

assured. Background information is obtained and shared. The health and development of the infant is carefully watched. All legalities are handled. Charges are fair and equitable. For these reasons, we feel an agency offers service and protection that may not be available by any other means. ★

### **A halachic view of adoption**

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Understandably, a *halachic* response on the matter of the adoption of children by Jewish parents cannot respond item by item to the well-informed preceding pieces. Rather, my contribution will take on the characteristic of an overview, designed not to serve as a final position paper of *halacha* but instead to raise certain problems and challenges which adoption poses to the *halachist*.

There are two crucial points which, as formulated in the preceding articles, may serve as starting points for a *halachic* discussion. They are the nature and degree of disclosure of the familial and social history of the adopted child and the religion of that child at birth. The two most important *halachic* considerations regarding adoption, though by no means the only consideration, center around the identity of the child. If the child is born of a Jewish mother, one major consideration is operant. If the child is born of a non-Jewish mother, this first consideration is replaced by a second.

In the case where the child being adopted is Jewish by birth, adoptive parents must be able to ascertain whether the child is, or is not, the product of a *halachically* prohibited union, where the offspring of such a union is a *mamzer* (an illegitimate child). Incest is one of the more obvious of such unions, but there are many other such relationships that fall into the category (see Leviticus 18 and 20 for a basic list of these relationships). For example, relations between a Jewish male and a Jewish female married to another Jewish male, or a woman who was divorced according to civil law, but not according to Jewish law, from her first husband would cause *mamzerut*. As such, a complete history of the natural parents' marital situations must be received. It should be noted that while Jewish law *per se* does not prohibit the adoption of a *mamzer*, any subsequent passing off of this child as the 'natural' child of its adoptive parents is destructive to the fabric of the Jewish people as a whole. (A *mamzer* cannot marry a non-*mamzer* born of a Jewish mother). Reliable information about the identity of the natural parents and their lineage is also vital even when it is absolutely certain that the child is not a *mamzer*. A Jew who

marries the adopted child must be certain that, just as the adoptive parents are not directly related to him or her, so too the adopted child is not directly related to him or her or to his or her family in a manner which would prohibit such a marriage.

### **Naming the Adopted Child**

A peripheral question regarding the adoption of a Jewish child is the naming of that child. It is clear from a comment of R. Moses Isserles (Ramo) that one who raises a child may be called his father or parent in terms of the child's Hebrew name as it would appear in a *get* (bill of divorce) or other documents. There is some controversy as to whether this holds true even if the one who raises this child has other children and whether the name of the natural father is known. (For a ready reference to the phenomenon of naming a child after the person who raises him/her, see Nahmanides' comment to Numbers 26:46, "And the name of the daughter of Asher was Sarah.") At any rate, if the adoptive child is male, he cannot become a *kohen* or *levi* like his adoptive father; if the father is a *yisrael* (Israelite) and the adopted son is a *kohen* or *levi* by birth, the son retains his natural status. Other questions which arise concern the rights of an adopted child regarding inheritance, the responsibility of honoring and caring for adoptive parents, among many others. A recently republished work, *Nahalat Zevi* by Rabbi G. Felder, addresses itself to all these problems and collects and analyzes many relevant sources, both Talmudic and post-Talmudic.

If the adopted child is born of a non-Jewish mother, there are no *mamzerut* (illegitimacy) or lineage problems to be considered (see *Igrot Moshe*, responsa of R. Moses Feinstein, *Yoreh De'ah* v. 1, #162). However, the ensuing conversion of the child of Judaism by his adoptive parents raises many questions. (Among them are questions regarding circumcision, e.g., if the adopted child is an older boy who has already been circumcised. Such questions are beyond the scope of this essay and I would refer the reader to Rabbi Felder's work).

### **Conversion of the Adopted Child**

Talmudic law already provided a structure for the conversion of a non-Jewish minor when R. Huna stated (*Ketubot* 11a): A convert who is a minor is immersed (and thereby converted, assuming circumcision, as well, in the case of a male) through the knowledge (and supervision) of the *bet din* (the Jewish court). As Rashi explains, the court functions *in loco parentis*. Thus, even though a minor cannot willfully accept Judaism according to the constructs of Jewish law, the court,

acting on his behalf, can validly sponsor his conversion to Judaism. The basic *halachic* reasoning is that the court is empowered to do that which is beneficial for a person, even if that person is not present. Since conversion to Judaism will prove ultimately beneficial for a person, the court converts the child even though he is not 'here', i.e. he cannot *halachically* make that decision for himself or herself. Such a child must be made aware of this conversion however, before he or she reaches the age of *halachic* responsibility (thirteen for males, twelve for females) because at that age, the child can renounce his or her Jewishness. If the child does not renounce the conversion at that time, it remains permanent. While the child renouncing the conversion is unlikely, there are authorities who suggest that if the child was never told of the conversion, the child's right to renounce his Jewishness always remains operant, even after the child reaches the age of responsibility.

A serious question regarding the conversion of adopted children based on the Talmudic formulation is whether the conversion is valid if the adoptive parents are non-observant and do not raise the child according to the norm of *halachic* observance. In such cases, it is argued by a number of authorities that conversion would not be beneficial to the child and would therefore not be undertaken on behalf of the child by the Jewish court.

Assuming a valid Orthodox conversion, the child then has the status of a *ger*, a convert. Here too, the son of an adoptive *kohen* or *levi* will not take on the father's status. An adopted daughter, now a *ga'yeret*, may not marry a *kohen*. The many intricacies of Jewish law that surround conversion are once again beyond the scope of this article.

A final point for the reader's consideration: Rabbinic organizations (such as the Rabbinical Council of America and others) keep records, or at least ask their members to provide records of marriages, divorces and conversions in order to preserve the sanctity of the Jewish people. To prevent hardship and heartache, it has been suggested that records should also be kept of adoptions to insure that none of the possible pitfalls described above become a reality.

In proceeding with adoption, competent *halachic* authorities must be consulted. Judaism most definitely does not wish to deny parents who wish to adopt and raise children their desires. It is important that these adoptions conform to *halachic* standards and thus become acts of kindness and love not only in spirit, but in the eyes of Torah as well. ★

## Deregulating judaism: a purim proposal Daniel J. Pressman

Despite recent changes in the political attitudes of the Jewish community, there has been very little official response to the new realities. Therefore, a new organization has been founded: The Organization for the Deregulation of Judaism. As their brochure states, their purpose is to "pare down the incredible clutter of regulations imposed through the ages by over-zealous Jewish authorities. Our goal is a new, streamlined *halacha*, stripped of all unnecessary, intrusive, bleeding-heart laws, leaving only the bare minimum of legislation necessary to protect economic stability and societal peace."

Task forces are at work on every area of Jewish law. No rabbis were included, since they were considered to lack objectivity. However, there are many learned laymen involved, several of them Hebrew school graduates.

So far only one task force has reported - The Kashrut Task Force. Composed entirely of members of the Kosher-Style Delicatessen Owners Association, it rapidly concluded that the dietary laws are "an unwarranted intrusion into the individual Jew's private life." They recommended that all *kashrut* commissions and overseers organizations be disbanded, "as they are composed of the worst kind of fussy, over-zealous bureaucrats." The task force is confident that "the forces of the free market economy will operate to control abuses, since *kashrut* observing consumers will avoid any merchant whose food is discovered not to be kosher." They also recommended that the definition of "kosher" be left up to the individual states, since "what's kosher in New York may not be appropriate for Montana."

The O.D.J. is also interested in the Talmudic civil and social legislation, which one member called "a classic of stultifying over-regulation." Such concepts as *Bal Tashchit* (the prohibition of wasteful destruction), *Maakeh* (the commandment to put a railing around a roof and other hazardous situations), and *Ona'ah* (laws dealing with overcharging) are being modified to reflect current social and economic realities. One subcommittee has calculated that applying *halachic* safety standards to our day would cost the American people over fifty billion dollars a year.

In the words of the committee chairman, "The first thing we changed was the idea that every human life is infinitely valuable. That clearly is an unrealistic standard, and we are introducing a more pragmatic benefit-risk ratio."

The election results, and the work of such statesmen as