The Ger As Judge and Public Figure

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Part I — The Sources in Rabbinic Literature

Introduction: The Status of a Ger[1]

The exact status of a *ger* in Jewish society is debated in Tosefta *Qiddushin* (5:2–3):

"גר ועבד משוחרר מותר בממזרת והולד ממזר" – דברי ר' יוסה. ר' יהודה או': "גר לא ישא את ה[ממזרת] גר ועבד משוחרר וחלל מותרין בכהנת..."

"A *ger* and a freed slave are permitted to marry a *mamzeret*, but the child will be a *mamzer*"[2] — these are the words of Rabbi Yossi. Rabbi Yehudah says: "A *ger* cannot marry a [*mamzeret*], but a *ger*, a freed slave and a desecrated-*kohen* are permitted to marry the daughter of a *kohen*."

1. This article only addresses the rabbinic traditions about the *ger*. There will be no attempt to deal with the biblical use of the term or its conception of the *ger*. One of the complications regarding the rabbinic use of the term *ger* is that it is sometimes used to refer to the convert him- or herself, and it is sometimes used in reference to a person whose parent or parents were converts. This point has important consequences when attempting to understand the reasoning of the rabbis in any given ruling about the *ger*. It is for this reason that I am leaving the term untranslated in this article.
2. This refers to the child of certain forbidden sexual unions, like incest or adultery (*mamzer* = male, *mamzeret* = female). The closest English equivalent is bastard, but because of its unpleasant connotations in Modern English, I will use the Hebrew term.

בת חלל זכר פסולה מן הכהונה לעולם. ר' יהוד' אומ': "בת גר זכר כבת חלל זכר ופסולה מן הכהונה..."

The daughter of a desecrated-*kohen* is barred from marrying into the priesthood forever. Rabbi Yehudah says: "The daughter of a man who is a *ger* is like the daughter of a desecrated-*kohen*, and is barred from marrying into the priesthood."

The status of the *ger* in the above examples differs greatly depending on the speaker. R. Yossi believes that a *ger* is not in the category of "community of Israel", and is therefore allowed to marry a *mamzeret*. R. Yehudah, on the other hand, believes that a *ger* is a full member of the community of Israel and may not marry a *mamzeret*. However, the *ger* carries with him a stigma on par with the stigma of the desecrated-*kohen*, and his daughters are, consequently, barred from marrying into the priesthood.

Both R. Yehudah and R. Yossi consider the *ger* to be "deficient" on one particular axis, that of lineage (יחוס). R. Yossi believes that the lineage of a *ger* is deficient to such an extent that he or she is not really Israelite and is therefore allowed to marry people who are forbidden to any Israelite. R. Yehudah believes that the lineage of a *ger* is less deficient than this; hence he does not allow such unions but also forbids the union of a *giyoret*[3] with a *kohen*.

Although this emphasis on lineage may seem surprising to us, it was of great import in the Second Temple and Rabbinic periods. How serious this "fear of bad lineage" was taken is best demonstrated by the discussion in Mishna *Qiddushin* (4:4–5):

הנושא אשה כהנת צריך לבדוק אחריה ארבע אמהות שהן שמנה: א. אמה, ב. ואם אמה, ג. ואם אבי אמה, ד. ואמה, ה. ואם אביה, ו. ואמה, ז. ואם אבי אביה, ח. ואמה. לויה וישראלית מוסיפין עליהן עוד אחת.

[A *kohen*] who wants to marry the daughter of a *kohen* must check [her lineage] through four mothers, who are eight: 1. her mother, 2. her maternal grandmother, 3. her mother's paternal grandmother, 4. her (mother's paternal grandmother's) mother, 5. her paternal grandmother, 6. her father's maternal grandmother, 7. her father's paternal grandmother, her (father's paternal grandmother's) mother. If he wants to marry a Levite woman or an Israelite woman, he should add one more.

3. This is the term for a female *ger*.

אין בודקין לא מן המזבח ולמעלה ולא מן הדוכן ולמעלה ולא מן סנהדרין ולמעלה וכל שהוחזקו אבותיו משוטרי הרבים וגבאי צדקה משיאין לכהונה ואין צריך לבדוק אחריהן ר' יוסי אומר אף מי שהיה חתום עד בערכי הישנה של צפורי רבי חנינא בן אנטיגנוס אומר אף מי שהיה מוכתב באסטרטיא של מלך.

One need not continue to check [the lineage], once one has encountered [an ancestor of hers] who brought sacrifices on the altar, or who [sang] from the pulpit, or who served on the Sanhedrin. [Furthermore,] anyone whose ancestors were public officials or charity officers can marry [their daughters] to a *kohen*, and one need not check them. Rabbi Yossi says: "Also anyone [whose ancestor] signed as a witness in Sephoris on an old document." Rabbi Ḥanina ben Antigonus says: "Also anyone [whose ancestor] was conscripted into the army of the [Israelite] king."

We learn two important points from this Mishna. First, the sages were extremely strict when it came to determining the "purity" of any family that wanted to marry their daughter to a *kohen*, checking four to five generations back. Second, we learn that certain public offices were also vetted for the same purity of lineage criteria; such that one can rest assured that if someone held that position, his family had already been checked.

With this in mind, the discussion will begin with the issue of the appointment of a *ger* to any position of authority.

A. Authority: The King and the Parnas (community official)

The King

King Agrippa was from a family of converts. There is a story in rabbinic literature about the legitimacy of his having been appointed king. The story has two different, contradictory punch-lines depending on the source which tells it.

The Mishna (*Sotah* 7:8) writes:

אגריפס המלך עמד וקבל וקרא עומד ושבחוהו חכמים, וכשהגיע ל'לא תוכל לתת עליך איש נכרי' זלגו עיניו דמעות. אמרו לו: "אל תתיירא אגריפס, אחינו אתה, אחינו אתה, אחינו אתה."

King Agrippa stood up, took [the Torah scroll] and read standing, and the Sages praised him. When he got to [the words] 'you may not place upon yourselves an outsider'[4] — his eyes swelled with tears. They responded to him: "Do not worry Agrippa, you are our brother, you are our brother, you are our brother."

4. Deut 17:15

According to this text the Sages were not overly concerned with the problem of having a *ger* as king of Israel. Agrippa was a good king and a halakhic Jew; this seems to have been good enough.[5]

However, on this Mishna, the Tosefta (*Sotah* 7:16) comments:

משם ר' נתן אמרו: "נתחייבו ישראל כלייה שחינפו לאגריפס המלך."

In the name of Rabbi Natan it was reported: "Israel was condemned to destruction because they flattered King Agrippa."

This same Tosefta is quoted by the Bavli (*Sotah* 41b), presumably authoritatively. This contradictory stance is reflected in the *Midrash Tannaim* as well.[6]

Hence, according to these opinions, the king of Israel needed to be more than just halakhically Jewish; he needed to be from Jewish stock.

Community Officials

The family purity requirement discussed above seems to have been applied to more than just the king, as was seen from the Mishna in the previous section, but to officials in general. This is expressed most clearly in *Midrash Tannaim* (Deut 17:15):

לא תוכל לתת עליך איש נכ' – להוציא את הגר משמע מוציא את הגר או אם לא יהא משבט יהודה לא יעמוד משבט בנימין אמרת והלא כל ישראל ראויין למלכות הא מה ת"ל איש נכ' להוציא את הגר...

You may not place upon yourselves an outsider — this excludes the *ger*. Does it really exclude the *ger*? Perhaps [it means] if there is no one from the tribe of Judah one must not let someone from the tribe of Benjamin arise. But are not all Israelites worthy of the crown?! Rather what is [the word]: "outsider" meant to teach? To exclude the *ger*…[7]

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5. This same position is reflected in the *Sifrei's* gloss on this verse.
6. *Midrash Tannaim*, Deut 17:15:

מעשה באגריפס שמשחוהו ישראל מלך עליהן וכיון שהגיע מוצאי שביעית לקרות המלך בספר תורה עמד הוא וקרא ושבחוהו חכמים וכיון שהגיע ללא תוכל לתת עליך איש נכרי זלגו עיניו דמעות ענו ואמרו לו אל תירא אגריפס אחינו אתה אחינו מאותה שעה נחתם גזר דין על אבותינו לגלות מפני שחינפו.

It happened with Agrippa, whom the Israelites anointed as king over themselves, that when the end of the Sabbatical year came and the king was supposed to read from the Torah scroll, he stood up and read and the Sages praised him. When he got to the words 'you may not place upon yourselves an outsider' — his eyes swelled with tears. They responded to him: "Do not worry Agrippa, you are our brother, you are our brother." From that time on the judgment was sealed against our fathers to be exiled, since they flattered him.

מיכן אמרו: אין מעמידין מלך מקהל גרים אפלו אחר כמה דורות עד שתהא אמו מישראל אין לי אלא מלך מנ' לרבות שר צבא שר חמשים או עשרה? אפלו הממונה על אמת המים ת"ל מקרב אח' תש' על' כל משימות שאתה משים לא יהו אלא מקרב אחיך.

From here they said: One may not appoint a king from among the *gerim*, even after many generations, unless his mother was an Israelite. This we know to be true with regard to the king, how do we know this includes a general, a commander of fifty or ten, and even the administrator in charge of water? [The verse] teaches us: "from among your brothers place upon yourselves" — all appointments which you make should only be from among your brothers.

According to this source, the same family purity requirements which apply to a king apply to any government official, even to the administrator in charge of water.[8]

Along these same lines, the Babylonian Talmud relates an anecdote (*Qid* 76b):

אושפזיכניה דרב אדא בר אהבה גיורא הוה, והוה קא מנצי איהו ורב ביבי, מר אמר: "אנא עבידנא סרורותא דמתא," ומר אמר: "אנא עבידנא סרורותא 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.

Rav Ada bar Ahava's landlord was a *ger*, and he had been quarreling with Rav Bibi. 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. He said to them: "'You shall surely place upon yourselves a king… from among your brothers' — all appointments that you make must be from among your brothers." Rav Ada bar Ahava said to him: "Even if his mother was an Israelite?" [Rav Yosef] responded: "If his mother was Israelite that counts as being 'from among your brothers'.[9]

7. At this point, the Agrippa story is related.
8. This idea is reflected in the Mishna quoted in the previous section, which states that if one knows that a person's ancestor was a public official, one need not check into his family before allowing him to marry one's daughter, as it is certain that he is from pure stock.
9. There is a running dispute among the commentators whether this is supposed to mean that the mother in particular needs to have been of Jewish stock, and that the father having been of Jewish stock would be insufficient, or whether it means that even if the mother was of Jewish stock, but certainly the father having been of

הלכך, רב ביבי דגברא רבא הוא ליעיין במילי דשמיא, ומר ליעיין במילי דמתא." אמר אביי: "הלכך מאן דמשרי צורבא מדרבנן באושפיזיכניה, לאשרי כרב אדא בר אהבה, דידע למהפיך ליה בזכותיה."

Therefore, Rav Bibi, who is a great man, should look after spiritual matters and this man should look after the city." Abaye said: "Therefore one who borders a rabbinic scholar should border one like Rav Ada bar Ahava, who knows how to argue in a person's favor."

This pericope features a discussion between Rav Ada bar Ahava and Rav Yosef about the appointment of a *ger* to oversee the administration of a small town. In this pericope it would appear that Rav Yosef took the disqualification of a *ger* to hold this position as halakha, since he was going to disqualify the landlord. In this, he follows the position of the Tosefta and *Midrash Tannaim*, but with one caveat. Rav Yosef defines the *ger* excluded by these sources as one whose mother is not of Jewish stock. Hence, Rav Ada bar Ahava succeeds in changing Rav Yosef's mind about his landlord by pointing out that the man was of Jewish stock on his maternal side.

This same position is echoed by Rava in another pericope (b. *Yeb* 45b):

רבא אכשריה לרב מרי בר רחל ומנייה בפורסי דבבל, ואע"ג דאמר מר: "'שום תשים עליך מלך' – כל משימות שאתה משים – אל יהו אלא מקרב אחיך"! האי כיון דאמו מישראל, מקרב אחיך קרינן ביה.

Rava accepted Rav Mari bar Raḥel and appointed him to be among the Babylonian collectors. And even though the master said: "'You shall surely place upon yourselves a king' — all appointments that you make must be from among your brothers." In this case, since his mother is Israelite, it counts as 'from among your brothers.'

Jewish stock would be enough. As this question is beyond the scope of the present inquiry, I will translate the phrase as is. No particular position on the matter is meant to be implied.

Rava's position is the same as that of Rav Yosef. They both agree with the position of R. Natan and the *Midrash Tannaim*, and both include the same "lenient interpretation" of this position, i.e. that it is only meant to exclude actual converts, not *gerim* whose mothers are from Jewish stock.

However, from the end of the pericope in *Qiddushin* (76b), we learn that this was not the only position among the Amoraim:

רבי זירא מטפל בהו. רבה בר אבוה מטפל בהו. במערבא, אפילו ריש כורי לא מוקמי מינייהו. בנהרדעא, אפי' ריש גרגותא לא מוקמי מינייהו.	Rabbi Zeira would include them (i.e. *gerim*). Rabba bar Avuha would include them. In the west they are not even appointed to be chiefs of measurements. In Nahardea they are not even appointed to be chiefs of irrigation.

The pericope ends in a kind of draw.[10] Rabbi Zeira and Rabbah bar Avuha do not accept the *derasha* as binding, and are willing to appoint *gerim* to positions of authority. In Israel and in Nehardea they did accept the *derasha* as binding and would not. The final halakha here remains undecided.

B. Courts: Legislative, Capital and Monetary

Legislation (*Hora'ah*) and the High Court

To be a member of the Great Sanhedrin, with the power and authority to vote on matters of halakha for the entirety of Israel, one needed to be of pure stock. Mishna *Horayot* (1:4) states:

10. This is Rashi's interpretation. However, the Meiri offers a different reading of this text and claims that Rabbi Zeira and Rabbah bar Avuha did accept the derasha as binding, only they believed that one could appoint a minority of *gerim* to an administrative team or panel. See *Tzitz Eliezer* 19:48 for a discussion of the halakhic implications of this interpretation.

הורו בית דין וידע אחד מהן שטעו, ואמר להן: "טועין אתם", או שלא היה מופלא של בית דין שם, או שהיה אחד מהן גר או ממזר או נתין או זקן שלא ראה לו בנים – הרי אלו פטורין, שנאמר כאן: 'עדה' ונאמר להלן: 'עדה', מה עדה האמור להלן עד שיהיו כולם ראויין להוראה, אף עדה האמורה כאן עד שיהיו כולם ראויים להוראה.

If the court issued a decree, and one of its members knew that it was a mistake and said to them: "You are mistaken", or if the senior member of the court was not present, or if one of them was a *ger* or a *mamzer* or a *netin*[11] or an elder who never had children — they are all exempt, for it says here 'assembly'[12] and it says there 'assembly'[13] — just like the assembly mentioned there is only if all of them are fit to issue legislation, so too the assembly mentioned here is only when all of them are fit to issue legislation.

The Mishna here lists cases where members of a court who offered mistaken legislation are exempt from punishment. Among the various examples is a case where the court had members who were not fit to sit on the court, the *ger* being one of the four examples.

The Mishna learns this list from a *gezeirah shava*[14] comparing a verse understood to be referring to the high court with a verse about a court that judges capital cases. This begs the question: How does the Mishna know that these people are excluded from serving in capital cases?

The *Yerushalmi* (ad loc.) offers an explanation:

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11. This refers to a certain type of Temple official. The reason why they maintain a second-class status is, perhaps, lost in history, but tradition identifies them with the biblical Gibeonites, who are cursed by Joshua to be low-grade temple servants for eternity.

12. Lev. 4"13:

ואם כל עדת ישראל ישגו ונעלם דבר מעיני הקהל ועשו אחת מכל מצות יקוק אשר לא תעשינה ואשמו.

And if the entire *assembly* of Israelites is mistaken, and it is hidden from the eyes of the congregation and they violate one of God's commandments which should not be transgressed and they are guilty.

13. Num. 35"24:

ושפטו העדה בין המכה ובין גאל הדם על המשפטים האלה.

And the *assembly* should judge between the assailant and the blood-avenger regarding these laws.

14. A type of rabbinic midrash which allows cross-pollinating exegesis between two verses from different contexts that share the same term.

כתיב: 'והתיצבו שם עמך' – מה את לא גר ולא נתין ולא ממזר, אף הן לא גרים ולא נתינים ולא ממזרים ולא עבדים.

It says: "and they should stand there with you"[15] — just like you (i.e. Moses) are not a *ger* or a *netin* or a *mamzer*, so too none of them should be a *ger*, a *netin*, a *mamzer* or a slave.

Bavli *Horayot* (4b) reasons similarly:

והתם מנלן? דאמר רב חסדא: "אמר קרא: 'והתיצבו שם עמך', עמך – בדומין לך." ואימא: עמך לשכינה! אלא אמר ר"נ בר יצחק: "אמר קרא: 'ונשאו אתך', אתך – בדומין לך."

How did they know this in that case?! Rav Ḥisda said: "The verse states: 'and they should stand with you'; 'with you' — those who are similar to you. But perhaps it means with you with respect to God's presence?[16] Rather, Rav Naḥman bar Yitzḥaq said: "The verse states[17]: 'and they will bear [the burden] with you'; 'with you' — those who are similar to you."

Both Talmuds posit that the exclusion of people of "impure blood" from sitting on capital cases stems from another midrash. The *Yerushalmi* prefers the midrash attributed in the *Bavli* to Rav Ḥisda,[18] while the *Bavli* seems to prefer the alternative of Rav Naḥman bar Yitzḥaq. Both base their *derashot* on an

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15. Num 11

[טז] ויאמר יקוק אל משה: "אספה לי שבעים איש מזקני ישראל אשר ידעת כי הם זקני העם ושטריו ולקחת אתם אל אהל מועד והתיצבו שם עמך. [יז] וירדתי ודברתי עמך שם ואצלתי מן הרוח אשר עליך ושמתי עליהם ונשאו אתך במשא העם ולא תשא אתה לבדך."

[16] And God said to Moshe: "Gather for me 70 men of the elders of Israel whom you know to be elders of the nation and its officers, and take them to the tent of meeting *and they should stand there with you*. [17] And I will descend and speak with you there and I will take some of the spirit that is upon you and place it upon them, and they will bear along with you the burden of the nation, and you will not bear [it] alone."

16. i.e. because God was going to take some of the "spirit" that was on Moshe and place it upon the elders

17. Ex. 18

[כא] ואתה תחזה מכל העם אנשי חיל ירא אלהים אנשי אמת שנאי בצע ושמת עלהם שרי אלפים שרי מאות שרי חמשים ושרי עשרת: [כב] ושפטו את העם בכל עת והיה כל הדבר הגדל יביאו אליך וכל הדבר הקטן ישפטו הם והקל מעליך ונשאו אתך.

[21] And you should seek out among the nation men of stature, who fear the Lord, men of truth who hate bribery, and place them upon [the people] as officers of thousands, officers of hundreds, officers of fifties, and officers of tens. [22] And they should judge the nation at all times, and any matter that is big they will bring to you and any small matter they will judge themselves, and they will lighten your burden *and bear it with you*.

18. As does Rambam, interestingly enough (*Mishneh Torah*, *Sanhedrin* 2:1)

implicit comparison with Moshe: the judge in a capital case must be "similar to Moshe" in status, i.e. not a *ger*, a *mamzer*, a *netin*, a slave[19] or someone without children.

This structure, where one learns family purity requirements for the high court from family purity requirements in a capital court, seems puzzling. One would have assumed that any rule about qualifications would apply first and foremost to legislation and the high court. Nevertheless, it is clear from other sources that any hierarchical distinction between the two cannot be considered definitive. Tosefta *Horayot* (1:3–4) offers this comparison:

חומר בהוראה מה שאין כן בדיני נפשות וחומר בדיני נפשות מה שאין כן בהוראה: שבהוראה עד שהורו כולן ובדיני נפשות הולכין אחר הרוב. שבהוראה עד שהורו בית דין שבלשכת הגזית ובדיני נפשות נוהגין בכל מקום.

There is a stricture by legislation that does not exist by capital law, and [there is a stricture] by capital law that does not exist by legislation. Legislation can only be achieved unanimously, but capital cases are decided by a majority. Legislation can only take place in the high court [which meets] in the room of hewn stone, but capital cases can be judged anywhere.

Although the Tosefta does not continue on to list strictures only relevant to capital cases,[20] the point of the text is clear: These two types of court cases are considered to be on par with each other. One can speculate that, given the extreme reluctance the rabbinic sources demonstrate with regard to capital punishment[21] the rabbis may have considered the requirements of being a judge in such cases to be on par even to high-court legislation itself.

The Mishna in *Horayot* and the Babylonian and Jerusalem Talmuds' pericopae discussing it are in some tension with the sources from the previous section. What need would there be for a proof that a *ger* cannot sit on the great Sanhedrin if one already knows that he cannot be appointed to any

19. This category was added by the *Yerushalmi* and the category of "without children" was removed. This highlights the gap between the first three cases in the Mishna, which are all examples of status disqualifications (פסולים) and the fourth, which seems to be something else entirely.

20. For example, capital cases can only be judged during the day, whereas legislation can even go on at night.

21. See m. *Makkot* (1:11), b. *Makkot* (7a), etc.; cf. Josephus *Antiquities* XIII (10:6) regarding the Pharisees' tendency to be lenient when it came to penalties.

communal position, even minister of water?! This tension will become even more palpable in the next subsection on capital and monetary courts.

Capital and Monetary Courts

Mishna *Niddah* (6:4–5) discusses the fitness requirements for a judge of capital cases in comparison to the fitness requirements for a civil court judge:

כל הראוי לדון דיני נפשות ראוי לדון דיני ממונות ויש שראוי לדון דיני ממונות ואינו ראוי לדון דיני נפשות. כל הכשר לדון כשר להעיד ויש שכשר להעיד ואינו כשר לדון.

Anyone who is fit to a judge capital case is fit to judge a monetary case, but there are those who are fit to judge a monetary case that are not fit to judge a capital case. Anyone who is fit to judge is fit to be a witness, but there are those who are fit to be witnesses but are not fit to judge.

What is left unclear in the above Mishna is: who specifically is being referenced?[22] This ambiguity is clarified somewhat in a different Mishna in *Sanhedrin* (4:2):

הכל כשרין לדון דיני ממונות, ואין הכל כשרין לדון דיני נפשות אלא כהנים לוים וישראלים המשיאין לכהונה.

Anyone is fit to judge a monetary case, but not everyone is fit to judge a capital case; only *kohanim*, Levites, and Israelites who can marry [their daughters] into the priesthood.

From a simple reading of this Mishna, it would seem that the category of "fit" people who are excluded from judging capital cases is limited to Israelites who cannot marry their daughters into the priesthood, i.e. a lineage problem.

This understanding is seconded by a *baraita* quoted in Yerushalmi *Sanhedrin* (4:8) in reference to this Mishna:

הכל כשירין לדון דיני ממונו'. ר' יהוד' אומ': "אפי' ממזירין."

Anyone is fit to judge a monetary case. Rabbi Yehudah says: "Even a *mamzer*."

A *mamzer* is an example of an Israelite excluded from sitting on capital cases but allowed to sit on monetary cases. Rabbi Yehudah uses the term "even" because a *mamzer* is not only barred from marrying his daughter to a *kohen*,

22. One could, of course, deduce this backwards from m. *Horayot* (1:4), but this is not done explicitly by the Talmud. Nevertheless, as we will see, the Mishna in *Horayot* does inform the discussion.

but he is barred from marrying into any Israelite family, unless the Israelite woman in question is herself a *mamzeret* or a convert. The *mamzer* is the lineage problem *par excellence*!

That having been said, the discourse on this topic is more complex. Tosefta *Sanhedrin* (7:5) problematizes the previous categorization:

הסריס ומי שלא ראה לו בנים כשר לדון דיני ממונות ואין כשר לדון דיני נפשות. ורבי יהודה מוסיף אף האכזרי והרחמן.	A eunuch and someone who has no children are fit to judge monetary cases but not fit to judge capital cases. Rabbi Yehudah adds anyone who is either cruel or overly compassionate.

This text complicates the picture. Although one could understand the case of a eunuch as being an example of an Israelite who cannot marry into the priesthood,[23] this explanation does not work at all for the childless person.

This example leads one to believe that the Tosefta's issue is not about who is fit to marry a *kohen*, but about who has had sufficient life experience and strong personal relationships to be able to condemn another human being to die. This, of course, parallels the 'elder who never had children' from the Mishna in *Horayot*. The position of Rabbi Yehudah in the Tosefta takes this a step further, as he seems to be worried about people who are by nature "unfit for the job".

Yerushalmi Sanhedrin (4:9) discusses this Tosefta:

רבי אבהו בשם רבי יוחנן: "אף פחות מבן עשרים ושלא הביא שתי שערות כשר בדיני ממונו' ולא בדיני נפשות, ויושב בדינו של שור."	Rabbi Abahu in the name of Rabbi Yoḥanan: "Even [someone] less than twenty years old who has not begun puberty is fit to judge monetary cases but not capital cases — though he can sit on a case of an ox."

The point here seems to be that a child, i.e. someone less than twenty who has not begun puberty, is simply not mature enough to judge capital cases. The ox case, which refers to judging an ox that gored a person to death, is mentioned in order to clarify that it is only capital cases that he cannot judge; the same

23. This example, like that of the *mamzer*, is really someone who cannot marry into any Israelite family, but it is still, certainly, a lineage problem.

level of maturity is not required to put an animal down as would be to execute a human being.

At this point, two categories of exclusions are evident:

a. People who are excluded for lineage reasons, i.e. ineligibility to marry into a priestly family.
b. People who are excluded for intrinsic or personal reasons, like pre-pubescent adolescents, people who are too cruel or too compassionate, etc.

The Babylonian Talmud discusses the first category further in two separate places (*Sanhedrin* 36b, *Niddah* 48a):

הכל כשרין לדון דיני ממונות – הכל לאתויי מאי? אמר רב יהודה: "לאתויי ממזר." הא תנינא חדא זימנא: כל הראוי לדון דיני נפשות – ראוי לדון דיני ממונות, ויש ראוי לדון דיני ממונות ואין ראוי לדון דיני נפשות. והוינן בה: לאתויי מאי? ואמר רב יהודה: "לאתויי ממזר!" חדא לאתויי גר, וחדא לאתויי ממזר. וצריכא: דאי אשמעינן גר – דראוי לבא בקהל, אבל ממזר – אימא לא. ואי אשמעינן ממזר – דבא מטיפה כשרה, אבל גר דלא בא מטיפה כשרה – אימא לא, צריכא.

'Anyone is fit to judge a monetary case' — Who does [the word] 'anyone' include? Rav Yehudah said: "It comes to include a *mamzer*."[24] Wasn't this already taught? "Anyone who is fit to judge capital cases can judge monetary cases, but not everyone who is fit to judge monetary cases is fit to judge capital cases." The question was asked: "Who does [the word] 'anyone' include? And Rav Yehudah said: "It comes to include a *mamzer*."! One of them comes to include a *mamzer* and one of them comes to include a *ger*. And this is necessary, for if it told us *ger*, [we might assume that this is because] he is fit to 'enter the community', but for a *mamzer* we would have said no. And if it told us *mamzer*, [we might assume that this is because] he came from Jewish stock, but a *ger*, who did not come from Jewish stock we would have said no — hence [they are both] necessary.

In order to solve the problem of the superfluity of the two *mishnayot* and the accompanying double recording of Rav Yehudah, the Talmud posits that each Mishna is there to include a different case. One Mishna is understood to include the *mamzer* and is the one Rav Yehudah was explaining, whereas the other Mishna is understood to include a *ger*. Between these two examples,

24. This same statement appears in the Yerushalmi as a *baraita*. Here it is in the name of Rav Yehudah the amora, there Rabbi Yehudah the tanna.

the Talmud assumes, all the cases of disqualified people (at least of the first category) should be covered.

The Babylonian Talmud (*Sanhedrin* 36b, *Qiddushin* 76b)[25] further explains the reasoning behind excluding people of impure lineage:

ואין הכל כשרין לדון דיני נפשות – מאי טעמא? דתני רב יוסף: "כשם שבית דין מנוקין בצדק, כך מנוקין מכל מום." אמר אמימר: מאי קרא? (שיר השירים ד"ז) 'כולך יפה רעיתי ומום אין בך'. ודילמא מום ממש? אמר רב אחא בר יעקב: "אמר קרא: 'והתיצבו שם עמך', עמך – בדומין לך. ודילמא התם משום שכינה?! אלא אמר רב נחמן בר יצחק: "אמר קרא: 'ונשאו אתך', אתך – בדומין לך ליהוי."

But not everyone is fit to judge a capital case — What is the reason? Rav Yosef taught: "Just like a court must be clean with respect to justice, they must also be clean with respect to blemishes." Ameimar said: "What is the verse [which demonstrates this]? (Song 4:7) 'You are completely beautiful, my beloved, and you have no blemish'." Perhaps this is referring to a physical blemish? Rav Aḥa bar Ya'aqov said: "The verse states (Num 11:16): 'And they will stand there with you' — people who are like you."[26] Perhaps there it is because of the divine presence! Rather, Rav Naḥman bar Yitzḥaq said: "The verse states (Ex 18:22): 'And they will bear with you' — with you, they should be like you."

The first half of this passage explains that to be a judge in a capital case, one must be without blemishes, even if these blemishes are not a reflection of the person's character. Hence, any lineage problem would exclude the person from sitting in judgment in such a case.[27]

The second half of the passage parallels *Horayot* with one conceptual difference: Whereas in *Horayot* the *derasha* is utilized to prove that the judges

25. The two texts are almost identical with the one difference being that in *Qiddushin* Mareimar as opposed to Ameimar is quoted. The text in *Qiddushin* is in reference to the Mishna (quoted in an earlier section) that requires checking into the lineage of potential members of the Sanhedrin.

26. In *Horayot*, it is Rav Ḥisda who makes this statement; it appears anonymously in the Jerusalem Talmud.

27. Although nowhere in these texts is the mishna in *Horayot* referenced explicitly, three out of the four cases, *ger*, *mamzer* and childless man, are referenced and there is no reason to assume that the fourth example, the *netin*, would not be included in this category as well.

must be like Moshe in every respect, i.e. have no lineage problems and have children, here it is used to prove that the judge cannot have any blemishes.[28]

This entire discussion is in serious tension with the pericope about authority, even more so than the case of legislation. First, the same question that was asked in the legislation subsection can be asked here: What need would there be for a proof that a *ger* cannot judge capital cases if one already knows that he cannot be appointed to any communal position, even minister of water?! Second, and even more problematic: How can the Mishna state that anyone, including a *ger*,[29] can sit on a monetary court if it has already been established that a *ger* cannot be appointed to any position of authority at all. Certainly a civil court judge is in a position of some authority! These questions will be discussed at length in the latter parts of this essay.

C. Ordination and Various Types of Monetary Courts

The first Mishna in tractate *Sanhedrin* enumerates different types of cases and how many judges are needed to adjudicate them. For the purposes of this essay, the first two types of cases are of importance:

דיני ממונות – בשלשה, גזילות	Monetary cases are adjudicated by three [judges].
וחבלות – בשלשה.	Cases of theft or assault are adjudicated by three [judges].

The Babylonian Talmud (*San* 2b-3a) discusses the implications of these being listed as separate categories:

28. This puts this passage in the curious position of proving "less" than the passage in *Horayot* did. While it is hard to know why the Talmud chose to present the *Sanhedrin/Qiddushin* text in this manner, one can speculate that the editors of the Talmud thought that it was self-evident why someone would need to be merciful if he were to judge a capital case. Therefore, they only included lineage problems as the subject of the midrashic proofs. This possibility is borne out by the fact that Rabbi Yehudah added the exclusion of the overly cruel and the overly compassionate only in relation to capital cases.

29. According to the Talmud

אטו גזילות וחבלות לאו דיני ממונות נינהו? – אמר רבי אבהו: "מה הן קתני; מה הן דיני ממונות – גזילות וחבלות, אבל הודאות והלואות – לא..."

Are cases of theft or assault not monetary cases? Rabbi Abahu said: "[The Mishna is written with] an implied 'what are': What are monetary cases? Cases of theft or assault, but not cases of admitted debt or loans…

תנא: מה הן דיני ממונות – גזילות וחבלות, אבל הודאות והלואות – לא.

It was taught: "What are monetary cases? Cases of theft or assault, but not cases of admitted debt or loans."

ולמאי? אילימא דלא בעינן שלשה – והאמר רבי אבהו: "שנים שדנו דיני ממונות – לדברי הכל אין דיניהם דין." אלא – דלא בעינן מומחין...

With regard to what [was this taught]? If it was meant to teach that three [judges] would not be required [in a case of admitted debt or a loan] — did not Rabbi Abahu say: "If two judges judge a monetary case, all would agree that the judgment does not count"! Rather [it was meant to teach] that ordained judges[30] are not required…

לעולם קסבר... בדין הוא דליבעי נמי מומחין, והאי דלא בעינן מומחין – משום דרבי חנינא. דאמר רבי חנינא: "דבר תורה, אחד דיני ממונות ואחד דיני נפשות בדרישה ובחקירה, [דף ג עמוד א] שנאמר 'משפט אחד יהיה לכם'. ומה טעם אמרו דיני ממונות לא בעינן דרישה וחקירה? כדי שלא תנעול דלת בפני לווין."...

What [Rabbi Abahu] must believe is that… theoretically, ordained judges would have been required, and the reason ordained judges are not required is because of the position articulated by Rabbi Ḥanina. For Rabbi Ḥanina said: "According to Torah law, both monetary and capital cases require examination of witnesses, as it says: 'one judgment shall apply to you.'[31] However, why did [the sages] say that investigation of witnesses is not required in monetary cases? So that the door would not be locked before the faces of lenders."

אי הכי תרתי קתני: דיני ממונות בשלשה הדיוטות, גזילות וחבלות בשלשה מומחין. ועוד: שלשה שלשה למה לי?

If this were so,[32] then the Mishna would be teaching two different things: Monetary cases are adjudicated with any three judges, but cases of theft and assault must be adjudicated with three ordained judges. Furthermore, why should the Mishna repeat the word "three"?

אלא אמר רבא: "תרתי קתני משום דרבי חנינא."

Therefore, Rava suggested: "Two things were taught because of [the position of] Rabbi Ḥanina."

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30. Technically, the term used means "expert judges", but the Talmud doesn't mean this in the sense of "competent" but in the sense of "licensed".

31. Lev 24:22

32. i.e. that admitted debts and loans require three judges

אלא אמר רבא: "תרתי קתני משום דרבי חנינא."	Therefore, Rava suggested: "Two things were taught because of [the position of] Rabbi Ḥanina."
רב אחא בריה דרב איקא אמר: "מדאורייתא חד נמי כשר,[||] שנאמר 'בצדק תשפט עמיתך' – אלא משום יושבי קרנות."	Rav Aḥa the son of Rav Iyqa said: "According to Torah law, one judge would be sufficient, as it says: 'judge your fellow justly.'[33] Rather, [three were required by the rabbis] because of the uneducated."

From this source, one learns that there are two categories of judges, ordinary people that serve as judges (הדיוט) and officially ordained judges (מומחה). According to the Babylonian Talmud, the former would be acceptable in standard monetary cases, like loans or debt payments, but the latter would be required in cases involving theft or assault.

The question arises, then, can a *ger* receive official ordination as a judge? The Babylonian Talmud never discusses this question, but there exists a text in the Jerusalem Talmud (*Ḥag* 1:8) that would imply that he could not.

מהו למנות זקינים לדברים יחידים?	Can one ordain an elder to have authority only in certain matters?
נישמעינה מן הדא: רב מניתיה רבי להתיר נדרים ולראות כתמי, מן דדמך בעא גבי בריה מומי בכורות, אמר לו: "איני מוסיף לך על מה שנתן לך אבא."	Let us learn the answer from this: Rav was ordained by Rabbi as competent to release people from their vows, and to make determinations about menstrual blood stains. After [Rabbi's] death, he requested [a further ordination] from Rabbi's son, [granting him the authority] to make determinations about blemishes found on first-born animals. [Rabbi's son] said to him: "I will not add to your authority more than my father already granted you."

33. Lev 19:15

א"ר יוסי בי ר' בון: "כולא יהב ליה לדין יחידי ולהתיר נדרים ולראות כתמים ולראות מומין שבגלוי, מן דדמך בעא גבי בריה מומין שבסתר, א"ל: 'איני מוסיף לך על מה שנתן לך אבא'."	Rabbi Yossi son of Rabbi Bun said: "He (Rabbi) gave him all of that: the [authority] to adjudicate as a single judge, the authority to release people from their vows, to make determinations about menstrual blood stains, and to make determinations about visible blemishes. After [Rabbi's] death, he requested [a further ordination] from Rabbi's son, [granting him the authority] to make determinations about hidden blemishes. [Rabbi's son] said to him: 'I will not add to your authority more than my father already granted you'."
אף על גב ד[א]ת אמר ממנין זקינים לדברי יחידים, והוא שיהא ראוי לכל הדברי	Even though [it has been determined] that one can ordain an elder to have authority only in certain matters, this is only if he is fit [theoretically] to deal with any matter.
כהדא ר' יהושע בן לוי מני לכל תלמידוי, והוה מצטער על חד דהוה בכי בעיינוי ולא הוה יכיל ממנייתיה.	For example, Rabbi Yehoshua ben Levi ordained all of his students, but he was pained with regard to one who was blind in one of his eyes, hence he could not ordain him.
וימניניה לדברי יחידים?!	But let him ordain [the student] to have authority only in certain matters!
הדא אמרה הראוי לכל הדברי ראוי לדבר אחד, ושאינו ראוי לכל הדברים אפילו לדבר אחד אינו ראוי.	This demonstrates that if one is eligible to have authority in any matter one can be given authority to deal with a specific matter, but if one is not eligible to have authority over all matters one cannot even be granted authority over one.

On the question of whether someone can be granted only partial ordination, the Jerusalem Talmud answers that this is possible, but only if the person were fit, at least theoretically, to be granted a full ordination. The actual case referenced as an example of someone unfit is the case of a man that was blind in one eye. As was seen in section B, a person with a physical blemish cannot sit on a high court. Hence, following the principle in the Jerusalem Talmud, such a person could not actually be ordained or appointed to sit on any court.

This text is actually codified as halakha in Rambam's *Mishneh Torah* (*Sanhedrin* 4:10):

חכם מופלא שהוא סומא בעינו אחת אף על פי שהוא ראוי לדיני ממונות אין סומכין אותו לדיני ממונות מפני שאינו ראוי לכל הדברים וכן כל כיוצא בזה.

A great scholar who is blind in one eye, even though he is eligible to adjudicate financial matters, he may not receive ordination even for monetary courts, since he is not fit to judge in all matters, and the same applies to any similar [disqualification].

If one were to apply this principle to the Babylonian Talmud's rule that the members of a court judging a theft or assault case require ordination, one would have to conclude that anyone who cannot sit on a high court cannot sit on a court for theft or assault either. Although the specific case mentioned in the Jerusalem Talmud is one of a physical blemish, it seems reasonable to suggest that this would apply to the *ger* as well, and that, if one accepts both of these texts as normative, a *ger* would not be eligible to sit on a court judging a case of theft or assault, at least as long as the requirement to use ordained judges remained in force.

Finally, there would seem to be little reason, even according the Jerusalem Talmud, to exclude a *ger* from judging regular types of monetary cases, since these judges do not require ordination or appointment.

D. Conversion Courts

The court required for conversion functions in an entirely different way than that of monetary and capital courts. There exists, unfortunately, very little discussion in rabbinic literature about what the requirements for such a court are.

Qiddushin

One short discussion with regard to requirements for conversion courts can be found in b. *Qiddushin* 62b. In this text, the Talmud is trying to explain why the Mishna believes that a man cannot marry a woman "on the condition" that he will convert. The Talmud posits that it must be because, similar to conditions like "when I am free from bondage" or "when your husband dies", the matter is not really under the man's control. To this, the Talmud asks in what way is it not under his control; if he wants to convert, let him convert! The Talmud responds with the following:

גר נמי לאו בידו, דאמר רבי חייא בר אבא אמר ר' יוחנן: "גר צריך שלשה, מ"ט? 'משפט' כתיב ביה כדין." — מי יימר דמזדקקו ליה הני תלתא.	A *ger* does not have control [over his own conversion], for Rabbi Ḥiyya bar Abba said in the name of Rabbi Yoḥanan: "A *ger* requires three [judges before whom to immerse]. How do we know this? For the word 'judgment' is used regarding him, just like in regular cases." How do we know that he will find three [judges to convert him?]

From here we learn that, minimally, three judges are required in order to perform the conversion.[34]

Rabbi Ḥiyya bar Rabbi

The key text is found in Bavli *Yebamot* (46b).

אמר רבה: "עובדא הוה בי רבי חייא בר רבי... דאתא לקמיה גר שמל ולא טבל. א"ל: 'שהי כאן עד למחר ונטבלינך.'	Rabbah said: "Once in the home of Rabbi Ḥiyya bar Rabbi… it happened that a *ger* who had been circumcised but had not yet immersed came before him. He said to [the *ger*]: 'Stay here until tomorrow and we will immerse you.'
ש"מ תלת: ש"מ גר צריך שלשה, וש"מ אינו גר עד שימול ויטבול, וש"מ אין מטבילין גר בלילה.	One can learn three things from this: One can learn that a *ger* requires three [judges before whom to immerse], one can learn that a person is not a *ger* until he has been circumcised as well as immersed, and one can learn that a *ger* cannot be immersed at night."
ונימא: ש"מ נמי בעינן מומחין! דלמא דאיקלעו.	Let us suggest [as well], that one can learn that expert/ordained judges are required! This could have been happenstance.
אמר רבי חייא בר אבא אמר רבי יוחנן: "גר צריך ג', 'משפט' כתיב ביה."	Rabbi Ḥiyya bar Abba said in the name of Rabbi Yoḥanan: "A *ger* requires three [judges before whom to immerse], for the word 'judgment' is used regarding him."

According to this text, the requirements for the conversion court are that it be made up of three judges, and that the process cannot be done at night.[35]

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34. But see later the position of R. Yehudah b' R. Yom Tov who believes that this requirement is only rabbinic.

35. There is, of course, a well-known debate between Rambam and the Tosafot about

The Talmud further suggests the possibility that one could learn from the case of the *ger* who approached Rabbi Ḥiyya bar Rabbi that the judges need to be ordained, but the Talmud remarks that this is inconclusive.

The Problem

Although this terse back and forth about ordained judges seems rather straightforward, it masks a real problem. If one takes seriously the Talmud's suggestion that the judges in conversion cases need to be ordained as a live concern, it would mean that there exists a serious question about whether any conversion outside of Israel or after the closing of the Sanhedrin in the 4th/5th century could ever be done.

Rashi

Rashi appears to have noticed this problem, which may be the reason he translates the term מומחה in two different ways depending on context. In *Sanhedrin*, Rashi translates it as "people with official power and authority"[36] whereas in *Yebamot* he translates it as "great rabbis".[37] Although this elegant solution avoids the problem entirely, it has an Achilles' heel; namely, it forces the reader to assume that the Talmud is using the same technical term to mean two different things.

Rabbi Yehudah b' Rabbi Yom Tov and Rabbi Simḥa of Speyer[38]

Another solution to this problem is proposed by Rabbi Yehudah b'Rabbi Yom Tov and Rabbi Simḥa of Speyer.

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whether the three judges are needed for the immersion or the acceptance of *mitzvot* ceremony. For the purposes of this essay it doesn't matter.

36. דמשמע מומחין לשון שררה ורבנות

37. רבנן רברבי

38. Their positions are recorded in Mordekhai (*Yeb* 36)

וה"ר יהודה ברבי יום טוב פי' על הך מלתא דמדאורייתא לא בעינן ג' לטבילה דמדאורייתא חד נמי כשר בדיני ממונות כדאמר בריש סנהדרין אלא מדרבנן הוא דאצריך בגירות כמו בדיני ממונות, וכן מצא מורי בשם רבינו שמחה ז"ל.

R. Yehudah b' Rabbi Yom Tov explained regarding this that according to Torah law, three [judges] would not be required to witness the immersion, since, according to Torah law, one [judge] would be sufficient, [for a conversion court] is analogous to a monetary court, as it was stated at the beginning of *Sanhedrin*. It is only according to rabbinic law that [three] were required, just like in monetary law. My teacher also found this same point recorded in the name of R. Simḥa.

According to these authorities, not only is the possibility that the judges on a conversion court would require official ordination rejected, but the entire pericope is rejected in favor of the position of Rav Aḥa son of Rav Iyqa in the pericope in *Sanhedrin* describing monetary courts.

A less radical version of R. Simḥa's position is recorded in the following paragraph in the Mordekhai.

ש"מ אין מטבילין גר בלילה – וטעמא משום משפט כדקאמר בסמוך וא"ת ליבעי נמי מומחין וי"ל כשם שתקנו ג' הדיוטות שלא תנעול דלת בפני לווין ה"נ תקנו בגר וכ"כ רבינו שמחה.

One can learn that a *ger* cannot be immersed at night — the reason is because the verse uses the term 'judgment'… And if one were to argue that, if so, ordained judges should be required as well, it is possible to respond by saying that just like [the rabbis] allowed three ordinary judges [in monetary cases] so that the door would not be locked in the face of lenders, the rabbis enacted a similar rule for the convert — this is what R. Simḥa wrote.

Although this iteration of R. Simḥa's view is in some tension with the previous one, what remains clear is that R. Simḥa and R. Yehudah b' Rabbi Yom Tov believe that the rules of a conversion court should be analogized to the rules of a simple monetary court and not to that of court adjudicating theft or assault.

Tosafot

The Tosafot approach the analogy between monetary and conversion courts somewhat more circumspectly. They begin with the question of why a court accepting converts requires three judges according to everyone, whereas we know from the pericope in *Sanhedrin* that according to Rav Aḥa son of Rav Iyqa one judge would be sufficient for judging a regular case of monetary law.

Although one could answer (as R. Yehudah b' Rabbi Yom Tov did) that Rav Aḥa would, in fact, apply his principle to conversion as well, but that the Talmud didn't happen to discuss this, the Tosafot do not go this route.[39] Instead they posit that the requirements for sitting on a court for conversion may be analogous to those of a court judging theft and assault and not to that of a regular monetary court.

וא"ת משום קבלת מצות נמי אמאי בעינן שלשה והרי הודאות והלואות דכתיב בהן משפט ואפ"ה אמרינן בסנהדרין דדן אפילו יחידי	If one were to ask why three judges are necessary for the [ceremony] of the acceptance of the commandments, for in cases of debts and loans, where the word "judgment" is also written, nevertheless we say in *Sanhedrin* that even one judge can adjudicate such a case.
ויש לומר דיש לנו להשוותן לגזילות וחבלות דלעולם בעי שלשה דכל היכא דאיכא לאקושי לקולא ולחומרא לחומרא מקשינן.[40]	One can answer that we should analogize [conversion courts] to those of theft and assault, where three judges are generally necessary, for any case for which one can make a comparison either to be lenient or strict, we make the stricter comparison.

With this argument, the Tosafot hold up the court of theft and assault as the paradigm court for conversion.[41] Consequently, the Tosafot do not accept R. Simḥa's analogy to regular monetary courts, as that would undo their whole solution. Additionally, they cannot accept Rashi's interpretation of *mumḥeh* in the conversion pericope as "great rabbi" either, since this is certainly not the meaning of the term in the pericope in *Sanhedrin* discussing a court for theft and assault. Hence, according to Tosafot, the term *mumḥeh* in the conversion pericope must mean "ordained" not "expert"!

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39. Ironically, this may be because they understand Rav Aḥa's position as normative, but cannot imagine accepting conversions, even *be-di-avad*, which were performed before only one judge.

40. Tosafot, *Qid* 62b. The point is made less circumspectly in *Yeb* 46b s.v. *mishpat*:

ואפי' למ"ד בסנהדרין [מז] דבר תורה חד נמי כשר הכא מדמין לגזילות וחבלות דבעינן שלשה לכ"ע...	Even according to the position in *Sanhedrin* (47a) which states that one judge is sufficient [in a monetary case], here [*giyyur*] is being compared specifically to theft and assault, where three [judges] would be required according to all opinions.

41. See Tosafot's gloss in b. *Yebamot* 47a, where they offer a different problematization of the one judge theory. This case is discussed more fully in the companion article in appendix 2.

This analysis by the Tosafot brings up an ostensibly insurmountable problem: If a court for conversion is like a court for theft and assault, and, therefore, requires ordained judges — how can any court nowadays convert anybody, since no judge nowadays is ordained?

The key to dealing with this problem, the Tosafot claim, lies in a different pericope in the Babylonian Talmud (*Git* 88b).

אביי אשכחיה לרב יוסף דיתיב וקא מעשה אגיטי.	Abaye encountered Rav Yosef when he was sitting and forcing [a man] to give a *get* [to his wife].
א"ל: "והא אנן הדיוטות אנן, ותניא: היה ר"ט אומר: 'כל מקום שאתה מוצא אגוריאות של עובדי כוכבים, אף על פי שדיניהם כדיני ישראל, אי אתה רשאי להיזקק להם, שנאמר: "ואלה המשפטים אשר תשים לפניהם" – לפניהם ולא לפני עובדי כוכבים. דבר אחר: לפניהם – ולא לפני הדיוטות'!"	[Abaye] said to him: "But we are just ordinary people,[42] and it was taught that Rabbi Tarfon would say: 'Any place where one finds Gentile courts, even if their rules are the same as Jewish law, one is not permitted to utilize them, for it states: "These are the laws you shall place before them"[43] — before them but not before Gentiles. Alternatively: before them but not before ordinary people'."
א"ל: "אנן שליחותייהו קא עבדינן, מידי דהוה אהודאות והלואות."	[Rav Yosef] responded: "We are functioning as their representatives,[44] just as we do for cases of admitted debts and loans."
אי הכי, גזילות וחבלות נמי!	If so, should we not [function as their representatives] for cases of theft and assault?!
כי עבדינן שליחותייהו – במילתא דשכיחא, במילתא דלא שכיחא – לא עבדינן שליחותייהו.	We only function as their representatives in common cases, but for uncommon cases, we do not function as their representatives.

In this text Abaye confronts Rav Yosef with the problem that it is impossible in Babylon to fulfill any function that would require a court made up of ordained judges; in this case a court which forces a husband to grant his wife a divorce. Rav Yosef responds that unofficial courts have the right to function in this way in cases that are common enough to require such a court so as to

42. i.e. not ordained

43. Ex 21:1

44. i.e. representative of the ordained rabbis of the Sanhedrin in Israel

avoid paralyzing Jewish society. This is why, Rav Yosef claims, a Jewish court made up of ordinary men can oversee divorces and regular monetary claims, but not theft and assault cases, which are uncommon.

With this text in mind, the Tosafot suggest an answer to the problem:

וא"ת ואנן היכי מקבלין גרים הא בעינן מומחין? וי"ל דשליחותייהו עבדינן כדמשמע נמי בשילהי המגרש (גיטין דף פח: ושם) וכמו שחשו לנעילת דלת בפני לווין חשו נמי לנעילת דלת בפני גרים.[45]	And if one were to ask how we can accept converts nowadays, since ordained judges are required? One could respond by saying that we are functioning as their representatives,[46] as is implied in *Gittin* (88b); hence just like in those cases they were concerned not to "lock the door" in the face of lenders,[47] so too here they were concerned not to lock the door in the face of converts.[48]

Essentially, the Tosafot take a principle which Rav Yosef codified to deal with a physical distance problem and apply it to one of physical and temporal distance.[49] The reason modern day courts are capable of converting someone is because they are doing so on behalf of the (now defunct) Sanhedrin.

Tosafot further argue for the legitimacy of this maneuver by comparing it to the decision in the Talmud to allow non-ordained judges to adjudicate financial disputes. We do not want to "lock the door" in the face of converts. The Tosafot realize that if the problem is not solved, it will lead to the untenable conclusion that no one could convert to Judaism in modern times.

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45. i.e. the ordained judges from earlier times
46. Which is why the judges for regular monetary cases need not be ordained
47. i.e. hence a mechanism was left which would permit the acceptance of converts even outside of the framework of a court of ordained judges. This last point is very similar to that of R. Simḥa; the difference being that R. Simḥa assumes that conversion is analogous to monetary courts in general, so he can adopt this argument without the extra caveat that the court is functioning "on behalf" of a Sanhedrin.
48. Yeb 46b, s.v. *mishpat*
49. Presumably, Rav Yosef thought of himself as functioning "on behalf" of the actual Sanhedrin, i.e. living people who lived a great distance from his community and, therefore, could not exercise the requisite control. Tosafot's Sanhedrin had, of course, been closed for almost a millennium (nowadays even more) and its members long dead.

Rabbi Natanel

Considering the speculative nature of both the comparison to cases of theft/assault as well as the application of Rav Yosef's principle to modern times, it is, perhaps, not surprising that the Tosafot include an alternative answer.

עוד אמר הר"ר נתנאל דבגר כתיב לדורותיכם דמשמע בכל ענין אף על גב שאינן מומחין דעל כרחך השתא ליכא מומחין שהרי אין סמוכין ולדורותיכם משמע לדורות עולם.[50]

Additionally, Rabbi Natanel pointed out that with regard to the *ger*, scripture states "for all your generations", which implies in all situations. [This must then be true] even if [the judges] are not ordained, since by necessity nowadays they are not official, since there is no ordination, and yet "for all your generations" implies for all time.

Rabbi Natanel does not accept the possibility that judges in a conversion court require ordination. He states that it is clear from scripture that the reality of the *ger* is pictured as lasting for all times, even though for much of Jewish history there has been no mechanism to ordain judges. Ergo, it is impossible to say that conversion requires ordination and the analogy to cases of theft and assault is spurious.[51]

Summary

In the end, the debate between Rashi, R. Natanel, R. Simḥa and R. Yehudah b' Rabbi Yom Tov on one side, and the Tosafot on other, boils down to whether ordination would be required theoretically or not. Practically speaking, all sides agree that in modern times the conversion court need not be made up of ordained judges.

One point worth noting, however, is that according to the Tosafot, in a time and place where there is a functioning Sanhedrin, the same rules which apply to courts adjudicating theft and assault would apply to a conversion court. Hence, if one were to follow the Jerusalem Talmud's principle that all

50. b. *Qid* 62b

51. The problem with this argument, of course, is that R. Netanel is inventing his own midrash almost a millennium after the end of the Rabbinic period! Although I do not know why he feels that it is acceptable for him to do this, I can only say that he is far from the only post-Talmudic authority to do so.

ordained judges need to be fit to judge any case, a *ger* would not be eligible to sit on a conversion court in a time and place that had a functioning Sanhedrin.[52]

E. Ḥaliẓah (levirate divorce)

Like the conversion court, the court overseeing *ḥaliẓah* functions very differently than a capital or monetary court. However, unlike the conversion court, the rules about who can and cannot sit on such a court receive detailed treatment in rabbinic literature.

The limitations on who is acceptable to sit on the court witnessing a *ḥaliẓah* stem from the midrash's reading of a verse in Deuteronomy 25. The verse is the final one in a section about a man whose brother dies leaving a childless widow. Ideally, he is supposed to take her in levirate marriage. However, if he refuses, there is an elaborate ritual aimed at humiliating him. The section ends with a description of the *ḥaliẓah* ritual:

(ז) וְאִם לֹא יַחְפֹּץ הָאִישׁ לָקַחַת אֶת יְבִמְתּוֹ וְעָלְתָה יְבִמְתּוֹ הַשַּׁעְרָה אֶל הַזְּקֵנִים וְאָמְרָה מֵאֵן יְבָמִי לְהָקִים לְאָחִיו שֵׁם **בְּיִשְׂרָאֵל** לֹא אָבָה יַבְּמִי.	(7) If the man does not wish to take his *yeḇamah*[53] as a wife, his *yeḇamah* should go up to the city-gate and say: "My levir refuses to establish a name for his brother **in Israel**; he does not desire to have me as his levirate wife."
(ח) וְקָרְאוּ לוֹ זִקְנֵי עִירוֹ וְדִבְּרוּ אֵלָיו וְעָמַד וְאָמַר לֹא חָפַצְתִּי לְקַחְתָּהּ.	(8) And the elders of his city shall call him and speak to him, and he shall say: "I do not wish to take her."
(ט) וְנִגְּשָׁה יְבִמְתּוֹ אֵלָיו לְעֵינֵי הַזְּקֵנִים וְחָלְצָה נַעֲלוֹ מֵעַל רַגְלוֹ וְיָרְקָה בְּפָנָיו וְעָנְתָה וְאָמְרָה כָּכָה יֵעָשֶׂה לָאִישׁ אֲשֶׁר לֹא יִבְנֶה אֶת בֵּית אָחִיו.	(9) And his *yeḇamah* will approach him before the elders and remove his shoe from his foot, spit before him and say: "Thus should be done to a man that refuses to build his brother's household!"
(י) וְנִקְרָא שְׁמוֹ **בְּיִשְׂרָאֵל** בֵּית חֲלוּץ הַנָּעַל.	(10) And his name **in Israel** shall be "the household of the removed shoe."

The midrash picks up on the use of the term "in Israel", learning from it that the *ger* is excluded from this category. The first term (verse 7) is understood

52. R. Shlomo Kluger's suggestion that this may have practical application nowadays will be discussed in the companion article in appendix 2.

53. i.e. deceased brother's childless widow

to exclude brothers who are *gerim* from having to perform either a levirate marriage or a *ḥalizah* (*Midrash Tannaim* ad loc.; *Sifrei* 189):

בישראל – ולא בגרים,	In Israel — not *gerim*,
מיכן אתה אומר: שני אחים גרים שהיתה הורתם שלא בקדושה ולידתם בקדושה – פטורים מן החליצה ומן היבום, שנאמר: 'בישראל' – ולא בגרים.	From here one can say: Two brothers who were *gerim*, who were conceived as Gentiles but born Jews, are exempt from *ḥalizah* and levirate marriage, for it states: 'in Israel' — but not *gerim*.

The second use of the term, in verse 10, is understood to exclude *gerim* from being members of the presiding court. The mechanism of the *derasha* differs in the two main halakhic midrashim on Deuteronomy. The *Midrash Tannaim* offers a straight deduction from the term:

ונקרא שמו בישראל – להוציא בית דין של גרים, עד שיהא אביו ואמו מישראל.	And his name in Israel shall be — to exclude a court made up of *gerim*, allowing only someone whose father and mother are both Israelite [to judge].

Alternatively, the *Sifrei* suggests a *gezeira shava* connecting the meaning of the term in verse 7 with its meaning in verse 10:

ונקרא שמו בישראל – נאמר כאן 'בישראל' ונאמר להלן 'בישראל', מה 'בישראל' האמור להלן פרט [לגרים][54], אף 'בישראל' האמור כאן פרט לבית דין של גרים.	And his name in Israel shall be — here it says 'in Israel' and there it says 'in Israel' — just like over there 'in Israel' is meant to exclude *gerim*, so too over here 'in Israel' is meant to exclude a court made up of *gerim*.

Although the midrashic strategy deployed by each of these sources differs, the point remains the same: a court made up of *gerim* cannot preside over a *ḥalizah*. The fact that this is a family purity issue is made explicit in *Midrash Tannaim*,

54. This is the text suggested by the *Zera Avraham*, the Vilna Gaon and R. David Pardo. The printed text reads: "לבית דין של גרים" or alternatively just "פרט לבית דין", but these readings make little sense. (However, see R. Elazar Naḥum ad loc. who attempts to defend the latter reading.)

which requires that both the mother and the father of the prospective judge be Jewish at the time of conception.

This strict interpretation of the term "in Israel" was not the only possibility envisioned by the rabbis, however. The Jerusalem Talmud records a dispute over what the proper *derasha* on these words should be. The context of the passage is Mishna *Yebamot* 12:1:

מצות חליצה בשלשה דיינין ואפילו שלשתן הדיוטות.	The commandment of *ḥalizah* must be performed before three judges, even ordinary ones.

The Yerushalmi comments:

אית תניי תני: 'חליצה בגרים – כשירה'. ואית תניי תני: 'חליצה בגרים – פסולה.'	There are those who teach: "*ḥalizah* with *gerim* is valid." And there are those who teach: "*ḥalizah* with *gerim* is invalid."
מאן דאמר חליצה בגרים כשירה – כמאן דאמר 'בישראל' – לרבות את הגרים. מאן דאמ' חליצה בגרי' פסולה – כמאן דאמר 'בישראל' – פרט לגרים.	The position which states that *ḥalizah* with *gerim* is valid follows the interpretation: 'in Israel' — to include *gerim*.[55] The position which states that *ḥalizah* with *gerim* is invalid follows the interpretation: 'in Israel' — to exclude *gerim*.[56]
הכא את אומר פרט לגרים והכא את אמר לרבות את הגרים?! תמן 'האזרח' – פרט לגרים 'בישראל' – פרט לגרי', מיעוט אחר מיעוט לרבות את הגרים. ברם הכא בישראל – לא גרים.	In one place you say that the term excludes *gerim* and in another you say it includes *gerim*? There [the verse states] 'the citizen' — to exclude *gerim*, 'in Israel' — to exclude *gerim*, an exclusion after an exclusion [is an inclusion], and it is meant to include *gerim*. However here [it simply says] 'in Israel' — to exclude *gerim*.
אית תניי תני: 'חליצה בשנים – פסולה', ואית תניי תני: 'חליצה בשנים – כשירה'.	There are those who teach: "*ḥalizah* with two judges is invalid." And there are those who teach: "*ḥalizah* with two judges is valid."

55. Lev. 23:42

בַּסֻּכֹּת תֵּשְׁבוּ שִׁבְעַת יָמִים, כָּל הָאֶזְרָח **בְּיִשְׂרָאֵל** יֵשְׁבוּ בַּסֻּכֹּת.	You shall dwell in booths for seven days; every citizen **in Israel** shall dwell in booths.

56. Deut. 25:7

מאן דאמר: 'חליצה בשנים פסולה' – כמאן דאמ': 'חליצה בגרים פסולה'.
מאן דאמ': 'חליצה בשנים כשירה' – כמאן דמר: 'חליצה בגרים כשירה'.

[Let us say that] the position which states that *ḥaliẓah* with two judges is valid is aligned with the position that says *ḥaliẓah* with *gerim* is valid and the position which states that *ḥaliẓah* with two judges is invalid is in line with the position that says *ḥaliẓah* with *gerim* is invalid.

אפילו כמאן דמר 'חליצה בגרים כשירה' – מודיי בשני' שהיא פסולה,
שהרי דיני ממונות כשירה בגרים ופסולין בשנים!

[No.] Even the position which holds that *ḥaliẓah* with *gerim* is valid would admit that it is invalid with two judges, since monetary cases are valid with *gerim* but invalid with two judges!

אית תניי תני: 'חליצה בלילה כשירה', אית תניי תני: 'חליצה בלילה פסולה'.

There are those who teach: '*ḥaliẓah* at night is valid' and there are those who teach: '*ḥaliẓah* at night is invalid."

מאן דאמר: 'חליצה בלילה כשירה' – כמאן דמ': 'חליצה בגרים כשירה'.
מאן דאמ': 'חליצה בלילה פסולה' – כמאן דמר: 'חליצה בגרים פסולה'.

[Let us say that] the position which states that *ḥaliẓah* at night is valid is aligned with the position that says *ḥaliẓah* with *gerim* is valid and the position which states that *ḥaliẓah* at night is invalid is in line with the position that says *ḥaliẓah* with *gerim* is invalid.

אפילו כמאן דאמר: 'חליצה בגרים כשירה' – מודה בלילה שהיא פסולה, שהרי דיני ממונות כשירים בגרים ופסולין בלילה.

[No.] Even the position which holds that *ḥaliẓah* with *gerim* is valid would admit that it is invalid at night, since monetary cases are valid with *gerim* but invalid at night!

From the discussion in the Yerushalmi, we learn that the *derashot* seen above were not the only understanding of the text. There was a position that understood the verse to mean that *gerim* were permitted to oversee a *ḥaliẓah*.

The further discussion in this pericope is revealing. It attempts to compare the disqualification of *gerim* for *ḥaliẓah* with other types of disqualifications, like judging at night or overseeing a case with only two judges. This is rejected because the two types of disqualifications are not of the same type: whereas a court of two judges or a court that judges at night would be disqualified due to improper or unjust procedure, the *ger* who sits in judgment is disqualified due to family purity considerations. This is proven by analogy to monetary cases, where, the Jerusalem Talmud argues, there are no family purity considerations. In that case all agree that the *ger* can sit as a judge, nevertheless, a court of two judges or a court that judges at night would still be disqualified.

The Babylonian Talmud (*Yeb.* 101) has a long discussion of this Mishna as well. It records a debate between an unnamed tanna and Rabbi Yehudah about whether the court overseeing the *ḥalizah* should have three members (unnamed tanna) or five (R. Yehudah). As part of the discussion, the Bavli attempts to deduce how each position reads the verses.

ואלא הדיוטו' מנא ליה? נפקא מ'בישראל' – ישראל כל דהו.	From where does [Rabbi Yehudah] learn that ordinary men [can oversee a *ḥalizah*]? He learns it from 'in Israel' — any Israelite.
ואידך, האי ישראל מאי עביד ליה? מיבעי ליה לכדתני רב שמואל בר יהודה: "בישראל – בב"ד של ישראל ולא בב"ד של גרים."	And what does the [unnamed tanna] do with this term? He needs it to derive the teaching of Rav Shmuel bar Yehudah: "'In Israel' — with a court of [ethnic] Israelites and not a court of *gerim*."
ואידך? בישראל אחרינא כתיב.	And [whence does Rabbi Yehudah derive this ruling]? There is another 'in Israel' available [for this midrash].

Later in the same text this story is told:

רב שמואל בר יהודה הוה קאי קמיה דרב יהודה, אמר ליה: "סק תא לזירזא דקני לאצטרופי בי חמשה, לפרסומי מילתא." אמר ליה: "תנינא: בישראל – בב"ד ישראל ולא בב"ד של גרים, ואנא גר אנא." אמר רב יהודה: "כגון רב שמואל בר יהודה מפיקנא ממונא אפומיה."	Rav Shmuel bar Yehudah was standing before Rav Yehudah. [Rav Yehudah] said to him: "Go up to the bundle of reeds and join the [court of] five, in order to make [the *ḥalizah* that is occurring] public."[57] [Rav Shmuel bar Yehudah] responded: "But has it not been taught: "'in Israel" — in a court of Israelites and not in a court of *gerim*'? I am a *ger*." Rav Yehudah said: "With testimony from [a *ger*] like Rav Shmuel bar Yehudah, I would [rule against a litigant], and take his money away."
מפיקנא ס"ד? והא ע"פ שנים עדים אמר רחמנא! אלא מרענא שטרא אפומיה.	Does he really mean he would take the money away? But does not the Merciful One say: "based on the testimony of two witnesses"! Rather, he would discount a document based on the testimony of such a person.

57. i.e. a court of 5 would be a public court, as opposed to a court of three (ostensibly this court had four and needed a fifth)

In the first part of this pericope, we see the standard *derasha* that the judge overseeing a *ḥalizah* must not be a *ger*; ironically this derasha is quoted in the name of Rav Shmuel bar Yehudah, himself a *ger*. The second part of the text records an uncomfortable story where Rav Yehudah sends this same Rav Shmuel bar Yehudah to be one of the extra two judges in a *ḥalizah*. Puzzled, Rav Shmuel bar Yehudah reminds Rav Yehudah that he is a *ger* and is not eligible to sit on this court. Rav Yehudah replies with a surprisingly dismissive comment, saying that he trusts Rav Shmuel bar Yehudah to such an extent that he would even give his testimony in a monetary case more than the usual weight of a single witness.

How is one supposed to understand this response? It is possible that all Rav Yehudah means is that Rav Shmuel bar Yehudah demonstrated his extreme honesty by reminding Rav Yehudah that he is a *ger*, and not taking the opportunity to take a position in a court that he was not really supposed to have. Alternatively, Rav Yehudah could mean that this rule does not apply to the extra two judges in a *ḥalizah* case, or even that he does not have a problem with *gerim* sitting on a court for *ḥalizah*.[58] Finally, he even could mean that the rule is really only a "rule of thumb", and that for someone like Rav Shmuel bar Yehudah, an exception can be made.

What seems clear from the above is that the rule about a *ger* not serving on a court overseeing *ḥalizah* seems to be a rule deriving from a *derasha* on a phrase in this section of the Torah, and is not applicable to any other case.

Part II — The Tension between the Pericopae

As noted above, the pericope on authority and the pericopae on courts are in serious tension in two ways:

a. What need would there be for a proof that a *ger* cannot judge capital cases or legislate if one already knows that he cannot be appointed to any communal position, even minister of water?
b. How can the Mishna state that anyone, including a *ger* (according to the Talmud), can sit on a monetary court — or any other court — if

58. like the alternative position recorded in the Jerusalem Talmud

it has already been established that a *ger* cannot be appointed to any position of authority at all?

Abaye's Solution

This latter question is asked explicitly by the Babylonian Talmud (*Qid.* 76b):

כל מי שהוחזקו אבותיו משוטרי הרבים – למימרא, דלא מוקמינן מפסולים, ורמינהו: הכל כשרים לדון דיני ממונות, ואין הכל כשרים לדון דיני נפשות; והוינן בה, הכל לאיתויי מאי? ואמר רב יהודה: לאיתויי ממזר!

Anyone whose ancestors were public officials — meaning to say that we do not appoint [such officials] from among the ineligible? But [another text] seems to contradict this: "Anyone is fit to judge a monetary case, but not everyone is fit to judge a capital case" (m. San. 4:2). We discussed this text, asking what [the term] "anyone" is meant to include, and Rav Yehudah said: "It is meant to include the *mamzer*"!

אמר אביי: בירושלים. וכן תני רב שמעון בר זירא בקידושי דבי לוי: בירושלים.

Abaye said: "In Jerusalem." Similarly, Rav Shimon bar Zeira taught at the betrothal of a member of Levi's household: "In Jerusalem."

Abaye's solution to the tension between the two *mishnayot* is to suggest that the rule disqualifying officials who are not of pure stock is not really a halakha at all, but simply the custom of Jerusalem. His position is supported by a *baraita*. This is also, presumably, the point of the ending of the pericope quoted in section A of part 1, which references the customs of different places and different rabbis, some who followed this rule and some who did not.

It is unclear how Abaye and those who are in agreement with this position understand the *derasha* of 'from among your brothers'. It is possible that they reject the midrash altogether, or that they interpret it as an mnemonic (אסמכתא), or even that they accept the *derasha* but limit its application to an actual king.

The main point one learns from this pericope is that the Mishna which states that anyone can be a judge in a monetary case is accepted as binding and absolute by Abaye *et al.*, while the Mishna stating that all authorities must be of pure stock is reinterpreted in light of it.

Abaye's solution is most probably the assumption behind the pericopae in the Jerusalem Talmud as well. Two examples stand out. First, in the above referenced pericope from Yebamot regarding *ḥaliẓah*, there seems to be no

question that a *ger* can judge anybody for monetary cases. This is the given with which the editor of this pericope builds his other arguments.

Additionally, in a separate part of the pericope in *Horayot* (1:4), the Jerusalem Talmud comments on the Mishna's case where either a *ger* or a *mamzer* had been appointed to the court and "accidentally" sat in on a legislative deliberation.

ניחא גר, ממזר – בית דין ממנין ממזירין? רב חונא אמר: "בשעברו ומינו."	This is understandable with a *ger*, but a *mamzer* — would the court really appoint a *mamzer*? Rav Ḥona said: "They did it despite the fact that it was forbidden."

This back and forth assumes that a *ger* could receive an appointment to the Sanhedrin, although he could not participate in legislation.[59]

Rava's Solution

In an earlier section, the position of Rava and Rav Yosef that a *ger* whose mother was from Jewish stock may be appointed to positions of communal authority was referenced. It was noted that these two rabbis seem to consider the *derasha* disqualifying a *ger* from being appointed to a position of authority to be binding.

Similarly, at the end of the pericope regarding *ḥalizah*, Rava offers the following overview of his position:

59. Ostensibly, he could not participate in capital cases either, and R. Moshe Margolies, in his commentary to the Jerusalem Talmud writes (*Pnei Moshe* ad loc.) that the Talmud must be referring here to the ability of the *ger* to judge monetary cases. Nevertheless, it is worth noting that Yisrael Meir Yonah, in an article on this subject, argues that this pericope should be seen as support for Rashi's position (which will be discussed later) that a *ger* can judge his fellow in capital cases. See: Yisrael Meir Yonah, "Including a Ger on a Conversion Court", *Beit Hillel* 24–25 (5766), 163. I assume his reasoning is that it would be odd for a judge to have an appointment to the Sanhedrin but be unable to either legislate or judge any capital cases. How many financial disputes or smaller crimes would the Supreme Court adjudicate?

אמר רבא: "גר דן את חבירו 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 חבירו גר, ואם היתה אמו מישראל – דן אפי' ישראל; ולענין חליצה – עד שיהא אביו ואמו מישראל, שנאמר: 'ונקרא שמו בישראל'."

Rava said: "A *ger* can judge his fellow according to the Torah. For it states: 'be sure to place a king upon yourselves whom the Lord your God will choose; from among your brothers you shall place upon yourselves a king'[60] — [when he is] 'upon yourselves' you require someone 'from among your brothers', but a *ger* can judge his fellow *ger*. If his mother is Israelite he can even judge a fellow Israelite. [However,] when it comes to *ḥalizah* the requirement is that both his mother and his father be Israelite, for it says: 'and his name will be called in Israel'[61]."

The latter two parts of Rava's statement fit with earlier paradigms. That *ḥalizah* would require a judge from "fully Jewish stock" fits with the position of the *Midrash Tannaim*, which we saw in the previous section. That a *ger* who is from Jewish stock on his maternal line does not fall under the "prohibition" of appointing a *ger* as an official was already established by Rava and Rav Yosef in the pericopae dedicated to this issue. It is the first part of Rava's statement that is surprising.

At first glance, it appears as if Rava is simply rehashing the *derasha* about a king/official needing to be of Jewish stock. However, looking closely at the mechanics of the *derasha*, we see that Rava is actually proposing a new reading. Rava's *derasha* is predicated on the earlier one on this verse. His argument is as follows: Given that all appointments need to be from among Jewish brethren, nevertheless, this would apply only to appointments with jurisdiction over "ethnic Jews", hence, nothing should preclude a *ger* from receiving an appointment with jurisdiction over other *gerim*. Therefore, Rava concludes, a *ger* can be a judge in a case overseeing another *ger*.

In Rava's statement we see an attempted synthesis of the two axes of "prohibition" that were described in the previous sections. Rava ties the disqualification of a *ger* to sit as judge into the *derasha* about authority, something the Mishna never actually does. The pericope on authority never explicitly mentions judges and the pericopae on judges never use the verse about appointing a king as a possible source.

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60. Deut. 17:15

61. Deut. 25:10, the same midrash as seen above

It is not clear how Rava's halakhic "solution" solves the problems. How does the statement "a *ger* can judge his fellow" explain why a *ger* can sit on a monetary court or why the Talmud felt the need to prove that he cannot judge capital cases or sit on the high court?

For this reason, perhaps, the exact meaning of Rava's statement became a matter of dispute among the *rishonim* (medieval rabbinic authorities). Since Rava's position becomes the lynchpin for much of the practical halakha on this topic, the article will turn to an explication of the various possible interpretations of his solution.

Part III — Rava and the Rishonim

Rashi

Following the lead of the pericope in *Qiddushin*, Rashi believes that it is axiomatic that a *ger* can sit as judge on any monetary case. Therefore, to explain Rava's novel *derasha*, he writes:

גר דן את חברו – דיני נפשות, דאילו דיני ממונות אפילו לכל ישראל, דתנן 'הכל כשרים לדון דיני ממונות', ואמרי' הכל לאתויי מאי לאתויי גר.	A *ger* can judge his fellow *ger* — in a capital case, since when it comes to monetary cases, he can judge any Israelite, for we were taught: "All are fit to judge monetary cases" and we say that the word "all" is meant to include the *ger*.

Since Rashi understands the Talmudic statement that a *ger* can sit as a judge in a monetary case in its simple and literal sense, he argues that Rava must be in consonance with this. Additionally, since Rava is presenting a leniency, not a stringency, Rashi argues that he must be understood as referring to the law of capital cases and offering a lenient exception to this law.

Rava's argument, then, is that although a *ger* cannot usually sit as a judge on a capital case, this would not apply when the defendant is another *ger*. This he demonstrates with a midrashic deduction from the verse about appointing a king.

The strength of Rashi's interpretation is that it leaves the majority of the pericopae in the Talmud intact and it reads well with Rava's actual words

which imply a leniency.[62] The difficulty with Rashi's interpretation is that it does not solve the tension between the rule that a *ger* cannot be appointed to an official position and the halakha that he can sit on a monetary court. Although it is unclear how Rashi thought this tension should be solved, it seems that one must at least say that he considers the position of judge for monetary cases to be lower on the authority scale than minister of water; a possible but difficult position to defend.

It would seem that when faced with either a simple understanding of the many pericopae about the *ger* and authority or a simple understanding of Rava, Rashi chose the former.

Additionally, Rashi chose the simplest textual read of Rava,[63] even though this reading leaves Rava with a position that is difficult to defend logically.[64]

Rambam

Taking an opposite approach,[65] Rambam argues that the pericopae discussing the appointment of a *ger* to a court should be seen through the prism of Rav Yosef and Rava's distinction between types of *gerim*. According to this position, a *ger* whose mother is of Jewish stock can receive official appointments. Hence, when interpreting the Mishna in *Sanhedrin* (and *Niddah*) about courts, Rambam writes (*San* 4:2):

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62. It also reads well with the *Yerushalmi* since the *Yerushalmi* seems to assume that a *ger* can judge anybody for monetary cases. As noted above, R. Yisrael Meir Yonah believes that the Yerushalmi is, in fact, a support for Rashi's other point, i.e. that a *ger* can judge a *ger* in a capital case, but this seems like a stretch, since the Yerushalmi is most probably in agreement with Abaye and not Rava, which would make Rashi's creative solution unnecessary.

63. This point is made by R. Naphtali Berlin (Neẓiv) in his commentary on the *Sheiltot* (2), who offers an extensive defense of Rashi's position. An alternative defense is offered in the *Tiferet Ya'aqob*'s glosses on the *Shulḥan Arukh* (ḤM 7).

64. *Nimuqei Yosef* (ad loc.) points out some further weaknesses. He says that according to Rashi one would end up with the bizarre situation in halakha that we are stricter on *ḥalizah* (which requires that both parents be Jewish) than on capital cases (which requires only one). Furthermore, whereas the *ger* could judge his fellow in a capital case, he could not judge an ox in a "capital case", an odd rule if true.

65. This is also the position of Rav Aḥa mi-Shabḥa (*Sheiltot* 2), Rif and Rid. Further, this is the position recorded as normative in the *Shulḥan Arukh*.

הכל כשרים לדון – ואפילו גר אם היתה אמו מישראל. וכן ממזר כשר לדון דיני ממונות.	All are fit to judge — even a *ger*, assuming his mother was from Jewish stock. Similarly, a *mamzer* is fit to judge monetary cases.

Essentially, Rambam argues that since a convert[66] cannot be appointed to any position of authority according to the Mishna in *Qiddushin*, all of the sources which say that he can sit on a monetary court must be referring to a *ger* whose mother is of Jewish stock.

The strength of this interpretation is that the tension between the two axes virtually disappears. No convert can be appointed to a monetary court or receive an appointment to any other position of authority. Conversely, any *ger* whose mother is from Jewish stock can be appointed as a judge of a monetary court or to any other appointment, other than to the high court or to capital cases where there is a special *derasha* that excludes them. Rava can then be seen as offering a lenient exception to the rule against converts judging monetary cases.

The weakness of the interpretation is that there would be no way to know that this is what the pericopae about courts meant unless one knew Rav Yosef and Rava's position in advance. This difficulty can be ameliorated, however, by claiming that these pericopae were written so that they could fit with either Rava or Abaye's position.

Tosafot

The Tosafot (Yeb 45a) take a similar approach to Rambam,[67] except they use the statement of Rava in *Yebamot* as their prism instead of his and Rav Yosef's statements in *Qiddushin*.[68]

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66. i.e. a *ger* who does not come from any Jewish stock

67. This is also the position of Rashba and was apparently first suggested by Riva (Rabbi Yitzḥaq ben Asher ha-Levi).

68. This is just one example of their comments on the interrelationship of these pericopae. See also their comment in *Sanhedrin* 36b for another example.

ואי"ת דהכא משמע דגר שאין אמו מישראל אין כשר לדון, ובפ' אחד דיני ממונות תנן הכל כשרים לדון... משמע דגר אע"פ שאין אמו מישראל אלא שנתגייר בעצמו דכשר לדון... וי"ל דהתם מיירי לדון גר חברו...

If one were to say that from this text[69] it seems that if the *ger* is not from maternal Jewish stock he is not fit to judge, but in *Sanhedrin* we are taught that all are fit to judge… and this sounds as if even the *ger* who is not from maternal Jewish stock, but rather one who converted, is fit to judge… One could respond by understanding the rule [in *Sanhedrin*] as referring to a *ger* judging his fellow *ger*…

The strength of this approach is that it smoothes out the tension between Rav Yosef and Rava's position and that of the pericopae on courts. However there are a number of weaknesses to the Tosafot's position.

Like Rambam, the Tosafot believe that no convert may serve on a monetary court or receive any other position of authority, but that any *ger* who comes from Jewish stock may.

However, according to Tosafot, this rule seems to derive exclusively from the *derasha* about appointments. This works well with Rava's statement in *Yebamot* where he derives this rule from that same verse. However, it reads very poorly as an interpretation of the pericopae about courts.

According to the Tosafot, one would have to assume that the comparison of the rules about the *mamzer* and the *ger* serving on a monetary court is not really a comparison, since there is no symmetry.[70] Whereas the *mamzer* can judge any Israelite, the *ger* can only judge his fellow *ger*. The Mishna becomes, then, rather cumbersome: No Jew with impure lineage (including a *ger*) can sit on any capital case as a judge, but he can sit on a monetary case, except for a *ger* who can only judge his fellow.

Additionally, there would be no way at all to know that this was what the pericopae meant unless one already knew Rava's position in advance.[71] Finally, Rava's words no longer read as a leniency of his own, since it turns out to be the "standard" interpretation of the Mishna offered in the Talmud.

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69. i.e. where Rav Yosef allows Rav Ada bar Ahava's landlord to take a position as administrator of a town

70. See *Tosafot ha-Rosh* (Yeb 45b) who discusses this problem.

71. This is similar to the difficulty with Rambam's read, except that the Tosafot's is even more counterintuitive, making the problem that much starker.

Rosh

Basing himself on the Tosafot's understanding of the various pericopae, Rosh (*Yeb* 12:2) offers a nuanced version of this position.[72] He points out that Tosafot's solution, i.e. interpreting the pericope in *Sanhedrin* as meaning that a *ger* can judge his fellow *ger*, brings out an additional problem. As was seen in the pericope on *ḥalizah* (as well as in the *midrash halakha*), the *ger* is excluded from *ḥalizah* based on a midrashic reading of the verse which demonstrates that a court of ethnic Jews is required for a *ḥalizah*. But why, Rosh asks, would one need a *derasha* for this if a *ger* cannot sit on any case whatsoever other than judging his fellow *ger*?! To this problem, Rosh offers a number of solutions:

וי"ל:	One may suggest:
א. דאיצטריך לפוסלו אפילו לחליצה של גרים שהיתה הורתן ולידתן בקדושה.	A. That it was necessary to exclude [the *ger*] even in a case where the *ḥalizah* is being performed by *gerim*, albeit ones whose birth and conception were as Jews.
ב. אי נמי אי קבילי עלייהו היה כשר לדיני ממונות ולחליצה לא מהניא קבלה.	B. Alternatively, in a case where the litigants accepted [the *ger* as judge], he would be allowed to sit on a monetary case, but the acceptance of the parties would not be a mitigating factor in a *ḥalizah*.
ג. א"נ לדין של ישראל כשר לדון בלא כפייה דלא שייך שימה ודבר של שרה אלא בכפייה... וכן עיקר.	C. Or that for a case involving an ethnic Jew, [the *ger*] can judge as long as he is not using coercive authority,[73] since a position is not really one of authority if it is not backed by the power to force compliance… This is the best answer.[74]

72. This is also the position of R. Mordekhai ben Hillel and is codified by Rosh's son in the *Tur* (YD 269).

73. Like subpoena power

74. The first and third answers were actually suggested by the Tosafot in *Yebamot* (101b) in response to a different question. The context is R. Shmuel bar Yehudah's reminding of R. Yehudah that he was a *ger* and therefore ineligible to participate in *ḥalizah*:

...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 א"נ כשר הוא	…Why would he bring a *baraita* about the ineligibility of a *ger* to oversee *ḥalizah*, as he would also be ineligible to oversee monetary cases, since his mother was not Jewish! One could suggest that it was necessary to exclude [the *ger*] even in a case where the *ḥalizah* is being performed by *gerim*. Alternatively, one could suggest that [the *ger*] is eligible to

Rosh's first answer keeps the Tosafot's position as is (i.e. that a *ger* can only sit on a case involving another *ger*), and suggests that the *derasha* is there to exclude the theoretical possibility that a *ger* could sit on a court for a *ḥalizah* of two *gerim*.

However, in his second and third answers, Rosh divides the category of judge in monetary cases into three types of scenarios. He argues that the important question is the nature of the judge's authority. The highest level of authority is a judge with subpoena powers. The middle level is a judge with an "official" appointment or position but no coercive power. The lowest level is a judge that is "unofficially" appointed or accepted by the litigants.

It is very important not to elide these latter two categories. They are conceptually distinct, and clearly treated as discrete categories by Rosh.[75] This point is made strongly by R. Shmuel Ḥayyun in his glosses on *Ḥoshen Mishpat* of the *Tur* (*Bnei Shmuel* ad loc.):

מה שאמר: 'גר כשר לדון בלא כפיה' – לאו למימרא דאינו כשר לדון אלא אם קבלוהו – דזה פשוט... אלא אפילו דלא קבלוהו עליהו יכול לדונם בעל כרחם אם הוא מומחא לענין דינו דין כמו כל דיין, אבל אינו יכול להכותם ולרדותם במקל ורצועה וליסרם בשבט כמו נשיא ברישׁ גלותא, שזה הוא מילי דשררה...

That which [*Tur*] said: "a *ger* is eligible to judge without coercion" — this doesn't mean that he can only judge [born Jews] when they specifically accept him, since that is obvious… rather even if they did not accept him upon themselves he can judge them against their will. If he is qualified with regard to the type of case his judgments count like any other judge. However, he cannot have them struck or beaten with a stick or switch like a court president or an exilarch, since this is real coercion…

ונראה דאפילו לדברי הרי"ף וסיעתו אם קבלו גר עליהם לדון דכשר, דלא גרע מפסילי אחריני...

And it would seem that even according to Rif[76] and those who agree with him, if [ethnic Jews] were to accept a *ger* as their judge that he would be eligible, since this is no worse than any other ineligibility…

לדיני ממונות לדון בלא כפייה דלא שייכא שימה ודבר של שררה דכתיב שום תשים עליך מלך (דברים יז) אלא בכפייה.

judge financial cases, as long as he is not using coercive power, since a position is not really official and one of authority — as it says you shall surely place a king upon yourself — if it is not backed by the power to force compliance…

75. However, see R. Moshe Klein's discussion in *Mishnat ha-Ger* (*Iyunim* 94), where he argues differently.
76. This is the position of Rambam discussed above.

Although R. Ḥayyun is offering a rather extreme example of coercion as his baseline, his main point seems definitive. One must avoid eliding Rosh's second and third answers. The categories of "accepting an ineligible judge" and "judge without coercive power" are two different concepts.

Rosh's second answer suggests that the *ger* could sit on a case involving ethnically Jewish litigants if he was appointed or accepted by the parties, despite his being a *ger*. One could argue, Rosh suggests, that appointment by the parties is not really authority at all.[77]

In his third answer, Rosh goes a step further and argues that perhaps a *ger* can even receive an official appointment and judge cases, presumably even without the litigants knowing that he is a *ger*, provided that he has no coercive powers and the litigants are choosing to come to court. The logic of this position is that authority without coercive power is no authority at all. This is the answer Rosh prefers.

R. David

R. Nissim ben Reuven records an alternative interpretation in the name of R. David:[78]

דכי אמרינן גר דן את חברו גר, היינו למנותו דיין קבוע בדיני ממונות על הגרים, וכי אמרינן דגר כשר לדיני ממונות של בני ישראל, היינו דוקא באקראי ובדיעבד, ואם דן דינו דין, אבל למנותו דיין קבוע לא, משום דבעינן 'מקרב אחיך'. ואם אמו מישראל מקרב אחיך קרינא בי', ומותר למנותו דיין בדיני ממונות של ישראל.

When we say that a *ger* can judge his fellow *ger*, this means that he can be appointed as an official judge for monetary cases involving *gerim*, but when we say that a *ger* is eligible to judge monetary cases for an ethnic Jew, this is only in exceptional cases, and *be-di-avad*. If he does judge, the judgment stands, but he cannot be appointed as an official judge, since 'from amongst your brothers' is required. If his mother was Jewish, however, he is considered as 'from amongst your brothers' and it would be permitted to appoint him as a judge in monetary cases involving ethnic Jews.

77. It is this second answer of Rosh which was adopted by R. Benveniste (discussed below in appendix 1) to explain the appointment of Shemaiah and Avtalion.

78. *Sanhedrin* 36b

הילכך בענין דינו של גר איכא שלשה דינין: גר כשר לדון את חבירו גר ולהיות קבוע בדינו ממונות בגרים. ולדון ישראל באקראי דינו דין. ואם אמו מישראל כשר להיות דיין קבוע מבני ישראל ולכל שאר מינויי העיר. אבל למלכות ולסנהדרין ולחליצה בעינן שיהיו אביו ואמו מישראל.

Therefore, with regard to the rules of the *ger*, there are three rules: a. a *ger* is eligible to judge his fellow *ger* and to be officially appointed to deal with the financial disputes of *gerim*. And if he judges ethnic Jew on an ad hoc basis, his judgment stands. b. If his mother is Jewish, he is eligible to be officially appointed to judge ethnic Jews, as well as to receive any other position of authority in the city. c. For kingship, sitting on the *Sanhedrin*, and overseeing a *ḥalizah*, we require that both his parents be Jewish.

According to R. David, technically a *ger* may judge an ethnic Jew for monetary cases,[79] but this is only *be-di-avad* and in ad hoc situations. However, he cannot be appointed as a judge over born Jews, but he can be appointed as an official judge over other gerim. However, he would be ineligible to sit on a Sanhedrin or oversee a *ḥalizah*, even *be-di-avad*.

What is attractive about this solution is that it explains the difference between the authority pericope and the court pericopae. For the court pericopae, the exclusion impugns his status as a judge, such that he cannot sit on a Sanhedrin no matter what, but he is eligible to judge born Jews in monetary cases. However, from the standpoint of authority, he is ineligible to be king, and this was extended, *de jure*, to any official appointment. However, his technical status as a judge stands, and his judgment counts *de facto*.[80] Rava's point then is that the rabbinic extension of the authority rule did not extend to a convert judging another convert.

Summary

It was shown above that the there is a tension between the pericopae on courts and the pericopae on authority. The Talmud seems to contain two solutions to this problem. The first solution is to admit that the two are in tension, and that the rules regarding courts are authoritative and that the rules about appointments in general are not, but simply represent the custom of Jerusalem and a smattering of other communities. This is the solution preferred by Abaye,

79. He does not specifically reference capital cases, but one can assume not.

80. This is probably the best read of the pericopae from the standpoint of Rava.

Rav Shimon bar Zeira, Rabbi Zeira, Rabba bar Avuha, and (apparently) the editors of certain pericopae in the Talmud as well.[81]

The second solution is to read the court rules in the light of the authority rules, and create an overarching synthesis. This is the approach of Rava and Rav Yosef, and is the one that has been accepted by later authorities and the halakhic community at large. Nonetheless, the exact nature of the synthesis is a dispute among the commentators.

The dispute focuses on the question of when a convert can sit on a monetary court when the litigant is ethnically Jewish. Rashi says always, Rosh says when the court has no coercive power, R. David says *ad hoc* and *be-di-avad*, and Rambam says never, although it seems probable that he would allow explicit acceptance by the parties.

Despite this sharp disagreement, one cannot help but notice a broad consensus.

- Generally speaking, no *ger*[82] can be appointed to the supreme court or be involved in legislation.[83]
- No *ger* can judge a capital case, with the possible exception of when the defendant is a *ger* according to Rashi.[84]
- No *ger* can sit on the court overseeing a *ḥalizah*.[85]
- Any *ger* who comes from Jewish stock[86] can receive any other appointment.
- No convert can be appointed to any position of authority over born Jews, with the possible exception of judge in monetary cases according to Rashi.

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81. It is also the opinion of the Jerusalem Talmud.
82. A *ger* here is someone from a family of *gerim*, i.e. either his mother or his father is a *ger*. In other words, these appointments require fully ethnic Jews. How far one is supposed to go back to determine this is a question beyond the scope of this paper, but see the introductory section of part one of this article where the possibility of going back 2 or 3 generations on both sides is discussed.
83. The case of Shemaiah and Avtalion suggests that this rule has exceptions (see appendix 1).
84. Again the Shemaiah and Avtalion case suggests exceptions.
85. There is a possible exception here as well, when the participants are *gerim*, but this is too tangential a question to take up here.
86. Again, whether this means ethnically Jewish mother or even ethnically Jewish father is a matter of dispute.

Assuming one does not follow Rashi, the key question becomes whether one follows Rosh's approach that the rule against appointing a convert to positions of authority applies only to positions of coercive authority.[87] Furthermore, assuming one does accept Rosh's position as normative,[88] the question of what exactly constitutes *serara* (authority) looms large.[89]

Part IV — Definitions of *Serara*

Serara as Discretionary Authority

In a well-known responsum discussing whether a woman can be a *kashrut* supervisor or not, R. Moshe Feinstein posits that authority means that a person has some decision making power or discretionary authority.[90] Someone who simply does whatever he or she is told is not really an authority figure.

Although this seems to be true as a general definition of "discretionary power", it is important not to exaggerate this point. The platoon leader has some discretionary authority, but he also must listen to the commands of the general. The minister of measures has some discretionary authority as well, but he certainly cannot do "anything he wants" and must follow the overall policies of the government he or she is in.

One important ambiguity in the definition of discretionary authority is how it applies in modern day democratic structures. In the reality that the Talmud was envisioning a king appointed officers and the officers made decisions. In our society a paradigm shift has occurred; the people appoint the

87. The position of R. David is exceptional by its nature, as it only applies *de facto*, and the position of Rosh with regard to acceptance of the *gerim* as judges is really not novel at all, since one could accept anybody as a judge in a monetary case.

88. It seems that the consensus position among the commentators on the *Shulḥan Arukh* as well as the *Arukh ha-Shulḥan* is that Rosh's position here is accepted as normative.

89. This question was discussed at length by Rabbi Aryeh Frimer with regard to women: *http://text.rcarabbis.org/women-in-communal-leadership-positions-shul-presidents-by-aryeh-frimer/*

The issues are different in a number of points and his lecture focuses mostly on the question of women as shul presidents, but there is some important overlap.

90. *Iggrot Moshe*, YD 2:44

officers and some of them make decisions directly and some vote as a part of a larger body. Hence, a number of questions must be asked:

- Is voting discretionary authority?
- Is being a senator or a member-of-parliament discretionary authority?
- Is being the president, the mayor or the secretary of state discretionary authority?

Although each of these questions is difficult and would require an article in itself to fully discuss, I would suggest the following middle position: Voting is not *serara*. Being president or some other officer is *serara*. Being a congressman or member of some other governing body which votes is probably or, at least, possibly (*safeq*) *serara*.[91]

Serara as Coercive Authority

From a simple reading of Rosh and those who follow him, it would seem that *serara* is limited to cases of coercive authority. Coercive authority applies to cases where one has no choice but to follow the decision of that authority. I would further argue that Rosh's definition of coercive authority would include the element of discretionary as well. Otherwise, every bailiff, police officer or army private could be considered to have coercive authority.

Assuming that the definition of *serara* is limited to coercive authority, the rule forbidding a convert from taking a position of authority would apply only to government positions, as there is no other body, at least in democratic states, which can force a person to do anything. Although one could claim that an organizations which one joins can have coercive authority over its members, this would seem to exceed the simple definition of coercive, since the member can always quit.[92]

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91. Personally, I think that there is no question that this is discretionary authority, since the concept applies to judges, and judges in Jewish courts always decide by majority vote. However, since many authorities claim otherwise, I will treat it only as a possibility.

92. In fact, this type of "coercive authority" is even less powerful than the authority of an arbitration panel, since once one accepts an individual or a group as arbiters in a dispute the decision of the panel is binding. Since halakha permits anyone (even a convert) to serve as unofficial judge in such a case, there would seem to be little

Part V — Halakha and Modern Questions

Having clarified the possible definitions of authority, this essay will conclude by looking at a number of practical questions which have arisen in modern times. Although I will discuss the halakhic ramifications of either definition, it seems to me that the more likely definition is that *serara* is coercive authority.

A. Synagogue Official

Discretionary Authority Model

If one were to define *serara* as purely discretionary authority, the halakha would be that not only could a convert not be president, but it would mean that a convert could not serve on any board of a Jewish organization whatsoever, certainly not as an officer, but probably not even as a board-member at large.

Furthermore, there seems little reason to limit this to boards. Since the halakha certainly includes both volunteer as well as paid positions,[93] it would seem that a convert could not serve as an executive director or as a rabbi.[94]

Coercive Authority Model

On the other hand, if one defines *serara* as coercive authority, there would be no problem for a convert to hold any of these positions, since no synagogue has real coercive authority over its membership. There is no member of a congregation that cannot quit his or her membership in a synagogue at any time and for any reason.

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reason not to allow the same person to serve as an authority in an organization which had only voluntary members.

93. I assume that the minister of water or the platoon leader received some sort of salary.

94. Just to clarify, I do not mean that this position would preclude a convert from receiving ordination, only that he could not hold the authoritative position of rabbi of a synagogue.

B. Beit Din

Discretionary Authority Model

If one were to define *serara* as discretionary authority, it would seem that a convert could not serve on any official or standing monetary court.

Coercive Authority Model

If one defines *serara* as coercive authority then a convert could be a member of any standing *beit din* today, at least outside of Israel.[95]

Both positions would agree, however, that a convert could serve in an ad hoc *beit din* made up of judges chosen by the litigants, since this is more like a legal arbitration than a court. The principle at work here is that litigants in financial disputes can decide on any method of resolving said disputes, even by appointing judges who are unquestionably forbidden to sit in judgment for said cases, such as relatives or minors. It is the litigants' money after all.

C. Conversion Panel

The question of whether a convert can sit on a conversion panel has received little attention until recently.[96] From the above analysis, it seems rather straightforward that a convert could sit on a conversion panel according to either model. There is certainly no coercive authority here, and even though there is discretionary authority, the authority is over a Gentile/convert, where there is no problem, as the conversion panel follows the rules of the monetary court system.[97]

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95. Israeli Rabbinic Courts remain a question. It is possible to argue that Israeli Rabbinic Courts have the standing of government bodies, although one can also argue that they lack the power of subpoena since a litigant can always insist on going to a secular court.
96. See Appendix 2 for the companion article to this one where this issue is discussed in depth.
97. Having said this, it may still be in the best interest of the potential convert to have all three judges ethnically Jewish in order to avoid potential pitfalls in the future, since there are a number of halakhic authorities who think that this would be problematic. Again, see Appendix 2 for a full discussion.

Conclusion

Although there has been much discussion in halakha about the appointment of a *ger* to a position of authority, it would seem that nowadays, according to the position that *serara* equals coercive authority,[98] there is nothing barring the convert from holding any position whatsoever in the Jewish community.[99]

Part VI — Sociological and Philosophical Postscript

Lulei de-mustafina (If I weren't afraid)

Lulei de-mustafina, I would point out that there is an unspoken tension that runs through the entire debate about *gerim*. On the one hand, there is the value of pure Jewish lineage discussed at the beginning of this article. On the other hand, there is the value of treating the *ger* like a full member of the Jewish people. All of the positions described in this article represent an attempted solution to this tension.

Some, like Abaye, limit the exclusion of *gerim* to positions of extreme gravitas, like being members of the *Sanhedrin* or other capital courts, presumably the throne as well.[100] Others, like Rava, extended this exclusion to any position of authority.

As times have changed and our valuing of "purity of lineage" has diminished, it has become more and more difficult to accept the position of Rava. One way of solving this problem has been to limit the interpretation of Rava to cases of discretionary or even coercive authority. In recent times this strategy has been taken a step further, with many modern *posqim* defining coercive authority in such a way that it has little applicability in our times. Some have even gone so far as to say that coercive authority cannot exist by definition in a democracy, even for the prime minister of Israel. Those *posqim* who have tried

98. The one possible exception being the holding of governmental positions in Israel; and these only if one believes that democratically elected officials can be defined as having *serara*.

99. For those who believe *serara* is purely discretionary authority, president of a synagogue or judge in a court are just the tip of the ice-berg.

100. Rabbi Michael Broyde has aptly compared this to the American law that a naturalized citizen cannot be president.

to reclaim some sort of prohibited position for *gerim* in our society, whether it be as shul president or member of a *beit din*, have come under heavy fire from many in the Open Orthodox community who find this offensive.

Although, as I have shown in the above article, there are really no halakhic barriers left that would preclude a *ger* from holding any position in the Jewish community, perhaps this is not sufficient. *Lulei de-mustafina* I would argue that what the Open Orthodox community really wants to do is to reclaim the position of Abaye and the editors of the Talmud, at least in theory, and state that a *ger* is eligible to all but the very highest offices.[101]

Lineage as a major factor in Jewish life is virtually gone as a reality; maybe it should go as a matter of theory as well.

101. This is similar to the argument put forward by Rabbi Dr. David Berger, among others, that the Meiri's position on Gentiles needs to be reclaimed in our day. David Berger, "Jews, Gentiles, and the Modern Egalitarian Ethos: Some Tentative Thoughts," in *Formulating Responses in an Egalitarian Age* (ed. Marc Stern; Orthodox Forum 13; Lanham: Rowman & Littlefield, 2005) 83–108.

Zev Farber

Appendix 1 — The Shemaiah and Avtalion Problem

In the Babylonian Talmud (Git. 57b, San. 96b), there is a discussion of famous converts.

תנא: נעמן גר תושב היה; נבוזראדן גר צדק היה. מבני בניו של המן למדו תורה בבני ברק; מבני בניו של סיסרא למדו תינוקות בירושלים; מבני בניו של סנחריב למדו תורה ברבים. מאן אינון? שמעיה ואבטליון.

It was taught: Na'aman was a *ger toshaḇ*, Nebuzaradan was a *ger ẓedeq*, the descendents of Haman learned Torah in Bnei Braq, the descendents of Sisra taught school children in Jerusalem; the descendants of Sanḥereḇ taught Torah publicly. Who were they? Shemaiah and Avtalion.

Since Shemaiah and Avtalion were also said to have been the heads of the Sanhedrin, the question arises as to how *gerim* could have received this position.[102]

Model 1 — Contingent Disqualification

The first to deal with the problem directly seems to have been R. Moshe of Coucy. His interpretation can be found referenced by R. Yehudah ben Eliezer (Riva) in his commentary on the Torah (Ex 21:1). The context there is Rashi's comment on the verse which states that the laws should be placed 'before them', where he states that it means before Jewish judges and not before Gentile judges. Riva asks why we would need a verse to teach that Gentiles cannot be judges in Jewish courts if we already know that even *gerim* cannot be judges in Jewish courts. To this Riva offers a possible answer:

102. It is a matter of dispute whether they were from a family of *gerim* or whether they were themselves converts, although the latter is where the question is most poignant.

ויש לומר דהא דגר פסול לדון היינו היכא שיש ישראל שיודעין לדון, אבל היכא שאין ישראל לא.	One could say that a *ger* is ineligible to judge when there are (ethnic) Jews who are qualified to judge, but if there are no qualified Jews, then [the *ger* would] not [be ineligible].
ותדע שהרי שמעיה ואבטליון גרים, והיו דנין את ישראל לפי שלא היה בישראל חשוב כמותם – כך פירש ר' משה מקוצי.	Note that Shemaiah and Avtalyon were *gerim*, and they would judge ethnic Jews, since there were no Jews of their stature at the time — this is the explanation of R. Moshe of Coucy.

Riva and R. Moshe of Coucy are actually making two separate but interrelated suggestions, the latter more radical than the former. In his first suggestion, Riva writes that the disqualification of a *ger* is not absolute but contingent on there being qualified ethnic Jews who can serve in this capacity. In his second suggestion, apparently that of R. Moshe of Coucy, the *ger's* disqualification is contingent on there being ethnic Jewish judges of equal or greater qualification than himself.

The difference between these two possibilities is not trivial. According to Riva no *ger* could be a judge unless there were no ethnic Jews qualified to judge; qualified would not mean as good, or better, than the *ger*, only good enough to be considered eligible. According to R. Moshe of Coucy, the *ger* could judge in this case, since he is the more qualified. It is, according to R. Moshe of Coucy, only an "all things being equal" rule.

This latter suggestion seems to have been picked up independently by R. Shimon ben Ẓemaḥ, in his commentary on m. Avot, *Magen Avot* (1:10):

שמעיה ואבטליון גירי צדק היו... ויש תימא, שהרי היו נשיא ואב בית דין... ואמרו בגמרא "כל משימות שאתה משים לא יהיו אלא מקרב אחיך" [ע"פ דברים יז טו] ואעפ"י שאמרו באחרון מקדושין [שם] ובפרק החולץ [שם] שאם אמו מישראל מקרב אחיך קרינא ביה, זהו לענין שאר שרדות, אבל לענין נשיאות שהוא דומה למלך, שהרי שניהם הם בכלל אשר נשיא יחטא [ויקרא ד כב], ... היה נראה כי כמו שהגר פסול למלכות אפילו אמו מישראל... כן הנשיא אינו כשר לנשיאות עד שיהיו אביו ואמו מישראל, ועוד שבודאי שמעיה ואבטליון הם עצמם היו גויים ונתגיירו... על כן יש לתמוה איך מנוהו נשיא. ושמא, כיון שלא היה בישראל כמוהו בקבלה, הוא היה ראוי יותר מכולן. כי לא פסלה תורה גרים אלא בשיש כיוצא בהם בישראל, אבל אם אין כיוצא בהן בישראל, הם קודמין...

Shemaiah and Avtalion were converts… But there is something surprising here, since they served as *nasi* and *av beit din*… The [sages] state in the *gemara*: "all appointments which you make should only be from among your brothers", and even though they said at the end of *Qiddushin* and in *Yebamot* that if his mother was Jewish that would be considered 'from among your brothers', this is true for other types of official positions, but with regard to being the *nasi*, which is like being a king — as both of them fall under the category 'if a prince among your people sin' — it would seem that just like a *ger* is ineligible for kingship, even if his mother was Jewish, so too anyone would be ineligible for heading the court unless both his father and mother were Jews. Furthermore, it is certain that Shemaiah and Avtalion were themselves Gentiles who converted… Therefore, one must wonder how he was appointed *nasi*. Perhaps, since there was no one among the Jews who were his equal in [knowledge of] tradition, he was more fit than anyone else in his time, for the Torah does not disqualify *gerim* unless there are others who are their equal among the ethnic Jews, but if there is no one like them among the Jews, they get precedence.

According to these authorities, the disqualification of a *ger* to have any position of power is not absolute but contingent. The only question is whether it is contingent on there being no one as talented as them or on their being the only qualified candidates.

One important question that must be asked about this position is whether this "contingent disqualification" means that when there is another, ethnically Jewish, judge that using the *ger* makes the procedure invalid, or whether the procedure remains valid but it is simply forbidden to do so. In his recent book on the subject of conversion (*Mishnat ha-Ger*, *Iyunim* 84, p. 735), R. Moshe Klein makes a strong argument for the latter interpretation.[103]

103. The son of R. Menashe Klein, author of the *Mishneh Halakhot*

נמצא לדבריו, שהגר אינו פסול מלדון פסול גמור, אלא דין קדימה בעלמא הוא, דבמקום שיש דיין ישראל יש להקדים ולמנותו. ולפי זה חלוק פסול הגר מלדון מפסול קרוב וכדו', שכן כאשר הדיין קרוב לאחד מבעלי הדין יש כאן פסול גמור דחיישינן שמא יטה את הדין לטובת קרובו, ואף אם עברו ודנו אצלו אין דינו דין. אבל גר מעיקר הדין כשר לדון, אלא שציותה תורה במקום דאפשר להקדים דיין מיוחס הימנו, וממילא במקום שכבר עברו ומינו דיין גר, כיון שמעיקר הדין כשר הוא לדון – דינו קיים, ואין צריך לחזור ולהתדיין לפני בית דין ישראל, שכן הלכה זו אינה מעכבת בעשיית הדין ואינה אלא לכתחילה בעלמא.

It seems that, according to this position,[104] the *ger* is not fully ineligible to judge, rather there is a rule of priority here, that where there is an ethnically Jewish judge available, he should be given priority and receive the appointment. According to this, the ineligibility of a *ger* is of a completely different nature than the ineligibility of a relative, etc. For when the judge is related to one of the litigants, there is an absolute ineligibility, for we worry that he might skew the proceedings in favor of his relative, and even if he judged the case anyway, the judgment would be invalidated. However, a *ger* is technically eligible to judge, it is only that the Torah commanded that when it is possible to give priority to someone with *yiḥus*, it should be done. However, certainly if they violated [this principle] and appointed a *ger* to be judge, since he is technically eligible to judge, his judgments are valid, and there is no requirement to have the case retried before a court made up of born-Jews. For this rule does not effect the validity of the court, it is simply a *de jure* rule.

This interpretation makes the Shemaiah and Avtalion paradigm much more than just an interesting exception. According to this interpretation, the entire rule about *gerim* being forbidden to function as coercive authority figures over born-Jews is only a *le-khatḥila* principle, with no real "teeth" or consequences to the litigants if violated.

Model 2 — Communal Acceptence

A very different solution was offered by R. Ḥaim Benveniste[105] in his glosses on the *Tur* (*Knesset Gedolah* ḤM 7:1). He begins his analysis by pointing out that there is a debate about whether Shemaiah and Avtalion were actual converts or from a family of converts; the former possibility being the more problematic explanation.

104. He is referring specifically to that of R. Moshe of Coucy.

105. 1603–1673 Constantinople

מעתה צריכין אנו ליישב לפי דעת הגדולים הללו איך נתמנו שמעיה לנשיא ואבטליון לאב בית דין? ואם תאמר שקבלוהו עליהם, אם כן למה נתחייבו שונאיהם של ישראל כליה מפני שהחניפו למלך אגריפס...? ועוד אפשר דקבלה מהניא והכתוב אומר 'לא תוכל לתת עליך איש נכרי'?!

Now we need to explain this according to these sages [who believe Shemaiah and Avtalion were themselves converts], how was Shemaiah appointed *nasi* and Avtalion *av beit din*? If one wants to respond that it is because [the people] accepted them as such, if this were possible, why were the Israelites condemned to destruction because they flaterred King Agrippa…? Furthermore, is it possible that acceptance would work if the verse says 'you may not take upon yourselves a foreign man [as king]'?!

ואומר אני חדא מתרתי: או דסבירא ליה להנהו רבוותא דיש הפרש בין מלך לשאר שררות, דאף על גב דבשאר שררות קבלה מהניא כדאשכחן בשמעיה ואבטליון מלך שאני דבדידיה אפילו בקבלה לא מהני...

So I say one of two things: Either these rabbis assume that there is a difference between the king and other positions of authority, and that even though for other positions of authority acceptance is valid, as we find with Shemaiah and Avtalion, however, a king is different, for with regard to him, even acceptance would be insufficient…[106]

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106. Benveniste has an interesting back and forth with himself on this, where he disputes the premise posited by R. Shimon ben Ẓemaḥ that a president must be treated like a king:

אך מה שלפי מגמגם בזה, דאפילו דנימא דיש חילוק בין המלך לשאר שררות שמא היינו דוקא לשאר שררות דעלמא, אבל הנשיא שהוא במקום המלך והוא הדין ריש גלותא, כי היכי דבמלך לא מהני' קבלה אף בדידהו לא מהני', וחזרה קושייתינו למקום' איך מינו לשמעיה נשיא?

However, I am unsure of this point, for even if we say that there is a difference between the king and other positions of authority, perhaps that would apply to most other positions of authority, but the *nasi*, who is in place of the king — and this would go for the exilarch as well — just like acceptance would be invalid for the king, it would be invalid for him as well, and our question would return to its place: How could they appoint Shemaiah as *nasi*?

ומיהו אין גימגום זה גימגום אלא אם נאמר דאף הנשיא צריך שיהא ישראל מכל צדדיו, ובאמו מישראל לחוד לא סגי דומיא דמלך. אבל אם נאמר דאף הנשיא באמו מישראל סגי כשאר שררות, לא יקשה עלינו היאך מינו נשיא לשמעיה, דכיון שיש חלוק בין מלך לשאר שררות כשאמו מישראל ואין אביו מישראל יש חילוק גם כן

Nevertheless, this is not really a problem unless one believes that even the president needs to be Jewish from all sides, and that a Jewish mother would be insufficient, like for a king. However, if one were to say that a Jewish mother would be sufficient for the president like it is for other positions of authority there would be no difficulty with our explanation of how Shemaiah was appointed president. This is because one could make the claim that just like a king is different from all other positions of authority on the matter of whether having a Jewish mother but not a Jewish father

או כלך לדרך זה בין במלך בין בשאר שררות בקבלה מהניא...

Alternatively, going all the way, [perhaps] acceptance would be valid for all positions of authority, including the king…

ולענין פסקא דדינא... כיון שלמפרשים ז"ל שסוברים ששמעיה ואבטליון הם עצמם הוו גרים מוכרחים לומר דבקבלה מהני לפחות בשאר שררות, ואפילו למפרשים שסוברים דלא היו הם עצמם גרים אלא מקהל גרים, לא בא בדבריהם מבואר דאפילו בקבלה לא מהניא אפילו לשאר שררות, כל שקבלוהו עליהם הקהל ומרוצים במינוין יכול לדון אפילו במילי דשררה וכפיה – כן נראה לי.

Insofar as practical halakha… since according to those that believe that Shemaiah and Avtalion were themselves converts one must posit that acceptance is valid, at least for any position of authority other [than king], and that even those who believe that Shemaiah and Avtalion were not themselves converts but from a family of converts, there is still no explicit claim that acceptance would not be valid at least for positions of authority other than king — [therefore], any person whom the community accepts upon itself by appointing him can judge, even in matters where he has authority and coercive power — this is my opinion.

According to Benveniste, the disqualification of a *ger* to serve in positions of authority can be overridden by the community's acceptance of the *ger*.[107]

This position is nuanced by R. Yonatan Eybeschutz[108] in his glosses on the *Shulḥan Arukh* (*Tumim* ḤM ad loc.), where he comments on this passage of the *Knesset ha-Gedolah*.

בדין קבלה דבנשיא מהניא קבלה ובמלך לא מהניא קבלה. ומסתבר דגם בנשיא כשאמו מישראל סגי בשאר שררות...

is sufficient, there can also be a difference with regard to the rules of acceptance, and that for a president acceptance would be valid but for a king acceptance would not be valid. And it would make sense that having a Jewish mother would be sufficient in order to become the president, as it is for other positions of authority…

107. This is based on Rosh's second suggestion referenced earlier.

108. Kraków 1690 — Altona 1764

ולפי דבריו צריך לומר אם קבלוהו חשובי העדה, אף על פי שאין רוב הצבור מסכימים, הוי כקבלוהו עליהם, ויכול לדון, דאטו בשמעיה ואבטליון הסכימו רוב ישראל בכל מקומות ארץ ישראל וחו"ל? זהו מהנמנע! אלא הואיל והסכימו סנהדרין וראשי חכמים וכנסת הגדולה בימים ההם הוה כקבלוהו כל ישראל עליהם...

According to this, one must say that they were accepted by the Jewish leadership. Even without the enunciated acceptance of the majority of the people it would be considered as if the [people] accepted [the *ger*], and he can judge. Since, with regard to Shemaiah and Avtalion, did the majority of the Jews in all places, inside Israel and out, actually agree [to accept them]? This is an impossibility! Rather, since the Sanhedrin, and the leading sages did — and there was the Great Assembly in those days — it was as if all of Israel accepted them upon themselves…

Eybeshutz correctly points out that it would have been a logistical impossibility for the majority of Jews at the time to accept the appointment of Shemaiah and Avtalion. Therefore, he argues, that if one were to follow Benveniste's explanation, one would have to add the correlary that it would be sufficient for the leadership of any given community to proffer the acceptance on behalf of the community at large.

Despite having added this nuance, Eybeschutz actually rejects Benveniste's solution to the problem. He argues that it makes little sense that the people could "accept upon themselves" members of the Supreme Court who would then have the power to enforce the death penalty — or other corporeal punishments — upon them.[109] In fact, Eybeschutz points out, this would be their main job, judicially speaking, since the Supreme Court would rarely if ever hear monetary cases.[110]

Model 3 — Extending the King's Martial Law Powers

Considering this problem, R. Eybeschutz offers two possible answers:

109. It would be interesting to know how R. Eybeschutz would react to modern day democracies.

110. They did, of course, legislate as well, but this hardly improves the situation.

ולכן צריך לומר או דמלך שאני כיון דרשות ביד מלך להמית ולהרוג לתקון המדינה... ואם כן, שמעיה ואבטליון נתמנו מפי מלך, כי בימיהם היה מלכי חשמונאים הכשרים ויכולים לדון בכפיה, כי יד מלך היה עמם.

Therefore, one must argue either that since a king has a special prerogative, since it is in his purview to kill or execute for the good of the country… therefore, [one could argue] that Shemaiah and Avtalion were appointed by the king, since in their days the legitimate Hasmonean kings reined. This is why [Shemaiah and Avtalion] could judge with coercive authority, since they did so with permission of the king.

או שנאמר כי באמת אילו היה בא דיני נפשות לא היו דנים, ולא נתמנו לכך, רק לקבלי שמועה ובירור הלכה בתורה שבעל פה לעוצם חכמתם ובינתם ויראתם הקודמת, ובזו היו נשיאים ואבות בית דין, ולא לדון דיני נפשות.

Alternatively, one could suggest that they did not, in fact, judge capital cases, [recusing themselves] if one came up, and they were not appointed for this. Rather, [they were appointed] to be repositories of knowledge, to clarify matters of oral law, since they were tremendously wise and insightful as well as extremely pious, and in this regard they served as president and head of court, but not to judge capital cases.

Eybeshutz offers two very different suggestions. His second suggestion avoids the problem altogether by positing that they did not in fact judge. They were merely the "spiritual heads" of the court. The first suggestion is based on the argument that if someone was appointed directly by the king, and that said king extended his "special prerogatives" to this person, he could then do whatever he wanted, which would include judging with coercive authority and administering capital punishment.

Both of Eybeshutz's suggestions would make the case of Shemaiah and Avtalion either unique or entirely irrelevant to the vast majority of cases. In this sense, Eybeshutz's position is the strictest, as he believes that *gerim* are absolutely (not contingently) disqualified as judges and that acceptance — at least for anything that would give the *ger* coercive authority — is invalid.[111]

111. See R. Eliezer Waldenberg's responsum (*Ẓiẓ Eliezer* 19:47) for a slightly different presentation of these sources.

Zev Farber

Appendix 2 — Companion Article
A GER ON A CONVERSION PANEL

Introduction

The question of whether a *ger* is eligible to sit on a conversion court was not discussed in the literature until almost modern times. However, over the past half century or so, the issue has become a matter of serious discussion and dispute.[112]

In the main article above I wrote that it seemed to me rather straightforward that a convert could sit on a conversion panel, and that there was no question here of the problem of "authority over an ethnic Jew", since the convert is inevitably not ethnically Jewish. Nevertheless, as this matter is quickly becoming a heated dispute in the Modern Orthodox world, the question will be taken up here in full. I will not rehash the Talmudic passages and the *Rishonim*, as these have all been dealt with above. Instead, I will outline the positions of all the disputants that I know of on this issue, and attempt to categorize and analyze their strengths and weaknesses.

Lenient View

There are a number of basic arguments advanced by the proponents of the lenient view that a *ger* is eligible to sit on a conversion court. Although we will look at each argument separately, a good place to start is the responsum of Rabbi Dr. Mordechai Fogelman (*Beit Mordekhai* 1:80),[113] who is, perhaps,

112. See the important survey articles by Rabbi Michoel Zylberman and Rabbi Michael Broyde. Michoel Zylberman, *Sefer Tuv Lev al Masekhet Pesaḥim* (New York, 5771), 114–117; Michael J. Broyde, "May a Convert be a Member of a Rabbinical Court for Conversion," *Journal of Halacha and Contemporary Society* 59 (2010): 61–78. I would like to thank R. Broyde for sending me copies of sources I did not have access to in addition to taking the time to discuss this with me at length — despite our fundamental disagreement on the subject.

113. b. 1888 Przemyslany (Ukraine) — d. 1984 Israel; inexplicably, R. Broyde claims

the most vocal defender of this position. Fogelman puts forward three separate arguments.

...ישנם כמה יסודות להתיר לגר שאין אמו מישראל, שישמש כדיין בבית דין של שלשה לקבלת גר.	There are a number of bases upon which one can permit a *ger* whose mother was not of Jewish stock to function as the judge on a court of three which oversees conversions.
אפילו להסוברים שלכל המשימות צריך שתהיה אמו מישראל, זהו רק במינוי גר לדיין קבוע, אבל לדון בארעי ואקראי – הכל מודים שכשר אפילו אין אמו מישראל...	Even according to those who believe that all appointments need to be made from among people whose mothers are ethnically Jewish this is only applicable when one appoints a set judge, but for the person to judge *ad hoc* from time to time, all would agree that this would be permitted even for someone whose mother was not ethnically Jewish…
ובר מן דין, רק בדברים שיש בהם כפייה אסור לגר שאין אמו מישראל להיות דיין, אבל בלא כפייה, וכשקבלו אותו עליהם, מותר לו להיות דיין...	Additionally, only matters which express coercive authority are forbidden to a *ger* whose mother was not ethnically Jewish to judge. However, to sit as judge for matters over which one has no coercive authority would be permitted to him…
ובנידון דידן: א. אין בית דין של שלשה לקבלת גר בית דין קבוע, אלא בכל פעם שצריך לקבל גר, קובעים במיוחד בית דין עראי לשם זה. ב. בבית דין של שלשה לקבלת גר לא שייך לומר שיש שם כפייה. בית הדין אינו כופה על הנכרים להתגייר, להפך, הנכרים הם המבקשים ופונים לבית הדין שיגיירם ויקבלם ליהדות. וכשגר בא להתגייר, בית דין דוחה אותו ואין מקבלים אותו ואומרים לו מה ראית להתגייר וכו'; ורק אם הוא מפציר וחוזר על בקשתו מקבלים אותו ...	Now in our case: A. Courts of three judges that oversee conversion are not established courts, rather, anytime a candidate is looking to convert an *ad hoc* court is put together to deal with it. B. With regard to the court of three that oversees conversions it would be impossible to apply the concept of coercive authority. The court never coerces Gentiles into converting. Quite the opposite: the Gentiles are the ones who come to the court requesting that they be converted and admitted into the Jewish faith. And when a candidate comes to convert, the court nudges him away and doesn't automatically accept him, and they say to him: "Why do you want to convert?" Only if he continues to insist and requests the conversion a second time is he accepted…

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that R. Fogelman's responsum would only permit a *ger* to sit on a conversion panel *be-di-avad*. With all due respect to R. Broyde, I cannot see how one could characterize this responsum in that way.

מלבד זה יש מקור ישיר להתיר לגר שאין אמו מישראל להיות דיין בבית דין של שלשה לקבלת גר... לפי דרשתו של רבא מותר לו לגר שאין אמו מישראל להיות דיין בכל בית דין שלא "עליך", ולאו דוקא בבית דין לדיני ממונות לגר חברו. ולכן רשאים להרחיב את תחום דרשתו של רבא ולהשתמש בה גם לנידון דידן ולומר: עליך הוא דבעינן מקרב אחיך, אבל גר יכול להיות דיין בבית דין של שלשה לגיור נכרים והכנסתם תחת כנפי השכינה, מפני שגר הוא לא מסוג "עליך".

Furthermore, there is an explicit source which permits a *ger* whose mother is not Jewish to be a member of the three person panel overseeing a conversion… According to Rava's *derasha*, it would be permitted for a convert to be a judge in any case where his authority is not over "you" (i.e. a born Jew), and this is not specific to monetary court cases involving other *gerim*. Therefore, it would seem appropriate to extend the parameters of Rava's *derasha* and apply it to our case and say that "over you" is where "from among your brethren" is required, but a *ger* can be a judge in a court of three overseeing the conversion of Gentiles and their admittance to stand "under the wings of the Divine Presence" since a *ger* is not categorized as the "you" [in the "over you" of Rava's derasha].

Fogelman puts forward three basic arguments. The first argument is that conversion courts are *ad hoc* by nature, and that there is no problem with a *ger* serving on an *ad hoc* court, only an official court.[114] The second argument is that the only cases a *ger* is excluded from adjudicating are cases where coercive authority is used, and conversion is voluntary, not coercive. The third argument, which is the one I put forward in the main article, is that the prohibition is to place a *ger* in a position of authority over an ethnic Jew, and a convert is by definition not an ethnic Jew. Each of these arguments finds support in the literature.

Model 1 — Ad Hoc Courts

The argument that a *ger* may serve as judge in an *ad hoc* court finds support in a "dissenting opinion" of the rabbinic judge, Rabbi Yehoshua Weiss, discussing a case where a *ger* was used as the third judge during the circumcision of the convert.[115]

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114. Although this point is true of many societies, it comes into problems in the modern day conversion court system in Israel, and, perhaps even in the contemporary GPS beit din system in America.

115. See: *Pisqei Din Yerushalayim — Dinei Mamonot u-Birurei Yahadut* vol. 7 file #107

בהא דדן אם גר כשר להיות אחד מהבי"ד לגיור ... ונראה עפ"י מש"כ הר"ן סנהדרין לו ב ד"ה חד בשם ה"ר דוד ז"ל ... ונראה דפירש דהא דממעטינן משום תשים וכו' דכל שימה יהיה מקרב אחיך, דדוקא במינוי קבוע מיקרי שררה אבל באקראי לאו שררה היא. וכ"מ מהרמב"ן יבמות מה א ... וא"כ בנידון דידן דהגר לא היה קבוע בבי"ד אלא אקראי בעלמא, נראה דבדיעבד דינו דין ואין צריך להטיף ד"ב.

With regard to what [R. Levin] wrote about whether a *ger* is eligible to sit on a conversion court… it would appear, however, that according to what Ran wrote in the name of R. David… it would seem that he understands the exclusion [of *gerim*] based on [the *derasha*] "you shall surely place" — all appointments must be from among your brothers — that specifically official appointments are considered positions of authority, but haphazard appointments are not considered authority. This is the position of Ramban (*Yeb*. 45a) as well… Therefore, in our case, where the *ger* was not a standing member of the court but was included on an *ad hoc* basis, it would appear that *be-di-avad* the process was valid and there is no need to do *haṭafat dam brit*.

R. Weiss brings the position of R. David and Ramban, arguing that according to their understandings of the *derasha* about appointment of a *ger*, the *ger* would certainly be allowed to sit on an *ad hoc* conversion panel. This does not go as far as Fogelman, who claims that conversion courts are by definition *ad hoc*. Nevertheless, what Weiss and Fogelman have in common is the idea that the *ger* is essentially permitted to judge, but that the rule against giving him an appointment would preclude making him an official judge.

This principle is underscored by Weiss's use of R. David, since R. David is actually speaking about a *ger* judging an ethnic Jew in a monetary dispute; he is not discussing conversion at all. Assuming the analogy between eligibility to judge monetary cases and eligibility to sit on a conversion panel, Weiss is arguing that if a *ger* can judge an ethnic Jew on an *ad hoc* basis in financial matters, he can sit on a conversion panel on an *ad hoc* basis as well.

Model 2 — Conversion is not Coercive

The second argument seems to be supported by R. Eliyahu David Rabinowitz-Teomim (known as the *Aderet*)[116] in a responsum (*Ma'aneh Eliyahu* 88):

— section c. The main opinion, written by R. Avraham Dov Levin, will be dealt with in a later section.

116. b. 1843 Pikeln (Lithuania) — d. 1905 Jerusalem; he moved to Israel late in life (1901) to be become the chief rabbi of Jerusalem. His son-in-law was none other

ואמנם בחקירתו אם גרים יכול לקבל גרים משום דמשפט כתיב ביה, ואם כן הוה ליה כמו שררות שאסור לגרים,	With regard to your inquiry about whether *gerim* can receive candidates for conversion, because the word 'judgment' is used with regard to this, and, therefore, doing so would be a form of authority, which is forbidden to *gerim*,
נראה לי ברור שיכולים, לפי מה שכתבו התוס' ביבמות... דהא דאין דנין לישראל, היינו דוקא בכפיה, ומשום דהוה ליה כשררות, אבל שלא בכפייה שפיר דנין גם לישראל...,	It seems obvious to me that they can, according to what Tosafot wrote in *Yebamot*… since the rule that they cannot judge born Jews applies only to cases where [the judge] exercises coercive power, because that is real authority, but when there is no coercive power they can certainly judge born Jews…
אם כן, אין מקום לספיקתו, דהא קבלת גרים, שאי אפשר בכפייה, שפיר גם גרים יכולים לקבל, דאף שנעשה ישראל בזה – מכל מקום אינו בכפייה, רק ברצון נפשו...	If so, there is no room for your doubts, since conversion cannot be done through coercion, *gerim* can certainly perform it. Even though the candidate is transformed into a Jew through this process, even so it is not done coercively but through the free will [of the Gentile candidate]…

Rabinowitz-Teomim's argument follows the basic contours of Fogelman's second argument, claiming that since conversion is by definition non-coercive, the rule that a convert cannot serve in a position of authority would not apply.[117]

A similar argument was put forward by Dayan Aryeh Leib Grossnass,[118] who argues in his *Lev Aryeh* (21) that if one accepts one of the interpretations suggested by *Tosafot* (and Rosh), i.e. that a *ger* is only excluded from

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than R. Abraham Yitzḥaq Kook, who dedicated his book *Eder ha-Yaqqar* to the memory of his father-in-law.

117. Later on in his responsum, Rabinowitz-Teomim brings up the possibility that if one accepts his reading of R. Yehudah in b. *Yeb.* 27a, then according to the position of the *Hagahot Mordekhai* (that a *ger* cannot judge an ethnic Jew even without coercive authority), a *ger* may be barred from serving on conversion courts. Nevertheless, this seems more like theoretical musings than a serious rethinking of his position. This seems to be the editor of the volume's (Aharon Beck) understanding as well, since in his description of this responsum in the table of contents he writes:

גר כשר לשבת בבית דין שמקבל גרים, משום שגר יכול לדון ישראל ללא כפיה, וגרות נעשית תמיד ללא כפיה.	A *ger* is eligible to sit on a conversion court, since a *ger* is allowed to judge an ethnic Jew, as long as he has no coercive authority, and conversion is never done coercively.

118. b. 1912 Poland — d. 1996 England

judging ethnic Jews with coercive authority, this would inevitably lead to the conclusion that a *ger* could serve on a conversion court:

...ובדבר שאינו של כפיה יש לו דין דיין, ולכן להיות דיין לגירות, דליכא מיעוטא ד"בישראל" באמת כשר, דיש שם דיין עליו, וכן לכל דבר שאינו של כפיה...	…with regard to judging with non-coercive authority, [the *ger*] has the status of judge, and, therefore, to be a judge on a conversion court, where there is no exclusion based on the term "in Israel", he is certainly eligible, for he has the status of judge. And this is true of any matter [over ethnic Jews] where he has no coercive authority…

According to Grosnass, once it is established that the *ger* has a status of judge, but is excluded from judging ethnic Jews either because of specific *derashot* or because of the principle that he may not hold coercive authority over ethnic Jews, it becomes clear that there is nothing stopping him from serving as a judge on a conversion panel.[119]

Finally, this argument is supported by R. Yehoshua Weiss as well:

ולפי"ז גר שבא להתגייר לאו כפייה הוא ולא נתמעט מעליך ומותר לגר להיות אחד מהב"ד לגירות.	According to this, since a *ger* coming to convert is not coerced, neither is he excluded by "upon you" — therefore, a *ger* is eligible to be one of the judges on a conversion court.

Weiss argues that conversion is not coercive, so there is nothing to stop a *ger* from sitting on such a court.[120]

Model 3 — The Authority Here is over a Gentile not a Jew-by-Birth

The third model, and that which seems the most intuitively obvious, appears to have the most supporters. One authority who seems to have seen this

119. Of course, according to the alternative position in Tosafot, that a *ger* can never judge an ethnic Jew, this argument falls apart, and one could argue that he would not be eligible. This is, in fact, the implication of Grosnass' formulation, although the point seems to me to be far from decisive.

120. It is worth noting that this argument is also included in a list of reasons to be lenient by R. Moshe Klein as well as by R. Yisrael Yonah. See Model 5 in this section for discussion.

argument as open and shut is R. Yisrael Zev Mintzberg.[121] He writes in his *She'erit Yisra'el* (YD 22):

... מה שבקש להודיעו אם יש לי ראיה מפורשת דמועיל בית דין של גרים לקבלת גר,	… [He] has asked if I can inform him if I have any definitive proof that a court made up of *gerim* can oversee a conversion.
לדעתי הדבר פשוט, דהרי ילפינן זאת דצריך שלשה מדכתיב בי' 'משפט'... ואם כן, כמו דדן את חבירו כמו כן יוכל לקבלו.	In my opinion, the matter is simple, for we learn the fact that [a court of] three is required [for a conversion] from the verse's use of the term 'judgment'… If so, just like [the *ger*] may judge his fellow, so too, he may accept him [as a convert].

R. Mintzberg argues simply that since a *ger* may judge his fellow, i.e. may receive appointment over his fellow, he may officiate at his fellow's conversion as well.

This position was adopted and codified by R. Mosheh Shtainberg[122] in his handbook on the subject (*Ḥuqqat ha-Ger* 6:10):

בית דין המורכב מגרים, יכול לקבל גרים ולגיירם, כי כשם שגר דן את חבירו, כמו כן יכול לקבלו.	A court made up of *gerim* can receive candidates for conversion and convert them, since just as the *ger* can judge his fellow [*ger*], so too can he receive him [as a conversion candidate].

What is important about this source is less the novelty of its *pesaq*,[123] but rather

121. b. 1865 Turobin (Poland) — d. 1962 Israel; R. Mintzberg moved to Israel as a child and spent much of his life as a prominent Ḥassidic rabbi in the Jewish Quarter of Jerusalem. He is most famous for negotiating a treaty with the Jordanian army during the War of Independence, together with the Sephardic Rabbi Reuven Hazzan, by walking out with a white flag towards the Jordanian commander at some risk to his life. The treaty allowed the civilian population of the city to escape unharmed. Mintzberg was 83 years old at the time (Hazzan was 70), and their "flag" was a white Shabbat table cloth tied to a stick.

122. b. 1909 Pryzemsyl, Galicia — d. 1993 Israel; R. Shtainberg was the rabbi of Bat Yam and an expert in laws of conversion, having written a number of books and responsa on the subject. He is the father of the eminent bioethicist R. Avraham Steinberg.

123. Shtainberg himself notes that he is simply following the positions of Mintzberg and Fogelman.

the fact that it is found in a popular handbook, suggesting that many rabbis may have been relying on this.[124]

That a *ger* serving on a court for *giyyur* was considered to be "obviously permitted" by certain authorities, ostensibly based upon the above logic, can be seen from an offhand comment of R. Shlomo Zalman ben R. Naḥman (Baharan) Loewy,[125] in an addendum to a letter written to his wife and family.[126]

גם זאת אני מסופק: שאם שלשה גרים טבלו עצמם בבת אחת ממש, דהיינו אם נימא בידי אדם אפשר לצמצם, אי נחשב זה לזה לבית דין הואיל ועל ידי טבילה זו נעשים כולם בבת אחת ישראלים, ממילא יהיו גם כן בית דין זה לזה בבת אחת וגרים גם כן כשרים לבית דין לטבול הגרים.

I was wondering about this as well: If three *gerim* immerse themselves at exactly the same moment, that is if we imagine that it is humanly possible to determine this, if they could be considered like a conversion panel for each other, since through their immersion each becomes Jewish at the same time, and, by definition, can be considered like each other's conversion panel, since *gerim* are also eligible to be part of a conversion panel overseeing the immersion of the converts.[127]

R. Eliezer Waldenberg refers to this comment by Loewy with approval in one of his responsa (*Ẓiẓ Eliezer* 13:80).[128] In this responsum, Waldenberg is discussing whether a *mohel* can be counted as part of the conversion panel, and he cites Loewy's discussion here as a proof that he can:

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124. The importance of the fact that a decision was recorded in a handbook as opposed to Talmudic novellae, and how this should be weighed when one is attempting to determine what the practice of rabbis has been over the past fifty years, was first brought to my attention by my teacher Rabbi Dov Linzer, albeit with regard to the responsum in Felder's handbook. The point is only strengthened when applied to the *Ḥuqqat ha-Ger*.

125. R. Shlomo Zalman Baharan-Loewy (1845–1910) was one of the founders of Me'ah Shearim. He was the son of R. Naḥum Loewy — (b. 1810 Szadek, Poland) — who moved to Israel in 1843 and become one of the leading rabbis in Jerusalem until his untimely death in 1865 in the cholera epidemic.

126. Shlomo Zalman Loewy, "Two Letters" in *Luaḥ Yerushalayim 10 — For the Year 5710* (ed. Dov Natan Brinker; Jerusalem: Mossad ha-Rav Kook, 1949), 206–213. The addendum is on pages 212–213. The letter was published posthumously by his grandson R. Yehoshua Barukh ben R. Tzion.

127. I assume that there is a male *miqvah* attendant, or else the theoretical conversion court would be one short.

128. 1915–2006 Israel

ואני נזכר מה שראיתי מזמן בלוח ירושלים (ברינקר) לשנת תש"י, שנדפס שם מכתב מהגה"צ ר' שלמה זלמן בהר"ן ז"ל, שבסופו כותב להסתפק... ונשאר בספק.

I remember what I saw a while back in *Luaḥ Yerushalayim* (Brinker)[129] for the year 5710, that published a letter from the great R. Shlomo Zalman ben R. Naḥum z"l, which ends with a theoretical question… and the matter was left in doubt.

R. Shlomo Zalman Loewy's theoretical question takes for granted that a *ger* can be part of a conversion panel. Waldenberg, who cites this text, takes no issue with this premise.[130]

It seems that neither Waldenberg nor Loewy consider this issue to be problematic, assuming the fact that a *ger* can sit on a conversion panel as something obvious.[131]

Yet another example of an authority who considers the eligibility of a *ger* to sit on a conversion court to be obvious is R. Nochum Kornmehl of Cederhurst. He writes in his *Tiferet Ẓvi* (1:72)

שאלה: בגר אם מותר להיות דיין בבית דין לקבלת מצוות לגר אחרת והב' אם הגר השני הוא אחיו, אם מותר לצירוף שלשה לבית דין כיון שהוא קרוב?

Question: Can a *ger* judge his fellow *ger* in a court which oversees the acceptance of mitzvot for conversion, and secondly, if the converting party is the judge's brother, is [the brother] allowed to join the court of three despite being his relative?

תשובה: ע' יבמות כב. דלענין עדות כשר קרוב גבי גר, וגר דן גר... וכיון שגר מצטרף עם אחיו לעדות, ממילא כשר לצירוף בית...

Answer: See *Yebamot* 22a that for testimony a *ger* is not considered a relative [to his biologically related fellow *ger*] when it comes to testimony. And [we know] a *ger* can judge his fellow *ger*… Hence, since a *ger* can join his brother for testimony, inevitably he can join his conversion court [as well]…

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129. R. Dov Natan Brinker, b. 1893 Dvinsk/Daugavpils (Latvia) — d. 1951 Israel

130. This was noticed by R. Yisrael Meir Yonah in his article:

ועיין בתשובת ציץ אליעזר (יג:פ) שכתב בשם הגרש"ז בהר"ן זצ"ל לדבר פשוט דמהני גיור על ידי גר.

And see Responsa *Ẓiẓ Eliezer* who wrote in the name of R. Shlomo Zalman Ba-ha-Ran that it was obvious that a *ger* can oversee a conversion.

131. In a personal communication, R. Michael Broyde commented to me that Loewy may only be referring to using the *gerim* as part of the conversion panel for immersion but not for the ceremony of the acceptance of mitzvot. This is, of course, a possible understanding of Loewy, but it seems to me an over-reading of his comment.

Whatever one thinks of Kornmehl's second argument about the applicability of testimony laws to that of courts and judges, he barely comments on what he calls the first question. Kornmehl takes it as a given that since a *ger* can judge his fellow *ger* he can certainly do so for conversion. This is why he focuses the responsum on the second question, one that could be argued in more than one direction. Apparently, Kornmehl believes, like R. Shlomo Zalman Baharan and R. Waldenberg, that having pointed out the rule that a *ger* can judge his fellow, the issue requires no further comment.

This same point was also made by R. Yehoshua Weiss in the above referenced decision. He begins by referencing a comment by R. Yaakov Lorberbaum of Lissa[132] in his *Netivot ha-Mishpat* (7:1). Lorberbaum offers a legal formulation for the exclusion of a *ger* from judging ethnic Jews.

...התמנות לגר אין אסור רק על ישראל ולא על גר חבירו.	…insofar as the appointment of a *ger*, there is only a prohibition to appoint him over an ethnic Jew, but [there is] no [prohibition to appoint him] over his fellow *ger*.

Having quoted this, Weiss offers this observation:

ולפי"ד נראה דגר כשר להיות אחד מהבי"ד לגירות, דע"ז לא נתמעט מקרא דשום תשים, דאין איסור התמנות גר על גר חבירו.	In my opinion, it would seem that a *ger* is eligible to be on a conversion panel, for this was not excluded by the verse "you shall surely place", for there is no prohibition to appoint a *ger* over his fellow *ger*.

Weiss here offers a variation on the principle already established by Mintzberg and others: when there is no explicit exclusion of the *ger*, he is automatically eligible to serve as a judge.

Finally, this point was made by R. Yisrael Meir Yonah, in an article on this subject.[133]

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132. 1760–1832

133. Yisrael Meir Yonah, "Including a Ger on a Conversion Court", *Beit Hillel* 24–25 (5766), 162–164

נשאלה שאלה בבית המדרש אם יש היתר במקום הצורך למנות גר בבית דין לגיורים למאי דקיימא לן דגר דן את חבירו הגר אפילו שאין אמו מישראל, והכי נמי הרי אינו דן ישראל אלא גר?

The question was asked in the study-hall whether it would be permissible, when necessary, to appoint a *ger* to sit on the conversion panel, according to that which we established that a *ger* can judge his fellow *ger*, even if his mother is not Jewish, since here, in this case, he is not judging an ethnic Jew, but a *ger*.

...ודאי שרשאי לדונו, והיינו טעמא שעדיין אין בכל זה סרך דאיסורא מקרא ד"שום תשים עליך כו' מקרב אחיך" – ולא גר. שזה לא נחשב ששם "עליו" גר לדונו אלא הגר דן את חבירו הגר...

... It is certain that the *ger* can judge [his fellow *ger* for conversion]. The reason is that none of this has the slightest connection to the prohibition derived from the verse "you shall surely place upon yourself… from among your brethren" — but not a *ger*. For this is not considered as [a Jew by birth] placing a *ger* upon himself to judge him, rather the *ger* is judging his fellow *ger*…

Again, the same basic point: a *ger* judging another *ger* is not a violation of the appointment rule.

Model 4 — Conversion Courts are Identical to Monetary Courts

This model is very closely related to the previous one. The difference is that according to Model Three, the point is that as long as the *ger* is not ineligible for intrinsic reasons, as he is for legislation and capital cases, he is automatically eligible unless excluded by the appointment law. Since the appointment law applies only to born-Jews, conversion court is automatically one in which he is eligible to sit. According to Model Four, conversion court is designed to be an exact parallel to monetary courts; hence whatever is acceptable for one is acceptable for the other. Since the Talmudic sources about a *ger* sitting as judge relates specifically only to monetary cases, these two models are often presented in tandem.

One supporter of this argument is R. Yisrael Zev Mintzberg, who references this after putting forth the third argument.

ויעוין שם בתוספות... שכבתו תי[רוץ] למאן דאמר דחד נמי כשר משום דגר מדמי ליה לגזילות וחבלות – מזה מוכח דאין לחלק בין גר לדיני ממונות,

And look there at the Tosafot… they wrote as a response [explaining why according] to the position that one [judge] would be sufficient [to judge monetary cases] that [the reason this would not apply to a conversion court] is because conversion is analogized to cases of theft and assault [which require three judges]. From this it is clear that one cannot distinguish between conversion and monetary cases.

ובחליצה שאני, דכתיב ביה 'בישראל'...

Ḥalizah, however, is different, since the verse used the term 'in Israel'.

R. Mintzberg argues that the rules for conversion courts and monetary courts are identical in halakha, and, therefore, since the *ger* may sit on the court for the former if the person he is judging is also a *ger*, the same must apply to conversions.

This position was adopted by R. Gedalia Felder in a short responsum printed in the second edition of his *Naḥalat Ẓvi* (1:226–227):[134]

...יש לומר היות דקיימא לן דגר דן את חברו גר... וגרות הלא 'משפט' כתיב ביה, ומזה ידעינן דבעינן שלשה... לא שונה גירות מדיני ממונות.

It would seem that since we have established that a *ger* may judge his fellow *ger*… and with regard to conversion the word 'judgment' is used, which is how we know that [the conversion court] requires three judges… there is no difference between conversion courts and monetary courts.

וכן מצאתי בעיוני בדבר בשו"ת שארית ישראל להגאון ר' ישראל זאב מינצבערג ז"ל... שדן בזה בקיצור, והעלה להתיר שבית דין של גרים יקבלו גרים אמיתיים ולטפל בכל ענייני גרות...

And this is what I find, in my research on this matter, in the responsa of the great R. Yisrael Zev Mintzberg of blessed memory… who dealt with this matter succinctly, and argued for the allowance of a court made up of *gerim* to receive true converts [into the faith],[135] and to oversee all aspects of the conversion process…

134. b. 1921 Iczuki-dolne (Galicia) — d. 1991 Toronto

135. Felder's addition of the phrase "true converts" is striking, as it has no parallel in Mintzberg's responsum. I would suggest that it is related to Felder's main concern, which is that all the members of the court be observant. Perhaps Felder was trying to avoid the impression that allowing converts on the court would mean allowing "anybody".

Like Mintzberg, Felder uses both the third and fourth arguments, although the focus of his piece is on the latter.

This position was also adopted by R. Zeev Wolf Roggin.[136] In a letter to his colleague R. Samuel Yalow,[137] Roggin argued that it could be proven from Tosafot that a *ger* was eligible to sit on a conversion court. Since to my knowledge the original letter has never been published, I will quote from Yalow's summary (*Shalmei Shmuel* 45):

והוא חפץ להביא ראיה מהתוספות יבמות מז דגר כשר, מהא דכתבו "משפט אחד לכם ולגר הגר", ושם הוא בדיני ממונות.

He (Roggin) would like to offer a proof from Tosafot… that a *ger* is eligible [to sit on a conversion court], since they based their position on [the verse] "One judgment should there be for you and the *ger* who dwells [among you]", and this is referring to monetary cases.

This is, essentially, the same argument as that offered by Mintzberg.

A longer and more expansive version of this argument was put forward in the responsa *Ba-Mareh ha-Bazaq* (3:82 n. 2):

136. d. 1975, Boston; Roggin is the author of the *Minḥat Ze'ev*. He was the son of R. Nahum Rogosnitzky, a Rosh Yeshiva of Yeshivat Etz Haim. Roggin was also the uncle of the famous R. Eliezer Waldenberg (author of the *Ẓiẓ Eliezer*).

137. Yalow's position and Roggin's critique will be discussed further on in the article.

Even though conversion requires a court of three… it would seem that it is no stricter than a monetary court, for the very rule that a court is necessary for conversion is learned from the fact that the term "judgment" is used in reference to conversion. The point of the *gemara* here is to say that just like monetary courts require three [judges] so too conversion requires three… In fact, R. Yehudah b' Rabbi Yom Tov and R. Simḥa… went very far with this analogy between monetary and conversion courts and wrote that from Torah law conversion would be acceptable even with one judge… Even the Tosafot entertained this possibility… We see from all this that the *gemara* learns the rules of the conversion court from those of monetary court. If so, a *ger* should be considered eligible to oversee conversions like he is eligible to judge a *ger* for monetary cases…!

אף-על-פי שבגירות צריכים בית-דין של שלושה… נראה שאינה חמורה מדיני ממונות, שהרי לומדים את עצם הצורך בבית-דין לגירות משום שבגירות כתוב "משפט" (יבמות שם). כוונת הגמרא בזה היא לאמור שכמו שבדיני ממונות צריכים שלושה, כך בגירות צריכים שלושה… וה"ר יהודה ברבי יו"ט ורבנו שמחה ז"ל… הרחיקו לכת בדמיון גירות לדיני ממונות וכתבו שמדאורייתא גירות כשרה בדיין אחד… ואפילו תוספות… היתה להם הוה אמינא כזאת… רואים מכל זה שהגמרא לומדת את דיני בית-הדין של גירות מדיני בית-דין של ממונות, ואם כן גר צריך להיות כשר לגייר גרים כמו שהוא כשר לדון גר בדיני ממונות…!

Even more than this, we have seen that even the laws of the conversion itself are learned from monetary law… We see, in fact, that even the rules of conversion are really the rules of financial cases, where it is permitted to finish the case at night whereas in capital cases even finishing the case at night would disqualify the proceedings. Now if one were to say that *ḥalizah* should solve this, since a born-Jew is required for the *ḥalizah* court… and even so it is [also] analogized to financial cases…? This is no argument, for *ḥalizah* has a specific derivation from a verse that demonstrates that a born-Jew is necessary, which is not true of conversion, which is learned from financial law. Therefore, all of the rules [of conversion courts] must be derived from the rules of monetary courts… Hence *gerim* are by necessity eligible to sit on a conversion court since they are eligible to judge [other] *gerim* in monetary courts.

ויותר מזה, ראינו שאפילו את דיני הגירות עצמם לומדים מדיני ממונות… רואים אפוא שגם דיני הגירות עצמם הם דיני ממונות, שבהם סוף דין כשר בלילה, בעוד שבדיני נפשות גם סוף דין פסול בלילה. וא"ת שחליצה תוכיח שצריכים דווקא ישראל גמור בבית-דין של חליצה…, ואף-על-פי-כן מדמים אותה לדיני ממונות…? אין זו ראיה, שבחליצה יש גזירת הכתוב, שכשרה רק בישראל, מה שאין כן בגירות, שלומדים מדיני ממונות, ולכן צריכים ללמוד כל ענייניה מדיני ממונות… וגרים צריכים להיות כשרים לדון בבית-דין של גרים, כמו שכשרים הם לדון בבית-דין של ממונות.

The author of this responsum brings a number of strong proofs that conversion courts are, halakhically speaking, exactly the same as monetary courts. He

discounts the comparison to capital courts, since these have different rules, such as whether it is permissible to finish the proceedings of a case at night. Furthermore, he points out that one cannot use *ḥalizah* as a paradigm, since it has a special derivation from a verse unique to it.[138]

Model 5 — Permissibility Based on Other Factors

A fifth "method" for dealing with this question has been to be lenient not for intrinsic reasons but due to a combination of factors.

For example, after putting forward his arguments for why a *ger* would be intrinsically eligible to sit on a conversion court, R. Yonah offers a secondary defense.

ומלבד כל זה, יש לצרף מה שכתב הכנסת הגדולה... דמהני קבלה בגר דיין שידון הישראל... ומתומים... כתב דלהכנסת הגדולה מהני אף קבלת חשובי העדה, אף שאין רוב הצבור מסכימים... ועיין להראש... דמשמע מתירוצו הראשון דמהני קבלה בגרים...ועיין סמ"ע וש"ך דשפיר רשאי לדון הגר את ישראל בלא כפיה, ורק לכפותו לדון אין רשאי. וכן הוא להדיא בתוספות ישנים (יבמות מה:) עיין שם. ובודאי יש לצרף כל זה להתיר למנותו לבית דין של גיורים, דלא מבעיא לפי מה שכתבתי לעיל דלא חשיב כדן את הישראל, אלא כדן את הגר שרשאי, אך אף אי נימא דחשיב כדן את הישראל, יש לצרף השיטות הנזכרות לעיל דמהני קבלת הישראל לכך, ושפיר דמי למנותו.

In addition to all this, one can certainly add the position of the *Knesset ha-Gedolah*… that accepting a *ger* as a judge is efficacious even to judge a Jew by birth… and the *Tumim* who said that even the acceptance of the leadership is sufficient… and see the Rosh… and see the *Sma* and the *Shakh*, [who argue] that a *ger* may judge an ethnic Jew if he is without coercive authority… and this is said explicitly by *Tosafot Yeshanim* as well… certainly all this can be added together to allow [the *ger*] to be appointed to a conversion court. For not only is it true according to what I wrote previously that this is not considered a case of judging ethnic Jews, but rather judging a *ger*, which is permitted, but even if one were to say that this is like judging born-Jews, one could add the above positions that the Jews accepting [the *ger*] as a judge is efficacious, and it would still be fine to appoint him.

138. It is true that the *Ba-Mareh ha-Bazaq* only uses this argument to defend the practice *de facto*, but *de jure* he believes that a *ger* should not sit on a conversion court. Nevertheless, this is not due to a competing theory but is out of deference to R. Shlomo Kluger who is strict on this matter. This will be discussed further in a later section.

ואין צריך הסכמה כללית. אלא שראשי הבית דין והצבור שם מסכימים לזה,	And a general acceptance [of him] is unnecessary. Rather the heads of the court and the community there should accept it.
ובפרט בענינים שלא שייך בהם כפייה, יש לדון להקל למנותו...	This goes especially for cases where [the judge] has no coercive power, in these we should certainly be lenient and give him the appointment…

Yonah's argument here hinges on the position of R. Ḥaim Benveniste in his *Knesset ha-Gedolah* that acceptance of a *ger* as a judge by born-Jews would make him eligible to serve as their judge. As he makes clear, Yonah is actually relying on a specific interpretation of this position, namely that of R. Yonatan Eybeshutz in his *Tumim*, which states that the community as a whole need not accept the *ger*, but it is sufficient if he is accepted by the leadership.[139]

Yonah ties these positions together with the principle that non-coercive authority over born-Jews is permissible for a *ger*. Hence, he argues, even if one were to deny his argument about why a *ger* is intrinsically eligible to sit on a conversion panel, one should still agree that he should be permitted to do so, because even if he weren't intrinsically permitted, he would still be eligible if the leadership of the community accepted him as their judge.

A similar, although not identical, collection of mitigating factors is used by the author of the responsum in *Ba-Mareh ha-Bazaq* to defend a *ger* overseeing a conversion, albeit *be-di-avad*.

139. See discussion of these positions in Appendix 1

מאחר שאפשר להתווכח על עצם הפסק של ה"חכמת שלמה"... ואפילו לשיטת ה"חכמת שלמה" יש לומר שבדיעבד אפשר לסמוך על שיטת רש"י, שגר כשר לדון גר בדיני נפשות... בצירוף שיטת הר' יהודה ברבי יו"ט ורבנו שמחה ... שמדאורייתא גירות כשרה בדיין אחד, ורק מדרבנן צריכים שלושה. על כן מדאורייתא הגירות מתקיימת בדיינים הישראלים, וצירופו של הגר הוי חיוב מדרבנן, ולכן ניתן להקל.

Since it is reasonable to argue with the very *pesaq* of the *Ḥakhmat Shlomo*…,[140] and even according to the *Ḥakhmat Shlomo* one could argue that it would be permissible, *de facto*, to rely on Rashi's position that a *ger* can judge his fellow even for capital cases… together with the position of R. Yehudah b' Rabbi Yom Tov and R. Simḥa… that according to Torah law conversion can be done with one judge, and that it is only a rabbinic requirement to have three. Therefore, *mi-de-oraitta* the conversion would be deemed acceptable with the Jewish judges, and the joining of a *ger* to this court only causes problems with the rabbinic requirement, and therefore we may rule leniently.

נוסף לנ"ל ניתן לצרף דעת ה"כנסת הגדולה"... שאם הקהל קיבלוהו עלייהו, אפשר לדון, ומשמע מדבריו שאפשר לדון אפילו נפשות... ואולי אפשר להוסיף לזה גם דעת הריב"א... שאם אין כמותם בישראל, אז גר כשר לדיני נפשות, וכן כתב הרשב"ץ ...וכן הסכים ה"ברכי יוסף"..., ולכן יש לומר שאם במקום שהגר נמצא בו אין כשרים שיכולים לשבת בבית-דין חוץ ממנו, שהוא כשר לכל. ובצירוף כל הנ"ל נראה להכשיר הגירות בדיעבד.

In addition to this, one could include the position of the *Knesset ha-Gedolah*… that if the community accepts him he can sit as judge, and it would seem from his words that this would even apply to capital cases… Perhaps it would even be possible to add the position of Riva… that if there aren't others of similar stature among the Jews by birth, then a *ger* could judge capital cases, an opinion with which Rashbaẓ agreed… as did the *Birkei Yosef*… Therefore, one could argue that if there are no eligible Jews in the area where the *ger* serves qualified to sit on a court other than him, than he would be eligible to judge any case. Combining all of the above, it would seem reasonable to accept the conversion [overseen by a *ger*] *de facto*.

As opposed to one overarching external factor, the author of this responsum uses a number of independent arguments. First, he argues that one could accept the lenient position. Second, if one does not accept this position, one can rely on Rashi. Third, he argues that one can rely on the position that only one judge is necessary according to Torah law, so that using a *ger* would only be a violation of a rabbinic statute, making relying on Rashi's position significantly more palatable.

140. The strict position of R. Shlomo Kluger on this question will be discussed in a later section.

Next the author suggests that one can use the position of the *Knesset ha-Gedolah* as a mitigating factor, assuming that if the *ger* was appointed then he has been accepted by the community.[141] Finally he adds a qualified mitigating factor, i.e. if there is no one as suitable as the *ger* to sit on the court in that community, then a number of authorities would argue that that makes the *ger* automatically eligible.

This type of argument is put forward as well by R. Moshe Klein in his *Mishnat he-Ger* (3:19). First, R. Klein puts forward his position in the main text:

בית דין המורכב מדיינים גרים, נחלקו הדעות האם כשר הוא לדון ולקבל גרים. ובמקום שאחד מהדיינים ישראל יש להקל לצרף עמו שני גרים בשעת הדחק.

A court made up of *gerim* — the authorities debate whether it would be eligible to oversee conversions. If one of the judges is a born Jew, it is fitting to be lenient and allow the joining of two *gerim* [as the other judges] when necessary.

Although R. Klein does not state what he thinks the status of someone who converted with a court that was entirely made up of converts, he argues that if one of the judges was a born-Jew, there is no question about the validity of the conversion, although it should be avoided when it isn't particularly inconvenient to do so. He explains his reasoning in a long footnote (n.41).

דכיון שנתבאר לעיל מדברי המרדכי בשם מקצת ראשונים, דמדאורייתא די בדיין יחידי לקבלת הגרות, ורבנן הוא דאצרכוהו שלושה, ממילא ספקא דרבנן הוא, ואחר שיש מן הפוסקים שכתבו שדין גרות כדין דיני ממונות, שגר רשאי לעסוק בהם בדינו של חבירו הגר, יש להקל בזה בעת הצורך כשאין בנמצא ישראל כשר הראוי להצטרף עמו לדין.

As was explained above, according to the Mordekhai in the name of a number of *rishonim*, according to Torah law one judge is sufficient in order to accept converts, and it was the rabbis who required three, inevitably the question [of whether a *ger* is eligible or not] is a case of a doubt about a rabbinic law, and since there are *posqim* who have written that the process of conversion is like the process with regard to financial cases, where a *ger* is eligible to be involved when judging his fellow *ger*, one should be lenient about this when necessary, i.e. when there are no other born Jews to join with him (i.e. the ethnically Jewish judge).

141. The author of the *Ba-Mareh ha-Bazaq* responsum does not mention whether it is necessary to use R. Eybeshutz's interpretation of this source in the *Tumim* for this argument, but it would stand to reason that it is.

There are a number of things worth noting in this piece. First, R. Klein seems to take the position of R. Yehudah b. R. Yom Tov and R. Simḥa very seriously, since the possibility that they are correct is the core reasoning behind his distinction between a court of two *gerim* and a court of three. Additionally, from the way Klein phrases his reservations, it would seem that he puts the judgment call in the hands of the overseeing rabbi. There seems to be no question in Klein's mind that a conversion overseen by a court made up of one born-Jew and two converts is valid. The only question is when it would be worthwhile act upon this and include converts in the conversion panel. Klein answers this question by saying that when the overseeing rabbi, who is an ethnic Jew, decides that these are the people or best people available, he can use them.

Klein defends the correctness of his view against an unnamed disputant, who "puts forward" a counterargument.

(והנה אף שראיתי למי שכתב לחלק, שכאשר אחד מן הדיינים פסול לדון גריעא טפי מדיין יחידי, שהרי לענין בית דין פסול קיימא לן שאף אם נמצא רק אחד מן הדיינים פסול נפסלו כולם, נראה לי דהכא שאני, דכיון שמתחילה דעתם לכך, ומצרף דיינים גרים אלו רק להצד שיש תועלת בצרופם, ולהצד שאין בכך תועלת כוונתו שיחשב הישראל כדיין יחידי, מועיל תנאו זה להכשיר את היחידי בכל גווני.)

(Now despite the fact that I have seen a certain author argue that when one of the judges is ineligible it is worse than using only one judge, since when it comes to disqualifying a court, we have established that even if one of the judges is ineligible, the entire court becomes disqualified. Nevertheless, this case seems to me to be different, since this is the intention at the very beginning, i.e. that the *gerim* who are functioning as the other two judges were joined as a court only on the assumption that there is a benefit to this, but if there is no benefit, [the convert]'s intention is that the born-Jew should be considered the only judge — [in this case] his conditional appointment [of the other two judges] should be considered efficacious insofar as allowing the one judge to function on his own.)

Klein uses the mechanism of "conditional thinking", to argue that a court of three in a conversion is essentially a *beit din al tenai*, a conditional court. If it is to the benefit of the convert to have the three men watching constitute a court, then they count as a court, if it is not to his or her benefit, than they are not. This — somewhat idiosyncratic — argument demonstrates the seriousness with which Klein takes the positions of R. Yehudah b' R. Yom Tov and R. Simḥa.

Finally, in case the reader is unconvinced by the above argument, Klein throws in a number of other factors that should lead one to be lenient.

ובפרט שיש בזה כמה צירופים נוספים להקל, שהרי יש מן הפוסקים דסבירא להו דבקיבלו עלייהו או בדבר שאין בו כפייה מותר לגר לשמש כדיין, ויש דסבירא להו שאם הוא גדול בדורו שאין אחר טוב הימנו הדבר מותר ...

Especially since this case has a number of additional reasons to lead one to follow the lenient position. For there are some authorities who believe that when the judges are accepted [despite their being converts] or in a case where there is no coercive authority, a convert is eligible to function as a judge. Additionally, there are those who believe that if the convert is the greatest of his generation, such that there is no one greater than him, then he would be permitted to sit on the court.

All of the above arguments are familiar and were used by previous authorities. However, it is worth remembering that Klein's interpretation of the position that one can use a *ger* when he is the most qualified judge is that it means that converts are eligible to be judges and that it is only that judges who are ethnically Jewish get priority. Hence, to Klein, including this position means including a position that *gerim* are intrinsically eligible and that violation of this principle would not disqualify the conversion.[142]

Model 6 — The Compromise Model

Some authorities have put forth arguments that the *ger* should be considered eligible to sit on a conversion court only for certain parts of the process, or only *be-di-avad*.

R. Yonah, for example, puts forward this type of an argument, even though he clarifies that he is just suggesting this as an extra point, since he believes including a *ger* as part of the conversion panel is intrinsically permissible.

מכל הלין טעמי נראה לעניות דעתי שבודאי יש להקל לצרף גר לבית דין של גיורים,

From all of the above reasons it would seem, in my humble opinion, that it is proper to be lenient and permit the *ger* to be a part of the conversion court.

142. See Appendix 1 for a discussion of this position and Klein's comments.

ובפרט לגבי הטבילה שנח' הראשונים אם צריכה להיות בפני ג' לעיכובא או רק לכתחילה, אף דאנן קיימא לן דבעינן ג' לעיכובא, מכל מקום ודאי דחזי לאיצטרופי ד' הפוסקים דלא בעינן כלל ג' רק לכתחילה. וממילא צירופו של הדיין הגר כדיין שלישי לא חשיב עשיית דין על ידי הגר. שאפשר לגייר אף בלעדיו.

This goes especially for the immersion, where the *Rishonim* are divided about whether this requires a court of three *de facto* or just *de jure*. Even though we hold that the requirement is even *de facto*, nevertheless, it is certainly sufficient to rely on the other position that three are only necessary *de jure* and argue that the *ger* is not really functioning like a third judge and, therefore, there is no "judgment by a *ger*", since the conversion could be done without him.

אך כל זה רק לרווחא דמילתא, דאעיקרא נראה דאף לגבי קבלת מצוות דבעינן בפני ג' לעיכובא אליבא דכולי עלמא, חזי שפיר לצרופי להאי גר לבית דין המגייר על ידי הסכמת ראשי הבית דין והמקום לכך.

Nevertheless, [the above argument] was only offered as an expansion of my points, but the bottom line is that even for the ritual of acceptance of mitzvot, where everyone agrees that three [judges] are necessary, it is still certainly fitting to allow the *ger* to join the conversion court, assuming that he is accepted by the heads of the court and the community for this purpose.

Even though it is clear from this source that Yonah believes there to be know real reason for compromise, nevertheless, he points out that for those who are more concerned with the possibility that a *ger* would be ineligible, it should be easier for them to accept the *ger* for overseeing the immersion, since there are those who believe that this process doesn't even require a court of three. This would mean that if one were to adopt this compromise position, the only thing the *ger* could not oversee would be the ritual of accepting mitzvot.

A similar argument is put forward by R. Shalom Yosef Eliashiv, an authority firmly in the strict camp on this question.[143] The rabbinic judge, R. Nahum Eisenstein, quotes R. Elyashiv's opinion in a case where a man had been circumcised as part of his conversion before three judges, one of whom was a convert.[144]

143. As will be seen in a later section

144. *Pisqei Din Yerushalayim — Dinei Mamonot u-Birurei Yahadut* vol. 7 file #107 — section c.

התיעצנו עם מרן הגרי"ש שליט"א, שהורה לנו – שמאחר וקיים בזה ספק אם זקוקים לבי"ד בשעת המילה, וכן ישנו הספק השני אם גר כשר להיות חבר ביה"ד, יש להכשיר את המילה ואין לערוך הטפת דם ברית לחומרא, אפי' אם המבקש יסכים לכך. הוסיף מרן שליט"א שאין צריך להוסיף עוד ספק שרופא דתי עמד במקום ליד המוהל, ואולי הוא יחשב כדיין, אף על פי שלא התכוון להעיד.

We consulted with our teacher, the great R. Elyashiv (may he live long), and he communicated to us that since there is a doubt in this matter whether a court is needed to oversee the *brit milah*, and there is a second doubt, namely whether a *ger* is eligible to sit on the court, one should treat the *milah* as being kosher, and there is no need to be strict and do a *haṭafat dam brit*, even if the man would agree to it. Our teacher added that there is no need to even add a third doubt, namely whether the religious doctor who was standing beside the *mohel* could count as the third judge, even if he didn't intend to at the time.

Like R. Yonah with regard to the immersion, R. Elyashiv argues here that since the requirement for a court of three to oversee the *brit milah* is itself in doubt, one can rely on the lenient position about a *ger* in conversion, creating a *sfeq sefeqa* (a double doubt) and permit it. Unlike Yonah, however, Elyashiv clearly intends this only to be relied upon *be-di-avad*, not *le-khatḥila*.[145]

The author of the responsum in *Ba-Mareh ha-Bazaq* also suggests a compromise position.

חוץ מכל הנ"ל, אם צירפו הגר לבית-דין רק לעניין מילה או טבילה, כשר בדיעבד בכל אופן ... ואפילו לרמב"ם ור"ף שלכתחילה טבל או נימול שלא בפני ג' אסור להינשא לישראלית, בדיעבד לא תצא.

Other than the above mentioned arguments, if a *ger* joined the court only to oversee the circumcision or the immersion, it would be acceptable *be-di-avad* in any event… even according to Rambam and Rif, for even though *le-khatḥila* if one immerses or is circumcised not in front of three [judges] it is forbidden for the person to marry a Jewish woman, if he did, it is not necessary for the couple to divorce.

145. R. Avraham Dov Levin (*ad loc.*) argues that this argument seems to contradict the editor's comment in a quote from R. Eliashiv that will be dealt with in a later section, where Elyashiv claims that using a *ger* on the conversion court would invalidate the proceedings even *de facto*. However, it appears to me that this doesn't really contradict that point, since it is possible for an authority to treat something as a question, not because he himself is unsure but because he recognizes that many of his peers are not in agreement with him.

This argument mentions both circumcision and immersion, and is essentially similar to the previous two.

This same type of argument is put forward by R. Moshe Klein (*Mishnat ha-Ger* 3:19 n.41), as a final defense of his position that one can include up to two *gerim* in a conversion court if necessary:

ואם קיבל עליו מצוות בפני שלושה מישראל, ורק המילה והטבילה נעשית בפני גרים, נראה פשוט שיש לסמוך בזה להקל, אחר שיש מן הפוסקים דסבירא להו דראיית בית הדין במילה והטבילה אינה מעכבת בחלות הגרות.

If he performed the acceptance of mitzvot before three born-Jews, and only the circumcision and the immersion were done before *gerim*, it seems apparent that one could rely on this to be lenient, since there are a number of authorities who believe that the direct participation of a court in circumcision and immersion is not an absolute requirement for the conversion to be valid.

Although R. Klein's primary point, discussed in the previous section, was to defend the eligibility of a court made up of two *gerim*, here he argues that even a court made up of three *gerim* can be easily defended as eligible to oversee the procedure of circumcision and immersion. Although it is not clear that the other authorities in this section would argue with Klein, it is worth pointing out that he is the only one to discuss a case of a conversion panel made up entirely of converts.

Finally, it is worth noting that the overall decision of the *Ba-Mareh ha-Bazaq* responsum is a compromise of sorts albeit along a different axis; this despite the multiplicity of arguments the author puts forward in favor of the idea that the *ger* is intrinsically eligible to oversee conversions.

שאלה: האם גר יכול להצטרף לבית-דין של ג' לקבל גרים אחרים, ומה הדין בדיעבד?

Question: May a *ger* join a court of three judges for the purpose of accepting converts, and what would be the ruling if he did so?

תשובה: נראה שגר לא יכול לשבת בבית-דין לגייר גרים, ואף על פי שיש לפקפק על פסק זה, כך צריכים לנהוג. ולעניין דיעבד יש להקל.

Answer: It would seem that a *ger* may not sit on a conversion panel, and even though one could dispute this ruling, this is the way we should practice. However, if it was done already, one should be lenient.

The author of the responsum here claims that one should not permit a *ger* to join a conversion court, although if he did so, the conversion would be valid. This would seem to be a surprising decision, considering the many reasons,

intrinsic and extrinsic, that the author brings to defend the eligibility of the *ger*. Nevertheless, the reason behind this surprising decision is set out clearly in footnote 3.

הואיל ולא מצאנו פוסק שמכשיר במפורשות, אין לנו כוח לפסוק נגד המשתמע מדברי ה"חכמת שלמה".	Since we have not found any authority that explicitly permits this, we do not have the power to decide in a way contrary to the implication of the words of the *Ḥakhmat Shlomo*.

From this it is clear that it is not the persuasive power of the argument found in the *Ḥakhmat Shlomo* which convinces the author,[146] but rather the fact that R. Shlomo Kluger made the argument, and that the author could not find an authority that disputed it. If this is really the author's main concern, I think from the above one can safely say that such authorities have been found.

Strict View

There are a number of conceptual models among the strict views as well.

Model 1 — Doing a Conversion is Like Having Jurisdiction over all Jews

R. Samuel Yalow,[147] in his glosses on the Babylonian Talmud (*Minḥat Shmuel* 225–226, *Sanhedrin*), discusses this question and offers two possible analyses.

ונסתפקתי בגר שבא להתגייר, שצריך שלשה, אם גר אחר יכול להיות מכלל השלשה.	I am unsure about when a candidate seeks conversion, and he requires three [judges], whether a *ger* can be one of those three.

146. This is fortuitous since the author of the *Be-Mareh ha-Bazaq* totally misunderstood R. Kluger's argument. This is because he did not have access to the primary source in which Kluger made it.

147. b. 1892 Rakiskie (Lithuania) — d. 1974 Syracuse.

דהוי כמו לדון את חבירו, דגר כשר, דהא דבגר צריך שלשה ילפינן ממשפט אחד יהיה לכם ולגר, ואין משפט פחות משלשה, ובמשפט של הגר הרי גר חבירו כשר בו, ואם כן גם לגיירו ולהכניסו בכלל ישראל גם כן כשר?	It is like judging his fellow, for which a *ger* is eligible, since the fact that a conversion requires three judges is learned from [the verse which states] 'one judgment shall there be for you and for the *ger*', and judgment cannot be made with less than three, and regarding the judgment of a *ger*, his fellow *ger* is eligible to do so. Therefore, should it not be that [the *ger*] would be eligible to convert him and bring him into the community of Israel?
או דלמא דאין כשר כאן אלא ישראל או לכל הפחות גר שאמו מישראל, ועיין רש"י קידושין דף ס"ב... וצריך עיון	Or, perhaps, only an ethnic Jew would be eligible, or, at least, a *ger* whose mother was ethnically Jewish, and see Rashi *Qiddushin* (62b)… And the matter requires thought.

Yalow's first possibility is the standard lenient approach outlined above. His second one, however, seems puzzling, as his comment is terse and his reference to Rashi unexplained.

The Rashi he is referring to is a gloss on the pericope in b. *Qiddushin* 62b.[148] Commenting on the Talmud's statement that a *ger* requires three, Rashi writes:

צריך שלשה – ישראלים שנזקקין לו להטבילו ולהודיעו מקצת מצות קלות וחמורות כדאמר ביבמות.	Requires three — Jews, who will attend to him, to immerse him [in the *miqvah*] and to inform him about some of the easy commandments and some of the hard commandments, as it says in *Yebamot*.

The simple point of Rashi's comment is to clarify what the word "three" refers to. Since the topic of the pericope is not conversion, the reader may be confused at the phrase "requires three" and wonder: "three what?" Hence Rashi explains "three Jews", i.e. three judges/people to oversee the conversion.[149] The point of the Talmud here is that since the candidate for conversion requires three other people to participate in the process, he is not really in control of whether he converts or not. Hence, his statement that he will marry her when he converts becomes analogous to the other two conditions that do not count,[150] since he has no control over whether they occur or not.

148. See main article for discussion.

149. This interpretation was argued forcefully by R. Dov Linzer, in a list-serve exchange with R. Michael Broyde.

150. i.e. when he is freed and when her husband dies

Yalow's point seems impossible to understand and his reference to Rashi almost inexplicable and totally out of context. In fact, Yalow was challenged by R. Zeev Wolf Roggin of Boston on this very point, and Yalow responded with a clarification of his understanding of Rashi and why he was suggesting that there may be reason for stringency.[151]

...דרש"י שם... כתב "גר צריך שלשה – ישראלים", מזה משמע דלא גרים...	…For Rashi there wrote: "a conversion requires three — Jews". This seems to exclude *gerim*…
...אני רק כתבתי שגירות איננו דין של גר, אלא דין של ישראל, שאנחנו עם ישראל דנים על הגברא של הגר, אם הוא ראוי להיות מקובל אצלינו,	…My point is that conversion is a not a rule affecting [only] the convert but it is a rule affecting Israel [as a whole], for we, the people of Israel, are judging the very person of the candidate to determine whether he is fit to be accepted among us,
וזה איננו דיני נפשות ולא דיני ממונות אלא דין משפט ישראל, ועל כרחך יהיה נצרך דוקא לישראלים ולא גרים, כדמשמע מרש"י...	And this is neither a capital matter nor a financial matter, rather it is a judgment affecting all Israel, therefore, by necessity, it would require only Israelites and not *gerim*, as was implied by Rashi…

Despite the simple reading of Rashi described above, Yalow argues that what Rashi means by "Jews" is ethnic Jews, i.e. not *gerim*. To "explain" this Rashi, Yalow creates a new category of court — i.e. courts that deal with matters of concern to the Jewish people as a whole.[152]

Despite Yalow's dismissal of Roggin and defense/clarification of his own position, it would seem worthwhile to look more carefully at Roggin's objections. Again, since I have no access to the original letter, I will quote from Yalow's summary:

151. The letter with the clarification was published in Yalow's responsa *Shalmei Shmuel* (45).

152. Perhaps the Sanhedrin could be fit into this rubric, in its capacity as chief legislative body.

...על זה כתב לי ידידי הרב הגאון הנזכר לעיל: ראשית דרש"י איננו פוסק להלכה אלא רק מפרש, ושנית דשיטת רש"י היא דאפילו לדיני נפשות כשר גר.	With regard to this [understanding of Rashi], my friend, the great rabbi mentioned earlier, wrote to me: First, Rashi is not deciding halakha, he is merely explaining the Talmud. Second, the position of Rashi is that a *ger* is eligible [to judge his fellow] even in capital cases!

R. Roggin has a two-pronged attack. First, he argues that it is always tricky to try to deduce a *pesaq* from a gloss of Rashi's, since Rashi's intention is mainly to explicate the passage, not to offer a halakhic judgment. Second, this very same authority (Rashi) is the one who believes that a *ger* can judge his fellow *ger* even for capital cases. It would seem odd, to say the least, that he would then go on to declare the *ger* ineligible to oversee a conversion, something ostensibly much less weighty than condemning someone to death. This objection is the reason R. Yalow is forced to create the "*über-category*" of "matters of concern to the Jewish people as a whole."

Despite what seems like the forced nature of this argument, it has found a defender in the important contemporary halakhic decisor, R. Shalom Yosef Elyashiv, although he seems to have come to the same conclusion independently of R. Yalow.[153]

אכן נראה דלענין לגייר את הגרים [דבעינן בפני שלשה] אז פסול דיין שהוא גר, ומשום דעצם קבלת גרים זה נחשב שדן את ישראל, דהרי זהו נדון להכניס גרים אל קהל ה', ונחשב שדן בזה את כללות קהל ה', וזה נחשב שדן את ישראל. כן נראה פשוט בסברא.	It would seem that with regard to conversion, where three judges are required, a judge who was himself a *ger* would be ineligible, since the very acceptance of converts should be considered as if [this judge] is judging all of Israel, since he is deciding whether to admit *gerim* into the community of God, hence it is considered as if he was judging the entire community of God, and that should be considered "judging Jews." This seems to me conceptually obvious.
(ושאלתי את רבינו אם זה מעכב את הגירות כשאחד הדיינים היה גר, ואמר רבינו דלדעתו זה לעיכובא.)	(I asked our teacher[154] if this would render the conversion void if one of the judges was a *ger*, and our teacher said that, in his opinion, it would void it.)

153. Rabbi Shalom Yosef Elyashiv, *Hearot la-Masekhet Qiddushin* 436

154. i.e. R. Elyashiv — this is the editor's comment

The argument here is conceptually identical to that put forward by R. Yalow. The difference is that whereas R. Yalow was "of two minds" on the subject, R. Elyashiv seems to be certain that the *ger* would be totally ineligible to sit on the panel, to the extent that the entire process would become invalidated if he did.

The above argument was vigorously attacked by R. Yisrael Meir Yonah in his article.

וזכורני שהביאו משם גאון אחד שליט"א שפסק שאינו יכול לגייר משום שאינו דין בגר המתגייר אלא הוי דין לכללות עם ישראל, וזה אינו רשאי לדון...

I remember that the position of a certain authority was quoted to me who argued that [the *ger*] could not participate in the conversion, since it is not a matter restricted to the person converting but is a matter relevant to the entirety of Israel, and for such matters he is not permitted to judge…

...להראשונים... דסבירא להו שאין הגרים בכלל ערבות, נראה ודאי דהוי כגר שדן את חבירו הגר... אכן נראה לפי עניות דעתי ד... אף למאן דאמר שיש ערבות עליהם, לא חשיב בנידון דידן עשיית דין לישראל שערבים הם מעתה עליהם, אלא דין באותו הגר המתגייר, שאין זה אלא תוצאה והשלכה לגבי הישראל, שמעתה ואילך יהיו ערבים עליהם, אך הדין עצמו ודאי שהוא כלפי הגר בלבד, שנחשב הוא כגר צדק...

According to the *Rishonim*… who believe that *gerim* are not included in the principle of mutual responsibility (*arevut*), it would seem certain that [conversion] would be seen as a case of judging one's fellow *ger*… However, it would appear, in my humble opinion, that… even according to those who believe that the principle of mutual responsibility does apply to them, this case would still not count as a judgment relevant to ethnic Jews, since they would not be responsible for [the new converts], but rather it is a judgment relevant to the *ger* who is converting. For [all Jews] being responsible for [the new converts] is only a secondary consequence, but the judgment itself is aimed at the *ger* alone, who is considered now a righteous convert…

הגע עצמך, אטו בהא דגר הדן את חבירו הגר, לא יתכנו אופנים שיש בהם השלכה לגבי ישראל, כגון אם חייב באמת לחבירו הגר, ואז חובו של ישראל אחר לא יכול ליגבות ממנו, שנשתעבד כבר לאחרים, ועוד כיוצא בזה...

Think about it, with regard to the usual case of a *ger* judging his fellow *ger*, are there not cases where this has consequences to ethnic Jews? For example, if he required his fellow *ger* to pay a debt, then this money could not be collected by an ethnic Jew [to whom he also owed money], since a lien upon this money has already been granted to others, and other such examples…

R. Yonah here has two main points. First, he argues, that if one believes that the principle of *arevut*, i.e. mutual responsibility for all Jews, does not apply to

converts, there should be no reason for "all of Israel" to be concerned about a new convert. This point is interesting, if not somewhat idiosyncratic, since one can imagine other reasons why Jews might care about someone joining their people other than technical responsibility for the other's well-being. Additionally, this only applies to a subset of *Rishonim*, so the point is academic.

Yonah's second point is more substantial. He argues that applying the rule forbidding *gerim* from having coercive authority over born-Jews to conversion is a misapplication. Of course, Yonah argues, there are secondary consequences of converting a person to Judaism, but this hardly makes the case directly related to said consequences. To illustrate this, Yonah points out that there may be secondary consequences to born-Jews even in monetary cases, since the use of the *ger's* money to pay one obligation may make it impossible for him to pay another.[155]

Model 2 — Conversion is like Capital Cases

The idea that conversion should be analogized to capital cases seems to have first appeared in halakhic literature by accident. R. Shlomo Kluger, in his *Ḥakhmat Shlomo* (YD 268:3) offers this terse observation:

ועיין מה שכתבתי... בתשובה לק"ק בראדשען... שם כתבתי לחקור אם גרים כשירים לקבל גרים או לא, יע"ש בטעמו, והעליתי כי הדבר הזה תלוי בפלוגתת רש"י ותוספות יבמות, יע"ש מה שכתבתי בטעמו, ודו"ק.

See what I wrote… in a responsum to the holy congregation in Brodschon… There I discussed the question of whether *gerim* are eligible to accept converts or not. Look there at my reasoning. I claim that the matter is contingent upon the dispute between Rashi and Tosafot in *Yebamot*, see there for the reasoning…

We will see the responsum to which he is referring in a later sub-section, but since this responsum was not readily available until recently, this comment in the *Ḥakhmat Shlomo* was all certain authorities had to go on to understand R. Kluger's position.

155. I suspect that Yalow and Elyashiv would respond to this latter point by saying that there is a difference between claiming that a case intrinsically affects all Jews and that a case accidentally affects a particular Jew.

When dealing with this question, the author of the responsum in *Ba-Mareh ha-Bazaq* refers to this comment by Kluger, and tries to explain it.

ב"חכמת שלמה" של הרב שלמה קלוגר... כתוב ששאלה זו תלויה במחלוקת רש"י ותוס' ביבמות דף קב ע"א. ונראית כוונתו שהוא מדמה גירות לדיני נפשות, הואיל ויכול לבוא לידי נפשות, כגון איסור אשת איש, ולכן לפי תוס' אסור לגרים לגייר – הואיל וסבירא להו שגר פסול לדון גר בדיני נפשות. אבל לשיטת רש"י יהיה מותר לגר לגייר, הואיל וגר דן בדיני נפשות. והואיל ואנחנו פוסקים כתוס'... יוצא שגר לא יכול לשבת בבית-דין לגייר גרים.

In the *Ḥakhmat Shlomo* of R. Shlomo Kluger… it is written that the question is dependent upon the debate between Rashi and Tosafot in *Yebamot* 102a. It would appear that his point is that he (Kluger) analogizes conversion to capital cases, since [the convert] could end up committing a capital offense, like adultery. Therefore, according to the Tosafot a *ger* would be ineligible to oversee conversions since they [Tosafot] believe that a *ger* cannot judge his fellow *ger* in capital cases. However, according to Rashi's position, [the *ger*] would be eligible to oversee conversions, since a *ger* can judge [another *ger*] for capital cases. Now since we follow the position of the Tosafot… it turns out that a *ger* is ineligible to sit on a conversion court.

The author of this responsum tries to understand Kluger's terse comment. He suggests that it must mean that Kluger believes that conversion cases are like capital cases. The author suggests that his reasoning must be because once a person is converted, he is subject to the death penalty if he commits something that halakha considers to be a capital offense. Hence, Kluger would argue, since the position of Tosafot is considered normative halakha, and since Tosafot consider a *ger* to be ineligible to judge even his fellow *ger* in a capital case, he should not be eligible to oversee a conversion either.

Although as we will see later this is not actually what R. Kluger meant in the above comment, and as we have already seen, the author of the *Ba-Mareh ha-Bazaq* responsum does not think this point correct either,[156] this analysis has recently been championed by the contemporary rabbinic judge, R. Avraham Dov Levin.

R. Levin writes about this subject twice as part of his written decisions for two different cases. The first is found in *Pisqei Din Yerushalayim — Dinei Mamonot u-Birurei Yahadut* (vol. 5 file #340, section e),[157] where he writes:

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156. Although in practice, he is willing to bow to the authority of Kluger on this question, at least *le-khatḥila*.

157. This decision was made together with R. Shmuel Bebas and R. Baruch Shraga.

האם גר כשר לשבת בבית דין של גיור.	Is a *ger* eligible to sit on a court?
ה. בסנהדרין לו ב אמרו שגר כשר לדון דיני ממונות אך פסול לדון דיני נפשות. ועי' תוס' יבמות קא ב שבלי כפיה כשר לדון אף על פי שאמו נכרית...	In *Sanhedrin* 36b they said that a *ger* is eligible to judge monetary cases but not capital cases. See Tosafot *Yebamot* 101b that he is eligible to judge without coercion, even though his mother was Gentile…
וגיור שצריך בי"ד... משום שנאמר בו משפט אחד יהיה לכם כגר, ואין משפט פחות משלושה. ועי' תוס' שם אם צריך מומחין או לא. ועי' תוס' שם שדומה למשפט גזילות וחבלות ולא להודאות והלואות שמספיק יחיד מומחה.	Conversion requires a court… as it says "one judgment shall there be for you and the *ger*", and judgment is never with less than three. See Tosafot there about whether ordained judges are required or not. Further, see Tosafot there, [who state] that this should be analogized to a court of theft and assault and not to one of admitted debt or loans, where one ordained judge would suffice.
ויש להסתפק האם דומה לדיני ממונות גם לענין שגר כשר לדון בו, או שדומה לדיני נפשות. ועי' רש"י קדושין סב ריש ע"ב שצריך שלושה ישראלים שנזקקין לו להטבילו. מפורש שצריך ישראלים, לאפוקי גר.	One may wonder if it is analogous to a monetary court such that a *ger* may serve as a judge or is it more similar to capital cases. See Rashi in *Qiddushin* 62b, [who states] that it requires three Jews to oversee his immersion. This is explicit that Jews are required, excluding a *ger*.

The last line is the same deduction suggested by Yalow being brought to bear on this question. However, unlike Yalow, Levin analogizes the conversion court to a capital court as opposed to creating a third category. From this piece alone his suggestion seems inexplicable. However, Levin corrects this in a later decision by explaining further (*Pisqei Din Yerushalayim — Dinei Mamonot u-Birurei Yahadut* vol. 7 file #107 — section c). This decision begins by restating his deduction from Rashi, and claiming to find support for this deduction from the comments of R. Yosef Dov Soloveichik in his *Beit ha-Levi* on the Torah (Genesis 17).

ורק דבעת שמל א"א אמר לו הקדוש ברוך הוא: "אני הנה בריתי אתך והיית לאב המון גוים." גילה לו דמעתה מי שירצה להכנס עמי בברית תהיה אתה המורשה והבעל כח העומד מצדי ואתה תכרות הברית עם הגר הבא להתגייר מדת עבודת הכוכבים, וזהו שאמר אני הנה בריתי אתך, דאתה תהיה העומד מצדי והיית לאב המון גוים לכרות עמהם ברית עבורי. וזהו דאיתא בגמרא (יבמות מ"ו ע"ב) דאינו גר עד שיתגייר בפני שלשה מישראל שנאמר (שמות יב ועי"ש בגמרא) וכי יגור אתך גר, דכל כריתת ברית צריך שיהיו שני הצדדים ביחד ואם נתגייר בפני עצמו הרי אין כאן כריתות ברית ורק בפני שלשה ישראל העומדים מצד הקדוש ברוך הוא כביכול יהיה הברית כרותה לעולם.

At the time our father Abraham was circumcised, the Holy One — blessed by He — said to him: "As for me, my covenant is with you, and you will be a father of many nations" (Gen 17:4). He revealed to him that from this point on "anyone who wants to join the covenant with me, you will have the authority and power to stand by my side, and you will make the covenant with the *ger* who comes to convert out of his idolatrous faith." This is what [God] meant by "As for me, my covenant is with you," that you will stand by my side and you will be the father of many nations when you make the covenant with them on my behalf. This is what the *gemara* states (b. *Yeb.* 46b), i.e. that a *ger* is not really converted unless it is before three Jews, as it says: "When a *ger* dwells with you" (Ex 12:48), any making of a covenant needs to be the combined effort of two sides. Hence, if [a Gentile] would convert privately, there is no making of a covenant. Only before three Jews who are standing by the side of the Holy One, blessed by He, as it were, can a covenant ever be made.

Next, Levin explains what he sees as the logic behind analogizing conversion courts to monetary courts:

ונראה שהטעם בזה לפי שבי"ד המגיירים צריך שיהיו כשרים גם לדיני נפשות כיון שכתוצאה מהגיור ידונו בו ד"נ...

It would seem that the reasoning behind this is that the members of a conversion court need to be eligible to judge capital cases as well, since, as a result of the conversion, the convert could be a defendant in a capital case…[158]

158. At this point in the piece, Levin tries to prove this point by referencing a comment by R. Elijah Kramer, the Gaon of Vilna, in his glosses on the *Shulḥan Arukh*:

וכמו שכתב בהגר"א בשו"ע אבהע"ז סי' יז ס"ק קלא בטעם ההלכה שכתב הרמ"א דלהיתר עגונה צריך בי"ד של שלושה כשרים, וכתב בהגר"א "שהרי יש בה ד"נ או ד"מ".

This is akin to what the Gra wrote (*Shulḥan Arukh* EH 17:131) explaining why Rema wrote that the court in an *agunah* case requires 3 "kosher" judges. The Gra wrote that this is because there are elements of capital and/or monetary cases in [the case of an *agunah*].

ועוד י"ל עפ"י מש"כ מו"ר הגרב"ד פוברסקי בבד קודש ח"ג סי' מט בביאור דעת רש"י, שבעיקר הדין הגר כשר לדון, וכמו שדן את חבירו, ורק דנתמעט מדין שררה, וי"ל דלא חשיב שררה ממש בדין אלא היכא שדן את חבירו בעונש הגוף, שהוא חלות דין על הגברא, וחשוב שררה, משא"כ בד"מ הוי חלות דין על הממון בלבד ולא חשיב שררה. עיין שם. ומעתה דין גירות דהוי חלות דין בגברא, חשיב שררה שהגר פסול לה.

Furthermore, according to what my teacher, the great Rabbi Baruch Dov Povarsky,[159] wrote in his *Bad Qodesh* (3:49), explaining the position of Rashi: that really a *ger* is eligible to judge [an ethnic Jew], just like he may judge his fellow *ger*, only that he is excluded because of the rule about authority, one could argue that something is not considered real legal authority unless the judge is actually deciding something that could punish a person bodily, since this means that the decision applies to the person, that would be authority. However, this is not true of monetary cases, since the decision applies only to the money, and this would not be considered authority. — See there. Following this analysis, a conversion case, where the decision affects the person, should be considered authority, with a *ger* ineligible to participate in the panel.

There are a number of points that need to be made in response to this piece. First, it must be pointed out that his use of Soloveichik's piece is no more persuasive than his (and Yalow's) earlier use of Rashi. All Soloveichik means is that now three Jews will be able to effect conversion, as opposed to how it was done for Abraham, where God himself did the conversion, so to speak. There is no way to learn anything about *gerim* on a conversion panel from this source.

That said, Levin here offers two reasons for why, in his opinion, a *ger* would be ineligible to sit on a conversion panel. In the first paragraph above, he explains that the reason conversion courts may be like capital courts is because once a person is converted he or she is subject to the death penalty. Next he offers a somewhat different basis for the analogy. He argues that the analogy is based on the fact that in monetary cases a decision is being made about objects but in capital and conversion cases, a decision is being made about the person.

A response to the deduction from Rashi, akin to that of R. Roggin to R.

A closer inspection of the sources quoted leads me to question this interpretation. Rema is using "three kosher judges" not to exclude *gerim* but to exclude the possibility that one expert judge would be sufficient. See the *Ḥelqat Meḥoqeq* and *Beit Shmuel* ad loc. for a debate about whether Rema's stringency here is correct.

159. Rosh Yeshiva of Ponovezh

Yalow, was put forward in a dissenting opinion in the same case by the rabbinic judge R. Shmuel Chaim Domb.

ומעתה לפי"ז לשי' רש"י דגר כשר לדון גר חבירו אף בד"נ, ורק חליצה בעינן ישראל גמור, דאיכא קרא "ישראל" למעוטי, לכאורה גר כשר לדון בבי"ד של גרות את גר חבירו, דאם בד"נ כשר כ"ש לגרות, ורק חליצה שאני, וז"ב.

Now according to Rashi's position that a *ger* can judge his fellow *ger* even in capital cases, and only *ḥalizah* requires an ethnic Jew — because of the inclusion of the word "in Israel" in the verse which excludes [the *ger*] — it would seem that a *ger* would be eligible to officiate for his fellow *ger* in a conversion panel, for if he is eligible in capital cases, he is certainly eligible in conversion cases. Only *ḥalizah* is different, and this is clear.

ולפי"ז לכאורה מה שדייק כת"ר אב"ד שליט"א, מדברי רש"י בקדושין סב ב דבעינן ג' ישראלים, ע"כ כונת רש"י לאו דוקא, דאטו גרע[160] בי"ד של גרות מבי"ד דנפשות שגר כשר בו, ולא מצאנו שום קרא דממעט גרים בגרות כמו דמצאנו בחליצה. או שכונת רש"י דרק למצוה לכתחילה ולא שפסול.

Following this, it appears that with regard to the deduction made by the honorable head of the court (Levin), may he live long, from the words of Rashi… there is no choice but to say that Rashi does not intend these words literally, for can a conversion court be considered somehow more significant than a capital court, where a *ger* would be allowed to sit? Furthermore, we find no verse that excludes *gerim* from conversion courts like we do with *ḥalizah*. Additionally, Rashi could even have meant this as a *de jure* position, but not as something that would disqualify the court.

Domb offers three arguments for why Levin's interpretation of Rashi must be faulty. His first, and most powerful argument, is that it would make no sense for Rashi to allow a *ger* to sit on a capital court for *gerim* but not to oversee conversions.[161] Second, there seems to be no reason for Rashi to say this, since there is no *derasha* that would make conversion, of all things, stand out like there is for *ḥalizah*. Third, even if Rashi did mean it literally, he must have meant this as a best-case-scenario, but certainly not that using *gerim* would invalidate the procedure.

Nevertheless, despite Domb's disagreement with Levin over the proper

160. Literally, this means less important, but that would make the sentence unintelligible. I assume this is just a "slip of the pen".

161. i.e. Roggin's objection to Yalow

interpretation of Rashi,[162] Domb still finds himself attracted to the analogy between capital cases and conversion, and believes that what Tosafot and other authorities would say remains a live question.

ובאמת מסתפקנא טובא דאף לשי' התוס' והמאירי, וכ"ה שי' רוב הראשונים, דגר כשר לדון גר חבירו רק בד"מ ולא בד"נ, ולישראל פסול אף בד"מ, מה דינו של גר בבי"ד של גירות...

In truth, I am very unsure about whether according to Tosafot and Meiri — and this is the position of the majority of *Rishonim* — that a *ger* is eligible to judge his fellow *ger* only in monetary cases but not in capital cases, and that he would be ineligible to judge an ethnic Jew even for monetary cases, what would be the rule about a *ger* sitting on the conversion panel…

והנה לפי"ז דכל האי דינא דבעינן ג' בגרות הוא מדכתיב "משפט", ומדמינן ליה לגזלות וחבלות, א"כ לכאורה "דין ותורת דיני ממונות" איתי ליה למעשה הגרות, וא"כ הרי בזה לשי' התוס' והמאירי ושאר הראשונים, גר דן את חבירו בד"מ, וא"כ ה"ה בב"ד של גרות כשר גר.

On the one hand, since the source of the requirement for three judges in a conversion is from the word 'judgment', and we analogize this to cases of theft and assault, therefore, it would seem that the process of conversion is governed by the rules and procedures of monetary law. Hence, according to this, according to the position of Tosafot, Meiri and other *Rishonim*, since a *ger* can judge his fellow in monetary cases, following this, the same would be true of conversion courts, i.e. that a *ger* would be eligible [to take part].

אמנם יש מקום לדון ולומר דכיון שבמעשה הגרות הוא נהפך מגוי לישראל, ויש בזה נפ"מ להרבה דינין התלויים גם בד"נ, שמא "תורת ד"נ עליה", וגר פסול בבי"ד של גרות...

Nevertheless, there is room to argue and say that since in the course of conversion the Gentile is transformed into a Jew, and this has consequences for many different laws, even those that are part of the capital court system, perhaps [conversion] should be governed by the rules and procedures of capital law, and, consequently, a *ger* would be ineligible to sit on a conversion court…

R. Domb is unsure where the Tosafot's position, and those other *Rishonim* that accept it, lead them. He first argues that one would think that since the Tosafot analogize conversion courts to courts prosecuting theft and assault, and these are monetary courts, then just like the *ger* can adjudicate such cases for his fellow *ger* so to he should be able to oversee the conversion of his fellow

162. The argument holds against Yalow as well — it is less model dependent and more a question of how to understand Rashi.

ger. On the other hand, Domb seems to find Levin's point that conversion has consequences relevant to capital cases compelling enough to suggest that, perhaps, Tosafot might still exclude a *ger* from sitting on a conversion court.

One problem with this latter argument is that there is no evidence for it. It is an interesting theoretical position suggested by Levin but with virtually no support in any source. The one source which Levin relied on heavily, i.e. Rashi (and Soloveichik who followed suit) is discounted by Domb as being impossible! This leaves Domb essentially with no evidence to counteract his own first point, i.e. that Tosafot analogize conversion to monetary cases not to capital cases![163] It is odd to ask a question according to Tosafot and then answer differently than that same authority's own words.

Insofar as the cogency of the theory itself, in a similar vein to his rejection of R. Yalow's point, R. Yonah rejects this point as well:[164]

ואף אם תהיה השלכה בכך שגייר את הגר לדיני נפשות של המתגייר לחייבו מיתה וכיוצא בזה, מלבד שרש"י ביבמות סבירא ליה שגר דן את חבירו הגר אפילו בדיני נפשות... אך אף למאן דאמר שאין הגר דן את חבירו בדיני נפשות, עדיין לפי מה שכתבתי לעיל לא חשיב שבעצם גירותו הוא דנו לדיני נפשות, שרק יכולה להיות השלכה לזה לדיני נפשות, אך אי אפשר להחשיב את מעשה ופעולת הגיור כדיני נפשות, שזה לא נידון כעת.

Even if there is a secondary consequence of this that would subject the *ger* to capital laws, and he could end up being condemned to die (in a Jewish court), even ignoring Rashi in *Yebamot* who believes that a *ger* can judge a fellow *ger* in a capital case… nevertheless, according to what I wrote above, the conversion cannot be considered as itself a judgment about capital cases, for it is only a secondary consequence of the conversion that brings about the capital punishment, but conversion cannot be considered a capital action, for [the capital offense] is not even being adjudicated at this time.

Again R. Yonah emphasizes the difference between direct authority and secondary consequences. There is no way to categorize conversion as a capital case, despite the fact that if the *ger* were to subsequently commit a capital offense he would be subject to execution. Only direct power over the

163. b. *Qiddushin* 62b; albeit specifically cases involving theft or assault

164. Although R. Yonah is responding to these points, it is unclear to whom he is responding. He never quotes R. Yalow, Elyashiv, Levin or Domb; he simply mentions that he has heard this theory from an authority.

conviction or acquittal of a suspect in a capital case would be giving someone life-and-death power.

The one point that goes unanswered is Levin's distinction between conversion and finances based on the distinction between making decisions about money and decisions about the body. Nevertheless, this argument seems to be based on a false analogy. It is true that monetary cases differ from other cases in this way, but this has nothing to do with the issue at hand. It must be remembered that a *ger* may not sit as a judge over an ethnic Jew, if he has coercive authority, even for monetary cases! On the other hand, he may do so for a *ger*, since he is allowed to have coercive authority over his fellow *ger*. Considering this, I am unsure why Levin thinks that his teacher's admittedly perspicacious analysis has any relevance to this case.

One final argument for the analogy between capital cases and conversion was put forward by R. Michael Broyde. Broyde argues that no less an authority than R. Akiva Eiger makes this analogy. To prove this, he quotes a gloss of R. Eiger on R. Yosef Karo's *Shulḥan Arukh* (YD 269:11). In this source, R. Karo states that it is forbidden for a *ger* to judge a Jew by birth. On this, R. Eiger quotes from R. Yaaqov Castro's gloss (*Erekh Leḥem* ad loc.), which itself is a quote from Rambam's *Mishneh Torah* (*Melakhim* 1:4). In this halakha, Rambam writes:

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 דיין או נשיא שלא יהא אלא מישראל, שנאמר מקרב אחיך תשים עליך מלך כל משימות שאתה משים לא יהו אלא מקרב אחיך.

One may not appoint a king from among the congregation of *gerim*, even after many generations, unless his mother was Jewish, as it says: "you may not place upon yourself a foreign man who is not from amongst your brethren." And this goes not only for kingship, but any form of authority among the Jews at all; he may not be appointed as a general, corporal or sergeant,[165] or even minister of water in charge of irrigation, and one need not add that to be appointed as a judge or a *nasi* (president)[166] one must be a Jew by birth, for it says 'from amongst your brethren you shall place upon yourselves a king' — all appointments must be from 'amongst your brethren'.

165. Literally, commander of the army, of fifty or of ten

166. R. Broyde translates this as "local presidents." I do not know why he does this;

Rabbis Castro and Eiger quote this source more or less verbatim, and with no comment. Attempting to explain R. Eiger's use of Rambam (and Castro) here, R. Broyde writes:

> R. Akiva Eiger further advances the classic explanation as to why capital cases are likened to conversions — serving as a *dayan* in both capital cases and in conversion cases are forms of *serarah* (authority), in which a convert cannot participate.

Although Broyde is certainly correct that Eiger is explaining the reasoning behind Karo's ruling that a *ger* cannot be a judge, he (Broyde) is applying this explanation to the wrong part. R. Eiger is not explaining why a *ger* cannot judge capital cases; he is explaining why he cannot judge Jews by birth in monetary cases! This is clear from the opening words R. Eiger references in his comment (the *divrei ha-maṯil*): "he is ineligible to judge a born-Jew."[167]

Model 3 — Conversion is like Ḥaliẓah

Although inspired by R. Yalow's analysis (Model 1), which he references, R. Tzvi Hershel Schachter takes the stringent position in a somewhat different direction.[168]

ועל פי פשוטו היה נראה להעיר שהבית דין של גרות אינם פוסקים שום דבר, ולא דנים בכלל, אלא הם רק משמשים כבית דין המקיים שעושים מעשה בית דין, דוגמת הצורך לבית דין בחליצה, ובסמיכת הפר העלם דבר של ציבור, ובסמיכת זקינים.

From a straightforward perspective, it seems worth noting that the conversion court does not decide anything, they don't even sit in judgment at all. Rather, they function purely as a court that establishes something through court procedure. This would be analogous to the need for a court for *ḥaliẓah*, for the placing of the hands on the ox offered due to a mistaken ruling which was delivered to the people, and for the ordination of elders.

One might call R. Schachter's approach "the notary model". In this model, there are certain official actions that require a court of ordained judges. These judges aren't judging, but functioning in a ceremonial, technical capacity.

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the simple meaning seems to be the president of the Sanhedrin.

167. פסול לדון את ישראל

168. Rabbi Hershel Schachter, "*Be-Din Ger Dan Ḥaveiro Ger*" *Kol Tzvi* 5762, 299–301

Based on an analogy to *ḥalizah*, which is also a court that doesn't decide anything, Schachter puts forward the ironic suggestion that this type of court would have to exclude *gerim*.

The suggestion is ironic because, intuitively, one would think that the rules should be stricter in cases where the judge actually judges as opposed to cases where his participation is only *pro forma*. Furthermore, as was pointed out in the previous section, using *ḥalizah* as a model is problematic, since the rule excluding *gerim* from overseeing a *ḥalizah* is derived from a *derasha* on the verse describing this process. There is no evidence that this *derasha* is meant to apply to any other situation.

Nevertheless, a recent defense of the "notary" or "*ḥalizah*" model has been put forth by R. Michael Broyde. Broyde argues that none other than R. Shabtai Kohen, in his commentary on the *Shulḥan Arukh* the *Siftei Kohen* (*Shakh* YD 268:9), takes this position. The piece in the *Shakh* Broyde refers to is a reiteration of a point made by R. Yoel Sirkis in his commentary on the *Ṭur* (*Bayit Ḥadash* — *Baḥ*; ad loc.).

R. Sirkis is attempting to explain why it is that the ceremony of accepting the yoke of the commandments would be considered invalid if done at night but if a financial dispute was begun and adjudicated at night it would still be valid, at least *be-di-avad*.[169] Don't we analogize conversion courts to monetary courts? Sirkis offers an answer to this question.

אין זה אלא בדבר שבממון ומטעם דהפקר בית דין הפקר אבל לענין איסורא כגון חליצה וגר פסול תחלת דין בלילה אפילו דיעבד	This [leniency] is only relevant to financial matters, and that is because of the principle that the court has the right to repossess anyone's property. However, when it comes to issues of prohibition, like *ḥalizah* and conversion, beginning the proceedings at night would invalidate them even *be-di-avad*.

Kohen accepts this point, quoting Sirkis explicitly in his piece, and reiterating that with regard to beginning the proceedings at night, "conversion is like *ḥalizah*."[170]

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169. This is because the halakha follows the positions of Rashbam and *Semag* by financial matters, and it is they who allow this in general. Technically, Sirkis wants to know why we could not apply their principle and our reliance upon it *be-di-avad* to conversion as well.

170. וה"ה הכא דכחליצה דמי

R. Broyde sees in this argument a proof for the position that a *ger* could not serve on a court for conversion:

> The *Shach* contends that there are two ways to understand the conversion ritual, and thus there are at least two different ways to construct a rabbinical court to oversee it. Each of these two constructions imposes significantly different requirements.
>
> One can view a court for a conversion to be on the same level as a court for financial cases. Since the requirements regarding who may sit on a bet din for financial cases are more lenient than the requirements for judging capital cases or witnessing *chalitza*, it follows that a convert can serve on a bet din for conversion, just as he may serve on a financial case.
>
> The other view within the *Shach* suggests that one should view a court for conversion like a regular court, but without any of the leniencies customarily found in financial adjudication; this produces a rabbinical court whose members are held to the standards of a court for *chalitza*. If that is the case, then a convert cannot serve on such a *bet din*.

With all due respect to R. Broyde, this analysis seems to me to be incorrect.

Broyde is equating two different issues here. One issue is who can serve on a particular type of court. The second issue is what types of procedures are required in various cases.[171] This latter issue is what Sirkis and Kohen are discussing. Their point is simply that since the court has a right to do whatever it wants with the litigants' money, the procedural rules are laxer for financial disputes. This has nothing to do with who can sit on a court and is by definition unique to financial cases.

When Kohen and Sirkis say that insofar as procedure is concerned, conversion is like *ḥaliẓah*, they simply mean that it is unlike monetary cases. *Ḥaliẓah* is an example where we know that improper procedure invalidates it, so too improper procedure invalidates the *qabbalat mitzvot*; it would also invalidate a capital case, or a case regarding lashes or even the judgment of an ox, I suspect. That is all that is meant here.

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171. The fact that the two are not necessarily interdependent is demonstrated clearly by the discussion in j. *Yeb.* 10:1; see the main article for discussion of this text.

Model 4 — A Special Derasha

One extremely novel take on this question is suggested by R. Shimon Sidon of Kunitz in his *Ot Brit* (*Gerim* 268:11).[172] Sidon is attempting to answer a question asked by the Tosafot, commenting on a passage in b. *Yebamot* (47a), where it states:

ת"ר: ושפטתם צדק בין איש ובין אחיו ובין גרו – מכאן א"ר יהודה: גר שנתגייר בב"ד – הרי זה גר, בינו לבין עצמו – אינו גר. מעשה באחד שבא לפני רבי יהודה, ואמר לו: נתגיירתי ביני לבין עצמי, א"ל רבי יהודה: יש לך עדים? אמר ליה: לאו. יש לך בנים? א"ל: הן. א"ל: נאמן אתה לפסול את עצמך, ואי אתה נאמן לפסול את בניך.

Our Rabbis taught: "You shall judge righteously between a man and his brother and his *ger*" (Deut. 1:16). From here R. Yehudah said: "A *ger* who converts before a court is a *ger*, but one who converts on his own is not a *ger*." It happened once that a person came before R. Yehudah and said: "I converted on my own." R. Yehudah asked him: "Do you have witnesses?" [The man] responded: "No." [R. Yehudah then asked]: "Do you have children?" [The man] responded: "Yes." [R. Yehudah] said to him: "You are believed to disqualify yourself, but you are not believed to disqualify your children."

On this *baraita*, the Tosafot write:

יש לך עדים – פירוש שנתגיירת בינך לבין עצמך ותימה מיהא אי הא דבעינן ג' היינו דוקא לכתחלה אבל דיעבד חד נמי כשר א"כ אם יש לו עדים לאו בינו לבין עצמו הוא.

Do you have witnesses? — Meaning, since you claim to have converted on your own. This is puzzling, since if the requirement to have three is really only *de jure*, but *de facto* even one judge is sufficient, if so, if he has witnesses, then he did not, in fact, convert on his own.

Tosafot's question fits into a larger theme that they discuss in a number of places in their glosses on the Talmud.[173] Since the Tosafot accept the position that one judge is sufficient according to Torah law to judge monetary cases, and conversion is analogized to monetary law, then wouldn't one judge be sufficient to convert somebody according to Torah law? In fact, as I discussed in the main article, this position is adopted by R. Yehudah b' Rabbi Yom Tov and R. Simḥa of Speyer. Although the Tosafot suggest this as a possibility, they

172. b. 1815, Nadash — d. 1891, Trnava

173. See, for example, their glosses on *Yebamot* 46b, *Gittin* 88b, and *Qiddushin* 62b

reject it on the grounds that conversion is like a court of theft and assault, which would require three judges anyway.

The Tosafot's question in the above quote seems to buttress their position that this possibility is mistaken, since, if it were correct, it would be impossible for someone to convert "by himself" if he were simultaneously being watched by two Jews.

R. Sidon is bothered by Tosafot's question, and attempts to answer it.[174]

ונראה לתרץ דיש לדקדק שם למה יליף ר' יודא מקרא ד'ושפטתם בין איש ובין אחיו' דכחיב בפ' דברים ולא יליף מקרא הקדום דפ' אמור או פ' שלח דכתיב 'משפט אחד יהיה לכם ולגר'. ונראה דלכן מביא האי קרא דנ"מ לדינא, דעיין בש"ע... דגר שאין אמו או אביו מישראל אינו כשר לדון את ישראל רק גר חבירו... ואי הוה ילפינן מ'משפט' דבעי ב"ד בשעת גירות, הוה סד"א דדי בב"ד של גרים כיון דיכולין לדון גר חבריהם, לכן יליף ר"י מקרא דדברים דכתיב 'ושפטתם בין איש ובין אחיו וגן גרו' – דוקא מי שראוי לשפוט בין איש ובין אחיו, ישראלים צריכין להיות דיינים בשעת הגרות. לפ"ז לק"מ דמשכחת שיש לו עדים גרים שהיו בשעת גרותו, דגרים כשרים להעיד... ולענין גרות הוה כנתגייר בינו לבין עצמו דצריכי' להיות דיינים ישראלים.

To answer the question, it appears to me that one can make a deduction from the fact that R. Yehudah learns out the law [requiring three judges] from the verse 'and you shall judge between a man and his brother' from Deuteronomy and not from the earlier verses in Leviticus or Numbers, where it says 'One judgment shall there be for you and the *ger*.' It would seem that the reason he does this is because there is a legal difference. For look at the *Shulḥan Arukh*… [which states] that a *ger* whose mother or father was not Jewish cannot judge a born-Jew, only his fellow *ger*… Now if [R. Yehudah] had used the "judgment" verse to require a court during the conversion, one would have assumed that a court of converts would be sufficient, since they are eligible to judge their fellow converts. Therefore, R. Yehudah uses the verse of "you shall judge between a man and his brother and his *ger*"; specifically somebody who can judge between himself and his brother, hence only born-Jews may be judges for a conversion. Following this, [Tosafot's] question is not a problem, since it is possible that [the said witnesses] to his conversion were other converts. For converts are eligible to be witnesses… but with regard to the conversion, it would be considered as if he did it on his own, since it requires judges who are ethnically Jewish.

174. One could also answer that a court only counts as a court if they know in advance that they are functioning as such. This position is advanced, although not explicitly as an answer to Tosafot's question, by R. Moshe Klein in his *Mishnat ha-Ger* (3:23–24).

In essence, R. Sidon argues that the Tosafot's question is not really a problem for R. Yehudah b' R. Yom Tov's position, since he can answer by stating that R. Yehudah has a *derasha* from the verse in Deuteronomy limiting conversion courts to born Jews, hence the witnesses could have been converts, counting as witnesses but not as a court.

The most basic problem with this argument is that Sidon has invented a *derasha* and put it in the mouth of R. Yehudah. R. Yehudah neither states nor implies that he is trying to exclude converts from sitting on the conversion court. Although it is an interesting question why he picked the verse in Deuteronomy instead of one of the other options, this is hardly an argument for inventing a new *derasha*.[175]

Additionally, it is important to note that Tosafot's problem is only a problem for this minority position, defended by R. Yehudah b' Rabbi Yom Tov and R. Simḥa, that one judge is sufficient for conversions according to Torah law. Consequently, even if one were to accept R. Sidon's *derasha* as an answer, it disappears as a relevant factor if one accepts the majority view that three are necessary even according to Torah law.[176]

Model 5 — Conversion Requires Ordination-Eligible Judges

The most prominent authority among those that restrict the conversion to only ethnic Jews is R. Shlomo Kluger.[177] In his comments on *Even ha-Ezer*,[178] Kluger writes:

גוף הדין אם גר כשר להיות בית דין לקבל גרים אין זה ברור...	The rule regarding whether a *ger* is eligible to sit on a court overseeing a conversion is unclear.

175. Sidon implies that R. Yehudah should have used the verse from Leviticus or Numbers since they are earlier in the Torah, but I am not sure why this should be so.

176. The *derasha*, of course, could be accepted independently of its functioning as an answer for the one-judge theory, but this would make a difficult suggestion even more difficult, as the only motivating factor for it would be R. Yehudah's choice of verse.

177. B. 1783 Kamarow — d. 1869 Brody

178. *Ṭuv Ṭa'am ve-Da'at* 6:268

הנה הן אמת לדעת רש"י ... דגר דן את חברו גר אפילו לדיני נפשות – פשיטא דיכול לקבל גרים גם כן,

The truth is that according to Rashi… that a *ger* can judge his fellow *ger* even in capital cases, it is obvious that he can serve on a conversion panel as well.

אך לדעת התוספות החולקים שם, וסבירא להו דדיני נפשות אינו יכול לדון, ובעל כרחך היכי דבעינן מומחים לא מהני גר אפילו לחברו גר,

However, according to the Tosafot who argue there, and who believe that [the *ger*] may not judge his fellow in capital cases, consequently, it may be deduced that whenever officially appointed judges are required, a *ger* would be unable to judge his fellow *ger*,

ואם כן, הרי התוספות ביבמות כתבו דגרות דומה לגזלות וחבלות, דבעינן דוקא ג' ומומחים, ומה שמקבלים גרים בזמן הזה הוי רק מכח שליחותייהו דקמאי עבדינן,

Therefore, since the Tosafot in *Yebamot* wrote that conversion courts are like courts for theft and assault, i.e. they require three official judges, and the mechanism that allows conversion in this day and age is only based on the principle that we are functioning on behalf of the judges of old,

ואם כן, יש לומר היינו רק ישראלים הראוים להיות מומחים, אז הוי שליחותייהו דקמאי, דהוי 'אתם' 'גם אתם' – לרבות שלוחכם דהוי דומיא דאתם. אבל גר דאינו ראוי להיות מומחה וסמוך, היכי דבעינן סמיכה, יש לומר דאינו בר שליחות כיון דאינו דומיא דקמאי.

Therefore, it would seem that only Jews who would [in theory] be eligible for official appointment could be considered as functioning on behalf of the judges of old, for only in this case [could they be considered to be fulfilling] the *derasha* of 'you' 'even you' — to include your messengers, i.e. that they must be like you. However a *ger*, who is not eligible to be appointed and ordained, in a case where ordination would be required, it would seem that he could not then function on behalf [of the authorities of old] since he is not similar [in status] to the authorities of old.

ובפרט מי שראוי להיות מומחה, יש לומר 'כל הראוי לבילה – אין בילה מעכבת בו.' אבל אם אינו ראוי להיות סמוך, יש לומר דמעכבת בו, כיון דאינו מומחה.

Specifically, for someone who is eligible to be appointed, one could argue that 'if it can be mixed, actually mixing it is unimportant.'[179] However, if he is not eligible to be ordained, it would seem that that would be a hindrance to him, since he can have no official appointment.

179. This is a Talmudic principle originally referring to the composition of a grain offering and whether one needed to actually mix the ingredients or not. Writ large, the principle means that in certain cases the potential of something

וגם הרי עיקר הטעם דלא בעינן מומחים הוי מכח נעילת דלת בפני גרים, אם כן, היינו אם לא הוי מקבלים כלל גרים, אבל אם מקבלים רק שלא יהיה גר הבית דין, בזה ליכא נעילת דלת, ויש לומר דלא התירו רק אם הוא על כל פנים ראוי לסמיכה ולא גר.	Furthermore, the basic reason why we no longer require official appointment is in order not to lock the door in the face of converts. If so, this would apply only if we stopped doing conversions altogether, but if we do accept candidates for conversion, but only stipulate that a *ger* cannot serve on the court, this would not count as locking the door, for one could argue that only someone eligible for ordination was permitted [to serve on this court], but not the *ger*.
גם יש לומר, כיון דכתיב 'משפט אחד יהיה לכם ולגר', ומזה למדו דבעינן ג' הראוי לדין – אם כן, הוקשו זה לזה, והראוי לכם ראוי לגר ושאינו ראוי לכם אינו ראוי לגר.	Additionally, one could say that since the verse writes 'one judgment shall there be for you and the *ger*', and from this was learned that three judges who are fit to judge are required, if so, then the two are interconnected, and that which is fit for you is fit for the *ger*, and that which is not fit for you is not fit for the *ger*.[180]
ולכך לדעת תוספות נראה דגר אסור לקבל גרים.	Therefore, according to Tosafot, it would appear that a *ger* is ineligible to perform conversions.

R. Kluger's argument is very complex and requires a certain amount of unpacking. Kluger begins his piece with an argument that anticipates those of Roggin and Domb. He claims that it is clear that Rashi would allow a *ger* to do a conversion because he would allow a *ger* to sit on a capital case. There is no way that Rashi could possibly consider conversion to be stricter than capital cases, hence he must be lenient on this question. What remains is to figure out what Tosafot's opinion would be.[181]

Kluger's main contention is that Tosafot believe that the modern day "representative court" must be similar in make up to the ancient proper court, i.e. that it must be made up of people who could, in theory, receive an

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occurring can count as if it has occurred; in this case since the born Jew could, in theory, be appointed that would be enough.

180. This latter point is very farfetched and seems to be based on Rabbi Kluger's own *derasha*.

181. This set up is almost identical to the set up offered by Domb. The difference is that Kluger never suggests that conversion could be seen as analogous to capital cases, even though from his terse comment in the *Ḥakhmat Shlomo* it sounded as if that were his intention.

appointment as an ordained judge and that this would exclude converts. This is because the Tosafot believe that conversion courts are like courts that judge theft and assault which required ordained judges. Even though there are no ordained judges, Kluger argues, there are people who would be eligible to be ordained judges, but this would exclude *gerim*.

Ironically, this is the exact opposite conclusion as that reached by Mintzberg, whose second proof was based on the very same Tosafot! Mintzberg does not seem to be bothered in the least with the fact that ordination could be required theoretically for conversions based on Tosafot's model. The question arises: how is it that these two eminent authorities are using the very same text to argue totally opposite claims.

It seems to me that the reason this is occurring is that Kluger actually has another, unstated, source in mind that strongly informs his reading of the Tosafot. This source is the Jerusalem Talmud in *Ḥagigah* (1:8) and codified by Rambam (*Sanhedrin* 4:10), which states that one cannot give partial ordination to someone who would be ineligible to receive full ordination.[182]

Mintzberg believes that a *ger* can adjudicate a case of theft or assault where the litigants were *gerim*. Even though such judges would, in theory, require ordination, Mintzberg would argue that there is no reason why a *ger* could not receive ordination to judge cases of theft or assault, as long as he only judges cases where the litigants were *gerim*. This argument makes perfect sense assuming one does not consider that *Yerushalmi* passage normative. Consequently, Mintzberg argues, the *Tosafot* must believe that a *ger* can sit on conversion courts, since they believe he can sit on all monetary courts, including those for theft and assault.

Kluger, on the other hand, tacitly assumes that the *Yerushalmi*'s principle is normative. Therefore, he argues, according to the Tosafot a *ger* could never receive ordination to serve as a judge in cases of theft or assault, and, by analogy, he would not be eligible to receive ordination to sit on a conversion court.

Although this explains how the Tosafot in *Yebamot* could be used in such opposite ways, even accepting the *Yerushalmi* as halakha would not lead necessarily to Kluger's deduction. This is because the Jerusalem Talmud, and Rambam following it, is talking about actual ordination. Kluger, on the other hand, is talking about someone functioning on behalf of a now defunct court. Although it is possible to apply the former halakha to the latter, it is

182. See main article for discussion of this source.

by no means logically necessary. Furthermore, it goes against the grain of the Tosafot's own words, which state that ordained judges (מומחים) are unnecessary, adding no qualifying remark.

Model 6 — Converts cannot have the Status of Judges

Another argument in favor of the strict view was put forward by R. Michael Broyde, basing himself on a perceived contradiction between two passages in Rambam's *Mishneh Torah*.

בית דין של שלשה שהיה אחד מהן גר הרי זה פסול, עד שתהיה אמו מישראל, היה אחד ממזר אפילו שלשתן ממזרים הרי אלו כשירין לדון, וכן אם היה כל אחד מהם סומא באחד מעיניו כשר מה שאין כן בסנהדרין, אבל הסומא בשתי עיניו פסול לכל.

A court of three is disqualified if one of its members is a *ger*, unless that *ger* has a Jewish mother. If one of them was a *mamzer*, even if all three were *mamzerim*, they are eligible to hold court. Also, if all of them were blind in one eye they would be eligible to hold court, which would be different for a Sanhedrin. However a fully blind person is ineligible to judge any case. (*Sanhedrin* 2:9)

הכל כשרים לדון דיני ממונות אפילו גר והוא שתהיה אמו מישראל, וגר דן את חבירו הגר אף על פי שאין אמו מישראל וכן הממזר והסומא באחת מעיניו כשר לדון דיני ממונות, אבל בדיני נפשות אין דנין אותן אלא כהנים לוים וישראלים המשיאין לכהונה ולא יהיה אחד מהן סומא אפילו באחת מעיניו כמו שביארנו.

All are eligible to judge monetary cases, even a *ger*, assuming his mother was Jewish. But a *ger* may judge his fellow *ger* even if his mother was not Jewish. So too a *mamzer* and a person blind in one eye are eligible to judge monetary cases, but for capital cases only *Kohanim*, Levites and Israelites who can marry into the priesthood [are eligible], and they may not be blind in one eye, as we explained. (*Sanhedrin* 11:11)

Broyde argues that there is tension between these two passages and offers an explanation.[183]

183. Although he hints at this in his article, Broyde elaborated on this point in an email correspondence with me. This quote is a modified version of this part of the correspondence (including modified spelling and formatting). Of course, R. Broyde was sent an early draft of this article and took the opportunity to modify the quote to ensure that it expresses his point accurately.

The first passage establishes that a convert may not sit on a court — any court; that is why Rambam calls such a court invalid [*pasul*]. Such a court would, in fact, be disqualified if a convert were to sit on it. The second passage establishes an exception to this, which is that a *ger* can judge his fellow *ger* on financial matters. The explanation for this would seem to be that there is a sort of *qabbalah* here of someone who is disqualified — which is permissible in monetary disputes — and not that a *ger* is actually eligible to judge his fellow, since he cannot do so on any other matter. If the latter were the case, then there would be a contradiction between the two passages in the Rambam. To put this in a different way, two converts in a financial dispute with each other cannot disqualify a judge who is also a convert, merely by claiming that they would not accept a convert as their judge, since they too are converts.

Furthermore, even if one analogizes conversion courts to monetary courts, nevertheless, unlike in monetary law, *qabbalah* of someone who is ineligible would not work in conversion. In theory, A and B can agree to sit in an *ad hoc* court made up of A's father, B's father and an evil-doer prohibited to sit on a court, in order to resolve their financial dispute, assuming they both agree to such in advance — but a *ger* certainly could not "accept" ineligible judges to oversee his conversion.

Hence, since a *ger* is ineligible to judge, which is what the language of Rambam says, he cannot sit on a conversion court. To me, stating that he is considered an eligible judge when judging other *gerim* seems like an implausible read of Rambam, since Rambam seems to consider this case as an exception, outside of the rule that "all are eligible to judge." Indeed, I see no other way to parse the phrase "a court of three is disqualified if one of its members is a *ger*" other than to mean that a court with a convert on it is invalid, and an invalid court produces invalid conversions even as an invalid court does not produce invalid judgments in financial matters when the parties accept the judges (or in the case of a convert, simply are similar to them.)

If Rambam had wanted to adopt the view that a court of converts is not invalid, but only invalid to judge born Jews, all he needed to do was add the words "to judge Jews" after the word *pasul*. Therefore, it seems to me that the best read of Rambam is to say that a *ger* is

> ineligible to judge anybody according to the Torah, but that he can judge his fellow *ger* due to an implied *qabbalah*, which would simply not work for a conversion.

Broyde here makes a textual argument and a conceptual argument. His textual argument is that Rambam's formulation in 2:9 implies that a convert is essentially removed from the category of eligible judge. Assuming this is correct how is one to explain 11:11? Here Broyde suggests that Rambam is working with the principle of *qabbalah*. According to this principle, when the parties agree to adjudicate their dispute before a certain judge, this judge's decision becomes binding, regardless of whether he would in theory be eligible or not. This is unique to financial disputes since the litigants "own" their money and can do what they want with it.

Therefore, the bottom line according to Rambam, in Broyde's understanding, is that a *ger* never really has the status of judge, but rather Rambam is telling the readers that there is an implied acceptance amongst *gerim* to allow "one of their own" to adjudicate their disputes, even though this would mean that the case would really be an arbitration and not a court case proper.

There are a number of problems with this argument. Firstly, from a textual perspective this seems like a case of over-reading. Although it is true that Rambam does not mention the exception to the rule in his first iteration of the rule in 2:9, this hardly proves that Rambam believes there to be no exceptions, especially when he will bring one up at the end of his treatment of the subject in 11:11. It seems much more likely to suggest that Rambam was simply interested in explicating the general law, which is that courts cannot be made up of converts since this would give them jurisdiction over born-Jews, which is forbidden to them. Only at the end does he throw in the fact that if, in theory, one wanted to form an *ad hoc* court of converts to judge a specific case where all of the litigants are converts, that this would be permissible.[184]

Secondly, the only reason that Broyde's deduction seems at all plausible is because he comes at the source with a specific question in mind; one that Rambam does not raise himself. It is a fact that the one court where there is no discussion in rabbinic sources about whether a *ger* can sit on it or not is the conversion court. Since this question is foremost in Broyde's mind as he

184. Rambam would probably even allow for a permanent court with only jurisdiction over *gerim*, but this would be an odd construct so there would be little reason to discuss it in the *Mishneh Torah*.

searches the sources, even the subtle difference between Rambam's phrasing in 2:9 and 11:11 seems significant to him. Perhaps, Broyde reasons, if Rambam is trying to say that a court of *gerim* is not really a court but only has the appearance of a court, this would imply an answer to the question about converts serving on a conversion court, since here it is certain that a real court would be necessary.

However, if one were to read the *Mishneh Torah* without this particular question in mind, one would see that R. Broyde's read creates more troubles than it solves. If the reason that converts can judge other converts is because of the principle of *qabbalah*, then the exception is really not about converts at all! The rule is that anybody can sit in judgment over anybody in financial disputes assuming the parties involved agree to this in advance. So why mention converts judging converts of all things.

Broyde's answer to the question is that in this case there is implied general acceptance by the converts, since it would be illegitimate for them to say that they reject a fellow convert just because he is a convert. Although this is a creative possibility, it is difficult to defend. Rambam makes no mention here of implied *qabbalah*, or any *qabbalah* for that matter. Second, this "rule" would not really be a rule at all. What if the converts did, in fact, object? According to the standard rules of monetary courts, the converts would have the right to refuse this court. However, one would assume from Rambam's formulation that this court of converts has subpoena power over the litigants, since it is being analogized to monetary courts which have that power. To say that the court of converts automatically has subpoena power because the *ger* has no choice but to "accept" this court since he ore she is himself or herself a *ger*, is tantamount to writing an entirely new halakha with barely a thread of textual evidence.

The crux of the problem with R. Broyde's read, in my opinion, is that there are really two rules when it comes to *gerim* functioning as judges, and that Broyde is reading 11:11 as an exception to the wrong rule.[185] One rule is a *ger* cannot serve on the Sanhedrin or on any capital case.[186] This is an intrinsic rule, as the *derasha* says these judges need to be "like Moshe" in a number of ways. This law does not apply to monetary cases, or any cases other than the two cited above.

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185. See the main article for a full discussion of the sources.

186. I am specifically simplifying and ignoring Rashi's position about *gerim* judging other *gerim* in capital cases, for the sake of space and clarity.

Another rule is that converts may not have coercive authority over Jews by birth.[187] This rule applies to monetary courts, as well as to a host of other non-court related political appointments, from king down to minister of water. This rule comes with an obvious exception, stated explicitly by Rava (b. *Yeb.* 102a). A *ger* can judge a fellow *ger*. The exception has nothing to do with *qabbalah*, and nothing to do with the idea that *gerim* are intrinsically disqualified from being judges. *Gerim* are only disqualified from judging capital cases or legislating on the Sanhedrin. They are fully eligible to judge any other case, but it is forbidden for them to have coercive authority over born-Jews. Nonetheless, a court of converts is a real court and may be granted coercive authority over other converts.

That this is the proper understanding of Rambam can be seen by R. Joseph Karo's iteration of this halakha as found in the *Shulḥan Arukh*.

לענין דין, גר כשר לדון דיני ממונות, והוא שתהא אמו מישראל. אבל אם אין אמו מישראל, פסול לדון את ישראל, אבל לחבירו גר דן. ולחליצה, פסול, אפילו לחליצת גרים, עד שיהא אביו ואמו מישראל.

With regard to judging, a *ger* may judge monetary cases, assuming his mother was Jewish. But if his mother was not Jewish, he is ineligible to judge born-Jews, but he can judge his fellow *ger*. And for *ḥalizah* he is ineligible, even for the *ḥalizah* of other *gerim*, unless both his parents were Jewish (YD 269:11).

בית דין של ג' שהיה אחד מהם גר הרי זה פסול לדון לישראל, אלא אם כן היתה אמו (או אביו) מישראל. וגר דן את חבירו הגר, אף על פי שאין אמו מישראל.

A court of three is disqualified to judge a born-Jew if one of its members is a *ger*, unless that *ger* has a Jewish mother (or father). But a *ger* can judge his fellow *ger*, even though his mother is not Jewish (ḤM 7:1).

Following the framework provided by Rava, R. Karo outlines the rules of when a *ger* is eligible to judge and when he is not. It seems clear that the ineligibility of a convert to judge monetary cases is by its very nature relevant only to born-Jews. But there is no question that they are eligible to judge converts. There is no implication in the *Shulḥan Arukh* that this has anything to do with *qabbalah*, which is a totally different issue.[188]

187. A third rule is that converts cannot oversee a *ḥalizah*, but this rule is applicable only to *ḥalizah*.

188. In theory, one could argue that R. Karo is disagreeing with Rambam, but it seems to me that he is just clarifying.

Considering the above analysis, the answer to the question of whether a convert can oversee conversions would seem obvious. The principle would be that a *ger* can judge any case which is not capital, not a *ḥalizah* and not legislating on the Sanhedrin, as long as the people over whom he has authority are not Jews by birth. Since conversion does not fit into one of the exceptions, and the person over which the *ger* has authority is by definition not a born-Jew, Rambam and Karo would think him eligible to judge.[189]

Perhaps the most inexplicable analysis of this subject was put forward in an article by R. Chanokh Henakh Cohen.[190]

שאלה: מי שאביו מישראל ואמו נכרית, ובילדותו נימול וטבל כדין לשם גירות, ואחר כך נתחנך חינוך נאמן לקדשי ישראל, ושמר תורה ומצוות, ולמד תורה כמה שנים בישיבות הגבוהות, ועכשיו משמש רב באחת הקהילות – אם מותר לצרפו כדיין בבית דין של שלשה בקבלת גר?

Question: There is a person, whose father was Jewish and mother Gentile, and in his youth he was circumcised and immersed properly as a conversion, and afterwards he was given a good Jewish education, kept Torah and mitzvot, and learned Torah for many years at *Yeshivot*. Now he is a community rabbi. Is it permissible to include him as a judge in court of three for conversion?

תשובה: ביבמות (מו:) "שמע מינה גר צריך שלשה... וכן היא הלכה פסוקה ברמב"ם... ומטור שלחן ערוך... משמע שכל עניני הגר, הן להודיעו המצוות הו המילה הן הטבילה, צריך שיהיו בשלשה הכשרים לדון (דיני ממונות), ובטור/שלחן ערוך יורה דעה סימן רסט בסופו: "לענין דין, גר כשר לדון דיני ממונות, והוא שתהא אמו מישראל."

Answer: In *Yebamot* [it says]: "We learn that conversion requires three…" and this is the decision codified by Rambam… and from the *Ṭur* and *Shulḥan Arukh*… it would appear that all aspects of the conversion, whether teaching [the candidate] mitzvot, or the circumcision, or the immersion, there needs to be three judges who are eligible to judge (monetary cases), and in the *Ṭur*/*Shulḥan Arukh* (YD 269 towards the end): "The rule is that a *ger* is eligible to judge monetary cases, provided that his mother is Jewish."

189. Of course, one could counter by arguing that conversion is analogous to one of the three exceptions, but this would be following one of the earlier models.

190. R. Chanokh Henokh Cohen, "*Be-Inyan Ger: Ha-Im Muttar le-Tzarfo ke-Dayan be-Beit Din shel Shelosha be-Qabbalat Ger*," *Shana be-Shana* 5752, 259–265.

מכאן אנו למדין, לכאורה, שגר כשר להיות אחד מבית דין של שלשה לקבלת גר רק כשאמו היא מישראל...

From here we learn, apparently, that a *ger* can be on a conversion court of three only if his mother was Jewish…[191]

R. Cohen either assumes that a court made up of converts has no status whatsoever, which is contradicted by the very next line of the source he quotes,[192] or that a *ger* overseeing a conversion is analogous to his judging born-Jews, a curious assertion for which Cohen offers no proof.

In fact, nowhere in R. Cohen's discussion does he bring up the statement of Rava that a *ger* can judge his fellow *ger*. This is not a little surprising, since Rava's statement is at the core of this issue. This can be seen by a quick glance at the authorities who take strict positions on the subject; all of them feel the need to explain why the rule that a *ger* can judge his fellow would not apply, something that Cohen, for some unknown reason, does not feel the need to explain.

Summary

The intent of the above analysis was to clarify what all of the authorities (known to me) have said on the issue, and to give the reader a conceptual overview of the various positions.

Insofar as how one determines the halakha on this issue, I think that the rabbinic sources speak for themselves, as I argued in the main article. When looking into the eligibility of a person to sit on a court, it seems to me that the question is adjudicated in the Talmud in only one way every time: The rule is that everyone gets to sit on a court until a *derasha* is found that disqualifies him. Hence, a *ger* is excluded from capital cases because of the *derasha* about Moses, and is excluded from the *Sanhedrin* because of the *gezeira shava* to capital cases. He is excluded from *ḥalizah* (according to the Bavli) because of the word 'in Israel' and he is excluded from judging an ethnic Jew (according

191. The remainder of Cohen's responsum is dedicated to the question of whether the fact that this person's father was Jewish could be considered a mitigating factor.

192. i.e. "but if his mother was not Jewish, he is ineligible to judge born-Jews, but he can judge his fellow *ger*"

to Rava) because of the *serara* (authority) rule. In a case of conversion he is judging a Gentile/convert, so it is would seem to me open and shut that he can be on the court.

Conclusion and Caveat

At the end of his article, R. Broyde writes the following:

> Since the dispute is without clear precedent, it is certainly wise to err on the side of caution and mandate that only born Jews serve as *dayanim* in cases of conversion. Given that there are eminent *poskim* who consider such conversions invalid, even after the fact, it would be a disservice to any potential convert (as well as to the Jewish community) to intentionally staff a conversion panel with such a rabbinical judge, especially since there are abundant competent and technically qualified rabbis available (76).

R. Zylberman takes an even stricter position:

ומכיון שנחלקו בזה גדולי עולם, לא מצאנו דרך סלולה בדבר, והצענו לאלו שנתגיירו בבית דין הנ"ל לגייר שוב לחומרא ולהסיר מהם כל ספק.	And since great scholars have argued about this, we have not found any simple direction to take. Therefore, we suggested to those that converted in the above mentioned court[193] that they should convert again *le-ḥumrah*, to remove any doubt.

In my own opinion, although I strongly disagree with these author's characterization of the state of the question insofar as the actual halakha is concerned, I do believe that it may still be in the best interest of the potential convert to have all three judges ethnically Jewish in order to avoid potential pitfalls in the future, at least for the time being.

This is not because I consider the possibility that a *ger* performing a conversion may be invalid. As I have tried to show, the arguments in favor of the strict position appear forced and almost definitely erroneous. I make the above suggestion simply because I see little reason to create possible practical problems for the *ger* in the future if it isn't necessary. For some reason, inexplicable

193. A court with one convert and two born-Jews

to me, a number of important *posqim* in the Modern Orthodox community, and the Orthodox community at large, have taken a strict position on this question. Until a significant enough number of rabbis can be convinced of the incorrectness of the strict position,[194] it would seem to me that the possible practical costs of using a *ger* when one could use a born-Jew outweighs the benefits in most cases. At the very least, the potential convert should be warned that there are those in the Orthodox world that consider this a problem.

Conversely, it is important to note the downside of being strict here. Every time a difference between a *ger* and a born Jew is canonized in halakha, the *ger* is hurt and our people are divided. In this case, the people being hurt are the rabbis themselves, and, irony of ironies, it is the potential *ger* who is being asked to offer the insult to his or her rabbi. This is a real price and is the reason I hope that there will be a change in attitude on this subject. Nevertheless, at this point in time, when we must choose between insulting our rabbis or possibly exposing potential converts to greater humiliation down the road, I think the former is the lesser of the two evils.

Finally, I fervently oppose the suggestion of R. Zylberman that one who is converted by a court with a *ger* on the panel should go through another conversion *le-ḥumrah*. Instead, I am in full agreement with the position of R. Avi Weiss in his *Jewish Week* op-ed that there is no good reason, halakhically speaking, to require a second *giyyur* in cases where a *ger* sat on the conversion panel. In fact, in my opinion, it is a potential violation of *lo tonu et ha-ger* (do not afflict the *ger*) to imply that he or she would require one.[195]

194. One of the purposes of this article

195. This is not only because I think the strict position to be false, but because the weight of the sources on this issue tends toward leniency here, as was demonstrated above, and at the very least one must admit there is clear precedent for leniency.