

Family Structure: Halakhic and Anthropological Perspectives

I. Developing a Halakhic Value System

The precise function of halakha as a system, and the role of halakhic norms in the development of a uniquely Jewish world view has long been debated. This complex and controversial topic has been subject to many different treatments throughout the course of Jewish history. The scope of this paper does not permit even a cursory survey of the range of efforts and attitudes that emerged.

However, two marginal extremes accent this range. On one side of the spectrum, Jews who reject the binding authority of halakha argue that it embodies nothing more than broad values, easily substituted for by other performances or emphases. The polar opposite view maintains that a binding halakha has nothing to offer in the area of values, as it is designed to be nothing more than a series of Divinely-imposed normative duties and obligations. The first perspective is embraced by the non-orthodox world; the second is associated with Prof. Y. Leibowitz and his adherents. Traditionally, the more accepted and acceptable approach, with strong roots in the literature of the *rishonim*, has been to attempt to discover a unique Jewish value system within the specific content of halakha.

Ironically however, the methodology employed in this noble and ambitious enterprise often reduced it to an unsatisfying process of "rationalization of the mitzvot" (טעמי המצוות) characterized by different dominant impulses. These included the strong influences of Aristotelian, Neo-Platonic, and Kabbalistic systems of thought in the medieval period, and of Hegelian, Neo-Kantian and other more contemporary currents in the modern era. None of these really accented an unadulterated halakhic-conceptual perspective. Intentions notwithstanding, the effect of these dominant currents relegated halakha to an instrument conveying truths and values developed and rooted elsewhere. Rambam's historicist approach toward טעמי המצוות, in *Moreh Nevukhim* is only the most glaring and unappetizing of these efforts.¹ Even those thinkers who

1. See Rav Soloveitchik's remarks in the *Halakhic Mind*, (Seth Press: New York-London 1986), pp. 92-98. He points out that Rambam's parallel efforts in *Mishneh Torah* are infinitely more satisfying and appear to represent a radically different approach to this entire subject. Prof. I. Twersky in

were cognizant of the problem partially succumbed to the same trap.² Moreover, this enterprise is characterized by the focus on general motifs, rather than specific halakhic details, as Rambam in *Moreh Nevukhim* readily concedes.³ Kabbalistic efforts of *טעמי המצות* did concentrate on halakhic details, but as theosophic representations of the world of the spheres, not in terms of their legal-conceptual normative content.⁴

In our era, a major critique and corrective of these approaches to *טעמי המצות* has been leveled by Rav Yosef Dov Soloveitchik z"l. Rav Soloveitchik has addressed this issue directly in his erudite essay, "The Halakhic Mind",⁵ by implication in his magnificent depiction of "The Halakhic Man", and generally as a leitmotif in many of his addresses, some of which have been recently published in various forms. Rav Soloveitchik's halakhocentric perspective of Jewish values, with its heavy conceptual orientation, is consistent with his halakhic methodology, a product of the "Brisker" approach.⁶

his massive *Introduction to the Code of Maimonides*, (Yale University Press: New Haven and London, 1980) documents this phenomenon at great length.

2. Rabbi Samson Raphael Hirsch's critique of previous efforts *טעמי המצות* comes to mind. For a summary of R. Hirsch's evaluation of Rambam's and M. Mendelsohn's *טעמי המצות*, see N. Rosenblum, *Tradition in an Age of Reform* (Philadelphia, 1976), pp.128-137. Ironically, if unsurprisingly, R. Hirsch's own system has been similarly criticized as overly influenced by Hegelian thought (ibid, pp.174-183). Recently, Rav Soloveitchik's thought has been subjected to similar scrutiny on the grounds that it relies too heavily on neo-Kantian currents. Undoubtedly, any system that utilizes secular nomenclature and categories is suspect. However, the real litmus test is to determine whether the external terminology and categories employed have had undue influence in evaluating the substance of halakha beyond the function of illuminating and transmitting plausible interpretations of halakhic texts and ideas that stand on their own. To discern this a strict methodology would have to be employed. One objective of this paper is to demonstrate this general approach.
3. *Moreh Nevukhim* III:26,31.
4. See J. Katz, *Halakha ve-Kabalah* (Jerusalem, 1984), pp.10-13.
5. See Note 1.
6. In my opinion, there is a world of difference between the aggadic-hashkafic and philosophic approach of Rav Soloveitchik and the aggadic-hashkafic material associated with other distinguished bearers of the Brisker tradition. A glance at the *Beit ha-Levi* on the Torah or at the published comments of R. Velvel Soloveitchik on the Torah suffices to underscore the differences. Whereas, unvarnished halakhic motifs dominate even midrashic interpretations in these works, blurring the line between halakha and aggadah in favor of the former, Rav Yosef Dov Soloveitchik uses halakhic categories to extract a halakhic value system which creates a direct correspondence between halakha and aggadah, but does not gloss over the distinctiveness

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In one passage, he argues the need for "objectification" as the only effective route for pursuing meaningful subjective religious impulses.⁷ It is halakha that plays the critical role in this process.⁸ He identifies the preoccupation with causal, "why" questions, rather than descriptive, "what" questions, the source of true "reconstruction", as the fundamental error of previous efforts to construct a halakhic value system.⁹ The proper methodology for achieving results is also delineated. Rav Soloveitchik proposes the following:

For were we to analyze the mystery of the God-man relation as reflected in the Jewish religious consciousness from both traditional and modern aspects, it would be necessary that we first gather all objectified data at our disposal in the Holy Writ pertaining to divinity and divine attributes; the norms regulating the God-man contact such as the norm of love and fear of God; moments of tension between God and man, as in the case of Job; many halakhic problems where certain attitudes of man towards Divinity have found their expression; all forms of cult, liturgy, prayer; Jewish mysticism, rational philosophy, religious movements, etc. Out of this enormous mass of objectified construct, the underlying subjective aspects could gradually be reconstructed. The latter, in turn, should be compared to central structural facts of modern psychology, typology and the philosophy of religion.

Yet, rarely has the challenge of reconstructing halakhic attitudes and perspectives in a comprehensive manner been undertaken. The appropriate methodology, then, is crucial to the quality of the enterprise. The conclusions, even the categories themselves, must issue from the nuances of halakhic-conceptual analysis as it is applied with full integrity to the details of the halakhot in question. Only then, will the effort to extract a value system, unified insights, and patterns attain religious-halakhic significance.

At the same time, a potential role for interdisciplinary tools and comparative secular frameworks should not be discounted. The issue is a complex one. Hazards and pitfalls are balanced by potential utility. The hazards I refer to are the same vulnerabilities that characterized previous efforts: the superimposing of foreign structures upon halakhic institutions; forcing or contriving details to fit these predefined models; relegating halakha's unique contribution to the periphery; trivializing differences between halakhic and universal approaches.

of each. The present context does not allow for further elaboration of this point.

7. *Halakhic Mind*, p.81.

8. *Ibid*, p.85.

9. *Ibid*, p.86.

We should acknowledge from the outset that fundamental differences in outlook, even in the universal areas of social justice and personal ethics, are likely to distinguish even a this-worldly oriented halakha from the most idealistic secular value system. Furthermore, it is always important to recognize that halakha's value system does not require external endorsement or apologetics.

Yet, definite benefits to a comparative approach are also evident. Issues common to universal human experience, behaviour and nature are likely to receive parallel if not identical treatment. Exposure to other models assists in charting and addressing developments. Awareness of categories, and even of terminology employed in examining parallel phenomena sensitizes one to the nuances of the issue and may provide important insights. Certainly, such ventures serve to sharpen contrasts. Moreover, from a pedagogic perspective, comparative analysis may be effective as an instrument to articulate and communicate Torah sensibilities to secular audiences. Thus, the utility of employing comparative social science models should not be underestimated.

II. Anthropology of Kinship

The issue that I have chosen to address is one which is crucial to every society and culture, kinship. The special Jewish-halakhic emphasis on family relations only heightens the significance of this theme.

In the social sciences of anthropology and sociology, much energy has been expended in the effort to decipher and delineate the dynamics of family relations in various societies. The studies of Clifford Geertz¹⁰ and David Schneider,¹¹ among others, have shed considerable light on the diverse models of family organization and ties, conceptually, practically, and in terms of self-perception. In Jewish historical circles, the issues have only occasionally been analyzed seriously. Prof. S. D. Goitein's superb volume on "The Family" in his comprehensive *Mediterranean Society*,¹² and several sections of Prof. Menahem Ben Sasson's dissertation on the history of Jewish life in Kairouan¹³ are two impressive examples of such an investigation.

Yet, the value of even these studies in illuminating the normative halakhic

10. See, for example, Hildred Geertz and Clifford Geertz, *Kinship in Bali* (University of Chicago Press: Chicago, IL, 1975)
11. David Schneider, *American Kinship: A Cultural Account* (Prentice Hall: Englewood, NJ, 1968).
12. S.D. Goitein, *A Mediterranean Society Volume III* (University of California Press: Los Angeles-London, 1971)
13. M. Ben Sasson, 800-1059 קוראן בימי הביניים: באפריקה הצפונית בימי הביניים, Ph.D. dissertation, Hebrew University, 1983.

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perspective toward kinship is dubious, at best. As C. Geertz has argued persuasively, kinship is not an isolated theory or institution, but one which very much reflects and absorbs from the dominant surrounding culture, and which is shaped by other factors in the overall cultural matrix. Prof. Goitein's study of Mediterranean Jewish society surely demonstrates this, as well. Despite the dominance of halakha in that society, many of its mentalities regarding kinship reflect operating values derived either from the surrounding culture or shaped by unique circumstances and realities of a Jewish world in a hostile, mobile, and commercial setting. A detached investigation into American Jewish or Israeli trends of kinship in our own era, even in Orthodox circles, undoubtedly would yield parallel conclusions.

By way of example, we note that many of the fascinating phenomena and insights brought to light by Prof. Goitein, with respect to a fully observant halakhic Mediterranean world, are of no real halakhic consequence, as the perspectives adduced do not necessarily derive from specific halakhic values. Often times, what emerges actually conflicts with halakhic values.

Goitein notes, for example, the exceptionally powerful notion of the extended family in this world "where the nuclear family is not its root, but a branch only". Naming children after living grandparents, rather than parents, reflects this orientation. He also determines on the basis of an analysis of personal correspondence – both volume and tone – that blood ties are stronger than marital ties in this society. Moreover, fraternal duty plays an exaggerated role in this culture (possibly due to a shorter life span for parents), particularly in terms of protection of sisters even after marriage. "A husband I can get, children I can bear, but a noble brother from where shall I get him". This was a popular slogan in Mediterranean society. Brothers often inherited before wives, confirming this trend. Indeed, there is evidence that wives were often perceived primarily as the mother of children, with the paternal relationship a closer connection. Economic and legal implications were attached to the concept of extended family, as both government and popular opinion held extended relatives responsible for financial commitments, something completely foreign to halakha. Thus, choosing a wife entailed selecting her family in a very real sense – economically, and socially. It is obvious that many of these perspectives, while they are of great interest, are not rooted in halakha, nor do they in any way purport to be.

III. Halakhic Approaches and Models

In halakhic sources, the subject of kinship is rich in material, though in diverse settings and frameworks. This enhances our opportunity to study the

phenomenon, but also presents us with important methodological difficulties and challenges. In this paper, I am constrained to gloss over these factors and considerations. Issues such as the non-uniformity of Talmudic sources; the different orientations of medieval halakhic schools; the interaction of various sub-topics; and the need to consider at least the dual character of most applications should ideally be addressed as part of a more comprehensive treatment of these issues. As I am primarily interested in conveying a programmatic approach to extracting values from halakhic material, I have opted to present some general observations based on an overview of the issues and some of the cumulative patterns that emerge.

A complex but definite portrait of family structure emerges from a rigorous halakhic analysis of a broad spectrum of topics including inheritance (נחלה), mourning (אבלות), ritual defilement of kohanim (טומאת כהנים), validity of witnesses (פסולי קרובה בעדות) etc.

It is obvious that as family-kinship constitutes a complex institution, and inasmuch as the intricate web of interrelationships express themselves differently depending upon the context and application, that more than one perspective will emerge even within a given culture.¹⁴ This multidimensionality is itself an important element of halakha's outlook, though one that can't be developed in this limited framework. For our purposes, it is sufficient to note that at least three general models can be discerned.¹⁵

The first model spotlights the intimate, inner family circle, the nuclear family. The categories of אבילות and טומאת כהנים are controlled by this theme of kinship, as they are restricted to the seven most basic relatives. Indeed, it is significant that in this context the status of wives, the most intimate of relatives from one perspective and yet an artificial or created relationship, is ambiguous and subject to debate.¹⁶

The second model, inheritance, accents extended blood ties, apparently unrestricted. Perhaps, however, this extended and open-ended quality is misleading. The theme of מישמוש נחלה, a process which connects each relative to his closest heir like links in a chain of inheritance, may generate an illusion of distant kinship only because the final outcome, rather than the critical links

14. C. Geertz makes this point persuasively with regard to Bali.

15. Interestingly, these models correspond in many respects to general models developed by anthropologists in their different studies.

16. See, for example, *Rambam, Hilkhhot Avel 2:1* (and *Hilkhhot Yibum 1:7*) and the commentators ad loc. The status of intimate relatives with only a maternal connection is also discussed in this connection.

that determine it, are visible. It is conceivable that the actual substantive process of inheritance is paternal-linear.

Ramban proposes that the father is strikingly omitted in the Torah's description of the chain of inheritance because his role is implicit in any other inheritance relationship except that of the son.¹⁷ He explains as follows:

קיבלו רבותינו כי האב יורש את בנו כאשר מת בלא זרע, ולא הזכיר הכתוב זה ... כי הירושה היא בשלשלת הזרע ביוצאי חלציו, לא בצדדיו. אם כן, ונתתם את נחלתו לאחיו משמע נחלה שהאב יורש בקבר וממנו תבא לאחים.

According to this perspective, even intimate relatives like brothers do not inherit directly but invisibly through the father.

Ra'ah and Ritva both argue that the theme of unrestricted, extended inheritance relationships by means of *מישמוש נחלה* applies finally to all natural Jews, and represents the true foundation for the institution of "death-bed grants" (*מתנת שכיב מרע*). They are thus able to explain the fact that this halakhic mechanism often appears to mimic inheritance, and is also limited to those who are able to inherit, excluding converts - "those ineligible to inherit are ineligible to receive death-bed grants".¹⁸ Even as we are impressed with the scope of this perspective, we should note that it may have an opposite effect, as well. By asserting so inclusive a notion of kinship, the significance of the category is neutralized, even trivialized. If all of *kelal yisrael* constitute one family, the concrete significance of family has been excessively diluted.

At the same time, both the viewpoints of Ra'ah-Ritva and of Ramban, cited above, are by no means uniformly accepted. It is certainly possible that even the invisible process of *מישמוש נחלה* really represents the links that form a real hierarchy of actual, if extended, family ties.

More likely, *נחלה* itself is hardly one dimensional. There are within the broad category of inheritance at least two avenues, one of which constitutes a direct relationship with the deceased, the other which is dependent on the links of *מישמוש נחלה* - whatever its true character. Clearly this issue dominated halakhic

17. *Ramban al ha-Torah* on *Bamidbar* 27:9. Ramban goes on to explain why the Torah intentionally eliminated this reference:

אבל לא רצה לומר ואם אין לו בת ונתתם את נחלתו לאביו, כי דרך ברכה ידבר ולא בנכרתים. ואולי לא היה זה בבאי הארץ שינחול האב את הבן, שבהם ידבר.

18. *Hiddushel ha-Ritva* on *Bava Batra* 149b s.v. *מתנת שכיב מרע*. Ra'ah records the same view in a responsum.

discussions of inheritance since Talmudic times.¹⁹ The status of brothers and uncles, in particular, was analyzed and debated along these lines, with important consequences associated with the resolution of this point. One illustration should suffice. Direct inheritance which bypasses any other intermediate link does not have to satisfy prior legal claims, such as outstanding debts, against the estates of those connecting links.²⁰

In any case, Ramban's other explanation of the father's omission in the Biblical hierarchy of inheritance implies that a brother does inherit directly, not simply through his deceased father.²¹

The capacity to inherit directly from grandparents, without the mediation of parents, is also analyzed in at least one Talmudic passage.²² We read of an individual who sold his future right of inheritance while his father was still alive. This fellow pre-deceased his father. When the father finally died, his grandson was able to inherit the grandfather's estate directly, despite the fact that his father, the son of the deceased, had already sold his own claim to that very inheritance. The Talmud proceeds to inform us as follows:

בן בכור שמכר חלק בכורה בחיי אביו ומת בחיי אביו, בנו מוציא מיד הלקוחות. וזו היא שקשה בדיני ממונות - אביו מוכר, אידו מפיך. וכי תימא הכא נמי אמר מכח

19. Several exchanges in the first five pages of *Yesh Nohalin* (eighth chapter of *Bava Batra*) implicitly discuss the status of brothers and uncles.
20. Several *poskim*, including R. Akiva Eger discuss this theme. For another application, see the discussion in *Kezot ha-Hoshen* 281:2.
21. He explains as follows:

הטעם כי במשפטי הירושה כל המנחיל נוחל כי הקורבה שזה. וכיון שאמר הכתוב שהבן יורש את אביו, גם האב יורש את הבן.

22. *Bava Batra* 159a. I shall discuss this passage in more detail in the course of this essay.

The possible connection between a direct status as heir and a relationship that essentially has its roots in the personal connection between the parties, is one that bears investigation. Of course, this kind of relationship is objectified in the halakha, and does not actually depend on the individual relations between the parties themselves. For that matter, in its objectified form, the parties may not necessarily even coexist at the same time. I hope to elaborate on this theme in a future article. In particular, I believe it can be demonstrated that the unique status of *first-born*, in contrast with *first-born*, is a result of the fact that the first-born's status, even his *first-born* flows from his personal stature within the family structure. Thus, the status of first-born is one that already pertains in the lifetime of the father, while other heirs attain that status only after the *first-born* is deceased.

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- אביו דאבא דקאמינא, אי מכה אביו דאבא קא אתיא, בחלק בכורה מאי עבדתי? ומאי קשיא דלמא מצי אמר מכה אביו דאבא קאמינא ובמקום אב קאמינא.

Remarkably, the grandson is able to bypass his father's transaction on the basis of a direct link to his grandfather to secure even a double portion, though he is entitled to the extra portion only as his father's surrogate by virtue of his father's status as a first-born. The principle of אביו דאבא קאמינא ובמקום אב, while it appears to be contradictory, certainly accents the complexity of the interrelationships, as well as the precarious balance between the motifs of direct and indirect inheritance.

The third, and by far most complex and diverse model of halakhic kinship is represented by פטולי קרובה, the laws that govern the disqualification of testimony due to family ties. The family structure reflected in this context is an extended one, far broader, for example, than represented by אבילות and כהנים. However, it is not unrestricted as is inheritance. At the same time, it is in one respect more inclusive than inheritance, as it includes some non-blood ties, alliance relationships created through marriage.²³

A sensitive reading of the mishnah in *Sanhedrin* (27b) reveals two distinct elements that parallel each of the previous themes of אבילות and נחלה, though substantively the lists in question are not identical to either. Specific relatives are enumerated, implying a direct and more intimate relationship. Father, brothers, uncles and aunts etc. are included in this core list. This group, even as a more intimate circle is more expansive than the relatives subject to אבילות.²⁴

23. Formulating the question in terms of whether פטולי קרובה לעדות constitutes a contraction of the inheritance notion of extended family structure, or an expansion of the nuclear theme reflected in אבילות, is too simplistic. It seems clear that this represents an independent category. The inclusion of a spouse's family reinforces this impression.

The exact parameters of these marital links are detailed by the Talmud and *rishonim* in *Sanhedrin* 27b-29a. They are crucial for a proper understanding of the character of these interrelations. Are we speaking of a real extended direct family relationship transcending blood ties, or merely a notion of disqualification of testimony not only with respect to one's own relatives, but with regard to one's wife's family as well. The issue is certainly not one of semantics, but goes to the very core of kinship ties. It can be demonstrated that different criteria involved in defining the limits to disqualification reveal different orientations with respect to this issue. As the details of this issue are quite involved, I hope to deal with the whole subject of the status of spouses and their families separately.

24. Much, of course, depends on the relationship between the משנה ראשונה and the משנה אחרונה, as well as on a proper understanding of the debate between them. There are those who perceive the category of ראי לירושו in pragmatic terms as a foundation for the exclusion of testimony due

There is also a second tier represented in the mishnah simply by the phrase "הן ובניהן וחתניהן". The definite impression is that the mishnah does not merely seek to save ink and space by providing a formula of inclusion instead of a detailed delineation. Evidently, the use of this formula establishes the non-specified relatives precisely as a second tier, the appendages or extension of the nuclear family already formulated.²⁵ The extended relatives of this group, though limited, unlike *מישמש נחלה*, are able, again in contrast to inheritance, to traverse bloodlines on the basis of *בעל כאשתו*, the connection of husband and wife that allies different families. Thus, *קורבה בעדות* constitutes a more complex and more intriguing model than those previously surveyed. It is to some of the relationships implied by this model that I now turn my attention.

IV. Basis for Disqualification of Relatives in Testimony

Before proceeding further, a core issue in *פסולי קורבה לעדות* that is critical to our analysis must be addressed, if only briefly. On what basis are relatives disqualified from testimony? Two extreme perspectives, each problematic in its own right, are often articulated.

The first theme, which must be integrated into any comprehensive approach to these halakhot, is expressed by the passage in *Bava Batra 159a*. The disqualification is portrayed simply as a *גזירת הכתוב*, presumably unrelated to any suspicion of dishonesty. The Talmud cites the example of Moshe and Aharon to underscore this point:

דלמא גזירת המלך היא - דאידו לא מהימן ואחריני מהימני, ולא משום דמשקר. דאי לא תימא הכי משה ואהרן לדעתנא משום דלא מהימני הוא? אלא גזירת מלך הוא שלא יעידו להם, ה"נ גזירת מלך הוא שלא יעיד על כתב ידו לדעתנא.

While the mishnah in *Sanhedrin* relates to the status of *אורב* and *שווא* in context

to the absence of disinterest in the case. Nimukei Yosef projected this to be Rashi's perspective, as he distinguishes between those who may inherit from but not inherit to a particular relative. Nimukei Yosef, himself, rejects any notion of a one-sided status of family and denies that the pragmatic issue of *לגזירת* is at stake here. Others view the capacity of inheritance as a gauge of family ties of a certain intensity, or simply in terms of distinguishing paternal and maternal kinship. (See, *Rambam, Hilkhut Edut 13:1*, and *Yad Ramah* and *Baal ha-Maor* on *Sanhedrin 27b*.)

25. This view is certainly projected by Rashi (*Sanhedrin 28b*, s.v. *לכדו*). He explains that though there is no tangible difference between *בן גיס* and *בעל אשת גיס*, the mishnah's exclusion of *בן גיס* is to be understood as rejecting not the individual but the conceptual basis of *בן גיס* as the source of his disqualification as a relative. In practice, then, only the son-in-law of a *גיס* is excluded by the mishnah since the son is counted *qua* *אשת גיס*.

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of its enumeration of relatives, this suggestive inclusion needs to be examined in light of the basis for disqualification. Moreover, we adopt the mishnah's conclusion that "אין ישראל נחשד בכך", which may precisely establish the disqualification even of relatives as independent of any such considerations of suspect credibility.

The Talmud in *Sanhedrin* 28a apparently rejects the notion that the disqualification should be limited to testimony on behalf of one's relative, and yet considers seriously the possibility that one could restrict the disqualification to testimony that is detrimental - אשכחן לחובה, לזכות מנא לך. Were the primary theme that of suspect credibility, the opposite should have been the case.²⁶ These indications illustrate one perspective.

At the same time, there are also, however, definite echoes of the view that suspect credibility (חשש שקר) and impartiality (נוגע בדבר) are the foundation of this disqualification. With respect to the status of an ארוסה we find the following discussion in *Sanhedrin* 28b:

אמר רבה בר בר חנה מעיד אדם לאשתו ארוסה. אמר רבינא לא אמרן אלא לאפוקי מינה, אבל לעיולי לה לא מהימן. ולא היא. לא שנא לאפוקי ולא שנא לעיולי לא מהימן. מאי דעתיך - כדאמר ר' חייא בר אמי משמיה דרעלא: אשתו ארוסה לא אונן ולא מטמא לה ... התם בשארו תלה רחמנא, אכתי לאו שארו היא, הכא משום איקרובי דעתא דוא, והא איקרבא דעתיה לגבה.

The fact that the possibility of a selective disqualification, only to her benefit, is entertained points to the factor of self-interest. The Talmud's ultimate conclusion, contrasting "קירוב הרעת" with "שאר" as different motifs in the disqualification of testimony, requires analysis. Does this constitute an absolute rejection of the theme of חשש שקר within the context of קרובה itself. If this be the case, then ארוסה stands outside קרובה. Perhaps, however, ארוסה remains within the general confines of that classification, in which case the theme of credibility is at least partially relevant to the disqualification of relatives. An examination of the various *rishonim* and *poskim* that relate to this text reveals a range of opinion on this matter.²⁷ Indeed, some *rishonim* adopt

26. Regarding this distinction, see the perspectives of *Sefer ha-Hinukh* no.589, and Rambam in *Sefer ha-Mizvot*, *lavin* no. 287. Furthermore, the category of disqualification as a means of insuring protection of the innocent is a pervasive motif in הלכות עדות, especially in נפשות based on such considerations as ושפטו העדה והצילו הערה and ונקי וצדיק אל תדריג.

27. See, for example, the debate between most *poskim* and Mordechai (ad loc.) if the relatives of the ארוסה are also included in the disqualification. The discussion in the *Or Zarua* and *Hagahot Asheri* if even שידוכין generate a disqualification is also significant, as there is certainly no formal

the crucial terminology of "קירוב דעת" employed with respect to ארוסה to explain other nuances of קרובה.²⁸

The initial inclusion of אוהב ושונא in this mishnah, and one interpretation of the significance of ראוי ליורשו as a prominent factor in defining the hierarchy of relatives whose testimony is disqualified reinforce this pragmatic motif.²⁹ *Sefer ha-Hinukh* (no. 589) unreservedly attributes the disqualification of relatives to their lack of objectivity and credibility, though he does so as a form of טעמי המצות. He explains as follows:³⁰

שנמנעו מלקבל עדות הקרובים קצתם על קצתם ... שאין מאמינים הקרובים קצתם על קצתם ... אבל הזכיר בנים ואבות על דרך משל שהם אוהבים מאוד זה את זה ואמר אלו שגם אלו אינם נאמנים זה על זה לחיוב, ואין צריך לומר לפטור ... וע"כ רצה המקום להרחיק ממנו לכלתי עשות דין בני אדם רק בעדות חזק אמיתי נקי מכל חשד, ולחזוק ענין זה הרחיק כל עדות הקרובים אף בחיוב פן תתפשט הרגל עדותם זה על זה לקבלו אף לזכות. והענין הוא מדרכי התורה השלימה שתרחיק לעולם המכשולות והדברים הקרובים להמצא בהם ההיזק אצל בני אדם. ועוד נמצא לנו תועלת אחר בדבר כי מהיות הקרובים שוכנים תמיד זה אצל זה ושיבתם וקמתם יחד, א"א להם להגצל שלא יתקוטטו זה עם זה לפעמים. ואילו יאמינו בעדותם זה על זה אולי כבעטם תמיד אלו עם אלו תעלה חמתם לפי שעה ויבואו לפני הדיין וחיבו את ראשם למלך וכשוך החמה כמעט שיחנק עצמו הקרוב מדאגתו על קרובו ועל מעשדו. וכל דרכי ה' ישרים.

Strikingly, he projects this consideration as the basis of the disqualification even of testimony detrimental to the interests of the relative, as he notes with great psychological insight that relatives may harbor hostility as well as affection, though rarely are they neutral toward one another.

If nothing more than suspect credibility underlies the disqualification of relatives in testimony, the entire family hierarchy is entirely artificial, and it appears to be absolutely irrelevant as a vehicle for exploring halakhic attitudes regarding kinship. It must be reemphasized, however, that while there may be room for the theme of חשש שקר, one can simply not ignore the גוירת הכתוב

status of family engendered by this commitment.

28. This is particularly true of certain *Hakhamei Provence*, like Rabad and Meiri, whose views I shall explore later.
29. We have already alluded to this interpretation of Rashi's one-sided קרובה. Interestingly, *Nimukei Yosef*, in the course of his denouncement of this view, invokes the section in *Bava Batra* regarding the disqualification of Moshe and Aharon.
30. *Sefer ha-Hinukh*, no. 589. In sharp contrast, Rambam concludes his discussion in *Sefer ha-Mizvot* (no. 287) by forcefully affirming the גוירת הכתוב. He states: טעם בשום פנים. This echoes his remarks in *Hilkhot Edut* 13:16.

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motif. Interestingly, *Minhat Hinukh* believed the two approaches to be mutually exclusive. He attacks *Sefer ha-Hinukh's* formulation as contradictory to the passage in *Bava Batra* on these grounds, and even argues that the contrast between the factors of שאר and קירוב העדות, cited earlier, demonstrate this fact.

However, *Minhat Hinukh's* comments notwithstanding, a third approach that reconciles the conflicting evidence is not only possible but compelling. Fortunately, it also provides us with a very productive model for halakhic family structure. As often is the case in halakha, the גזירת הכתוב functions not in complete absence of some rationale, but as a means of objectifying and institutionalizing, and perhaps in the process, subtly altering a particular theme. Thus, it is likely that the גזירת הכתוב formalizes the family dynamic that would generally be responsible for a lack of objectivity in matters that affect the fate of relatives, whether it be to their benefit or detriment. The objectification of this disqualification not only precludes specific exemptions (like Moshe and Aharon) due to a לא פלוג mentality, but possibly also establishes that the grounds for disqualification transcend a crude suspicion of dishonesty and point instead to an unconscious and uncontrollable lack of objectivity as the real root of the problem. The interaction between family ties and interest-identification works in the opposite direction as well. In determining the boundaries of formal family ties, an attempt to objectify the dynamic interaction, including feelings of empathy and the sense of identification between family members is a critical barometer of those very ties. The material outcome of a particular case may not be grounds to suspect false testimony, but the lack of disinterest in the defendant's fate is sufficient grounds to disqualify both independently, and as a gauge of kinship itself. Thus, the formal status of פסול קרובה contrasts with the more pragmatic disqualification of גזירת הכתוב³¹ even as the family hierarchy represented reflects halakha's unique perception of the dynamic interaction of kinship.³²

31. I am proceeding on the assumption that גזירת הכתוב operates on the basis of חשש שקר. The truth is that this itself represents a major debate among the *rishonim* and later *poskim* (See, for example, *rishonim* on *Bava Batra* 43a:45a and *poskim* on *Hoshen Mishpat* no. 37.) The formulation projected by *Ri Migash* (*Bava Batra* 43a, 45a) and *Ir Shushan* (*Shach*, *Hoshen Mishpat* 37:1) and others that גזירת הכתוב itself, is a form of פסול קרובה לעצמו or בעל דבר is especially meaningful to our discussion. It may convey that lack of objectivity rather than credibility is the root of that problem, as well. [However, *Ri Migash*, *Bava Batra* 45a rejects this notion with respect to edut, though he adopts it regarding dayanim.]

32. This approach may account for the different signals of individual *rishonim* as well. Rambam, for example, codifies the theme of גזירת הכתוב and emphatically dismisses the need for specific

This basic approach which views disqualification for testimony as a scheme of kinship is reinforced by the existence of parallels between the controversial cases of פסולי עדות and the other contexts of family structure like אבילות and גחלה.

This particular context, as it integrates a structural – formalistic motif with an experiential dimension (קירוב הרע), affords the unique opportunity for a complex view of the halakhic family. It is not surprising that the subtleties of each of the complex relationships resonate in this framework. The status of sons-in-law and of grandparents are confronted. The relationships of spouses and the implications involved in the merging of families for husbands and wives respectively can be examined through this medium.³³ The question of maternal and paternal family dominance constitutes a very significant theme. The thorny question of a parent's second family – step children and parents, half siblings etc. is addressed in the halakhic treatment of this topic.

Having established that halakhic family structure is reflected in the context of פסול קרובה לעדות, I would like to briefly examine just a few of these relationships as they emerge from the nuances and details of halakhic analysis.

V. Sons-in-law

By definition, son-in-law is an artificial or created relationship. Does he actually integrate into the larger family unit as an independent member by virtue of his relationship with the daughter, or perhaps as the father of grandchildren; or, does he essentially remain only an appendage to those other relationships?

suspicion (*Hilchot Edut* 13:16; *Sefer ha-Mitzvot*, *lavin*, no. 247). Yet in *Sefer ha-Mitzvot* he does acknowledge the problem of lack of objectivity.

There are many benefits to this approach. In addition to harmonizing different themes, it also enhances our appreciation and comprehension of several debates in the Talmud that appear to revolve around drawing the formal line of family interrelation, not the anticipated level of suspicion, or even disinterest. The status of ראשון שלישי (great uncle), of שני שלישי (first cousin once removed), and the classification of grandparents as either ראשון שני or שני שלישי, are cases in point. How one calculates the formula of קרובה does not change the degree of objectivity, but it does establish formal relations.

Finally, those who accent purely formal ties reflect this orientation. Rash's explanation of גיס noted earlier, which stresses the basis for the disqualification as בעל אמות אמו, rather than כן גיס, is only significant in the realm of formal relations, as the actual interest is unaffected by its theoretical source.

33. The possibility that relationships of this kind are not fully reciprocal also registers in this literature. See *Mordechai*, *Or Zarua* and *Hiddushel ha-Ran*.

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36. *Sanhe*

The differences between these formulations is far from semantic or picayune. At stake is an orientation, as well as possible tangible consequences. It is obvious that anthropologists of other societies necessarily contend with this status, as well.

Once the wife is removed from the picture, ties with her parents are severed. Hence, the mishnah declares as follows:

היה קרוב ונתרחק הרי זה כשר

Emotional considerations notwithstanding, no distinction is made in halakhic sources between an acrimonious divorce which obviously undermines any previous relationship, and a tragic death in which the mutual pain and sorrow may actually emotionally bind.³⁴ Once the link is gone, the legal status dissipates. Again, the conceptual basis for this is unclear. It might illustrate that the initial connection to the family was only a tenuous one through his wife. Alternatively, one might argue that as long as the relationship is intact, it operates independently of the wife. However, inasmuch as the relationship is created, it is also reversible, and the formal status of son-in-law also depends on the spousal link. The debate in the mishnah regarding the status of a son-in-law with children is relevant to this point:

רבי יהודה אומר אפילו מתה בתו ויש לו בנים ממנה הרי זה קרוב

The husband of the daughter has been isolated from his status of father of grandchildren. R. Yehudah may believe that the existence of grandchildren, incontrovertible products of the marriage, insures the continued formal status as son-in-law, which in any case operates independently of the wife.³⁵

As noted, his relationship while still connected to the family is an ambiguous one. The popular aphorism "דעתו כבנו" springs to mind when one reads the mishnah which groups sons and sons-in-law together on one level – הן בניהן וזרתיהן. However, the Talmud does express at least one view that belies this aphorism. The possibility is considered that a son-in-law, because he is only artificially linked, is always a step removed from sons – כיון דמעלמא קאתי כדור – אדור דמי.³⁶ Though the specific application is rejected, it is not evident if the orientation that underlies it is equally dismissed.

The status of מזרחנים, in-laws, is also addressed in this framework. The conclusion regarding this relationship, however, is unequivocal. In-laws can testify

34. See H.M. 33:12 and Shach, no.8.

35. It is, of course, also conceivable that he believes that his status remains a dependent one, but that as the father of the grandchildren, rather than as husband. This issue requires more analysis.

36. Sanhedrin 28a.

on behalf or against one another, as their relationship is likened to that of a barrel and its cover (*Sanhedrin 28b*). The ideal here, as expressed in the symbol, is not kinship and the full merging of families into one organic whole, but coordination and cooperation in the furthering of mutual interests of their respective children.³⁷

VI. Grandparents

A halakhic analysis of the relationship between grandparents and grandchildren reflects the uniqueness of that relationship in both of its extremes. On the one hand, it highlights the special bond that bridges and even transcends relational distance between the two. This theme is captured by the halakhic expression - בני בנים הרי הם כבנים. At the same time, halakha, too, recognizes that in some respects a generation gap actually expands the distance between these relatives.

One view expressed in *Bava Batra 128a* sanctions the testimony between grandchildren and grandparents since it defines the relationship between them as *מר בר רב* *אשר באבא דאבא* - ראשון בשלישי. This assessment is particularly striking because the formula used to calculate these levels seems to dictate a different conclusion - ראשון בשני, as children stand in a relation with their parents. The Tosafists and others explain the ruling and the discrepancy in the calculation on the basis of a generation gap - *ויש לומר דאבא דאבא כשר* - *טפי דאיתפלג דרא*.³⁸ While ultimately the status of ראשון בשני is adopted and the disqualification is asserted - *ולית הלכתא כמר בר רב אשר*, this conclusion does not necessarily constitute a rejection of the previous theme. Interestingly, while Tosafot limits the disqualification of testimony to grandparents, *Rashbam* suggest that it extends to anyone in a direct vertical line.³⁹ This position obviously attests to the uniqueness of this link which defies normal methods of classification.

This duality is reflected in the context of נחלה, as well. The Talmud (*Bava Batra 116a-116b*) relates the following exchange:

בעי רמי בר חמא אבי האב ואחי האב - כגון אברהם וישמעאל בנכסי עשו - איזה מהן קודם? אמר רבא ת"ש האב קודם לכל יוצאי יריכו. ורמי בר חמא אגב דורפיה לא עיין בה.

37. With respect to serving as judges, however, in-laws are disqualified, as the subtleties of judgement demand absolute impartiality.

38. *Tosafot Bava Batra 128a s.v. אשר* מר בר רב אשר.

39. *Rashbam and Tosafot Bava Batra 128a s.v. ולית הלכתא*.

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The initial approach that considers that the uncle may be a closer heir despite the fact that a father inherits before a brother is puzzling, indeed. The uncle and grandfather are, after all, the father and brother of the deceased's father, the crucial link between all of these relatives. Apparently, the added generation, or generation gap, is responsible for the discrepancy. Again, it is difficult to assess the conclusion that the grandfather takes precedence. It might reflect the relationship between grand-children and parents. Alternatively, it might simply point to the theme *מישמוש נחלה בקבר* - ירושה בקבר, in which the father as the invisible link dictates the priority of his heirs.

The same section explores a similar circumstance involving the relative priority of a brother and grandfather:

בעי רמי בר חמא אבי האב ואחיו - כגון אברהם ויעקב בנכסי עשו - איזה מהן קודם אמר רבא ת"ש האב קודם לכל יוצאי יריכו, ורמי בר חמא יוצאי יריכו שלו, ולא יוצאי יריכו של בנו. ה"נ מסתברא דקתני זה הכלל כל הקודם בנחלה יוצאי יריכו קודמין. ואילו איתיה ליצחק, יצחק קודם. השתא נמי דליתיה יצחק, יעקב קודם. שמע מינה.

Here, the initial formulation, that a grandfather precedes a brother though sons inherit before fathers, accents the intensity of the relationship with grandparents as it projects them as extended parents, ignoring the generational element completely.⁴⁰ The conclusion, affirming the priority of brothers over grandparents, is uncontroversial and open to any number of explanations.

These Talmudic discussions should be integrated with an analysis of another cited earlier - (*Bava Batra 159a*) קאמינא אבא ובמקום אבא, which establishes the capacity of a grandchild to inherit his grandfather's estate directly, even his father's double portion of that estate, bypassing any obligations or transactions that his father may have undertaken. What emerges is a complex balance between a direct relationship and one that remains anchored in, and continues to be defined by, the mutual link (son-father). Halakha rejects a one dimensional view in favor of a sophisticated and dynamic perspective of this relationship.⁴¹

40. Rashbam certainly interprets along these lines: ונמצא עשו בן אברהם וקודם אברהם ליעקב בנכסי עשו - דהאב קודם לאחיו. Interestingly, Tosafot ad loc. adopts a different approach. They propose that the gemara considered the possibility that a father actually inherits prior to children. If this be so, the priority of grandparents to brothers is nothing more than an application of the routine formula of inheritance hierarchy.

41. I have limited my remarks to the issues of נחלה and קרובה. However, there are a number of other halakhic areas to be explored, including *דיוב פריסה* etc. Obviously, one should not expect a uniform approach to all of these or other issues, as each domain is governed

The generation gap re-surfaces, according to some *rishonim*, in another application. Some halakhists allow a husband to testify in a case involving his wife's grandparents or grandchildren (from a previous husband), though he is disqualified from testimony to her uncle or nephew. How can this be accounted for when we consider that from his wife's perspective, grandparents and grandchildren are relationally closer than either nephews or uncles?⁴² R. Yonah is very much disturbed by this dilemma, and acknowledges his inability to reconcile this view. He formulates his quandary as follows:⁴³

ויש עוד לשאול מה טעם דורגו לבדו, ולמה אינו פוסל לבן דורגו או לבת דורגו שהרי
ב' בראשון הוא עם אשתו. ומאי שנא דלכן אחי אשתו הוא פסול, ומאי שנא דלכן בן
אשתו הוא כשר כיון דקיל כמאן דפסול באבא דאבא בפרק יש גוחלין.

Meiri, however, does suggest a solution. He argues as follows:

ואעפ"י שבנו של דורג אצל אשתו של זה ראשון בשני שאמרו חכמים שאין קירוב
הדעת מתפשט מצד אישות בדורג יותר ממנו. ויש אומרים שכן הדין באבי אביה
ובאותן שהם על מדרגה זו, ואעפ"י שהבעל כאשתו לגמרי להיות ראשונה ראשונים
לו, ושנייה שניים לו שמא לא נאמר אלא באחיה ואחותה שהם בזמן אחד וגדלים
כאחד, אבל בנו של דורג ואף דורג עצמו אין דעתו מתקרבת לו כל כך ברוב הפעמים
כבר נזדקן האישות ובטל דגו, ואין קרבת הדעת מצויה שם. ודיו שנעשה אצלו הבעל
כאשתו להיות שניהם ראשון בראשון ולהיות ראשונה שניים לו, ושנייה שלישיים לו.
וכן הענין לדעת זה באבי אביה והדומים לו שלא דגו חכמים אלא מה שהוא נראה

by its own requirements and definitions.

42. The positions of Mordechai, R. Yonah, and Meiri on *Sanhedrin 28b* form the basis for this discussion. See, also, *Teshuvot ha-Rashba* 5:174.

43. *Hiddushei R. Yonah on Sanhedrin 28b*, s.v. שיעור מד. He proceeds to reject any notion that subjective emotional ties play a function in the disqualification of testimony. He states:

ואין לומר דזה טעם ברור. ומי שאומר שהטעם דפסולים הוא שחכמים ירדו לסוף דעתן של
קרובים ואמרו שאלו אזהבים את אלו ואלו אין אזהבין את אלו. ואין נראין דבריו שלא הזכיר
קירוב הדעת אלא באשתו ארוסה שהגיעו בה משום נוגע בעדות. תדע שהרי אמרו שאין קרובי
ארוסה פסולים אלא לה בלבד הוא פסול להעיד. אלמא דהויא משום נוגע בעדו נגעו בה. ועוד
ראיה מדאמרין בפר' מי שמת היה יודע לו עדות ... דגזירת המלך היא דאי לא תימא הכי משה
ואהרן דלא ליהמני וכו'. ומיהו בארוסה אע"ג משום איקרובי דעתא הוא, אפילו לאפוקי מינה לא
מהימן שלא דילקו חכמים בדבר. ואע"ג שמסוגיא שלפנינו לא נראה בן אלא נראה דקרוב גמור
הוא, יכול אדם לדחוק ולפרש כש"ס. ומה שכתבתי מה טעם ותן אחי אשתו וכן דורגו או ותנו
שכשרים, צ"ע.

Thus, he relates to the conflicting evidence cited earlier in an attempt to establish the role of suspect credibility in this context. *Teshuvot ha-Rashba* provides a parallel to R. Yonah's perspective.

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להם להיות קורבת הדעת מצוייה בניהם. ויש חלקין לפסול באבי אביה ומקל וחומר שהרי פסול הוא לכן אחי חמותו ולאחי חמיו כמו שיתבאר וכל שכן באבי חמיו. ומכל מקום באב בעל האם כשר שאינה מתפשטת אלא מבעל האם לחורג ומן החורג לבעל האם.

Meiri's response invokes the theme of קירוב הדעת, which we have previously noted relates to the more subjective dimension of קורבה פסולי, but which must still operate as an objectification of family hierarchy. The key, again, is to be found in a rejection of mathematical formulae as the sole criterion of family hierarchy. Intangible elements like generation gaps, the likelihood of meaningful interaction, even emotions like nostalgia and resentment must also be calculated into the complex equation of kinship ties.

While the special dynamic between grandparents and their grandchildren neutralizes the generation gap that simultaneously distances them, even to the point of establishing ties that are more intense than indicated by the routine relational formula, the same cannot be expected to apply to their spouses. The experiential dimension of this relationship, critical to the objective קורבה status that it attains, is obviously limited only to blood relatives. The expectation that one might respond to a spouse's grandparent in any way that approximates the emotional attachment and sense of nostalgia that characterizes that relationship is simply unreasonable. Indeed, the generation gap grows ever larger with respect to spouses who initially encounter these relatives at a stage in life where interaction is limited at best for a variety of reasons.⁴⁴ These considerations do not apply with the same force for other relatives, like uncles, with respect to whom the generation gap plays a far less significant role. It is this overall perspective that Meiri advocates. Tosafot invokes the generation gap to justify a similar discrepancy regarding a spouse's great uncle.⁴⁵

With respect to a spouse's grandchildren from a previous marriage, there is perhaps another, equally important consideration. An inevitable complex of emotions – rivalry, resentment etc. – engenders a measure of ambivalence that may cloud these relationships. Often this group of relatives may not be a source of mutual concern and affection, but of tension and divisiveness. Thus, beyond the generation gap motif, there are further grounds to exclude these relatives

44. Obviously, this formulation is an attempt to objectify conditions that are common to most family structures. The fact that particular cases do not follow this pattern is irrelevant, as halakha's interest is precisely to establish an objective and formal hierarchy based on general patterns of interaction. [See *Moreh Nevukhim III:34*]

45. *Tosafot, Sanhedrin 28a s.v. רב*.

from disqualification as witnesses.⁴⁶

VII. Step-Children

The mishnah ascribes an unusual status to step-children, as it asserts that זורגו לכוור – that a step-child's son and son-in-law are not included in the list

46. A close reading of the sources cited earlier demonstrates that there are *rishonim* who distinguish between grandparents and grandchildren in this respect, only disqualifying grandparents. Had it not been for the factor of rivalry etc., one might have anticipated a distinction in the opposite direction. It is also possible that the relationship between grandparents and grandchildren is not fully reciprocal. To project the differences in terms of emotional intensity alone, even if it were quantifiable, would be to gloss over far more significant factors. The perspectives from opposite stages in life are the critical elements. Obviously different levels of maturity, as well as radically different aspirations, preoccupations, and needs dictate not only the very different emotional expressions of that relationship but also its fundamental thrust and content. It is interesting that the theme of בני דוד בני דוד is far more common in halakha than its converse – אבא דאבא. Yet, occasionally the former operates even when the latter does not. This can be accounted for by an awareness that different contexts may relate to different facets of this complex and not always fully reciprocal relationship.

We have previously alluded to Rashi's view that קרבה that is linked to the factor of זיווג may not be fully reciprocal. It is quite possible, Nimukei Yosef's critique notwithstanding, that this is due to the complexity of certain relationships rather than to pragmatic factors. Thus, Rashi perhaps understands that relationships with the maternal branch of the family are perceived differently by each side, as reflected by the one way traffic in נחלה. Indeed, the distinctions between paternal and maternal relatives only exists for the child himself, never for the mother's blood relatives. [Interestingly, Prof. Goitein develops a parallel theme with respect to Mediterranean society. Brothers developed a very strong protective instinct toward their sister. It was often in loco parentis. As a result, maternal uncles felt an unusual measure of responsibility to the children of that sister.] Again, what emerges is a very sophisticated halakhic conception of kinship. Another relationship not fully governed by the principle of reciprocity according to the view of some *rishonim* is the marital link. While the gemara (*Sanhedrin 28b*) speaks of both בעל באשתו אשה, כבעלה – there is a major debate among *rishonim* if these views are identical, and if not, which one is of greater scope. See, for example, *Or Zarua*, *Mordechai*, and *Hiddushei ha-Ran* ad loc. At stake, is the issue if spouses fully integrate into each others family, or remain nothing more than an appendage or the "relative of a relative". The possible distinction between the two directions with respect to this issue may relate to the broader theme of maternal and paternal family units, and also may echo in the issues of yuhasin and nahalah etc. In any case, the entire subject needs to be examined along with the limits of בעל באשתו developed by different *rishonim* in context of ערוה.

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of disqualified relatives. The Talmud considers another view that this same status applies also to a גיס - the husband of a wife's sister. Rif argues that this ruling can only refer to the children that this type of brother-in-law fathered with a previous wife.⁴⁷ The significant implication of this ruling is that the step-children of other relatives listed in the mishnah aside from גיס, are apparently disqualified as witnesses as relatives. This expansive position, however, runs into a significant difficulty, as the Talmud records an interesting debate about the status of a half brother's half brother (the step-child of one's mother where she also has her own child with that husband). We read as follows:

בעל אמו - הוא, ובנו ודחתו. בנו, היינו אחיו אמר רבי ירמיה לא נערכה אלא לאחי האה. ר' חסדא אכשר באחי האה. אמרו ליה לא שמיע לך הא דר' ירמיה? אמר להו לא שמיע לי כלומר לא סבירא לי. אי הכי היינו אחיו תנא אחיו מן האב וקתני אחיו מן האם.

How is it conceivable that the tie with a mother's step-child could be inferior to the link with a brother's, sister's or aunt's step-child? According to Rif's perspective, this, indeed, reflects R. Hisda's view. This discrepancy motivated the rejection of Rif's viewpoint by most *rishonim*.⁴⁸ Rabad, however, proposes an interesting solution⁴⁹

מכל מקום צריכים אנו להכריע בין דברי הגאון ז"ל שמכשיר בכולם בנים מאשה אחרת כמו בבני בעל אמו מאשה אחרת כדברי רב חסדא ובין דברי הרב ז"ל שפוסל בכולן חוץ מגיסו ובני בעל אמו. ודבר הרב ז"ל צריכין טעם מאי שנא הני מהני? ונאמר כי עיקר הפסלות כבר פירשו בו משום איקרוכי דעתא, ולא משום ירושה. אי לכך בעל אמו לא מקרבא דעתיה לגביה כולי האי דלפסיל בגיניה בנים מאשה אחרת דמשנא נמי שנו אהרדי.

Once again, the actual family dynamic is critical. Step-children are a potential

47. Rashi, Tosafot, Baal ha-Maor and Milhamot ha-Shem ad loc. discuss this issue at length and dispute Rif's view. They insist that the reference is to the children of one's sister-in-law which are actually disqualified on the basis of another relationship cited in the mishnah - בעל אחות אמו. The concrete significance of the special status of גיס is that his son-in-law is excluded from the disqualification. As a result of this view, they argue that the stepchildren of all other relatives mentioned in the mishnah are also excluded from the disqualification list.
48. Or Zarua offers an interesting suggestion to resolve this dilemma. He distinguishes between relationships that are based on an artificial marriage link and those that are routed through blood ties.

49. *Teshuvot ha-Rabad*, no. 33.

source of tension between a husband and wife. In this particular case, Rabad focuses on the relationship between the child and his step-father which certainly may be characterized by ambivalence. The connection between these relatives, and between the respective children of each spouse may even deteriorate into hatred. In addition to the strained relationship with a step-father, one could speculate about other factors that may also contribute to animosity and certainly to rivalry. In any case, it is precisely the intimacy of the connection (to one's mother) and some times the proximity of living arrangements that heightens these tensions. Ironically, the step-children of more distant relatives do not carry the same kind of emotional baggage, and, consequently, may qualify more easily as extended family. It is, then, specifically *בן דורגו* and *אחי האב* that are excluded in Rif's scheme.⁵⁰

The mother's stepchild is of interest from another point of view, as well. The dynamic and formal elements converge beyond what we have previously noted in examining Rabad's comments. Or Zarua, for example, cites Riva's view that R. Yirmiyah only would have disqualified the mother's stepchild vis-a-vis her child if another son existed who was the half brother of each. He states as follows:

ודוקא שיש לבעל אמו בן מאמו שהוא אחיו מאמו, ויש לו נמי בן מאשה אחרת.
דמתוך קירוב דעת שיש לו לאחיו מאמו, אוהב נמי לאחיו מאשה אחרת. אבל אין לו
לבעל אמו בן מאמו כשר אף לר' ירמיה דלאו אחיו הוא ולא אחי אחיו הוא.

Again, the motif of *קירוב הדעת* looms large in this scheme. Moreover, the common brother proves to be the true source of the family link in this

50. Rabad explains *ניסו לבדו* in terms of the distance of the actual initial link. In general, an examination of the limits of *כאשתו בעל* reveals that the more distant the connection, the more significant blood ties become. An intimate family circle might include those who have marital ties, as the level of intense interaction is the crucial defining component. As the interaction wanes, the formality of the blood ties looms larger. The general approach of Rabad, including the citation of *R. Yonah and Rashba (Teshuvot ha-Rashba 5:174)* reject not only the details, but the perspective that projects *קירוב הדעת* as a central motif, is reminiscent of Melri's explanation of *לבדו* discussed earlier. They view this approach as undermining the *גורם*, as formulated in *Bava Batra 159a*. It is my contention that these Provencal scholars merely reject rigid relational formulae as the sole basis for establishing a formal hierarchy of kinship. Instead, they integrate the subtle dynamic of different interrelationships into the calculation of an objective hierarchy of family structure that is far more complex, but also more effectively approximates both real and ideal family relations. The effect of this is to produce an invaluable model of kinship.

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For other halakhists, it is possible to propose that the significant tie is through the mother. Still it is possible that the mother's own relationship with her stepchild is altered by virtue of his blood relationship with her own son.⁵¹ Impressively, this subtle consideration, too, is reflected in halakha's treatment of the issue. Rabad certainly focuses on the mother's role. He further argues that according to Rif's general scheme stepchildren are only disqualified when biological children also exist. Moreover, Rabad argues that any קרבה that exists in any of these relationships, is limited to the mother's lifetime. He explains:

ועכשיו שהעמדנו הדברים כדעת הרב דל שכל הקרובים יש להם בנים וחתנים אפילו מאשה אחרת דרך מבעל אמו וגיסו. צריך אתה לדעת ולהזהר שלא תטעה בדברי ר' ירמיה שאמר לא נצרכה אלא לאחי האב. ופשוטן של דברים נראה שאין אחי האב אלא בשבילו. ולזה הענין יחלש הטעם שפירשנו בבעל אמו ובגיסו דלא מיקרב דעתיהו כולי האי דליפסול לזה בנים מאשה אחר. ומה לנו באיקרובי דעתיהו דידרוה. הלא הבנים ודאי מיקרבי אהרדיז אינו כן. שאין הפסלות באה לו אלא מצד האמהות. שאם תאמר מפני האב באה לו הפסלות, מעתה אפילו מתה אמו אם יש שם ממנה יהיו אחיו מאשה אחרת פסולין לו ... אלא לאו שמע מינה שאין הפסלות באה לו אלא בשביל האמהות. וכל זמן שהאמהות קיימות יש שם קירוב הדעת אפילו עם בנים מאשה אחרת. מתו האמהות, נתרחק הכל לדעת חכמים ... כשאנו פוסלים בנים מאשה אחרת, דוקא שהאמהות קיימות ויש לו בנים מהם. שבשביל אלו אוהב את אלו, אבל אם אין לו בנים מהאמהות הקרובות ויש לו בנים מאשה אחרת, לא פסילו לזה. משום הכי אמר לאחי האב ותרוייהו בעינן לזה. והשתא לדעת הרב דל דפסלינן בשאר קרובים בנים וחתנים מאשה אחרת, דוקא דהאמהות קיימות ויש להם בנים, אי לא לא.

Apparently, the mother is the glue that holds together these precarious families. Once she is removed from the family portrait, the relationships themselves begin to unravel. The halakhic emphasis on the mother's function reflects the true essence of family ties. Again, both the formal and interactive aspects of family structure emerge.

VIII. Conclusion

Clifford Geertz chronicles three schools of kinship theory. The affective approach to kinship asserts that the nuclear family is predominant, and that the emotional ties it represents are paradigmatic. All other forms of kinship are metaphorical, or attenuated extensions of this fundamanel model. Another perspective, sometimes described as the normative school of kinship theory or the British school, focuses not on the passions of the immediate family, but the

51. Undoubtedly, this is the case whether or not it is deemed to be halakhically significant.

pragmatic need for broader social organization along formal and legal lines. Marriage alliances are crucial to this effort. Finally, Geertz notes the cognitive orientation of many American anthropologists whose primary concentration is the psychological and intellectual implications of kinship – the question of how one defines and perceives himself *vis-a-vis* other members of his family unit.

Certainly, the complex halakhic perspective of kinship which we have only partially examined highlights each of these themes, even as it interconnects them. Much more needs to be done if we are to extract a comprehensive picture of halakhic kinship. Hopefully, the methodology to be employed has been demonstrated.

Rav Soloveitchik concludes his essay *The Halakhic Mind* with an ambitious challenge. As noted previously, the challenge has rarely been met. He asserts:⁵²

To this end there is only a single source from which a Jewish philosophical Weltanschauung could emerge: the objective order – the halakhah. In passing onward from the halakhah and other objective constructs to a limitless subjective flux, we might possibly penetrate the basic structure of our religious consciousness. We might also evolve cognitive tendencies and aspects of our world interpretation and gradually grasp the mysteries of the religious halakhic act. Problems of freedom, causality, God-man relationship, creation, and nihility would be illuminated by halakhic principles. A new light could be shed on our apprehension of reality. The halakhic compass would also guide us through the lanes of medieval philosophy and reveal structural standards by which to judge and evaluate the philosophical thought of that golden age. It would help us discriminate between the living and the dead in Jewish philosophy. What, for instance, is of halakhic nature in the Guide and the Kuzari, and what merely an echo of Platonic-Aristotelian philosophy? The purpose of such an analysis is not to eliminate non-Jewish elements. Far from it, for the blend of Greek and Jewish thought has oftentimes been truly magnificent. However, by tracing the Jewish trends and comparing them to the non-Jewish, we shall enrich our outlook and knowledge. Modern Jewish philosophy must be nurtured on the historical religious consciousness that has been projected onto a fixed objective screen. *Out of the sources of halakhah, a new world view awaits formulation.*⁵³

52. *Halakhic Mind*, pp. 101–102.

53. The italics are mine.

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