

# אנא גר אנא

## “*Ana Ger Ana: May a Convert to Judaism Serve on a Bet Din?*”

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***She'eilah:*** Our colleague, Rabbi Shlomo Zacharow, a Mesader Gittin and Instructor at the Conservative Yeshiva in Jerusalem, has turned to the Joint Bet Din of the Conservative Movement<sup>1</sup> for instructions regarding the permissibility of including a convert to Judaism among its members when he convenes a Bet Din for divorce proceedings. The question is occasioned by restrictive approaches to this matter recently articulated by the Orthodox Beth Din of America and, with particular force, by Beth Din member Rabbi Michael Broyde.

May a convert to Judaism serve on a Bet Din?

***Teshuvah:*** Countless Gerei Tzedek -- sincere and devoted converts to Judaism -- labor daily on behalf of their fellow Jews as congregational and community leaders, as Jewish educators, as rabbis and cantors, as cherished, fully empowered members of the Jewish People, and as exemplars of Jewish religious practice. The blessings represented by the presence and active participation of converts in our communities is a powerful force in contemporary Judaism, but is hardly unique to the 21st Century.<sup>2</sup> A significant percentage of the Tannaim, for example, were themselves converts or descended from converts. Among the many giants and luminaries of early rabbinic Judaism to be counted among those brought to the Jewish People (directly or by descent) through conversion are Shemaya and Avtalyon, Rabbi Akiba, Rabbi Meir, and Onkelos, the celebrated translator of the Torah into Aramaic.

Notwithstanding the principled equal status and genuine spiritual gifts of those who have, throughout the ages, embraced Judaism through conversion, the corpus of Jewish Law includes a number of legal disabilities borne by converts. These historic restrictions appear dramatically at odds with the profound affection and admiration properly accorded Gerei Tzedek, with their status as full-fledged Jews, and with our moral and Halachic obligation warmly to welcome and, indeed, to love the convert. Rabbi Beryl Wein<sup>3</sup> has commented that, in the context of

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1. This paper was originally written as an internal policy statement for use by members of the Joint Bet Din of the Conservative Movement, and by the Mesadrei Gittin (authorized adjudicators of Jewish Religious Divorce) which it certifies. The Joint Bet Din, comprised of nine members, deals with matters of marriage and divorce, as well as arbitration and mediation.
  2. For a history of conversion to Judaism, see my book, *Noble Soul: The Life and Legend of the Vilna Ger Tzedek, Count Walenty Potocki*, (Gorgias Press, 2005) and, especially, the appendix to that work.
  3. Rabbi Beryl Wein (born 1934), a celebrated rabbi and lecturer, is former Executive Vice President of the Orthodox Union. He made this observation in a lecture recorded and distributed by the Destiny Foundation: “The Legacy of Hillel and Shammai.”

contemporary attitudes toward conversion, such Halachic restrictions are “unlikely for us to imagine.”

This responsum will examine the extent to which the historic Halachic disabilities borne by converts remain applicable today and, specifically, the question of the eligibility of converts to be impanelled as members of Rabbinic Courts, if they are otherwise qualified.

## **A. Halachic Obstacles to the Convert as Judge**

### **I. *Som Tasim*: Who May be Appointed to a Position of Public Authority?**

Discussion of the extent to which a convert to Judaism is eligible to serve as a member of a Bet Din begins with the statement of Rava:

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

“A convert to Judaism may judge his fellow convert: this is a legal principle rooted explicitly in the Torah. As it is said: ‘You shall be free to set a king over yourself, one chosen by the Lord your God. Be sure to set as king over yourself a member of your own people.’<sup>4</sup> It is only for authority over yourself that “a member of your own people” is required. A convert to Judaism, however, may judge a fellow convert. And if his mother was Jewish, he may judge even another Jew. As for matters of Chalitzah, one may not serve as a judge unless both his father and mother were of Jewish origin, as it is said:<sup>5</sup> ‘His name shall be called in Israel...’<sup>6</sup>

Rava’s statement introduces the seeming paradox of a *גר...ואמו מישראל* -- a convert to Judaism born to a Jewish mother... a term introduced by Mishnah Kiddushin 4:7. In its usage here, *גר* refers not to the personal conversionary status of the prospective judge, but to his “Yichus” -- his family pedigree. The child of a father who has converted to Judaism (or even the more distant, direct patrilineal descendant of a convert to Judaism) and a Jewish mother is -- although Jewish by birth -- in the ten-fold system of pedigree and personal status enumerated in Mishnah Kiddushin (*עשרה יוחסין*) deemed a *גר* rather than a *ישראל* (notwithstanding our current conflation of these two groups for purposes of, e.g., liturgical honors). Thus, the child born to a father who is a multi-generational descendant of a convert to Judaism, by a mother who is herself a convert to Judaism, would (according to Rava’s formulation) be similarly precluded from judging a case involving those of unambiguous, native-born Jewish status and parentage. That is to say, the judicial disabilities borne by converts to Judaism under the rubric of *שום תשים* are, to a certain extent, borne by their descendants, as well.

The restrictive biblical parameters for the selection of an Israelite monarch are extended to

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4. Deuteronomy 17:15.

5. Deuteronomy 25:10

6. BT Yevamot 102A.

-- כל משימות שאתה משים אל יהו אלא מקרב אחיך: lesser positions of public trust and authority: “Appointments to any and all positions of public authority may be made only from among members ‘of your own people.’”<sup>7</sup> Maimonides, on this basis, codified:

אין מעמידין מלך מקהל גרים אפילו אחר כמה דורות עד שתהיה אמו מישראל, שנאמר לא תוכל לתת עליך איש נכרי אשר לא אחיך הוא, ולא למלכות בלבד אלא לכל שררות שבישראל, לא שר צבא לא שר חמשים או שר עשרה, אפילו ממונה על אמת המים שמחלק ממנה לשדות, ואין צריך לומר דין או נשיא שלא יהא אלא מישראל, שנאמר מקרב אחיך תשים עליך מלך כל משימות שאתה משים לא יהו אלא מקרב אחיך.

“We do not appoint a king from among the community of converts to Judaism, even after several generations, unless his mother is of Jewish origin, as it is said: ‘You must not set a foreigner over you, one who is not your kinsman.’ This applies not only to the king, but to all offices of authority in Israel: the foreigner may not command the army, nor units of fifty or ten troops, nor may a foreigner even be appointed to oversee a body of water from which shares are apportioned to water fields. Needless to say, only one of Jewish origin may serve as king or judge, as it is said: ‘Set as king over yourself a member of your own people’ -- Appointments to any and all positions of public authority may be made only from among members of your own people.”<sup>8</sup>

Similarly, the Shulchan Aruch, without dissent or qualification by the Rema, rules:

בית דין של ג' שהיה אחד מהם גר ה"ז פסול לדון לישראל אא"כ היתה אמו מישראל וגר דן את חבריו הגר אע"פ שאין אמו מישראל.

“A court of three members, of which one is a convert to Judaism (Ger), is disqualified from judging a person of Jewish origin, unless the mother of the convert is of Jewish origin. But a convert may judge a fellow convert even if the judge’s mother is not of Jewish origin.”<sup>9</sup>

Rashi’s commentary on Rava’s original statement in the Gemara, however, narrows the exclusion of the convert from the judicial role:

גר דן את חבריו: דיני נפשות, דאילו דיני ממונות אפילו לכל ישראל, דתנן (סנהדרין ל"ב:) הכל כשרין לדון דיני ממונות, ואמרינן: "הכל" לאתויי מאי? לאתויי גר.

“A convert to Judaism may judge his fellow convert: this refers to capital cases. As for monetary cases, the convert may serve as a judge for any Jew. As the Mishnah states: ‘All are permitted to judge monetary cases.’ And as the Gemara explains: ‘The force and function of the word “all” is to include what? Its force and function is to include the convert to Judaism.’”<sup>10</sup>

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7. BT Yevamot 45B.

8. Rambam, Mishneh Torah, Hilchot Melachim 1:4.

9. Shulchan Aruch, Choshen Mishpat 7:1.

10. BT Yevamot 102A, Rashi ad loc.

The limited eligibility of the convert to Judaism to serve as a judge is expanded by other authorities, who identify a number of mitigating factors, and circumstances under which the service of a convert as judge does not constitute violation of the Biblical prohibition of *Som Tasim* (Deuteronomy 17:15).

## **B. Mitigating Factors: The Convert as Eligible Judge**

### **I. *Kfiyah v'Kabbalah*: The Willingness of the Parties**

The disqualification of converts to Judaism as judges, articulated by the Shulchan Aruch in Hilchot Dayanim, is rephrased in Hilchot Gerim:

לענין דין גר כשר לדון דיני ממונות והוא שתהא אמו מישראל אבל אם אין אמו מישראל פסול לדון את ישראל אבל לחבירו גר דן.

“As for the judicial role, a Ger is eligible to judge monetary cases, so long as his mother is of Jewish origin. But if his mother is not of Jewish origin, he is disqualified from judging an individual of Jewish origin, but he may judge his fellow convert.”<sup>11</sup>

The Shach significantly modifies this pattern of disqualification:

פסול לדון את ישראל אפילו דיני ממונות, ודוקא על ידי כפייה, אבל אם מקבלו עליו לדון מותר. כן כתב הרא"ש וטור וכן כתב העט"ז

“He is disqualified from judging a party of Jewish origin -- even in monetary cases -- that is, specifically, with coercive authority. But if the litigant accepts him and his judgment, it is permitted. So wrote the Rosh, and the Tur, and so wrote Ateret Zekeinim.”<sup>12</sup>

The Shach (citing a similar ruling by the Bach) also makes reference to the provision in Yoreh Deah, which he reworks in his comment to the parallel passage in Choshen Mishpat:

בי"ד ס"ס רס"ט פסק בהדיא דאפילו בכפייה מותר לדון חבירו ובלא כפייה לדון אפילו ישראל.

“In Yoreh Deah 269, he ruled explicitly that a convert to Judaism may judge his fellow convert even with coercive authority, and -- absent coercive authority -- he may even judge a party of unambiguous Jewish origin.”<sup>13</sup>

Be'er Hetev, citing the further precedent of the Levush, concurs: לדון אפילו דיני ממונות ודוקא -- “That is, (a convert is not permitted) to judge (a Jew of non-conversionary Jewish lineage) specifically, with coercive authority. But if the litigant

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11. Shulchan Aruch, Yoreh Deah 269:11.

12. Ad loc.

13. Shulchan Aruch, Choshen Mishpat 7:1, ad loc.

accepts him and his authority, it is permitted.”<sup>14</sup>

The Aruch Ha-Shulchan directly incorporates the consideration of coercive authority as the disqualifying factor for a convert while transmitting the language of Yoreh Deah itself:

ולענין דין כשר לדון דיני ממונות והוא שתהא אמו מישראל, אבל אם אין אמו מישראל פסול לדון ע”כפייה, אבל לחבירו הגר דן.

“As for the judicial role, (a Ger) is eligible to judge monetary cases, so long as his mother is of Jewish origin. But if his mother is not of Jewish origin, he is disqualified from judging in a coercive role, but he may judge his fellow convert.”<sup>15</sup>

Rabbi Eliezer Waldenberg surveys various authorities’ treatment of our question in a responsum directly on point: “Does the acceptance of the parties render a convert to Judaism eligible to serve as a judge.”<sup>16</sup> Without providing his own Psak, Waldenberg identifies three separate halachic approaches: 1) those who deny that acceptance by the parties (or community) avails; 2) those who rule that acceptance by the parties (or community) does indeed avail, but -- “only when there is none other in Israel who equals his greatness in Torah” [this consideration will be discussed below, in section B-IV]; and 3) Those who rule that acceptance by the parties (or community) does indeed avail even without the added demand of unequalled scholarly stature. Of this final group, Waldenberg writes:

ושלא זקוקים בזה להסכמת כל ישראל ממש אלא מהני גם אם קבלוהו חשובי עדה ואע”פ שאין רוב צבור מסכימים הוא כקבלוהו עלייהו ויכול לדון.

“It is not the case that we literally require the assent of all Israel. It is sufficient if the leading members of the community accept him. Even if the majority of the community do not agree (with the leaders’ determination), it is as if they have accepted him for themselves, and he is eligible to judge.”

Rabbi Waldenberg thus implies that the “willing acceptance” required to impanel converts as judges need not be secured on a case by case basis from the parties or litigants they are to judge, but may be effected by the assent of communal leaders on their constituents’ behalf.

## **II. Tzirut: Appointment to Shared Office**

Rabbi Eliezer Waldenberg, in his Responsa Tzitz Eliezer, responds to a query as to the permissibility of appointing a convert to Judaism as a congregational Gabbai, or to any other post in which responsibilities and authority are shared among peers, as, for example, as a member of a committee or board. He concludes:

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14. Shulchan Aruch, Yoreh Deah 269:11, ad loc.

15. Aruch Ha-Shulchan, Yoreh Deah 269:7.

16. Rabbi Eliezer Waldenberg, She’eilot u-Teshuvot Tzitz Eliezer, 19:48.

יש מקום לפי ההלכה להתיר למנות גר לגבאי ביה"כ או לשאר שררות בישראל אפילו לאלו שסוברים שבדרך כלל לא מהני בזה קיבלו עליהו... כיון שזה בא בהבלעה עם אחרים מישראל. וכשאינא תרתני, צירופו עם אחרים, וגם קיבלו עליהו של כל הציבור, בודאי שיש להתיר זאת.

“There is basis in Halachah to permit appointment of a convert to Judaism as congregational Gabbai or to any other position of public trust and authority in the Jewish Community -- even for those who hold the position that in general the principle of the community’s acceptance of the (otherwise disqualified) official is irrelevant -- when this individual appointee’s authority is subsumed by that of the fellow Jews with whom he is appointed and shares office. And when both conditions are applied -- the sharing of authority with others *and* the acceptance of the official’s authority by the community, there are certainly grounds to permit this.”<sup>17</sup>

The role of a member of a Bet Din is, by definition, shared with fellow judges. This is in seeming contrast to the appointment of an independent judge, alone mentioned by Rambam (and repeated by, among others, Rabbi Akiva Eiger) as comparable to that of a king: a sole decisor with all but unlimited discretionary power over the lives, property, and personal standing of those subject to his legal authority.

### **III. Serarah Arai: Temporary vs. Permanent Appointments**

A number of authorities rule that any prohibition concerning a convert being named to public office devolving from Deuteronomy 17:15 applies only to permanent positions (analogous to the Israelite monarchy), and that appointment to a position of authority on a temporary or ad hoc basis is permissible. Encyclopedia Talmudit states the principle succinctly: **אם דן בדרך עראי** -- “If a convert to Judaism serves as a judge on an ad hoc basis, it is valid.”<sup>18</sup> Thus, in Chiddushei Ha-Ran, we read:

גר דן את חבירו גר היינו למנותו דיין קבוע בדיני ממונות על הגרים, וכי אמרינן בגמרא דגר כשר לדיני ממונות של בני ישראל, היינו דוקא באקראי ובדיעבד, ואם דן דינו דין, אבל למנותו דיין קבוע לא, משום דבעינן מקרב אחיך... גר כשר לדון את חבירו גר ולהיות קבוע בדיני ממונות בגרים, ולדון ישראל באקראי דינו דין... ובדיני נפשות ולחליצה ולמלך בעינן אביו ואמו מישראל וכן דעת ר' אחא משבחה גאון ז"ל וכן פסק הרשב"א ז"ל ביבמות.

“A convert to Judaism may judge his fellow convert. That is, he may be appointed to fixed office as judge for monetary cases involving converts. And when the Gemara states that a convert is valid to judge monetary cases involving those of unambiguous Jewish parentage, that is on an ad hoc basis and is valid after the fact: if he judges, his judgment is a valid ruling. But to appoint him to fixed office as a judge is not permitted, since we require ‘a member of your own people’... A convert is valid to judge his fellow convert and to serve in a fixed judicial office for monetary cases for converts. And as for judging those of unambiguous Jewish parentage on an ad hoc basis: his judgment constitutes a valid ruling... But for capital cases and for Chalitzah and for

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17. Ibid., 19:47.

18. Encyclopedia Talmudit: “Ger” p. 268.

appointment as king, we require that both his father and mother be of unambiguous Jewish parentage. And this is the position of Rabbi Achai of Shabcha Gaon, of blessed memory, and this is the position of the Rashba, of blessed memory, in his commentary on Yevamot.”<sup>19</sup>

Thus Ramban, explaining Rashi’s approval of converts as judges in monetary cases, also distinguishes the judicial role from other offices from which converts to Judaism are barred:

ואיכא למימר נהי נמי דכשר לדון דיני ממונות מיהו לא ממנינן ליה לא ריש מתא ולא ריש גרנותא דהיינו משימות שאתה משים שלא יהו אלא מקרב אחיד.

“One may say: granted, even one who is authorized to serve as a judge for monetary cases, we would still not appoint him as leader of a city or even to administer a water wheel for a municipal well: for these are appointments which may be made only from ‘among your own people.’”<sup>20</sup>

Ramban thus distinguishes the role of the judge impaneled for any particular case from that of appointed public office, to which alone the Biblical prohibition applies. Rashba makes a similar distinction -- “insofar as offices of public trust and authority are more stringent in nature than monetary cases, as they (the former) are somewhat analogous to the role of the king.”<sup>21</sup>

Rabbi Moshe Feinstein states that the ad hoc nature of Batei Din convened to facilitate conversion proceedings is particularly evident:

ואף שהזכיר הרמב"ם שיהיו ת"ח ברפ"ג מסוטה ובפ"ה מרוצח ה"ח התם דעושין זה הב"ד צריכין למסור ת"ח כדי שודאי ידעו וגם יתקבלו דבריהם אבל בגרות שא"צ לבא דוקא לפני ב"ד שבעיר דהא יכול לבא לפני כל אדם להתגייר שייך רק לומר להם שידעו מה לעשות ואם יודעין רשאין אף שאינם ת"ח.

“Even though, at the beginning of Chapter 3 of Sotah and in Hilchot Rotzeach 5:8, Rambam specifies that they should scholars (Talmidei Chachamim), there the Bet Din does this because they must send scholars to be certain that they will know what to say and so that their words will be accepted (when they issue a statutory warning to a prospective murderer). With regard to conversion, however, where the aspirant need not appear before the city’s established court, but rather can come before anyone in order to convert, it is fitting only to instruct them (the members of the Bet Din), so they will know what to do. If they know what to do, they may act as a Bet Din even if they are not scholars (Talmidei Chachamim).”<sup>22</sup>

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19. Chiddushei Ha-Ran, Sanhedrin 36B.

20. Chiddushei Ha-Ramban, Yevamot 45B.

21. Chiddushei Ha-Rashba, Yevamot 102A.

22. Rabbi Moshe Feinstein, Responsa Igrot Moshe, Yoreh Deah 159. Notwithstanding this leniency, we note the counsel of our colleague, Rabbi Jonathan Lubliner regarding the composition of Batei Din for conversion: “Rabbis have more than a generic role to play at a beit din; by virtue of their training and experience they are the ones best qualified to conduct the ritual welcoming Jews-by-Choice into the House of Israel. Equally important...the experience partakes of greater religious clarity and cogency for those who join our communities and synagogues.” Rabbi Jonathan Lubliner, “Petach Ha-Ohel - At the Entrance of the Tent: A Rabbinic Guide to

Rabbi Feinstein's discussion of the scholarly bona fides of those eligible to form a Bet Din l'Giur is beside the point. If כל אדם -- "anyone" -- that is, any three Jews may convene themselves as a Bet Din in order to accept converts, the participation of a convert among the members of that body cannot be construed as "appointment" to office... and thus represents no violation of שום תשים .

#### **IV. Ein Kamohu: When the Convert is of Unequalled Stature**

The Tzitz Eliezer traces a line of rabbinic reasoning that predicates approval of judges by the community, or by the parties to a case being adjudicated, exclusively כאשר אין כמוהו בישראל -- גדול בתורה -- on situations "when there is none other in Israel who equals his greatness in Torah."<sup>23</sup> Paraphrasing the Chemdat Yisrael, Waldenberg elaborates:

דדוקא אם יש בישראל גדול כמותם אז אם בוחרים את הגר הוי זה בכלל התמנות שלנו, שאנחנו ממנים אותו, וזה אסור לנו, אבל אם הגר הוא הגדול שבדור ומגיע לו כתר תורה מדינא אין אנחנו ממנים אותו כלל כי כתר תורה שייך למי שגדול יותר בדור והוא שלו מדינא ולא צריך מנוי כלל.

"It is specifically when there are other candidates of equal stature in the Jewish community, that if we choose a convert it constitutes appointment by us -- insofar as it is we who appoint him -- and that is forbidden us. But if the convert in question is the unrivalled scholar of the age, and the Crown of Torah passes to him by immutable logic (or as a matter of justice), then it is not we who appoint him at all, for the Crown of Torah by right belongs to the one who is unrivalled in stature in his age. It is his by immutable logic (or as a matter of justice), and he requires no appointment."<sup>24</sup>

Such unrivalled stature "in one's age" -- גדול הדור -- has been cited,<sup>25</sup> for example, to explain the appointments of Shemaya and Avtalyon to national leadership -- as Nasi and Av Bet Din, respectively -- not withstanding their conversionary pedigrees. That is to say, they were self-validating candidates -- unrivalled in wisdom and scholarship. They were not, therefore "appointed" in violation of the Biblical prohibition: the positions were theirs as of right.

The same principle should be considered applicable on a local level. The rabbi of a community who is himself a Ger Tzedek (like any rabbinic colleague) is generally -- in the context of the congregation or institution he serves -- in the category of אין כמוהו. He is unrivalled in scholarship and singular in expertise -- if not necessarily in his generation or age as a whole -- then in his communal context, especially in isolated communities. (If he is not, strictly speaking, unrivalled, it is more likely still that he may be among, at least, the three most desirable and qualified of prospective judges!) Similarly, a rabbi who must assemble a Bet Din,

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Conversion" (Rabbinical Assembly, 2011), p. 8.

23. Op. Cit., 19:47.

24. Ibid.

25. Tzitz Eliezer, *ibid.*, citing Knesset Ha-Gedolah (Rabbi Chaim Benveniste, 1603–1673)



say, to deliver a GET as a Shaliach Sheini, may find Gerim to be among the most knowledgeable and observant laymen (or, indeed, colleagues) available. In such a situation, the convert to Judaism may be deemed qualified to serve on the Bet Din מדינא -- by immutable logic (or as a matter of justice). Indeed, he is not “appointed” at all: he is a member of the Bet Din by right. His service as a judge is self-validating. אין כמוהו -- There is no one of equal stature.

We might add that, when assembling a Bet Din to oversee a conversion to Judaism, a rabbi who is a Ger Tzedek (or a convert to Judaism deemed by his rabbi to be fit to judge), may well -- by virtue of his own conversion -- bring a personal knowledge, life experience, and unique sensitivity to the proceedings at hand... which no “native born” Jew could fully achieve or appreciate! A Ger Tzedek serving as a judge on a Bet Din l’Giur may be אין כמוהו -- of unrivalled stature and unequalled qualification -- in the strictest sense of the term.

The spiritual gifts unique to the convert to Judaism -- the convert’s unrivalled insight into the thinking and into the individual needs of spiritual seekers, as well as a heightened ability to perceive and to communicate the appealing beauty of Jewish Tradition -- are illustrated by the feat attributed to Onkelos Ha-Ger, the celebrated convert to Judaism, a scion of the Roman royal family, who translated the Torah into Aramaic:

אונקלוס בר קלונימוס איגיור. שדר קיסר גונדא דרומאי אבתריה, משכינהו בקראי, איגיור. הדר שדר גונדא דרומאי [אחרינא] אבתריה, אמר להו: לא תימרו ליה ולא מידי. כי הוּו שקלו ואזלו, אמר להו, אימא לכו מילתא בעלמא: ניפיורא נקט נורא קמי פיפיורא, פיפיורא לדוכסא, דוכסא להגמונא, הגמונא לקומא, קומא מי נקט נורא מקמי אינשי? אמרי ליה: לא. אמר להו: הקב"ה נקט נורא קמי ישראל, דכתיב: וזה הולך לפניו יומם וגו', איגיור [כולהו]. הדר שדר גונדא אחרינא אבתריה, אמר להו: לא תשתעו מידי בהדיה. כי נקטי ליה ואזלי, חזא מזוזתא [דמנחא אפתחא], אותיב ידיה עלה ואמר להו: מאי האי? אמרו ליה: אימא לן את. אמר להו: מנהגו של עולם, מלך בשר ודם יושב מבפנים ועבדיו משמרים אותו מבחוץ, ואילו הקב"ה, עבדיו מבפנים והוא משמרן מבחוץ, שנאמר: ה' ישמר צאתך ובואך מעתה ועד עולם, איגיור. תו לא שדר בתריה.

“Onkelos, the son of Kalonymus, converted to Judaism. The Emperor sent a detachment of Roman soldiers after him. He attracted them to Judaism by citing Scripture, and they also converted. The Emperor sent a second force of Roman soldiers after him, warning them not to engage Onkelos in conversation! As they were about to lead him away, he said to them, ‘Let me speak to you of just one worldly matter: In a procession, the torchlighter carries the light in front of the torchbearer; the torchbearer precedes the commander (Lat., *dux*); the commander goes in front of the governor (Lat., *hegemon*) and the governor in front of the Imperial Minister (Lat., *comes*). But does the Imperial Minister light the way for the general populace?’ The soldiers answered him: ‘No!’ Onkelos responded: ‘But the Holy One, blessed be He, carries a light for all Israel, as Scripture states: ‘And the Lord went before them in a pillar of fire, to give them light.’ They, too, all converted to Judaism. The Emperor sent yet another unit of Roman soldiers after him, adjuring them not to converse with him at all. As they seized him and set out, Onkelos saw the Mezuzah on the doorway. He placed his hand on it and said to them: ‘What is this?’ They said: ‘You tell us.’ He said to them: ‘It is the way of the world that a mortal king sits within and his servants guard him from without. But with the Holy One, blessed be He, His servants dwell within, and He guards them from without, as Scripture states: ‘The Lord shall

guard your going out and your coming in from this time forth and forever.’ They, too converted to Judaism, and the Emperor sent no more troops.”<sup>26</sup>

This is not a halachic text, and the historicity of the narrative is certainly open to question. Moreover, while the account asserts the serial conversions of numerous Roman soldiers -- praetorian proselytes -- under Onkelos’ influence, it does not specifically record that Onkelos participated in that ritual process as a member of the overseeing Bet Din! Nevertheless, this Rabbinic text clearly illustrates that -- quite soon after his own adoption of Judaism, Onkelos had the spiritual wherewithal, rhetorical prowess, and personal insight into human nature to communicate the compelling nature of Jewish belief and practice to even the most unlikely of prospective converts. **אין כמוהו** -- His own life experience and, indeed, the very fact of his personal familiarity with the workings of the non-Jewish world, equipped him to effect the conversion of others with what can only be understood as an unrivalled ability. The analogous personal gifts of contemporary Gerei Tzedek -- the unique contribution they may bring to the proceedings of our Batei Din -- should not be underestimated. How much more so converts to Judaism among our rabbinic colleagues, who combine such life experience with often unequalled scholarly erudition.

#### **V. Chalitzah: Exceptional Exclusion**

Rava’s statement that those serving on a Bet Din for Chalitzah must be of unambiguous Jewish birth immediately follows the Gemara’s description of an incident involving Rabbi Shmuel bar Yehudah. The sage declines an invitation to serve as one of five members of a Bet Din for Chalitzah... the increased number functioning **לפרסומי מילתא** -- to enhance the public visibility of a judicial proceeding of such consequential significance in personal status. Rabbi Shmuel bar Yehudah explains his recusal:

אמר ליה תנינא בישראל - בבית דין של ישראל, ולא בבית דין של גרים. ואנא גר אנא.

“He (Rabbi Shmuel bar Yehudah) said to him (Rabbi Yehudah): We have taught in a Baraita: ‘(His name shall be called) in Israel...’ (Deuteronomy 25:10) -- this indicates the requirement of a Bet Din ‘of Israel’ (comprised of members of unambiguous Jewish birth), and not a Bet Din of converts to Judaism. And I am a convert myself.”<sup>27</sup>

It should be noted that the parallel text in the Yerushalmi records a Tannaitic dispute as to whether the seemingly extraneous use of the word “Israel” in the verse functions to exclude or, conversely, specifically to include converts to Judaism among those eligible to serve on a Bet Din for Chalitzah. The Tosafot, assuming the former, ask a pointed question about Rabbi Shmuel bar Yehudah’s statement:

למה היה לו להביא ברייתא דפסיל גר לחליצה? לדיני ממונות נמי מיפסל לדון לישראל כיון דאין אמו מישראל. ויש לומר דאיצטריך לפסול אפילו לחליצת גרים. אי נמי: כשר הוא לדיני ממונות לדון בלא

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26. BT Avodah Zarah 11A.

27. BT Yevamot 101B.

כפייה. דלא שייכא שימה ודבר של שררה, דכתיב שום תשים עליך מלך אלא בכפייה.

“Why did he cite a baraita stating that a convert to Judaism is disqualified (from serving on a Bet Din) for Chalitzah? He would also be disqualified to judge a monetary case, since his mother was not of Jewish origin. One might say that the baraita was necessary to preclude a convert (serving on a Bet Din) even for a case of Chalitzah involving other converts. Alternatively: (It shows that) he would be qualified to (serve as a member of a Bet Din) to judge monetary cases (for those of unambiguous Jewish birth) if the Bet Din is not a coercive body. For the Biblical prohibition against appointment of those of non-Jewish origin to positions of public trust, and the issue of their holding office (to wit: ‘You shall be free to set a king over yourself [one chosen by the Lord your God. Be sure to set as king over yourself a member of your own people]’), applies only when their authority is of a coercive nature.”<sup>28</sup>

Indeed, Rabbi Shmuel bar Yehudah’s acknowledgment of his conversionary status as grounds for his recusal from the case at hand, carries a number of instructive implications. The halachic objection to a convert to Judaism serving on a Bet Din is here presented as specific to the case of Chalitzah, and based in the Scriptural language with which that exceptional ritual is, uniquely, prescribed. Rabbi Shmuel bar Yehudah’s reference to a בית דין של גרים -- “a Bet Din of converts” -- or, more plausibly, “a Bet Din which includes converts among its membership” -- is clear indication that such a body was a real possibility in, at least, certain other circumstances, as Tosafot confirms. The disqualification of the convert as judge for Chalitzah is thus itself presented as exceptional.

Further to be deduced from this incident is the remarkable extent to which, at this formative period in the history of Jewish religious life and its jurisprudential system, converts to Judaism were accepted and “assimilated” into the Jewish community. The conversionary status of Rabbi Shmuel bar Yehudah -- a sage who had close dealings and personal relationships with, inter alia, Ulla,<sup>29</sup> Abaye,<sup>30</sup> Rabbi Yochanan, Rabbi Elazar, and especially Rabbi Yehudah -- was unknown to his colleagues. It is only this fact that explains the misplaced invitation to serve on a Bet Din from which he was properly to be excluded... unless Rabbi Yehudah, who extended the invitation -- and whom Rabbi Shmuel bar Yehudah elsewhere criticizes for his lenient rulings<sup>31</sup> -- was among those who would have permitted a convert to serve on a Bet Din even for Chalitzah! The latter possibility must be considered plausible. Rabbi Yehudah was Rabbi Shmuel bar Yehudah’s teacher; the master referred to his disciple as שינא (“the incisive one” or “keen scholar”),<sup>32</sup> and it is unlikely that he was unaware of his student’s personal status and family origins.

The unusual stringency with which a convert to Judaism is precluded from serving on a Bet Din for Chalitzah -- though associated with the peculiar language of that rite’s Scriptural origins, may in fact reflect another consideration. The convert, by virtue of the transformation in his religious status, severs ties -- with their various legal implications -- to his family of origin. His

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28. BT Yevamot 101B, cf. v’ana.

29. BT Baba Kama 38A-B.

30. BT Gittin 16B.

31. BT Avodah Zarah 28B.

32. BT Ketubot 12B.

biological parents are no longer -- in a legal sense -- his parents; he similarly has no legal kinship with his siblings. (Rabbinic injunction somewhat circumscribes this dissociation to preclude even the appearance of, e.g., incest with a “former” sibling who has also converted, etc.) A convert -- who by his very nature has no “halachic” siblings (and never could have such familial connections) -- can never be subject to the laws of either Chalitzah or Levirate marriage himself. (The case of “Chalitzah involving other converts” mentioned in the Tosafot refers not to those who have themselves converted, but to those whose family pedigree or “Yichus” is from converts, even several generations removed... or perhaps to a Giyoret in the role of Shomeret Yavam.) Is it not reasonable that this may be the reason for the convert’s exceptional exclusion from the Bet Din that administers this area of Jewish Law... legal provisions to which he -- by virtue of his conversionary status -- can never be subject?

A similar rationale motivates a disability classically borne by converts in matters of inheritance:

ועוד אומר רבינו תם דבגר לא אמרינן מצוה לקיים דברי המת. דכל דאיתיה בירושה מצוה לקיים דבריו, הואיל ולא פסק כחו מאותו ממון, דמכחו יורשין. אבל גר, דליתיה בירושה, ופסק כחו מממונו, אין מצוה לקיים דבריו.

“Rabbeinu Tam says further that we do not apply to a convert to Judaism the principle ‘It is a Mitzvah to carry out the final instructions of the dead (deathbed gifts and bequests notwithstanding statutory heirs).’ For any to whom matters of inheritance apply, it is a Mitzvah to carry out his (final) instructions, insofar as he retains authority over his estate, and on the basis of that authority he is inherited. But a convert to Judaism, to whom matters of inheritance do not apply (since he severed familial relationships, and corollary claims as an heir, by virtue of his conversion), he does not retain authority over his estate: there is no Mitzvah to carry out his instructions.”<sup>33</sup>

Tosafot and Rabbeinu Tam link the asserted disability in the convert’s authority over his own estate (at least beyond the statutory claims of his own children) to the fact that -- having legally dissociated himself through conversion from those from whom -- otherwise -- he would have been entitled to inherit (i.e. his father and brothers) -- the laws of inheritance do not fully apply to him. The force of a convert’s deathbed instructions, like his ineligibility to judge Chalitzah, devolves from the fact that -- in halachic terms -- he has no (mortal) father, no brothers... and, consequently, no legal standing vis-a-vis obligations devolving from one’s paternity. (Indeed, two brothers who each convert to Judaism are permitted to serve together as witnesses -- and to testify regarding each other -- as they are no longer “relatives.”<sup>34</sup>)

The exclusion of the convert from judging cases of Chalitzah is thus exceptional, as other areas of Jewish law for which a Bet Din might be convened -- monetary disputes, divorce, financial dealings with fellow Jews, and conversion prominent among them -- do indeed fully apply to the convert and native born Jew alike. In these other areas of Jewish law and practice -- unlike Chalitzah -- the ineligibility of the convert to judge is, therefore, not absolute.

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33. BT Gittin 13A, Tosafot ad loc., cf. v’ha la mashach.

34. BT Yevamot 22A

## **VI. Ger Dan Et Chaveiro: A Convert Judging a Fellow Convert**

It is clear from Rava's original statement in Yevamot, and from the codification of his dictum in the Shulchan Aruch (both in Yoreh De'ah Hilchot Gerim and in Choshen Mishpat Hilchot Dayanim), that גר דן את חבריו דבר תורה -- the eligibility of a convert to Judaism to act as a judge, when the party being judged is a fellow convert, is an established halachic principle rooted in Scriptural Law. The Shach explicitly states that this eligibility is not subject to the will or acceptance of the litigants or parties being judged.

A critical practical question is whether the eligibility of a convert to Judaism to judge his fellow converts extends to conversion proceedings themselves: may a convert to Judaism serve on a Bet Din impaneled to accept converts... to oversee the conversion process. This question has been sharply debated of late by the Rabbinic Council of America and its allied Beth Din of America.<sup>35</sup> Beth Din member, Rabbi Michael Broyde, concedes, "there is no direct discussion in the *rishonim* or the classical codes of the question of whether a *ger* may sit on a *bet din* for conversion" as well as "the silence of the *Shulchan Aruch* and *Tur*, both of whom note that a *ger* may not sit on a *chalitza* even *bedieved*, but make no mention of the fact that such is true for conversion, also." Rabbi Broyde nevertheless concludes stridently that "the intentional decision to place a rabbi who is a convert on a conversion panel is nearly a form of rabbinic malpractice." To his great credit, Rabbi Broyde proposes that "when a mistake happened" and a convert to Judaism was among the members of a Bet Din overseeing a conversion -- i.e., *bediavad* -- that the conversion be recognized as valid: "that this person is Jewish *bein lekula bein lechumra*, since most *poskim* accept this view *bedieved*." Notwithstanding this determination, Broyde further suggests that those who have undergone such "flawed" conversion proceedings be counseled to "re-immense in a mikva in front of an unquestionably valid panel" -- i.e., a Bet Din which includes no converts to Judaism among its members. Rabbi Broyde self-consciously describes his dual rulings -- that those who have converted under the auspices of a Bet Din which included one or more converts be accepted as valid after the fact... and that they be counseled to re-immense -- as conclusions "at tension" with each other.

Rabbi Broyde's comments came in response to the permissive stance articulated by his RCA colleague, Rabbi Avi Weiss:

"A convert may serve on a Beit Din when the judgement is regarding another convert... Additionally, a convert may be a judge on a non-coercive Beit Din, i.e. one to which the person appearing before the court has willfully submitted him or herself... A convert serving on a Beit Din of conversion should thus be valid for both of these reasons. While some halachic authorities still argue to invalidate a convert to be on a Beit Din for conversion, it is obvious that those who maintain the convert's validity as a judge have the weight of the halachic sources behind them."

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35. For more on the controversy, and the exchange between Rabbis Broyde and Weiss, see <http://hirhurim.blogspot.com/2009/03/may-convert-serve-on-bet-din-for.html>.

It is true that an aspiring convert is not yet Jewish when she or he first appears before the overseeing Bet Din. Nevertheless, such a proceeding must be considered a case of *גר דן את חבירו הגר*, since the Bet Din does not conclude its task, and, certainly, issues no *Ma'aseh Bet Din* -- no formal statement or decisive ruling validating the conversion -- until the conversion aspirant has emerged from the Mikveh. At that point, the individual is *כישראל לכל דבר* -- already Jewish in all respects.<sup>36</sup> The *Ma'aseh Bet Din* which ensues attests to that fact. It is, indeed, the Jewish status of the new convert to Judaism that empowers the Bet Din to act. Rabbi Isaac Klein forcefully states this principle: “It is the final act *Qabbalat ‘Ol Mitswot*, that is decisive and requires a *Bet Din*... Since today that is done as a separate ritual after the immersion, a *Bet Din* is required only at the final ceremony.”<sup>37</sup> A Bet Din which concludes a candidate for conversion has not satisfied the requirements for that transformation in religious status simply refrains from taking any judicial action whatsoever; it does not judge the non-Jew appearing before them -- who would not be subject to their ruling! Should a convert to Judaism be among the judges comprising the Bet Din, there could be no clearer -- and therefore permissible -- case of *גר דן את חבירו הגר*.

## **VII. *Bet Din L'Giur*: Does the Function of a Bet Din for Conversion Constitute “Judging”?**

The requirement that conversion take place under the supervision of a Bet Din is clearly established in the Gemara:

ת"ר: ושפטתם צדק בין איש ובין אחיו ובין גרו: מכאן אמר רבי יהודה: גר שנתגייר בבית דין הרי זה גר, בינו לבין עצמו אינו גר.

As the rabbis have taught: ‘Decide justly between each man and a fellow Israelite or a stranger (*ger*)’ [Deut. 1:16]. On this basis Rabbi Yehudah said: A convert who undergoes conversion under the auspices of a Bet Din is a valid convert. If (he converted) all on his own, he is no convert.”<sup>38</sup>

The reasoning underpinning this standard is a close reading of the verse from Deuteronomy: “אמר רבי חייא בר אבא אמר רבי יוחנן: גר צריך שלשה, משפט כתיב ביה -- Rabbi Chiya quoted Rabbi Yochanan: A convert requires three (that is, judges, to establish his conversionary status); ‘justice’ is written in reference to him in Scripture.”<sup>39</sup>

In determining the eligibility of a convert to Judaism to serve, specifically, on a Bet Din for conversion, it is necessary to define with precision the function of such a Bet Din and its requisite three members. Does a Bet Din for conversion actually “judge” ...and what is the force of *משפט* as it applies to conversion proceedings? That is, to what extent is the process of conversion a “judicial” undertaking in the usual sense? Menachem Finkelstein, a member of the faculty of Bar Ilan University School of Law, currently serving as an Israeli District Judge, and a former Judge Advocate General of the Israel Defense Force with the rank of Major General, writes:

36. BT Yevamot 47B; Mishneh Torah, Hilchot Issurei Biah 12:17.

37. Rabbi Isaac Klein, *A Guide to Jewish Religious Practice*, (JTS/New York, 1979), p. 444.

38. BT Yevamot 47A.

39. BT Yevamot 46B.

מסתבר לומר, כי אין זהות גמורה בין בית-דין הדן בדיני ממונות לבית-דין המקבל גרים. בקבלת גרים אין ריב ואין בעלי דין וטענות בעלי דין, ולמעשה אין הכרעת דין במובן הרגיל של המונח.

“It is reasonable to say that a Bet Din judging monetary cases is not entirely identical to a Bet Din which is accepting converts. In accepting converts, there is no dispute, there are no litigants, and no conflicting claims, and -- in practice -- there is no legal finding in the usual sense of the term.”<sup>40</sup>

Judge Finkelstein bases his observations on a similar passage from the writings of early Israeli Ashkenazi Chief Rabbi Isaac Herzog, who asks rhetorically:

מה ענין משפט כאן, וכי יש כאן טענות בעל דין ופסק בית דין, וכי אינו גר עד שיאמרו לו ב"ד ישראל אתה, אלא ודאי כיוון שעלה מהטבילה הרי הוא כישראל לכל דבר, ומה ענין משפט לכאן.

“How is this a ‘judicial matter’? Is there a litigant’s claims and a legal finding rendered by the court? Is the aspirant not considered a convert until the Bet Din declares to him: ‘You are a Jew’? Rather, it is certain that once he emerges from the immersion, he is a Jew in every respect. So in what way is this a ‘judicial matter’?”<sup>41</sup>

Judge Finkelstein concludes his chapter on this question by stating, inter alia:

הקביעה כי “הדבר צריך בית דין”, אינה הופכת בהכרח את הגיור למשפט, ואינה מחילה על קבלת גרים כל אותן הלכות הנוגעות לבית-דין שדן דיני ממונות.

“The determination that ‘the matter requires a Bet Din’, does not necessarily turn conversion into a judicial proceeding, nor does it make all laws concerning a Bet Din judging a monetary case also applicable to the acceptance of converts to Judaism.”<sup>42</sup>

The presence of a Bet Din is indispensable to the process of conversion. That is, the actions undertaken by an aspiring convert to Judaism in order to effect her or his new religious status -- acceptance of the Mitzvot, immersion -- take place in the presence, and under the supervision, of a Bet Din of three members. Arguably, however, that Bet Din does not actually “judge” in the usual sense: it does not render a legal decision so as to resolve conflicting claims. Any prohibition against a convert to Judaism “judging” as a member of a Bet Din would, from this perspective, not apply.

### **C. Our Attitudes and Obligations to Converts to Judaism**

In Sefer Mitzvot Ha-Katzar, the last book of his prolific career, Rabbi Israel Mayer Ha-Kohen Kagan -- the Chofetz Chaim -- enumerates those Commandments still practicable in modernity. Two of these halachic obligations have direct bearing on the question before us. Among the prescriptive Commandments, the Chofetz Chaim lists:

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40. Menachem Finkelstein, Ha-Giur: Halachah u-Ma’aseh [Hebrew], (Bar Ilan University Press/Jerusalem, 1994), p. 267.

41. Rabbi Yitzchak Ha-Levi Herzog, “She’eilah B’Dvar Gerut,” Mizkeret: Kovetz Torani L’Zecher Ha-Rav Herzog [Hebrew], (Jerusalem, 1962), p. 50.

42. Finkelstein, pp. 300-301.

מצות עשה לאהב את הגר, שנאמר: ואהבתם את הגר. וזוהי מצוה נוספת על ואהבת לרעך כמוך שהרי הגר הוא גם כן בכלל ישראל. והקב"ה אוהב את הגר, דכתיב: ואהב גר לתת לו לחם ושמלה, ונאמר ואתם ידעתם את נפש הגר. ופרוש גר כאן הוא שבא מארץ אחרת ומעיר אחרת לגור אתנו, ומכל שכן גר שנתגייר.

“It is a positive Commandment to love the ‘Ger’, as it is said: ‘You shall love the stranger (Ger)’<sup>43</sup> This Commandment is over and above the obligation to ‘Love your neighbor as yourself,’<sup>44</sup> since the convert is already included among Klal Yisrael. The Holy One, blessed be He, loves the Ger, as it is written: ‘He loves the stranger, giving him food and clothing.’<sup>45</sup> And as it is said: “You know the soul of the stranger.”<sup>46</sup> And the meaning of ‘Ger’ here is one who has come from another land or another city to dwell among us, and all the more so one who has converted to Judaism.”<sup>47</sup>

Among the negative Mitzvot, the Chofetz Chaim includes מצות לא-תעשה שלא להונות -- “The Prohibitive Commandment not to oppress the convert to Judaism with words, as Scripture<sup>48</sup> says: ‘You shall not wrong a Ger.’”<sup>49</sup> This codification by a celebrated rabbinic ethicist of our duties toward converts must be read in the context of the more sweeping Talmudic dictum: הזהירה תורה בששה ושלשים מקומות ואמרי לה -- “One who causes anguish to a proselyte thereby transgresses 36 commandments; some say, 46 commandments.”<sup>50</sup>

In recent years, the institution of conversion to Judaism -- and the loving welcome to which the convert to Judaism is halachically entitled -- have come under siege. Our colleague, Rabbi David Greenstein, wrote: “The conversion crisis in Israel has reached the breaking point... What is at stake is the Jewish soul of the country.”<sup>51</sup> Rabbi Seth (Shaul) Farber, founder of ITIM: The Jewish Life Information Center and Rabbi of Kehillat Netivot in Ra’anana, has observed:

“The momentum has shifted. Though the Torah insists on protecting the convert, on making him or her a full member of the community, and on never reminding a convert of his or her past, institutional orthodoxy has condemned converts to a never-ending set of tests and examinations, to assessments and evaluations, and ultimately to a level of scrutiny unprecedented in history.”<sup>52</sup>

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43. Deuteronomy 10:19.

44. Leviticus 19:18.

45. Deuteronomy 10:18.

46. Exodus 23:9.

47. Rabbi Israel Mayer Ha-Kohen Kagan, Sefer Mitzvot Ha-Katzar, Mitzvot Aseh, #61.

48. Exodus 22:20.

49. Sefer HaMitzvot Ha-Katzar, Mitzvot Lo Ta’aseh, #49. In a sense, both this halachic duty and the discrete Commandment prohibiting the wronging of a convert to Judaism in financial matters are at stake as we state our position on the eligibility of converts to serve as members of our Batei Din, including, at least theoretically, those dealing with דיני ממונות -- “financial matters.”

50. BT Baba Metzia 59B. For this translation and a full discussion of the contemporary administration of conversion matters, see Rabbi Marc Angel, “Conversion to Judaism: Halakha, Hashkafa, and Historic Challenge,” Institute for Jewish Ideas and Ideals (jewishideas.org). See also Shulchan Aruch, Choshen Mishpat 228:2.

51. Rabbi David Greenstein, “Viewpoint: A Call for Lay-led Conversion Courts,” The Jerusalem Report, August 4, 2008, p. 47.

52. See “Asking for forgiveness from the convert,” September 25, 2009, at [http://cgis.jpost.com/Blogs/orthodoxopinions/entry/asking\\_for\\_forgiveness\\_from\\_the](http://cgis.jpost.com/Blogs/orthodoxopinions/entry/asking_for_forgiveness_from_the).



Rabbi Farber urges those responsible for (or complicit in) this behavior to “think strongly about begging God for forgiveness for what we have done to the convert among us.” Indeed, he provides a series of “Al Cheit” prayers which address the sinful treatment accorded converts to Judaism: “Al het that we didn’t cry out when conversions were annulled... Al het that we allowed converts to be oppressed and politics to guide religion,” etc. The impact of subjecting converts to Judaism to re-immersion or “re-conversion” subsequent to annulled or ostensibly flawed conversion proceedings (as recommended, for example, by Rabbi Brody, when converts -- in halachic error, he would say -- served on the authorizing Bet Din) is, according to Rabbi Farber, that the very individuals whom the Jewish community is duty-bound to love “live in fear and trepidation that their Jewishness will be denied.”

Our own troubled times are not the first in which converts to Judaism have found less than the loving welcome which is their due from their chosen religious community. Maimonides’ famous epistle to “Obadiah, the wise and learned Proselyte” was occasioned by just such conditions in the early 12th century. Obadiah was “humiliated and confused”<sup>53</sup> by his ill treatment by Jews who objected to his recitation of various prayers which, they claimed, belied his conversionary status: “God and God of *our ancestors*,” Who *chose us* from among all peoples,” Who worked miracles for *our ancestors*,” etc. Rambam ruled: “You may say all this in the prescribed order and not change it in the least. In the same way as every Jew by birth says his blessing and prayer, you, too, shall bless and pray alike, whether you are alone or pray in the congregation.”<sup>54</sup>

As rabbinic authorities today determine the application and mitigation of Deuteronomy 17:15, לא תוכל לתת עליך איש נכרי אשר לא אחיך הוא -- “You must not set a foreigner over you, one who is not your kinsman” -- we do well to keep in mind Maimonides’ closing words to Obadiah concerning the “Yichus” -- the religious pedigree of converts to Judaism:

ואל יהי יחוסך קל בעיניך. אם אנו מתיחסים אל אברהם יצחק ויעקב, אתה מתיחס למי שאמר והיה העולם. וכן מפרש בישיעה, זה יאמר לה' אני וזה יקרא בשם יעקב: הגר יאמר לה' אני, והישראלי יקרא בשם יעקב.

"Do not hold your personal religious pedigree in low esteem. We may trace our lineage to Abraham, Isaac, and Jacob, but your religious pedigree derives directly from God, through Whose word the world was created. That is the explicit message of Isaiah: ‘One shall say, I am the Lord’s; another shall use the name of Jacob.’ It is the convert who can say ‘I am the Lord’s.’ The Jew-by-birth shall use the name of Jacob."

As we are specifically occupied with determining the eligibility of converts to Judaism to serve among the judges impaneled for a Bet Din (and limitations placed on that eligibility by Deut. 15:17), let us consider the “reworking” of Maimonides’ paean to proselytes, offered some 800 years later by an American Jewish jurist. Louis Dembitz Brandeis, Associate Justice of the United States Supreme Court -- in 1916, the first Jew named to that court, despite his religious pedigree -- was reportedly asked if he had ever regretted his Jewishness, or considered renouncing his Jewish origins in the interest of furthering his career. Brandeis famously responded: “I am sorry I was born a Jew.” Following a carefully calibrated rhetorical pause --

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53. See Isadore Twersky, A Maimonides Reader (Behrman/New York, 1972), p. 474ff. Scholars have identified Obadiah’s religious origins as that of a Muslim or, alternatively, as a former Roman Catholic Priest. See also Rabbi L. Cooper, “‘God of our Ancestors’ - Biological Ancestry & Spiritual Roots in the Prayers of Converts,” Jewish Education Leadership, (7:2), Winter 2009, at [http://www.lookstein.org/online\\_journal.php?id=257](http://www.lookstein.org/online_journal.php?id=257).

54. Twersky, p. 475.

in which detractors anticipated announcement of his apostasy, Brandeis continued: “I am sorry I was born a Jew... I wish I had the privilege of choosing Judaism of my own free will.”<sup>55</sup>

Or as Rabbi Shmuel bar Yehudah might have us say: **אנא גר אנא**.

## **D. Summary**

The Biblical sanction for appointment of an Israelite king, restricts that office to native-born Israelites:

כִּי־תבא אל־הארץ אשר ה' אלקיך נתן לך וירשתה וישבתה בה ואמרת אשימה עלי מלך ככל־הגוים אשר סביבתי: שום תשים עליך מלך אשר יבחר ה' אלקיך בו מקרב אחיך תשים עליך מלך לא תוכל לתת עליך איש נכרי אשר לא־אחיך הוא:

“If, after you have entered the Land that the Lord your God has assigned to you, and taken possession of it and settled in it, you decide, ‘I will set a king over me,’ you shall be free to set a king over yourself, one chosen by the Lord your God. Be sure to set as king over yourself one of your own people; you must not set a foreigner over you, one who is not your kinsman.”<sup>56</sup>

The Biblical restrictions regarding the monarchy were subsequently extended to bar converts to Judaism from lesser offices of public trust and authority, as well... although a bona fide Ger Tzedek is no longer properly termed a “foreigner.” Neither is it completely accurate to say that the convert is **לא אחיך** -- “not your kinsman.” Nevertheless, the prohibition is extended, inter alia, to the office of judge, ostensibly barring the convert to Judaism -- ordained rabbi or layman -- from being impaneled as a member of a Bet Din... and invalidating any action taken by that Bet Din. The Biblical Prohibition in Deuteronomy 17 (**שום תשים**) is the sole basis for any exclusion of the convert, who is **כישראל לכל דבריו** -- Jewish in every respect -- from functioning as a judge. Where that single prohibition does not apply, the convert to Judaism is (at least by virtue of his conversionary status) no less valid a judicial candidate than any other Jew.

Rabbinic sources are all but unanimous, on the basis of **שום תשים**, in barring the convert to Judaism from serving as a judge in capital cases (a purely academic concern in the twenty-first century) and on a court (customarily of five judges) overseeing the ritual of Chalitzah. The latter stringency is based on the unique wording of the Scriptural prescription of the rite: the

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55. The story is repeated, in a variety of sources and contexts. See, for example, Anita Diamant, “Developing a relationship With Israel and the Holocaust: Conversion transforms formerly neutral territory into emotionally fraught real estate” at [http://myjewishlearning.com/life/Life\\_Events/Conversion/Conversion\\_Process/Israel](http://myjewishlearning.com/life/Life_Events/Conversion/Conversion_Process/Israel) or the reference to Brandeis by Israeli Minister of Education Gideon Sa’ar in “Sharansky at the Jewish Agency Meetings,” October 25, 2010 at <http://ejewishphilanthropy.com/sharansky-at-the-jewish-agency-meetings>.

56. Deuteronomy 17:14-15. It should be noted that a similar restriction regarding the head of state is, of course, included in the Constitution of the United States. “No person except a natural born Citizen” is eligible to serve as President (Constitution of the United States, Article II, Section 1). There is no historic record of any debate or objections regarding this provision at the Constitutional Convention of 1787. The Twelfth Amendment extends the restriction to the Vice-Presidency. The constitutional provision was, apparently, intended to preclude ambitious foreign monarchs (or former subjects loyal to them and subsequently naturalized as U.S. citizens) from gaining undue influence or ascendancy in American governance through political intrigue.

conspicuous repetition of the word **ישראל**. When, for example, Rabbi Shmuel bar Yehudah, a Ger Tzedek of the Talmudic Period, recused himself from a court scheduled to effect a Chalitzah, it was on the basis of the exceptional exclusion of converts from just such judicial proceedings in particular, and not any general bar to him -- as a convert to Judaism -- serving as a judge per se. Chalitzah, that is to say, is exceptional in its absolute exclusion of converts as judges.

For judicial proceedings which do not in absolute terms preclude converts to Judaism from serving as judges by the very content or exceptional nature of the case, a number of mitigating factors and special circumstances may be identified which, according to august rabbinic precedent, have rendered it permissible to impanel converts among the members of the Bet Din:

**1.** The foremost of these is the permissibility of a convert to Judaism serving as judge for cases in which the parties before the court are fellow converts. While the most common such case today is the Bet Din L'Giur -- the court overseeing the conversion process -- the same principle applies to any judicial proceeding: monetary cases, various stages in the execution of a divorce, etc. **גר דן את חברו -- A convert may judge his fellow convert.**

**2.** There is a body of opinion that a Bet Din convened for conversion proceedings is not actually "judging" the aspiring convert at all; rather the aspiring convert effects his own religious transformation in the presence of the "court" members. **There can be no prohibition against a convert to Judaism serving on a Bet Din that does not judge!**

**3.** The willing submission of the parties appearing before a Bet Din to the authority of that court, and their concomitant acceptance of its make-up, is also deemed by numerous rabbinic authorities sufficient to permit a convert to serve among the judges. He is not "appointed" or imposed on the parties in violation of Deuteronomy 17:15... They freely accept him. It should be emphasized that rabbinic courts today (certainly those outside the court system and officialdom of the Israeli Chief Rabbinate) are by nature non-coercive in their authority. Parties submit themselves to a given court. Our Batei Din have neither subpoena power nor power of enforcement, but rely on the consent and good faith of the judged... and on the moral suasion and spiritual counsel of the judges. This is clearly demonstrated by the limitations experienced by the Joint Bet Din of the Conservative Movement in "requiring" that Gittin be issued when Jewish marriages have broken down. Our lack of coercive power -- at times insufficient even to elicit communication from prospective parties -- explains our frequent recourse to extraordinary rabbinic means of dissolving marriages. When the Joint Bet Din (or a subset of its members) acts as a court of arbitration in other areas of Jewish Law (generally, but not necessarily, financial matters), it is expressly at the agreement and approval (and, generally, on the initiative) of the parties. **דאפילו בכפייה מותר לדון -- חבירו ובלא כפייה לדון אפילו ישראל** **A convert may judge his fellow convert even in a court with coercive authority. Absent coercive authority, a convert may judge any Jew.**

4. Rabbi Eliezer Waldenberg (1915-2006), a celebrated Israeli decisor of Jewish Law, ruled that appointment of converts to positions in which authority is shared, as among members of a committee or board, does not violate שום תשימ. While he does not explicitly extend this principle to members of a Bet Din (by definition a shared office), **the inapplicability of שום תשימ to shared office bolsters the impact of other mitigating factors.**

5. The prohibition of שום תשימ assumes appointment to a permanent post, a fixed office... and does not refer to functioning as a judge on an ad hoc basis, so as to render a decision in a single matter or proceeding. A Bet Din arranged by, say, a Mesader Gittin in order to appoint a secondary agent to deliver a Get... or by a congregational rabbi to accept a convert to Judaism... or at the request of a Jewish communal institution to resolve an employment or business dispute... is typically convened as an ad hoc body to handle a specific matter or conflict. The appointment is temporary. **גר כשר לדון את חבירו גר ולהיות קבוע בדיני ממונות בגרים, ולדון ישראל באקראי appointed even to a permanent post to judge cases involving fellow converts. Furthermore, a convert may be appointed to serve as a member of a Bet Din convened on a temporary or ad hoc basis, and as such may judge cases involving any Jew.**

6. The self-validating scholar is not “appointed” at all: he occupies the office -- whether national or local -- by right. הוא שלו מדינא ולא צריך מנוי כלל. The eligibility of a convert to Judaism serving as a local rabbi to act as judge for his own congregation, community, or students is self-validating, and -- as such service requires no further appointment -- in no way violates שום תשימ. A local rabbi may also include on a Bet Din he convenes converts to Judaism whom he deems to be unrivalled in ability, knowledge, requisite character, life experience or piety. Those self-validating traits also obviate any arbitrary “appointment” under the rubric of שום תשימ. **When an individual’s knowledge, spiritual stature, and scholarly erudition make his role as a judge or in other positions of public trust and authority self-validating, the prohibition of שום תשימ does not apply.**

## E. Conclusion

A convert to Judaism may not serve on a Bet Din adjudicating capital cases or overseeing the ritual of Chalitzah. For other cases -- in monetary matters, arbitration, matrimonial law, conversion proceedings, etc. -- a number of mitigating circumstances permit the convert to serve on a Bet Din. In many cases, four separate mitigating factors<sup>57</sup> -- each deemed by weighty rabbinic precedent individually sufficient to seat a convert as judge -- apply simultaneously. Where the Bet Din is convened to oversee conversion to Judaism, two further mitigating circumstances apply: the permissibility of a convert judging a fellow convert, and the possibility that the function of a Bet Din l’Giur is not “judging” in the formal sense of the term. Thus six

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57. Acceptance by the parties or community, the shared nature of the appointment, the temporary or ad hoc nature of the office, and the self-validating quality of the appointee.

mitigating factors allowing a convert to Judaism to serve on a Bet Din may simultaneously apply to conversion proceedings.

In matters of personal status -- marriage, divorce, conversion, and the consequent status of offspring -- we generally and appropriately apply the principle *מעלה עשו ביוחסין*... we apply a more stringent standard.<sup>58</sup> The permissibility of impaneling a convert to Judaism on a Bet Din does not enjoy universal support among classical or modern rabbinic authorities, and doing so is not the most stringent halachic stance available. Some might posit on this basis that -- though arguably valid as judges -- converts to Judaism should, as a matter of public policy, be excluded from the judicial role in matters of personal status: *מעלה עשו ביוחסין*. However, to do so would be to deny converts to Judaism communal roles which they are halachically permitted to occupy. To do so would be to place unnecessary constraints on the professional activity of converts to Judaism who have earned rabbinic ordination and selflessly serve God, Torah, and Israel. To do so would be to lend further credence to the invalidation of proper conversion proceedings, recklessly rendering the religious status of devoted and proper *Gerei Tzedek* negotiable, undermining their personal spiritual identities and sense of self. To do so would be to contribute to a communal atmosphere increasingly hostile and inhospitable to prospective and current converts... precisely at a time in our history when principled *keruv* -- responsible and halachically sound -- is most needed by the communities we lead.

In short, to adopt a public policy which denies converts to Judaism communal roles which they are halachically permitted to occupy, violates the affirmative Commandment of the Torah to love the convert. Such a public pronouncement also violates the Torah's many prohibitions against wronging the convert or oppressing the convert with words.

The prohibition of *שום תשים*, derived from Deuteronomy 17:15, precludes inclusion of converts in the judicial role only in proceedings of the most extraordinary content and under the most unusual of circumstances... rarely if ever occurring in practice. In convening *Batei Din* and in selecting their members, the permissibility of impaneling qualified converts to Judaism is, therefore, to be presumed.

**אם אנו מתיחסים אל אברהם יצחק ויעקב, אתה מתיחס למי שאמר והיה העולם.**

Those born as Jews may trace their lineage to Abraham, Isaac, and Jacob, but the religious pedigree of sincere converts to Judaism derives directly from the Creator. *מעלה עשו ביוחסין* -- We could aspire to no higher standard.

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58. BT Kiddushin 83A, etc. See, for example, Rabbi Joel Roth's CJLS 1984 Responsum, "Should the Kashrut of Conversions be Investigated?"

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