

博士論文

論文題目 Inventing Imagined Descent
- Theorizing Rabbinic Conversion as the Ethnic Construction of
Jewish Identity -
(「虚構の出自」としてのユダヤ・アイデンティティ：
-血縁を再創出するラビ・ユダヤ教改宗法規再考-)

氏 名 櫻井 丈

Contents

Introduction

Rabbinic Conversion as a Model of Jewish Identity (Re)Construction.....	4.
Aims and Methodology: Uncovering New Perspectives of the Bavli.....	6.
Textual Reworking as the Babylonian Innovation of New Concepts.....	14.
The Mishnaic Theory of Classification as a Model for Rabbinic Conversion.....	19.
Rethinking Rabbinic Conversion as a Mode of Ethnic Identity Construction.....	21.
Understanding the Fixity and Fluidity of Ethnic Identity in Antiquity.....	23.
Kinship as a Malleable Construct in Defining the Biblical <i>Ger</i>	29.
The Role of Religion/Conversion in Defining Ethnicity.....	33.
Organization of This Study.....	42.

Chapter 1. Conversion as the Classification of Jewish Identity

Legalization of Conversion as a Court-Controlled Procedure.....	45.
The Literary Structures of the Tractate of Conversion.....	48.
The Amoraic Statements (Meimra/מֵימְרָא).....	50.
Stringent Tendencies of the Conversion Procedure in the Tractate.....	51.
A Synoptic Comparison: The First Baraita: The Case of Circumcision and Immersion.....	53.
The Second Baraita: The Case of Circumcision without Immersion.....	57.
The Third Baraita: The Case of Witnessed Conversion.....	60.
The Fourth Baraita: The Bavli's Development of a 'Court' for Conversion.....	64.
The Fifth Baraita: The Procedure of Conversion.....	73.
The Sixth Baraita: The Bavli's Emphasis on Conversion as New Birth.....	80.
Conversion as the Mishnaic System of Classification.....	84.
The Mishnaic Concept of Classification in the Biblical Accounts of Creation.....	86.
Correspondence between Naming and Classification.....	88.
Human Intention as the Power to Classify the Fundamental Character of Reality.....	92.
Humanity as God's Agent of Creation.....	102.
Conversion as the Bavli's Act of Legalizing the Divine Task of Classification.....	105.

Conclusion	108.
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Chapter 2. “A Convert as a Newborn Child”: Conversion as Erasure of Gentile Kinship

Conversion as “Fictive” Kinship Construction.....	109.
Conversion as the Motif of Birth.....	113.
Legalizing Severing of the Convert’s Gentile Kinship Ties.....	117.
The Notion of “A Gentile Has No Paternity”	149.
Conclusion.....	163.

Chapter 3. Inventing “Forefathers”: Conversion as Construction of Patrilineal Ancestry

Claims to Common Ancestry as a Criterion for Ethnic Membership.....	165.
Examining the Convert’s Kinship Anomaly in Mishnah Bikkurim 1:4.....	165.
Appeals to Common Ancestry as a Site for Authorizing Kinship Claims	183.
Patrilineal Descent as Fictive Kinship Construction.....	190.
Conversion as Cultural Interpretations of Patrilineal Descent.....	205.
Conclusion.....	206.

Chapter 4. Conversion as the Acquisition of Jewish Bodies and Selfhood

Rabbinic Conversion as Construction of the Convert’s Body/Self.....	208.
Classifying Ritual Impurity as an Indicator of the Fundamental Change of Reality.....	209.
The Body as a Conceptual Representation for the Self/Personhood.....	218.
Susceptibility to Impurity as a Marker for the Convert’s Bodily Transformation.....	226.
Conversion as the Acquisition of the Jewish Body/Self.....	234.
Immersion Revisited: Immersion as the Marker of the Jewish Body/Self.....	243.
Conclusion.....	252.

Conclusion.

Conversion as the Act of Classification/Creation.....	254.
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Bibliography.....	256.
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Introduction

Rabbinic Conversion as a Model of Jewish Identity (Re)Construction

This doctoral study aims to examine and uncover the theoretical models of Jewish identity construction through an inquiry into the *halakhic* discourse of rabbinic conversion known as *Giyyur* (גיר) by unfolding its internal and external developments in the rabbinic corpus, namely the Babylonian Talmud (henceforth the Bavli) along with its other synoptic Tannaitic and Amoraic texts. It also aims to uncover the complex dynamics of how conversion shapes and defines the boundaries of Jewish identity with significant attention to its internal textual development of the Bavli as well as how that textual evolution coincided with the development of conversion as a mode of fictive ethnic identity construction with a view to uncovering the mechanisms for the demarcation of identity. Seeking to explore how rabbinic conversion functions to construe Jewish identity, the primary aim of this study, therefore, is to uncover how the dynamics of the process of conversion serves to change, create, and shape the convert's kinship and ethnic identity, thus illuminating the structures of group boundaries of Judaism and the nature of Jewish law/the *halakhah* that construct such an identity.

The biblical tradition of integrating the *Ger*/גר (sojourner/stranger/resident alien) into the Israelite tribal community surely played an instrumental role in crafting the *halakhic* institution of rabbinic conversion in the later period. Rabbinic conversion enabled the possibility of affiliation with an ethnic group defined by kinship and descent through certain cultic and religious frameworks such as circumcision and immersion. Ethnic membership is thus attainable by way of such procedures and practices of initiation, which guaranteed full identification with and affiliation with the given community. The idea of affiliation with the host community was derived from Greco-Roman culture, in which one could be genealogically affiliated with a particular *ethnos* through cultic, religious rituals and practices of initiation.

The emergence and development of rabbinic conversion are deeply intertwined with civic and cultic/religious models of group affiliation offered by Greco-Roman culture. The Greek idea of *politeia* served as the archetype of rabbinic conversion. The Greek idea of

politeia as a form of political and social thought in fact furnished the Jews with two models of affiliation and membership, which contributed to shaping conceptions of Jewishness whose group boundaries are fluidly subject to transformation and negotiation in changing social contexts. Its first model involves a form of polity that ensures citizenship, in which one can become a citizen of the *polis* (state) by being subject to its legal system, which also fits in with the imperial Roman civic settings as well. Adopting the idea of *politeia* during the Second Temple period, the Jews had gradually developed a conceptual framework for understanding the conceptions of Jewishness based on a form of membership and affiliation in an imagined social entity through one's full subordination to its legal system known as the *Halakha* (or the Torah). Its second model concerns the notion of *politeia* as a "way of life" or "customs" provided a vehicle for entry into the community. In fact, various religious sects professed their mystery cults that enabled outsiders to join them through adherence to their codes of cultic practices, which made them distinctively detached from the rest of society. The notion of *politeia* thus served as the archetype for conversion in the form of religious rituals of initiation in the later period, which allowed non-Jews to be incorporated into the community defined by kinship and descent through adherence to a code of religious practices.

With the rise of Rabbinic Judaism as the dominant form of religious and communal expressions of Jewish identity, its model of conversion became fully institutionalized by the latter half of the seventh century, during which the Bavli reached the final stage of its redaction. Consequently, the two models of civic affiliation and cultic initiation provided by the Greek notion of *politeia* were gradually merged into rabbinic conversion during the long period of the formation of the Bavli, which provided a new yet innovative perspective of Jewish identity construction. Specifically, the Jewish appropriation of *politeia* and its relevant concepts in the Second Temple period finally merged with the Bavli's idea of grafting gentiles into the Jewish kinship relations via *halakhic* procedures of conversion, which resulted in the erasure of their kinship and hence the invention of "fictive" descent as legitimate members of an *ethnos* called Israel. This implies that one's

change in religious affiliation entails one's change in kinship and ethnic identity.¹ Therefore, rabbinic conversion greatly reshaped the criteria for what constitutes "Israel" as an ethnic group markedly distinct from other ethno-religious groups. The introduction of rabbinic conversion greatly allowed Jewish identity construction to be structured as fluid and malleable, which in turn made its ethnic identity subject to change and negotiation via a set of *halakhic* procedures notwithstanding or in response to radical social and political changes derived from emerging different social and cultural contexts. In other words, rabbinic conversion, which enabled the crossing of ethnic and religious boundaries from gentile to Jew, in turn broadened and even sharpened the criteria for the ethnic and religious boundaries of Jewish identity as a whole. With the invention of rabbinic conversion, the locus of Jewish identity as a cultural construct enhances its adaptability and negotiation while maintaining its structure of that identity firmly intact.

Aims and Methodology: Uncovering New Perspectives of the Bavli

Large numbers of scholars have engaged in the study of the history of rabbinic conversion with great interest. The theme of rabbinic conversion as a scholarly subject has ideological concerns that have preoccupied Jews, which is deeply intertwined with the issues of "who is a Jew" with significant attention to an inquiry into and what constitutes and defines boundaries of Jewish identity. Scholars such as Bernard Bamberger, W.G. Braude, and Gary Porton all engaged in detailed surveys of rabbinic texts on this topic.² Shaye Cohen,

¹ Moshe Lavee, *The Rabbinic Conversion to Judaism: The Unique Perspective of the Bavli on Conversion and the Construction of Jewish Identity* (Leiden and Boston: Brill, 2018). This doctoral dissertation is thankfully and greatly indebted to his work on rabbinic conversion in the context of the unique development of the Bavli's textual redaction. Although this current study has many overlaps in terms of analysis and methodologies with his, my approach to the theoretical models of rabbinic conversion suggested in rabbinic literature slightly differs from that of Lavee in that it focuses on rabbinic conversion as a theoretical model of "fictive" or "imagined" ethnic and kinship identity construction, in which ethnicity is understood as a feature of cultural (and religious) identity and a cultural construct subject to change and negotiation.

² Bernard J. Bamberger, *Proselytism in the Talmudic Period* (Cincinnati: Hebrew Union College Press, 1939); W.G. Braude, *Jewish Proselytizing in the First Five Centuries of the Common Era: The Age of the Tannaitic and Ammoraim* (Providence, RI: Brown University, 1940); Gary G. Porton, *The Stranger within Your Gates: Converts and Conversion in Rabbinic Literature* (Chicago: University of Chicago Press, 1995); Marcel Simon, *Verus Israel – A Study of the Relations between Christian and Jews in the Roman Empire (135-425)*, trans. H. McKeating (Oxford: Oxford University Press, 1986).

Martin Goodman, Lawrence Schiffman, Louis Feldman, Christine Hayes and Moshe Lavee thematically described rabbinic conversion as portrayed in classical rabbinic sources with a view to laying bare the historical context of its *halakhic* developments.³ Abraham Sagi, Zvi Zohar and Menachem Finkelstein further worked on the theme of rabbinic conversion in classical rabbinic sources as a background for their surveys on later *halakhic* developments.⁴ All of their studies are also complemented by a number of scholars, such as Ephraim Urbach, Gedaliyahu Alon, Emil Schürer and Joachim Jeremias, who cover this theme with detailed surveys on the history of rabbinic Judaism and its concept.⁵ Tannaitic

³ Lawrence H. Schiffman, *Who was a Jew? Rabbinic and Halakhic Perspectives on the Jewish Christian Schism* (Hoboken: Ktav, 1985); Louis H. Feldman, *Jew and Gentile in the Ancient World* (Princeton NJ: Princeton University Press, 1993); Martin Goodman, *Mission and Conversion: Proselytizing in the Religious History of the Roman Empire* (Oxford: Clarendon Press, 1994); Sacha Stern, *Jewish Identity in Early Rabbinic Writings* (Leiden: Brill, 1994); Shaye J.D. Cohen, *The Beginnings of Jewishness: Boundaries, Varieties, Uncertainties* (Berkeley: University of California Press, 1999); Christine E. Hayes, *Gentile Impurities and Jewish Identities: Intermarriage and Conversion from the Bible to the Talmud* (New York: Oxford University Press, 2002); Moshe Lavee, *The Rabbinic Conversion to Judaism: The Unique Perspective of the Bavli on Conversion and the Construction of Jewish Identity* (Leiden and Boston: Brill, 2018).

⁴ Avi Sagi and Zvi Zohar, *Transforming Identity, The Ritual Transformation from Gentile to Jew – Structure and Meaning* (New York: Continuum, 2007); Avi Sagi and Zvi Zohar, *Conversion to Judaism and the Meaning of Jewish Identity* (Jerusalem: The Bialik Institute and the Shalom Hartman Institute, 1994) [Hebrew]; Menachem Finkelstein, *Conversion – Halakha and Practice* (Ramat-Gan: Bar Ilan, 2006) [Hebrew]. While Sagi and Zohar observe how early rabbinic sources provide a basis for the concept of conversion, Finkelstein, who mostly examines the themes of rabbinic conversion in the context of post Talmudic *halakhic* sources from the Middle Ages from onward, does not focus at all on its *halakhic* developments in the classical rabbinic period. Therefore, the concept of rabbinic conversion as the mechanisms for the demarcation of Jewish identity is often overlooked in his study.

⁵ George Foot Moore, *Judaism: the First Centuries of the Christian Era – The Age of the Tannaim*, vol. I-III. (Cambridge: Cambridge University Press, 1966), 323-353; Joachim Jeremias, *Jerusalem in the Time of Jesus: An Investigation Into Economic and Social Conditions During the New Testament Period* (London: S. C. M. Press, 1969), 320-337; Emil Schürer, *A History of the Jewish People in the Time of Jesus Christ*, div. I-II, vol. 2 (Edinburgh: T&T. Clark, 1869), 291-328; H. L. Strack and Paul Billerbeck, *Kommentar zum Neuen Testament aus Talmud und Midrasch*, Vol. I-IV (München, 1922-1928), 715-723; Ephraim E. Urbach, *The Sages: Their Concepts and Beliefs* (Jerusalem: Magnes Press, 1975), 541-49; Gedaliyahu Alon, *Jews, Judaism, and the Classical World* (Jerusalem: Magnes Press, 1977), 146-189; Samuel Bialoblocki, "The Attitude of Judaism toward Proselytes and Proselytism," *Bar Ilan* 2 (1974): 44-60 [Hebrew]; Moshe Samet, "On Conversion to Judaism", in *Gevoroth HaRomah: Jewish Studies offered at the Eightieth Birthday of Rabbi Moses Cyrus Weiler*, ed. Z. W. Falk (Jerusalem: Mesharim, 1987), 293-308 [Hebrew]; Moshe Samet, "Conversion to Judaism in the Early Centuries," in *Jews and Judaism in the Second Temple, Mishnah and Talmud Periods: Studies in Honor of S. Safrai*, ed. I. Gafni, A. Oppenheimer and M. Stern (Jerusalem: Yad Itzhak Ben Zvi, 1994), 316-343 [Hebrew].

literature of the first and second centuries and the later Amoraic literature of the third to the fifth centuries were merged and later evolved into the sophisticated and elaborate texts with multi layers of traditions. Therefore, identifying the origins and mechanisms of the laws of rabbinic conversion requires a complex undertaking. Drawing on various methodologies developed by the latest generations of Talmudic scholarship including the ones suggested by, Y. Sussman, Richard Kalmin, Jeffrey Rubenstein and Moshe Lavee among others, this study uncovers how the complex yet distinctive character of rabbinic literature and its culture affirm the discourse of conversion represented in the Bavli, which contributes to shaping the demarcation of Jewish identity as a whole.⁶

⁶ Moshe Lavee, "No Boundaries to the Demarcation of Boundaries: The Babylonian Talmud's Emphasis on Demarcation of Identity". In *Rabbinic Traditions between Palestine and Babylonia*, ed. Tal Ilan and Ronit Nikolsky (Leiden-Boston: Brill, 2014), 84-116; The Samaritan May Be Included: Another Look at the Samaritan in Talmudic Literature". In *Samaritans – Past and Present: Current Studies* ed. M. Mor and F.V. Reiterer (Berlin: De Gruyter, 2010), 192-202; Moshe Lavee, "The Noahide Laws: The Building Blocks of a Rabbinic Conceptual Framework in Qumran and the Book of Acts". *Meghillot* 10 (2013): 73-114; Moshe Lavee, Welfare and Education vs. Leadership and Redemption: The Stories about Rabbi and Rabbi Hiyya as an Example of the Image of the Tannaitic Past in the Babylonian Talmud", *Jewish Studies Internet Journal* 8 (2009): 55-56, 75-84; Moshe Lavee, "Rabbinic Literature and the History of Judaism in Late Antiquity", ed. M. Goodman and P. Alexander (London: Oxford University Press and the British Academy, 2010), 323-336; Moshe Lavee, "The Samaritan May Be Included"; Shamma Y. Friedman, *Talmudic Studies: Investigating the Sugya, Variant Readings and Aggadah* (New York-Jerusalem: JTS, 2010) [Hebrew]; Yaakov Sussman, "Yerushalmi Neziqin, Once Again", *Talmudic Studies* I. (1990): 55-134, 96-114; David Rosenthal, "The Transformation of Eretz Israel Traditions in Babylonia", *Cathedra* 92 (1999): 7-48 [Hebrew]; Robert Brody, *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture* (New Haven-London: Yale University Press, 1998), 155-170; Robert Brody, "Literature of Geonim and the Talmudic Text," *Talmudic Studies* 1 (1990): 237-303 [Hebrew]; Daniel Boyarin, "Hellenism in Jewish Babylonia", in *The Cambridge Companion to The Talmud and Rabbinic Literature*, ed. C. E. Fonrobert and M. S. Jaffe (New York: Cambridge University Press, 2007), 339-345; Isaiah M. Gafni. "A Generation of Scholarship on Eretz Israel in the Talmudic Era: Achievement and Reconsideration", *Cathedra* 100 (2001): 199-226 [Hebrew]; David Goodblatt, "A Generation of Talmudic Studies", in *The Talmud in its Iranian Context*, ed. C. Bakhos and R. Shayegan (Tübingen: Mohr Siebeck, 2010), 1-20; Richard L. Kalmin, "The Formation and Chracter of the Babylonian Talmud", in *The Cambridge History of Judaism*, vol. 4, ed. S.T. Katz (Cambridge: Cambridge University Press, 2006), 840-876; Christine E. Hayes, *Between the Babylonian and Palestinian Talmuds: Accounting for Halakhic Difference in Selected Sugyot from Tractate Avodah Zarah* (New York: Oxford University Press, 1997); Jeffrey L. Rubenstein, *The Culture of the Babylonian Talmud* (Baltimore and London: The Johns Hopkins University Press, 2003); *Creation and Composition, The Contribution of the Baoli Redactors (Stammaim) to the Aggadah*, ed. Jeffrey L. Rubenstein, (Tübingen: Mohr Siebeck, 2005), 1-22; Charlotte E. Fonrobert and Martin J. Jaffe, "Introduction", in *The Cambridge Companion to The Talmud and Rabbinic Literature*, ed. Charlotte E. Fonrobert and Martin J. Jaffe (New York: Cambridge University Press, 2007), 1-14; Tal Ilan and Ronit Nikolsky, "From There to Here (bSanh 5a), Rabbinic Traditions Between Palestine and Babylonia: An Introduction", in *Rabbinic Traditions between Palestine and Babylonia*, ed.

The two distinct centers of rabbinic cultures, the Land of Israel and Babylonia, were in close proximity to each other during the long period of the formation of the Talmudic texts. Since each of these centers were located within markedly distinct social and cultural contexts, the two Talmudic texts, the Bavli and the Yerushalmi respectively, absorbed perspectives peculiar to each of these cultures through the gradual and complicated processes of their transmission and redaction.

Aside from this geo-cultural factor, a chronological factor also played an important role in the shaping of the Talmudic texts. While the textual formation and transmission of the Yerushalmi ceased in the fifth century, the Bavli continued to evolve well into the sixth century and even later. Combining the Palestinian traditions of Tannaim and Amoraim with those of the Babylonian Amoraim, later anonymous literary layers were thus formed by the Bavli during its textual evolution.⁷

Importantly, it is the later stages of the Bavli's textual redaction by the *Stam* that helped mold the rabbinic model of conversion, which has received little attention in Talmudic scholarship until recently. As this study makes it clear later, synoptic comparisons with parallel Tannaitic and Amoraic sources illustrate that the Bavli in fact contributed to the development of the rabbinic model of conversion by creating a fictive chronology in which later developments and perspectives were attributed to earlier (Tannaitic) authorities. As Lavee suggests, its failure to identify Babylonian perspectives and innovations in the historical development of rabbinic conversion led to the description of such a rabbinic model as the final product of the Bavli's single process of conceptual and textual

Tal Ilan and Ronit Nikolsky (Leiden-Boston: Brill, 2004), 1-31; Michael L. Satlow, "Wasted Seed": The History of a Rabbinic Idea", *Hebrew Union College Annual* 65 (1994): 137-175; Vered Noam, "'The Later Rabbis Add and Innovate': On the Development of a Talmudic Sugya", *Tarbiz* 72 (2002): 163 n. 39; 168 n. 67 [Hebrew]; Louis Jacobs, "Are Three Fictitious Baraitot in the Babylonian Talmud?" *Hebrew Union College Annual* 42 (1971): 185-196.

⁷ The following scholars are the proponents of such a view: Yaakov Elman, "Middle Persian Culture and Babylonian Sages: Accommodation and Resistance in the Shaping of Rabbinic Legal Tradition," in *The Cambridge Companion to the Talmud and Rabbinic Literature*, ed. C.E. Fonrobert and M.S. Jaffe (New York: Cambridge University Press, 2007), 7; Seth Schwartz, "The Political Geography of Rabbinic Texts," *The Cambridge Companion to the Talmud and Rabbinic Literature*, ed. C.E. Fonrobert and M.S. Jaffe (New York: Cambridge University Press, 2007), 75-97; Richard L. Kalmin, *Jewish Babylonia between Persia and Roman Palestine* (Oxford-New York: Oxford University Press, 2006); Isaiah Gafni, "Babylonian Rabbinic Culture," in *The Cultures of the Jews: A New History*, ed. D. Biale (New York: Knopf Doubleday Publishing Group, 2002), 22.

transformation, in which the notion of incorporating outsiders into kinship groups such as the biblical heritage of the *Ger*/גר (stranger/sojourner/resident alien) immediately shifted to the rabbinic model of conversion.⁸ However, such a swift shift from the biblical model to the rabbinic one was largely a product of the Bavli's discursive strategy of crafting a fictive chronological prism in which its later perspectives and developments of the concept of conversion (or the biblical conception of the *Ger*) were attributed to the early Tannaitic period, particularly through the textual reworking of earlier Tannaitic and Palestinian Amoraic cultural traditions in the Land of Israel.

This study thus serves as an attempt to fill the lacuna left unexamined in Talmudic scholarship, primarily aiming to uncover rabbinic textual and conceptual dynamics with a synoptic study of specific themes of rabbinic texts in order to identify certain perspectives and developments that led to the historical development of the discourse of rabbinic conversion. To elaborate how abstract concepts peculiar to the Bavli can be identified, specific methodologies must be applied to laying bare new developments and perspectives preserved in the textual layers of earlier Tannaitic or Amoraic sources in the Bavli. Sussman suggests the following regarding the identification of such specific themes peculiar to the Bavli:

*The intensive development (of the Bavli as a text) is not only an issue of more voluminous text or the growing dialectical complexity of the Talmudic discourse. Rather, above all, it is the issue of the development and consolidation of abstract legal concepts typical of the Bavli. In the case of certain concepts and legal conceptions entirely new features and perspectives were introduced, which were completely unknown in earlier amoraic sources.*⁹

⁸ Lavee, *The Rabbinic Conversion to Judaism*, 5. Lavee points out that the problem is derived from the failure to recognize the Bavli's tendency to "reconstruct" the chronology and history of the law of rabbinic conversion through the attribution of its later perspectives and developments to earlier Palestinian authorities, which has come to distort such a historical perspective to this day. As a result, various findings of conversion in rabbinic sources have not properly been mapped onto the chronological and geographical orders of rabbinic Judaism.

⁹ Sussmann, "Yerushami Neziqin, Once Again," 107 n. 201. Cf. Lavee, *The Rabbinic Conversion to Judaism*, 7.

Since the intensive developments of the text of the Bavli are deeply intertwined with the historical development of the rabbinic model of conversion preserved in the text, a method proposed by Shamma Friedman is effectively instrumental in uncovering the evolution and developments of specific concepts in the Bavli:

*Spelling out the relationship between the component works of the Talmudic corpus, and modes of literary evolution discernable in synoptic parallels will lead to the identification of institutional and conceptual evolution and developments.*¹⁰

Employing various methods of synoptic comparison of parallel sources proposed by Friedman allows us to reveal how both *baraitot* (Tannaitic statements) and *meimrot*/מִמְרוֹת (Amoraic statements) are rephrased and reworked as views attributed to early Palestinian rabbinic authorities in the earlier periods. It also illustrates a textual pattern in which the wording and phrasing preserved in the *sugyot* of the Bavli are in fact a product of its later textual transmission, reflecting particular Babylonian views, perspectives and tendencies. As Shlomo Naeh also addresses, the Amoraim and the later redactors of the Bavli not only interpret earlier material in the layers of the *sugya*, but also shape it on the basis of their *halakhic* views.¹¹ In other words, identifying the Babylonian concept of rabbinic conversion

¹⁰ Shamma Y. Friedmann, "Uncovering Literary Dependencies in the Talmudic Corpus," in *The Synoptic Problem in Rabbinic Literature*, ed. S.J.D. Cohen (Providence: Brown University Press, 2000), 57. Cf. Lavee, *The Rabbinic Conversion to Judaism*, 7.

¹¹ Shlomo Naeh, "Did the Tannaim interpret the Script of the Torah Differently from the Authorized Reading?," *Tarbiz* 61 (1991): 401-445 [Hebrew]. See also Marc Bregman, "Pseudepigraphy in Rabbinic Literature," in *Pseudepigraphic Perspectives*, ed. E.G. Chazon and M.E. Stone (Leiden: Brill, 1999), 27-41; Shamma Y. Friedman, "On the Origin of Textual Variants in the Babylonian Talmud," *Sidra* 7 (1991): 67-102 [Hebrew]; Shamma Y. Friedman, "The Baraitot in the Babylonian Talmud and Their Relationship to Their Parallels in the Tosefta," *Atra L'haim: Studies in the Talmud and Medieval Rabbinic Literature in Honor of Professor Haim Zalman Dimitrovsky*, ed. Daniel Boyarin, Shamma Y. Friedman, I.M. Ta-Shma, Marc Hirshman, and M. Schmeltzer (Jerusalem: Magnes Press, 2000), 163-201 [Hebrew]; Sussman, "Yerushalmi Neziqin, Once Again," 98 n. 180; Shamma Y. Friedman, *Talmud Arukh BT Bava Mezi'a VI, Critical Edition with Comprehensive Commentary: Text* (New York: JTS, 1996), 8 n.9; Vered Noam, "The Later Rabbis Add and Innovate: On the Development of a Talmudic Sugya," *Tarbiz* 72 (2002): 163 n. 39; 168 n. 67 [Hebrew]; Sacha Stern, "Attribution and Authorship in the Babylonian Talmud," *Journal of Jewish Studies* 45 (1994): 28-51; Sacha Stern, "The Concept of Authorship in the Babylonian Talmud," *Journal of Jewish Studies* 46 (1995): 183-195.

allows the Bavli to craft its own versions of “Babylonian *baraitot*” that differ from other parallel Tannaitic versions preserved in rabbinic sources from the Land of Israel as well as its own versions of “Babylonian *meimrot*” that are originally attributed to Palestinian Amoraic sages. This indicates that these statements serve as the newly reworked traditions of the Bavli so as to introduce new conceptions, exegesis developments in its textual layers.

Especially, this synoptic approach developed by David Weiss Halivni and Shamma Friedman enables the identification of Babylonian tendencies and perspectives in anonymous layers of late Babylonian additional comments, indicating that new concepts and conventions that were not originally referenced in earlier *meimrot* ascribed to Palestinian rabbis from the Land of Israel are introduced as newly innovative concepts.¹² Furthermore, utilizing such a method also reveals how the anonymous layer in the Bavli can be identified as its “governing voice” (סֵתָם/*Stam*) that serves primarily as (an) anonymous redactor(s) that could rephrase, rework, reconfigure earlier Tannaitic and Amoraic material and views in such a didactic way that set forth new innovative conventions and constructs.¹³

Utilizing the synoptic approach, this study thus engages in literary analysis of

¹² See also Moshe Lavee, *The Rabbinic Conversion of Judaism*, 8-9; David Halivni, *Sources and Traditions: A Source Critical Commentary on the Talmud Seder Moed from Yoma to Hagigah* (Jerusalem: JTS, 1975) [Hebrew]; Shamma Y. Friedman, “A Critical Study of Yevamot X with a Methodological Introduction”, in *Texts and Studies, Analecta Judaica*, ed. I. H. Z. Dimitrovsky (New York, 1977), 275-441 [Hebrew]; Shamma Y. Friedman, *Talmudic Studies: Investigating the Sugya, variant Readings and Aggadah* (New York-Jerusalem: JTS, 2010) [Hebrew]; Jeffrey L. Rubenstein, *Creation and Composition: The Contribution of the Bavli Redactors (Stammam) to the Aggadah*, (Tübingen: Mohr Siebeck), 1-22; Richard L. Kalmin, *The Redaction of the Babylonian Talmud: Amoraic or Savoraic* (Cincinnati: Hebrew Union College Press, 1989).

¹³ Friedman also points out that an anonymous stratum was not necessarily phrased after the attributed statements especially when the different modes of speech are used for such attributed statements. See Shamma Y. Friedman, “On the Origin of Textual Variants in the Babylonian Talmud” *Sidra* 7 (1991): 67-102 [Hebrew]. Shamma Y. Friedman, “A Good Story Deserves Retelling — The Unfolding of the Akiva Legend”, in *Creation and Composition, The Contribution of the Bavli Redactors (Stammam) to the Aggadah*, ed. J. L. Rubenstein (Tübingen: Mohr Siebeck, 2005), 71-100. See also Sussman in the case of a wrong attribution of an anonymous stratum to late dating: “Yerushalmi Neziqin, Once Again,” 108-109 n. 205; 111 n. 220a; 112 n.221; Robert Brody, “The Contribution of the Yerushalmi to the Dating of the Anonymous Material in the Bavli,” in *Melekheth Mahshevet: Studies in the Redaction and Development of Talmudic Literature*, ed. A. Amit, A. Shemesh (Ramat Gan: Bar-Ilan University Press, 2011), 27-38 [Hebrew].

sugyot/סוגיות (units of Talmudic discussions) to help uncover the Bavli's conceptual framework that underlies its literary structure, stressing that the rabbinic institution of conversion can be understood as a literary product of the governing voice of the Bavli.¹⁴ This suggests that the literary structure of the Bavli's unit reflects key perceptions peculiar and distinct to the Bavli. Since the literary structure of the reworked material in the *sugya* reflects the specific agendas and perceptions of the Bavli, I will illustrate that such a literary structure of the *sugya* reflects how the Bavli reworks and reshapes earlier Tannaitic and Amoraic material to produce its specific conventions and concepts in emerging circumstances.¹⁵ Again, to avoid a mere speculation, synoptic comparison of parallel texts is employed to illustrate how the Bavli's attempts to rearrange earlier material eventually serve its unique agenda distinct from earlier rabbinic sources.¹⁶ Synoptic comparison to parallel sources thus reveals that an entire Talmudic discourse of any *halakhic* theme might have been reshaped and retransmitted during early stages of Amoraic transmission in the Land of Israel and later evolved in a different form in both Babylonia and the Land of Israel.¹⁷ Since the relation between the Babylonian texts and the Palestinian Amoraic texts reflects the relations between the Babylonian *baraitot* and *meimrot* and their Palestinian

¹⁴ Interestingly, Nurit Be'eri coined the term "presenting voice" (הקול המוסר) in the Yerushalmi in order to distinguish from the anonymous voice in the Bavli. Nurit Be'eri, *Exploring Ta'anit: Yerushalmi, Tractate Ta'anit – Forming and Redacting the Traditions* (Ramat-Gan: Bar-Ilan University Press, 2009) [Hebrew].

¹⁵ In "A Critical Study of Yevamot X with a Methodological Introduction," Friedman stresses how the literary design of large structures is shaped by the governing voice of the Bavli. See also M. I. Kahana, "Introduction of Intention and Compulsion of Divorce – Toward the Transmission of Contradictory Traditions in Late Talmudic Passages," *Tarbiz* 62 (1993): 225-263 [Hebrew]. See also Avraham Walfish, "Creative Redaction and the Power of Desire – A Study of Redaction of Tractate Qiddushin: Mishnah, Tosefta, and Babylonian Talmud," *Jewish Studies Internet Journal* 7 (2008): 31-79 [Hebrew]; Shulamit Valler, *Women and Womanhood in the Talmud* (Providence, RI: Brown Judaic Studies, 1999); N. Zohar, *Secrets of the Rabbinic Workshop* (Jerusalem: Magness Press, 2000) [Hebrew].

¹⁶ See also Martin S. Jaffe, "Rabbinic Authorship as a Collective Enterprise," in *The Cambridge Companion to The Talmud and Rabbinic Literature*, ed. C.E. Fonrobert and M.S. Jaffe (New York: Cambridge University Press, 2007), 17-37.

¹⁷ A. Grey, *A Talmud in Exile: the Influence of Yerushalmi Avodah Zarah on the Foundation of Bavli Avodah Zarah* (Providence, RI: Brown University Press, 2005); Shamma Y. Friedman, "Literary Development and History in the Aggadic Narrative of the Babylonian Talmud: A Study Based Upon B.M. 83b-86a," in *Community and Culture Essays in Jewish Studies in Honor of the 90th Anniversary of the Founding of Gratz College* (Philadelphia, 1987), 67-80.

counterparts, attempts to identify these parallels will serve to find a common tradition in these texts that underlies the later development of the rabbinic model of conversion.

Textual Reworking as the Babylonian Innovation of New Concepts

Therefore, this study primarily aims to address and discuss the implications of the textuality of the Bavli with significant attention to the pattern of its evolutionary textual developments in examining the theoretical theme of the rabbinic model of conversion, in which the convert is legally and conceptually transformed into a new person with a new ethnic identity. As mentioned previously, the evolution of the Bavli's textual redaction indicates that rabbinic conversion is the final product of its innovation that in fact reflects the complicated processes of its textual transmission, in which earlier Tannaitic and Amoraic material (the *baraitot* and *meimrot*), concepts, and laws were reworked, reshaped, reframed and rearranged by the anonymous redactors of the Bavli known as the *Stam*. They restructured, reconfigured and modified concepts that were already existent in Tannaitic and early Palestinian Amoraic literature, thus transforming legal/*halakhic* conceptualizations by restructuring their legal discourses on particular themes such as conversion. In this process of textual transmission and evolution, particular metaphors, ideas and laws were subtly reshuffled and rephrased in a didactic way that created new perspectives on particular themes. Moreover, this process of textual transmission eventually led to both textual and semantic mutations, in which particular phrases, motifs and images took on new meanings. This allowed *halakhic* rulings to be reworked to conform to emerging new perceptions. This is especially true regarding the Bavli's use of the phrase "*A convert is like newborn child*" (גר שנתגייר כקטן שנולד דמי), which is based on the notion of one's renewal (known as בן יומא "*one-day-infant*") in Palestinian Amoraic literature. Its use of the phrase suggests that the image of birth and renewal was subtly and semantically reworked and reconfigured in the context of the severing of the convert's kinship ties with his former, gentile kin.

In developing the concept of conversion, the *Stam* of the Bavli brought together various pieces of earlier Palestinian and Tannaitic traditions by integrating them into one conceptual and textual framework as a whole. The process of textual transmission thus

suggests that particular concepts and terms that were insignificantly marginalized among earlier Tannaitic and Amoraic sages were then transformed by the Bavli into normative legal conventions or constructs in later generations. This textual transformation, specifically referred to as what Moshe Lavee calls “Dominantization,” affirms the process by which the Bavli transformed certain marginalized concepts and terms of earlier Tannaitic and Palestinian Amoraic sources into newer, dominant ones, thus suggesting that earlier conventions and concepts were reworked and reconfigured to conceptualize the notion of conversion as an authentic tradition dated back to the early Tannaitic period.¹⁸

The evolution of the Bavli’s textual developments also contributed to forming a new chronological perspective on the transmission of its traditions. With its effort at Dominantization, the Bavli developed its unique chronological layers in which earlier, ancient traditions were constantly transmitted and then interpreted as setting forth new innovations and ideas. Explicitly or implicitly attributing certain views and concepts to earlier rabbinic figures such as Tannaim and Amoraim, earlier materials were reworked and redesigned to craft a new chronological layer in which the views of earlier Tannaitic or Amoraic sages were understood to fit those of the later Babylonian ones. By this mechanism of textual transmission, the *Stam* of the Bavli succeeded in systematically and even retroactively attributing its newly innovative views and concepts to earlier rabbinic authorities; they read and interpolated their later Babylonian agenda into the views of earlier strata. This evolutionary process of the Bavli’s textual developments thus created historical continuity as if the later Babylonian innovative conventions or ideas had already been attributed to the earlier Tannaitic or Amoraic sages or authorities, thereby enhancing its legal authority and authenticity. Its textual transmission through interpolation also constructed a chronological prism through which the historical development of the laws of conversion was fictively showcased during the early Tannaitic period.¹⁹

¹⁸ Lavee, *The Rabbinic Conversion of Judaism*, 15-16.

¹⁹ Michel Meslin describes a similar observation regarding conversion in Judaism, arguing that conversion is a product of the Bavli, and therefore cannot be taken as an authentic representation of early rabbinic conversion in early Judaism. Michel Meslin, “Baptism,” in *Encyclopedia of Religion*, vol.2, ed. Mircea Eliade and Charles J. Adams (New York: Macmillan, 1987), 59-63. For similar

The Bavli's invention of the rabbinic court for conversion, for example, reflects its chronological prism. This suggests that the Bavli references the institution of the rabbinic court for conversion in all its chronological layers. Attributing the institution of the rabbinic court for conversion to the second-century Tanna Rabbi Yehuda, it also read his view into a *meimra* attributed to the third-century Palestinian Amora Rabbi Yohanan. It also cited the views of the Babylonian Amoraim of the third to the fourth centuries Rav Huna and Rav Sheshet to explicitly stress that the rabbinic court for conversion was suggested as an early Tannaitic legal institution. It is important to note that this hermeneutical shift was not intended at all to be some textual manipulation. The formulation of the Bavli's anachronistic account of the development of the laws of conversion in fact suggests that new interpretations of earlier material through textual reworking and rephrasing should be perceived as faithfully and authentically transmitting and representing the textual traditions.²⁰

The Bavli's centuries of the continuous and fluid process of textual transmission gradually crafted a specific sense of chronology, in which the later Babylonian phrases, views, tendencies, agendas and concepts were attributed, interpolated, interwoven and read into the views and phrases of earlier generations of the Tannaim and early Amoraim in the strata of the Talmudic text. This evolutionary process purposefully served the agenda of enhancing the authenticity of the rabbinic figures and their *halakhic* authority. Although some inconsistent views that were and contradictory to its prevailing trends were occasionally preserved in its chronological layers, such a multilayered presentation contributed to the formation of the Bavli as a multi-vocal text that preserves a series of well-defined traditions interwoven in its different chronological strata. The Bavli as a text that contains multilayered strands of Tannaitic and early Amoraic traditions serves to mark distinct layers of chronology in which various materials with specific styles of language and terminology reflect how the later perspectives and tendencies are

observations, See Daniel Boyarin *Border Lines: The Partition of Judeo-Christianity*. (Philadelphia: University of Pennsylvania Press, 2004); Adiel Schremer, "Stammaitic Historiography," in *Creation and Composition: The Contribution of the Bavli Redactors (Stammait) to the Aggada*, ed. J. L. Rubenstein (Tübingen: Mohr Siebeck, 2005), 219-35. Cf. Lavee, "The Rabbinic Conversion of Judaism," 16.

²⁰ This point is also strongly stressed by Lavee. I strongly agree with his assessment.

interwoven and then attributed into the layers of the earlier views, thus granting both authenticity and authority to specific agendas and concepts attributed to generations of early sages and finally conveying the idea that the later innovations are a wider part of historical continuity of traditions. This suggests that unlike the Mishnah, the Tannaitic *baraitot* and early Amoraic *meimrot* as non-canonized texts are openly subject to minor changes and emendations by the later Babylonian Amoraim as well as the *Stam*. This openly continuous and fluid process of textual manipulation and preservation of earlier views and perspectives in the later strata of the Talmudic text gradually allowed the later Amoraim and *Stam* to accept the rabbinic authority of earlier generations as legally authentic and authoritative. Through such a prolonged process of textual transmission, the Bavli's later innovative views and perspectives were thus retrojected and attributed by the anonymous voice of the Bavli into the layers of earlier Tannaitic and Palestinian Amoraic traditions. Therefore, this process constitutes the specific sense of chronology implied in the Talmudic text with a set of assumptions that color the Bavli's innovative perspective as historically and chronologically authoritative.

The creation of the Bavli's chronological prism through the reworking and restructuring of earlier traditions during the process of textual transmission thus serves as a part of the Bavli's wider endeavor to convey its later agendas and concepts as a new theoretical and *halakhic* conventions. Especially important is the Bavli's specific use of a "rhetoric of the obvious" (*P'shita*/פשיטא) in setting forth its new *halakhic* innovations. It plays an instrumental role in introducing new conceptualizations and perceptions into the wording and phrasing of earlier Tannaitic sources, which gradually might as well define the Bavli's authenticity and authority.²¹ Therefore with its use of rhetoric, the Bavli also could present its own revised versions of the Tannaitic views as well as early Palestinian Amoraic ones in a discursive way that took on new interpretations. Reworking and rephrasing the strata of earlier traditions by adding explanations and emendations to them, the *Stam* as the Bavli's anonymous reactor reinforces the idea that the revision of the

²¹ Moshe Lavee, "Rabbinic Literature and the History of Judaism in Late Antiquity: Challenges, Methodologies, and New Approaches," in *Rabbinic Texts and the History of Late-Roman Palestine*, ed. M. Goodman and P. Alexander (London: Oxford University Press and the British Academy, 2010), 333-334.

Talmudic texts are part of its intellectual endeavor in setting forth a new conceptualization. This implies that the later governing voice of the Babylonian Stammaitic authority has the sole power to redefine earlier traditions as a site for conceptualizing new theoretical frameworks and legal constructs such as the notion of the convert as a newborn. Babylonian Amoraim, for instance, presume that an earlier Tannaitic text alludes to the notion of the rabbinic court for conversion or severing of kinship ties with gentile kin upon conversion, thus bestowing on the later text as a sense of authenticity. Such presumption thus conveys the idea that the later Babylonian view is understood as innovative and yet authoritative, thus creating a sense of authenticity. Through the continuous attribution of its later views and perspectives to earlier Tannaitic and Palestinian Amoraic views, the Bavli crafted a sense of fictive chronology that turns the concept of conversion as a prolonged social process into a single event.²² This enabled the Bavli to claim that this newly defined Babylonian innovative construct had already been invented by earlier Tannaitic authorities, which contributed to enhancing the legal authenticity of rabbinic conversion as a *halakhic* institution.

This suggests that the Talmud can be read not as a source that haphazardly contained different chronological layers, but rather as a multilayered text that reflects the preservation of the well-defined legal traditions of early sages. Such reading could thus allow the readers to view the chronological development of how the institution of conversion gradually came to be developed. The *Stam* of the Bavli systematically innovates a new conceptualization by reworking the views and phrases of earlier rabbinic authorities and ascribing these to such groups of sages. That is, its reworking of textual transmission by later generations of sages creates a new textual and conceptual framework in which new specific constructs and conventions are defined only to become a concrete reality. The very transformation from construct to historical reality took shape over time, continuously evolving even after the final formation and redaction of the Bavli. In fact, the later geonim and rabbis in the medieval period further intensified such tendencies, in which the Bavli's coined phrase such as "*A convert is like a newborn child*" gradually became

²² Moshe Lavee, "The 'Tractate' of Conversion – BT Yeb. 46-48 and the Evolution of Conversion Procedure," *European Journal for Jewish Studies* 4 (2010): 209.

a concrete historical reality.²³ Therefore, this study demonstrates that it is in this context of the complex process of the Bavli's textual evolution during the phase of gradual transmission that comes to define the boundaries of Jewish identity, in which kinship and ethnic identity becomes subject to change and negotiation. This is made possible due to the discursive models of tendencies toward well-defined legal definitions and abstraction developed and intensified in the Bavli. Such textual and conceptual developments thus serve as active agents that shape social and cultural structures that craft concepts, conventions, and institutions, which culminate in the rabbinic model of conversion. Rabbinic conversion as a Babylonian construct produced by such developments thus contributed to sharpening the demarcation of the group boundaries of Jewish identity.

The Mishnaic Theory of Classification as a Model for Rabbinic Conversion

It is clear that rabbinic conversion as a legal procedure signifies the convert's change of the *halakhic* status as *Israel*. Alongside uncovering how the textual evolution of the Bavli contributed to the formation of rabbinic conversion, this study also attempts to incorporate another important aspect of how the rabbinic model of conversion accounts for the mechanism for initiating a change of identity from gentile to Jew. With its use of rhetoric, the Bavli engaged in textual reworking, maneuver, and rephrasing of early Tannaitic and Amoraic materials, which in turn contributed to the development of conversion as a legal procedure that signifies the fundamental change of the convert's ethnic and kinship identity from gentile to Jew. To help account for how the system of Jewish law initiates such a fundamental change of identity, this study attempts to draw on the theoretical models suggested by Howard Eilberg-Schwartz to demonstrate that the Bavli's use of rhetoric that enables a semantic change of meaning in the text is based on the Mishnah's system of classification in which one can exercise the power of human intellectual and rational faculties or mental disposition, namely "thought" or "intentions" (*mahshavah*/מחשבה) to classify and categorize given objects or persons in question in the classificatory system of the Mishnah, which thereby allows one to alter the fundamental

²³ Moshe Lavee, *The Rabbinic Conversion of Judaism*, 47.

character or essence of reality.²⁴

According to Eilberg-Schwartz, in the classificatory system of the Mishnah, the person's formulation of a particular thought or plan shapes a "magical" effect of altering the character of reality. In other words, the mishnaic system of classification presents the concept that human thought serves as an active agent by which the status of things comes to be altered through the process of classification. In this mishnaic conceptual framework of classification, the convert, previously *gentile*, is now classified as *Israel* upon conversion with the *Bavli's* strategic use of rhetoric or reworking. This indicates that the *Bavli* uses the mishnaic concept of classification in order to define the convert under the category of "Israel" with the use of its rhetoric in the *sugya*. Therefore it can be assumed that the *Bavli's* legalization of conversion as a court procedure is understood as an act of classification similar to the Mishnah's. Especially, a set of six *baraitot* in the 'Tractate' of Conversion preserved in the *Bavli* is structurally and textually characterized as *mishnaic* or is treated by the *Bavli* as a thematic unit similar to the Mishnah, this thematic correspondence between the two texts suggests that the *Bavli* discursively uses the Mishnah's conceptual framework to classify the convert into a category of "Israel."

Additionally, the Mishnah's emphasis on susceptibility to ritual impurity as an indicator of change of the object's basic character is worth examining specifically in relation to the discourse of conversion. Several Tannaitic texts illustrate how the convert's body becomes "ritually impure" during birth or through the contamination of skin disease immediately after conversion while it was not ritually defiled prior to conversion. This view also promotes the idea of conversion as a vehicle that creates a transition into the realm of ritual impurity, by which the convert's body contracts and absorbs such a state of ritual impurity to such an extent that his body (or self) fundamentally changes as Israel. This study thus examines how rabbinic conversion developed by the *Bavli* is closely embedded in the Mishnah's system of classification to show how the *Bavli* discursively uses its classificatory system to define a new ethnic identity for the convert.

²⁴ Howard Eilberg-Schwartz, *The Human Will in Judaism: The Mishnah's Philosophy of Religion* (Atlanta: Scholars Press, 1986).

Rethinking Rabbinic Conversion as a Mode of Ethnic Identity Construction

Since the aim of rabbinic conversion as the Bavli's innovative construct is the demarcation of the group boundaries that sharply define Jewish identity distinct from non-Jews, rabbinic conversion to Judaism involves more than a transformation of one's religious affiliation. In other words, rabbinic conversion enables the crossing of ethnic boundaries. This suggests that rabbinic conversion entails ethnic transformation. To be more precise, a form of identity construction in which a gentile becomes a Jew via the procedure of conversion addresses the question of whether Jews are defined as ethnicity or religion or perhaps both. Therefore, the question of rabbinic conversion as portrayed in the rabbinic corpus as a site for demarcating the boundaries of Jewish identity in fact leads to the question of how to better understand the concepts of ethnicity and religion in late antiquity in association with understanding the nature of Jewish identity as understood by the sages of rabbinic Judaism. While this debate is far too broad-ranging to discuss here, what is important for the purposes of this study is how the notion of ethnicity gets defined in relation to religion in general and conversion in particular in order to show how religion serves as a cultural construct that defines features of ethnic identity.

As mentioned previously, the Bavli's innovation, derived from the evolutionary processes of textual transmission through its semantic reworking of earlier Tannaitic and Amoraic material, set forth rabbinic conversion as a new conceptualization that shapes *halakhic* structures of meaning that can craft Jewish identity in a variety of forms. Especially, the Bavli's phrase of "*A convert is like a newborn child*" suggests that conversion enables a gentile to become a Jew by severing the convert's kinship ties with his former kin, implying that one can change or erase one's own kinship identity and that Jewish identity is openly fluid and thus subject to change according to the emerging social and cultural circumstances.

Rethinking the above questions, the nature of the relations between ethnicity and religion in late antiquity must be called into question. Ethnicity and religion are often thought to be in tension with each other because ethnicity continues to be treated as if it were fixed, immutable facets of identity, while religion is understood as a category open to all people via conversion. This also implies that religious conversion offers a degree of

fluidity while ethnicity offers only fixity that definitely makes one's identity immutable. Today, our modern culture often perceives ethnicity as "given," thus characterizes it as an immutable entity. That is, it is understood as an immutable attribute over which we have no control or as something that we are innately born with. Especially salient is the myth of "shared blood" as an immutable concept that runs deeply in our modern culture, falsely implying that there is some intrinsic essence to ethnicity. First and foremost, I argue that both ethnicity and religion in late antiquity are contingent, social constructions; they are durable yet malleable cultural constructs that are constantly open to fluidity, negotiation, change and reconstruction over time. An understanding of ethnicity as a cultural construct that is fluid and openly subject to change even though it is described as fixed and immutable allows us to present a different approach to viewing a different understanding of the relationship between religion and ethnicity particularly in understanding Jewish identity construction via rabbinic conversion.

The fact that rabbinic conversion defined by the Bavli enables the convert to change his kinship and ethnic identity as a Jew thus allows us to revise prevailing interpretations of ethnicity and religion in late antiquity. This study drew largely on the work of Denise K. Buell on the study of ethnic reasoning in early Christianity because her study in fact offers a very suggestive insight into how ethnicity constitutes a primary facet of cultural identity in late antiquity. Buell in fact challenges and rebuffs the widely held views on the mutual exclusivity between ethnicity and religion, specifically demonstrating that Christianity, often understood as transcending "ethnic particularities," adopted ethnic language and modes of its reasoning in order to define themselves as a people over and against other ethnic groups in the Mediterranean culture such as the Greeks, Egyptians and Jews.²⁵ She argues that religion as a cultural construct constitutes one of the defining criteria of ethnicity, stressing that it serves as a medium for creating ethnoracial transformation.²⁶

²⁵ Denise Kimber Buell, *Why This New Race: Ethnic Reasoning in Early Christianity*. (New York: Columbia University Press, 2005). Her main argument concerns the understanding of how peoples in the ancient Mediterranean culture frequently defined themselves by way of religious practices. Especially her view of "ethnic reasoning" in early Christianity serves as the basis for claiming ethnic membership, which is subject to fluidity and fixity as well as transformation and negotiation.

²⁶ *Ibid.*, 37-47.

This indicates that religion can be used to serve either end of the spectrum of fixity and fluidity to define and construct ethnicity, which also means that religion sharpens ethnic group boundaries, which serves the ends of fixity.²⁷ Drawing on her points of view on the fluid nature of ethnicity and religion, I suggest in this study that rabbinic conversion can be understood as a socially embedded process intertwined with other modes of cultural identity that entails the crossing of ethnic boundaries despite the fact that these social boundaries may not only be religiously drawn but also be ethnically defined.

Understanding the Fixity and Fluidity of Ethnic Identity in Antiquity

The study of the notion of ethnic identity, particularly the notion of Greekness in antiquity, offers an insight into how the criteria of ethnicity can be selectively defined in different contexts in antiquity, which can be applied to understanding the notion of Jewishness in the discourse of conversion in rabbinic literature. Drawing on anthropological and sociological theories on ethnicity, Jonathan Hall, persuasively suggests in his study of ancient Greek ethnic identity that the defining criteria of ethnic membership are socially constructed and thus subject to renegotiation.²⁸ This implies that whatever discourses of identity such as common blood, customs, language or gods are used to discursively assert ethnic identity.²⁹ In other words, through manipulations of such attributes, claims of ethnic identity are discursively asserted. In order to invoke the legitimacy and fixity of kinship claims of ethnicity, other cultural criteria are necessary.

In this light, the discourse of culture that defines ethnicity can be imagined by what Jonathan Friedman calls as a dynamic “product of the practice of meaning, of multiple interpretation and socially situated acts of attribution of meaning to the world of multiple interpretations both within society... and between society.”³⁰ Thus assertions of multiple

²⁷ Ibid.

²⁸ Jonathan M. Hall, *Ethnic Identity in Greek Antiquity*. (Chicago: University of Chicago Press, 1997), 24.

²⁹ David Konstan also suggests this point. See David Konstan, “Defining Ancient Greek Ethnicity,” *Diaspora* 6 (1997): 109.

³⁰ Jonathan Friedman, “Notes on Culture and Identity in Imperial Worlds,” in *Religion and Religious Practice in the Seleucid Kingdom*, ed. Per Bilde et al. (Aarhus, Denmark: Aarhus University Press, 1990), 23.

meanings in identity construction whether it could be essential or distinctive, can be attributed to concepts and practices in a way that may overlap. For that reason, the boundaries between religion, ethnicity, philosophy, and civic identity are all blurred and deeply intertwined with one another in antiquity especially in the context of the construction and transformation of cultures and identities.³¹ Examining the discourse of rabbinic conversion in the context of the textuality of the Bavli thus reveals that Jews also defined themselves through selective interaction with existing social practices and interpretations of how such practices produce the interpretation of meaning, as seen in the Bavli's semantic reworking to set forth a new convention through its textual transmission.

In the case of discussing ancient perceptions of Greek ethnicity, Irad Malkin points out that ethnicity has no fundamental essence in favor of the view that ethnicity is a socially contingent, cultural construct.³² For example, he also notes that Greek ethnicity seems to have been traditionally subject to constant negotiation:

*Each time we find a statement involving ethnicity it reformulates the concept or expresses some position about it... In attempting a response to the question "Who is a Greek?" [most ancient writers] would play with acceptable conventions, choosing to emphasize particular aspects or even invent new ones.*³³

Judging from Herodotus's defining criteria of what constitutes Greek ethnic identity, definitions of ethnicity in antiquity cover the broader spectrum of fixity and fluidity. However, one could select a range of conventions in formulating a particular definition on ethnicity. Many scholars often cite Herodotus (*Histories* 8.144.2) to identify the five criteria of defining Greekness: (1) common purpose: (2) kinship (*homaimon*): (3) shared language (*homomglosson*): (4) shared sanctuaries of the gods and sacrifices (*theon hidrumata koina kai thusai*): (5) ways of life and customs (*ethea homotropa*).³⁴ While combinations of a common

³¹ Buell, *Why This New Race*, 37.

³² Irad Malkin, "Introduction," in *Ancient Perceptions of Greek Ethnicity* (Washington D.C.: Center for Hellenic Studies/Cambridge: Harvard University Press, 2001), 15.

³³ *Ibid.*, 6.

³⁴ *Ibid.*, 5-6. For the criteria of Greek ethnicity, see also Rosalind Thomas, "Ethnicity, Genealogy,

goal, kinship, language, shared religious practices, and a way of life serve to invoke ancient definitions of Greekness, one could select one of these criteria to serve as the defining feature that constitutes ethnicity.

It is thus important to ask questions not only about what exactly constitutes the defining criteria of ethnicity but about how, why and under what circumstances such claims of ethnic identity are rhetorically and discursively asserted. As David Konstan convincingly argues, Herotodus's suggestion of the five criteria of ethnicity is strategically deployed to call for collective Hellenic unity under Athenian dominance in the wake of the Persian Wars.³⁵ During the Roman imperial period, the notion of Greekness was defined and negotiated especially over and against Romans.³⁶ Many texts in antiquity, which include but are not limited to the rabbinic corpus, in fact craft fictive histories and genealogies for a group of people by describing them as descendants of particular ancestors.³⁷ This indicates that the criteria of ethnicity shift over time according to the specific historical and

and Hellenism in Herodotus," in *Ancient Perceptions of Greek Ethnicity*, 213. Suzanne Said, "The Discourse of Identity in Greek Rhetoric from Isocrates to Aristides," in *Ancient Perceptions of Greek Ethnicity*, 275.

³⁵ David Konstan, "To Hellenikon Ethnos," in *Ancient Perceptions of Greek Ethnicity*, 30, 33, 36. Konstan convincingly argues that common traits themselves do not constitute a sense of ethnic self-awareness. Rather claims of ethnic identity are asserted based on how such shared characteristics can be discursively and strategically employed and mobilized in changing social, political and religious contexts.

³⁶ Ewan Bowie, "Greeks and their Past in the Second Sophistic," in *Studies in Ancient Society*, ed. Moses Finley (London: Routledge, 1974), 166-209; Anthony Spawforth, "Shade of Greekness: A Lydian Case Study," in *Ancient Perceptions of Greek Ethnicity*, 375-400; and Preston, Rebecca. "Roman Questions, Greek Answers: Plutarch and the Construction of Identity." In *Being Greek Under Rome: Cultural Identity, the Second Sophistic, and the Development of Empire*, edited by Simon Goldhill, (Cambridge: Cambridge University Press, 2001), 86-117; An attempt to define who Greeks are conversely serves to define Romanness as well. See Andrew Wallace-Hadrill, "To be Roman, Go Greek: Thoughts on Hellenization at Rome," in *Modus Operandi: Essays in Honor of Geoffrey Rickman*, ed. Michael Austin, Jill Harris, and Christopher Smith (London: Institute of Classical Studies, 1998), 79-91.

³⁷ Rosalind Thomas, "Genealogy," 629. The practice of crafting genealogies of families in writing was a widely common practice in antiquity. Examples include Athenian families publishing their genealogies as a way of asserting prestige and honor accorded to their putative ancestors as heroes; As Rosalind Thomas points out that "prestige, status, even moral character might be derived from the original ancestors, preferably legendary, heroic or divine," descent was preferably used for strategic purposes in order to prove that it could foster a sense of authenticity and legitimacy of the family. For the diplomatic use of kinship in antiquity, see C.P. Jones, *Kinship and Diplomacy in the Ancient World*. (Cambridge, Mass.: Harvard University Press, 1999).

social context and can often be subject to negotiation to assert such identity.

Along with the views of Konstan, the theoretical view addressed by Gert Baumann is also suggestive of how the dynamic interplay between fixity and fluidity reinforces and asserts ethnic claims of identity. Baumann in fact develops the twofold dynamic of a “dual discursive competence” of ethnic identity construction, addressing that the practice of constructing ethnic identity involves the two discourses of culture, the essentialist and the processual. His view of “dual discursive competence” is understood as follows: while the essentialist discourse claims that ethnicity has some inherent essence that defines an ethnic group as a whole (fixity or also known as primordialist), the processual discourse maintains that its defining characteristics are not inherently essential, but constantly created and constructed by its members, thus openly subject to change and negotiation over time (fluidity or known as instrumentalist).³⁸ Instead of understanding these discourses of the essentialist and the processual as mutually exclusive, he aptly argues that these two discourses, though seemingly incompatible, are in fact complementary in creating and reinforcing claims of ethnic identity:

The leader needs to preach an essentialist theory of culture: “Our group will act and will be, and deep down has always been, united in its thinking and identity.” Yet employing this essentialist rhetoric is in fact a creative act. The rhetoric is essentialist, yet the activity processual. Culture is said... to be rooted in an unchangeable past, yet the leader can hope to create it because he or she

³⁸ Baumann, *The Multicultural Riddle: Rethinking National, Ethnic, and Religious Identities*. (New York: Routledge, 1999), 90-95. This twofold discourse of culture challenges the primordialist-instrumentalist dichotomy that serves as a defining feature of ethnic identity. Other scholars who address similar models are: Carola Lenz, “Creating Ethnic Identities in North Western Ghana,” in *The Politics of Ethnic Consciousness*, edited by Cora Govers and Hans Vermeulen (New York: St. Martin’s Press, 1997), 31-89; Ann L. Stoler, “Racial Histories and Their Regimes of Truth,” *Political Power and Social Theory* 11 (1997): 183-206; and Buell and Jonson Hodge, “The Politics of Interpretation.” Both Buell and Jonson Hodge presents a helpful review of Baumann’s work when it comes to dealing with how religion reinforces ethnic identity construction in the context of late antiquity. For a discussion of the two discourses, see Hans Vermeulen and Cora Govers, “Political Mobilization” in *The Politics of Ethnic Consciousness*, edited by Cora Govers and Hans Vermeulen (New York: St. Martin’s Press, 1997), 1-30; Jonathan Hall, *Ethnic Identity*, 17-19; Carter G. Bentley, “Ethnicity and Practice.” *Journal for the Comparative Study of Society and History* 29 (1987): 25-26; Malkin, “Introduction,” 15-19; Caroline Johnson Hodge, *If Sons, Then Heirs: A Study of Kinship and Ethnicity in the Letters of Paul* (New York: Oxford University Press, 2007), 21.

*knows culture to be malleable and pliable, open to change... What the culture-forging leader preaches is the essentialist theory; what he or she preaches is the processual theory.*³⁹

These two paradigms thus serve together to reinforce the concept of ethnicity as both ascribed and achieved as well as fixed and fluid. It is important to note that the terms by which this ethnic ascription is defined gets changed by appealing to the rhetoric of the essentialist. His theoretical view of the dual discursive competence thus shows that ethnicity, which can often be perceived to be immutable and thus fixed, can be attained or altered especially by appealing to the rhetoric of the essentialist discourse. That is, claims of fixity (the essentialist discourse) can be manipulated by appealing to claims of fluidity (the procedural discourse). Ethnicity is therefore serves as a malleable cultural construct that alters even claims of kinship and descent according to the strategic and discursive use of rhetoric in different social and cultural contexts. This illustrates that in considering the spectrum of fixity and fluidity in ethnic identity construction, claims of fixity such as kinship and descent can be subject to fluidity in practice especially by appealing to such claims.

Following the views of Buell, Konstan, and Baumann, I suggest that the necessary criterion of what constitutes ethnicity is based on the dynamic interplay between fixity and fluidity.⁴⁰ Especially, appeals to common kinship and descent demonstrate one significant way in which the “essence” or “fixity” of ethnicity is asserted, fostering assertions of such claims of identity as fixed, inherent, and primordial. Appeals to common kinship and descent (though they are also social constructions as well), as Jonathan Hall rightly suggests, might as well be considered as part of cultural negotiation that fluidly produces fundamental ties to fixity.⁴¹ While “blood” serves as a powerful symbol for the relationship defined by kinship in our modern culture, “kinship” and “descent” also symbolize the claims of fixity implied by the notion of ethnicity.⁴² Insofar

³⁹ Ibid., 91.

⁴⁰ Buell, *Why This New Race*, 9. Buell also emphasizes this point to articulate that the notion of ethnicity is constituted by being constantly subject to both fixity and fluidity.

⁴¹ Jonathan Hall, *Ethnic Identity*, 28-32.

⁴² David M. Schneider, “What is Kinship about?” in *Kinship Studies in the Morgan Centennial Year*,

as kinship and descent operate in the fluid aspect of ethnicity, what constitutes descent and kin relations shift or can be redrawn discursively (or ritually) to include and exclude particular individuals and groups, which implies that these claims of fluidity serve to assert ethnic claims of kinship and descent as fictive yet real.⁴³ Although definitions of ethnicity often tend to be acknowledged by other cultural criteria such as language and customs, kinship and descent serve as constitutive elements of defining ethnicity especially when they are privileged as necessary to define it. The following definition of ethnicity in the context of ancient Greece suggested by Konstan thus deserves attention. He notes: “the self-conscious insistence on an image of the organic cohesion of community, however it may be constructed”.⁴⁴ This understanding of ethnicity indicates that the construction of ethnicity can take many forms. In the historical and cultural context of antiquity, this “organic cohesion of a community” is constructed upon various facets of cultural markers such as geographic homeland, shared history, myths of origin, common ancestry, daily practices, adherence to the law including ethnical codes and religion (or combinations of these factors). One of the most salient and defining characteristics of ethnicity, as most anthropologists and sociologists generally agree, entails claims of common kinship or descent from a common ancestor. This indicates that this criterion of ethnicity is dependent on the presence of such claims.⁴⁵

Therefore, kinship as one important feature of what constitutes ethnicity discursively offers a central way of articulating a sense of ethnic fixity, essence, and continuity by employing the rhetoric of fluidity. It too is understood as a cultural construct subject to change and negotiation over time. In other words, kinship is characterized by appeal to fixity and essence such as blood and genealogy by appealing to the rhetoric of malleability.

ed. Priscilla Reining (Washington D.C.: Anthropological Society of Washington, 1972), 44-47.

⁴³ Ibid. 50-60; Buell, *Why This New Race*, 9. Buell argues that kinship and descent serve as analytical categories created by social scientists to explain a wide variety of social organizations, practices, and cultural symbols.

⁴⁴ David Konstan, “Defining Ancient Greek Ethnicity,” *Diaspora* 6:1 (1997): 109. For his similar arguments on ethnic identity construction in ancient Greece, see “*To Hellenikon Ethnos: Ethnicity and the Construction of Ancient Greek Identity*,” In *Ancient Perceptions of Greek Identity*, ed. Irad Malkin, 29-50. Cambridge, Mass.: Harvard University Press, 2001.

⁴⁵ Jonathan M. Hall, *Ethnic Identity*, 17-33; *Hellenicity: Between Ethnicity and Culture* (Chicago: University of Chicago Press, 2002), 9-17. Cf. Buell, *Why This New Race*, 9.

Appeal to common kinship or descent from particular ancestors is thus one of the favored strategies of asserting and shaping claims of ethnic identity.⁴⁶ Kinship, according to David Schneider, is a cultural construct that organizes social relations.⁴⁷ In the discourse of kinship, “blood” specifically serves as a symbol or metaphor for conceptualizing different social relations between ethnic groups, thus reinforcing it as fixed and natural.⁴⁸ This metaphoric understanding of blood is embedded within such social relationships that sanction and legitimate authority and authenticity of kinship claims of ethnic identity.⁴⁹

As exemplified by the notion of “*A convert is like a newborn child*” suggested by the Bavli, kinship and descent serve as privileged components that discursively shape ethnic claims of Jewish identity. The *halakhic* procedure of conversion plays a significant role in serving as a medium that discursively manipulates such kinship claims, thereby reinforcing ethnic transformation for the convert. At the same time, the perception that kinship can be shaped and negotiated via such conversion does not compromise the belief that blood ties are perceived to be natural and immutable. These two paradoxically mutually exclusive concepts thus operate in concert in the construction of ethnic claims of identity.

Kinship as a Malleable Construct in Defining the Biblical *Ger*

⁴⁶ Buell, *Why This New Race*, 9. This issue is discussed in detail in Chapter 3.

⁴⁷ David M. Schneider, “What is Kinship about?” 44-48; 50-60.

⁴⁸ Caroline Johnson Hodge, *If Sons, Then Heirs: A Study of Kinship and Ethnicity in the Letters of Paul* (New York: Oxford University Press, 2007), 16-17. Carola Lentz suggests that while ethnicity and kinship are fluid constructs subject to change and negotiation, in order for such change and negotiation to be effective, the consensus of those who are involved are required to effect that change. Carola Lentz, “Creating Ethnic Identities,” 33-34. Jonathan Hall also makes this point in *Ethnic Identity*, 25.

⁴⁹ Silvia J. Yanagisako and Carol Delaney, “Naturalizing Power,” in *Naturalizing Power: Essays in Feminist Cultural Analysis*, ed. Silvia Yanagisako and Carol Delaney. (New York: Routledge, 1995), 20. A classic example of naturalizing social relationships is the authority of the father over the son. When the relationship between the father and the son is socially constructed and sanctioned, its authority becomes natural and legitimate. When the father-son relationship is used as a metaphorical understanding of social relationships, the structure of the authority of such a relationship may also get structured to be projected onto another social relationship such as the teacher-student relationship. Another example of naturalizing claims involves procreation. Buell argues that when kinship is used as a metaphor for procreation in the specific cultural setting in which procreation is “held to be a natural and valued process,” so too the social relations imbued with procreation are understood to be natural and legitimate. D. K. Buell, *Making Christians: Clement of Alexandria and the Rhetoric of Legitimacy*. (Princeton, N.J.: Princeton University Press, 1999), 3.

In light of the malleable nature of kinship claims in ethnic identity construction, Ppre-rabbinic Judaism seems to have been aware of its fluid nature to determine the criteria of ethnic membership. Especially salient is the biblical tradition of inclusion of the *Ger*/גר (sojourner/stranger/resident alien) in the Hebrew Bible, on which the laws of conversion in the Bavli are originally based. This in fact suggests that kinship can be understood as a malleable cultural construct that can be subject to negotiation in order to incorporate outsiders who are not genealogically related into the Israelite kinship group. Mark Glanville argues in his study of the biblical *Ger* in Deuteronomy that the *Ger*, frequently understood as a foreigner in recent scholarship, is also a socially displaced person who needs to be incorporated into the Israelite kinship groups.⁵⁰ In the context of Deuteronomy's ethical vision for the *Ger*, which stipulates a system of his protection, his inclusion and incorporation into the Israelite clan, as he points out, are closely intertwined with the crafting of his kinship. That is, the primary goal of Deuteronomy, as he suggests, is to foster the incorporation of the *Ger* onto the Israelite genealogies as their kindred within the household, the clan and the nation as a whole.⁵¹ Especially the incorporation into the nation of those who had been separated from patrimony and from kindred was the primary goal. Therefore this vision of incorporation is achieved through the interplay of various codes of social laws and laws of judicial procedure.

In understanding the notion of kinship as described in the Hebrew Bible, it is important to note that the cultures of ancient Israel and the Near East were communally defined. People in the ancient Near East shared a collective identity, which is what Marshall Sahlins calls a "mutuality of being" or an "intersubjective solidarity."⁵² Such a "mutuality of being" is highly visible in the Hebrew Bible. For instance, such a notion can be seen in pronouncements of generational benediction and malediction in Exod 34:7. Or the promise that the sins of the forefathers will fall upon the descendants until the third and fourth generation has parallels in such communal cultures.⁵³ Kinship relations, according to

⁵⁰ Mark Glanville, "The Ger (Stranger) in Deuteronomy: Family for the Displaced," *JBL* 137, no. 3 (2018), 599.

⁵¹ Ibid.

⁵² Marshall Sahlins, *What Kinship Is – and Is Not* (Chicago: University of Chicago Press, 2013), 2, 43.

⁵³ Ibid., 49. Cf. Glanville, "The Ger (*Stranger*) in Deuteronomy, 604-605.

Frank Moore Cross, in fact served as cultural media that define the rights and obligations, the duties, status, and privileges of members of the tribal group especially in West Semitic tribal groups. Moreover, kinship terminology was presented as the medium of expressing legal, political, and religious institutions.⁵⁴

As mentioned earlier, although the notion of kinship in the form of blood ties often tends to be conceived of as immutable, in communal cultures in ancient Near East, its is understood as mutable and hence subject to change. For instance, Mac Marshall points out that a Trukese man may refer to another as “my sibling from the same canoe,” speaking of a man with whom he survived a life or death situation on the ocean.⁵⁵

Kinship as a mutable and malleable cultural construct is highly visible in the Hebrew Bible especially in the form of the *Ger*’s grafting into kinship. The *Ger*’s incorporation into the Israelite clan was made possible through his grafting into their kinship relations. Frank Moore Cross also asserts that in the West Semitic societies, when individuals or subgroups were grafted onto the genealogies of a particular clan, fictive kinship was forged, which became “kinship of the flesh and blood.”⁵⁶ That is, such fictive kinship or kinship-in-law, as Glanville also points out, became “kinship-in-flesh.”⁵⁷ As Tikva Frymer-Kensky argues the grafting of individuals into kinship relations is also common in the context of narrative texts of the Hebrew Bible.⁵⁸ Kinship terms such as “firstborn,” “father,” “brother,” and “sister” are essentially described as a form of a “judicial relationship” that may be enacted by contract as well as by birth in Near Eastern cultures.⁵⁹ It is also suffice to say that at the

⁵⁴ Frank Moore Cross, *From Epic to Canon: History and Literature in Ancient Israel* (Baltimore: Johns Hopkins Press University Press, 1998), 4.

⁵⁵ Mac Marshall, “The Nature of Nurture,” *American Ethnologist* 4 (1977): 643-642. Cf. Sahlins, *What Kinship Is*, 29; Glanville, “The Ger (*Stranger*) in Deuteronomy,” 605. Both of them cite Marshall.

⁵⁶ Cross, *From Epic to Canon*, 7.

⁵⁷ Glanville, “The Ger (*Stranger*) in Deuteronomy,” 605. Numerous examples of fictive kinship through acts of grafting in the Hebrew Bible indicate that the concept of kinship in ancient Near East is mutable enough to forge a “fictive” one. For instance, marriage is considered as a type of adoptive or fictive kinship, as demonstrated in Gen 2:23, “bone of my bone, flesh of my flesh.” Or the possibility of becoming kin-in-law served the basis for forging political covenants (e.g., 2 Sam 5:2, 1Chr 11:1).

⁵⁸ For example, Joseph’s entry into Pharaoh’s household in Gen 41:40 can be seen as entering into such a judicial relationship.

⁵⁹ Tikva Frymer-Kensky, “Patriarchal Family Relations in Ancient Near Eastern Law,” *BA* 44

time of the disruption of clan structures (especially the devastation of such kinship structures caused by the Babylonian exile), fictive kinship groupings based on vocation and geography came to play important roles in crafting “adoptive” clans, which in turn ensured the continuity of the Israelite kinship.⁶⁰ Although genetics plays a minimum role in determining and forging kinship⁶¹, all of these cases examined above demonstrate that kinship is understood as a malleable cultural construct that is forged even without the interference of biological descent. Kinship may be constructed endlessly through sharing land, cohabiting in the same household, nurturing, eating from the same hearth, giving and sharing food, working together, sharing migration, and mutual assistance through commitment of working and living together.⁶²

As Deuteronomy demonstrates in its ethical inclusion of the *Ger* into a household, into a clan, and into all tribes of Israel, grafting of kinship enables the incorporation of outsiders into kin groups, which is in turn structured into the people of Israel as a whole. Glanville’s assertion that kinship-in-law becomes kinship-in-flesh through grafting of outsiders into kinship groups indicates that kinship, often formulated in terms of biological relationships, can thus be established and reinforced by other criteria such as common daily practices, language, and religion, which come to form a sense of ethnic awareness. This informs that the way in which ethnicity is defined is closely contingent on the specific context. Although both kinship and ethnicity claim a primordial base, they are nevertheless cultural constructs that are subject to change and negotiation.⁶³ In light of these standpoints, the sages of the Bavli might have reconfigured the biblical concept of grafting of kinship into the *halakhic* procedures of conversion so as to craft a fictive kinship for the

(1981): 209-214.

⁶⁰ Glanville, “The *Ger* (Stranger) in Deuteronomy,” 605. Regarding this topic, see also Hugh G.M. Williamson, “The Family in Persian Period Judah: Some Textual Reflections,” in *Symbiosis, Symbolism, and the Power of the Past: Canaan, Ancient Israel and Their Neighbors from the Late Bronze Age through Roman Palestine; Proceedings from the Centennial Symposium, W.F. Albright Institute of Archeological Research and American Schools of Oriental Research, Jerusalem, May 29/31, 2000*, ed. William G. Dever and Seymour Giltin (Winona Lake, IN: Eisenbrauns, 2003), 469-85.

⁶¹ Sahlins, *What Kinship Is*, 74-86.

⁶² Ibid., 29, 71; Janet Carsten, *After Kinship, New Departures of Anthropology* (Cambridge: Cambridge University Press, 2004), 149. Cf. Glanville, “The *Ger* (Stranger) in Deuteronomy,” 606.

⁶³ Carola Lentz “creating Ethnic Identities,” 33-34.

convert as part of the kindred of Israel.

The Role of Religion/Conversion in Defining Ethnicity

Since ethnicity is understood as a concept constructed through appeals to fluidity by manipulating appeals to fixity, definitions of ethnic membership can be attained or achieved. If ethnicity is portrayed as an entity that is easily attainable or achievable, various components such as common purpose, education (*paideia*) a way of life and religious practices might be stressed as cultural constructs that could define ethnicity. For example, the Greeks of Hellas, according to Favorinus, believe that education plays a key role in producing the same effects as birth."⁶⁴ This indicates that there are other means by which Greekness can be "achieved" or "attained" as opposed to the assertion of Greekness as ascribed, implying that even claims of fixity such as birth and blood can be subject to fluidity and negotiation in practice. In antiquity, it is the religion (and its practices) that could play an instrumental yet primary role in constructing and asserting claims of ethnic identity. Buell in fact suggests that religion functions to (1) mark differences between ethnic groups and (2) enable ethnic transformation, helping to produce a collective identity under specific social circumstances.⁶⁵ A change in one's ethnic and kinship identity via conversion thus implies that ethnic identity transformation is deeply intertwined with religious practices. Religion in antiquity thus serves as a malleable category within ancient definitions of ethnicity that is instrumental to defining ethnic affiliation as both fixed and fluid. By appealing to the fluid end of the ethnic spectrum, religion enables ethnic transformation especially via conversion. In other words, religion (and its practices) in antiquity serves as a cultural medium by which to assert ethnic fixity by negotiating ethnic fluidity. Despite the fact that they are freely adopted or rejected, religious practices can be used to exhibit the fluid end of the spectrum by being closely tied to the fixed end because they are instrumental to both producing and reinforcing kinship itself, especially in the context of sacrificial rites. In this sense, religion is mutually intertwined with kinship to such an extent that shared kinship may often result in shared

⁶⁴ Konstan, "To Hellenikon ethnos," 35-36.

⁶⁵ Buell, *Why This New Race*, 41.

religious practices. Attending to Herodotus's appeal to shared worship as one of the criteria of defining Greekness, Robert Parker, for instance, stresses that in Greek society who they are is closely intertwined with who they worship. It was normally assumed among Greeks that "shared blood" or "shared kinship" would lead to "shared religious practices" especially in the context of one's observance of offering sacrifices with one's kinsmen.⁶⁶ Nancy Jay likewise argues that in the Greco-Roman culture religious practices of sacrifice can produce socially significant kinship structures in which lines of descent are socially secured. Referring to sacrificial rites in Greco-Roman culture as cultural media that produce social relations of reproduction, Jay aptly argues how ethnic membership was determined by social paternity through sacrifice as a warrant and means of creating a patrilineally defined descent group.⁶⁷ Since the entire social order of Greco-Roman society was largely dependent on patrilineally organized social relations, such social relations were particularly organized around "fathers" and "sons," which constituted and maintained social process of reproduction through sacrificial rite.⁶⁸ Therefore, it is the social paternity of reproduction that determines ethnic membership in the Greco-Roman cultural context. Gianna Pomata, on the other hand, shows that while Romans held a view of kinship associated with notions of shared blood, asserting that only men were able to produce the kinship relationship by shared blood (*agnatio*).⁶⁹

The observance of particular religious customs or practices can also help shore up the

⁶⁶ Robert Parker, *From Cleomenes on the Acropolis: An Inaugural Lecture Delivered Before the University of Oxford on 12 May 1997* (Oxford: Clarendon, 1998), 12. Cf. Malkin, "Introduction," 6; Buell, *Why New Race*, 43.

⁶⁷ Nancy Jay, *"Throughout Generations Forever": Sacrifice, Religion, and Paternity* (Oxford: Clarendon, 1998), 36-37.

⁶⁸ Ibid.

⁶⁹ Gianna Pomata, "Blood Ties and Semen Ties: Consanguinity and Agnation in Roman Law," in *Gender, Kinship, Power: A Comparative and Interdisciplinary History*, ed. Mary Jo Maynes et al. (New York: Routledge, 1996), 43-64. While the sacrificial system in both Greek and Roman cultures involves the definition of kinship relations of *agnatio* only, which was of civic and legal consequence, a natural form of kinship (*cognatio*) produced by women was of no legal consequence. This shows how patrilineal descent forms a basis for a collective identity of a particular ethnic group. Although rabbinic Judaism adopted the matrilineal principle of descent for kinship reckoning, I argue that a patrilineal understanding of descent is applied in the *halakhic* discourse of conversion in order to invent a fictive descent for the convert. How patrilineal kinship defines the convert's fictive descent is dealt with in Chapter 3.

definition of ethnic identity that can also be asserted through kinship connections to particular gods or deities.⁷⁰ *Ethne* in antiquity are in fact defined by religious boundaries demarcated by the worship of various deities. For example, the association of a particular people with particular deities in asserting claims of ethnic identity was common and longstanding in Greco-Roman culture. “A people with different customs” (*Chresthai nomois*) were described as “having different gods” (*chresthai theois*), which indicates that the deities of a particular *ethnos* constituted one of its attributes.⁷¹ In the late republic and into the first century C.E., it seems to have been generally assumed that in Rome, different ethnic groups were often characterized by their religious practices.⁷²

It is specifically clear in the context of the Hebrew Bible that Abraham’s covenant with God through the rite of circumcision creates a kinship relationship that was simultaneously religious and genealogical, which constitutes a part of important component of Jewish identity construction.⁷³ Hellenistic and Roman texts that deal with the discussion of Jewishness (or Judaeanness) also describe how piety and observance of particular religious customs would reinforce both ends of the fixed/fluid spectrum, defining ethnic membership through appeals to common kinship and ancestry. For instance, Israelites are described as an *ethnos* and a *genos* (a people) in the book of Judith. Either term seems to suggest that the ethnic essence of what constitutes an *ethnos* or a *genos* is largely defined by their relationship to a particular deity or god, which is closely intertwined with genealogical claims of kinship. In *Judith* 5:6-8, Israelites were understood by Achior, the leader of the Ammorites, as being descended from the Chaldeans, who refused to worship the gods their forefathers had worshipped in Chaldea, later abandoning the ways of their ancestors and beginning to worship the God of Heaven, which enabled them to cease to be Chaldeans and become a new *ethnos*. This suggests that

⁷⁰ Buell, *Why New Race*, 43.

⁷¹ Arthur D. Nock, *Conversion: The Old and the New in Religion from Alexander the Great to Augustine of Hippo* (1933; repr., Baltimore: Johns Hopkins University Press, 1988), 18-19.

⁷² Mary Beard, John North, and Simon Price, *Religions of Rome*, 2 Vols. (Cambridge: Cambridge University Press, 1998), 1:121. Cicero (*Nat. D.* 2.8), on the brink of the Roman imperial period, characterizes early Christians as a people on the basis of their religious piety (*religio*) and worship (*cultus deorum*).

⁷³ Ibid. Buell also made that point as well.

religious practices and beliefs serve as various components that embody both ethnic fixity and allow ethnic fluidity.

Moreover, religion equally functions as a vehicle for enabling ethnic transformation. For example, although it is not the only factor, religious transformation is considered a necessary element to become a Roman; the transformation of identity from “Barbarian” to “Roman” required a shift in religious practices. In the book of Judith, it is also stressed that the adoption of religious practices and beliefs could introduce the transformation of ethnic identity. Near the end of the text, Achior the Ammonite swore allegiance to the God of Israel, subsequently becoming circumcised (*Judith 14:10*). His conversion is not described as the private act of a single individual. Rather the transformation of Achior’s identity via conversion has collective consequences. His newly acquired “religious” identity enables his descendants to be “ethnically” affiliated with an *ethnos* called Israel, which later serves as a basis for the rabbinic notion of “*A convert as a newborn child*” in the Bavli. In other words, becoming a member of a particular *ethnos* by changing his religious allegiance implies that ethnic fixity is construed and guaranteed by religion as a fluid construct that mediates such transformation of identity.⁷⁴

In his study on Jewish identity construction in the context of Hellenistic cultures, Shaye Cohen presents an influential perspective on how conversion to Judaism was a possible undertaking of changing collective identity. He argues that a shift in how *Ioudaios* is primarily defined from an “ethnic” identity to a “religious” or “cultural” identity occurs during the last few centuries before the common era.⁷⁵ This shift in identity in cultural

⁷⁴ Buell, *Why This New Race*, 44.

⁷⁵ Shaye J.D. Cohen, *The Beginnings of Jewishness: Boundaries, Varieties, Uncertainties* (Berkeley and Los Angeles: University of California Press, 1999), 109-139; Thomas M. Finn, *From Death to Rebirth: Ritual and Conversion in Antiquity* (New York: Paulist Press, 1997), 12-13. Thomas Finn also develops the same argument of how a shift in an Israelite identity from ethnicity to religion occurred. Such an understanding apparently reflects the notion of ethnicity as a “fixed” category, in which the transformation of identity from outsider to insider is virtually impossible unless through appeals to kinship and shared descent. Buell, on the other hand, defines ethnicity as a possible feature of cultural identity in which religion as a cultural construct can be included, arguing against their views that religion can serve as a cultural construct that is entangled with and produced in relation to other social categories in other social contexts, hence accounting for its fluid nature to explain the malleable understanding of Jewish identity. Jonathan Hall in his book, *Hellenicity: Between Ethnicity and Culture*, also nuances such a claim of locating the defining criteria of ethnicity as one facet of

terms rather than in ethnic ones is interpreted as a shift to the possibility of conversion, which is in turn meant to implicitly or explicitly understand ethnicity as an immutable concept that precludes the transformation of one's identity. This suggests that in order for conversion to be a possible vehicle for transformation of identity, identity construction has to be "culturally" defined rather than "ethnically" defined. Cohen advances his view very succinctly:

Ethnic (ethno-geographic) identity is immutable.... However, in the century following the Hasmonean rebellion two new meanings of "Judaean" emerge: Judaean are all those, of whatever ethnic or geographic origins, who worship the God whose temple is in Jerusalem, or who have become citizens of the state established by the Judaean (a political definition). In contrast with ethnic identity, religious and political identities are mutable: gentiles can abandon their false gods and accept the true God, and non-Judaean can become citizens of the Judaean state.⁷⁶

Adopting the Greek concepts of *politeia* (citizenship), in which non-Judaean can be affiliated with the Judaean state as its citizens, the Hasmoneans apparently expanded the parameters of the criteria for membership in political and religious/cultural terms. However, Cohen's argument of characterizing this change as a result of a shift from immutable to mutable conceptualizations of Jewish (or Judaean) religious/cultural/political identity makes a sharp distinction between ethnicity and religious culture (or political identity), thus failing to see the dynamics of how both fixity and fluidity are closely intertwined in constructing identity. Cohen, who views ethnic identity as immutable and religion/culture as mutable, ignores the dual discursive discourses and practices of fixity and fluidity in ethnic identity construction, as specifically suggested by Baumann.⁷⁷ If it is presumed that ethnicity can be viewed as entailing the

cultural identity by blurring a sharp distinction between ethnicity and culture. *Hellenicity: Between Ethnicity and Culture* (Chicago: University of Chicago Press, 2002), 17.

⁷⁶ Ibid., 109-110.

⁷⁷ Supporting the claim made by Cohen, John North, who follows the view that there was a significant Jewish effort at conversion among gentiles during the second and third centuries C.E., characterizes Jews as members of a particular religion but not as an ethnicity. His position seems to delve into the historical context in which the Jewish missionary effort posed a source of competition

fixed end of the spectrum, then it can be asserted instead that the shift that occurred in the Hasmonean era in fact entails a transformation of how the notion of ethnicity can be defined with a greater stress on its fluidity/malleability, as clearly described in the book of Judith in which Achior's piety culminates in finalizing his conversion to Judaism.⁷⁸

In contrast to Cohen, Naomi Janowitz advances the view that ethnicity is subject to fluidity/malleability in negotiating the (re)construction of its identity, stressing how Jews in the Hellenistic era redefine the notion of Jewishness and its criteria of ethnic membership partially by adopting the Hellenistic ideas and practices of *politeia* as a medium for attaining membership in a particular *ethnos*:

*It was not so much the clash between Judaism and Hellenism as the very nature of the ethnos that opened up the possibility of non-Jews becoming 'Ioudaioi' (Cohen 1999, 105). Affiliating with an ethnos was not a complex undertaking, since ancient ethnē had more permeable boundaries, than, for examples, the tribal units familiar from Hebrew scriptures.*⁷⁹

The possibility of crossing ethnic boundaries via conversion in the context of late antiquity, as she stresses, may also be seen as the acquisition of one's permanent identity. This suggests that ethnic affiliation may easily be changed by a change in social reference. For instance, one can become a member of a particular ethnic community that practices the worship of ancestral deities; adopting their deities allows him to be ethnically affiliated with the community.⁸⁰ Thus the crossing of ethnic boundaries via conversion allows us to see ethnicity and religion as potentially fluid and negotiable entities, which requires

for Christians in their own mission. As Buell argues against his argument, the ongoing debates about whether or not Jews actively sought converts are closely intertwined with how to understand the relationship between religion and ethnicity. Therefore North's standpoint that Jews are defined only as a religious group may not be valid. See John North, "Development of Religious Pluralism," in *The Jews Among Pagans and Christians in the Roman Empire*, ed. Judith Lieu, John North, and Tessa Rajak (New York: Routledge, 1992), 191.

⁷⁸ Denise K. Buell, "Ethnicity and Religion in Mediterranean Antiquity and Beyond," *Religious Studies Review* 26 (2000): 247. Cf. Buell, *Why New Race*, 44.

⁷⁹ Naomi Janowitz, "Rethinking Jewish Identity in Late Antiquity," in *Ethnicity and Culture in Late Antiquity*, ed. Stephen Mitchell and Geoffrey Greatrex (London: Duckworth and the Classical Press of Wales, 2000), 213-214.

⁸⁰ Jonathan Friedman, "Notes on Culture and Identity in Imperial Worlds," 27.

rethinking on how the notion of conversion enables such ethnic identity transformation.

To support this view, Joshua Levinson also presents a helpful insight of how two paradigms of genealogical and covenantal identity mesh together to form Jewish identity in the context of the negotiating identity of the convert in rabbinic texts.⁸¹ Both paradigms serve to construct Jewishness as what is called “fictive ethnicity.”⁸² They have different stresses; the genealogical paradigm emphasizes the construction of identity according to biological descent, while in the covenantal paradigm, identity is constructed through the acceptance of a particular institutionalized belief system.⁸³ Although both paradigms seem to be sharply distinguished from each other in identity formation, they in fact help constitute ethnicity because they are deeply intertwined with each other. While the genealogical paradigm foregrounds claims of fixity by appeal to claims of descent and kinship, Levinson astutely points out that:

Both paradigms present identity as belated rather than indigenous. Whether the decisive moment is the revelation at Sinai or the birth of the twelve tribes, identity is achieved only through a detergent process, by the natural body purging itself of foreign elements. This belatedness, which stresses the acquired nature of identity, would seem to indicate a certain anxiety concerning the inconstancy of identity, which undermines the very distinctions [between insider and outsider] these texts work so hard to construct.

Levinson’s analysis of rabbinic negotiations of identity suggests that both paradigms are understood as serving as different aspects or mirrors of such identity, which contributes to constituting their own versions of ethnic identity. Both indeed serve the fix and fluid ends of the ethnic spectrum in identity construction.⁸⁴ In other words, both genealogical and

⁸¹ Joshua Levinson, “Bodies and Bo(a)ders: Emerging Fictions of Identity in Late Antiquity,” *HTR* 93 (2000). His view on the negotiating aspect of identity in relation to the discourse of Abraham as a progenitor and putative ancestor of Israel is discussed in detail in Chapter 3.

⁸² *Ibid.*, 344.

⁸³ *Ibid.*, 345-346.

⁸⁴ Buell, *Why This New Race*, 163. Buell also cites Levinson to stress that what constitutes and defines ethnicity is deeply intertwined with two facets of fixity and fluidity. To assert such a sense of ethnic awareness, one must appeal to fixity by appealing to fluidity for authorization.

covenantal/religious paradigms are deeply intertwined with one another in asserting ethnic identity.

Therefore ethnicity can be a possible (though not necessarily) feature of cultural identity subject to change and negotiation, which is always produced in relation to and intertwined with other social categories and contexts. For that reason, I argue that ethnicity and religion are not mutually exclusive, which can also be applied to understanding how rabbinic conversion can serve as a mechanism for ethnic transformation.

In light of theoretical views and paradigms regarding the malleable nature of ethnicity as a cultural construct conducive to transformation and negotiation as well as religion as a cultural medium that precipitates and malleably shapes and evokes ethnic claims of identity, it needs to be emphasized that rabbinic conversion developed in the Bavli is designed and structured to build ethnic identity construction that enables the transformation of such identity for the convert. Especially important and salient is a form of social embedded-ness that rabbinic conversion offers in changing cultural contexts. It also involves a process of socialization by which one becomes a member of a certain ethnic group whose way of life is governed by the *Halakha*. More specifically, the process of rabbinic conversion as understood by the Bavli is, by definition, understood as akin to the process of naturalization.⁸⁵ One's change in religious affiliation entails one's change in kinship and ethnic affiliation. In other words, rabbinic conversion involves identification with or full integration into the Jewish ethnic group. Recent scholarship has gradually begun to gravitate towards views that conversion to Judaism has aspects of social dynamics that potentially involves one's social interaction with certain religious groups or

⁸⁵ The following scholars uphold such a view. Moore, *Judaism in the First Centuries*, 1.327; G.B. Caird, *The Apostolic Age* (London: Duckworth, 1955), 84; Jeremias, *Jesus's Promise to the Nations*; Ferdinand Hahn, *Mission in the New Testament* (trans. Frank Clarke; London: SCM, 1965[1963]), 24; S.J.D. Cohen, "Respect for Judaism by Gentiles according to Josephus," *HTR* 80 (1987): 410-12; Alan F. Segal, "'The Cost of Proselytism and Conversion,'" in *SBL 1988 Seminar Papers* (ed. D. Hull; Atlanta: Scholars Press, 1988.), 346, 348; Scott McKnight, *A Light among the Gentiles: Jewish Missionary Activities in the Second Temple Period* (Minneapolis: Fortress, 1991.), 7, 47; Michael F. Bird, *Crossing Over Sea and Land: Jewish Missionary Activity in the Second Temple period* (Peabody Mass: Hendrickson Press, 2010), 21 n. 12. However, they all focus on the concept of conversion in light of Jewish missionary activity in the Second Temple period rather than the Tannaitic or Amoraic period.

philosophical schools that profess certain praxis rather than just a change of one's personal, inner disposition.⁸⁶ It involves certain degrees of social interaction by a potential convert with a group where he or she shares the group's identity, which might result in initiation into the group.

In the above context, rabbinic conversion was never a matter of changing one's inner disposition only (although it was surely an essential element but not the only requirement) but rather provided a social embedded-ness into which one can integrate oneself by sharing that praxis on the social scheme. What matters is a stronger degree of social dislocation that allows converts to share ethos or mythos with the group members, which creates a sense of alignment of one's beliefs and praxis with the religious/cultic and social framework and social fabric of a Jewish community.⁸⁷ This implies that conversion can be viewed as a socially embedded process that enables the crossing of social and cultural boundaries.⁸⁸ However, a mere historical analysis of what conversion was or what it actually did is beyond the scope of this study because it does not tell us *how it functions* and *effects* actual change in the world of rabbinic culture. Paying extensive attention to how rabbinic conversion enables a fundamental change in the convert's identity from gentile to Jew allows us to seek to explore the process by which the laws of conversion shape and create the reality of everyday life including kinship reckoning, ritual purity, and ethnic identity, thus examining the nature and contour of Jewish identity construction.

In light of these characteristics examine above, I suggest in this study that rabbinic conversion serves as a legal mechanism for constructing Jewish ethnic membership because some fundamental essence such as blood, flesh and seed is symbolically and discursively invoked and asserted as the basis for claiming such membership by way of the *halakhic* procedure. Therefore, the understanding of ethnicity and religion as

⁸⁶ Michael F. Bird, *Crossing Over Sea and Land*, 23. According to Michael Bird, a sense of belonging provides the basis for an act of believing.

⁸⁷ Ibid., 24. Conversion to Judaism (though in the context of Judaism in the Second Temple era) can be defined in terms of (1) an ideological re-orientation of existing beliefs and/or the adoption of new beliefs, (2) an ethical transformation of commitment and values, in accordance with perceived norms, resulting in altered behavior, and "identification with and incorporation into the Jewish *ethne*.

⁸⁸ Denise Kimber Buell, *Why This New Rac*, 158. She argues that conversion needs to be understood as a socially embedded process by which one can cross cultural, social, and even ethnic boundaries.

contingent, social constructions can be applied to examining the *halakhic* system of rabbinic conversion preserved in rabbinic sources. They are durable yet malleable cultural constructs that are constantly open to fluidity, negotiation, change and reconstruction over time even though they are perceived as fixed and immutable, which allows us to present a different approach to viewing a different understanding of the relationship between religion and ethnicity in understanding rabbinic conversion.⁸⁹ Instead of viewing ethnicity as an ascribed or fixed entity, I suggest that Jewish identity as portrayed in the rabbinic corpus is understood as a cultural construct to which fixity is attributed but at the same time fluidity is asserted.⁹⁰ Ethnic claims of Jewish identity as a cultural construct can be malleably defined through appeals to fixity, particularly by way of the *halakhic* procedure of conversion.

Organization of This Study

This study consists of four chapters, each of which explores different facets of how the *halakhic* notion of conversion shapes discourses of kinship, ethnic, and bodily identity in different social, cultural, and religious contexts. The first chapter examines conversion as a legal procedure controlled and administered by a rabbinic court. Since the conversion procedure is run by such a rabbinic court, which guides and examines the prospect convert, the part of the goal of this chapter is to identify the development of the rabbinic court as part of a gradual evolution of the process of conversion documented, preserved, and recorded in the Babylonian Talmud with a methodological analysis of the text. In so doing, I will also elucidate how such a legal development by the Babylonian Talmud takes shape of another important legal construct that shapes the ethnic and kinship identity of the convert, namely the rabbinic notion of the convert as a newborn. Explaining how such new legal and conceptual constructs were all developed and evolved during the formation

⁸⁹ Buell, 9. She argues that in the context of early Christianity, an unquestioned assumption that "religion" is "given" creates a tension with the notion of ethnicity as immutable.

⁹⁰ Buell draws on anthropologist Ann Stoler's approach, arguing that the dynamic of ethnic/racial discourse involves the continuum of fixity and fluidity. Some fundamental essence such as blood, flesh and seed is frequently asserted as the basis/criterion for claiming ethnic membership. See Ann Laura Stoler, "Racial Histories and their Regiments of Truth," *Political Power and Social Theory* 11 (1997): 198.

of rabbinic texts, I attempt to examine how Jewish law including the law of conversion, embedded in the Mishnah's system of classification, has magical effects of transforming entities in question, and how the rabbis utilized the legal theory to shape the fundamental character of reality including the issues that deal with conversion.

In the second chapter, I will show how a newly developed legal construct is applied in defining the convert's kinship status. I argue that this unique legal concept of the convert as a newborn is used as a cultural construct to invent his or her new kinship relationships, which ensure his or her full entrance into the very kinship structures of the Israelite ethnic community.

The third chapter explores how conversion can be used to authorize the invention of patrilineal descent and common ancestry traced to the nation's progenitor Abraham to ensure full ethnic inclusion. The rabbis literally invented the past for converts in order that they may be incorporated into the seed of the progenitor Abraham as their "*father*" thus establishing a genealogical affiliation with the ethnos as a whole. By appealing to the discourse of the seed of forefathers/ancestors as reflected in the Genesis passage, group members accept such logic of shared blood as an organizing principle for their social structures.

In the last chapter, I will show how the concept of conversion as a *halakhic* medium of identity transformation is deeply embedded in the rabbinic discourse of the *human body* that discursively constitutes the notion of *self* and *personhood*. The rabbinic notion of the human body, most importantly, should be examined as a major site through which one's own self or identity is understood, negotiated, and constantly redefined. I argue that the rabbis' appeal to the discourse of the human body as a site through which identities are shaped and performed is also used to construct a distinct *Jewish body/self* for the convert. In specific bodily-related *halakhot* that deal with conception, skin discoloration and genital discharge in association with the event of conversion, one's *halakhic* transformation from gentile to Jew via conversion apparently entails some form of his/her "*bodily*" change or vice versa. I also stress that the bodily discourse of conversion reveals that what we call Jewishness or Jewish identity is not understood as a physically "given" but rather as a "cultural construct" that is fluid, mutable and constantly subject to negotiation, which may

help shape and create a conceptually defined framework of defining the convert's *Jewish body/self*, in which the discourse of the human body is embedded as a discursive cultural construct that stands for *what* a person is.

Chapter 1

Conversion as the Classification of Jewish Identity

Legalization of Conversion as a Court-Controlled Procedure

Tractate *Yevamot* 46a-48b of the Babylonian Talmud (henceforth the Bavli), which contains a long collection of discussions on the *baraitas* ("outside sources"; they are referred to as a collection of orally transmitted traditions attributed to the Tannaim outside of the canonical text of the Mishnah; pl. *baraitot*), is devoted solely to a fully detailed description of the procedure of conversion (*Seder Ha Giyyur*/סדר הגיור).⁹⁵ There are two important textual and conceptual developments in the tractate of conversion: 1) the institutionalization of the rabbinic court 2) the imagery of conversion as new birth that comes with a social severing of kinship ties with the convert's gentile kin upon conversion, which is especially structured or tailored to foster the notion of convert as newborn. This finds extensive expression in the Bavli's unique phrase at the end of the *sugya* "A convert is like a newborn child" (גר שנתגייר כקטן שנולד דמי).

This literary unit of the Bavli known as the *sugya* (סוגיה) is structured as a small 'tractate' (*masekhet*/מסכת) within tractate *Yevamot* organized around a set of six *baraitot* that deal particularly with the procedure of conversion that enables a change of status from gentile to Jew. This suggests that this *sugya* as a small 'tractate' thematically presents and discusses the conversion procedure in the same manner as the canonical text of the

⁹⁵ The followings are previous studies on the theme of the rabbinic conversion procedure: Bernard J. Bamberger, *Proselytism in the Talmudic Period* (Cincinnati: Hebrew Union College Press, 1939), 31-59; William G. Braude, *Jewish Proselyting in the First Five Centuries of the Common Era: The Age of the Tannaim and Ammoraim* (Providence: Brown University, 1940), 74-79; Gedalia Alon, *Jews, Judaism and the Classical World* (Jerusalem: Magnes Press, 1977), 146-89; Sacha Stern, *Jewish Identity in Early Rabbinic Writings* (Leiden Brill, 1994), 88-90; Gary Porton, *The Stranger within Your Gates: Converts and Conversion in Rabbinic Literature* (Chicago: University of Chicago Press, 1995), 132-54; Joshua Kulp, "The Participation of a Court in the Jewish Conversion Process," *JQR* 94 (2004): 437-70; Moshe Lavee, "A Convert is Like a Newborn Child: The Concept and its Implications in Rabbinic Literature" (Ph.D. dissertation, Beer Sheva, 2003), 229-261; Moshe Lavee, "The 'Tractate' of Conversion – BT YEB. 46-48 and the Evolution of Conversion Procedure," *European Journal of Jewish Studies*, 4 (2010): 169-213.

Mishnah.⁹⁶ In other words, the literary structure of this unit in which Tannaitic discussions on the conversion procedure are included as a 'tractate' is of thematic significance in conceptualizing the notion of rabbinic conversion. That is, the most unique yet significant development of the conversion procedure documented in this tractate is the institutionalization of a rabbinic court commonly known as *Bet Din* (בית דין) as an authoritative body that governs the (dis)approval of the legal status of converts. This development implies that conversion is understood as a court-controlled, legal procedure that requires stringent standards for the convert's full inclusion into the Jewish fold with thoroughly careful examination.⁹⁷

Furthermore, the Bavli's legalization of a rabbinic court and its stringent standards for conversion as displayed by this unit reflects a long process of the gradual evolution of the Bavli. This means that its tendencies towards stringency and institutionalization for conversion are documented, preserved and presented throughout different parts of the unit as reflecting different chronological layers, in which early Tannaitic concepts were reworked and re-conceptualized during the textual evolution of the Bavli. An analysis of this *sugya* reveals that the more stringent standards of the conversion procedure are ascribed not only to earlier sages in the *baraita*, but also to the majority of the rabbis in the Bavli, which creates a "chronological prism," according to which such stringent standards were read by the redactors (*Stam*; pl.*Stammaim*) of the Bavli into the earlier Tannaitic texts and already established as legally (*halakhically*) valid in the Tannaitic period.⁹⁸ In other words, the Bavli's versions of the baraitot originally attributed to the second century, Amoraic texts attributed to the third to fourth centuries, and the anonymous voice of the Talmud of the fifth to sixth centuries all merged together to promote coherent values and institutions, establishing the legal validity of conversion as a legal institution.

The *Bavli*'s institutionalization of conversion as a court-controlled, legal procedure

⁹⁶ Moshe Lavee, "The Rabbinic Conversion to Judaism; The Rabbinic Conversion of Judaism," in *Conversion in Late Antiquity: Christianity, Islam, and Beyond*. ed. Arietta Papaconstantinou with Neil MacLynn and Daniel L. Schwartz (New York: Routledge, 2016), 223; "The 'Tractate' of Conversion – BT YEB. 46-48 and The Evolution of Conversion Procedure," *EJJS* 4.2 (2011), 170.

⁹⁷ Ibid. Cf. Moshe Lavee, "A Convert Is Like a Newborn Child: The Concept and its Implications in Rabbinic Literature," (Ph.D. diss., Beer Sheva: Ben-Gurion University, 2003), 231.

⁹⁸ Lavee, "The Rabbinic Conversion to Judaism," 223.

gradually led to the conceptualization of a new legal construct, which comes to define the conversion procedure as “new birth.” This legal, conceptual transformation introduced by the Bavli finds concrete expression in the rabbinic use of imagery of “*A convert is like a newborn child*” (גר שנתגייר כקטן שנולד דמי) placed at the end of the tractate. As I will argue below, the notion of the convert as a “newborn child” is deeply embedded in the severing of kinship ties with his gentile kin (although I will discuss this matter extensively in chapter two.). The Bavli’s legalization of the court procedure demonstrates that it is aimed at promoting the convert’s severing of legal validity of his gentile family ties upon conversion. Such a severing of the convert’s kinship ties with his/her gentile kin, most importantly, is attributed to the Tannaim in a didactic way that helps reinforce the rabbinic authority by way of its textual maneuver and reworking.

The very structure of this unit in the Bavli also reveals that it demonstrates its concerted efforts to reinforce the ethnic boundaries of Jewish identity so as to promote the full integration of the convert into the Jewish ethnic group. I argue that a series of discussions on the legal procedures of conversion as preserved in this tractate also need to be understood as its effort to encourage or even promote the “ethnic fashioning” or “kinship construction” of the convert as part of Israel. This suggests that conversion entails a legal procedure that redefines kinship through the severing of gentile kinship validity, which finds concrete expression in the phrase “*A convert is like a newborn child*” found at the end of the tractate. Jewish law including conversion, as I argue, has magical effects of transforming entities in question. The laws of conversion are embedded in the mishnaic system of classification, in which one can exercise the power of intellectual and rational faculties, namely “thought,” “intentions” or “plans” in classifying and categorizing given objects or persons in question, thereby altering their fundamental character or essence. In the classificatory system of the Mishnah, the person’s formulation of a particular thought or plan shapes a “magical” effect of altering the character of reality. In such a conceptual framework, conversion can be understood as a type of classification in which one can formulate intention to classify a gentile into a Jew, thus changing the fundamental character of his identity. I will show that the Bavli’s use of rhetoric, along with stringent views on the procedure sealed by the *Stammaitic* comments, originally stems from the

mishnaic system of classification.

The Literary Structures of the Tractate of Conversion

'Tractate of Conversion' of *bYev46a-48b* has the textual, literary structures that deal with the procedure of conversion. This particular unit of the Bavli is documented, preserved, and organized around a set of six statements of *baraitot* attached to Amoraic discussions on each of them and is thus textually structured in the form of a tractate. This means that the literary form of this 'tractate' consisting of a set of six *baraitot*, according to Lavee, is structurally characterized as *mishnaic*,¹⁰⁰ which is most likely to suggest that these *baraitot* are treated by the Bavli in the same manner as mishnaic texts.¹⁰¹ Therefore in the Bavli, the Tractate of Conversion is thus presented as a small tractate that deals with specific *halakhic* themes of conversion.¹⁰² A set of these six *baraitot* is listed as follows:

¹⁰⁰ Jacob Nahum Epstein *Introduction to the Mishnaic Text* (Jerusalem: Magnes Press [Hebrew], 2000), 765. Cf. Lavee, "Tractate of Conversion," 171, n. 3. Lavee, "The 'Tractate' of Conversion," 170. According to Jacob Nahum Epstein, the wording of each *baraita* is essentially characterized as mishnaic in nature because the phrase "נדרת" (*as our Mishnah taught*) is usually used to quote a passage of the Mishnah. For example, a different version of this *baraita* appears in *Seder Eliyahu*, ending with the phrase "כך שנו חכמים במשנה" (Thus the Sages taught in the Mishnah). See also, *ibid*, 874. Another example shows that R. Eliezer b. Natan borrows the words טבל ועלה from the *baraita* of the tractate of conversion, concluding the text with דתן, which is frequently used to quote the mishnaic text. Provided that the textual and literary characteristics of the *baraita*/*baraitot* in the Tractate of Conversion as "mishnaic," this is of greatly conceptual significance in examining the nature of rabbinic conversion as the medium that causes a change of status of things. That is, its thematic and literary framework, I believe, is structurally embedded in the Mishnah's system of classification in which the essential characters and properties of certain objects/substances/persons are newly defined and altered through the formulation of plans. I will extensively argue below how the mishnaic system of classification is instrumental to shaping the conversion procedure as structurally an act of "classification," which is also tantamount to creation in rabbinic thought. Since classification is by definition an act of creation, the conversion procedure legally administered by an authoritative *Beit Din* itself is therefore considered as creation.

¹⁰¹ It is important to note that the phrase "Our rabbis taught" (תנו רבנן/*Ta'nu Rabbanan*) typically appears in the *baraita* inserted in the *sugya* of the Talmud. Concerning certain Talmudic units structured as tractates, see Abraham Weiss, *On the Literary Work of the Amoraim* (New York: Yeshiva University, 1962), 264-276. Cf. Lavee, "The 'Tractate' of Conversion," 170-171; "A Convert is Like a Newborn Child," 230 n. 9.

¹⁰² Lavee, 230 n.10; "'Tractate' of Conversion," 171; "A Convert is Like a Newborn Child," 230-231. My analysis on the structure of this tractate is entirely indebted to the work of Lavee. I revised some of his figures for the purpose of my study herein.

1. 'גר שמל ולא טבל' ת"ר: "A convert who was circumcised but did not immerse" (bYev46a)
2. 'הרי שבא ואמר מלתי ולא טבלתי' ת"ר: "If one came and stated: 'I was circumcised but did not immerse'..." (bYev46b)
3. 'מי שבא ואמר גר אני...' ת"ר: "One who came and said: 'I am a convert'..." (bYev46b)
4. 'ושפטתם צדק...' ת"ר: "And you shall judge righteously..." (bYev47a)
(The full description of the conversion procedure)
5. 'גר שבא להתגייר בזמן הזה' ת"ר: "A convert who came to convert..." (bYev47a)
6. 'מפני מה גרים מעונין' תניא: "Why converts suffer..." (bYev48b)

Although it contains some diversions on related topics (such as the beautiful captive women and the circumcision of slaves), each baraita serves as an independent literary unit that discusses the related themes of conversion. Particularly the fourth baraita describes the procedure of conversion rituals from beginning to end (which covers the *sugyot* of bYev47a-48b). The description of the conversion procedure recorded in this baraita, as already suggested by Shaye Cohen, consists of four main components: 1) presentation 2) examination 3) instruction by rabbinic figures including the ritual of circumcision 4) immersion and more additional instruction.¹⁰³ This description of the procedure, needless to say, is presented as Tannaitic material. The last baraita of this literary unit, which deals with a series of impending sufferings that befall the convert upon conversion, serves as an aggadic baraita, sealing the entire unit with a verse of comfort.¹⁰⁴ The fifth baraita, which contains a detailed description of the full performance of conversion rituals, has a typical mishnaic structure, in which a description of procedures is provided with some diversions at the end of the unit.¹⁰⁵ It is also evident from the fifth baraita, which is an aggadic baraita

¹⁰³ As Cohen pointed out, the conversion procedure is described in a progressive tense, which gives the audience a sense of an ongoing, everlasting institution. For more, see Shaye J.D. Cohen, *The Beginnings of Jewishness: Boundaries, Varieties, Uncertainties* (Berkeley and Los Angeles: University of California Press, 1999), Chapter 7. Cf. Lavee, 221 "The Rabbinic Conversion to Judaism," 221 n. 4.

¹⁰⁴ With regard to concluding the text with the aggadah and verses of comfort as part of the text's literary convention, see Epstein, *Introduction*, 974; Abraham Walfisch, *The Literary Method of Redaction in Mishnah Based on Tractate Rosh Hashanah* (Ph.D. diss., Jerusalem, 2001), 5 n. 30 [Hebrew]. Cf. Lavee, "'Tractate' of Conversion," 171.

¹⁰⁵ See also the following mishnayot: *RH* Ch.1-2; *Bikk*, Ch.1-3; *Parah*, Ch.1-4; *San*3:6. Cf. Lavee,

that this whole set of six baraitot serves as a basic independent literary unit whose tradition is reworked by the Talmud to fit its conceptual agenda, namely the severing of the convert's kinship ties with his gentile kin upon conversion. It promotes the notion of the convert as a *newborn child* (גר שנתגייר כקטן שנולד דמי), which stresses conversion as a marker of new birth as Israel (*bYev48b*).

The Amoraic Statements (Meimra/מימרא)

Furthermore, the following four baraitot in this unit, commonly characterized as the Babylonian baraitot, can thematically be seen as the concluding statements of each discussion for the entire 'Tractate.' The Amoraic statements called *meimra* (מימרא) by R. Hiyya b. Abba in the name of R. Yohanan (Henceforth *RABA ARY*¹⁰⁶) often appear at the end of the Talmudic discussion of each of the first four baraitot mentioned above:

1. לעולם אין גר עד שימול ויטבול – *"He is not (considered as) a convert unless he both circumcised and immersed..."* (*bYev46a*)
2. גר צריך ג' משפט כתיב ביה – *"A convert requires (the presence of) three (men), for 'law' has been written with regard to him (the convert)..."* (*bYev46b*)
3. הלכה: בין בארץ בין חו"ל צריך להביא ראיה – *"The halakhah: both in the land of Israel and abroad (He) is required to bring a proof..."* (*bYev47a*)
4. לא קטן קטן ממש – *"A 'minor' [in the text discussed] does not actually mean a minor ..."* (*bYev47a*)

These above Amoraic concluding statements serve as the summative function of each Talmudic discussion on the baraita, creating a cohesive literary unit for the entire tractate.¹⁰⁷ For instance, the 'Tractate' is preceded by a story on R. Hiyya b. Abba's and R. Yohanan's rulings on three issues of identity. These three areas include: (1) the status of the offspring of converts who have been circumcised but not immersed: 2) wine touched

"The 'Tractate' of Conversion," 172 n. 7.

¹⁰⁶ See Lavee, "The 'Tractate' of Conversion," 172.

¹⁰⁷ Ibid. This is what Lavee called the "summative voice" of the Talmudic discussion.

by gentiles: 3) food cooked by gentiles.¹⁰⁸ This story serves as a transition from the previous discussion to the 'Tractate.'

Stringent Tendencies of the Conversion Procedure in the Tractate

Analyzing the basic structures of the Tractate, according to Lavee, uncovers a gradual evolution of the legal development of the conversion procedure. In particular, the anonymous redactors of the Bavli (*Stammaim*) rework and redefine the original meanings of earlier Tannaitic materials by extracting some Amoraic interpretations and comments on the earlier Tannaitic views, which in turn allows them to read new legal concepts and institutions into these earlier Tannaitic sources by means of its use of the rhetoric, through which the choice of words and phrasing form to express certain tendencies, values and agendas.¹⁰⁹

Before going on to examine the court for conversion as the Tractate's most important development, I will identify some other unique textual features of the 'Tractate of Conversion' and uncover how the *Bavli's* stringent tendencies helped shape the conversion procedure as a legal process that defines a new legal and kinship status of the convert. Importantly, what primarily characterizes conversion as a legal procedure presented in the 'Tractate' is the formulation of stringent procedures or requirements. The 'Tractate,' as Lavee points out, presents more stringent standards of the procedure than those previously documented in Tannaitic and Palestinian Amoraic sources. Importantly, since such stringent tendency in the 'Tractate' reflects a legal emphasis on the convert's change of status, which ultimately tends towards the notion of the convert as a newborn child, institutionalizing conversion as a stringent procedure has far-reaching implications for defining the kinship status of the convert. The Bavli's emphasis on such stringency, I argue, primarily seeks to sharpen the group boundaries between Jew and gentile, which serves to create a deeply embedded or intrinsic ethnic difference between the two groups of people,

¹⁰⁸ Ibid. See also *bYev46a*.

¹⁰⁹ For more on how the rhetoric of the Talmud works in the *sugya*, see David Kramer, *The Mind of the Talmud* (New York: Oxford University Press, 1990). Cf. Lavee, "'Tracte' of Conversion," 174.

thus stressing conversion as promoting such intrinsic ethnic difference.¹¹⁰

It is also important to note that the Bavli's formulation of conversion as the stringent procedures reflects its emphasis on the rhetoric as promoting its certain *halakhic* agenda. Some features of stringent tendency in the conversion procedure in fact identifies as the text's rhetorical function in the 'Tractate.' The rhetoric employed by the Bavli indeed reflects its textual strategies by which a certain theme or agenda is promoted through structure, form, and the choice of terms and phrasing.¹¹¹ In such a rhetorical framework of the *sugya*/Tractate, the stringent view is attributed to or characterized as the majority view, while the lenient view suggested earlier is undermined and rejected later.¹¹² In many cases, earlier Tannaitic views are additionally attributed to the sages as the majority view, which is decisively instrumental in shaping conversion as valid legislation. The rhetorical strategy of the Bavli also promotes a textual framework in which the later majority view is presented as the "obvious" (*p'shita*/פשיטא) or normative even though it was not originally understood as such earlier.¹¹³ Resorting to such a rhetorical strategy, the *Bavli* quite often reworks and reshapes early Tannaitic materials by ascribing more stringent standards to the majority of the sages or to earlier Tannaitic ones in favor of stringency (concluding the discussion with the statements of *RHBA ARY*), which forms a chronological development of certain ideas and values, according to which the more stringent views had already been

¹¹⁰ Lavee, "A Convert as a Newborn Child," 234. He holds a similar view to mine in that such strict standards of conversion serve to erect the boundaries of group identity. Conversion provides more stringent standards for acceptance, which sharpens the ethnic difference between Jew and gentile in that it seeks to create such difference/distinction from the gentile other. This view seems to be in accordance with Fredrik Barth's view of the construction of ethnic boundaries. He argues that it is the creation of the group *boundary* that defines ethnic group rather than the "*cultural stuff that it encloses*" (p.15). Conversion, in this sense, can be defined as what Barth might call ethnic boundary construction that distinguishes Jews (converts) from gentiles. On ethnic boundaries as the foundation for ethnic identity construction, see Fredrik Barth, *Ethnic Groups and Boundaries: The Social Organization of Culture Difference* (Long Grove, IL: Waveland Press, 1998), 9-38.

¹¹¹ Lavee, "'Tractate' of Conversion," 191.

¹¹² *Ibid.*, 191. Lavee also points out that such rhetoric serves as a device that can function across the different layers of the Talmudic text, which sheds new lights on earlier *baraitot* or *meimrot*, redefining an earlier tradition or view as normative.

¹¹³ *Ibid.*, 185. I will discuss its textual implications in shaping the Tractate as a cohesive text more below.

established as legally “normative,” “obvious” or “valid” in the Tannaitic period.¹¹⁴

With the use of the rhetoric, the Tannaitic views are thus intentionally shaped by the anonymous redactors of the *Bavli* to promote an idea that the conversion procedure is a stringent process that demarcates the ethnic boundaries between Jew and gentile.¹¹⁵ In so doing, the late layers of the *Bavli* could read the more stringent procedures of conversion into the earlier Tannaitic texts.¹¹⁶ As I discuss in detail below, the ‘Tractate of Conversion’ thus uses such a textual strategy of the rhetoric, which allows the *Bavli* to integrate several earlier Tannaitic and Amoraic materials, thus merging to create a new legal concept¹¹⁷ with a particular emphasis on the conceptualization of conversion as “new birth,” as culminated in the coining of the *Bavli*’s phrase “*A convert is like a newborn child*” (גר שנתגייר כקטן שנולד דמי).¹¹⁸

A Synoptic Comparison: The First Baraita: The Case of Circumcision and Immersion

A synoptic comparison of the baraitot documented in the ‘Tractate’ with the other parallel texts of Tannaitic and Palestinian Amoraic sources in general reveals the *Bavli*’s more stringent tendencies in which more stringent Tannaitic views are additionally attributed to the majority of sages in defining the legal validity of the conversion procedure in the ‘Tractate.’ In the first baraita, more stringent Tannaitic views that demand both immersion (טבילה) and circumcision (מילה) are additionally attributed to the majority of the sages in the *Bavli* to stress that both serve as a *sine qua non* for the completion of the valid conversion

¹¹⁴ Lavee calls such a phenomenon a “chronological prism,” according to which specific values and tendencies are gradually evolved over time as part of the text.

¹¹⁵ Barth, *Ethnic Groups and Boundaries*, 11. It seems that the *Bavli*’s aim at the more stringent standards of conversion is its intentional construction of group demarcation and the criteria for membership as distinct categories distinguishable from other categories of people. I suggest that this reading can be understood in light of Barth’s theory on ethnic boundaries.

¹¹⁶ This is the *Bavli*’s strategy of redaction, which finds concrete expression in the phrase “*A convert is like a newborn child*” inserted at the end of the fifth baraita to stress conversion as new birth. As I will argue below in chapter two, such an idea of kinship severing was read into views and tendencies attributed to the Tannaim.

¹¹⁷ Lavee, “The Rabbinic Conversion to Judaism,” 223.

¹¹⁸ As I will argue below, stringent tendency, an emphasis on rhetoric such as the “obvious” all lead to the creation of conversion as new birth, which is embedded in the mishnaic system of classification by human thought/*mahshavah*.

process, while its Palestinian parallel text only has a stricter view attributed to R. Yehoshua, who requires only immersion to effect conversion.¹¹⁹

Figure 1.

<i>bYev46a - 46b</i>	<i>yQid3:12 64d (Gerim1:2)</i>
<p>ת"ר: גר¹²⁰ שמל ולא טבל - אלי¹²¹ אומר: הרי זה גר שכן מצינו ר' עזר באבותינו שמלו ולא טבלו. טבל ולא מל - ר' יהושע אומר: הרי זה גר שכן מצינו באמהות שטבלו ולא מלו. <u>וחכמים אומרים: טבל ולא מל, מל ולא טבל -</u> <u>אין גר עד שימול ויטבול.</u> (<i>bYev46b</i>) אלא מהכא: "ויקח משה את הדם ויזרק על העם" (שמות כד:ח) וגמירי דאין הזאה בלא טבילה. ור' יהושע טבילה באמהות מנלן? סברא הוא דאם כן במה ונכנס תחת כנפי השכינה? <u>וחכמים אומרים: לעולם אינו גר עד שימול ויטבול.</u></p>	<p>גר שמל ולא טבל, טבל ולא מל - הכל הולך אחר המילה, דברי ר' אליעזר.¹²² רבי יהושע¹²³ אומר: אף הטבילה מעכבת.</p>

¹¹⁹ Lavee, "Tractate," 174.

¹²⁰ In MS Günzburg 1017 it is read as גוי.

¹²¹ It is read as אליעזר in MS Munich 95 and Vatican 111.

¹²² It is read as אלעזר in *Gerim* MS JTS Ena 2237 rab.34.

¹²³ In *Gerim* it is read as "Rabbi Akiva." This attribution may be a late revision on the basis of the reading of *bYevamot* 71b. Presenting a dispute between Rabbi Akiva and Rabbi Eliezer, this *sugyah* suggests that Rabbi Akiva requires both circumcision and immersion while Rabbi Eliezer requires only circumcision. Cf. Lavee, *The Rabbinic Conversion of Judaism*, 241 Appendix, Annotated Texts, 6, e.

<p style="text-align: center;">א"ר חייא בר אמר ר' יוחנן:</p> <p style="text-align: center;">לעולם אינו גר עד שימול ויטבול. פשיטא יחיד ורבים.</p> <p style="text-align: center;"><u>הלכה כרבים !</u></p> <p>Our rabbis taught: (Regarding) a convert who was circumcised but did not immerse:</p> <p>R. Eliezer said: He is (considered as) a convert since we found that our fathers were circumcised but did not immerse.</p> <p>(Regarding) a convert who immersed but was not circumcised:</p> <p>R. Yehoshua said: He is (considered as) a convert since we found that our mothers immersed but were not circumcised...</p> <p><u>And the sages said: [Concerning] the one who immersed but was not circumcised or circumcised but did not immerse – he is not a convert unless he was both circumcised and immersed</u> [indicating that both circumcision and immersion are <u>necessary</u> in decisively effecting the status of a convert as Israel].</p> <p style="text-align: center;">(bYev46b)</p> <p>Rather derive it from (where the verse states with regard to the formation of the covenant of Sinai): "And Moses took the blood and sprinkled it upon the people" (Ex24:8), and it is learned that there is no ritual sprinkling without immersion (Therefore, Israel's forefathers must</p>	<p>[Regarding] a convert who was circumcised but did not immerse:</p> <p>All cases follow his circumcision; these are the words of R. Eliezer.</p> <p>R. Yehoshua said: Immersion is also indispensable [to effect conversion]</p>
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<p>have immersed at Sinai, and consequently that is also an essential requirement for conversion).</p> <p>With regard to the opinion of R. Yehoshua, from where we derive that foremothers performed immersion? It is based on logical reasoning, even if they hadn't, with what were they brought under the wings of the divine presence? (Therefore they must have immersed)</p> <p>Said RHBA ARY: <u>He is not a convert unless he is never considered unless he was immersed and circumcised. This is obvious!</u></p> <p>(In cases of the individual opinion against that of the majority)</p> <p><u>The law follows the majority!</u></p>	
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Here one can see how the Bavli reworks Tannaitic materials by attributing a more stringent view to the majority of the sages. It is particularly important to note that the *baraita* was reworked in accordance with early Amoraic view as well. The concluding Amoraic *meimra* expressed by RHBA ARY also agrees with the stringent view of the majority of the sages in the *baraita* in which both circumcision and immersion are necessary for valid conversion.¹²⁴

This textual development, in other words, illustrates how stricter Tannaitic views, which require both circumcision and immersion as a *sine qua non* for valid conversion, are attributed to the majority consisting of the sages, which was later reworked by Amoraim as the Babylonian version of the *baraita*. This is important because the statement of RHBA

¹²⁴ This means that RHBA ARY's concluding statement on the view of the majority in the first *baraita* "לעולם אין גר עד שימול ויטבול"/"He is not (considered) a convert unless he both circumcised and immersed" serves as the summative voice of the anonymous layers of the *Bavli*. In the *sugya* of *bYev46a*, this *meimra* is based on an anecdote in which R. Hiyya met a convert who was not circumcised and R. Yohanan criticized such a practice. Cf. Lavee, "The Rabbinic Conversion to Judaism," 180-181.

ARY can be understood as concluding the discussion based on a stringent view (or interpretation) of the earlier Tannaitic material in discussion (that is a dispute between R. Eliezer and R. Yehoshua).³⁴ This gradual development also allows us to reveal what Lavee calls a “chronological prism” according to which the later *halakhic* framework of the institution of conversion had already been established as normative in the Tannaitic period.¹²⁶ Finally the anonymous layers of the Bavli (*Stam*), as mentioned earlier, read stringent and institutionalized process of the conversion procedure (which requires both circumcision and immersion) into the earlier Tannaitic texts to create an impression that this is a perpetual institution that has already been established in the Tannaitic period. Through such textual maneuvers of reworking early Tannaitic material with the concluding Amoraic comments on it, they all merged to create a new concept and value in favor of stringency, which establishes its legitimacy and authority, hence the necessity of both rituals for valid conversion.¹²⁷

The Second Baraita: The Case of Circumcision without Immersion

In the second *baraita* that appears in *bYev46a*, R. Yose’s view, which demands that a self proclaimed convert who was circumcised but did not immerse should not be immersed on the Sabbath, is in agreement with the view that demands both circumcision and immersion, does not appear in the *Bavli*’s parallel text of *yQid3:12, 64a* (or *Gerim1:2*).¹²⁸

³⁴ Lavee, “The Rabbinic Conversion to Judaism,” 180-182.

¹²⁶ *Ibid.*, 185.

¹²⁷ *Ibid.* This is an example of the process of reworking early Tannaitic material to create as “the lecturing voice of the Talmud.”

¹²⁸ *Ibid.*, 175 n.13. Despite the second view attributed to R. Akiva, the parallel text of *Gerim1:2* has a similar structure to the *yQid3:12, 64a*. For studies of *Gerim*, see Gedalia Alon, “The Levitical Uncleaness of Gentiles” in *Jews, Judaism and the Classical World*, Trans. I Abrahams. (Jerusalem: Magnes Press, 1977), 173 n.51 [in Hebrew]; Bernard J. Bamberger, *Proselytism in the Talmudic Period* (New York: KTAV, 1939), 46-52; John Nolland, “Uncircumcised Proselytes?,” *JSJ* 12 (1981): 173-194 ; Lawrence H. Schiffman, *Who was a Jew?: Rabbinic and Halakhic Perspectives on the Jewish – Christian Schism* (Hoboken, NJ: KTAV, 1985), 23-35; Gary G. Porton, *The Stranger within Your Gates: Converts and Conversion in Rabbinic Literature* (Chicago and London: The University of Chicago Press, 1994), 94-96; John Collins, “A Symbol of Otherness: Circumcision and Salvation in the First Century,” in *To See Ourselves as Others See Us: Christians, Jews, “Others” in Late Antiquity*, eds. Jacob Neusner and Ernest S. Frerichs (Chico, CA: Scholars Press, 1985), 163-186.

Figure 2.

<i>bYev46a</i>	<i>yQid4:8, 66a</i>
<p>ת"ר: הרי שבא ואמר: מלתי ולא טבלתי - מטבילין אותו ומה בכך, דברי ר' יהודה <u>ר' יוסי אומר: אין מטבילין</u>¹²⁹. <u>גר תקוני גברא ולא מתקנין.</u> לפיכך מטבילין¹³¹ גר¹³⁰ בשבת, דברי ר' יהודה. <u>ר' יוסי אומר: אין מטבילין</u>¹³². <u>גר תקוני גברא ולא מתקנין.</u></p> <p><i>Our rabbis taught: If someone came and said: I have been circumcised but have not immersed – They immerse him, and what of it!? (since we are not concerned at all with the original purpose of circumcision, they immerse him upon his request on the Sabbath); these are the words of R. Yehuda.</i></p> <p><u>R. Yose said: They do not immerse [him].</u></p> <p><i>Therefore they immerse him (a prospect convert) on the Sabbath; these are the words of R. Yehuda.</i></p> <p><u>And R. Yose said: They do not immerse him.</u></p> <p><u>[For the immersion of] a convert will change the status of the person/convert</u></p> <p><i>(Thus they do not perform immersion on the</i></p>	<p>גר שמל ולא טבל והיו לו בנים ואמר: מלתי ולא טבלתי. נאמן. ומטבילין אותו בשבת.</p> <p><i>A convert who was circumcised but has not immersed and has children, and says: I have been circumcised but have not immersed - trustworthy.</i></p> <p><i>And they immersed him on the Sabbath.</i></p>

¹²⁹ אוֹתוֹ is added in MS Oxford 248 and MS Vatican 111.

¹³⁰ אוֹתוֹ is also added in MS Munich.

¹³¹ גר is omitted in MS Moscow.

¹³² גר בשבת is added in MS Oxford.

Sabbath).	
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A closer inquiry into the second baraita reveals the important conceptual development brought about by the *Stam*'s reworking of the Tannaitic material regarding the demand for immersion as a stricter standard in determining the definite status of the convert as "Israel." The phrase "*Immersion will change the status of the person (convert)*" (*tikkune gabra*/תקוני גברא), which appears as the *Stam*'s reworked attribution of the stricter view to R. Yose, affirms the Bavli's summative, concluding voice of this *baraita*. In a dispute over whether immersion is sufficient to effect conversion even on the Sabbath, R. Yose holds that immersion on the Sabbath is forbidden for the sake of conversion, while R. Yehuda permits it.¹³³ R. Yose's objection to R. Yehuda in fact implies that immersion itself, though rendered invalid and forbidden on the Sabbath if performed, is understood as an essential act that effects the fundamental change of the convert's status (*tikkune gabra*/תקוני גברא) from gentile to Jew, stressing that it needs to be strictly performed in a proper manner. Therefore, the *Stam* of the *Bavli* thus reworks and manipulates R. Yose's view so as to create an impression that the need for immersion to change the convert's identity has been attributed to him and thus established as normative in the Tannaitic period.¹³⁴ Hence, this understanding surely reflects the *Bavli*'s emphasis on legal stringency regarding the performance of the conversion procedure in defining the convert's status as expressed as "*tikkune gabra*" (literally translated as the 'fixing' of the man). Equally important is the attribution of the stricter standard of immersion to R. Yose; the *Stam* seeks to associate the word "*Tikkun*" / תיקון with immersion, thus emphasizing immersion as a definitive act that

¹³³ Bamberger, *Proselytism in the Talmudic Period*, 47. It seems that this *baraita* is interpreted by the *Stam* of the *Bavli* to mean that R. Yehuda holds that the status of the convert can be determined by either ritual, perhaps stressing that the candidate's Jewish status has already been established by circumcision alone, whereas R. Yose requires both circumcision and immersion in accordance with the first *baraita* presented above. According to R. Yose, the taking of the "blood of the covenant" would be required in a situation where the candidate could not prove whether he had been circumcised to effect conversion.

¹³⁴ Ibid. 47, 58 n. 39. Bamberger read the text as perhaps implying that R. Yehuda seems to have held a view that although immersion could also be required of the convert, this also implies that he could achieve such a Jewish status without immersion. On the contrary, it has been stated in *bBer47b* that it is not until the candidate is fully immersed that he still has the ethnic status of a gentile, which is fully in accordance with R. Yose's view in the *baraita* of *bYev46a*.

finalizes the conversion procedure¹³⁵ to denote it as a marker that signifies the *halakhic* change of the convert's identity.¹³⁶

The Third Baraita: The Case of Witnessed Conversion

In the third *baraita*, based on the proof texts of *Lev*19:33 and *Num*15:14, a stricter view is ascribed to the sages according to which the convert needs to bring proof of his conversion in both the land of Israel and outside of it. The fact that the view of the sages is documented only in the Babylonian *baraita* may reflect its growing concern for stringency in the acceptance of converts.¹³⁷ The fact that a stricter view is intentionally attributed to

¹³⁵ Lavee, "A Convert Is Like a Newborn Child," 163 n. 313. The word "*Tikkun*" / תיקון can also be used in the following situations: (1) completing a certain process 2) improving and restoring things that were in a bad shape (*mShab*12:2). In *bPes*110b in the case of the prohibition of drinking in pairs, one who drinks an odd number of cups (i.e. 3 cups) is considered as having his issue "resolved" (מיתקן). Also in *bZev*76b-77a the phrase is associated with the process of being purified from ritual defilement caused by skin diseases (מצורע). Or in *mNidda* 2:1, the term *Tikkun* / תיקון is associated with the situation in which the able-minded women help the disabled women care for themselves in daily life such as checking themselves to immerse for ritual purity. The term perhaps refers to the state of preparation or readiness (or restoration) for proper use for the purpose of sanctification rather than a change of a person's status. In *mDemai* 5:1, particular dough needs to be tithed and set aside as a *maser teruma* or a *challa*, thus making it ready for use for that *halakhic* purpose. The prohibition of immersion on the Sabbath as seen in the second *baraita* perhaps implies that just as any object on the Sabbath cannot be prepared for mundane purposes (since any type of labor is prohibited on the Sabbath), so too humans may not as well be prepared to be immersed on the Sabbath. This also suggests that perhaps in the Tractate of Conversion in the *Bavli*, such a mishnaic concept of restoration or preparation for proper use is "reworked" or "reshaped" into a marker of signifying a person's change. It is also important to note that a change of a person's status is paralleled with a change of properties of artifacts (*kelim*) in laws dealing with susceptibility to ritual impurity, all of which will be discussed below in the fourth chapter.

¹³⁶ This is not to say that circumcision is overlooked in changing the identity of the convert. A few midrashic traditions such as *GenR*11:6 stress that circumcision serves as a marker that signifies the change of a convert's bodily status. Its later version of *Pesikta Rabbati* 23:116b associates a tale of Aquila the convert (a certain philosopher in *GenR*11:6) with the concept of circumcision as changing the bodily status of the convert. See also Lavee, 163 n. 314. Although the 'Tractate of Conversion' stresses that it is the rite of immersion that defines the change of the convert's ethnic status from gentile to Jew, yet I do not dismiss the fact that circumcision is of equal value in promoting the convert's Jewish identity construction. I will examine how circumcision could equally serve as a major marker of identity change in an inquiry into the notion of Abraham as the archetype of the convert in light of the paradigm of patrilineal descent in the *sugya* of *yBikk*1:4, 64a in chapter three.

¹³⁷ Joshua Kulp, "The Participation of a Court in the Conversion Process," *JQR* 94:3 (2004), 442. Kulp argues that although the words of the sages are missing from the third *baraita* in one manuscript, this probably has to do with a "homoioteleuton." See also Abraham Liss, ed., *The Babylonian Talmud with Variant Readings, Tractate Yevamoth (II)* [Jerusalem, 1986], 187.

the majority of the sages, who demand that one who claims to have been converted should bring witness-based proof of his conversion both in the land of Israel and outside of it to ensure that the conducting of such a proper conversion has been witnessed.

As opposed to the *Bavli*, its parallel text in *Sifra Kedoshim* 8:1, 91a (ed., Weiss), however, provides a lenient view.¹³⁸

Figure 3.

<i>bYev46b-47a</i>	<i>Sifre Qed8:1, 91a (Weiss edition, 25b)</i>
ת"ר: מי שבא ואמר: 'גר אני', יכול נקבלנו? ¹³⁹ תלמוד לומר: 'אתך' ¹⁴⁰ במוחזק לך. בא ועדי עמו. ¹⁴¹ מניין? תלמוד לומר: 'וכי יגור אתך גר בארצכם'. [מז ע"א] אין לי אלא בארץ, בח"ל מניין?	בא ואמר לך 'גר אני' יכול קבלו? ¹⁴² תלמוד לומר: 'אתך' במוחזק ¹⁴³ לך. את שבאו עידי עמו ¹⁴⁴ מניין? תלמוד לומר: 'וכי יגור' ¹⁴⁵ יגור ¹⁴⁶ בארצכם'. אין לי אלא מנין בארץ? תלמוד לומר: 'אתכם'

¹³⁸ Lavee, "The 'Tracate' of Conversion," 176. My translation of the text of the Sifra is based on Kulp's translation of one of its manuscripts. For a description of all types of manuscripts of the Midrashic literature, Menaham Kahana, *Manuscripts of the Halakhic Midrashim: An Annotated Catalogue* (Hebrew; Jerusalem, 1995) [Hebrew], 62-65; 73): Vatican 66; Vatican 31; Parma De Rossi 139; Oxford Bodleian 150 Uri 119 and London BL Add. 16.406. Since JTS Rab 2234 is corrupt and does not read the phrase "the convert must bring proof in or outside of the land of Israel," which does not fit the literary structure of the text. In addition, this version of the Sifra seems to be a parallel text to Gerim 4.5 (ed., Higger, 79). Cf. Kulp, "The Participation of a Court," 441 n. 13.

¹³⁹ MS Munich reads מקבלין.

¹⁴⁰ MS Moscow Günzburg also reads אתך. Cf. Lavee, 261 n. a.

¹⁴¹ MS Moscow Günzburg reads בא עדי עמו; MS Munich reads הוא ועדי עמו; MS Oxford reads עדי עמו. בא הוא.

¹⁴² MS Vatican 31, MS London and MS Oxford read קבלו; In MS Oxford, it is also read as תקבלנו; Ms Parma reads מקבלו.

¹⁴³ MS London reads במוחזק.

¹⁴⁴ MS Oxford reads את שבא ועדי עמו. את שבא ועדי עמו is omitted in all other variants.

¹⁴⁵ וכי יגור is added in MS London; גר is added in MS Vatican 31; אתך is added in MS Oxford; וכי יגור is read in all other variants. It is also assumed that the text quoted Lev 19:33, omitting the verse of Num 15:14. Later versions such as MS London filled in the gap, inserting the verse of Num 15:14.

¹⁴⁶ All other Manuscripts read וכי except for MS London.

¹⁴⁷ וכי יגור is added in MS Vatican 31.

<p>תלמוד לומר: "אתך", בכל מקום שאתך. אם כן, מה ת"ל בארץ? בארץ - צריך להביא ראיה, בח"ל - אין להביא ראיה, דברי ר' יהודה. <u>וחכמים אומרים:</u> <u>בין בארץ בין בחוצה לארץ - צריך להביא ראיה.</u> <u>הלכה: בין בארץ בין חו"ל צריך להביא ראיה.</u></p> <p><i>Our rabbis taught: If a man came and stated, 'I am a convert, ' should we accept him? It was stated in Scripture 'With you'(Lev19:33) – only when he is well known to you. If he came with his witnesses, from where do we know [that his word is accepted as trustworthy]? It was stated in Scripture, "And if a stranger [a convert] sojourns... <u>in your land.</u>" From this verse only I know [that the law is applicable] <u>within the land of Israel.</u></i></p> <p><i>From where do we know [that it is also applicable] outside of the land of Israel? It was stated in Scripture, "With you" – [That implies] <u>wherever he is with you.</u> If so, why does it say <u>in the 'land'</u> (Num15:14) in Scripture? – In the land of Israel - proof [of conversion] must be provided; outside of the land of Israel – no such proof [of conversion] needs to be provided; these are the words of R. Yehuda.</i></p>	<p>בכל מקום שאתם. אם כן למה נאמר 'ארצכם'? אלא בארץ¹⁴⁸ צריך להביא ראיה, וחוצה לארץ אין צריך להביא ראיה.¹⁴⁹</p> <p><i>If a man came and said to you, 'I am a convert,' should you accept him? It was stated in the Scriptures 'With you'(Lev19:33) – only when he is well known to you. If witnesses came with him, from where do we know [that his word is accepted as trustworthy]? It was stated in Scripture, 'And if a stranger [a convert] sojourns... <u>in your land</u>' (Num15:14)</i></p> <p><i>From this verse I only know [that the law is applicable] within the land of Israel.</i></p> <p><i>From where do we know [that it is also applicable] outside of the land of Israel? It was stated in Scripture, 'With you'(Lev19:33) – [That implies] <u>wherever he is with you.</u> If so, why does it say '<u>in your (plural) land</u>' in Scripture?</i></p>
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¹⁴⁸ MS Vatican 66 reads ובארץ, which seems to contradict the structure of the sentence herein.
Cf. Lavee, 177 n. 15.

¹⁴⁹ MS New York reads בארץ צריך להביא ראיה בחוץ לארץ אינו צריך להביא ראיה.

<p><u>But the Sages said: Both within the land of Israel and outside of the land of Israel proof [of conversion] must be provided.</u></p> <p>(bYev47b)</p> <p><u>The halakhah: he (the convert) is required to bring proof both in and outside of Israel.</u></p>	<p><i>In the land of Israel proof [of conversion] must be provided; outside of the land of Israel no such proof needs to be provided.</i></p>
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The Tannaitic parallel text in the *Sifra* refers to the need for witnesses who may testify to confirm the validity of the proper conversion procedure such as a surgical procedure of circumcision. Testimony by such witnesses is designed to demonstrate that such a conversion procedure has to be performed with the proper intent and in the correct manner.¹⁵⁰ For instance, in a case where the convert had already been circumcised (perhaps as a gentile) in the past, the witnesses may have to testify that a drip of blood had been shed as part of the conversion procedure.¹⁵¹ The demand for witnesses¹⁵² thus seems to reflect a growing concern among the Tannaim to oversee the proper and correct performance of the conversion procedure, especially if performed outside the land of Israel.¹⁵³

¹⁵⁰ Kulp, "The Participation of a Court," 441 n. 14. For similar cases in Tannaitic texts, see *tAZ3:13* (ed., Zuckerman, 464) and *mShab19.6* (regarding *peri'ah*, the stretching of the foreskin).

¹⁵¹ Ibid. 441. See, for example, Cohen, *The Beginnings of Jewishness*, 227-228 as well as notes.

¹⁵² Ibid., 442 n. 17. The *Sifra* states that although witnesses are "sufficient" both in the land of Israel and outside of it, they are "not necessarily required" in the land of Israel. That is perhaps because the text, as Kulp speculates, may be referring to two different situations in mind; the acceptance of converts is based on the case where they are "well-known to you" or on the testimony of such witnesses. In any case, converts can be accepted into the community in either manner in the land of Israel. Outside of the land of Israel, witnesses, however, are sufficient but not required.

¹⁵³ Ibid. 442-443. As Kulp points out, the *Sifra's* emphasis on the need for witnesses does not necessarily prove that the conversion procedure has to be performed before others in front of a rabbinic court (The need for a rabbinic court for the proper conversion procedure is more clearly spelled out in the fourth *baraita*, which I will discuss below). The *Sifra* itself seems to stress that one does not need to bring proof of his conversion in the land of Israel, which also implies that the need for the witnesses only outside of the land of Israel is not necessarily a requirement or a *sine qua non* in and of itself. Rather, the text seems to intentionally stress that the conversion procedure is to be performed in a correct manner and intent and such witnesses may testify that such a conversion procedure has been taken place.

As seen in the first and second baraita, a stricter view on the basis of the earlier Tannaitic view (and its parallel text in the *Sifra*) is attributed by the *Stam* (the anonymous redactor of the Bavli) to the majority of the sages. This textually indicates that they intentionally reworked the earlier *baraita* so as to promote the idea that the conversion procedure has to be defined as a stringent legislation approved by the majority. With the rhetoric of the 'obvious' (פשיטא), the *halakhah* follows the view of the majority in cases of the individual view against that of the majority.¹⁵⁴ Again, in so doing, such a stringent view that conversion has to be properly performed with proof has already been attributed to early Tannaitic sages as a normative, authoritative and eternal institution, which upholds the legitimacy of conversion as a stringent legislation. Importantly, these two baraitot presented above, both of which have similar stringent views attributed to the majority of the sages, are reworked and presented as the conclusive statements in the name of *RHBA ARY* intentionally aimed at promoting a more stringent and institutionalized procedure of conversion.¹⁵⁵

The Fourth Baraita: The Bavli's Development of a 'Court' for Conversion

Unlike other baraitot preserved in the 'Tractate' in the Bavli, the fourth baraita has no parallel source in any earlier source. The most significant development documented in this baraita is the establishment of a rabbinic court for the conversion procedure called *Beit-Din* (בית דין). It is the only Tannaitic text in the 'Tractate' that explicitly speaks of a rabbinic court as a legal institution that gives a seal of approval in the conversion procedure.¹⁵⁶

¹⁵⁴ Lavee, "The 'Tractate' of Conversion," 178, 181, 191. This textual shaping also reflects the *Bavli's* use of "פשיטא" (*p'shita*)/the 'obvious' to be discussed below. In addition, it is worth noting that the *Bavli's* strategy of rhetoric, as Lavee notes, serves as a means by which a "certain agenda is promoted." In other words, the later stringent view is presented by the *Stam* of the *Bavli* as "obvious" in order to legitimate the attribution of the stringent view to the majority view.

¹⁵⁵ *Ibid.*, 181. Presenting an example of a Geniza fragment, Lavee also points out that a quotation of the stringent view attributed to the sages is added before the statement of *RHBA ARY* in some variants. See also Abraham Liss, *The Babylonian Talmud with Variant Tractate Yebamoth* (Jerusalem: Yad Harav Herzog, 1986), vol/2: 181.

¹⁵⁶ *Ibid.*, 178.

Figure 4.

<i>bYev47a</i>	
<p>בא עדיו עמו... אמר רב ששת: דאמרי: שמענו שנתגייר בבית דין של פלוני. סלקא דעתך אמינא לא ליהמנייהו קא משמע לן...</p> <p>ת"ר: 'ושפטתם צדק בין איש ובין אחיו ובין גרו' - מכאן א"ר יהודה: <u>גר שנתגייר בב"ד - הרי זה גר,</u> <u>בינו לבין עצמו - אינו גר.</u></p> <p>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.</p>	<p>(Continued from the third baraita in which the convert needs to bring witnesses to his conversion in the land of Israel and outside of it) He (a convert) came and brought his witnesses (to his conversion) with him... .</p> <p>Rav Sheshet said: (The cases is where)they say: we heard that he converted in the court of so-and-so. (But they did not witness the actual conversion. And it is necessary to teach this because) it could enter your mind to say that they should not be trusted; (therefore the verse teaches us that they should be trusted.</p> <p>Our rabbis taught: 'And judge righteously between a man and his brother, and a stranger [a convert]' (In the context of Deut1:16 SifreDeut16 (ed., Finkelstein, 17) explains that the term <i>ger</i>, often translated as a 'sojourner,' is clearly understood as not referring to a convert in its original context) <i>that is with him'</i> (Deut1:16)); from this text did R. Yehuda deduce that <u>a man who was converted in a court is a convert; but he who does so privately is not a convert.</u></p> <p>It once happened that a man came before R. Yehuda and told him, "I have converted privately." R. Yehuda said to him: "Have you</p>

א"ל: נאמן אתה לפסול את עצמך, ואי אתה נאמן לפסול את בניך.	witnesses?" He said to him: "No." "Have you children?" He said to him: 'Yes.' He said to him: "You are trusted as far as your own disqualification is concerned but you cannot be trusted to disqualify your children."
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This baraita, consisting of both *halakhic* midrash and its precedent, provides a basis for the institution of a court for conversion. Deducing its basis from the biblical text of *Deut*1:16,¹⁵⁷ R. Yehuda demands that a rabbinic court be established to oversee the conversion procedure, explicitly emphasizing that only through this process of a court-controlled procedure, can a convert become a Jew, which has no parallel in any other Tannaic source.¹⁵⁸ While the word a "court" (בית דין) appears as part of R. Yehuda's view that refers specifically to conversion as a court-controlled procedure in the first case, only "witnesses" (עדים) are mentioned as his inquiry into whether conversion has properly been witnessed in response to the candidate's private performance of conversion.

Although the word a "(rabbinic) court" is not explicitly mentioned in the second case, the necessity of witnesses by a few individuals as part of a conversion procedure in and of itself implies some kind of a participation of a court in the conversion process. I suggest that the *Stam* of the Bavli uses the strategy of reworking and re-editing Tannaitic texts in an effort to read the institution of a court of conversion into early Tannaitic texts. The *Stam* of Bavli in the end combined two Tannaitic views to formulate conversion as a court-controlled legal procedure.¹⁵⁹ Understanding R. Yehuda's view that requires a court

¹⁵⁷ Either *Num*15:16 or *Lev*24:22 could serve as the biblical proof text of this *baraita*. Cf. Kulp, "The Participation of a Court," 453 n. 62.

¹⁵⁸ According to Moshe Samet, the story in the second case of the fourth *baraita* does not match its first half of the Midrash. Moshe Samet, "Conversion in the First Centuries C.E." In *Jews and Judaism in the second Temple, Mishnah, and Talmud Period: Studies in Honor of Shmuel Safrai*, ed. Issaiah Gafni et al. (Jerusalem: Yad Izhak Ben-Zvi, 1993), 325. Cf. Kulp "The Participation of a Court," 449 n. 40.

¹⁵⁹ Some scholars in fact cast strong doubt on the authenticity of the requirement of a rabbinic court for conversion as a genuinely "Tannaitic" concept. Cohen argues that the attribution to R. Yehuda, who is thought to be a Tanna in the middle of second century, cannot be reliable as a Tannaitic text because the idea of a court for conversion must precede the *halakhah* attributed to the Palestinian Amora R. Yohanan in the third century. Cohen, *The Beginnings of Jewishness*, 224. Cf.

as referring to conversion as court-controlled through its effort to connect the concept to the biblical proof text, the *Stam* of the *Bavli* conceptualized and formulated conversion as a stringent and institutionalized procedure by retroactively reworking early Tannaitic materials, thus reading the necessity of a court procedure into this particular Tannaitic text¹⁶⁰. This reworking strategy therefore serves to shape a legally stringent process of conversion as if such a concept had already been attributed to the early Tanna and established as authoritative in the Tannaitic period, which demonstrates the *Bavli*'s emphasis on a rabbinic court as illustrative of the sole authenticity of Jewish identity construction.¹⁶¹

As I have examined so far, although it is partially confirmed that the process by which the late redactors of the *Bavli* read the concept of the rabbinic court into the *baraitot* as well as the early Palestinian Amoraic teachings. However, it is equally true to affirm that at the very end of this *baraita* the early Amoraic statement by RHBA ARY is also taken to attribute the concept of a court to R. Yehuda although he did not explicitly refer to a model of court-controlled conversion but rather as a model of witnessed conversion in the second case.¹⁶² As I mentioned earlier, the main concern of the *Stam* of the *Bavli* is how to define conversion as a court procedure by retroactively attributing the concept to earlier Tannaim and Amoraim in such a didactic way that such views had already been established as authoritative in the Tannaitic era.

The same process of reading the concept of a court into the *baraita* by the early Amoraim

Kulp, "The Participation of a Court," 449 n. 43.

¹⁶⁰ Lavee, "The 'Tractate' of Conversion," 178. My view seems to be in accordance with that of Lavee, who also argues that these two claims of the fourth *baraita* were re-edited in a way that eventually "merged to" create the particular concept of conversion as a legal process by way of the *Stam*'s method of reworking Tannaitic materials.

¹⁶¹ The use of the phrase 'מכאן אמר' (*from this (biblical) text he (R. Yehuda) said so-and-so*) in the first half of the *baraita* seems to illustrate that the fourth *baraita* was reworked as the Babylonian version of the *baraita* by the *Stam* of the *Bavli*. In fact, Kulp has noted that another version of this phrase, "from here 'they' said so-and-so" (*מכאן אמרו*) is more commonly used as a *halakhic* midrash. Kulp, 449, "The Participation of a Court," 449 n.42. Even though the phrase appears a few times in the *Yerushalmi*/Palestinian Talmud, it is rarely found in any Tannaitic source; its only appearance in Tannaitic sources is found in *SifreDeut*283 (ed., Finkelstein, 300.) and *SifreNum*112 (ed., Horowitz, 121.).

¹⁶² Lavee, "The 'Tractate' of Conversion," 187.

can be seen in R. Sheshet's comment on the fourth *baraita* that teaches that the convert who brings witnesses to his conversion is considered trustworthy (*bYev47a*).¹⁶³ The witnesses to conversion mentioned in the *baraita*, according to R. Sheshet, are taken to mean that the conversion needs to be properly performed before a court.¹⁶⁴ More importantly, his assumption that the conversion procedure takes place only in a rabbinic court hints at his attempt to read the notion of a rabbinic court into the Tannaitic material. This process of reworking the early Tannaitic material by the Amoraim presents itself as a conceptual framework in which authority over the conversion procedure is handed over to the handful of the sages.¹⁶⁵

Another *Stam*'s attempt to read the notion of a rabbinic court into the earlier, Tannaitic and Amoraic, sources is particularly found in the discussion on the request to wait for a day for immersion. Its discussion on a story of waiting until the next day to perform the immersion for the convert at night provides a source for the demand for a court in administering the conversion procedure. In comparison to its parallel text in *yYev8:1, 8d*, the Babylonian version illustrates a more strict focus on conversion as a judicial procedure concluding that conversion indeed requires a rabbinic court consisting of three people who facilitate the procedure by reworking the early Amoraic statement of *RHBA ARY* that requires a court of law:

¹⁶³ Although Lavee categorized this Tannaitic teaching as part of the third *baraita*, I intentionally inserted it in the category of the fourth *baraita* because this case, as I discuss below, clearly illustrates a shift from the witnessed model of conversion to the court-controlled model of conversion.

¹⁶⁴ Kulp, "The Participation of a Court," 453.

¹⁶⁵ Ibid. Lavee also points out that a similar pattern of reworking the early Tannaitic text as authoritative, which for example is found in the discussion of R. Akiva's view on menstrual blood the text. This implies that such an attempt to rework the text contributes to establishing the rabbinic authority. See also Charlotte Elisheva Fonrobert, *Menstrual Purity: Rabbinic and Christian Reconstruction of Biblical Gender* (Stanford: Stanford University Press, 2000), 112-115; Ishay Rozen Zvi, *The Rite that Was not: Temple, Midrash and Gender in Tractate Sotah* (Jerusalem: Magness Press, 2008), 8.

Figure 5.

<i>bYev46b</i>	<i>yYev8:1, 8d</i>
<p>אמר רבה: עובדא הוה בי רבי חייא בר רבי ורב יוסף מתני רבי אושעיא בר רבי, ורב ספרא מתני רבי אושעיא ברבי חייא דאתא לקמיה גר שמל ולא טבל. אמר ליה שהי כאן עד למחר ונטבלינך. שמע מינה 'תלת': שמע מינה גר צריך שלשה. ושמע מינה: אינו גר שימול ויטבול. שמע מינה: אין מטבילין אותו בלילה... אמר רבי חייא בר אבא אמר רבי יוחנן: גר צריך שלשה 'משפט' כתיב ביה.</p>	<p>אמר רבי יצחק בר נחמן רבי יהושע בן לוי היה בלדוקיא והוה תמן ר' יודן נשייא בעא מיקרוץ. אמר ליה המתן ואנו מטבילין את הגיורת הזו למחר. רבי זירא שאל לר' יצחק בר מפני כבוד הזקן. או משום שאין מטבילין את נחמן למה. הגיורת בלילה. אמר ליה משום שאין מטבילים את הגיורת בלילה. אתא עובדא קומי דרבי יוסי מהו להטביל את הגרים בלילה הזו ולא¹⁶⁷.</p>
<p><i>Rabba said: It happened at the house of R. Hiyya be Rabbi (Due to); and R. Yosef taught: R. Oshaia b. R. Hiyya that there came before him¹⁶⁶ a case in which a convert who had been circumcised but had not immersed. He said to him: "Wait here until tomorrow when we shall immerse you."</i></p>	<p><i>R. Yitzhak b. Nahman said: R. Yoshua b. Levi was in Ladokia and R. Yehuda Nesia was there and wanted to rise early (in order to leave). He told him: "Wait and we will immerse this convert tomorrow¹⁶⁸." R. Zeira asked R. Yitzhak b. Nahman: "Why (did he ask him to wait)?" Was it for the honor of the elder or because we</i></p>

¹⁶⁶ *The Babylonian Talmud with Variant Readings, Tractate Yevamoth (II)*, 184. Although MS Cambridge Add. 3207, JTS Adler 626, Moscow GB 594 and Oxford Bodleian Neubauer 367 all read לקמיה (before him; R. Oshaia b. R. Hiyya?), MS Munich 95 and several Rishonim read לקמיהו (before them). Cf. Kulp, "The Participation of a Court," 451 n. 58.

¹⁶⁷ Interestingly, the phrase "ולא הורו" ("they didn't instruct") could also be read as "ולא הודו" ("they didn't admit or confess"). Cf. Kulp, "The Participation of a Court," 454 n. 67.

¹⁶⁸ In the *Yerushalmi*, R. Yehosha b. Levi asked R. Yehuda Nesia to wait until the next day to immerse the convert to complete his conversion, which perhaps indicates that they will have to immerse the convert during the day. However, in the latter half of the *sugya*, debate still remains ambiguous among the Amoraim whether immersion should be performed during the day. The motif of immersion at night is repeated in *bYev46b* to stress the idea that immersion is considered a legal process that cannot be performed at night. See also Kulp, "The Participation of a Court," 454. Finkelstein, "Proselytism," 225-251. ,

<p>From here infer three: infer that <u>conversion requires three</u>; infer that <u>he is not a convert until he is circumcised and immersed</u>; and infer that <u>a convert is not immersed at night...</u></p> <p><u>RHBA ARY said: A convert needs (the presence of) three (people for the conversion process) as 'law' has been written in regard to him.</u></p>	<p>don't immerse a convert at night?" He told him: "Because we don't immerse a convert at night." It happened before R. Yose and they asked, "What is the law regarding immersing at night?" And he didn't give them instruction.</p>
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The Bavli's discussion of the case brought to the house of R. Hiyya b. Rabbi¹⁶⁹ is originally derived from R. Yose's view in the second *baraita* that demands both circumcision and immersion as essential components that validate conversion. The convert who had already been circumcised was asked by the sage(s) to wait until the next day to be immersed to complete his conversion. In short, the *Stam* of the Bavli interprets and reworks the passage of "waiting until the next day for immersion" as referring to the need for a court for conversion. Especially, the phrase "(Wait here until tomorrow) when we shall immerse you" involves the presence of more than one sage in performing immersion, which also implies that the convert who has already begun his 'private' conversion process needs to come

¹⁶⁹ According to Rashi, the conclusion by which conversion must take place before a court of three is based on his reading of the first section in which the three Babylonian Amoraim - Rabbah, R. Yosef, and R. Safra- along with another three Palestinian Amoraim - Hiyya b. Rabbi, R. Oshaia b. Rabbi and R. Oshaia b. Hiyya were present when the convert came. However, his interpretation is rather obscure regarding the reason why the presence of three sages at constitutes the basis for a court procedure during the conversion. Rather, the *Stam*'s conclusion may be based on how the word בֵּי (the house of) signifies. Reading Kulp's translation of "בֵּי רַבִּי חִיָּיא בְּרַבִּי" as "at the 'house' (of Rabbi Hiyya b. Rabbi)," in this *sugya*, it is quite possible to read the word בֵּי as referring to דִּינָא "a court house," denoting more of a site of judicial process whereby a legal procedure is executed rather than just a school of a particular rabbinic figure. This reading may fit the *Bavli*'s context in which a person appears at the site of judicial procedure. Even though David Goodblatt discusses the meaning of בֵּי in the *Bavli*, he never mentions the usage of the word from this specific *Yevamot* passage. At this moment, it is still safe to say that this reading is at least plausible. See David M. Goodblatt, *Rabbinic Instruction in Sasanian Babylonia* (Leiden: Brill, 1975), 147-148. See also Kulp, "The Participation of a Court," 451-452 n. 59.

before a body of Jews/sages to get his conversion process formerly finalized.¹⁷⁰

In any case, imposing the idea that conversion requires a court upon the entire *sugya*, the *Stam* of the Bavli concludes that both acts of circumcision and immersion are needed for conversion and that a rabbinic court consisting of three sages is necessary to oversee and complete the procedure with *RHBA ARY*'s statement of "גר צריך שלשה ג' 'משפט' כתיב ביה" (*A convert needs (the presence of) three (people) as 'law' has been written in this case*). By reading the need for a court of three (people) into both Tannaitic and Amoraic materials through its textual reworking, the *Stam* of the Bavli thus succeeds in introducing a new significant legal concept that will be presented in the next part of the *sugya*, that is, a rabbinic court as the critical part of the conversion procedure. The idea of a court for conversion, however, is not a mere addition to or an inference drawn from *RABA ARY*'s concept of the need for a court consisting of three sages; it has already been hinted at by one significant word "בפנינו" (*in our presence*) introduced in the second *baraita*, which clearly entails a judicial body of sages that is responsible for conducting the conversion procedure.¹⁷¹ This eventually leads to the development of the concept of court-administered conversion sealed with the final Amoraic statement of *RHBA ARY*.¹⁷²

Additionally there is one particular passage of the Bavli that emphatically speaks of a rabbinic court as a *sine qua non* for the conversion procedure:

bQid62a-b

א"ל כל שבידו לאו כמחוסר מעשה דמי

איתיביה האומר לאשה הרי את מקודשת לי לאחר שאתגייר לאחר שתתגיירי לאחר שאשתחרר לאחר שתשתחררי לאחר

¹⁷⁰ Bamberger, *Proselytism in the Talmudic Period*, 250. Bamberger points out that the convert seems to appear before a single rabbi to ensure whether his 'private' conversion is properly performed rather than to let the rabbi aid in his conversion process. Cf. Kulp, "The Participation of a Court," 452.

¹⁷¹ The word is introduced in the context of the second *baraita* which deals with the issue of whether or not circumcision effects conversion.

¹⁷² Ibid., 182 n. 25. Based on his reading of *halakhic* midrash in *Sifre Bamidbar 108* (Horowitz Edition, 112), in which three components of conversion (circumcision, immersion, and sprinkling of blood), Lavee also speculates whether the number of people present at the conversion procedure originally corresponds to the number of such components, which denotes the number of acts needed to complete conversion. Even he admits that this is speculative at best, I suggest that such an understanding of *halakhic* midrash may effectively be used to rework the Tannaitic material to justify the number of such acts.

שימות בעליך לאחר שתמות אחותיך לאחר שיחלוץ לך יבמיך אינה מקודשת
 בשלמא כולהו לאו בידו אלא גר הוי בידו גר נמי לאו בידו דאמר רבי חייא בר אבא אמר רבי יוחנן:
 גר צריך שלשה. מאי טעמא? "משפט" כתיב ביה כדין. מי יימר דמזדקקו ליה הני תלתא.

He (R. Yohanan) answered him (R. Asi). Whatever (act) lies in his power is not as though that act were lacking. He (R. Asi) raised an objection: If one says to a woman, "Behold you are betrothed unto me after I convert," or "after you convert," "after I am freed," or "after you are freed," "after your husband dies," or "after your sister dies," or "your brother-in-law" performs halizah for you," she is not betrothed. As for all it is well, for they are not in his power; but to convert surely lies in his power! To convert is not in the hand of the convert (he has no controls over it). As R. Hiyya b. Abba in the name of R. Yohanan (in other words, RHBA ARY) stated: "(Conversion of) a proselyte requires (the presence of) three (people who constitute a court for conversion)." What is the reason? 'Judgement/Law'(mishpat) is written in connection with this case. (Since) it is like a matter of lawsuit, who can say that these three will assemble for him?

R. Asi tries to prove that even though something is within a person's control or power, such an act is not regarded as having been performed, and the betrothal of the convert prior to his conversion, for example, would otherwise become valid *after* conversion.¹⁷³ R. Yohanan, on the other hand, maintains that all acts of conversion are determined by the presence of a rabbinic court, which suggests that it is not entirely within the convert's control or power. Originally based on the context of marriage, in which a gentile cannot betroth a Jewess on condition that he will convert in the future, it is assumed that one particular principle identified therein is that R. Yohanan's statement used in one context bears a new meaning in another context. This clearly implies that the future prospect of becoming a Jew is not completely under his control.¹⁷⁴ By way of the *Stam's* textual

¹⁷³ Kulp, "The Participation of a Court," 456 n. 79. Since R. Asi holds that the person who is converting must perform conversion on his own without any outside involvement, it seems clear that he is not quite familiar with R. Yohanan's statement on *bYev46b* that the presence of three facilitators is a *sine qua non* for the conversion procedure. However, the structural feature of the *sugya* indicates that it is the textual reworking of an Amoraic *meimra* by the *Stam* that solves R. Asi's difficulty or objection by citing a different view of R. Yohanan from another context.

¹⁷⁴ Lavee, "The Rabbinic conversion," 224; Kulp, "The Participation of a Court," 456. More

strategy of reworking the original text or statement, the statement of R. Yohanan comes to be read as a statement or say, a *halakhic* principle accepted by all.¹⁷⁵

Lastly, another important textual reworking by the Amora (later approved by the *Stam* of the *Bavli*) is a textual emendation to the Tannaitic source in the fifth *baraita* of *bYev47b* later attributed to R. Yohanan. This *baraita*, which teaches that 'two' disciples of the sages are to assist the convert in the rite of immersion, is emended by R. Yohanan to read 'three' disciples. His textual emadation that increases the numer of discples to three thus results in a stricter standard of conversion as a court procedure, which needs at least three people.¹⁷⁶ In other words, resorting to a textual emendation to the original Tannaitic text, the *Bavli*, as Lavee stresses, also develops the 'imagined' process of Amoraic reworking of original Tannaitic texts, appealing as if *RHBA ARY*'s statement of the need for a court of three sages were in complete agreement with or had originally been attributed to stringent Tannaitic views.¹⁷⁷

The Fifth Baraita: The Procedure of Conversion

Consequesntly, the *Bavli*'s development of conversion as a court-controlled procedure finally leads to the construction of its ritual frameworks for admission. A significant contribution to the *Bavli*'s establishment of rituals as part of the court-controlled procedure is found in the fifth *baraita*, wherein the rituals of conversion such as circumcision and immersion play a decisive role in defining and finalizing the status of the convert as *Israel*. The only parallel text to the fifth *baraita* is found in the minor tractate

importantly, although it is not explicitly stated therein, this *sugya* also demonstrates the *Bavli*'s strategy of reworking the original text to create a new concept with the use of the rhetoric or rephrasing. That is, one particular statement used in one context comes to bear a new meaning in a new context, which resonates with the notion of the convert as a newborn child in the Tractate to be discussed below.

¹⁷⁵ Ibid. 457. In *Halakhot Pesuqot*, the earliest post-talmudic work that codifies this *halakhah*, the conversion procedure requires the presence of three people. For more, Niel Danzig, *Introduction to Halakhit Pesuquot with a Supplement to Halakhic Pesukot* (New York: The Jewish Theological Seminary of America, 1993) [Hebrew], 584-586.

¹⁷⁶ See Shmuel I. Sprecher, "On the Issue of 'A Convert Needs Three': The *Sugya* on the Case of R. Hiyya b. Ami - Yevamot 45b." *Magal* 11 (1985): 9-13 [Hebrew.] Cf. Lavee, "The 'Tractate of Conversion,'"188.

¹⁷⁷ Lavee, "The 'Tractate' of Conversion,"183.

Gerim. Although we are not fully certain of whether the text is of Tannaitic origin, and there has still been a scholarly debate regarding the exact dating and origin of tractate *Gerim*, the text itself contains a full Tannaitic account of the conversion procedure, remarkably illustrating textual and linguistic similarities to the *Bavli*, which is instrumental in reconstructing and uncovering the gradual evolution of the conversion procedure developed by the Bavli.¹⁷⁸

Figure 6.

<i>bYev47b</i>	<i>Gerim1:3;5; 2:5</i>
<p>ת"ר: גר שבא להתגייר... ומודיעין אותו מקצת קלות ומקצת מצות חמורות, ומודיעין עון לקט שכחה ופאה ומעשר עני ומודיעין אותו ענשן של מצות... וכשם שמודיעין אותו ענשן של מצות, כך מודיעין אותו מתן שכר... קיבל - מלין אותו מיד... נתרפא מלין אותו מיד ושני תלמידי חכמים עומדים על גביו. <u>טבל ועלה, הרי הוא כישראל לכל דבריו.</u> תניא: רבי חנניא בנו של רבן גמליאל אומר:</p>	<p>קבל עליו הורידהו לבית הבית הטבילה וכיסהו במים עד מקום הערוה ואומרים לו מקצת דקדוקי מצות על מנת שהוא נותן בשכחה ובלקט ובפיאה ומעשר... <u>טבל ועלה, אומרים לו דברים טובים...</u></p>

¹⁷⁸ According to Cohen, the date of tractate *Gerim* is unknown. Although it is not fully affirmative, he holds that the text is perhaps dated to the sixth or eighth century. If so, we may uncover the post-talmudic historical development of the conversion procedure. Cohen, *The Beginnings of Jewishness*, 217. Lavee, however, casts doubt on Cohen's method of dating the text, strongly arguing that the formation of the text is much earlier given the structure of the text. He holds that it is reasonable to assume that there might exist two versions of rabbinic conversion procedure: one is a Babylonian version and the other a Palestinian one. These two versions of the text might have originated in the second century, but were reworked in later periods and finally reached its final redaction between the third and the sixth century. Lavee, "The Rabbinic Conversion to Judaism," 222. Although tractate *Gerim* is quite difficult to ascertain chronology, the text remarkably resembles its parallel versions in Palestinian Amoraic sources such as *yQid3:12, 64a* or even earlier sources such as Tannaitic midrash. The text's language and conclusive statement sometimes parallel the anonymous comments and redaction of the *Bavli*. For that reason, Lavee suggest that a comprehensive synoptic comparison between the *Bavli* and all its parallel rabbinic texts should be examined. See also "The 'Tractate' of Conversion, 174, 179 n. 18.

<p>מפני מה גרים בזמן הזה מעונין, ויסורין באין עליהן - מפני שלא קיימו עשב מצות בני נח.</p> <p><u>רבי יוסי אומר: גר שנתגייר כקטן שנולד דמי.</u></p> <p><i>Our rabbis taught: A (potential) convert who approaches to be converted...</i></p> <p><i>They accept him (the potential convert) immediately.</i></p> <p><i>They instruct him about a few of the light commandments and a few of the severe commandments; and they instruct him the sin of (the violation of the laws of) gleanings, the forgotten sheaf, the corner of the field, and the poor tithe. And they instruct him about the punishment for (violation of) the commandments... And just as they instruct him about the punishment (violation of) the commandments, they also instruct him about their reward (for their fulfillment).</i></p> <p><i>If he accepts, they circumcise him immediately... When he has healed, they immerse him immediately, and two disciples of the sages stand over him...</i></p> <p><u>When he has immersed and risen (from the water), behold, he is like (an) Israel(ite) in all respects.</u></p> <p><i>It was taught in the baraita: Rabbi Hanina ben Rabban Shimon ben Gamaliel said: Why are converts at the present time oppressed and</i></p>	<p>נפרעין מן הגרים כדברי ר' יוסי.</p> <p>ר' יהודה אומר: אין נפרעין ממנו אלא <u>הרי הוא כבן יומו.</u></p> <p><i>If he accepts upon himself, they bring him down to the immersion house and they cover him with water until the place of his nakedness.</i></p> <p><i>They say to him a few of the details of the commandments on condition that he contribute gleanings, the forgotten sheaf, the corner of the field, and the tithe...</i></p> <p><u><i>When he has immersed and risen (from the water), they speak to him kind words and words of comfort.</i></u></p>
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<p>visited with afflictions? (That is because) they had not observed the Seven Noahide commandments. Rabbi Yosi said: (They would not be punished for their previous deeds prior to their conversion because) <u>A convert who has just converted is like a newborn child.</u></p>	<p>Converts are punished according to Rabbi Yosi; Rabbi Yehudah says: He is not punished, but <u>behold he is like a one-day-old infant.</u></p>
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Although both texts share remarkable similarities in terms of language and ritual frameworks, they demonstrate a minor yet significant difference in terms of their orientation of the conversion procedure. That is, the procedure of conversion described in tractate *Gerim* is more of an initiation ritual, while the Bavli emphasizes conversion as the compliance of legal norms defined by a ritual framework, namely immersion.¹⁷⁹ From here we can see that the *Stam* of the *Bavli* introduced the definitive language of status change, signifying the ritual of immersion as a primary vehicle of changing the convert's identity from gentile to Jew.

Therefore, the Bavli's another significant textual and conceptual development identified in the fifth *baraita* is therefore its addition of the phrase "ועלה הרי הוא כישראל לכל דבריו" (When the convert has immersed and risen from the water) behold he is like (an) Israel(ite) in all respects), whereas such a term is not found in its parallel text in tractate *Gerim* 1:3. The *Bavli's* use of rhetoric has a significant implication for the ritual of immersion (*Tevila*/טבילה) as a defining marker of changing the convert's *halakhic* status as *Israel*. Its usage is in fact found only in the *Bavli*, which emphasizes that it serves as a ritual function that confirms the change of the convert's status.¹⁸⁰ Moreover, it is considered as a significant development because following immersion, the phrase "הרי הוא כישראל לכל דבריו" ("Behold, he is like Israel in all respects") directly refers to the convert's definitive and fundamental change of identity as *Israel*. This suggests that the term itself connotes a legal

¹⁷⁹ Cohen, *The Beginnings of Jewishness*, 238. Cf. Lavee, "'Tractate' of Conversion," 179; "The Rabbinic conversion to Judaism," 222.

¹⁸⁰ In the fourth chapter, I will discuss how immersion can function as a vehicle of change of status by examining its implication from several cases that appear in Tannaitic and Amoraic sources regarding the convert's susceptibility to ritual impurity prior to or after conversion.

concept that represents the fundamental transformation of one's legal status, which is in full accordance with the *Bavli's* emphasis on conversion as a legally stringent procedure.¹⁸¹ The *Bavli's* use of this specific term indicates that conversion is formulated as a decisive act that ensures one's entrance into the community, which also defines the acquisition of a new legal status. In other words, conversion is defined as a ritual that confirms and establishes the new *halakhic* status of the convert as *Israel*.¹⁸²

Immersion as an essential conversion ritual as the definitive signifier of the convert's change of status can be identified and thus explained by the *Bavli's* use of the rhetoric and phrasings as part of the rabbinic strategy of rephrasing the Talmudic text because they serve as powerful tools in creating new meanings of specific *halakhic* matters in new emerging contexts. As we have learned in the first *baraita* (*bYev46a-b*), the necessity for both circumcision and immersion as part of the stringent standards of conversion is attributed by the *Stam* of the *Bavli* to the majority of the sages. Here we can also see how the *Stam* of the *Bavli* used its rhetorical strategy to define immersion as a requirement for conversion especially for women who cannot physically go through circumcision. The *Bavli* first deduced the necessity of immersion from the passage of *Ex24:8*, in which Moses sprinkled the blood upon people in establishing the divine covenant at Sinai (which is also understood as the archetype of conversion), concluding that *Israel's* forefathers must have immersed because it is logically assumed that there is no ritual sprinkling of blood

¹⁸¹ Lavee, "A Convert Is Like a Newborn Child," 255; Lavee, "'Tractate' of Conversion," 180 n. 20. It is important to note that the phrase *כִּי־יִשְׂרָאֵל לֹכֵל דָּבָר* generally appears as denoting the equality of the convert to the native-born in terms of the observance of certain commandments especially in the *baraitot* of the *Yerushalmi* such as *yDem4:3 23c*, *ySheq1:5, 46b*, *yKet3:1, 27b* (כִּי־יִשְׂרָאֵל לֹכֵל דָּבָר); *tTer4:14* (כִּי־יִשְׂרָאֵל). Furthermore, the term also appears in the context in which "(the convert's female offspring was) conceived and born in the sanctity of Israel" (הִיתָה הַוּרְתָה וְלִידָתָה בְּקִדּוּשָׁה) in *mKet4:3*. In this situation, it is the female offspring who is fully defined as a native-born /that is, *Israel* in every respect ("כִּבְתָּ יִשְׂרָאֵל לֹכֵל דָּבָר") rather than the converted mother ("גִּיּוּרָתָה") because she was conceived and born to the mother who converted prior to her conception. However, this term suggests that the conversion of the parents is equally important because it confers the Israelite status on their offspring. Although a similar appears in *tYev12:2* and its parallel in *bYev97b* regarding the brother's obligation of levirate marriage and a rite of *halizah*. I will also discuss further on this matter in relation to the *Bavli's* concept of "A convert is like a newborn child" in tractate *Yevamot* in the second chapter.

¹⁸² *Ibid.*, 255. According to Snow and Machalek, conversion is defined as "status confirmation ritual." See also David A. Snow and Richard Machalek, "The Sociology of Conversion," *ARS* 10 (1984): 167-190.

without immersion, hence the necessity of immersion as part of the process of conversion. Furthermore, the gemara also asserts by logical reasoning (סברא) that women must have immersed at Sinai along with men in order to enter under the wings of Shekinah/the divine presence (שכינה). The underlying assumption of entering under the wings of the divine presence is that immersion is also required for conversion for women. This *Bavli*'s use of rhetoric illustrates that some sort of a mandatory ritual framework is necessary to define a convert as a Jew.¹⁸³ As mentioned earlier, the Talmud's rhetorical strategy redefines what was not considered as normative or legitimate earlier as normative later by presenting it as "obvious" (פשיטא).

By using its rhetoric, the *Bavli* can also redefine and change the semantics of certain terminologies in order to fit its conceptual frameworks. For example, the above phrase "to enter under the wings of the divine presence" (ונכנסו תחת כנפי השכינה) that appears in the first and sixth *baraita* is rhetorically rephrased by the *Bavli* to denote a ritual process of going through a valid conversion procedure. Since the root כנס connotes "to gather," the Talmud seeks to rephrase its semantics of the word to mean entrance into the group. In Tannaitic or Palestinian Amoraic sources, the verb כנס is used to signify the convert's religious transformation or Israelites' concerted efforts to bring gentiles into the Jewish fold so that they can acknowledge God.¹⁸⁴ Therefore, since the *Bavli* rephrases the original semantics of the term to emphasize conversion to denote entrance into the group¹⁸⁵, immersion as a mandatory ritual framework that enables the convert to join the group in turn defines it as

¹⁸³ Ibid., 185.

¹⁸⁴ Ibid., 185-186. See *Mekhilta de-Rabbi Shimon bar Yohai* 18:28 (Epstein-Melamed edition), 134. In the context of *GenR*39:8, the verb כנס appears as the *kal* or *paal* form in the sense of 'to gather' (converts or other Israelites), while *hifil* (הכניס) or *nifal* (נכנס) tends to be used to connote 'to bring gentiles in' especially in combination of other phrases as seen in the first and six *baraita* of the Tractate. See also David Daube, *The New Testament and Rabbinic Judaism* (Peabody, MA: Hendrickson Publishers, 1994), 353-354. Cf. Lavee, "A Convert Is Like A Newborn Child," 256-59. 56 n. 151.

¹⁸⁵ Also another similar phrase such as תחת כנפי השמים ('under the wings of the heaven') appears in Tannaitic sources: *Mekhilta de-Rabbi Shimon bar Yohai* 18:27; *Sifra Qed*8:3, 91a, 80a (MS Rome); *Mekhilta de-Rabbi Yishmael Amalek Yitro* 1:80 (MS Oxford). See also Urbach, *The Sages*, 37 n. 37. Regarding the phrase "לחסות תחת כנפי השכינה" (to take refuge under the wings of the divine presence), *RutR*2:12; *Midrash Tehilim*110a. Cf. Lavee, "A Convert Is Like A Newborn Child," 256 n. 152.

a ritual that confirms the convert's new status as Israel.

Again, the Bavli's preferred use of (הוא כישראל לכל דבריו) "הרי" (*behold (he is defined as an Israelite)*) also serves as a strong rhetorical function, whose phrasing can play instrumental roles in shaping the convert's change of status. A similar phrasing is expressed as הרי זה גר (*behold he is a convert*) that appears in the first *baraita*. While its parallel text in the *Yerushalmi* (*yQid*3:12, 64a as well as *Gerim*1:2) does not use the same phrasing (even though its context also concerns the status of the convert's offspring), the Bavli's anonymous layer of the first *baraita* stresses that a convert who underwent the legal procedure of conversion administered by the rabbinic court is defined as *Israel*, which is characterized by the phrase "הרי זה גר" (*behold he is a convert*). Although both texts have the same *halakhic* phrasing, the Bavli's version expresses its emphasis on the convert's change of status upon conversion more explicitly, while such a rhetorical phrasing is completely absent in its parallel text in the *Yerushalmi* as well as *Gerim*.¹⁸⁶

Lastly, another important aspect of the rhetorical word הרי is found in the following Amoraic statement on in the fifth *baraita* that concerns whether or not the convert who has completed conversion is still considered as a Jew even in the case of his apostasy.

bYev47b

"טבל ועלה הרי הוא כישראל לכל דבריו." למאי הלכתא? דאי הדר ביה ומקדש בת ישראל - ישראל מומר קרינא ביה וקידושיו קדושין.

"Once he has immersed and emerged behold he is Israel in every respect."

(The gemara asks): With regard to what the law says about this case? It is that he reverts back to behaving as a gentile, he nevertheless remains Jewish, and if so he betroths a Jewish woman, although he is considered an apostate Jew, his betrothal is a valid betrothal.

¹⁸⁶ Lavee, "A Convert Is Like A Newborn Child," 192 n. 39. Lavee also points out that the word originally appears in the context of entrance into the Temple to bring sacrifices after conversion in *Gerim*2:5, which is hinted at by the term מעכב. This seems to suggest that the *Stam* of the *Bavli* took that concept and inserted in its anonymous layer of the *baraita* in order to create a new legal, *halakhic* meaning.

This Amoraic statement on the convert who has just completed the conversion procedure following immersion, which appears in the fifth *baraita*, shows that once the conversion procedure has been completed, he is completely considered as a Jew in every respect. Even if he returns to his old gentile ways and engages in idolatry, he is still regarded by the society as a Jew, albeit an apostate Jew. This demonstrates that his conversion is irreversible and irrevocable; as indicated by the word “הרי” after immersion, his ethnic status has completely changed to such a surprising extent that it is irreversible. Even if he betroths a Jewish woman, his betrothal takes effects just like any other native-born. This reveals that the Bavli perceives of conversion as a legal construct that cannot be annulled because it is also considered as birth.¹⁸⁷ By virtue of the law of the sages, he cannot become a gentile again even in his apostasy.

The Sixth Baraita: The Bavli’s Emphasis on Conversion as New Birth

The most significant conceptual development of the conversion procedure by the Bavli’s rhetorical strategy is found in the sixth *baraita* of the ‘Tractate’ in *bYev48b* in the context of conversion as new birth, which finds concrete expression in the phrase “A convert is like a newborn child” (גר שנתגייר כקטן שנולד דמי). Its parallel text in *Gerim2:6* (presumably due to its ambiguous dating?) portrays converts as those who are not punished for their sins committed prior to their conversion because they are analogized as “a one-day-old infant” (בן יומי), which is quoted as marking their renewed status; the text implies that converts, who sinned previously prior to their conversion, had their sins forgiven upon conversion and as a result they are now metaphorically understood as a one-day-old infant, who do not carry any burden of previous sins. Such imagery of forgiveness of sins seems to evoke the picture of conversion as symbolizing a state of one’s complete renewal.¹⁸⁸ It is the motif of forgiveness of his sins that enables him to be renewed as a completely new

¹⁸⁷ A similar phrasing can be found in *bBekh30b* and *tDemai2:4*, in which the convert who has been suspected of rejecting even one word of the Torah is considered an apostate Jew. In this case, his betrothal with a Jewish woman is considered valid by virtue of the *halakha* that once he has converted, he will be a Jew in every respect. See also Bamberger, *The Stranger within Your Gates*, 251 n. 40.; Bamberger, *Proselytism in the Talmudic Period*, 31-32.

¹⁸⁸ I will discuss *Gerim*’s usage of the term in comparison with the notion of the convert as a newborn child in the *Bavli* extensively in the second chapter.

individual like a one-day-old infant. In other words, *Gerim* uses such a metaphor of forgiveness of sins to stress the convert's renewal.

The Bavli, on the other hand, appropriates *Gerim*'s concept of "a one-day-old infant" into "a newborn child" (קטן שנוולד) to emphasize conversion as "new birth." Drawing an analogy between the convert and a newborn child, the Bavli analogizes conversion to new birth. This, as I will discuss below, indicates that its concept of conversion as new birth bears legal and practical significance. That is, the motif of the convert as a newborn child is developed by the Bavli as a well-defined legal concept of severing the convert's kinship ties with his gentile kin. Since the convert is *halakhically* defined as a newborn child, he is understood as an entirely new person, who is no longer related to his gentile relatives,¹⁸⁹ which creates a powerful legal fiction that defines a new Jewish identity completely different from that of the gentile other. This, again, suggests that conversion as a legal procedure governed by the rabbinic court is instrumental in creating the convert's new kinship, albeit fictively. Rephrasing the semantics of the Palestinian expression of "a one-day-old infant," the Bavli invented the notion of "a newborn child, which attests to the fact that different phrasings and semantics of earlier Tannaitic materials in fact come to bear new meanings by way of its use of rhetoric."¹⁹⁰

Therefore, the Bavli's imagery of conversion as new birth, as characterized by the phrase "A convert is like a newborn child" that appears in the last *baraita* of the Tractate, has a rhetorical function and purpose; a purpose that defines an imagined ethnic identity. Importantly, the use of rhetoric allows us to identify the intention of the Talmudic text. Its structure, form, choice of words and phrasings – are all aimed at promoting a certain

¹⁸⁹ Lavee, "The Rabbinic Conversion to Judaism," 239. I will extensively discuss the *Bavli*'s notion of "A convert is like a newborn child" with its emphasis on conversion as the convert's legal severing of his gentile kinship validity and its implications for fictive ethnic/kinship fashioning in the second chapter.

¹⁹⁰ Leib Moscovitz characterizes the rephrasing of the *baraita* as "stylistic reformulation of tannaitic [...] statements," stressing that although their literary style is newly defined, the content carries the same connotations and views. However, as I have demonstrated above, rephrasing the semantics of earlier materials or view can create new meanings in different contexts. See Leib Moscovitz, *Talmudic Reasoning: From Casuistics to Conceptualization* (Tübingen: Mohr Siebeck, 2002), 133 n. 147. See also Lavee, "The 'Tractate' of Conversion," 192. He also shares a similar view with mine regarding how the change of semantics can carry a new meaning even though the earlier materials preserve the same legal views.

agenda that forms and stabilizes conversion as a legal procedure that defines Jewish identity for the convert. In the anonymous voice of the Talmud, rhetoric is used and formatted as addressing the specific theme of the Talmudic text because it serves as a means by which certain agendas are promoted. The nature of rhetoric as a means by which structure, form and figurative choice of words convey the content in turn serves to implicitly express the same coherent message and agendas in a new context. That is, the textual reworking by the *Bavli* itself functions as rhetoric in creating new meanings in a legal context. Especially the *Bavli*'s emphasis on conversion as new birth implies that conversion entails a new kinship, ethnic construction for the convert.¹⁹¹ This also means that a similar phrase in one context appears as a different one with a new meaning in another by way of the use of rhetoric which in turn shapes the character of reality.

Having examined how the reworkings of all of the baraitot presented above are later textual or redactional developments by the *Stam* of the *Bavli* to fit its conclusion that stresses conversion as a legal court-controlled procedure, the 'Tractate' as a whole strongly reflects the shift from a witnessed model of conversion to a court-controlled model of conversion. It also entails a shift of the authority from the individual, whose own choice and decision to convert play a central role, to the authority of the society governed by the rabbinic court as a legal representative body, in which the rabbis can exercise their authority and power to determine whether or not the candidate for conversion is accepted, which means that the individual can no longer exercise his power to convert himself or gain a formal approval from the rabbinic authority on his own accord. In this framework, the convert's sense of belonging to the community is not defined by his self-affiliation with the group based on his own personal commitment, but only by his public affirmation approved by the accepting society, namely the rabbis.¹⁹²

¹⁹¹ I suggest that the rabbinic use of rhetoric and phrasing shown in the *Bavli* is not a mere rabbinic word play. It shows that words have the power to shape the fundamental character of reality including the convert's change of "kinship" status from gentile to Jew. In the latter half of this chapter, I will discuss how human thought including wording, phrasing and rhetoric has the power to shape the character of reality. This concept is deeply embedded in the mishnaic system of classification in which human thought or intention serves as a primary vehicle to classify given objects into certain categories, thereby presenting them as a new creation.

¹⁹² Lavee, "The Rabbinic Conversion to Judaism," 224.

Additionally, this shift indicates that the necessity of a court for conversion is purely a Babylonian concept that is gradually read and attributed into earlier Tannaitic views so as to create the impression that conversion is a court-based institution defined by legal stringency originally established in the Tannaitic era, which creates a sense of the historical continuity and authenticity of conversion as deeply embedded in Jewish law.

Importantly, the Bavli's development of conversion as a legal institution that administers a court procedure has significant implications in defining the criteria for group membership. Namely, it demonstrates the Bavli's attempt to reinforce the demarcation of the group boundaries of Jewish identity. The court-controlled procedure of conversion serves as a legal mechanism of social integration that defines entrance into the group, thereby granting the convert a new legal status as a legitimate member of the ethnic group. In such a legal framework, the mode of Jewish identity formation implied in conversion is embedded in the construction of an imagined citizenship, which reflects that the form of Jewish identity is defined as a distinct autonomous social and cultural entity unbound by geographical boundaries with no specific political power.¹⁹³ However, I argue that the construction of such an imagined citizenship in fact entails the construction of an imagined "ethnicity" because the convert joins the community primarily defined by *genealogical descent*; the granting of citizenship or his new status as *Israel* means that the new convert now shares the group's myths, ethos, and norms with the native-born as if he were born into the ethnic group. As the Bavli's notion of "*A convert as a newborn child*" illustrates, his new society defines him as one without legal kinship ties to his former gentile kin due to the granting of a newly invented ethnic status. By implication, the Bavli's emphasis on the rabbinic court as an essential component of conversion that defines such Jewish identity

¹⁹³ Ibid. 224-225. Lavee perceives the development of conversion as a court-controlled procedure as shifting from the "realm of self-affiliation with the group, its norms, ethos and mythos" to a "civic definition of belonging," which stresses the nature of Jewish identity as an "imagined citizenship." Although I concur with his assessment of conversion as an imagined citizenship, its civic definition alone cannot explicate the ethnic nature of Jewish identity via conversion. That is because conversion, I argue, is an act of affiliation with the group defined by *its norms, ethos, mythos*, and most importantly *genealogical descent*. In fact, the Bavli's notion of the convert as a newborn child, as I will show below, indicates that the convert's kinship ties with his gentile kin must be severed in order to enter the community defined by genealogical descent. Conversion is, in a sense, a mode of the construction of an imagined kinship or ethnicity.

construction suggests that the sages as a representative body of the ethno-religious community of Israel has the sole power to define the convert as a *newborn* by virtue of divine law, the *halakhah*. More significant is the *halakha* as the divine law that has the power to shape the fundamental character of reality, namely the fundamental transformation of the convert's ethnic/kinship identity as Israel. The answer, as I will argue below, lies in the nature of the *halakhah* set forth by the Mishnah and its system of classification.

Conversion as the Mishnaic System of Classification

As I have examined above, the 'Tractate' of Conversion in the *Bavli* legalized the idea of rabbinic conversion as a court-controlled procedure supervised and administered by a rabbinic court (*Beit Din*/בית דין), with stringent standards of entrance into the community defined by descent. This indicates that the individual does not have an authority to convert himself in order to be affiliated with his new ethnic/religious community and that the very authority of conducting the conversion procedure is handed over solely to the rabbinic court. This suggests that it is only the *rabbinic court* that can exercise its legal authority to transform the convert from *gentile* to *Israel/Jew*. However, the question still remains ambiguous in terms of how the change of such legal status upon conversion defines the convert's fundamental change of kinship or ethnic identity. Although the 'Tractate' of conversion is structured and conceptualized to promote the idea that conversion is a legal procedure that signifies the convert's change of the *halakhic* status as *Israel* by way of the *Bavli*'s textual maneuver and reworking of early Tannaitic and Amoraic materials with its use of rhetoric and rephrasing, what precisely enables conversion as a legal procedure to change the convert's ethnic and kinship identity? In what way is such a thing possible?

In order to answer the above puzzling questions, I will now introduce one theoretical framework to begin my inquiry into how the legalization of conversion shapes the fundamental transformation of the convert's identity. Drawing on the theoretical views suggested by Howard Eilberg-Schwartz and further developed by Mira Balberg, I argue that one can exercise the power of human intellectual and rational faculties or mental

disposition, namely “thought,” “intentions” or “plans” in classifying and categorizing given objects or persons in question in the classificatory system of the Mishnah, thereby altering the fundamental character or essence of reality. In particular, the term *mahshavah* (מחשבה) or *kavanah* (כוונה) is often translated as “thought,” “plans” or “will” (intentions in some contexts) in the Mishnah to refer to a form of a person’s consciousness or mental disposition to use a particular object for a specific purpose. Most importantly, in the classificatory system of the Mishnah, the person’s formulation of a particular thought or plan shapes a “magical” effect of altering the character of reality¹⁹⁴. In other words, the mishnaic system of classification presents the concept that human thought functions as an active vehicle by which the status of things or its identity in the world comes to be changed or altered through the process of classification. Most importantly, it is particularly stressed in the Mishnah that the capacity of the object in question to become susceptible to or withstand ritual impurity serves as a crucial indicator of the fundamental change of its property or essence by classification.¹⁹⁵

As I mentioned earlier, the ‘Tractate’ of Conversion is structurally and textually characterized as *mishnaic* because a set of six *baraitot* as Tannaitic texts is structured and treated by the *Bavli* as a thematic unit, hence a tractate¹⁹⁶. In other words, one could assume that the *Bavli*’s legalization of conversion as a court procedure is understood as an act of classification. In this mishnaic conceptual framework of classification, the convert,

¹⁹⁴ Eilberg-Schwartz, *The Human Will in Judaism: The Mishnah’s Philosophy of Intention* (Atlanta: Scholars Press, 1986), 95-96.

¹⁹⁵ I will extensively discuss in the fourth chapter that the Mishnah’s emphasis on susceptibility to ritual impurity as an indicator of change of the object’s basic character is in fact reflected in the *halakha* of conversion. Several Tannaitic texts such as the Mishnah and *baraita* in the *Bavli* as well as the *Yerushalmi* (particularly *mNeg*7:1, *tNeg*2:14, *mZav*2:3, *bBekh*46b and *yNid*1:4, 49a) illustrate that the convert’s body becomes “ritually impure” during birth or through the contamination of skin disease immediately after conversion even though such a physical phenomenon didn’t affect him or her at all while he/she was a gentile. Drawing on Eilberg-Schwartz’s view of the mishnaic system of classification, I will develop the view of conversion as a vehicle that creates a transition into the realm of ritual impurity by which the convert’s body contracts and absorbs such a state of ritual impurity to such an extent that his body (or self) fundamentally changes as Israel.

¹⁹⁶ Epstein, *Introduction to the Mishnaic Text*, 765; 874. Cf. Lavee, “Tractate of Conversion,” 171 n. 3. In *Seder Eliyahu*, the term טבל ועלה (*When he has immersed and risen from the water*) from the fifth *baraita* of the Tractate is presented with the phrase “דחתנן” (*as our Mishnah taught*) often used to quote a mishnaic passage.

previously *gentile*, is now classified as *Israel* upon conversion with the Bavli's strategic use of rhetoric or reworking. That is to say that the Bavli uses the mishnaic concept of classification in order to define the convert under the category of *Israel*. As I will discuss in detail below, through the system of classification of certain persons or objects under certain categories, the sages in the Mishnah come to newly define and change the very character or essence of such persons or objects. Surprisingly, this also possibly implies that with such conceptual frameworks of classification, a person can even change his *kinship* or *ethnicity* because such attributes or properties can be classified as or transformed into new entities with the exercise of human thought. For that reason, I suggest that the Bavli's legalization of conversion is deeply embedded in the mishnaic system classification in such a way that transforms the convert's fundamental identity from *gentile* to *Israel*. Furthermore, conversion as a court-controlled procedure administered by the sages indicates that the sages as a representative body of Jews and God's agent have the intellectual power to shape the character of the convert to such an extent that his kinship or ethnic identity is fundamentally transformed into that of Israel.

The Mishnaic Concept of Classification in the Biblical Accounts of Creation

The idea that human thought has the power to shape and transform the character of reality through an act of classification of given objects, according to Eilberg-Schwartz, derives from the first two chapters of the book of Genesis, which provide the theological foundation and conceptual infrastructure of the Mishnah. Especially important is the priestly accounts of creation in Genesis 1-2:4 that in fact stress the significance of classification in determining and shaping the character of the world:

Gen1:1-9

בראשית ברא אלהים את השמים ואת הארץ... ויאמר אלהים יהי אור ויהי אור. וירא אלהים את האור כי טוב ויבדל אלהים בין האור ובין החשך. ויקרא אלהים לאור יום ולחשך קרא לילה... ויעש אלהים את הרקיע ויבדל בין המים אשר מתחת לרקיע ובין המים אשר מעל לרקיע ויהי כן. ויקרא אלהים לרקיע שמים... ויאמר אלהים יקוו המים מתחת השמים אל מקום אחד ותראה היבשה ויהי כן. ויקרא אלהים ליבשה ארץ ולמקוה המים קרא ימים.

When God began to create the heaven and the earth... God said, "Let there be light"; and there was light. God saw that the light was good, and God separated (yavdel) the light from the darkness. God called the light Day, and the darkness He called Night... God made the expanse from the water, distinguishing the water between which was above the expanse. And it was so. God called the expanse Sky... God said, "Let the water below the sky be gathered into one area, that the dry land may appear." And it was so. God called the dry land Earth, and the gathering of waters He called Seas.

In the creation account of Genesis 1, God's major divine work in creation, according to the priestly writer, was to "classify" (as frequently seen in the Hebrew verb "הבדיל" which refers to that which is rendered as "to separate") the world by giving names to every object He had created.¹⁹⁷ For example, His act of separation of light from darkness, the heavens above from the waters below, and the dry land from the seas indicates that God named each and every one of the things He had created upon classifying (separating one from the other) the world.¹⁹⁸ This biblical account presupposes the mishnaic scheme of classification in a significant respect. It portrays classification as instrumental in defining the fundamental character of the world. According to Genesis 1, the divine act of classification is what defines the world as God originally intended at creation.¹⁹⁹ As I also argue below, the mishnaic system of classification plays a fundamental role in defining and shaping the character of reality. That is to say, when an object is classified into a certain category of things, its fundamental character changes as well. As I will also illustrate below, the Mishnah confers on humans the power to classify the world. This implies that the Mishnah identifies the human act of classification with the divine work of

¹⁹⁷ Ibid., 103. Gerhard Von Rad, *Genesis*, (Philadelphia: The Westminster Press, 1972.), 82-83. Benedikt Otzen, Hans Gottlieb, and Knud Jeppesen, *Myths in the Old Testament*, trans. Frederick Cryer, (London: SCM Press, 1980), 44. Walter Eichrodt, *Theology of the Old Testament*, vol.1, trans. J. A. Baker (Philadelphia: The Westminster Press, 1961), 40.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid., 104.

creation.²⁰⁰ It also reveals that an act of classification changes the properties of a given object. As in the creation account in Genesis 1, classification in the Mishnah is also characterized as an aspect of creation. Human acts of classification prescribed in the Mishnah therefore have the power to alter the basic essence of reality. Again, when humans classify objects, they carry out the divine act of creation.

Therefore, this biblical scheme of the divine act of creation conceptually presupposes or underlies the mishnaic system of classification in many respects. As I will show below, it is clearly evident in the Genesis account of creation that classification defines the character of what constitutes the world.²⁰¹ The Mishnah conceptually understands classification as instrumental in defining the essential character of reality including susceptibility of certain objects or persons to impurity. When a certain object is classified into a certain category, then its fundamental character changes as well.

Correspondence between Naming and Classification

Following *Gen1:1-9*, they are subsequently assigned by God the divine task of “classifying” the world in His stead namely through a process of “naming.” In so doing, humans take part in a joint venture of the divine task of creation as His partner. The passages of *Gen2:19-20*, originally attributed to the Yahwist writers, apparently stress that human beings can transform the very qualities of certain objects by calling such objects a different name, which arguably reflects the underlying mishnaic concept that the human exercise of classification can alter the status of things in the world²⁰²:

²⁰⁰ Ibid.

²⁰¹ Benedikt Otzen, Hans Gottlieb, and Knud Jeppesen, *Myths in the Old Testament*, trans. By Frederick Cryer (London: SCM Press, 1980), 27-28. A similar point can be made regarding the mishnaic law of the mixture of different species of animals and fabrics (*Kilayim*), Irving Mandelbaum, *A History of the Mishnaic Law of Agriculture: Kilayim*, (Chico: Scholars Press, 1982), 3. Cf. Eilberg-Schwartz, “*Human Will of Judaism*,” 103, 217 n. 13.

²⁰² Ibid. It is interesting to see how each of the biblical books has different theological orientations. Eilberg-Schwartz in fact argues that the priestly account of creation does not assign humans a major role to classify the world since for the priest writers, it is God alone who classifies the world, thereby establishing dichotomies at creation, as opposed to the Yahwists who seemingly ascribe humans a role in classifying the world. In fact, Leviticus, as he also points out, has no human involvement in the work of classification because it was written by the priestly writers. That could possibly explain why the Mishnah’s underlying concept of classification, in which the rabbis serve

וַיֵּצֵר יי אֱלֹהִים מִן הָאָדָמָה כָּל חַיַּת הַשָּׂדֶה וְאֵת כָּל עוֹף הַשָּׁמַיִם וַיֵּבֵא אֶל הָאָדָם נֶפֶשׁ חַיָּה לִרְאוֹת מֶה יִקְרָא לוֹ וְכָל אֲשֶׁר יִקְרָא לוֹ הָאָדָם נֶפֶשׁ חַיָּה הוּא שְׁמוֹ. וַיִּקְרָא הָאָדָם שְׁמוֹת לְכָל הַבְּהֵמָה וּלְעוֹף הַשָּׁמַיִם וּלְכָל חַיַּת הַשָּׂדֶה.

And the Lord God formed out of the earth all the wild beasts and all the birds of the sky, and brought them to the man to see what he would call them; and whatever the man called each living creature, that would be its name. And the man gave names to all the cattle and to the birds of the sky and to all the wild beasts.

In the above passages, Adam is in fact portrayed as giving names to every creature. This suggests that he completes the divine task of creation by naming every animal, thereby distinguishing one species from another and classifying them.²⁰³ This also implies that Adam acts like a God who brings order to the world on His behalf. Consequently, Adam participates in a joint venture with God in imposing order on the world. In other words, it seems that the Yahawist writers equate the human capacity to classify with God's power to create and classify the world by exercising His will at creation.²⁰⁴

Another important aspect of this biblical account of creation, as Eilberg-Schwartz points out, is that Adam's act of naming animals in fact corresponds significantly to the mishnaic idea of classification with human intention by which humans classify certain objects or substances by formulating a plan to use them. When a person *plans* to use an object, he effectively gives a *name* to that object. As I will illustrate below, the Mishnah has ample examples of giving names to particular objects; for example, when a person plans to eat a dead bird, the bird is suddenly labeled as "food," hence immediate consumption. This process of naming all animals by Adam, in a fundamental sense, is a process through

as agents in classifying objects, seems to be attributed to the Yahawists, or at least the rabbis inherited some of their worldview.

²⁰³ See again Eichrodt, *Theology*, Vol., 40; Otzen, *Myths*, 44; von Rad, *Genesis*, 127.

²⁰⁴ Eilberg-Schwartz, *Human Will in Judaism*, 104. The passages of Genesis 2, in accordance with Eilberg-Schwartz's view, suggest that the Mishnah's system of classification is based on the Yahawistic conception of creation, in which humans take active roles in classifying the world.

which the change of status takes effect in reality. That is to say, God conferred on Adam, symbolically understood as the archetype of all humanity, the capacity to transform the character and qualities of objects in question by calling each one of them a different name. In the mishnaic context of ritual impurity, as I will explain further below, a certain substance that is not susceptible to ritual impurity, for example, becomes susceptible to ritual impurity when calling it “food” or “furniture” and so on. In this sense, a person’s plan to use an object and naming serve identical functions in that the divine work of naming corresponds to the mishnaic system of classification by the formulation of plans²⁰⁵.

Although it is a mere speculation, there is one linguistic connection between the mishnaic system of classification and the biblical concept of creation through naming. The Mishnah often deals with the case of whether or not two objects belong to the same category of thing. Significantly, one particular biblical expression related to one of the Mishnah’s expressions used to express the idea of identifying a category of things is found in Genesis 1. In fact, the Mishnah’s formula of “*one type of produce is or is not of the same kind as another*” (מין במינו ושלא במינו)²⁰⁶ seems to be in line with the biblical phrase “*according to its own kind*” (למינהו or למינה) in Gen1:21, 24 and 25.²⁰⁷

Although it is difficult to demonstrate that there is a linguistic association between the Mishnah and the Yahwist story in Genesis 2:4-25, I suggest that this biblical account of creation presupposes or underlies the Mishnah’s theory of classification because it appropriates the biblical language of naming to promote its theory of classification. Although it is never explicitly stated in the Mishnah, it is clear from the use of the terminology it uses in classifying objects that it adopts the biblical idea of naming as its theory of classification. The Mishnah in fact refers to classification of certain objects as “calling a name” (*liqwrot shem*/ לקרוא שם).²⁰⁸ The same phrase appears in the passage where

²⁰⁵ Ibid.

²⁰⁶ See *mSheb*7:4; *mHallah*4:1; *mOr*2:6-7; *mBik*3:10; *mAZ*5:8; 8:2.

²⁰⁷ Ibid., 107. The same phrase can also be found in *Lev*11:15, 22 and *Deut*14:14 especially in the context of that which refers to wild life. Cf. Eilberg-Schwartz, *Human Will in Judaism*, 217 n. 17.

²⁰⁸ For example, *mDem*4:3-4; 7:6; *mTer*3:5; 5:1; *mMaS*4:4; 5:9; *mPesh*3:3. Cf. Eilberg-Schwartz, *The Human Will of Judaism*, 107.

Adam names all types of animals.²⁰⁹ More importantly, the word “name” (*shem*/שם) in the biblical account of creation in fact refers to “category” in the Mishnah.²¹⁰ For instance, in *mKeritot* 3:4, the Mishnah seeks to clarify ambiguities in the case of whether or not two objects belong to the same category. When they do not belong to the same category, it states that they do not derive from the same category (אינו מן השם).²¹¹ Therefore, it seems that the Mishnah appropriate the biblical language that appears in the Genesis account of creation to build its own theoretical infrastructure.

There is another important aspect of the divine act of naming at creation. The idea that God allows Adam to name all the animals on His behalf implies that God conferred on humanity the capacity to define the character of reality by naming, which arguably corresponds to the mishnaic idea that human beings can classify the world by planning how to use certain things for particular purposes.²¹² Just as naming an object defines the character of that object in the biblical scheme of creation, so too people define the character of objects by planning to how to use them in the mishnaic system of classification. Again, this implicitly illustrates that the process of naming itself has a power to transform reality; in the mishnaic system, it is the process through which such change takes effect by classifying given objects into certain categories. In so doing, Adam joins God’s venture of

²⁰⁹ See verse 20, “וַיִּקְרָא הָאָדָם שְׁמוֹת לְכָל הַבְּהֵמָה וְלָעוֹף הַשָּׁמַיִם וְלִכְל חַיַּת הַשָּׂדֶה” (*And the man gave names to all the cattle and to the birds of the sky and to all the wild beasts*).

²¹⁰ Eilberg-Schwartz, *The Human Will of Judaism*, 107.

²¹¹ See also *mMak*3:9. The Mishnah, however, does not necessarily use this biblical phrase to express the concept of category. In fact the word “כלל” or “בכלל” (*b’K’lal* or *K’lal*) is another term that expresses the idea of categorization, which means that the Mishnah appropriates language from the biblical account of creation. The phrase “to call a name” appears in *Gen*3:20; 16:15; 32:31, particularly in the context of naming a person or place. Paying attention to the fact that the Yahwist account of creation is the only text in which Adam names animals, Eilberg-Schwartz argues that the Mishnah employs the same phrase in classifying wildlife and fauna, which seems to support his claim that the biblical account attributed to the Yahwist writers shapes the mishnaic system of classification. Cf. Eilberg-Schwartz, *The Human Will of Judaism*, 107; 217 n. 18. Also the term “כלל” in *mShabbat* speaks of the categorizing principle of what constitutes forbidden labor on the Sabbath. See *mShabbat*7:1,2 and 3. In contrast, in *bShabbat*73b, the *baraita* in the *Bavli* instead uses the term “משום” (a category) to clarify what categories of labor are liable on the Sabbath; for example, one of the 39 primary categories of forbidden labour on the Sabbath is plowing (החורש) or building (בונה), which concerns whether or not several types of labor such as digging (החופר) and making a furrow (החורץ) can be classified under the category of plowing or building (בונה).

²¹² *Ibid.*, 105.

creation in imposing order on the world. Furthermore, the idea of classifying the reality of the world by naming and planning, as I argue below, is deeply embedded in the mishnaic theory of human thought or intention as the Mishnah's appropriation of the biblical concept of the divine will as a vehicle to complete the divine work of creation.

Human Intention as the Power to Classify the Fundamental Character of Reality

The Mishnah, which underlies and appropriates the biblical scheme of classification at creation, addresses the principle of the intellectual capacity of human thought or intention (*mahshavah*/מהשבה: *kavanah*/כוונה) as a vehicle to classify objects in question. The world perceived according to the sages of the Mishnah consists of or is divided into two fundamental dichotomies: (1) the dichotomy between clean/pure (טהור) and unclean/impure (טמא) and (2) the dichotomy between sacred (קדש) and profane (חל). These two dichotomies serve as basic categories under which any given object is classified through the formulation of intention because all the other classifications the Mishnah makes are closely connected to them. For example, when the framers of the Mishnah distinguish carefully between sacred and profane, between useful and useless objects or between food and waste, these distinctions are a mere variation of the basic dichotomy between pure and impure²¹³. In this framework of classification, sacred and useful objects or food become impure, while profane and useless objects or waste cannot become contaminated.

How does human thought or intention (*mahshavah*/מהשבה)²¹⁴ shape the character of an object in question? First of all, the mere formulation of an Israelite's intention or plan to use an object in question for a specific purpose automatically puts that object into one of

²¹³ Ibid., 100.

²¹⁴ Eilberg-Schwartz often translates the word *mahshabah* as "plan" to emphasize that susceptibility to ritual impurity depends largely on the formulation of the plans for the object in question. Although Balberg arguably considers his translation of the word *mahshabah* as "plan" as somewhat misleading, I still find his choice of word sufficiently convincing for our purposes because it refers to a mental state that allows one to exercise his will power and intention, which serves as the very core of transformation of reality. In other words, whether it be translated as "plans" or "thought," it can take any form that designates one's mental investment in the classification of given objects or substances in reality. Eilberg-Schwartz, *The Human Will*, 95-100. Cf. Balberg, *Purity, Self and Body in Early Rabbinic Literature*, 88.

the classifications that the framers of the Mishnah regard important.²¹⁵ For instance, from the very moment an Israelite intends or plans to use a given object for a “sacred” purpose, then it is automatically or *ipso facto* classified as a sacred object such as a sacrifice. In the mishnaic system of classification, the formulation of a plan to use an object in question for a specific purpose effects the classification of that object into a particular category, hence altering its essence or character.²¹⁶

The biblical writers in fact makes an implicit connection between the human capacity of planning and the divine will at creation due to the fact that they use the term *mahshavah* to denote human intention or plans and the divine will. In this scheme, humans are understood as acting like a secondary creator or God in formulating plans in accordance with the divine will. The Mishnah, by contrast, appropriates the biblical idea of creation to the extent that the formulation to plan allows humans to carry forward the divine will of creation by classifying the world God had originally seen important. As I discuss below, human thought serves as the divine will, which has the power to shape the reality of the world.²¹⁷

The biblical passages of *Ex35:1-30* and *36:1*, written by the priestly writers, in which the word *mahshavah* is used illustrate striking similarities to the mishnaic concept of human intention in classifying objects in question. The passages describe how Bezalel was

²¹⁵ Ibid., 96.

²¹⁶ Michael Higger, *Intention in Talmudic Law*, reprinted in E. M. Gerschfield, ed., *Studies in Jewish Jurisprudence I* (New York: Hermon Press) 1971, 247-248. Cf. Howard Eilberg-Schwartz, 95. See also 215. n.2. Although intention and plans do not necessarily or even exactly refer to the same course of action, these two terms are often used interchangeably. Eilberg-Schwartz claims that planning often connotes a decision to take specific steps to achieve a particular result. In some cases, however, both “intention” and “plans” are employed interchangeably. One could easily replace one for the other, “I am planning to travel to Thailand” and “I intend to travel to Thailand” without changing its meaning. It means that the term “plans” is designated to signify intentions that deal with a specific action in the future. Higger translates *mahshabah* as plans. He points out that there is a substantial distinction between *mahshabah*/מחשבה (plans) and *kavanah*/כוונה (intention). The former signifies the intent of a particular act “with or without reference to the effect of that act” while the latter refers to the “planning or premeditation with reference to the effect of a general, future act, without any special act in mind.” In some cases in the Mishnah, it is clear that the word *mahshabah* signifies a particular plan to perform a specific course of action. In *mTohorot8:6* the term *mahshabah* is used in a situation where an Israelite plans to remove a dead bird from a vat or jar of wine for the purpose of a sale to a gentile, as I will show below.

²¹⁷ Ibid.

assigned by God the task of designing the Temple:

Ex35:1-30; 36:1

ואמר משה אל בני ישראל ראו קרא יי בשם בצלאל בן אורי בן חור למטה יהודה: וימלא אותו רוח אלהים בחכמה בתבונה ובדעת ובכל מלאכה: ולחשב מחשבות לעשות בזהב ובכסף ובנחשת. ובחרשת אבן למלאכת מחשבת. ולהורות נתן בלבו הוא ואהליאב בן מקאחיס למטה דן. מלא אותם חכמת לב לעשות כל מלאכת חרש וחשב ורקם בתכלת ובארגמן בתולעת השני ובשש וארג עשי כל מלאכה וחשבי מחשבות. ועשה בצאלאל ואהליאב וכל איש חכם לב אשר נתן יי חכמה ותבונה בהמה לדעת לעשות את כל מלאכת עבדת הקדש לכל אשר צוה יי.

And Moses said to people of Israel, "See, the Lord has called by name Bezalel the son of Uri, son of Hur, of the tribe of Judah, and He (God) has filled him with the Spirit of God, with ability, with intelligence, with knowledge, and with all craftsmanship, to devise artistic designs (lhoshv mahshavot), to work in gold and silver and bronze, in cutting stones for setting, and in carving wood, for work in every skilled craft (malechet mahshavot). And He has inspired him to teach, both him and Oholiab the son of Ahisamach of the tribe of Dan. He has filled them with ability to do every sort of work done by a craftsman or by a designer (howsheb) or by an embroiderer in blue and purple... by any sort of workman or skilled designer (howshebei mahsavot). Bezalel and Oholiab and every able man in whom the Lord has put ability and intelligence to know how to do any work in the construction of the sanctuary shall work in accordance with the Lord has commanded."

The word *mahshavah* that frequently appears in the above passages underlies or presupposes the mishnaic concept of human intention. The term corresponds significantly to its mishnaic meaning in that it denotes the mental capacity of designing an artistic craft, which also deals with the formulation of plans on how to go about constructing a specific architecture. This biblical concept thus bears a similarity to the mishnaic one that planning has the power to classify objects. Moreover, this biblical account explicitly describes God as the one who appoints humans to carry out His plans. In other words, this story assumes that Bezalel, who is assigned to oversee the construction of the Temple, is understood as God's partner in a joint venture of the divine scheme of creation. This seems to suggest

that the Mishnah mandates that humans also act as God's partner in classifying the world and that humans be instructed to implement the divine scheme of classification to further promote His creation.²¹⁸ Simply put, by classifying given objects or substances into the categories of things in the world, humans carry out the divine will, hence the divine work of creation.

In the Mishnah, the classification of an object is critical to shaping the character of its reality because it also serves to define whether or not an object in question can be rendered susceptible to ritual impurity, which is one of the basic criteria for classifying things. For instance, any substance classified under the category of "food" potentially becomes impure. However, any substance that falls under the category of "waste" cannot contract such impurity even if it comes in direct contact with sources of such impurity.²¹⁹ The same principle also applies to the distinction between "useful" and "useless" objects. In the case where useful objects are in direct contact with sources of impurity, they become susceptible to uncleanness, whereas useless objects, on the contrary, cannot be rendered impure in that instance. By distinguishing carefully between pure and impure, sacred and profane, useful and useless, hot and cold, or food and waste objects, the Mishnah thus shapes and gives order to the world because it is these dichotomies, for the rabbis, that are primarily constituent of the order and reality of the world.²²⁰

Such an act of classification thus constitutes a significant power in altering the fundamental character of given objects/persons. A failure to distinguish or classify may result in jeopardizing the divine work of creation God has originally ordained.²²¹

Each of the following Mishnaic texts below illustrates how the notion of human intention called *mahshavah* plays a crucial role in shaping the character or properties of

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid., 100.

²²¹ The following analogy could be helpful in understanding the significance of the mishnaic system of classification. The distinction between clean and unclean can be analogous to the distinction between hot and cold. It is obviously clear that such an unclean object like a hot object can be a dangerous thing that needs to be avoided in everyday life. Being unable to discriminate clean objects from unclean ones or between objects that absorb contamination or withstand heat or cold may result in jeopardizing their everyday life in accordance with divine law.

objects in question, namely determining the susceptibility of those objects to ritual impurity since susceptibility to ritual impurity marks the fundamental change of their status. By investing one's thought in given substances or objects, one can actively alter the essential character and properties of given such as food and liquids:

*mTohorot*8:6

כלל אמרו בטהרות.

כל המיוחד לאכל אדם - טמא עד שיפסל מאכל הכלב. וכל שאינו מיוחד לאכל אדם - טהור עד שיחדנו לאדם.

They addressed the principle of (susceptibility to) purity: Whatever is designated to be eaten by human beings (meyuhad leakol adam) is impure (that is, susceptible to ritual impurity) until it becomes unfit to be eaten by dogs.

Whatever is not designated to be eaten by human beings (she eino meyuhad leakol adam) is pure (that is, insusceptible to ritual impurity) until one designates it for human beings (ad she yehadno le adam).

This Mishnah asserts that substances that are specifically “designated” (*meyuhad*/מיוחד) for human consumption are fundamentally classified as food, which thereby renders it susceptible to ritual impurity. Nevertheless, the Mishnah makes it clear from its final clause “until one designates it for human being” that certain inedible substances that are rendered susceptible to ritual impurity such as human flesh, raw animal flesh, and dead birds can also be considered as food because they are specifically “designated” for the purpose of consumption through thought/*mahshabah*. Even any substance as sources of impurity that is originally considered to be prohibited for consumption such as animal carrion and pigs can be defined as “designated for human beings” to be edible once one activates *mahshabah* on it.²²² One's formulation of intention to eat a certain substance thus

²²² Eilberg-Schwartz, 132-134. In *mUqtzin*3:1-2, the term “*mahshabah*” is also used as a signifier that activates a degree of susceptibility to ritual impurity. The phrase *מהשבה והכשר* (*mahshabah and hekhsher*) refers to the process of activating ritual impurity through one's thought or deliberation, which suggests that human thought activates susceptibility to ritual impurity, thereby rendering a

enables that substance to be rendered ritually impure. Nevertheless, it could not absorb ritual impurity without the formulation of such intention to eat.²²³

Another example shows that extrapolating the Levitical ruling that susceptibility to ritual impurity may affect food “*that may be eaten*,” the rabbis in the Mishnah make concerted efforts to put forth a general principle of how thought or intention (*mahshabah*) alters the status of objects such as food:

mToh8:6 (continued)

כיצד? גוזל שנפל לגת וחשב עליו להעלותו לנכרי - טמא. לכלב - טהור.

רבי יוחנן בן נורי מטמא. חשב עליו חרש שוטה וקטן - טהור.

אם העלוהו - טמא, שיש להן מעשה ואין להן מחשבה.

[Regarding] a young pigeon that fell into a wine vat [and died] –

If [the owner] *planned (or intended)* to remove it (*hashab alav*) [from the vat] for [sale to] a gentile, [the pigeon] is rendered ritually impure [Since the Israelite intends to sell it for consumption, the pigeon falls into the classification of food, and hence it becomes subject to the rules governing the susceptibility of food to ritual impurity].

[If, by contrast, he intended to remove it from the vat] for a dog, [the pigeon] is rendered susceptible to ritual impurity [because the Israelite did not intend to use it for human consumption].

certain substance potentially edible, articulating the way in which food contracts ritual impurity. In other words, their status depends largely on whether the Israelites conceptually treat them as food. See also Mira Balberg, *Purity, Self and Self in Early Rabbinic Literature* (Berkeley and Los Angeles: University of California Press, 2014), 87.

²²³ Balberg, *Purity and Self in Rabbinic Literature*, 213. n. 59. In a similar vein, *Midrash Tannaim* on Deuteronomy 14:7 (ed. Hoffman, 74.) states, “*They are impure for you, but they are taken into account (חשובין) for others* (that is, considered as edible).” There are a few exceptions regarding whether or not thought/*mahshabah* determines the susceptibility of food substances to ritual impurity. According to *mUqutzin*3:2-3, different communities might have different standards or norms as to what constitutes food, sometimes their norms may play a crucial role in determining susceptibility to ritual impurity. For example, the same food may require “thought” in order to be classified as impure in the countryside, where it is not normally consumed, whereas it may *not* be required to render the food ritually impure in the urban areas. In some instances, one does not require such “thought” to render food ritually impure because this is presumably attributed to the very fact that such food is commonly eaten in such a way that thereby has such a food substance automatically assumed for ritual impurity. See also Balberg, 87.

In this Mishnah, the rabbis discuss on the issue of whether a pigeon that has died by falling into a wine vat can be classified as human food or waste. By formulating a “plan” or “intention” (חשב עליו) to sell such a dead bird, the dead pigeon can thereby be classified as “food” for sale in the market place. Here in this Mishnah, the Israelite’s intention to sell the pigeon for consumption thus enables it to fall into the category of food.²²⁴

As the Hebrew phrase *hashab alav* (חשב עליו/“(the owner) intended or planned”) clearly suggests, an Israelite who *plans* or *intends* to sell the dead pigeon in the market place is automatically placed into the category of food, which thereby renders it susceptible to ritual impurity. In other words, as in the case of the usability of artifacts as a major criterion for determining their susceptibility to ritual impurity, one’s *conscious decision* to eat any forbidden substance for consumption has the power to transform the inedible substance into food, which thereby effects its susceptibility to impurity. Here, it is through one’s cognitive intention that susceptibility to ritual impurity signifies as a marker of edibility or vice versa, thus introducing the object into the realm of ritual impurity.²²⁵

²²⁴ Ibid., 215-6. n. 6. Since the pigeon in this Mishnah is not properly slaughtered according to the prescribed procedure, it is categorized as “carrion.” According to the mishnaic system of classification, the carrion of birds transmits ritual impurity to a person if he or she intentionally eats it. However, merely coming in contact cannot render anybody or any object ritually impure either. Although the bird is originally classified in the category of carrion, once it enters the category of “food,” it is subject to certain restrictions; it begins to be defined and treated as “food” which absorbs ritual impurity as food. Like any other foodstuffs that have become ritually unclean, it can now impart impurity to other foodstuffs while any object categorized as “carrion” *cannot* impart such impurity to other foodstuffs because they are completely different substances of different categories. Once any substance that was previously categorized as carrion enters the category of “food,” then it becomes ritually unclean and imparts impurity to other food substances as “food” rather than carrion. Hence each object/substance defined in different categories receives a different treatment or status according to the way in which it is classified. Another similar mechanism is also found in *mZeb*2:5, in which the priest’s plans or intention have the power to alter the cultic status of an animal primarily designated for a sacrifice. Simply put, his “intention” to eat the meat of a sacrificial animal in effect enables him to classify the cow, originally sacrificed on the altar, as a meat slaughtered for human consumption by removing the cow from its original classification as a holy object. Hence, one’s mere formulation of an intention to designate a certain object for a particular purpose allows him to alter the classification and status of that object. Cf. Eilberg-Schwartz, *The Human Will in Judaism*, 99.

²²⁵ Although blood is most often considered as a substance that may not be drunk, as noted in *Lev*17:10-13, interestingly *mMakhshirin*6:5 designates blood as a liquid for drinking, perhaps for animals or for gentiles. See also Balberg, 213. n. 55.

*mKelim*22:2

השולחן שנטלה אחת מרגליו - טהור.

נטלה שניה - טהור.

טמא כשיחשוב עליו.²²⁶

A [three-legged] table that one of the legs of which was removed – is pure (insusceptible to ritual impurity).

If the second one was removed – it is pure.

If the third one was removed, it becomes ritually impure once he thinks about it

The above Mishnah construes a two-legged or one-legged table as “not usable,” which is therefore categorically considered as ritually pure due to the fact that it has gone out of use. The tabletop, however, can potentially become susceptible to ritual impurity because one’s “intention” or “deliberation” to use it for a particular purpose. The susceptibility of this tabletop to ritual impurity indicates that someone actively wants or intends to use this table top. As the clause “*once he thinks about it*” (כשיחשוב עליו) clearly implies, one’s thought serves as not only the power to transform “not yet usable” objects into “usable” ones, but also the power to change “no longer usable” items into “usable” items, meaning that there is another new way of using them. This Mishnah, moreover, makes clear that the actual owner of artifacts are capable of rendering them susceptible to ritual impurity by an act of deliberation through which humans are mentally invested in these artifacts.²²⁷

²²⁶ MS Kaufman A50 and MS Parma 2596 read as follows “it is impure *until* he thinks about it” (עליו) (טמא עד שיחשוב) Balberg points out that the Hebrew word “עד” (until) could also be translated as “by the time that” in Mishnaic Hebrew. See also Mira Balberg, *Purity, Selfin and Self*, 213 n. 48. I will examine her theoretical view of how susceptibility to ritual impurity can be used as a cultural construct to shape one’s Jewish selfhood, which also comes to define one’s subjectivity to divine law including the laws of conversion in a great length in the fourth chapter.

²²⁷ Additionally, that Mishnah, as Balberg points out, notes that the ownership of an artifact a person possesses also serves as a criterion for its susceptibility to ritual impurity. Put simply, the understanding of an artifact as “being owned” by the owner renders the artifact susceptible to ritual impurity. As in the case of the completion of labor (גמר מלאכה), the concept of one’s ownership likewise constitutes a crucial maker of susceptibility to such impurity because the owner is mentally, subjectively, invested in the article he possesses through his “thought,” “will” or “intention” to use

Lastly, the Mishnah below concerns the issue of whether the fetus of the cow properly slaughtered belongs to the category of food or waste (its entrails). That is, the rabbis wish to determine whether the fetus can potentially become susceptible to ritual impurity. Mishnah *Hulin*4:7 involves the case of whether the fetus of a slaughtered cow can belong to the category of the animal's meat or to the category of its entrails. If the fetus belongs to the category of the animal's meat, then it is classified as food that can be potentially rendered ritually impure:

*mHul*4:7

השוחט את הבהמה ומצא בה שליא - נפש היפה תאכלנה, ואינה מטמאה לא טמאת אכלין, ולא טמאת נבלת.
חשב עליה - מטמאה טמאת אוכלין, אבל לא טמאת נבלות.

[Regarding] an Israelite slaughters an animal [according to the correct procedure] and finds fetus within it –

A person with a strong stomach may eat. [Since the animal was properly slaughtered, Israelites permitted to eat the fetus just as they are permitted to eat the meat of the animal. Therefore a person who can tolerate such food is permitted by law to eat it if he or she desires so].

[Although Israelites are permitted to eat a fetus, it falls into the category of waste, with the result that] it cannot contract food impurity. [This is because most Israelites consider the fetus repulsive and do not eat such things. Since Israelites do not regard a fetus as food, it does not contract the ritual impurity of food].

And [in the case of a fetus that was discovered in a cow that had been slaughtered improperly, the fetus “does not transmit”] the impurity of carrion [because only the meat of carrion transmits

it. Such a concept appears namely in the context of the rulings concerning the recovery of items that are either lost or stolen. It is especially made manifest in the *halakhic* principle of the “despair of the owners” (יאוש בעלים/*ye'ush be'alim*), in which once an owner “despairs” of a lost or stolen object, the very object he owns no longer belongs to him and whoever *wants* or *intends* to take hold of it can legally claim its ownership. One can thus sever his attachment to the article through his mental investment in it in order to abandon ownership or vice versa. This indicates that the establishment of one's *mental ties* or *attachment* to his possession through thought or intention for daily use is what thereby constitutes ownership, thereby incorporating his artifact into the realm of ritual impurity. See more in detail *mBava Qamma*10:2, *mKelim*26:8 or the second chapter of *Bava Metzia* regarding the laws of “despair of the owners” Cf. Balberg, *Purity, Body. Self*, 84.

uncleanness. The fetus, like the bones, sinews, and fat does not (Lev7:24; mHul9:1).].

[If, however, in the case of the properly slaughtered cow, the slaughterer] planned [to eat] the fetus (hshab aleha) [before carrying out the slaughter] -

[The fetus falls into the category of food with the result that] it can contract food impurity, [In this case, the intention or thought of the slaughterer determines the status of the fetus as food].

But [in the case of the improperly slaughtered cow, if the slaughterer plans to eat the fetus and thus clearly regards it as part of the beast's meat, it nonetheless does not fall into the category of meat, and hence] does not [transmit] the impurity of carrion. [In this case, the intention of the slaughterer is irrelevant. The fetus is treated as part of the cow's entrails even if the slaughterer considers it as meat].

This Mishnah presents two cases of how human thought or intention effectively treats the fetus. The first case dictates that human intention has the power to render the fetus susceptible to ritual impurity, which defines it as food while in the second case such intention is rendered ineffective.²²⁸ As clearly evidenced by the phrase “(the slaughter) planned [to eat] the fetus” (חשב עליה), the formulation of the Israelite's intention or plan (mahshaba/מחשבה) to eat the fetus of the cow has the power to effectively classify it as food and hence potentially determine its susceptibility to ritual impurity.²²⁹

The close reading of this Mishnah (as well as another Mishnah examined above),

²²⁸ mHul4:7 illustrates two contrasting cases as follows: the first case involves a situation where the cow is *properly* slaughtered by an Israelite, subsequently discovering the fetus of a baby cow upon dissecting the carcass, while the second case deals with a situation where an Israelite who has slaughtered a cow *improperly* finds a fetus in it.

²²⁹ Eilberg-Schwartz, *The Human Will in Judaism*, 111-13; 115. Under certain circumstances the formulation of human intention or plans is not effectively conducive to altering the character of objects in question. In the second case of mHul4:7, the entrails, however, do not become susceptible to ritual impurity because certain substances such as flesh from a corpse, semen, and dead animals are defined as sources of ritual impurity as specified in Lev11:29-32. It is for this reason that the formulation of plans or intention in this instance is ineffective or inoperative. This suggests that it is God alone that can determine which objects are defined as “sources” of such impurity while human beings cannot effectively alter or affect the status of such substances. This Mishnah presupposes and dictates the notion of divine agency as discussed above. As I will discuss below, in the mishnaic system of classification, human beings are in fact commissioned as divine agents to define what substances or objects contract ritual impurity from sources of such impurity. For that purpose alone, they may as well have a divine mandate to determine exactly what constitutes food or useful objects/artifacts.

moreover, reveals that from the moment the Israelite formulates an intention or plan/*mahshabah* to do whatever is or will be designated to do with a certain substance or object, it can potentially absorb ritual impurity, which most importantly constitutes the terms of human agency to fulfill the divine task of classifying the world. As in the case of the usability of an artifact, the Israelite's intention to classify a substance/object in question as food makes it susceptible to ritual impurity. This, as I have repeatedly argued above, affirms the human agency to carry out God's mandate to classify the world, which is tantamount to creation. Or put it differently, human beings, again, have the absolute power to define the classification of certain objects in question when it comes to determining what objects are rendered susceptible to ritual impurity through the formulation human intention or plans.

Having examined the above mishnaic texts, the Mishnah thus promotes the idea that classification allows the rabbis to alter their fundamental character of objects in question by formulating intention to classify them into certain categories that the framers of Mishnah deemed fit. It is the human intention (*mahshavah*/מחשבה) that plays a critical role in shaping the character of the world. It constitutes one of the significant aspects of the reality for the rabbis. It also allows them to determine whether or not objects contract impurity and prescribe how to treat such substances in accordance with divine law. Most importantly, it is significant because it allows them to partake in the work of creation because the mishnaic notion of human thought or intention corresponds significantly to the divine will at creation. In this conceptual framework, just as God created and classified the world by exercising His will at creation, so too in the Mishnah humans can impose order on the world by formulating intention or plans to classify and shape its character as prescribed by the mishnaic system of classification originally ordained by God. In so doing, humans can carry out and embody the divine task of creation. In other words, the mishnaic concept of classification is tantamount to the divine work of creation.

Humanity as God's Agent of Creation

As noted, God permitted Adam to give all types of animals names on His behalf in the biblical account of creation. In other words, God appointed humanity as His "agents" to

carry out His divine task of creation, which implies that God's primary role of imposing order on the world is now bestowed upon Adam so that he can now serve as His proxy to complete the divine task of classifying the character of the world. The Mishnah, on the other hand, appropriates this biblical conception of agency into its own system. It develops the idea of human agency or proxy in order to carry out the divine work of classification. In the biblical account of creation, God appointed Adam to serve as an agent to classify the world on His behalf, which also means that both of them are partners in a joint venture of the divine task of creation. In the Mishnah, appointing someone as an agent or proxy fundamentally also entails the resemblance between the agent and the principal in that they have reciprocal rights and obligations.²³⁰

In the Mishnah, numerous occasions on which the principal appoints the agent to fulfill legal obligations on his behalf are discussed, which produces a great deal of legal effects. For instance, a principal asks another person to fulfill his obligation to set aside produce dedicated to the Temple on his behalf.²³¹ Or a person appoints an agent (*sharia*/שליח) to deliver a writ of divorce to his wife (נא)²³² or marry a woman on his behalf.²³³ Importantly, These legal situations attest to or are characterized by the mutual rights and obligations that both the principal and the agent have to each other.²³⁴

Another feature of agency is that the principal has the power to transfer his/her own legal powers to the agent. This means that such transfer of legal powers in effect creates a great deal of legal effects. If a householder appoints his son as an agent to carry out his obligation to set out produce on his behalf, the son may fulfill that task.²³⁵ In this case, the householder in effect transfers his legal power to his son in order to sanctify the produce by assigning his task to his son. The son as an agent can also create the same legal effects

²³⁰ On the Jewish concept of agency, see Israel Levinthal, "The Jewish Law of Agency" in *Studies in Jewish Jurisprudence*, ed. Edward M. Gershfield, (New York: Hermon Press, 1971), 9-83. Cf. Eilberg-Schwartz, *The Human Will in Judaism*, 108.

²³¹ *M.Ter*4:4.

²³² *M.Git*1:4; 4:1.

²³³ *M.Qid*9:4.

²³⁴ Eilberg-Schwartz, *The Human Will in Judaism*, 108.

²³⁵ *M.Ter*.3:4.

as the principal as well.²³⁶

The rabbis' concept of agency therefore shapes the way in which they conceive of human role in the mishnaic system of classification. Their concept of agency implicit in the biblical account of creation suggests that in appointing humans as divine agents, God transfers His divine powers to humans in a way that can create a great amount of legal effects, namely the divine task of creation by classifying the character of reality. The Mishnah in effect attributes to humans powers that are equivalent of God's because humans are understood as serving as divine agents in the mishnaic system of classification.²³⁷ Again, in the biblical account of creation, it was the divine task of classification that shaped the reality of the world. The rabbis in the Mishnah, on the other hand, define human acts of classification as analogous to creation.²³⁸ As I have repeatedly argued, when a person classifies an object in question under a certain category, he or she can alter the basic characteristic of that object, namely determining whether or not the object can contract ritual impurity. This evidently demonstrates that the Mishnah ascribes to humans profound legal consequences to the system of classification in shaping the character of the world.

The Mishnah's concept of agency or proxy suggests that humanity partakes in the divine task of classifying His creation by serving as a "secondary" or "quasi" creator.²³⁹ In other words, they do so with their capacity to analyze the reality of the world around them, namely classifying the fundamental character of its reality by formulating intention/*mahshavah*. It is this *mahshavah* or human rational/cognitive capacity that enables them to comprehend the order of creation in classifying the world as divine agents.²⁴⁰ Humans are therefore authorized by God to define what objects would fall into

²³⁶ Eilberg-Schwartz, *The Human Will in Judaism*, 108-109.

²³⁷ Ibid., 109.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ This also indicates that only adult Israelites with rational faculties will have the power to classify the world. Children, deaf-mutes and mentally challenging persons have no intellectual power whatsoever to determine the classification of an object in question as God's agents. Therefore any of the above persons has no power to define the classification of such an object. See *mKel*17:15; *mMakh*3:8. Cf. Eilberg-Schwartz, *The Human Will of Judaism*, 110.

the designated categories set forth by Him. They can have absolute control over the classification of such objects insofar as they fulfill the divine terms of agency. Through engaging in the task of classifying them, they will have fulfilled the divine will.²⁴¹

Conversion as the Bavli's Act of Legalizing the Divine Task of Classification

In short, the textual and conceptual developments of conversion as a legal procedure in the *Bavli*'s 'Tractate' of Conversion demonstrate that conversion can be understood as the rabbinic act of classification. As noted earlier, the form analysis of this unit reveals that the theme of conversion is textually structured in the form of a tractate, which means that its literary form consisting of a set of six baraitot is in fact treated by the *Bavli* in the same manner as mishnaic texts, whose theme needs to be thoroughly discussed and examined by the later generations of the sages to create and develop new *halakhic* applications in ever changing cultural and social contexts. The *Bavli*'s utmost concern with legal stringency in institutionalizing conversion as a legal procedure demonstrates that the stringent views of the conversion procedure, validated by Amoraim and the anonymous redactor (*Stam*) of the *Bavli*, are attributed to earlier Tannaitic sages, which indicates that conversion is understood and thus treated as a stringent legal process that needs to be

²⁴¹ This explains the reason why Israelites/Jews must learn the rules that govern the (Mishnah's) theory of classification to fulfill divine law/*halakhah* because their failure to fulfill it results in a direct violation of God's will, which also undermines His divine order of creation. For example, the Mishnah requires that every Israelite/Jew recite certain blessings over the food they are about to eat in a properly prescribed manner because every meal serves as an occasion for reflecting on and celebrating the divine act of the creation of the world. For example, as *mBer6:1* illustrates, one must learn how to distinguish a difference between "fruit of the tree" (פרי העץ). Over any fruit that grows on a tree (פרות האלון), one must say, "(Blessed are you...) who has created the fruit of the tree" (בורא פרי העץ); over vegetables one must recite, "(Blessed are you...) who has created the fruit of the ground" (בורא פרי האדמה). In reciting blessings over food, one must know which specific food items fall into primary categories of what constitutes food. One must know that since "fruit of the ground" is a subcategory of "fruit of the earth" (פרי הארץ), one must recite "fruit of the ground" (פרי האדמה) over a potato. By contrast, one cannot fulfill his religious obligation by reciting "the fruit of the tree" (בורא פרי העץ) over a potato because a potato is not included in the primary category of the fruit of the tree. The Mishnah therefore demands their mastery of the various classifications God had established in nature at creation. Failure to classify or understand such classifications undermines the divine order, thus incapable of celebrating His creation. Therefore, the Israelite rational capacity to understand the divine classifications is equivalent of ordering the divine creation, which allows them to have powers that are tantamount to God's. Cf. Eilberg-Schwartz, *Human Will in Judaism*, 109-110.

defined and thus classified under certain categories.

It is therefore in this conceptual and textual framework that the Bavli attempts to classify the convert as a newborn under the general category of Jew/Israel. In my view, the Bavli appropriates the Mishnah's concept of classification, which is also based on the biblical concept of the divine creation, so as to create and develop the legal concept of conversion as new birth; to classify the convert as a newborn may be understood as the divine act of creation because such an attempt at the categorization of particular entities is crucial to shaping the fundamental character of entities, which is in full accordance with the mishnaic system of classification as part of the task of the divine creation. Therefore, in light of the *halakhic* standpoint, the *Bavli's* conceptual development of the institution of conversion in the 'Tractate' can be defined as the divine work of creation.

Particularly unique and significant in the Bavli's effort to classify the convert as Israel is its use of the strategy of rhetoric and phrasing. As mentioned earlier, one's formulation of intention shapes a magical effect of altering the character of reality in the classificatory system of the Mishnah, which conceptually corresponds to the notion of the divine will in the biblical account of creation, in which God created and classified the world by exercising His will. In the mishnaic context, it is humans that classify the world by formulating intention or plans. Therefore, in the context of the 'Tractate', the Bavli's use of rhetoric and rephrasing such as "פשיטא" and "הרי" demonstrates that it perhaps functions as a kind of human intention/*mahashavah* in reshaping the *halakhic* meanings of the Talmudic text so as to promote its specific *halakhic* agendas (*i.e.* the attribution of stringent views to the earlier sages or the rejection of earlier lenient views to promote the validity of specific *halakhakhot*/laws) although no such word is explicitly stated in the Tractate. The change of semantics by way of rephrasing and reworking the original, earlier Tannaitic (perhaps also Palestinian Amoraic) texts is another significant strategy of the Bavli's use of its rhetoric. The *Bavli* seeks to construct the concept of the convert as a newborn (קטן שנוולד) by changing the semantics of the phrase בן יומי that appears in its parallel in *Gerim* in order to deduce the notion of conversion as new birth. Therefore, it demonstrates that the change of semantics can carry new meanings in new *halakhic* contexts, which can shape the fundamental character of certain entities although both texts share the same *halakhic* views

and agendas. In this sense, I believe that although there is no direct reference to the concept discussed above, the Bavli's rhetoric and rephrasing can serve as the mishnahic concept of *mahshavah* in shaping the fundamental character of reality in new cultural and social contexts.

Conversion as a court-controlled procedure governed and administered by *Beit Din* consisting of sages suggests that it serves as divine agency or proxy in carrying forward the task of the divine creation and that the rabbis who constitute a sole representative body of the entire Jewish community have the powers and authority to carry out the divine task as the divine agents. Because God in effect ascribes humanity powers analogous to His by transferring such powers and authorities to them in order to carry out the divine task of creation on His behalf, they can exercise their powers to classify the fundamental reality of the world. We have learned above that in the biblical account of creation, it was the divine acts of classification that shaped the fundamental character of reality while in the Mishnah the rabbis treat human acts of classification as equivalent to the divine work of creation. This demonstrates that the Mishnah ascribes to humans profound effects to their acts of classification to such an extent that what they classify in effect produces tremendous legal consequences.

Therefore, in a similar manner, the rabbis in the Bavli can exercise their power to have absolute control over their acts of classification, which is tantamount to the divine acts of creation, insofar as they fulfill the divine terms of agency. The Bavli's effort to attribute more stringent views to the majority of the sages in deciding on particular *halakhic* cases such as the necessity of both circumcision and immersion and a demand for a rabbinic court/*Beit Din* consisting of three sages for conversion indicates that their legal decision, though textually reworked later by the *Stam* to be attributed to earlier Tannaitic sages, produces profound legal powers and consequences to shape the fundamental character of reality. In this light, it is the rabbis as God's agents that define the classification of conversion as a new creation. By engaging in the task of classifying the convert as a newborn child or more specifically as Israel, they have fulfilled the divine will of

creation.²⁴²

Conclusion

The 'Tractate' of Conversion demonstrates reflects a long process of the Bavli's gradual evolution of the conversion procedure. Its stringent tendencies towards the need of a rabbinic court, a performance of immersion as a status confirmation ritual that signifies the convert's change of status, and the demand for majority views as a defining factor of (dis) approval by a new society are all documented, preserved and presented throughout different parts of this Talmudic unit as reflecting different chronological layers, according to which early Tannaitic concepts were reworked and re-conceptualized by way of its strategy of textual reworking and rephrasing. Such stringent standards and concepts were read by the anonymous redactors/*Stam* of the Bavli into earlier Tannaitic texts and already established as legally valid in the Tannaitic period by attributing them to earlier Tannaitic sages. Through the Bavli's use of rhetoric implied by particular phrasing and wording, it also changes the semantics of earlier concepts to create new *halakhic* meanings. Most important of all in the Bavli's textual evolution of the conversion procedure is the development of the notion of the convert as a newborn child; this new halakhic construct comes to shape a new kinship identity for the convert that allows him to be integrated into the kinship structures of the Israelite community defined by genealogical descent. All of these textual and conceptual processes merged together to promote and develop coherent values and ideas, thus establishing conversion as a legal institution that defines the demarcation of the group boundaries of Jewish identity.

²⁴² In addition, as mentioned earlier, this Talmudic unit as a tractate demonstrates the demarcation of the group boundaries that define Jewish identity, which enables converts/the native-born to differentiate themselves from the gentile other. This suggests that the conversion procedure documented and preserved in the *Bavli* illustrates a manner in which Jewish ethnic identity *is* or *can be* not only invented but also maintained. In fact, As I argue in the fourth chapter, the *Bavli's* invention of conversion as new birth embedded in the mishnaic system of classification in effect has tremendous implications in examining the notion of Jewish (ethnic) identity; examining conversion allows us to view the notion of Jewish identity as a cultural construct subject to change and negotiation with higher degrees of fluidity.

Chapter 2

“A Convert as a Newborn Child”

Conversion as Erasure of Gentile Kinship

Conversion as “Fictive” Kinship Construction

Rabbinic literature clearly attests to the fact that rabbinic conversion (גיור) involves a radical transformation of a convert's identity. It transforms a gentile into a Jew, which implies that he is defined as an entirely new person with an entirely new identity. This also presupposes that the convert's entrance into the community of Israel by way of conversion creates his new kinship relationships. Radically hyperbolic as it may sound, a change of the convert's legal, social, and religious status upon conversion, however, entails a change in his *kinship* itself. In the *Bavli*, such a radical transformation of his genealogical identity upon conversion can find concrete expression in the phrase “A convert is like a newborn child” (גר נתיייר כקטן שנולד דמי). This unique Babylonian phrase appears especially in the context of extensive discussions of the laws related to levirate marriage (ייבון), incest (הערייות), procreation (פריה ורביה), and the inheritance of the firstborn (בכור לנחלה), all of which aim to sever the convert's former kinship ties with his gentile relatives on the father's side, whose relationships no longer matter upon his conversion (*bYev22a*; *62a*; *97b*; *bBek47a*). Since the basic criterion of the Israelite group membership is defined primarily by genealogical descent, such a severing of his previous gentile kinship ties is crucial to ensuring full entrance into the very kinship structures of the Israelite community. In this chapter, significant attention is paid to the two *halakhic* concepts of conversion that indeed entail the creation of newly, albeit fictively, defined kinship relationships for the convert:

(1) “A convert is like a new born child” (גר שנתגייר כקטן שנולד דמי):

According to this phrase, which appears only in the *Bavli*, conversion transforms a gentile into a Jew, an entirely new person with an entirely new identity, which suggests that his kinship ties with his gentile relatives are literally severed upon

conversion.

(2) “A gentile has no paternity” (אין אב לגוי):

This dictum, which appears only in Palestinian *Amoraic* sources, articulates that there is no valid paternity for a gentile even while he was still a gentile. No valid paternity between a gentile and his offspring born prior to his conversion is established, and such a situation continues even after his conversion.

Moshe Lavee has indeed claimed that the notion of “A convert is like a newborn child” is based on the *halakhic* premise in Tannaitic tradition that the convert is assumed not to be related to his former kin either because his kinship ties are severed upon his conversion or because paternal kinship relations between the convert and his gentile father was never established prior to his conversion, which implies that he is not still considered as the legitimate offspring of his biological father after his conversion. This presupposes that he comes to be linked *genealogically* with the members of the community of Israel.²⁴³ Therefore my argument of “fictive” kinship in the context of rabbinic conversion calls attention to the “made-up-ness” of kinship constructions. Instead of understanding rabbinic conversion as entailing a religious system open to all those who accepted its beliefs and practices, I strongly suggest that conversion needs to be understood as a system of “fictive” kinship construction designed to incorporate converts into the very kinship structures of the people of Israel; such a view will surely help provide a new way of reading the concept of kinship and ethnicity embedded in the rabbinic laws of conversion, which suggests that the change of one’s religious orientation itself, though problematic to define, is closely intertwined with the change of one’s ethnic descent. Since rabbinic literature clearly shows that the convert, who has severed all family ties with his gentile relatives upon conversion, is no longer defined as a gentile, his consanguinity thus

²⁴³ Moshe Lavee, “A Convert Is like a Newborn Child: The Concept and Its Implications in Rabbinic Literature” [in Hebrew], Ph.diss., Ben-Gurion University in the Negev, 2004, 46-51. Cf. Lavee, “No Boundaries for the Construction of Boundaries: The Babylonian Emphasis on Demarcation of Identity,” in *Rabbinic Traditions between Palestine and Babylonia*, ed. Ronit Nikolsky and Tal Ilan (Leiden: Brill, 2014), pp.100. Bernard J. Bamberger, *Proselytism in the Talmudic Period* (1939: repr., New York: KTAV Publishing House, 1968), 86-91.

needs to be redefined as a legitimate member of the Israelite community.

For that reason the study of rabbinic conversion in late antiquity must therefore be called into scrutiny in terms of how the convert undergoes procedures that enable transformation especially in matters related to kinship and ethnicity.²⁴⁴ As rabbinic sources clearly suggest, conversion is understood as enabling a gentile to become a Jew, which I believe indicates a form of fictive kinship construction that genealogically

²⁴⁴ Gary Porton, in his thorough analysis of conversion in rabbinic literature, views converts as those who are genealogically ambiguous and ethnically distinguished from the native-born Israelites along the lines of ethnicity and kinship, therefore failing to grasp a comprehensive picture of the convert's ethnically redefined Israelite identity especially when it comes to examining the notion of "*A convert is like a newborn child.*" Especially on 220 in *The Strangers within Your Gates*, he wrote: "The rabbinic views on converts and conversion illustrate the dual focus of rabbinic Judaism... On the one hand, it was an ethnic system designed for native-born Israelites. On the other hand, it was a religious system open to all who accepted its beliefs and practices. Israelites were included in both... Converts occupied a middle ground. While *they could never fully become part of the ethnic People Israel, they could almost fully participate in the religious Congregation of Israel as a distinct segment of that Congregation.*" I may not endorse and perhaps even refute his assessment of conversion and converts because his view clearly presupposes a sharply drawn dichotomy between religion and ethnicity in defining the convert's Jewishness and that such an approach may undermine or fail to examine the complex nature of kinship relations interwoven in the laws of conversion. Although the converts' ethnic and kinship status may be at first understood as fictively constructed vis-à-vis the native-born Israelites, his overall analysis is contrary to what I've observed in the rabbinic texts that deal with conversion, especially concerning the notion of converts as newborn children.

Shaye J.D. Cohen likewise approaches conversion as sharply distinguishing between ethnicity and religion in discussing the implications of the convert's legal status and his genealogy as especially seen in the *sugya* found in *yBikkurim* 1:4, 64a which deals with the issue in which the convert should be included in the genealogy of the Patriarch. Interestingly there is one rabbinic text that provides details of the convert's genealogical status in Jewish society. The *gemara* of *bQid69a* (*mQid4:1*) records the ten genealogical castes, in whom converts are included as the 5th descent group, whose former, gentile, origin is completely ignored, which surely tells us something about the nature of the convert's ethnically or genealogically defined status. As the very term we're about to examine illustrates, such dichotomy between religion and ethnicity is not fully functional nor is it comprehensive in examining the implication of the notion of "*A convert is like a newborn child.*" Gary Porton, *The Strangers within Your Gates: Converts and Conversion in Rabbinic Literature* (Chicago: The University of Chicago Press, 1994), 1-8, 211-215, 220. Shaye J.D. Cohen, *The Beginnings of Jewishness: Boundaries and Uncertainties*. (University of California Press: 1999), 198-238. On the contrary to the views of the two above scholars, Lavee, however, argues that the institution of conversion governed by the proper court procedures cements and solidifies the kinship validity of the convert, which is incorporated into the community defined by descent in genealogical terms by paying special attention to the notion of the convert as a newborn child. Although the general survey of the conversion procedure in rabbinic literature is beyond the confines of this study, the data and insight gained in the following studies are still worth examining: Moshe Lavee, "'Tractate of Conversion'-BTYeb.46-48 and the Evolution of Conversion Procedure," *EJJS* 4.2 (2011): 169-213.

incorporates the converts into the kinship structures of the Israelite community defined by descent. The rabbis, in fact, stressed the abiding significance of descent in maintaining the group's boundaries, and the concept of genealogical descent is indeed an indispensable factor in defining the conceptions of Jewishness. At the same time, the understanding of conversion itself, however, presupposes the constructed nature of the group's identity formation²⁴⁵; one's genealogical descent is, though fictive in nature, newly invented upon conversion.²⁴⁶ In other words, conversion serves as a mechanism that creates a legal fiction that renders a convert of foreign origin fully equal to the native-born Israelite in every respect. In light of this understanding, I will examine how the notion of the convert as a newborn child is theoretically implied and discursively employed in Tannaitic and Amoraic literature in an attempt to reveal rabbinic conversion as a form of "fictive"

²⁴⁵ Conversion, often understood primarily as a private matter of faith and conscience that entails a total transformation of one's worldview and orientation of life, is also intertwined with other forms of cultural identity. Arthur Darby Nock views the concept of conversion as encompassing a complete change of one's orientations and commitments. This understanding, however, is based on the theoretical premise that conversion itself often comes to be viewed as sharply distinguishing ethnicity/genealogical descent from systems of religious belief and practice. I suggest that rabbinic conversion documented in rabbinic sources, however, is a culturally embedded phenomenon that entails the crossings of cultural and ethnic boundaries, which indicate the change of one's kinship relationships. Nock's approach to conversion, which is characterized as what he calls "adhesion," has been revised in such a way that conversion is interwoven with a process of initiation and action within the same religious cult or community embedded in its social context. Arthur Darby Nock, *Conversion: The Old and the New in Religion from Alexander the Great to Augustine of Hippo* (1933; repr., Baltimore: The Johns Hopkins University Press, 1988), pp. 3-16. For the critique of Nock, see also Wayne A. Meeks, *First Urban Christians: The Social World of the Apostle Paul* (New Haven: Yale University Press, 1983), pp. 77. John Curran, "The Conversion of Rome Revisited," in *Ethnicity and Culture in Late Antiquity*, ed. Stephen Mitchell and Geoffrey Greatrex (London: Duckworth and the Classical Press of Wales, 2000), 8.

²⁴⁶ Denise Kimber Buell, *Why This New Race: Ethnic Reasoning in Early Christianity* (New York: Columbia University Press, 2004), 158. Conversion, as Denise K. Buell in fact points out, is understood as presenting a "socially embedded process that enables the crossing of social and ethnic boundaries." Following such a premise, a crossing of social boundaries presupposes one's change in "kinship" and "ethnic affiliation." In fact, rabbinic sources do illustrate that a convert to Judaism severs his family ties upon his conversion, and the former kin he had prior to conversion are not genealogically considered as his, clearly implying that he is defined as someone whose genealogical descent is newly incorporated into the kinship structures of Jewish ethnicity. Thus it could be assumed that the convert's severing of all kinship ties with his former gentile relatives upon his conversion presupposes the creation of their new genealogical relationships that subsequently enables the definition of new, albeit fictive, Jewish descent.

kinship construction,²⁴⁷ into which the convert is incorporated as fully part of the Israelite community defined by descent.

Conversion as the Motif of Birth

Unlike the Bavli, whose sole purpose of conversion is to sever a convert's kinship ties with his gentile relatives, in Palestinian Amoraic literature the phrase "*A convert is like a newborn child*" has another implication: The convert's previous status prior to his conversion no longer matters upon his conversion, which refers to the complete transformation and renewal of his identity. In the Palestinian text such as Tractate *Gerim* 2:5, as well as its parallel baraita of the Bavli in *bYev48b*, it is stressed that the convert is not what he once was; he is not punished for his misdeeds or wrongdoings committed prior to his conversion because he is now considered as a newborn person. This clearly suggests that his previous deeds while he was a gentile are not regarded as his because he wasn't assumed to exist previously, which implies a radical transformation of the convert's identity:

Gerim 2:5

נפרעין מן הגרים כדברי רבי יוסי. רבי יהודה אומר: אין נפרעין ממנו אלא הרי הוא כבן
יומו. אמר רבי חנינא בן גמליאל: מפני מה הגרים מעוניין? מפני שהן מחשבין, קודם לשנה
קודם לשתים, שאגבה את חובי, ושאעשה את צרכי. אמר לו רבי יוסי: אלו ממון נחסרין, הרי הוא כדברך,
אלא שהם קוברים בנים ובני בנים וחלאים רבים וייסורין באין עליהן, מפני מה מעוניין? מפני שבע מצות

²⁴⁷ Joshua Levinson, "Bodies and Bo(a)ders: Emerging Fictions of Identity in Late Antiquity," *HTR* 93 (2000): 344. As mentioned earlier, in support of Buell's view, Joshua Levinson also offers the notion of a "fictive ethnicity," according to which the two dominant paradigms of genealogy and covenant help constitute Jewish ethnicity; although he does not call the former as ethnic and the latter as religious, both concepts are intertwined with each other to the extent that these two factors foreground the group's fixity, which fits the conceptual framework of rabbinic conversion. Levinson's term, a "fictive ethnicity," is surely helpful in understanding the constructed, made-up nature of Jewishness; yet a sharp distinction between "genealogical" and "covenantal" in defining Jewishness may undermine an analysis of the complex nature of kinship relations inherent in the laws of conversion. Put simply, I repeatedly suggest that rabbinic conversion should be understood as a form of "fictive" kinship construction; since kinship itself is a social construct that is subject to change and negotiation over time, it is not independent of the social context in which it is embedded but entirely defined by it. It is not the biology that defines kinship, but rather the social relations of reproduction that maintain the group's lineage. For more on the social aspect of reproduction, see Nancy Jay, *Throughout Your Generation Forever: Sacrifice, Religion and Paternity* (Chicago: University of Chicago Press, 1992). 36-7.

שנצטוו עליהן בני נח.

Converts are punished according to Rabbi Yosi; Rabbi Yehudah says: He is not punished, but behold he is like a one-day-old infant. Rabbi Hanina ben Gamaliel said: Why are converts visited with afflictions? Because they calculate a year or two years prior to their conversion, saying: When I have collected my debts and when I have dealt with my needs (meaning I will convert). Rabbi Yosi said to him: If they were to lose money, you would be right; but they bury their children and grandchildren and sore diseases and chastisements befall them. Why are they visited with afflictions? Because of the seven Noahide laws they were commanded upon.

bYev48b

רבי חנינא בנו של רבן גמליאל אומר: מפני מה גרים זמן הזה מעוניין וייסורין באין עליהן? מפני שלא קיימו שבע מצות בני נח. רבי יוסי אומר: גר שנתגייר כקטן שנולד דמי. אלא מפני מה מעוניין? לפי שאין בקיאים דקדוקי מצות כישראל. אבא חנן אומר משום רבי אלעזר: לפי שאין עושין מאהבה אלא מיראה. אחרים אומרים: מפני ששהו עצמם להכנס תחת כנפי השכינה.

*It was taught in the baraita: Rabbi Hanina ben Rabban Shimon ben Gamaliel said: Why are converts at the present time oppressed and visited with afflictions? Because they had not observed the Seven Noahide commandments. Rabbi Yosi said: **One who has become a convert is like a newborn child.** Why are converts oppressed? Because they are not so well acquainted with the details of the commandments as the Israelites. Abba Hanan said in the name of Rabbi Eleazar: Because they do not do it out of love but out of fear. Others said: Because they delayed their entry under the wings of the Shekhinah.*

Both texts deal with the current affliction of converts and the image of the convert as a newborn child. In addition, the convert's failure to observe the Noahide laws and their delay of conversion are presented as answers to their plight. It is important to note, however, that though the two texts are organized in a different manner, they undoubtedly present two similar phrases as referring to the radical change of the convert's status. We

also find that the phrase כקטן שנולד דמי ("considered as a newborn") in the *Bavli* differs semantically from the Palestinian phrase כבן יומו ("like an one-day-old infant"),²⁴⁸ suggesting that the Babylonian phrase assumes the convert as analogous to a newborn infant, by understanding conversion as the process of birth while the Palestinian phrase, on the other hand, places a more emphasis on his new age.²⁴⁹ Importantly, as the semantics of the word נולד suggests, this Babylonian motif of the convert as a newborn child in fact, as Lavee points out, carries a legal connotation. The phrase is perhaps understood as a literary reflection of the legal process whereby things that were created are considered as things that did not exist previously. In other words this Babylonian phrase therefore stresses that the convert is not punished for such former misdeeds while he was a gentile because his previous misdeeds are not actually considered as his. This phrase implies that upon conversion he is now defined as a new person with an entirely new identity just like a newborn infant. Moreover this phrase, which illustrates such *halakhic* resonance of the *haggadic* expressions, is reworked and presented more as indicating the legal process that brings about the change of status for the convert especially in the context of a legal severing of his former kin in the other *sugyot* of the *Bavli*.²⁵⁰

²⁴⁸ Lavee, "No Boundaries for the Construction of Boundaries," pp.97.

²⁴⁹ The implication of the term "is like/is considered as if" ("כ") as a form of abstraction that constitutes rabbinic law lies beyond the confines of this study. However it is worth briefly examining that rabbinic statements contain assertions of the existence of a sort of *halakhic* virtual reality, in which certain types of tangible objects or persons in question are treated differently than they really are. Such a form of abstraction, commonly known as legal fictions, occurs in numerous legal rulings in rabbinic literature. Leib Moscovitz, in fact, points out that the term "is like" / "is considered" ("כ") denotes a classificatory legal fiction, and *Tannaitic* sources as a whole employ the "as if/is like" terminology to introduce such a legal fiction while in post-*Tannaitic* sources such as the *Talmud*, such terminology is asserted as referential classification, whereby the case under consideration is treated in the same way as another case. The passages of *Gerim*2:5 as well as *bYev*48, however, use comparison-based classificatory terminology such as הרי הוא כ... (*behold he is considered/treated as...*) and גר שנתגייר כ... (*A convert who has converted is like/treated as...*) in a clearly figurative and metaphorical manner to assert legal formulations, which reflects referential classification rather than fictional representation of the facts. Furthermore such terminology of referential classification is usually used to render a particular object or action in question in/valid. Examples are found in *mSuk*1:2 "if one built a sukkah under a tree, it is as if he had built it inside a house"; *mMiq*10:6 states, "if one immersed a utensil which was full of liquid, it is as if he had not immersed it." More on legal fictions and their implications, Leib Moscovitz, *Talmudic Reasoning: From Casuistics and Conceptualization*. (Tübingen: Mohr Siebeck, 2002), 163-199; 165-166 n. 10; 167 n.14.

²⁵⁰ Lavee, "No Boundaries for the Construction of Boundaries," 97-98. In reference to *mBes*1:1 on an egg that was born on the Festival, Lavee also points out that the word נולד is used as

The phrase *בן יומי* in *Gerim*, in contrast, is quoted as marking a renewed status of the convert, whose previous sins were forgiven and atoned for upon conversion. This is perhaps viewed as a complete renewal of what Lavee calls a “continuity of personality of the convert”; the text implies that the convert, who sinned previously prior to his conversion, had his sins forgiven and atoned for upon conversion, and as a result he is now metaphorically described as a one-day-old infant, who does not carry the burden of any sin.²⁵¹ Such imagery of forgiveness and atonement for sins comes to evoke the imagery of conversion as symbolizing a state of complete renewal.²⁵² This indicates that it is the motif of forgiveness of his sins that enables him to be renewed as a completely new individual like a one-day-old infant. The Palestinian text uses such a metaphor of forgiveness and atonement for sins to stress the complete nullification of the convert’s gentile past,²⁵³ which makes it clear that this motif of birth, connected to the notion of forgiveness of sins, is used to mark the transformation of the identity of the convert.²⁵⁴

The image of the convert as a newborn child, as seen in both the Bavli and *Gerim*, invokes a different connotation of semantics in meaning. While Palestinian Amoraic sources use this imagery interchangeably for converts and Jews alike, the Bavli, on the

classificatory terminology, which seems to reflect Moscovitz’s assertion of referential classification. Cf. Moscovitz, “*Talmudic Reasoning*,” chapter 4.

²⁵¹ Note that similar statements equivalent to the one in *Gerim*, exclusively introduced as legal fictions, are also found in other *Tannaitic* statements, introduced by the expression, “רואין... כאילו” (we consider X... as if...) as well as “... רואה אני...” (I see/view/treat... as if...) or “... רואין שאם...” (we consider X... so that if...) as only seen in Tosefta. e.g. *mZev*8:4, 9 and *tZev* 8:15, 20 (ed. Zuckerman, p.492). *tSuk*1:12 (ed. Lieberman, p.259), *tZev*8:22 (ed. Zuckerman, p.492) *tMiq*4:10 (ed. Zuckerman, p. 656) Cf. Moscovitz, “*Talmudic Reasoning*,” 73 n.38.

²⁵² As suggested in *yBik*3:3, 65c-d, this phrase, however, is also used in other Palestinian sources to describe the forgiveness and atonement for sins of various groups of people such as a convert, a groom, a renowned scholar, sages, an anointed king, or the lay Israelites who observe the daily rites of atoning sacrifices. Therefore the phrase is used interchangeably for Jews and converts alike. Also, other Palestinian sources such as *yRH*4:8, 59c and *PRK* et qorbani, 4 use the phrase to refer to the atonement for the sins of Israel. Cf. Lavee, “No Boundaries,” 97.

²⁵³ Lavee, “No Boundaries,” 98-99.

²⁵⁴ Additionally it is important to note that this Palestinian phrase of a birth is closely linked with the motif of a new creation, referring to the convert as a new creation (בריה חדשה). In *yRH*4:8 as well as *GenR*39:11,14, it is stressed that anyone who was converted is as if he was created. This suggests the motif of renewal of one’s status is strongly reflected in the Palestinian usage of the term. George F. Moore also suggests that the notion of בריה חדשה refers to the complete nullification of sins in the past. George F. Moore, *Judaism: the First Centuries of the Christian Era - the Age of Tannaim*, Vol.I-III (Cambridge: reprint1966), 533. Cf. Lavee, “A Convert Is Like a Newborn Child,” 102 n. 40.

other hand, uses this image of a newborn exclusively for the convert, which is used to suggest the change of his legal status; the past misdeeds he committed prior to his conversion are not his because he is regarded as a newborn person with a new identity, who did not exist previously. This phrase is repeatedly used in the Bavli to articulate the legal status of the convert's relatives; if the convert is a newborn person, the very relatives he had prior to his conversion are no longer his relatives because they didn't exist previously and his kinship ties with his former kin is in fact to be severed upon conversion. This virtually means that this imagery is used to define the convert's new Jewish kinship to be incorporated into the kinship structures of the Israelite ethnic community.

Legalizing Severing of the Convert's Gentile Kinship Ties

The Bavli's unique phrase, "*A convert is like a newborn child*" (גר שנתגייר כקטן שנולד דמי), mostly found in the baraitot of the Bavli, has conceptual ramifications in several areas of family law and practice. Among them are the laws of levirate marriage, incest, procreation and the inheritance of the firstborn, all of which deal with the convert's severing of kinship relationships with his former gentile relatives.²⁵⁵ Especially the laws of incest related to the status of the convert and his offspring are particularly complex because (1) any offspring could be conceived while his parents were still gentiles upon their conversion, and (2) the convert severed all kinship relationships with his gentile relatives upon his conversion. For instance of if a convert were conceived prior to his mother's conversion but born afterwards, he is obligated to follow the rulings of the forbidden sexual unions with regard to his mother's relatives but not with his gentile father's relatives.

Unlike Palestinian Amoraic sources, this phrase appears only in the Bavli as part of the *halakhic* claim of the legal status of the convert and his offspring. Especially important in the implication for this phrase is the conceptual framework in which it is presented, suggesting that upon conversion he is perceived to be a new person with an entirely new identity with a lack of legally valid kinship with his previous gentile relatives.²⁵⁶ In this

²⁵⁵ Gary Porton, *The Strangers within Your Gates: Converts and Conversion in Rabbinic Literature* (Chicago: The University of Chicago Press, 1994), 171.

²⁵⁶ Lavee, "No Boundaries," 96, 99. Note that this phrase, which contains the Aramaic suffix (דמי "like"), is not an originally *Tannaitic* expression, but rather is rephrased as its Babylonian version.

vein the convert is understood as an entirely new person who had not existed previously. Since this phrase repeatedly appears in the Bavli as part of the *halakhic* discussions that deal mostly with the legal status of the convert's prior kin, the relatives he had prior to his conversion are no longer regarded as his actual ones. This understanding of the *Bavli* seems to stress that the convert's legally valid kinship ties with his gentile relatives are nullified upon his conversion, which enables him to be newly defined as Israel.²⁵⁷

More importantly, the notion of the covert as a newborn child, closely embedded in his severing of valid kinship ties with his former gentile relatives upon conversion, has ramifications in matters related to the marital law. Especially it concerns the laws of incest, which find concrete expression in the laws of levirate marriage, in which a man is obligated to have sexual intercourse with his deceased brother's wife who left no offspring for the purpose of maintaining lines of his brother's descent, and similar matters of family law in the extensive discussions in the Bavli. Since his family status legally becomes unclear upon his conversion, the convert is subject to certain marital restrictions, particularly concerning whom he may be qualified to marry. Especially complex are the issues of levirate marriage, which are further elaborated in extensive discussions concerning whether the convert is legally eligible to marry his deceased brother's wife as prescribed in *Deut.25:5-10*. Since levirate marriage is determined by paternal brotherhood as required in the above text, only brothers who are legitimate *Israelites* who must share the same *father* become subject to the levirate relationship,²⁵⁸ which calls into question

This indicates that the motif of the convert as a newborn child is evolved into a specific phrase that denotes a legal concept unique in the *Bavli*.

²⁵⁷ Porton, "*The Strangers within Your Gates*," 118. It should be noted that his legally valid kinship relationships with his relatives in fact might not be accurately acknowledged by members of the Israelite community. For instance if the convert lives with his sister, the native-born Israelites might assume that they too might as well live with their sisters because they would not normally recognize whether the convert, being a newborn child, has no legal relationship with his siblings. In the case of court testimony the native-born, however, would usually come to know that the convert is like a newborn child. In the *sugya* of *bYev22a*, it is ruled that two paternal brothers who are converts may testify against each other because they no longer have legal relationships with their gentile father as well as relatives.

²⁵⁸ *Ibid.*, 166, 177.

²⁵⁸ *Ibid.* Cf. Bamberger, "*Proselytism in the Talmudic Period*," 86-87. Roland DeVaux, *Ancient Israel, Vol1: Social Institutions* (New York and Toronto: McGraw-Hill, 1965), 38. Although DeVaux argues that "discussion about the purpose of the levirate seems to be endless," his view, in accordance

about whether the convert, who has severed kinship ties with his gentile father upon his conversion, is fully obligated to observe it. This suggests that maintaining paternal kinship relationships through the observance of levirate marriage is essential to perpetuating lines of paternally defined descent. Mishnah *Yevamot* 11:2 (Hereafter referred to as *mYev* 11:2) in fact states that the convert, however, cannot engage in a levirate relationship with his deceased brother's wife nor can he perform the rite of *halizah* because he has severed paternal ties with his gentile father upon his conversion. The Bavli goes on to discuss to what extent and under what circumstances he may or may not be eligible to engage in the levirate relationship and attempts to infer his kinship status from such marital restrictions.

Moreover the notion of "A convert is like a newborn child" is visibly elaborated in the extensive discussions in relation to the laws of incest derived primarily from the biblical injunctions of forbidden sexual unions as prescribed in Leviticus 18. Its underlying principle is based on an "uncovering of kinship of the flesh" (גילוי שאר הבשר),²⁵⁹ which is clearly addressed in *Lev* 18:6 'that none of you approach any close relative to uncover nakedness (אל כל בשר בשרו לא תקרבו לגלות ערוה)'. The prohibition of sexual unions with one's kin is spelled out with a view to formulating the rules banning sexual offense against uncovering a person's relatives' nakedness.²⁶⁰

with that of Porton, seems to correctly suggest that its purpose is to promote "an expression of the importance attached to blood-ties." This implies that through discussions of how and to what extent the levirate relationship can be defined in relation to and applied to the convert, *Tannaitic* sources formulate a law in which the convert's kinship is newly established through a severing of his gentile paternal ties.

²⁵⁹ *A History of the Family: Volume One Distant Worlds, Ancient Worlds*, (ed.) Andre Burguiere, Christiane Klapisch-Zuber, Martine Segalen, Francoise Zonabend Introduced by Claude Levi-Strauss and Geroges Duby *Translated by* Sarah Hanbury Tenison, Rosemary Morris and Andrew Wilson (Cambridge, Massachusetts: The Belkap Press of Harvard University Press, 1996), 171-172. In fact the Talmud had gradually added a number of marriage prohibitions, whose legal structure had been aligned on the biblical law prohibiting incest. These marriage prohibitions that concern sexual taboos of consanguinity, originally derived from Leviticus 18, are defined as the Torah law (מדאורייתא), which serves as the basic foundation on which the notion of the convert as a newborn child is based in extensive discussions of the Talmud.

²⁶⁰ Calum M. Carmichael, *Law, Legend, and Incest in the Bible: Leviticus 18-20* (Cornell University Press, Ithaca and London) 1997, 17-18 n. 8. Carmichael points out that the connecting particle *waw* (ו) "and" in the following verse tends to be used by contemporary interpreters as *waw* explicative "which is" in a circumstantial clause. See one of those proponents of such translation: Cf. S.F. Bigger, "The Family Laws of Leviticus 18 in Their Setting," *JBL* 98 (1979), 196. However as also seen in the following verses, particularly *Lev* 18:16 for that matter, the lawgiver affirmatively makes it

In light of the redefinition of the convert's kinship status in rabbinic sources in relation to the laws of incest, Leviticus 18, moreover, has another significant literary characteristic. Leviticus 18, according to Berkowitz, has a literary, chiasmic structure that promotes its thematic scheme in defining Israel's distinctiveness, highlighting the contrast between Israel and gentile, between their gods and the God of Israel via chiasmus.²⁶¹ Drawing on the paradigm of this underlying premise of Leviticus 18:3 suggested by Berkowitz, its literary pattern characterized by the chiasmic structure, according to Welch, serves to create group boundaries.²⁶² The sole purpose of *Lev*18:3 is to erect a boundary between Israel

clear that uncovering the nakedness of a person eventually comes to uncover the nakedness of his kin including his in-law(s). For instance, as illustrated in verse 8, uncovering the nakedness of your father's wife (i.e., your mother) comes to uncover the nakedness of your father, which stresses that he has a sexual relation with his father. Rashi, for instance, comments on verse 14 (אחי אביר לא תגלה), explaining that intercourse with his father's brother (his uncle) is interpreted to mean intercourse with his wife (ומה היא ערוהו, אל אשתו לא תקרב). It is important to note that these prohibitions in these verses are indeed formulated with a view to prohibiting uncovering a related person's nakedness.

²⁶¹ Beth A. Berkowitz, *Defining Jewish Difference: From Antiquity to the Present*. (Cambridge and New York: Cambridge University Press, 2012), 25-34. The literary patterns of Leviticus 18, as characterized by parallelism, reveal modes of biblical law that are distinctly separate from other legal cultures, which speaks of Israel's distinctiveness. Leviticus 18, found within the literary unit commonly known as the Holiness Legislation, which covers chapters 17-26, exhibits paradigms of Israel's distinctiveness by way of chiasmus. According to Berkowitz, Leviticus 18 preserves characteristic features such as moral-purity language, literary parallelisms, and most importantly Israel's separateness. As the first half of the literary structure of verse 3 itself is organized around chiasmus, "Like the practice of the land of Egypt where you have dwelled, you should not practice, and like the practice of the land of Canaan to which I am bringing you, you should not practice, and in their laws you should not go", one can find it easier to see that Israel is commanded to hearken to an injunction to separate itself from foreign influence and customs. Verse 3 (and 1-5 as a whole), as both Welch and Berkowitz also point out, serves to stress contrasts and distinctions "on two legal sides of a rule." For instance when מעשה ("practice") changes to משפט ("rule"), לא תלכו ("you should not go") changes to תשמרו להם (you should heed to go), it is clear that the literary parallel comes to highlight the contrast between us and them, Israel and gentile, and Israel's God and their gods. It should be noted that the immediate following verses, referring primarily to forbidden sexual practices such as incest, can be read as an attempt to preserve and construct the integrity of an Israelite ethnic identity in the process, in contrast to Egypt and Canaan portrayed as sexual perpetrators, represented as archetypes of the gentile Other. On chiasmus also see John W. Welch, "Chiasmus in Biblical Law: An Approach to the Scripture of Legal Texts in the Hebrew Bible," *Jewish Law Association Studies* IV (1990): 5-22. On the Bible's representation of the Canaanites, Robert L. Cohn, "Negotiating (with) the Natives: Ancestors and Identity in Genesis," *Harvard Theological Review* 96/2 (2003): 154-155. Robert L. Cohn, "Before Israel: The Canaanites as Other in Biblical tradition," in *The Other in Jewish Thought and History: Constructions of Jewish Culture and Identity*, edited by Laurence Silberstein and Robert L. Cohn, New York: NYU Press, 1994, 74-90.

²⁶² *Ibid.*, 18, 21. As Welch points out, "Sometimes the repetition of initial phrases at the conclusion

and the gentile Other, thus containing the people of Israel.²⁶³ If understood in this light, the legislations of forbidden sexual practices in Leviticus 18, as also reflected and thoroughly discussed in several baraitot in the Bavli in relation to the laws of conversion, may perhaps be read as an attempt to construct the integrity of the group boundaries of Israel particularly by discursively creating a fictive descent for the convert. From this scriptural premise reflected in the Tannaitic texts, it would thus seem to underscore the conversion process as a discursive strategy to form and promote Israel's distinctiveness. In fact the verse itself not only urges Israel to separate itself from foreign cultures and practice, but also highlights the difference between the people of Israel and the other inhabitants of the land.²⁶⁴ Drawing on views of both Berkowitz and Welch, it may be surmised that the *Bavli* employs the very effect of chiasmic structures in Leviticus 18, originally highlighted to distinguish between us and them, Israel and nations and its God and their deities, as a discursive strategy to erect a boundary marker that sets the convert apart from his former gentile kin, marking him as self-contained, so that he is to be included in the kinship structures of the people of Israel. The conversion process would thus seem to fit Leviticus 18's thematic scheme of Israel's distinctiveness, which comes to indicate that the convert, who has severed all family ties with his gentile relatives, is now made into *Israel* as distinctly separate from his former kin who supposedly represents the gentile Other. Since the laws regulating the prohibition against marriage with the brother's wife as well the laws of levirate marriage are organized around the above premise, the following Tannaitic and Amoraic sources seem to uphold the principle of Israel's separateness as a whole. If understood in this light, the laws of incest discussed in Mishnah and the Talmud, on whose underlying premise Leviticus 18:3 is based, sets the identity marker in defining the convert as Israel, who becomes completely distinct from any other nation mentioned in Scripture.

of a segment functions an enclosure, marking boundaries and making the section self-contained." Cf. Berkowitz, "Defining Jewish Difference," 30-31.

²⁶³ Ibid. Therefore the very chiasmus displayed in verses 3-5, which demands the observance of God's injunctions by "marginalizing the practices of Egypt and Canaan," comes to circumscribe Israel as a self-contained group.

²⁶⁴ Berkowitz, "Defining Jewish Difference," 29.

The fact that the Mishnah and the Talmud especially pay significant attention to the prohibition against marriage with a brother's wife in *Lev18:16* (אשה אחיך לא תגלה ערות אחיך הוא) ²⁶⁵ in relation to the convert implies that the verse, as Carmichael points out, presupposes the custom of levirate marriage.²⁶⁶ It is assumed that the convert, who is not fully required to engage in such a marriage with his sister-in-law²⁶⁷ on the father's side, is indeed permitted to marry her because his paternal ties with his gentile relatives have been severed and rendered legally void upon his conversion. In this case his marriage with his paternal (deceased) brother's wife is not in violation of the sexual taboos of incest prescribed by *Lev18:16*.²⁶⁸ The fact that the convert is included in this type of discussion of whether or not he should be eligible for the duty of levirate marriage indicates that the sages must have been concerned with establishing lines of his *descent* to be incorporated into the community of Israel as a legitimate member of the kinship group. By elucidating the complexity of the laws of levirate marriage, the converts' new kinship relationships are newly, albeit fictively, defined within the genealogical framework of the people of Israel. Importantly the extensive discussions in the laws of incest in relation to the convert as a newborn child is that defining sexual status is essential to defining what it means to

²⁶⁵ Concerning verse 16, Ibn Ezra in fact refers to the case of the deceased brother in *Deut25:5*, commenting that though the brother's wife's daughter is not directly mentioned, it is clear from the context of the verse that uncovering the nakedness of the brother's wife also means intercourse with her daughter, which is in violation of the prohibition of incest. As also seen in n.14, this too illustrates that uncovering the nakedness of a person's nakedness uncovers his relative's nakedness as well.

²⁶⁶ Carmichael "Law, Legend and Incest in the Bible," 15, 34-35, 37. The rule in this verse, "You shall not uncover the nakedness of your brother's wife: it is your brother's nakedness," as Carmichael points out, is originally formulated by the law giver as a response to the story of Judah and Tamar in *Gen38* and to be more exact, a series of sexually incestuous relationships in the patriarchal history which preceded it in the Genesis narratives. To formulate the prohibition of such sexually incestuous relations is to define one's proper sexual status in society, which ensures what it means to belong to a generation (תולדות) after the one they would expect him to be born into.

²⁶⁷ It is generally agreed that *Leviticus 18* forbids union with the mother or with the half-sister on the mother's side as first-degree incest, and with the daughter as second degree-incest.

²⁶⁸ Commenting on *Lev18:16*, Maimonides holds in *Issurei Biah 1:5* that except for the levirate duty, one who cohabits with a sister-in-law either on the father's or the mother's side is subject to punishment by flogging due to 1) uncovering of the nakedness of his kin (משום שאר בשר) and 2) another man's wife (וממש אשת איש). Interestingly as also articulated in the Talmud, it is inferred from this that the convert, who has no paternal ties with his gentile relatives, is not subject to such a punishment.

belong to a generation (תולדות), by which to perpetuate lines of descent, into which the convert's offspring are fully incorporated for the future generations.²⁶⁹ This implies conversion as a discursive tool to shape and define the convert's new genealogy incorporated into the community defined by descent.

The Mishnah, the Tannaitic text redacted in the beginning of the 3rd century C.E., begins to expound how the laws of levirate marriage in relation to the convert. The text of *mYev*11:2 states that the two brothers of a gentile mother who are converted along with her neither perform the rite of *halizah*²⁷⁰ nor engage in levirate marriages even though one of them leaves a childless widow later in life. It shows how conversion and the relationship of the convert to his/her offspring affect the complex rulings of levirate marriage and the rite of *halizah*. As the *gemara* to this Mishnah, *bYev*97b, later makes it clear, the brothers may marry each other's wife unless the brother died without offspring as opposed to the prohibition of incest prescribed in *Levi*18:16, this is due to the fact that they have severed all family ties with their paternal gentile relatives, which allows them to marry their gentile sister-in-law, to whom they are not genealogically related.

*mYev*11:2

הגיוורת²⁷¹ שנתגיירו בניה עמה לא חולצין ולא מייבמין אפילו הורתו של ראשון שלא בקדושה
ולידתו בקדושה והשני הורתו ולידתו בקדושה. וכן שפחה שנשתחררה²⁷² בניה עמה.

(Concerning) the converted woman whose sons were converted along with her - they (her converted sons) neither observe the rite of halizah nor enter into levirate marriages even if she (the converted mother) conceived the first son not in holiness²⁷³ (before her conversion) but bore him in holiness

²⁶⁹ Carmichael, "Law, Legend, and Incest in the Bible," 37 n. 35. According to Carmichael, the Hebrew term *toledot*/תולדות is understood to focus on the aspect of procreation as a necessity to construct history, in which one belongs to the "generation he is born into."

²⁷⁰ Its parallels: *tYeb* 12:2; *Sif.D.*289 on 25.6. The rite of *halizah* is a ritual normally observed by the brother who does not wish to engage in a levirate marriage with his sister-in-law, as prescribed in *Deut*25:9.

²⁷¹ The *Yerushalmi Yevamot* 11:2 reads גיוורת.

²⁷² Most MSs read וכן השפחה שנשתחררה.

²⁷³ Though its origin is unknown, the word קדושה "*sanctity*" often refers to the community or the house of Israel. In *bQid*78a, this word is used in the context of marriage between the daughter of

(after her conversion) and conceived and bore the second one in holiness (These converted brothers are not thus obligated to enter into levirate marriages nor are they bound to observe the rite of *halizah*). The law equally applies to the sons of a female slave who were emancipated along with her.

The case of “she conceived the first son not in holiness but bore him in holiness and conceived and bore the second one in holiness” receives significant attention in this Mishnah, which shows how conversion affects the rulings of levirate marriage and the rite of *halizah*. It also changes the convert’s relationships to his offspring prior to or after his/her conversion.²⁷⁴ Clearly seen in the first clause is the convert’s legal ineligibility for the duty of levirate marriage and the rite of *halizah*. As the first clause, “The sons of a woman who were converted together with her neither observe the rite of *halizah* nor contract levirate marriages (ולא מייבמין) (הגיוורת שנתגיירו בניה עמה לא חולצין)” clearly illustrates, these converted brothers do not enter into the levirate relationship nor do they observe the rite of *halizah*. This clause, according to Rashi, presupposes that one must share the same father, who is an *Israelite* in order to fulfill the levirate duty to maintain his lines of descent, which precludes the converts from that duty since the laws of levirate marriage requires paternal ties²⁷⁵. Although the reason behind their ineligibility to the laws of levirate marriage is not directly addressed in this Mishnah, it is implicit that the converted brothers have severed paternal kinship ties with their *gentile* father upon conversion.

Even more complex to note is the second clause, “The first son was conceived not in holiness but born in holiness” (הורתו של ראשון שלא בקדושה ולידתו בקדושה). This apparently refers to

two converted parents, who is wholly derived from foreign descent, and a priest. It is stressed that upon conversion, a prospective convert enters into the community of Israel -the “*sanctity*” of Israel-, and any offspring born after their conversion are said to be generated within the “*sanctity*” or the community of Israel. In the context of *mYev*11:2 as well as *tYev*12:2, it is clear that בקדושה (in holiness) refers to “conversion,” whereby a gentile mother becomes a Jewess, marking her male offspring as full *Israelites* in every respect if conceived after her conversion. For more on its usage, see Christine Hayes, *Gentile Impurities and Jewish Identities: Intermarriage and Conversion from the Bible to the Talmud* (Oxford: The University of Oxford Press, 2002), 174-5.

²⁷⁴ Its parallels: *tYeb* 12:2; *Sif.D.*289 on 25.6.

²⁷⁵ Rashi, האב בעיניו וגר אין לו שאר האב. This clause is taken to mean that a convert needs paternity in order to fulfill a levirate duty, but he has no such kinship ties with his paternal relatives upon conversion.

a situation in which the first male was conceived by two gentile parents, and subsequently was born after the mother (perhaps as well as the father) had converted. This text implies that the first brother is not required to fulfill the duty of levirate marriage and the rite of *halizah* because the mother conceived the male while she was a gentile (in other words prior to her conversion). This means that he is not legally ineligible for the obligation of levirate marriage, normally enjoyed by the native-born because his legal parents were gentiles at the time of his conception. His ethnic membership, therefore, is not as legally equal as the native-born *only* in matters of his eligibility for these rulings. As the parallel baraita of *tYev*12:2 also indicates, the third clause, “(The mother) *conceived and bore the second one in holiness*” (והשני הורתו ולידתו בקדושה), on the other hand, suggests that the second male was conceived by a converted mother (as well as a converted/native-born father), as *bYev*97b illustrates, he is considered a fully native-born Israelite, so that he is legally eligible for the obligation of levirate marriage and the rite of *halizah*.²⁷⁶

Judging from the second and the third clause, it is implied that the valid Israelite status of the offspring is determined by the status of the parents at the moment of the male offspring’s conception for the purpose of the levirate relationships.²⁷⁷ Despite their conversion with their mother, they are not regarded as newborn children who are Israelite brothers for the purposes of the levirate duty²⁷⁸. This seems to confirm that the converted brothers do not have the same parents. As illustrated by the phrase “*not in holiness*” (בקדושה שלא) in the second clause and another one “*in holiness*” (בקדושה) in the third clause in fact

²⁷⁶ As also confirmed by the parallel text of *tYev*12:2, this Mishnah seems to stress that the legal definition of her offspring’s Jewishness is in fact governed by the definitive moment of conception after the completion of her conversion. In other words it is the conception of the male offspring at the time of the parent(s)’ conversion that determines the kinship validity of their Jewish status. As I’ll articulate later, the *Tannaitic* and *Amoraic* texts apparently uphold the view that the convert as a newborn child bestows the sense of Jewishness on his/her offspring only after s/he has completed his/her conversion, which involves the creation of *toledot*/תולדות (a generation).

²⁷⁷ Porton, “*The Strangers within Your Gates*,” 172. In fact this Mishnah deals particularly with the case of kinship ties that the male offspring have with their gentile father, which determines the applicability of legal obligations of levirate marriage and the rite of *halizah*. It seems to be a well-known fact that its literary structure presents the seemingly most radical case, in which the first male has a kinship tie with his *gentile* father while the kinship ties of the second male has been severed upon their mother’s conversion, which suggests the lack of legally valid kinship with their gentile father.

²⁷⁸ Ibid. This point is also suggested by Porton.

illustrate, it is clear that these converted brothers do not have the same legal status at the time of conception during or after the parent(s)' conversion²⁷⁹; the first son was conceived by a *gentile* mother prior to her conversion, while the second one was conceived by a Jewish mother (and a converted or native-born father).²⁸⁰ This clearly implies that since the conception of the two brothers took place at different periods of the parent(s)' conversion, affects their legal standings, namely their eligibility to engage in the levirate duty.²⁸¹ The fact that the male offspring are conceived by their converted mother seems to indicate that they may not possibly be related as brothers. In other words, the status of the mother (as well as the father for that matter) at the moment of the males' conception seems to determine the Jewish status of the male offspring for the sake of the levirate relationships.²⁸²

²⁷⁹ Porton, *"The Strangers within Your Gates,"* 172. It should also be noted that the one was conceived by gentile parents while the other was conceived by two Jewish parents, one native-born and the other a convert, or possibly both parents could be converts. Although it's not explicitly mentioned in this Mishnah, a gentile male who fathered the first son would not be the same father as the one who fathered the second son upon conversion, assuming that he would be converted along with his wife during or after the conception of these male children. All in all it is apparently stressed in the second and third clause of this Mishnah that both brothers' valid kinship ties with their gentile father has been severed upon the mother's conversion.

²⁸⁰ This also implies that even if the woman's husband also had converted with her, he would be considered as a different person after his conversion, meaning that the very first male conceived prior to his conversion would not have the same father as the one conceived after his conversion.

²⁸¹ Interestingly Gwynn Kessler claims that it is the fetus in the uterus that collectively symbolizes the people of Israel. Quoting the proof text of Ps.8:3 and 68:27, the *Mekhilta of Rabbi Ishmael, Shirata* 1 stresses that fetuses who are still in the mother's womb recognize God and praise a song to Him. Midrash Tehilim 8:3 in fact magnifies the scope of this motif of the Exodus to suggest that while still in the uterus fetuses witness God's revelation of the Torah and receive it on their parents' behalf. In this sense this tradition shows the motif that the people of Israel are supposedly founded upon fetuses on the mother's womb, which apparently fits the description of the status of the mother's offspring during or after conversion. Gwynn Kessler, *Conceiving Israel: The Fetus in Rabbinic Narratives* (Philadelphia: University of Pennsylvania Press, 2009), 29-46.

²⁸² It is worth pointing out that the laws of levirate marriage and similar birth-related laws as seen in this Mishnah (as well as its parallel texts) are governed by the internal logic of legal formalism, which works within the parameters of well-defined principles of hermeneutics and logic. Following the views of Lavee, I suggest that the *halakhic* formalism governed by a casuistic convention presents the hypothetical case of conversion as a means for signaling and marking the definitive moment of the applicability of various legal obligations. For instance, the *baraita* of *bBekh46b* illustrates the definitive moment at which the laws of birth purity and impurity take effect is when the forehead of an infant emerges from the converted mother's womb. This means if the mother gives birth to her male after her conversion, she becomes subject to the laws of purity and impurity as someone who is a Jewess in every respect. In a similar vein, the laws of levirate marriage in

The gemara of *bYev97b*, an Aramaic commentary to *mYev11:2*, focuses on the complex relationship of the converts to their paternal siblings, which finds concrete expression particularly in how the discussions concerning levirate marriage effects the redefinition of their paternal relationship with their sisters-in-law. According to the gemara, the rationale for the Mishnah's ruling is that the brothers who converted along with their mother are forbidden to marry each other's wife. However it suggests that the brothers are not obligated to fulfill the levirate duty since the widow is not subject to the levirate ceremonies; she is permitted to marry anyone including her brother-in-law because both of them are considered as strangers who are not genealogically related to each other due to the lack of valid paternal kinship between them.²⁸³

In the gemara of *bYev97b*, the phrase "*A convert is like a newborn child*," deduced by the *Stam* from an elaboration on the laws of incest, now appears primarily in the context of the convert's eligibility for marriage with his brother's wife, suggesting that the convert's valid paternal kinship with his gentile relatives is completely severed in the case of a person who was conceived prior to the mother's conversion but born after her conversion. In fact it is thoroughly discussed in the context of the permission of such incest among those without valid paternity. Since its scriptural basis presupposes the prohibition of marriage with the brother's wife as specified in *Lev18:16*, the *gemara* illustrates how the phrase signifies their marriage with each other's wife. They may marry their paternal sisters-in-law because they are considered as *newborn children*, who have no kinship

particular displayed in this Mishnah are defined by the legal principles of a casuistic convention, whereby conversion serves as a marker of establishing new Jewish kinship relationships. This Mishnah (and other parallel texts) seem to demonstrate that such bodily processes as conception and birth at the time of the mother's conversion effects the change of kinship ties of her male offspring, thus marking them legally qualified as full-fledged Israelites to fulfill these obligations. The event of conversion either *prior to* or *after* the conception of the males is thus employed as pointing out the definitive marker of obligations with regard to levirate marriage, which in turn sharpens the identity marker of the Israelite status of the converted males. On the legal principles of a casuistic convention in birth-related laws in the *Tannaitic* texts, See Moshe Lavee, "Birth, Seminal Emission and Conversion: Gender, Self-Control and Identity in *bBekhorot*." In *Introduction to Seder Qodashim: A Feminist Commentary on the Babylonian Talmud V.* ed. Tall Ilan, Monika Brockhaus and Tanja Hidde (Tübingen: Mohr Siebeck, 2012), 286-287.

²⁸³ One could argue that if both brothers were born after their mother's conversion, people might mistake them for the native-born, which makes it easier for the widow to marry anyone she wishes. Cf. Porton, "*The Strangers within Your Gates*," 115.

relationships with gentile paternal relatives. Since none of their former kinship relationships with their gentile relatives matter, they are no longer considered as brothers, but rather as complete strangers who are not genealogically related to each other.²⁸⁴

bYev97b

בני יודן אמתא אשתחרור שרא להו רב אחא בר יעקב למינסב נשי הדדי...
 מן האב ולא מן האם כ"ע לא פליגי דשרי. מן האם ולא מן האב כ"ע לא פליגי
 דאסיר. כי פליגי מן האב ומן האם מאן דשרי²⁸⁵? בתר אבא שדינן דהא בני פלניא
 קרו להו ורב ששת קרו²⁸⁶ להו נמי בני פלנית. ואיכא דאמר פליג רב אחא בר יעקב
 אפילו באחין מן האם. מאי טעמא? **גר שנתגייר כקטן שנולד דמי.**

*(When) the sons of a female slave Yudan were freed, R. Aha b. Jacob permitted them to marry each other's wife... . In respect of (two) converts or emancipated slaves who are paternal brothers but not maternal ones, both sages (Rav. Aha and Rav. Sheshet) agree that they (paternal brothers) are permitted to marry each other's wife.²⁸⁷ In respect of converts who are maternal brothers but not paternal brothers, both of them agree that they are forbidden to marry each other's wife (such a marriage would be considered incestuous since it violates Lev18:16). When the sages have argued, asking who may be permitted to marry each other's wife, paternal or maternal brothers? (R. Aha permits the convert's marriage with his gentile sister-in-law on the father's side) since their children are ascribed only to the father, which is why they are called as the son of such-and-such a father. R. Sheshet, on the other hand, prohibits them from marrying each other's wife because their children are ascribed only to such-and-such a mother. But some hold the view that R. Aha b. Jacob raises an objection to even a marriage with the wife of a maternal brother. What is the reason (for the prohibition against marrying the wife of a maternal brother)? (That's because) **A convert is like a newborn child** (who has no valid kinship ties with his gentile relatives on the father's side*

²⁸⁴ Lavee, "A Convert Is Like a Newborn Child," 48.

²⁸⁵ Various MSs read רב אחא בר יעקב.

²⁸⁶ MS Munich reads ומאן דאסר קרו.

²⁸⁷ See Rashi, דאחי לאיחלופי בישראל. Both R. Aha b. Jacob and R. Sheshet agree that converts who are paternal brothers may marry each other's wife because it is well known that their father is a gentile, no one would erroneously come to conclude that the native-born might marry their brother's wife.

upon conversion).

In the gemara of *bYev97b* the notion of the convert as a newborn child is closely associated with converts' severing of kinship ties with their gentile father. The sages, particularly R.Aha, stress that only converted brothers (as well as freed slaves) who are paternally related may marry their paternal sisters-in-law. It is possible for them to do so because it implies that no kinship ties are supposed to exist between the converted sons who are regarded as newborn children and their gentile father upon their conversion.²⁸⁸ It is worth noting here that here it is the severing of their gentile paternity among the converted brothers that renders them legally eligible to establish marital relationships with their paternal sisters-in-law, to whom they are no longer related as the same kin. According to this understanding, the prohibition of marriage with the brother's wife as prescribed in *Lev18:16*, therefore becomes inapplicable²⁸⁹ because this implies that only sharing the same paternity in the same household enables them to engage in levirate marriages as well as to perform the rite of *halizah*. More importantly in this instance the convert, who has severed paternal ties with his gentile father upon his conversion, is thus permitted to marry his brother's wife, who is now regarded as a stranger.²⁹⁰

The sages, on the other hand, hold that maternal brothers who are converts are forbidden to marry each other's wife because the brothers have now established valid kinship with

²⁸⁸ As we'll articulate later, the notion of "A convert is like a newborn child" resonates with that of "A gentile has no paternity" as seen in Palestinian Amoraic literature.

²⁸⁹ Ibid., "The Strangers within Your Gates," 307. n.215. See Rashi, דאחי לאיחלופי בישראל and Tosafot, האם ולא מן האב כ"ע לא פליגי אסיר. Again no one should erroneously deduce from this case that the native-born may marry their brother's wife. Thus it is perhaps for this reason that the convert's marriage with his deceased brother's wife was permitted. They also agree that maternal brothers cannot marry each other's wife because one could erroneously deduce from this case that the native-born could also marry their brother's wife, obviously assuming that they share a common mother. Both R.Aha and R.Sheshet disagree only with regard to brothers who share the same parents; R.Aha permits them to marry each other's wife, since the brothers, identified as the sons of such-and-such a man (בני פלניא קרו להו), are ascribed only to the father's line ((אבא שדינן ליה)) while Sheshet, however, prohibits such marriages because such brothers are called the sons of such-and-such a woman (בני פלוגיית).

²⁹⁰ Rashi, אשת אחיו ולא משום ייבום אלא אפילו במקום בנים דקסבר אין קורבה לגר דקטן שנוול דמי. Rashi also interprets this passage as implying that since the convert is a newborn child who has no (paternal) consanguinity with his (paternal) sister-in-law.

their converted mother upon their conversion.²⁹¹ It is clear from the context of this gemara that such a marriage would violate the prohibition of incest. Lastly it is important to note that the obligation for levirate marriage (as well as the rite of *halizah*) is determined by the converts' paternal relationships with their father; the laws of levirate marriage are inapplicable for the convert if they had a gentile father. Even though they were both born after their mother had converted, they could not marry each other's widow. However it is ruled by R. Aha that they are permitted to marry her only if they both converted along with their mother.²⁹² Again the converts who are paternal brothers, however, are not subject to the violation of incest because they are understood as newborn children, who have severed paternal kinship relationships upon their conversion, which enables them to marry their paternal sister-in-law as a total stranger.

Further elaborating on the above Mishnah's ruling according to which the converted brothers neither perform levirate marriage nor observe the rite of *halizah*, the gemara continues to explain why the convert is defined as a newborn child by expanding on the case in which the two male children, who were converted along with their mother, were born after her conversion, but one of them was conceived before her conversion. The gemara in fact takes up a particular clause in *mYev*11:2, "*Even if she conceived the first son not in holiness but bore him in holiness, and conceived and bore the second one in holiness*" by focusing on the word "even if" (אפילו). Assuming that the converted brothers may not marry each other's wife, as prescribed in *Lev*18:16, then the word "even" makes sense since the gemara understands this situation to mean that they might be regarded as the sons of "*two different mothers*" (שתי אמהות דמו), who might as well be permitted to marry each other's wife. In such an instance, the mother who conceived the male offspring is conceptually understood by the gemara to be two different individuals who are not genealogically related to each other.

²⁹¹ This also indicates that the phrase "*A convert is like a newborn child*" signifies the establishment of maternal ties between the converted mother and her offspring. Such a valid maternal kinship is formed and maintained after the mother's conversion. For more, see Lavee, "*A Convert is Like a Newborn Child*," 62.

²⁹² Porton, "*The Strangers within Your Gates*," 115. Therefore one may deduce from this case that she is not subject to Mishnah's rulings, so that the converted brothers are not obligated to fulfill them.

דא"ג דראשון הורתו שלא בקדושה ולידתו בקדושה,
והשני הורתו ולידתו בקדושה וכשתי אמהות דמו אפילו הכי אסירי.

Despite a situation in which the first male was conceived not in holiness (prior to the mother's conversion) but born in holiness (after her conversion), and the second one was both conceived and born in holiness (after her conversion), such brothers might be considered as (the sons of) two different mothers (who may be permitted to marry each other's wife) even though they are nevertheless prohibited (from marrying the brother's wife, as specified in Lev 18:16) (Since the brothers, who were conceived and born prior to or after the mother's conversion, are regarded as genealogically unrelated to each other, they may marry each other's wives.)

The phrase "*the (converted) brothers might be considered as (the sons of) two different mothers*" (כשתי אמהות דמו) is meant to underscore the fact that the converted offspring did not share the same mother at the time of conception. The status of the mother at the time of the conception of her male offspring plays a crucial role in determining their legal status as well as Jewishness.²⁹³ The *gemara* interpreted the first clause "*the first male was conceived not in holiness but born in holiness, and the second one was both conceived and born in holiness*" to mean that there are "*two different mothers*" who conceived the males; the mother who conceived the first male while she was a *gentile* is completely different from the very mother who conceived her second son after she *converted*. The conception of the male offspring also illustrates that if the *gentile* parents, for instance, had converted, they would be considered completely different persons; the male offspring conceived before their parents' conversion would not have the same parents as the one conceived after they became converts.²⁹⁴ More importantly this text also suggests that it is the converted mother's conception of the males *after* her conversion that legally defines them as the

²⁹³ Likewise *SifD Ki Tisa* 289 on *Deut.25.6* also claims that the status of the parents, namely the mother, during the time of conception determines the legal status of their offspring, which seems to support Mishnah's concern with the status of the parents at the time of the conception of the brothers.

²⁹⁴ Porton, "*The Strangers within Your Gates*," 172.

native-born because only *after* her conversion is she considered *a newborn child*. Hence in this manner her legal status as a full-fledged Jewess bestows Jewishness on her offspring for the sake of entering into the levirate relationships. Therefore the Mishnah's second and third clauses, as understood by the *gemara*, indicates that the former refers to the legal status of her first son as a gentile while the latter points to the status of her second son as a Jew. Conceptually understood to have "*two different mothers*," these brothers are regarded as strangers, who may marry each other's wife²⁹⁵ because they are not considered as biological brothers but as utter strangers who happened to be born into two different women.²⁹⁶

This phrase of "*two different mothers*" is closely embedded in the concept of "*A convert is like a newborn child*," which involves the transformation of the identity of the individual, thereby redefining the kinship status of his/her offspring upon conversion. This phrase suggests a case that deals with the converted mother's kinship relationship with her offspring, changing the mother's identity upon conversion. It illustrates that the very mother who conceived and gave birth to her offspring after her conversion is no longer the same woman as she was prior to her conversion, so that the male offspring she had prior to her conversion, therefore, are not considered as her offspring.²⁹⁷ In this circumstance,

²⁹⁵ Lavee, "*A Convert Is Like a Newborn Child*," 48.

²⁹⁶ Although all the discussions recorded in this *sugya* are all theoretical in nature, and it might be that it bears no legal significance in a practical sense, it should be noted that this part of the discussion in the *gemara* clearly stresses a radical change of the convert's kinship relationships upon conversion; the convert's permission to marry his paternal brother's wife does attest to the fact that he is now understood as a radically new person with a new kinship attached to the native-born. I will also discuss about this term in chapter 4.

²⁹⁷ In addition, another important concept that is similar to the notion of "*A convert is like a newborn child*" as well as "*two different mothers*" found in the *Bavli* is the phrase "*another different body*" (אחרת גופה) as seen in *bYev23a*. Although this phrase shares no semantic connection with the notion of the convert as a newborn child nor does it focus on the convert's severing of family ties with his former kin, it does refer to the change of the convert's legal status in the context of incest; in short, if a female slave or a gentile who converted, the father of the household, originally forbidden to marry them for the violation of incest specified in Lev.18, may be permitted to marry them because their body becomes "*another different body*" (לכי מגיירא גופה אחרת היא) upon conversion. Moreover this phrase is also used to indicate the motif of birth. Especially in *bArkh 7a*, when the mother is seated on the traveling chair, an infant in the mother's womb is considered "*another different body*" (אחרת גופה) because the infant, who has already taken a physical form in the uterus, is capable of being detached (i.e., delivered) from her body. In this sense, the converted mother's body itself may also be distinguished from her previous body prior to her conversion. Cf. Lavee, "*A Convert Is Like a*

she is considered a newborn child, whose kinship ties with her offspring are newly established as Israel only to be incorporated into the kinship structures of the Israelite community.²⁹⁸

Moreover, such a severing of the convert's valid kinship ties with his former relatives, as illustrated by Mishnah's hypothetical case of "*the one conceived not in holiness but born in holiness*," (הורתו של ראשון שלא בקדושה ולידתו בקדושה) has *halakhic* implications for the *Bavli's* phrase "*A convert is like a newborn child*." As repeatedly noted, this notion of the convert as a newborn child presupposes the new definition of the convert's kinship relationships at the definitive moment of conversion. This notion is also characterized by another legal notion "*A gentile has no paternity*"; the convert had no kinship ties with his gentile father because no such ties had been established between the father and his son even while he was a gentile.²⁹⁹ That is, the occasion of "*the one conceived not in holiness but born in holiness*" indicates that the male, who was fathered prior to the mother's conversion, already has no kinship ties with the father, and at the very moment of the mother's conversion, valid paternity between the son and the father is completely severed. At the same time, the lack of such valid paternity among gentiles and a severing of such kinship at the time of

Newborn Child," 162 n. 310. I will also discuss about this term in chapter 4.

²⁹⁸ In a similar vein significant attention is paid to the case of daughters who were conceived before their parents' conversion but who were born after their conversion. As in *mYev*12:1, *mKet*3:4 also states that the daughter of a convert who was conceived before her mother converted but who was born after her would be to be stoned if she engaged in illicit sexual acts with another man other than her husband to whom she was engaged. However the woman's husband does not need to pay the 100 sela fine if he erroneously accuses her of harlotry because she is treated only in some respects as an Israelite. Resh Laqish explains that the clause "*that she die*" in *Deut*22:21 supports the inclusion of the described woman in Mishnah because this appears to be superfluous, which in turn seems to be an obvious result of the clause "*shall stone her with stone*." Her husband does not need to pay the fine if he falsely accuses her because the clause "*that she die*" includes the daughter of the convert only with regard to her punishment; it does not contain such a woman among those whose husbands are required to pay the fine. Because as *bYev*97b and *t.Yev*12:2 make it clear, the convert's daughter who was both *conceived* and *born* after her mother's conversion is considered as a full-fledged Israelite (so is her mother in a strict sense of the *halakha*), she is not mentioned in the Mishnah. And the phrase "*in Israel*" excludes the convert's daughter who was conceived and born before her mother converted. For this reason *bKet*44b further goes on to explain why several Mishnayot deal with several issues of the offspring of a female convert who was conceived prior to her mother's conversion, but born after her conversion. See also *yKet*.9:13; Venice 33c. Cf. Porton, "*The Strangers within Your Gates*," 114.

²⁹⁹ To be specifically discussed about this phrase and its implications later in the section of "*A gentile has no paternity*."

conversion suggest that the convert is maternally related to the mother who likewise converted.³⁰⁰

Secondly, the Mishnah's case of "*the one conceived not in holiness but born in holiness*" implies conversion as transformative of the convert's entirely new identity to such an extent that no kinship relationships are thought to exist between the convert himself and his relatives. As the phrase "*two different mothers*" (כשתי אמהות דמו) in *bYev97b* in fact suggests, the one conceived *prior* to the mother's conversion and the other conceived *after* her conversion might be considered as strangers to each other because the mother who conceived her first male *prior* to her conversion is not the same individual as the very mother who conceived her second one *after* her conversion; the mother comes to be defined as a new, yet different individual upon her conversion. In other words the notion of "*A convert is like a newborn child*" is implied in these phrases, which reflects the *Bavli's* stress on the concept of conversion as a legal mechanism that allows the convert to sever all kinship ties with his former kin. *mYev11:2's* occasion of the first male conceived prior to the mother's conversion but born after her conversion, as suggested by the *gemara's* phrase of "*two different mothers*," addresses a severing of the convert's paternal kinship ties, which determines his legal eligibility for the obligation of levirate marriage and the rite of *halizah*. This situation suggests that one of the converted males has valid kinship ties with his father while the other one does not.

As addressed in *bYev97b*, the baraita of *tYeb12:2* that parallels *mYev11:2* further articulates the case of the one conceived not in holiness but born in holiness by expanding upon the complex issue of the levirate relationship. Tosefta in fact includes a discussion of the prohibition of marriage with a brother's wife, who is understood as the wife of a convert in this case, as prescribed in *Lev18:16*, an issue not clearly addressed in *mYev11:2*.³⁰¹ As in *mYeb11:2*, the Tosefta similarly presents a picture of the mother and her

³⁰⁰ Lavee, "*A Convert is Like a Newborn Child*," 66.

³⁰¹ It should be noted that *tYev2:5-6* also include the same ruling as *mYev11:2* in a different framework. *tYev2:5* in fact contains the "*wife of a convert*" among those who neither perform the rite of *halizah* nor levirate marriage. *tYev2:6* in fact refers to the convert as one of those who neither perform the rite of *halizah* nor engages in the levirate marriage. These two texts complement each other, with the first referring to the females, and the second the males. Even though the two are not necessarily connected with each other, Saul Lieberman associates the statement in *tYev2:5* with

male offspring who undergo the process of conversion, by which they may or may not be subject to the laws of levirate marriage and the rite of *halizah* upon conversion. As also elaborated in the *gemara*, the convert's legal severing of his valid kinship ties upon conversion in this Tosefta needs to be understood in light of the concept of "A convert is like a newborn child":

tYev12:2 (Its Parallel: bYev 98b)

הגירות שנתגייירו בניה עמה לא חולצין ולא מייבמין. היתה הורתן שלא בקדושה ולידתן
שלא בקדושה, לא חולצין ולא מייבמין. ואין חייבין משום אשת אח. היתה הורתה שלא בקדושה
ולידתה בקדושה, או חולצין או מייבמין, אבל חייבין משום אשת אח.
היתה הורתה ולידתה בקדושה, הרי היא כישראל לכל דבר.

The sons of a woman who were converted with together with her neither observe the laws of levirate nor the rite of halizah (since they were conceived and born when she was still a non-Jew, the laws of levirate marriage and the rite of halizah do not apply to them.) If they were both conceived and born not in holiness, they neither observe the laws of levirate marriage nor the rite of halizah; they are not obligated to follow the prohibition against marrying the brother's wife (as a violation against marriage with the brother's wife as prescribed in Lev18:16). If she conceived (males) not in holiness but bore (them) in holiness, they neither observe the laws of levirate marriage nor the rite of halizah, but they are obligated to follow the prohibition against marrying the brother's wife (ibid.). If she both conceived (males) and bore (them) in holiness, behold she (the converted mother) is like Israel in every respect.

mYev11:2, stressing the fact that the convert has severed all kinship ties with his gentile brother(s) since it seems to uphold the view that Tosefta's statement fitted that of Mishnah. In addition the language of *tYev2:6* is also found in *tYev11:2*, which additionally states that if one of those mentioned in the text, who are not obligated to enter into the levirate relationship with their sisters-in-law, marries them, the women must be invalidated from marrying into the priesthood. Moreover if the brothers claim their sister-in-law and then perform the rite of *halizah*, nothing is accomplished on their ends. Saul Lieberman *Tosefta Ki-Fshutah: A Comprehensive Commentary on the Tosefta Part VI Order Nashim* (Jewish Theological Seminary of America: New York and Jerusalem, 1967), 18.

As is the case with *mYev11:2*, the notion of the convert as a newborn child is also implied in Tosefta through the discussions of the convert's severing of valid kinship ties. The text, as in the *mYev11:2* as well as *bYev97b*, addresses the event of conversion as a marker that signifies the severing of converts' valid kinship ties with their paternal relatives. The hermeneutical logic of a casuistic convention, as also seen in *mYev11:2*, may be found in this parallel text, in which the *halakhic* status of the male offspring is governed by the change of their mother's legal status at the time of their conception and birth. As in Mishnah, Tosefta stresses that their eligibility for the obligation of levirate marriage and the rite of *halizah* is namely determined by the definitive moment of the mother's conception after her conversion; the text examines how the moment of conversion exerts an influence on the kinship relationships the male offspring have with their (converted) parent(s). Put differently, The texts illustrates how the conception and birth of the males either prior to or after their mother's conversion defines their legal eligibility for these laws.

The first clause "*If they were both conceived and born not in holiness*" (ולידתן שלא בקדושה) (היתה הורתן שלא בקדושה) specifies a case regarding whether a converted mother and her male offspring are subject to the levirate relationships. According to the first clause, since the male offspring, who converted along with their mother, were conceived and born prior to the mother's conversion, receive no legal treatments concerning the laws of levirate marriage. In such a circumstance, the male offspring are not subject to the laws of levirate marriage and the rite of *halizah*; nor is any punishment incurred if they marry each other's wife. It is important to note that since they converted along with their mother, both paternal and maternal kinship ties are completely severed. In this sense, these converted offspring are not considered "brothers" in terms of the obligation of levirate marriage and the prohibition of incest with sisters-in-law because of the lack of both family ties among themselves.

On the other hand, the second clause "*If she conceived (males) not in holiness but bore (them) in holiness*" (היתה הורתה שלא קדושהב ולידתה בקדושה) (*mYev11:1*), just as suggested by *mYev11:1*, addresses a slightly different stance. It stresses how the time of conception and a birth either prior or after the mother's conversion effects the legal status of her male offspring. Since the

mother's conversion took place at the time of the conception of males, it is clear that their paternal ties are severed.³⁰² However their maternal ties are maintained because the male offspring, fathered by a gentile male during their conception, were born after their mother's conversion, which implies that the infants are considered to have converted with their mother.³⁰³ As in the first clause, the male offspring are exempt from the obligation of levirate marriage and the rite of *halizah* due to the severing of their paternal ties upon their mother's conversion. However, they are obligated to follow the prohibition against marrying each other's wife; that's because there is a legally valid maternal kinship between their mother and her male offspring upon her conversion. This means that her male offspring are therefore considered maternal brothers, to whom they are related to each other through their converted mother.

The final clause "*If she both conceived (males) and bore (them) in holiness*" (הורתה ולידתה בקדושה) clearly indicates that since the mother's conversion took place prior to the conception and birth of her males, her male offspring, who now have both paternal and maternal ties upon her conversion, are now required to perform levirate marriages and the rite of *halizah* and are thus subject to the prohibition against marrying the brother's wife. In this sense they are defined completely as "*Israel*" in every respect. This shows that it is the completion of her conversion *prior to* the conception and birth of her offspring that defines

³⁰² Interestingly, the *gemara* of *bYev97b* includes Tosefta's discussion of the two brothers who converted along with their mother. This *baraita* in the *Bavli* articulates that the two brothers who converted along with their mother are twins, which suggests that they have the same father, not explicitly mentioned in Tosefta. This also makes it clear that only the native-born with the same father can engage in the levirate relationships. It is also stressed in the *gemara* that if they were conceived and born after their mother's conversion, they are treated as native-born Israelites in every respect. It's worth noting that both texts differ with regard to who is a newborn child upon conversion; Tosefta underscores the converted mother's status as a newborn child who as a first generation Israelite comes to procreate her offspring and raise them as full-fledged Israelites while it is stressed in the *gemara* of *bYev97b* that those conceived and born after the mother had formally converted become legally accepted as the native-born in the community, enjoying privileges originally accorded to the native-born. It's important to add that the change of the mother's status upon her conversion effects and dictates the moment of her offspring's being subject to the laws of levirate marriage, which is governed by the well-defined principles of a casuistic convention as seen in other birth-related laws.

³⁰³ Lavee, "*A Convert is Like a Newborn Child*," 67. This passage seems to contain the idea claimed by Kessler that a fetus in the uterus is understood as a decisive factor in defining Jewishness of the child. Cf. Kessler, "*Conceiving Israel*," 29-41.

them as Israel. This clause also demonstrates that it is the bodily process of the conception of the male offspring that determines the definitive moment of the obligation of levirate marriage and the rite of *halizah*, which governs converts' incumbency on the rulings. It clearly suggests that the conception of her offspring *after* the mother's conversion serves as a decisive moment that subsequently transforms her male offspring into full-fledged Jews, and from that moment on they are fully subject to the laws of levirate marriage and the rite of *halizah* as well as the prohibition of incest with sisters-in-law on par with the native-born.³⁰⁴

Importantly, the mother herself, who converted *prior to* the conception and birth of the male offspring, is understood as a "*newborn child*." As the final clause "*behold she is like Israel in every respect*" (הרי היא כישראל לכל דבר) clearly illustrates, she is now defined as an entirely new being with an entirely new identity. Since she is regarded as a newborn child, the previous relatives and offspring she had prior to her conversion are not considered hers. The text implies that her conversion enables the conceptual transformation of her genealogical identity as a Jewess, thus bestowing her Jewish identity on her offspring in the next, successive generation. In other words, this text briefly shows that the mother's conversion enables the new definition of Jewish descent.³⁰⁵

³⁰⁴ It is clearly illustrated that the laws of levirate marriage in relation to the female convert and her male offspring in this Tosefta is guided and governed by the legal principles of a casuistic convention. As Lavee points out in the case of the laws of purity and impurity, it can be compared to a defined moment in which the production process transforms raw material into a defined tool. As frequently seen in other *Tannaitic* sources, the change of raw material into a new entity is paralleled with the change of status of the woman in the moment of her conversion, which will surely effects the legal status of her male offspring as full-fledged Israelites. This legal mechanism, used primarily as a catalyst that marks the changing of raw material into a defined tool, which dictates the moment of their being subject to particular laws. Clearly visible is that a situation in which prior to her conversion the mother was not subject to certain laws such as the laws of purity and impurity, understanding conversion as an agent that defines her new identity as a Jewess, which renders her and her offspring fully subject to such laws. Lavee, "Birth, Seminal Emission and Conversion: Gender, Self-Control and Identity in *bBekhorot*," 286-7.

³⁰⁵ Lieberman, "*Tosefta Ki-fshuta Seder Nashim*," 40. It should be noted that although the notion of the convert is like a newborn child is not directly mentioned, it is clearly implied in this Tosefta. Lieberman in fact interpreted this clause to mean that the converted mother comes to be treated as if she was a native-born (כלומר, כבת ישראל מלידה שילדה מישראל), who gave birth to a Jewish male, implying that the converted mother, defined as Israel in every respect, gives birth to her offspring who is completely identified as Israel, which renders him completely qualified to fulfill the levirate duty as a native-born. This therefore resonates with the notion of the convert as a newborn child upon her

In sum, the Babylonian notion of “A convert is like a newborn child” is reflected in the Tannaitic case of “the one (the convert) conceived not in holiness but born in holiness,” indicating the severing of a convert’s kinship ties with his gentile relatives upon conversion. Although the notion of “A convert is like a newborn child” is conceptually associated with the severing of paternity among converts, it also implies that the legal validity of her maternal kinship with her offspring is defined upon her conversion.³⁰⁶ As illustrated in *tYev*12:2, the converted mother has a kinship relationship with her offspring conceived and born after her conversion. Thus the concept of “A convert is like a newborn child” may also be understood in this light.

In respect of the concept of “two different mothers” addressed in the gemara of *bYev*97b, in tractate *Bekhorot* another implication of the *halakhic* principle of “A convert is like a newborn child” is found in the disputes that deal with the laws of the firstborn (בכור) and the double portion of the father’s inheritance (פי שניים), as specified in *Ex*13:1-2;11-15 respectively, which signals the convert’s radical change of identity. The laws of inheritance, for instance, become complicated because the convert, who has severed all family ties with his gentile relatives, does not possess a right to inherit from their gentile parents. This implies that several problems arise in the area of the transfer of property when they could die without leaving heirs (Insertion needed). It is important to note that since the convert, considered as a newborn child, has no kinship ties with his gentile relatives upon conversion, any offspring born prior to his conversion are not considered as his legal heirs.³⁰⁷

conversion. This suggests that the notion of conversion accompanies the notion of *toledot*, transmitting the identity of the progenitor to the next generation.

³⁰⁶ Although the motif of a convert as a newborn child is not explicitly mentioned in Palestinian *Amoraic* sources, its legal premise is implied in the context of the laws of incest that deal with the status of maternal ties prior to or after the emancipation/conversion of slaves. As also shown in *yYev*12:2 12a, the slave’s valid maternal kinship ties are defined either *prior to* or *after* his conversion/emancipation, thereby effecting his legal subjectivity to the law. Cf. Lavee, “A Convert is Like a Newborn Child,” 62.

³⁰⁷ Additionally, Maimonides holds in *Zekiyah u-Matnah* 1.6 that this principle is not applied to the case of a male offspring conceived prior to the mother’s conversion, but born after her conversion. It should be noted that any offspring conceived, born, and raised as Jews after parents’ conversion are regarded as the only legal heirs of a converted father. Cf. Bamberger, “Proselytism in the Talmudic Period,” 96.

מי שלא היו לו בנים ונשא אשה שכבר ילדה עודה שפחה³⁰⁸ ונשתחררה עודה נכרית ונתגיירה משבאת לישראל ילדה בכור לנחלה ואינו בכור לכהן. רבי יוסי הגלילי אומר: בכור לנחלה ולכהן, שנאמר "פטר רחם בישראל" (שמות יג:ב) עד שיפטרו רחם מישראל³⁰⁹ ...
מי שהיו לו בנים ונשא אשה שלא ילדה נתגיירה מעוברת.

Any male (a native-born Israelite or a convert) who'd had male children married a woman who already gave birth to children while she was still a slave and was subsequently emancipated, and married a woman who already gave birth to children while she was still a gentile and subsequently converted. If she had intercourse with an Israelite male and bore a male offspring (after her conversion), (according to an anonymous opinion) the son is regarded as his father's firstborn, who is supposed to inherit the double portion. However he is not redeemed from the priest as the firstborn. (As opposed to anonymous sages) R.Yoshi the Galilian, however, teaches the following: The son is regarded as the firstborn who needs to be redeemed from the priest and to receive the inheritance of the father's double portion. As it is said in scripture, "Whoever opens the womb among Israel (The first issue of every woman among Israel) (Ex13:2)." That refers to the time when anyone will be born from Israel... Any male had no male offspring married a woman who hasn't given birth and subsequently converted and became pregnant. The son is regarded as his father's firstborn, who is supposed to inherit the double portion and must be redeemed from the priest.

As Ex.13:13 and Deut. 21:17 suggest, any male offspring who is the firstborn (בכור) must be redeemed from the priest, and also inherit a double portion of the inheritance (פי שנים) from his father. This Mishnah presents a theoretical case in which a native-born Israelite male/a male convert, who had no offspring, married a female convert (or a female freed slave) who had children while she was a gentile. According to an anonymous *Tanna*, if she bore a male offspring before her conversion, the son can receive the double portion from

³⁰⁸ Most MSs read וילדה ועודה שפחה.

³⁰⁹ MS Munich reads בישראל.

his father because he is considered as his father's firstborn whereas he, however, was not entitled to being redeemed from the priest because he is not his mother's firstborn. Perhaps the time of the male's conception while the mother was a gentile affects his subjectivity to the laws of redemption from the priest, which equally resonates with the case previously addressed in *mYev*11:2, in which the male offspring was conceived before the mother's conversion but born after her conversion. The reason behind this view is that the converted mother herself is not viewed as a completely newborn child nor is her identity transformed upon her conversion,³¹⁰ which affects the legal status of her male offspring for the purposes of the laws of the firstborn.

On the contrary, R.Yosi the Galilean, however, holds that the mother who bore the son after her conversion is transformed from a gentile into a Jewess upon her conversion, and the son the mother produced after she converted is indeed regarded as the firstborn, who needs to be redeemed from the priest, basing his view on Ex.13:2 "*Whoever opens the womb among Israel* (פטר רחם בישראל)."³¹¹ This also indicates that since the firstborn of the converted mother, who is by definition Israel, needs to be redeemed, the children she produced while she was a gentile are not genealogically related to her. Since the mother is transformed from a gentile to an Jewess "*in every respect*" upon her conversion, any male offspring conceived and born after the mother's conversion is indeed said to be seed from the house of Israel, which renders him fully subject to the laws of redemption from the priest as well as the enjoyment of his father's inheritance as the native-born.

Although it is not directly stated, the notion of the convert as a newborn child is implied in this Mishnah. It is worth noting that the converted mother who gave birth to her male offspring upon her conversion is understood as a newborn child³¹², as also seen in *tYev*12:2. R.Yoshi the Galilian's view reflects that the converted mother's status at the time of the conception of her offspring determines the legally legitimate status of her male offspring

³¹⁰ This point is also made by Porton. Cf. "*The Strangers within Your Gates*," 174.

³¹¹ Jack N. Lightstone, *Yose the Galilian I. Traditions in Mishnah-Tosefta* (Leiden: Brill, 1979), 120-24. Cf. Porton, "*The Strangers within Your Gates*," 174.

³¹² It could also be inferred from his view that if a native-born Jew (or a converted male) who had previously fathered children married a female convert who was pregnant, and if she bore a male offspring, then he would be the mother's firstborn, who must be redeemed from the priest. Cf. Porton, "*The Strangers within Your Gates*," 174.

as Israel.³¹³ The sages in fact differ with regard to whether the converted mother is transformed as a newborn child upon conversion, subsequently affecting the legal status of her male offspring as the firstborn. However it is clear from R.Yoshi the Galilian's view that the mother's legal status at the time of conception and birth upon her conversion is a crucial factor in defining the Jewishness of her male offspring.³¹⁴ In a similar vein the subsequent clause of this Mishnah confirms that if any Israelite or converted male who had fathered offspring married a female convert who became pregnant later on, then the child must be the mother's firstborn, who needs to be redeemed from the priest. Similarly the converted mother's status at the time of the child's conception and birth supposedly serves as a crucial factor in defining the Israelite status of her offspring she bore. Since the converted mother is considered an Israelite upon her conversion and the son is her first child, his parents must redeem him from the priest, as prescribed in *Ex13:13*.³¹⁵ As also demonstrated in *tYev12:2* and *bYev97b*, it is therefore clear from this Mishnah that the converted mother is completely transformed upon her conversion as a "newborn child,"

³¹³ As previously noted, the intention of the law, as governed by the legal formalism of a casuistic convention, is to mark the moment of obligation of fulfilling the rulings. The text of *mBekh8:1* undoubtedly stresses that it is the conception of the male offspring "in Israel" that renders him fully subject to the laws of the firstborn and redemption from the priest, which resonates with the notion of the convert as a newborn child as seen in the *gemara* of *bBekh47a-b*.

³¹⁴ Apparently one could argue that the concept of "Whoever opens the womb among Israel" as raised in *Ex13:2* also apparently resonates with the notion of "sanctity" / קדושה as previously addressed in *b.Qid78a*, asserting that the sages uphold the principle that the daughter of two converts are fit for marriage with a priest since she was conceived and born in the sanctity of Israel (בקדושת ישראל) despite the fact that her parents are both converts. This view by R.Yoshi the Galilian seems to be derived from an understanding of the phrase "seed of the house of Israel" / מזרע בית ישראל in *Ezk44:22*, as a reference to seed from within the sanctity of people Israel, affirming that any offspring conceived and born after their parents' conversion are indeed said to be "seed from the house of Israel." More importantly it also implies that since such converted parents are viewed as newborn children, Jewish identity is transmitted to their female offspring from them, which makes it possible for her to marry into the priesthood, securing legitimate lines of descent. As seen in *t.Yev12:2* as well as *b.Yev97b*, a similar point can be made of the converted mother, whose children were both conceived and born in the sanctity of Israel, is completely viewed as Israel in every respect. Cf. Hayes, "Gentile Impurity," 175.

³¹⁵ Concerning the clause "Any male who had no male children married a woman who hasn't given birth and subsequently converted, who became pregnant later on..." (שהיו לו בנים ונשא אשה שלא ילדה נתגיירה מעוברת), Rashi understood it to refer to a situation in which the male was conceived after the mother converted, as similarly raised in *mYev11:2* and *tYev12:2*. This apparently indicates that the conception of the male offspring after the conversion of the mother, who is a newborn child that defines his legal status as an Israelite.

who bestows her Jewishness on her offspring.

In a similar vein, the same pattern is also illustrated in the case of a converted male who fathered his male offspring after his conversion in the *gemara* of *bBekh47a*, a commentary on *mBekh8:1*. It suggests that the child born after the conversion of a male gentile is considered the firstborn with respect to inheritance whereas the children the father had prior to his conversion are not considered his legitimate offspring in this respect because they are viewed as gentiles, who no longer have kinship ties with the converted father. There exists a new kinship relationship between the firstborn male born after the father's conversion and the converted father because he is considered a newborn child, who had his identity renewed as Israel upon his conversion, bestowing his line of descent on his offspring.

Regarding the laws of the firstborn and inheritance, the following dispute between R. Yochanan and Resh Laqish in the *gemara* of *bBekh47a* further expands on an ambiguous case presented by this Mishnah concerning the convert's right of the firstborn as well as inheritance:

bBekh47a

איתמר היו לו בנים בהיות גוי ונתגייר. רבי יוחנן אומר: "אין לו בכור לנחלה."
ור"ש בן לקיש אומר: "יש לו בכור לנחלה." רבי יוחנן אומר: "אין לו בכור לנחלה."
דהא הוה ליה "ראשית אונן" (דברים כא: יז) ור"ש בן לקיש אומר: "יש לו בכור לנחלה,
גר רשנתיי כקטן שנולד דמי..."

*It has been stated in a dispute: There is a man who had fathered male children while he had been a gentile and subsequently converted. R. Yochanan holds that he is not (regarded as) the firstborn for the rights to inherit his father's double portion. R. Shimon b. Laqish teaches the following: He is (regarded as) the firstborn for the rights to inherit his father's portion. R. Yochanan disagrees, explaining that he is not (regarded as) the firstborn for the rights to inherit his father's double portion since he'd already had children (before his conversion). As it is said "the first fruit of his vigor (Deut21:17)." (As opposed to R. Yochanan's views) R. Shimon b. Laqish counters: He is (regarded as) the firstborn for the rights to inherit his father's portion. (That's because) **A convert***

is like a newborn child.

In *bBekh47a*, R.Yochanan suggests that male children born after the conversion of a gentile father, who had already fathered his male offspring prior to his conversion, is considered as a firstborn with regard to the inheritance of his father's double portion. This view agrees with Yoshi the Galilean's view in *mBekh8:1*, who quoted the passages of *Ex13:2*, "Consecrate to me every firstborn; man and beast." The male offspring he had fathered prior to his conversion, on the other hand, are not considered as his, thus suggesting that the male child born after his conversion and the one born prior to his conversion are not genealogically related to each other for the purpose of the laws of the status of the firstborn. As opposed to Rabbi Yochanan's view that the converted male is not a newborn because the offspring he had fathered prior to his conversion are considered his, Resh Laqish, on the other hand, holds that since a convert, namely the gentile father who converted before his firstborn male was born, is considered a newborn child, the firstborn male born after his father's conversion is entitled to enjoying the privileges of his father's inheritance accorded to the firstborn male of the native-born. This suggests that here the notion of the convert as a newborn child is addressed as the lack of kinship relationships between the converted male and the offspring he had fathered prior to his conversion while redefining a new valid kinship with the convert's offspring as Israel.³¹⁶

As seen in the above Mishnah, the gemara presents a similarly theoretical case of a convert who had no offspring while he was a gentile, but this time the subject in question is a male; the *gemara* describes a converted male, who had previously married a (gentile) woman, had fathered male offspring prior to his conversion. Both R.Yochanan and Resh Laqish disagree with regard to the status of the male convert as a newborn child in dealing with the laws of the firstborn and inheritance for his male offspring born after his conversion. According to R.Yochanan, if a converted male had fathered offspring before

³¹⁶ In the case of a female gentile who bore children and subsequently converted, her children previously born before her conversion are clearly excluded from enjoying the rights of inheritance. If her firstborn child after her conversion is a male, then he is defined as a firstborn who must be subject to Jewish law. This indicates that his firstborn son for the purposes of the laws of inheritance is indeed understood as the firstborn after his conversion. Cf. Porton, "The Strangers within Your Gates, 117 306. n.209. Cf. *bYev62a*.

he converted, his first son could not receive the privileges of his father's double inheritance as the firstborn, whose rationale is based on "*the first fruit of his vigor*" in *Deut21:17*. One could argue that since the son was born while his father was a gentile, he was not entitled to enjoying the privileges accorded to the firstborn of an Israelite father.³¹⁷ Resh Laqish, on the other hand, rules that the first male born while he was a gentile may enjoy his father's double inheritance as the firstborn because his view is based on the *halakhic* principle that the male convert himself was considered as a *newborn child*, which stresses that the firstborn child born as an Israelite by the converted father, who is an Israelite.

Another dispute between those two sages concerns the duty of procreation (פריה ורביה) in *bBekh47b*, which presents the case of whether or not a convert who had had male offspring prior to his conversion may be viewed as having already fulfilled the duty of procreation.

bBekh47b

דאיתמר: היו לו בנים בהיותו גוי ונתגייר. רבי יוחנן אמר: "קיים פריה ורביה."
 ור"ש בן לקיש אמר: "לא קיים." רבי יוחנן אמר: "קיים." "לא תוהו ארבה
 לשבת יצרה" (ישעיהו מה). ור"ש בן לקיש אמר: "לא קיים פריה ורביה." גר שנתגייר
 כקטן שנולד דמי.

*It has been stated in a dispute: If someone has children while he was a gentile, and then he was converted: Rabbi Yohanan said: He has already fulfilled the obligation to be fruitful and multiply. Resh Laqish said: He has not fulfilled the obligation to be fruitful and multiply. Rabbi Yohanan said: He has already fulfilled the obligation to be fruitful and multiply since he already had children (while he was a gentile). Resh Laqish said: **He has not fulfilled the obligation to be fruitful and multiply – (since) A convert is like a newborn child.***

As opposed to R. Yochanan, who assumes that the convert who has had his male offspring

³¹⁷ Porton, "*The Strangers within Your Gates*," pp.117; Bamberger "*Proselytism in the Talmudic Period*," 97.

prior to his conversion is considered to have already fulfilled the duty of procreation because he has already had children born before his conversion, R. Shimon b. Laqish, on the other hand, holds that even though the convert has had his male offspring born before his conversion, he must fulfill the duty of procreation because he is understood as a “*newborn child*” upon his conversion. This implies that the male convert, who is a former gentile, has no kinship validity with any of his supposedly *gentile* offspring born *prior to* his conversion, therefore being able to procreate his *Jewish* offspring.³¹⁸

Figure.1 The Rationale for the Convert as a Newborn Child in Tractate Bekhorot

Sources	Sages	Cases	Halakhah	Biblical/Halakhic Basis
<i>mBekh 8:1</i>	R.Yoshi HaGalili	<i>The first male Offspring conceived And born to the Converted mother</i>	<i>The firstborn Redeemed from The Priest</i>	Ex13:2 “פטר רחם בישראל”
<i>bBekh 47a-b</i>	Resh Lakish	<i>The male offspring Born after His father’s Conversion</i>	1.Inheritance 2. Procreation	גר שנתגייר כקטן שנולד דמי “A convert is like a newborn child”

In light of the discussions concerning the duty of procreation in relation to the convert’s status, the above figure seems to uphold the view that the assurance of the converts’

³¹⁸ Although R.Yochanan’s view, in which the convert, who has had children born before his conversion, is already considered to have fulfilled the duty of procreation, prevailed in this case, one could also argue that the male offspring born prior to the father’s conversion may well be regarded as *having been converted* along with his father, who is also viewed as a *newborn child*. Cf. Lavee, “A Convert is Like a Newborn Child,” 48 n.131.

descent may as well be important in constructing the historical continuity of the people of Israel, in which the convert must be included. The laws regarding inheritance and procreation in relation to conversion thus seem to stress the transmission of identity to the next generation. Because the convert is understood as a newborn child, who has no valid paternal kinship ties with his gentile relatives upon his conversion, the converted father himself inaugurates a new line of descent with his offspring³¹⁹; the offspring he begets may be understood as being traced to the one who had preceded him –the converted father–, ensuring his lines of descent from one generation to the next, which contributes to perpetuating the continuity of the people of Israel as a whole. This apparently reflects the premise that the offspring’s destiny is linked to those who had preceded them. As Carmichael also put it, in belonging to the generation he is born into, the progenitor in fact belongs to a generation in which the offspring would be expected to be born into after him.³²⁰

This phrase, moreover, reveals another aspect of the notion of the convert as a newborn child. It refers to the change of the parents’ identity (or the mother’s) prior to and after their conversion, which also determines the Jewish status of their offspring. Not only are her previous kinship ties with her paternal gentile relatives severed upon her conversion, but also she is transformed into an entirely new person with an entirely new identity. Since the conception of her first male took place prior to her conversion, and the second one was both conceived and born after her conversion, no valid kinship ties exist between her two males. The mother’s conversion, in this sense, seems to be stressed as an event that

³¹⁹ According to Sam K. Williams, the progenitor has the organic relationship with his offspring, in which the offspring are included in the progenitor. Johnson-Hodge also develops his view to suggest that such an organic relationships assumes a model of procreation that in which the progenitor “bestows life and shapes the identity of the child.” Although this model is basically based on the patrilineal understanding of descent, it does stress that the offspring’s presence in either of the parents (in other words the mother) secures his corporate identity. Sam K. Williams, “Promise in Galatians: A Reading of Paul’s Reading of Scripture,” *JBL* 107 (1988): 717. In this sense This *sugya* in the *Bavli* strongly affirms that the converted parent (either the father or the mother or perhaps both), who is defined as a newborn child upon his/her conversion, bestows his/her corporate identity on his/her offspring, shaping his/her essential identity as Israel. More on the organic relationships between the progenitor and the offspring, Caroline Johnson-Hodge, *If Sons, Then Heirs: A Study of Kinship and Ethnicity in the Letters of Paul*. (New York: Oxford University Press, 2007), 97-98.

³²⁰ Carmichael, “*Law, Legend, and incest in the Bible*,” 37.

radically transforms her identity, from a gentile into a Jewess. In fact the phrase also seems to suggest that the converted mother inhabits two separate bodies within one; her body is *conceptually* separated into two different bodies upon conversion. Thus the implication of the phrase is understood as follows: the conception of the males took place in two conceptually different bodies, one in the body of a “gentile” and the other in the body of a “Jew.”³²¹

The concept of “*A convert is like a newborn child*” gains a wider scope of its legal validity and use in the *Bavli*, applied in the realms of incest, procreation, and the inheritance of the firstborn in the context of a convert’s severing of his kinship relationship with his former relatives. All these laws discussed in the *Bavli* all point to the definition of new kinship relationships of the convert as a legitimate member of the Israelite ethnic community. This indicates that the concept of the convert as a newborn child, developed by the *Bavli*, is therefore understood as pointing out the invention of a newly defined kinship as well as the new identity of a person who previously didn’t exist prior to the conversion. In this vein, conversion is an irreversible step through a legal severing of his gentile past. In the next section, we’ll examine how another Palestinian *Amoraic* tradition that denotes the lack of paternal kinship among gentiles is made to fit this Babylonian notion of “*A convert is like a newborn child*,” promoting the demarcation of the convert’s identity ethnically linked to or incorporated into the people of Israel.

³²¹ In this sense, conversion, I suggest, may be understood as some sort of creation of the convert’s new body. Conversion, as Mira Balberg aptly points out, is characterized as what she calls an “*acquisition of a new Jewish body*.” The convert is defined as a newborn child because of this conceptual transformation of his body. For instance speaking of the converted mother who conceived and bore her male offspring after her conversion as seen in *tYev*12:2, it is therefore possible to suggest that she is now defined as a new person with a new line of descent; again the mother, who conceived her first male while she was a gentile, is not exactly the same person as the one who conceived and gave birth to her second male after she became a convert. Hence this phrase actually illustrates that the notion of the convert as a newborn child not only marks the severing of the convert’s family ties, but also reveals the concept of conversion as creating an entirely new person with an entirely new identity. This perhaps suggests that such an understanding assumes the notion of conversion as constructing a new body with new kinship relationships. I will discuss about this issue in chapter 4. Mira Balberg, *Purity, Body, and Self in Early Rabbinic Literature* (University of California Press: Berkeley, 2014), 134-135. Cf. Hayes, “*Gentile Impurities*,” pp.144,164-192. Vered Noam, *From Qumran to the Rabbinic Revolution: Conceptions of Impurity* [in Hebrew]. (Yad Ben Zvi Press: Jerusalem, 2010), pp.289-91. Rosen-Zvi and Adi Ophir “*Goy: Toward a Genealogy*” *Dine Israel* 29 (2011): 69-122.

The Notion of “A Gentile Has No Paternity”

Another conceptual framework in the laws of conversion that denotes the notion of “A convert is like a newborn child” is the Palestinian *Amoraic* concept of “A gentile has no paternity” (אין אב לגוי). The *Tannaitic* texts formulate a series of laws in which the convert is assumed not to be related to his former gentile kin; he is not considered as the offspring of his gentile father for the sake of inheritance, levirate marriage, and the status of the first-born, which correlates the lack of valid paternal kinship among converts with the lack of valid paternal kinship among gentiles, suggesting that no legally valid paternal kinship between a gentile (father) and his offspring is established or even exists while he was still a gentile. Hence such a situation continues even after his conversion; therefore the convert himself is not still considered the offspring of his biological gentile father, just as he was not considered as such prior to his conversion.

As opposed to the *Bavli*’s frequent usage of the image of the convert as a newborn child, this phrase, however, is mostly found in Palestinian *Amoraic* sources, stressing that the convert’s paternal kinship ties have no legal validity even while he was a gentile. It is used to indicate the lack of valid paternal kinship of the convert especially in the context of establishing a marital relationship with his paternal sister, levirate marriage, inheritance, and the status of the firstborn, especially attesting to the *Tannaitic* legal framework with regard to the laws of incest, in which the convert, assumed to be genealogically unrelated to his previous kin upon conversion, is not considered as the legitimate offspring of his gentile father.³²²

It is also clear from several *Tannaitic* and *Amoraic* texts we have examined above that the notion of the convert as a newborn child is conceptually associated with the nullification of gentile paternity upon conversion. Judging from the semantic aspect of “A gentile has no paternity,” the rabbis are apparently aware that it is the notion of paternity that defines valid kinship of gentiles,³²³ which enables the change of kinship that

³²² Lavee, “A Convert is Like a Newborn child,” pp.46-51. Cf. Lavee, “No Boundaries for the Construction of Boundaries,” 99.

³²³ Although this is not a place to thoroughly discuss and examine the implication of paternity in late antiquity, it is worth pointing out how agnation effects the establishment and (re)definition of

constitutes ethnicity from gentile to Jew via conversion, they resorted to inventing a legal fiction that nullifies its validity.

The convert's severing of his gentile paternity is therefore a crucial factor in redefining his new kinship relationships in the community of Israel, whose legal framework is originally based on the *halakhic* notion addressed in Palestinian *Amoraic* sources that denotes the lack of valid *halakhic* kinship among gentiles, which in turn comes to be conceptualized later as the *halakhic* notion that defines the lack of legally valid paternal kinship among the converts in the *Bavli*. This also suggests that the permission of incest among converts who are paternally related is correlated with the permission of incest among gentiles. In other words the phrase, "*A gentile has no paternity*" indicates that a legally valid kinship between a gentile person and his offspring is never established, and therefore the lack of such valid paternal kinship continues upon conversion. As other *Amoraic* literature, for instance, indicate, just as the convert was not considered as the legitimate offspring of his biological father even prior to conversion, he is not continuously considered as such. As opposed to the *Bavli's* concept of "*A convert is like a newborn child*," which stresses the severing of the convert's family ties upon conversion, the concept of "*A gentile has no paternity*," on the other hand, indicates the continuity in the lack of legally valid paternal kinship among converts.³²⁴

one's descent in Roman law. Paying attention to Roman legal concepts of *agnatio* as well as *cognatio*, Pomata stresses that it is the concept of paternity that defines one's descent in Roman law. In other words *agnatio* is defined as a social reproduction of lineage fictively regulated by rituals, which redefines an outsider as an insider. Gianna Pomata, "Blood Ties and Semen Ties: The Consanguinity and Agnation in Roman Law," in *Gender, Kinship, Power: A Comparative and Interdisciplinary History*, ed. Mary Jo Maynes et al. (New York: Routledge, 1996), 43-44. Following the view that sacrificial ritual helps regulate and maintain social relations of reproduction, Nancy Jay, on the other hand, argues that although social paternity and biological paternity may often do coincide, it is the notion of social paternity that determines the membership based on patrilineal lineage, which enables an outsider to be incorporated into lines of paternally defined descent. Perhaps the rabbis might have been aware of how social paternity defines the reproduction of legitimate offspring to secure lines of one's descent, into which an outsider is incorporated as a legitimate member of the family. Therefore it may be that they might have employed the system of *pater familia* to deduce the notion of "*A gentile has no paternity*." Nancy Jay, *Throughout Generations Forever: Sacrifice, Religion, and Paternity*. (Chicago: The University of Chicago Press, 1992), 43. In light such understanding, Buell also stresses that certain religious rituals serve as a warrant or means of creating patrilineal descent. "*Why This New Race*," 43.

³²⁴ Lavee, "No Boundaries," 99; "*A Convert Is Like a Newborn Child*," 46, 49.

The *halakhic* basis for this notion is found in *GenR 18:5*, raising a question of whether a person who was converted can actually resume a marital relationship with his paternal sister. As opposed to Rabbi Meir's claim that the convert who had been married to his sister, whether she be paternal or maternal, must divorce her, the sages, however, proclaim that he may marry his paternal sister, albeit not with his maternal sister, due to the fact that he is assumed to have been a "*gentile who has no paternity*" (אין אב לגוי):

GenR 18:5

"על כן יעזב איש את אביו ואת אמו" (בראשית ב כד). תני: גר שנתגייר והיה נשאו לאחותו בין מן האב בין מן האם - יוציא, כדברי ביר מאיר. וחכמים אומרים: מן האם - יוציא, ומן האב - יקיים, שאין אב לגוי.

"Therefore he shall leave his father and mother...(Genesis 2:24)" It was taught in the following baraita: A person who became a convert was already married to his sister (while he was gentile). (If his sister is) either paternal or maternal, he should divorce her (since he violates the prohibition of incest as prescribed in *Lev18:16*). This is in accordance with the views of Rabbi Meir. However the sages teach the following: (If his sister is) maternal, he must divorce her: (If his sister is) paternal, he may, however, remain married to her because **a gentile has no paternity**.

Again, the notion of "*A gentile has no paternity*," based on the premise that no valid kinship for gentiles is supposed to exist even while he was a gentile, indicates that a convert is thereby able to contract and maintain a marital relationship with his *paternal* sister, to whom he is not genealogically related through his *gentile father* because no such valid paternity exists between his biological gentile father and the convert himself even prior to his conversion. This rabbinic concept also suggests an essential conceptual framework that shows a parallel relationship between the prohibition of incest of the convert and that of gentiles.³²⁵

It is therefore assumed that the convert's paternal sister may marry him due to his lack

³²⁵ Ibid., 49.

of valid paternal kinship. Moreover such a marital union doesn't make him violate the prohibition of an incestuous relationship as prescribed by the Torah; it is the lack of such valid paternal kinship ties that enables him to continuously maintain such a marital union even after his conversion. Similarly, other Palestinian *Amoraic* sources (as well as the *Bavli*) have various traditions that reflect this *halakhic* concept, as brought about by *Genesis Rabba*. These parallel texts of the baraitot illustrate that the legal principle of “A gentile has no paternity” is implied in the case of the convert's legal eligibility for marrying his paternal sister:

Figure 2. The Convert's Marriage with His Paternal Sister

Gen18:5	yYev11:2, 12a	Gerim 3:5	bYev98a	yYev11:2, 12b
<p>תני גר שנתגייר והיה נשואי לאחותו בין מן האב בין האם יוציא כדברי ר' מאיר וחכמים אומרים מן האם יוציא ומן האב יקיים שאין אב לגוי</p>	<p>גר... אחותו בין מאב בין מאם יוציא דברי ר' מאיר ר' יודה אומר אחות מאם יוציא מאב יקיים</p>	<p>היה נשוי אחות אביו מאב אחות אביו מאם ר' מאיר אומר יוציא וחכמים אומרים יקיים</p>	<p>גר שהיה לידתו בקדושה והורתו שלא בקדושה יש לו שאר האם ואין לו שאר האב כיצד? נשא אחותו מן האם יוציא מן האב יקיים</p>	<p>אחותו אמו יוציא, אחות אביו יקיים. דברי ר' מאיר. ר' יוסה אומר: אחות אמו מאמה יוציא, אחות אמו מאביה, יקיים.</p>
<p>“Therefore he shall leave his father and mother...(Genesis 2:24)” It was taught in the following baraita: A person who became a convert was already married to his sister (while he was gentile).</p>	<p>(In respect of) A convert (who has been married to) either his paternal or maternal sister - he must divorce her; these are the views of Rabbi Meir. Rabbi Yuda, on the other hand, teaches the following: (If the convert</p>	<p>There was a convert who had been married to either his father's paternal sister or his father's maternal sister; Rabbi Meir says: he must divorce her (his father's maternal sister).</p>	<p>(In respect of) A convert born in holiness (after his mother's conversion) but conceived not in holiness (prior to his mother's conversion) – He has his maternal kinship, but has no</p>	<p>(If a convert is married to) his maternal sister – he should divorce him; (If he is married to) his paternal sister – he may remain married to her. This is in accordance with the views of Rabbi Meir. Rabbi Yose,</p>

<p>(If his sister is) either paternal or maternal, he should divorce her (since he violates the prohibition of incest). This is in accordance with the views of Rabbi Meir. However the sages teach the following: (If his sister is) maternal, he must divorce her: (If his sister is) paternal, he may, however, remain married to her because a gentile has no paternity.</p>	<p>has been married to) his maternal sister, he must divorce her. (However if he has married to) his paternal sister, he should remain married to her.</p>	<p>However sages teach the following: He (the convert) may remain married to her (his father's paternal sister).</p>	<p>paternity (Rashi: A convert has no paternity). How do we know that? (That's because) He has been married to his sister (since he was a gentile). If she is a maternal sister, he must divorce her. If she is a paternal sister, he may remain married to her even after his conversion.</p>	<p>however, teaches the following (by clarifying): (If he is married to) his mother's maternal sister – he should divorce her (since he is genealogically related to her through her mother upon her conversion); (If he is married to) his mother's paternal sister, he may remain married to her (Therefore their incestuous relationship are permitted).</p>
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The figure of the above parallel baraitot therefore illustrates that the convert's marriage with his paternal sister, normally forbidden as constituting an incestuous relationship prescribed in *Lev18:16*, is in fact permitted due to the lack of his valid paternity, which fits the notion of "A gentile has no paternity." This makes them genealogically unrelated to each other *ipso facto*. These parallel *baraitot* demonstrate that this particular law of incest is formulated in such a way that the convert is assumed not to be related to his previous gentile kin by ruling that no valid paternity is established among gentiles, which is in accordance with the *halakhic* principle of "A gentile has no paternity" as explained earlier. The legal premise of the permission of incest among converts thus suggests a conceptual framework in which the lack of valid kinship among converts is correlated with the lack of valid kinship among gentiles. Importantly they also illustrate that the concept of "A gentile has no paternity," originally meant to be formulated as a law that seemingly permits incest

among gentiles due to the lack of valid paternal kinship, is now expanded by the *Amoraim* to formulate a new legislation that permits incest among converts, therefore ruling that no valid paternal kinship is not assumed to exist among them.³²⁶ Although the phrase, “A gentile has no paternity” is not explicitly mentioned in some *baraitot* of the Palestinian *Amoraic* texts, the lack of valid gentile paternity among converts is clearly implied in these texts.

As previously mentioned in *GenR18:5*, both the *Yerushalmi* and *Gerim* also address the same *halakhic* agenda; the convert who has been married to his paternal sister since he was still a gentile may remain married to her because the lack of his valid paternal kinship is clearly implied. This, therefore, suggests that the lack of legally valid *halakhic* kinship among gentiles still continues upon conversion; in this case there is no legally valid paternal kinship for the convert simply because he was not already considered the legitimate offspring of his biological, gentile father even while he was a gentile, so that he may marry his ostensibly “paternal” sister, to whom he is no longer genealogically related as the same paternal kin upon his conversion.

On the contrary, in order to deduce that the convert has no valid paternal kinship, the *Bavli* instead cites the case of a male convert conceived in holiness but born in holiness, which assumes the notion of conversion as an event that severs the legal validity of his paternal kinship ties. Indicated by the phrase “He (the convert) has no paternal kinship” (האב אין לו שאר), the *baraita* of *bYev98a*, for instance, stresses that the convert, fathered prior to his gentile father’s conversion, may marry his paternal gentile sister because he is not considered as the legitimate offspring of his biological *gentile* father. This in turn means that as the phrase “He has maternal kinship” (יש לו שאר האם) suggests, the convert, who may be permitted to marry his paternal sister, on the contrary, is forbidden to marry his maternal sister or any relative who is *maternally* related because he is considered as his converted mother’s legitimate offspring; in this instance, as already seen in *tYev12:2* as well

³²⁶ Ibid., 55 n. 152. As also raised in *Sanh 57b-58a*, a convert/ a gentile is used interchangeably in the following texts: a convert dealt with in *GenR18:5* is identical with a gentile in the *Yerushalmi*. This makes it clear that the concept of the lack of paternity among gentiles is later expanded by the *stam* of the *Bavli* to suggest the lack of paternity for converts in explaining the permission of incest, whose premise is grounded on the notion of the convert as a newborn child. For more, see Lavee, “No Boundaries,” 100-1.

as *bYev97b*, he is already considered as “Israel” because the mother gave birth to him *after* she had converted.³²⁷

Hence the conclusion of these *baraitot* seems to affirm the *halakhic* agenda originally claimed by *GenR18:5*, indicating that the convert, who is now genealogically related to his maternal side of the family upon his conversion, must divorce his maternal sister due to the fact that he has valid maternal ties with his maternal relatives. Such a marital union would thus violate the prohibition of incest as prescribed in Leviticus 18 whereas a paternal union wouldn’t. Though the phrase “A gentile has no paternity” is not specifically addressed in these parallel *baraitot*, the concept of lack of paternity among gentiles is deduced from the occasion of “the convert who has been married to his paternal sister.”³²⁸ This suggests that in the *baraita* of *bYev98a*, the concept of “A gentile has no paternity” is deduced by the *stam* from the case of “A convert born in holiness but conceived not in holiness” in such a way that the convert who may marry his paternal sister has no valid paternity. While originally the concept refers only to the lack of valid paternity among gentiles, the *baraita* of the *Bavli* interprets this to refer to the lack of paternity among converts, so that the lack of their paternity prior to their conversion also is understood to mean a severing of their paternity upon their conversion.³²⁹ Judging from the parallel drawn between the *Bavli* and *Genesis Rabba* (as well as other Palestinian *Amoraic* sources) in the context of the *Tannaitic* law that permits incest/marriage with a paternal sister, it seems that “A gentile has no paternity” and “A convert is like a newborn child” complements one another. Again the *Bavli* deduces the concept of lack of paternity from the case of “A convert born in holiness but conceived not in holiness,” suggesting that if there is no valid paternity among gentiles, then the convert also has no valid paternal kinship of offspring born before his conversion.

³²⁷ Ibid, pp.55.

³²⁸ The word הוהי נשוי (He has been married) found in *GenR18:5* is understood by the other *baraitot* to refer to a case that the convert was married *while he was a gentile*. For instance, one can find a similar case in the previous passage of *bYeb98a*, גר שנתגייר והיה נשוי אשה ובתה או אשה ואחותה. Its parallel is also found in *Gerim*, particularly in the case of והיה נשוי לאחותו אביו מאב. Of course the concept is inferred by the *stam* in *bYev98a* from the case of מן האב ... נשא אחותו ... to indicate a severing of paternal kinship among converts. Cf. Lavee, “A Convert is Like a Newborn Child,” 56 n. 153.

³²⁹ David Weis Halivni, *Sources and Traditions: A Source Critical Commentary on the Talmud. Seder Nashim* (in Hebrew). (Jewish Theological Seminary of America: Jerusalem, 1982), 108. This *baraita* of the *Bavli*, as well as *Gerim* 3:5, is a late reworking of the *Tannaitic* tradition by the *stam*.

The *Bavli* did hermeneutical maneuvers to make the concept fit its agenda, namely the concept of “A gentile has no paternity” in Palestinian *Amoraic* tradition was interpreted to indicate the convert’s severing of paternal kinship ties upon conversion, which was later developed into the principle of “A convert is like a newborn child.”

Another example also illustrates the parallel that lies between the two *sugyot* of the *Bavli* in the *halakhic* ruling of the convert’s severing of valid kinship ties with his gentile relatives upon conversion, which suggests a similar literary and structural pattern in which paternal siblings may be eligible for performing duties by virtue of the *halakhic* principle that the convert is considered as a newborn child.

Figure 3. The Convert’s Severing of His Paternal Ties upon Conversion

<i>bYev97b</i>	<i>bYev22a</i>
<p>בני יודן אמתא אשתחרור, שרא להו רב אחא בר יעקב למינסב נשי הדדי...</p> <p>מן האב ולא מן האם - כלי עלמא לא פליגי דשרי, מן האם ולא מן האב - כלי עלמא לא פליגי דאסיר...</p> <p>ואיכא דאמר: פליג רב אחא בר יעקב אפילו באחין מן מן האם.</p> <p>מאי טעמא? גר שנתגייר כקטן שנולד דמי.</p>	<p>אמר רב נחמן: גרים, הואיל ואתו לידן, נימא בהו מלתא:</p> <p>אחין מן האם - לא יעידו, ואם העידו, עדותן עדות.</p> <p>אחין מן האב - מעידין לכתחילה.</p> <p>אמימר אמר: אפילו אחין מן האם נמי מעידין לכתחילה.</p> <p>ומ"ש מעידות? ערוה לכל מסורה, עדות בית דין מסורה. וגר שנתגייר כקטן שנולד דמי.</p>
<p>When the sons of a female slave Yudan were freed, R. Aha b. Yacob permitted them to marry each other's wife... . In respect of two converts or emancipated slaves who are paternal brothers but not maternal ones, both sages agree that paternal brothers are permitted to marry each other's wife. In respect of converts who are maternal brothers but not paternal brothers, both of them agree that they are forbidden to marry each other's wife. When the sages have argued, asking who may be permitted to marry each other's</p>	<p>R. Nahman said: Since the issue of converts has been addressed, let us discuss the matter about them: Maternal brothers may not testify as a witness at the court; if, however, they did, their evidence is considered valid. Paternal brothers may testify as a witness without challenge.</p> <p>Amemar said: Even maternal brothers may testify as a witness without challenge. And why is this case different from incest? Matters of incest lie in everybody's hands; evidence is entrusted to Beth din</p>

<p>wife, paternal or maternal brothers? For their children are ascribed only to the father, which is why they are called as the son of such-and-such a father. R. Sheshet, on the other hand, prohibits them from marrying each other's wife because their children are ascribed only to such-and-such a mother. But some hold the view that R. Aha b. Yacob raises an objection to even a marriage with the wife of a maternal brother. What is the reason? A convert is like a newborn child.</p>	<p>(the rabbinic court), and (they know that) a convert is like a newborn child.</p>
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The gemara of *bYev22a* deals with the laws of testimony, in which two *paternal* brothers who are converts may testify against one another at the rabbinic court because these converted paternal brothers, being considered newborn children themselves, *legally* have no blood ties with each other.³³⁰ In a similar vein, in *bYev97b*, as previously discussed, paternal brothers are permitted to marry each other's wife because none of their previous paternal relationships matter any more upon their conversion, which makes it possible for them to be defined as total strangers. Both *sugyot* demonstrate a similar structure of an extent and scope of the *halakhic* obligations to perform by the convert's paternal siblings: They are allowed to perform specific obligations such as giving testimonies at the rabbinic court and marriage with his paternal sister-in-law respectively due to the fact that they are no longer considered as related by blood. This supposedly entails that it is the concept of gentile paternity on the part of the convert that comes to be nullified upon his conversion, which is in accordance with the notion of "*A gentile has no paternity*" as found in Palestinian Amoraic literature, which is understood as the convert's severing of valid paternal kinship with his gentile relatives in the Bavli.

Lastly the laws that pertain to the lack of valid paternal kinship among gentiles help define the establishment of valid kinship among converts especially in the context of the laws of procreation (פריה ורביה), suggesting that both notions of "*A gentile has no paternity*"

³³⁰ Porton, "*The Stranger within the Gates*," 118. Lavee, "*A Convert is Like a Newborn Child*," 44-5.

and “A convert is like a newborn child” are intertwined with one another to deduce a new concept of valid kinship for the converts.

Figure. 4 The Correlation between “A Convert is Like a Newborn Child” and
“A Gentile Has no Paternity”

<i>bYev62a</i>	<i>yYeb2:6, 3d</i>
<p>איתמר: היו לו בנים בגוייתו ונתגייר: רבי יוחנן אמר: קיים פריה ורביה. וריש לקיש אמר: לא קיים פריה ר' יוחנן אמר: קיים פריה ורביה דהא הוּו ליה. ור"ש לקיש אמר: לא קיים פריה ורביה, גר שנתגייר כקטן שנולד דמי... א"ל: בהיותן גוים אית להו חייס, נתגיירו לית להו חייס.</p> <p><i>It has been stated in a dispute: If someone has children while he was a gentile, and then he was converted: Rabbi Yohanan said: He has already fulfilled the obligation to be fruitful and multiply.</i></p> <p><i>Resh Laqish said: He has not fulfilled the obligation to be fruitful and multiply. Rabbi Yohanan said: He has already fulfilled the obligation to be fruitful and multiply since he already had children (while he was a gentile). Resh Laqish said: He has not fulfilled the obligation to be fruitful and multiply - (since) A convert is like a newborn child. He (Resh Laqish) answered to him (Rabbi Yohanan): While they were gentiles, they had valid paternal kinship (with their gentile kin), but when they have converted, they no longer have any legally valid paternal kinship (with their former kin).</i></p>	<p>גוי שבא על גויה וילדה: רבי יוחנן אמר: גוים יש להם יחסים. רבי שמעון בן לקיש אמר: גוים אין להן יחסין.</p> <p><i>(In respect of) A gentile man who had sexual intercourse with a gentile woman, who gave birth: Rabbi Yochanan said: Gentiles have valid paternal kinship.</i></p> <p><i>Rabbi Shimon ben Laqish said: Gentiles have no valid paternal kinship.</i></p> <p><i>(and there is no recognition of paternity of the offspring born prior to conversion, which counts him as the first-born)</i></p>

(Since their valid paternal kinship with their gentile kin has been severed upon conversion, now they must procreate their offspring as those who are part of the people of Israel)	
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Although these two Talmudic texts present seemingly two different, unrelated disputes, they address the same *halakhic* agenda: the validity of the status of the firstborn and legal fulfillment of procreation. *yYev*2:6,3*d* deals with the *halakhic* issue of whether gentiles have legal validity of paternal kinship whereas *bYev*62*a* engages in discussions of whether converts have the validity of such paternal kinship. Since the issue that pertains to the kinship status of gentiles was raised in both Talmud texts, some efforts of dialectical maneuvers are made to explain how the lack of valid paternal kinship among gentiles in the *Yerushalmi* defines the new valid kinship of converts as Israel in the context of the laws of procreation in the *Bavli*. In fact R.Yohanan, who holds that gentiles have paternal kinship; since their offspring born prior to their conversion are considered theirs, they have already fulfilled the obligation of procreation. Resh Laqish, on the contrary, rules that converts has not fulfilled the obligation of procreation yet; the offspring born prior to their conversion are not considered their legitimate offspring because the converts do not have paternal kinship ties with their former gentile relatives,³³¹ thus explaining that they are completely considered as newborn children. His statement, “While they were gentiles, they had valid paternal kinship. When they have converted, they no longer have any legally valid paternal kinship” (בהיותן גוים אית להו חיים, נתגיירו לית להו חיים) clearly affirms the fact that converts, who had paternal ties with their gentile paternal relatives before their conversion, now have severed all paternal kinship ties upon their conversion. This severing of valid gentile paternity upon conversion implies that their valid Jewish kinship relations have newly been established as Israel, thereby enabling them to procreate their Jewish offspring to be incorporated into the kinship structures of Israel. It is clear from this juxtaposition of the lack of paternity among gentiles as addressed in the *Yerushalmi* with the establishment of new valid “Jewish” kinship among converts in the *Bavli* in such a dialectic way that the

³³¹ Lavee, “A Convert Is Like a Newborn Child,” 52-3.

notion of “*A gentile has no paternity*” complements the notion of “*A convert is like a newborn child*.”

We may therefore deduce from these two Talmudic texts that the notion of “*A gentile has no paternity*” in the *Yerushalmi*, which denotes the lack of valid paternal kinship among gentiles, is discursively used to articulate the *Bavli*’s notion of “*A convert is like a newborn child*” to assert the lack and severing of valid paternal kinship among converts, which in turn enables them to establish new kinship ties incorporated into the kinship structures of Israel. This shows that if indeed there is no legally valid kinship among gentiles, then converts also have no valid paternal kinship with their offspring born prior to their conversion, therefore indicating that they must fulfill the obligation of procreation from scratch. Again it is possible to suggest that the lack of valid paternal kinship among gentiles in the *Yerushalmi* is juxtaposed with the lack and severing of valid paternal kinship among converts in the *Bavli* to explain why converts must procreate as those who belong to a community defined by descent. That is, the lack of valid legal kinship among gentiles is correlated to the lack of valid paternal kinship with gentile father among converts.³³²

Equally important to note is that the motif of the convert as a newborn child is expressed as a new Babylonian concept in defining the severing of valid paternal kinship for converts vis-à-vis gentiles, as originally claimed by the *Yerushalmi*. It may have been reworked as a later rephrasing by *the Stam* of earlier materials that were added in the anonymous layers of the *Bavli*.³³³ We’ll see how the *Bavli* in fact quotes Resh Laqish’s view to stress that the convert, being like a newborn child, must fulfill the obligation of procreation as a Jew. This implies that Resh Laqish’s view is thus based on the premise that the convert’s previous offspring born prior to his conversion are not considered his because he has no valid paternity to begin with. Given the fact that the concept of “*A gentile has no paternity*,” as seen in the parallel passage of the *Yerushalmi*, is also attributed to the same Resh Laqish, his statement in the *Yerushalmi* is redefined and rephrased by the anonymous voice of the *Bavli* as further articulating the convert’s severing of his paternal

³³² Lavee, “*No Boundaries*,” 99.

³³³ Halivni, “*Seder Nashim*,” 108.

kinship ties, later attributing it to the same Resh Laqish. In other words the concept of the convert as a newborn child is understood by the anonymous voice of the *Bavli* to be associated with the lack of valid paternity among converts,³³⁴ which redefines his kinship as Jews. Hence this textual evolution of the *Bavli* demonstrates that it harmonizes both concepts of “A convert is like a newborn child” and “A gentile has no paternity” to deduce a new concept or understanding of the lack of validity of paternal kinship for converts. The phrase “Gentiles had no valid paternal kinship” (לית להו חיים) is used in the *Bavli* to indicate the lack of valid paternal kinship ties among converts while they were still gentiles, while the phrase “A convert is like a newborn child” complements the former by denoting the re-definition of valid maternal kinship tie between converts and their maternal relatives upon their conversion.³³⁵ The Palestinian notion of the lack of paternity among gentiles is interpreted by the *stam* (an anonymous redactor of *Amoraic* tradition in the Talmud) of the *Bavli* as converts’ severing of all paternal ties with their gentile father, which redefines their kinship anew incorporated into the kinship structures of Israel. As already seen in several *sugyot*, the converts, who have severed all their gentile paternal ties, are permitted to marry their gentile sisters-in-laws, to whom they are not genealogically related because what constitutes gentile-ness is based on their paternity.

This textual evolution of a particular *halakhic* concept by the *Bavli* vis-à-vis other earlier Palestinian traditions of the *baraitot* in the context of the laws of incest indicates that through dialectical maneuvers, the *stam* presents a new conceptual framework of an earlier view. As the *sugya* of *bYev22a*, for instance, suggests, the lack of kinship validity that applies to the relationship of the convert to his converted mother is exemplified by the

³³⁴ Lavee, “No Boundaries,” 101-2.

³³⁵ Lavee, “A Convert Is Like a Newborn Child,” 56. The original statement of the *Yerushalmi*, as Lavee points out, is presented as a casuistic argument; the *stam* (an anonymous redactor of *Amoraic* tradition in the Talmud) of the *Bavli* explains its new concept by rephrasing the original concept attributed to the *Yerushalmi*. The *Bavli* preserved a different version of the *Yerushalmi* that originally deals with gentiles, for instance, with a few changes of the term גוי for גר. The *Bavli* thus maneuvered the original claim of the *Yerushalmi* that deals with *gentiles* to make the statement fit its new agenda, namely the lack of valid kinship for *converts*, only to suggest that the converts come to be understood as newborn children, so that their previous offspring they had prior to their conversion are not considered theirs. For more, see Lavee, “No Boundaries,” 102 n. 41.

phrase “*A convert is like a newborn child*.”³³⁶ This illustrates that the *Bavli*’s hermeneutic move enables the harmonization of the earlier notion of “*A gentile has no paternity*” with a new, later concept of “*A convert is like a newborn child*” only to indicate that since the convert is a newborn person, and his gentile mother is not considered his actual biological mother, incest between the convert and his mother, is permitted.³³⁷ Such a dialectic maneuver by the *stam* of the *Bavli* also enables the application of new concepts on earlier views and traditions. Therefore this dialect move assumes the understanding that a later concept, namely “*A convert is like a newborn child*” comes to be defined as a governing principle that conceptualizes the laws of incest originally derived from the Torah law (מדאורייתא). In other words, this dialectic maneuver suggests that a new *halakhic* concept (*A convert is like a newborn child*) is applied to new emerging circumstances on the basis of the original understanding of earlier traditions (*A gentile has no paternity*) in order to define the convert’s new kinship. More importantly, this dialectic maneuver by the *Bavli* may also be employed as a discursive strategy by the *Amoraim* so as to incorporate the convert into new kinship relationships. Or put it differently, whether they be the laws forbidding sexually incestuous relationships or principles of casuistic conventions, the rabbis employed whatever discourses they had to invent and define a new, albeit fictive, genealogy for the convert so as to be incorporated into the kinship structures of the ethnic community of Israel.³³⁸

³³⁶ It should be noted that “*A convert is like a newborn child*” is often quoted in the late anonymous strata of the *Bavli*. In fact, any view that supports this concept, such as the laws of the inheritance of the first born, incest, and procreation (*bYev22a*; *bYev62a*; *bBekh 47a* respectively), is ascribed to late *Amoraim*, suggesting that the convert’s lack of kinship is originally accorded by the *Bavli* the legitimate basis of a biblical law (אורייתא). The idea that the lack of valid paternal kinship is derived from the Torah is later expanded by the *Bavli* to include the idea that it also falls on maternal kinship. See also Lavee, “No Boundaries,” 101. Cf. Lavee “*A Convert Is Like a Newborn Child*,” 56-58.

³³⁷ Although this view is rejected by the sages, this shows that an earlier concept that the convert’s lack of previous kinship applies only to paternal kinship relations is now harmonized with the later concept that this applies to maternal kinship relations as well.

³³⁸ It is worth finally noting that any *sugyot* of the *Bavli* that deal with the *halakhic* issues of conversion, including the ones examined in this study, apparently demonstrate its concerted efforts to reinforce the boundaries of Jewish identity as a whole. As also demonstrated by Lavee in his thorough analysis of the ‘tractate of conversion’ in *bYev46a-48b*, it is clear from the *Tannaitic* traditions (*baraitot*) preserved in these *sugyot* that the Babylonian tendencies are gradually attributed to earlier Palestinian authorities, eventually serving to erect the group boundaries on the

Conclusion

As all the rabbinic sources examined above demonstrate, conversion enables the convert to acquire a new, albeit fictive, genealogical identity. It should be noted that the sages, especially in the *Bavli*, held that the phrase '*A convert is like a newborn child*' is not understood as mere hyperbole or rhetorical flourish, but rather as a practical, yet virtual description essential to understanding the concept of conversion. This phrase, in fact, implies conversion as actually constituting a new kinship for the convert; the formation of a new kinship, I believe, entails the creation of a new body for the convert. As I have shown in this present study, the two phrases, "*A convert is like a newborn child*," and "*A gentile has no paternity*," as quoted in the *baraitot* of the *Bavli* as well as in Palestinian Amoraic sources, suggest the legal principles of nullification of the convert's valid kinship with his gentile relatives upon conversion. Hence I suggest that these *halakhic* concepts are conceptualized as indicating the discursive strategy by the rabbis to invent a new fictive kinship for the convert. The notion of conversion, as suggested by these two phrases, entails not only the change of person's legal status but also conceptualizes a person's bodily transformations. It can be noted that the convert who is a newborn child may be characterized as a person who underwent a radical transformation of bodily phenomena in legal terms. The rabbis, in particular, employed the discourses of the laws of incest to construct new kinship relations for converts as well as their offspring, so that they are to be incorporated into the very kinship structures of the Israelite ethnic community. Rabbinic conversion, often thought to be a crossing of religious boundaries, does indeed entail a crossing of ethnic boundaries, namely redefining the convert's kinship as Israel. As the *Bavli* and other Tannaitic sources (*bYev*48*b*; *bYev*62*a*; *bYev*97*b*, *mBekh* 8:1, *bBekh*47*a-b*, *mYev*11:2 and *tYev*12:2) repeatedly illustrate, the phrase is implied and appears as part of a

basis of the redefinition of genealogical descent, which came to include the converts. This also seems to resonate with the claim made by Kalmin, who holds that the notion of lineage is strongly emphasized and highly valued in a rigidly hierarchical Sassanid Persian society. In such a social structure, the (re)definition of the convert's kinship along genealogical lines is an indispensable matter. On further discussions on the tractate of conversion in the *Bavli*, Moshe Lavee, "'Tractate of Conversion'- BTYeb.46-48 and the Evolution of Conversion Procedure," *EJJS* 4.2 (2011): 169-213. On the importance of purity of lineage, Richard Kalmin, *The Sage in Jewish Society of Late Antiquity*. (Routledge: London and New York, 1999), 8-13.

legal claim that things that had existed or events that had taken place prior to conversion are inconsequential. As for the status of the convert's gentile kin, since the convert is now considered a new being that had not existed previously, the gentile relatives he had prior to his conversion, for instance, are not considered as his relatives. This, to be sure, indicates that the previous status of the convert, including his previous kinship ties, no longer matters upon his conversion. Rabbinic conversion, therefore, is defined by the system of legal fictions that enables the convert, who is no longer a genealogically gentile, to inaugurate his new line of descent.

Chapter 3

Inventing “Forefathers”

Conversion as Construction of Patrilineal Ancestry

Claims to Common Ancestry as a Criterion for Ethnic Membership

As we have discussed in the previous chapters, conversion entails ethnic/kinship affiliation, which enables converts to be integrated into the kinship structures of the Jewish ethnic community by virtue of the *halakhic* principle of “A convert is like a newborn child.” Their incorporation into the Jewish kinship group via conversion clearly indicates that they are by definition ethnically affiliated with other members of the native-born in the community defined by kinship and descent. However, the following Mishnah questions the validity of the convert’s genealogical descent; Mishnah *Bikkurim* 1:4 (henceforth *mBikk1:4*), which deals with the bringing of first fruits and recitation of the prayer that contains reference to Patriarchal ancestry, challenges the convert’s kinship status due to his lack of proper Israelite ancestry, making him somewhat unequal to the native-born in matters related to common descent. This Tannaitic text (along with its Palestinian gemara) is one of the few sources that actually deals with how the convert is treated in everyday life. Beginning with careful textual analysis of *mBikk1:4*, as well as the *sugya* of the Yerushalmi *Bikkurim* 1:4, 64a (henceforth *yBikk1:4*, 64a), I will examine how the discourse of common ancestry, namely forefathers, helps shape the convert’s kinship identity formation. Particular attention is paid to the close examination of how the discourses of matrilineal and patrilineal descent are understood and treated in rabbinic sources to shed a new light on understanding Jewish kinship identity especially in association with conversion.

Examining the Convert’s Kinship Anomaly in Mishnah Bikkurim 1:4

In this chapter, I will demonstrate that the rabbis attempted to establish or craft a myth of collective identity for converts, particularly by appealing to Israel’s common past and ancestry, thereby identifying and shaping their common descent. The following *sugyot* of *mBikk1:4* and *yBikk1:4*, 64a illustrate the pattern of fictive ethnic identity construction for

the convert by which the group's membership, though primarily defined by genealogical descent, can be acquired through a manipulation of the myth of Israel's historical forebears. Since cultural features that are marked as characteristics of the group's ethnic identity depend largely on the interpretations of the experiences of the group's mythical or historical ancestors, such interpretations are often built around the myths in which historical and mythical events have been accorded symbolic significance.³³⁹ Such ethnic, albeit fictive, identity construction based on the interpretations of the mythical past via conversion underlines a certain process of socially embedded structures into which outsiders incorporated as legitimate members of such an ethnic group. Although the process of conversion seems to indicate the constructed nature of Jewish identity formation for the convert, wherein the paradigm of such Jewish identity is represented as belated or fluid rather than indigenous or fixed, the rabbis draw on myths and legends of ancestors or the interpretations of such myths and legends to justify their full incorporation into the group defined by descent.

I therefore explore some of the ways in which the rabbis invented fictive descent for the convert, redefining his/her ethnic identity through appeals to the mythical past. First of all, *mBikk1:4* examines whether or not the convert may share legal equalities with the native-born on the basis of the group's common ancestry in defining the "forefathers"/"ancestors" of the ethnic community of Israel. In other words, it raises the question of whether the convert himself or herself is genealogically affiliated with the nation's ancestors upon conversion despite his/her previous "gentile" descent. Obviously lacking genealogical descent, the convert may not be genealogically affiliated with the native-born due to his lack of shared ancestry. Apparently formulating its passages within the genealogical paradigm of identity formation, it is clearly evident that this Mishnah addresses how much the notion of descent affects the convert's legal status in the Israelite community.

³³⁹ Charles F. Keyes, "The Dialectics of Ethnic Change," in *Ethnic Change*, ed. Charles F. Keyes (Seattle: University of Washington Press, 1981), 8. His view presupposes the importance of a claim to sharing a common myth as a vehicle for ethnic and religious mobilization to be discussed below.

אלו מביאין ולא קורין:

הגר מביא ואינו קורא שאין יכול לומר "אשר נשבע ה' ל**אבותינו**"³⁴⁰ לתת לנו (דברים כו:ג). "

אם היתה אמו מישראל מביא וקורא.

וכשהוא מתפלל בינו לבין עצמו, אומר "אלהי **אבות ישראל**".

וכשהוא בבית הכנסת, אומר "אלהי **אבותיכם**".

ואם היתה אמו מישראל, אומר "אלהי **אבותינו**".

רבי אליעזר בן יעקב אומר: אשה בת גרים לא תנשא לכהנה עד שתהא אמה מישראל.

אחד גרים ואחד עבדים משחררים ואפלו עד עשרה דורות.

עד שתהא אמן מישראל.

1. The following people (are obligated to) bring (the offerings of first fruits, 'bikkurim' to the Temple in Jerusalem) but may not recite (the declaration prescribed by Deut. 26:3):
2. The convert brings (first fruits/bikkurim) but does not recite (the declaration from Deut. 26:3) since he cannot say: "the land that the Lord has sworn to **our forefathers/ancestors**"³⁴¹ to give us" (Deut26:3).
3. But **if his mother was of Israel**, he brings and recites (the declaration from Deut. 26:3).
4. And when he prays (reciting the 18 benedictions) by himself, he recites, "**God of the forefathers/ancestors of Israel**"
5. And when he is in synagogue (in and with the community), he recites, "**God of your forefathers/ancestors.**"
6. But **if his mother was of Israel**, he recites, "**God of our forefathers/ancestors.**"
7. R. Eliezer b. Yacov says: A woman who is the daughter of converts may not marry into the priesthood.
8. **Unless her mother is of Israel.**

³⁴⁰ MS Kaufman reads "יי אלהינו" while MS Napol omits "יי אלהינו".

³⁴¹ I intentionally translated the word *avot* (אבות) as "**forefathers/(male) ancestors** and *avotenu* (אבותינו) as "**our forefathers/(male) ancestors**" to stress patrilineal aspects of descent from lines of Abraham. Since I believe that the ideology of patrilineal descent is still effective for shaping the convert's kin relations as opposed to those of matrilineal descent in the context of this Mishnah and the *Yerushalmi*, this translation will be helpful in elucidating how this rhetoric functions for identity construction for the convert. I will also discuss this point further below.

9. (This rule applies equally to) converts and emancipated slaves even until ten generations.

10. *Unless their mother is Israel.*

This Mishnah prescribes that one must bring the offerings of first harvest (*Bikkurim*/ביכורים) to the Temple and recite the declaration, specifically referring to *Deut26:1-3*, that contains the word “our forefathers/ancestors” (אבותינו). This clearly implies that the Mishnah’s understanding of Jewish identity formation is undoubtedly based on claims to genealogical descent from common ancestors, who in this context refer to the Patriarchs including Abraham, Isaac and Jacob. Although as discussed above, Jewish law/the *halakhah* by definition regards the convert, understood as a *newborn child* (שנתגייר כקטן שנולד),³⁴² upon conversion, as equal to the native-born in every respect (הרי כישראל לכל דבריו),³⁴³ the passages of *mBikk 1:4-5*, on the contrary, treat him or her as genealogically distinct from the native-born, rendering him or her somewhat ethnically or genealogically marginalized from the native-born. Since this Mishnah’s theme concerns who may be legally eligible to bring the offerings of first harvest and recite the declaration, the convert in fact suffers legal inequality in terms of its discourse of Israel’s shared ancestry.

The convert, though required to bring *Bikkurim* to the Temple as a legitimate member of the ethnic group, may not recite the liturgical declaration prescribed by *Deut26:3* “the land that the Lord has sworn to our fathers/ancestors to give us” (אשר נשבע יי לאבותינו לתת לנו) on a par with the native-born due to his/her lack of descent or the group’s shared ancestry. (Clauses 1-3). But he is required to recite “God of our fathers/ancestors” (אלהי אבותינו) (Clauses 4-5) supposedly because it is emphasized that his/her presumed “gentile” descent precludes him from claiming that his ancestors were sole recipients of the patriarchal promised land as part of his inheritance.

The daughter of converts may not marry into the priesthood (Clauses 7-10).³⁴⁴ The

³⁴² *bYev22a*; 62a; 97b. *bBekh47a*; *bYev47a*. See chapter one and two.

³⁴³ The Hebrew “כ” can be read as denoting “equal to” or identified as”, which entails his/her possession of equal rights and duties incumbent upon him/her. See also *tYev12:2* in chapter two. Cf. Lieberman, *Tosefta Kifishta Seder Nashim*, 40.

³⁴⁴ According to the parallel text in *mQid 4:6-7*, the female convert and her offspring may not marry into the priesthood as prescribed by *mQid4:1*. However, the gemara of *bQid78a-b*, on which *mQid 4:6-7* are based, concludes that as opposed to R. Eliezer b. Yacov’s view, the *halakhah* follows

understanding of this Mishnah clearly places the convert in a conceptually anomalous and legally ambiguous position, bestowing a divided identity on him or her in spite of the *halakhic* principles of “A convert is like a newborn child” and “A gentile has no paternity” and indicating that the convert is ethnically or genealogically excluded from other native-born members because he or she literally doesn’t have “Jewish forefathers” nor does he or she possess kinship connections with any other member of the community.

It is obviously evident that these above inequalities that the convert suffers apparently stem from his/her lack of such Israelite *forefathers/ancestors*. He or she *may* bring the offerings of *Bikkurim* but *cannot* recite the declaration that contains the term “*our forefathers/ancestors*” because he or she is not *ethnically* and *genealogically* affiliated with any member of the community. This clearly means that one’s descent from Israel’s common ancestor Abraham plays a decisive role in determining his/her legal (in) eligibility to recite the declaration. The Mishnah’s term “*our forefathers/ancestors*” (אבותינו) also presented by *Deut*26:3 suggests that his recitation of the term in his prayers enables him to confirm his full identification and genealogical connection with his Abrahamic ancestry. The Mishnah’s use of the word “*our fathers/ancestors*,” in other words, entails or even the group’s emphasis on the notion of common ancestry as an essential component that defines the group’s ethnic identity. Therefore, the Mishnah stresses that the concept of common ancestry, needless to say, serves as one of the most fundamental criteria for the definition of ethnicity,³⁴⁵ clearly asserting that the term “*our fathers/ancestors*” is

the view of R. Yosi, who asserted that that the daughter of two converted parents is eligible to marry into the priesthood because she was *conceived* and *born* in the “*sanctity*” of Israel (בקדושה), implying that she is a fully native-born by virtue of the *halakhic* principle of “A convert is like a newborn child” (גר שנתגייר כקטן שנולד). See also 47 n. 79 in Chapter two.

³⁴⁵ Keys, “The Dialectics of Ethnic Change,” 5. He maintains that ethnic identity formation is deeply embedded in a “primordial” relationship between people, which stems from the assumed ‘givens’ of social experience such as culture. Descent, therefore is understood as one of such assumed ‘givens’ of culture, which also enables it to link with ancestral figures. Ethnicity, according to his view, stems from such a cultural interpretation of descent. As I show below, the conclusion I have come up with the definition of the convert’s Jewish identity seems to be in line with his view on ethnicity and its identity formation as derived from such a cultural interpretation of descent. On ethnic identity as based on a sense of primordial attachment, see Clifford Geertz, “The Integrative Revolution: Primordial Sentiments and Civil Politics in the New States.” In *Old Societies and New States: The Quest for Modernity Asia and Africa*, ed. Clifford Geertz (New York: Free Press, 1963), 109.

emphatically presented as deeply evoking the group's sense of historical collective memory tied to their common ancestry.³⁴⁶ One can infer from the Mishnah's clauses that his/her lack of such common, patriarchal, ancestry therefore precludes the convert from reciting "*our fathers/ ancestors*." Fully excluded from such historical and genealogical connections to Israel's patriarchal ancestors and their mythical past, the convert, who does not share a sense of the group's historical, collective memory with the native-born members of the community, is thus understood by this Mishnah as completely unable to attain full legal equality with the native-born in matters related to descent, birth and the group's sense of collective history. This makes him remain somewhat a non-Israelite or ethnically marginalized. Such legal anomaly forces him to straddle the boundaries between the Jewish "self" and the gentile "Other."

Additionally, the convert's ineligibility to attain legal equality with the native-born due to his lack of Israel's common ancestry also has far-reaching consequences. The Mishnah, as presented by clauses 4 and 5, rules that certain restrictions distinct from the native-born must apply to the convert in reciting "*fathers/ancestors*." The convert must recite the 18 standing benedictions (*Amidah/Shmone Esre*/עשרה עמידה/שמונה) in either individual or communal settings. That is, the convert, who does not share Israel's "*fathers/ancestors*," must, perhaps forcibly, recite either "*God of the forefathers/ancestors of Israel*" (אלהי אבות ישראל) alone or "*God of your forefathers/ancestors*" (אלהי אבותיכם) in leading prayers with a congregation. This clearly suggests that the convert, though understood as a "*newborn*

³⁴⁶ Gerald J. Blidestein, "The Bringing of the *Bikkurim*" in Rabbinic Law." In *Studies of the Philosophy of the Halakaha and Aggadah* ed. Gerald J. Blidstein (Beersheba: Ben-Gurion University Press) [Hebrew], 38-39. See also Porton, *Goyim: Gentiles and Israelites in Mishnah-Tosefta*. (Atlanta: Scholars Press, 1988), 173-203. As Blidstein points out, the act of bringing first fruits symbolically enacts one's experience by evoking a sense of historical belonging as a people, thus establishing one's historical ties to the land of Israel as well as to the Patriarchal ancestors. Although the destruction of the Second Temple in 70 C.E. rendered the legal validity of this agricultural law completely annulled, the law itself is still accorded symbolic significance. That is because in my view, this law is divinely revealed; an inquiry into this law involves the manner in which one sanctifies the land of Israel and its agricultural products as His possessions. In so doing, this law is designed to establish symbolic ties to the land of Israel, which in turn strengthens the group's solidarity.

child," is not completely on a par with the native-born in terms of genealogical descent; different legal standards, as distinct from the native-born, must apply to him regardless. In this setting this Mishnah construes, views and treats the convert as an ethnically distinct, albeit anomalous, entity from the native-born, clearly rendering him ambiguously unequal with the native-born particularly in matters related to birth and descent. Hence this illustrates how much the notion of descent and kinship matters in the construction of the group's ethnic identity.

However, this Mishnah, ruling that the convert cannot recite the declaration "*God of our forefathers/ancestors*" due to his lack of such Jewish *fathers/ancestors*, asserts that if his mother is "*of Israel*" (אם הייתה אמו מישראל/תהא אמן מישראל), as illustrated by clauses 3, 6, 8 and 10, he may be eligible to recite the declaration on a par with the native-born. These clauses ("*but if his/their mother was/is of Israel*") are perhaps thought to speak of the offspring of a native-born (Jewish) mother and a converted father.³⁴⁷ This implies that his legal inequality would disappear if he were born of a "*Jewish mother*."³⁴⁸ While clauses 2, 4 and 5 speak of a first-generation convert, clauses 3, 6, 8 and 10 refer to a second-generation convert whose mother is *genealogically* Jewish and father a convert. The first-generation convert is obligated to bring first fruits but cannot recite the declaration whereas the second-generation convert (of a mixed union between a Jew and a convert) is obligated both to bring and recite since he is Jewish by birth.³⁴⁹ This principle of matrilineal descent seems at odd with a major mode of kinship reckoning in which paternity mostly determines the status of the offspring in the ancient Mediterranean.

These clauses presented above thus appear to be construed to speak of one particular *halakhah*, whose origin seems to date back from the second century to the present day, that prescribes that the kinship status of the offspring born of a mixed union between a Jew and a gentile is determined solely by the status of the mother. This means that the

³⁴⁷ This is based on the interpretation by R. Solomon Sirilio (circa 1558.) ad loc. See also Kalman Kahana, *Masekhet Bikkurim: Heqer v'iyun* (The Institute for the Study of the Commandments that Pertain to the Land of Israel: Jerusalem, 1988) 36. Cf. Cohen, "*The Beginnings of Jewishness*," 310 n. 3.

³⁴⁸ Cohen, *The Beginnings of Jewishness*, 309-10.

³⁴⁹ The concept of "*conceived and born in the sanctity of Israel*" הורתו ולידתו בקדושה technically points to the fact that such an offspring of converted parents are deemed as Jewish *by birth*.

offspring of a Jewish mother and a converted father, although genealogically Jewish by birth, is deemed to have the status of a convert. In other words, in order for the convert to be genealogically connected to Jewish *fathers/ancestors*, he needs to have a Jewish *mother*. This means that the offspring born of a Jewish mother is deemed *Jewish* even though the father is a gentile while the offspring born of a gentile mother is understood as a *gentile* even if the father is Jewish.³⁵⁰ In any case, clauses, 3, 6, 8 and 10 also suggests that the convert, who lacks actual descent from Israel's "*forefathers/ancestors*," might be qualified to recite the liturgical declaration on a par with the native-born if he were born of a Jewish mother or descends directly from her maternal line notwithstanding his gentile father/his gentile ancestry on the paternal side.

This Mishnah thus seems to speak of the paradigm of matrilineal descent in defining the collective membership of the ethnic group. As *mQid* 3:12 illustrates below, the status of the offspring of intermarriage is determined by that of the mother (אם הייתה אמו אלמית). If the convert was born of a native-born Israelite mother, he may recite a series of prayers that contain the phrase "*God of forefathers/ancestors*" (אלהי אבותינו). However, the fact is that he doesn't have a native-born Jewish mother either. Judging from its tautology and literary context, the Mishnah apparently construes the convert who can recite the pertinent verse as the offspring of a native-born Jewish mother and a gentile father (or perhaps a converted father). This presupposes a view that his legal inequality would surely disappear if the convert were born of a native-born mother. In other words, one could also argue that the legal eligibility of the convert to recite the pertinent biblical verse has to be guaranteed by his birth to a native Israelite mother or by a union that stems from lines of matrilineal descent from the native-born mother.

Although the historical origin of matrilineal descent is uncertain and it is still considered as a hot-debated topic, the only existent source that clearly attests to the principle of such kinship reckoning is found in Mishnah *Qiddushin* 3:12 (henceforth *mQid*3:12). It clearly asserts the logic of matrilineal descent according to which the offspring of an Israelite male and a gentile female is considered a gentile, and the offspring of a gentile male and an Israelite female is understood as an Israelite:

³⁵⁰ Ibid.

כל מקום שיש קידושין ואין עבירה - הולד הולך אחר הזכר. ואיזו? זו כהנת, לוייה, וישראלית שנשאו לכהן ללוי ולישראל. וכל מקום שיש קידושין ויש עבירה - הולד הולך אחר הפגום. ואיזו? זו אלמנה לכהן גדול, גרושה, וחלוצה לכהן הדיוט, ממזרת, ונתינה, לישראל, בת ישראל, לממזר ולנתי. כל מי שאין לה לא עליו ולא על אחרים קידושין - הולד כמותה: ואיזו? זה ולד שפחה ונכרית.

A. Whenever there is potential for a valid marriage and the sexual union (Qiddushin) is not sinful, the offspring follows the male. And what (fem.) is this? This is the daughter of a priest, Levite, or Israelite who was married to a priest, Levite, or Israelite.

B. Whenever there is potential for a valid marriage but the sexual union is sinful, the offspring follows the parent of lower status. And what (fem.) is this? This is a widow with a high priest, a divorcee or a "released woman" (halutzah, a widow released by her levirate (Deut25:5-10)) with a regular priest, mamzeret (a feminine form of a mamzer who may marry a native-born Israelite due to the circumstances of his or her birth) or a netinah (a feminine form of a natin) with an Israelite, an Israelite woman with a mamzer or a natin (a temple slave in Ezra 2:43-58).

C. And any woman who does not have the potential for a valid marriage with this man but has the potential for a valid marriage with other men, the offspring is mamzer. And what (masc.) is this? This is he who has intercourse with any of the relations prohibited by the Torah.

D. And any woman who does not have the potential for a valid marriage either with this man or with other men, the offspring is like her. And what (masc.) is this? This is the offspring of a slave woman or a gentile woman.³⁵¹

This Mishnah is thematically structured by four paragraphs that provide theoretical

³⁵¹ This translation is based on Cohen's translation of Albeck's edition. Other references are made to Parma De Rossi 138 and 984, Budapest Kaufmann A50, Paris 328-329, Leiden Scal.3 and Munich 95. Cf. Cohen, *The Beginnings of Jewishness*, 274 n. 42.

possibilities in defining the status of offspring by birth. Clauses A and B are built around the statement, “*whenever there is potential for a valid marriage*” (כל מקום שיש קידושין), asserting that valid betrothal to contract a valid marriage called *qiddushin* (קידושין) serves as the basis for determining the status of the offspring. In such a union, whether it is sexually violated or not, the offspring follows either the father or either parent depending on their martial circumstances. In a valid marriage contracted through valid betrothal as seen in clause A, the status of the offspring follows that of the father, which is in line with in the biblical model (the status of the offspring of such a union between Israelites follows the status of the father) and other cultures of the Mediterranean in late antiquity. In other words, paternity plays a decisive factor in defining the kinship status of the offspring.³⁵² In clause B, the offspring follows either parent of lower status because a marriage, though contracted by valid betrothal, involves a sexual violation. Clause A permits unions as potentially valid while clause B prohibits certain unions but treats it as potentially valid. In any case, both clauses exemplify how the valid betrothal to contract a valid marriage with one another (*qiddushin*) determines the status of the offspring.³⁵³

However, clauses C and D deviate sharply from the models offered by clauses A and B presented above because of the mother’s incapacity to contract a legal marriage with the (Israelite or perhaps gentile) man, which results in the lack of valid paternity for the offspring. In clause C, such a lack of valid paternity affects the status of the offspring in such a way that he or she is defined as a *mamzer/mamzeret*.³⁵⁴ Such an offspring is thought

³⁵² In a marital union with a male from the priestly class, the offspring follows the priestly father.

³⁵³ Ibid., 275. Also see n. 45. Sifra 92d ed. Weiss (379. Codex Vaticanus 66) uses אישות instead קידושין to refer to a betrothal.

³⁵⁴ Ibid., 274 n.41. A *mamzer* (the feminine form of the term is *mamzeret*) is a male or a female Jew who may not marry a certain native-born due to the circumstances of his or her birth. Cohen points out that the English translation of the term “illegitimate” or “bastard” may not be appropriate because they are derived from a completely different legal system. On the definition of who is a *mamzer/mamzeret*, see *mYev4:13*, *mYev7:5*, *tQid4:16*, *yQid4:16*, 64d, and *bYev45b*. Although *mYev7:5* states that the offspring of a union between a Jewish mother and a slave or gentile father is deemed a *mamzer*, it does not explain why he is identified as such. Perhaps that is because it is assumed that he or she lacks valid paternity (the parent on either side does not have the valid betrothal/*qiddushin* to contract a valid marriage). Both *yQid4:16*, 64d and *bYev45b*, however, refer to a *mamzer* as the offspring who issued from a union prohibited by Scripture (i.e. an incestuous union). This applies to the mother who does not possess the capacity to contract a valid marriage with the gentile male but does possess that capacity to do so with the Jewish male. *TQid4:16*, by

to have issued from an incestuous union with an Israelite male (perhaps in some context, a gentile male?) prohibited by the Torah. In clause D, it is assumed that the offspring of a union between an Israelite male and either a slave or gentile female follows the status of such a gentile/slave mother. In other words, Clause C states that the offspring who is defined as a mamzer/mamzeret is still thought to be an ethnically Israelite, while clause D perceives the offspring of a gentile mother who does not possess valid *qiddushin* as an ethnically *gentile*.

Therefore, the convert in clauses 2, 4, 5, 7, 9 in *mBikk1:4* is assumed to have been born of a union between the Israelite father and the gentile mother while the convert in clauses 3, 6, 8, and 10 seems to have been born of a union between the Israelite mother (or perhaps the converted mother?) and either the native-born or converted father. At least, it seems that the paradigm of matrilineal descent governs the criterion for membership in the above Mishnah. Although *mBikk1:4* does not explain the rationale behind the matrilineal logic of descent, the Talmudim below provide the basis for such a principle:

yQid 3:14, 64d/yYev2:6, 4a/ bQid68b

רבי יוחנן בשם רבי שמעון בן יוחי כתיב: לא תתחתן במ. בתך לא תתן לבנו. וכי יסיר את בנך מאחרי (דברים ז:ג-ד)
 "בנך" מִיִּשְׂרָאֵל (תי) קרוי "בנך" ואין "בנך" מן הנכריות קרוי בנך אלא "בנה."

*R.Yohanan (PA 2) said in the name of R.Shimeon b. Yohai, "It is written, 'You shall not intermarry with them (do not give your daughters to their sons or take their daughters for your sons)' (Deut7:3) and it is written, 'for he shall turn your son away from (following) Me (to worship other gods)' (Deut7:4). This means that "your son" born of an Israelite (woman) is called **your son**, but "your son" born of a gentile woman is not referred to as your son, but **her son**."*

As opposed to commonly dominant views held by many scholars, who have argued that

contrast, explains by quoting R. Simeon's view that a mamzer is the offspring who issued from a union that entails extirpation (*karet*). Whichever the case is, at least, we can assume that it is the lack of valid paternity defined by valid betrothal to contract a valid marriage that affects the status of the offspring. See also Cohen for the complex arguments involving mamzerim, *The Beginnings of Jewishness*, 276-278.

the passage of *Deut7:4* refers to a universal ban on intermarriage with gentiles, Christine Hayes clearly asserts that this passage is expounded by R. Shimon b. Yohai as scriptural evidence for the universal application of the principle of matrilineal descent.³⁵⁵ R. Shimeon b. Yohai, the third generation Tanna, derives the principle of matrilineal descent from his exegesis of *Deut7:3-4*, originally understood as detailing the ban on intermarriage with the Seven Canaanite nation especially by paying significant attention to the following verse “He will turn your son away” (כי יסיר את בנך).³⁵⁶ While the previous verse must refer to the fact that Israelites are prohibited from giving their daughters (“your daughters”) to Canaanite sons (“their sons”) and from taking Canaanite daughters (“their daughters”) for their sons (“your sons”), which is commonly understood by other Amoraic sources³⁵⁷ as referring to a universal ban on intermarriage, the phrase of verse 4 “He will turn your son away,” as both Cohen and Hayes observe, must be understood to mean that “he” – the Canaanite/gentile husband of an Israelite female – will turn “your son” – the son of an Israelite female – away, implying that the offspring born of the union of a Canaanite/gentile husband and an Israelite woman is referred to as “your” son, that is, an “Israelite son” while the child born of the union of an Israelite husband and a gentile/Canaanite female is identified as “her son,” that is, a “gentile son,” which exactly fits in with the logic of clause D in *mQid3:12*, in which valid betrothal (*Qiddushin*/קידושין) is never officially established between an Israelite male and a gentile female, hence the definition of the genealogical/ethnic status of her son as a gentile.³⁵⁸

His exegetical approach to understanding *Deut7:4* thus allows the rabbis to affirm the biblical rationale for the paradigm of matrilineal descent in such a rhetorical way that the

³⁵⁵ Christine Hayes, *Gentile Impurities and Jewish Identities: Intermarriage and Conversion from the Bible to the Talmud*. (Oxford: Oxford University Press, 2002), 147-157.

³⁵⁶ See Rashi, “כי יסיר את בנך” and “ואין בנך הבא מן והעב”ם קרוי בנך” in *bQid68b*. Rashi likewise understands verse 4 as referring to the mixed union of a gentile male and an Israelite female. In *Tosafot*, Rabeinu Tam also holds that R. Shimeon b. Yohai understood “He” in verse 4 as referring to a gentile father-in-law who takes away his Israelite son-in-law, who is understood as “your son” whose female spouse is a gentile.

³⁵⁷ See *bAZ36b* and *bYev23a*.

³⁵⁸ *Ibid.*, 150-151. Cohen, *The Beginnings of Jewishness*, 286-288. According to Cohen, the context of the text is likely to demand that the passage be read as such: “She” (the Canaanite woman) will turn “your son” away or “they” (the Canaanites) will turn “your son” away.

male offspring born of an *Israelite* female -“*your daughter*”- is still regarded as “*your*” son, that is, an *Israelite* son *regardless of* the father’s kinship/ethnic status. Therefore R. Shimon b. Yohai’s exegesis of *Deut7:3-4*,³⁵⁹ as Hayes points out, clearly illustrates a rabbinic attempt to establish the biblical rationale for the paradigm of matrilineal descent rather than the universal ban on intermarriage with gentiles, as commonly understood by the *stam* of the *Bavli*.

Again, the status of the male offspring as defined in accordance with clause D in *mQid3:12* follows that of the mother, who is understood as a *gentile* in such a mixed union. In this mixed union, he is genealogically defined as a *gentile* since his “*gentile*” mother does not have a valid *halakhic* status defined by the Jewish community, thus *halakhically* unable to establish valid betrothal (*Qiddushin*/קידושין)³⁶⁰ with an *Israelite* male, which subsequently cannot let her confer her kinship identity on the offspring. Lacking legitimate *Israelite* paternity, her male offspring therefore traces to his lineage to the maternal line of his *gentile* mother. Quite the opposite, however, is true; *mQid3:12* illustrates that the *Israelite* mother helps ensure a line of *Israelite* descent for the offspring regardless of the father’s ethnic status. For this reason, this Mishnah seems to conclude its passages by upholding the paradigm of matrilineal descent as a fundamental criterion for defining the kinship

³⁵⁹ Similarly in *yQid3:14*, 64d in the *sugya* of *yYev2:6*, 4a, the fifth generation Palestinian Amora R. Tanhuma uses R. Shimeon b. Yohai exegesis of *Deut7:4* as scriptural support for his view that the offspring born to two *gentile* parents prior to their conversion has the status of a firstborn while the offspring born after their conversion does not. Although R. Shimeon b. Yohai’s exegesis is meant to affirm the logic of matrilineal descent in a situation of intermarriage, it is unusual to use his exegesis as a source to define kinship ties in a marital union between *gentiles*. Cf. Hayes, 270 n. 28.

³⁶⁰ Although it is a mere speculation, the idea that *gentiles* lack the capacity to contract valid marriages/*qiddushin* (קידושין) seems to echo the *halakhic* principle of “A *gentile* has no paternity” (לגוי אין אב) as we discussed earlier. *Gentiles*, according to this principle, have no legal (*gentile*) “paternity” even prior to conversion, they therefore have no legal potential to contract a valid marriage. This perhaps implies that one’s potential to contract a valid marriage/*qiddushin* must be defined by one’s legal paternity. In a practical sense, it is easy to assume that such a legally anomalous situation gave rise to the institutionalization of the proper conversion procedure as an enviable option to redefine the legal status of a *gentile* spouse as *Israel*. But it does not necessarily mean that this situation opted for a rationale for the paradigm of matrilineal descent over the principle of patrilineal descent as a preferred form of kinship reckoning in defining membership.

status of the convert as *Israel*. As indicated by clauses 3, 6, 8 and 10, only by tracing his lineage to the “*forefathers/ancestors*” of Israel through his maternal line, may the convert then be able to recite the pertinent biblical passage of *Deut26:3* that includes the word “*our forefathers/ancestors*” on a par with the native-born.

The following inferences can possibly be made from a series of arguments in *mBikk1:4* on the convert’s legal (in)eligibility for *halakhic* observance in matters related to the definition of his/her genealogical status. First of all, the very Jewish identity apparently addressed by *mBikk1:4* seems to be based on the notion of shared common ancestry, whose line of descent is traced to the nation’s progenitor Abraham, which is determined solely by matrilineal descent in the case of intermarriage. Again, it is undoubtedly the notion of shared, common ancestry that defines and characterizes ethnic membership, which evokes a sense of emotional ties that can be shared among members distinct from other groups, which seems to be clearly asserted in this Mishnah. Since his/her eligibility to observe a particular *halakhah* depends largely on whether he or she can trace his/her ancestry to the Patriarchs, the notion of genealogy is strongly stressed here in this Mishnah as a crucial component in defining Israelite ethnicity itself in general and group membership for the convert in particular. The Mishnah, as indicated by clauses 2, 4 and 5, clearly assumes that the convert completely fails to meet such a criterion for group membership defined by Israelite common ancestry. Instead the Mishnah, as clearly suggested by clauses 4 and 5, demands that the convert recite “*God of your fathers/ancestors*” or “*God of the forefathers/ancestors of Israel*” due to his lack of “*our fathers/ancestors*.” This suggests that the convert’s lack of Israelite ancestry makes the Mishnah address different theoretical frameworks of his kinship reckoning, thus forcing him to be identified as the ethnic and religious “Other” completely distinct from the native-born. The convert’s genealogically ambiguous kinship status in turn places him in a legally unequal position, which renders his membership status completely anomalous. In this sense, the convert as understood by *mBikk1:4* may be categorically and genealogically classified as the ethnic “Other” (“them”) due to his gentile origin, which makes him marginalized as an anomalous being completely distinguished from the native-born Israelites (“us”) in the community defined

primarily by genealogical descent.³⁶¹ As Rodney Needham points out, classification of human groups serves as one of the fundamental criteria for group identity construction.³⁶² Indeed, the convert's inability to recite "(God of) *our forefathers/ancestors*" entails his failure to share historical and collective memory with the members of the community. Even if the convert is just as eligible as the native-born to fulfill legal obligations, it does not automatically change his biological or genealogical descent.

For the above reason, the very agenda of *mBikk1:4* is apparently centered around the marginality of the convert's ethnic and genealogical status. Again, his *ethnic* membership becomes legally and genealogically ambiguous in the sense that the convert comes to be treated by the Mishnah as genealogically *unequal* to the native-born due to his lack of Israelite common ancestry notwithstanding some degrees of equality he is entitled to enjoy with other native-born members in the case of his brining the first fruits. Nevertheless, the convert's lack of actual Israelite ancestry and legal ineligibility to declare "*our forefathers/ancestors*" indicate that a different criterion of group membership applies to him; his, former, gentile descent is irrelevant in determining his *halakhically* "Jewish" status and thus claiming his "Patriarchal" ancestry. Hence that is what renders him completely excluded and even marginalized from the criterion of ethnic membership set forth in the above Mishnah.

What seems to indicate from the Mishnah's discourse of *our fathers/our ancestors* in defining the convert's genealogical status is that the criterion of his Israelite ethnic membership also seems to lie in a sharp dichotomy between *genealogy* and *religion*. It is this very dichotomy that creates a legally conceptual tension in defining his Jewish status although both entities are presumed to be inseparable in Jewish identity construction, which may as well apply to the convert. What this Mishnah also seems to imply regarding the ethnic ambiguity of the convert's Jewish status is that different conclusions may be drawn depending on how one may view *Jewishness/Jewish identity*; to the extent that group

³⁶¹ See Porton, *The Strangers within Your Gates*, 216-220. Porton tends to argue that rabbinic literature in general presents the convert as "marginal beings," who occupies the "liminal space between the Israelite and gentile communities." However, his assessment may not fit in with the conclusion of the *Yerushalmi* to be discussed below.

³⁶² Rodney Needham, *Primordial Characters* (Charlottesville, University Press of Virginia, 1978), 5.

membership based on religious/cultural practice is what defines Jewishness alone, then the convert may perhaps be able to attain full equality with the native-born. According to this model, what ostensibly constitutes the criterion of group membership is his eligibility to fulfill legal obligations. If birth or common descent, as clearly evidenced by the Mishnah's assertion of "*our forefathers/ancestors*," is what primarily defines or characterizes Jewishness, then it is evidently clear that the convert's ethnically "gentile" origin automatically renders him genealogically anomalous, thus precluding him from literally and physically sharing a claim to the group's common ancestry.

However, the Mishnah's far-fetched description of the convert as the anomalously marginalized ethnic other is not the end of our discussion. In the previous chapters, we have discussed how conversion creates fictive kinship structures into which the convert as a *newborn child*, who has "completely" severed all his valid kinship ties to his gentile kin, is fully incorporated as full members on a par with the native-born. As the notion of "*A convert is like a newborn child*" according to the mishnaic/*halakhic* system of classification strongly suggests, he is no longer categorized as a gentile but as *Israel*; his descent fundamentally *changes* upon conversion. This suggests that conversion deeply involves the dual nature of Jewish identity formation. Both ethnicity and religion serve as essential components in constructing the convert's Jewish identity. Such dual identity formation is deeply reflected in the following gemara of *yBikk1:4, 64a*, an Amoraic commentary on *mBikk1:4*:

yBikkurim 1:4 64a

אמר ר"י יוסי "קיימה בנימין בר עשתור קומי רבי חייא בר בא" בגוי שבא בעבירה על בת ישראל היא מתניתא. "רבי יונה לא אמר כן, אלא רבי שמע לאילין דבי בר עשתור דאינון גרים בני גרים אומרים "אלהי אבותינו." הא תנינן "אם הייתה אמו מישראל אומר אלהי אבותינו." הא גרים בני גרים לא. אמר ר"י יוסי "קיימה בנימין בר עשתור קומי רבי חייא בר בא. רבי חזקיה בשם רבי חייא בר בא, "קיימה בר עשתור קומינן בגוי שבא בעבירה על בת ישראל היא מתניתא"

R. Yosi says the following: Benyamin b. Ashtor, (who is) in the presence of R. Hiyyah, construed the Mishnah's clause "if his mother was of Israel" as referring to a gentile (not a converted father) who had sinful intercourse with an Israelite woman, and the offspring of that union is the one of whom the Mishnah speaks "If his mother was of Israel, he brings and recites" (thus implying that second-generation converts like those of the house of bar Ashtor, who are the descendants of converts, may recite "(God of) our fathers/ancestors" even if they do not have native-born mothers).

R. Yonah did not interpret (Benyamin b. Ashtor's interpretation of the Mishnah's clause "if his mother was of Israel, he may bring and recite") in this manner, but (rather applied Benyamin b. Ashtor's interpretation to a different clause in the Mishnah):

Rabbi heard that those of the house of b. Ashtor, who are those converts - the sons of converts-, reciting (in their prayers) "God of our fathers." But did we not learn (in the Mishnah) "But if his mother was of Israel, he may recite 'God of our forefathers/ancestors'? Does this not imply that converts who are the sons of converts may not (recite "God of our forefathers/ancestors")?

It was in response to this objection, R. Yonah says that R. Yosi says that Benyamin b. Ashtor in the presence of R. Hiyya b. Abba construed the Mishnah as referring to a gentile who had sinful intercourse with an Israelite woman, and the offspring of that union is one of whom the Mishnah speaks "If his mother was of Israel he says "God of our forefathers," (thus implying that second generation converts like those of the house of b. Ashtor, who are sons of converts, may say "God of our forefathers" even if they do not have the Jewish mothers).

(Or according to another tradition) R. Hezekiah says in the name of R. Hiyyah b. (Ab)ba: bar Ashtor, in our presence, construed the Mishnah as referring to a gentile who had sinful intercourse with an Israelite woman, and the offspring of that union is one of whom the Mishnah speaks "If his mother was of Israel he says "God of our forefathers," (thus implying that second generation converts like those of the house of b. Ashtor, who are sons of converts, may recite "God of our forefathers/ancestors" even if they do not have the Jewish mothers).

The Yerushalmi attempts to explain the Mishnah's understanding of matrilineal descent by extrapolating the passage "if the mother was of Israel, he may recite *God of our forefathers/ancestors*." Benjamin b. Ashtor, who is a student of the third generation Amora R. Hiyyah b. Abba³⁶³ explains that the Mishnah's statement of if his mother was of Israel refers to the offspring of the union between a gentile father and a Jewish/Israelite mother. R. Yosi, R. Yonah and R. Hezekiah, three fourth-generation Amoraim attempted to formulate the exegesis of the Mishnah's clause. Beniyamin b. Ashtor, a student of the third-generation Amora R. Hiyya bar (Ab)ba and also come from the family of converts, attempts to reinterpret the Mishnah's clause "*if his mother was of Israel*" as referring to the offspring of intermarriage between a *gentile* father and a *native-born Israelite* mother (ישראל בגוי שבא בעבירה על בת). This seems to imply that a second-generation convert/offspring may recite "*our forefathers/ancestors*" regardless of whether the father is a convert or gentile.

A certain rabbi (whose name is either unknown or corrupt; not attributed to R. Yehuda Ha Nasi, the compiler of the Mishnah) heard the members of his family, who are descendants of converts, reciting "*God of our of forefathers/ancestors*" in their prayers, opposing such a practice since the bar Ashtor's are descendants of converts whose ancestry is not of genealogically Israelite origin because the Mishnah in fact requires that a convert recite "*our forefathers/ancestors*" only if his parent is of *native Israelite* origin. It is initially assumed by the Yerushalmi that clause 3 "*if his mother was of Israel*" may refer to a second-generation convert who is the offspring of the union between a *converted* father and a *native-born* Jewish mother, which implies that those second-generation converts who are not the offspring of a native-born parent would not be eligible to recite "*our forefathers/ancestors*." However, the Mishnah, according to Beniyamin b. Ashtor, refers not to the offspring of a *convert* father and *native-born Israelite* mother but to the offspring of a *native-born Israelite* mother and a *gentile* father. His exegesis seems to suggest that the Israelite status of the offspring is determined by the status of the mother no matter who

³⁶³ The word "קומי" (in the presence of) indicates that Benjamin b. Ashtor is was the student of R. Hiyya. Although he is not mentioned anywhere, but his family is mentioned in several passages (in *yDemai*6:1, 25*b* as well as its parallel in *yAZ*1:9, 40*b*, in which his family asked R. Haggai about tithing of produce or in *yYev*11:2, 2*d*, in which they asked R. Yosa about whether converts are allowed to perform levirate marriage. See Cohen, *The Beginnings of Jewishness*, 313 n. 11.

their father is - even if he is a gentile-, which exactly fits the rabbinic framework of the matrilineal principle. This also means that if the mother is of genealogically Israelite origin, the offspring is clearly affirmed as a Jew by birth regardless of his gentile father, who does not need the conversion procedure to be admitted into the community.³⁶⁴

Appeals to Common Ancestry as a Site for Authorizing Kinship Claims

The Mishnah's discourse of the convert's legal (in)eligibility to recite "*our fathers/ancestors*" in prayer has primarily been shaped by his (lack of) maternal line of descent. This apparently illustrates that it is only through his birth to a mother who is of genealogically Israelite origin that guarantees his inclusion in the Patriarchal lines of descent. The Yerushalmi, on the contrary, challenges *mBikk1:4*'s paradigm of matrilineal descent as a primary criterion for defining the convert's ethnic membership.

³⁶⁴ I suggest one possible reading: perhaps R. Yosi might have understood Benyamin b. Ashtor's construal of the Mishnah's clause "*if his mother was of Israel*" as referring to the case that even a "converted mother" herself is deemed to be "*Israelite*" in every respect regardless of the fatherhood, which means that her offspring may recite "*our forefather/ancestor*." The reason being that R. Yosi himself addressed a view in the case of the female convert's eligibility to marry into the priesthood in *yBikk1:4*, *64b/bYev78a-b*, which was fully endorsed by the majority as *halakhically* acceptable and valid due to the fact that anyone who is *conceived* and *born* within the *sanctity of Israel* (קדושה/*kedusha*) is automatically understood as ethnically "*Israel*" (R. Eliezer b. Yaakov's view that the daughter of two converts may not marry into the priesthood in the clause 7 of *mBikk1:4* is completely rejected for that reason). As noted previously, the female offspring is fully eligible to marry a priestly male because her mother converted *before* she was conceived and born (which is in line with the notion of the convert as a newborn child). In addition, the converted mother, as Lieberman pointed out in his analysis of *tYev12:2* (See above in the second chapter), can be viewed or treated as a native-born Israelite/Jewess who is equal to any other native-born in this regard. Since she is understood as an "Israelite" mother, her male offspring can also perform levirate marriage and a rite of *halizah* as the "native-born." Although she, as a convert, may not be married to a priest due to the principle "*A gentile has no paternity*," her offspring can because he is born into a "Jewish" mother. In light of this understanding, perhaps we may as well come up with one possible reading that allows for the convert's inclusion in their prayer of "*our fathers/ancestors*" on the basis of the view of R. Yosi, a view ignored by the Mishnah but endorsed in the *Bavli* and *Yerushalmi*. In other words, R. Yosi, who advanced the view that the daughter of two converts may marry into the priesthood in the *sugyot* of *bQid78a-b* as well as its parallel *yBikk1:5*, *64b*, asserts that she is genealogically fit/*kasher* for marriage. R. Yosi's view on the offspring of two converted parents also reflects *mBik1:4*'s understanding of an "Israelite mother" in such a way that allows her offspring to recite "*Our forefather/ancestors*" on a par with/as the native-born! This implies that all the offspring of converts, including those whose parents are both converts, may recite the declaration "*our fathers/ancestors*" regardless of the parentage!

רבי זריקן אמר רבי זעירא בעי. "כלום הוא מתקווין לא לאברהם יצחק ויעקב? וכי אברהם יצחק יעקב אבותיהם היו? כלום נשבע הקב"ה אלא לזכרים שמא לנקיבות!?"

R. Zeriqa said: R. Zeira asked, "Does he (the convert in the last two clauses) not mean to refer to Abraham, Isaac, and Jacob? Now were Abraham, Isaac and Jacob their fathers? Did not the Holy one blessed be he, take an oath only to males, but not to the females?"

Both R. Zeriqa and R. Zeira, the third-generation Amoraim, in fact raise a question on the validity of the *halakhic* ruling based on *mBikk1:4*. They inquire how the Mishnah's emphasis on matrilineal descent makes the convert genealogically entitled to recite "*our forefathers/ancestors*" as addressed in *Deut26:3*. Judging from the context of *Deut26:3*, "*our forefathers/ancestors*" to whom the text actually refers are clearly pointing to the three Patriarchs, Abraham, Isaac, and Jacob. The biblical text thus makes it clear that God originally swore to give the land of Israel to their male descendants as their inheritance. In this context, particular reference is made to the male offspring who descended from the Patriarchs. The text clearly implies that it is only through their male offspring that are eligible for inheritance while such a Patriarchal promise wasn't particularly made or guaranteed to their female descendants.

Given such a reading of the above biblical text regarding "*our forefathers/ancestors*," the matrilineal model addressed by *mBikk1:4* in defining the convert's ethnic status in the context of his genealogical failure to claim Israel's common ancestry that causes him to attain his legal inequality on a par with the native-born thus is called into question. It seems that if the principle of matrilineal descent excludes the female descendants from reciting "*our forefathers/ancestors*," then all the more so, the convert who lacks such Patriarchal ancestry may as well be excluded from such a promise.³⁶⁵ Since the plain reading of its clause "*if his mother was of Israel, he may recite our forefathers/ancestors*" cannot literally fit the scriptural context of *Deut26:3* and hence connection with the concept of

³⁶⁵ Cohen, "*The Beginnings of Jewishness*," 328.

Israelite *forefathers/ancestors* in association with the convert's legal eligibility, the following gemara, however, challenges such a *halakhic* convention and even argues against the Mishnah's identity construction based on the paradigm of matrilineal descent.

At the end of this *sugya*, the gemara of *yBikk1:4, 64a* finally dissents from the previous discussion of the Mishnah's emphasis on the centrality of the principle of matrilineal descent in determining the convert's ambiguous kinship status. As its plain reading suggests, the convert is literally excluded from and thus unable to partake the divine promise simply because he or she may not be genealogically regarded as the direct descendant of these Patriarchs, nor is his/her identity transferred through female lines of descent. Completely rejecting the Mishnah's previous understanding of the matrilineal paradigm of descent, the following gemara of *yBikk1:4, 64a* therefore demonstrates another alternative to understanding the convert's genealogically ambiguous ethnic status by radically and conceptually reinterpreting the discourse of "*our forefathers/ancestors*." Conceptually perplexed by the Mishnah's definition of his ambiguous kinship status, it entirely argues that matrilineal descent does not necessarily serve as a *sine qua non* for the convert's inclusion in the Patriarchal lineage:

yBikk1:4, 64a

תני בשם רבי יהודה: גר עצמו מביא וקורא. מה טעם? "כי אב המון גוים נתתיך (בראשית יז:ה)".
 לשעבר היית אב לארם ועכשיו מכאן ואלך אתה אב לכל הגוים. רבי יהושע בן לוי אמר הלכה כרבי יהודה.
 אתא עובדא קומי דרבי אבהו והורי כרבי יהודה.

It has been taught in the baraita in the name of R.Yehudah (T3). A convert himself may bring (first fruits) and recite (the verse from Deut. 26:3, "God of "our fathers/ancestors"). What is the scriptural basis for this view? "I have made you the father of a multitude of nations (Av-Hamon Goyim)" (Gen. 17:5). In the past you were the father of Aram, but now henceforth you are the father to a multitude of the nations. R.Yehoshua b. Levi (PA1) said, "The law is in accordance with the view of R. Yehudah (T3). " A case came before R. Abbahu (PA 3) and he rendered its decision in accordance with R.Yehudah (meaning that the law has been declared that the convert can now recite the declaration on a par with or as the native-born since he is "genealogically" linked/traced back to

the Patriarch Abraham, who was also deemed the first convert)."

Completely refuting or rejecting the Mishnah's original assertion that only the native-born or the offspring of the convert whose mother is of genealogically Israelite origin is entitled to claim "our forefathers/ancestors," the gemara of *yBikk*1:4, 64a concludes the *sugya* with a clear assertion that the convert may also be eligible to recite the biblical declaration of *Deut*26:3 "that the Lord has sworn to our forefathers/ancestors to give us" (נשבע ה' לאבותינו לתת לנו) (אשר) in bringing the first fruits because he is indeed considered as the descendant of the Patriarch Abraham who is also thought to be "the father of a multitude of converts" (המון גרים) (אב), as evidently confirmed by *Gen*17:5 "I have made you the father of a multitude of nations" (אב המון גוים נתחיד). R. Yehuda, a third-generation Tanna, is quoted by the *Yerushalmi* as convincingly asserting that the term *Hamon-Goyyim* (המון גוים) in *Gen*17:5 that originally refers to a multitude of nations is rhetorically and etymologically read as Abraham's future descendants of converts (גרים), explicitly affirming that converts are indeed understood as genealogically claiming shared ancestry with Israel's progenitor Abraham on a par with the native-born (or at least as the native-born in this context).³⁶⁶ As illustrated by the etymology of Abraham as "a multitude of converts" (*Av-Hamon-Goyyim*/אב המון גוים), the *Yerushalmi* strongly confirms the convert's genealogical continuity with the common ancestor Abraham by telling the story of Israel's ethno-Genesis in the form of the aggadah "In the past you were the father of Aram, but now henceforth you are the father to a multitude of the nations," thus emphasizing that Abraham is now identified as the archetypal ancestor of all (future) converts. Especially important in claiming the convert's common ancestry with the nation's progenitor is the motif of Abraham as the archetypal convert. In fact, many midrashic and Talmudic traditions portray Abraham as the archetypal convert or the archetypal father of all the converts.³⁶⁷ That is because Abraham, previously identified

³⁶⁶ This is the Talmud's textual strategy of appropriating and reworking an earlier Tannaitic tradition to promote a new *halakhic* meaning, as also seen in the tractate of conversion and other *sugyot* in the Bavli *Yevamot*.

³⁶⁷ The motifs of Abraham as the archetypal convert is reflected in the following Midrashic and Talmudic sources: Abraham as the first convert: *bSukkah*49a; *bHag*3a; *Mekhilta de-R. Yishmael Nezikin*18: Abraham as the archetypal father of converts: *tBer*1:13; *ExR*1:35-36; *NumR*8:9: Abraham as one who abandoned idol worship: *Tanhuma* (Buber) *Lech Lecha* 3:30a and *Bereshit*32:11b; *RuthR*5:3:

as Abram who was an Aramean (also portrayed as the *father of Aram*/אב לארם in the *Yerushalmi*) in Ur, is also understood as the “first” convert who abandoned idol worship and established the divine covenant with God. By rhetorically appealing to the common origin, the *Yerushalmi* fully identifies the convert with the progenitor Abraham who was also understood as the first, archetypal convert, which enables him to gain full genealogical inclusion in the Patriarchal lineage.

Importantly, the *Yerushalmi*’s effort to craft the convert’s genealogy by including him in the lineage of the progenitor Abraham suggests that appeals to descend from purported ancestors are important vehicles to shape claims to common ethnic origin. Such appeals to descend from common ancestral figures are employed as the rhetoric of defining kinship relationships, thus serving to create a genealogical link between two or more groups perceived to be different in the present. It should be noted that appeals to a common past, as Denise K. Buell argues, are instrumental to shaping claims to one’s genealogical descent.³⁶⁸ The past, as she explains, is also thought to be a crucial site for authorizing the values by which to shape one’s present identity, thus solidifying a sense of fixity that ensures the group’s historical continuity.³⁶⁹ Therefore, the kinship claims of the converts to descend from their common ancestor Abraham can thus be shaped by the notion of a common past, whose history and identity are fashioned for them, thus stylizing them as

Abraham as a newly created person: *GenR39:2*; Abraham as a proselytizer: *Sifre Deut32*; *GenR39:14*. See also Lavee, “A Convert Is Like A Newborn Child,” 215-217.

Although this is not a place for an extensive inquiry into early Jewish missionary activity, the following studies by Moshe Lavee and Joanna Weinberg can illuminate how the divergent rabbinic traditions of both Babylonia and Palestine illustrate a change in the motif of Abraham as a proselytizer. Moshe Lavee, “Converting the Missionary Image of Abraham: Rabbinic Traditions Migrating from the Land of Israel to Babylon.”; Joanna Weinberg, “Abraham, Exile, and Midrashic Tradition.” In *Abraham, the Nations, and the Hagarites: Jewish, Christian, and Islamic Perspectives on Kinship with Abraham* ed. Martin Goodman, George H. van Kooten, and Jacques T.A.G.M. van Ruiten (Leiden and Boston: Brill, 2010), 203-222; 223-242.

³⁶⁸ Denise Kimber Buell, *Why This New Race: Ethnic Reasoning in Early Christianity* (New York: Columbia University Press, 2005) 64, 75-76. Appeals to kinship claims were practiced in ancient Mediterranean culture. Both a history and a genealogy were crafted for ethnic groups by defining them as descendants of particular ancestral figures. For instance, the Greeks and Romans frequently recited the noble genealogy of one’s kin to assume and secure one’s legitimately powerful status. See *Divus Julius* 6.1 for Julius Caesar’s claim to his noble ancestry. In a similar vein, Paul also practiced a similar strategy of crafting a new, though fictive, lineage for gentiles by incorporating them into the lineage of Abraham in Galatians 3, which is to be discussed below.

³⁶⁹ Ibid.

part of their collective whole. By portraying the people of Israel as historically and genealogically continuous over time, the rhetoric of fictive descent is stressed in order to realize one's potential to by appealing to the past. This in turn implies that a particular group of people can be transformed into another or that different peoples emerge from a common ancestor.

It is equally important to note that ethnicity or genealogical descent is not necessarily defined by one's actual biological or historical connections with forebears; rather what really matters is the subjective recognition of or belief in such shared ancestry whether it is assumed or real. Charles Keyes also describes such a fictive construction of descent as "one in which connections with ancestors or with those with whom one believes one shares descent are not traced along precisely genealogical lines."³⁷⁰ For instance, Americans ascribe their national identity to connections with the "Pilgrim Fathers" or with those who fought in the Revolutionary War even though only few Americans can trace their lineage back to members of the Plymouth community or those who wrote the Constitution.³⁷¹ In my view, it is the cultural interpretation of such descent that defines kinship connections between the descendants and the ancestors.

Therefore, the Yerushalmi's citation of the biblical passage of *Gen17:5* as a strategy of mythmaking for the covert's inclusion in the genealogy of the progenitor Abraham clearly indicates that a myth of ethnic origin is used as the cultural interpretation or appropriation of descent. As Russell McCutcheon maintains, mythmaking serves as a strategy of abstracting the beginnings from the past, thereby defining one's present by linking it to a mythic moment.³⁷² It does serve as a site for shaping the convert's present kinship claims

³⁷⁰ Keyes, "The Dialectics of Ethnic Change," 5-7. The notion of ethnicity, as Keyes argues, is defined as a "form of kinship reckoning," by which the notion of descent is culturally interpreted. In other words, the idea of sharing descent is a form of seeking solidarity with those whom they recognize as being of the same people. The recognition of such a sentiment, he maintains, is predicated on cultural interpretations of what "other do or do not belong to the same people as one self." In light of the *Yerushalmi's* image of Abraham as the archetypal ancestor of converts, collective myths or legends function as vehicles for validating a connection between the descendants and the forebear by serving to accord symbolic significance to the putative connection whether such a connection is historically real or assumed. What matters is an assumed belief in such myths.

³⁷¹ *Ibid.*, 6.

³⁷² Russell T. McCutcheon, *Critics Not Caretakers: Redescribing the Public Study of Religion*. (Albany: State University of New York Press, 2001), 88. In other words, this is another way of saying that

to Israel's common ancestry. In this sense, although his genealogical connection to the progenitor Abraham is fictively fabricated or manipulated, the Yerushalmi uses the passage of *Gen17:5* discursively as the myth of common ethnic origin to include him in the Patriarchal lineage. By implication, this suggests that its appeal to common past or ethnic origin is accorded symbolic significance in evoking a sense of continuity of the group of which he or she is a member by descent; for that reason, the convert is indeed considered as part of that descent.

How the notion of a common past is articulated and employed as a rhetoric that shapes a sense of collective identity can also be seen in the following Amoraic traditions:

BT Shvuot 39b/ BT Shabbat145a:

"ולא אתכם לבדכם וגו'(דברים כט:יג)". אלא אותן העומדין על הר סיני דורות הבאים וגרים העתידין להתגייר מניין? תלמוד לומר "ואת אשר איננו (שם)"

"(I make this covenant) Not with you alone, etc (Deu.29:13)." These (people) are standing on the foot of Mt. Sinai, (They are) converts who will come to convert in the coming generations. What is the scriptural basis? The scripture says. "Those who are not with us today (Ibid: 14)."

אמר ליה רב אחא בריה דרבא לרבי אשי "גרים מאי?" אמר ליה "אפ על גב דאינהו לא הוו, מזלייהו הוו." דכתיב "את אשר ישנו פה עמנו עומד היום לפני ה' אלהינו ואת אשר איננו (פה) וגו'. (דברים כט:יג יד)"

R.Aha the son of Raba asked R.Ashi, "What about converts?" He replied. 'Though they (converts) were not present, their guiding stars were present as it is written: I make this covenant, with its sanctions, not with you alone, but both with those who are standing here with here with us this day before the Lord our God and those who are not with us here this day.' (Deut. 29:13-14)

appeals to the past shape one's claims about the present. One's cultural interpretation of appropriation of the past shapes one's connection with the past, thereby linking oneself with the past. See Buell, *"Why New Race,"* 78.

These two *sugyot* strongly stress the very motif that the converts are portrayed as those who identify fully with the past, present and future of the people of Israel as the legitimate members of the nation. The convert (to be more precise, his soul/מזל) is portrayed as establishing the covenant with the Divine and taking on the Torah as His divine law at Mt. Sinai. In addition, these two parallel passages of the *Bavli* stress that it is the revelation at Mt. Sinai that defines and constructs collective identities for both the native-born and converts. It should be noted that in these texts, converts are undoubtedly understood as those who come to establish the divine covenant with God at Mt. Sinai, even in the future generations. The two verses in *Deut*29:13-14 “וְאֵת אֲשֶׁר אֵינָנוּ פֹה” (*those who are not with us here*) and “וְלֹא אַתְּכֶם לְבַדְכֶם” (*Not with you alone*) serve as scriptural warrant for converts who will come to convert in the coming generations, which also indicates that they are understood by Amoraim as predestined to be part of the people of Israel.

Just as R.Yehuda did in *sugya* of the *yBik*1:4, 64a the late amora R. Ashi in *bShab*145a expands the meaning of the passage of *Deut*.29:14 to include converts since the verse14, “*those who are not with us here today*” / “וְאֵת אֲשֶׁר אֵינָנוּ פֹה” refers to converts, whose guiding stars (Mazal/מזל) were already present at Mt. Sinai, are included in the covenant made between God and Israel, implying that they are indeed partakers of the divine covenant. This implicitly confirms claims to common descent for converts.

While Levinson argues that these narratives present an ideological model that apparently supersedes genealogical descent as a basic marker of a collective identity, I suppose that quite the opposite is true: This is clearly one of their rhetorical strategies to expand the parameters of the notion of genealogical descent, especially by appealing to a common past as a site for authorizing the legitimacy of common descent; both interrelate and cooperate with each other in defining membership.³⁷³

Patrilineal Descent as Fictive Kinship Construction

The Yerushalmi rejected the Mishnah's the paradigm of matrilineal descent as a mode of kinship reckoning because it cannot completely account for the convert's inclusion in the

³⁷³ Joshua Levinson, “Bodies and Bo(a)rders: Emerging Fictions of Identity in Late Antiquity.” *HTR* 93: 4 (2000), 344-347.

lineage of Abraham. Or put it simply, the notion of Abraham as the archetypal father/ancestor of converts (*Av-Hamon-Goyyim*) as evidenced in *Gen17:5* suggests that it presupposes a metaphorical kinship connection between the father and the son. The *Yerushalmi*, I suggest, employs the proof text of *Gen17:5* in order to articulate and define a new patrilineal kinship relationship for the convert through the crafting of his new, genealogy traced back to Israel's male ancestor, Abraham. According to this understanding, the convert is literally presumed to share the common descent with other members of the native-born by virtue of his *male* lines of descent from the *male* ancestor Abraham. In this instance, the Mishnah's principle of matrilineal descent cannot explain the convert's full inclusion in the Abrahamic genealogy, which defines him as Israel on a par with the native-born. The *Yerushalmi's* might have understood that the notion of Abraham as the father of a multitude of converts (*Av-Hamon-Goyyim* / אב המון גוים / גרים) in *Gen17:5* presupposed the normative understanding of patrilineal descent. Therefore, I argue that it is the principle of patrilineal descent that can only account for the convert's inclusion in the genealogy of Abraham.

In order to better understand and elaborate how the fictive kinship construction of converts as direct descendants of the progenitor Abraham in the *sugya* of *yBik1:4, 64a* is deeply embedded in the understandings of patrilineal descent, I argue below how the study of Caroline Johnson Hodge on the Pauline understanding of kinship construction for the gentiles in the early Christian community could perhaps offer another clear insight into how claims of shared descent and ancestry come to shape the discourse of kinship and ethnic identity construction in rabbinic Judaism by way of the understanding of patrilineal descent. According to her view, the Pauline gentile kinship construction in the early Christian community particularly rests on the "in" language of particular Genesis passages, which shapes and reinforces the ideology of patrilineal descent.³⁷⁴

Drawing on his full use of the "in" language in Genesis passages in his apostolic writings, Paul, as Johnson Hodge suggests, articulates how the ideology of patrilineal descent contributes to crafting fictive kinship for gentiles in Christ, which shapes the

³⁷⁴ Caroline Johnson Hodge, *If Sons, Then Heirs: A Study of Kinship and Ethnicity in the Letters of Paul* (New York: Oxford University Press, 2007), 97-98.

concept of “containment” of descent, in which descendants are contained “in” the seeds of their ancestors.³⁷⁵ It is Paul’s discursive strategy of the “in” language that crafts fictive genealogies for gentiles to be incorporated into the Abrahamic lineage by being “in” Christ in *Galatians* 3:6-9, which seems to resonate more or less with the *Yerushalmi*’s discursive attempt to fictively craft a way for converts to be incorporated into Israelite lines of descent by being “in” the seed of the nation’s progenitor Abraham. Despite the stark difference between both texts in the historical contexts in which they were produced as literary compositions, at least it seems clear that both do illustrate the principle of how they are genealogically included in the lineage of Israel’s progenitor Abraham, particularly through the concept of descendants being “in” their ancestors.

This notion of descendants being “in” their ancestors frequently appears throughout the particular passages of Genesis and is specifically used in the context of establishing the divine covenant through a particular ancestor, as seen throughout Genesis passages, particularly chapter 12 or 18. According to this theoretical model of patrilineal kinship relationships between ancestors and descendants, the Genesis text particularly engages in

³⁷⁵ Ibid., 94-95. Interestingly the concept of the offspring being “in” the ancestors, as Johnson Hodge points out, is in fact found in Greek medical and zoological texts that deal with conception, reproduction and embryology. In the *Generation of Animals*, Aristotle, for instance, argues that the offspring are thought to be contained “in” both parents in various ways. The offspring are conceived of being both “in” and “coming out of” the parents because each parent passes on different attributes to the children. Although the substance or material of the father itself does not pass down on to the child, the offspring might resemble the parents. The reason being that the mother contributes the substance or matter while the father the form and character. For the mother, it is the “movement and generation” of the substance or material that shapes the fetus in the mother’s womb in such a way that gradually causes it to grow into a child when combined with the seminal fluid of the father (729b6). In other words, the mother is understood as a vehicle out of which the fetus is generated and comes into being (716a22-23), thus containing it in the mother. Such forces that shape and grow them into the offspring are found in the father, which concurrently enables him to pass on his character and form to the offspring (767b15). Hence Aristotle calls a series of such processes of generation the generator (716a22-23). In this theoretical model of generation and embryology, the offspring are therefore understood to be present “in” and originate from the parents. Even though all of the texts discussed above is presented in different contexts and time periods, each assumes a common understanding of generation and reproduction deeply implicit in the paradigm of patrilineal descent, in which descendants are understood to be contained “in” their ancestors, which somehow accounts for the transmission of the progenitor’s certain identities and characteristics across generations. For more on the Aristotelian notions of conception, reproduction, and embryology, see Aristotle, *Generation of Animals*. Trans. A. L. Peck. (Cambridge, Mass: Loeb Classical Library, 1945).

the definition of a corporate identity for descendants, asserting that many descendants have genealogically been integrated into or contained in the lineages of their respective ancestors in each generation.³⁷⁶

The logic of patrilineal descent in which the offspring are organically contained “in” the ancestor is particularly promoted by Sam K. Williams, who describes such a phenomenon as “the Hebraic concept of the inclusion of descendants in the progenitor” and argues that “in a sense foreign to us, a people’s ancestor and the ancestor’s offspring are identical. Drawing on his view, it is assumed that the offspring are incorporated *into* the ancestor, and the offspring is later present as his ancestor.”³⁷⁷ This biblical model of descent and kinship identity transmission across the generations Williams raises in the Genesis passage in fact suggests that both descendants and ancestors are genealogically identical and organically connected as a corporate, united group of people who assume reciprocal relationships with each other. More importantly, explicit in this understanding of patrilineal descent is the presence of descendants “in” their ancestors, specifically “in” their *seed*. This also confirms the idea that the descendants are believed to be contained *in* the ancestors, and his descendants are also represented as *manifestations* or *elaborations* of their ancestors, which allows members of kinship/ethnic group to share the same traits and characteristics with each other.³⁷⁸ Therefore such an understanding of patrilineal descent assumes a reciprocal model of kinship relationships in which the descendants

³⁷⁶ To give a specific example in the Genesis text, Isaac was contained in the womb of Sarah and Jacob and Esau in the womb of Rebecca. In *Gen*25:23, Rebecca was told by God about the twins conceived in her womb: “There are two nations “in” your womb and two peoples shall be separated out from your stomach and the one people shall serve the other while the elder shall serve the younger.” This verse apparently speaks of the twins who are contained “in” the womb of Rebecca, which seems to reflect a similar understanding of descent in which the progeny is coming out of the progenitor. In defining the twins, the verse assumes an understanding of the containment of a corporate entity that not only refers to individuals but also represents a whole group of people such as *ethnos* or *laos*/לְאוֹם. Cf. Johnson Hodge, *If Sons, Then Heirs*, 96-97.

³⁷⁷ Sam K. Williams, “Promise in Galatians: A Reading of Paul’s Reading of Scripture.” *Journal of Biblical Literature* 107(1988) 717. Cf. Johnson Hodge, 97. Although Williams himself, as Johnson Hodge points out, does not identify this phenomenon as the principle of patrilineal descent nor does he base his argument on such a principle, it is clear from his assertion that his view is based on the understandings of patrilineal relationships between ancestors and descendants, as seen in Genesis passages.

³⁷⁸ Johnson Hodge, *If Sons, Then Heirs*, 94.

originate from their (male) ancestors, and their genealogical identities are patrilineally transmitted across several generations. This illustrates that one cannot ignore the former without the latter; both must be mutually existent in defining and transmitting the very identity of peoplehood to the next generation, which also seems to resonate with the notion of *toledot*/תולדות (the history of common origin) in the Hebrew Bible as previously mentioned above.³⁷⁹

In such a conceptual framework, the ancestor and the descendants as described in the Genesis passage are thus identical in that the descendants are understood to be contained “in” the seeds of their ancestors. In other words, the descendants are understood to represent their ancestor,³⁸⁰ and the ancestor are also symbolically representative of the descendants in the future generation. Moreover, such reciprocal relationships between them are symbolically figured as a “father-son” relationship as well (as also seen in the context of the fictive kinship connection between the convert and the progenitor Abraham in the *sugya* of *yBikk1:4, 64a*); the child is considered as the offspring of the male forebear who has fathered him and given the seed for his later descendants. It could surely be assumed that containment of descent is thus embedded in the father-son, patrilineal relationships that ensure the continuity of (male) descent.

The “in” language of Genesis passages assumes not only the reciprocal relationships between the descendants and the ancestor but also is expressed as what Johnson Hodge calls an “ideology of the seed,” in which the ancestor’s essential identity and characters are transmitted to his future descendants. This is especially true in the context of scriptural passages in Genesis in which the divine blessings are passed down from one generation to the next. As is clearly evident and emphasized in several Genesis passages, an heir (in this case a progenitor) is specifically chosen by God to carry such divine blessings to be passed

³⁷⁹ This is NOT to say that matrilineal descent is not a viable option for Jewish kinship reckoning as developed in rabbinic texts. What I’d like to suggest is that the idea behind that is to show how the progenitor’s characters and identity are passed down or transmitted to the next generation in order for the convert to inherit the identity of the progenitor. As I will repeat below, in order to define kinship construction for the convert who has obviously no previous Jewish kinship status, his kinship reckoning must be patrilineal. Even though the principle of patrilineal descent often values or even triumphs over the maintenance of the male lines of descent, female lineages can be used to articulate a patrilineal understanding.

³⁸⁰ Johnson-Hodge, *If Sons, Then Heirs*, 96-99.

down to his offspring. This theoretical model, I assume, presupposes patrilineal understandings of descent because the father's seed shapes the essential identity of the offspring.³⁸¹ Such patrilineal kinship relationships allow the father to pass on his essential character and identity to such an extent that eventually comes to shape the essential character and identity of the offspring in the next generation (while the mother also provides material substance that nurtures the child as well). Such understandings of transmissions of the paternal identity and character to the offspring therefore presuppose a construction of genealogical continuity of men of different generations, which is seemingly built around an ideology of the seed. It could hence be suggested that the ideology of the seed thus centers on the containment or manifestation of the descendants "in" their ancestor embedded in the paradigm of patrilineal descent, which is instrumental to constructing a corporate identity of the descendants across the generations.³⁸²

That said, I hereby suggest that Paul's scriptural understandings of the containment of patrilineal descent in his apostolic writings, namely the book of Galatians, might provide an insight into how we could better understand the theoretical model of the convert's shared ancestry with the progenitor Abraham as promoted in the *yBikk1:4, 64a*. Before going back to the discussion on the convert's inclusion in the lineage of Abraham in the Yerushalmi, again I will briefly examine Paul's strategy of crafting new kinship relationships for the gentile followers of Christ who are made into the descendants of the progenitor Abraham.

Paul, as Johnson Hodge argues, appears to have employed Genesis passages to re-craft definitions of gentile kinship that might be found "in" the Patriarch Abraham in *Gal3:6-9*.³⁸³ He understands kinship to be a malleable, yet powerful tool of crafting new identities, redefining or rearranging kinship relationships in which gentiles can be initiated into a new kin group as "sons" who are eligible to inherit as part of a new household. Rereading Genesis passages that deal with descent, kinship and procreation, Paul creates a new discourse of kinship for gentiles in which they sprang from the

³⁸¹ Ibid., 97.

³⁸² Ibid.

³⁸³ Ibid., 93-94.

progenitor Abraham. He also understands that these passages such as Galatians 3:6-9 and Romans 4:16 serve as scriptural warrants for the gentiles being made into descendants of Israel's progenitor Abraham.

With the discursive use of the "in" (*en/εν* in Greek; *ve/ב* in Hebrew) language in particular Genesis passages, Paul invokes understandings of patrilineal descent to authorize, shape and reinforce a new kinship for gentiles to be incorporated into the people of Israel as his heirs. Importantly, the "in" language of Genesis passages signals the transmission of the essential identity of the progenitor to his descendants in the form of divine blessings and promises. Particularly he employed the notion of 'faithfulness' as the most essential construct of characters and traits that the descendants must inherit from the ancestor in Paul's line of reasoning. Put simply, Paul uses "in" language in order to rework or broaden the scope of kinship for the gentiles: by becoming descendants of Abraham or more specifically by claiming shared ancestry with Abraham, the gentile followers of Christ can be identified as part of the collective entity called Israel, or more specifically the "sons of the God of Israel." Coming out of one ancestor, descendants are understood as organically part of such one corporate body:

Gen12:1-3

And the Lord said to Abraham: "Go forth out of your land and out of your kindred, and out of the house of your father, and come into the land I will show you. And I will make you a great people and I will bless you and make your name great and you shall be blessed. And I will bless those who bless you and curse those that curse you and "in" you all the families/tribes of the earth shall be blessed."

Gal3:6-9

Just as Abraham "trusted in God, and it was reckoned to him as righteousness" (Gen15:16; Rom4:3) so you know that those who descend from [Abraham's] faithfulness (οι εκ πιστεως), these are sons of Abraham. The scripture, having foreseen that God would justify the gentiles out of faithfulness (εκ πιστεως), proclaimed the good news beforehand to Abraham that "All the gentiles will be blessed 'in' you"(quoting Gen12:3; 18:18 "all the families/peoples of the earth shall be

blessed"/ "ונברכו בך כל חותמשפ האדמה/גויי הארץ"). For this reason, those who descend from faithfulness (οἱ ἐκ πίστεως) are blessed with the faithful Abraham.

Paul's strategic use of the "in" language of Genesis passages serves his argument for reinforcing patrilineal kinship construction for gentiles and their inclusion in the Abrahamic lineage. Equally crucial to constructing new kinship relationships for gentiles, first of all, is how he uses the Greek preposition *ek* (ἐκ), often translated as "come out of," "spring from," "derive from," "descended from" and "born out of," and *pistis/pisteos* (πίστεως), often translated as 'faithfulness' 'loyalty' or 'trust.' These two Greek terms form the basis of his argument for new patrilineal kinship construction for gentiles. Combining *ek* with *pistis* in verse 7 and 9 –thus *hoi ek pisteos* –, Paul declared "those (gentiles) who descend from (the) faithfulness (οἱ ἐκ πίστεως)" (of Abraham) as his "sons" indeed.³⁸⁴ That is, those gentiles who are *ek pisteos* are considered as the descendants of Abraham; they are justified by God as *ek pisteos* who are therefore included in the blessing (or to be more specific, the blessed lineage of Abraham). How does the *pistis*/faithfulness of Abraham generate the inclusion of gentiles in his blessed lineage as his descendants? Or how do gentiles as his promised descendants spring from his *pistis*/faithfulness?

It is important to take note that the term *ek* appears in the context of procreation of heirs and multiple descendants.³⁸⁵ Paul in fact uses the preposition *ek* to describe descent from a particular lineage of the progenitor, namely Abraham.³⁸⁶ It refers to generation or procreation especially in the context of the relationship between parents and offspring. Moreover, the term *Hoi ek*, as Stanley Stowers in fact points out, also refers to "origins,

³⁸⁴ For instance, in *Generation of Animals*, 724a18, Aristotle describes the most fundamental origin or source of the generation of life with the preposition *ek hou*(ἐξ οὗ), usually translated as "out of which." Cf. Johnson Hodge, 80; 186. n. 4. For related discussions, see also *Metaphysics*, 1023a26ff; 994a20; *Physics*, 194b29-195a31.

³⁸⁵ In the Septuagint, particularly in Genesis 15:3-4 and 17:16, the term *ek* is also used to designate the creation of a new kinship especially in the context in which Abraham was promised by God an heir and numerous descendants in later generations. Genesis 15 discursively serves as Paul's scriptural warrant for crafting a new kinship for gentiles, as also characterized by his use of the phrase *ek pisteos* (*Those who descended from the faithfulness of Abraham*) in Gal3:7. Importantly the use of the term *ek* illustrates as deeply embedded in the patrilineal concept of how the descendants are contained "in" the seed of their male ancestors.

³⁸⁶ Johnson Hodge, *If Sons, Then Heirs*, 83.

participation and membership.”³⁸⁷ This indicates that the word itself connotes an ethnic origin of a particular people.³⁸⁸ Especially in the context of *Gal3:7*, the *ek* language is used to mark specific lineages from which certain individuals or people spring.³⁸⁹ Playing with the kinship language *ek*, Paul redefines the gentile followers of Christ as those who “descend from” or “come out of” the lineage of Abraham in Galatians 3:7 and Romans 4:16, stressing how descendants were “born out of” or “descended from” certain lineages of the ancestor of a particular ethnic group, into which these gentiles are to be integrated as his heirs and descendants.³⁹⁰

Secondly, combining the preposition *ek*, Paul redefines the nuance of its kinship language by placing the notion *pistis*/faithfulness as the source of origin for gentile inclusion in the lineage of Abraham. In the Galatian passage, Paul clearly affirms that the term *pistis* serves as a major vehicle for new kinship construction for the gentile followers of Christ. Drawing on the passages of Genesis 15:3-6, where God promises Abraham an heir and then many descendants who will descend from him, Paul links Abraham’s faithfulness to the divine promise of his fertility, thereby creating a new lineage, which he believes includes the gentile followers of Christ. His use of *ek pisteos* echoes the passage of Genesis 15:3, in which Abraham’s faithful response to God’s promises. The phrase in verse

³⁸⁷ Stanly Stowers, *A Rereading of Romans: Justice, Jews and Gentiles*. (New Haven, Conn: Yale University Press, 1994), 240-41. Referring to his own lineage, Paul boldly claims that he was “born out of the lineage of Israel” (ἐκ γενους Ισραηλ)... a Hebrew descended from Hebrews (Εβραιος ἐξ Εβραιων) (Phil3:5) and that “born from the seed of Abraham” (ἐκ σπέρματος Αβρααμ)(Rom11:1).

³⁸⁸ The preposition is used in the following Greek texts: In Plato’s *Menexenus*, Socrates “They were virtuous because they were sprung from virtuous men” (δια το φυναι ἐξ αγαθων) (237A). Josephus recounts a letter from the Spartan king to the Jewish high priest in which the Spartans claim kinship with the Ioudaioi: “We have learned that the Ioudaioi and the Lakedaimonians come from one descent group, springing from a common descent relationship by virtue of Abraham” (ἐς ενος ειεν γενους εκ της προς Αβραμουν οικειοτητος) (*Jewish Antiquities*, XII.226). Similarly, I Maccabees also mentions that the Spartans and Ioudaioi are brothers “from the lineage of Abraham” (ἐκ γενους Αβρααμ) (12:21). For the Spartans’ claim of common kinship with the Jews, see Erich Gruen, “Fact and Fiction: Jewish Legends in Hellenistic Context” In *Hellenistic Constructs: Essays in Culture, History, and Historiography*, ed. Paul Cartledge, Peter Garnsey, and Erich Gruen. (Berkeley: University of California Press, 1997), 74-75. Cf. Johnson Hodge, 186 n. 5 and 6. This emphasizes kinship implications in its usage.

³⁸⁹ Several other examples include: *Gal1:15*; *2:15*; *4:4*; *Rom1:3*; *4:23*, *9:5-10*. The use of *ek* in all these verses refers to “born of” or “descended from” by implication.

³⁹⁰ Johnson Hodge, *If Sons, Then Heirs*, 82-83. The preposition *ek* connotes descent or issue/birth in certain contexts of his writing, which includes the following: *Rom9:6* “For not all those born out of the lineage of Israel are truly Israel.” *Gal4:22-23*. This preposition also implies “Born of.”

7 and 9 “those who descended from faithfulness” (*Hoi ek pisteos*/οι εκ πιστεως) should specifically be translated as “those whose line of descent springs from Abraham’s faithfulness.”³⁹¹ This indicates that his use of the combination of *ek* and *pistis* – *hoi ek pisteos* – as a result creates a new semantic meaning that allows Paul to newly define descent from Abraham in such an innovative way that includes gentiles as his descendants originally promised to him.³⁹² The term *pistis*, as opposed to the modern conception of faith or belief as an inner, abstract disposition, is used as denoting a concrete disposition of specific character traits that is closely intertwined with a certain act of behavior.³⁹³ The faithfulness of Abraham in this context refers specifically to a certain disposition or behavior related to his role as the progenitor of a particular people. The *ek* language is jointly used to evoke Abraham’s role as the procreative ancestor of many descendants. What matters the most in Paul’s kinship reasoning is that it is the ancestor’s trust or faithful response to God’s blessed promise of fertility that constitutes or generates this blessed lineage.

In other words, Paul argues that *pistis*/faithfulness refers less to an inner disposition of belief, but rather more to the covenant between God and Abraham, which is based on God’s promises of fertility. Faithfulness in this context specifically refers to his response to such divine promises of begetting his offspring Isaac, through whom his many descendants will issue.³⁹⁴ Abraham repoded to the God of Israel with an act of faithful obedience with which he was commanded to act on His promise of procreation of his heir, which led to founding a new lineage, in which his numerous descendants will inherit as his heirs. In this line of reasoning, *pistis*/faithfulness serves as a shorthand for Abraham’s response to God’s promise. *Pistis*/faithfulness could thus be understood as a specific mode of human action that the ancestor Abraham took (to fulfil his procreative role given by God), which is to be transmitted to the descendants. It bestows the essential identity of

³⁹¹ Ibid., 86.

³⁹² Paul’s creation of new semantics as a way to craft a new interpretation that gives shape to actual kinship construction is, in a sense, similar to the *Balvi*’s use of rhetoric to change the semantics of particular verbs as seen in the case of changing the semantics of כנס (to gather) into נכנס (to enter). See chapter 1.

³⁹³ Ibid., 82.

³⁹⁴ Ibid.

the ancestor on the descendants, shaping their identity after his character. As far as Abraham's faithfulness or his faithful response to God's promises is concerned, his faithfulness/*pisteos* as an essential attribute implies that it is not his mere genetics that can be passed on to the next generation, but most importantly it is the 'character' of the male progenitor that serves as the very essence of his identity that is transmitted to his descendants. I therefore suggest that this understanding explains Sam K. Williams' patrilineal concept of the 'Hebraic concept of the inclusion of descendants in the progenitor'; that is, the ancestor's character, which is in this case his faithfulness, is later present in his descendants. Or more specifically, the father's seed, which consists of the very character trait of his faithfulness, bestows and shapes the essential identity of the offspring because they tag onto the same degree of faithfulness that allows them to be included 'in' the progenitor's seed defined by such faithfulness. Drawing on this model of identity transmission, Paul discursively used Abraham's faithfulness or his attribute of a particular action to craft a new kinship for gentiles. Hence the notion of *pistis*/faithfulness as the ancestor's essence of identity enables gentile inclusion in his lineage. In line with the logic of patrilineal descent or Williams' view of containment of descent, it is the notion of faithfulness that serves as an essential component that characterizes and manifests their ancestor, which can be passed onto the descendants in each generation in this context.³⁹⁵ In a similar vein, the Yerushalmi uses the motif of Abraham's exemplary behavior as the first convert who responded to God's calling to establish the covenant to multiply his seed for the generations to justify the inclusion of the convert in his genealogy. More importantly, this seems to echo the concept of ethnic identity as the interpretations of the experiences and actions of mythical ancestors as mentioned earlier.³⁹⁶

For the above reason, the phrase *ek pisteos* in *Gal3:7* and *9*, which echoes the passage of *Gen15:5-6* is stressed by Paul as referring to the moment of Abraham's faithful response to God's promises of fertility.³⁹⁷ His promise of fertility is also embedded in the containment of patrilineal descent, in which his future descendants will not only inherit his lineage but

³⁹⁵ Ibid., 88.

³⁹⁶ Keyes, "The Dialectics of Ethnic Change," 6.

³⁹⁷ Johnson Hodge, *If Sons, Then Heirs*, 85.

also collectively represent or elaborate his essential character throughout the generations.

Therefore, the phrase *ek pisteos* (ἐκ πίστεως), which appears both in Galatians 3:7 (οἱ ἐκ πίστεως) and Romans 4:16 (τῷ ἐκ πίστεως Ἀβραάμ), is interpreted by Paul to strongly suggest that certain individuals or peoples, including gentiles, are identified as being “descended from” or “born out of” the faithfulness of Abraham. Although faithfulness and kinship seem to be mutually exclusive, he uses that concept strategically and discursively as a construct of character traits so as to create a new descent group by combining it with the word *ek*. As the latter clause of verse 9 “(those who descend from faithfulness) are blessed with the faithful Abraham in fact indicates, Paul clearly asserts that those faithful ‘gentile’ followers of Christ are considered as those who descend from the faithful ancestor Abraham, thus worthy of receiving his blessing (in other words, the fertility of his seed or continuity of his blessed lineage) as his heirs.³⁹⁸ Connoting a rather spiritualized language, this verse, according to Paul, significantly speaks of good news already foretold by Genesis passages; the gentile followers of Christ will be blessed by God “in” the seed of the progenitor Abraham as his heirs of God’s promise. Therefore, such an understanding, as Johnson Hodge repeatedly argues, is deeply embedded in the logic of patrilineal of descent in which the descendants are present “in” their male ancestors.³⁹⁹

Combining the concept of *ek/descent* with *pisteos/fidelity* as mentioned above, Paul further promotes the concept of gentile inclusion in the patrilineal lineage of the progenitor Abraham by discursively using the patrilineal logic of “in” language, Paul’s entire argument of Galatians 3 (through 4:7) is that verse 8 “All gentiles (families/tribes) will be blessed in you” serves as the foundation for the genealogical inclusion of gentiles in the lineage of Abraham. As Johnson Hodge observes, these gentile followers of Christ,

³⁹⁸ Will Deming illustrates a good case of a better translation of the adjective *pistos*. Will Deming *Paul on Marriage and Celibacy: The Hellenistic Background of 1 Cor 7*. (Cambridge: Cambridge University Press, 1995), 145 n. 139. Cf. Johnson Hodge, 186 n. 15.

³⁹⁹ Likewise in *Gen22:17-18*, his promise of multiple and prosperous descendants in the future generations itself entails a sign of being “blessed” “in” him. In other words, the idea that all the *ethne/goyyim* of the earth are blessed “in” the seed of Abraham assumes that the ancestor reciprocally represents all the future descendants and all the future descendants are collectively contained “in” the seed of the ancestor.

according to Paul, are understandably contained “in” the seed of Abraham in the same way the descendants are contained “in” the seed of their ancestors as Williams asserted earlier.⁴⁰⁰ More specifically, Paul’s citation of the proof text of *Gen12:3* (*All the families of the earth shall be blessed “in” you* / וַיְבָרֶכְךָ בְּךָ כָּל מִשְׁפָּחוֹת אֲדָמָה) in *Gal:8* “*All the gentiles will be blessed “in” you* (εὐελογηθήσονται ἐν σοὶ πάντα τὰ ἔθνη),” as Johnson-Hodge suggests, serves his main argument of patrilineal kinship construction for the gentile followers of Christ.⁴⁰¹ Drawing on the “in” language of verse 8 (or more specifically *Gen12:3*), Paul stresses that gentiles are to be included “in” the lineage of Israel’s progenitor Abraham, *in* and *through* whom his descendants will be “blessed” as chosen co-heirs of His promises and blessings on a par with His people Israel. Rereading *Gen12:3*, Paul applies the concept of the descendants being “in” the ancestor to articulate a patrilineal understanding of descent in which the descendants (that is, gentiles) are contained “in” the ancestor (that is, Abraham).⁴⁰² That is, with the use of the “in” language, along with his earlier model of the combination of *ek* with *pisteos*, Paul textually appropriates the passage of *Gen12:3*, invoking the patrilineal containment of descent to include the gentile followers of Christ in the lineage of Abraham. Therefore, his understanding of all the gentiles as being “*blessed in Abraham*” as expressed in verse 8 is spelled out as follows: since the concept of “being blessed” in the context of the Genesis passage refers to fertility or future progeny, these gentiles are to “multiply” in the seed of the progenitor Abraham. In this vein, Paul used the “in” language of *Gen12:3* discursively as shaping and reinforcing his own strategy for kinship construction for the gentiles.⁴⁰³

By the same token, this patrilineal concept of gentile inclusion in the lineage of Abraham (that is, the concept of gentiles being ‘generated’ in his seed) is deeply tied to the concept of Abraham becoming a ‘people’ (*goy* / גוי / *ethnos* / ἔθνος)⁴⁰⁴ as a whole. As originally

⁴⁰⁰ Johnson Hodge, *If Sons, Then Heirs*, 99.

⁴⁰¹ Ibid.

⁴⁰² Ibid., 98. It is agreed that Paul’s citation of the Genesis passage in *Gal3:8* most likely serves as a conflation of *Gen12:3* and *18:18*.

⁴⁰³ Ibid. Again, as Johnson-Hodge points out, Paul’s citation of Genesis in *Gal 3:6-9* (especially in verse 9 “*all the gentiles are blessed “in” you*”) is an exegetical expansion of *Gen12:3* and *18:18* which of course echoes *Gen15:3-6* in its entirety.

⁴⁰⁴ It is also important to take note that the Hebrew term *goy* (גוי) in several Genesis passages and

expressed in *Gen12:2* “And I will make you a great people” (ואעשך לגוי גדול) or the passage of *Gen18:18* “But Abraham shall become a great and populous nation and all the people of the earth will be blessed in him” (ואברהם היו יהיה לגוי גדול ועצום ונברכו בו כל גויי הארץ).⁴⁰⁵ Verse 18 makes explicit reference to how the notion of Abraham becoming a “great nation” shapes the genealogical, albeit fictive, inclusion of *goyyim/ethne* “in” his lineage as his future descendants. In *Gal3:8*, Paul apparently combined the components of each of these two verses in order to construct new kinship relationships for the gentiles integrated into the lineage of Abraham. For that reason, for Paul, gentiles/*ethne* in Christ are considered as descendants of a common ancestor Abraham. His textual citation of *Gen12:3* in verse 8 “All the gentiles will be blessed in you” thus serves as the foundation for gentile kinship construction: the gentiles are thus contained “in” their common ancestor.

Having thoroughly examined Paul’s discursive strategy of constructing new gentile kinship relationships with the containment of patrilineal descent in Galatians 3, I suggest that similar understandings of the patrilineal model of kinship construction for the convert

the Greek word *ethnos* (ἔθνος) in Galatian passages respectively are used as a collective noun that includes both ancestors and descendants in each of these verses. James Scott, *Paul and the Nations*, 58. In the Galatian passage, the Greek word *ethne* (ἔθνη) refers to gentiles or non-Jews. In *Gal3:8*, Paul uses *ethne* instead of *phulai* (tribes) to stress that it is gentiles that are to be included in the seed of Abraham as his promised heirs/descendants. Judging from the use of the Greek noun *ethnos/ἔθνος* (Plural, *ethne*), in verse 8, this can commonly be understood as a collective noun that includes both ancestors and descendants. The plural form of *ethnos, ethne*, can thus be translated in many different contexts in the Septuagint; it could refer to all “peoples” or “nations.” Or it could specifically be translated as all “non-Jews” or “gentiles.” Whichever is the case, the word, both *ethnos* and *goy*, undoubtedly refers to a corporate body of people with common ancestry. See also James Scott, *Paul and the Nations: The Old Testament and Jewish Background of Paul’s Mission to the Nations with Special Reference to the Destination of Galatians*. (Tübingen: Mohr Siebeck, 1995), 57-134. Cf. Johnson Hodge, 99.

⁴⁰⁵ This verse, which has a strong connection with *Gen17:5*, has a strong kinship implication. In *Gen 17:2-6*, Abraham’s promise for future progeny and fertility is guaranteed and sealed by circumcision as part of the divine covenant. Although this is not a place to thoroughly examine this subject, it is worth pointing out that circumcision as a marker of the divine covenant is deeply embedded in the understandings of patrilineal descent, whose sole purpose is to multiply one’s seed for the future generation. If understood in this light, the male convert, who is to be circumcised during the conversion procedure, is also obligated to procreate as a member of the ethnic group. Therefore, it is strongly implied that circumcision as part of the sign of the divine covenant, is also symbolized as the perpetuation of the convert’s lines of descent and that conversion initiates such kinship reckoning. On the procreative functions of circumcision, see Howard Eilberg-Schwartz, *The Savage in Judaism: An Anthropology of Israelite Religion and Ancient Judaism* (Bloomington and Indianapolis: Indiana University Press, 1990), 141-176.

are reflected in the *sugya* of *yBik1:2, 64a*. Both texts are, first and foremost, concerned with how converts/gentiles followers of Christ are included in the genealogy of the progenitor of Israel, Abraham. To enable their full inclusion, both texts attend to Genesis passages (17:5 for the *Yerushalmi*, 12:3 for Paul) for authorizing each group's kinship claims, whose conceptual premise is governed by the principles of patrilineal descent. The concept of Abraham as being the founding father of a certain ethnic group demonstrates the normative assumptions of patrilineal descent, in which his descendants are understood as being collectively contained in the seed (genealogy) of their ancestors as a united, corporate group. Although it is not explicitly mentioned in the *Yerushalmi*, it is clearly evident that the following traits are apparently presented by the rabbis in defining the genealogical status of converts: converts are also understood to descend from a common male ancestor; they have collectively inherited the characteristics of that ancestor, and hence they come to be understood as part of a corporate group linked by organic connections to their common ancestor. Again, clearly seen is a reciprocal relationship in which the ancestor, as Johnson Hodge maintains, represents all his descendants and all the descendants represent the ancestor. The notion of Abraham becoming the father of all converts and converts being his descendants, as shown in the *Yerushalmi*, illustrates the mutually organic and genealogical connections with each other. Contrary to what is generally assumed, this *sugya* does not speak of the paradigm of matrilineal descent as a criterion for defining the convert's ethnic membership; it is thus the power of the logic of patrilineal descent that defines, constructs and even perpetuates the group's continuity in which converts are included.

Therefore, interpreting and appropriating the discourse of the seed of forefathers/ancestors as reflected in the Genesis passage, the rabbis literally invented the past for converts in order that they may be incorporated into the seed of Abraham as their "*fathers*" in particular and the lines of the Israelite *ethnos* in general, thus establishing a genealogical affiliation with the *ethnos* as a whole. Rabbinic conversion thus needs to be understood as an act of new patrilineal kinship construction in which the rabbis weave their definitions of kinship into the patrilineal conceptions, as I demonstrated above. The *sugya* of *yBikk1:4, 64a* therefore illustrates how the rabbinic discourse of ancestors

rhethorically functions to craft fictive claims to genealogical descent, incorporating the convert into an already existing kinship. Such a newly “crafted” fictive kinship, as Johnson Hodge has argued, therefore serves to enhance the logic of “shared blood.” That is, these reciprocal relationships between group members and their ancestors are understood to be founded on the notion of “shared blood” and therefore considered as “natural” and inherently “fixed.”⁴⁰⁶ Group members tend to accept such logic of shared blood as an organizing principle for their social structures.

Conversion as Cultural Interpretations of Patrilineal Descent

As we have examined above, the convert’s ethnically anomalous Jewish descent, as suggested by *mBikk1:4*, is completely rejected by the Yerushalmi. Instead, his ethnic status is normalized, legitimated, and naturalized as the one who have claims to common ancestry with Israel’s forefather Abraham through the discourse of forefathers, namely the principles of patrilineal descent. R. Yehuda’s statement of converts as descendants of the progenitor Abraham, who is understood as “*Av-Hamon Goyyim*” is therefore endorsed by R. Yehoshua b. Levi, the first generation Palestinian Amora and R. Abbahu, the third generation Palestinian Amora.

First, R. Yehoshua b. Levi declared that the law (the convert may recite “*God of Our forefathers/ancestors*” on a par with the native-born) must be followed in accordance with R. Yehuda, and R. Abbahu ruled that the law should be followed in accordance with R. Yehuda. Nevertheless, since there was no Temple in Jerusalem in the mid-third century C.E. when R. Abbahu lived, it is highly unlikely that people actually brought the first fruits of the harvest and recited the pertinent declaration.⁴⁰⁷ Whether or not such a practice was performed in the post-Second Temple era is not much of a concern here.

⁴⁰⁶ Buell, *Why New Race*, 64. Johnson Hodge *If Sons, Then Heirs*, 21. Both view the notion of common ancestry as a crucial criterion for legitimizing shared blood, thus “naturalizing” or “fixing” ethnic identities. By implication, defining the notion of common ancestry as I examined may be embedded in what Keyes calls a “cultural interpretation of descent.”

⁴⁰⁷ Cohen, *The Beginnings of Jewishness*, 329. Perhaps it might have been the case where a convert asked R. Abbahu whether or not he could recite the prayer and R. Abbahu permitted. Or some born-native Jews complained to him that they heard some converts reciting “*God of our forefathers/ancestors,*” and then he approved the prayer.

What really matters the most is that their decision was unanimously approved. By implication, the convert's descent was no longer subject to *halakhic* scrutiny in matters related to common ancestry.

Based on this observation, though this is a mere speculation, I suggest that their *halakhic* decision has a far-reaching implication in defining the convert's descent in matters related to genealogy. As discussed earlier, the rabbis as God's agents have the authority and power to classify every object and person in question under the sun including converts in order to carry out the divine task of creation. Their acts of classification, which are tantamount to creation, thus have the power to shape the fundamental character of reality, hence the convert's origin. They abstracted the notion of forefathers from the biblical text to craft new genealogies for converts to ensure their genealogical connection with their purported ancestor Abraham. With the *halakhic* system of classification, the rabbis classified and categorized converts as descendants of the progenitor Abraham by appealing to claims to Israel's common ancestry and Abraham's past. In other words, they "classified" or engineered converts' ancestry by appealing to kinship claims. In this sense, the principles of patrilineal descent serve their kinship creation for converts.

Conclusion

To identify the convert, who was previously a gentile, as someone who shares the collective identity and common ancestry of the nation Israel, the ideology of patrilineal descent plays an instrumental role in creating and even crafting his new Israelite kinship identity, thus incorporating him into Israel's kinship structures. Deeply embedded in such an understanding of kinship is the notion of forefathers, namely common (male) ancestry. Drawing on Paul's strategy of kinship construction for gentiles by the containment theory of descent, I argued that the Yerushalmi has a similar understanding of patrilineal kinship reckoning; the convert's genealogical connection with the progenitor Abraham presupposes and underlies the understanding of organic, reciprocal relationships between ancestors and descendants, which also illustrates that descendants are contained in the seed of their ancestors and that the ancestors represent their descendants. As the phrase *Av-Hamon-Goyyim/ the forefather of a multitude of nations* in Gen17:5 indicates, its kinship

reckoning is deeply embedded in the principle of containment of patrilineal descent in which the convert is a descendant of Abraham and Abraham is his ancestor. In other words, the language of patrilineal descent shapes the Yerushalmi's construction of a new kinship between the convert and the progenitor Abraham, which implies that one's descent can be manipulated as a cultural construct subject to change and negotiation.

Chapter 4

Conversion as the Acquisition of Jewish Bodies and Selfhood

Rabbinic Conversion as Construction of the Convert's Body/Self

As we have examined several *sugyot* of the Bavli, the notion of the convert as a “*newborn child*” (גר שנתגייר כקטן שנולד דמי), implies that he is understood as legally severing his/her blood relationships with his previous, *gentile* kin, stressing that he/she is no longer genealogically related as a *gentile*, nor can he/she be “*ethnically*” identified as a *gentile*. The Bavli’s understanding of the convert’s radical transformation seems to imply that he is indeed perceived as a *distinct* person with a new identity that is completely identical to or almost identified as the native-born, which also makes him completely separate from the *gentile* other. In light of such a hyperbolically radical change of his “*kinship*” or “*ethnic*” status that took place upon conversion, the essential question that needs to be asked is what fundamentally differentiates the convert from his previous *gentile* kin. Simply speaking, in what sense or in what way can the convert be identified as Jewish? The rabbis’ *halakhic* understanding of conversion evidently makes us call into question the intrinsic nature or “*given*” aspect of Jewish identity construction; a sharp division between genealogy and religion/belief in characterizing or theorizing Jewishness may not or cannot allow us to arrive at a certain understanding needed to account for the intricately complex nature of Jewishness. In fact, the bodily discourse of conversion in rabbinic texts, as I will show, reveals that what we call Jewishness or Jewish identity is not understood as a physically “*given*” but rather as a “*cultural construct*” that is fluid, mutable and constantly subject to negotiation.

As various laws including but not limited to the notion of ritual impurity specifically in relation to converts and conversion in Tannaitic and Amoraic sources demonstrate, I suggest that conversion as a *halakhic* medium of identity transformation is closely associated with or deeply embedded in the rabbinic discourse of the *human body* that discursively constitutes the notion of *self* and *personhood*. The rabbinic notion of the human body should be examined as a major site through which one’s own self or identity is

understood, negotiated, and constantly redefined.

The rabbis attempted to use the discourse of the human body as a site through which identities are shaped and performed so as to construct a distinct *Jewish body* for the convert. As I illustrate from specific bodily-related *halakhot* in several rabbinic sources that deal with conception, skin discoloration and genital discharge in association with the event of conversion, one's *halakhic* transformation from gentile to Jew via conversion apparently entails some form of his/her "*bodily*" change or vice versa. Or put it differently, what physically and visibly appears in the convert's body in the form of physical phenomena upon conversion indicates that the very notion of his *personhood/self* is fundamentally transformed. Such an understanding may help shape and create a conceptually defined framework of defining the convert's *Jewish body/self*, in which the discourse of the human body is embedded as a discursive cultural construct that stands for what a person *is*. In this final chapter, I will review some of the mishnaic theory of classification to see how the notion of human intention also shapes the notion of the Jewish body/self in the case of the laws of ritual impurity.

Classifying Ritual Impurity as an Indicator of the Fundamental Change of Reality

First of all, although my inquiry into several mishnaic texts I will present below may not directly be related to the discourse of conversion per se, nevertheless they all demonstrate the mishnaic principles of classification by the formulation of human thought, as I introduced earlier in the first chapter. As I will argue below, these will surely play critically significant roles in constructing the convert's body, kinship and identity as Israel. As we extensively have discussed in the first chapter, the rabbinic concept of conversion as a legally administered court procedure is deeply embedded in the mishnaic system of classification by which objects or persons in question are classified into categories by formulating plans for specific purposes. As mentioned earlier, God ascribed humans the capacity to classify the world He had originally intended at creation. By so doing, humans alter their character and properties to the extent that they carry out the divine will of creation. That is, the human act of classification prescribed in the Mishnah is tantamount to the divine work of creation.

Moreover, in the mishnaic system of classification, humans were empowered by God to determine what objects or substances would contract (im)purity due to the rabbinic worldview that the world is divided into the dichotomies between holiness and profanity as well as purity and impurity. Every dichotomy stems from the subcategories of these two basic dichotomies. Most significantly, merely by formulating plans or intention called *mahshavah* (מחשבה) for specific purposes, they are classified as ritually impure. Since the Mishnah explicitly links its system of classification to the divine work of creation, the act of classification of objects or substances (or even persons) as ritually susceptible to impurity also constitutes a major part of the divine work of creation. That said, the mishnaic system of ritual (im)purity is closely connected to or deeply embedded in the divine work of creation.⁴⁰⁸ The following Mishnah claims that all substances that are rendered susceptible to ritual impurity were created at creation.

*mKelim*17:14

ויש במה שנברא ביום הראשון טמאה: בשני - אין בו טמאה. בשלישי - יש בו טמאה. ברביעי ובחמישי - אין בהם טמאה...
וכל שנברא ביום הששי - טמא.

On the first day [of creation] something was created which is susceptible to impurity [when made into a vessel], but on the second day of creation, [nothing was created] which is susceptible to impurity.

On the third day of [creation], something was created which is susceptible to impurity, but on the fourth and fifth days, nothing [was created] that is susceptible to impurity...

Everything that was created on the sixth day of creation is susceptible to impurity.

By implication, this Mishnah illustrates that any material or substance created on the sixth day potentially contracts ritual impurity. This suggests that the classification of objects in question into given categories of (im)purity is part of the divinely ordained task of creation. In addition, the divine work of ordering the world at creation is directly connected to the mishnaic system of classification that governs its principle of ritual

⁴⁰⁸ Eilberg-Schwartz, *The Human Will in Judaism*, 106.

(im)purity.⁴⁰⁹ In distinguishing objects that are rendered susceptible to (im)purity, Israelites thus carry out or embody the divine will of classifying the character of reality God had originally ordained at creation.⁴¹⁰

As mentioned in the first chapter, a specific purpose of the use of certain objects serves as a major criterion in shaping susceptibility to ritual impurity. A number of mishnaic texts illustrate that it is the human thought that plays a fundamental role in classifying raw material into defined artifacts. In fact, Mishnah Tractate *Kelim* (Artifacts) develops a highly elaborate system of classification for distinguishing between natural and man-made objects such as garments, furniture, kitchenware or cooking utensils, as set forth by Leviticus 11:32-35. In the tractate, every man-made object or artifact is examined and classified so as to determine whether, how, and at what point artifacts become (in)susceptible to ritually impurity.⁴¹¹

More far-reaching is the biblical assertion of “*any article which may be put to use*” in *Lev11:32* as one of the primary criteria for susceptibility to ritual impurity. The usability of given objects in question serves as a major criterion for susceptibility to ritual impurity because one’s designation to use objects in question also involves one’s conscious decision to use them in a manner prescribed by the mishnaic system of classification. In the context of Leviticus 11, verse 32 needs to be read as providing an explanatory definition of the

⁴⁰⁹ Ibid. Conversion, as understood as the rabbinic act of classification or creation, is directly related to the establishment of the convert’s subjectivity to the *halakhah* as a member of the community. Especially unique is the convert’s susceptibility to ritual impurity upon conversion as an indicator of the fundamental transformation of his identity as Israel, as documented in several Tannaitic sources, which I will examine below.

⁴¹⁰ The correspondence between the divine work of creation and the mishnaic system of (im)purity often finds concrete expression in a certain *halakhic* practice. In fact, the biblical account of creation in Genesis 1 is often cited to deduce a *halakhic* practice of purification such as an immersion pool (*miqveh*/מקוה). In *mParah*8:8 and *mMiquvaot*5:4, the passage of *Gen1:10*, written by the priestly author, is cited as a proof text that the gathering (*miqveh*/מקוה) of water as “Seas” can actually be defined as an immersion pool (*miqveh*/מקוה) for ritual purification. In my view, this exegetical midrashic work by the Tannaim can also be understood as the act of classification, which is tantamount to creation. Cf. Howard Eilberg-Schwartz, *The Human Will in Judaism*, 106.

⁴¹¹ Mira Balberg, *Purity, Body, and Self in Early Rabbinic Literature* (Berkeley and Los Angeles: University of California Press, 2014.), 79. The rabbis also put forth an elaborate classificatory system of distinguishing between artifacts that can be used as receptacles and ones that cannot be used as receptacles, determining that artifacts made of certain materials such as wood, glass, leather and bone can become susceptible to ritual impurity only when they serve as receptacles.

artifacts (*Kelim*/כלים), classifying which material artifact is fit to use in a given situation. As such phrases as “may be put to use,” “may be eaten,” and “may be drunk” in Leviticus 11 suggest, the rabbis in the Mishnah, however, interpreted this clause as asserting that only artifacts, foods, and liquids that can be or have been designated for human purposes can be rendered susceptible to ritual impurity while inanimate objects that remain in their natural state are insusceptible to such impurity.⁴¹² This suggests that any type of labor by human hands such as the production of artifacts from raw material also involves one’s mental investment in such labor, hence susceptibility to ritual impurity. The following passages of the Mishnah in fact demonstrate how human thought or *mahshabah* renders and alters the character of an artifact as ritually (im)pure in the case of (in)completion of labor:

*mKelim*26:7

כל מקום שאין חסרון מלאכה – מחשבה מטמאת.
וכל מקום שיש חסרון – אין מחשבה מטמאת.

In any case in which there is no lack of labor (that is, nothing else remains to be done in the manufacturing process, that is, the completion of such a process (גמר מלאכה)), thought renders [artifacts] ritually impure.

*But in any case in which there is a lack of labor (that is, something remains to be done in the manufacturing process, that is, the unfinished process of labor), thought does not render [artifacts] ritually impure.*⁴¹³

The above passages suggest that the completion of labor (גמר מלאכה) plays a crucial role in the contraction of ritual impurity, stressing that the full production or manufacture of an artifact involves one’s intention or will to use it for a particular purpose. The lack of such an intention to use it, again, has no effect on the susceptibility of such an artifact to ritual

⁴¹² Ibid., 77.

⁴¹³ This Mishnah also adds the term *utzba* (העצבה) later, which apparently refers to some kind of leather straddle cover, to articulate the idea that it is upon one’s decision to use it that potentially renders it susceptible to ritual impurity. Cf. Balberg, 213 n. 47.

impurity. Put it differently, the contraction of ritual impurity depends largely on the “intention” to use it. It is only through the exercise of thought or its mental, subjective investment in how to use a fully produced or manufactured object that susceptibility to ritual impurity comes into effect.

Therefore, the first clause of the above Mishnah clearly illustrates the *halakhic* principle of the “completion of labor” (*gemar melakhah*/גמר מלאכה) as a crucial factor in the incorporation of artifacts into the human realm of ritual impurity⁴¹⁴; it is primarily through one’s thought that transforms objects into artifacts that become susceptible to ritual impurity insofar as they are fully processed and thus ready for use. Moreover, this also suggests that even when damaged artifacts that have gone out of use become insusceptible to impurity, a person’s thought enables such artifacts to be susceptible to impurity again.

Another important example of the mechanism by which human thought produces magical effects of altering the essence of a given substance or object is defining susceptibility to ritual impurity in relation to liquids as potent transmitters of ritual impurity. The Mishnah, on the surface, requires that the susceptibility of all types of foods to ritual impurity be activated through contact with liquids, and it is the liquids that mechanically function as an activator that transforms categorically “pure” foods into categorically “impure” ones. The way in which substances or objects become susceptible to ritual impurity through liquids is based on the mishnaic principle of “activation through liquids” (*hekhsher mashqin*/הכשר משקין) as well as “if water has been put” (*ki yutan*/כי יותן). This concept of activation of ritual impurity through liquids is based on the biblical injunctions of *Lev*11:34 and 38 “As to any food that may be eaten, it shall become

⁴¹⁴ Balberg, *Body, Purity, and Self*, 77-78. Balberg calls this process the “humanization of nature and the material world.” As mentioned earlier in the first chapter, it suggests that inanimate objects including artifacts, foods, and liquids and the human body can contract impurity as far as they have specifically been *designated* (*meyuhad*/מיוחד) for human purposes. As *mTohrort*8:6 makes it clear, any material object in its natural state remains “pure” or insusceptible to impurity unless one designates it for human use (*ad she yehadno le adam*/עד שיחדנו לאדם). In order to become susceptible to ritual impurity, a material object has to be handled for human use, which is also applied to the human body as well. As I also argue below, such a process of humanization is found in the laws of susceptibility of the convert to ritual impurity in relation to the laws of conversion when we view conversion as the process of classification or humanization in which Jews handle and adjust the convert’s status or identity for their purpose.

unclean if it came into contact with water" and "But if water has been put,"⁴¹⁵ according to which food substances become susceptible to ritual impurity only after contact with water. Also liquids including moisture, for instance, are considered to constitute contact with water because they play a crucial role in merging the boundaries between separate entities together in such a way that connects them together as one single entity. This suggests that ritual impurity therefore enables liquids to disseminate and even duplicate, thereby allowing two separate entities that would not normally affect one another to be rendered susceptible to such impurity.⁴¹⁶ These two principles illustrate the process through which liquids come into contact with substances or objects such as foodstuffs and plants, thereby making them susceptible to ritual impurity.⁴¹⁷

The mishnaic concept for "activation of ritual impurity" (*hekhsher tum'a*/טמאה) which is based on the principle of "if water has been put" (*ki yutan*/כי יותן) in *Lev*11:34 is also introduced as the idea that the susceptibility of foodstuffs to ritual impurity by contact with water is actually initiated or activated through the "will" or mental disposition of the owner toward such foodstuffs. Pointing to *Lev*11:38, the rabbis assert in the Mishnah that all foods are rendered impure in direct contact with liquids⁴¹⁸:

*mMakh*1:1

כל משקה שתחלתו לרצון אף על פי שאין סופו לרצון או שסופו לרצון אף על פי שאין תחלתו לרצון - הרי זה בכי יותן.
משקין - טמאים - מטמאין לרצון ושלא לרצון.

⁴¹⁵ Ibid., 91.

⁴¹⁶ Ibid. It should be noted that the idea behind liquids as transmitters of ritual impurity is that water or other liquids serves as an activator of contact with other substances; in so doing, boundaries between separate entities are obfuscated because it makes one substance cling to the other, which in turn allows the source to be transmitted to the secondary source.

⁴¹⁷ Interpreting the biblical verse of "liquids that may be drunk" in *Lev*11:38, Mishnah *Makhshirin*6:4-5 list six other liquids that *may be drunk*: dew, oil, wine, blood, milk, and honey. Also bodily fluids such as saliva, tears, and urine, often categorized as derivatives (*toledot*/תולדות) of water, also can function as an activator that generates susceptibility to ritual impurity.

⁴¹⁸ MS Parma 2596 (De Rossi 497), however, vocalizes the phrase as *ki yiten*/If he has put (water)). This suggests that this vocalization tends to follow the rabbinic reading according to which someone voluntarily has put water on the plant. See also *bKiddushin*59b; *bBava Metzi'a*22a. Cf. Balberg, 214. n. 71.

Any liquid (mashqe) that was [put on food, and the contact of food with this liquid was] initially according to [the] “will” [of the owner] in the end even though it was not according to [the] “will” [of the] owner in the end –

And any liquid that was [put on food, and the contact of food with this liquid was] according to [the] “will” [of the owner] in the end, even though it was not according to [the] “will” [of the owner] initially –

This is a case of “if water has been put” (that is, the food is rendered susceptible to ritual impurity). Impure liquids render [whatever they touch] impure both according to “one’s will” and not according to one’s will.

In this above Mishnah, the “will” (*ratzon*/רצון) of the owner serves as a crucial factor in enabling the activation of susceptibility to ritual impurity through liquids. In order for food substances to acquire a state of ritual impurity, it explicitly shows that the owner must be actively *invested* in the food items with his own mental deliberation (that is, his will/ “*ratzon*”) in the course of contact between the food and liquids. In other words, it is, in essence, the owner’s state of mind that renders the foodstuffs susceptible to ritual impurity.⁴¹⁹

Another mishnaic concept of activation of susceptibility to ritual impurity through liquids asserts how intention (*kavanah*/כוונה) serves as a medium that renders an object in question ritually impure. The concept of *Kavanah* functions as an actor’s motivation behind his/her actions.⁴²⁰ In other words, the liquids’ capacity to contract impurity depends largely on the “state of the mind of the owner” of the food.⁴²¹ The Mishnayot that follow

⁴¹⁹ Ibid., 92-93. However, the underlying assumption is that the case of the “unintentional” contact between food and liquids lies beyond the owner’s deliberation. Under such an instance, the susceptibility of the liquids to ritual impurity is not activated (that is, it is not rendered ritually impure). See also *mMakh*6:4-5.

⁴²⁰ It is also important to suggest that intention or *kavanah* as depicted in the Mishnah is not something that must necessarily be addressed clearly but assumed as any mode of behavior that indicates a willingness that creates contact between food and liquid regardless of the current mental disposition of the owner. Cf. See also Balberg, *Purity, Body, and Self*, 93.

⁴²¹ Balberg, *Purity, Body, and Self*, 92; 214 n. 82. R. Yehoshua expresses his disagreement with the anonymous view that direct contact with liquids renders the food impure without the owner’s mindful disposition of the owner. This clearly attests to the principle that no liquid can render food susceptible to impurity until one intentionally puts the liquid on the food.

in fact claim that the liquids do not automatically activate ritual impurity for food without the owner's intention or investment of his deliberation in the food.

mMakh1:3

אמר רבי יהושע... אם יש משקה טמא בתורה עד שיתכון ויתן שנאמר "וכי יתן מים על זרע (ויקרא יא:לח)"

R.Yehoshua said...if there is, according to the Torah, any impure liquid [that is, that makes food susceptible to impurity] unless he [the owner] intends to place it [on the food], as it states, "But if water has been put on the seed (and a carcass falls on it, it is unclean for you)" (Lev11:38).

mMakh3:5

המלקט עשבים כשהטל עליהם להטן בהם חטים - אינן בכי יותן.

אם נתכון לכך - הרי זה בכי יותן.

If one was picking weeds when the dew was still on them in order to cover wheat with them, this does not constitute a case of "if water has been put" (ki yutan, that is, the wheat does not become susceptible to ritual impurity).

If he "intended" that (that is, he wanted the wet weeds to have the wheat moistened) -

It constitutes a case of "if water has been put."

mMakh6:1

המעלה פרותיו לגג מפני הכנימה וירד עליהם טל - אינם בכי יותן.

אם נתכון לכך - הרי זה בכי יותן.

If one took up his fruits up to the roof on account of aphids (that is, to protect the fruits from insects), dew fell upon them - this does not constitute a case of "if water has been put."

If he "intended" that (that is, he wanted the dew to fall upon them) - it constitutes a case of "if water has been put."

In these mishnaic texts presented above, they all emphasize that it is the *mental investment* of the owner in the direct contact between his item and liquids that activates susceptibility

to ritual impurity.⁴²² Nor do they do possess their intrinsic qualities, physical state and the power to do so because such substances need to be *mentally* invested by a person in order to activate susceptibility to impurity. Therefore, liquids in and of themselves cannot activate susceptibility to ritual impurity unless the owner intentionally invests his mental disposition in the contact with such liquids. As repeatedly mentioned above, the Mishnah stresses the importance of personal mindsets or subjective dispositions as instrumental in shaping the character of reality, namely the activation of susceptibility to ritual impurity. As also illustrated in the case of manufactured artifacts and inedible items, the activation of susceptibility to ritual impurity entails the incorporation of objects into the realm of human beings, which invests one's mental disposition toward this object in question.

All of the Mishanyot presented above demonstrate the principle of how susceptibility to ritual impurity is activated by human cognition and mental disposition. The mishnaic system of classification related to its principle of (im)purity suggests that any artifact, food and liquid are all subsumed, though in different forms with different focuses, under the same overarching rubric of susceptibility to ritual impurity. Classifying given objects as ritually impure indicates that their basic properties and character are fundamentally changed; it is therefore the exercise of human thought *mahshavah* as the extension of the divine will at creation that alters the character of reality namely by rendering given objects susceptible to ritual impurity. As repeatedly mentioned above, such an act of classification is thus tantamount of the divine act of creation.

As I will show below, all of these mishnaic principles of classification by susceptibility to ritual impurity presented above are related to the notion of conversion as the construction of the convert's identity as Israel. As several Tannaitic sources that follow demonstrate, the convert's status is examined in relation to his/her susceptibility to ritual impurity prior to or after conversion. The convert, *classified* completely as a *newborn* upon conversion, is understood as becoming completely susceptible to ritual impurity on a par with the other native-born members while his previous gentile body does not harbor such impurity, and hence becoming a Jew via conversion involves his full capacity to be rendered "ritually impure." As I will argue below, the rabbis used the discourse of ritual

⁴²² Ibid., 94-95.

impurity or susceptibility to such impurity to starkly demarcate the intrinsic difference or distinction between a Jew and a non-Jew.⁴²³

The Body as a Conceptual Representation for the Self/Personhood

Before going on to thoroughly discuss the issue of conversion as a medium of one's bodily transformation, I will introduce and explore the rabbinic perception of the human body, self and personhood. Along with artifacts, foods and liquids, the human body is also defined as an entity that falls under the category of susceptibility to ritual impurity, which has far-reaching implications for understanding the rabbinic notion of the self and the person. First of all, the rabbinic inquiry into the bodily phenomena of ritual impurity such as decomposition and contagion presented in Tannaitic texts (particularly in *mTohorot* 1:8, *mKelim* 19:5, and *mZaviim* 5:4) in fact compels us to perceive the human body as an entity whose boundaries and constituents are fluid, constantly mutating and even modular. The rabbis in fact do not describe the body as an independently single, distinct entity, but rather as a complex fabric of organic components (such as visceral organs, and limbs), to and from whose different body parts are attached and then detached. This implies that it is constantly being remodeled, redefined, or transformed.

mTohorot 1:8

מקצצת שהיתה תחילה והשיך לה אחרת - כלו תחלה.

פרשו- היא תחלה וכלן שניות.

היתה שניה והשיך לה אחרות - כלו שניות.

פרשו - היא שניה וכלן שלישיות.

If a piece of dough was "first" (impure in the once-removed degree), and one attached other pieces of dough to it, they are all "first."

If they were separated, [the piece that was initially impure] is "the first," and all the rest are "second" (impure in the twice-removed degree).

If [the initial piece] was "second," and one attached other [pieces of dough] to it, they are all "second."

If they were separated, [the piece that was initially impure] is "second," and all the rest are "third."

⁴²³ Ibid. See also 215. n. 3. Balberg, *Purity and Body in Rabbinic Literature*, 86-87.

mKelim 19:5

מטה שהיתה טמאה מדרס וכרך לה מזרן- כלה טמאה מדרס.
פרשו - היא טמאה מדרס. והמזרן מגע מדרס.

If a bed was impure on account of trading, and one appended as mattress to it, all of it is rendered impure on account of trading. Once the mattress was separated, the bed is rendered impure on account of trading, and the mattress is impure on account of touching that which is impure on account of treading.

mZaviim 5:4

מקצת טמא על הטהור ומקצת טהור על הטמא - חבורי טמא על הטהור.

If the appendage of the impure person were on the pure person, or if the appendages of the pure person were on the impure person, then (the pure person) is rendered impure.

In short, the rabbis created a paradigm of bodily contact and connectivity to show that the body is understood as a fluid entity, whose boundaries are constantly and flexibly transformed especially through direct and indirect contact/touch, which also indicates that the body, to a greater extent, is understood as a modular entity.⁴²⁴ All of these Tannaitic texts describe the human body as חיבורים, appendages, to and from which certain body parts are constantly connected and removed. If the appendage is rendered impure, then all of the artifact will be rendered impure, and if the artifact is rendered impure, the appendage will also be rendered impure. This means that when the “appendage” is connected to an object in question, they form one unit for the purpose of contraction and transmission of ritual impurity. Such physical contact therefore allows the object in question to share the same property or the same ritually impure status with the other part to which it is added. Now two separate entities function as one single body made up of various bodily components, which clearly indicate how conceptually flexible the human body functions. This suggests that the rabbinic notion of the human body is understood not only as fluid and malleable but also as *modular*. It can alter its qualities/properties or even its constituency by having

⁴²⁴ Balberg, 50-51; 58. What constitutes a human body is closely connected with the rabbinic notion of *adam* (אדם/mankind/), which denotes (1) a legal agent or subject and (2) a physical body. As I will argue below, in the Mishnah there is no distinction between body and soul as distinct entities, but rather both entities merge to constitute a willing and self-reflective entity, that is, the self.

other external parts added to or removed from it.

Interestingly, a number of anthropologists who have studied societies and cultures in which personal boundaries are flexible and even mutable suggest that the transmission or exchange of fluids is stressed as symbolizing the creation of *bodily connections*, which connects different bodies into one body among members of the community.⁴²⁵ In a similar vein, the mishnaic system of susceptibility to ritual impurity can be understood in many ways as presenting a similar concept of fluids as potential “transmitters” of such ritual impurity because they are symbolically viewed as fully capable of effectively connecting different entities together, thereby making them into one body. Liquids play a symbolic role in such a way that such transactions of liquids may as well be applied to familial and communal relations. As I will show below, the transmission of impurity is also employed by the rabbis to stress that the convert’s body is also fluid and modular in the context of conversion to such an extent that his contraction of ritual impurity upon conversion serves as an indicator of his bodily change.⁴²⁶

Moreover, the symbolic transactions of liquids also imply that the body is conceptualized as a fluid and modular entity. In fact, the rabbinic understanding of the human body as a physically fluid, mutable and even modular entity has far-reaching implications for defining what makes a body into a *person*. Importantly, what the above Mishnayot seem to indicate is that “*what the body functions or constitutes*” is closely associated with *what the body is*, which inevitably leads us to ask what a *person* fundamentally *is*. Rabbinic legislation, the *halakha* emphatically brings the human body to the fore or treats as a mutable entity not simply as the main locus of everyday practice but as a site for the construction of specific identities, which especially cultivates certain dispositions and attitudes conducive to the development of the self and subjectivity.⁴²⁷ The very physicality

⁴²⁵ This idea resonates with the mishnaic idea of the human body as “חיבורים” as I will introduce below.

⁴²⁶ Lawrence Babb, “The Physiology of Redemption,” *History of Religions* 22, no. 4 (1983): 293-312; Busby “Permeable and Partible Persons”; Sarah Lamb, *White Stars and Sweet Mangoes: Aging, Gender, and Body in North India* (Berkeley: University of California Press, 2000), 27-41; Beth Conklin, *Consuming Grief: Compassionate Cannibalism in an Amazonian Society* (Austin: University of Texas Press, 2001), 111-131. Cf. Balberg, *Purity and Body in Rabbinic Literature*, 213-214. n. 70.

⁴²⁷ Balberg, *Purity and Body in Rabbinic Literature*, 61-62. My argument of the concept of the human

of the body as a flexibly mutative and modular entity also suggests what it conceptually represents in defining *personhood/selfhood* as a cultural construct. Therefore, through their body-related discourse of impurity, the rabbis must have introduced the notion of the *body* as a way of conceptualizing one's perception or self-understanding.⁴²⁸

Following the views of Balberg, I also suggest that the rabbis perceived and understood the human body as symbolically representing or even embodying what *constitutes a person/a self*.⁴²⁹ According to Balberg, the concept of the *body* as the *self* denotes a human entity that is capable of actively reflecting on its own actions and thoughts, which implies the body as serving as a willing, self-reflective and active legal agent, that is, a *subject*. In other words, the rabbinic notion of body as the self must also be understood as a *subject* especially in relation to the *halakhah*. Her view of subjectivity is apparently and conceptually congruent with the mishnaic system of human thought, intention and plan.

Importantly, we also have to take note that the question of one's self-formation must pertain to the notion of self in antiquity as *something that one must develop and cultivate* with reflection.⁴³⁰ As both Pierre Hadot and Michel Foucault in fact argue, in antiquity, the

body as a site for the construction of selfhood/personhood is agreement with that of Balberg.

⁴²⁸ Ibid. In other words, the human body, as she argues, is defined not only as *something one has* or *inhabits* but also but *what one is*.

⁴²⁹ Ibid., 10-12; 62. Again, the notion of self as a "way of conceptualizing one's understanding of one's own (and others') being" is deeply intertwined with the notion of body as symbolically representing *what one is*. The conceptual correspondence between the self and the body in the Mishnah, particularly in the context of its discourse of ritual impurity suggests that the body as a site for representing one's specific identity, that is the self, is defined through subjectivity by which one invests his mental dispositions in his body. Such an act involves self-reflection despite the bodily phenomena he inhabits. It is one's subjectivity to the *halakhah* as a set of legal guidelines that constitute every mode of Jewish ritual life that helps shape unspoken assumptions about personhood shape certain dispositions toward the self. Both entities are inseparable in the mishnaic or rabbinic context because the very body that may or may not contract ritual impurity is to a great extent shaped and constructed by the subject who inhabits such bodily impurity and it is through one's own *conscious* decision, that is self-reflection, that allows such impurity to be removed from the body he inhabits.

⁴³⁰ The followings are a handful of studies on the self in antiquity with a focus on practice: Maud Gleason, *Making Men: Sophists and Self-Presentation in Ancient Rome* (Princeton: Princeton University Press, 1995); Judith Perkins, *The Suffering Self: Pain and Narrative Representation in the Early Christian Era* (New York: Routledge, 1995); Jan Assmann and Guy Stroumsa, eds., *Transformations of the Inner Self in Ancient Religions* (Leiden: Brill, 1999); Yasmin Syed, *Vergil's Aeneid and the Roman Self: Subject and Nation in Literary Discourse* (Ann Arbor: University of Michigan Press, 2005); John Dugan, *Making a New Man: Ciceronian Self-Fashioning in the Rhetorical Works* (New York: Cambridge University Press,

notion of self is deeply embedded in the idea of philosophy (which I assume also includes religion) as a way of life in which one was constantly committed to cultivating certain dispositions and characters within themselves through various mental and physical activities and practices.⁴³¹ As Foucault particularly points out, the *self* is what one had to strive to “become” as a *subject* who is actively committed to and consciously invested in certain ways of living and bodily practice; the self was thus understood as *something one strove to become* or *something one had to develop*.⁴³² Following their understanding of self-formation, in order to attain one’s ideal of what one ought to be, one essentially must reflect on, shape, control, and cultivate one’s *body* through a set of fixed practices, which is referred to by Foucault as “*techniques of the self*.”⁴³³ This also construes the body as transformative in its own self-formation. This seems to fit in with the notion of rabbinic conversion as a form of identity “*trans*”-formation, in which the convert must be reflectively *subject* to the *halakha* as a set of bodily practices to enable his self-transformation. Gretchen Reydam-Schils in fact argues that the use of reflexive pronouns enables them to trace and identify how the notion of the self was prevalent in ancient texts.⁴³⁴ For example, the fact that the Greek word *autos* is used without an accompanying noun indicates that it may perhaps be referred to as the notion of the self, just as you also see in the expression *hakastos autos*, “each self.”⁴³⁵ Interestingly or even perhaps coincidentally, the Hebrew reflexive מתגייר

2005); Shadi Bartsch *The Mirror of the Self: Sexuality, Self-Knowledge, and the Gaze in the Early Roman Empire* (Chicago: University of Chicago Press, 2006); David Brakke, *Demons and the Making of the Monk: Spiritual Combat in early Christianity* (Cambridge, MA: Harvard University Press, 2006); David Brakke, Micheal Satlow, and Steven Weizman, eds., *Religion and the Self in Antiquity* (Bloomington: Indiana University Press, 2005).

⁴³¹ Pierre Hadot, *Philosophy as a Way of Life*, ed. A. Davidson, trans. M. Chase (Oxford: Blackwell, 1995), 102.

⁴³² Michel Foucault, “On the Genealogy of Ethics: An Overview of Work in Progress,” in *The Foucault Reader*, ed. P. Rabinow (New York: Pantheon, 1984), 340-72.

⁴³³ See Michel Foucault, *The Care of the Self*, trans. R. Hurley (New York: Random House, 1986); Foucault, “technologies of the Self,” in *Technologies of the Self: A Seminar with Michel Foucault*, ed. L. Martin, H. Gutman, and P. Hutton (Amherst University of Massachusetts Press, 1988), 16-49.

Cf. Balberg, *Body, Purity, and Self*, 11.

⁴³⁴ See Gretchen Reydam-Schils, *The Roman Stoics: Self, Responsibility, and Affection* (Chicago: University of Chicago Press, 2005), 15. Richard Sorabji, *Self: Ancient and Modern Insights about Individuality, Life, and Death* (Chicago: University of Chicago Press, 2006), 32.).

⁴³⁵ Ibid.

or נתגייר (The *Hitpa'el* form) also seems to point to a transformative aspect of conversion. In fact, the word denotes the convert's self-*"trans"*-formation by taking on a set of fixed bodily practices such as circumcision and ritual immersion, which perhaps resonates with what Foucault calls *"techniques of the self."* Therefore, this could allow us to view conversion as transformative of one's *body* as a *self* provided that the self and the body are understood as discursive cultural constructs subject to transformation. Foucault's broader insight into the notion of self as a discursive cultural construct that is constantly subject to change through certain cultural praxis also allows us to engage in fundamental questions of identity closely tied to the *body/self*. What I would like to show now, though, is that the convert's bodily changes upon conversion suggest that conversion serves as a identity marker of initiating the fundamental transformation of his/her *self/personhood* because the *body* as a cultural construct represents or embodies the notion of the *self*. The convert's *self/body* is thus perceived by the rabbis as transformative upon conversion, which creates subjectivity to the such bodily praxis set forth by the *halakhah*.⁴³⁶

That said, the following rabbinic texts I'm about to illustrate allow us to better understand the implications of the convert's identity transformation in the realm of his/her *"bodily"* change upon conversion.

<i>bYev97b</i>	<i>bYev23a</i>
דא"ג דראשון הורתו שלא בקדושה ולידתו בקדושה, והשני הורתו ולידתו בקדושה וכשתי אמהות דמו	אמר קרא "בת אשת אביך" (ויקרא יח:ט) מי שיש לו אשות לאביך בה, פרט לאחותו משפחה וגויה...

⁴³⁶ Although Balberg's work *Purity, Body, and Self in Early Rabbinic Literature* critically engages in the notion of the self in terms of the Mishnah's discourse of bodily impurity, not much has been done regarding the critical inquiry into the notion of the self in the context of rabbinic literature. Some works attempt to focus on the comprehensive picture of the person or the human being although all of the studies tend to focus extensively on non-*halakhic*, *agghadic* texts. Such studies are as follows: Ephraim Elimelech Urbach, *The Sages: Their Concepts and Beliefs* [in Hebrew] (Jerusalem: Magnes Press, 1976), 189-226; Emero Stiegman, "Rabbinic" *Anthropology* in *Aufstieg und Niedergang der Römischen Welt* II.19.2: *Religion (Judentum)*, ed. Wolfgang Hasse (Berlin: Walter de Gruyter, 1979), 487-579; Jonathan Schofer, *The Making of a Sage: A Study in Rabbinic Ethnics* (Madison: University of Wisconsin Press, 2005) and *Confronting Vulnerability: The Body and the Divine in Rabbinic Ethics* (Chicago: University of Chicago Press, 2010); Ishay Rosen-Zvi, *Demonic Desires: Yetzer Hara and the Problem of Evil in Late Antiquity* (Philadelphia: University of Pennsylvania Press, 2011). Regarding the above studies, see also Balberg, *Purity, Body, and Self*, 190 n. 40.

<p>שפחה וגויה הוה ליה לרבנות, דאי מגיירה, לדידיה נמי תפסי בה קידושין. לכי מגיירא גופה אחרינא היא.</p>	<p>אפילו הכי אסירי.</p> <p><i>Although the first son was not conceived (prior to the mother's conversion) but born in the holiness of Israel (after her conversion), and the second one was both conceived and born in the holiness of Israel (after her conversion), such brothers might be considered as (the sons of) two different mothers (who might thus be permitted to marry each other's wives, to whom they are not considered as paternally related by blood) even if they are nevertheless prohibited (from performing levirate marriages with their paternal sisters-in-law).</i></p>
<p>The verse states: "The daughter of your father's wife" (Lev18:9) and this means that whoever has enter into a marital relationship with your father, which excludes his sister from a Canaanite maidservant or a gentile woman, with whom no marital relationship is possible...</p> <p>It should include a (Canaanite) maidservant or a gentile woman, as, if she converts, betrothal can come into effect with (the father of the household) himself. (The Gemara answers) When she converts, she becomes another different body, (that is, a new person), who may be permitted to marry the father of the household, who is originally forbidden to her by the prohibition of incest.</p>	

The sugya of *bYev 97b*, for instance, specifies a theoretical case of "two different mothers" (דמו כשתיאמהות) (which is based on the first clause in *mYev11:2* "The first son was not conceived in the holiness of Israel but born in the holiness of Israel, and the second one was both conceived and born in the holiness of Israel" and is closely embedded in the concept of "A convert is like a newborn child") According to the *sugya*, there conceptually exist two different mothers, who conceived two different male offspring prior to or after her conversion. The mother, who conceived the first male while she was a gentile, is no longer the considered as exactly the same woman as the very mother who conceived and bore the second son after she had become a convert, the former refers to a gentile woman while the latter a Jewess, indicating that the male offspring are conceptually two different individuals or strangers who are not genealogically related to each other; the mother cannot be related to her first son she conceived while she can be with her second son because of her transformation from gentile body to Jewish one (that is, the former is a gentile while the latter a Jew!)

In this situation, the converted mother in *bYev97b* is actually understood as inhabiting "two separate bodies" within her single body; her body is conceptually bifurcated into two

different bodies *prior to* or *after* her conversion, implying that the conception and birth of these two male offspring took place in the *two conceptually different bodies*, one in the body of a *gentile*, the other in the body of a *Jewess*. This means that although her old gentile body still harbors bodily phenomena that took place prior to her conversion, her previous, gentile, kinship status is *inconsequential to* and is *of no impact* on the consanguinity of her male offspring conceived *prior to* her conversion.⁴³⁷

Similar to the notion of “*two different mothers*” quoted above is the phrase “*another different body*” (גופא האחרת) found in *bYev23a*. Although this phrase shares no semantic connection with the notion of “*A convert is like a newborn child*” in *bYev97b* nor does it focus on the convert’s severing of family ties with his former kin, it does stress a fundamentally *halakhic* change of the convert’s bodily status in the context of the prohibition of incest; if a Canaanite maidservant was emancipated or a certain gentile woman converted, the father of the household, originally forbidden to her by the prohibition of incest specified in Lev18:9 “*The nakedness of your sister, the daughter of your father, or the daughter of your mother, where born at home or born outside,*” might be permitted to marry her because her body is considered to have become “*another different body*” upon her emancipation or conversion, *i.e.*, a Canaanite or gentile woman becomes *Jewish* via conversion and emancipation, which clearly implies that conversion conceptually allows the convert’s body/self to be transformed into a completely different being, which enables marital relations with a Jewish person. Therefore her previous ethnic/kinship status is of no impact in defining her marital relationships because she now has a newly defined *Jewish body*.⁴³⁸

⁴³⁷ See Chapter one. As *tYev12:2* also suggests, the converted mother who has two separate bodies prior to or after her conversion has two different *halakhic* consequences prior to or after her conversion. Her *gentile body* that conceived the first male prior to her conversion, is of no impact in terms of her legal eligibility for the laws of levirate marriage and the prohibition against marrying the brother’s wife while her *Jewish body* that conceived and bore her male offspring after her conversion makes her male offspring fully eligible for such laws because the converted mother, is defined as a *newborn person*, who is perceived as *Israel* in every respect. Saul Liberman in fact interpreted this clause to mean that the converted mother comes to be treated as a native-born Jewess, who gave birth to her Jewish offspring (שילדה מִיִּשְׂרָאֵל), which implies conversion as transmitting the identity of the progenitor to the next generation. Liberman, *Tosefta KiFishuta Seder Nashim*, 40.

⁴³⁸ As mentioned earlier in the second chapter, the concept of “*A convert is like a newborn child*” as seen in *bYev97b* is formulated and reworked as the severing of the convert’s paternal kinship on the

Susceptibility to Impurity as a Marker for the Convert's Bodily Transformation

Mira Balberg claims that one's subordination to the *halakah* as a legal *subject* is what primarily constitutes the Jewish *body/self* or *personhood*.⁴³⁹ Conversion, in that sense, may also be what Foucault calls "*the techniques of the self*." In other words, the transformation of the convert's *body/self* via conversion also enables him/her to define and establish his/her "subjectivity" to the divine law/*halakhah*. The birth-related laws in the realm that deals with ritual impurity in the following *baraita* illustrate how the event of conversion, in which a gentile becomes a Jew, serves as an identity marker that defines the definitive moment of the convert's eligibility to observe various *halakhic* commandments. Here the two definitive moments of bodily processes such as conception and birth and the event of conversion govern the definition of the convert's legal status. It is also important to note that the laws of conversion dealing with birth-related rulings are governed by the internal logic of legal formalism, which works within the parameters of well-defined principles of hermeneutics governed by the logic of a casuistic convention.⁴⁴⁰ That is, the *halakhic* formalism governed by such a casuistic convention presents a hypothetical case of conversion as a means to signal and mark the definitive moment of the applicability of various legal obligations.⁴⁴¹ It

basis of another Amoraic concept of "A gentile has no paternity" (לית ליה חיים/אין אב לגוי) in *GenR18:5/bYev62a*; *yYev2:6, 3d*. The gentile's lack of his paternal kinship is later understood by the Amoraim as indicating that the convert is not still regarded as the offspring of his biological gentile father because he was not even considered as such prior to his conversion. In other words, the *body* of a gentile father is legally and conceptually nonexistent, and hence is of no consequence to the convert's *body* even prior to his conversion. In light of the rabbinic concept of the *body* as the embodied *self* or *personhood*, the notion of the convert as a "*newborn child*" is suggestive to such an extent that his new Jewish *body/self* is now detached from the *body/self* of his biological gentile father, to whom he is no longer related by blood.

⁴³⁹ Balberg, *Purity, Body, and Self*, 132-134.

⁴⁴⁰ Moshe Lavee, "Birth, Seminal Emission and Conversion: Gender, Self-Control and Identity in *bBekhorot*," in *Introduction to Seder Qodashim: A Feminist Commentary on the Babylonian Talmud V*. (Tübingen: Mohr Siebeck, 2012), ed. Tal Ilan, Monika Brokhaus and Tanja Hidde, 286-287.

⁴⁴¹ *Ibid.* 287. It should also be noted that this *halakhic* formalism governed by a casuistic convention presents conversion at least as a hypothetical case that serves as marking the obligatory moment. Therefore, it does not necessarily reflect the reality of everyday life involving birth or other bodily phenomena such as ejaculation or skin discolorations. In fact, it is highly improbable that a woman can undergo the ritual of immersion during her conversion procedure while giving birth. Such a hypothetical case is aimed only at presenting the legal validity of specific rulings such as marking the moment of obligation prior to or after conversion during birth.

shows that it is his/her bodily phenomena (such as conception, birth, skin discolorations and genital discharges) that took place *after* his/her conversion that completely change his status as a Jew/Jewess. This suggests that the convert was not susceptible to ritual impurity *prior to* the definitive moment that marks the formation of his/her identity as Israel through conversion (*i.e.*, since he/she was ethnically a gentile *prior to* his/her conversion, he or she is not rendered susceptible to ritual impurity nor is he or she incumbent upon such laws of impurity to purify himself/herself.). This means that it is only *after* his/her conversion that allows him/her as a Jew/Jewess to be subject to the laws of ritual impurity as a legitimate member of the community defined by descent, which also implies that he/she is *classified* as *ritually impure* according to the mishnaic system of classification.

Accordingly, the conceptualization/establishment of the convert's legal subjectivity through his bodily transformation via conversion is also implied especially in the birth-related laws that deal with the convert's susceptibility to ritual impurity prior to or after conversion in the following *baraitot* in *bBekh46* and *yNid1:4, 49b* :

<i>bBekhorot46b</i>	<i>yNid1:4, 49b</i>
<p>גירות שיצאת פדחת ולדה בגויותה ואחר כך ניתגירה, אין נותנין לה דמי טמאה וימי טהרה ואינה מביאה קרבן לידה.</p> <p><i>In the case of a female convert, if the forehead of her infant emerged from the womb while she was a gentile, and she subsequently converted, she is not subject to periods of impurity and purity and she does not bring the offering for confinement.</i>⁴⁴²</p>	<p>ילדה, אחר כך ניתגירה, אין לה דם טוהר.</p> <p><i>If she gave birth and subsequently converted, she is not subject to the law of purity of menstruation.</i>⁴⁴³</p>

⁴⁴² This reading is based on MS Oxford Heb. c.17, (ff. 86 – 101). MSs Vatican 120 and London 25717 also read *פדחת ולדה* or *פדחת ולדה*. In MSS Florence and Munich, here they read *וילדה פדחת*. Cf. Lavee, "Birth, Seminal Emission and Conversion," 286.

⁴⁴³ This *Yerushalmi* is cited according to MS Leiden.

These two baraitot presented above illustrate how the definitive moment of birth during the mother's conversion marks the formation of her identity as a Jewess, thus making her subject to the laws of impurity. It is implied in these two texts that during the period when the mother was a gentile, she was neither subject to nor incumbent upon the laws of impurity. In *bBekh46b*, the definitive moment at which the laws of birth impurity (that is, bringing birth offerings) take effect is when the forehead of an infant emerges from the converted mother's womb.⁴⁴⁴ This means that the birth of her male offspring *after* her conversion makes her *subject* to the laws of impurity as a *Jewess* in every respect. In a similar manner, in *yNid1:4*, the birth of her offspring *prior to* her conversion won't make her subject to the law; by implication, it is only the definitive moment of the mother's birth *after* the mother's conversion that makes her *subject* to the laws of impurity. Also implied therein is the moment of the mother's conception *after* her conversion that defines the ethnic and kinship status of her offspring.⁴⁴⁵

More importantly, the *halakhic* mechanism of a casuistic convention in which the convert becomes subject to the laws of birth purity as displayed in the above *baraitot* is structurally similar to the laws that govern the susceptibility of defined artifacts to ritual impurity as presented in *mKelim26:7*.

⁴⁴⁴ Regarding a similar principle, see also *yNid3:4, 50d* and its parallel in *bNid26a*. On the way in which this principle is applied at the moment of circumcision, see also *yShab19:4, 17b*. Cf. Lavee, "Birth, Seminal Emission and Conversion," 286-287 n. 3; "A Convert Is Like A Newborn Child," 161-162.

⁴⁴⁵ This pattern of the definitive moment defines status change is similarly seen in the case of "one who was conceived but born in the sanctity of Israel" (הולתו לידתו בקדושה) in *tYev12:2/bYev97b* as mentioned earlier. In other words, It is the mother's conception *after* her conversion that the ethnic/kinship status of her offspring as *Israel* is defined.

The Parallel between a Defined Artifact and a Convert in the Baraita of bBekh46b⁴⁴⁶

Status	A Raw Material	An Artifact
Purity Status	Pure	Impure
Ethnic/Religious Status	A Gentile	A Jew (via conversion)
Legal Status	Not Fulfilled (prior to birth/conversion)	Fulfilled (after birth/conversion)

Here the correspondence between a manufactured artifact and a female convert in the realm of susceptibility to ritual impurity can be hinted at in these *baraitot*. Conversion or artifact production is understood to serve a definitive marker of status/identity change from gentile into Jew or raw material into defined artifact. Therefore, this semantic marking of identity/status formation through the definitive moment of susceptibility to ritual impurity (or more specifically, subjectivity to the laws of birth (im)purity) is illustrated by the double-layered parallelism in which raw material is manufactured into a defined artifact or a gentile becomes a Jew/Jewess via conversion⁴⁴⁷.

Importantly, this parallelism, I suggest, reflects the *halakhic* understanding of the “completion of labor” (*g'mar melakhah*/גמר מלאכה) in *mKelim*22:6 as a defining factor that renders susceptibility to impurity. Since the completion of the manufacturing process of raw material into a finished artifact involves the human manipulation of such a natural object for their specific use with the formulation of plans or intention⁴⁴⁸, namely the

⁴⁴⁶ This figure is originally based on Lavee's chart in his “Birth, Seminal Emission and Conversion,” 287. I revised some of his parallelism in order to illustrate a clearer correspondence between different variables such as conversion and the manufacturing process of artifacts.

⁴⁴⁷ Lavee, “Birth, Seminal Emission and Conversion,” 287.

⁴⁴⁸ Balberg, *Body, Purity, and Self*, 77. Balberg's concept of the humanization of nature is deeply influenced by the work of Karl Marx, who also argues that human beings invest amounts of their physical labor and efforts into natural objects in such a way that processes and manufactures them in order to use them as finished products for their daily purposes. See also Karl Marx, *Early Writings*, trans. R. Livingstone and G. Benton (London: Penguin, 1992), 329. This suggests that the human manufacturing process of natural material becomes “humanized” to the extent that it extensively and organically becomes part of the human body, which in turn allows any natural, raw, material manufactured as a defined product to be incorporated into the human realm in which they are manipulated and adjusted for humans use, which potentially renders such artifacts/products ritually impure in the context of the mishnaic system of ritual (im)purity. Therefore, artifacts, in some sense, serve as an extension of the human body, which has a capacity to potentially become

mishnaic notion of *mahshavah* (מחשבה), susceptibility to ritual impurity is determined to a great degree by one's designation for use⁴⁴⁹. As mentioned earlier, it is primarily through the formulation of plans that transforms objects into artifacts that become susceptible to ritual impurity insofar as they are fully processed and thus ready for use. In other words, in order to become susceptible to ritual impurity, a material object has to be manipulated for human use, which also involves human mental, subjective investment in it, which assumes that as long as finished products have specifically been *designated* (*meyuhad*/מיוחד) for human purposes, they are potentially rendered ritually impure. It strongly implies that the human endeavor of producing artifacts from natural material itself is a by-product of human thought or intention (*mahshavah*/מחשבה), hence susceptibility to ritual impurity.

Moreover, the correspondence between conversion and the process of manufacturing thus suggests that conversion in which a gentile becomes a Jew, in a sense, can also be described as a type of production process whereby one particular entity is classified, formed and transformed into a new one. In other words, conversion is equivalent to

ritually impure. It also important to note that any defined tool manufactured by people in everyday life, as Balberg suggests, can serve the bodily function. In antiquity, as she also points out, any tool or item that people use in every day life such as garments they wear, sickles used to reap crops on their fields, furniture or all that embodies their livelihood constitutes an indispensable part of who they are as a person. In addition, anthropologist McKim Marriot has suggested in his studies of Indian society that in some societies, personal possessions are in fact viewed as part of or an extension of the owner's body. See McKim Marriot, "Hindu Transactions: Diversity without Dualism," in *Transaction and Meaning: Directions in the Anthropology of Exchange and Symbolic Behavior*, ed. B. Kapferer (Philadelphia: Institute for the Study of Human Issues, 1976), 109-137. On this similar theme, also see Cecillia Busby, "Permeable and Paritable Persons: A Comparative Analysis of Gender and Body in South Asia and Melanesia," *Journal of the Royal Anthropological Institute* 3, no. 2 (1997): 261-78; Edward Lipuma, "Modernity and Forms of Personhood in Melanesia," in *Bodies and Persons: Comparative Views from Africa to Melanesia*, ed. M. Lambeck and A. Strathern (Cambridge: Cambridge University Press, 1998), 53-79. For a general survey of this issue see Fowler, *The Anthropology of Personhood*, 53-78. Cf. Balberg, 82, n. 41.

Her idea is closely associated with what I will also argue below as the notion of the human body as representing personhood/selfhood. See also Balberg, *Body, Purity, and Self*, 77; 82. I will also illustrate and examine various cases of Tannaitic and Amoraic sources that follow regarding how the bodily process that occurs prior to or after conversion shapes a change of one's "bodily" status. Most importantly, the materialization of natural resources designated for our specific purposes means that our cognitive, subjective investment in natural objects brings susceptibility to ritual impurity; hence such "humanization of nature" involves human thought as a decisive factor in classifying such objects as ritually impure.

⁴⁴⁹ See also 6 n. 7. As the passage of *mTohrort*8:6 makes it clear, raw material will not become rendered ritually impure *unless* it is *designated* for specific human use (*ad she yehadno le adam* / לאדם עד שיחדנו), namely manufacturing such material into a finished product for daily use.

classification and formation, which are embedded in the mishnaic system of classification, according to which the character of an entity is significantly altered by the formulation of plans to classify it as ritually impure. Whether it is conversion or material manufacturing, this parallelism strongly suggests that both cases are governed by the same *halakhic* principle of classification according to which one entity is transformed into new one by the formulation of plans or *mahshavah*.

In addition, the legal and hermeneutic principle of a casuistic convention that governs the laws of birth purity in association with conversion is in fact guided by human consciousness that shapes the physical and conceptual reality of given objects. I argue that this logic of a casuistic convention serves as a type of formulation of *mahshavah* (מחשבה) in that it plays an instrumental role in classifying entities in question and also defining the scope of the applicability of specific laws in the case of conversion. The laws of birth impurity as presented in these *baraita* are in fact governed by the logic of a casuistic convention, which defines the event of conversion as marking the definitive moment of obligation at which a convert/Jew becomes *subject* to such laws of birth (im)purity in the same manner that a finished artifact becomes ritually impure, thus subject to the laws of purification. Although it is not explicitly stated in the above *baraitot*, I argue that the legal formalism of a casuistic convention as a mode of *mahshavah* is strongly implied because it serves primarily as a marker of the change of status or identity of given entities. The definitive moment of obligation to the laws of impurity *after conversion* functions casuistically as a semantic marking of identity formation for the convert as an entity that makes him/her *subject* to such laws⁴⁵⁰. By implication, conversion as the definitive moment of obligation to specific laws of (im)purity is defined by the logic of a casuistic convention in such a way that signals the final phase of completion or formation of defined entities, which deeply involves human intentionality to define the applicability of specific laws⁴⁵¹. This case suggests that presenting conversion as a vehicle that casuistically

⁴⁵⁰ This suggests that prior to conversion, a gentile cannot be rendered ritually impure, and a material object cannot contract such impurity until it gets processed as a defined artifact because a previous status is entirely *inconsequential*.

⁴⁵¹ The principle of the “completion of labor” (*g’mar melakhah*/גמר מלאכה) is also mapped onto this parallelism as well, which stresses that it is the formation/completion of new entities that renders

defines his/her subjectivity, the framers of the Mishnah/*Baraitot* therefore formulate plans/*mahshavah* to alter the basic character of the convert as ritually impure in a similar manner of the production of defined artifacts⁴⁵².

The following *sugya* of *bNid43a-b* is another example that illustrates the casuistic convention of conversion as a means for defining the definitive moment of obligation in various cases involving the human body and its physiological phenomena such as the discharge of bodily liquids:

bNid43a-b

בעי רבא: גוי שהיררה, וירד וטבל, מהו? אם תמצי לומר בתר עקירה אזלי...

Rava inquired: What is the law where a gentile indulged in sexual thoughts, and then he went down and performed ritual immersion? If you were to find some cases where we follow the period of detachment (then the question would arise...).

בעי רבא: זבה שנעקרו מימי רגלי, וירדה וטבלה, מהו?...

Rava inquired: What is the ruling where the urine of a zavah had been detached from the source and then she went down and performed ritual immersion?(...)

בעי רבא: גויה [זבה] שנעקרו מימי רגליה, וירדה וטבלה, מהו?

Rava inquired: What is the law where the urine of an gentile woman who was a zavah had been detached from the source, and then she went down and performed ritual immersion?

them ritually impure.

⁴⁵² The model of conversion governed by the logic of a casuistic convention, in which a gentile who has changed his/her status and immediately becomes subject to Jewish law, is not limited to the realm of the laws of ritual impurity. A few cases of conversion in Tannaitic sources demonstrate that conversion is presented casuistically in order to point out the definitive moment of obligation with regard to different types of rulings other than the laws of impurity. The following cases illustrate a similar pattern of the case of conversion as an event that defines the applicability of specific laws: *m.Hal.3:6* in the case of the allocation of portion from the dough; *m.Peah4:6* in the case of priestly gifts in the field; *m.Hul1:4*; *Gerim1:6-7* in the case of collecting loans and charging interest prior to after conversion. Most importantly, the cases that we have examined above such as levirate marriage (*m.Yev11:2*, *t.Yev12:1* and *b.Yev97b*) and the birth of a first-born/procreation (*m.Bekh8:1* and *b.Bekh47a-b*) all demonstrate the patterns of casuistic conventions in defining the scope of legal applicability. See Lavee, "Birth, Seminal Emission and Conversion," 288-289.

This *sugya* presents conversion casuistically as a means to point out the definitive moment of obligation concerning in various cases that involves the human body such as the bodily processes of semen emission and urination. The first case involves a gentile who had a sexually arousing thought and subsequently converted. And moreover, at the very moment in which he experienced seminal emission only after the completion of his conversion, his legal status radically, though casuistically, changes from gentile to Jew as a *subject* who is subordinated to the law of ritual purity.

Implied herein is Rava's inquiry into the definitive moment at which the convert's body becomes susceptible to ritual impurity, which deals with the production of semen at the moment of (sexually arousing) thought. His inquiry lies in the question of which moment renders the convert impure; is it the moment of thought, that is, the moment of production of semen or the moment of seminal emission that defines the convert's susceptibility to impurity? Whichever the case is, this *sugya* seems to imply the significance of human thought or *mahshavah* as an instrumental vehicle in defining the ritual state of the convert's body. Rava in fact seems to stress or even articulate the idea that it is the cognitive, mental facilities such as thought or intention as a frame of reference that determine a particular human act in the casuistic case of conversion⁴⁵³.

⁴⁵³. It should be noted that the verb *הרהר*, though referred to as intentionally engaging in some arousing thoughts, also is intertwined with physical aspects of bodily liquid production with the process of heating, though in a metaphorical sense, especially in the context of sexual arousal. Such usage is found in *bSan108b* (ברותחין) and *bAZ18a* (מרתח), which refer to a sense of arousing thought of excitement. One of the textual variants of "גר שהירה וירד וטבל" in *bNid43a* (a convert *indulged in sexual thoughts...*) can be read as "גר שהרתח וירד וטבל" (a convert *ejaculated...*). While the verb *הרהר* refers to a (sexually arousing) thought, the verb *הרתח* might imply the physicality of semen production. However, in *Kallah Rabbati1:8*, the verb is understood to connote the "development" or "creation" of sexual arousal. Even though the root *רתח* in fact refers to heating in the process of cooking, its connotation may be metaphorical in that it denotes a mental, cognitive state of some arousal or emotional impulsiveness. Or the verb sometimes connotes anger in the *Bavli*, which denotes a marker of certain degrees of impulsiveness such as desire, which is semantically similar to the verb *חמם* (to heat) in biblical and Mishnaic Hebrew. In any case, the above examples in terms of the verb *הרהר* as *הרתח* seem to suggest that the change of semantics creates a new meaning and connotation; human intention creates or shapes the physicality of human act. See Michael Sokoloff, *A Dictionary of Jewish Palestinian Aramaic* Jerusalem, 2002, 531. Lastly, this semantic understanding of the verb *הרהר* associated with its variant verb *הרתח* possibly suggests how human intention shapes physicality of certain bodily related acts such as emission and urination. Especially attending to the anonymous layer of *bNid43a*, in which a physical difference between urine and semen is suggested, the verb *הרהר/הרתח* dichotomy seems to reflect the intentional creation of the physiological

That said, these sources presented above illustrate that an effort is made to expand the parameters of the *halakha* in order to fit the making of the human body subject to Jewish law. Especially important here in defining the rulings is the role of cognitive faculties such as human intention and plan (*mahshavah*), as pointed out by Eilberg-Schwartz. Employing the legal formalism of casuistic conventions, the rabbis formulate intention to classify the convert as subject to the laws of ritual impurity. This means that their bodily phenomenon such as birth that took place *after* her conversion serves as an identity marker that signals her change of legal subjectivity. His/her change of subjectivity upon conversion, as I discuss below, implies that his/her own *body or selfhood* is significantly transformed as *Israel*.

Conversion as the Acquisition of the Jewish Body/Self

Examining the above *baraitot*, what can we learn about the rabbinic understanding of the body/self in relation to conversion and its implications? The discourse of ritual impurity, as Christine Hayes has also suggested, is discursively employed by the rabbis to construct the intrinsic, fundamental difference between Jews and gentiles⁴⁵⁴. They may need a bodily discourse of Jewish difference in order to delineate the group boundaries between these two distinctly different groups. Importantly, Tannaitic sources often make use of bodily phenomena of ritual impurity associated with the event of conversion as a hypothetical case to demarcate the boundaries between Jews and gentiles. Therefore, what we have seen in those texts is that the rabbis' discursive construction of the *Jewish body/personhood* via conversion also reflects their discursive attempt to construct *gentile body/personhood* as well⁴⁵⁵. In a similar vein, in support of Hayes' views, Balberg aptly argues that the *personhood* of gentiles is defined solely by their inability to be classified as

difference between men and women in terms of the release of bodily liquids that were produced prior to conversion (or immersion by a Jewess who contracts impurity), i.e. women are passive but physically able to restrain their urination, while men are defined as active but unable to control their seminal emission. Such a gender difference may be mapped onto the dichotomy between intention and the physiological production of semen/urine in reading this text as discussed above. See Lavee, "Birth, Seminal Emission and Conversion," 296-297 n. 27.

⁴⁵⁴ Hayes, *Gentile Impurities*, 107-144.

⁴⁵⁵ This point is also raised by Balberg. Balberg, *Purity, Body, and Self*, 134-5. Cf. Hayes, *Gentile Impurities*, 144.

ritually pure or impure in the rabbinic impurity system as dependent on their legal *subjectivity*, namely their subordination to the *halakha*⁴⁵⁶; not only are they under no obligation to purify themselves, but also their bodies are not conceptually designed to acquire the states of such ritual impurity that require purification.

This in turn implies that the *personhood/selfhood* of Jewishness is dependent on their ability to contract ritual states of levitical purity and impurity as specified in the *halakha*⁴⁵⁷; their subordination to the *halakha* as legal subjects determines the degree of susceptibility to impurity, which articulates their personhood through what may appear on the surface of in the human body. In this respect, the bodies of gentiles, however, are viewed as fundamentally different from those of Jews in that their bodies are unable to be ritually activated within the rabbinic system of ritual purity and impurity. Their bodily inability to contract such impurity confirms that they are not considered to be *subjects* to the law.

Therefore, gentiles, ritually insusceptible to such impurity *in their capacity* as humans, are completely excluded from the rabbinic system of ritual purity and impurity; in other words, gentiles are by definition pure because they are outside of the realm of ritual impurity⁴⁵⁸. As Vered Noam points out, gentiles *cannot* become ritually impure nor can

⁴⁵⁶ Balberg, *Purity, Body, and Self*, 134.

⁴⁵⁷ Ibid.

⁴⁵⁸ Ibid., 123-126. Adolf Büchler was the first scholar who grappled with the issue of the impurity of gentiles, arguing that the original *halakhic* view derived from the Hebrew Bible is that gentiles are insusceptible to ritual impurity. However, the rabbis had gradually developed the idea of gentile ritual impurity during the first centuries B.C.E. and C.E. in order to prevent Jews from contact with them, which eventually culminated in issuing a decree prior to the Great Revolt in the mid-sixties of the first century C.E., according to which gentiles are inherently susceptible to ritual impurity such as abnormal genital discharges (he asserted that *bShabbat 83a* and *bNiddah 34a* provided textual evidence for such ritual impurity). Gedalyahu Alon, on the other hand, argued that the idea of gentile ritual impurity dated back to the biblical period, in which the sources of such impurity were derived from their worship of idols. He concluded that gentiles had always been inherently and ritually impure due to their idol worship, which was also said to defile their bodies as well. Alon's approach of inherent gentile ritual impurity was entirely rejected by Jonathan Klawans and Christine Hayes, both of whom argued against his view that subscribing to Büchler's view, there's no such idea of intrinsic gentile ritual impurity on account of idolatry in the Pentateuch. Such an idea emerged as a political tool in response to an increasing political turmoil during the first centuries C.E. In fact, Hayes and Balberg suggest that the rabbinic ruling that gentiles convey ritual impurity like persons with abnormal genital discharges or corpse contamination is purely a rabbinic innovation that has nothing to do with the biblical concept of impurity, which is embedded in a different set of meanings the notion of ritual impurity late developed by the rabbis in the Mishnah. Therefore the current scholarship holds that gentiles, first and foremost, are categorically

they obtain the ritual states of impurity that require purification because they are neither defined nor bound as *legal subjects* by specifics of legal systems of levitical purity, by which only Jews/converts are bound⁴⁵⁹. In other words, their inability to be susceptible to ritual purity and impurity suggests that they are conceptually divested of legal *subjectivity* to ordinances of the divine law and that they are indeed *inconsequential* in the ritual system of impurity.⁴⁶⁰ In the *halakhic* sense, their *body or personhood* is not defined as a legal *subject*.

Therefore, the susceptibility of Jews/converts to such ritual impurity is what *constitutes* their relation to the law, namely their *subordination* to the divine law as *legal subjects*. In this sense, conversion may be understood as one's self-subjection to the law. The personhood of both gentiles and Jews, as Balberg claims, is understood as dependent on their *legal subjectivity* to the laws of ritual impurity. That is, the ability of a person's/one's physical

and conceptually pure. The followings are a list of studies on the notion of gentile ritual impurity: Adolf Büchler, "Levitical Impurity of the Gentile in Palestine before the Year 70," *JQR* 17, no.1 (1926): 1-81. Gedalyahu Alon, "Gentile Impurity," in *Studies in Jewish History in the times of the Second Temple and the Talmud* [in Hebrew] (Tel-Aviv: Ha-Kibbutz Ha-Meu'had, 1957), 1:121-47. Jonathan Klawans, "Notions of Gentile Impurity in Ancient Judaism," *AJS Review* 20 [1995] 285-312. John C. Endres, *Biblical Interpretation in the Book of Jubilees*, CBQ Monograph Series (Washington, D.C.: The Catholic Biblical Association of America, 1987), 75 n.49. Christine Hayes, *Gentile Impurities and Jewish Identities: Intermarriage and Conversion from the Bible to the Talmud* (Oxford: Oxford University Press, 2002), 107-45. Zvi Arie Steinfeld, "The Decrees Against Gentiles and their Daughters According to R. Nahman bar Yitshak" (Hebrew), *Annual of Bar-Ilan University* (Ramat Gan: Bar Ilan University) 20-21 (1983) 25-42.

⁴⁵⁹ Vered Noam, *From Qumran to the Rabbinic Revolution: Conceptions of Impurity* [in Hebrew]. (Jerusalem: Yad Ben Zvi Press, 2010.), 289-91. Noam holds that gentiles are excluded from the system of ritual purity and impurity because they are incapable of contracting such (im)purity as human beings. Rather they are viewed as akin to or are categorically juxtaposed with the bodies of animals and inanimate objects that do not contract corpse impurity. See also *bNaz61b*. Balberg, on the other hand, revises Noam's view in such a way that since the rabbinic view of personhood is defined by subordination to the law, gentiles are not *nonpersons* in a sense that they are not bound by the relationship with the law. Therefore gentiles' insusceptibility to impurity may at least be explained by their exclusion from such a relationship.

⁴⁶⁰ Rosen-Zvi and Adi Ophir "Goy: Toward a Genealogy" *Dine Israel* 29 (2011): 69-122. Rosen-Zvi holds that gentiles, ritually excluded from the rabbinic impurity system, are therefore classified as *nonpersons* along side with animals because they are not implicated in the concept of "*adam*" in the impurity system and more importantly they are viewed as *non-subjects* within the legal system. This does not mean that gentiles are physically different from Jews in the same way that animals are different from human beings but rather are categorized as *persons* in relation to the divine law. That which gentiles are categorically nonhumans suggests that it is the notion of one's subjectivity to the Torah that defines one's *selfhood* or *personhood*. As Balberg also suggests, from the rabbinic point of view, conversion is considered a viable option to preclude such a notion. Cf. Hayes, *Gentile Impurities*, 164-192.

body to be susceptible to ritual impurity can only be acquired and hence *consequential* through his subordination to the divine law, by which the convert, is essentially bound. Such subordination to the law reveals itself in the person's physical *body/self* through his/its ability to contract ritual impurity to such an extent that only those who can subordinate themselves to the law can participate in the ritual of the impurity system. The ritual exclusion of gentiles from the rabbinic system of ritual impurity, on the other hand, categorizes their bodies as ritually "incapable" of contracting such impurity, hence implying that they cannot subordinate themselves to the law as *legal subjects*. Therefore, conversion serves as a viable, alternative option that enables the body of a gentile to be susceptible to impurity because through conversion it is now inhabited by a *person/self* as a *subject* who is ritually qualified to obtain susceptibility primarily by subordinating himself to the law.⁴⁶¹ His legal inconsequentiality in matters of susceptibility to ritual impurity through conversion is precluded.

This in turn suggests that conversion may be understood as what Balberg calls an "*acquisition of a new body*." This understanding implies that when one's subjective relation to the law changes, his *body/self* conceptually changes as well⁴⁶². One's subordination to Jewish law, aka, conversion, is therefore what constitutes the *Jewish body/self/personhood* (which clearly resonates with Foucault's *techniques of the self*), particularly rendering him ritually susceptible to impurity. In this vein, conversion entails the transition into such legal subjectivity, which enables the convert's *self/body* to be newly and fundamentally transformed.

Furthermore, such an understanding also suggests that the notion of the gentile body may be understood as *invisible, inaccessible to*, and hence *inconsequential* in the realm of the divine law, namely in the circuit of ritual impurity. Although gentile bodies may be empirically and ontologically visible, they have *no consequence* and are hence *invisible* in the realm of ritual impurity.⁴⁶³ In this vein, conversion may also be viewed as an act that enables the transition from *invisibility* to *halakhic visibility*, in which one who was not

⁴⁶¹ Balberg, *Purity, Body, and Self*, 134. In this sense, conversion, as I also argue, is understood as an acquisition of a new body that is susceptible to such impurity.

⁴⁶² Ibid.

⁴⁶³ Ibid.

previously able to subordinate oneself can now subordinate oneself to the law as a legal *subject*. The following passages of *mNeg7:1* and its parallel *tNeg 2:14* demonstrate how one's transition into the realm of legal subjectivity enables his bodily transformation of his *selfhood/personhood* upon conversion. It actually presents a list of the body parts that are not previously affected by or insusceptible to impurity of skin discolorations:

<i>mNeg7:1</i>	<i>tNeg2:14</i>
<p>אלו בהרות טהורות: שהיו בו קודם למתן תורה, בגוי וניתגיר, בקטן ונולד, בקמט ונגלה, בראש ובזקן, בשחין, ובמכוה. ובקדח המורדין...</p> <p><i>The following bodily discolorations are pure: Those that were in one (i.e., the Israelites) before the giving of the Torah, in the gentile before he converted, in the child before he was born, in the wrinkle before it was revealed, in the head and the beard (before they became bald), in the boil, the scald, and the wound that were festering.</i></p>	<p>בהרות... כחצי גריס עד שלא נתגייר, וכחצי גריס, משנתגייר - טהור.</p> <p><i>A bright spot... (if one had a bright spot in the size of) half a grain before he converted and (it added on another) half of a grain after he converted – he is rendered pure.</i></p>

As previously seen in the *baraita* of *bYev97b*, the passages, guided by the *halakhic* formalism of a casuistic convention, describe how the transformation of the convert's new body after conversion generates or creates the transition into legal subjectivity. These passages seem to indicate a number of situations in which one's body parts that were previously insusceptible to impurity (i.e., the gentile body/self) are now transformed into the very body parts that are now susceptible to impurity (i.e., the Jewish body/self). These bodily transformations are categorized into three distinct groups: 1) people with body parts that were previously "nonskin" have now become skin, i.e., head and beard have become bald; festering wounds and boils healed: 2) People with body parts that were previously invisible have now become visible, i.e., the wrinkle now became smoothed and revealed:

(3) People who were not previously subordinate to the law, *i.e.*, the Israelite before the receiving of the Torah and gentiles before they converted. In all these transitions, a group of people who had any bodily discolorations that were previously considered as insusceptible to impurity (*i.e.*, “pure”) have now become susceptible to impurity (*i.e.*, impure) because the very body fundamentally has changed to such an extent that any skin conditions *prior to* the transition are considered *inconsequential*.⁴⁶⁴ Their previous bodily status no longer exists conceptually, hence suggesting that they are legally *inconsequential* in matters of impurity prior to the transition, that is conversion,⁴⁶⁵ which serves as an identity marker that signals the formation of the Jewish *selfhood*.

The transition into susceptibility to impurity after the event of conversion clearly suggests that any skin discolorations prior to the transition are considered as conceptually *nonexistent*. That is, a discontinuity between the body/the self of a gentile prior to conversion and the *body*/the self of a convert after conversion comes to exist, so that the convert’s *previous* impurity status when he was a gentile becomes *inconsequential*. Importantly, this confirms the fact that human beings who were not previously subordinate to the law (*i.e.*, the Israelites before the giving of the Torah and gentiles before they converted) now have become subordinate to the law (*i.e.*, Israelites or converts), namely the laws of ritual purity and impurity. To put it differently, gentiles who were previously insusceptible to ritual impurity have now become susceptible to it as Jews because conversion initiates such a legal transition into the realm of legal subjectivity. Therefore, the bodily transformation of his *selfhood/personhood* upon conversion may entail both the transition from *invisibility* to *visibility* and the transition into a group defined by subordination to the *halakha*. In addition, the discontinuity between the gentile body and the Jewish body upon conversion also indicates the disparity between ontological reality and conceptual reality with regard to humans’ physical ability to contract ritual (im) purity. Gentiles before conversion, though physically capable of being afflicted with skin

⁴⁶⁴ Ibid., 135., These people, as also suggested by Balberg, were previously *inconsequential* in terms of the system of ritual impurity.

⁴⁶⁵ This resonates with the phrase “*two different mothers*” in *bYev97b*. Though discussed in a different *halakhic* context, both phrases illustrate how the change in one’s relation to the law brings about the change in one’s body *conceptually*.

discolorations, have no legal consequences after their conversion in terms of a ritual status of purity and impurity defined by the divine law.

In this sense, this transition from gentile *invisibility* into Jewish, *halakhic visibility* can therefore be conceptualized as the “*acquisition of a new Jewish body/self/personhood.*” After one subordinates oneself to the law, the very body he inhabited prior to his conversion becomes legally *visible*. Even though his bodily phenomena prior to his conversion persist visibly, these are viewed as completely *inconsequential* in terms of the system of ritual impurity.⁴⁶⁶ It is only after the completion of his conversion that he has now become *visible* to the law. Since his legal visibility and accessibility are largely determined by his subjectivity to the law, his body/self conceptually has to be subject to the effects of ritual impurity.⁴⁶⁷

Similarly, the case of a gentile who had a normal seminal emission (קרי) prior to his conversion also presents a similar understanding of the constitution of a new Jewish *body/self* upon conversion as a legal subject to the *halakha*.

mZav 2:3

הרואה קרי אינו מטמא בזיבה מעת לעת. רבי יוסי אומר: יומו. גוי שראה קרי ונתגיר, מיד הוא מטמא בזיבה.

One who sees a seminal emission is not rendered impure by abnormal genital discharge for twenty-four hours (me-et-le-et). Rabbi Yose says: (during) the same day. A gentile who has seen a seminal emission and then converted is immediately rendered impure by abnormal genital discharge.

In mZaviim 2:3, as soon as he underwent conversion, the seminal emission he had prior to his conversion is now regarded as an abnormal genital discharge (יבה), thus rendering him

⁴⁶⁶ How this works is as follows: When a skin affliction appears on a gentile person's arm on Monday, he converts on Tuesday, and then a new skin affliction appears on Wednesday, and on Thursday the convert comes to have his skin affliction (s) examined. The affliction that appeared on Monday is ignored while the affliction that came out on Wednesday is examined carefully for possible signs of impurity, Cf. Balberg, *Purity, Body, and Self*, 136.

⁴⁶⁷ The same logic can be seen in the context of the convert's kinship severing as well as the non-culpability of his past sins prior to conversion as expressed as “*A convert is like a newborn child*” in the ‘Tractate of Conversion’ in bYev48a. The term, again, stresses the inconsequentiality of his gentile past because he is in a legally *visible* state, which renders his gentile identity legally *invisible* and *inconsequential*. The convert's legal visibility, I suggest, may reveal that this Bavli's notion of the convert as a newborn child may be understood as establishing his subjectivity defined by divine law, which also symbolically represents his Jewish selfhood/personhood.

ritually impure. The law rules that since the seminal emission took place prior to conversion, he is not rendered ritually impure. However, if he converted, and then had an abnormal genital discharge within twenty-four hours of such a seminal emission, he will be rendered ritually impure. This case clearly illustrates that as in *mNeg7:1*, any bodily phenomena that happened to the body of the convert *prior to* his conversion is also viewed as legally *inconsequential*; whatever happened to his/her body *prior to* his/her conversion no longer matters because two bodily phenomena, namely a seminal emission and an abnormal genital discharge, happened in two conceptually different *bodies/selves*, one in the body of a *gentile*, the other in the body of a *Jew*.⁴⁶⁸

As in the case of “*two different mothers*” in *bYev97b* examined above, these Tannaitic texts present a conceptual framework in which the convert’s body is conceptually bifurcated into two different bodies *prior to* or *after* conversion, one in the gentile body the other in the Jewish body (in terms of the impurity of genital discharges). The convert, who still harbors the same body as he did previously when he was a gentile, is now defined conceptually and legally as acquiring a kind of *new body*, a body that allows him to be rendered ritually impure according to the laws of impurity, which means that his newly acquired Jewish *body* thus renders him fully *subject* to the laws of ritual impurity. Now, he is willingly go on to purify himself by reflecting on his own thoughts and actions as a *subject*.⁴⁶⁹ It is the legal *consequentiality* and *visibility* of the Jewish *body/self* that conceptualize and even cultivate its personhood/selfhood, thus rendering his/her *body*

⁴⁶⁸ Ibid., 136-7. *BNid43a* also provides a similar idea that a seminal emission and an abnormal genital discharge took place in “two different bodies” as well, one inconsequential in terms of ritual impurity prior to conversion and the other consequential in the laws of such impurity especially after conversion.

⁴⁶⁹ Here, we can also see how human intention or will shapes the character of reality in these Tannaitic texts. As raised by Eilberg-Schwartz, it is still possible to point out that the convert’s bodily change from gentile to Jew entails his change of *selfhood/personhood* through the exercise of human thought or plan (מחשבה), which also characterizes what Balberg refers to as the “humanization of nature.” Again, this may indicate that one’s status of being rendered impure is determined not only by his own action but also by his own subjective investment in his status in question, which also involves the use of his own rational, cognitive faculties. In the Mishnah, the susceptibility of an object/a person in question to impurity is a clear marker of its being owned with a clear intention for use. That is, one’s subjectivity involves one’s thought or intention in such a conscious way that shapes and changes one’s physical and mental reality. On Balberg’s critique on Eilberg’s view on intention, see “*Purity, Body, and Self*,” 88-89.

ritually impure. This *halakhic* reasoning also suggests that the notion of ritual impurity is discursively constructed as a changeable property or entity in such a way that whoever subordinates oneself to the rabbinic legal system of ritual impurity as a *subject* embodies his/her Jewish *personhood/self* (aka. via conversion). Again, this clearly illustrates that what appears as bodily phenomena during the event of conversion indeed symbolically embodies what makes the body into a person. What constitutes a new Jewish *body/self* along with its legal visibility is defined by one's subordination to the *halakha* as a legal subject.

As these texts show, the notion of the convert as a newborn child harbors a conceptual framework by which conversion is presented as a bodily transformation of the convert, which renders him, as well as his offspring, visibly subject to the law. The transformation of the convert's body via conversion entails the transformation of his kinship; conversion is thus defined by a legal transition from gentile kinship to Jewish one. The laws of levirate marriage, as illustrated in the *baraitot* of the *Bavli* as well as other Tannaitic sources, confirm that the severing of the convert's paternal kinship upon conversion enables the creation of his new body. Furthermore the convert's lack of gentile, paternal kinship, as suggested by the concept of "*A gentile has no paternity*," also illustrates that the inability of a gentile father to be incorporated into the kinship structures of the Israelite community can also be understood as a manifestation of the lack of his paternal body; the convert is not still regarded as the offspring of his biological father because he was not even considered as such prior to conversion. In other words, as the phrase "*A gentile has no paternity*" implies, the body of a gentile father is legally and conceptually nonexistent, and hence is of no consequence to the convert's body even prior to his conversion.

Since the notion of "*A convert is like a newborn child*" suggests the transition from legal invisibility to visibility, which is based on one's subordination to the Torah as a legal subject, his new body, characterized by a newly defined kinship upon conversion, is now rendered legally visible and consequential in terms of the laws that require a legally valid kinship such as the laws of levirate marriage. Again, the texts of the Mishnah and the *baraitot* present a picture in which the convert, who still inhabits in the same body as he did previously, harbors a conceptually new body. What generates or constitutes a new

Jewish body along with its visibility in terms of the laws of incest is defined by one's subordination to the Torah as a legal subject, as all converts must adhere to it when they converted. The inability of converts fathered by a gentile male prior to conversion to observe the laws of levirate marriage may be understood as a manifestation of the gentile father's lack of legal subjectivity because such a gentile, who is not subordinate to the Torah, is not considered a legal subject.

Immersion Revisited: Immersion as the Marker of the Jewish Body/Self

In the first chapter, I have examined that the ritual of immersion (*Te'vila*/טבילה) is established by the *Stam* of the Bavli as a status confirmation ritual that signals the convert's entrance into the ethnic community of Israel. Indicated by the phrase "לכל דבריו" "טבל ועלה הרי הוא כישראל" in the 'Tractate' of Conversion, it is stressed by the *Bavli* that immersion enables the convert to change his fundamental identity from gentile to Israel. In this sense, immersion, understood as an essential component that finalizes the conversion process, is an initiatory rite that enables the convert's entrance into the community of Israel defined by descent. Nevertheless, there has been a scholarly debate over whether immersion is a rite of purification or initiation in terms of its cultic function.⁴⁷⁰ Contrary to the widely-held assumptions, having examined Tannaitic sources that deal with the laws of impurity in relation to the laws of conversion above, I suggest that immersion as a conversion ritual has both initiatory and purificatory functions because it creates a transition into the realm of susceptibility to ritual impurity, which defines the *halakhic* subjectivity to divine law as a whole to which all the members of the community including converts must adhere. In other words, as the Tannaitic laws on bodily impurity demonstrate, the convert, now defined as a *newborn* upon conversion, has a body that potentially becomes susceptible to ritual impurity, hence his obligation to purify himself as a legal subject. Purification by immersion in this respect is symbolized as transformative of the convert's bodily status that eventually defines the new Jewish self.

⁴⁷⁰ Christine Hayes, "Do Converts to Judaism Require Purification?: M. Pes 8:8 – An interpretive Crux Solved," *JSQ* vol. 9 (2002), No.4, 327-352. Lawrence H. Schiffman, "Conversion to Judaism in Tannaitic Halakah," In *Conversion, Inter-marriage, and Jewish Identity* (The Orthodox Forum) (New York: Urim Publications, 2015), 198-202.

The Hebrew Bible does not provide the basis for immersion as an initiation ritual nor the Dead Sea Scrolls, Philo and Josephus do have specific reference to immersion for initiatory purposes. It seems that Mishnah *Pesahim* 8:8 is frequently cited as the only textual evidence that the practice of immersion for converts already took place as early as in the late first century B.C.E. before the destruction of the Second Temple in 70 C.E.⁴⁷¹:

*Pes*8:8

גר שנתגייר בערב פסח. בית שמאי אומרים: טובל ואוכל את פסחו לערב. ובית הלל אומרים: הפורש מן העורלה כפורש מן הקבר.

If a convert/a stranger converted on the day before Passover, the House of Shammai says: He immerses and eats his paschal offering in the evening. But the House of Hillel says: One who departs from his foreskin (that is, a convert) is as impure as one who departs from the [impurity caused by contact with] the grave [that is, a corpse].

The dispute between the House of Hillel and the House of Shammai in this Mishnah concerns the issue of whether a convert, who was circumcised on the fourteenth of Nisan on which the paschal sacrifice was slaughtered, should be eligible to partake the paschal sacrifice on the eve of Passover on which the sacrifice was slaughtered and its blood was sprinkled. According to the view of the House of Shammai, the convert may immerse himself and eat the paschal sacrifice immediately after the completion of his conversion because the clause “*he (the convert) immerses himself and eats his Passover sacrifice*” (את פסחו) (טובל ואוכל) signals full participation in the Passover ritual and exemption of the Second Passover. This view is seemingly based on the assumption that the convert is rendered *ritually impure* immediately upon conversion, hence his obligation for purification on a par with the native-born. In other words, his ritual status at the time of his conversion is determined by his immediate susceptibility to ritual impurity, which guarantees his fitness

⁴⁷¹ Schiffman, “Conversion to Judaism in Tannaitic Halakah,” 199. Harold H. Rowley, “Jewish Proselyte Baptism and the Baptism of John,” in *From Moses to Qumran* (London and New York: Association Press, 1963), 225-235.

as well as eligibility at the time of the slaughter and consumption of the Paschal sacrifice. This, again, suggests that he was not therefore ritually impure prior to conversion.

As indicated by their statement by “*One who departs from his foreskin is as impure as one who departs from a grave*” (הפורש מן העורלה כפורש מן הקבר), the House of Hillel, by contrast, asserts that the new convert’s contraction of corpse impurity while in his gentile state prevents him from fully participating in the Passover ritual as well as consumption of the paschal sacrifice. As the plain meaning of the text suggests, he is thus required to purify himself with sprinkling of water mixed with ashes of the burnt red heifer on the third and seventh days as prescribed in *Num19:18-19*.⁴⁷² This suggests that after the completion of the conversion process (presumably after circumcision), the convert still has to wait seven days and go through the required purification of corpse impurity. Therefore, the new convert may not be eligible to immerse himself and eat the paschal sacrifice because he was not obligated and eligible to participate in the Passover ritual at the time of the sacrificial slaughter and the sprinkling of blood. However, this explanation of the convert as one who becomes defiled like a corpse contaminant (כפורש מן הקבר) does not fully explain why he is not allowed to participate in the Passover ritual; as the preposition “כ”/“like” suggests, the analogy of the convert to a corpse contaminant is purely statutory, which implies that the new convert is not rendered ritually impure immediately upon conversion.⁴⁷³

⁴⁷² Hayes, “Do Converts to Judaism Require Purification?,” 340. Although the Mishnah does not explicitly clarify the legal basis for the convert’s disqualification from the Passover ritual on the first day, it can be deduced from Tosefta *Pisha* 7:13-14 that the convert’s disqualification is derived from his ineligibility at the time of the slaughter and sprinkling on the eve of the Passover, during which he was still a gentile who was surely neither eligible nor obligated to observe the feast.

⁴⁷³ Ibid., 342-343. Although the phrase “*One who departs from his foreskin is as impure as one who departs from a grave*” (הפורש מן העורלה כפורש מן הקבר) seems to be embedded in the notion of gentile contraction of corpse impurity, which Alon misconstrues as inherent, Hayes in short asserts that the analogy of the convert to a gentile person with corpse impurity is designed to express the convert’s disqualification from the first Passover because there is no intrinsic gentile impurity. Again, this analogy suggests that the convert is not understood as ritually defiled at the time of his conversion, which stands contrary to the view of the House of Shammai. Another possible explanation suggested by Hayes is that the phrase may refer to the convert’s suffering of the “metaphorical” death of his family upon conversion, which requires a period of mourning to be emotionally settled and adjusted so that he is ready to participate in his new ritual life. In fact, *Deut21:10-13* provides the basis for the need for a period of mourning and emotional adjustment in the context of the captive women who are about to be assimilated into the Israelite ethnic community. According to

In short, I argue that the centrality of the dispute between the two Houses primarily concerns whether or not the ritual impurity is contracted prior to conversion, which is what defines the convert's ritual fitness as well as legal eligibility for his full participation in the Passover ritual. Having examined the concept of gentile *inconsequentiality* as well as the construction of the Jewish *body/self* in the realm of ritual impurity set forth by the Mishnah presented above, the House of the Shammai seems to suggest that the convert's full fitness and eligibility for the Passover ritual as a legitimate member of the Israelite community is determined primarily by his capacity to be *susceptible* to ritual impurity as a legal *subject*.

The view of the House of Shammai seems to support the idea that the new convert wasn't rendered ritually impure while still in his gentile state as opposed to the view of the House of Hillel because gentiles, as I argued above, are completely outside of the mishnaic system of ritual impurity and hence *inconsequential* in terms of their susceptibility to ritual impurity prior to conversion. Only after his conversion is he allowed to purify himself of whatever impurities that may befall him because conversion automatically initiates the transition into the realm of legal subjectivity by which all the members of the Israelite community including converts must be subject to such laws of impurity. Cohen in fact argues that the immersion required by the House of Shammai serves as a marker of the transition from a state of prohibition from the consumption of the paschal sacrifice to a state of permission for such consumption.⁴⁷⁴ His view seems to be in line with the notion

this explanation, before their full integration into the new ethnic community such as participation in the sacred feast, a long period of emotional adjustment such as lamentation or grieving must suffice. However, this understanding, as Hayes points out, is purely hypothetical, but can account for the fact that the convert is not rendered ritually impure. On gentile corpse contamination derived from ritual impurity of idols, see Alon, "The Levitical Uncleaness of Gentiles," 147, 163-164.

⁴⁷⁴ Shaye. J.D. Cohen, "Is 'Proselyte Baptism' mentioned in the Mishnah?: The Interpretation of m.Pesahim 8:8 (= m. Eduyot 5:2)" in *Pursing the Text*, ed. J.C. Reeves and J. Kampen, JSOTS 184 (Sheffield: Sheffield Academic Press) 1994, 278-292. Cf. Hayes, "Do Converts to Judaism Require Purification?," 332-333; 348-349. However, in his view, the convert in this context is *not* by definition ritually impure. He holds that the immersion required by the House of Shammai is not a purification rite by pointing to the law set forth in *mHag* 3:3, in which a convert, categorized as lacking atonement, is ritually pure along with *onen/a* mourner (which means that he has received ritual purification by immersion but have not yet brought the prescribed sacrifice). However, his view seems to fall short in terms of the susceptibility to ritual impurity that eventually generates legal subjectivity as I articulated above. The legal category of lacking atonement applies only to

of conversion as the transition from the realm of ineligibility/non-fitness into the realm of eligibility/fitness, which may as well characterize the transition from the realm of *insusceptibility* to ritual impurity to the *susceptibility* to ritual impurity. This understanding also upholds the view that conversion is characterized as the transition into the system of legal, *halakhic* subjectivity by which all the members of the community of Israel including converts must be subject to the laws of ritual impurity.⁴⁷⁵ His view confirms that the convert's eligibility to fully participate in the Passover ritual is affirmed by his capacity to be rendered ritually impure and hence his need to receive purification immediately following conversion.

There is another Mishnah that indicates that the convert needs to receive purification by immersion for purification along with those with genital discharges and skin disease in order to ensure full participation in the ritual including but not limited to the Passover. In *mKerim2:1*, the convert is included in the category of those who lack atonement:

mKer2:1

אלו הן מחוסרי כפורים: הזב והזבה והיולדת והמצורע. רבי אליעזר בן יעקב אומר: גר מחוסר כפרה עד שיזרק עליו הדם ונזיר ליינו ותגלחתו וטומאתו.

those in the realm of ritual susceptibility (*i.e.* Jews including converts and mourners (*onen*)) but not those who are outside of the realm of ritual impurity (*i.e.* gentiles). In that sense, although the convert is not technically rendered ritually impure in this context, he is still *potentially* rendered susceptible to whatever types of ritual impurities that fall upon him once he has undergone conversion because immediately upon his conversion, he has already been an integral part of the system of ritual purity set forth by the *halalah*. By implication, the fact that the convert is categorically pure, I suggest, means that he receives purification by immersion from potential impurities immediately following his conversion as Israel but not as a gentile. For that reason, the concept of lacking atonement set out in *mKer2:1* that follows needs to be understood in light of the concept of susceptibility to ritual impurity as a marker of generating legal subjectivity.

⁴⁷⁵ Lavee, "A Convert Is Like A Newborn Child," 251. His view also reflects the understanding of conversion as the transition into the realm of legal subjectivity suggested by Balberg and myself that whatever was the convert's ritual status prior to conversion is utterly *inconsequential* because his/her previous ethnic and ritual status was outside of the purview of the mishnaic system of ritual impurity. As I have repeatedly argued above, this idea significantly resonates with the notion of the convert as a newborn child (גר שנתגייר כקטן שנולד) because the analogy of the convert to a newborn entails the fundamental change of status and identity to such a great extent that his/her former identity as a gentile is entirely *inconsequential* as if no such thing existed.

The following are the category of those who lack atonement (one who has purified himself via immersion but who still needs to bring a sacrifice before eating sacrificial meat): A Zav [a male who has certain types of abnormal genital discharges, which render him impure], a Zavah [a female who has certain types of abnormal genital discharges, distinct from her menses, which render her impure], a woman who has given birth, and a Metzora [one rendered severely impure from an unsightly skin disease; upon recovery and purification he must bring offerings]. Rabbi Eliezer ben Yaakov says: A convert [has the status of] one who lacks atonement until the blood has been sprinkled [on the altar] for him; and Nazir [a person who swears abstention from all grape products like wine, from cutting his hair, and avoidance of corpse impurity] [depends on his sacrifices to be permitted] his wine, his hair-cutting and his impurity.

The legal term “lacking atonement” (*mehsarei kippurim* / ימחוסר כפורים) refers to a category of people who have completed purification by immersion but still remain prohibited from consuming the paschal sacrifice, hence their obligation to bring the prescribed sacrifice for full participation. The convert is categorized as such along with people with abnormal genital discharges (*Zaviim*/זבים), who have likewise completed purification by immersion but still need to bring the prescribed sacrifice. By implication, this seems to imply that just as those with abnormal genital discharges need to purify themselves of their impurities that have befallen them, so too the convert needs to purify himself of defilement by immersion. I suggest that even though they have undergone the required purification process of immersion, this context may suggest that they can *potentially* be rendered ritually impure because they are already included in the covenantal system of ritual impurity.⁴⁷⁶

The Yerushalmi in fact interprets the dispute between the House of Hillel and the House

⁴⁷⁶ Another possible explanation of why the convert is included in the category of those who lack atonement is that immersion can be understood as an initiatory practice, which is completed by bringing the prescribed sacrifice following it. As *bKer8b* indicates, during the Second Temple period, the new convert was to bring the prescribed sacrifice to the Temple to complete full entrance into the community following circumcision and immersion. Although such a practice was no longer performed due to the destruction of the Second Temple in 70 C.E., it was embedded in the system of admittance via conversion that allows the new convert to be integrated into the ethnic community of Israel. On the connection between immersion and the sacrifice as part of an initiatory practice, see Lavee, “A Convert Is Like A Newborn Child,” 249-250.

of Shammai as stemming from diverse views attributed to the unique phrase of “the gentile captive women” that appears in *Num31:19*, examining whether or not the convert can contract ritual impurity such as corpse impurity while he was still a gentile (that is, prior to conversion):

yPes8:8, 63a

מה טעמון דבית שמאי? “אתם ושביכם” (במדבר לא:ט) - מה אתם לא נטמאתם עד שנכנסו לברית, אף שביכם לא נטמאו עד שנכנסו לברית.
מה טעם דבית הלל? “אתם ושביכם” (במדבר לא:ט) - מה אתם טעונין הוייה בשלישי ובשביעי, אף שביכם טעונין הוייה בשלישי ובשביעי.

What is the reason of the House of Shammai? “You and your captives” (Num31:19) – just as you did not become unclean until you entered the covenant, so your captives did not become unclean until they entered the covenant [hence contraction of impurity that occurs prior to conversion does not require a rite of immersion as a process of purification]. What is the reason of the House of Hillel? “You and your captives” – just as you require sprinkling on the 3rd and 7th days, so your captives require sprinkling on the 3rd and 7th days [for contraction of impurity due to contact with a corpse that occurred prior to conversion/while that gentile female was still a gentile].

The *Stam* (an anonymous redactor) of the Yerushalmi attempts to extrapolate the opposing views of the two Houses on the basis of the phrase “you and your captives” that appears in *Num31:19*. Through the midrashic expositions of the phrase, the *Stam* draws an analogy between the Israelite soldiers and the captive (gentile) women, implicitly illustrating that such gentile women become legitimate members of the ethnic community of Israel from the very moment of their capture. This indicates that from the very moment of attaining membership, they are immediately rendered susceptible to ritual impurity just like any other member of the Israelite community, hence their incumbency on all the laws of (im)purity and regulations as subjects of the community.

Each House understands the above premise of the Yerushalmi differently. The House of Hillel interprets the passages of *Num19:18-19* as indicating that the captive women are rendered ritually defiled due to their exposure to corpses. By virtue of the law that

exposure to corpses renders them susceptible to ritual impurity, hence their obligation to purify themselves of such impurity by sprinkling as prescribed in *Num19:18-19*. According to the House of Hillel, a convert is sprinkled immediately following his conversion because of the corpse impurity contracted while he was still a gentile; even though they are not ritually eligible to be purified by sprinkling while in his gentile state, he is *presumed* to contract corpse impurity *prior to conversion*.⁴⁷⁷ But such a view runs against or even undermines the view that gentiles are not intrinsically impure because they are outside of the *halakhic* system of ritual impurity, as I discussed above.

The House of Shammai, on the other hand, asserts that “*you and your captives*” are analogized to the native-born and converts as those who become ritually impure immediately after entering into the covenant; susceptibility to ritual impurity activates *only after* their entrance into the covenant (i.e., conversion). Most importantly, this verse is understood by the *Yerushalmi* as implying that a convert bears *no* ritual impurity *prior to* his conversion (in other words, a gentile is not intrinsically impure due to his ethnic state in and of himself) and that just as the captive women who have become members of the Israelite community may as well be susceptible to ritual impurity just like any other native-born member from the moment of capture, so too the convert who becomes a Jew

⁴⁷⁷ Lieberman, *Tosefta Kifshuta Pisha* 614. Cf. Hayes, “Converts to Judaism require Purification?, ” 348. According to Lieberman, the *Yerushalmi* interprets the dispute between the Houses as a dispute over whether or not a convert can be purified of corpse impurity while yet in his “gentile” state. The view of the House of Hillel concerns only the case of an uncircumcised gentile because he is under the “presumption” of corpse impurity contracted while he is still a gentile. The view of the House of Shammai, in which gentiles are *insusceptible* to impurity prior to conversion, hence their ritual and intrinsic inability to fully participate in the Israelite cultic life, runs against the plain meaning of the biblical text, which is attributed to the House of Hillel. As Hayes points out, this is a typical strategy of midrashic renderings of the biblical text to draw on the text’s particular and contextual implications by analogy. Therefore, this midrashic exposition does not seek to interpret the story and context of *Num31*, but rather attempts to explicate the specific homiletical and legal implications that extend far beyond the plain meaning of the text by de-contextualizing it. The view of the House of Hillel, by contrast, is embedded in the plain meaning of the text, asserting that the passage of *Num31* requires purification for “all those who touched a corpse... you and your captives. Lieberman in fact interprets Bet Hillel’s view as having been based on the plain meaning of the biblical text, stressing that gentiles are also ritually defiled by the touch of a corpse along with the native-born Israelites, hence their need to purify themselves of such contamination by sprinkling as prescribed in *Num19:18-19*. However, Lieberman explains the *Yerushalmi*’s exposition on Bet Hillel’s view as having been based on the understanding that the captive women are retroactively defiled after immersion not due to intrinsic gentile impurity but because of their exposure to corpses. For more, see Lieberman, *Tosefta Kifshuta*, 4:614.

must be subject to the laws of ritual impurity because he is defined as susceptible to ritual impurity from the moment of conversion.

Another significant aspect to the *Yerushalmi*'s midrashic exposition on *Num31:19* in relation to the view of the House of Shammai is that the *Yerushalmi* links entrance to the covenant and conversion to the contraction of ritual impurity. More important is susceptibility to ritual impurity that commences immediately following conversion/entrance into the covenant. This suggests that conversion entails the covenantal relationship that ensures the legal subjectivity defined by susceptibility to ritual impurity, which is in accordance with all the Tannaitic textual evidence that I demonstrated above, in which it is only after conversion that the convert becomes ritually impure, hence his obligation to the laws of impurity as a legitimate member of the community of Israel.

This *Yerushalmi*'s view attributed to the House of Shammai also seems to be reflected in the tradition of the *Bavli* attributed to R. Yehoshua in the 'Tractate' of Conversion of *bYev46b*. The *Bavli* establishes the ritual of immersion as an essential component of conversion by the analogy between the covenant by which Israel's forefathers formed at Mt. Sinai and conversion. By the *Stam*'s logical deduction of Moses' act of sprinkling in *Ex24:8* (In other words, this is also the *Bavli*'s strategy of reworking earlier Tannaitic views to create a new interpretation as discussed in the first chapter), the concept of immersion as part of establishing the divine covenant is consequently reshaped or formed into an essential requirement of conversion. For that reason, immersion can be understood as initiatory at the same time purificatory.⁴⁷⁸

⁴⁷⁸ In fact, there is a Tannaitic tradition that strongly supports Bet Shammai's view in the *Yerushalmi*. In *Sifre Zutta Hukkat 19:10*, the requirement of immersion is linked to the verse of *Num10:10* "This shall be for the Israelites a permanent law..." to extrapolate a view that just as children of the covenant (i.e. Israel) receive sprinkling, so the captive (women) *when she enters the covenant and becomes impure* will receive sprinkling. Here the motif of the divine covenant Israel received at Mt. Sinai is closely associated with the notion of conversion in such a way that those who enter the covenant, the native-born Israelites or converts (captive women) alike, must receive purification by immersion. This tradition, attributed to R. Elazar b. Yaakov and R. Meir, appears to support the view of the House of Shammai that converts are purified only of ritual impurities contracted after conversion because they also enter the covenantal relationship with God as part of the people of Israel (i.e. conversion). Cf. Hayes, "Do Converts to Judaism Require Purification," 348-349 n. 39. Lieberman, *Tosefta Kifshuta*, 4:614. On the analogy between immersion and the divine covenant in

Therefore, purification by immersion upon conversion has far-reaching implications for defining the convert's bodily transformation of his self-identity as Israel. The ritual of immersion as a purificatory rite upon conversion examined above demonstrates that it creates the transition into the realm of susceptibility to ritual impurity, which in turn defines the convert's subjectivity and subordination to the divine law as a member of the people of Israel. As I mentioned above, the convert's being rendered ritually impure upon conversion and subsequent purification entails the fundamental transformation of his body and selfhood to such an extent that what appears in his body upon conversion is symbolically represented as inhabiting a kind of a new body/self that allows him to be rendered ritually impure according to the laws of impurity. Again, his acquisition of the new Jewish *body* that is potentially rendered ritually impure thus suggests that he is fully *subject* to the laws of ritual impurity as a legal *subject*. The ritually impure status of the convert upon conversion marks the legal *consequentiality* and *visibility* of the Jewish *body/self* that conceptualize and even cultivate his personhood/selfhood as Israel.

Conclusion

As I have shown in this inquiry, the rabbinic bodily discourses of ritual impurity associated with conversion allows us to view conversion as conceptually transformative of the convert's *personhood/selfhood* through his/her actual engagement in bodily phenomena upon conversion. The bodily discourses of impurity associated with conversion in several Tannaitic and Amoraic sources in fact suggest that one's *bodily* transformations that took place during the event of conversion is indeed marked as signaling the fundamental change of the convert's *selfhood/personhood*. Since the rabbinic view of the human body as a fluid and mutable entity is deeply embedded in the rabbinic understanding of the body as a cultural construct that shapes what constitutes one's *self* or *personhood*, we can also assume from what Foucault calls *techniques of the self* as the methodology of self-formation and cultivation that enables one to change his *body/self* as a subject. This shows conversion as the discursive construction of the *self*, which is what one has to strive to "*become*" as a *subject* who is consciously invested in certain ways of living through bodily practice.

Sifre Zutta, see Jacob N. Epstein, "Sifre Zutta Parasha Parah," [In Hebrew.] *Tarbiz* 1 (1930): 46-78.

Therefore, the laws of impurity associated with conversion allow us to see that what may appear as one's bodily change during conversion actually entails a fundamental change of his actual *personhood*. In this regard, the inconsequentiality of the convert's previous bodily status in the realm of the impurity system may also suggest that conversion is understood as legally subjecting the gentile's "*body*" / "*self*" in such a discursive way that transforms his body/self into a new Jewish *self*.

Again, the *halakhic* discourse of the body including but not limited to the laws of purity and impurity in association with the laws of conversion especially treats the human body as a cultural construct whose boundaries are fluid and constantly mutative, enabling the convert to even change his kinship/ethnic identity through his subordination to the divine law. Conversion, therefore, should be understood as enabling the convert to acquire a new "*Jewish body*" or "*selfhood*" / "*personhood*" as a legal *subject*, which completely distinguishes himself/herself from his/her previous gentile kin. The very consequences of understanding of Jewishness associated with conversion also allow us to undermine a sharply embedded division between religion and ethnicity in theorizing Jewish identity formation but rather help us better comprehend and appreciate the notion of Jewishness as a discursive cultural construct, whose boundaries are highly fluid, mutable and constantly subject to transformation in any given circumstances. Hence I suggest that conversion may perhaps be understood as the rabbis' discursive attempt to substantiate the intrinsic claims of Jewish personhood through their discourse of the *body*/the *self* vis-à-vis the (*body* of) gentiles.

Conclusion

Conversion as the Act of Classification/Creation

We have learned that conversion serves as a *halakhic* medium that shapes and constructs every facet of the convert's legal, ritual, bodily, and ethnic identity as *Israel*. It is not merely a change of one's piety nor is it one's re-orientation to a new set of beliefs resulting in altered behavior. Conversion is not just a change in one's legal status so that he can enjoy legal equality with the native-born. In short, conversion is the divine act of creation. As we have seen, humanity is entrusted by God to classify the character of the world. As illustrated by the notion of the convert as a newborn child, the convert is classified via conversion as a newborn, thus capable of severing kinship ties with his gentile kin, to whom he is no longer related by virtue of such an act of classification.

We have seen how the sages were concerned with legal stringency in legalizing conversion as a legal procedure demonstrates that the stringent views of the conversion procedure are attributed to earlier Tannaitic sages, which indicates that conversion is understood and thus treated as a stringent legal process classified under certain categories. It is therefore in this conceptual and textual framework that the *Bavli* attempts to classify the convert as a newborn under the general category of Jew/Israel. The *Bavli* appropriates the Mishnah's concept of classification so as to develop conversion as new birth.

Most importantly, conversion as a court-controlled procedure governed and administered by *Beit Din* consisting of sages suggests that it serves as divine agency or proxy in carrying forward the task of the divine creation and that the rabbis who constitute a sole representative body of the entire Jewish community have the powers and authority to carry out the divine task as the divine agents. Because God in effect ascribes humanity powers analogous to His by transferring such powers to them in order to carry out the divine task of creation on His behalf, they can exercise their powers to classify the fundamental reality of the world. This demonstrates that the Mishnah ascribes to humans profound effects to their acts of classification to such an extent that what they classify in effect produces tremendous legal consequences. The rabbis in the *Bavli* can exercise their

power to classify, which is tantamount to the divine acts of creation. It is the rabbis as God's agents that define the classification of conversion as a new creation. By engaging in the task of classifying the convert as a newborn child or more specifically as Israel, they have fulfilled the divine will of creation. Such kinship definition comes as a result of the rabbinic act of classification. Conversion is thus understood as actually constituting a new kinship for the convert.

The notion of the convert as a newborn child harbors a conceptual framework by which conversion is presented as a bodily/self transformation of the convert, which renders him, and his offspring, visibly *subject* to the law. The transformation of the convert's body/self via conversion entails the transformation of his kinship. Conversion is marked by a legal transition from gentile kinship to Jewish one. The severing of the convert's paternal kinship upon conversion enables the creation of his new body. Therefore, conversion generates the transition from legal invisibility to visibility. His new body, characterized by a newly defined kinship upon conversion, is now rendered legally visible and consequential in terms of the laws that require a legally valid kinship. Again, the texts of Mishnah and the *baraitot* present a picture in which the convert, who still inhabits in the same body/self as he did previously, harbors a conceptually new body/self. What generates or constitutes a new Jewish body/self along with its visibility is defined as result of such an act of classification, which is tantamount to creation.

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