
A Proposal for the Purification of All Jews (and Incidentally Patrilineals)

By Leonard Levin

Rabbi Akiva said: Fortunate are you, O Israel! Before whom do you purify yourselves? And who purifies you? Your Father in heaven, as it says, "I shall sprinkle pure water upon you, and you shall be pure." (Ezekiel 36) And it says: "The Lord is the *mikveh* of Israel" (Jeremiah 17) — just as a *mikveh* purifies the impure, so does the Holy Blessed One purify Israel (Mishnah *Yoma* 8:9).

The world Jewish community is in danger of splintering into mutually antagonistic fragments. The choice is clear: between maintaining inflexibly strict standards that relegate the majority of Jews to illegitimacy, or developing a consensus based on mutual recognition of sub-groups who agree on major principles but allow discretion in how those principles shall be implemented in each sub-group.

As things stand now, there are people who consider themselves as Jewish, or married, or invested with positions of Jewish responsibility and authority (rabbis, cantors, and teachers) by this group but not by that group, and are at the mercy of discrimination by this or that sub-group or authority as to whether they want to participate in daily Jewish ritual, marry a Jew, exercise official Jewish functions, be accepted to Israeli citizenship as a Jew, or be buried in a Jewish cemetery. Cases such as those of Jessica Fishman¹ and Lev Pesahov² have dramatized the acute injustice that individuals and broad communities have suffered because of the arbitrary denial of Jewish status to those whose Jewishness has been recognized by some jurisdictions and denied by others. We are all of us victims or potential victims of this arbitrary exercise of the power to disqualify, which is exercised in the name of the Jewish tradition but runs counter to the sentiment and values and even counter to certain specific legal precedents in Judaism.

There are a number of issues that converge to produce the dilemma we face today. Among those issues we must list are the following:

1. What is determinative of Jewish identity? What objective and subjective factors converge to yield the determination that so-and-so is a Jew? Among objective factors, we must include:
 - a. The fact that one or both parents of that person (or one or more grandparents) are Jewish or presumed Jewish.
 - b. The fact of the person's having received a Jewish upbringing, including Bar Mitzvah or Bat Mitzvah, in a particular Jewish denomination.
 - c. The fact that a person underwent a conversion ceremony, of a given denomination.

Among subjective factors, we include:

- d. Does this person regard him/herself as Jewish?
- e. If the person participates in ordinary Jewish practice, or in a *rite de passage* (Bar/Bat Mitzvah or conversion), what is going through their mind as to their intention?
2. The diversity of historical traditions concerning the status of Jews born of a single Jewish parent, whether paternal or maternal.
3. The competition of various jurisdictions claiming to determine what constitutes “acceptance of commandments” necessary for conversion, who is qualified to perform conversions, etc.—while disagreeing on the standards to apply for these purposes, each having their interpretation of the same body of canonical texts and traditions.
4. The disconnect between a large number of Jews who qualify as partially Jewish on racial-ethnic and subjective-existential grounds (and therefore are counted as Jewish by demographic researchers and under the Israeli Law of Return) but whose status on halakhic grounds is more ambiguous or questionable, and a super-restrictive religious criterion enforced by a reactionary elite not at all representative of world Jewry but by historical accident empowered to determine “who is a Jew” for religious purposes within the State of Israel.

Under these circumstances, no less an authority than Rabbi David Hartman has advocated “shifting our halakhic focus, when it comes to defining membership, from questions of purity and authority to the health and benefit of the living community” (*The God Who Hates Lies*, p. 170).

I propose that we be guided, in addressing these issues, by certain principles that I base on traditional Jewish texts. My recommendation will be to adopt two actions, one to guide our action *le-khatehillah*,³ the other *be-di'avad*:⁴

- *Le-khatehillah*, I propose that we adopt a general practice of immersion, which may be accomplished either in a *mikveh* or in *mayim hayyim* (such as an ocean) at least once a year, to restore immersion in some form as a general part of normative Jewish religious practice within our communities.
- *Be-di'avad*, I propose that we accept as Jewish those individuals certified as Jewish by all mainstream Jewish movements; as a corollary, this includes recognizing as Jewish those patrilineal Jews raised within liberal Jewish communities, with Jewish education and Bar/Bat Mitzvah.

The conjunction of these two recommendations is deliberate, and is aimed to achieve a third result, of greater overall mutual acceptance of sub-groups within the Jewish community. This result will hopefully be achieved by the following argument: Classically, conversion to Judaism is achieved by three factors: receiving of *mitzvot*,

circumcision (for males), and immersion. *Bedi'avad*, according to the classical Jewish sources, any immersion in a Jewish ritual context – not specifically for *gerut* – suffices to satisfy the immersion requirement. Any patrilineal Jew who has been educated Jewishly and undergone a formal Bar/Bat Mitzvah ceremony has (according to my argument) fulfilled the requirement of receiving the *mitzvot*. I assume that such an individual, if male, has undergone circumcision also for the purpose of affirming Jewish identity. If we revive immersion as a general Jewish practice, then all three requirements will be met, and there should be no objection to accepting such individuals as fully Jewish.

PRINCIPLES

I propose the following principles to guide our consideration:

1. Pluralistic reciprocity. In a pluralistic vision of the larger Jewish community, there can be different jurisdictions with different standards and procedures as to what effectively constitutes changes in personal status. Insofar as possible without violating basic principles, Group A should recognize the actions of Group B as valid, even though the standards and procedures of Group A and Group B differ in the matter in question. (Source: Text #1 from Appendix – the mutual recognition of marriages by the School of Shammai and School of Hillel, BT *Yevamot* 13b-14a)
2. The irrevocability, past a reasonable point, of change of status to Jewish identity. Once children have been born of parents who were accepted as Jewish either presumptively or by conversion, and the presumption or conversion of the parent is challenged for whatever reason (for instance, because of improper procedure), the Jewish status of the children cannot be reversed. (Sources: Text #6 – the case of the man who “converted himself” in BT *Yevamot* 47a; Text #7 – Maimonides, *Hilkhot Issurei Biah* 13:6-10; Text #5 – *Shulhan Arukh Yoreh Deah* 268:3)⁵
3. The presumption of legitimacy of those conforming to Jewish practice. Conformity to Jewish practice counts as a factor in favor of presuming the validity of one’s Jewish status, even in the absence of evidence concerning the circumstances of their conversion (if any). (Sources: Text #4 – the case of the woman and man “who immersed for their impurity” in BT *Yevamot* 45b; Text #7 – Maimonides *Hilkhot Issurei Bi’ah* 13:9)
4. The coincidence of the requirements for conversion with the requirements for living a Jewish life. This is a feature of traditional Jewish communities which is absent from most modern Jewish communities, and which my proposed innovation would restore. In a traditional Jewish community, observant Jews are – as part of their regular routines of religious

observance— explicitly pledging allegiance to the *mitzvot* (whether daily in recitation of *Shema*, or occasionally in attendance at Yom Kippur or Bar/Bat Mitzvah ceremonies) and ritually immersing themselves. This is the basis for the argument of Rav Assi (ratified in the codes) that a woman or a man, immersing for their impurity, performed by that immersion the requirement for conversion. One could argue that in such a Jewish community, the requirements for conversion—or, if you will, for making Jews Jewish—were being fulfilled continuously, so that any questionable or borderline issues of Jewish status were continually being rectified in the course of normal Jewish living.

This last principle may raise in our minds the question: Why, then, do we have a “conversion process” and a “conversion ceremony” in the first place? The answer is not hard to find. In the normal course of life, there are many people who are born non-Jewish, who decide in the course of their lives to change their religious outlook, commitment, and way of life, and thus to become Jewish from a prior state of being non-Jewish. Such cases are generally clear-cut and undisputed. It is for such cases that the process of education-for-conversion and the ceremony of conversion itself are intended. Conversion is a change of personal status, belief, and practice from being non-Jewish to being Jewish. It is clearly appropriate for the person who is unambiguously non-Jewish to begin with. It is of debatable appropriateness in the case of a person who is Jewish by some criteria and not others, or who is clearly and unequivocally Jewish in some people’s eyes (including their own) and not at all Jewish in other people’s judgment.

This leads me to mention a paradox that was pointed out by a contemporary Israeli Masorti rabbi,⁶ Avinoam Sharon. He has expressed his view that there are people who can never become Jewish, namely, those who sincerely believe that they are Jewish, more particularly, those born of a Jewish father and a non-Jewish mother who were raised and educated as Jewish. The reason for this impossibility, he says, is that in his view a conversion can only be valid if performed with the intention of transitioning from a non-Jewish state to a Jewish state. As the person in question already regards him/herself as Jewish, they can never undergo conversion with the proper intention. Any conversion that they undergo (and many have undergone it) would then be invalid for that reason, and they would remain non-Jewish even after the conversion. His conclusion from this state of affairs is that the split in the Jewish body politic resulting from the raising of a generation of Jews is permanent and irremediable. But even if we do not accept his pessimistic conclusion, we may be given pause to reconsider, whether subjecting patrilineal Jews to a conversion process is necessarily and automatically the right course of action.

This leads to another principle on which we should base our action:

5. Jewish sub-groups with different outlooks on matters concerning both of them should find ways of acting that does not violate the principles or self-

understanding of either. This is understandably a difficult principle to operate on, precisely because it would seem that on the matter on which they differ, either would have to capitulate to the other's view in order to act in a manner acceptable to them. In the case before us, it would seem *prima facie* that such-and-such an individual is Jewish according to one criterion (that of the Reform and Reconstructionists who accept patrilineal Jews, raised in the Jewish tradition, as Jewish) and non-Jewish according to another criterion. How, then, were the House of Shammai and the House of Hillel able to marry each other when they disagreed as to the rules governing certain marriages? The traditional commentators say that each group informed the other who would be ineligible for marriage according to the other's rules, so that they were able to comply with the stringencies of both groups simultaneously. I have no evidence from the time-period in question that it actually happened that way, and such a procedure would not help us. My own understanding of that passage is that it is at least just as likely that each accepted *bedi'avad* as valid actions of the other group that they would not themselves have performed *le-khatzilah*. Whether that is actually what the House of Shammai and the House of Hillel did, it is at any rate a procedure that has been honored many times by other authorities in other domains of Jewish law. It seems to me essential that we follow such a procedure, at least in part, in the present dilemma in order to work our way out.

The careful reader or listener to my proposal will notice, however, that it responds to this principle in a special way. The procedure of universal immersion that I propose does not require, of the more liberal factions, that they give up their view that patrilineal Jews are validly Jewish to begin with. It also does not require, of the more conservative factions, that they give up their view that patrilineal Jews have not fulfilled the requirements of becoming Jewish prior to immersion. It does not require, of any so-called "patrilineal Jew," that he/she regard himself/herself as non-Jewish going into the ceremony (thus avoiding Avinoam's paradox). But if they accept the other parts of my rationale, both groups will agree that after universal immersion has been adopted and practiced, any difference in status between Jews-with-one-Jewish-parent and Jews-with-two-Jewish-parents, whether any such difference was present to begin with or not, is now moot and has been swept into the past.

Indeed, the purist could argue that no Jew knows the purity of his or her lineage. It is clear from the testimony of the Talmud that there were some individuals who were "passing" as Jews in the third century – and these are just the ones whose existence left some trace in recorded history! We may presume that those who went unrecorded were far more. (If we include those who were converted, but whose conversions would not have passed the current Israeli Chief Rabbinate's standards, the proportion will no doubt be much higher.) It is likely the case that every Jew in the world today possesses some

of the genetic heritage of all these different kinds of questionable Jews. The mitochondria of unconverted non-Jewish ancestresses are very likely percolating in all of our cells. By a formalist criterion – one that would require a formal conversion ceremony to mark every change of status – we are all of doubtful status. The only view that would insure our own irrefutable Jewish status would be one that granted, on some level, the power of the momentum of continual Jewish practice to have a positive impact on actual Jewish identity. And that view would give aid and comfort to today's patrilineal Jews. So let us all go into the *mikveh* or the ocean together, and not quibble about for whom the water cleanses. Rabbi Akiva said it purifies all of us, and I believe he was right.

ARGUMENT

1. A prospective convert becomes Jewish by satisfying three requirements: (a) acceptance of the *mitzvot*, (b) circumcision (in the case of males), and (c) immersion for the purpose of conversion. [Text #2] *Bedi'avad*, the strict criteria of each of these three is relaxed in various ways; for instance, the immersion may be *stam* (a non-specific) ritual immersion. [Texts #4, #5, and #7]
2. The case before us is of a person born of a Jewish father and a non-Jewish mother, who has undergone a Jewish education and participated in a Bar/Bat Mitzvah ceremony, and who is regarded by their community as fully Jewish by virtue of these facts, without a formal conversion ceremony. It is assumed that this individual, if male, has also been circumcised with the intention of fulfilling the requirement of circumcision as a Jew, whether this was done in the traditional Jewish ritual manner or in the modern medical-surgical mode.
3. As my argument for acceptance of Reform "*kabbalat mitzvot*" in the case of patrilineal Jews shares common features with the case of acceptance of Reform or Reconstructionist conversion, it makes logical sense to address that case first. At bottom, the determination, whether a Reform or Reconstructionist-administered conversion ceremony is valid or not, is a judgment as to whether Reform or Reconstructionist Judaism is a legitimate form of Judaism in the current age. Those of us who are pluralists on principle take as a minimum the acceptance of the legitimacy of the major branches of Judaism. It follows from this that we should regard their conversion procedures as valid conversions, at least with respect to the "acceptance of commandments" requirement. In further support of this claim, I cite the description of "reception of *mitzvot*" in *Yevamot* 47a-b (Text #2, which is replicated in almost identical terms in *Shulhan Arukh Yoreh Deah* 268), specifically that the specification of *mitzvot* should be a representative sampling but does not need to be complete, and that the

intention to observe the *mitzvot* is also stated in general terms without exhaustive specification. This description is broad and flexible enough to include the pledge to observe Judaism that is made by the convert in a Reform or Reconstructionist conversion ceremony.

4. Once we grant the legitimacy of the *kabbalat mitzvot* in Reform and Reconstructionist conversions, it is easy to extend this argument to argue that a Reform or Reconstructionist Bar/Bat Mitzvah ceremony constitutes valid “acceptance of the commandments” that is admissible to satisfy one of the three key requirements for conversion. The candidate for Bar/Bat Mitzvah has already received instruction in Judaism that is comparable to the education that a prospective convert receives. And all these standard Bar/Bat Mitzvah ceremonies include at a minimum the blessings of the Torah, which (even in the modified Reconstructionist version) bless God “who has given us the Torah” – an explicit acknowledgement of the binding character of the Jewish tradition. The free form speeches by Bar and Bat Mitzvah candidates also typically affirm the individuals’ acceptance of Judaism, in terms that are the free, creative and willing self expression of each individual. They are witnessed by the entire congregation, which exceeds the minimum requirement of a court of three “kosher” Jews. Taking all this in conjunction, we should certainly accept that anyone who has become Bar/Bat Mitzvah in these movements has fulfilled the “acceptance of commandments” requirement that is part (indeed, according to authorities like Maimonides, the major part) of the requirements for conversion.
5. Another possible precedent for the case of a patrilineal Jew, viewed from a halakhic perspective, is that of the Jew who without formal conversion seeks to “blend” into the Jewish community. Such a person is even more suspect than the current case, for there is no evidence that such a person has explicitly affirmed before witnesses that they accept Judaism as binding. Indeed, such a case is treated with ambivalence by the tradition. On the one hand, it is sought that such a person rectify their status. (Immersion is a valid form of rectification – see end of Text #7, Maimonides *Hilkhhot Issurei Biah* 13:9). On the other hand, if they have successfully “passed” to the point of having children who are accepted as Jews, their status is not to be challenged retroactively. [Texts #4, #5d and #6] The Talmudic rabbis and medieval legists seemed to recognize that once a family had been accepted into the community over multiple generations, the harm that would be caused by uprooting them outweighed the good of establishing “purity” of lineage. In the last analysis, continued Jewish practice was the determinative factor, outweighing purity.
6. In the texts describing those prospective Jews who “passed” and were

ultimately accepted, ritual immersion is repeatedly invoked as a factor, indicating that it was probably regarded as decisive. [Texts #4, #5b, and #7] It is no accident that this coincides with one of the key ritual requirements of the conversion process. Of the other two requirements, we can say that circumcision is to be assumed as having taken place in the male cases cited (otherwise, it would certainly have been raised as an objection). This leaves the question of “acceptance of mitzvot.” From the silence on this factor in the Rav Assi stories [Text #4, and see also the first part of Maimonides, Text #7], we must infer that continued conformity to the Jewish way of life is taken as tantamount to implicit acceptance of the mitzvot. (Even if this were not the case, it is not necessary for our own situation, for we regard the formal Bar/Bat Mitzvah ceremony, taking place in a public congregation, as fulfilling this requirement.)

7. Let us now suppose that a person comes to me and says, “I was born the child of a Jewish father and a non-Jewish mother. I was raised Jewish, received a Jewish education, and had a Bar/Bat Mitzvah ceremony. I identify as a Jew.” I must decide how to respond to this person, both myself as an individual, and on behalf of the Jewish community. For clarity, I will describe these two aspects of my response separately.
8. First, my individual response. I must preface this by saying that my own personal interpretation of Judaism is rationalist and non-sacramental, with a high ranking of the subjective factors in determining Jewish identity. In terms of the dichotomy that Abraham Joshua Heschel described in rabbinic theology in his book *Heavenly Torah*, I align more with the positions he ascribed to the School of Rabbi Ishmael than to those he ascribed to the School of Rabbi Akiva. I attach the highest importance to the fact that he says he identifies as a Jew. In support of the validity of his claim, I enlist many of the narratives of the Bible, especially those in which the children of mixed marriages were included in the people of Israel without question. My mind goes to the case of Judah’s children by Tamar, and Moses’ children by Zipporah. I bring to mind the story of Ruth, where her declaration of faith was made before no court of three males, but in private to Naomi alone, and the law of Exodus 12:43-44, that circumcision was enough for a male to enter the assembly of Israel and eat of the Paschal lamb (but no mention is made there of immersion or declaration of allegiance). I recall the case of Naaman, whose signal action was immersion—but it can be argued that in his case, the immersion was necessary to cure him of his leprosy, and that it is a poor precedent for converts in general. In short, the Bible knows of many individuals who by choice joined the people of Israel and affiliated with it, but it does not know of any sacramental ritual that is necessary and efficacious in changing the

inner nature of a person from non-Jewish to Jewish.⁷ It seems self-evident to me that the person before me stands in a long line of individuals who voluntarily associated themselves with the destiny of the people of Israel. Moreover, the person in front of me has not merely taken Judaism on privately, as a matter of personal whim. He has been solemnly told by the religious authorities in his community – by teachers and rabbi – that he is fully Jewish, and that his Jewishness is confirmed by his education and the solemn ceremony in which he undertook the obligations of Judaism. I accept warmly his self-declaration as a Jew and the bonds that unite him and me in a common enterprise, a common destiny and a common way of life.

9. But now to my response on behalf of the Jewish community. Although my bonds of Jewish fellowship to this self-declared Jew are genuine and positive, I also feel positive bonds with millions of other Jews, of the present and the past, world-wide. I am acutely aware that this self-declared Jew before me poses a test case on which the views of this larger Jewish community will be sharply divided. Alongside non-sacramental rationalist Jews such as myself, there are Jews of different temperament, some strongly legalistic, others mystical or of a decidedly sacramental bent – Jews who stress the objective criteria of Jewish identity. They view the case of this person in a different way. For them, the fact that he was born of a non-Jewish mother and has not undergone formal conversion to Judaism are decisive. My accepting him as fully Jewish will tend to exacerbate a split that has already assumed critical proportions in our day, between those Jews who regard themselves as of legitimate lineage and others whom for a variety of reasons they regard as questionable or illegitimate. The contours of these divisions are well known and do not need to be rehearsed at this point.
10. One measure that has been recommended for such a situation as I describe is that I should recommend to this self-declared Jew that he undergo a formal conversion to Judaism. I understand that the purpose of this recommendation is to ameliorate the evil I have just described, namely the division of the Jewish people. But I am at a loss to understand how this recommendation should be tailored to achieve the described objective. Should I recommend a Reform conversion to this person? If he has already had a Reform Bar Mitzvah, then he is an accredited Jew by Reform standards. What would a Reform conversion add? Should I recommend a Conservative conversion? Such a recommendation has at least two defects, by the current criteria. First, if he is a convinced Reform Jew, on what grounds should I be recommending a Conservative conversion? Should he profess what he does not believe, simply to achieve extrinsic benefits of

status? Such a course would be hypocrisy. Secondly, if the objective is to erase the splits in the Jewish people, a Conservative conversion would not achieve this, since those who are most rigorist in maintaining exclusivist standards do not recognize Conservative conversions either. Finally, should I recommend an Orthodox conversion? The already-mentioned objections still stand. If he were already convinced of the greater truth of Orthodox Judaism, he would not be standing in front of me maintaining the validity of his Jewish status, but he would be seeking that Orthodox conversion on his own initiative. And if he is not convinced of it, I am not about to advocate a course which would encourage hypocrisy. Finally, the conversion of isolated individuals to Orthodoxy would leave the divisions of the Jewish people intact while strengthening the hands of those who are most strongly opposed to a pluralistic solution of the problems of the Jewish people – and would undercut my own legitimacy as a Conservative Jew, running counter to my own Jewish self-understanding.

11. The paradox pointed out by Rabbi Avinoam Sharon is an additional reason for hesitating recommending any form of conversion at all. As Rabbi Sharon has pointed out, the validity of a voluntary profession such as that in conversion depends on its sincerity. This objection is not necessarily absolute. A prospective convert might enter a conversion ceremony with the intention: “I already regard myself as Jewish; nevertheless, I willingly enter this ceremony with the purpose of unambiguously affirming my Jewish identity and removing any doubt concerning it.” Arguably, a conversion ceremony entered into with that intention can be valid. However, as the Jessica Fishman case and many similar cases illustrate, there are individuals who cannot countenance this alternative. For them, their conviction of their Jewish identity is so firm and absolute that they cannot question it for a moment, and so conversion with integrity is not an option. In my view, their refusal to undergo a conversion ceremony for this reason should be respected.
12. Nevertheless, I believe that the claims of the traditionalists, who cannot accept as “Jewish” patrilineal Jews who have not undergone conversion, also have a strong basis, indeed an overwhelmingly strong presumption in terms of the coherence of the historical Jewish community. For the past fifteen hundred years, the Jewish tradition has with near unanimity held that the child of a non-Jewish mother and a Jewish father is in need of formal conversion to Judaism, and a significant minority has held that even the converse case – the child of a Jewish mother and a non-Jewish father – is less than fully Jewish and in need of conversion. At a minimum, they require immersion *le-shem gerut* – for the explicit purpose of conversion –

to rectify the identity of Jews of mixed background.

13. In some cases, formal conversion of a Jew of mixed background may be psychologically and spiritually appropriate as the explicit resolution of a complex search for one's true, inner identity. Ethan Tucker cites one such case, which he presents as typical.⁸ I think we should take seriously his pointing out the existence of such cases. I would beware, however, of legislating universal stringencies on the basis of individual cases. I am aware as I say this that I, too, have advanced individual cases (for instance, those of Jessica Fishman and Lev Pesahov) in advocacy of universal rules – in this case, for leniency. The proliferation of special, unique cases in the area we are considering is legion. Under these circumstances, it behooves the wise counselor to be sensitive to the unique circumstances of every individual case before him, and to tailor his advice to guide that individual in the most appropriate way to maximize that individual's potential as a human being and as a Jew. However, in the matter of legislating rules, I believe a course of moderation is mandatory, to provide that counselor with the maximum discretion.
14. Under these circumstances, I believe that mandating general immersion for all Jews on a regular basis is – if not a universal remedy – a measure that can greatly ameliorate all the dilemmas I have just described. It should be instituted on the understanding that compliance with this practice will *be-di'avod* satisfy the requirement of individual immersion for all Jews whose status as fully Jewish is questioned by one or another segment of the Jewish community. At the same time, it will do so without singling out individuals because of the circumstances of their lineage, or forcing them into a decision whether to “convert” to Judaism when such an action would be insincere on their part.
15. Whether such general immersion should take place in traditional *mikva'ot* or in public bathing areas (oceans, lakes, rivers) is a technicality beyond the scope of this paper. (P.S. Rabbi Michael Pitkowsky informs me there is halakhic precedent for allowing bathing suits, provided the water penetrates them. According to Rabbi Isaac Klein in his *Guide to Jewish Religious Practice*, p. 445, loose-fitting bathing suits are permissible.)
16. It would be appropriate in any case to develop a liturgical accompaniment to the act of immersion that could incorporate the text from *Mishnah Yoma* 8:9 that I have chosen as the epigraph to this paper, as well as explicit affirmations of Jewish belief such as the Shema. A possible timing could be for it to be performed annually in the month Elul, as part of the spiritual preparation for High Holy Days. I leave this, too, for future development.
17. Though a step such as I have indicated can be a first step toward

לקבל לא רוב טובה ולא רוב פורענות ואין מרבין עליו, ואין מדקדקין עליו. קיבל, מלין אותו מיד. נשתיירו בו ציצין המעכבין את המילה, חוזרים ומלין אותו שניה, נתרפא, מטבילין אותו מיד ושני ת"ח עומדים על גביו, ומודיעין אותו מקצת מצות קלות ומקצת מצות חמורות טבל ועלה הרי הוא כישראל לכל דבריו.

The Rabbis taught: If a prospective convert comes to be converted in this age, they say to him: "What motivated you, that you came to convert? Do you not know that Israel in this time is persecuted, oppressed, downtrodden and harassed, and subject to constant hardships?" If he says, "I know, and I am unworthy of acceptance," they accept him immediately. They inform him of some of the minor mitzvot and some of the major mitzvot, and they inform him of the obligations of donating the gleanings, the forgotten sheaves, the corner of the field, and the poor man's tithe. They inform him of the sanctions for the mitzvot in such terms: "You should know that before considering conversion, if you ate forbidden fat, you were not punished with excision; if you profaned the Sabbath, you were not punished with stoning. But now if you convert, if you eat forbidden fat, you are punished with excision; if you profane the Sabbath, you are punished with stoning." Just as they inform him of the punishment for mitzvot, so they inform him of the reward, in these terms: "Know that the World to Come is only for the righteous. In the current time, Israel cannot receive either abundance of good or excessive retribution." They do not tell him too much, nor are they too exacting. If he accepts, they circumcise him immediately. If there are adhesions that prevent complete circumcision, they go back and circumcise him again. When he is healed, they immerse him immediately. Two scholars stand over him and inform him some of the minor mitzvot and some of the major mitzvot. When he has immersed and ascended, he is Jewish in all respects.

PRINCIPLES:

1. Conversion to Judaism includes three required elements: receiving commandments, circumcision (in the case of males), and immersion.
2. The standard of "receiving commandments" is moderate: ומודיעין אותו מקצת מצות חמורות ומקצת מצות קלות, "and inform him some of the minor mitzvot and some of the major mitzvot."

Argument: The paradigmatic case of a "patrilineal Jew" seeking acceptance by the larger Jewish community is of one born of one Jewish parent, who has received an elementary Jewish education and undergone Bar Mitzvah or Bat Mitzvah; and if male, has been circumcised and this circumcision (however performed) was accepted in his local community as fulfilling the requirement of male circumcision as a Jew. I will argue that by virtue of these givens, this candidate has fulfilled the requirements of "receiving commandments" and "circumcision," and is lacking only "immersion."

Text #3: BT YEVAMOT 46A
ת"ר: גר שכל ולא טבל ר"א אומר: הרי זה גר, שכן מציינו באבותינו, שכל אדם שכל ולא טבל, ר' יהושע אומר: הרי זה גר, שכן מציינו באמהות, שטבלו ולא מלו וחכמים אומרים: טבל ולא מל, מל ולא טבל אין גר, עד שימול ויטבול.

Our rabbis taught: If a prospective convert has been circumcised but not immersed, Rabbi Eliezer said: He is a valid convert. For we find in the case of the patriarchs, that they were circumcised but not immersed. If a prospect has immersed but not been circumcised, Rabbi Joshua says: He is a valid convert. For we find in the case of the matriarchs, that they immersed but were not circumcised. But the sages say: He is not a valid convert unless he has undergone both circumcision and immersion.

PRINCIPLE:

Even though our normative practice from classic rabbinic times onward has been to require acceptance of the commandments, circumcision and immersion as criteria for conversion, we should recognize that this practice has emerged in historical times, and that there are precedents for waiving any of these requirements if circumstances should warrant it.

Text #4: BT YEVAMOT 45B
עבדיה דרבי חייא בר אממי אטבלה לההיא עובדת כוכבים לשם אנתתא, אמר רב יוסף: לילינא לאכשורי בה ובברתה בה, כדרב אסי, דאמר רבי אסי: מי לא טבלה לנדותה? בברתה, עובד כוכבים ועבד הבא על בת ישראל הולד כשר.

ההוא דהוה קרו ליה בר ארמייתא, אמר רב אסי: מי לא טבלה לנדתה? ההוא דהוה קרו ליה בר ארמאה, אמר רבי"ל: מי לא טבל לקרוי?

A slave of Rabbi Hiyya bar Ammi immersed a gentile woman in order to make her his wife. Rav Yosef said: I can rule that she and her daughter are both kosher (i.e., Jewish). Herself—following [the method of] Rav Assi. For Rav Assi said (in a parallel case): “Did she not immerse for her menstrual impurity?” Her daughter — [by the rule that] if a gentile or a slave has intercourse with a Jewish woman, the baby is Jewish.

[What case of Rav Assi are we talking about? The following:] There was a man who was called “the son of the Aramean woman.” Rav Assi objected: “Did she not immerse for her menstrual impurity?” There was another man who was called “the son of the Aramean.” Rabbi Joshua ben Levi objected: “Did he not immerse [to be purified from] his seminal emission?”

כל ענייני הגר בין להודיעו המצות לקבלם בין המליץ עליהם צהר שמהו ויבית הדין של ירושלים
 וביום (תוס' ורא"ש פ' החולץ) מיהו דוקא לכתחלה אבל בדיעבד אם לא מל או טבל אלא בפני ב'
 (או קרובים) (הגהות מרדכי) ובלילה אפילו לא טבל לשם גרות אלא איש שטבל לקרוי ואשה
 שטבלה לנדתה הוי גר ומוותר בישראלית חוץ מקבלת המצות שמעכבת אם אינה ביום ובשלשה
 ולהר"יף ולהרמב"ם אפילו בדיעבד שטבל או מל בפני שנים או בלילה מעכב ואסור בישראלית
 אבל אם נשא ישראלית והוליד ממנה בן לא פסלין ליה:

- a. All matters of conversion, whether informing the prospective convert of the mitzvot in order to receive them, whether circumcision or immersion, should be in the presence of three qualified to judge, and in the daytime (see *Tosafot* and Rabbenu Asher on BT *Yevamot* 47b).
- b. Nevertheless, this standard addresses what one should do in the first place. But after the fact, if one circumcised or immersed only in the presence of two (or if some of the judges were relatives – according to “*Haggahot Mordecai*”) or at night, or even if one immersed not for the purpose of conversion but (in the case of a man) to cleanse from seminal impurity or (in the case of a woman) for menstrual impurity, the prospect is considered a valid convert and may marry a Jew.
- c. However, the acceptance of mitzvot is mandatory and must be done during the daytime with three.
- d. Alfasi and Maimonides rule that if one immersed or was circumcised before only two, or at night, this is an impediment and such a person would be forbidden to marry a Jewish woman; even so, if he went ahead and married a Jewish woman and had a child, one does not disqualify him retroactively.

Principle (from b): After the fact, the requirement of immersion for conversion is fulfilled if a person immersed in a Jewish context to perform an act intended as conformity to Jewish practice.

Principle (from d): After the fact, if a questionable conversion resulted in progeny, who have been accepted into the Jewish community, one does not disqualify it.

Text 6: BT *Yevamot* 47a (מקומה)
 ת"ר (דברים א') ושפטתם צדק בין איש ובין אחיו ובין גרו (understood as convert). 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.

“And you shall judge justly between a man and his kinsman and his ger (understood as convert).” (Deuteronomy 1:16) Rabbi Yehudah deduced from this that if a prospective convert was converted before a court, this is a valid conversion, but if he just converted

himself, this is not a valid conversion.

There was the case of one man who came before Rabbi Yehudah and said to him, “I converted myself [without witnesses or a rabbinic court].” Rabbi Yehudah said to him, “Do you have witnesses [to that effect]?” He replied: “No.” Rabbi Yehudah asked him, “Do you have children?” He replied: “Yes.” Rabbi Yehudah ruled: “Your testimony would be reliable enough to disqualify just yourself, but it is not reliable to disqualify your children.”

Principle: Once children have been born of parents who were accepted as Jewish either presumptively or by conversion, and the presumption or conversion of the parent is challenged for whatever reason (for instance, because of improper procedure), the Jewish status of the children cannot be reversed. (Compare previous: *Shulhan Arukh, Yoreh Deah* 268:3.)

גירות שראינוה נוהגת בדרכי ישראל תמיד כגון שחטבו לידה ותפיש תרומה מעיסתה וניצא
TEXT 7: MAIMONIDES HILKHOT ISSUREI BIAH 13:9
בזה, וכן גר שנוהג בדרכי ישראל שטובל לקריו ועושה כל המצות הרי אלו בחזקת גרי צדק, ואע"פ
שאין שם עדים שמעידין לפני מי שנתגיירו, ואע"פ כן אם באו להתערב בישראל אין משיאין אותם
עד שיביאו עדים או עד שיטלו בפנינו הואיל והוחזקו עכו"ם.

A female convert whom we saw conforming always to Jewish practice – for instance, who immersed for her menstrual impurity and separated out the priestly due from her dough, and the like – and similarly a male convert who conformed to Jewish practice, immersing for his seminal impurity and performing all the mitzvot – these are to be presumed as valid converts, even though there are no witnesses who testify as to before whom they were converted. Nevertheless, if one came to intermarry with Jews, one should not marry them until they bring witnesses or immerse before us, inasmuch as they are presumed to be gentiles.

Principle: Conformity to Jewish practice counts as a factor in favor of presuming the validity of one’s Jewish status, even in the absence of evidence concerning the circumstances of their conversion (if any).

NOTE: One can argue that the strictness of Maimonides’ conclusion (that one should not intermarry with those of unknown origin and status “until they bring witnesses or immerse before us”) has the force of *lekhathilah*, since once one has gone ahead and married and had children, the existence of the children is an argument for overriding whatever doubts one had concerning the validity of an irregularly performed conversion.

TEXT 8: BT *Sanhedrin* 32A-B

אמר רבי חנינא: דבר תורה אחד דיני ממונות ואחד דיני נפשות בדרישה ובחקירה, שנאמר משפט אחד יהי לכם, ומה טעם אמרו דיני ממונות לא בעינן דרישה וחקירה? כדי שלא תנעול דלת בפני לוין. אלא מעתה טעו לא ישלמו? כל שכן שתנעול דלת בפני לוין.

Rabbi Hanina said: The Torah applied the rules of judicial inquiry and cross-examination equally to civil and capital cases, as it says: "You shall have one judgment." Why, then, did they say that in civil cases judicial inquiry and cross-examination are not required? In order not to close the door before borrowers. But will you say, on that account, if the judge made a judicial error, he should not be held liable? All the more so, that you should not close the door before borrowers.

Principle: *neilat delet* (closing of a door). The letter of certain requirements is relaxed to remove an obstacle that would deter a person from a desirable course of action. In the Sanhedrin example, the requirement of strict cross-examination was relaxed in civil cases, in order not to deter people from engaging in business transactions such as lending. In the present example, I recommend relaxing the *be-di'avad* provision of the principle recognizing casual immersion as valid for conversion, in order not to deter candidates for recognition as Jews who would be put off (as was Jessica Fishman, and as were others) by a demand that they convert to Judaism, when they already regard themselves as Jewish.

A Liturgy for Immersion in Natural Waters

כאיל תערג על אפיקי מים כן נפשי תערג אליך אלקים:

צמאה נפשי לאלקים לקל חי מתי אבוא ואראה פני אלקים

Like a hind yearning for watercourses, my soul cries for You, O God; my soul thirsts for God, the living God; O when will I come and appear before God's face? (Psalm 42:2-3)

תהום אל תהום קורא לקול צנוריק כל משבריק וגליך עלי עברו

Deep calls to deep in the roar of Your cataracts; all your breakers and billows have rolled over me. (Psalm 42:8)

גל עיני ואביטה נפלאות מתורתך:

Open my eyes, that I may perceive the wonders of Your Torah. (Psalm 119:18)

גל מעלי חרפה ובוז כי עדתיך נצרת:

Roll away from me taunt and abuse, because I observe Your decrees. (Psalm 119:22)

הושיעני אלקים כי באו מים עד נפש:

Rescue me, O God, for the waters have come up to my soul. (Psalm 69:2)

אפפוני מים עד נפש תהום יסבבני סוף חבוש לראשי:

The waters engulfed my soul; the deep surrounded me; weeds twined around my head. (Jonah 2:6)

וזרקתי עליכם מים טהורים וטהרתם מכל טמאותיכם ומכל גלוליכם אטהר אתכם:

I will sprinkle clean water upon you, and you shall be clean: I will cleanse you from all your impurities and from all your defects. (Ezekiel 36:25)

מים רבים לא יוכלו לכבות את האהבה ונהרות לא ישטפוה :

Many waters cannot quench love, nor rivers drown it. (Song of Songs 8:7)

והיה כעץ שתול על פלגי מים אשר פרוי יתן בעתו ועלהו לא יבול וכל אשר יעשה יצליח:

The righteous person is like a tree planted beside streams of water, which yields its fruit in season, whose foliage never fades, and whatever it produces thrives. (Psalm 1:3)

ברוך אתה יה-וה למדני חקיך:

Blessed are You, O Lord; teach me Your laws! (Psalm 119:12)

ואשמרה תורתך תמיד לעולם ועד:

I will always obey Your teaching, forever and ever. (Psalm 119:44)

שמע ישראל ה' אלקנו ה' אחד:

Hear, O Israel, the Lord is our God, the Lord is One. (Deuteronomy 6:4)

אמר רבי עקיבא, אשריכם ישראל, לפני מי אתם מטהרין,

ומי מטהר אתכם, אביכם שבשמים, שנאמר, (יחזקאל לו)

וזרקתי עליכם מים טהורים וטהרתם ואומר, (ירמיה יז)

מקוה ה' ישראל, מה מקוה מטהר את הטמאים, אף הקדוש ברוך הוא מטהר את ישראל

Rabbi Akiva said: Fortunate are you, O Israel! Before whom do you purify yourselves? And who purifies you? Your Father in heaven, as it says, "I shall sprinkle pure water upon you, and you shall be pure." (Ezekiel 36) And it says: "The Lord is the *mikveh* of Israel" (Jeremiah 17) — just as a *mikveh* purifies the impure, so does the Holy Blessed One purify Israel. (*Mishnah Yoma* 8:9)

NOTES:

- 1 "She Doesn't Live Here Any More," *Yediot Aharonot* April 30, 2010. The daughter of a Reform converted mother, Jessica Fishman grew up Conservative in St. Paul, MN, attending day school and walking weekly with her family to synagogue. She made aliyah and lived for seven years in Israel, serving for two years in the IDF. When she became romantically involved with a Jewish Israeli man, he demanded that she "convert." The Orthodox rabbinate refused to recognize her mother's conversion or Jessica's Jewish status. Jessica felt the demand to convert was a violation of her life-long sense of Jewish identity. She broke off the engagement, uprooted from Israel and returned to the United States.
- 2 "Israel: Soldier's Death Raises Question: Who Is A Jew?" *Los Angeles Times*, August 14, 1993. Lev Pesahov, son of a Jewish father and a non-Jewish mother, immigrated from Russia to Israel in 1990 under the Law of Return. In August, 1993, wearing the IDF uniform, he was killed in a terrorist attack on an army checkpoint. He was refused Jewish burial but was buried on the edge of the military cemetery in Bet Shean.
- 3 *Le-khatehillah* – "before the fact," designating a "best practice" that one should choose to observe, if it is up to one to perform an action.
- 4 *Be-di'avod* – (*post facto*) "after the fact," designating a lower standard that allows an action not performed in accordance with "best practice" to be regarded as valid, once it has already been performed.
- 5 One of the most tragic developments of recent times has been the revocation of Jewish status of people who have been raised as Jews, on the basis of the retroactive nullification of their parents' or grandparents' Jewish status by non-recognition of conversions. The claim of authorities who engage in this practice, that they alone are fully faithful to the Jewish tradition, should not be allowed to stand unchallenged. They are in flagrant violation of these halakhic precedents.
- 6 "A contemporary Israeli Masorti rabbi." That itself is a contradiction in the eyes of some, who do not think that anyone non-Orthodox can be a rabbi.
- 7 The early absence of a universal standard of conversion is reflected also in Text #3 from *Yevamot* 46a, where Rabbi Eliezer allows circumcision alone, and Rabbi Joshua immersion alone, as sufficient for conversion. This text suggests that the consolidation of the current set of requirements for conversion took place in the Tannaitic period.
- 8 Ethan Tucker, memo of July 5, 2011, page 7.

