

MARY CONNOLLY REVISITED

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There is abundant literature on the Australian convict period, but we still know very little about the social history of the time. Some of the best writing on the subject is on its Jewish dimension, thanks to Rabbi Dr John Levi and Dr George Bergman. Their *Australian Genesis*, first published in 1974 and now in its second edition, is elegant and scholarly.¹ Nancy Keesing called it the pioneering study of the convict age. In recent years Rabbi Levi has made a further massive contribution to the subject by updating his smallish biographical dictionary, *The Forefathers*,² into a huge tome titled *These Are the Names*.³ Now we can more or less identify most of the early Jews and pinpoint their characters and careers, though many questions remain.

One of those questions is addressed and reviewed in the present paper. It considers Mary Connolly, who entered Judaism in Sydney in 1831, and was married in Australia's first Jewish marriage ceremony. Her husband John Moses, a fruit seller born in London in 1800, had been found guilty of stealing a man's watch, and was sentenced to seven years' transportation. Arriving in New South Wales in December 1820, he was sent to Van Diemen's Land the following November as a cook and confectioner to Government House. On 5 December 1826, in a church ceremony in Hobart, he married 16-year-old Mary Connolly, another convict. He had various jobs, mostly as a pastrycook, and in 1830 in Sydney even baked Australia's first *matzot* (unleavened bread for Passover). That year Rabbi Aaron Levy, a member of Chief Rabbi Solomon Hirschell's Beth Din (ecclesiastical court)⁴ came to New South Wales to organise a *gett* (religious divorce), and whilst there converted Mary Connolly to Judaism and gave her the Hebrew name Rebecca. We have to presume that he saw in her enough commitment to Jewish beliefs and practices to warrant her conversion. He was not very fluent in English but must have been capable of conversing with Mary and her husband.

There being no formal *mikveh* (ritual bath) in Sydney, her

immersion may have been at a quiet spot beside the harbour, with the rabbi forming an *ad-hoc* Beth Din with two local Jewish inhabitants - presumably Phillip Joseph Cohen and either or both of Philip Solomon and Moses Brown. However, we wonder how Levy could dare to carry out a conversion in a British colony when it was thought that Menasseh ben Israel, in the course of negotiating with Oliver Cromwell to allow the Jews to return to England, had agreed not to make proselytes amongst Christians: indeed the Spanish and Portuguese Synagogue long threatened sanctions against 'any one who may bathe a foreign woman' (immerse her for the purpose of conversion) 'because it is not meet that they be admitted into our congregation'.⁵

Applicants for conversion were, after being instructed in Jewish beliefs and practices, usually sent across to the Continent, often to Holland, to be converted.⁶ On their return to England they were sometimes immersed in a *mikveh* to confirm their new status.⁷ That is the official story, but in spite of it conversions still occurred in England itself. The most famous example is Lord George Gordon, who seems to have been accepted into Judaism in Birmingham in 1787 after being rebuffed in London by Chief Rabbi David Tevele Schiff. There were lesser known but, nonetheless, documented conversions in England when a Jew had or expected a child by a Christian woman. Sometimes a Jewish pedlar married a farmer's daughter and had her converted to Judaism.⁸

Benjamin Artom, *Haham* (Chief Rabbi) of the Spanish and Portuguese Synagogue, boldly claimed in 1876: 'No Christian has ever been converted to Judaism here',⁹ but up to 1837 as many as 41 converts (17 women and four men) are named in the marriage records of his own congregation, and we cannot be certain that they all underwent conversion outside England.¹⁰ Moses Cassuto says in his diary that in London in 1735 he saw (or heard of) two Protestant men and two women become proselytes.¹¹ The story of the 'ban' is told in my paper, 'The Ban That Never Was', a more extended version of which was delivered to the Jewish Historical Society of England, Israel Branch, in 2005.¹²

The London Beth Din minutes for 19 Shevat 1834, clearly state, *Ein reshut bamedinah hazot legayyer shum adam*, 'It is not permitted in this country to convert any person'. However, after Hermann Adler, son and the subsequent successor of the Ashkenazi chief rabbi, discovered no evidence of any formal undertaking made to Cromwell in the seventeenth century, the British rabbinate as from 1875 openly allowed conversions on British soil.¹³ Yet, that was nearly half a century after Mary Connolly, and if the policy until the 1870s was not to allow proselytes, surely Mary Connolly should not have been accepted.

A second issue in relation to conversions was the Blasphemy Act of 1698 (the official title is 'An Act for the more effectual suppressing of Blasphemy and Profaneness'), which imposes severe penalties if a Christian repudiates Christianity or if someone induces such repudiation. The denial of Christianity was considered blasphemous by the law, and since a convert to Judaism openly or constructively does that, a conversion to Judaism might have constituted or entailed an illegality. In this sense we have to ask whether Mary Connolly possibly acted unlawfully in becoming a Jew and whether Rabbi Aaron Levy might also have been guilty of breaking the law in administering the conversion.

That the legislation could have this effect is acknowledged by a number of legal historians, including Henry S.Q. Henriques in his *The Jews and the English Law*.¹⁴ He quotes Mr Justice Best in a judgment of the Full Court of King's Bench in 1819,¹⁵ explaining that the Act had political rather than theological motives. The judge said: 'The Legislature, in passing this Act, had not the punishment of blasphemy so much in view as the protecting the government of the country, by preventing infidels from getting into places of trust'.¹⁶ We can take it for granted that Mary Connolly was unlikely to have had any ambition of holding public office, which would in any case have been unthinkable for a woman, especially a Jewish woman. We can likewise assume that Rabbi Levy harboured no ambitions of this kind. However, Henriques considered that despite everything the Act 'is still nominally in force'¹⁷ even though the matter was never tested in the courts.

Both issues – the legality of converting Christians to Judaism, and the status of the Blasphemy Act – were clearly relevant in England itself. They could be only discounted in New South Wales if English law did not apply in the Colony. Yet, the early governors and administrators believed firmly that they were planting the British flag and system on antipodean soil including British practices and British law. They could exercise some discretion but their own appointment and the policies, they were bound to implement were subject to the mother country. These are sweeping statements that are too obvious to require detailed documentation. Eventually the apron strings loosened, but we are talking about 1831.

As a penal colony, New South Wales was governed from London. As of July 1828, English law was 'received' by the Colony if specifically expressed to apply or deemed suitable to the circumstances of the Colony. Local conditions were, however, recognised in 1823 when legislation known as The New South Wales Act established a Legislative Council, which passed its first Act in 1824. The movement towards responsible government was furthered

by the first New South Wales Constitution Act passed by the British parliament in 1842.

Did this mean that in New South Wales in 1831, Jews were legally bound by an old 'undertaking' to Cromwell not to convert gentiles to Judaism? There is no documentary evidence of any such undertaking, but the Whitehall Conference of 1655 had urged one and there was a perception that it existed. Levy must have been aware of this as a member of Solomon Hirschell's Beth Din and as its scribe may well have written the minute quoted earlier to the effect that conversions were not lawful in England. If pressed, he might have argued that since English gentiles could undergo conversion on the Continent without technically breaching the presumed undertaking, the Antipodes were certainly far enough away from London to allow a conversion there (presumably more than one, since Mary Connolly's children must also have been received into Judaism by Levy). However, whilst the Continent was not a British colony and New South Wales was, the conversion/s probably received no publicity and no-one was likely to report it/them to the authorities.

The problem of the Blasphemy Act may well be rather different. Despite the official status of the Church of England in Britain itself, it is not certain that New South Wales had an established Church in the same sense. The Colony had a spectrum of sects with a high proportion of Catholics, Presbyterians and other faiths including Jews. There were debates, analysed by Israel Getzler in *Neither Toleration Nor Favour: The Australian Chapter of Jewish Emancipation*,¹⁸ as to whether this was a Christian country, with the concomitant question of whether state aid could be extended to Jews. Since the Blasphemy Act defended not just Christianity but its Anglican version, it seemed out of keeping with the new, more tolerant society that seemed in process of developing in the Antipodes. It is thus unlikely that legislation protecting the Church of England could be used in New South Wales to prevent Mary Connolly from becoming Jewish or Rabbi Levy from converting her. The question does not appear to have been litigated, so there are no court decisions that might help us.

Still, in 1827 an Act was passed in New South Wales for 'restraining the Abuses arising from the publication of Blasphemous and Seditious Libels'. It did not completely define blasphemy but spoke of any action 'tending to excite His Majesty's subjects to attempt any alteration of any matter in the Church or State as by law established otherwise than by lawful means'. It seems – though there is no court explication – that what it opposed was not so much an individual's private views but any insulting or inflammatory public attack on Christianity, on God, and/or the authority of the Scriptures.

There is no evidence that either Rabbi Levy or Mary Connolly publicly attacked or undermined any version of Christianity since, as we have said, the conversion (as Mary's children would have been too young to be deemed 'legal persons', it is only Mary whose acts we need to consider in this regard) was probably unknown and unreported to the general population. Henriques, writing about the situation in England, seems to recognise this point when he says that the Act:

... might be made use of to prevent conversions from Christianity to Judaism, if these should ever take place upon a large scale, or any active missionary organisation were established among the Jews for this purpose... Hitherto there has been no occasion to attempt to use the statute in this way; should, however, one arise, the bitterness of religious controversy would probably prompt such an attempt.¹⁹

In other words, if the number of conversions to Judaism were kept low and no public attention were aroused, it is unlikely that anyone would think of invoking the Blasphemy Act.

It would still appear that in the vastly different religious situation in New South Wales, the Blasphemy Act would not have been regarded as having any applicability and its eventual disappearance from the statute book could be predicted. However, it took a long time for this to happen. Long afterwards, in the 1990s, there was renewed discussion as to whether New South Wales needed any anti-blasphemy legislation, even with a broader scope than before and aimed at protecting all religious groups from attack or libel. I was then senior rabbi of the Great Synagogue, Sydney, and was invited to be amongst those who made submissions. I opposed the whole principle of blasphemy legislation, arguing that no citizen should be compelled to submit to any faith or to religious faith in general, that all religions should be able to present their insights and even face robust debate in the market place of ideas, and that religious discrimination was already covered by other existing laws. The Law Reform Commission eventually recommended the abolition of the offence of blasphemy.

The second major issue that needs attention is the Jewish marriage ceremony of John Moses and Mary Connolly. The *ketubah* (marriage document) is extant and for some years was held by the Australian Jewish Historical Society in Sydney. It was studied and analysed in detail by Rabbi Dr Israel Porush.²⁰ He came to the conclusion that although Rabbi Levy, an expert *sofer* (scribe), wrote the document, the marriage took place after the rabbi left Sydney, and another hand filled in the date of the ceremony in Hebrew. There

is also some confusion as to when Phillip Joseph Cohen affixed his signature, but this is a question for another forum. The main issue is whether it was Cohen who officiated, and why mention of the marriage is totally absent from the early register of the Sydney Synagogue, which is now the property of the Great Synagogue. Since there are three signatures, namely Phillip Joseph Cohen, Philip Solomon and Moses Brown, whilst Jewish law requires only two, we may have to conclude that Cohen was the officiant whilst the others were witnesses.

Cohen was a 25-year-old free settler who arrived in May 1828, bearing the authority of the chief rabbi of England to conduct Jewish weddings. In *These Are the Names*, Rabbi Levi says that Cohen was also authorised to conduct divorces, but this is not likely since *halakhic* (Jewish legal) divorce procedures require great expertise, and in any case until 1857 the dissolution of a valid marriage needed an Act of Parliament.²¹ The reference to divorces seems to have come from Hyman A. Simons' book on Solomon Hirschell,²² but Simons may have read too much into whatever document the chief rabbi gave Cohen. There are claims that the actual document is in the safe of the Great Synagogue, but my searches failed to find it. (In an obituary tribute to Victor Cohen, P.J. Cohen's son, it is claimed that: 'Letters of authorisation from Chief Rabbi Solomon Hirschell entrusted to Mr P.J. Cohen were deposited by him with the Colonial Secretary',²³ but the Colonial Secretary's records in Sydney do not bear out this contention). Cohen must have had some competence in Hebrew (Simons says he had 'an elementary knowledge of the laws and customs of Judaism', which is no great compliment) and amongst other promising young men had received some Hebrew instruction from Hirschell. Simons, followed by Rabbi Levi, claims that Cohen 'spent a few months at the Beth Din'. Rabbi Levi inserts 'at the office of the Beth Din', but no formal office existed at that time.

Not entirely aware of the situation in New South Wales, Hirschell possibly thought that Sydney already had a synagogue and Cohen would become its minister, but the term 'minister' was not used. Hirschell himself was known as 'high priest of the Jews' and Aaron Levy was called 'Jewish priest' in the passenger list of the ship that brought him to Australia. Cohen's name indicates descent from the ancient priesthood, so why was he was not also called 'Jewish priest'? The answer tells us more about Hirschell than about Cohen. It is true that Cohen was not a professional minister and lacked rabbinic knowledge, but others who engaged in business and knew little Hebrew did bear the ministerial title. However, Hirschell was an empire-builder, and London control of Jewish marriages was a decisive mark of authority. Thus, when the Sydney register records

the marriage of Moses Joseph and Rosetta Nathan in 1832, it says that Cohen officiated, not by virtue of any personal 'priestly' or quasi-ministerial status, but by Hirschell's authority.

Control over marriages was not merely a *halakhic* precaution. Neither England nor New South Wales had a government procedure whereby marriages were centrally recorded by an official registrar. In England the law merely required that a marriage be celebrated in a church by an ordained clergyman, with the records being kept in the parish register. There were exceptions for Quakers and Jews, and as far as the Jews were concerned a marriage was recognised if conducted according to Jewish usage. This meant that any marriage of two Jews required to be conducted by Hirschell or his delegate. It was taken for granted that his writ extended to every British colony.

Compared with today's highly structured system, marriages were conducted in New South Wales in a rather haphazard way. The government was satisfied that if entered in the registers of a parish, a marriage was valid. Likewise, if a marriage between two Jews was conducted according to Jewish usages, it was a valid marriage. There was a 'Permission to Marry' book, but it applied only to convicts, who often represented themselves as single and did not admit that they had a spouse in England. A convict could not marry without the governor's approval: hence Moses Joseph needed permission to marry Rosetta Nathan, making theirs the first union listed in the Sydney Synagogue register. The authorities did not interfere with the marriage of free settlers, though there was an assumption that a valid marriage required an 'episcopally ordained' minister. The term 'episcopally ordained' seems to have been interpreted rather broadly to allow marriages by Catholic priests and Presbyterian ministers. Since Quakers and Jews could conduct their own marriages, the Jews could be married by P.J. Cohen or others without official permission.

However, the Sydney Synagogue register is rather unreliable. The first decade or so seems to have been written up long after the event, presumably relying on notes kept by somebody over the years. Perhaps it was rewritten from an untidy original, but there are many errors. It lists the marriage of John Barnett and Sarah Francis in 1833 even though they had arrived in the Colony already married. It makes mistakes in some of the dates and the names of the parties. It omits at least one marriage of two Jews (Solomon Lyons and Phoebe Benjamin) solemnised in 1826 by Rev Samuel Marsden, although this omission is explained by it being a Christian ceremony.

More importantly, the list omits the marriage of John Moses and Mary Connolly, maybe because it was known that they had already had a (Christian) marriage ceremony in Hobart a few years earlier.

(Recent usage at the Great Synagogue is that when a religious ceremony follows an earlier civil marriage the details are still entered in the official register for the sake of the record). Animus may also have been involved, as Rabbi Levy could have declined to conduct other conversions during his Sydney stay. Most of the married members of the congregation, certainly Abraham Polack, who had made the application for the Jews to have their own place of worship in Sydney, had Christian wives, and there were controversies about whether their children could be regarded as Jews. The rabbi might have kept a diary, but I found no such document in the archives of the Chief Rabbi or the London Beth Din, which are today in the library of the Jewish Theological Seminary of America.

Cohen for his part must have kept his own registers and trained others in the required procedures - notably Moses Brown, Michael Phillips, Isaac Friedman and Solomon Phillips, who was for a time the congregation's *ba'al tefillah* (prayer leader) and later became minister of the Macquarie Street Synagogue. All were deemed agents for the chief rabbi. This would certainly have been the case when Michael Phillips conducted Cohen's own marriage in 1833 to Annette Abigail Levien. By this stage Cohen had conducted only a few marriages because he was spending most of his time in Maitland. The first minister, Rev Michael E. Rose, arrived in 1835 as a free settler (the ship's list called him a dealer) with credentials from Hirschell enabling him to serve as reader, *shohet* (meat slaughterer) and *mohel* (circumciser). During the three years he was in Sydney, Rose conducted six weddings with the sanction of the congregational president, who himself had a non-Jewish wife.

By the 1840s the solemnisation of marriages was regularised. The government now required formal notice and instituted official registration of marriages. The *ad-hoc* days were gone, and neither inefficiency nor communal politics could affect the records. What did not change was that the validity of Jewish marriages was, at least since 1753, judged by whether they conformed to the usages of the Jews. In 1798 in *Goldsmid v Bromer*,²⁴ an English court refused to recognise a Jewish marriage because of rabbinical testimony that both witnesses were disqualified in the light of Jewish law: one witness had profaned the Sabbath, eaten non-*kosher* meat and declared himself to be only a nominal Jew.

Once marriages began to be governed locally, the chief rabbi (Solomon Hirschell until his death in 1842; Nathan Marcus Adler from 1845) still recommended ministers for antipodean congregations, but in conducting marriages such ministers did not act as the chief rabbi's agents but by authority of the colonial government. The Marriage Act 1899 admitted that Jews could not

be compelled to marry by Jewish rites, but the Act did not recognise any other form of marriage between two parties both of whom were Jews. In a legal Opinion of 6 August 1929, the Sydney barrister Alroy Maitland Cohen stated: 'In my opinion a Jew and Jewess, who in New South Wales go through the form of marriage before a Registrar only, are not legally married'. Many things have changed since then including the law on this point. In modern-day Australia, there are conversions to Judaism, there are synagogue marriages and there are civil marriages between Jews, and no-one objects that any of these acts necessarily contravene the law of the country.

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ENDNOTES

1. John Levi and G.F.J Bergman, *Australian Genesis*, (1st ed., Adelaide: Rigby, 1974; 2nd ed., Melbourne: Melbourne University Press, 2002).
2. John Levi, *The Forefathers* (Sydney: Australian Jewish Historical Society (AJHS)), 1976.
3. John Levi, *These are the Names* (Melbourne: The Miegunyah Press, 2006).
4. He was also known as Reb Oran or, from his place of origin, Aaron Lissa or Lisser. He was the Beth Din scribe and drew up its *gittin* (divorce documents): see the Beth Din minute book for 1833-1845, held in the Elkan Adler collection at the Jewish Theological Seminary of America.
5. Lionel D. Barnett (ed.), *El Libro de los Acuerdos, Being the Records and Accompts of the Spanish and Portuguese Synagogue of London from 1663 to 1681* (Oxford: Oxford University Press, 1931), pp. 11,13.
6. The Beth Din minute book (see note 4) records conversions in a number of parts of Holland including Amsterdam, Rotterdam, The Hague and Elburg. Though Elburg had only a tiny Jewish community its rabbi might have been specially trusted by the London Beth Din. It seems from the minute book that females who had children went to Holland on their own and the children were separately converted in London.
7. The Beth Din minute book generally states in Hebrew that it was necessary 'for confidential reasons' (*ta'am kamus*) to repeat the immersion; maybe there was a doubt as to whether correct procedures had been followed.
8. Vivian D. Lipman, 'Trends in Anglo-Jewish Occupations', *Jewish Journal of Sociology*, vol. 2, part 2, pp. 202-218.
9. Haham Benjamin Artom, *Sermons*, (London: 1876).
10. Lionel D. Barnett (ed.), *Bevis Marks Records*, part 2 (London: Jewish Historical Society of England, 1949).
11. Richard D. Barnett, 'The Travels of Moses Cassuto', in John M. Shaftesley (ed.), *Remember the Days* (London: Jewish Historical Society of England (JHSE), 1966), p. 104.
12. Apple, Raymond (ed.), *Yismach Yisrael: Historical Essays to Honour*

Rabbi Dr. Israel Porush, O.B.E., on his Eightieth Birthday (Sydney: AJHS, 1988).

13. Hermann Adler, 'A Survey of Anglo-Jewish History', *JHSE Transactions*, vol. 3 1899, pp. 13-14.
14. Henry S.Q. Henriques, *The Jews and the English Law* (Oxford: Oxford University Press, 1908, reprinted from the *Jewish Quarterly Review*).
15. *Ibid.*, p.14.
16. *Ibid.*
17. *Ibid.*, p.15.
18. Israel Getzler in *Neither Toleration Nor Favour: The Australian Chapter of Jewish Emancipation* (Melbourne: Melbourne University Press, 1970).
19. Henriques, *op. cit.*, p.277.
20. Israel Porush, 'The Earliest Australian Jewish Marriage Document, 1831', *AJHS Journal*, vol. 8 (1979), pp. 404-409.
21. John Levi, *These are the Names*, *op. cit.*, p. 153.
22. Hyman A. Simons, *Forty Years a Chief Rabbi: The Life and Times of Solomon Hirschell* (London: Robson, 1980), p.79.
23. Obituary, Victor Cohen, *AJHS Journal*, vol. 1, part 6 (1941).
24. *Haggard's Consistory Reports*, 1798, p.324.