
The Absence of Patrilineal Descent in Medieval Halakhic Sources

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In this essay I argue that in Medieval halakhic sources patrilineal descent was never considered a factor for determining a child's Jewishness.

Following the 1983 decision of the Reform movement's Central Conference of American Rabbis to recognize as Jewish the children of mixed marriages when the child is raised Jewish, the journal *Judaism* devoted its Winter 1985 issue to a symposium on the topic, with contributions from many of the most prominent scholars in the field. These include an essay by Rabbi Bernard M. Zlotowitz, then the director of the New York Federation of Reform Synagogues and a key proponent of the CCAR decision, on which I will focus.

With the exception of the Orthodox opinion, there is virtual unanimity among scholars that in the early biblical period, patrilineal descent was the accepted norm. At some point in time before the redaction of the Mishnah (late second century) matrilineal descent became the predominant principle in determining whether a child of a mixed marriage is a Jew. Zlotowitz presents evidence that it was Ezra who instituted the change from patrilineal to matrilineal descent; other scholars¹ argue that this happened at a later date as a result of the influence of Roman law. But there is virtual unanimity among rabbinic sages that matrilineal descent is the determining factor for Jewish-gentile intermarriages. That is the argument I would like to reinforce in this essay.

Patrilineal descent, as Zlotowitz correctly notes, is still the more important determinative element to this day as far as priesthood and other intra-Jewish genealogy is concerned.² For instance, a child is considered a *kohen* if his father – not his mother – is a *kohen*. Even regarding intermarriage, Zlotowitz cites a dissenting opinion in the Talmud³ which seems to uphold the patrilineal principle, but it is important to stress that this was clearly a dissenting opinion, and was harshly suppressed in a manner that is rarely contemplated in our day.⁴

Where Zlotowitz falls short is in his attempts to find lingering controversy over this principle in later *halakhic* sources. He cites two supporting sources for his opinion that “the debate continued to rage.” I will address these sources separately.

Zlotowitz's main citation is from the Rama (Moses Isserles) – the pre-eminent *halakhic* authority for Ashkenazic (European) Jewry – in his Mappah comments on Joseph Caro's Shulḥan Arukh. While Zlotowitz's translation is correct, the context of the remarks indicates that this source is not relevant to the question of patrilineal vs. matrilineal debate in intermarriage, but rather to the question of parentage in the context of incest.

Below is the relevant passage in the Shulḥan Arukh, with Caro's text in regular print and Isserles's comments in italics.

His sister is forbidden to him from the Torah, whether from his father's or his mother's side, whether his sister through [his father's subsequent] marriage or by way of [his father's] extra-marital relations (*znut*); even if his father had incestuous/adulterous relations (*ervah*) and thus begat a daughter, she is his sister and she is forbidden to him; except for his sister from [a union of his father with] a slave maiden or a gentile woman.

Isserles: It seems to me that basically (lekhathilah) he may not have relations with her. And there are some who doubt to say that it is only according to biblical law (mid'oraita) that the child is deemed to follow the slave maiden and the gentile woman, but according to the rabbinic law (miderabanan) she is [considered] his child, therefore one should be more stringent from the outset (lekhathilah).⁵

The basic rule established here by Caro is that one is prohibited from having sexual relations with one's sister; to transgress is to breach a severe *ervah* prohibition and a resultant child is deemed a *mamzer*.⁶ This prohibition applies to half-sisters as well, whether the siblings share a father or a mother. But this prohibition, according to Caro, does not extend to a half-sister when her mother is not Jewish.

This rule in the Shulhan Arukh is a bit vague, because it isn't clear what situation Caro is describing. Specifically, did the sister convert to Judaism, or did she remain a gentile? If the sister converted to Judaism then evidently Caro is stating that one is permitted, in this case, to have relations with one's natural half-sister. Presumably he is applying the principle of *ger shenitgayer kekatan shenolad dami*⁷ – that when one converts to Judaism it is as if one is reborn, and familial relations from one's pre-conversion days are severed. Even though the two siblings share a natural father, and we might have considered carrying over some prohibitions from the sister's pre-conversion days,⁸ this rule states that from a halakhic perspective the two are unrelated, hence permitted to marry.

The other way of understanding the situation in the Shulhan Arukh – that the sister never converted and remained a gentile – would presumably lead to the conclusion not that Caro is permitting such a union (clearly the medieval rabbi frowned upon relations with gentile women), but rather that he does not consider such relations to constitute a severe incestuous relationship.

Isserles evidently understood the Shulhan Arukh to be making the former assertion – that one is permitted to marry the sister after she converts.⁹ Several other commentators disagreed with this reading of the Shulhan Arukh.¹⁰ In any event, Isserles is uncomfortable with the notion of permitting a man to have relations with his half-sister, so he adds that this relationship – even if it doesn't constitute the severe prohibition of incest – is still essentially forbidden. Even though by biblical law the child of an intermarriage between a Jewish man and a non-Jewish woman is not deemed to be that man's child, there are “some who doubt” whether by rabbinic law the child is not deemed to be his. As Isserles notes in his Darkei Moshe commentary on the Tur,¹¹ the source of this opinion is the Or Zarua.¹²

But – and this is the key for the patrilineal descent question – the Or Zarua and the Rama never argued that the half-sister is considered Jewish because her father was a Jew. All agree that a child born to a Jewish father and a non-Jewish mother is not Jewish. Rather they were attempting to establish that a child of such a union is to be seen – in some limited extent and only for the sake of a rabbinic prohibition – to be the child of her natural father (and the sister of her natural half-brother).

Zlotowitz's second source is from the Laws of Circumcision in Caro's Shulhan Arukh. The basic rule is that circumcision involves a desecration of Shabbat, and hence is prohibited. But if a child turns eight days old on Shabbat, then on that day the biblical commandment to circumcise him takes precedence over the Sabbatical prohibitions. Of course, this only applies when there is a clear biblical commandment to circumcise, and hence the permission to circumcise on Shabbat does not apply to non-Jews. Caro states:

A Jew who fathered a son by a gentile woman – we do not circumcise [the son] on Shabbat.¹³

Other than Zlotowitz, I know of no other source that infers from here that “the child should be circumcised, but not on the Sabbath.” At most, what this *halakhah* implies is that one is not prohibited from circumcising the child of a Jewish man and a gentile woman, but how such a circumcision might relate to some claim this child might have to Jewishness is vague at best. It seems rather that this rule is stated in contradistinction to the immediately preceding rule in the Shulhan Arukh:

A Jew who became an apostate and fathered a son by a Jewess – we circumcise [the son] on Shabbat.¹⁴

Contrary to the oft-quoted maxim *af-al-pi shehata yisrael hu*,¹⁵ (a Jew – despite having sinned – is nevertheless a Jew) an apostate is, for most intents and purposes, not considered Jewish. The question here is whether we should consider an apostate's infant son to be Jewish, or whether there is a presumption that he will follow in his father's footsteps and continue his family's tradition of apostasy. As the Tur noted several centuries before Caro, because this child's mother was Jewish we consider him to not end up as an apostate¹⁶, hence he is to be circumcised on Shabbat.

The basic principle we learn from these laws is clear: Jews are to be circumcised on Shabbat (even if the father is an apostate), while gentiles are not (even if the father is Jewish). It would be a mistake to infer anything beyond that.

One additional comment on the circumcision issue: Isserles's comment with respect to the laws of excommunication that the courts can rule that one is forbidden to circumcise the child of a banned individual¹⁷ is not relevant here. That was a draconian measure (twinned with the prohibition of burying a banned individual) that can be enacted temporarily to prohibit interaction of others with the banned individual, but it does not affect the basic obligation of circumcision. The father of the child, for instance, is surely obligated by law

to circumcise his son regardless of the excommunication decree¹⁸, and in any event such a ban would not apply unless there were a specific decree by the courts. On the other hand, the Shulḥan Arukh's Laws of Circumcision cited above are directly affected by the basic determination of who is, and who is not, considered Jewish.

In conclusion, since the days of the Mishnah and until the Reconstructionist Movement considered otherwise in the last generation, there has been virtual unanimity among the rabbis that a child naturally inherits his or her religious affiliation from the mother – *i.e.*, matrilineal descent. Divergent opinions among the Talmudic sages were quickly squelched, and in any event did not survive into the later *halakhic* literature.

I am especially indebted to my teacher, Rabbi Bernard M. Zlotowitz, for assisting and encouraging me to write this essay.

¹ See, for instance, Shaye J.D. Cohen, "The Matrilineal Principle in Historical Perspective" in the same issue of *Judaism* (Issue 133, Winter 1985).

² As per the Mishnah in Kiddushin 3:12.

³ PT Yevamot 4a, regarding Jacob of Kfar Niburya who allowed the circumcision of the child of a gentile woman on Shabbat.

⁴ The dissenting rabbi was flogged. According to J. David Bleich (in the same issue of *Judaism*) the dissenter accordingly reversed his opinion, but it seems to me that Bleich is mistaken; what he construes as an expression of regret by the dissenter is – to the contrary – an expression of recalcitrance.

⁵ Shulḥan Arukh Even Haezer 15:10. The translation is mine.

⁶ A *mamzer* is a Jew, albeit an individual with a severe genealogical flaw that prohibits him or her from marrying other Jews. A slave, on the other hand, is generally considered to have a halfway status between Jew and gentile.

⁷ BT Yevamot 22a, 48b, 62a, 97b; Bekhorot 47a.

⁸ According to Jewish law, gentiles are also prohibited from engaging in most forms of incest.

⁹ From Isserles's use of the term *lekhatilah* (from the outset/initially/basically) it follows that he believed Caro was permitting the sexual union in question, not just determining the severity of the prohibition involved.

¹⁰ Specifically the Levush and the Turei Zahav.

¹¹ Tur Even Haezer 156.

¹² Or Zarua, Laws of Yibum and Kiddushin 595 (first paragraph).

¹³ Shulḥan Arukh Yoreh Deah 266:13.

¹⁴ *Ibid.* 266:12.

¹⁵ BT Sanhedrin 44a.

¹⁶ Tur Yoreh Deah 266. Although I have interpreted the Tur's rationale as being concerned with the child – that we presume he will not end up an apostate – an alternative reading in the Tur would conclude that it is the father we are concerned about – that we presume the father is not really an apostate. This hinges on our reading of the unvowelled word *y.tz.a.* as *yeitzei* (will go out) or *yatza* (has gone out). The alternative reading raises other problems.

¹⁷ Shulḥan Arukh Yoreh Deah 334:6.

¹⁸ The language *ein malin* (we do not circumcise) or *malin oto* (we circumcise him) by the laws of circumcision are figures of speech, and are not to be interpreted as applying only to other individuals. See similar language, for instance, in the immediately preceding *halakhah* in the Shulḥan Arukh (YD 266:11).

Rabbi Zlotowitz responds:

Though Mr. Liebman is correct that the Rama is referring to an incestuous relationship, nevertheless the Rama is following the concept of patrilineal descent in that the child follows the status of the father.

Furthermore, though the Shulḥan Arukh prohibits the *brith* of the son of a non-Jewish mother on the Sabbath, it does not preclude having the circumcision on any other day of the week.

