

A Reconstructionist View on Patrilineal Descent

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THE STIR CAUSED BY THE MARCH 1983 decision of the (Reform) Central Conference of American Rabbis (CCAR) to equate patrilineal and matrilineal descent is somewhat surprising. The resolution was not the first such statement by that body and, indeed, reflects the practice of Reform Jews over the last century.¹ It was also preceded both by a 1968 resolution of the Federation of Reconstructionist Congregations and Havurot (FRCH) and by a 1979 resolution of the Reconstructionist Rabbinical Association (RRA). That the 1983 CCAR resolution evoked such intense reactions on both sides of the question is, therefore, instructive. One of the arguments of this essay is that patrilineal descent is an idea whose time has arrived — in a way that was not true one or two decades ago, prior to the recent dramatic changes in the social position of North American Jews. It is the persuasive and compelling reasons in favor of patrilineal descent today that spur both its proponents as well as its opponents.

Reconstructionist Resolutions on Patrilineal Descent

The FRCH "Resolution Regarding Children of Mixed Marriages," adopted on May 5, 1968, reads as follows:

... We hereby recommend the following procedures:

The parents of such children born of a Jewish father and a non-Jewish mother should be informed that, in many parts of the Jewish world, their children would not be recognized as Jews without undergoing the traditional forms of conversion.

We should further inform the parents that the Reconstructionist Movement and its affiliated institutions will consider these children Jews if the parents have committed themselves to rear their children as Jews by providing circumcision for boys, Jewish education for boys and girls, and if the children fulfill the requirements of bar/bat mitzvah or confirmation.²

The recent FRCH "Resolution on Inter-marriage," adopted on June 16,

1. See, for example, the 1947 CCAR resolution on mixed marriage and intermarriage, *CCAR Annual*, Volume 57, and the 1961 edition of its *Rabbi's Manual*, p. 112.

2. "Resolution Regarding Children of Mixed Marriages," *Reconstructionist* 34, 8 (5/31/68): 30.

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1984, concludes with a paragraph reaffirming the 1968 resolution “which regards as Jewish a child whose father or mother is Jewish, provided that the child is raised and educated as a Jew.”³

The RRA “Guidelines on Conversion,” adopted on January 16, 1979, concludes with the following paragraph:

If one parent is Jewish, either mother or father, the offspring is to be regarded as Jewish and should undergo the rites prescribed by our tradition (*b’rit milah* for boys, a covenantal naming ceremony for girls); but no special conversion procedure is required.⁴

The paragraph is essentially a clarifying footnote to an extensive discussion about the Reconstructionist approach to the conversion process and was not intended as a comprehensive statement on the topic of patrilineal descent. In context, it indicates that the RRA’s conversion procedures do not apply to infants who have one Jewish parent, when both parents demonstrate, as indicated, their intention to raise the child as a Jew.

In what follows, I will attempt to articulate the Reconstructionist position on patrilineal descent. That position does, as will be seen, overlap with the Reform position.

How and When Should the Tradition be Modified?

The overriding issue at stake in the debate involves the way in which decisions can, and should, be reached concerning Jewish practice. In the halakhic form of Judaism — which was established by the rabbis two millennia ago and which remained the predominant mode of Jewish life until the political emancipation of the Jews in the nineteenth century — the sphere of decision-making was left to the rabbi, the halakhic authority. Decisions were thus rendered on the basis of past precedent, and even innovative decisions required the claim of the past’s authority. The Oral Torah was considered a mere elaboration of the Written Torah, so that the recognized decisions of a rabbinic authority were accorded Sinaitic authority. The *mizvot* were believed to be divine commandments. While it is true that many rabbis continue to make decisions in their own lives on the basis of halakhah, the halakhic system really ended when most Jews stopped making most decisions on the basis of halakhah.

Historical research — such as Professor Cohen’s exemplary discussion here of the matrilineal principle — reveals unfailingly that this traditional claim for the essentially unchanging nature of halakhah is without factual basis. As Professor Cohen shows, our biblical ancestors’ patrilineal practices were altered by the rabbis — perhaps under the influence of

3. “Resolution on Inter-marriage,” *Reconstructionist* 50,1 (September, 1984), p. E of newsletter insert.

4. The “Guidelines on Conversion” document is appended to the RRA booklet, *Guidelines on Inter-marriage*, and is available from the RRA office, Church Road and Greenwood Avenue, Wyncote, PA, 19095.

Roman legal practice, perhaps because of the rabbis' preoccupation with forbidden mixtures. Scholars of the period will continue to establish plausible causes, and their findings illustrate the basic Reconstructionist definition of Judaism: as the evolving civilization of the Jewish people and one which reflects the ways in which the Jewish people have adapted to new circumstances and incorporated new beliefs and practices in their historical odyssey.

Professor Cohen concludes by stating that his historical analysis does not have halakhic implications. That assertion is consistent with the position of the Conservative movement, which promotes the research of historians while maintaining that the halakhah, itself, however it may have changed in the past and may be changed today, is the constant which unifies Jewish history.

Reconstructionists would disagree. It is not only the details of halakhah that have changed over the course of Jewish history. The halakhic system, itself, is a product of historical circumstances — circumstances which no longer apply today, as follows: 1) The Jewish community is no longer governed by halakhic law, as it was in the rabbinic and medieval periods, so that it is inaccurate to regard traditional Jewish practices as binding in a legal sense. 2) Non-Orthodox Jews who accept the historian's perspective cannot accept as literal the traditional claim that halakhah has the imperative force of divine commandment. At most, they can choose to revere the human interpretations of past generations, taking care, of course, that such reverence does not become idolatrous. 3) The very authoritative decision-making structure of the halakhic system contradicts our best contemporary intuitions about the value of the democratic process and the desirability of autonomous decisions reached by responsible individuals.⁵

In light of the diminished authority of halakhah in the contemporary era, Reconstructionists advocate changes in Jewish practice to adapt to unprecedented circumstances, even when no halakhic precedent can be found. (Sometimes the Conservative movement does so also, as in the 1974 *takkanah* of its Committee on Law and Standards allowing women to be counted in the *minyan*.)

The phenomenon of intermarriage among North American Jews provides a striking example of social circumstances that require bold and creative approaches. Because of the unprecedented social integration of Jews in the society at large, because of the radically new bases upon which Jews now choose their spouses, and for a variety of other causes, Jews now marry non-Jews as a matter of course. We can no longer assume that Jews who intermarry do so because of their desire to abandon their Jewish heritage. In an age of secularism, we can no longer assume that the

5. For further elaboration, see Jacob J. Staub, "The Sabbath in Reconstructionism," *JUDAISM* 31, 1 (Winter, 1982): 63-69.

non-Jewish partner is a committed, practicing member of another religious community. In the midst of the feminist revolution, we cannot assume that it is the mother, and not the father or some other adult, who assumes the primary responsibility for childraising. Nor can we assume, as was once possible, that the child of two Jewish parents will be raised as a Jew, in any meaningful sense of that term. Nor should we, living as we do so comfortably in a pluralistic society, make a virtue of retaining the rabbis' presumption that gentiles are of another, forbidden "species."

Given the unprecedented nature of our social circumstances and assuming, in principle, the virtue of modifying Jewish practice to meet those circumstances, there are several reasons for adopting the patrilineal principle.

A Sociological Imperative

First, sociological data indicates that large numbers of children are being raised as Jews even though their mothers were not Jewish at the time of their birth. When the rabbis established the matrilineal principle, the structure of the Jewish community and the surrounding society made the current situation unimaginable. At that time, the de jure status which children were accorded by halakhah matched the de facto reality — the matrilineal principle designated as Jews those children who were being raised as Jews.

When the de facto situation alters, as it has today, and the de jure status is not altered to match the current reality, rabbis are thrust into situations in which they are compelled to act against their better judgment and their desire to be sensitive and welcoming. Consider the frequent case of the son of a non-Jewish mother who has been raised as a Jew and who is required to undergo *hatafat dam b'rit* and *tevilah* prior to becoming bar mizvah. Aside from the physical pain thus caused and the emotional turmoil engendered in a child and family who have lived as Jews, such a requirement communicates powerfully the message that Jewish identity is determined not by the way one's life is lived but, rather, by arbitrary ritual requirements which almost magically change one's persona. The rabbis who instituted the matrilineal principle, when such de jure-de facto discrepancies were virtually nonexistent, could not have intended to communicate such a message.

Embracing the Open Society

Second, the adoption of the patrilineal principle assumes a confident view of the current circumstances of, and future possibilities for, the Jewish community in an open society. Jews argue among themselves about whether North America's open society is a blessing — because it offers economic opportunity, political security, and cultural cross-fertilization — or a curse — because of the allure of assimilation which entices Jews

away from the tradition. Implicit in the advocacy of the patrilineal principle is the belief that, if we choose to live in an open society, we ought to do so confidently. To do otherwise is self-defeating.

Those who recoil at the thought that the patrilineal principle lowers our standards and opens the floodgates to a deluge of syncretism reflect an embattled mentality about the contaminating dangers of those gentiles with whom we interact daily. They assume the essential impossibility of non-ghettoized Jewish life, and one wonders why they have not yet undertaken the *mizvah* of *aliyah*.

Those, on the other hand, who are confident that Jewish life can flourish in an open society are not unaware of the challenges posed by assimilation. They do not, however, assume that Jewish survival is inversely proportional to Jewish integration. Recognizing the rate of intermarriage, they seek, with the patrilineal principle, to increase the permeability of the boundary which separates us from our non-Jewish neighbors, thus making it easier for people to be, and become, Jewish. Otherwise, we confront a situation in which it is easy for Jews to leave the community and incomparably more difficult for non-Jews to join it. For committed, liberal Jews, there are worse tragedies imaginable than the marriage of a Jew to a non-Jew — for example, the loss of tens of thousands of Jews, and their descendants, who want to live Jewish lives but who are barred by a defensive and insensitive community preoccupied with family trees.

The Challenge of Outreach

The third consideration follows from the second. We who are committed to the continuing vibrancy of the Jewish heritage are today afforded a great opportunity. In the current spiritual climate of North America, an increasing number of young people — once alienated by sterile religious school education and enticed by the now waning promise of universalism — are interested in establishing meaningful Jewish lives. They are open to, and, indeed, seeking, new avenues of return to the Jewish community. And they are as likely as not to be romantically involved with, or married to, non-Jews. Some are swept into the yeshivah world by the global wave of fundamentalism to which we are witness today. Most, however, are well-adjusted, socially entrenched, and in search of a form of Jewish renewal which is compatible with the rest of their lives: a form of authentic study of Jewish texts which does not equate sanctity with divine authorship; a mode of Jewish spiritual growth which allows in the transcendent without requiring the surrender of one's autonomy to an absolute authority; membership in a supportive and intimate Jewish community which does not derive its self-definition from the rejection of the *goyim*. Their sense of themselves as returning Jews is such that, when we tell them that their children aren't Jewish, we present them with a version

of Judaism which is not congruent with theirs. When we do so, we should not be surprised if they turn elsewhere in their quest for spiritual fulfillment.

Where they are welcomed, as in Reconstructionist congregations and in *havurot*, intermarried couples and their families are frequently an energizing force. They are often enthusiastically motivated in their learning and practice, precisely because Jewish practice in an intermarried home is challenging and problematical. And studies indicate that a significant percentage of those spouses do choose Judaism after the wedding and the birth of children, and that a significant percentage of the others would be open to Jewish identification were we to reach out to them.⁶

The pre-eminent challenge facing the Jewish community today is the development of ways to reach out and involve those who are peripheral to Judaism — those born Jewish but Jewishly uncommitted as well as those inclined to conversion. We who advocate the adoption of the patrilineal principle believe that the degree to which we are willing to be open to intermarried couples and their families is paradigmatic of our approach to outreach in general.

Gender Equality

Fourth, and most important to many, is the issue of gender equality. In the last ten to fifteen years, we have witnessed the extraordinary and rapid transformation of the non-Orthodox community, so that Jewish practices and positions are at least theoretically open to women. Committed as the Reconstructionists have been, since the movement's beginnings, to the principle of gender equality, we believe that the reconstruction of the Jewish civilization in this respect has only just begun. It will be a long time before Jewish women overcome the structural disability of being heir to a three-thousand-year-old tradition whose liturgy, philosophies, ritual practices, and concept of reality have been shaped by men. Committed liberal Jewish women and men must confront daily a tradition which reflects assumptions about appropriate sex roles which are at odds with both their beliefs and the way they live their lives.

In the case of matrilineal descent, it is Jewish men against whom the halakhic system discriminates. For those who struggle to render Jewish civilization non-sexist, this is yet another hurdle. It is not a matter of counting and balancing the disabilities which Jewish women and men respectively face. All such disabilities reflect the overall, unacceptable sexist assumptions of the tradition. In this case, men are supposed to assume the role of good providers and to leave the childraising to their wives. Today, men raise children, too, and a tradition whose legal assumptions are unliberated risks rapid obsolescence.

6. See, for example, Egon Mayer and Carl Sheingold, *Intermarriage and the Jewish Future* (New York: American Jewish Committee, 1979).

Here, too, we face the consequences of the discrepancy between current de facto reality and de jure assumptions inherited from another age. Given the high rate of divorce today, many Jewish men, divorced from non-Jewish wives, find that they lack the legal recourse to claim custody of the children or even, without custody, to insist that their children be given a Jewish education. On what can they base their claims when halakhic authorities disown their children?

Some Reconstructionists' Misgivings

Not all Reconstructionists have embraced the patrilineal principle unambivalently. Most notable among their concerns is the issue of the unity of *K'lal Yisrael*.⁷ By breaking so starkly with halakhah on a question of personal status, some fear that we are creating an irreversible schism, in which those in the halakhic community will deny the Jewish legitimacy of our children, refuse to allow their children to marry ours, and deny us our rights under Israel's Law of Return. Also, there is concern about the harmful consequences to innocent children who may be raised thinking themselves Jewish, only to find, subsequently, that halakhic Jews reject their identity.

Furthermore, the precise implementation of the patrilineal principle requires further clarification.⁸ There are two issues here. First, is the status of the child of a Jewish father to be made identical to that of a child of a Jewish mother? Traditionally, the child of a Jewish mother is Jewish in all circumstances. Both the 1979 RRA and the 1983 CCAR resolutions seem to imply that birth to a Jewish mother does not in itself suffice as a criterion of Jewish identity, if it is not accompanied by a Jewish upbringing. The 1968 FRCH resolution, by contrast, creates two separate categories — Jewishness by birth to a Jewish mother, and Jewishness by birth to a Jewish father if, and only if, it is accompanied by Jewish upbringing, education, and commitment. The 1984 FRCH reaffirmation of the 1968 FRCH resolution, however, seems to require Jewish upbringing, etc. in both cases. Work is under way to reconcile the two interpretations.

Second, what of the case of an adult — born of a Jewish mother, or a Jewish father, or *both* — who was not raised as a Jew and who now wishes to claim Jewish status? Here, the need is raised for clear guidelines concerning the requirements for Jewish recognition beyond birth or conversion. In the medieval world, a child of Jews would certainly live a Jewish life. Today, having two Jewish parents in no way guarantees even the most rudimentary Jewish identification. It is, thus, clear that the tradi-

7. See Richard A. Hirsh, "Jewish Identity and Patrilineal Descent: Some Second Thoughts," *Reconstructionist* 49, 5 (March, 1984): 27f., reprinted from *Raayonot* (Winter, 1984). For an even more unambiguous reaction by a Reform leader, see Jakob J. Petuchowski, "Toward Sectarianism," *Moment* 8, 8 (September, 1983): 34-36.

8. The discussion of Hirsh, *Op. cit.*, pp. 225-28, 34, is masterful in this regard.

tional birth criterion might be usefully modified. The precise nature of that modification requires further consideration and experience.

Because of these questions, some have suggested that patrilineal descent be applied selectively — that infant conversion should be encouraged (*lekhathilah*) when the opportunity presents itself and the parents are willing, but that, in cases (*bediavad*) where that does not occur and we are presented with children and adults who are Jewish except for conversion, the patrilineal principle should be invoked.⁹

Despite the significance of these misgivings, this writer finds the arguments in favor of patrilineal descent compelling.

K'lal Yisrael is an Unattainable Goal

As members of a numerically small people, with the loss of six million still fresh in our memories, and with the ever present threats of anti-Semites around the globe reminding us of our vulnerability, all Jews warm to the UJA slogan, "We are one." Though we may be united in the front which we present to outsiders and in our support of Israel's security, a united *K'lal Yisrael* is a noble ideal, not an attainable reality. And liberal Jews who are concerned about Jewish unity err when they blame themselves. Liberal Jews possess an ideology which could, indeed, allow for a pluralistic unity in diversity. It is not they who have difficulty according respect to Jewish movements and perspectives which differ from their own. It is, rather, Orthodox Jews who exhibit not the slightest inclination to admit the legitimacy of a united pluralism.

The adoption of patrilineal descent does not endanger Jewish unity. We are too willing to ignore the fact that even so-called "modern" Orthodox rabbis do not openly recognize the validity of conversions performed under non-Orthodox auspices — even when they are performed according to the halakhic requirements of *milah* and *tevilah* by rabbis who are *shomrei Shabbat* and *kashrut*. Because I am a Reconstructionist rabbi, it makes no difference at all to an Orthodox rabbi whether I require the conversion of a non-Jewish mother and her children or if I recognize the children's Jewish identity on the basis of patrilineal descent. Were I to convert those children, they would be forced to submit to re-conversion by an Orthodox rabbi before he considered them sufficiently Jewish for a bar mizvah ceremony or for marriage to another Jew. A Reconstructionist, Reform, or Conservative rabbi cannot, by Orthodox definition, supervise a personal status procedure. In fact, the Orthodox mainstream is marching to the right, further from the non-Orthodox, thus making it more difficult for members of the Orthodox community interested in participating in a broader coalition.

One often encounters Conservative rabbis who labor under the illu-

9. Ibid.

sion that they are viewed differently by the Orthodox than are their Reconstructionist or Reform colleagues. Conservative Judaism may appear halakhic to Conservatives, but it is far from being so recognized by Orthodox Jews, who regard it scornfully. The attempt, last summer, by the Orthodox parties in Israel to demand an amendment to the Law of Return affected Conservative Jews as much as others and is yet another reminder of the Orthodox position.

Some may be surprised that a self-proclaimed Reconstructionist position denies the possibility of a unified *K'lal Yisrael*. After all, Mordecai M. Kaplan, the founder of Reconstructionism, was singularly dedicated to the unification of all Jewish parties. Kaplan's ideal, however, was not the homogenization of differences among Jews. His vision was of a single community center, supported by all Jewish parties, in which multiple services would take place simultaneously in different rooms. His vision, thus, understood the fact that liberal Jews find the Orthodox *mehizah*, for example, as offensive and intolerable as the Orthodox find gender equality.

Thus, Kaplan's noble ideal of *K'lal Yisrael* was based on the assumption that all Jewish parties could agree to disagree and could participate in a united *kehillah* which recognized and encouraged them in their differences. He, more than anyone, never advocated that differences should be repressed for the sake of homogenized unity. Given the current position of most Orthodox Jews and the direction in which they are headed, it is unrealistic to expect that non-Orthodox concessions will alter their views. At most, they seem to accept the non-Orthodox as lapsed Jews who are potential *baalei teshuvah*. Under these circumstances, policies based on the ideal of *K'lal Yisrael* are misguided.

The Vitality of the Historical Process

Contrary to attacks upon liberal Judaism as the minimalistic last step before apostasy, Reform and Reconstructionist Judaism have been responsible for "saving" hundreds of thousands of Jews who would have otherwise been lost to the Jewish community — and for leading them onto paths of increased observance and study. Though Orthodox Jews claim to be the sole legitimate heirs of traditional Judaism, liberal Jews regard the Orthodox as out of step with Jewish authenticity. If the Jewish tradition has, indeed, evolved for three millenia in creative, dramatic, and unpredictable directions, then proponents of continued change and adaptation are more authentic heirs than are advocates of the status quo.

Every serious student of Jewish history knows that one of its constants is repeated factional disputes during which it was impossible to predict the new form of so-called normative Judaism that would emerge. Pharisees and Sadducees, Geonim and Exilarchs, central academies and popular messianic movements, Babylonians and Palestinians, Rabbinites

and Karaites, Maimonideans and anti-Maimonideans, kabbalists and rationalists, Hasidim and *mitnagdim* — the list grows longer with more study and testifies to the dynamic character of our multifaceted heritage. It is not only incorrect to submit to the fallacy that all of these heresies were unsuccessful attempts to supplant a pristine and immutable form of rabbinic Judaism that beat back all challenges; such a fallacy is dangerous to the survival of a vital Jewish tradition. Those who triumphed in each instance appropriated the title of normative Judaism after the fact, often wrote accounts branding their opponents as heretical sectarians, and then proceeded to incorporate elements of their opponents' practices and beliefs into "normative" Judaism.

For those who accept a historical understanding of the evolution of Jewish civilization and who are committed Jews, the ever present imperative is to participate in the ongoing evolution of Judaism, so that it does not become an irrelevant relic. Everyone prefers to triumph, and it is frightening to contemplate the possibility that the dialectics of Jewish history may prove the principle of patrilineal descent, for example, to be a poor idea. But it is far worse for the committed liberal Jew to abandon her/his principles for the sake of unity. It is time to cease according undeserved respect to those who wait an extra decade or century before bowing to the inevitability of historical evolution.

It is time, because the gravity of the stakes involved in the debate is too great to forgive inaction. There are Jews to be reached who will be lost if we insist on adhering inflexibly to halakhic precedent. To do so is to assume that the Jewish tradition lacks the vitality to adapt to the revolutionary social changes which we now confront. Countless thousands of Jews, ripe for return, wait to see if the Jewish community has the courage, wisdom, and sensitivity that our ancestors applied time and time again when they faced revolutionary changes in Jewish circumstances. We are accustomed to crediting them with the remarkable survival of our tradition; time will tell if we are worthy successors.