

What Is a Jew? Part 7
Conversion: Leadership and Marriage
By Rabbi Ethan Tucker

I. Power and intimacy as markers of acceptance

We perhaps best demonstrate our full acceptance of people into our lives when we allow them to serve in positions of power over us and to penetrate our most intimate circles. A person can be warmly welcomed into a family, a people, a country, a religion and still kept somewhat at bay if these privileges are denied him or her. When the United States Constitution specifies that a naturalized citizen may not serve as the President, this is an implicit statement about the place of the immigrant more broadly. Immigrants themselves are not 100% completely American and can only hope to fully integrate their *children* into their chosen homeland. Put more softly, the process of naturalization is drawn out and cannot open all doors in one generation alone. While the new immigrant may have all the rights of a citizen, the absence of certain privileges—like the ability to run for President—is an implicit value statement that being born on United States soil or to two U.S. citizen parents is meaningful. It helps define place of birth and lineage as critical elements of an unalloyed American identity and status.

So it goes with conversion as well. When we encounter sources that do *not* treat the convert identically to the native-born Jew, we should see not only potential discrimination against the convert, but also statements regarding the essence of what it is to be Jewish. Limitations on the convert may be minor, even vestigial, but they still always signal an incomplete process and may even hint, in an echo of an earlier biblical model, at a residual notion that conversion is somewhat implausible to begin with.

Last week we looked at how we encourage and allow the convert to talk about Jewish history in our liturgy. This week we turn to questions of power and intimacy. Can a convert to Judaism serve in all the same leadership positions that are open to native-born Jews? Can a convert marry all Jews?

II. Leadership

The Torah itself already indicates that leading the Israelite nation is not open to all:

דברים יז:טו

שׁוֹם תִּשִׂים עָלֶיךָ מֶלֶךְ אֲשֶׁר יִבְחַר ה' אֱלֹהֶיךָ בּוֹ מִקְרֵב אֶחָיִךְ תִּשִׂים עָלֶיךָ מֶלֶךְ לֹא תוּכַל לִתֵּן עָלֶיךָ אִישׁ נֹכְרִי אֲשֶׁר לֹא־אֶחָיִךְ הוּא:

Devarim 17:15

Appoint, appoint over yourself a king, whom the Lord your God will choose. From among your brothers you shall appoint a king over yourself: You may not place over yourself a foreign man who is not your brother.

Though the Israelites are given some agency in choosing a king—provided he comes with God's approval—they may not, under any circumstances, hire a foreigner to fill this position. One of the most powerful ways that the group's identity is defined is by restricting the position of ultimate leadership for the main members of the group. The נכרי, the foreigner, lies outside this inner circle. While he can potentially be welcomed into many other areas of Israelite life,¹ this position of power is off limits to him. One can read these verses narrowly as only referring to the monarchy, but one can also read them broadly, as a kind of archetype for Jewish leadership more generally. The Tannaim chose the second path:

מדרש תנאים לדברים יז:טו

...שׁוֹם תִּשִׂים עַל מֶלֶךְ אִין לִי אֵלֵא מֶלֶךְ מִנִּי לִרְבוֹת שׁוֹטְרִים וּגְבֵאֵי צְדָקָה וְסוֹפְרֵי דֵינִין וּמְכִין בְּרִצּוֹעָה ת"ל מִקְרֵב אֶחָיִךְ תִּשִׂי עַל מ' כֹּל שֶׁתִּשְׂמַחְהוּ עִלְיֶךָ לֹא יֵהֵא אֵלֵא מִן הַבְּרוּרִים שְׁבֵאֶחָיִךְ: לֹא תוּכַל לִתֵּן עִלְיֶךָ אִישׁ נֹכְרִי לְהוֹצִיא אֶת הַגֵּר... מִיִּכְן אִמְרוּ אִין מַעֲמִידִין מֶלֶךְ מִקְהֵל גְּרִים אִפְלוּ אַחַר כֵּמָה דוֹרוֹת עַד שֶׁתִּהְיֶה אִמּוֹ מִיִּשְׂרָאֵל אִין לִי אֵלֵא מֶלֶךְ מִנִּי לִרְבוֹת שׁוֹטְרִים שְׁרֵי צְבָא שְׁרֵי חֲמִשִּׁים אוֹ עֲשָׂרָה אִפְלוּ הַמְּמוֹנָה עַל אִמַּת הַמִּים ת"ל מִקְרֵב אֶחָיִךְ תִּשִׂי עַל כֹּל מְשִׁימוֹת שֶׁאֵתָּה מְשִׁים לֹא יֵהוּ אֵלֵא מִקְרֵב אֶחָיִךְ:

¹ In I Melakhim 8:41-43, Shlomo imagines the נכרי coming to worship at the Temple and asks God to heed his prayer.

Midrash Tannaim Devarim 17:15

...“Appoint, appoint over yourself a king”—[From here,] I only know the case of a king, how do I know [this same rule applies] to officers and charity collectors and court secretaries and those who administer court-ordered lashes? Scripture teaches: “From among your brothers you shall appoint a king over yourself [you may not place over yourself a foreign man]”—Anyone who you place over yourself should only come from the select of your brothers.

“You may not place over yourself a foreign man”—this comes to exclude the convert...

Based on this, they said that one does not appoint a king from the community of converts, even after many generations, until his mother is from Israel. [From here,] I only know if the case of a king, how do I know this [restriction] also applies to a general, to head of fifty, a head of ten, or even one appointed to be in charge of the water channel? Scripture teaches: “From among your brothers you shall appoint over yourself [a king; you may not place over yourself a foreign man]”—All appointments that you appoint should only be from among your brothers.

This passage makes two main points. First, it asserts that the biblical restriction applies to all meaningful positions of leadership, whether they be the monarchy, in the military, or related to managing the municipal water supply. It derives this from the more general statement at the end of the verse: *לֹא תוֹכֵל לְשִׂים עֲלֶיךָ אִישׁ נָכְרִי* / “You may not place over yourself a foreign man.” This broader formulation is read as taking the verse beyond the realm of the monarchy into all contexts of power and authority. A number of values may be at work here. There may be a concern that allowing foreigners to take control of critical social institutions will eventually lead to the subjugation of the local population and a possible loss of independence. We see similar concerns at work today when foreign corporations buy and control domestic businesses that are cornerstones of the local economy.² There is likely also a concern here around abdicating core responsibilities by farming them out to outside forces. Ownership comes through leadership. Handing the monarchy and other leadership positions over to outsiders suggests that these tasks—the key tasks needed to build and sustain a society—are not important and cannot hold one’s interest or command one’s commitment. We hear concerns of this sort today in discussions

² This fits with the anxieties of the rest of the passage in Devarim, which worries that excessive horses, wives, and money may all corrupt the king, lead him astray, and possibly hand the people over to foreign control and oppression.

about the importance of a domestic labor force. Just as protectionist policies aim to stimulate local economic forces, so too this sort of restriction on foreign leadership was doubtless intended to strengthen native Jewish participation in the leadership of the community.

Second, and important for our purposes, this passage assumes that the term נכרי includes the (Rabbinically defined) גר, the convert to Judaism, thus rendering the convert unfit to be selected as a king or for any position of authority in the Jewish community. This is a non-obvious reading of the text. In the Bible, נכרי refers to a foreigner, someone who is not only a non-Israelite, but lives elsewhere and merely passes through from time to time.³ By contrast, the גר is a resident alien, a non-Israelite who lives on the land, among Israelites, and one would not normally assume that the term נכרי is meant to include the גר as well, who is generally afforded the same privileges and rights as an Israelite. True, in this case, the verse not only excludes the נכרי, but seemingly anyone who is not אחיך—your brother. Indeed, elsewhere in the Torah, it is clear that a גר is not in this latter category, such that it is reasonable to claim that the Torah also forbids a resident alien from being appointed to positions of authority.⁴ Nonetheless, this is all in reference to the *biblical* גר, who is in no way an Israelite. One *might* have read the verse as being compatible with a claim that the *Rabbinic* גר, the convert, *is* considered to be “your brother”, by dint of having gone through an embodied process of becoming a Jew. Nonetheless, this midrash reads אחיך as a term limited to those with shared bloodline and the convert is thus excluded. This passage thus quite demonstrably resists the notion that the convert becomes identical to a born Jew in all aspects. When it comes to leadership, those without Jewish ancestry remain outsiders, not fully naturalized. This represents a meaningful holdover from the biblical model that has no clear notion of becoming an Israelite. While we are used to thinking that the Rabbinic tradition abandons this approach and allows Gentiles to naturalize fully, this is an example where the biblical model lives on: A convert may become a Jew, but he does not (fully) become “your brother.”

This basic approach is widely accepted and is captured in the following story, albeit with an interesting twist:

³ See the formulation of Devarim 29:21: והנכרי אשר יבא מארץ רחוקה.

⁴ See Vayikra 25:47.

תלמוד בבלי קידושין עו:

אושפזיכניה דרב אדא בר אהבה גיורא הוה, והוה קא מנצי איהו ורב ביבי, מר אמר: אנא עבידנא סררותא דמתא, ומר אמר: אנא עבידנא סררותא דמתא; אתו לקמיה דרב יוסף, אמר להו, תנינא. "שום תשים עליך מלך... מקרב אחיך" - כל משימות שאתה משים לא יהיה אלא מקרב אחיך. אמר ליה רב אדא בר אהבה: ואפילו אמו מישראל? אמר ליה: אמו מישראל - מקרב אחיך קרינא ביה. הלכך, רב ביבי דגברא רבא הוא ליעיין במילי דשמיא, ומר ליעיין במילי דמתא.

Talmud Bavli Kiddushin 76b

A convert came over to Rav Ada b. Ahava's house as a guest and he started fighting with Rav Beivai. One said: I will be in charge of the town! And the other said: I will be in charge of the town! They came before Rav Yosef, who said to them: It is taught: "Appoint, appoint over yourself a king... from among your brothers"—Any appointments that you make should only be from among your brothers. Rav Ada b. Ahava said to him: Even if his mother is Jewish? He said to him: If his mother is Jewish, then he is considered to be from among your brothers. Therefore, Rav Beivai, who is a great man, should deal with heavenly matters and [the convert] should deal with the affairs of the town.

In this story, Rav Yosef agrees that a convert is barred from serving in any position of authority in the Jewish community, in keeping with the midrashic reading of the Torah we saw above. Nonetheless, Rav Ada b. Ahava implicitly cites the *mishnah* in Bikkurim that we saw last week. There, the Mishnah holds that if a patrilineal descendant of converts nonetheless has Jewish blood on his maternal side, then he is a part of the Jewish family tree and may speak about the Jewish/Israelite past in the first person possessive. Rav Ada b. Ahava suggests—and Rav Yosef agrees—that this sort of lineage also entitles the descendant of converts to be considered “your brother” and to be fit for positions of authority, even for the monarchy. But had this not been the case, the convert would indeed have been disbarred, simply because he was not born a Jew.

I would suggest that this limitation on the convert is not ultimately about the convert himself, but instead about a notion of Jewishness and a residual notion that even if conversion is possible, it is never really complete. We should therefore not be surprised that there is some haggling over the precise parameters of this exclusion, in keeping with the ongoing tension we have been tracking between ethnic and religious understandings of Jewishness. The ethnic pole of that discussion will pull towards the exclusion of converts from these positions of authority,

whereas the religious pole will tend to minimize the relevance of this rulings to the point at which they are vestigial.

This plays out practically around the question of who can serve as a judge in the context of Jewish courts. **Mishnah Sanhedrin 4:2** lays out a simple rule:

משנה סנהדרין ד:ב

הכל כשרין לדון דיני ממונות ואין הכל כשרין לדון דיני נפשות אלא כהנים לויים וישראלים המשיאין לכהונה:

Mishnah Sanhedrin 4:2

All are valid to judge civil cases but not all are valid to judge capital cases, only *kohanim*, *leviim*, and *yisraelim* eligible to marry into the priesthood.

This text asserts that the qualifications to serve as a judge in capital cases are higher than those required to serve as such in civil cases. For capital cases, only Jews of proper lineage are eligible. Those who cannot marry into priestly families are out. We know from elsewhere (in sources we will examine shortly) that converts are among those excluded from marrying in to priestly families. This would seem to exclude them from serving as a judge in capital cases. Nonetheless, the very figures excluded by this Mishnah for capital judging are included for civil judging. This implies that the Mishnah authorizes converts to sit as judges in civil cases. Indeed, the Gemara draws out precisely this inference from our text:

תלמוד בבלי סנהדרין לו:

הכל כשרין לדון דיני ממונות. הכל לאתויי מאי? ... לאתויי גר...
ואין הכל כשרין לדון דיני נפשות. מאי טעמא? ... אמר רב נחמן בר יצחק: אמר קרא +שמות י"ה+ ונשאו אתך,
אתך - בדומין לך ליהוי.

Talmud Bavli Sanhedrin 36b

“All are valid to judge civil cases.” “All” includes what?... a convert...

“But not all are valid to judge capital cases.”—Why?... Said Rav Nahman b. Yitzhak: [God said to Moshe,] “They shall bear the burden with you.” “With you”—they must be like you [i.e., not converts.]

The bottom line is straightforward: Converts are eligible to judge civil cases but not capital ones. But what is precisely the scope of this eligibility and lack thereof? And how does this interact with the general prohibition we saw above on converts assuming *any* position of authority? How is it possible that a convert would serve as a judge at all?

Another text complicates the picture further. **Rava** rules that the convert's eligibility to judge is affected by who is being judged!

תלמוד בבלי יבמות קא:-קב.

אמר רבא: גר דן את חברו דבר תורה, שנאמר: "שום תשים עליך מלך אשר יבחר ה' אלהיך בו מקרב אחיך תשים עליך מלך", עליך הוא דבעינן מקרב אחיך, אבל גר דן את חברו גר, ואם היתה אמו מישראל - דן אפי' ישראל. ולענין חליצה - עד שיהא אביו ואמו מישראל, שנאמר: ונקרא שמו בישראל.

Talmud Bavli Yevamot 101b-102a

Said Rava: According to the Torah, a convert may judge his fellow [convert], as it says: “Appoint, appoint a king over yourself, whom the Lord your God will choose, from among your brothers you shall appoint a king over yourself”—over *yourself* we require from among your brothers, but a convert may judge his fellow convert. And if his mother was [born] Jewish, he may judge even a [born] Jew. And with respect to *halitzah*: We require that his father and mother be [born] Jewish, as it says: “And his name shall be proclaimed in Israel.”

Does this approach of Rava's define the terms of the Mishnah's leniency for converts to judge civil cases? Or does it add an additional leniency that levels the playing field further between converts and native-born Jews when it comes to leadership? This is the subject of a medieval debate. **Rif** represents the more ethnic reading of this material. He rules as follows:

רי"ף סנהדרין יג:

האי גר דקא אמרינן כשר לדון דיני ממונות דוקא דאמו מישראל דגרסינן בפ' מצות חליצה אמר רבא גר דן את חברו דבר תורה שנאמר שום תשים עליך מלך עליך הוא דבעינן מקרב אחיך אבל גר דן את חברו ואם היתה אמו מישראל דן אפי' ישראל

Rif Sanhedrin 13b

When we say a convert is valid to judge civil cases, that only applies if his mother is a [born] Jew, for we learn [in Yevamot] that Rava said: According to the Torah, a convert may judge his fellow [convert], as it says: “Appoint, appoint a king over yourself...”—over *yourself* we require from among your brothers, but a convert may judge his fellow [convert]. And if his mother was [born] Jewish, he may judge even a [born] Jew.

According to Rif, converts and the descendants of converts are obviously entirely excluded by the Mishnah from judging capital cases. With respect to civil cases, the Mishnah indeed includes the גר, but this only refers to a patrilineal descendant of converts who *also* have Jewish ancestry on their maternal side. A convert himself surely cannot judge civil cases either, in keeping with the rule that converts may not be appointed to positions of power. The only exception we can make is to allow converts (or their descendants) to judge a civil case that involves another convert. In this model, the convert is effectively disbarred from serving as a judge at all, except for other Jews who are not really a part of the Israelite fraternity either. This reading of the rabbinic canon maximizes its ethnic thrust, thereby highly limiting the convert’s potential leadership role. Converts are welcome to join the Jewish people and to graft their family tree onto Israelite stock, but they themselves do not have a complete and total transition that allows them full access to power.

By contrast, **Rashi** reads the above sources totally differently:

רש"י יבמות קב.

גר דן את חברו - דיני נפשות דאילו דיני ממונות אפילו לכל ישראל דתנן (סנהדרין דף לב) הכל כשרים לדון דיני ממונות ואמר' הכל לאתויי מאי לאתויי גר.

Rashi Yevamot 102a

A convert may judge another convert—in capital cases, because with regard to civil cases, he may judge any Jew, as is taught in the Mishnah: “All are valid to judge civil cases” and we say [in the gemara]: “‘All’ includes what?” A convert.

For Rashi, the Mishnah's validation of the convert for civil cases is total: Even a convert himself—and obviously his descendants—can judge even native-born Jews in civil cases. The only limitation on the convert is in capital cases, but even there, Rashi reads Rava as permitting a convert to judge a capital cases involving a convert! Given that capital cases were no longer tried by Jewish courts in Rashi's time (nor in the time of the Talmud for that matter), this effectively means that the convert is the full equal of the native-born Jew when it comes to judging. This represents more of a religious orientation to the question of the convert and Jewishness more generally. Once someone has embraced Judaism, they become eligible for all but vestigial positions of leadership.

Rashi and those following him would still have to grapple with the story involving Rav Ada b. Ahavah and Rav Yosef, which bars the convert from serving in positions of authority in the Jewish community.⁵ How might a religiously oriented voice engage this text and sideline or neutralize it? Here, a remarkable passage in **Iggerot Moshe** lights the way. R. Moshe Feinstein is discussing whether a convert can be appointed the head of a school, which seems to be a position of authority:

שו"ת אגרות משה יורה דעה חלק ד סימן כו

...שודאי שכן הלכה שאסור למנות גר לשום שררה... אבל למעשה יש לידע, שהמצווה של ואהבתם את הגר (דברים עקב י' י"ט) מחייבת אותנו לקרבם ולהקל בכל עניינים אלו. ולפיכך אחר ישוב גדול נראה, שאין להחשיב משרות אלו בתקופתנו כענין של מעשה שררה, דעיקר תפקיד של ישיבה הוא ללמד לתלמידים כשהם רוצים. ומה שיש כח להמנהלים והראשי הישיבה על התלמידים לסלקם או שלא לקבל אותם לכתחילה וכדומה, אין זה אלא כמו שררה של בעה"ב על פועליו, שאין זה מעין מינוי לשררה כלל. ולפי זה משרות אלו

⁵ Indeed, for some, like Rashba and Ritva, this story is itself a refutation of Rashi's approach here: How could it be that a convert would be fit to sit on a *beit din* but ineligible to be the mayor of the town? It is possible that Rashi thought that Rava disagreed with the earlier story. He is, after all, a later authority and entitled to his own interpretation. The *midrash* we cited earlier is not cited in full in the Talmud Bavli, and Rashi may not have assumed that all Amoraim agreed that converts were excluded under the rubric of איש נכרי. But more likely, particularly in light of the parallel on Yevamot 45b, where Rava is said by the anonymous Talmud to have agreed with the exclusion of a convert under this rubric, is that Rashi likened positions of communal power to judging capital cases. It is one thing to be involved in resolving a monetary dispute, but it is another to actually have the power to set communal policy. If so, we must note that while the monarchy was/is defunct, these analogous positions were not necessarily so. In this sense, I am not claiming that Rashi is actually consciously advocating a "religious" reading of the sources that will erase all practical differences between converts and native-born Jews. Rather, when we are considering the effects of ruling like Rashi in this matter as opposed to Rif, the *effects* on the community and its conception of converts and Jewishness will pull us in opposite directions. Put yet another way, someone who thinks in more ethnic terms will gravitate towards Rif, whereas one who thinks in more religious terms will gravitate towards Rashi.

אינם אלא כמילוי תפקיד וכעניין של עסק... ובדבר מה שהערת אם יש איסור גם על הגר עצמו לקבל שררה,
לכאורה נראה שאין כאן איסור כלל, גם בשררה ממש...

Responsa Iggerot Moshe Yoreh Deah IV:26

...It is clearly the *halakhah* that it is forbidden to appoint a convert to any position of authority... But in practice, one must understand that the *mitzvah* to love the convert requires us to draw them close and to be lenient in all these matters. Therefore, after much consideration it seems that one should not consider these sorts of appointments in our time to be like positions of authority. For the essential role of a *yeshiva* is to teach students when they want to learn. The fact that the administrators and the *rashei yeshiva* have the power to expel students or not to accept them is not any more authority than an employer has over his workers, which is not an appointment to a position of authority at all. According to this, these appointments are nothing more than doing a job... And with regard to your question as to whether there is a prohibition on the convert himself to accept the authority, it would seem that there is no such prohibition, even with regard to *bona fide* authority...

R. Moshe Feinstein himself does not here wipe out any distinction between converts and native-born Jews. Indeed, in this very responsum, he clarifies that it would be forbidden to appoint a convert as a *kashrut* supervisor, a position that involves enforcing laws against someone without their consent and to their monetary disadvantage. But he does two things here that one can imagine expanding further, particularly if one has a “religious” orientation to these questions. First, he notes that while the black-letter law excludes the convert from being given positions of authority, we can robustly debate and discuss what is considered a position of authority. He suggests that anything that can be described as a job, as opposed to enforcement, would not count in this regard. And he further suggests that any sort of authority that develops organically, such that the convert is simply offered a certain kind of authority, as opposed to being assigned it, might also be exempt from this concern. This allows the possibility for the law to stay intact in theory and to die in practice. Indeed, perhaps it may well be that the society with the strong impulse not to discriminate against converts is the very society that has a less authoritarian structure and operates with a great deal of democracy and consensus building, such that the concern of inappropriate handling of authority present here is self-liquidating. Second,

he names the religious motivation to think “religiously” about the convert. That impulse comes from a place of not wanting to push the joiner of Judaism away, and there is a verse on which that is based. R. Moshe highlights and endorses that motivation, somewhat surprisingly advocating for tendentious leniency when it comes to these questions.

Whether one follows this path or resists it, it should be clear that questions of leadership by converts are important proxies for thinking about the definition of the Jewish community. Let us turn now to cases involving marriage, which move these questions from the boardroom to the bedroom.

III. Marriage

One of the central consequences of converting to Judaism is being permitted, according to rabbinic law, to marry a Jew. But we can also detect how complete the notion of conversion is by carefully examining marriage laws and seeing if they operate the same for converts as for native-born Jews. Again, if we discover that converts are subject to different restrictions on whom they may marry than other Jews, we can detect a more ethnic conception of Jewishness at work. These converts have become Jews but don’t really erase their separate ethnic past. The more these past differences are erased and leave no mark on the convert’s marital eligibility, the more we are working with a religious conception of what it means to be Jewish.

One of the basic marriage restrictions that applies to most Jews is the prohibition on marrying a *mamzer*. While the early Tannaim disagreed over the precise scope of this category, they all agree that it refers to the offspring of a forbidden union. The Torah says about the *mamzer*:

דברים כג:ג

לֹא-יָבֹא מַמְזֵר בְּקִהְלָהּ, גַּם דּוֹר עֲשִׂירִי לֹא-יָבֹא לָהּ בְּקִהְלָהּ:

Devarim 23:3

The *mamzer* may not come into the community of the Lord. Not even the tenth generation may come into the community of the Lord.

This prohibition is understood by *Hazal* to refer to a ban on *mamzerim* marrying into the Jewish community, at least those with untainted lineage. But what are the parameters of ה'קהל"/"the community of the Lord?" This is the topic of **Tosefta Kiddushin 5:1-2**:

תוספתא קידושין ה:א

גירי וחרורי ממזרי ונתיני שתוקי ואסופי וכל האסורין לבא בקהל מותרין לבא זה בזה דברי ר' מאיר
ר' יהודה אומ' ארבעה קהלות הן קהל כהנים קהל לויים קהל ישראל קהל גרים והשאר מותרין לבא זה בזה
וחכמים אומ' שלש קהלות הן קהל כהנים קהל לויים קהל ישראל...
גר...מותר בממזרת...דברי ר' יוסה ר' יהודה או' גר לא ישא את [הממזרת]...

Tosefta Kiddushin 5:1-2

Converts, emancipated slaves, *netinim*,⁶ those of uncertain paternity, and foundlings, along with all those who are forbidden to enter into the *kahal*/community, are permitted to marry one another, according to R. Meir.

R. Yehudah says: There are four *kehalot*/communities: the *kahal* of *kohanim*, the *kahal* of *levi'im*, the *kahal* of Israel, and the *kahal* of converts. All the others may marry one another.

The Sages say: There are three *kehalot*/communities: the *kahal* of *kohanim*, the *kahal* of *levi'im*, the *kahal* of Israel...

A [male] convert... is permitted to marry a *mamzeret*... according to R. Yose. R. Yehudah says: A [male] convert may not marry a *mamzeret*.

The Tosefta begins with **R. Meir**'s statement that all those who are forbidden to marry into the core of the Jewish community may nonetheless marry one another. That means that an emancipated slave may marry a *mamzer*, and a foundling may marry someone of uncertain paternity, even though these various characters are not allowed to marry untainted Jews. Interestingly, R. Meir asserts that converts, despite the fact that they *may* marry Jews of untainted lineage, may *also* intermarry with these problematic characters. As a practical matter, this affords them more flexibility and is less restrictive. As a theoretical point, it of course implies that they are not considered part of "the community of the Lord" into which the *mamzer* may not enter through marriage. In this model, the convert joins *Judaism*, but lives in a kind of adjunct

⁶ These are descendants of the Gibeonites who tricked Yehoshua into a treaty when he was conquering the land. See Yehoshua 9.

relationship to the Jewish *people*, which manifests itself in this ethnic marriage law. The **Sages** clarify that indeed, the term קהל in the Torah is only meant to refer to *kohanim*, *levi'im*, and *yisraelim*. **R. Yose** turns this into a practical ruling and clarifies that a male convert may indeed marry a *mamzeret*. **R. Yehudah**, when he disagrees with this ruling, does so by way of asserting that the term קהל in the Torah is meant to include four groups: *kohanim*, *levi'im*, *yisraelim*, and converts. In other words, once the religious conversion is complete, the convert has joined the Jewish people as well, and is equally forbidden from marrying a *mamzer*. He offers a practical ruling explicitly forbidding the marriage of a convert, just like any other native-born Jew. Again, this debate is not merely about whom a convert can and cannot marry, it is about who is the defining core of the Jewish people. This in turn reflects a claim of what Jewishness is more broadly. Do converts actually become full members of the Jewish nation by adopting its religion? Or do converts sign onto the religion of the Jewish people, perhaps even become permitted to marry them and merge with them, but still remains a people apart?⁷

We see further evidence of the incompleteness of conversion in the laws surrounding marriage into priestly families. As I argued around leadership, restrictions around marrying into an elite are implicit statements of holding a more generally marginal status in the broader society. The more restricted a female convert is around marrying a *kohen*, the more she is implicitly told that she has *mostly* joined the Jewish people, but not entirely, as her different ethnic background remains front and center. The more those restrictions fall, the more we implicitly say that there is nothing about being a Jew that fundamentally has to do with who your parents are. There are four main positions on the question of female converts marrying *kohanim* and they are scattered across the following two texts:

משנה קידושין ד:ו-ז

בת חלל זכר פסולה מן הכהונה לעולם... רבי יהודה אומר בת גר זכר כבת חלל זכר: רבי אליעזר בן יעקב אומר ישראל שנשא גיורת בתו כשרה לכהונה וגר שנשא בת ישראל בתו כשרה לכהונה אבל גר שנשא גיורת בתו פסולה לכהונה אחד גר ואחד עבדים משוחררים אפילו עד עשרה דורות עד שתהא אמו מישראל רבי יוסי אומר אף גר שנשא גיורת בתו כשרה לכהונה:

⁷ The consensus of later sources is to follow R. Meir, R. Yose, and the Sages. See Talmud Bavli Kiddushin 73a.

קידושין עה-עה:

תניא, רבי שמעון בן יוחי אומר: גיורת פחותה מבת שלש שנים ויום אחד - כשרה לכהונה, שנאמר: וכל "הטף בנשים אשר לא ידעו משכב זכר החיו לכם" (במדבר לא), והלא פינחס היה עמהם...

Mishnah Kiddushin 4:6-7

The daughter of a male *halal* may not marry a priest, no matter how many generations have passed... R. Yehudah says: he daughter of a male convert [may not marry a *kohen*, nor may any woman with a patrilineal line back to a convert].

R. Eliezer b. Ya'akov says: The daughter of a male Jew and a female convert may marry a *kohen* and the daughter of a female Jew and a male convert may marry a *kohen*. But the daughter of a male and female convert may not marry a *kohen*. A convert... even until ten generations may not marry a *kohen* unless her mother [was born] Jewish.

R. Yose says: Even the daughter of a male and female convert may marry a *kohen*.

Talmud Bavli 78a-78b

It is taught: R. Shimon b. Yoḥai says: A woman who converts under the age of three may marry a *kohen*, as it says: “And all the young female children who have not yet known male intercourse keep alive for you” and Pinḥas [who was a *kohen*] was among those going out to war...

The Mishnah begins with an anchoring point: When a priest marries a woman forbidden to him, such as a divorcée, his children become desacralized. They are known as *halalim*, genetic descendants of priests who have nonetheless been stripped of their priestly nature. For the most part, this means that they simply behave like normal *yisraelim*, Jews of undistinguished lineage. But their status as a *halal* still means, according to this Tannaitic view, that they desacralize the women they are intimate with, rendering *them* forbidden to marry priests. They also pass on the status of *halal* to their sons, who in turn render women unfit for the priesthood.⁸ In other words, any woman who can trace back a patrilineal line to a *halal* is unfit to marry a *kohen*.

R. Yehudah builds off of this model and applies it to converts as well. He argues that any women who can trace a patrilineal line back to a *convert* are unfit to marry a priest, no matter how many generations have passed. In other words, גר is a kind of sub-ethnic identity that exists

⁸ By contrast, the daughters of *halalim* have the status of *halalot*: They themselves may not marry a priest, but their daughters may (provided the father is not a *halal*).

within and alongside the Jewish people and it is passed on, like the sub-ethnic identity of the priesthood, in a patrilineal fashion. Not only is a female convert forbidden from marrying a *kohen*, but even a woman born as a Jew three generations after her paternal great-grandfather converted to Judaism may not marry a *kohen*. This is a profound statement that the process of conversion hardly erased one's genetic essence.⁹

R. Eliezer b. Yaakov takes a different approach, demanding a different criterion for eligibility to marry a *kohen*: The woman must be able, somewhere in her family tree, to the core family tree of the Jewish people. In other words, it cannot be that every branch of her Jewish family tree eventually dead-ends in a conversion. But even if she is the patrilineal descendant of a convert, as long as not all of her other ancestors trace back only to converts, she is eligible to marry a *kohen*. This dramatically broadens the pool of a convert's descendants who can build families with even the most elite elements of the Jewish people. Nonetheless, this is still a highly ethnic definition of Jewishness. Not only the convert herself is restricted, but also any converts whose family trees have not yet merged with the rest of the Jewish people. Under his definition, it is possible for a group of people to convert to Judaism, raise generations of people as Jews in isolation and still not, even a hundred years later, be eligible to marry priests, because they have remained ethnically segregated. Practically, R. Eliezer b. Yaakov is light-years away from R. Yehudah, but theoretically he is quite closely related.

R. Yose offers a view that is different not only in terms of its practical scope, but the theory it is working with. For R. Yose, the key is that one is *born* a Jew. Yes, the convert herself may not marry a priest, but her children may, even if they were fathered by another convert. In other words, even someone without any ethnic connection to the Jewish people whatsoever is

⁹ Note that R. Yehudah is the one above who insists that the convert may not marry a *mamzer*. That ruling represents more of a “religious” perspective, whereas this one tends more in the “ethnic” direction. Two points are in order here. First of all, we should expect that these perspectives will constantly be blended, and this is no exception. Assuming the attributions are consistent and accurate here, R. Yehudah may have felt that the religious aspect of Jewishness is more critical in the context of *mamzerut*, which he may have understood to do less with genetics and more as a kind of social sanction. On the other hand, he may have held the issues surrounding the priesthood to be wrapped up in a kind of ethnicity that the convert could never transcend. It should also be noted that my intention throughout this series is not to claim that R. Yehudah or anyone else has a completely consistent position on Jewishness as a specific percentage of ethnicity and religion. Rather, the various debates that we see at work remind us repeatedly of this dichotomy and the ways in which it constantly presents itself to us. Whether or not R. Yehudah or anyone else has a consistent view, we are implicitly called on to revisit this question over and over again as we evaluate these various positions.

considered to be a full Jew—at least for the purposes of marrying a *kohen*¹⁰—provided they were never anything else. This moves us starkly away from ethnicity, even as it is still strongly embodied. Embracing the Jewish religion is not enough to erase one’s ethnic past, but embracing the Jewish religion acquires one a Jewish bloodline such that the next generation is treated as native-born.

Finally, **R. Shimon** offers the boldest view, albeit with a discomfiting prooftext. R. Shimon holds that even a convert herself may marry a *kohen*, provided that she converted when under the age of three. R. Shimon refers us back to the war on Midian, where Moshe orders all the men and women to be killed, but spares the young women, the ones who have not yet had any sexual intercourse. R. Shimon interprets this strictly, to refer to women below the age where sexual intercourse could be perceived as having any meaning or long-term effects. In rabbinic sources, this boundary is the age of three, after which, sexual encounters can mark a woman’s body indefinitely and potentially disqualify her from ever marrying a *kohen*. R. Shimon notes that Moshe permits these young women to be taken by the Israelite soldiers, presumably as wives, presumably after conversion. Since the story of the war on Midian includes a note that Pinchas, the *kohen*, was among the group that went out to war, the women offered to the group must also have been appropriate for him. Therefore, reasons R. Shimon, a *kohen* must be permitted to marry a convert, so long as she was converted under the age of three.

There is much to be said about this and other unsettling Rabbinic texts that talk about three as a meaningful boundary age around sexuality and the acceptance, without comment, of the notion that a woman’s body can be indefinitely marked by a sexual encounter in this way when there is no such analogue for a man. It is beyond the scope of this discussion but warrants a deeper treatment elsewhere. For now, I will also say that the age of three is also around the time from when memories begin to be retained. While R. Shimon’s prooftext comes from a sexual context, he might also be trying to capture the difference between someone who converted to Judaism but remembers being a Gentile as opposed to someone who has no alternate consciousness other than a Jewish one. That would also be a powerful definition of a religious notion of Jewishness: As long as one cannot really imagine being anything other than a Jew, that

¹⁰ It is hard to know whether R. Yose’s position is intended to span all kinds of categories beyond this one. Would he have disagreed with the *mishnah* in Bikkurim regarding talking about the Jewish past in first person possessive? Would he have held that the child of converts can serve as a judge in capital cases? These various topics do not directly speak to one another in Rabbinic literature, and even later codes often assume that the jurisprudential history of each topic is to be sorted out through an isolated look at each substantive topic.

is enough to treat someone as being a complete member of the Jewish people, even for the purposes of marrying into its most elite subgroup.

The Talmud analyzes these four positions¹¹ and then continues:

תלמוד בבלי קידושין עח:

אמר רב המנונא משמיה דעולא: הלכה כרבי יוסי. וכן אמר רבה בר בר חנה: הלכה כרבי יוסי; ומיום שחרב בית המקדש, נהגו כהנים סילסול בעצמן, כרבי אליעזר בן יעקב. אמר רב נחמן, אמר לי הונא: בא לימלך - מורים לו כרבי אליעזר בן יעקב, נשא - אין מוציאים אותה ממנו, כרבי יוסי.

Talmud Bavli Kiddushin 78b

Said Rav Hamnuna in the name of Ulla: The *halakhah* follows R. Yose. And so said Rabbah bb. Hannah: The *halakhah* follows R. Yose, but since the Temple was destroyed, the *kohanim* have guarded their dignity and followed R. Eliezer b. Ya'akov. Said R. Nahman: Huna said to me: If a person comes to consult us, we instruct him to follow the view of R. Eliezer b. Ya'akov. If he goes ahead and marries, we do not force him to divorce her, following the view of R. Yose.

The first thing we see in this passage is that R. Shimon b. Yoḥai is left by the wayside; female converts themselves are not allowed to marry *kohanim*. In a way this is highly intuitive: *Kohanim* and converts represent polar, incompatible opposites when we think about the essence of Jewishness. The priesthood symbolizes and preserves Judaism's most potent repository of bloodline, an unbroken chain of male DNA that purports to go back to Aharon the priest himself. It represents, in extreme form, that part of Judaism that is all about peoplehood, about genealogy, about ancestors. That sort of lineal sanctity provides a deeply stabilizing center for a society that might otherwise be overrun by the vagaries of history. The ability to trace genealogy back to antiquity can give an entire people a sense of authenticity and eternity that few, if any, other social groupings can. For many, the royal family in the United Kingdom serves this same function until today. The convert, by contrast, represents Judaism's boldest foray into the

¹¹ The anonymous voice of the Talmud anchors all of these positions in competing interpretations of Yehezkel 44:22, which requires priests to marry women מרע בית ישראל, from the seed of the house of Israel. R. Yehudah reads this term in its strongest ethnic form, requiring a patrilineal line that connects back to the main family tree of the Jewish people. R. Eliezer b. Ya'akov read it as sufficing with a connection to original Jewish stock, even if only on the mother's side. R. Yose sees only a requirement that the woman be conceived from people who were already Jews. R. Shimon reads the condition as fulfilled if she becomes a sexual being as a Jew.

forsaking of bloodline. Converts are the bearers a form of the covenant that in no way devolves upon them from birth. They parade for all to see the possibility of entering into direct relationship with God through Judaism despite lacking the ancestry that would have conferred this upon them automatically. Put in other terms, *kohanim* stand for the power of being non-negotiably part of a clan, a tribe, a family. Converts stand for the leveraging of contingency and choice to create powerful, mission-driven religious commitments. The three stricter views here thus all reflect a concern that the permitting the marriage of a *kohen* to a convert runs the risk of fraying—if not erasing—that *kohen*'s ties to Aharon and the unbreakable bond with history that they represent.

But we also see a formal rejection of ethnicity as an overwhelming factor. Ruling like R. Yose and allowing someone with no ethnic connection to the Jewish people to marry a *kohen* is an equally strong statement, one that decrees that bloodline alone will not be allowed to define the essence of Jewishness. The notion that converting to Judaism acquires one a Jewish bloodline is a deeply religious conception of what it is to be part of Israel, even as it retains primacy for the notion of being *born* Jewish as being highly significant. Still, we see here resistance to putting this sort of theory into practice. *Kohanim* themselves, unsurprisingly, refused to follow R. Yose in practice and required women to have some genetic connection to the Jewish people before marrying them. And even the Rabbinic establishment, while formally endorsing R. Yose when push comes to shove, still preferred and counseled a more ethnic treatment of this topic.

This is a wonderful example of the unresolved tension around ethnicity and religion continuing to play out through the boundary case of converts. The results are messy and unclear because the core problem is complex. If the biblical Israelite is an entirely ethnic figure, Rabbinic sources surely depart from this in their definition of the Jew. But neither they—nor significant elements within the Jewish people—ever abandon the ethnic element of Jewishness entirely. It is the delicate dance between these two models that continues to define our understanding of what a Jew is until today.¹²

¹² Two other striking sources show the durability of the ethnic paradigm when it comes to converts. Both branch of a statement by R. Hama bR. Hanina on Kiddushin 70b, which says that the Divine Presence only dwells in Jewish families of attested lineage. R. Yehudah Ha-Levi (Spain, 12th c.), when he discusses prophecy in Kuzari I:115, turns to discuss the convert and says the following: ועם כל ומי שדבק בדרך הזה יהיה לו ולזרעו חלק גדול מן הקורבה אל האל יתברך. וזה לא ישתוה הגר הנכנס בתורתנו עם האזרח, כי האזרחים לבדם הם ראויים לנבואה, וזולתם, תכלית ענינם שיקבלו מהם ושיהיו חכמים. “God allows him who treads this path, as well as his progeny, to approach Him very closely. Those, however, who become Jews do not take equal rank with born Jews, who are specially privileged to attain to

IV. Closing thoughts

As we end this series on defining Jewishness, I want to offer some brief closing thoughts on what this all might mean for us today. I argued at the beginning of this series that our ongoing struggle with how to define Jewishness is due to the antiquity of the Jewish people. Forged in a world where ethnicity and religion were largely fused and inseparable, the Jewish people passed through the revolution of the Hellenistic empire and its creation of a multi-ethnic civilization. Since then, we have been trying to sort out our response to the implicit question posed to us: Which are you? An ethnicity or a religion?

Each of these models comes with significant benefits and limitations. Ethnic models grant a certain degree of stability and self-evident definition. They avoid heresy hunting and can be broadly inclusive of all members of the group, even those exhibiting religiously deviant behavior. But ethnic models are also somewhere between grudgingly accepting to hostile to newcomers and have a hard time articulating a mission or purpose beyond parochial survival. What is gained through peoplehood can easily be squandered through a self-serving myopia that loses sight of God’s vision for humanity. Religious models allow for clearer definitions in this regard and are quite adaptable to welcoming those who are inspired by the cause and way of life and who wish to join. By not judging people by their origins, they allow Jewishness to take new

prophecy, whilst the former can only achieve something by learning from them, and can only become pious and learned, but never prophets.”

A modern source of this ilk can be found in Mishneh Halakhot 7:213, the response of R. Menashe Klein (United States, 20th c.). He is discussing the fact that Jews are obliged to welcome the convert and tries to square this with R. Hama b. Hanina’s statement above. He says the following: והנה פשוט דגר מצוה לאוהבו ולקרבו והתורה צותה עליו בכל מיני ציווי מ"ח פעמים בתורה לקרב שלא להונות אותו עם כל זה לענין שידוכין אין להתערב בהם דפשוט שאם מתערבין עמהם אין השכינה שורה על המשפחה זו ולכן קשים הם לישראל כספחת...ופשוט דבגרים אין נפ"מ אם הוא גר צדק ושומר הכל ואפ"ה אין להתערב עמהם ואפילו בזמן הזה ולא אמרינן כיון דממילא נתערבו כמה גרים במשך הזמן אין נפ"מ ומותר הכל דודאי מי שהוא ממשפחה מיוחסת חס ליה להשתדך עם גר. “Obviously, one must love converts and draw them near. The Torah commanded in various ways in 48 different places to draw them near and not to hurt them. Nonetheless, with respect to arranging marriages, one should not mix with them, because obviously if a family mixes with them, then divine presence will no longer dwell on that family, and therefore they are as terrible for Israel as a rash...and it is obvious that when it comes to converts it makes no difference if the person is a righteous convert and observes everything; nonetheless, one should not mix with them, even today. We don’t say, “since so many converts have already mixed in to the Jewish people over time, it doesn’t matter anymore and all are permitted to marry”; certainly, it would be terrible for any family of pure lineage to be matched up with a convert.” This is a remarkable rollback of the religious model of Jewishness in favor of the ethnic one. Converts become devotees of the Jewish religion and are *permitted* to mix with the Jewish ethnos, but, for R. Klein, ideally they would dwell as a people apart, sharing a religion with Jews, but not families. These approaches are obviously not universal—the passage we saw last week in Rambam’s responsa is the most blatantly in conflict with them—but they should remind us that this is not a topic on which there is inexorable motion or “progress” in one direction alone.

forms as needed. But religious models encourage a quest for ideological purity and allow for even the closest family members to turn on one another. What a religious model gains in its embrace of converts it must be prepared to lose in its loss of apostates. Each can promote peace and harmony and each can be deployed to inflict violence on the other.

In the two major centers of Jewish life today, it is quite easy to detect two very different responses at work. In Israel, Jewishness unquestionably hovers closer to the ethnic pole of our constructed spectrum. The Zionist narrative is largely one of a people, not a religion, returning to its homeland and building a society for itself despite various oppositional forces and peoples. While religious debates flare in modern Israel, there is no question that the dominant identity lines are drawn between Jews and Arabs, where “Jews” is conceived not primarily as a religious group, but largely an ethnic one. Israeli society has little interest in or compassion for converts, other than a few advocates who work hard to alter the status quo. In Israel, with its reasonably robust birthrate, Jews are mostly made the old-fashioned way: they are born. And for most Israeli Jews, this is just fine. Despite the lack of consensus around religious practice, to understate things considerably, most Israelis simply don’t care if it is near impossible to navigate the state’s bureaucracy as a convert. The convert is a curiosity, perhaps an admirable one, but one on the fringes of the Jewish experience, one that certainly cannot narrate in first person possessive the historical events that launched Zionism and continue to shape it. With time, that may change, but the ethnic anchor of Israeli Judaism is undeniable. That leads to a clear sense of solidarity among Jews in Israel, but Israeli society also needs a clearer sense of the purpose of being Jewish and what the message is to the broader world.

Things are dramatically different in the United States. In some ways, American Judaism’s biggest challenge is that it wants it both ways: to cherry pick the ethnic and religious elements of Jewishness that are most comfortable and most in tune with external morés. American Jews love being ethnic in all sorts of ways: They don’t want to be judged in or out based on their practice, they like the notion that a child born to a Jew is unquestionably a Jew irrespective of belief or connection to *mitzvot*, and they generally like the kind of religious freedom and agnosticism that is enabled by ethnic group definitions. In short, they love the ways in which being Jewish can be treated as being part of a family. They also love being religious. In an increasingly post-ethnic society, they resist placing much if any emphasis on origins and love to encourage personal journeys towards truth and meaning. With high intermarriage rates and an increasing cloudiness

around Jewish ethnicity in the United States, American Jews are finding it more tenable to define Jews on a voluntaristic basis rather than grounded in bloodline. The dream for many contemporary American Jews is to define a Jewishness that you can be automatically born into, that has no non-negotiable behavioral expectations—including whom one marries—and that welcomes anyone to join Judaism and become a full and equal member of the community.

The problem is, as I have argued throughout this series, that this is entirely incoherent and unsustainable. Adopting either an ethnic or a religious frame has consequences in all kinds of directions. You can't really declare that someone born a Jew can never lose that identity while avoiding any hierarchy between the native-born and the convert. You can't really welcome the convert with open arms based on an embrace of the Jewish religion and maintain a studied agnosticism on any kind of religious standards for Jewish life. Either American Judaism will come to terms with this dilemma or large swaths of it will simply devolve into incoherence or irrelevance. Given the contemporary demographic trends, it seems that the kind of ethnically dominant model at work in Israel is out of reach. Given current ideological trends in American society at large, it is hard to imagine this even being desirable for most. That means that the future of a vibrant and self-sustaining American Judaism almost certainly rests on a clearer embrace of a religious model. That will bring the benefits of seeing converts as paradigms, not exceptions, but it will also require a tougher stomach for articulating expectations for religious behavior and giving communities meaningful religious definition. And even if this succeeds, it is likely to deepen the divide between American and Israeli Jews, who will increasingly be responding to Alexander the Great's challenge to us from two different poles of the spectrum of Jewishness. In some ideal world, there would have a stereophonic effect that would enrich our understanding of the covenant and God's relationship with the Jewish people. In practice, it may generate a good deal of discord and make it even harder for these two communities to understand one another.

Perhaps the best counsel is to remember that the question of defining the ethnic-religious character of Jewishness can never truly be resolved. We can tend towards one pole or another, but, so long as we are true to where we came from, we will never be able to shake either of these modes entirely. That stems from having forged a covenant with God in the ancient world, as an ethnic clan, a covenant that imprinted a revolutionary vision for the world on the soul of an earthly people. History's wheel will continue to turn, and we will undoubtedly continue to

confront changing circumstances that will rebalance our identity equations over and over. Perhaps our task is to embrace the messiness, have the courage to respond faithfully to our past and the conditions of the present, while maintaining the humility to know that an eternal covenant is meant to take us into an unknown future as well.