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Translation^{of} and Observation
on

Hilkhoth Gerim in Shulhan 'Arukh

By

Hiroshi Okamoto

Thesis submitted in partial fulfillment of requirements for
the Degree of Master of Arts in Hebrew Letters and Ordination

Dedicated to Simon & Helen Scheuer

.....without whose support for a Japanese student and his wife who are prohibited to work even for self-support under the law of the country, the study of the law of G-d would have been impossible.

Digest of the thesis

This is a record of my inner adjustment to Hilkhoth Gerim.

After a brief study of the semantic of Halakhah with respect to contemporary Anglo-American concept of law and Sino-Japanese attitude toward "law", we translate Shulhan 'Arukh Yoreh De'ah 268 and 269 with major commentaries (Siftey Khohen and Turey Zahav, etc) to English.

Whenever logico-linguistic approach appears to be too remote to account for our ethical and aesthetic experience, we observe our pragmatics in terms of our prejudices in three marginal fields, namely: (1) Vast East vs. discriminating West; (2) missionary Church vs. Jews; (3) born-Jews and proselyte. These are documented by the latest accounts of interfaith encounters, now unprecedented in America. (See Bibliographyp. V)

Our attention is centered on the oral orientation of Judaism (268:2) and potential Halakhic provision, if any, for creating a "congregation of proselytes". (269:11)

Toward acquirement of a religiously valid view, we will briefly examine historical, sociological, psychological and ethical jurisprudence (Hegelian Marx, Eugen Ehrlich, Petrazycki and F. S. Cohen, respectively).

As the by-product of this inquiry, it will be seen that Halakhah is best approached as a single continuum. Conventional mission idea is criticized, but we will find it intrinsically crystalized in the very notion of Halakhah. Through our elucidation of "acceptance of the Mizwoth" which is devoid of oath of renunciation, self-sufficiency of Geruth, Yahaduth and Dath will be intensively surveyed. (See Summing Up pp.78-83)

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PREFACE

I wish to acknowledge my indebtedness to the authors mentioned in the bibliography for their helpful criticisms and suggestions. I wish to express my thanks to Professor Van Meter Ames, Dean of the Department of Philosophy of the University of Cincinnati, who has placed his wide scope of bibliographical reference at my disposal. I have surveyed with his help the necessary but difficult area of comparative religious thoughts which should emerge from the deep inter-faith encounter, now unprecedented in America.

To the teachers and friends of the Hebrew Union College Family I owe everything literally from Alef Beth to the essence of Geruth, Yahaduth and Dath. Especially, without Dr. Samuel Sandmel's deep insight and unselfish cooperation in my whole program, my course of study could have never reached this point.

Above all to Professor Alexander Guttman I express my heartfelt gratitude for his highest scholarship and leadership, for his patience during the years needed for the preparation and completion of this work, and for his universal religiosity of humbleness refined in Halakhah.

Hiroshi Okamoto

Cincinnati, February 21st, 1964

Introduction

The life in Hilkhoth Gerim has not been logic. It has been experience.

The business of philosophy is to analyze this experience.

"What is religiously valid today the rabbi must ascertain by investigation. The main business, besides being aided by rules in Seder Tannaim v'amoraim, is to consult the Codes which regulate practice and from them backward to go back to the older authorities (e.g. the responsa of Geronim) and to the sources (the discussions in the Talmud).^{#1}

Joseph Caro follows often the wording of Mishneh Torah, which therefore must be compared (I found this is not so much in Hilkhoth Gerim) he admits laws pertaining to sacrifices and purity and other statutes impossible of execution after hurban; but just as frequently it matters little to him whether the subjects admitted are inapplicable to his own times. The oldest and most important commentary, universally recognized among Eastern European Jews - Haggahoth or Mappa by Moses Isserles. It is permissible to contradict the Shulhan 'Arukh when compelled by sources and when the statute rests on presuppositions no longer adequate.^{#2}

We study Hilkhoth Gerim from this point of view. Herman Strack (1848-1924) explicitly states that we can contradict to the Code when the statute rests on presuppositions no longer adequate. But this is self-evident view to any system. Then why should we state it at all? Having a reservation at his

view we proceed to obtain the religiously valid view on Hilkhoth Gerim. Two main works on Talmudic sources of Hilkhoth Gerim are Bamberger's and Braude's. The two are best compared by the latter's own words as follows:

After I finished my manuscript two recently published works reached me. One, Gerim by A. Z. Marcus, is in the main an improvised compilation of rabbinic quotations. The other, Proselytism in the Talmudic Period by my good friend Dr. Bernard J. Bamberger of Albany, New York, is an excellent presentation of the Halakah and the Haggadah. In deference to his work I omitted my chapter on individual proselytes. Bamberger's treatment of that subject cannot be improved and I refer the reader to his book. I am glad to say that we agree in our conclusions that both the Tannaim and the Amoraim wanted proselytes and did all they could to win them. But in this study the argument is more decisive. In the chapter on "Utterances Misinterpreted as Unfriendly" I show how R. Helbo was misunderstood and prove that not merely the preponderant but the unanimous opinion of the rabbis favored proselytes. In the chapter "Those Who may not come into the Community of the Lord" I show how the rabbis struggled to remove ancient exclusions and in the main succeeded. In the chapter "The Proselyte in Government and Judiciary," I show how the Tannaim and Amoraim gradually made it possible for proselytes to hold

office. Finally, in the section on "Marriage with Priests," I show how the rabbis coped with that difficulty. My principal contributions are the proper interpretation of R. Helbo's utterance that proselytes are as troublesome as the itch as a political and not a religious opinion; and the demonstration of the steady improvement of the position of the proselytes within the ethnic and the religious community, as a result of the untiring labors of both Tannaim and Amoraim in their behalf.*3

As for our concern, Bamberger's assumption that proselytism became possible only after Judaism became a universal and therefore unique religion - under prophetic influence*4 - hinders our approach basically.

It seems to imply, I hope I am wrong, that there was and is a universale religion and that it is Christianity.

Christianity changed already in the 1930's its traditional outgoing world-missionary zeal to internal self-criticism. Since 1950 missionaries who had been in the East are now teaching Eastern religions to the West. No one today, except out of sheer ignorance, would venture to say that there is the universal religion.

The point is "Is the mission idea ethical?" The facts clearly show all over the world that the answer is negative. Objections are pointed at the very notion of missionary evangelism that implies a superiority complex as well as an

impulse of self-righteousness. Northrup quotes Shridharani; "It is forgivable to insist on one God, but to insist upon The Prophet and The Law is intellectually wrong. The assertion of Louis XIV that "I am The State" is quite innocent compared to anyone's assertion that 'I am The Law'... This exclusiveness is anti spiritual inasmuch as it is overweening in the light of the limitations of human perception. This exclusiveness is to be found in 'decidedly liberal' contemporary Christian leaders as well as in the traditional fundamentalists.

It is clear that if the conflicts in racial and religious prejudices of this world are to be at all ameliorated, not merely in India but in the West as well, a much deeper-going reformation than the one which occurred with the origin of Protestantism, with respect to the sufficiency and authority of the claims of the theistic religions, must occur. One of the major causes of the ills of our world has its source in very high places."#5

All these objectives voiced from the East (India first, since India was the first of the countries which were subjected to colonial exploitationists and missionaries) are directed to Christian mentality of outgoing aggressiveness, however innocent it might have meant to be.

The West first distinguished itself from the East.

Modernization of the East has been reported mainly by and through Christian values, being often confused with Westernization, as Professor Kishimoto points out.*6

I am a Jew by Qabbalath Hamizwoth, and am a Japanese citizen by birth, and am staying here in the United States only as a student to whom free work is prohibited so that the exclusion of Asia-Pacific Triangle should be kept firm by the United States Department of Justice!⁷

Therefore, my observation of Hilkhoth Gerim is prejudiced by the following three relational hypotheses.

1. West and East.
2. Christianity and Judaism.
3. Born-Jews and proselytes.

Our primal concern in this thesis is the relation between born-Jews and proselytes, being overlapped by working-prejudices of West and East, and of Christianity and Judaism.

Whether postulating of these presuppositions is valid or not, our approach is to aim at dissolving, in our final stage of discussion, of these apparent tentions and discomforts which are presumably caused by these postulates themselves.

In spite of all these, we walk, as our depth-motive, with and by the Halakhah.

Footnotes

- *1Herman Strack. Introduction to Talmud and Midrash. 1921, p. 89.
- *2Ibid. p. 166. This view will ultimately be invalidated through the course of our discussion.
- *3William Gordon Braude. "Jewish Proselyting. In the First Five Centuries of the Common Era. The Age of the Tannaim and Amoraim." Brown University, Providence, R. I. 1940. pp. 6-7, Note 15.
- *4Bernard J. Bamberger. Proselytism. Cincinnati, 1939, p. 13.
- *5Northrup. Meeting of East and West. 1945. pp. 413, 414.
- *6 Hideo Kishimoto. Some Japanese Cultural Traits and Religions, in Philosophy and Culture/East and West, Honolulu, 1962. pp. 245-255.
- *7See: United States Immigration Laws M-50 (Rev. 10-20-61).

Hilkhoth Gerim(*)

(*These laws are practised in the countries which civil law permits becoming Jewish.

Section #268

How to initiate¹ proselyte or proselytes and the laws of the sanctity of proselyte. It pertains to twelve paragraphs.

Observation

(*is present in folio printed in New York, 1900, but not in Vilna edition (1876). Investigation is necessary as to what social circumstance or historical consideration are involved in this tragic notation.

We can cite Epstein's 'Arukh Hashulhan Hilkhoth Gerim #268: The ordinances of proselytes in the former days. However, in our districts, we do not possess authority to receive proselytes due to the civil law. (c. 1850, Rumania).

On the other hand, we have to note the fact that Abraham Danzig's Hokhmah 'Adam, New York, 1946, which is subtitled "to include all the laws for Jewish people in Shulhan 'Arukh Yoreh De'ah" does not even refer to Hilkhoth Gerim.² Likewise, Qizzur Shulhan 'Arukh by Solomon Ganzfried does not mention Hilkhoth Gerim probably with the same purpose.

Our Hilkhoth Gerim here in Shulhan 'Arukh consists of section #268 (12 paragraphs) and #269 (11 paragraphs) Consangu-

ious prohibition on proselytes and laws concerning testimony and Halizah.

Plural construction of "Hilkhoth" is used almost as an equivalent to "Chapter on..." in Code literature since after Alfasi, Ramba'm and R. Asher. The phrase Hilkhoth Gerim seems to have taken over ^{from} the use in Tur. Mishneh Torah contains corresponding contents of Shulhan 'Arukh #268 and #269 in its chapters 13, 14 through 22 of Hilkhoth 'Issure Bi'ah even though they are not subdivided under the heading "Hilkhoth Gerim."³ Karo seems to have taken over his wording גרם נעלם from the name of the book of Mishneh Torah. It is at least not in Tur.

The phrase Hilkhoth Gerim as to signify a group of Halakhoth is found in Ruth Rabba I, 7 and Yalkut 2. St. #601. Das. I, 16⁴ גרם נעלם גרם נעלם גרם נעלם
(cf. also Koh, Rabba V.8)

The singular form "Hilkath" is found in Sanh. 87a and Nid. 72b גרם נעלם -- bondage of eleven days to terminate ^{or} niddah status.

M. Guttmann translates Hilkhoth Gerim "Satzunger ueber Proselyten."⁵

I am to write this thesis in English, which is not my native tongue. I console myself by reasoning that the degree of difficulty for a native Jew to write in Hebrew is about the same ^(as) for a Japanese proselyte to write in English. Besides this there are some aspects which came to my attention because of this problem of translating Hebrew into English.

English "law" is chosen in the sense explained in the following.

German distinguishes "Recht" from "Gesetz."

Chinese [fa] 法^a [tao] 道^b [li] 禮

Japanese: as long as and as far as Japanese use Chinese pictographs and coin words in Japanese articulation with the result of double levels implied in a meaning - emotive or referential, expressive or impressive, whether a Japanese is Confucius - Taoistic - Shinto - Buddhist, Christian or even a Jew, the religious overtone of 法^a and 道^b play a significant role, probably deeper than "law" does to English-speaking people.

One cannot avoid translating Hebrew "Halakhah" into one's own native language with which he thinks and feels. Jewish commitment into Hebrew has resulted in great degree to refining and sanctifying Hebrew language by means of specified religious usage in Galuth.

If one's mentality becomes reprehensive to any other value than Jewish, one should rather dwell in the strength and beauty of Halakhic Hebrew, as Rabbis have written Responsa mainly in Halakhic Hebrew, not in their native languages.

English "law" has been approximated to "haw" (hou)^a 法 or "do" (to)^b 道⁶, which are constructed with other pictographs:

e.g. - morality (dotoku)^c

essence of Buddhism (buppo)^d

humanity (jindo)^e

道 德
佛 法
人 道

Shintoism (shinto) ^f	神道
Codeless Code of Samurai (bushido) ^g	武士道
M in logic (shubo) ^h	宗法
P in logic (shuho) ⁱ	宗法
Tao determining itself (myoho) ^j	妙法
Rechts (ho) ^k	dharma & rita 法

This means "law" in Japanese occupies almost entire range of religious, legal and ethical mentations.

I was very hesitant to translate "Halakhah" as "law", which meant primarily "positive law" in conventional use. However, after spending a half year in reading recent legal philosophic works in English, I am, now convinced to translate "Halakhah" as "law" in English.

"Law is, indeed, a complex subject--more complex than any traditional theory has supposed. It has at least three parts, each with its particular scientific and philosophical method: (1) positive law, (2) living law and (3) natural law.

In the Anglo-American common law world the scientific method for studying the positive law is inductive generalization, of the natural history type, from particular cases and statutes, combined with the elucidation of the resulting legal concepts by the method of contemporary analytic philosophy. The latter philosophical method is required because the most important legal concepts are incomplete symbols. In the civil law tradition of the Continental European nations, Scotland, Quebec and Louisiana, the method of determining the positive law is different. Instead of beginning with individual cases

and applying to them the method of classification and case-by-case inductive generalization of the natural history type of scientific procedure, the civil law must be approached, in most, at least, of its parts, with the deductively formulated theory of the method and mentality of mathematical physics as one's model. ^{There is a third type of positive laws} Treating each dispute as unique, it dispenses with legislative statutes, legal principles and litigation, to settle disputes by the methods of arbitration and mediation. This was the preferred method of positive legal procedure in classical Confucian China. Gandhi turned to it in his South African period. With the present vogue of philosophical existentialism, nominalism and ethical subjectivism, accompanied by the increasing influence of Asia with its anti-litigational mediational ethic of peace-making, this positive legal method is likely to take on increasing importance in the days to come.

The scientific method for determining the living law is that of deductively formulated and indirectly verified theory, as used in contemporary cultural anthropology and comparative philosophy of the world's cultures. The scientific method of natural law jurisprudence is that of the philosophy of the scientifically verified theories of natural science, including psychology, when the latter science restricts itself to those facts about man that are logically antecedent to, and independent of, the cultural differences between men. Those psychological facts that are culturally relative belong to social psychology and to sociological jurisprudence, not to

the psychology of natural man and to natural law jurisprudence.

Clearly, contemporary law is a challenging subject. Its challenge, moreover, appears to be inescapably philosophical with respect to both theory and method.*7

When no facts arise to bring the traditional theory or methods of a subject into question, its problems are not philosophical.

The new fact which we confront at the beginning of the second half of the twentieth century is that the study of religion is becoming technically possible and therefore it is positively imperative for all of us without leaving one's native environment and society. This new fact requires the deeper interpretation of the opening words of Paragraph 2.

Construct state and constructed בְּנוּי require great attention in our quest.

For instance incomplete symbol such as "righteousness" and "nation" are transformed into complete symbols in Halakhic use.

e.g.

קָרַב רָחֵק

full proselyte

Important question in indicative and non-indicative, in which category imperfect Hebrew falls is yet to be explored in our quest for religiously valid view.

Notes on Title

*1 In translating קָרַב / רָחֵק , since verbs are denominative of the noun, ger, I chose English "initiate" to accord to the spirit of Hilkhoth Gerim, which will be discussed in observation of Paragraph 1.

Hypothetical root 71c never appears in Biblical Hebrew in Piel and Hithpa^{al}el, as Rabbinic Hebrew does.

אין שום מקום בלשון חז"ל

*2Haim Tchernowitz. Toledoth Hopposkim, vol. 3, p. 285.

*3Mishneh Torah, Sefer Qedushah, gedruckt bei Julius Sittenfeld, Berlin, 1866, p. 105 groups Ch. 13 through 22 under the heading Hilkhoth Gerim.

*4Michael Guttman. "Zur Einteitung in die Halacha" In (Jahresbericht der Landes-Rabbinerschule in Budapest, fuer Schuljahr 1908-9 and 1912-3) p. 21.

*5Ibid. p. 20.

*6Peter Boodberg translated "tao" as "Lodehead" in "Philosophical Notes on Chapter One of the Lao Tzu" in Harvard Journal of Asiatic Studies. Vol. 20, pp. pp! 598-618.

*7F.S.C. Northrop. The Complexity of Legal and Ethical Experience. Little, Brown and Company, Boston. 1959. pp. 42-43.

PARAGRAPH 1.

A proselyte who enters the household of Israel is obliged to circumcision first. If he was circumcised while he was a non-Jew (or born circumcised - the prepuce is deficient from birth)¹ (Tur in the name of R. Asher), blood of the covenant has to be dropped from it, but they do not recite the blessing over him. If membrane viril was cut off, circumcision does not prevent him from proselytism and immersion is sufficient for him. (In case immersion preceded circumcision as ex post facto it is valid.) (Beth Yoseph in the name of Ramban, and likewise Magid Mishnah^e on Hilkhoth 'Isurei Biah ch. 14) (Other opinion that the immersion is not valid.) (Nimkei Yoseph ch. HaHolez^u in the name of Aaron Halevi of Britzlona)

Siftey Khohen says: Dropping of blood of the covenant without blessing recited is based on a principle that we agree to be lenient and skip the blessing at a questionable case, but is balanced by the stringent action. See #265:3

Ture Zahav quotes on the same point from Beth Yoseph on Tur #253 that dripping of blood is not necessary for a born-Jew, since there is a difference between a born-Jew and a proselyte.

Ture Zahav relates the case of a circumcised non-Jew 'E'ven

Ha'ezer #7, since the case refers to a circumcised non-Jew having relations with a Jewess and the issue shall not be abhorred as Bar 'aramai, as Alfasi comments on ch. HaHolez, but is regarded as a lawful Jewish issue ex post facto. See paragraph 3 in this section. Joshua Katz's Perishah similarly relates the matter to a case of a Jewess priest who had a first son by a circumcised non-Jew, which is not required for the rite of Pidyon Haben, but this is not the case as in #305.

- Observation -

An apparent question arises. Who is a Ger? When is he first called a Ger and until when?

There seems to be three possible assumptions implied and fused up.

1. When a non-Jew comes to Beth Din with an explicit intention to become Jewish. (Paragraph 1)
2. When he completes the blessing after immersion. (Paragraph 2)
3. He is called a Ger for his lifetime. (#269)

The three conflicting definitions of Ger are rooted in three levels of Halakhic field continuum.

There are respectively, to my observation:

1. sequential legal term "Process" or merely a step in time sequence.
2. law of contract (acceptance of Mizwoth)
3. law of status (indelible allegiance in marriage and divorce)

PARAGRAPH 2

When one comes for proselytism, we say to him, "What have you seen that you have come for proselytism? Do you not know that Israel at the present time is oppressed, despised, (They are downtrodden and disfigured. From 'Why is thy strong one overthrown?' Jer. 46:15) and harassed and afflictions overcome upon them." If he say, "I know. But I am not worthy to join them" ...they accept him immediately and acquaint him the principles of Judaism that are the unity of God and the prohibition of idolatry. And we extenuate with him in the matter. And acquaint him with some of the punishments of the commandments, which we say to him, "Before you have come to this position, even you ate suet, you are not punished with kareth. Even you broke Sabbath, you are not guilty of stoning. But now, if you ate suet, you are punished with kareth. If you broke Sabbath, you are guilty of stoning." However, we are not to exceed nor to exact on him, but as we inform him the punishment of commandments, so we let him know the reward of commandments that through the observance of these commandments he attains the life of the world to come and that there is no absolutely righteous man but man of wisdom who observes these commandments and know them. And we say to him, "Let it be known that the world to come is stored only for

the righteous and they are Israel and that which you see Israel in trouble is in this world. It is good for them that it is stores, for they are not able to receive much goodness in this world as non-Jews, lest they should become proud of their heart and go astray and lose the reward of the world to come. But the Holy One Blessed be He does not bring too much punishment upon them in order they should not perish. All the nations vanish, but they endure."

And we extenuate on this matter for intimating commandments.

If he accepts, we circumcise him immediately and wait until he is completely healed, when we immerse him in a proper Tevilah with no partition. (Some say that he shall shave his hairs and clip his nails on his fingers and toes before Tevilah.) (Tur, Alfasi and R. Asher) and three (learned men) (also Tur) stand about him and acquaint him for the second time with some minor and major commandments as he stands in the water.

In the case of a woman, Jewess' place her in the water up to her neck and the judges, Dayyanim from outside, acquaint her in some minor and major commandments as she sits in the water, then she immerses before them. They turn their faces aside and go out in order not to see her when she rises out of the water.

He blesses over the immersion after he rises out of the water; and as he has had the Tevilah, he is now a Jew. Even if he turns back to his former way, he is an apostate Jew whose marriage is valid.

Siftey Khohen: We intend in the orientation to let him leave if he wants, since gerim are hard like a sore to Israel. This measure is also to prevent his possible regretting after he has become Jewish without adequate warning, as Beth Yosef, which the 'Aharonim held as not indispensable procedure. Getting acquainted with the punishment in all the details is limited only to indicate a general way as it is mentioned in the paragraph, since the candidate may well be motivated for the sake of the heaven. Similarly Bayth Hadash.

It is to be noted here that with the traditional reservation against gerim on the part of Israel and warnings and preventive measures taken by Beth Din. Shabbathai Khohen did not forget to mention the possibility in emotive trust in both sides, Beth Din and the candidate. This is a point worthy to be deepened in the light of interfaith encounter and also in the prospect of Beth Din as a religious institution.

Siftey Kohen, on the base of Talmudic dictum

כל דבר שיש בו חסד, refers to proper Miqweh for the immersion of proselyte, as Rambam,

כל דבר שיש בו חסד, refers to proper Miqweh for the immersion of proselyte, as Rambam,

Note: the Revision, which R. David Miller mentioned in his work, The Secret of Jews, p. 382.*1

Wherever the volume of water for the Mikvah is mentioned in my previous work as being 179.53 gallons, it should read 80.57 + gallons. 304,995.17 cubic centimeters, 305 litres.

Wherever the floor space of the Mikvah is mentioned in my previous work as being about 8 square feet, it should read about 3-2/3 square feet. Also see p. 353.

"I cannot reconcile the 'Aruch Hashulhan's calculations with the fundamental rules for calculation of the size of the Mikvah laid down by our Talmudic sages, above cited (Yoreh Diah, #201 - 1)"*1

An opinion in Bayth Hadash brought up by R. Meir Darshan quoting Rashi on Parashah פאראשא (Num. 8:1,12-16) and also the custom of apostate Jew coming back to Judaism is considered as de facto and not-shaving itself does not make a partition, which does not invalidate the immersion, (extreme attention at a particular physical requirement is avoided)

Turey Zahav also quotes R. Halbo's saying. Nachmanides objection to the delay of Mizwah of immersion waiting for the complete heal and his consequent proposal for immersion before circumcision is against the principle to let the candidate leave earlier than he suffers the painful operation, but is accepted as de facto.

Turey Zahav spots at Perishah which quotes Rashi's equation of 710 to Yezer Hara'a.

Dr. Wachholder lists six different interpretations

offered by Tosafists, and takes the first as the deepest interpretation of

ק'ל'ט פ'ר'ט חמ"ח ע"ב

It seems to me R. Abraham Hager's attitude echoes some bit of arrogance which is peculiar to Christian mentality. I keep silence on this.

1. R. Abraham ha-Ger explains that proselytes, having accepted Judaism voluntarily, observe the commandments more carefully than the average Jew and thereby remind G-d that born-Jews are sinning while strangers follow His precepts. (Qiddushin 62b)

2. R. Isaac b. Samuel says היה dwells only among those Jewish families whose pedigree is unmingled with alien blood;

3. Rashi - as proselytes are not acquainted with the ritual, their influence is adverse.

4. because Jews are responsible for each others' sins,
they suffer when a proselyte falters in the law.

5. in 24 places, the Pentateuch admonishes against oppressing or insulting the convert, but Jews, being merely human, find it difficult not to insult him.

6. the primary reason the Jews have been in exile has been to attract converts, so proselytes have been the cause of the exile of the Jews.*2

"We extenuate in this matter for intimating commandments."

Maggid Mishnah^e centers the attention at this point.

This self evident matter (6 | e e) - unity of God
and prohibition of idoltry - are the essence of religion and

faith. He is bound to believe clearly. We are to let him know this and conduct lengthy discipline with him for the matter is the essence of Judaism, religion and proselytism. (Maggid Mishnah on 'Iss^urey Biah 14:1)

Intimating commandments suggest that Beyth Din should exercise its deepest scholarship and insight to enable the candidate to feel at home with the law which acceptance is the essence of Judaism as well as of conversion.

The essence of Judaism being so clear and precise, it should not take more than a few seconds for Beyth Din to let the candidate know it. ^{the} Task of Beyth Din really starts after it. To contexturize this principle into the candidate to the extent that he feels completely at home with the law.

How to do this internalization of law within individual mentality - the code stops here and inner dislectic of the law starts its dynamics. Intimate commandments as if they are his own sons to educate with him.*3

- Observation -

Paragraph 2 through *ג'N /N/k |'fN סאָר אַר* may be regarded as one of a few Rabbinic passages representing Israel to the non-Jewish world with a crystal compact of internalization of essence of Judaism.

Beyth Din, it is assumed that the candidate has implicit and/or explicite will to become Jewish and the will is in an unspecified way communicated to Beyth Din being composed on the said ground, upon being confronted to the candidate, say...

Do we say to the candidate in Hebrew exactly as it is

written in Shulhan 'Arukh? The question is live in case the candidate is Hebrew speaking and conversant in Rabbinic and Biblical expressions and phrases. Or do we paraphrase with minimum interpretation the Halakhic and religious Hebrew compiled and authorized not after the 17th C, or a few hundred years ago. Or are we allowed to present this paragraph in other languages? If so, to what extent and depth can other languages reproduce the original? Now we find ourselves standing at the same relatively field as Rabbis faced with the Scripture.

The recognition of the layers of the contents of the oral orientation is shown by colors in the following page.

Barayitha in Yevamoth 47a-b is, without any addition but with a few omits^{2310 v5}, followed by Alfasi. Maimonides boldly added to ^{the} Talmud the "principles of Judaism" with warnings against ex remities, emphasis of Intellect in observing and knowing of Mizwoth, the notion of surviving Jews, intimating of Mizwoth in the orientation.

Tur followed mostly after Alfasi with sole adding of Rashi's comment on Talmud, but did not take Maimonides' theological additions.

Karo combines Mishneh Torah and Tur. ✓ is the only word he added to his predecessors's works. As far as wording concerns, Karo is with Tur more than with Maimonides.

Note that ~~Rabinowitz~~ Diqduqey Soferim does not cover Seder Nasim.

There are a few points of difficulty in this paragraph, Commentators do not take up.

1. "When one comes for proselytism, we say to him..."

When one comes to become Jewish, it is assumed in this sentence that some Jews noticed his implicit will to become Jewish and informed learned Jews, who after examining the candidate's motivation and sincerity in some unspecified ways, as Rambam states that there shall be preliminary examination before ^{the}Beth Din is formed for this special case. This step before the formal Rabbinical court are entirely omitted in Karo and Commentators. How long may this step last? It may be a few hours, may be twelve years or even may last two or three generations as in the famous case of Minyamin's matrimonial plan. (Sotah 9a, also see Braude pp. 60-61 note)

Concerning Minyamin's elaborate matrimonial plan, see Braude pp. 60-61, note 62.

"Post-Talmudic authorities continue to differ on the legal status of the issue of Egyptian proselytes of varying generations. All are agreed that the issue of a second generation Egyptian wedded to an Egyptian proselyte is considered second generation Egyptian and may not marry into the Jewish community, but Maimonides ('Issure Bi-ah 12-20) regards the issue as second generation. (See on Post-Talmudic opinions Shulhan 'Arukh, Eben Ha-'ezer 4-6)"

As a matter of fact, the term Ger is assumed very differently in Paragraph 2 and 12 and the entire section #269, which

will be discussed later. During this period of indetermination, what Beth Din shall do and how the candidate will pursue the knowledge in Judaism as he is well motivated. Careful students on Hilkhoth Gerim cannot miss an assumption that a candidate is motivated by an immediate practical necessity to become a member of the Jewish community - marriage is the foremost example. The consequent Halakhic elaboration, being based on this assumption, is doomed to have discouraging overtone. "We never go out seeking converts, of course. We simply accept proselytes with many misgivings." This is the overwhelming attitude today in Judaism - Reform or Orthodox. 2

However, today, with the development of communication and publication being no parellel to those of the sixteenth century, what we will do if one comes $\int k \tau \theta' \lambda \theta \text{ } \theta / \eta \int f$, not $\tau'' \theta \lambda \theta \int$?

"In a theory of cultural evolution, which identifies the "ought" with the historical "is." What meaning is there for saying that today's culture is bad and in need of reform? Within their theory this question has but one answer: The "is" for today is bad to the extent that it departs from tomorrow's "is". In other words, the ideal for today is tomorrow's actuality. But to make this answer meaningful as a basis for prescribing how today's culture is to be reformed, it is necessary to know today the charactor of tomorrow's "is". This is impossible unless there is a determinism such that knowing today's culture, one can deduce tomorrow's. Thus it happened that to the true doctrine that culture in the West evolves according to the

dialectical logic of negation. Hegel and Marx added the false doctrine that this dialectical evolution of Western culture is deterministic."⁴

Today, Maimonidian Neo-platonism which appears to have been completely negated as a set of nonsense, we nonetheless hold indeterminate field theory in which time is identical to extension of thought at any given spatial point. Our endeavor is to carry the center of thought at this point zero, and its method and discipline have been cultivated in Eastern culture, which I shall express fully in my dissertation.

1. If Halakhah starts with conventional assumption, it ends with conventional misgiving.

We here focus our attention on this point, studying carefully how the Rabbis and highest minds of Jewish experience impressed themselves in this very subtle marginal area of law.

2. "acquainting him with the principles of Judaism that are the unity of God and prohibition of idolatry"

Karo adopted this Maimonides' phrase, which is not in Talmud (Yevamoth 47a), neither in Alfasi nor in Tur. "Man of wisdom (intellect) is a Zadiq and Zadiqim are Israel" appears to be Rambam's explanation of it, just as other phrases are obviously paraphrasing the basic Talmudic text.

Did Karo pick up creedal aspect of Rambam or simply followed it as any legal literature conventionally does (legal conservatism)?

Documental criticism of the Scripture in the nineteenth

century went so far as (1) recognition of layers (2) de-harmonization (3) evaluation (4) dating (5) bundles used for source of history, which is meaningful.

Self-contradictory defect of the nineteenth century historical approach become clear when the dates of the layers are known as in our case here.

In a theory of cultural evolution, which identifies the "ought" with the historical "is", what meaning is there for saying that today's culture is bad and in need of reform? Within Hegel and Marx's theory this question has but one answer: The "is" for today is bad. H. Strack implies this.

3. "All the nations vanish but they endure": On which Rabbinic commentary and reference do not shed any light.*5 Literally "all the idolators", which in Halakhic Hebrew simply means non-Jews. But I take "nations" here. "Nation" on the basis of contractual law has been confused from Hobbes to Austin with "tribe" on the base of status law. Hobbes's naive realistic epistemology and his metaphysical ontology of material substances was the cause. For a "nation" in the latter sense, it is true as Austin maintained that international law is a theoretically self-contradictory notion, and hence practically impossible. Many legal scientists today hold that there is no such thing as international law. It follows that international community is but a tower of Babel on sand. Catholic or ecumenical conference and so forth are not exceptions from this point of view.

I would interpret and translate:

"All the nations are self-contradictory in complete symbols,

which are bound to vanish. But endures are they Israel." For "Jews" are complete, concrete symbols, once they accept the Mizwoth. International law, or Kingdom of God or Messianic jurisprudence in religious terms, in turn becomes actual on this base of "Jew." We understand the Torah as prototype of international law and Hilkhoth Gerim as a living agent's formulae for global Israel.

This daring expression is, however, only explained with utmost humility as it has been experienced and cultivated in the everyday actions of Jews as minority overagainst majority powers. Majority force can never say this phrase.

We can here compare how Christianity acquired universality by substituting Halakhah with philosophy.

"Candidates for church membership of all ages, were first given a systematic course of instruction and testing (catechization), lasting for several months and ending in the rite of baptism, by immersion or sprinkling. (Commonly the catechizing was during Lent and the baptizing at Easter.)

The believers appeared in white robes for their baptism, and that rite was followed by confirmation or the laying on of hands, that the Holy Spirit might descend upon each new member. After the laying on of hands came unction (anointing with oil), concluded with making the sign of the cross, while each new member vowed^{*6} to give up the old gods, and the old morality, and to follow the law of Christ, in perfect assurance of faith.^{*7}

The significance of Justin Martyr and his fellow apologists

is, that they successfully demonstrated how in Christianity, when it chose to appear in Greek dress, could at whatever sacrifice of its original Hebraic form, not only continue to make a powerful religious appeal, but hold its own with any of the classic philosophies of the ancient world - Platonism and Stoicism especially. It became easier now for Christian writers to invade the field of general philosophy, and to speak of the Christian religion as truly universal in its scope and application - "catholic" was the word they used.*8

4. "If he accept" the mode of acceptance is not at all suggested. Acceptance of Mitzwoth, observance of them and study of them are all implied. Judgement by Beth Din is solely directed by their view of the law and ethics. Let us study how ethics are viewed by lawyers. F. S. Cohen advocates, as he did in 1934, for scientific modern ethics, in Brooklyn Law Review 33 (pp. 34-35)

"In the Books of Mo^s, all the basic problems of human conduct that a given social order raised are dealt with as parts of the same life, subject to the same sanctions, and marked by a constant set of human values. There is no hint that problems of hygiene are less "moral" than problems of sex, or that a man's conduct ceases to be moral when it affects vast numbers of his fellows. The moral system which the Books of Moses reflect is a system which seeks to guide men in the fields of laws, art, commerce, hygiene, and all other realms in which men seek to achieve the valued ends of life. All conduct, of course, involves questions of

technique, as to which such a moral code may have little or nothing to say, but all conduct also involves a choice of human ends, and to that extent falls within the field of a complete moral code.

What is true of the moral code of the Hebrews is no less true of that which appears in the writings of Plato. To Plato the notion that art, for instance, might have a purpose of its own ("art for art's sake") foreign to any standard of the common good, and that the question what an artist ought to do as any artist was any less a moral question than the question of what he ought to do as a father, or husband or friend, seemed quite devoid of force. If certain types of painting or sculpture or music induce men to live worthless lives, they are in Plato's view, bad, and the artist who pursues such forms of art must be punished or exiled from a good state. Trade practice, whether of artist or of lawyer offers no haven of refuge from the winds of moral doctrine.

This view of a moral code which pervades all aspects of life is basic in the Christian world view of the Middle Ages. The Church teachers treat in great detail such problems as the problems of the fair price, not only with respect to payment for the use of money, but also with respect to all other forms of trade. Not only customs of trade, but also habits of thought, the pursuit of art, the use of wealth, and duties of rulers of subjects and of subjects to rulers are clearly conceived as fields of human conduct which must be subject to a single set of social values if men are to avoid endless conflict

and chaos in their common life.

Each of these great moral codes faces clearly the basic problems of a given social scene. Each looks upon the whole field of human conduct as the proper realm of ethics. There is no hint in any of these worldviews of the modern "Sunday School ethics" which restricts its outlook to a small part of men's day-to-day life and leaves major problems of conduct to be dealt with in terms that are supposed to be non-moral. None of these worldviews would permit a lawyer or judge to deal with basic problems of human conduct while shutting his eyes to the doctrines of ethics which had been evolved in an attempt to throw light upon these problems. In each of these systems, of thought, the jurist must be a student of ethics and may be a teacher of ethics."⁹

On the other hand Solomon Simon is convinced in concrete strength of Halakhic discipline over mere ethics.

"Halakhah is based on the conviction that ethical principles in themselves will not lead to an effective change in one's everyday life. Ethical principles require discipline, education and self-control so as to create a will and induce a habit wherewith to embody the principles in experience. Without concrete and specific application, the noblest ethical principles remain abstractions and wry ideals. Halakhah-Judaism fulfills two functions -

- (a) that of self-discipline
- (b) a mechanism for the attainment of individual shleygmuth "wholeness"

Halakhah has marked Judaism as a "religious civilization."*10

5. "I am not worthy" seems to Eastern mentality a balanced self-sufficient expression. Why Rashi added to this "to have fellowship with them." The original text in Talmud (Yevamoth 47a) appears more adequately an expression of the virtue of humility as Maimonides said in his Hilkhoth De'oth ✓

ד'ק'נ'ע א'נ'כ'ח'ב' א''ו

6. "Observing and knowing mizwoth". Dr. Alexander Guttmann in his *Das Verhaeltnis Praxis-Gesetz in der Mischna* states that practical instances in Tosefta are about 300 whereas they are about 150 in Mishna.*11

Between practice and study (teaching), there exist almost whole prospects of ethical and legal experiences under God.

This belongs to our further study in this approach.

Notes on Paragraph 2

*1 Rabbi David Miller. The Secret of The Jew, 1930, revised 1938. p. 382.

*2 Ben Zion Wacholder. Attitudes Towards Proselytizing in the Classical Halakah, Historia Judaica, vol. XX, Oct. 1958, New York, p. 83.

*3 ל'י'ב'א ל'כ'א ל'ח'א ל'ט'א... "We intimate one in presence." is an leading element in religious orientation.

*4 F.S.C. Northrop. The Complexity of Legal and Ethical Experience, Boston, 1959. pp. 120-121.

*5 ד'ק'נ'ע א'נ'כ'ח'ב' א''ו is referred to Sotah 9a by Vilna Gaon. Tanukhuma Ne'zavim refers to ל'י'ב'א ל'כ'א ל'ח'א ל'ט'א c.f. also Deut. 32:23 "Mine arrows will be spent, but sons of Jacob will not cease."

*6 No vow of renunciation of former status exist in Hilkhoth Gerim cf. U.S.A. naturalization law requires renunciation.

*7 John B. Noss. Man's Religions. New York, MacMillan, 3rd ed., 1963. p. 726.

*8 Ibid. p. 631.

*9 F.S. Cohens. Readings in Jurisprudence. 1950. pp. 648-649.

*10 Solomon Simon. A Renewed Halakhah tr. fr. Yiddish by Israel Knox. A Quarterly Journal of Jewish Life and Thought, vol. 3 No. 1, Winter, 1954. p. 50.

*11 Samuel Löwinger. ed. Jewish Studies (in memory of M. Guttman). Budapest, 1946. pp. 115-128.

-as

day-

Paragraph 3

Every matter concerning a proselyte, orientation in Mizwoth to accept, circumcision, immersion is required to take place in daytime, (Tosafat and Rash ch. HaHolez) before three who are lawfully fit to adjudicate. This is only a priori, but as post de facto, if he had circumcision or immersion in the presence of only two (or relatives) (Hagahoth Mordekhai) and in the nighttime; even he took immersion not for the sake of proselytism but as a man who takes immersion for his noctual^{ry} pollution or as a woman for her menstrual^u uncleanness; he becomes a proselyte and is allowed to marry a Jewess.

But acceptance of Mizwoth does not follow the above. For it is valid only in daytime with the presence of three. According to Alfasi and Rambam, even ~~ex post de facto~~^{ex} one who had immersion or circumcision ~~with~~ⁱⁿ the presence of two or at night, it is invalid and he is prohibited to a Jewess.

However, in case he married a Jewess and had a son from her, we do not disqualify the son. (from marrying to distinguished lineage.)

The question is how "acceptance of Mizwoth is essentially different from immersion and or circumcision. Immersion and circumcism can be performed before two ^{men} and at night. Whereas "acceptance of Mizwoth is valid only before three ^{men} and in daytime like Elizah.

Siftey Khohen on this question explains, quoting Tosafists and Ra'ash, that "acceptance of Mizwoth" is the beginning of Din (Hoshen Mishpat #4), but immersion and circumcision are concluding the Din which can be finished at night.

An investigation must be undertaken on what Isserles wrote (ibid. Hoshen Mishpat #4-2) "some say - if they pass the time and conclude the Din at night, their din is valid." If so, Siftey Khohen asks, acceptance of Mizwoth can well be de post facto at night. Perhaps, Isserles refers the reasoning above mentioned to monetary cases, since "hefger beith din hefger". Bayth Haddash on Hoshen Mishpat #5 is for deciding the case of Halizah toward stringency.

The question remains unanswered. One thing through this discussion turns out clear. Stringency vs. leniency is not necessarily a criterion in understanding the particular Halakhah is favorable to a given subject or not, though it is certainly a relativity field concept to elucidate law.

Immersion for proselytism includes "acceptance of Mizwoth".

- (1.) Immersion alone can be done before two and at night.
- (2.) Acceptance of Mizwoth alone can not be done except with three and in the daytime (Alfasi, Rambam) like Halizah, but not like monetary case as Isserles supposed.

We can state the question again:

For Alfasi and Rambam "acceptance of Mizwoth" is fused with Tevilah.

For Tur and Karo, "acceptance of Mizwoth" is separated

from Tevilah and Milah.

Another question: "We do not disqualify the son from a non-Jew whose proselytism did not meet the requirements (at night before two) and a Jewess."

After all this Halakhic elaboration and strictness on ritual formality why the law seems to allow the apparently non-religious relation between incomplete proselyte and a Jewess.

The law encourages loose sexual relation?! Turey Zahav: Alfasi wrote on this. It is post de facto that we do not disqualify the son from a Jewess by the incomplete proselyte. It refers to the matter that they should not call the son as the son of a non-Jew, since a Jewish family of distinguished lineage would not marry him even though he is a Kosher Jew. Even a slave had a relation with a Jewess, the son is a Kosher Jew. Nevertheless the distinguished family would not marry him. In ch. HaHolez; Rab pronounced him a Kosher Jew and wanted to give to him his daughter but now Rav is made a gaunt.

Rabbenu Hannan~~el~~ intended the same way in Tur at the beginning of this section.

"We do not disqualify him" is the call for the proud Jews of distinguished lineage to give their daughter to such an issue.

Law runs by itself to greater minuteness. It often appears becoming more and more stringent. At the same time, the Law assumed the inevitable free force of sex and negate itself by adopting to the cases which the instinct brought up. Rabbi

seeks, then, a virgin field of Halakhic continuum from where a genuine law-pursuit can make a fresh, renewed step. Leniency and Stringency are relative terms, and it follows that lenient decision does not mean a rabbi's attitude to be favoring, as shown especially clear in this case.

Dr. Wachholder assumed Spanish school and German school and analyzed Yoreh De'ah in terms of leniency and stringency, as follows: (Historia Judaica, vol. XX, 1958, p. 95, note 75).
 Parag. 1. Previously circumcised candidate need Hatafah (Span.)
 Parag. 3. Three judges presenting circumcision and immersion is only a preliminary requirement. (Tosafists)

Parag. 10. The proof of conversion is needed outside of Israel (Rambam)

Parag. 12. Only present motives should be considered. (Span.)
 Besides there are two instances.

'Even Ha'ezer 1:7. A convert who had his children when he was still a non-Jew, when he and his children became Jewish, they fulfilled the commandment of Per'ayah 'Ur'ubiah. (not in the case of former slave)

'Orach Haim 199:4 "God of Our Fathers" can be recited by proselytes. (Rambam and also Tosafists)

In addition to these:

- (1) Like Tur, Karo places Hilkhote Gerim in a more favorable light.
- (2) Karo does not quote the famous statement of R. Helbo

.תהאבא דמרתא דמרתא דמרתא דמרתא דמרתא

Dr. Wachholder concludes: If German school prevailed,

the laws of proselytes would have been more positive. Dr. Freehof points out in his Recent Reform Responsa, 1963, p. 81 that Dr. Wachholder's distinction between Tosafists (therefore the Franco German Jews) consideration of proselytizing as a mitzvah and the Spaniards who did not hold so, is to be modified by the fact that it was the Spaniard Nissim Gerondi who made the warmest statement about proselytizing is a mitzvah. "If we may be their ^{agents} (the ordained Palestinian rabbis) in everyday money matters, surely we may be their agents for the noble task of bringing proselytes under the wings of the Shechinah!" (Commentary on Alfasi Guttin ch. 9)

Of course, R. Nissim Gerondi lived in the 14th century when the German and Spanish schools were emerging to a stream, which would soon be represented by the victory of Shulhan 'Arukh.

At any rate, for our search for a religiously valid view for proselytism explicitly stated in Shulhan 'Arukh, whether proselytizing was regarded as a mitzvah during a certain temporal spatial range in the history before 1500 or not is not relevant.

R. Helbo's statement "Proselytes are difficult as sore to Israel" is not mentioned by Karo, but both Siftey Khohen and Turey Zahav recite the phrase immediately at the beginning of paragraph 2 as Alfasi, Rambam, R. Asher did. Karo's approach is to show precisely factual prescription of conduct how to do this, when to do this, which is the very element that lead Shulhan 'Arukh prevail over the great eagle of Mishnah Torah.

As Tchernowitz beautifully states*1

ה'רמב"ם נשאר "הנשר הכפול" אבל מקומו במחלוקת.
והש"ע שהיה מצוי בקל בהחלט הוצא לרד"ל, משה בח"ר
ספי לטובל את מהחר פסקיו, גלובל-פסקי הלכות גיו-
אבל, וקד'פתו - האמנות והפער - זרק, הוא התנשא
למלאך והרמב"ם נהפך למחזיק משלש הרגלים שצ"ה
העתיק מהר"ק את שולחן.

Freehof observes the proselytism in American and in Israel as follows:

"Basically one of the sources of difficulty in the situation is not so much what the Law is, but the attitude of the rabbis. There is only one form of Jewish religion in Israel, and that form, for reasons which seem adequate to itself, is afraid of the whole situation confronting the Jewish religion in the present world (including Israel) and react vigorously against a liberal attitude in the reception of proselytes. There are in Israel many moods among Jews, but only one type of religious organization. In America, for example, where there is more than one type of religious organization, the mood between traditional and modern has become mutually tolerant".*2

A historical approach of law disclaims concern with ethics and repeatedly invokes a Zeitgeist or Volksgeist to decide what the law ought to be.

Even Maine's famous generalization "the movement of the progressive societies has hitherto been a movement from Status to Contract"*3 was generally received as an indication

of the desirability of free contract.

In looking up the law in this attitude, conventional accusations against legalism lose the most of their ground, namely law entails only one attitude.

Puritan legalism and Jewish legalism belong to two different courses of the universe.*4

The former negates explicitly the continuance from God to law by the proposition God became man. Becoming is being; therefore Jesus is God. Jesus is the law. "Believe in him!"

At this point law-loses the law-giver and appears frozen. Or more correctly, disappears.

Humanism does not say "believe in Jesus", but says "believe in man". Both are devoid of the law-giver. It is no wonder that the main alternative for them are ethical relativism, (which is) in the end,

Notes on Paragraph 3

*1Chaim Tchernowitz. Toledoth Ha-Poskim. 1947, vol. 3, p. 332.

*2Solomon B. Freehof. Recent Reform Responsa. Hebrew Union College Press, 1963. p. 76

*3Ancient Law, ch. 5, 1861.

*4 See James Parkes' contrast: orthodoxy vs. orthopraxis.

The Foundations of Judaism and Christianity, Quadrangle Books,
Chicago, 1960, p. 830

Paragraph 4

Since the immersion of proselytes need Beth Din of three, we do not immerse him on Sabbath and holiday, nor at night. If it has been done, it is valid.

Siftey Khohen: Semag" says in the name of Ba'al Halakhoth Gedoloth that we give him immersion on Sabbath and on Holidays. See Bayth Hadash.

Turey Zahav express a question why Beth Yosef did not write, as Tosafists did in ch. HaHolez, that we do not immerse proselytes on Sabbath due to its uncleanness and hence an exception of legal restoration of disqualification.

Ezekiel Halevi Landa in Dagol Meravavah and Abraham Maskil Le-eythan in Yad Avraham comment, in correction to Paragraph 3, on the case of minor whose acceptance of Mizwoth is not appertaining to him that immersion becomes the essence of proselytism. Therefore Beyth Din of three and in daytime are required ^apriori and de facto.

From this we can safely say 'Aharonim regarded immersion as important as acceptance of Mizwoth and can take the place of the former. However, the orientation in the water is not discussed at all in this case. Further investigation is required on this matter.

Paragraph 5

One who circumcises proselytes blesses "Blessed art thou Lord, our God, King of the Universe, who sanctified us with his commandments and commanded us to circumcise proselytes." Thereafter, he blesses, "Blessed art thou Lord our God, King of the Universe, who sanctified us with his commandments and commanded us to circumcise proselytes, and to drop out of them blood of covenant, for without blood of covenant heavens and earth would not have been established, as it is said, "Were it not for My Covenant, I had not instituted the laws of Nature."¹

1. Jeremiah 33:25 is incomplete conditional sentence (prodasis) - Thus saith the Lord - If my covenant be not with day and night, if I have not appointed the ordinances of heaven and earth ...(J.P.S.)

Dr. Asher Asher (M.D.) in his The Jewish Rite of Circumcision, London, 1873, shows a keen insight on circumcision from a medical point of view and also translated the passage from his own point of view. (p.19)

..."us to circumcise proselytes, and to imprint on their flesh the seal of Thy Covenant, the symbol of that morality and religion for the practice of which the world was called into existence, as it is written - "Were it not for My Covenant, I had not instituted the laws of Nature. Who establishest the Covenant".

He notes Pesahim 68b: Yalkut, Jeremiah 321, Rashi's remarks on the Scripture for basing his Midrashic interpretation.

Turey Zahav: Perishah revised the text with the concluding phrase:

"Blessed art Thou who establishes the Covenant."

Paragraph 6

Kuthianess¹ who became Jewish² being pregnant.³

Her son does not need immersion.

1. There found no commentaries on Kuthian in this instance by 'Aharonim.

2. Dagul Merbābah. If Beth Din knew at the time of immersion that she was pregnant, the law is clear but if not I have a lengthy discussion which hangs on high tamerisks - i.e. 'אָרַרְרָא 'סֵאבָא [ע'סא] (originates from great men) but the space is not enough here!

3. Pithheẕ Teshubah. See Sefer Tifereth Lemoshe, which should read - "If she did not become Jewish we require immersion for her son."

Paragraph 7

¹Non-Jewish child who has a father can be made Jewish. If he has no father and comes² to become Jewish or his mother brings him to be made Jewish, the Beth Din proselytise him since (ל'גזל כסף נזקל ל'גזל ל'גזל אל'גזל).³

"We give merit in absentia."

Whether his father initiated him to become Jewish or Beth Din did, he can renounce³ when he grows up. His legal status will not be a apostate Jew, but a non-Jew.⁴

1. Be'er Hagolah: Rab Huna's dictum Kethuveth 11a and Rashi's comment (If he betrothes a woman, she does not need a Get from him).

2. Siftey Khohen: The child comes by his own will, even, as it is understood, he has no thought of his own, we listen to him on the basis of "ל'גזל כסף נזקל ל'גזל ל'גזל אל'גזל". But without his will, he is not a proselyte even when Israel dominates powerfully over them. (Bayth Hadash) (also Be'er Heftey)

Will (ל'גזל כסף נזקל ל'גזל ל'גזל אל'גזל) and thought (ל'גזל כסף נזקל ל'גזל ל'גזל אל'גזל) are distinguished here by Siftey Khohen rather naively. Perhaps he does not distinguish them at all. How can we recognize the child has a certain will to become Jewish? First the child must be able to express his will - implicitly and/or explicitly. His implicit will - Beth Din must be able to notice it. Siftey Khohen is very careful in limiting application of the said principle. When and where Israel has ever been strong over

non-Jewish society to the extent that a child conceived the will to become Jewish - is another question.

Let us observe this seemingly non-significant point into its depth.

- a. *paq* in this context undoubtedly means a quantifier as in the context of the Bill of Rights or the Declaration of Independence.
- b. This quantifier is given a specific qualification that it is a minor, which is internal Jewish halakhic category, 13 or $12\frac{1}{2}$ years old.
- c. It is necessary, therefore, to set the inter-relationship of the Jewish minor and the non-Jewish minor.
- d. The non-Jewish minor is 18 years old or so, when religious youths conceive a drive for a higher form of religiosity.
- e. There are many Rabbinic dicta vaguely related to this, e.g.

אין אדם יכול להיחשב קטן עד שיהיה בן 13 שנה

Gittin 12a

אין אדם יכול להיחשב קטן עד שיהיה בן 18 שנה

Eruvin 81

(Hasidah, Israel. Issac: Ozar Ma'amaroth
Jerusalem, 1959-60, Vol. 1.)

Jer. Kethuvoth 13:2

(Eisenstein: Ozar Ma'amare Hazal.)

3. Siftei Khohen. R. Nissin writes that protest of minors is not a protest to the matter, for if he wants to be (Jewish) afterward, his protest is completely disregarded, even though it is legal to the matter that after he has been grownup, if he insists in his protest, it has the legal effect.

The same opinion is of comment in Derishah.

Pithhei Thshuvah: cf. Sefer Tifliereth Lemosheh and etc. there must be a careful investigation on this matter, since this is one of the important essentials in proselytism. See Responsa^{um} of o'p 253

Alfasi on Hahotetz

Rambam Shitah Memequbbezeth

Ra'ash

All seems to indicate

} that Halakhah is against renouncing.

4. Turei Zahav: His betrothal is invalid. (marriage).

The age from 13 to 18 occupies a great period of formation of self. Religious education is consummated during this period. Some even get married. Some start to show his gift in various fields of mental activity.

If one hold that Hilkhoth Gerim starts its function only when a non-Jew comes to Beth Din with explicit will to become Jewish, the law would never touch the depth and secret of religiosity. Instead, the law would deal with only proselytism for marriage's sake and its attendant troublesome complications. This is apparently what is today. Nonetheless it is not what ought to be. Indeed, Judaism requires a life long discipline in the yoke of the law, the essence is the study of the law whenever and wherever the practice thereof happen to be impossible. Each nation has its own positive law and living law, which scientist pursues the natural law. There are professional lawyers and jurists in every level of the nation and the society and family. Between nations, however, only tragically ill-found international law operates desparately. The real depth cause seems to me the disruption between one category and another. From minor to man, from individual to family, from family to society, from society to nation, from nation to mankind, from mankind to all the living, from creature to the creator. In our case, here, minor to man is not changing nor conversion but formation and growing. It is the process from zero to one, not from one to another one. I would look up the law with this prospect.

Paragraph 8

The foregoing refers to one who was not brought up in Jewish minhag after he grew up, but in case he observed Jewish Minhag after growing up, he can never again renounce.²

1. Be'er Hagolah: dictum of R. Josef (Ibid) and Tosafoth R. Yom "7 like Ra'ash and R. Nissin.

2. SifteY Khohen: He will be an apostate (Mumar) Jew if he did renounce (Similarly Be'er HeYtev)

Does this mean that it is practically impossible to renounce? The truth behind this Halakhah is that after conscientious participation in a Minhag, one cannot be but a Jew.

The question remains, how far the extent of Minhag? And how deep and right is one's conscientiousness to himself and how his participation is verified by himself and by the household of Israel.

In paragraph 2 we studied the essence of Judaism and proselytism as the acceptance of Mizwoth. Here we search into our consciousness the fulfillment of a Mizwah. Self-sufficiency of Halakhic religion is at this point, which Dr. Michael Guttman with crystal simplicity in contrast to the nature of mystic religions. Mendelssohn and subsequent religious philosophers were not keenly aware of the distinction.

טבע צו מיסטוריע משונה וואס למארי מטבע צו מצותיות,
 הראשונה זקוקה ליציאת ברורות בהמינת הטבע האלהי,
 מאריו, תכונותיו ומצותיו בעצמות של האלהי,
 כי מן העצם האלהי נבנות השיטות המיסטוריות
 של אפני היתמצות או ההתחברות בין
 אלהים ואדם.

אמנם בעת מצותיות צריך להכיר את אלהים
 בהמינת אפיו העולם המגלה רצונו בתמאנת מצות.
 אם בן צו מצותיות אין יכול לחפור לתוך סתרי היותו
 של בורא העולם, אין בכך כלום. פיו לא לפעול
 שיש בורא ומנהיג לעולם והוא צוה למני אדם
 כבאר לא ליצוריו או כאפיו לעצמו, שיתנהל בהייהם כקובץ.*

Notes on Paragraph 8

*¹Michael Guttman. בהינת קיום מצוות Breslaw, 1930
 (Bericht des Jüdisch - Theologischen Seminars
 (Fraenckelsche stiftung für Das Jahr 1930)) p. 112

Paragraph 9

In case a non-Jew¹ comes to cut his foreskin because of wounds or congenital boil, a Jew is prohibited² to operate because he is not intended for Mizvah³. Therefore, if a non-Jew intends for the fulfillment of law of circumcision, it is an obligation for Israel to circumcise him.

(In locale where Jews are allowed to practice medicine for non-Jews, it is nevertheless permitted to do so)

(Nimkey[~] Yosef Chapter Nos'in 'al ha'anusah, and Rambam, Rashi, see #158)

1. Be'er Haggolah. Tur in the name of Rambam, in the end of Hilkhoth Milah. On the base of ^{the}Barayytha^h, Israel circumcises proselytes for the sake of proselytism, etc. 26a

2. Sifte~~y~~ Khohen: Because for non-Jews, it would not be a matter of life or death but if there is no remedy in the matter, it is permitted. Likewise in locale where practicing medicine for them is permitted, as for the sake of preventing ill-feeling or (וצדק) it is permitted. See Isserles' note of #263:5 and commentary by Be'er Heytev.

3. Turei Zahav: Medical treatment is prohibited on the one hand, doing Mizvah for him is obsolete since he is not intended to it, on the other.

This is an instance where law ends. Are we to generalize that Halakhah starts and ends among Jews? If Halakhah is viewed at compulsive aspect of law only, it may be so. Here I lead

an impulsive element of law into our discussion. Northrop criticizes that Petrazychis identification of natural law with psychological intuitive law is erroneous*. However, from an ethical point of view, therefore in religion, self-sufficiency of concept of impulsions is capable to extend the disrupted Halakhic continuum into non-Jewish field. Further study is being undertaken on this point.

Notes on Paragraph 9

*1 F.S.C. Northrop: Complexity of Legal and Ethical Experience, Boston, 1959, p. 92

Paragraph 10

Kuthy¹ or Kuthyess who comes and says "I was made Jewish by so-and-so Beth Din properly is not trusted to enter the congregation (community) unless he brings witnesses. If² we saw them observing the ways of Israel and practicing all the Mizwoth, these are indeed in the grip of Gereẕ Zedeg, even though there is none to witness that before whom they were made Jewish. But even in such cases³ if they come to mix with Jews, we do not marry them until they bring witnesses or immerse before us and they are regarded non-Jewish.

But⁴ one⁵ who comes and says "I was a non-Jew and was made a Jew by a Beth Din, trusted is he, for the mouth which prohibit itself is to be accepted. And Rambam writes⁶ that this matter is being referred to the land of Israel and to those days when everyone there was considered Jewish. But in the outside of Israel it is necessary to bring a proof and afterward marry a Jewess for where priestly descent is concerned, they put up a higher standard. (Kethuvoh 13a)

1. Be'er Hagolah: Baraitha Yebomoth 47a according Rabbis.

2. Be'er Hagolah: Rambam 'IssaeiBiah ch. 13: 9.10.

Note: The term used" *נאמן* *הוא*."

"

3. Ibid.

4. Siftey Khohen: especially one who has been considered as non-Jewish and say so. But one who has not been known as Jewish, he could have said that he was a Jew. He can be accepted on the base of Miggo.

Miggo: A legal rule according to which a deponent's statement is accepted as true on the ground that, if he had intended to tell a lie, he might have invented one more advantageous to his case.

5. Siftey Khohen: Bayth Hadash wrote: But we practice leniently and believe him as well as marry him a Jewess. It is possible that Rambam, too, would agree with respect to prevailing modes (ס'קלל ס'ח/ק). They are regarded trustworthy Jews even today, for most of them, non-Jews, marrying Jewess and entire family is regarded Kosher as explained in 'Even Ha'ezer #2. Rambam refers to the cases as follows in this paragraph.

6. Be'er Haggolah: cf. Pesahim 3b. Tosafists on a Kuthian slave.

Paragraph 11.

If one who¹ used to be assumed as Jewish in Israel (comes to Beth Din and) said "I became Jewish by myself", if he has children, he is not accepted with respect to the children, but² accepted with respect to himself, equating himself to forbidden cut of meat (and) to³ be forbidden to Jewess until he has immersion before Beth Din.

1. Be'er Hagolah: Yebamoth: 47a. a case brought to R. Jehuda:

Tur: In case we did not know that he was not a Jew. Be'er Hagolah's reference to Talmud is rather ambiguous. Study is necessary for judicial agents and ethics judges*¹ Hilkhos Gerim starts its function only with Beth Din. The question remains: Did he come to ^{the} Beth Din by his own volition or was he brought to Beth Din after being discovered in his former status? What would Beth Din do? Both cases would lead to the same process.

2. Siftey Khohen:

והוא לא היה כהן ואם כן לא היה כהן

(1) ^{אם כן לא היה כהן} it seems to me Siftey Khohen had used a different edition.

(2) the principle of virtue of disqualifying oneself is meant with respect to one's own testimony only, not to his

relationship with a Jewess and her non-disqualification.

(3) B^aer He~~y~~tev seems he read *נפוג כפ*.

Notes on Paragraph 11

*1F. S. Cohen emphasizes ethics over the law. A rabbi, far more than the lawyers and judges, must have clear attitude on this point.

Paragraph 12

When¹ the proselyte² comes to become Jewish we examine him if the motive is for money which he will gain or for an office³ which he will take or because of dread he has come to enter the religion.

In case a man, we examine him if his eyes are on a married Jewess. In the case of a woman, we examine her if her eyes are on Jewish lads, Being no cause found in them, inform them yoke of Torah and difficulty in observing it on the part of non-Jewish environments so that they may withdraw.

1. Siftei Khohen^{and 2.} Be'er Hatev quote the famous case that Hillel accepted that apparently insincere applicant.

2. Definition of Ger implied in this paragraph with respect to its initiation is contradictory to that in Paragraph

2. ~~as. ...~~

cf. Israel Ben Zeev: דברים | אומר בעבר | אברהם

Jerusalem, 1961. "as soon as a candidate comes to Beth Din, he is a Ger.

BenZeev does not quote Bamberger's, but refers to Braude's (pp. 67-71), p. 42

3. Office is meant such High Priesthood as that ger asked to Hillel for the condition of conversion.

4. Cause (ה' ז' ז') is understood, in naive realm as ulterior motive. In Halakhic field, it all depends on the judgement of Beth Din.*¹

"Cause" Latin progenitor "causa", Greek "αἰτία" prototype are all words borrowed from the law courts, which crept into physics on the coattails of the dignified stoic theory that the physical world is run, like a legal system, under "laws of nature". If cause is banished from law, will law-suits be banished also? Or can we refine the concept of causation and hold on to it in the law even though all other sciences reject it?

In our Rabbinic continuity; sincerity and love are weaved in "lishmah", as in " *הנהגה ליה ליה* " Pes. 50b ...

הנהגה ליה ליה ... הנהגה ליה ליה ... פלוס' פלוס'

Pes. 50b

by all means let a man engage in the study of the Law and in good deeds, even if not for their own sake, for through the work for a selfish purpose he will arrive at the state of doing good for its own sake.

Sah. 99b *הנהגה ליה ליה פלוס'* who studies the Law for its own sake (for no selfish ends)

It is interesting to observe in Modern Hebrew that sincerity is expressed in (*לשם ה' / לשם ה' / לשם ה'*)

(tr.) If they embrace and not withdraw, and we see them seeking out of love⁵, we accept them. If we did not examine him nor informed him of the reward and punishment of Mizzwoth, and is circumcized and then (written and ...)

immersed before three lay Jews, he becomes a proselyte.

Even if it is known that he became Jewish for ulterior motive, as he is circumcised and immersed, he is desecrated out of non-Jews but we pay attention to him until his religiosity⁶ has been refined.

5. "Love" is an incomplete symbol as well as "cause", "righteousness" in this paragraph.

I just quote here a voice in the East quoted in the West recently.

"The Zen roshi Sokeivan concedes that the Western concept of love is so extravagant, so extraordinary that the Oriental could never dream of it."²

6. I translated ^{דפדף} as religiosity and ^{דפדף} refined in consideration with difficulty in trans-cultural marginal field, which we are now engaged.

(tr.) Even if he turns aside¹ and practice idolatry, he is regarded as apostate Jew, whose marriage is valid. (Apostate Jew who did repentance need not immersion only by Rabbinic ordinance. He has to immerse and embrace the words of fellows ^{in front of three}) (Nimkei Yosef Chapt. Ha^ufolez) This anonymous phrase requires further investigation

1. Ture^z Zahav: Tur: his wine is fit.

Perishah: some object the simple matter and that he is ^{more} proper than Apostate Jew, for Be^uth Yosef wrote #124 that his wine is fit.

That we here prohibit his wine even retrospectively prior to his turning to apostate. But this matter is not justified since he entered the household of Israel having been assumed as a Jew in every respect, and you are not to ^{disqualify} invalidate him until it is known to you that he is invalid. And the intention of Bial Halakhoth seems to me that it teaches us an implied opinion (לפ'י', deduction, argument) that especially in thousand matters with respect to stringency he is as non-Jew. To take a few matters out of them and base them for invalidation of a case is the way of stringency, not leniency.

Tur concluded his betrothal invalid.

In short, stringency regards the case a non-Jew, as even his wine made retrospectively unfit. Yet his marriage right is indelible. Apparent inconsistency and contradiction of stringency and leniency find, as Turef Zahav interprets, its marginal field in post de facto validity of Qiddushin by a renouncing proselyte.

Notes on Paragraph 12

*1F. S. Cohen. Yale Law Journal, 238, 1950, in Cohens Readings In Jurisprudence and legal philosophy, p. 245

*2Huston Smith. Between Syncretism and Ghetto in Theology Today, vol. XX No. 1, Apr. 1963, p. 28

Section #269

Consanguineous prohibition on proselytes
and ordinances concerning the testimony and
Halizah. It pertains to 11 paragraphs.

Paragraph 1

Torah law permits a proselyte to marry his
mother or his sister from his mother who became
Jewish. However, sages prohibited the matter so
that they should not think "We came from stricter
holiness to easier one." Similarly, a proselyte
who had relation with his mother or his sister
while she was non-Jewish is regarded as one who
had relation with a non-Jewess.

Siftey Khohen: Benei Noah should not have the impression
that Jewish law is less moral, this competitive attitude in
ethic is the motive for Rabbinical expansion. The assumption
is of Rambam and Karo that a non-Jew has no fatherhood.*1
cf. paragraph 7.

Be'er Haggolah: Rambam Chapter 14 of Hilkhoth 'Ishuth
based on Yevamoth 22a, also a riddle in 97b.

It appears that use of terms: Benei Noah, 'Aramith,
Oveid Kohavim seems to imply no specific designation. It is
merely preserving these terms employed in the sources.

We are to note here that whatever the historical consid-
eration might have been, Rabbis conceived Qedushah in rela-

tivity with respect to their contemporary environment in the light of Halakhic continuum.

Notes on Paragraph 1

*¹cf. Perishah: ר"ל וליכא למיחש לאיחלופי בישראל
 דכיון שקלרעין^א אלגמ בני איש פלוגי עכ"ל
 ופצין שמהאי טעמא מגירין להם שאין אגור עכ"ל.

Paragraph 2

How does the ordinance on proselytes concerning consanguineous marriage deal with relatives? If he was married to his mother or his sister from his mother when he was not Jewish and they became Jewish, they are to be separated. If he was married to other relative, he and his wife are not to be separated.

Be'er Haggolah: Alfasi is of same opinion.

Siftey Khohen: In case he broke the law of their former religion (here we can readily say S. Khohen's understanding of comparative ethics is focused to the legal aspects of the said religion - which religion he had in his mind we do not know), and he married the 1st degree maternal relative, they are to be separated forever.

In the case of 2nd and other degrees of consanguinity, permanent separation is not necessary since the prohibition is of Israel, not of the other religion, the separation shall be for only 3 months to ascertain the lawfulness of the issue. (Here, we can further notice that the real concern is not about the laws of status per se but only to avoid the impression of degrading transition on the part of proselytes, not the objective standard of the law itself.

In one further step, it seems to me, S. Khohen's understanding of Jewish law is emotive rather than referential, as the two attitudes cannot dispense with each other. In other words, law/or aggregate of law is serving God inasmuch as God

issues the law with specification in legal, historical continuity of existence of Israel.

The proselyte is to refine himself how to embrace the law in each detail as every unit of law is integrated to entire Halakhic continuum.

Also, proselyte's self-negation must extend its virtue to the utmost integrity in humility as "I know, but I am not worthy ...". (Section 268:2)

This attitude is here experimentally expressed by the sign oRl. By means of self-negation on the part of the proselyte to make himself emotively nothing, the given law is fulfilled in its own light, instead of being replaced by another law. Leshmah doctrine can be through this observation, extended to " *נעלם ונעל כדע קלל* ."

Qedushah, which is incomplete symbol, except in legal context, might reveal its meaning by an attitude termed here as oRl.

Paragraph 3

Non-Jews are prohibited to maternal relative after becoming Jewish by means of Rabbinical injunctions, but is permitted to paternal relative (an agnate), though it is surely known that one is his paternal relative, as in the case of twins, the matter is clearly that both have a ^{the} same father, nevertheless they did not decree against ^{paternal} paternal relative.

Therefore, a proselyte can marry the wife of his ^{paternal} paternal brother, the wife of his father's brother, the wife of his father, and the wife of his son, though she is married to his brother or to his paternal brother, or to his son after they became Jewish. Similarly the sister of her maternal mother, his paternal sister and his daughter who became Jewish are permitted to him.

However, he is not to marry his maternal sister nor the sister of his mother from her mother, nor the wife of his maternal brother who married his maternal brother after she became Jewish. But, if she married his brother as he was not Jewish, then she is permitted to him.

Siftey Khohen comments that this list of prohibited maternal relatives intend to show the strictness of Judaism. Tosafists and R. Asher prohibit also the wife of his father. In accord with them, Baith Haddash explains the stricter view to prohibit his father's sister as it is for Beney Noah.

The reason *for* the seemingly lenient view on the last instance is that she is not the wife of his brother because he did not betrothe her according to Jewish law as he was not Jewish.

Paragraph 4

Two brothers whose conception was not lawful (in Qedushah), but birth was in Qedushah, are subject to the consequence of prohibition on the wife of his brother. But they are not to perform levirate separation and marriage.

Beṽth Yosef holds that even though they are not twins, since their birth was in Qedushah, they are subject to the consequence of the prohibition on the wife of his brother. Similar is the view of Baṽth Ḥadash.

Investigate: Karo teaches explicitly on the case of twins, so do 'Atereth Zahav, Rambam, Isserles, (Maggid Mishnah), (Don Videl deTolse) on the end of Hilkhoth 'Issurei Vi'ah.

Torah law defines brothers as those from the same mother, not from the father. Twins who were conceived unlawfully, have no father. Levirate separation and marriage are applied to brothers from a father ('Even Ha'ezer #156). But if both their conception and birth were in Qedushah, they are completely Jewish in every respect. Similarly Tur.

Paragraph 5

One who marries a proselytess and her~~x~~ daughter proselytess or two sisters from a mother is to live with one of them and divorce another.

Siftey Khohen: But proselytess sister from a father, one can marry even a priori since paternal kin are permitted as above.

A Get is required for divorce of the another, for bethrothal binds him to her as they have no kins, since every proselytess is like a new born minor girl. Similarly 'Atereth Zahav.

Paragraph 6

One married a proselytess and she died. He is permitted to marry her mother or her daughter, since it was decreed only for their lifetime.

Siftey Khohen: He is permitted because there is after death no prohibition. Kareth was not decreed, also because decree is only for lifetime. Some codify that even after death it is prohibited. Similarly the opinion of Tur seems stringent.

This view is to be investigated further with respect to the effect of death on Halakhah.

Paragraph 7

It is permitted for a man (Jew) to marry two sister proselytesses from a father for we did not prohibit on paternal kin.

Paragraph 8

We did not decree concerning the second degree of consanguinity with respect to proselytes. Therefore, a proselyte is permitted to marry his maternal mother and a Jew can marry a proselytess and her maternal mother or daughter of her daughter's daughter, and similarly with a second degree kin.

Siftey Khohen: Similarly, Karo's works and Rambam's. 'Atereth Zahav comments, "or her daughter's daughter, because it is difficult for him first to take her maternal mother." Therefore, he wrote "a Jew can marry a proselytess and her maternal mother or her daughter's daughter," It is an error that her maternal mother and her daughter's daughter are prohibited by Torah as it is mentioned in 'Even Ha'ezer Section #15, paragraphs 13 and 15. The Scripture is full of expression "you shalt not take her daughter's daughter and her son's daughter." The matter is simple that it should say in the beginning "a Jew can marry a proselyte and her maternal mother's mother." Similarly the expression of Rambam is quoted in Derishah. It is clear.

Paragraph 9

A proselyte and his wife who became Jewish with him need to be separated from each other for three months to demark the difference between an issue which is lawfully conceived and that ^{which is} of not.

(And if he does not want to establish her, she needs no Get and may leave him without Get) (Nimkey Yosef ch. Nos'in 'al Ha'anusah).

Paragraph 10

Concerning testimony, even brothers from a mother may testify ^{for} each other, since a proselyte who has become Jewish is like a minor who has been born.

Siftey Khohen: Testimony is performed only in Beyth Din and specialist; on this matter. See Hoshen Mishpat 13:11 and opinions of ha'aharonim.

Paragraph 11

Concerning judging, a proselyte is fit to judge monetary cases provided that his mother is Jewish. But in case his mother is not Jewish, he is invalid to judge a Jew. However, he may judge his fellow proselyte.

Concerning Halizah, he is invalid even for the halizah of proselytes unless his father and mother are Jewish.

1. Siftey Khohen refers to Isserles in Hoshen Mishpat #250:7 that same is the law in case his father is Jewish, see Sefer Me'rath 'Enaim on the above. Siftey Khohen bring further that he is invalid to judge a born-Jew even in monetary cases, especially by compulsion.* But if they accepted him as a judge, it is allowed, by R. Asher, Tur, 'Atereth Zahav.

Concerning Halizah, Siftey Khohen offers another opinion in 'Eben Ha'zel #159:2 that it is valid if his father is Jewish.

Hidushey Ra'aq quotes Rambam: Hilkhoth Melakhim 4:4:

"We do not elect a king out of congregation of proselytes unless his mother is of Israel. This applies not only to kingship but to all the offices (משרות) in Israel, even for measuring water for the field not necessary to refer to Dayyan or Nasi even after many generations." Copied in ע"פ קצ"ח (Jacob Kashtro) and see the note."

This opinion gives a hard time to an apologist! To say that the "President of the United States of America has to be a born-American" is a naive equation of Positive law to Jewish living law. The question is the validity of a statement such as "Maimonides prepared Mishnah Torah for Messianic age!" "Congregation of proselytes" requires also a further study.

Concerning how to understand (אֱלֹהִים), R. G. Felder in his *Nehalath Zevi*, Toronto, 1959, Part I (pp. 134-136), interprets public office as public service. In connection with this, if the Rabbinate means public service, a proselyte can be ordained. R. Felder draws an opinion from *Sh"t* and R.M.D. Plazki (*Hemdath Yisrael* commentary *Ner Mizwah* 89, p. 78) that a proselyte where there is no one else and if he is learned in Torah, can be appointed to the Rabbinate. But where people need to appoint a person for the office, we do not appoint ^{him} at all.

Siftey Khohen's objection to compulsion deserves a particular observation. It is customary to regard law as a weaker and lower form of ethics than morality. "In a moral relation between X and Y, X is under an obligation to himself to behave in a certain way with respect to Y without Y having the converse right to such behavior from X, (for instance, Jesus' injunction to turn the other cheek). On the other hand, in legal relations, which are bilateral because there is no such things as X having an obligation to perform in a certain way with respect to Y without Y having the converse

right to such performance on the part of X.

Petrazycki^{*1} uses the term "ethics" to represent any moral relation or experience in which an obligation occurs. When that obligation is unilateral, we have the branch of ethics terms "morals", when it is bilateral, we have the branch of ethics termed "law".

"Law" in this sense indicates that there is a sense in which law is a higher ethics than morals. For in law any time that X obligates himself with respect to an object Y, X automatically ascribes to Y the right to have this obligation carried through by X." This may explain why people are less willing to obligate themselves as fully in law as they may do in personal morals; morality has been associated with generosity, grace, humanity, whereas law, especially when it is used as a major discipline of religiosity, has been alleged to legalism.

Notes on Paragraph 11

^{*1}F.S.C. Northrop. Petrazycki's Psychological Jurisprudence, University of Pennsylvania Law Review, 1956, vol. 104, No. 5.

Summing Up

In order to acquire a religiously valid view concerning proselytism, we took up Herman Strack's view (p. 1) with reservation. Our observation revealed a few implicit facts which are taken for granted in the Hilkhoth Gerim.

1. The law starts when a candidate comes to Beth Din, for it is assumed that he has immediate practical necessity to join the Jewish community.
2. Recognition of a candidate and his will to become Jewish is not at all specified.
3. How to form a Beth Din of three is not dealt with in Yoreh De'ah.
4. Maimonides sets examination of candidate's sincerity preceding the oral orientation. Karo puts it after, but in Paragraph 12, he supplements it with Maimonidian sequence.
5. Overwhelming cases for proselytism have been for marriage in the West, especially pre-marital relationship or non-marital relationship under infinitely various circumstances. Hence, Hilkhoth Gerim's silence with respect to candidacy for studying the Torah with implicit ultimate goal to observe it and know it.
6. Here our discussion went into philosophical observation of "law" itself, because a rabbi in Japan primarily deals with such candidates, we hope!
7. The oral orientation in Paragraph 2 is analyzed with

caution, because this sort of briefing is not Halakhah itself. Dropping off Halakhah itself necessitates substituting Halakhah with something of non-Halakhic concrete. Our side look on catechism and Hegelian Marxism was made in this junction. The basic problem is logic of reform. Deterministic attitude of early Jewish Reformers went so far as explicit abandoning of *the* Schulhan 'Arukh. The nineteenth century German universalism shows up its influence even in Herman Strack's implication that we can contradict ~~to~~ the Code when the statute rests on presuppositions no longer adequate. He should have said "we can be variable to".

8. Also the limit of source analysis has been indicated. Rabinowitz's tentative imcompletion of *Diqduqey Sofrim* intended not to affect the later Halakhic decisions.
9. Rashi's supplement on Talmudic source "I am not worthy" with "to have fellowship with them" marks Western emphasis on logical thoroughness in contrast to Eastern emotional thoroughness which is to be calminated to virtue of humility. Maimonides skipped this phrase altogether and implied it in the examination of *נִסְיָא*. Yet his praise of humbleness in *Hilkhoth De'oth* is noteworthy. Humbleness can go through various extreme emotions. "Despised and downtrodden" nation is collective experience of Israel. Mode of first acceptance on the part of the candidate is not specified, except the above mentioned.

10. How long to extenuate in the orientation is not specified.

11. Contents of the orientation are clearly listed:

- a. Yihud Hashem and 'Issur 'Avodath Kokhavim.
- b. Sabbath and dietary laws.
- c. Rewards and punishment of Mizwoth.
- d. Life in the world to come.
- e. Doing and knowing of Mizwoth.
- f. Overtrodden Israel are endurers in contrast to nations by definition.

How to and to what extent the Beth Din leads the orientation is not specified, except "not to exact nor multiply". This relative degree is decided by the Beth Din.

12. Even that the orientation has to be oral is not specified. We assume "אין אדם יכול ללמוד בלתי שומע" (A man cannot learn without hearing).

13. The second acceptance, which is to proceed ^ecircumcision, on the part of proselyte is not specified. Acceptances by words, by observance or by means of study which can be recognized through his accumulation of knowledge (in the West) or by means of internalization of the law (in the Eastern discipline), which dispense with the mere knowledge of aggregates of laws.

14. The rite of circumcision and complete healing.

15. The rite of immersion is combined with the second oral orientation in acceptance of Mitzwoth. And the third and final acceptance on the part of the candidate.

16. Combination of acceptance of Mizwoth and immersion lead a Halakhic complexity.
17. We observed one clear fact that in our Hilkhoth Gerim there is no rite or oath of renunciation of former faith. It just dissolves itself by means of acceptance of Hamizwoth. Early Christian rite of conversion and our secular positive laws institute the oath or rite of renunciation of former faith or former citizenship.
18. Zen 禪, not as a religion, but as a discipline of self-negation, aims at this dissolvment of obsessing from the past. This is a point of comparison, not necessarily compatibility, of Judaism and Japanese mentality.
19. We struggled to find out any implicit meaning in Section 269 in terms of this crucial notion of acceptance of Hamizwoth.
20. Potenciality to make "congregation of proselytes" is Halakhicly checked. This is all we can say at this stage.

Christianity has brushed with major world faiths in its past, but the depth encounter with them which is now beginning (since 1950) is unprecedented. Mission driven of church is being internalized. Huston Smith, in his "Between Syncretism and the Ghetto"*, roughly categorizes that the West tends to think in terms of self-fulfillment, the East in terms of self-negation. These two mentations would

lead to two different ethics, as it is quoted by him.

"But on this score is Christianity really different from, say, Ch'an Buddhism? Does not the symbol of the Sixth Patriarch tearing up the sutras "stand against the self-elevation of a concrete religion to ultimacy" as unequivocally as the Cross? It may be objected that, being a form of mysticism, Ch'an doesn't take symbolism enough. But this reveals a popular misunderstanding illustrated in the following incident.

A western professor, wishing to show that he had grasped Zen's determination to pass beyond forms, expressed surprise when the abbot of Hakuin's temple bowed reverently to each of the images of the Buddha they passed. "I thought you were beyond such things," he said continuing "I am! Why I would just as soon spit on these images." "Very well, replied the abbot, his point heightened in impact by the inadequate English in which it was couched "You spits, I bow."

The spitting habit and the bowing habit seems a depicting contrast, except that both Christians and Buddhists have been majorities in the West and the East whereas Jews have been the minority in almost everyplace on the earth. Jews cannot afford either the spitting habit or the bowing habit. Minority among minority, Jews among Jews, such as Maimonides, Spinoza, Einstein and Freud had, therefore, nothing but rational intellectualism to stand on by themselves. Halakhah, ascribing itself to every Jew, gives this discipline in rational tradition to Israel, and enable them to work, rationally with balanced emotion even in the vast area of non-Halakhic field. We know that the Code Hilkhoth Gerim in

Shulhan 'Arukh can only be functioned where a considerable large religious Jewish community exists, and that the Halakhic provision is yet inadequate to create a Jewish community except by immigration of a Halakhic community.

In spite of all these, the fool of God, courted by pragmatic ethic which is self-contained in the very notion of Halakhah, cannot be but studying of it for the length of our days.

*Huston Smith. Theology Today, Vol. XX, No. 1, April 1963, pp. 21-30.

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