

# “Patrilineal Descent” and Same-Sex Parents: New Definitions of Identity

BY RENÉE BAUER

**W**hen the Reconstructionist (1968/79) and Reform (1983) movements adopted their resolutions affirming “patrilineal descent,” the frame of reference was exclusively heterosexual. When examined in light of the welcoming of same-sex couples into the progressive Jewish community, the failure of those resolutions to address the circumstances of such couples becomes evident. This essay examines how new understandings of “identity,” of “family” and of “parents” necessitates a rethinking of the “patrilineal” positions.

## The Situation

Ruth and Kate are active members of their local Reconstructionist synagogue, where they celebrated their wedding three years ago. Ruth is Jewish and Kate is not. The couple comes to see the rabbi to discuss the arrival of their first child. Kate is five months pregnant and the couple is overjoyed that their dream to have children together is coming true. The child was conceived with sperm from an anonymous, non-Jewish

donor. The couple has a Jewish home and has been living an active Jewish life together for years. The decision to raise their child as a Jew was an easy one, despite the fact that Kate is not Jewish. Kate has thought about converting but has decided that it would be too painful for her Catholic mother. She has worked hard to create a loving and open relationship with her mother since she came out as a lesbian and thinks that becoming Jewish would ruin the progress she has made.

Ruth and Kate had originally made an appointment with their rabbi to discuss a welcoming/*brit* ceremony they were planning for their baby. However, a few days before the appointment, a larger issue arose. A friend of theirs told them that their baby would not be Jewish because Kate is not Jewish. They were surprised and hurt when they heard this and want to know what their rabbi thinks. They have two questions: Will the baby be Jewish at the time of its birth? Must the baby go through a conversion ritual in addition to a *brit*/welcoming ceremony to be considered Jewish?

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## **Ruth's Position**

Ruth is defensive and hurt when she comes to talk to the rabbi. She explains that the process of having a child has been more difficult than she had anticipated because the larger society does not recognize her as a soon-to-be parent. She has been learning about the procedures for second parent adoption, and is angry that the courts will require that a social worker visit her and Kate to deem whether they have an appropriate home for an adoption. She perceives these laws as homophobic and they infuriate her.

She says to the rabbi, "Any straight woman can get knocked up without giving it a second thought and everyone considers her a mother. Kate and I have been talking for years about having children and how we want to raise them. But I need the courts to sanction my family." The language of adoption seems wrong to her. She is not "adopting" someone else's child. She and her partner have created this baby together.

She heard about a lesbian couple in San Francisco that received an edict from a judge that made the non-birth mother a legal parent before the baby was born. She knows that the courts in Pennsylvania would not grant this ruling, but she wishes they would. Such a ruling would acknowledge that the baby was hers from the time of conception, and recognize that the intentionality of the couple from the beginning has been that both women will be equal parents of the child that Kate is carrying.

The pain Ruth has felt in secular society heightens her feelings of anger and sense of being threatened when she learns that Jewish community may question the identity of her child. She had assumed that her baby will be recognized as a Jew because s/he will have a Jewish mother: her. For Ruth, requiring conversion is a message that the Jewish community does not see her as a parent of the child. It is equivalent in her eyes to the civil courts requiring adoption. It would tell her that her family needs to be sanctioned in a way that is not required for heterosexual families. Ruth tells the rabbi that she is dedicated to living a Jewish life and has created a Jewish home with her partner despite the fact that many parts of the Jewish community will not accept their family. She has always felt validated and welcomed as a lesbian at this synagogue and assumes her rabbi will agree with her point of view.

## **Kate's Position**

Kate is less angry than Ruth. She has made a commitment to raise their child as a Jew and is concerned that things be done correctly to assure that the child is acknowledged as a Jew. She does not want her decision not to convert to be an obstacle for her child. Yet she is also very protective of Ruth and of her status as the baby's second parent. She is clear that the baby she is carrying is just as much Ruth's child as it is hers, and she is sensitive about any implication that this is not the case. Kate tells the rabbi that even though civil law views her as a single mother having a baby out of

wedlock she does not perceive it this way at all. She would not have gotten pregnant had she not been in a committed relationship with Ruth. Kate has witnessed the tension that can arise in lesbian couples who have children when the non-birth mother feels insecure about her status as parent. She and Ruth have been discussing these issues in depth and are trying to assure that they do not have this experience.

## Ruth's Parents

Ruth explains that her parents see this baby as their grandchild. After Ruth and Kate's wedding, Ruth had many conversations with her parents about her intention to have a family. It took some time and processing for her parents to understand that when she and Kate had a child, regardless of who bore the child, it would be their grandchild. The fact that they have embraced this future child as their own is, for Ruth, the final step in their full acceptance of her lesbian identity and her partnership. Ruth explains to the rabbi that she does not know how she could explain to her parents that the baby must be converted without undermining her hard work to have them see this baby as their grandchild.

## The Rabbi Responds

This is a complicated issue for a rabbi to respond to, because certain primary values are in conflict. The Reconstructionist value of creating inclusive communities and embracing gay and lesbian Jews is in tension with

the halakhic understanding of who is born a Jew, and who requires conversion. Reconstructionist communities acknowledge the validity of same-sex families yet these families are invisible in *halakha*. Therefore, trying to reconcile the range of contemporary understandings of family with the traditional Jewish notion of family is difficult.

For liberal rabbis, personal status questions (of which this case is one) are often the most complex and troublesome questions they face. The issue of whether this baby will be considered Jewish at birth is a question of status and not of identity. Status is decided by the community and not by the individual. Furthermore, it presents a binary choice. Either a person is Jewish or is not Jewish. There is no in-between when it comes to status within a given Jewish community.

Identity, however, is self-determined and can be fluid. One can identify Jewishly in different ways and to different degrees throughout one's lifetime. Being raised with a Jewish education in a Jewish home could result in a child having a strong Jewish identity. But without either having Jewish parents (or at least one Jewish parent, female by tradition, male or female according to the patrilineal policies) or a conversion, the child would not have Jewish status. Lay people in the liberal Jewish world often focus primarily on Jewish identity, but rabbis must consider issues of status as well as of identity. What is difficult for the rabbi is that while she certainly needs to act in a pastoral way, the couple wants a specific answer about the status of their child. The

rabbi is therefore required to function more in the role of a *posek* (decisor) than a pastor.

## Is This Adoption?

To determine how to respond to this case, the rabbi would need to look for precedents in traditional Jewish sources as well as in Reconstructionist understandings of identity, status and lineality. First it must be determined into which (if any) traditional category this baby fits, since traditionally there is no category for a child born to two mothers. The case that would seem most closely to match the situation of Ruth and Kate's baby would be that of an adopted child. The United States legal system has used the adoption statutes to determine the rights of the non-birth parent in a same-gender couple. Adoption in civil and Jewish law is a classification for children who are parented by an adult who is not biologically related to them. Ruth indeed will be parenting a child to whom she is not genetically related, so looking for halakhic and contemporary discussions around adoption to determine how to respond to this case would be logical.

So we need to look at how Jewish law defines adoption. Rabbi Isaac Klein succinctly explains the *halakha* when he writes, "In Jewish tradition . . . ties of blood and kinship can neither be destroyed nor created. Therefore, an adopted child has the same status as his natural father."<sup>1</sup> And "[if] the [natural] mother is not Jewish . . . the child is required to undergo conversion."<sup>2</sup> Thus, according to *halakha* the case of Ruth

and Kate's baby should be treated the same as the case of an adopted child because both the baby's biological mother and biological father are not Jewish. Kate and Ruth's baby would need to undergo conversion to be considered a Jew under Jewish law.

The idea that adopted babies need to undergo conversion has troubled many couples who adopt and is also a matter of concern to some Reconstructionist rabbis who, while respecting the traditional requirement of conversion for adopted children, are sympathetic to and want to respect the affirmation of some adoptive parents that bringing the child into their Jewish family establishes the child's Jewish identity without conversion. Many such adoptive parents feel that the Jewish community is questioning whether their child is really part of the new adoptive family. Similar to Ruth, adoptive parents can fear that they will not be recognized as the real parents of the new baby. Additionally, they often struggle emotionally as they go through the adoption process.

## Adoption as Conversion

Rabbi Michael Fessler suggests one way of addressing the adoptive parents' painful feelings while still remaining loyal to the halakhic requirement for conversion. He transvalues the conversion ritual and makes it into an adoption ceremony.<sup>3</sup> Since Ruth and Kate's baby is seen by *halakha* as an adopted baby it is appropriate to consider using the rituals associated with conversion for them because they have the potential to address the couple's emotional

concerns while solving their halakhic problem.

Yet, although the case of adoptive parents and the case of lesbian mothers have many similarities, this new ritual does not satisfy the unique issues in this particular scenario. The new understanding Fessler places on the ceremony that includes immersion, *bet din* and circumcision is that the ceremony “would focus on welcoming the child into his or her new family and effecting a change of status of a different kind: Jewish adoption as the transfer of lineage, such that the adoptive parents are considered the real parents.”<sup>4</sup> The problem with applying this idea to the lesbian family is that there is no transfer from one family to another. There is an intact family that has decided to conceive a child together. Therefore, the proposed adoption ritual cannot be used for Ruth and Kate’s child.

There are important spiritual needs that are met by Rabbi Fessler’s ritual. There is often a compelling need for adoptive parents to ritualize the inclusion of an adoptive child into their family. It is true that adopting a child, even an infant, is different from birthing a child. Pregnancy and birth are powerful experiences that prepare people to be parents and connect them to the child in a way that the adoption process normally does not. It can be helpful to mark this difference without giving it lower value. However, this is not relevant for Ruth and Kate because they are experiencing pregnancy and birth together. They are not incorporating someone else’s child into their family and therefore it must be questioned

whether adoption is the correct paradigm to use to decide upon the status of Kate and Ruth’s future child.

## Civil Law Positions

The civil legal understanding of adoption differs from the halakhic understanding and casts further doubt about viewing Ruth and Kate’s family in the same category as an adoptive family. Explaining New York’s state adoption law, Rabbi Klein writes:

Though adoption is a legal fiction whereby a person who is a member of one family becomes a member of another family, in classical law, in the laws of the West today, the fiction became a fact, and “an adopted child assumes towards adoptive parents the status of a natural child, and assumes towards natural parents the status of a stranger so far as legal obligations are concerned, and adoptive parents become clothed in law with responsibilities of natural parents” (New York State Domestic Relations Law, §110, in McKinney, *Consolidated Laws of New York*, bk 14, 255).<sup>5</sup>

According to this civil description of adoption, Ruth and Kate’s baby is not an adopted child. The baby is not leaving one family to become part of a new one. The other natural parent, besides Kate, is the sperm donor. The sperm donor is not even aware that his sperm has led to conception. He is certainly not “another family.” He gave up his

legal rights to any future child when he donated at the sperm bank. The baby, since conception, has been part of Ruth and Kate's family. It therefore seems misguided that the United States legal system classifies same-gender families as adoptive families. Because the Reconstructionist movement is committed to embracing gays and lesbians and supporting their full legal equality in civil society, Reconstructionist rabbis are challenged to question these civil definitions of family, because they do not mirror the movement's embrace of same-sex families. With the emergence of new family structures new legal classifications, both civil and Jewish, must be created in order to make fair decisions.

## **Resolutions on Patrilineal Descent**

The models of adoption, traditional and contemporary, are not the right models from which to make the decision about the status of Ruth and Kate's baby. Another framework must be examined. The Reform and Reconstructionist resolutions on ambilineal<sup>6</sup> descent, commonly referred to as "patrilineal descent," may apply to this case. These resolutions address the status of children with one Jewish parent. According to *halakha* only children who are born of a Jewish mother are considered Jewish. But both the Reform and Reconstructionist movements have agreed to recognize as a Jew any child who is born to one Jewish parent and who is identified and raised as a Jew.

Ruth and Kate are clear that they will

raise their child with a Jewish education and the appropriate Jewish lifecycle rituals. The question here is whether the case of lesbian mothers where one partner is not Jewish can be included under these resolutions. When the (Reform) Central Conference of American Rabbis resolution states that "the child of one Jewish parent is under the presumption of Jewish descent,"<sup>7</sup> or when the Reconstructionist Rabbinical Association's "Guidelines on Conversion" state, "If one parent is Jewish, either mother or father, the offspring is to be regarded as Jewish . . . no special conversion procedure is required,"<sup>8</sup> are these statements concerned strictly with biology?

When these positions were adopted, same-sex parents were not in the minds of the rabbis who were voting. The assumption was that "a child born to one Jewish parent" meant that she or he had a biological parent who was Jewish. The question now, nearly three decades after these documents were written, is whether these resolutions can apply to the increasing number of same-gender couples in our communities that are having children. The difference between these families and heterosexual families is that one parent is not related biologically to the baby. Thus, we must ask whether the case of Ruth and Kate would be different if the sperm donor was Jewish, and whether the sperm donor is a "parent" of the child.

## **Reconstructing Models of "Descent"**

It seems that the child born to a same-sex couple, in which only one

partner is Jewish and in which the couple decided and acted on having the child together, indeed has “one Jewish parent.” There is a strong tradition of Jewish identity being passed biologically, but as the nature of how some babies are conceived changes, the question of how Jewish descent is passed on needs to be reconsidered. Making the genetics of the anonymous sperm donor the determinative factor in Jewish descent would place “Jewish descent” entirely in the realm of genetics. Jewish identity by way of “descent” should be expanded to include the children of either parent who causes the child to be conceived, regardless of whether that parent is genetically related.

The way in which the Hebrew language describes birth can help demonstrate why a non-birth mother can be likened to a biological father. The Hebrew root *y-l-d* creates the verbs for birthing. This root is only used in the *kal* (active) form when describing the action of the mother who physically gives birth to the child. The *hifil* form, “to cause to birth,” is used to describe the actions of both a father and of a midwife. In different ways, a father or midwife “cause the baby to be born,” but neither literally births the child. Similarly, the *hifil* form can thus describe what the non-birth mother in a lesbian couple does. Although in a different way than either a father or a midwife, she also “causes the baby to be born.” She participates in the insemination of her partner and she supports her partner through the pregnancy. The major difference between her and a biological father is that her genes are

not given to the baby.

This analogy has its problems. For example, most lesbian mothers do not want to be seen as fathers. Also, discounting the importance of the sperm donor can be seen as devaluing the role of the biological father in the birth of their children. Despite these dangers, the comparison is helpful in determining into what legal category the non-birth mother fits. It helps to clarify how children that are conceived by same-sex couples are not the same as adoptive children. They have their own unique identity issues that are different from those of adopted children. The spirit and/or intent of the ambilineality positions can be used to decide the status of these children.

Dr. Bethamie Horowitz, in her report to the Commission on Jewish Identity and Renewal of the UJA-Federation of New York, teaches that in our multicultural contemporary world it is more useful to view a person’s “Jewish identity as necessarily linked to that individual’s experience over time.”<sup>9</sup> People form their Jewish identity through the experiences they live through over the course of their lives and they create a narrative of their Jewish lives based on their experiences. Accordingly, rabbis must be sensitive in handling lifecycle moments because these events stand out in people’s narratives.

## A Resolution

The lineality positions of both the Reconstructionist and Reform movements are in need of clarification, and

not only with regard to being inclusive of same-sex parents. But in terms of that specific concern, and based on the above analysis of Ruth and Kate's situation, an inclusive emendation to the Reform and Reconstructionist lineality positions would be to have them read "A child born of or to a couple, one of whom is Jewish. . . ."

In light of that reframing, and through this process of careful consideration, it should be concluded that even in the absence of the proposed rewording, the current ambilineality decisions of the CCAR and the RRA should govern Ruth and Kate's case and therefore their baby will not need to undergo conversion to have status as a Jew. Because the baby is being born to one Jewish parent, Reform and Reconstructionist communities should recognize the baby as a Jew at the time of his/her birth.

Ruth and Kate will need to know that this decision would challenge some people in the liberal Jewish world because it redefines what it means to be "born a Jew." In the Conservative and Orthodox worlds the child would not be seen as a Jew, so the couple would need to decide if they wanted to go through conversion for this reason. But the rabbi should be reiterate that the child will be fully recognized as a Jew in Ruth and Kate's congregational community.

Rabbis should not decide status issues solely on the basis of how the lay person will respond and how it will affect her/his personal Jewish story, but

they must be aware of this phenomenon when they make their decisions. For example, Kate and Ruth's narrative of their Jewish journey and their baby's future story will be shaped by how the rabbi decides their case. It is important that the narrative be one of acceptance. In a world that questions the validity of same-sex families, the Jewish community should be a beacon of validation. We can do this by affirming the truth not of the blood relations of the family but of the intentionality behind the creation of the child.

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1. Isaac Klein, *A Guide to Jewish Religious Practice* (New York: Jewish Theological Seminary, KTAV, 1992), 436.

2. *Ibid.*, 437.

3. Michael Fessler, "Adoption and Jewish Families: A Proposal," *The Reconstructionist*, Fall 2001.

4. *Ibid.*, 58.

5. Klein, *op. cit.*, 436.

6. ". . . often mislabeled 'patrilineal,' which would imply that only Jewish fathers and not mothers convey Jewish status to offspring. This may have been the case in the biblical period, but does not accurately describe the liberal movements' current position." Fessler, *op. cit.*, 59.

7. Walter Jacob, ed., CCAR Responsa #38 in *Contemporary American Reform Responsa* (New York: CCAR Press).

8. From RRA Guidelines on Conversion, as quoted in Jacob Staub, "A Reconstructionist View on Patrilineal Descent," *Judaism*, #133, 34:1, Winter 1985, 98.

9. Bethamie Horowitz, *Connections and Journeys: Assessing Critical Opportunities for Enhancing Jewish Identity*, UJA-Federation



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