Tomchei Shabbos, no travel during the Nine Days --- not a question. But a life without a loving, Jewish partner that he is attracted to -- he knows he can't commit to such a life. As such, he expects in his Jewish life to be in fairly consistent violation of several Mitzvot, on a Daoraita as well as Derabbanan level.<sup>2</sup>

May David still convert?

Much like Jews by birth who are gay, essentially observant, and non-celibate, “David” might have any number of theological understandings of his own situation. Maybe he wishes he could better resist this prohibition but is exhausted from that struggle and can't honestly tell a Beis Din that he will succeed in it. Maybe he is like so many frum gay men, who don't have any great answer, but know that being

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<sup>2</sup> For the Torah prohibition on intercourse between men, see Rambam, Sefer HaMitzvot Neg. 350 and Mishne Torah, Hil. Issurei Biah 1:14, following Vayikra 18:22, 20:1, and also involving Dev 23:18.

For the prohibition on less intimate touch between proscribed partners, understood by many to be a Daoraita violation, see Issurei Biah 21:1, following Vayikra 18:6 and also involving 18:30; but see Ramban's comments to Sefer HaMitzvot Neg. 353 and also Ibn Ezra to 18:6.

In fact, R. Yosef Shalom Elyashiv appears to have held that this prohibition, at least in its standard form, does not apply to homosexual touch. See Kovetz Teshuvot 3ֹEH 184, and for a helpful interpretive analysis, R. Yaakov Adas, Divrei Yaakov p. 341-345. (I owe these latter two citations to my teacher, R. Ysoscher Katz.)

For the general prohibition on wasting seed, see Issurei Biah 21:9,18. For Daoraita views see Sefer Mitzvot Katan 292 and Igrot Moshe EH 3:14, for Derabbanan views, see Shut Pnai Yehoshua 2:44 and the apparent meaning of Rambam Peirush l'Mishnayot Sanhedrin 7:4.

Note that these last two prohibitions apply to a wide range of circumstances and relationships, mainly involving straight people, with homosexual relations being but one small part of their orbit. One can imagine a gay person who strictly observes these proscriptions in the vast majority of realms and contexts (e.g. intimate touch with women or close family members; wasting seed though onanism) and only violates it in the very specific context of intimacy with their partner.

For a possible prohibition of Yichud between men, see R. Yehuda's minority view in Kiddushin 4:14 and Kiddushin 82a, but note the strict conclusion in Shulchan Aruch EH 24. Later authorities are split on its application in more recent times, see Beis Shmuel ibid. and Aruch HaShulchan 24:6. Perhaps, in our time, there is reason to adopt a strict approach.

While an important question, it is beyond the scope of this article to exhaustively investigate the precise Mitzvot that a non-celibate gay Jewish man violates. For our purposes, suffice it to say that at least one Mitzvah Daoraita is clearly in play and that a few other Mitzvot of varying severity are conceivably also involved in a secondary manner.

The prohibitions on homosexual intimacy between women are less severe or explicit. See, for example, Mishne Torah, Issurei Biah 21:8. This paper intentionally focuses on a hypothetical male candidate, with the expectation that any lenient conclusion here would easily apply in cases involving female candidates.

observant and gay are both parts of their being, and somehow just have to make sense of it. Fairly or not, perhaps he believes that in some way the Mitzvah does not apply to him.<sup>3</sup>

Can a Beis Din perform such a conversion? Should it? This article presents the foundational sources relevant to this issue, with the goal that the reader will come away with a firm understanding of the core *mekorot* at play. This article also organizes into one place seven potential arguments towards a permissive approach.

It should go without saying that this article is written in the spirit of *l'halacha v'lo l'maaseh*, as a theoretical investigation and not as a practical conclusion. Its purpose is to organize and analyze material, for all readers to digest on their own. Some arguments will be stronger than others. Some will apply in all cases, others only in specific instances. But taken together, I do hope they provide a sense of grounding and basis for *rabbonim* who are considering their options when presented with a circumstance like David's.

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<sup>3</sup> Almost all of the sources, citations, and arguments presented here apply regardless of what specific Mitzvah a conversion candidate wishes to exclude. We could speak of a “David” who insists on eating shrimp, or who refuses to don Tefillin, or who aspires to never kindle the Channukah flame.

Nonetheless, this entire paper is built upon the case of a gay, non-celibate man -- analyzing the material through the lens of his case -- for three reasons:

- A. Prevalence. I have been involved with several cases of gay people seeking to convert who were unsure to what extent they could accept the relevant prohibitions into their life. Indeed, I hear of such cases from rabbinic colleagues not infrequently. (Unsurprisingly, I have never encountered this issue in regard to, say, not laying Tefillin.)
- B. Tenability. A convert who holds out for shrimp raises red flags. It is difficult (not impossible, but difficult) to understand from where this insistence derives, what it says about their personal make up, and what it implies about their commitment to the rest of the Mitzvot. What do they see as so exceptional about this one specific Mitzvah, that they wish to exclude it? These points are far more understandable with a gay person. The desire for meaningful romantic partnership and fulfillment is a powerful one, for which a Beit Din might hold much sympathy.
- C. Moral Urgency. It seems to me that many people, particularly young Jews, are troubled by the idea that a gay, non-celibate person (even one whom they would consider to be transgressing a Torah prohibition) would be barred from any hope of conversion. It seems unfair, particularly when Jewish communities are full of born Jews who clearly or publicly commit a particular sin. My sense is that this moral discomfort appears in regard to gay candidates but not, say, for a candidate who is opposed to celebrating Hannukah.

It is my hope that the material here provided serves as a useful Halakhic resource when facing a common, understandable, and pressing dilemma facing rabbis, communities, partners, and, most importantly, conversion candidates.

(See n. 9\* below for indication that the Hannukah candle case is uniquely forgiving.)

## Background & “Argument #0”: The Core Talmudic Sources Point to a Default Permissive Stance

The fundamental requirements of a kosher conversion are immersion in a Mikvah (Yevamos 46a, Krisus 9a, SA YD 286:2), circumcision for men (ibid., YD 286:1), and the involvement of a three judge Beis Din (Yevamos 45b, YD 286:3).

Central to the process is some kind of formal recognition or acceptance of the Mitzvot. Interestingly, there is no explicit statement in the Talmud that Mitzvah acceptance is obligatory. However, accepting Mitzvot is: a. core to the Talmud’s description of how a conversion should proceed (Yevamos 47ab, Rambam Issurei Bia 14:2,3,6; YD 286:2), b. understood by some Rishonim to be the moment when the Beis Din’s mandated involvement is meant to occur (Tosfos Yevamos 45b “Mi”, Ramban ibid., Rosh Yevamos 4:31, YD 268:3), c. arguably more than a mere requirement, but the very essence itself of what it means to convert (cf. Rosh ibid; cf. Rambam 14:4; R. Soloveitchik in Reshimos Shiurim Yevamos 45b “B’ram Yeuyein b’Rambam”; Peninei Halacha, Haam v’Haaretz 10:3; Taz YD 268:9 expanding on language of the Rosh, and similarly Levush 269:3; R. Yitzchak Yehuda Shmelkis, Beit Yitzchak YD 2:100, end 9. Similarly, see the Lubavitcher Rebbe, Likkutei Sichot 33, Shavuot 2, p. 29, s. 3.)<sup>4</sup>

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<sup>4</sup> That said, there is a thread in Halakhic thought that accepting Mitzvot is actually not a prerequisite for conversion. See R. Bass & R. Rosen, Section 2. They highlight that the Bach (YD 268:7) understands the Rambam (Issurei Biah 13:17) to have taken this permissive approach. They also point out that such a position is nicely rooted in the Talmud itself (Yevamos 47b), which portrays *hodaat mitzvot* (informing the convert of Mitzvot) as serving the sole purpose of scaring the candidate away. Apparently, Mitzvah acceptance was not itself a desideratum, when the Gemara considered why we perform *hodaat mitzvot*.

See as well the excellent piece by contemporary conversion scholar R. Davidson, pp. 28-34, which discusses this theme at length. He shows it may even be the position of the Shulchan Aruch (!), and argues that this was the personal position of R. Shlomo Zalman Auerbach.

However, see R. Broyde & R. Kadosh, who sharply push against reading such a thread into Rishonim and Acharonim, including the Bach.

See as well Finkelstein, 2:2:4, p. 185, who adopts a lenient read of the Bach, but finds the Bach’s position puzzling. Interestingly, there is one moment in which Rashi describes the requirements of conversion and appears to intentionally omit Kabbalat Mitzvot. See Rashi, Yevamos 46b ד”ה יכול מקבלין אותו, and the inference raised (but then otherwise explained) by Maamar Mordechai 2 OH 32.

An important factor in this debate is whether and to what extent lenient statements about *hodaat mitzvot* (informing a convert about Mitzvot) imply a permissive position on *kabbalat mitzvot* (the convert accepting the Mitzvot). See Finkelstein 2:2:2 n. 66, p. 182 for a discussion of the Rema’s approach to this question.

On a conceptual level, it is also helpful to distinguish between those who say that Mitzvah acceptance is not a prerequisite to conversion, and those who maintain that it is a requirement, just one that can be fulfilled by negligible or very accessible means. For example, R. Shlomo Zalman Lifschitz (Chemdat Shlomo YD 29 et al; cited in R. Davidson’s essay) holds that immersion in the Mikvah itself constitutes Mitzvah acceptance. In practice, this position does not require an independent moment of Mitzvah acceptance; nevertheless, it does still maintain that Mitzvah acceptance is critical to conversion.

But must Mitzvah acceptance include a pledge to properly observe every last Mitzvah?<sup>5</sup> In a few pages, we will see a controversial Talmudic statement that indicates yes. This statement, on its face, will pose difficulties for somebody like David. However, to understand the disputed place of those lines, as well as their complex reception and interpretation, we must first introduce the more straightforward Talmudic cases which all point in the opposite direction: that a pledge to properly observe every last Mitzvah is not expected or, at least, not required.

Four Talmudic precedents establish a strong default position that imperfect or non-exhaustive observance of Mitzvos raises no problem for a conversion.

1. Yevamos 47ab - The foundational conversion *baraisa* that lays out the model process states that the Beis Din should teach the convert only “but a few select Mitzvot”, and also states that they should “not make it lengthy for him or detailed for him”. Indeed, as soon as the convert “accepts these [minimal Mitzvot and teachings] we circumcise him immediately.”

This text could not be more clear that comprehensive knowledge of and individualized commitment to all 613 Mitzvot is not required. Indeed, it is discouraged.

2. Shabbos 68b tells of a convert who “converts amongst the non-Jews” such that they were never introduced to foundational Mitzvot like Shabbos and, as a result, have lived their entire Jewish lives unaware that they were violating Shabbos each week. Indeed, they were apparently unaware of the prohibitions against idolatry (!) and with some frequency violated these as well. Nonetheless, the Gemara takes for granted that such a conversion is obviously valid.

Yet again, awareness of and individualized commitment to all 613 Mitzvot is never entertained as a conversion requirement. However, while this particular conversion is valid, nothing indicates that it is regarded as ideal or well-conceived.

Indeed, note that these first two sources speak of someone who is fairly ignorant of many Mitzvot and thus is not capable of an individualized acceptance of all 613. David’s case

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<sup>5</sup> For a nice expression of this distinction -- between the requirement to generally accept Mitzvot and the potential requirement to accept every last Mitzvah -- see Beis Yitzchak YD 2:100.10, “ואי דהש"ך פוסק”

is somewhat different. He is fully aware of the Mitzvot related to homosexual relationships, yet, it can be argued, is actively refusing to accept them.

3. Yevamos 45b tells of a male *Eved Canaani* who, interested in having marital relations with a non-Jewish woman, has her first immerse in a Mikvah for Niddah purposes. This woman then continues immersing for Niddah, apparently adopting the practices and identity of a Jewish woman. She eventually produces a daughter, presumably from this *Eved Canaani*. The Gemara rules that she is indeed considered a valid convert and that her daughter is a born Jew.

It is a strange set up (why does the *Eved Canaani* want a non-Jewish partner to go to the Mikvah?), but one background detail is highly relevant for our purposes. A Jewish woman (including a convert) and an *Eved Canaani* are forbidden from together having relations. (Onkelos to Devarim 23:8; Rambam Issurei Biah 12:13; Igros Moshe YD 3:106 ועי' 'במות, and 3:108 עכ"פ רש"י) At best, the woman is unaware of this prohibition. At worst, she is fully aware of the prohibition and enters into the conversion process with active intent to transgress. Either way, despite the fact that the whole purpose (!) of her immersion and her adoption of Jewish practice is to be with this *Eved Canaani*, in violation of a command, the conversion is ruled valid.

That a convert goes into conversion with specific intentions to engage in a prohibited behavior is, apparently, not disqualifying. In a Halakhic world in which perfect acceptance of Mitzvot was absolutely required, we would expect the Gemara to ask: how can a woman who seems to be having ongoing marital relations with an *Eved Canaani* possibly be considered to have accepted all of the Mitzvot? Indeed, the question is stronger since the very act of immersing in a Mikvah, necessary for her conversion to go into effect, was done in service of the proscribed relationship.

4. Shabbos 31a records three extraordinary cases in which Hillel converts a person despite a glaring lack in their Mitzvah acceptance. In one, a non-Jew wishes to convert on condition that Hillel teach him the entirety of the Torah on one foot.. Hillel converts him, before famously proclaiming: “What you hate, don’t do to your friend - that is the whole Torah in its entirety, and the rest is commentary. Go and learn.” In another, a non-Jew seeks to convert on condition that Hillel appoint him into the position Cohen Gadol. (Converts, like Leviim and Yisraelim, are forbidden by the Torah from serving in that position. See Bamidbar 18:4, et all, Rambam Sefer HaMitzvot Neg. 74) Hillel

proceeds with the conversion anyway, before guiding the convert to study the relevant verses and ultimately accept that he is banned from the role. Finally, a non-Jew declares that he does not believe in the Oral Torah and that he desires to convert on condition that he be taught only the Written Torah. Here too, Hillel proceeds with the conversion, then shepherds the convert towards eventually accepting the authenticity and relevance of the Oral Torah.

In each case, there is a substantial gap between full Mitzvah acceptance and what Hillel readily accepts. But just how wide is that gap? The “on one foot” case can be read conservatively, as a person wishing to accept all the Mitzvot, but only if their core principle can first be identified. Their education is hyper-brief, but their acceptance of Mitzvot is complete. A more extreme reading is also available, in which the convert wishes to accept only this one Mitzvah principle, yet Hillel happily converts him, expecting him to now start learning about the other Mitzvot as well. As to the “Cohen Gadol” case, it seems that the convert is unaware of the ban in advance. Either way, the “Oral Torah” case is hard to read in anything but an extreme manner. The convert knows that there is an Oral Torah and explicitly excludes it, yet Hillel accepts him. Perhaps Hillel would only perform such a conversion when he is supremely confident that the convert will eventually embrace the whole Torah (cf. Rashi Shabbat 31a גיירה), but even so, we are left with an astonishing precedent: a kosher conversion takes place, under Hillel’s aegis, at a point when the convert emphatically rejects the entire Oral Torah.

It is possible to force out a read of these cases that substantially lessens their extraordinary character. The Maharsha, after raising special concerns about the Cohen Gadol case, suggests that the conversion happened *only after* the convert had already changed his mind and abandoned serving in that position (Chiddushei Aggadot, Shabbat 31a “Amar Leit). The Maharsha recognizes how his reading goes against the plain meaning of the text and, interestingly, he raises this suggestion solely in regard to the Cohen Gadol case.<sup>6</sup> One could offer other reads in the same forced spirit. For example, in the Oral Torah case, perhaps the convert refuses to not *study* Oral Torah,

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<sup>6</sup> See p. \*, below (Argument #3, Section 3) for a fuller presentation of the Maharsha, and for R. Eliashiv extending Maharsha’s approach into the Oral Torah case.

but he heartily commits to *observe* it.<sup>7</sup> While I personally am unconvinced by such readings, one must acknowledge that ambiguities within the text make them possible.

Either way, the Gemara itself raises no concern with any of these three remarkable conversions, all of which contain some substantial deficiency in Mitzvah acceptance. That they are all performed by the great sage Hillel, of his own accord, further cements the conclusion that imperfect Mitzvah acceptance is no barrier to a kosher conversion.

The above four precedents, taken together, establish a strong default view: that perfect, exhaustive acceptance of Mitzvot is not necessary for conversion. The ideal convert is taught only a few Mitzvot; some converts never learn about Shabbat or the prohibitions against idolatry; one whose very motivation to immerse is in order to engage in sinful behavior is still deemed kosher; Hillel readily converts non-Jews who want a Torah watered down to one principle, wish to be Jewish so they can receive a prohibited honor, or outright deny the validity of the Oral Torah and its Mitzvot. Perhaps more remarkable than each of these precedents is how routinely the Gemara treats them -- never pausing to ask how such unproved or tenuous forms of Mitzvah acceptance could possibly be sufficient. Indeed, the most remarkable thing about these cases is how the Talmud considers them so very unremarkable.

It must be noted that none of these precedents perfectly address David's case, in which he identifies a specific set of Mitzvot that he fully expects to not observe. So one could argue that David's case is uniquely problematic and thus unacceptable -- but they would have a lot of work to do. The substance and tenor of the above four precedents all lean in David's favor. How will they be addressed? All four precedents are permissive. On what basis will a restriction be introduced, let alone justified? If, perhaps, some new Talmudic precedent is discovered, which speaks directly to David's situation and rules against him, it would be of great value in this discussion. But it would also be a great surprise. How could such a text exist, yet not once be raised by the Gemara in any of the above four discussions?

### **The “Except for One Thing” Baraisa & Argument #1: The Baraisa's Unclear Canonicity**

Indeed, such a text seems to exist. It is core to this topic and thus worth citing in full. Bechorot 30b, in the Vilna Shas version of the Talmud, includes the following Baraisa:

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<sup>7</sup> See p. \*, below (Argument #3, Section 2) for authorities who interpret the Hillel story in this manner.

הבא לקבל דברי חבירות חוץ מדבר אחד אין מקבלין אותו עובד כוכבים שבא לקבל דברי תורה חוץ מדבר אחד אין מקבלין אותו ר' יוסי בר' יהודה אומר אפי' דקדוק אחד מדברי סופרים וכן בן לוי שבא לקבל דברי לוי וכהן שבא לקבל דברי כהונה חוץ מדבר אחד אין מקבלין אותו שנאמר המקריב את דם השלמים וגו' העבודה המסורה לבני אהרן כל כהן שאינו מודה בה אין לו חלק בכהונה

One who comes to accept the rules of Chaveirut [trustworthiness in matters of Tumah and Tahara] except for one thing, we do not accept him. A non-Jew who comes to accept the rules of Torah with the exception of one thing, we do not accept him. R. Yose son of R. Yehuda says: Even just one detail from the Rabbinic rules.<sup>8</sup> And so too a Levite who comes to accept the Levite rules or a Cohen who comes to accept the Priesthood rules, except for one thing, we do not accept him.<sup>9,10</sup>

At first glance, the “except for one thing” Baraisa directly implicates David, who seeks to accept the rules of the Torah, but appears to exclude one element therein. We will soon investigate what precisely the Baraisa means when it speaks about excluding and what specifically it demands when it declares “we do not accept him”, with the goal of concluding whether David is or isn’t affected. But at the very least, anyone wishing to accept David for conversion will have to carefully work through this strict precedent.

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<sup>8</sup> Some later authorities offer a different read of R. Yose’s statement. See below\*. I follow here the standard interpretation of R. Yose, which is adequate for our current purposes.

The term דברי סופרים, which I translate broadly as “Rabbinic rules”, is notoriously indeterminate. Much has been written, in particular, about the Rambam’s employ of the term. (See R. Dr. Jakob Neubauer, הרמב"ם על דברי הרמב"ם, or for one easily accessible online essay, R. Dror Fixler, M’virkat Moshe, המונחים ההלכתיים במשנת הרמב"ם.)

I translated דברי as “rules” to parallel חוץ מדבר אחד, “except for one rule”.

But a limited meaning of דברי סופרים is that it refers only to Rabbinic derivation of Torah-level rules. (For example, the Mitzvah to eat in a Sukkah on the first night of Sukkot is a Torah-level command, not obvious from the verses themselves, but discovered through careful exegesis, on Sukkah 27a.) In this read, דברי סופרים does not refer to Rabbinic-level regulations, like *muktzah* on Shabbat and Yom Tov, or purely Rabbinic Mitzvot, like lighting Hannukah candles. Within this approach, a candidate who accepts all the Mitzvot except those of Hannukah may face no opposition from Bechorot 30b. Indeed, this more restricted read is suggested by R. Yitzchak Herzog (see n. 75\* below) and appears to be the presumption of the Maharal (see ns. 50\* and 61\*).

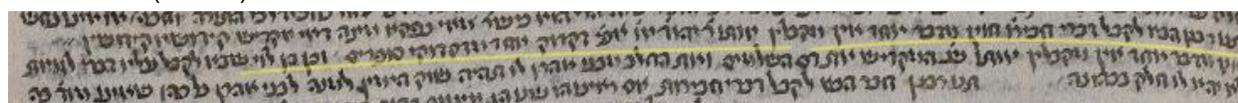
<sup>9</sup> All translations mine. Two Hebrew words permeate this passage: קבל and דבר. I sometimes translate דבר as “rule” and sometimes as “thing”, to produce an easier to read English text. I consistently translate קבל as “accept”, but note that that same verb is used to describe two very different processes: the conversion candidates’ acceptance of particular rules, and the Beis Din’s acceptance of that candidate.

<sup>10</sup> The concluding sentences of the Baraisa will be cited and discussed in Argument #5, p. \*. They are not necessary for our current purposes.

That is, if it is indeed part of the Talmudic canon. But many manuscript versions of the Talmud omit the line completely. They speak about one who accepts the rules of Chaveirut, the Levite rules, or the Cohen rules, but skip the conversion case. The uncompromising coda of R. Yose son of R. Yehuda remains, but is recorded as a stricture about Chaveirut, not conversion. Manuscripts with this omission include the oldest complete record of the Talmud, the Munich 95 documents, and the Firenze II.1.7 and Vatican Ebr. 119 versions. The British Library’s Add. 25,177 does contain the rule about converts, but does so with a clear corruption, noted in the manuscript’s margins. The Baraisa also appears as part of Tosefta Demai 2:6 and the Vilna version thereof includes the relevant conversion lines. However, the authoritative Vienna version of the Tosefta omits it, and the Lieberman edition ultimately publishes the line set apart in brackets.

On the other hand, several manuscripts do retain the relevant conversion lines. These include the Vatican Ebr. 120-121 edition of the Talmud and the Erfurt (Berlin) version of the Tosefta. Likewise, it’s clear that Rashi had this text before him (Shabbos 31a הוציאו בניזיפה and Sukkah 28a דקדוקי סופרים)<sup>11</sup>, as did Rabbeinu Gershom (Bechorot 30b חוץ מדבר אחד), the Maggid Mishnah (Issurei Biah 14:8), and the medieval Ashkenazi authority behind Erchei Tannaim v’Amoraim (Yaakov Ish Kfar Nevoriah d’p’h v’Kasha l’Tareitz).<sup>12</sup> The Sefer Mitzvos HaGadol (Neg. 172-173) is aware of volumes that contain it, though his own text is quite different. Thus completes the list of Halakhic authorities from the Rishonic period who report having these lines.<sup>13</sup>

#### Munich 95 (absent)

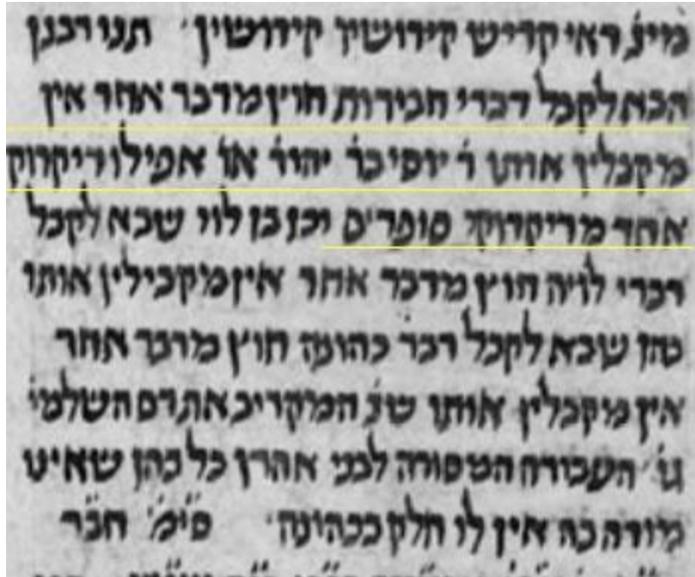


#### Firenze II.1.7 (absent)

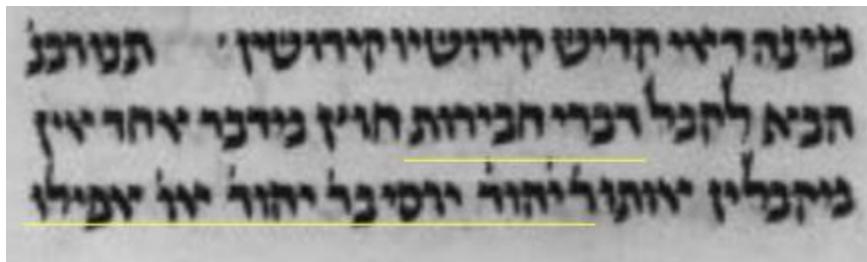
<sup>11</sup> In the Vilna edition of the Talmud, the Baraisa is cited three times (Rashi in Sukkah, Rashi in Shabbat, the Gemara in Bechorot) and in each of these instances, the text of the Baraisa somewhat varies.

<sup>12</sup> It has recently been ascribed to R. Yehuda ben Kolonomos of Shpeyer, an important Baal Tosafos, also known as the ריב"ק.

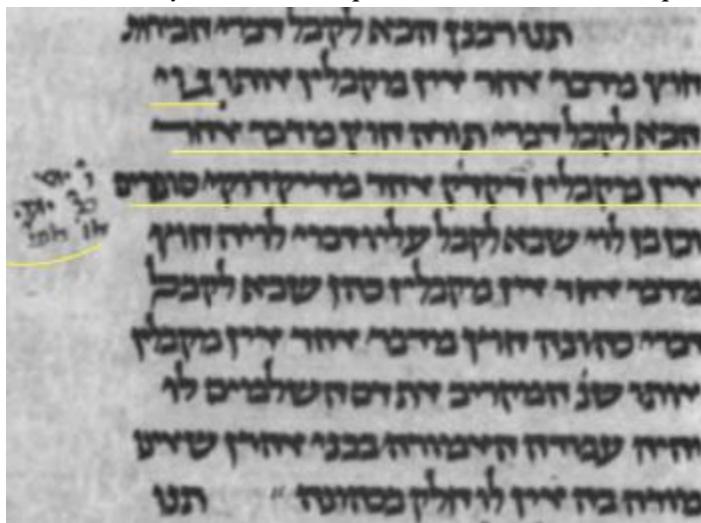
<sup>13</sup> The conversion passage is found in the Vilna Talmud printing of Ramban’s Hilchot Bechorot (38b, back pages of Bechorot) yet it is absent from Hilchot Bechorot manuscripts (see Auerbach edition, n. 158) and is not mentioned elsewhere in the Ramban’s sizeable oeuvre. As such, there is little evidence to suggest Ramban actually had this text.



Vatican Ebr. 119 (absent)



British Library Add 25,717 (present, with noted corruption)



It is worth briefly considering the alternative Talmudic text of the Sefer Mitzvos HaGadol (Smag). Regarding the Torah prohibitions of “do not abuse a stranger and do not oppress him” (Shemot

22:20) and “do not abuse him; like a native-citizen amongst you he shall be to you” (Vayikra 19:33,34) he writes that they apply only to a convert who accepted all of the Mitzvot:

מפרש בפרק עד כמה בזמן שקיבל עליו כל התורה כולה כאחד מכם לא תונו אותו, ויש  
ספרים הרבה שאינו כלל שם בפרוש עד כמה אלא כך הוא שם גר שבא לקבל עליו דברי  
תורה חוץ מדבר אחד אין מקבלין אותו

It is explained in Perek Ad Kama [the fourth chapter of Bechorot, which contains Bechorot 30b] that at a time when a non-Jew accepted upon himself the whole Torah in its entirety, like one “amongst you” (Vayikra ibid.), then “do not abuse him”. [I.e. if he did not accept the whole Torah, these verses do not apply to him.] But there are many books which do not include this over there, in Perek Ad Kama, but rather have the following over there: “A convert who comes to accept the rules of Torah with the exception of one thing, we do not accept him.”

In place of our familiar line, the Smag has a completely different passage. On the one hand, his alternative teaching appears to make basically the same point: someone is only a “full” convert, to whom the prohibitions against abusing converts adhere, if they accept the entire Torah. On the other hand, it's a softer version thereof. For the Smag, there is no Talmudic text which actually speaks about a convert who “excludes one thing”, none which declares that “we do not accept him”, and none which adds R. Yose son of R. Yehuda's strict coda. Further, this passage's primary purpose is to define the basic boundaries of the abuse prohibition, not to establish detailed parameters for conversion. As such, it is quite possible that it's only goal is to clarify that the verses refer to a Geir Tzedek (Torah-accepting convert into Judaism) and not to a Geir Toshav (non-Jew who formally accepts the seven Noahide laws, but whom no one views as actually Jewish).<sup>14</sup> Either way, this echo in the Smag appears to be the only record of this abuse-oriented teaching in any Talmudic source. We can thus speak of three versions of Bechorot 30b: those with the line about converts, those without, and, as an aside, the Smag's alternate.

While the Baraisa itself has a questionable text history, a relevant and more stable teaching about converts is recorded in Sifra, Kedoshim 8:3.

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<sup>14</sup> Avodah Zara 64b contains a threeway dispute as to which Mitzvot a non-Jew must accept to attain the status of “Geir Toshav”; acceptance of the Noahide laws is the dominant position. See p. \* below, (Argument #6, Evidence H.), for further discussion of Geir Toshav and where this Talmudic passage is relevant for properly interpreting the Bechorot 30b baraita.

”כאזרח” – מה אזרח שקבל עליו את כל דברי התורה אף גר שקבל עליו כל דברי התורה.  
מיכן אמרו גר שקבל עליו את כל דברי התורה חוץ מדבר אחד – אין מקבלים אותו. ר' יוסי  
בר' יהודה אומר, אפילו דבר קטן מדקדוקי סופרים

”Like the native-citizen amongst you, so shall be the stranger (*geir*) who lives amongst you.” (Vayikra 19:34) Just as the native-citizen accepted upon himself all the Torah rules, so too a convert (*geir*) must accept upon himself all the Torah rules. From here they said: A convert who accepts upon himself all the rules of the Torah, except for one rule, we do not accept him. R. Yosi son of R. Yehuda says: even one small rule from the Rabbinic details.<sup>15</sup>

To the best of my knowledge, every reliable version of the Sifra contains this ruling. It also appears in a number of later Midrashic collections: Yalkut Shimoni to Kedoshim 19:34; Mechilta d'Rabi Shimon Bar Yochai 12:49; and Tanchuma (Warsaw), Parashat Vayikra 2.<sup>16</sup> That said, as relevant as the the Sifra may be, it is not cited by any later Halakhic authorities<sup>17</sup> or in any teshuvot.<sup>18</sup> Finally, see Sefer Chassidim 995, a medieval work, which retains a version of the conversion ruling but with a completely different heading.

So, what should we make of the “except for one thing” Baraisa? How are we to treat a highly pertinent text which appears in some versions of the Talmud but is entirely absent from others? That might be in the Tosefta, but might not? That might be incorporated into Shas itself, or is perhaps relegated in altered form into more obscure collections? How are we to treat it when, as discussed above, it runs in spirit and content against four unquestionably canonical sources?

We thus have the basis for our second argument for David's conversion: the main text standing in his way may not be standing there at all.<sup>19</sup>

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<sup>15</sup> It is likely a coincidence, but the Sifra contains elements of both the Bechorot Baraisa and the Smag alternative.

<sup>16</sup> Pesikta Zutra, Shelach to 15:31 condemns a heretical Jew who accepts the entire Torah “except for one rule”, but does not appear to be a statement about standards for conversion.

<sup>17</sup> It is cited by Chizkuni, Vayikra 19:34. The Meiri in his Chibbur HaTeshuva (Meishiv Nefesh 1:7) references this idea, though it is unclear if he aware of it from the Sifra, Bechoros 30b, or elsewhere.

<sup>18</sup> See, in particular, Igrot Moshe YD 3:108, discussed below, where a reference to this Sifra might have been expected.

<sup>19</sup> The very fact that the Baraita is ignored by so many early Poskim (see Argument #2) may itself indicate that just how widespread it was for a medieval community's version of the Talmud to simply lack the Baraita.

See n. 78\* below for the additional argument that the Baraita as a whole reads more smoothly when it omits the critical lines about conversion.

## Argument #2: The Baraisa’s Utter Absence from Early Poskim and It’s Redirection by the Rambam

Separate from the question of whether the “except for one thing” Baraisa is part of the Rabbinic canon, is the question of whether we *pasken* in accord with it. Here, there is much evidence to suggest that we do not. The ruling is excluded from the foundational Halakhic works of the Rif, the Rosh, the Rambam (see below), the Tur, the Beis Yosef, and the Shulchan Aruch. The Gilyon Maharsha (Bechorot 30b) describes the situation well: “I have not found *poskim* bringing this ruling.”

We cannot know with certainty why it is ignored. But given that the Baraisa runs counter to the spirit of other sources, appears to be directly overruled or ignored by Hillel, and is not even firmly part of the manuscript record, we should not be shocked that it is excluded from the Halakhic conversation.

Of the many early Poskim who do not include this ruling in their laws of conversion, the Rambam’s approach is most complicated. Issurei Biah 14:8 reads:

וְאִין מְקַבְּלִין גֵּר תּוֹשָׁב אֶלָּא בְּזִמְנוֹ שְׁהֵיבֵל נוֹהֵג. אֲבָל בְּזִמְנוֹ הַזֶּה אֶפְלוּ קִבְּלוּ עָלָיו כָּל הַתּוֹרָה  
כְּלָה חוּץ מִדְּקָדוּק אֶחָד אִין מְקַבְּלִין אוֹתוֹ:

We only accept a Geir Toshav [non-Jews who seek official status as an observer of the Noahide laws] in an era when the Jubilee cycle is in effect. But in our era [when the Jubilee is not in effect], even if the non-Jew accepted upon himself all of the Torah in its entirety, except for one detail, we do not accept him.

Apparently, Rambam is aware of the Baraisa yet understands it as not speaking at all about the institution of conversion. Rather, the Baraisa speaks of a neighboring institution, that of the Geir Toshav, a kind of non-Jewish “alien resident” amongst the Jewish people.<sup>20</sup> The Baraisa highlights just how stubborn we are today about not granting that status. If a non-Jew approached seeking to become a Geir Toshav, and offered to observe not just the seven Noahide laws, but 8 or 10 or 500 or 612 of the Mitzvot as a non-Jew, we would still turn them away. No amount of extra Mitzvot help their cause, since the entire institution of “somewhat observant non-Jew” is on pause until the return of the Jubilee. It’s a highly creative re-interpretation of the Baraisa,<sup>21</sup> and its advantage is clear. No longer does the Baraisa stand in direct contradiction to Hillel or the other conversion precedents.

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<sup>20</sup> The Rambam’s formulation has overtones of the Smag, both in its linguistic choices and in its transformation of the Bechorot passage into a statement about Geir Toshav. I do not know what, if anything, to make of this connection.

<sup>21</sup> See Chevel Nachaloto 8:28, who acknowledges that Rambam is clearly not speaking about conversion, and see Daat Cohen 154, ft. 1 for an analysis of Rambam’s choice.

That said, one occasionally finds later authorities who assume that the Rambam passage applies even to cases of regular conversion. R. Yitzchak Yaakov Weiss (Minchas Yitzhak 1:121), R. Chaim Ozer Gordzinsky (Achiezer 3:26), R. Yitzchak Yehuda Shmelkish (Bais Yitzchak YD 2:100.10), and R. Yekutiel Yehuda Halberstam (Divrei Yetziv YD 168), each cite the Rambam as having codified a strict Halakha about conversion, without addressing the fact that the text is clearly not about conversion. This matter is surprising and requires further investigation. Perhaps they see Geir Toshav and regular conversion as parallel institutions, such that a rule stated about one presumably applies to both.<sup>22</sup> Perhaps they silently stake out an implication: why would a Geir Toshav who wishes to embrace 612 Mitzvot be rejected, if we could instead accept him as a full-fledged Jew?<sup>23</sup> It must be, they think, that the Rambam also denies Jewish conversion to someone who excludes a single rule from the Torah. We cannot know what motivates these specific authorities, as they do not address the issue.

Either way, these later *poskim* stand in contrast to countless authorities who write about the topic and do not cite this (on its face, irrelevant) Rambam source, starting with the Tur and the Shulchan Aruch themselves, who are aware of Rambam’s ruling about Geir Toshav yet choose to not even make mention of it in their sections on conversion.

A final note on the Rambam is in order. At Issurei Biah 12:17, a section about marital relations with non-Jews, Rambam describes converts as “accepting upon themselves all of the Mitzvot in the Torah” (emphasis mine). This offhand description is the closest we get to any early Halakhic authority so much as implying that the absence of one Mitzvah would create an issue. Indeed, R. Moshe Feinstein twice cites this line as proof that a convert who excludes one rule is not considered a kosher convert (Igros Moshe YD 3:108, 5:40). That said, Rambam appears to be quickly describing the ideal and typical conversion, not specifying the details of what would occur if one had a slightly imperfect conversion. Further, no such language is found in the Rambam’s actual chapters about conversion

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<sup>22</sup> See Finkelstein, p. 101 who argues that the Rambam’s clear intention was for a statement about Geir Toshav to apply fully to regular conversion. I find this approach difficult to accept. For one, the Rambam is a notoriously systematic and coherent writer; it is atypical for him to pen a law about one category without prompting the reader that it is meant to also apply to another. Additionally, if this was Rambam’s clear intention, it was not so clear as to be noticed by later close readers, like the Tur or Shulchan Aruch. As Finkelstein notes, they fail to record this section of the Rambam, because they apparently see it as part of the Geir Toshav (not the regular conversion!) code.

<sup>23</sup> Beit Yitzchak YD 2:100.10 spells out this implication in regard to arriving at a better understanding of the Bechorot 30b Baraita. \*(See below in my article for more on this.) But note that Beit Yitzchak is not here making a claim about how to read the Rambam. Like others, Beit Yitzchak already assumed, without pause or explanation, that the Rambam’s statement about Geir Toshav can be read as a statement about regular conversion.

See Finkelstein, p. 201, bottom, for a critique of the the above argument, as it appears in Beit Yitzchak.

itself, Issurei Biah 13:1-14:6, and no similar language is echoed by Tur or Shulchan Aruch. Indeed, for similar reasons, R. Eliyashiv (Kovetz Teshuvot 2:56) advises against reading too much into this brief Rambam passage.

Either way, we find that the crucial “except for one thing” Baraisa is absent in its original form from all foundational works of Psak, including that of the Rambam. Granted, one can build an argument that the Rambam alludes to and thereby codifies the Baraisa, but it is no easy task to sustain such a claim.

Nevertheless, the Baraisa is anything but absent from more recent Halakhic writing. The great Poskim of recent generations happily cite from the Baraisa, and it can be found treated as an authoritative ruling in the writings of R. Moshe Feinstein, R. Ovadia Yosef,<sup>24</sup> R. Dovid Zvi Hoffman,<sup>25</sup> R. Ben Zion Meir Hai Uziel,<sup>26</sup> R. Avraham Yitzhak Kook<sup>27</sup>, R. Chaim Ozer Gordzinsky,<sup>28</sup> R. Yitzchak Yehuda Shmelkish,<sup>29</sup> R. Yitzhak Hertzog, R. Yitzchak Yaakov Weiss, and R. Yisrael Meir Kagan.<sup>30</sup> At one point, R. Feinstein acknowledges that the ruling is absent from the Tur and Shulchan Aruch, asserts that the authors of those works must still agree with it, and states that further research is needed on why they would omit a ruling with which they concur.<sup>31</sup> For his part, R. Kook also recognizes the Baraisa’s absence from critical codes but cites the principle that, nevertheless, “an early established teaching does not budge from its place”. (R. Kook does not appear to be aware of those manuscripts in which the Baraisa is not an established early teaching.) However, these are rare moments and most Poskim treat the Baraisa as authoritative without question.<sup>32</sup>

Why the sudden prominence of a once neglected text? The ascent of the Vilna Shas may here play a role, as it made universal a version of Bechorot 30b which does indeed contain the Baraisa. In addition,

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<sup>24</sup> שו"ת יביע אומר ח"ח אה"ע ס' יב

<sup>25</sup> שו"ת מלמד להועיל חלק ג (אה"ע וחוי"מ) סימן ח

<sup>26</sup> שו"ת פסקי עוזיאל בשאלות הזמן ס' סה

<sup>27</sup> שו"ת דעת כהן (ענייני יו"ד) ס' קנד

<sup>28</sup> שו"ת אחיעזר חלק ג סימן בו:ה

<sup>29</sup> בית יצחק יו"ד ק: ד"ה אמנם לא מצאתי

<sup>30</sup> Biur Halacha 304:1 ד"ה א"י גמור. I owe this reference to R. Izirer p. 24, ד"ה אמנם מצאתי. Interestingly, and somewhat like the Rambam, the Biur Halacha initially invokes the Baraita to make a point about Geir Toshav! But at the end of the passage, as part of a re-evaluation of his position, he does mention it in regard to regular conversion.

<sup>31</sup> R. Feinstein does not recognize this conundrum in his Halakhic teshuvot, but in his Talmud commentary, Dibrot Moshe, Yevamot 37:4.2 p. 506, ד"ה ועצם הדבר. I owe this reference to Finkelstein, p. 101, n. 294.

<sup>32</sup> Finkelstein, p. 190 represents R. Kook’s statement as something that, “the *poskim* nonetheless emphasized”, but cites no one there besides R. Kook. To my knowledge the *poskim*, by and large, do not emphasize this.

perhaps the great upswing of conversion cases in modern times means that a Baraisa which once could have been seen as rarely needed is today quite relevant.

I would propose another explanation, which though somewhat speculative leads to a practical takeaway for the reader. In recent generations, conversions have unfortunately begun to be performed in which Mitzvah acceptance is largely absent. As mentioned above, acceptance or acknowledgement of the Mitzvos seems to be a core part of conversion, yet there is no explicit statement in the Talmud that Mitzvah acceptance is technically required. As such, Poskim of the last two centuries have, on the one hand, a powerful sense that such conversions cross a clear line and ought be disqualified, but on the other hand, have no obvious explicit Talmudic precedent upon which to construct that decision. Our Baraisa, which strongly critiques conversion in which *one* Mitzvah is excluded, is the best starting point available for a discussion about converts who exclude *many* Mitzvos. Indeed, it is often established about a particular convert that there was a broad absence of Mitzvah acceptance, but it is fairly easy to establish that at least one specific Mitzvah was not properly accepted. Our Baraisa thus becomes quite useful in the battle against conversions that lack basic acceptance of Mitzvot. But note that the Baraisa is here doing more work than it was ever intended to do. For over a millenia, it was called to address a rather peculiar case: an individual is fully willing to accept a life of Torah and its Mitzvos, but has one small detail which he wishes to exclude. Today, it is often used in cases about people who are basically not willing to embrace a Torah life at all.

As such, I encourage readers to recognize that there are two separate questions for which our Baraisa can be used: 1. Is Mitzvah acceptance a required part of conversion? 2. If a person does heartily accept most Mitzvot, but happens to exclude one small element of the 613, is their conversion affected? Ruling strictly on the former is greatly aided by our Baraisa but does not require it, while ruling strictly on the latter begins to unravel without our Baraisa. One can, in theory, use our contested Baraisa as an additional reinforcement in asserting the former, while also acknowledging that the Baraisa’s Halakhic authority is fairly weak, such that we cannot rely upon it to rule strictly in the latter.

In the end, the reader is faced with an unusual situation. What Halakhic weight should be given to a ruling which was omitted from all early Halakhic codes, up to and through the Shulchan Aruch and its commentaries, but appears now, in the last two centuries of Psak? In this way, we find a new argument in favor of David’s conversion: the main text standing in his way may be a text with zero or deficient Halakhic authority.

### Argument #3: What Does it Mean to “Accept” A Mitzvah & Three Lenient Possibilities

Let us assume that the “except for one thing” Baraisa exists as part of the Talmudic canon and that it has perfect Halakhic authority. We still will not know whether David’s conversion is affected until we have determined what counts as “excepting” (that is, excluding) a Mitzvah. And in that regard, the first step is to establish what counts as positively “accepting” (that is, including) a Mitzvah.

If accepting a Mitzvah means committing to fully observe that Mitzvah, David is pretty clearly excluding at least one Mitzvah. However, that is not the only possible meaning of the term. Indeed, four main viewpoints have emerged, three of which do not implicate David:

#### A. To accept Mitzvot means to freely consent to one’s conversion.

That is, “accepting Mitzvot” means acknowledging that you are about to be converted and choosing not to object. This is a rather low bar, but it is strongly rooted in the Talmud’s actual use of the term **מקבל**, “accept”.

Yevamos 47b/48a features a lengthy debate whether a non-Jewish slave or captive, whose life is largely controlled by their Jewish master, can be forcibly converted into Judaism. Throughout the debate, to “accept” and even to “accept the yoke of the Mitzvot” refers to the slave willfully going along with the conversion, whereas to “not accept” refers to being forced into a life of Mitzvot against their will. Interestingly, this is the only time in a Talmudic conversion source that the actual phrase **קבלת מצות** or **קבלת עול מצות**, “accepting Mitzvos” or “accepting the yoke of Mitzvos” ever appears. It seems that bare minimum consent is the original meaning of the term.<sup>33</sup> (Also see **מחזור ויטרי ס’ קמד** for a fascinating example where **מקבל תורה** means basic consent and interest. The story involves not a convert, but an ostracized and thus uncircumcised Jewish child, whom R. Akiva hopes will gain an interest in studying Torah.)

The idea that for a convert to properly “accept” Mitzvot they must merely *not be forced against their will* into Mitzot is the view of the Rugatchover (R. Yosef Rosen, Tzafnat Paneach, Issurei Biah 13:6)<sup>34</sup>, who offers similar arguments to the above. He states:

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<sup>33</sup> R. Davidson, p. 26-27, shows that some versions of Yevamot 47b/48a omit the phrase “עול מצות”, which he sees as further evidence that to “accept” in this context means to consent. What else would they be accepting? The Behag had this version and it is retained in some Talmud manuscripts.

I think it wise to emphasize that in these versions of the Talmud, the phrases “קבלת מצות” and “קבלת עול מצות” – so central to how we understand conversion today and so widespread in contemporary Halakhic literature -- are in utterly absent from the Talmudic discourse..

<sup>34</sup> While not as explicit, this may be the position of the the Rid (Piskei Rid, Yevamot 47b). See R. Davidson’s (ibid., p. 26) analysis thereof. Additionally, the Maharsha (Chiddushei Aggadat, Shabbat 31a **מקרא ליה אמר ליה**) seems to

צפנת פענח הלכות איסורי ביאה פרק יג  
דקבלת המצות מעכב דהיינו ר"ל שיקבל עליו הגירות ... ר"ל שיתרצה בזה לקבל  
הגירות ולא בע"כ

When we speak of accepting the Mitzvot being absolutely required, it means, the person must accept upon himself the conversion ... It means he must agree to the conversion and that it not be against their will.

The Rugatchover does not address our specific case: what it means to not accept one specific Mitzvah. But the implication of his approach is that a situation of excluding one Mitzvah would look like: a person declaring that they refuse to convert at all, because of one particular Mitzvah; or perhaps, a convert stating that they wish to convert in general, but they audibly refuse to have one particular Mitzvah be part of their conversion. Either situation does not describe David, who freely wishes to convert and fully understands that the laws related to homosexuality are part of the 613 Mitzvot that constitute this conversion.

#### B. To accept Mitzvot is to acknowledge a set of obligations.

That is, a convert must accept that they *ought to* keep all the Mitzvot, but not necessarily state that they *will* keep all the Mitzvot. Failing to perform a Mitzvah is, of course, a transgression, but no Jew is free of sin; a person can enter their conversion aware that there are particular Mitzvot that they will transgress.

As such, the only way to “not accept” a Mitzvah is for a convert to request that an exception be made and they simply not become obligated in a particular Mitzvah. To “not accept” would mean asking a Beis Din to create a tailor-made religion for you, in which only 612 of the Mitzvot apply.

This view is frequently associated with R. Uziel (Mishpitei Uziel 2 YD 58), who writes:

שו"ת משפטי עוזיאל כרך ב - יורה דעה סימן נח  
לא אמרו חוץ מדקדוק אחד אין מקבלין אותו אלא שאומר שאינו מקבל עליו  
עול מצוה זאת ... אם קבל כל התורה ושכרן ועונשן של מצות אלא שהוא  
נמשך בדברים שהרגיל בהם בגיותו הרי זה גר חוטא ואין נמנעים מלקבל  
אותו משום כך .... אם כן בטלת מצות גרות דאין צדיק בארץ אשר יעשה

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me to twice use the phrase מקבל עליו לגיירו to refer to a convert choosing, for themselves, to undergo a conversion. מקבל, in these lines in his writing, means something like to desire, choose, or consent. (The passage is difficult to parse. My suggestion is not the obvious read of the Maharsha but helps produce a comprehensible text.)

טוב ולא יחטא. ואם כן נאמר אפילו בישראל כל שכן הוא בגר, שודאי יעבור  
במצוה או מצות מן התורה אחרי המילה והטבילה. והרי זה כאלו אמרו חוץ  
מדבר אחד

They only said, “except for one thing- do not accept him” about someone who says that he will not accept upon himself even the yoke (obligation) of this Mitzvah ... [But] if he accepts the entire Torah, and the reward and the punishment associated with the Mitzvot, just that he will continue in the [sinful] activities which he was accustomed to do when a Gentile -- behold he is a [valid] convert, just one who is also a sinner. And we are not hindered in accepting him for conversion because of this ....

R. Yitzchak Herzog (Heichal Yitzchak EH 19) raises the same possibility. Though his mind is not settled on this question, his formulation is clear and worth repeating:

יש מקום להסתפק בזה, שמא הדין הזה הוא דווקא בתנאי מפורש ... שלא תחול  
הגירות לענין זה ושלדבר זה תהא כנכרית ויהא מותר לה מן הדין ... אבל זו איננה  
משיירת בגירות אלא שאנו יודעים ... לא תוכל להתגבר ויודעת שתחטא, זה לא  
נקרא שיור בגירות. כך אפשר לומר.

There is room for the following doubt. Perhaps this rule [about “except one thing”] is only when the convert makes an explicit condition ... that the conversion will not take effect in regard to this one matter, such that for this Torah matter, she will still be like a non-Jewish woman and it will be permitted to her even according to Jewish law. ... But here, in which she doesn’t limit her conversion, but rather we know ... that she will be unable to overcome [her temptation] even as she is aware that she is sinning -- that is not considered a deficiency in a conversion. So is it possible to say.

In this school of thought, David’s conversion is unaffected. He acknowledges that the restrictions around homosexual intercourse are part of the 613 Mitzvot, thereby accepting them all. Though he will likely continue in sinful activities from his life as a Gentile, overcome by temptation and aware that he is sinning, that is not itself a problem of “except one thing”. The contemporary scholars of

conversion, R. Haim Amsalem<sup>35</sup> and R. Pesach Kalman Davidson<sup>36</sup> have shown that this position was held by hundreds of Poskim and was the common practice in leading Batei Din of the last century.

C. To accept Mitzvot is to acknowledge a set of obligations, as attested by some baseline level of actual observance.

Here again, it is obligation, not actual observance, that is the key requirement. But can we really trust someone to say they have accepted responsibility for Mitzvos, if they utterly fail to perform them? What kind of responsibility has been accepted, if it leads to zero or minimal change in behavior? Some kind of observance is necessary to show us that an acknowledgement of responsibility has actually transpired.

This view is most associated with R. Chaim Ozer Grodzinsky (Achiezer 3:26)<sup>37</sup>, who first writes:

נראה דדין זה דנכרי שבא להתגייר ולקבל עליו כל המצות חוץ מדקדוק אחד מד"ס דאין מקבלין אותו, היינו במתנה שלא לקבל ושיהי' מותר לו דבר זה מן הדין, בזה אין מקבלין אותו דאין שיור ותנאי בגירות ואין גירות לחצאין, אבל במי שמקבל עליו כל המצות, רק שבדעתו לעבור לתיאבון אין זה חסרון בדין קבלת המצות.

This rule [of except one thing] is only when he makes a condition that he will not accept it and that this prohibited activity will remain fully permitted to him, even by Torah law. In that case, we do not accept him, for there can be no remnant or condition in conversion and there is no half-way converting. But one who accepts all the Mitzvot,

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<sup>35</sup> See the exhaustive full length study, Sheirit Yisrael, p. 155-158. He cites ten Poskim, including R. Ovadia Yosef in writing and in testimony to the Knesset, in regard to the widespread practice of treating an acknowledgement of Mitzvot as sufficient grounds for conversion.

<sup>36</sup> R. Davidson, *ibid.*, p. 26.. He points to the Halakhic decisions of of R. Moshe Driham (V'heishiv Moshe YD 50,51) and R. Yisrael Beiri (Nachalat Tzvi 162), and he argues there that an additional five Poskim effectively rule in the same manner. See n. 42\* below for more material from R. Davidson.

Compare

<sup>37</sup> While it is most associated with him, many later Poskim affirmed his view. See R. Veitz, who provides full and well-organized citations from 13 Poskim whom he describes as agreeing with R. Grodzinsky. These include R. Ovadia Yosef (writing in the journal Torah sh'Baal Peh 13, p. 32) and the Tzitz Eliezer (16:66, 19:34:2, Hilchot Medinah 3:3:3 p. 205).

That said, I believe that R. Veitz sometimes conflates R. Grodzinsky's moderately lenient approach with the fully lenient approach of R. Uziel. For example, the passage I cite above from R. Herzog -- which to me expresses full leniency, in line with R. Uziel - is treated in his article as an equivalent to R. Grodzinsky. Similarly, R. Davidson (see above, n. 26\*) places R. Moshe Driham in the extremely lenient camp of the Rogotchover, while R. Veitz places him in the more moderate school of R. Grodzinsky. I leave it to the reader to review the many sources that R. Veitz so helpfully arranged, and assess where precisely they each align.

even while thinking that he will violate one of them after the conversion, due to his desires, this does not constitute a gap in their accepting the Mitzvot. It is only when he makes a condition that he wishes to not accept a particular Mitzvah into his conversion that there is a gap which stops the conversion.....

So far, this follows the viewpoint of R. Herzog. But he continues:

אולם היכא שברור הדבר שבודאי יעבור אחרי כן על איסורי תורה חלול שבת ואכילת טריפות ואנו יודעים בבירור כונתו שאינו מתגייר רק לפנים ולבו בל עמו, הרי אומדנא דמוכח שמה שאומר שמקבל עליו המצות לאו כלום הוא א"כ זהו חסרון בקבלת המצות דמעכב

However, when the matter is clear that he certainly will transgress Torah prohibitions after the conversion -- Shabbos desecration, the eating of non-kosher meat -- and we know with certainty his intention, that he is converting only outwardly and his heart is not with him, then it is a clear basis that what he was saying that he accepted upon himself the Mitzvos, was in fact nothing. And if so, that is a gap in his acceptance of Mitzvos, which stops the conversion.

Some ink has been spilled establishing the precise details of R. Grodzinsky's test.<sup>38</sup> But the broad contours of this position are clear: some amount of planned transgression is fine, since conversion is about acknowledging obligation, not committing to observance; at the same time, some greater amount of planned transgression is problematic, as it shows that the convert did not meaningfully accept the Mitzvah obligation at all, and is instead “converting only outwardly”.

How does David stand in this framework? Since he intends to perfectly perform 612 Mitzvot, including everything related to Shabbos and Kashrus, it is very hard to claim that “he is converting only outwardly and his heart is not in it”. While there is a 613th Mitzvah which he will poorly observe, he makes no condition asking for it to be removed. As such, his conversion should be unaffected.<sup>39</sup>

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<sup>38</sup> See R. Iram and also R. Lifshitz. See as well R. Veitz whose range of sources provide an opportunity to see the way that many different Poskim have subtly reinterpreted the Achiezer. Finkelstein dedicates a section to the topic, 2:3.4, p. 203-211. \*note however

<sup>39</sup> Peninei Halacha, HaAm v'Haaretz 10:4 adds a new detail, in his summation of the Achiezer, which would raise questions for David. He writes:

כאשר יש לו עמדה עקרונית שאינו רוצה לקיים איזו מצווה או שמתר לעבור על איסור מסוים – אין מקבלים אותו. אבל אם הוא רוצה לקיים את כל המצוות, ורק מפני קשיים הוא מעריך שלא יקיים את כולן – אין מחשבתו מעכבת את הגיור

When the convert has a fundamental stance that he does not want to fulfill a certain Mitzvah or that is permitted to transgress a particular prohibition, we do not accept him. But if he wants to

That said, I see at least two possible, and far more strict, variants within this framework.<sup>40</sup> First, one could argue that we should apply R. Grodzinsky’s standard to each individual Mitzvah that the convert accepts. That is, if a convert knows they will *sometimes* transgress a specific Mitzvah, we can still imagine that they have accepted that Mitzvah; but if the convert expects that they will *always or grossly* transgress that Mitzvah, can we really say that they are accepting it? This, of course, would implicate David, who plans to typically violate at least one specific Mitzvah. For the record, this is not what R. Grodzinsky himself demands (he permits in a case involving a woman who will grossly transgress a Mitzvah), but it is a reasonable position in and of itself. Either way if David is willing, he can escape even this concern by committing to *some* low level observance of the relevant restrictions.

Second, one could argue that certain Mitzvot are so core to our understanding of Torah Judaism that violation of them itself implies that the Mitzvot as a whole were not properly accepted.

This may be what R. Grodzinsky alludes to by citing Shabbos and Kashrus.<sup>41</sup> If someone is not Shomer Shabbos and Shomer Kashrus, what faith do we have that they are invested in the Mitzvah system at all? Following in this path, one could claim that the prohibition against homosexual intimacy is itself one such core observance, and that a person who knowingly and consistently violates it is obviously not accepting upon themselves a life of Mitzvah obligation. This seems like a rather strained argument to make (particularly given the lived experience of Torah-involved, largely Mitzvah observant, non-celibate gay men) but its possibility must be conceded.

Taken together, we find a new, higher bar for Mitzvah acceptance: recognition of Mitzvah obligation, coupled with just enough observance to show that said recognition is not phony. At first glance, David easily passes even this test, though heavily strict variants of this test may pose a challenge for him.

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fulfill every Mitzvah, and only due to hardships does he estimate that he will not observe them, this thought does not block the conversion.

Note the emphasis on “wanting” or “not wanting” to fulfill a Mitzvah, which does not appear directly in the original Achiezer text, but is apparently intuited therefrom. If one accepts the Peninei Halacha’s read, the question arises whether a person like David -- who is so resigned to the hardships before him, or so intent on the need to remain non-celibate -- should be considered as “not wanting” to fulfill these Mitzvot. If so, the Achiezer would no longer be a source in favor of David’s conversion.

<sup>40</sup> For some rather lenient variant reads of the Ahchiezer, see the sources cited by R. Davidson, *ibid.*, p. 33. These include R. Chaim Dov Altosi (Hiddushei Batra, Yevamot 263), who infers that the Achiezer considers Mitzvah acceptance non-mandatory (!), thus adding Achiezer to the camp discussed above in n. 2.

<sup>41</sup> Erchei Tannaim v’Amoraim (*ibid.*) makes a similar distinction in regard to Avodah Zarah. One who excludes Avodah Zarah from their conversion is no longer in the category of someone who excepts one thing, but the entire thing.

#### D. To accept Mitzvot is to commit to fully observe them

That is, a convert must pledge to actually practice all of the Mitzvot. If he makes that pledge with reasonable sincerity, and later turns out to transgress Mitzvot, it does not spoil his initial conversion.<sup>42</sup> But if he never makes that pledge in the first place, we have an issue. Likewise, if he is unaware of certain Mitzvot or their details at the time of his pledge, that is perfectly fine, so long as he makes a general commitment to perform all Mitzvos, whatever they might be. He will do more as he learns more. But, if he knows about specific Mitzvos, yet will not commit to actually perform them, he has failed in his acceptance.

This is the position of R. Moshe Feinstein, R. Yitzchak Yehuda Shmelkis שו"ת בית יצחק ק:ט ד"ה, R. Avraham Yitzhak Kook מפורש וכו' משא"כ היכא דאיתגיירו, and others.<sup>43</sup> R. Feinstein writes (Igros Moshe EH 2:4, YD 3:106, 3:108):

קבלה לקיים כל המצות שחייבין בהם ישראל צריך לקבל וזה מעכב הגרות ... ודאי מקבלין גרים אף שלא ידעי רוב דיני התורה שהרי מודיעין אותם רק מקצת מצות, ופשוט שאף רוב דיני שבת אין מודיעין אותן, וגם מצינו עוד יותר שאף שלא ידע הגר שום מצוה הוא גר ... הוא משום דאיירי שקבל עליו לעשות כל מה שהיהודים צריכין לעשות וזה סגי לגרות... דענין קבלת כל המצות הוא ענין אחד לשמוע ולעשות כציוי ה'

The acceptance which a convert must accept is to fulfill all of the Mitzvot that Jews are obligated in and [lack of such acceptance] holds backs the conversion... Only when he accepts upon himself to perform all that a Jewish person has to perform, that is what is sufficient to create a conversion ... The matter of accepting all the Mitzvot is really one matter: to listen and to perform, as commanded by God.

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<sup>42</sup> Yevamos 47b is clear on this point:

דאי הדר ביה ומקדש בת ישראל ישראל מומר קרינא ביה וקידושיו קידושין

If a convert goes back on it [i.e. stops observing the terms of his conversion] and then proceeds to betroth a Jewish woman, he is considered a Jewish apostate and his act of betrothal is valid [i.e. he is an unsavory Jew, but a Jew nonetheless].

This echoes a theme true for all Jews. As Sanhedrin 44a notes:

חטא ישראל אמר רבי אבא בר זבדא אע"פ שחטא ישראל הוא

"The Jewish people sinned" (Josh 7:11). R. Aba b. Zavda said: even though they sinned, they are still called Israel.

<sup>43</sup> See R. Veitz who lists five additional works that adopt this position. R. Avraham Dov Kahana Shapira (Devar Avraham 3:28) is often cited as critiquing the Achiezer and pushing for stricter line, though even he leaves some space for accepting the Achiezer's position.

In this last of our four views, David is almost certainly implicated. He knows about the relevant Mitzvot, but knows that he cannot commit “to fulfill” or “to perform” them. In effect, he is a convert “except for one thing”.

But note that David’s situation is clearly relevant only in this last approach. But if “to accept” means to consent, or to acknowledge responsibility, or even to acknowledge responsibility with some baseline level of observance, David faces no issue. In this way we find a fourth argument in favor of David’s conversion: the main text standing in his way might not even be talking about him.<sup>44</sup>

#### **Argument #4: R. Moshe Feinstein’s Exception for Heroic Mitzvot**

Even R. Moshe Feinstein, who demands the convert commit to actually perform all Mitzvos, recognizes an important exception. Some Mitzvot are so profoundly difficult to observe that while we hope a convert will commit to keep them, we cannot honestly demand that commitment. He writes, about Mitzvot that require a person to give up their life:

שו"ת אגרות משה יורה דעה חלק ג סימן קח  
גר שקבל כל המצות אבל אמר להב"ד שאף שמקבל עליו כל המצות יודע שלא יוכל לעמוד  
בנסיון ליהרג כשיאנסוהו בדברים שהדין הוא שיהרג ולא יעבור, שנחשב קבלת מצות מאחר  
שקבלה חיוב המצות לקיימם כשיהיה לה באפשר שהוא שלא תהא אנוסה, ומה שתעבור  
הוא מפני שאין בכחה לעמוד בנסיון אף שברצונה לקיים המצוה ולא לעבור ... לכן אף  
שיאמר שדבר כזה לא יוכל לקיים נמי יש לן לקבלו ולגיירו,

A convert who accepts all of the Mitzvot but says to the Beis Din that even though she accepts upon herself all the Mitzvot, she knows that she is unable to withstand the trial of having to be killed when [evildoers] are compelling her [to violate] a matter which, by Torah law, she should let herself be killed and not transgress -- this is still considered accepting the Mitzvos [despite her saying that she will not follow Torah law in this matter]. For she does accept upon herself the obligation of the Mitzvos, in the sense of fulfilling them when it is possible for her to do so, that is, when she is not being compelled [to violate them]. And what she will transgress in the future is only because it wasn't in her ability to withstand the trial, but it still remains her wish to fulfill the

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<sup>44</sup> The most stringent position (D., above) is today often described as the mainstream view. However, see See R. Davidson’s *הגר ואהבתם את הגר*, which anthologizes into one resource over one hundred citations from Poskim and rabbis, past and contemporary, who adopt one of the more lenient approaches (A-C., above), or who do not require Kabbalat Mitzvot at all (see n. 5\* above).

Mitzvah and not transgress ... Therefore, even if a convert says that they are incapable of observing a Mitzvah matter like this, it is still upon us to accept them for conversion and to convert them.

R. Feinstein here states that a convert who tells the Beis Din that she cannot honestly commit to follow Torah law any time that it requires self-sacrifice, is nonetheless a perfectly fine convert. (See MT Yesodei HaTorah 5 and YD 157 for a list of such circumstances). The principle he establishes is fascinating: a convert must commit to fulfill the Mitzvot only in situations when such observance is “possible”, but not in situations in which “it is not in her ability to withstand the trial” of mandated observance.

In other words, there are certain Torah obligations which are so difficult for a person to keep that a convert is excused for not pledging to observe them. The bar of difficulty is high. He does not speak of merely inconvenient Mitzvot, but of what I think we can fairly term, “heroic Mitzvot”. In such circumstances, a Jewish person obviously *should* do the heroic thing, but we can also recognize that there is a way in which the matter is out of their control.

The relevance for David’s case is intriguing. One could build the argument that David’s full fulfillment of the Torah commandments around homosexual intimacy are tantamount to heroic observance, and thus worthy of R. Feinstein’s exception. Declaring these Mitzvot heroic in no way diminishes his obligation, the Torah’s expectation that he fulfill them, the admiration due to gay men who do fulfill them, or the Beis Din’s preference that he do the heroic thing and commit to them. But it does provide a framework for the Beis Din and the wider community to understand and accept David’s decision to not make such a commitment.

To be clear, building this argument for David is no easy task and should be undertaken with humility. I will detail at the end of this section the difficulties such construction will face; ultimately, I leave it as an intriguing possibility. But first, a thorough analysis of R. Feinstein’s theory will help us in appreciating just how broad an exception he makes and in assessing how closely R. Feinstein’s word can be relied upon in making a case for David.

Recall that in David’s case, there is basically only one Mitzvah whose acceptance is questionable. How many Mitzvot is R. Feinstein’s “coerced” convert incompletely (yet somehow still satisfactorily) accepting? R. Feinstein does not list them all, but his framing (“a matter which, by Torah law, she should let herself be killed”) suggests that this list includes any Mitzvah which in some context a Jew would be obligated to keep under threat of death. This implicates a very wide range of Mitzvot! A

person must martyr themselves for almost any Mitzvah during a campaign of anti-Jewish religious persecution or when pressed to violate as part of a public spectacle (MT, Yesodei HaTorah 5:1-4, YD 157:1). The incomplete Mitzvah acceptance is especially relevant in regard to three absolutely foundational Mitzvos -- against murder, idolatry, and adultery -- for which a person must sacrifice their life even in private and even without a persecutorial setting. The martyrdom obligation is a fairly small, very rare detail in how to observe each of these Mitzvot, but the amount of Mitzvot involved -- and their centrality -- is legion. R. Feinstein thus permits a great deal more than excluding just one Mitzvah.

While not emphasized by R. Feinstein, he is obviously aware that an additional, more localized set of Mitzvot are implicated in a far more egregious manner by this kind of conversion. The multiple commands associated with Kiddush Hashem (sanctifying God’s name; see MT ibid 5:1) are themselves what obligate a Jew to martyr themselves for the sake of Mitzvah observance. When a convert states that they cannot live up to the call of martyrdom, she is essentially saying that there are specific Mitzvot whose core demand she will not fulfill, solely because of the difficulty they entail. The “coercion” in this case comes from inside her; she knows she cannot muster up the courage to fulfill the Mitzvah of Kiddush Hashem, even if violent evildoers would happily let her do so. Nonetheless, R. Feinstein allows her to substantially exclude the Kiddush Hashem commandments from her conversion, as their performance is fundamentally heroic.

How far can we extend the “heroic” category? R. Feinstein himself believes that the category is not limited solely to life and death situations. He was presented with the case of a potential convert who would lose her job if she failed to attend work on the Jewish holidays that immediately followed her conversion. On the day of her conversion she knew in her heart that she would rather violate the holidays than lose her professional position and, indeed, she ultimately did come to work on those days. Nonetheless, R. Feinstein ruled that this does not invalidate her conversion, for it is as if she was “compelled” to transgress.

He writes:

שו"ת אגרות משה יורה דעה חלק ג סימן קח  
ואחרי שנתבאר שהוא גר אף כשאמר שלא יוכל לעמוד בנסיון דאונס נפש בדברים שהדין  
הוא דיהרג ולא יעבור, מסתבר דאף כשיאמר שלא יוכל לעמוד בנסיון דממון דהוא הדין  
דלעבור אלאו אסור אף כשיאנסוהו לאבד כל ממונו שהוא ג"כ נסיון גדול דהרבה אין יכולין  
לעמוד בזה ... דלכן נמי יכולין לגיירו דנחשב זה שקבל המצות כיון שבעצם מקבל המצות  
ויקיימם כשלא יהיה לו נסיון משתי משמעות הראשונים דלא כל ישראל היו במדרגת עמידה  
בנסיון דעניות

And now that it has been explained that a person is a valid convert even when he says that he is not able to withstand the trial of being compelled by his life, on a matter for which the Torah law is that he should allow himself to be killed instead of violating the matter -- it follows that even if he would say that he isn't able to withstand a trial by money (for it is the Torah law that violating a negative Mitzvah is forbidden even when [evildoers] are compelling him to violate it by threatening to destroy all his money) that this too would be considered a great trial, that many people would not be able to withstand .... and that therefore, here too we are able to convert this person [without concern] because it is still considered that they have in fact accepted the Mitzvot. This is because at its essence, he accepted the Mitzvot in that he will fulfill them whenever there isn't a trial [i.e. whenever he isn't being compelled otherwise] in either of these first two meanings [trial by death or by loss of money]. For not all Israel is on the level of withstanding the trial of becoming impoverished!

Apparently, when a particular Mitzvah is so difficult to practice that “many people would not be able to withstand” this spiritual test and when we can generalize and say that “not all Israel is on the level of withstanding” the challenge, this too counts as a heroic Mitzvah. Note that loss of a job is never a sufficient cause to permit one to violate a negative Torah prohibition. Strictly speaking, losing a job (or other forms of monetary loss) are not instances of *oneis* at all.<sup>45</sup> Nonetheless, R. Feinstein here expands the heroic category to include any substantially difficult situation. One wonders how far it can be taken.

What brings R. Feinstein to create such a broad and generous exception in the first place? Anyone who insists that a convert must commit to actually observe all 613 Mitzvot (and R. Feinstein is in that camp) will be faced by a conundrum. On the one hand, we know that some of those 613 Mitzvah obligations are incredibly difficult to fulfill, so much so that we can fairly presume that many perfectly righteous converts (and perfectly righteous born Jews) cannot honestly commit to fulfill them. On the other hand, the content and tone of the Talmud's conversion passages contains no interest in warning the convert about these extremely difficult Mitzvot, investigating whether the convert would actually be willing to observe them, or worrying about whether such an unlikely yet essential commitment has been made. More lenient readers might see the Talmud's disinterest in such questions as evidence that the bar for Mitzvah acceptance is relatively low. But when R. Feinstein takes the strict line on the

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<sup>45</sup> For a clear statement of this idea, see Encyclopedia Talmudit, Oneis (Hechreich), Sec A. and B., who cite Rivash 387.

meaning of “accepting the Mitzvot” his position will fall apart unless he addresses this conundrum. He does so by carving this important exception.

R. Feinstein names two such moments where this exception makes the strict line on Mitzvah acceptance far more tenable. First, the Talmud uses acceptance of the Torah at Sinai, by the Israelite masses, as a model for conversion standards.<sup>46</sup> While it is at least somewhat reasonable to imagine the Jewish masses pledging to perform most Mitzvot, it seems unlikely that the median Israelite sincerely committed to self-sacrifice. In R. Feinstein’s words: “Not every Jew is like Avraham Avinu, who was able to withstand trials, and yet their statement of ‘we will do and we will listen’ counted as a valid acceptance!” (Given how quickly the Sinaitic Jews descended into public idol worship and other sins, one wonders if R. Feinstein’s argument is understated.) Second, Yevamot 24b ultimately approves of conversions pursued for ulterior motives or for material gain, like those who convert for the sake of access “to the king’s table” or to the political privileges of “[King] Solomon’s servants”. Yet again, we find a broad class of admissible converts who are anything but pious, Avraham Avinu-esque candidates. While it is possible to imagine them committing to perform most Mitzvot, it seems unlikely that their commitment is perfect. Indeed, it is almost implausible to believe that these converts for major material gain pledge to observe those Mitzvot which demand major material loss. If someone is converting today for the sake of a \$10,000, will they really keep Shabbat tomorrow if it meant losing \$20,000? Yet there are circumstances when that is exactly what full Shabbat observance imposes.

We find that the strict line on Mitzvah acceptance, which could prevent David’s conversion, comes with (and relies upon) a built-in exception for very difficult Mitzvot; and that the definition of very difficult applies even to situations which are not technically defined as *oneis*, and even in situations in which the source of the hardship is not some outside imposition but the core demands of the Mitzvah itself.

David faces a somewhat similar circumstance: a Mitzvah that is phenomenally difficult to fully observe, whose observance might fairly be described as heroic. Can we apply R. Feinstein’s exception here to permit his conversion? A serious attempt to do so entails three separate tasks: establishing the Halakhic authority of this exception; showing that it can be extended past R. Feinstein’s original cases; and demonstrating that the relevant Mitzvot do in fact constitute a heroic challenge for David.

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<sup>46</sup> See Yevamos 46b (top). One might expect that the forefathers and foremothers mentioned on Yevamos 46a (bottom) have nothing to do with Sinai, but see Rashi d”h b’avoteinu sh’malu and d”h b’imahot.

As to the exception’s authority, it has quite a bit going for it. R. Moshe Feinstein is certainly a formidable *Poseik* upon which to rely; R. Feinstein’s own tone is not at all speculative but is instead quite confident and declarative; the proofs he offers are manifold and convincing; he employs this principle in an actual case so as to rule leniently. That said, I am not aware of other Poskim who affirm or themselves apply R. Feinstein’s ruling. Furthermore, this exception is but one of several arguments that R. Feinstein together relies on in order to produce a lenient ruling.

Extending this exception past R. Feinstein’s original precedent is a more difficult task. R. Feinstein spoke of Mitzvot which entail losing one’s life or substantial sums of money, but not of Mitzvot which lead to major romantic, sexual, or relationship challenges. He hints to some guidelines for which other kinds of difficult Mitzvot count -- ones that are not “possible” to perform, that constitute a “trial that he is not able to withstand” -- but never provides a clear guiding principle. Further, R. Feinstein spoke of Mitzvot which would be almost universally difficult to observe. David’s case involves a Mitzvah which certainly seems heroic for him and other gay men, but is not heroic for straight Jews to fulfill. Additionally, R. Feinstein’s case involved Mitzvah transgression whose frequency and duration were, in practice, rather minimal. The female candidate planned to violate only a few discreet holidays before finding a new workplace that would better suit her religious needs. Indeed, the hypothetical heroic cases that R. Feinstein speaks about -- martyrdom, losing your job for religious reasons -- typically occur only seldomly, maybe (*rachmana litzlan*) a few times in a Jew’s life. In contrast, David confronts a heroic Mitzvah which he would transgress for much of the rest of his life and with relative frequency. On the one hand, R. Feinstein lays out a principle which on its face can be extended to include David’s case; on the other hand, there are substantial gaps between the original precedent and David’s situation, which should be at least acknowledged, if not bridged.

Finally, one needs to evaluate just how heroic a challenge these Mitzvot pose for David. In my humble view, it seems that an entire future life without romantic fulfillment or sexual satisfaction is clearly exceptionally difficult and is a far more heroic ask than being fired from one’s job. But I leave it to the reader to make that assessment. That said, no single act of intimacy is itself so vital or urgent that eschewing it can be considered heroic. The Torah demands sexual and romantic restraint of various types, on various occasions, from all Jews. For David, the “trial he cannot withstand” is giving up on decades of romantic partnership, but each day to day obligation to avoid homosexual intimacy is not itself extraordinarily onerous. Is this trial by a million non-heroic Mitzvot really a trial? Further, every individual and sexuality are different. What might be incredibly difficult for one gay person might be less difficult for another; certain prohibitions may be almost impossible for one gay man to eschew, while others will not get in the way of him building a meaningful romantic partnership. In every case

before a Beis Din, what exactly counts as a heroic Mitzvah and what remains but a reasonably difficult Mitzvah, will be different.

That an extra leniency exists for heroic Mitzvot seems very likely. How far this leniency goes remains unclear, but it provides for us a fifth argument in favor of David’s conversion: even those who demand full commitment to every last Mitzvah must make an exception for “very difficult” Mitzvot. Can you really say that the Mitzvah which David excludes is anything but?

#### **Argument #5: Hillel’s Inclusive Approach, Rashi’s Exception for Theological Disbelief, and Other Benefits of Disbelief**

As we have seen, the Baraisa on Bechorot 30b runs counter to the spirit of numerous Talmudic cases. But by far the most difficult challenge comes from the the Hillel stories on Shabbat 31a. Anyone wishing to hold up the Baraisa as an authentic text with Halakhic authority must address these cases. Rashi is the only Rishon to do so and his approach went unquestioned and unchallenged for over seven hundred years.

The Hillel cases are moving, relevant, and presented here in full. Special attention should be given to the first case (core sentences underlined), which offers the most extreme ruling.

מעשה בנכרי אחד שבא לפני שמאי אמר לו כמה תורות יש לכם אמר לו שתים תורה שבכתב ותורה שבעל פה א"ל שבכתב אני מאמינך ושבועל פה איני מאמינך גיירני ע"מ שתלמדני תורה שבכתב גער בו והוציאו בנזיפה בא לפני הלל גייריה יומא קמא א"ל א"ב ג"ד למחר אפיך ליה א"ל והא אתמול לא אמרת לי הכי א"ל לאו עלי דידי קא סמכת דעל פה נמי סמוך עלי שוב מעשה בנכרי אחד שבא לפני שמאי, אמר לו: גיירני על מנת שתלמדני כל התורה כולה כשאני עומד על רגל אחת. דחפו באמת הבנין שבידו. בא לפני הלל, גייריה. אמר לו: דעלך סני לחברך לא תעביד - זו היא כל התורה כולה, ואידך - פירושה הוא, זיל גמור. שוב מעשה בגוי אחד שהיה עובר אחורי בית המדרש, ושמע קול סופר שהיה אומר: "ואלה הבגדים אשר יעשו חושן ואפוד". אמר: הללו למי? אמרו לו: לכהן גדול. אמר אותו גוי בעצמו: אלה ואתגיר בשביל שישמיני כהן גדול. בא לפני שמאי, אמר ליה: גיירני על מנת שתשימי כהן גדול. דחפו באמת הבנין שבידו. בא לפני הלל - גייריה. אמר לו: כלום מעמידין מלך אלא מי שידע טכסיסי מלכות? לך למוד טכסיסי מלכות. הלך וקרא, כיון שהגיע בזה הקרב יומת אמר ליה: מקרא זה על מי נאמר? אמר לו: אפילו על דוד מלך ישראל. נשא אותו גר קל וחומר בעצמו: ומה ישראל שנקראו בניו למקום, ומתוך אהבה שאהבם קרא להם בני בכרי ישראל - כתיב עליהם והזר הקרב יומת, גר הקל שבא במקלו ובתרמילו - על אחת כמה וכמה. בא לפני שמאי, אמר לו: כלום ראוי אני

להיות כהן גדול? והלא פתיב בתורה: “והזר הקרב יומת.” בא לפני הלל, אמר לו: ענותן הלל, ונחו לה ברכות על ראשך, שקרבתי תחת פני השכינה. לימים נדווגו שלשתן למקום אחד, אמרו: קפדנותו של שמאי בקשה לטורדנו מן העולם, ענותנותו של הלל קרבתנו תחת פני השכינה.

It once happened that a non-Jew came before Shammai and asked, “How many Torahs do you have?” Shammai responded: “Two. A Written Torah and an Oral Torah.” The non-Jew replied: “I believe you about the Written one, but not about the Oral one. Convert me on condition that you will teach me only the Written one.” Shammai scolded him and kicked him out with rebuke. The same convert then came before Hillel, and Hillel converted him. One the first day, Hillel taught him “Aleph, Beis, Gimmel, Daled”. The next day, he reversed their order. The convert said, “But yesterday you didn’t say it like that!” Hillel then replied, “So you were trusting me about what I taught [yesterday]? Then you should trust about the Oral Torah as well!”

It again happened that a non-Jew came before Shammai and said to him, “Convert me on condition that you teach me the entire Torah while I stand on one foot.” So Shammai pushed him away with the constructing ruler that was in his hand. The same convert then came before Hillel, and Hillel converted him. He said to the convert, “What you hate, don’t do to your friend - that is the whole Torah in its entirety, and the rest is commentary. Go and learn.”

It again happened that one non-Jew was passing behind the study house and heard the voice of a teacher, who was saying, “And these are the garments that they shall make, a breastplate, and an *ephod* ...” (Ex. 28:4). He said, these are all for whom? They said to him, for the Cohen Gadol. That non-Jew then said to himself, I will go and convert, so that they appoint me Cohen Gadol! He came before Shammai and said to him, “Convert me on condition that you appoint me Cohen Gadol. [Only those born as Cohanim can be appointed Cohen Gadol, making this forbidden.] So Shammai pushed him away with the constructing ruler that was in his hand. He [the non-Jew] then came before Hillel, and Hillel converted him. He said to the convert, “No one appoints a king who doesn’t yet know the royal arts! Go and learn the royal arts.” So he went and read [the Torah passages about being Cohen Gadol]. When he reached the verse, “and a non-Cohen who approaches [to do Cohen services] shall die” (Num 3:10), the convert asked, “About whom does this verse speak?” Hillel told him, “Even about David, King of Israel.” So the convert raised an *a fortiori* argument about

himself: born Jews are called God’s children, and out of the love with which He loves them, God calls them “Israel my firstborn son!” (Ex 4:22), and yet it is written about them “and a non-Cohen who approaches shall die” -- some lightweight convert who comes with his walking stick and traveling pack, certainly the verse applies to them as well!

He came back to Shammai and said to him: But I wasn’t even fit to serve as Cohen Gadol! Isn’t it written in the Torah, “and a non-Cohen who approaches [to do Cohen services] shall die” (Num 3:10)! He then came back to Hillel and said to him: O humble Hillel<sup>47</sup>, may blessings rest upon your head, for you brought me close, under the wings of the Shechina! Some day later, all three converts happened together in one place. They said, the carefulness of Shammai sought to drive up from the world, but the humility of Hillel brought us close, under the wings of the Shechina!

Each of these cases seems to involve a person “excepting one Mitzvah”, if not more, yet Hillel proceeds. The first situation, with the rejection of the Oral Torah, is the most challenging, since the convert is fully aware of the Mitzvot and explicitly refuses them. Not only does Hillel accept this convert, but the Talmud’s entire narration of the story is designed to applaud Hillel’s choice and critique Shammai’s unnecessary stricture. How can the Bechorot 30b Baraisa survive this text?

Rashi, attempting such resolution, first writes about the Oral Torah case:

הוציאו במזיפה - דתניא הבא לקבל דברי חברות חוץ מדבר אחד וכן גר הבא להתגייר וקבל עליו דברי תורה חוץ מדבר אחד אין מקבלין אותו במסכת בכורות  
“Shammai kicked him out with rebuke” -- since it is taught in a Baraisa, “One who comes to accept the rules of Chaveirut except for one thing, and likewise a convert who comes to convert and accepts upon himself to rules of Torah except for one thing, we do not accept him,” in Tractate Bechoros.

Apparently, Shammai’s refusal to engage with this convert was due to his following our Baraisa. Interestingly, Rashi offers no further explanation when Shammai repudiates the subsequent converts,

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<sup>47</sup> The root ענו, often associated with humility in regard to one’s own ability or value, sometimes refers specifically to a person of relatively high social status acting with grace or kindness to someone of lower status. This is one such instance. The convert has no reason to think that Hillel is humble in regard to Hillel’s own abilities or virtue, but he has just experienced Hillel reaching below his station to give time and consideration to an outsider / non-Jew. See Megilla 31a where the exact same term is applied to God, in a context that is clearly about a Higher figure treating lowly individuals with magnanimity.

lightly implying that this one reason covers all three instances. At this point, one might suggest an easy resolution: the Baraisa is a product of the school of Shammai, but is proudly rejected by Hillel.

Rashi, however, offers a different solution:

גייריה - וסמך על חכמתו שסופו שירגילנו לקבל עליו דלא דמיא הא לחוץ מדבר אחד שלא  
היה כופר בתורה שבעל פה אלא שלא היה מאמין שהיא מפי הגבורה והלל הובטח שאחר  
שילמדנו יסמוך עליו:

“Hillel converted him” - Hillel relied on his intellectual insight that, eventually, he would successfully train the convert into accepting the Oral Torah upon himself. For this is not like the case “with the exception of one rule”, for this convert does not deny (*kofeir*) the Oral Torah, he just does not believe that it is from the mouth of God (*m’pi hagevura*).<sup>48</sup> But Hillel was certain that after he taught him, the convert would believe him about the Oral Torah.

The passage is somewhat mystifying. At first glance, “not believing that it (the Oral Torah) is from the mouth of God” somehow improves the convert’s standing! This is a surprising and intriguing idea, but apparently necessary if one wishes to maintain the authority of the “except one thing” Baraisa. But the details of Rashi’s position are difficult to construct. What is the distinction between “denying” the Oral Torah (which is problematic) and “not believing it is from the mouth of God” (which is unproblematic)? And what is the importance of Hillel’s “certainty” in the last line, in justifying his actions? Despite the rather remarkable nature of this passage, it sat largely uncontested and unexplored for almost nine hundred years. To my knowledge, no other prominent Rishon or Acharon asked how to jibe the Hillel stories with our Baraisa or proposed an alternate resolution.<sup>48</sup>

What can we take away from this Rashi? Four basic approaches have been proposed:

A. Some form of disbelief in the Divinity of a Mitzvah makes “excepting” that Mitzvah more palatable.

In this approach, failing to accept a particular Mitzvah is somewhat mediated by disbelieving that the Mitzvah is actually from God. One might explain it as follows: it cannot be considered “excluding a Mitzvah” if you do not count it as a Mitzvah in the first place. We expect converts to accept all

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<sup>48</sup> It is worth exploring if other editions of Rashi’s commentary omit these lines, as they go uncited for so many centuries. Perhaps this lack of attention is evidence that the Baraisa itself was absent from popular Talmud editions, or was understood by most readers to not be Halakhically binding, such that other Rishonim and early Acharonim showed little interest in resolving the question that here bothers Rashi.

Mitzvah rules, as a broad class, whatever those rules may be, but we do not demand that they accept any individual rule whose Mitzvah status they deny.

The above formulation is, in my view, the straightforward read of Rashi. Indeed, this seems to be how Chashukei Chemed (R. Yitzchok Zilberstein, Bava Kamma 149a) understands Rashi. Further, both R. Yitzhak Herzog (Heichal Yitzchak EH 1:13:14) and R. Moshe Feinstein in one *teshuva* (IM YD 3:106) take the above as the *prima facie* meaning of Rashi, which they each find too radical to ultimately accept.<sup>49</sup>

Rashash (R. Shalom Sharabi, Shabbat 31a) offers a similar read of Rashi. He takes the problematic case of “denying” to refer to a convert who has vigorously researched a particular Mitzvah (“an investigation into all parts of the Hidden”) and confidently concluded that it is not Divine.<sup>50</sup> In contrast, the acceptable situation of “not believing” refers to a less rigorous convert who did not conduct an exhaustive theological investigation but merely lacks default faith in the Mitzvah. In this interpretation, someone who fails to accept a Mitzvah out of agnosticism, skepticism, or moderate study of Jewish thought is deemed acceptable by Rashi.

R. Yosef Engel (Gilyonei HaShas, Shabbos 31a) crafts a related distinction. Someone who “knows the Torah but does not wish to accept it” is problematic; but someone who is aware of a Mitzvah but does

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<sup>49</sup> The Maharal (Chiddushei Maharal, aka “Gur Aryeh”, Shabbat 31a ד”ה גער בו) likewise reads the Hillel case at face value, as involving a convert who -- much like a Karaite -- broadly rejects the entire Oral Torah. He uses this to conclude that Karaites are technically not heretics [*minim*], for if total rejection of the Oral Torah qualified a person as such, Hillel would never have involved himself with such a convert.

It is unclear if Maharal here writes within Rashi’s understanding of the case or if he offers his own direct explication of the Talmud’s situation.

<sup>50</sup> Where exactly would Rashash draw the line between rigorous and non-rigorous research? And is his distinction primarily about the depth of the research, or about the confidence of the denial? I leave it to the reader to interpret his words:

רש"ש מסכת שבת דף לא עמוד א ד"ה גייריה.

נ"ל בוונתו דכופר לא מיקרי אלא אחר החקירה בכל חלקי הסותר אבל זה לא חקר ולא נוכח אלא שלא היה מאמין בו לכן הובטח שלאחר שיברר אליו אמיתת הדברים ישוב מאמין:

It seems to me that Rashi’s intention is that he is not called a “denier” (*kofeir*; in many contexts, “heretic”) until after he has done an investigation into all parts of the Hidden. But one who did not investigate and did not discern [that’s to whom Rashi refers when he writes], “rather he does not believe, etc.” For this reason [i.e. the convert’s relatively low level of research and self-assurance] was Hillel confident [according to Rashi] that after he clarified the truth of the matter to the convert, the convert would revert and believe.

It is possible that Rashash’s reference to “all parts of the Hidden” set an almost impossibly high bar for research that very few could ever meet. If so, then unless “David” has scrutinized every last Torah text and concept regarding homosexual intimacy, he cannot be considered a “denier” for excluding it.

not know much about it, cannot yet be said to excluding it.<sup>51</sup> In this way he distinguishes between the Karaites - whose ancestors practiced the Oral Torah, who are themselves familiar with the Oral Torah way of life, yet choose to refuse it -- and Hillel’s convert, whose disbelief comes only after a less intimate knowledge of the Mitzvot. According to R. Engel, Rashi makes room for this relatively uninformed kind of apostasy.

R. Moshe Feinstein offers a far more modest place for disbelief, in two of his *teshuvot*.<sup>52</sup> He understands Rashi to be saying that Hillel’s convert absolutely believes in the Oral Torah and wishes to completely accept it. (In fact, R. Feinstein asserts that we would never accept a convert who denies such a core tenet of Jewish belief.) However, the convert happens to view Hillel as an untrustworthy teacher of the Oral Torah. In this way, the convert is not excluding a Mitzvah, he is but seeking a different human teacher of that Mitzvah. Yet again, disbelief improves the standing of the convert, but it is disbelief not in any Mitzvah, but in Hillel himself, which R. Feinstein here sees.

R. Asher Weiss offers an interpretation fairly similar to R. Feinstein’s (Minchat Asher, Shabbat, 34). According to R. Weiss, Hillel’s convert wishes to accept every last Mitzvah that the Jewish people consider part of their Torah. However, the convert happens to view Hillel as an untrustworthy teacher, who is mistaken about or even making up this “Oral Torah” idea. Were the Oral Torah to be something that Jewish people do in fact recognize as part of their Torah, the convert would happily accept it; he just distrusts Hillel to serve as an accurate spokesman for the Jewish people. Once again, a lack of faith (in a teacher) benefits a convert.<sup>53</sup>

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<sup>51</sup> I was surprised to see R. Yosef Goldberg (שורת הדין כרך ג פס"ד המתחיל בעמוד קסה ד"ה ואמנם ראיתי) , discussed below, p. \*) offer a rather different summary of R. Yosef Engel. R. Goldberg treats the phrase, “knows the Torah but does not wish to accept it” as “knows the entire Torah but does not wish to accept it”, seeing in R. Engel an almost impossibly high standard that I do not believe was ever present in R. Engel’s words. After claiming with confidence that this is R. Engel’s view, R. Goldberg then expresses his astonishment that R. Engel would write such a thing.

While I do not think such a high bar can fairly be read into R. Engel, see n.\* 36 above, where I entertain such a read of Rashash.

<sup>52</sup> Igrot Moshe EH 2:4, YD 3:106. Note that R. Feinstein’s treatment of the “except for one thing” principle varies between these two Teshuvot. In the former, it is an absolute rule, that applies even after the fact. In the latter, it is a mere *lekhatkhila* prescription, that can be waived at times. See my discussion of this below, p.\*. Either way, his understanding of Rashi’s distinction remains the same in both: the convert believes in the Oral Torah but distrusts Hillel to teach it.

<sup>53</sup> R. Weiss’ position differs from R. Feinstein’s in two subtle ways. First, R. Feinstein insists that a convert must at least believe in the concept of an Oral Torah, while R. Weiss sees no such requirement. Second, both R. Weiss and R. Feinstein envision a convert who fears that their teacher is engaged in misrepresentation. But misrepresentation of *what*? For R. Feinstein, the convert’s fear is that God is being misrepresented. But for R. Weiss, the convert’s fear is that the Jewish people are being misrepresented.

Taken together, we have uncovered five readings of Rashi in which some kind of disbelief in the Mitzvot actually benefits the convert’s position: strong, almost heretical disbelief that a particular Mitzvah is actually Divine; moderate agnosticism about whether a particular Mitzvah is actually Divine; naive disbelief, built on limited familiarity with a Mitzvah; a lack of trust in his teachers when they say that a particular prohibition is actually God’s will; or, a distrusting teachers when they claim that a specific Mitzvah is recognized by Jews as part of their Torah.

All of these interpretations are relevant for David. If he tells his Beis Din that he would observe the Mitzvot related to homosexual intimacy if he truly believed they were God’s will, but that a. He does not believe that they are actually God’s will (straightforward read of Rashi) b.) Doubts that they are God’s will after some investigation (Rashash’s read) c.) Doubts they are God’s will from a place of naive disbelief (R. Yosef Engel) d. Does not trust his current teachers when they tell him it is God’s will (R. Feinstein’s read in two *teshuvot*), or e. Does not trust them when they tell him it is the Jewish people’s understanding of their Torah,<sup>54</sup> his standing would be improved. If sincere and plausible, some form of disbelief would take David out of the category of “excepting one Mitzvah”.<sup>55</sup>

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With this in mind, I do see a small issue with R. Weiss’ interpretation of Rashi. The Talmudic narrative concludes with Hillel teaching the convert the Alef-Bet in such a way that the convert becomes convinced of Hillel’s authority. If the convert is interested in Truth (as per R. Feinstein), the lesson is apt: if you are willing to believe me as a source of Truth about the letters, shouldn’t you believe me on other matters? Or perhaps more bluntly: even the basic act of reading the Written Torah requires an oral faith in me as your teacher; you’ve already taken that leap of faith into orality, so take it all the way.

But if the convert is interested in what the Jewish people believe (as per R. Weiss), the Alef-Bet lesson is unnecessary and off-base. Just have the convert find some Jews and ask them! And how does the Alef-Bet lesson position Hillel as an authority on what the Jewish people believe?

Ultimately, between these two similar interpretations of Rashi, R. Feinstein’s produces a tighter narrative flow.

<sup>54</sup> Personally, I find it difficult for to imagine a real-life “David” who sincerely doubts that these prohibitions are part of the Jewish people’s understanding of the Torah. It seems to me that these prohibitions are widely recognized -- within the Jewish world and out -- as part of the Jewish understanding of God’s will.

In contrast, when it comes to R. Moshe Feinstein’s more Truth and God-oriented understanding of Rashi’s allowance for disbelief, I can absolutely imagine a “David” who holds theological doubts about the Truth or Authenticity of these specific prohibitions, and questions whether God actually considers these Mitzvot binding. He would concede that the Jewish people recognize these Mitzvot, while insisting that they are mistaken for doing so.

<sup>55</sup> It is not the case that each of these readings independently validate every gay person’s conversion. Rather, depending on the specifics of David’s case and whether he presents with a particular kind of theological disbelief, one or two of these readings can be marshaled for support. What these readings show is a *range* of ways in which Rashi is understood to create room for skeptical converts. What precisely fits within that room -- and what does not fit in that room -- is subject to debate between the above readings.

But even within these permissive reads of Rashi, an element of his words can still be seen as holding David back. Consider Rashi’s phrasing once more. What is the role of the first and last sentence?

גייריה - וסמך על חכמתו שסופו שירגילנו לקבל עליו דלא דמיא הא לחוץ מדבר אחד שלא  
היה כופר בתורה שבעל פה אלא שלא היה מאמין שהיא מפי הגבורה והלל הובטח שאחר  
שילמדנו יסמוך עליו:

“Hillel converted him” - Hillel relied on his intellectual insight that, eventually, he would successfully train the convert into accepting the Oral Torah upon himself. For this is not like the case “with the exception of one rule”, for this convert does not deny (*kofeir*) the Oral Torah, he just does not believe that it is from the mouth of God (*m’pi hagevura*).<sup>o</sup> But Hillel was certain that after he taught him, the convert would believe him about the Oral Torah.

The center sentences (“For this ... mouth of God”) effectively show that Hillel’s convert was not in violation of Bechorot 30b. At that point, the conversion should be perfectly valid. However, the first and last lines of Rashi’s comment challenge that inference. Rashi twice emphasizes that Hillel had strong confidence that the convert would eventually accept the entire Oral Torah which, in fact, subsequently happens. Potentially, Rashi is suggesting that Hillel would never have proceeded with this conversion without such confidence. But why would he not? With Bechorot 30b out of the way, what teaching or precedent is holding Hillel back?

It is possible that Rashi here broadcasts his own reasonable, but as of yet unstated, principle: a conversion with imperfect Mitzvah acceptance may be technically kosher, yet still *should be avoided* unless there is solid ground to believe that a more complete Mitzvah acceptance will eventually occur. Indeed, R. Feinstein sees such a principle in Rashi’s words\*. Obviously, this rule would be quite debilitating for David, whom offers no evidence to suggest a future change of heart. On the other hand, Rashi never explicitly states such a rule and, even if he did, it would be not Talmudic per se, but Rashi’s own sensible invention.

Ultimately, these readings each see in the Hillel cases, and in Rashi’s reading thereof, some new pathway through which David can extricate himself from Bechorot 30b. At the same time, they also leave space to infer from Rashi a new Rishonic rule, which would somewhat limit David’s ability to convert.

B. Disbelief in a Mitzvah does not itself count as “excluding” it, so long as the convert accepts the Mitzvah into their practice.

This is the approach of R. Yitzchak Herzog (Heichal Yitzchak EH 1:13:14 with some doubt, but with more confidence at 1:19:7), who essentially describes Hillel’s convert as ‘orthoprax’ in regard to the Oral Torah. The convert intends to fully observe, but he lets Hillel know that he has theological qualms. Rashi, in this read, states that since the convert does not “deny” the obligation or practice of the Oral Torah, but only “does not believe” in its Divinity, this is not a case of “excepting” a Mitzvah. (This is also the position of R. Shlomo Kluger<sup>56</sup> and, with an additional stringency, also that of R. Natan Geshtetner.<sup>57</sup>)

As a read of the actual Talmudic material, R. Herzog’s approach is rather forced. Nothing in the Hillel passage suggests that the convert intends to accept and observe the Oral Torah, such that Rashi would essentially be adding new information, without evidence, into the story.<sup>58</sup> That said, as a read of the Rashi text itself, it is an elegant gloss.

As with the previous approach, R. Herzog must still explain Rashi’s opening and closing lines about Hillel’s certainty. What do these sentences add? He offers a similar explanation to that offered above. Rashi is here asserting his own as of yet unstated principle: an ‘Orthoprax’ conversion may be technically kosher, yet still *should be avoided* unless there is solid ground to believe that faith will

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<sup>56</sup> Chochmat Shlomo YD 268:2, ל’ ד’ כשבא להתגייר אומרים לו, which can be found in the “Yalkut Meforshim” section printed in newer versions of the Shulchan Aruch.

I was alerted to this source by the Piskei Din of R. Yehuda Goldberg (see below, Shurat HaDin 3 p. 165) and of R. Chagai Izirer\* (איזירר? spell).

מספר 178159/1) בית הדין האזורי רחובות, תיק מספר

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I was rather surprised to see R. Izirer\* (ד”ר דברי הנצי”ב מוקשים) treat R. Kluger’s approach as the obvious and straightforward read of Rashi, even referring to it as the “pshat”.

<sup>57</sup> L’horot Natan 3:83:8. In a radically conservative read of the case, he states that Hillel’s convert even believes that the Oral Torah is the correct and true interpretation of the Written Torah, which the Sages in their wisdom derived and transmitted to us. The convert’s only point of contention is that he believes the Sages arrived at the truth of the Oral Torah solely through their own intelligence and without hearing it, as it were, from the Mouth of the Divine. See n. 45\* below.

<sup>58</sup> R. Geshtetner’s approach (n. 44\* above) thus constitutes an even deeper stretch. I allude to the possibility of such forced readings above, p\* , Argument #0, Background Source 4.

eventual arrive.<sup>59</sup> R. Herzog adds that disbelief is tolerated in the Hillel story only in regard to the Oral Torah; about the the Written Torah, even Hillel would demand full faith before conversion.<sup>60</sup>

This approach to Rashi offers minimal succor to David; indeed at first glance, it does not appear to address his situation at all. That said, some relevance can be found. Recall from Argument #3 the view of R. Uziel that to properly accept a Mitzvah all that one must do is acknowledge responsibility for it. If David believes in the Divinity of the Mitzvot, but knows that he cannot or will not fully observe them, R. Uziel would have no further issue with David’s conversion. But let’s say David also disbelieves in the Divinity of the teachings surrounding homosexual intimacy. Can that worsen his status? The good news is that the disbelief itself does not put David in violation of Bechorot 30b. However, unless David offers reason to think he will eventually gain faith, Rashi’s principle about avoiding such conversions would apply. Further, if David’s disbelief applies to the Written Torah’s restrictions, then R. Herzog’s own strict assertion would apply, stating that the Beis Din ought not convert him. Ultimately, this approach adds a little leniency, and some stricture, to one specific version of David’s case.

C. Rashi’s interpretation is incorrect and should be replaced by a more conservative re-read of the Hillel story.

This is the somewhat surprising approach of R. Yosef Shalom Eliashiv who extends an argument first made by the Maharsha. In his commentary to the Hillel stories, the Maharsha appears to accept Rashi’s interpretation of the Oral Torah case. However, in regard to the Cohen Gadol case, he notes that this interferes with passages from Yevamot 24a\* that express hesitancy about people who convert for socio-economic gain. Why is Hillel so eager to convert a non-Jew who is obviously interested in Judaism for material reasons? He concludes:

וצ"ל הא דקאמר בא לפני הלל וגיריה כו' לאו דוקא אלא דלא גיריה עד לבתר הכי שידע  
דגר אסור בכהונה ולא קאמר לעיל דגיריה אלא שקבל עליו לגייר ומתוך שלא לשמה בא  
לשמה

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<sup>59</sup> R. Kluger also sees such an assertion by Rashi.

<sup>60</sup> It is possible to read the Maharal (see above, n. \*) as implying the same strict assertion about the Written Torah. The Maharal writes that Karaites, like Hillel’s convert, are not considered heretics because “they accept the corpus of the Torah [i.e. the Written Torah] and only the interpretation [i.e. the Oral] do they not accept, such that they will eventually accept the interpretation [as well].” It sounds one who rejects the Written Torah is in a separate, far worse category. Though something of a stretch, I wonder if the Maharal would apply this distinction even to someone who rejects but one specific part of the vast Written Torah

Rather, we must say that when the Talmud says “he came before Hillel, and Hillel converted him”, it was being imprecise. For Hillel did not actually convert him until a later point, after the non-Jew came to know that a convert is barred from the Priesthood. When it previously said that “Hillel converted him” it meant that Hillel accepted upon himself to do the conversion [i.e. decided to eventually do it], on the presumption that from [an initial interest to pursue conversion for] ulterior motives, the non-Jew will soon come to righteous motives (*m'toch sblo lishma ba lishma* - cf Pesachim 50b., et al).

Maharsha here reverses the order of events in the Cohen Gadol case.<sup>61</sup> First the non-Jew gives up his material interest in becoming a Jew, and then Hillel converts him. Of course, this is an obvious re-read of the text's plain meaning, as Maharsha acknowledges. Further, it seems to conflict with two Tosafot passages, which raise the same question but propose a more moderate solution. Finally, this re-read requires Maharsha to take a lenient position on the controversial question of teaching Torah to a potential convert while they are still a non-Jew, since he has Hillel doing so. For all these reasons, R. Akiva Eiger questions the Maharsha's approach<sup>62</sup>, R. Moshe Feinstein expresses surprise at it<sup>63</sup>, and R. Herzog considers such an approach far-fetched.<sup>64</sup>

Nevertheless, R. Eliashiv revives and even extends this read. Acknowledging that the Maharsha only wrote it in regard to the Cohen Gadol case, he applies it also to the convert who refuses the Oral Torah. He writes:

הערות הגרי"ש אלישיב מסכת שבת דף לא עמוד א' ס' ד' ד"ה גייריה  
צ"ב היאך גיירו והרי אף באינו מקבל ד"א מן דאורייתא או דרבנן, אין לגיירו. ועי' רש"י שסמך  
על חכמתו, ועדיין קשה דגירות צריך בעצם קבלת הגרות מושלמת ומה תועיל קבלתו לבסוף  
הרי בשעת הגרות אי"ז גרות. וצ"ל כמו"ש המהרש"א דגייריה היינו החליט לגיירו ולא שבאמת  
כבר גיירו

But it requires explanation how Hillel converted him [in the Oral Torah case] for after all, someone who does not accept even one matter, be it from the Torah or Rabbinic, we should not accept him. And see what Rashi wrote, that Hillel relied on his wisdom.

<sup>61</sup> It seems to me that R. Jachter somewhat misreports the Maharsha's position, in “Part One”, Sect. “Hillel's non-Believing Convert – Rashi and Maharsha”, but would be closer to R. Eliashiv's read, below.

<sup>62</sup> \*akive eiger citation

<sup>63</sup> Igrot Moshe YD 3:106.

<sup>64</sup> Heichal Yitzchak EH 1:19.7, immediately before “ד"ה ואולם רש"י. My digital version reads אך זה רחוק, and I wonder if the author's original composition was the more common אך זה דחוק.

But this is still difficult, for conversion requires at its essence a complete conversion acceptance, and what benefit is his eventual acceptance later, for at the moment of the actual conversion, it was not valid. Rather, we must say similar to what the Maharsha wrote, that “Hillel converted him” only means that Hillel decided to [eventually] convert him, but not that he actually already converted him.

In this read, which rejects Rashi, Hillel only converted the non-Jew after he fully accepted both the Written and Oral Torahs. Of course, this understanding bodes poorly for David. It neuters a radically accepting Hillel source, and it strips of its Halakhic weight whatever leniency one reads into Rashi’s comments. That said, it is unclear how much authority to grant R. Eliashiv’s approach.<sup>65</sup> It is the rare moment when a Rishon’s well known view, which had gone unchallenged for seven hundred years of Talmudic commentary, is explicitly renounced.

D. Bechorot 30b is only a best practice (lekhatkhila) ruling, and it can be waived when the Beis Din has reason to believe that full Mitzvah accept will happen after the conversion takes place.

The easiest way to resolve Hillel’s actions with Bechoros 30b is to lower the severity of that Baraisa. R. Moshe Feinstein, in a third *teshuva* on this topic, reads Rashi as doing just that.<sup>66</sup> Given that Hillel accepts a convert who so blatantly “excepted one thing”, Bechoros 30b must only be a best practice (lekhatkhila) teaching, meant to guide a Beis Din in how it should typically act, but incapable of actually blocking (meakev) the validity of conversion. Indeed, when atypical situations arise, a Beis Din is permitted to ignore the best practice guideline and proceed with a convert even when they “except one thing”.

Thus R. Feinstein’s reading of Rashi. Yes, this non-Jew clearly excludes many Mitzvot from their conversion. But Hillel did not have to worry about the best practice guidelines, since this case before him was somewhat atypical: Hillel was confident that full acceptance would come in the near future. It is a somewhat choppy, but surprisingly feasible read of the original Rashi passage. One benefit is that the opening and closing lines, describing Hillel’s confidence, become Rashi’s main point. The

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<sup>65</sup> His position seems to be shared by R. Elazar Moshe Horowitz, Ohel Moshe, Shabbat 31a, who writes that the Maharsha is the correct read of Cohen Gadol passage and that Maharsha’s approach could be applied to the Oral Torah case as an alternative to Rashi. (I owe this reference to R. Izirer, p. 22.) It is possible that R. Eliashiv was himself inspired by Ohel Moshe and other predecessors, as the next paragraph in R. Eliashiv’s work ( ד”ה והנה ) במעשה בנכרי also echoes an Ohel Moshe view.

<sup>66</sup> \*\*

middle lines, with their curious distinction between “denying” and “not believing” play a smaller role. Their point is that Hillel saw in the non-Jew a malleable kind of disbelief, that could easily be undone.

This approach to Rashi offers substantial advantages to David. As will be addressed in the next (and final) section, it is unclear if the “except for one thing” rule can actually block the validity of a conversion. If it cannot, then even if David is considered to have excluded Mitzvot, his conversion will still be valid, after the fact. Indeed, if his case is deemed atypical in any substantial manner, a Beis Din could process his conversion without hesitation or hindrance. The specific “atypical factor” that Rashi here highlights - full Mitzvah acceptance seems likely in the future - fails to benefit David, who offers no reason to think his commitments will change. But the approach as a whole -- Hillel overrides Bechorot 30b because the latter is but a best practices ruling -- puts the authority of Rashi behind a major weakening of the “except one thing” Baraisa.

Ultimately, we find four different approaches to Rashi and the Hillel story. The straightforward read of Rashi (with variants by R. Zilberstein, Rashash, R. Feinstein in two locations, and R. Weiss) provides a surprising leniency for converts who refuse Mitzvot based on disbelief; the somewhat strained Heichal Yitzchak read provides a leniency for ‘orthoprax’ converts; the bold approach of R. Eliyashiv rejects Rashi outright, offering a far more conservative re-read of Hillel’s actions; finally, the “best practices” read (R. Feinstein in a third location) uses the Hillel narrative to substantially weaken the “except one thing” Baraisa, marking a new path towards validating David’s conversion.

#### E. Beyond Hillel and Rashi, another possible benefit of disbelief rooted in Shabbat 68b.

Regardless of how one interprets Rashi (see Options A-D above), there is completely different path towards establishing that a convert’s skepticism benefits them. Recall from the Background Section the case of “converting amongst the Gentiles” (Shabbat 68b; p. \*, Source 2 above) in which a convert is completely unaware of the Mitzvah of Shabbat. The Talmud’s unchallenged assumption is that such a conversion is valid, at least after the fact. Clearly, a convert who is ignorant of a Mitzvah cannot be blamed for not accepting it.

But how far can this concept of “ignorance” be stretched? Imagine a conversion candidate who obdurately distrusts their rabbi about the authenticity of a particular Mitzvah (say, Shabbat). Even after being taught about this supposed Mitzvah dozens of times, they persist in their belief that such a Mitzvah simply does not exist. Arguably, such a candidate remains just as “ignorant” of the Mitzvah as a person who never heard about Shabbat at all. And, if so, can they really be accused of “excluding” the Mitzvah of Shabbat, if they remain unaware of it in the first place?

R. Moshe Feinstein twice makes this exact suggestion. Regarding an unobservant woman who converts with Conservative rabbis in order to live with her unobservant Jewish husband, he writes:

שו"ת אגרות משה יורה דעה חלק א סימן קס  
יש מקום לומר טעם גדול... הוא כגר שנתגייר בין העכו"ם שמפורש בשבת דף ס"ח שהיו גר  
... אף שהב"ד אמרו לה שצריך לשמור שבת חושבת שהוא רק הדור בעלמא אבל גם מי  
שאינו שומר השבת וכדומה טועה לומר שהוא יהודי כשר נמצא שלטעותה קבלה כל המצות  
שיהודי מחוייב שהוא גרות אף שמחמת זה לא תקיים עכ"פ המצות וזהו טעם שיש בה ממש  
להחשיבה לגיורת והוא למוד זכות קצת על הרבנים המקבלים

There is space to say a great reason [to recognize her conversion] .. That she is like the convert who converts amongst the Gentiles, about which it is clear in Shabbat 68b that they are a valid convert ... For even when the Beit Din tells her that she needs to keep Shabbat, she thinks that they are telling her just a nicer way to practice [hiddur b'alma] ... As such, from within her mistaken perspective, she was accepting all the Mitzvot that Jews are obligated in, which is what makes a conversion! ... And this is a reason with substance, to consider her a valid convert, and it is a way to somewhat justify [limmud zechut ketzat] the rabbis who accept such conversions.

Regarding a rather observant convert who, like many in her Orthodox community, intends to breach the laws of modest dress, he suggests:

שו"ת אגרות משה יורה דעה חלק ג סימן קו  
מאחר שנפרץ תלבושת הפריצות בעוה"ר גם בבנות ישראל ואף באלו שהן שומרות תורה,  
שכן הנכריה שבאה להתגייר הרי חושבת שהוא רק חומרא בעלמא שרוצים הרבנים  
להטיל עליה יותר מהדין מאחר שידעת מנשים שמחזיקין אותן לשומרי דת ומתלבשות  
בתלבושת פריצות, ואף שאומרים לה הרבנים שהוא דבר איסור אינה מאמינה להם, וא"כ יש  
לידון אותה כנתגיירה כשלא ידעה מדיני התורה שהוא גר כדאיתא בשבת. ומסתבר זה אף  
שלע"ע = שלעת עתה = אין לי ראייה ע"ז

After the wearing of immodest clothing has spread, in our great iniquity, even amongst the daughters of Israel and even amongst those who observe Torah law ... Behold [the convert] thinks that [modest dress] is just a stringency (*chumra b'alma*)... And even when the rabbis tell her that this is a forbidden thing, she does not believe them. If so, she should be considered as someone who converted but happened to not know about

a particular law of the Torah -- that is, a valid convert -- as is found in Tractate Shabbat [68b].<sup>67</sup> And this seems like a sound argument to me, though at the moment I do not have a proof.

It is reasonable to extend such an argument to “David”. If, despite learning about the sexual prohibitions from rabbis, lecturers, and books, he stubbornly refuses to recognize the Mitzvah’s existence, then perhaps he remains just as “ignorant” as the candidates that R. Feinstein describes.<sup>68</sup> Note that arriving at this conclusion is possible even for those who read Rashi and the Hillel story in a strict manner; here, our basis is Shabbat 68b, not Shabbat 31a.<sup>69</sup>

But one should be cautious in making such an extension. For one, the argument’s authority is imperfectly grounded. R. Feinstein assesses his rationale as “great”, “with substance” and “sound”, but he presents it as a proposal and against his own position.<sup>70</sup> Second, Shabbat 68b validates an “ignorant” conversion only after it occurred; we have no indication that a competent Beit Din should, in advance, choose to initiate such a conversion. Third, both of R. Feinstein’s examples involve social influence from a Jewish partner or Jewish community that sees a particular Mitzvah as non-existent. In today’s Orthodox communities, the prohibitions relevant to David are widely seen as existent and binding, even if occasionally treated as difficult to comprehend or somewhat unenforced. It’s fairly difficult to imagine a “David” is under the impression that the Orthodox community recognizes no Mitzvot related to his sexuality. Lastly, in R. Feinstein’s cases, the convert views the Beit Din not as mistaken or delusional, but as committed to religious best practices (*hiddur, chumra*). But if “David” distrusts the

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<sup>67</sup> It would be quite intriguing if R. Feinstein was here referring to Shabbat 31a, with its Hillel story and Rashi’s comments thereon. But that would be a misread. Besides Shabbat 68b being a much clearer precedent, see how R. Feinstein describes Shabbat 68b earlier in the teshuva (ד”ה והנה בעובדא) and how his description of Shabbat 68b there aligns with his use of it here.

<sup>68</sup> R. Yosef Engel’s interpretation of the Hillel case (above, p. \*) employs a similar logic. The conversion is acceptable, despite disbelief, because of the convert’s limited knowledge. In the convert’s relatively naive and unfamiliar state, their disbelief in a Mitzvah does not yet count as true disbelief. Though R. Engel never connects his thinking about the Hillel story to the precedent set in Shabbat 68b, it would be an easy jump for him to make.

<sup>69</sup> Additionally, the argument from Shabbat 68b (“ignorance”) makes a more robust legal claim. The arguments from Hillel/Rashi can, at best, remove a negative strike against David. They shield him from the negative ruling of the “except for one thing” Baraita, but they cannot positively establish that his conversion is valid. However, the argument from Shabbat 68b is not a shield but a weapon. Shabbat 68b treat the ignorant convert as positively valid. If David can be placed under the wing of Shabbat 68b, his conversion, once performed, is unquestionably kosher.

<sup>70</sup> R. Feinstein’s own preference for the first candidate, stated at the beginning of the Teshuva, is to not accept her. In the modesty case, R. Feinstein writes that her status is “in doubt (*safek*) but leaning, after the fact, towards being a valid convert”. Only after that unsure conclusion does R. Feinstein introduce, as a suggestion, the argument that would more conclusively permit.

Beit Din about Mitzvot, it will likely be from a sense that the rabbis are misguided or misinformed. Will R. Feinstein’s argument hold in such a case? I leave it to the reader to envision situations in which R. Feinstein’s argument applies or fails to apply, and to assess the authority of an argument that is, on the one hand, quite intriguing, but on the other, fairly unprecedented.

But when it comes to firm precedents, David has much going for him. Anyone wishing to charge David with “excluding one Mitzvah” needs to first overcome three powerful texts: The Talmud clearly validates a convert who excludes Mitzvot out of ignorance; Hillel seemingly accepts a convert who excludes much more than one Mitzvah (the entire Oral Torah!); Rashi apparently carves out a major leniency for converts who theologically disbelieve in a Mitzvah. These source each build into a robust, firmly sourced defense for David: he cannot be said to “exclude” a Mitzvah, if he doubts it is even a Mitzvah at all. Fail to limit, reinterpret, or otherwise make sense of these three precedents, and any case against David built on Bechorot 30b immediately falls apart.

#### **Argument #6: The Baraisa as a Merely Lekhatkhila Ruling**

The above arguments propound that the “except one thing” Baraisa lacks Halakhic force (#0-2) or simply does not pertain to David’s situation (#3-5). But let’s say, despite the above arguments, that the Baraisa applies to David with full Halakhic force. How severely does that alter his status? When the Baraisa declares, “we do not accept him”, what verdict does it express?

As briefly discussed above, there are two primary possibilities. Perhaps the Baraisa speaks only in a *lekhatkhila* (ab initio, mandated best practice) sense. It firmly states that such a conversion *should not* proceed, but acknowledges that if it did for whatever reason occur, it would be kosher. In such a read, the Baraisa speaks mainly to the Beis Din itself, spelling out whom it should choose to work with. Alternatively, perhaps the Baraisa speaks in a *b’dieved* (post facto, absolute requirement) sense, stating that even if such a conversion was actually attempted, the lack of perfect Mitzvah acceptance is *me’akeiv* (blocks) its validity. The Baraisa is doing more than outlining Beis Din best practice, but naming a new precondition indispensable to every conversion.<sup>71</sup>

At first glance, this question is purely academic. At the end of the day, no self respecting Beis Din will pursue a conversion which runs counter to *lekhatkhila* standards. But there are two highly practical purposes that make this question worth pursuing.

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<sup>71</sup> See n. 2\*, above, for the radical possibility that a convert’s need to accept Mitzvot is entirely *lekhatkhila*. Here, I discuss the far less extreme position that while Mitzvah acceptance is fully required, the mandate to accept each and every Mitzvah is *lekhatkhila*.

First, Arguments #0-5 provide sound basis for a serious Beis Din to rule leniently about David’s case and proceed with a conversion, even if many other Batei Din might rule strictly and would never initiate such a conversion themselves. Once the lenient Beis Din performs the conversion, how should the more stringent Beis Din relate to David? If our Baraisa speaks only in a Lekhatkhila sense, the strict Beis Din should, after the fact, accept David’s Jewish status. What’s done is done. But if the Baraisa speaks in a Bedieved sense, a strict Beis Din will still withhold their recognition. No doubt this difference will make a major impact on David’s ability to thrive in Jewish community.

Second, a Lekhatkhila ruling may leave space for extenuating circumstances and atypical situations in which standard requirements can be waived.<sup>72</sup> What (if any) circumstances justify such an exception can be debated, but we have already seen one suggestion. R. Feinstein (Argument #5, section D.) understands Rashi to have a Lekhatkhila understanding of our Baraisa, in which Rashi identifies such a circumstance: if a Beis Din believes that the candidate will *eventually* accept all the Mitzvot. Perhaps other circumstances will permit a Beis Din to cede the Baraisa’s restriction and proceed with an imperfect convert.

There are five points of evidence for a Lekhatkhila reading of the Baraisa:

- A. Timing of our Case: The Baraisa speaks of a “a non-Jew who comes [to convert]”, that is, someone at the beginning of their process, not one who has already completed it. Strictly speaking, our Baraisa’s ruling imposes limits on somebody *initiating* a conversion, but not on who has already undergone it.
- B. “We accept him” as Lekhatkhila in a Pivotal Source: Yevamos 47ab, the foundational description of the conversion process, uses **מקבלין אותו**, “we accept him”, to describe Beis Din choosing to initiate a conversion. It would seem that **אין מקבלין אותו**, “we do not accept him” would describe the choice to not initiate a conversion process, but does not say anything about the validity of such conversions once performed.<sup>73</sup>
- C. “We do not accept” as a lenient contrast to B’dieved terms: In three places, the Gemara lists the indispensable requirements for conversion. Specifically: a Baraisa on Yevamos 47a about the involvement of a Beis Din, a Baraisa on Yevamos 46a about circumcision and immersion, and a statement of Rebbe in Krisus 9a about circumcision, immersion, and offering a sacrifice

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<sup>72</sup> Footnote about shelichutayu avdinan\*\*\*

<sup>73</sup> A similar analysis to mine appears in Finkelstein, p. \*\*.

When speaking about Geirei Toshav, Rambam consistently employs the term **אין מקבלין** in a B’dieved sense. That is his apparent intention in **יד:ח**: **איסורי ביאה**, raising the ire of Raavad there, as well as in **יט**: **הלכות עבודה זרה**.

when the Beis HaMikdash is standing. In each, the Gemara uses firm B’dieved language, focused on the status of the convert: **אינו גר**, “he is no convert” or **לא נכנסו לברית**, “they did not enter the covenant”. This sets up a striking contrast with our Baraisa. First, if perfect Mitzvah acceptance is also on the short list of indispensable requirements, why is it never mentioned in any of these lists? Second, since the Gemara has unequivocally B’dieved language for invalidating a conversion, why did our Baraisa on Bechoros 30 switch to the more ambiguous **אין מקבלין אותו** “we do not accept him”? Doing so suggests a different and less severe ruling, focused on the Beis Din and not the convert himself, that is only Lekhatkhila and not about the inherent validity of such conversions.<sup>74</sup>

These three pieces of evidence all make a rhetorical claim, pushing us to read “we do not accept him” as inherently a Lekhatkhila term. Indeed, it is for some combination of the above three points that R. Moshe Feinstein (Igros Moshe 3:106) commences his discussion of this topic by acknowledging:

**לשון אין מקבלין שמשמע לכתחלה ... לשון אין מקבלין דהוא לשון דלכתחלה**

The language of “we do not accept” implies a Lekhatkhila ruling ... The language of “we do not accept” is the language of a Lekhatkhila ruling.

But there are two further indications towards a Lekhatkhila reading, which speak not to the rhetoric of the Baraisa, but to its legal content.

D. Incorporating R. Yose son of R. Yehuda’s ruling. Recall R. Yose son of R. Yehuda’s ensuing line in our Baraisa: we do not accept a convert even if they exclude “just one detail from the Rabbinic rules”. This strict statement from R. Yose is hard to make sense of on a full Bedieved level. Conversion began as a Daoraisa institution, that only required acceptance of Daoraisa laws. If the Sages want to add to the list of Mitzvot that must be accepted (for example, by requiring converts to accept the Rabbinic holiday of Hannukah) that additional requirement would presumably only have the power of a Derabbanan.<sup>75</sup> So at most, R. Yose can rule that

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<sup>74</sup> Note Maharsha’s (חידושי אגדות שבת לא ע”א ד”ה אמר ליה מקרא) loose paraphrase of **יבמות כד ע”ב**, in which he writes **אין מקבלין** in place of our **אינם גרים**. It is possible that Maharsha is sensitive to the distinction between these phrases and intentionally substitutes one for the other to reflect the Gemara’s own move there from a Bedieved into a Lekhatkhila ruling.

<sup>75</sup> The argument can be made that the Torah itself - at Devarim 17:11 **לא תסור מדבריהם** “do not veer from their words” - commands us to follow all Derabbanan laws, whatever they may eventually be. R. Yose would thus be ruling that one who rejects a Rabbinic law is essentially rejecting an element of Daoraisa law, and should be disqualified from converting even on a Daoraisa level. In fact, R. Yose would be going so far as to claim that someone who accepts 99.9% of Derabbanan law but excludes one tiny subclass therein judged as having a substantial defect not just in that Derabban law, but in their Torah-level acceptance of **לא תסור**. Such an approach is plausible, but difficult.

one who rejects a Rabbinic law is not considered Jewish on a Derabbanan level. However, this would be a groundbreaking ruling -- that someone is Jewish on a Da'ora level but not Jewish on a Derabbanan level -- with far reaching Halakhic consequences<sup>76</sup>. Yet there is no discussion of such a possibility or its ramification anywhere in the Talmud or in Rishonim\*\*. As such, R. Yose's ruling is far more palatable and reasonable if understood in a Lekhatkhila context.<sup>77</sup> R. Yose orders a Beis Din to not pursue converts who reject a single Rabbinic teaching, but never claims that such a conversion would actually be invalid. In effect, the extreme nature of R. Yose son of R. Yehuda's ruling inclines us to read the Baraisa as a whole in a Lekhatkhila light.<sup>78</sup>

- E. Reconciling our Baraisa with the Background sources. The permissive background sources described at the beginning of this article make far more sense if our Baraisa offers only Lekhatkhila guidance. The conversions those sources recognize include: a person who converts “amongst the non-Jews” and is unaware of Shabbat, the woman who converts to be with an Eved Ivri, and the three Hillel converts. If our Baraisa really means to invalidate converts with imperfect Mitzvah acceptance, all of those conversions should have, at least at first glance, been ruled invalid. If our Baraisa speaks only in a Lekhatkhila voice, we understand why the Gemara raises no alarm when these conversions are ultimately recognized.

Having provided much support for the Lekhatkhila view, it is important to note the main evidence for a B'dieved approach. There are two key textual indicators:

- F. “We would accept him” as Bedieved in one less pivotal source. A Baraisa at the bottom of Yevamos 46b speaks of a person who comes to the Jewish community and claims, without evidence, that he is a convert. The Baraisa states, יָכוֹל נִקְבְּלוֹ, “it is possible that we would

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<sup>76</sup> A similar question arises when a convert immerses in a Mikvah that is kosher on a Da'ora level but not to a Derabbanan standard.

<sup>77</sup> As an alternative response to this pressure, one can push back against the overly broad statement of R. Yose and limit it only to details from Biblical law. The Rogatchaver (ה'אבל בזמן הזה) states that Rambam (הל' איסורי ביאה יד:ז) explicitly ruled against R. Yose's seeming overstatement, by codifying R. Yose's words as דקדוק אחד מדברי סופרים, instead of דקדוק אחד. Similarly, R. Herzog (שו"ת היכל יצחק אבן העזר א סימן ) reads R. Yose's דברי סופרים as referring not to Rabbinic edicts but to Midrashei Halacha, which have full Da'ora strength. A fascinating approach is taken in L'Horos Nasan 3:83.10, that converts who exclude a Derabbanan rule are discouraged on a Lekhatkhila level while those who exclude a Da'ora rule are invalidated even Bedieved. This resolves the above tension but makes for a somewhat forced read of R. Yose.

<sup>78</sup> R. Moshe Feinstein raises this argument in אגרות משה ח"ג ס' קו.

accept him”, before teaching why we do not. In this particular context, “accept” clearly does not refer to initiating a conversion, but to recognizing one after the fact.<sup>79</sup>

- G. “We do not accept” in its immediate context. Recall, that our Baraisa in Bechoros speaks not just about converts, but also about a Cohen, Levi, or Chaveir who wishes to exclude one Mitzvah from their respective duties. The language of these rulings are all identical: אין מקבלין אותו, “we do not accept him.” What does that term mean in these non-conversion cases? Is it speaking only in a Lekhatkhila voice, about not initiating them into these roles? Is it speaking even in a B’dieved voice, about disqualifying them from those roles, even if they have already begun serving in them? In regard to the Levi and Chaveir, there is little evidence either way.<sup>80</sup> Regarding the Cohen however, the Baraisa on Bechoros 30b concludes in rather firm, sharp terms, that suggest B’dieved force:

וכהן שבא לקבל דברי כהונה חוץ מדבר אחד אין מקבלין אותו שנאמר המקריב את  
דם השלמים וגו' העבודה המסורה לבני אהרן כל כהן שאינו מודה בה אין לו חלק  
בכהונה

And so too a Levite who comes to accept the Levite rules or a Cohen who comes to accept the Priesthood rules, except for one thing, we do not accept him. As it says, “the one who offers the blood of the well-being offering (and its fats, of the children of Aaron, to him shall be the right thigh as a portion)” (Vayikra 7:33) – meaning, the service that was given over to the children of Aaron, any Cohen that does not admit to it, has no portion in the Priesthood.

Apparently, a Cohen who does not live up to the name “son of Aharon”, is excluded by the verse from receiving Cohen gifts.<sup>81</sup> The use of a Torah verse to establish this rule, and the unqualified tone of the last clause, suggests a firm B’dieved ruling. With this in mind, it becomes quite tempting to read all of

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<sup>79</sup> In fact, Rashi’s version of this Baraisa actually uses the familiar phrase מקבלין אותו, “it is possible that we accept him” instead of יכול נקבלנו. This phrase is the one that was clearly Lekhatkhila when used in Yevamot 47ab, see above, Evidence B.

This Rashi is noteworthy for not listing Kabbalat Mitzvot as part of the conversion process. See above, n. 5\*.

<sup>80</sup> See Mishneh Torah Hil. Mishkav uMoshav 10:1-2 for the Rambam’s codification of the Chaveir passage, which to me, at first glance, seems to be a Lekhatkhila reading, since it focuses on the initiation process of the Chaveir. See Hil. Kli HaMikdash 3:1 for the Levi ruling.

<sup>81</sup> This follows the interpretation of Rashi Bechorot 30b d”h Mibnei Aharon. See the fuller version of the Cohen teaching at Tosefta Demai 2:7. For Rambam’s codification, see Hil. Bikkurim 1:1.

the “we do not accept him” rulings in this Baraisa - including the one about conversion - in a similar B’dieved light.<sup>82, 83</sup>

Additionally, there is one clue for a Bedieved read that emerges not from the linguistic context, but legal context, of the Baraita. I find this clue fairly unconvincing, but provide it here for the reader’s edification:

#### H. Reconciling our Baraita with one Talmudic position on Geir Toshav.

A Geir Toshav is a non-Jew who formally accepts certain Mitzvot and, as a result, is entitled to residential privileges in the land of Israel, despite not belonging to the Jewish people.<sup>84</sup> Yevamot 46b contains, in a Baraita, a dispute about which Mitzvot need be embraced in order to achieve this status. R. Meir holds that that the non-Jew only needs refrain from false worship (*avodah zarah*); the Sages state they must accept all seven of Noahide laws. The Baraita then presents a third view:

אחרים אומרים אלו לא באו לכלל גר תושב אלא איזהו גר תושב זה גר אוכל נבילות שקבל  
עליו לקיים כל מצות האמורות בתורה חוץ מאיסור נבילות

But others<sup>85</sup> say: These [prior suggestions] do not achieve the status of Geir Toshav.

Rather, what is a Geir Toshav? A convert who eats un-slaughtered meat, who accepts upon himself to fulfill all of the Mitzvot stated in the Torah except for the prohibition on un-slaughtered meat.

Within this minority position, that a Geir Toshav basically accepts 612 Mitzvot, what differentiates the Geir Toshav, from a Geir Tzedek (convert into Judaism)? If Jewish law insists upon full acceptance of all 613 Mitzvot for regular converts, that last Mitzvah serves as a go-to distinction: 612 for a Geir Toshav, but 613 for a Geir Tzedek. But if there is any room in Jewish law for a convert who excludes one Mitzvah (for example, the laws of kosher meat) to achieve full Jewish status, what contrast

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<sup>82</sup> Igros Moshe YD 3:108 develops this approach in full, arguing that the Rambam himself (in both Bikkurim and Mishkav uMoshav) also reads a Bedieved ruling into the Baraisa.

<sup>83</sup> This strategy -- using information about one case in the Baraisa to inform how we read the conversion case -- provides strong support for those who believe that to “accept” Mitzvos means to “commit actually observe” them (Argument #5, D.). The whole institution of Chaveirut is about creating a network of Jews who actually observe those rules of Tumah and Tahara that all Jews are already obligated in. For this reason, to accept the rules of Chaveirut almost certainly means to commit to actually observe them. When the Baraisa then speaks of a convert who “accepts” the Torah rules except for one, it would presumably refer to a convert who fails to commit to actually observe one Mitzvah. See L’Horos Noson 3:84.11.

<sup>84</sup> See Mishne Torah, Issurei Biah 14:7, Avodah Zara 10:6.

<sup>85</sup> Sometimes “others” is a lightly derogatory sobriquet for R. Meir (see Horayot 13b, end). That cannot be the case here, as R. Meir is already present in the debate (see Tosafot Avodah Zarah 64b ואחרים אומרים (ד”ה)).

remains? The above “Geir Toshav” would, by force, become a Geir Tzedek! As such, the position of the “others” is greatly assisted by reading the Bechorot 30b baraita as an absolute, Bedieved stricture, that leaves no such room.<sup>86</sup>

The primary<sup>87</sup> defect with this argument is that there already exists, glaringly so, a number of key differences between the processes for becoming a Geir Toshav and Geir Tzedek. One need not invent a new distinction by reading Bechorot 30b in a particular way, when at least two distinctions are easily available. For one, a Geir Tzedek -- even one who accepts only 612 Mitzvot -- undergoes the additional step of immersion, while a Geir Toshav does not.<sup>88</sup> Second, there are major differences in intent. The Geir Tzedek and his Beit Din intend for this candidate to become a full Jew (with membership in a Divine covenant, a new national identity, the decoupling of relation to birth family, and standing as a Jew in ritual and legal settings) while the Geir Toshav and his overseeing rabbis have no such design. The “others” can freely read Bechorot 30b in a Lekhatkhila light -- i.e. they can tolerate the legal possibility of a Geir Tzedek who accepts only 612 Mitzvot -- without blurring the categories of Geir Tzedek and Geir Toshav.<sup>89</sup>

With these eight points in mind, what are we to make of the conflicting evidence? So much about conversion language and law suggests that the key clause is Lekhatkhila, yet its immediate context in the Bechoros Baraisa implies that it is Bedieved.<sup>90</sup> There is no obvious resolution, and we turn now to the positions and precedents of the Rishonim and Poskim.

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<sup>86</sup> This argument is made by R. Grodzinsky, Beit Yitzchak YD 2 100.10 ד"ה שוב מצאתי, who considers it conclusive.

<sup>87</sup> I see several secondary defects with R. Grodzinsky's argument. 1) The “others” only speak about the case of rejecting the Mitzvah of un-slaughtered meat. It is possible that the Bechorot Baraita agrees that such a case is unique and deserves its own separate rules. 2) It is possible that the Tannaim involved in Avodah Zarah's debate are themselves unsure if the Bechorot baraita is meant to be read in Bedieved or Lekhatkhila terms. (As detailed above, the Baraita is anything but transparent.) Even if the “others” require a Bedieved read, it is possible that R. Meir and the majority-view Sages prefer a Lekhatkhila read. 3) It is possible that the Tannaim involved are completely unaware of the Bechorot Baraita which, as discussed above is invisible in some textual traditions (Argument #1) and is never raised by Tannaim or Amoraim in any other relevant setting (Argument #0). The “others” may themselves believe that conversion into Judaism is impossible for someone who accepts 612 Mitzvot, but that would be their own minority position - not their view of an uncontested Baraita.

<sup>88</sup> Additionally, unlike a Geir Tzedek, a male Geir Toshav need not undergo ritual circumcision as part of his “conversion”. However, it is possible that the “others” require a male Geir Toshav to circumcise at some point (it is, after all, one of the remaining 612 Mitzvot), so this distinction is somewhat muted.

<sup>89</sup> A form of these rejoinders appears in R. Grodzinsky, Achiezer 3:26.5 and R. Herzog, Heichal Yitzchak EH 1:19.9. The claim by R. Schmelkes, and the counterpoints by R. Grodzinsky and R. Herzog, are presented, with an analysis similar to mine, at Finkelstein, p. 201-202.

<sup>90</sup> Frankly, the most elegant resolution belongs to those manuscripts which simply omit the conversion clause from its uncomfortable home in the Baraisa. This tension is itself a solid argument in favor of those manuscripts.

In the world of Rishonim, we find multiple precedents for a Lekhatkhila read. As described in Argument #5 Approach D., one can read Rashi on Shabbat 31a as explicitly adopting a Lekhatkhila understanding. Similarly, Erchei Tannaim v’Amoraim considers it natural to treat the clause as a Lekhatkhila statement.<sup>91</sup> Finally, it is worth analyzing the comment of Rabbeinu Gershom on Bechoros 30b:

חוץ מדבר אחד אין מקבלין אותו. דאמרינן הואיל ואין יכול לעמוד באותו דבר [ודאי לא יעמוד  
נמי באחרים]<sup>92</sup>

“Except for one rule, we do not accept him”<sup>93</sup> — For we say that since he cannot stand by this one rule, certainly he won’t stand by the others!

Three elements of this comment indicate a Lekhatkhila understanding. First, excluding one Mitzvah is presented as not inherently problematic; in and of itself, a conversion lacking one Mitzvah is perfectly fine. Our concern is only what excluding one Mitzvah signals: that other Mitzvos will also come to be rejected. Second, that signal does not itself sound like a Bedieved issue. If excluding one Mitzvah does not immediately invalidate a conversion, why would excluding an additional five or fifteen? It sounds like Rabbeinu Gershom wishes to avoid a highly unsettling but not invalidating problem. Finally, note the use of future tense. We are not concerned about the convert’s validity, at the time of his conversion, but what kind of Jew he prove to be, once he is already fully converted.<sup>94</sup> That said, a Bedieved read is conceivable. Perhaps Rabbeinu Gershom here asserts, that someone who excludes one Mitzvah must necessarily be excluding many more, such that this seemingly small exclusion necessarily indicates a major, invalidating defect in their Mitzvah acceptance. I do not believe this to be an easy read of Rabbeinu Gershom, but it remains possible.

Without further Rishonim who actually have this passage in their Talmud and choose to comment on it, we turn now to modern Poskim. Here we encounter a great diversity. Indeed, there is even disagreement within the words of a single authority. On the Lekhatkhila side,

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<sup>91</sup> “Yaakov Ish Kfar Nevorim” d”h v’Kasha l’Tareitz. See n. 13\* above.

<sup>92</sup> The brackets appear in the Vilna edition, indicating its preferred version of the text.

<sup>93</sup> It is unclear upon which line in the Baraisa Rabbeinu Gershom here comments. It is possible that he responds directly to the conversion case, but equally possible that he writes in regard to the Chaveir, with a comment that is also meant to explain the conversion case.

<sup>94</sup> Authorities who see in Rabbeinu Gershom a Lekhatkhila read include Heichal Yitzchak EH 1 13.15 and L’Horos Noson 3:84.11, as well as R. Yosef Goldberg (Shurat HaDin 3 p. 165) and R. Avraham Yitzhak Klob \*\* (spell? בלאב) (ibid. 15 p. 129).

clearly stands R. Avraham Yitzchak Kook.<sup>95</sup> Additionally, R. Dovid Zvi Hoffman adopts the Lekhatkhila approach, writing about its implications at length.<sup>96</sup> Apparently, the Netziv also advocated the Lekhatkhila view.<sup>97</sup> R. Chaim Ozer Grodzinsky<sup>98</sup> and R. Yitzchak Yehuda Shmelkis<sup>99</sup> both first argue for a Lekhatkhila read, offering interesting supports along the way, before eventually adopting a Bedieved conclusion.<sup>100</sup> In a passage primarily discussing Geir Toshav, R. Yisrael Meir Kagan appears to take the Bedieved read for granted.<sup>101</sup> R. Moshe Feinstein is somewhat split on the matter. In two *teshuvos*, R. Feinstein offers unequivocal support for the Bedieved view.<sup>102</sup> But in a third, he describes the question as unresolved, presents strong arguments for a Lekhatkhila read, and concludes that the matter leans in that direction.<sup>103</sup> Interestingly, R. Geshtetner distinguishes between converts who exclude Derabbanan and Daoraita rules, offering a Lekhatkhila read of the former and a more strict Bedieved interpretation of the latter.<sup>104</sup>

One consequence of a Lekhatkhila (“mandated best practice”) read is that it makes room for extenuating circumstances and atypical situations, in which the Baraisa’s dictum can be waived. What would qualify as an extenuating circumstance, and would any assist David’s cause? I list here five categories, from the narrowest (and easiest to support) to the broadest (and most speculative).<sup>105</sup> These categories include:

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<sup>95</sup> ד. קנד ד”ה ואע”ג דקיי”ל as well as שו”ת דעת כהן (עניני יו”ד) סימן קנב

<sup>96</sup> קנד ד”ה ואע”ג דקיי”ל as well as שו”ת דעת כהן (עניני יו”ד) סימן קנב

<sup>97</sup> See Meishiv Davar 5:46, whose relevant lines are quoted by R. Izirer, p. 21, top. I do not yet have direct access to the Meishiv Davar’s fifth volume and was not able to verify the quote.

Note that later on the page R. Izirer’s attributes, with little evidence, a key stricture to the Netziv. R. Izirer then continues to treat this stricture as the official position of the Netziv (p. 22, bottom), without the Netziv ever having stated it himself.

<sup>98</sup> שו”ת אחיעזר חלק ג סימן כו:ה

<sup>99</sup> בית יצחק יו”ד ק:י ד”ה אמנם לא מצאתי. The evidence he raises for a B’dieved reading is also raised by R. Feinstein (שו”ת אגרות משה יורה דעה חלק ג סימן קח ד”ה וכל הנידון בדה). R. Grodzinsky, cited above, forcefully rejects this evidence.

<sup>100</sup> As described on p. 44\*, the argument he considers conclusive is not obviously persuasive.

<sup>101</sup> Biur Halacha, *ibid.*, see n. 22\* above.

<sup>102</sup> שם ב:ד ד”ה והנה לבד זה, and the straightforward assertion of this view in שם א:בז ד”ה אך עיקר הנידון

<sup>103</sup> שם ג:קו

<sup>104</sup> L’Horos Nasan 3:8.10. See end of n. 31\*. Since David’s case involves violation of Daoraita commands (see n. 1\*) R. Geshtetner’s approach would not assist him. A gay man who expects to only violate Derabbanan’s would gain somewhat from this position.

<sup>105</sup> There is a thread in Halakhic thought that contemporary conversion is unique in that what is restricted on a Lekhatkhila level becomes, *de facto*, invalid even on a Bedieved level. That is, any conversion that *should not* be

a. When the Lekhatkhila rule will be satisfied at a later time.

That is, if a candidate who excludes one Torah rule will, in time, come to accept that Torah rule, they can be converted now. Indeed, according to R. Moshe’s suggested read, this is the explicit view of Rashi (Argument #5, D.)

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pursued in a typical situation remains, even after the fact, invalid. (!) I provide a summary of this thread here; some background is required.

In many instances, a Beit Din can only be comprised of *mumkhin* [lit. experts], rabbis who received official *semicha* [ordination] that stretches all the way back to Moshe. That chain of *semicha* began to dissolve in the fourth century, such that it has been almost impossible for over one thousand years to operate a Beit Din for conversion with *mumkhin*. However, conversion was understood by the Rishonim to be an exception and two separate bases were provided for why a conversion Beit Din in our time can be composed of *hedyotot* [lit. laymen, people without Mosaic *semicha*].

The first Rishonic theory borrows from Keritut 9a, which notes that offering a sacrifice was originally a required step in conversion, but today, without the Beit HaMikdash, is impossible. Keritut 9a cites Bamidbar 15:4 - “when a *geir* their resides with you or is among you, across you generations” - to prove that conversion must be possible in every generation and that the sacrificial requirement is dropped in our post-Temple epoch. With this in mind, the Ri (cited in Nimmukei Yosef, Yevamot 16a d”h tanu rabbanan) argues that the Torah itself grants authority to regular judges in our post-*semicha* age.

The second theory borrows from Gittin 88b, a passage unrelated to conversion, where courts are permitted to conduct certain cases without *mumkhin* on the basis of “*shelichutayhu avdinan*” - the non-expert judges are acting as the authorized agents of expert judges. With this in mind, Tosfot (Yevamot 46b, d”h mishpat) argues that non-expert judges can process conversions today because they act of authorized experts of earlier, expert judges, who wished for this right to extend into the future.

Within this second view, there are limits to that authority. Gitting 88b itself mentions some judicial matters that were not handed over to non-experts. Specifically, cases that were not “common” were never authorized.

As such, within this second view, one can argue that particular cases of conversion were likewise never authorized. That is, even if the case itself makes for a seemingly valid conversion, the judges involved - as non-experts - simply lack the ability to pursue it. R. Kook (Daat Cohen 150 d”h umnam nireh) suggests that converting someone who is medically incapable of circumcision fails because, amongst other reasons, it is “not common”. R. Tzvi Pesach Frank (Har Tzvi, YD 216) moves past the “common” paradigm and argues that a conversion pursued is invalid, because the experts of the past would never have authorized non-experts to ignore local rabbinic leadership. R. Eliezer Waldenberg (Tzitz Eliezer 5:15.2, citing R. Shalom Kotna’s Cha’torah Yei’aseh) suggests similarly in regard to utterly unobservant converts who will be a plague on the Jewish community.

But in a radical extension, the Netziv (Meishiv Davar 5:46, which I am not able to access at this time) apparently applies this to any situation in which a Beit Din performs a conversion which, on a Lekhatkhila level, ought not be performed. In this light, such conversions are invalid even after the fact (!), as they lacked an authorized Beit Din. However, R. Feinstein (Dibrot Moshe, Yevamot 35, end., p. 481-2), R. Schmelkes (YD 2:100.5), and R. Uziel (Piskei Uziel b’Sheilot Hazman 64) each disagree with this approach.

If you adopt the second Rishonic approach to contemporary conversion (“*shelichutayhu avdinan*”), and believe that this approach implies limits to a contemporary Beit Din’s authority, and additionally you accept the Netziv’s extension of that limit to every Lekhatkhila situation -- you would reject each of the following five categories of leniency, including that proffered by the Beit Yosef.

(I owe almost all of the above sources to the excellent analyses provided by Finkelstein, p. \*\* and R. Brofsky, The Beit Din Le-Giyur (1). Though I may be mistaken, I believe that R. Brofsky’s text contains a typo in the citations for Meishiv Davar and Piskei Uziel.)

A similar dynamic operates in regard to candidates who convert for ulterior motives, like financial, political, or romantic gain. Yevamos 24a concludes that, Lekhatkhila, a Beis Din may not perform such conversions. However, two Tosafos<sup>106</sup> state that when Hillel believed that a candidate would later grow into pure motivations, he was able to set the rule aside. Indeed, the Beis Yosef (YD 268:12 V'da d'lo kiblu) asserts that every Beis Din is empowered make such an assessment. He rules:

מכאן יש ללמוד דהכל לפי ראות עיני ב"ד

From here we learn that all [such decisions] follow what the eyes of the Beis Din do see.

Though the Beis Yosef is speaking about the Lekhatkhila rule against converts with ulterior motives, it is only a modest extension of his words to see in them a broader principle relevant to all Lekhatkhila restrictions. Whenever a Beis Din assesses that a Lekhatkhila rule will be satisfied later, they can choose to override the rule right now. In this extension of the Beis Yosef, if a candidate excludes one Mitzvah now, but the Beis Din believes the convert will eventually embrace that Mitzvah, the Beis Din may proceed. (A far more expansive read of the Beis Yosef will be presented below.)

Whether supported by Rashi or also by the Beis Yosef, David is unaided by this option, since he offers little reason for a Beis Din to think he will one day change and come to accept those Mitzvot which he currently rejects. (Indeed, he may even protest such an intimation.)

b. When the rationale behind the Lekhatkhila rule does not apply.

Recall Rabbeinu Gershom's explanation of our Baraisa: “since he cannot stand by this one rule, certainly he won't stand by the others.” It suggests that in atypical situations in which a Beis Din does not harbor this doubt, but are confident that the convert will stand by other Mitzvos, they can proceed. Indeed, this exact suggestion, based on Rabbeinu Gershom, is made by R. Yosef Goldberg in a fascinating (and tragic) Psak Din involving a member of the Igbo Jews from Nigeria.<sup>107</sup>

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<sup>106</sup> תוספות יבמות קט ע"ב ד"ה רעה and תוספות יבמות כד ע"ב ד"ה לא

<sup>107</sup> Citation in n.\* above. The candidate in question considered himself a Jew by birth, refused to doubt that status, but wished to be recognized by the Israeli Rabbinat. The Rabbinat, for its part, was unwilling to recognize his born status but suggested he convert. This seemed like a good solution, as he was fully invested in Mitzvah observance (he already considered himself Jewish!) and was happy to immerse in a Mikvah, draw circumcisional blood, and formally re-accept the Mitzvot. He was, however, unwilling to acknowledge that he was currently a Gentile for whom these rituals were necessary. Is this considered excluding a Torah rule (namely, the rules of who is and isn't Jewish) and if so, can he be converted?

This line of thinking -- waiving a Lekhatkhila when its purpose does not apply -- is very well documented in regard to a different conversion rule. Yevamos 24b states that a conversion for romantic reasons should be rejected, presumably because these are insincere converts. Nonetheless, many Poskim rule that when the couple is already civilly married, or otherwise living together, such a conversion may proceed. Why? Since they are already able to live together without a conversion, the desire to convert must be at least partly sincere. Since the concern behind the Lekhatkhila rule fails to apply in these cases many Poskim are comfortable waiving the rule entirely.<sup>108</sup>

Returning to our case and Rabbeinu Gershom’s explanation thereof, if a Beis Din believes that someone who excludes one Mitzvah will in fact faithfully observe the rest, they have basis to proceed with the conversion. This is a powerful tool towards converting David. Its one thing if a candidate tells us they are not interested in keeping Shabbat or that they wish not to abandon the pleasures of shellfish. Why do they not? What does that say about their overall interest, let alone commitment, to a life of Mitzvos? But such questions trouble us far less in regard to David. It is perfectly obvious and heartbreakingly understandable why he has come to exclude the Mitzvot around intimacy, and its fairly easy to build the case that Mitzvot not related to his sexuality will remain unaffected. If one can imagine a gay, non-celibate born Jew still observing the vast majority of the Mitzvot -- indeed, if one can encourage and expect a gay born Jew to fully observe the vast majority of the Mitzvot -- it is little stretch to imagine a gay, non-celibate convert zealously doing the same.

There is only one rationale offered by any Rishon for why we do not accept a convert who excludes one Mitzvah. This very rationale offers the possibility that we make an exception for someone like David.

### c. In Pressing Circumstances

Let’s say that a convert excludes a Torah rule, but offers no reason to think they will come to later accept it and no special evidence to suggest they will stand by the other Mitzvot. Our concerns remain in full. Is there still room to waive the Lekhatkhila?

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<sup>108</sup> See for example Pri HaSadeh 2:3 (end, in brackets): “Know that in regard to someone who converts for marriage, one can be very lenient if they are already living together prior to the conversion. For then there is no suspicion that she has converted for marriage, since they were already living together without a conversion. You can assume that her intention truly was sincerely. And so it is written in Shut Yissa Ish 7.” See as well Tuv Taam v’Daas 1:130, the conclusion of Achiezer 3:26, Sridei Aish 2:66 in regard to civilly married couples. I owe several of these citations to the Beit Midrash l’Haraa u’Mishpat. See there as well for Poskim who dissent, ruling that the Lekhatkhila rule applies regardless, and for record of the Lubavitcher Rebbe actively supporting such conversions.

If an outside circumstance makes the convert difficult to reject, then quite possibly. The Taz (YD 91:2) cites the Rema (Toras HaChataas 17) in establishing a broad Halakhic principle about unusually difficult settings and needs. Speaking about the problem of cold kosher foods coming into contact with non-kosher dishes, he writes:

תורת החטאת כלל יז  
דלכתחלה יש להחמיר בכל ענין ובדיעבד שרי בכל ענין ושעת הדחק כגון שנתאכסן בבית  
העכו"ם כדיעבד דמי

On a Lekhatkhila level one needs be strict in every case, but on a Bedieved (after the fact) level it is permitted in every case. And a pressing circumstance (sha'at hadechak), like when one is lodging in a non-Jewish establishment, is considered to be like a Bedieved case [i.e. permitted].

When at home or in a normal situation, the Lekhatkhila rule applies; in a pressing, unusual circumstance, it does not. Note that the example he gives does not quite enter the realm of dire, urgent, or emergency needs; staying at a roadside inn is enough to trigger the exemption.

How far does this principle go? Can it extend to conversion cases? In brief, the phrase “a sha’at hadechak is like a Bedieved” is employed by Poskim far beyond the topic of non-kosher dishes, to address topics from Iggun to Shabbos to Tzitzis.<sup>109</sup> In fact, it is even sometimes formulated as “a sha’at hadechak is *more lenient* than a Bedieved”.<sup>110</sup> This is not the place for a comprehensive analysis of the principle.<sup>111</sup> But in regard to extending the principle to conversion settings, I am aware of at least two Poskim who did so without concern.<sup>112</sup>

Can David’s case be considered, in and of itself, a pressing circumstance? It is a stretch of the concept, but a tempting one to make. Yes, for a typical conversion candidate who excludes one rule, we turn them away. But, in David’s case, what else are we to do? We cannot change his orientation, his desires, or his romantic needs. The paths before us and before him are uniquely difficult. Further, his case is

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<sup>109</sup> A quick scan through, for example, Yalkut Yosef, finds the rule applied to questions involving: rising the morning, kiddush and havdala, Tallis, Tefillin, Tefilla, Omer, Hannuka candles, Chametz, etc.

<sup>110</sup> This is the implication of רמ"א אבה"ע סי' קכ"ו סע' ד as noted in שחיטת עופות בחתיכת - שחיטת עופות בחתיכת - שחיטת עופות בחתיכת. It is also the concluding suggestion of Sdei Chemed, “Letter Dalet” 61 and is cited as support at ילקוט יוסף שובע שמחות ב פרק ג סימן ב הערה ב.

<sup>111</sup> Point to some article?\*\*\*

<sup>112</sup> שו"ת מנחת אלעזר חלק ג סימן ח about performing the Bris at night; שו"ת בית מרדכי חלק א סוף סימן נז about the absence of the Beis Din at key moments. Yalkut Yosef (ibid, n. 78\*) points the reader to Shulchan Gavoa 2 and Shevet HaLevi 5:147:7, 8:214:1 in regard to performing the Bris before sunrise, at dawn.

fairly rare; about 1% of American men identify as gay.<sup>113</sup> In theory, the Lekhatkhila strictures that we maintain in 99% of cases may not apply in these rare, more difficult circumstances (like someone on the road, when there are no other options).<sup>114</sup> Of course, the Bedieved rules, which are the bedrock fundamentals of conversion, apply in full. (Non-kosher cold dishes are sometimes permitted; non-kosher food obviously is not.) Treating David as a “Shaath HaDechack” allows a Beis Din to recognize that this conversion is not the typical, ideal process but one that, under the circumstance, they still can perform.

Either way, one can imagine a wide array of alternative situations that might emerge which can transform David’s case into a Shaath HaDechack. Perhaps refusing to convert him will cause infighting or strife within the Jewish community; perhaps his presence or abilities are desperately needed in the local Jewish community; perhaps refusing him will create a public scandal<sup>115</sup>; perhaps he will strengthen the Reform community by leaving and pursuing conversion there. While not the case before us, there are no end to such hypotheticals, and were one to emerge, its status as a Shaath HaDechack may very well justify the conversion.

#### d. For the Benefit of a Jewish Person

Imagine a situation in which the conversion transforms not just the life of the convert, but also has a substantial positive effect on an already Jewish person. Perhaps our Lekhatkhila ruling fails to apply in such a case. Such is the strong suggestion of R. Dovid Zvi Hoffman (Melamed L’hoyil 3:8).

He writes about a non-Jewish woman who is already civilly married to a Cohen and, after the loss of a child, is severely (indeed, pathologically) desperate to convert into Judaism and unite her husband and future children in stable Jewish identity. One issue at hand is that there is a Mitzvah forbidding Cohanim from marrying converts<sup>116</sup> and it thus seems like the entire point of her conversion is premised on excluding that particular prohibition. At the same time, R. Hoffman notes that this is an exceptional circumstance, since it is better for a Cohen to be wedded to a Jewish convert than to remain married to a non-Jew. He makes a fascinating suggestion:

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<sup>113</sup> Some article\*\*

<sup>114</sup> However, some have argued that highly atypical conversion cases simply cannot be performed in our generation at all. See n.\* below, for a fuller discussion. To the extent we consider David’s case a *shaath hadechak* because of its extraordinary nature, this argument becomes relevant.

<sup>115</sup> See Melamed L’hoyil 3:8 quoted below, section d., end of citation, where preventing Chilul Hashem is seen as possible cause to proceed with a questionable conversion.

<sup>116</sup> See ויקרא כא:ז, יבמות סא,, רמב”ם הלכות איסורי ביאה יז:א, יח:א.

יש לומר דדוקא אם מקבלין הגר משום תקנה דידי' צריכין לומר לו או תקבל כל התורה כולה או תשאר נכרי כמו שהיית עד עתה שהנכרי אין לו עונש אם אינו מקיים המצוות. אבל אם אנו מגיירין אותה משום תקנתא דישראל ודאי מוטב שתגייר ולא יופסד זרע ישראל ולא יתחייב ישראל כרת על ידה, אף שיעשו שניהם איסורא זוטא, דהא עכשיו לא די שהישראל עושה איסורא רבה אלא שגם היא עושה איסור שמכשלת את ישראל. ובפרט דבנ"ד יש עוד לחוש שאם תשתגע האשה מחמת שאין מקבלין אותה, יהי' חלול השם ח"ו שיאמרו שישראל אין מרחמין על נכרית, ואין חוששין אם תחלה ותשתגע

We can say that when a convert is accepted in order to “improve” herself [from non-Jewish to Jewish status], only then do we tell her to accept the entirety of the Torah or remain non-Jewish ... But if we are converting her in order to “improve” a Jew [i.e. to save the Cohen from the graver sin of being married to a non-Jew] then of course it would be recommended that she be converted [even if she excludes some Torah rules] - and then we won't lose out on producing Jewish children and he won't be punished with Kareis because of her [i.e. the punishment for remaining with a non-Jew]. And this applies even though they will still be violating a smaller prohibition [of a Cohen marrying a convert], for at this point, not only he is violating a great prohibition but she is violating a prohibition by aiding him in that! And in our particular case we also must worry that if [in her extreme desperation] she goes insane because of our not accepting her for conversion, there will be a Chilul Hashem (Chas v'Shalom) in that the non-Jews will say that the Jews were not compassionate on this non-Jewish woman and they cared not if she became ill and insane.

In R. Hoffman's ruling, the problem of ‘excluding’ a Mitzvah is not such a concern when it actually leads to the ‘including’ of more Mitzvot in the life of a third-party Jew. After all, Mitzvah observance has increased, or at the very least, been balanced out, as a result of the conversion. One might even say, that the value of “rescuing” a third-party Jew from his current transgressions outweighs the Lekhatkhila barriers we place before converts.<sup>117</sup>

The principle need not be limited solely to romantic connections. We can imagine a convert whose effect on friends, family, or Jewish community might be equally beneficial. That said, R. Hoffman's case has the advantage of featuring direct, concrete, and provable Mitzvah benefits. R. Hoffman can

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<sup>117</sup> I distinguish R. Hoffman's category from the prior one, “In Pressing Circumstances”, primarily because R. Hoffman does not invoke the language of Shaat HeDechak. Additionally, he does not describe a sense of needing to “override” or “abandon” the Lekhatkhila because of problematic circumstances. Rather, it sounds like he believes the Lekhatkhila ruling does not pertain in the first place when, on a cumulative level, Mitzvah observance is increased (not decreased) via a conversion.

point to the specific Mitzvah against marrying a non-Jew and say with perfect certainty that the Cohen’s observance of that Mitzvah improves once his spouse becomes a Jew. One is on less firm ground when pointing to a general sense that Mitzvah observance will improve as a result of this conversion.

If we accept this ruling,<sup>118</sup> how might it apply to David? The most likely circumstance is if David is in a committed romantic relationship with an already Jewish but not fully observant partner (whom I will call “Aaron”). One can imagine many situations in which Aaron’s Mitzvah observance will dramatically increase if instead of developing a relationship with a non-Jew, it is with a Mitzvah observant Jew. One might even imagine Aaron’s observances around sexuality improving when in a committed relationship with another Mitzvah engaged Jew. If Aaron is also currently responsible for raising a Jewish child, perhaps from a previous marriage, it would be of even more interest to ensure that Aaron ends up creating a Mitzvah oriented lifestyle. Granted, these “Mitzvah improvements” are more fluid, subjective, and context-specific than the ones that R. Hoffman was able to identify to in his ruling. But a clear-headed Beis Din could easily come to such a conclusion, and see not just one or two Mitzvah advantages to converting David, but thousands.

#### e. As Rabbinic Discretion Sees Fit

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<sup>118</sup> Igrot Moshe EH 2:4 disagrees with R. Hoffman, rejecting both the principle in general and its application to the Cohen case.

However, see Nahar Mitzrayim, Hilchot Geirim 5 who adopts an approach similar to R. Hoffman’s and describes it as the official practice of the rabbinic leadership of Egypt.

See also the Rambam’s teshuva (Pe’er HaDor 132) about freeing and thus converting a slave-woman who is currently living as a romantic partner with her Jewish master. If such a master frees his slave, he is forbidden from marrying her (Yevamos 2:8; Rambam, Hilchot Geirushin 10:14; later also codified in SA EH 11:5). Nonetheless, the Rambam writes: “even though this is akin to a sin (converting and marrying such a woman) ... and it is forbidden Lekhatkhila to marry her we have already ruled several times in such cases that he should free her and marry her. We do this to pave the way for those who wish to repent, and we say that “it is better for him to eat the sauce than to eat the actual fats” [i.e. to limit transgression]. And we rely on the words of the Sages: “It is a time to act for God, they breach Your Torah!” (Berakhot 54a, based on Ps 119:126)”. Note that she would be converting for the purpose of marrying her former master, despite it being forbidden to do so.

Though the Rambam writes about a slave-woman, R. Eliyahu Bechor Hazzan rules similarly about converting free non-Jews who are in romantic partnerships with Jews. Though they are likewise forbidden from marrying their Jewish partner (Yevamos 2:8, et al.), he writes that he and his predecessors would in fact convert the non-Jewish partner and marry the couple. He bases this decision on the above Rambam. (Neve Shalom, Hilchot Geirim 2, p. 39b; echoed in Taalumot Lev 3:29). “Rescuing” the third-party Jew allows us to override a Lekhatkhila rule about marriage and to proceed with a conversion whose whole purpose is to overstep that rule

Recall the Beis Yosef’s ruling about a Beis Din’s authority to assess whether a convert with ulterior motives will later embrace Judaism sincerely. His statement there contains bold overtones -- “and from here we learn that all [such decisions] follow what the eyes of the Beis Din do see” -- and is cited as authoritative by the Shach (SA *ibid.* 23) and the Drisha (*ibid.* 7).

It is tempting to see in this striking language the granting of broad discretionary powers to every Beis Din. In regard to Lekhatkhila restrictions,<sup>119</sup> the Beis Din is invited to apply its wisdom, its awareness of their community setting, and their perception of the unique individual before them, in deciding whether it is necessary to follow best practice or to make an exception: “all follow what the eyes of the Beis Din do see”.

Indeed, R. Haim Dovid HaLevi understands the Beis Yosef this way, using his words as part of a larger theory about the importance of rabbinic discretion in conversion law. Writing on the topic of whether or not there is a Mitzvah obligation upon the Jewish community to perform conversions, he notes that the Torah is not clear on the matter and concludes (*Aseh Lecha Rav* 1:23, 3:29)<sup>120</sup>:

אך זה היה רצון התורה, שלא תהא מצוה זאת מחוייבת עכ"פ, אלא מסורה לכל דיין ומנהיג בדורו להחליט כראות עיניו בין לקולא בין לחומרא. לחומרא: כפי שנהג עזרא הסופר, שללא ספק היו נגד עניו שיקולים רבים לנהוג כפי שנהג. ההשערות יכולות להיות שונות ומגוונות ... אך חשוב הוא העקרון, שיכול היה עזרא לנהוג לפי ראות עיניו, אף שמצד הדין יכול היה לצדד בגיוון. ולקולא, כפי שנהג הלל בשעה שקבל מועמד לגיור ע"מ שימנוהו כהן - גדול, שמצד הדין יש עכוב בקבלתו, ולפי ראות עיניו החליט לקבלו, והיה רשאי לנהוג כן ... לזה כיונה תורה כאשר השאירה את עיני הגיור "לפי ראות עיני הדיין". לסיכום, רצתה תורה שמצות קבלת גרים תידון תמיד כהוראת שעה, כל דור וכל דיין במקומו, יחליט אם לקבל גר או גרים, לפי תנאי הזמן והמקום...מכל הנ"ל ניתן ללמוד, כמה רחב ועמוק הוא המושג ההלכתי בענייני גיור: "הכל לפי ראות עיני הדיין" ודוק היטב.

But this itself was the will of the Torah, that this ‘Mitzvah’ of performing conversions would not be obligatory in all circumstance, but that the authority would be handed down to each judge and leader in his generation, to decide “as his eyes do see”, be it

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<sup>119</sup> And perhaps even in regard to a Bedieved restriction! In my research, I came across a tradition stated about the 19th century Polish Poseik, R. Yisrael Eliyahu Yehoshua of Kotno, author of *Shut Yeshuos Malko*, that he would have waived circumcision (!) in one particular circumstance. Unfortunately I am unable to relocate it. (My note, seemingly mistaken, reads: “See *Aseh Lecha rav*, below, d”h *mefuram*” [sic].)

<sup>120</sup> The bulk of this passage first appeared in the more focused 1:23 and appears again as part of R. Cohen’s fuller treatment of conversion in 3:29. The final sentence appears only in 3:29 as his concluding line on the topic.

leniently or strictly. On the strict side: like Ezra the Scribe acted [demanding Jewish men divorce their non-Jewish wives, instead of converting them]<sup>121</sup>, for without doubt there were before his eyes many considerations that suggested acting as he did. The assessments to be made may be diverse and varied ... but what is important is the principle, that Ezra was able to act this way, “following what his eyes do see”, even if under the law itself he could have determined to convert them. On the lenient side: as Hillel acted when he accepted a candidate for ‘conversion on condition of being appointed Cohen Gadol’. Under the law, there is an impediment to accepting him, but “following what his eyes do see” he decided to accept him ... This is what the Torah intended when it left matters of conversion to “follow what the eyes of the judges do see”. In summary, the Torah wanted that the Mitzvah of accepting converts would always be adjudicated through temporary judgments, each generation and judge in its place, deciding whether to accept this one convert or many, following the conditions of that time and that place ... .. And from all of the above you can learn, just how broad and deep this Halakhic concept is in matters of conversion: “all follows what the eyes of the Beis Din do see”, and note this well.

For R. Haim Dovid HaLevi, broad rabbinic discretion is an essential element of conversion law, evident for millenia prior to the Beis Yosef, but buttressed and neatly formulated by him. R. Yosef Mesas (Shemesh uMagein HM 3:5) also advocates this view and records how it was the position of the recent great Poskim and rabbinic leadership of Morocco.<sup>122</sup> Indeed, R. Haim Amsellem, an important contemporary scholar on conversion writes (Shearis Yisrael 25 p. 152)

הסטנדרט היחיד המוסכם שהוזכר כאבן יסוד בגיור על ידי כל הפוסקים, הוא הכלל שטבע  
הבית יוסף (יו"ד סי' רס"ח) בעניני הגיור "הכל כפי ראות עיני הבית דין", כלומר בית הדין רשאי  
לקרב או לרחק לפי שיקול דעתו ולפי צורך השעה, והשיקולים יכולים להיות רבים ומגוונים  
ונדונו בספרות הפוסקים בהרחב

The singular, agreed upon standard, which is mentioned by all the Poskim as a foundation stone in conversion, is the principle which the Beis Yosef minted, that in conversion matters “it all follows what the eyes of the Beis Din do see”. That is, the Beis Din is permitted to bring near or push away, according to the internal considerations of the Beis Din and according to the needs of the time. These considerations may be numerous and diverse, and they are treated at length in the writings of the Poskim.

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<sup>121</sup> See Ezra 9-10.

<sup>122</sup> Though not of Emek Yehoshua 3:17, to whom he responds.

R. Amsalem frequently refers to this principle, in Halakhic and popular writings, applying it to a wide array of situations.<sup>123</sup> Unfortunately, I have had a more difficult time finding examples in the written Halakhic record of Poskim understanding the Beis Yosef this way (apart from the above R. Haim Dovid HaLevi and R. Yosef Mesas). In my research, when the Beis Yosef is cited, it is almost always in the more modest, narrow sense described above in category a.<sup>124</sup> Namely, he allows waiving a best practice when a Beis Din assesses that the very concern that the rule protects against will, now or in due in time, cease to be. That is all he allows. It may very well be the case that, historically, most Batei Din did operate with a strong sense of rabbinic discretion.<sup>125</sup> After all, why else would the Torah specifically insist on a Beis Din’s involvement in the performance of conversions? I will add that in oral conversations with American rabbis I frequently hear reference to this broad read of the Beis Yosef. But in regard to published Halakhic texts, the record is fairly sparse, such that it is difficult to portray a broad read of the Beis Yosef as the obvious or dominant approach.

Either way, this theory has major ramifications for David. If a Beis Din concludes that it is wise, useful, or necessary to convert David, it would be their prerogative to proceed, despite the barrier of Lekhatkhila restrictions. That is a big “if”, but not an unrealistic one. On the other hand, the same theory justifies why some Batei Din would specifically reject David. Even if they believe it fully permissible to convert David, if they consider it unwise or deleterious, they would be utterly justified in refusing. Rabbinic discretion is a powerful tool, but it cuts both ways. That said, one of those ways provides yet one more path towards a Beis Din correctly deciding to convert David.

Ultimately, reading the Bechorot 30b baraita as applying only Lekhatkhila is textually compelling, well-founded in the Poskim, and profoundly relevant for David. For one, it means that rabbis who would not themselves initiate David’s conversion still have good reason to recognize him after the fact -- after a different Beit Din performed the conversion. Additionally, rabbis who would not initiate David’s conversion in “standard” Lekhatkhila circumstances have some grounds to pursue it in a range of non-standard scenarios: if they are convinced David will properly stand by the other 612 Mitzvot; if they consider his rare case or its communal ramifications to constitute a *shaat hadechak*; if it benefits a third-party Jewish person or persons; or if it aligns with their general sense of rabbinic discretion. Arguments #1-6 suggested that the Bechorot baraita fails to pertain, as an authoritative Halakhic text,

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<sup>123</sup> It is mentioned some forty times in Shearis Yisrael. See also, for example, his treatment of the Beis Yosef in a popular article for Mekor Rishon, listed in n.\* 1.

<sup>124</sup> For one quick example, see שו"ת אחיעזר חלק ג סימן כד ד"ה אבל בזה שב"ד

<sup>125</sup> See R. Ovadia Yosef’s 1976 testimony before a Knesset committee, reprinted by R. Amsam in his Zera Yisrael (back of the work, p. 5) for evidence of such a historical pattern.

to David. But even if you insist that the baraita applies to David with the full weight of its restrictive judgment -- is it even all that restrictive?

## Conclusion

I have shown that it is Halakhically defensible, by combining a variety of basically plausible arguments, to not convert a person like David on the basis of Talmudic precedent. This is not an easy position to justify and it requires adopting a wide range of assumptions: 1) that the Baraisa's lines about excluding one Mitzvah are in fact part of the Talmudic canon, despite being absent from many manuscripts, corrupted in others, and ignored by the many relevant Talmudic conversations that function as if completely unaware of those lines 2) that we Pasken in accord with those lines, against the decision of the Shulchan Aruch (as well as the Rif, Rosh, Tur, and seemingly the Rambam) and despite much evidence from Shas itself, including Hillel against Shammai, indicating that we do not 3) that a convert can explicitly accept responsibility for and obligation in a Mitzvah yet still be considered to exclude it 4) that an exception for “heroic Mitzvot” does not exist, despite the apparent need for one, or that it does not apply to David's difficult circumstance 5) that an exception for “theological disbelief” does not exist, despite Rashi's pivotal words on the matter, or that it does not apply to David's specific circumstance 6) that the Baraisa applies even Bedieved, despite the contextual and Rishonic evidence otherwise, such that none of the five exceptions to a Lekhatkhila conversion rule can be considered. Each of these suppositions has some plausibility but choosing to rely on them all is a delicate proposition. Though defensible, it would be intellectually “out there” to adopt such a strict view. That said, a Beis Din which does so can take solace in knowing that they have authorities upon whom to rely, such as R. Moshe Feinstein in some of his writings.

It is one thing to personally arrive at such a strict, assumption laden conclusion, and adopt it as one's own practice or position, but it is another to insist or expect others to do so as well. I hope that those who in their learning and wisdom choose to be strict on this matter can see how there is more than enough room for other rabbinic authorities to adopt a more lenient position. All it takes is firmly rejecting one of the above assumptions, or following rabbinic discretion in a different direction or, refusing to exclude somebody from conversion based on a lengthy set of maybes. At the end of the day, a stricture that is built upon a questionable Baraisa with a questionable Halakhic history applied to a questionable circumstance leaves enough question to justify an inclusive approach. Indeed, it is the inclusive approach which, in the full view of the Talmudic and Halakhic evidence, raises fewer questions.

### **Postscript: Responses to the Question of “But Would You Convert a ...?”**

In conversations with colleagues about the above conclusion, the same concerned question frequently arose. Sometimes this question stemmed from a desire for intellectual consistency and other times it emerged from a place of deep *yirat shamayim*. The question is: “but would you convert a candidate who is an active murderer? Or who insists on sleeping with their sister?” The implication is that the above analysis of Halakhic sources must be incorrect if it allows for such conversions. Can it really be that these converts are acceptable?

I ask the reader to consider three answers:

For one, *in hachi nami* (roughly: “granted, so it is”). We have reviewed the Halakhic sources and they do in fact make space for such conversions. Simply put, the Halakhic sources do not single out any Mitzvah, even extremely severe Mitzvot like murder or adultery, as somehow more capable of disqualifying a conversion. If anything, there is a consistent stream of texts -- from Talmudic sources through to modern Poskim -- which establish the opposite: the severity or importance of a Mitzvah plays no role in the context of conversion.<sup>126</sup> The above question about accepting a murderer may come from a sincere and thoughtful place, but it is not a place proximate to the actual Halakhic material.

What then are the extra-Halakhic concerns expressed by this challenge and do they apply to David? Why is it so powerfully intuitive, on a gut level, that candidates who commit, God forbid, murder or

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<sup>126</sup> Yevamos 47ab sets forth that a convert is taught “some light Mitzvot and some heavy ones”, making clear that many “heavy” ones will not be included in the candidate’s Torah education. The only Mitzvot there emphasized as foundational are leket, shikcha, peah, and maaser ani - the commands to redistribute agricultural wealth to the poor. Little indication is made of any other “cardinal” Mitzvot that could in some way be of greater importance in the conversion process. The Rambam, sensing a major gap in the proposed curriculum, inserts two Mitzvot that he explicitly labels essential: “they inform him of the religions’s essentials [ikkarei ha-dat], which is the unity of the Name and the prohibition of idol worship, and they dwell at length on this matter” (Issurei Biah 14:1, and see Maggid Mishneh). Despite giving himself the opportunity include other essentials, the Rambam chooses to not list any other Mitzvot as uniquely important in a conversion. But ultimately, even the Rambam must concede that Halakha makes leaves space for a convert who worships idols (!). Shabbat 68b recognizes a convert who was unaware of restrictions on idolatry, Shabbat observance, consuming blood, or consuming suet and continued, as a Jew, to violate these Mitzvot. Yevamot 24b recognizes a convert who is lenient in regard to what appears to be intermarriage, or at the very least, sleeping with non-Jewish slaves. In fact, it is precisely the most “core” Mitzvot that are singled out for special leniency by R. Moshe Feinstein. His argument about “heroic Mitzvot” takes as its starting point those prohibitions for which one must martyr themselves (forbidden sexual relationships, murder, idolatry). It is specifically these Mitzvot for which deficient acceptance is defended.

Anyone contending that there is a set of “core” Mitzvot, carrying extra importance, that on their own can disqualify a conversion, faces a difficult set of precedents. In sum, the above questions about accepting a murderer may come from a sincere and thoughtful place, but not a place grounded in the actual Halakhic material.

incest, ought be refused? I believe the intuition may be broken down into two parts. First, there is a concern for safety. Conversion provides a person access to Jewish communities, spaces, and privileges. It is absurd to consider the conversion of a killer because we fear for our physical well-being in their presence. But this worry has zero relevance when bringing a gay person into Jewish life. Second, this question voices an important impulse regarding communal self-perception. We express our communal values by choosing whom we treat as members. Welcoming in a sociopath as a member -- let alone as a guest or honored visitor -- does harm to a community's sense of self. Are we “healthy” individuals if we allow someone in who is “unwell”? I beg readers to recognize that such a concern does not apply to the conversion of a gay person, and to consider the message that is broadcast to born Jews who are gay when a conversion in their community (or overseen by their own rabbis and teachers) is refused on such grounds.

Finally, I would assure these questioners that the conversion system likely retains a built-in mechanism for admitting non-troubling cases of “except one thing” (e.g. non-celibate gay men) while refusing instances that do in fact trouble us (e.g. a person who, God forbid, advocates adultery). That mechanism is the Beit Din. This is not the place to fully explore this institution, its role, and its conceptual underpinning<sup>127</sup>, but practically speaking, a candidate who cannot find three qualified judges willing to convert them will never gain entry into Jewish identity. In effect, the Beit Din itself retains the right to distinguish between conversions it will sit for and those it will neglect. Discretion to override a Lekhatkhila regulation and proceed leniently is briefly debated above; but discretion to not process a theoretically viable candidate, and thus act strictly, is almost certainly within a Beit Din's right.<sup>128</sup>

We live in a time when many wish to impose fleeting non-Torah values, or even their own personal morality, onto the Halakhic system. When it comes to actual Halakhic basis, there is some space to reject David's conversion, even while there is firmer ground upon which to accept him. But when it comes to non-Halakhic bases (moral intuition, practical concern, rabbinic discretion), I ask those wishing to restrict David's conversion to contemplate what secular anxieties, non-Torah bigotries, or subtle political pressures push them to graft a “no” onto a Torah-true system so clearly capable of saying “yes”.

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<sup>127</sup> English readers are encouraged to begin with R. David Brofsky's informative three part, “The Beit Din Le-Giyur”, which is part of his online series “Laws of Conversion and Circumcision”.

<sup>128</sup> This right is related to -- but does not hinge on -- the question of whether there is technically a Mitzvah to perform conversions, and what if any obligation that imposes upon born Jews. Again, for an excellent summary, see R. Brofsky, “Is There a Mitzva to Accept Worthy Converts?”.

## Practical Summary for Rabbis Converting Gay, Non-Celibate Geirei Tzedek

### Background

- Although not explicit in Shas itself, there is much precedent in Rishonim and Acharonim that Kabbalat Mitzvot is a requirement of conversion, if not the very essence thereof.
- But there is also much precedent in the Talmud itself to imply that acceptance of every single last Mitzvah is not a requirement.
- Despite the implication of those precedents, a Baraita on Bechorot 30b states, at first glance, that one who “**excludes**” even a single Mitzvah is not accepted for conversion.
- However, it is unclear if the key ruling in this Baraita even exists, as it is absent from or corrupted in many manuscripts.
  - That said, it does appear in the Vilna Shas, and in the Sifra, and is widely cited today.
- Further, it is not treated as authoritative by any of the great medieval Poskim: not by Rif, Rosh, Tur, or even Shulchan Aruch. (Rambam cites it, but almost certainly in a manner irrelevant for modern conversion.) Arguably, Hillel himself rules against it.
  - That said, it is quoted as authoritative by Rashi and by many contemporary Poskim.

### Case by Case Application:

- If this candidate fully consents to their conversion (Tzafnat Paneach, Issurei Biah 13:6), acknowledges that they are obligated in the relevant Mitzvot (Mishpitei Uziel 2 YD 58), or performs enough Mitzvot to show an overall acknowledgement of obligation (Achiezer 3:26) - the Baraita may not apply to them
  - If the candidate accepts to observe some Halakhic practice around intimacy, they fit into the Achiezer’s paradigm even better.
  - That said, other Poskim hold that merely expecting to violate a particular Mitzvah counts as “excluding” that Mitzvah, such that the Baraita does apply. (Igros Moshe EH 2:4, YD 3:106, 3:108)
- If this candidate is struggling to properly accept a “heroic Mitzvah”, it is likely that they are considered exempt from the Baraita’s strict ruling. (Igrot Moshe YD 3:108).
  - One should assess in Igrot Moshe both what constitutes “heroic” (in some ways a fairly low bar) and whether the candidates own situation meets that bar.
  - Some possible standards are “not every Jew is like Avraham Avinu” and “consider the Jews who accepted the Torah at Sinai”.
- If this candidate in some way disbelieves in the authenticity of the relevant prohibitions, the Baraita may not apply to them.

- Different Poskim provide this leniency for different forms of disbelief, some of which are mutually exclusive. One should assess which if any apply (or count against) the candidate.
  - They disbelieve that the relevant Mitzvah is from God. (Straight read of Rashi, Shabbat 31a)
  - Without full investigation or fully formed confidence, they disbelieve that the relevant Mitzvah is from God. (Rashash ibid.)
  - With relatively naive or unfamiliarity, they disbelieve that the relevant Mitzvah is from God. (Gilyonei HaShas ibid.)
  - They wish to accept all the God-given Mitzvot, but disbelieve their teacher in regard to this Mitzvah. (Igrot Moshe EH 2:4, YD 3:106)
  - They wish to accept all the Jewish-accepted Mitzvot, but disbelieve their teacher in regard to this Mitzvah. (Minchas Asher, Shabbat, 34)
  - Less likely, but a candidate who accepts to practice celibacy but on a theological level doubts that it is required by God, finds some justification from Heichal Yitzchak 1:19.7.
    - If their disbelief is not in the Written Torah’s Mitzvah, but solely in regard to Derabbanan interpretations thereto, they are more substantially aided by Heichal Yitzchak.
- That said, some qualify the above and state that, on a *Lekhatkhila* level, conversions of such “disbelievers” should not be performed unless one is confident that belief will later be established. (Igrot Moshe YD 3:106)
- Further, some Acharonim go against Rashi and centuries of undisturbed acceptance of Rashi, and deny that there is any such exception for disbelief. (Haaraot HaGrish Eliashiv, Shabbat 31a). Others read Rashi as here advocating for a different leniency, not related to disbelief. (Igrot Moshe, \*).
  - But even the above Acharonim, who see no such exception for “disbelief” per se, might agree that some instances of disbelief qualify as “ignorance”. (Igrot Moshe YD 1:160, 3:106). If a candidate’s teachers inform them of a Mitzvah, but the candidate believes them to be exaggerating, they would seem to be no different from the “ignorant” convert of Shabbat 68b who is treated, at least after the fact, as kosher.
- Its possible that the Baraita only applies *Lekhatkhila* (\*). If so, then these conversions should obviously be recognized after the fact. Furthermore, they can be initiated in advance under the following potential extenuating circumstances:

- If the Beit Din is confident that, in time, the convert will come to accept even this Mitzvah (Very reasonable extension of Beit Yosef YD 268:12 V'da d'lo kiblu)
- If the Beit Din is confident that, unlike most candidates who exclude one Mitzvah, this candidate will properly stand by the other 612. (Reasonable implication of Rabbeinu Gershom, Bechorot 30b, the only Rishon to comment on the Baraita's rationale.)
- If the Beit Din concludes that the conversion of a non-celibate gay person itself constitutes a *shaat hadechak*. (His orientation cannot be changed, it is a rare and atypical case, etc.)
- If the social ramifications of the case constitute a *shaat hadechak*. (Refusing him will lead to *chillul hashem*, communal infighting or strife, public scandal, or the strengthening of non-Torah communities; if his involvement in the community is desperately needed)
- If the Beit Din, in their broad rabbinic discretion, considers it a good idea (Aseh Lecha Rav 1:23, 3:29, rooted in a broader reading of BY *ibid.*)
- If this conversion will benefit the religious or spiritual lives of other Jews (Melamed l'Hoyil 3:8)
  - Some explicitly dispute that this constitutes an extenuating circumstance. (Igrot Moshe EH 2:4)
  - More broadly, some Poskim read the Baraita as applying even Bedieved (Beit Yitzchak YD 100:10, seemingly even Biur Halacha 304:1). In their view, none of the above extenuating circumstances would apply.

#### Addendum

- Please reach feel free to contact me to discuss these and other sources.  
[Benzgreenfield@gmail.com](mailto:Benzgreenfield@gmail.com) 818.568.4476
- In the course of my research, a well-known Talmid Chacham who is often consulted by Batei Din suggested an entirely different reason to permit these conversions. His argument involves different key sources and thorough presentation was beyond the scope of this paper. If you are thinking through a practical case, please reach out and I will be happy to discuss.