

PARENTAL HONOR---DM 3N 7122

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Chapter 1---The Filial Relationship: Biblical and Ancient

A. General

Under the term *parental honor* we understand certain relationships of children towards parents which involve fear and reverence, respect and veneration, love and affection, and the duties which these may entail. This relationship has its source in nature. It is enforced and regulated by law. It is corroborated by knowledge and reason. The duties of children towards parents derive from the physical, moral, and spiritual nature of man, are determined by law, and are further motivated by reason and philosophy.

We are not here concerned with the reciprocal relations and duties between parents and children. Under the term *parental honor* we deal merely with that side of the question which concerns the relationships and duties of children towards their parents.

The primitive origins of *parental honor* is a matter of much controversy. We have listed certain emotions, sentiments, and feelings of children towards their parents. With which of these did the filial relationship begin? We cannot trace the origin directly. But we know that ancestor-worship is really the continuance of the filial relationship after the death of the parent, that it is "primarily a family cult based on the desire of the survivors to maintain friendly relations with the departed"\*\*.

Anthropologists and students of the history of religion, however, are not of one opinion on what led to these relations. Some hold that it was affection; others that it was fear; still others that both fear and affection were involved. W.R. Smith writes: "It is not with a vague fear of unknown powers, but with a loving reverence for known gods who are knit to their worshipers by strong bonds of kinship, that

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\*Samuel Mayer: *Die Rechte der Israeliten, Athener, und Römer*, Vol. II, Part II, #247

\*\*W. Crooke: *Ancestor Worship and the Cult of the Dead*, *Hastings's Encyc. of Religion and Ethics*

religion in the only true sense of the word begins."\* Jevons agrees with Smith and adds that primitive man was "necessarily led to such relations by the operation of those natural affections which owing to the prolonged, helpless infancy of the human being, were indispensable to the survival of the human race."\*\* In support of his position he contends that the maintenance of the parental instincts and family affection was essential to the survival of primitive man in the struggle for existence. This school, then, maintains that the dead were regarded as friendly and that this friendship and affection were merely prolongations of the relations between parents and children which had existed during the lifetime of the parents.

But there is the opposite view, that the dead had to be propitiated because they were unfriendly to the living, because of the fear that unless the dead were conciliated harm would come to the living. Herbert Spencer states: "Anything which transcends the ordinary, a savage thinks of as supernatural or divine."\*\*\* Anything of such an exceptional nature frightens the savage. It becomes, as Tyler in "Primitive Culture" shows, a threatening and hovering spirit. To protect himself against harm he invents ways and means with which to propitiate this animistic phenomenon. The dead ancestor is so conceived of by the savage. In as much as ancestor-worship is merely a continuance of the filial relationship after the death of the ancestor, it would appear that that relationship during the lifetime of the parent was also that of fear.

But that is hardly proven even according to the view that the dead are regarded with fear. The circumstances during the lifetime of the parent are different from what they become in the eyes of the savage after death. For even the savage does not look upon his living parent as anything remarkable or divine. He has no menacing spirit to fear. If he is at all afraid of his parent it is the fear of the weaker for the stronger. When the child grows up, when he is able to act and to will,

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\*Religion of the Semites, pp. 213-357

\*\*Introduction to the History of Religions

\*\*\*Principles of Sociology, I, p. 411



natural affection and fear may be blended into reverence and veneration.

W. G. Sumner, on the other hand, contends that "the interests of children and parents are antagonistic," and that "the fact that there are, or may be, compensations does not affect the primary relations between the two."\* He states further: "Kinship is purely a matter of fact and history, and therefore rational. There is no 'natural affection'. There is habit and familiarity, and the example and exhortations of parents may inculcate notions of duty."\*\* Kinship is a product of the folkways in its construction and of the *mores* in as far as it involves notions of welfare, convenience, rights, and duties. In other words, the relation of child to parent does not involve sentiment and affection. It is purely rational.

Sumner bases the *mores* of respect and contempt on the advantages and disadvantages of the aged. Age means a depository of wisdom, but a loss physically. The aged may become burdens. There are then two sets of *mores* in respect to the aged: (a) those in which the aged are treated with arbitrary and conventional respect; and (b) those in which the doctrine is that those who become burdens must be removed. In some cases the two codes were in strife. Among the ancient Teutons the father could expose or sell his children, and the adult son could kill his aged father and mother. There was no fixed duty of child to parent or of parent to child. Lippert, whom Sumner quotes, asserts: "As a man grows old and weak he loses the only claim to respect which savages understand; but superstitious fear then comes to his protection. He will die soon and then his ghost can take revenge."\*\*\* Yet Sumner goes on to say that old women were not as barbarously treated as men probably because of affection, that the relation of child to parent was far stronger under the mother-right for the same reason, although the introduction of the father-right won more respect for the aged man.

It seems that Sumner, though allowing for affection in the case of the mother, bases parental respect entirely on a matter of advantage

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\*W. G. Sumner: Folkways, p. 308-310

\*\*W. G. Sumner: Folkways, p. 494

\*\*\*Kulturgeschichte, I, 229

or disadvantage in the case of the father. The respect which the father gets is derived from fear. According to Lippert he is feared when still in his prime because of his prowess and strength; when he becomes old because his ghost may take revenge. Yet as true as it may be that in primitive days there were no fixed duties between parents and children, experience would seem to corroborate the view of the psychoanalysts that sentimental as well as rational motives predominated in the relationships between children and parents. Perhaps even the superstitious fear that the dead would take revenge grew out of the sentiments of love and affection for parents who are therefore to be preserved in their old age. Greek poets, historians, and dramatists, for example, allude to the filial relation in terms expressing almost passionate love. The Oedipus and Electra complexes, though they are exaggerated states of filial affection are not a *creatio ex nihilo*. They must result from something within the very nature of man. It cannot be that mere economic advantage guides the child in his relationship to his parent. Even the savage child is attached to his parent by sentiment and affection if not by intelligence. Such seems to be the view of most scholars and psychologists.

*Parental Honor*, then, is a relationship of child to parent. It may be expressed by the varying emotions, sentiments, and feelings of fear, affection, and love. These are sometimes in conflict, at other times in harmony. They may now take the form of reverence, now of respect, now of veneration. The modes of expression exist. Only the extent and the degree of expression depend on circumstances, physical, religious, and economic, and are guided by matters of advantage and disadvantage. But fundamentally a child respects its parent because of reverence, veneration and devotion.

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B. Biblical

However coercive may have been the primitive methods for obtaining parental respect, however much the continuance of that respect may have been effected by the fear that the ghost of the parent would take its revenge, ~~if it is~~ certain it is that in the Scriptures we reach that stage of parental respect which takes the form of veneration and reverence. That ancestor-worship did exist in Israel in pre-historic days may be assumed on general grounds as well as from the fact that even in historic times there were still vestiges of animistic notions. Such were the translations into heaven (II Kings ii, 11), the Teraphim (Genesis xxxi, 19), the sacrifices and offerings to the dead (Genesis xlii, 1; Deut. xxvi, 14), the mourning rites, the laws of uncleanness, and the practice of necromancy. The *levirate* marriage may also have originated in this way.\* The dead brother needed some one to worship his ghost. If he had no child with his wife, his living brother would have to marry her. The child of such a union would adopt the name of the dead brother. To do so was, in primitive and animistic days, almost equivalent to being the offspring of the dead. But of course in historic times this conception was lost.

The remains of ancient ancestor-worship point to a very important development. Religion, as W. R. Smith shows, began with ancestor-worship. This took various forms. Among such peoples as the Babylonians, Greeks, and Romans the phenomena of nature were invested with the ancestral ghosts who later became gods. Among the Hebrews, however, the ancestral spirits became tribal gods. The great man, the hero, the tribal ancestor died. His ghost was propitiated. Reverence for the dead ancestor increased proportionately with the time removed from him. He grew in magnitude. He became a god. The destiny of the tribe was relegated to him. He became the tribal god. When several related tribes <sup>were</sup> ~~became~~ united, the tribal god became a national god. The strongest tribe set him up as the supreme national god. Thus was the religious evolution of the tribal god to that of the central Yahwe cult. The prophets made the next step pos-

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\*G. Vargoliouth: Ancestor-worship---Hebrew, *Hasting's Encyclopaedia of Religion and Ethics*

sible. It was probably ~~as~~ a result of their influence that ~~described~~ ~~provoked~~ <sup>was diverted</sup> the patriarchal myth from becoming a patriarchal cult. <sup>They</sup> ~~and~~ made an ethical religion of the Yahwe cult. Yahwe became the universal God. The religion of Israel became an ethical monotheism. Thus with the victory of pure monotheism, ancestor-worship naturally disappeared.

Now, as has already been shown, ancestor-worship presumes parental honor in some form or another. Since religion began with ancestor-worship, parental honor may be said to be the very starting-point of religion and certainly of the first tribal religion of Israel. The importance that parental and ancestral respect has had for the history of religions, therefore, can hardly be overestimated.

Another vestige of primitive days was incest. In-marriage (endogamy) was discouraged. The Scriptures frown upon it. The incestuous act of Lot's daughters (Genesis xix, 31-38) is condemned. It is given as the reason why intermarriage between the Israelites, on the one hand, and the Ammonites and the Moabites, on the other, was forbidden. "The nakedness of thy father and the nakedness of thy mother" must not be uncovered, nor "the nakedness of thy father's wife" (Lev. xviii, 7-8, xx, 11, 14; Deut. xxiii, 1; Deut. xxvii, 16, 20). Mal-alliances between children and parents are forbidden in the Bible because they are considered infringements upon parental respect. The reasons given in Leviticus xviii, 7-8 against these forms of incest are: "It is the nakedness of thy father," or, "She is thy mother", that is to say, you are violating the law of parental honor. The same attitude is expressed in other passages (Lev. xx, 11; Deut. xxvii, 20; etc.)

In the Scriptures the filial relationship appears under two main headings: fear---יָרָא, and honor---יָחַד. The Hebrew of the first is a verbal noun derived from the Kal infinitive. It is a feminine form. It expresses a state, i.e., a state of fear pertains for children in relation to their parents. A later development gave the word the meaning of reverence, respect. The Hebrew for the second is a Kal infinitive used as a noun. But the command to honor parents is given in the <sup>imperative of the</sup> Piel---יִחַד, to <sup>or consider</sup> make <sup>heavy</sup> weighty, important; to honor. *Veneration is implied.*



Parental honor in the Bible is an ethical and religious concept. The duty of the child to the parent takes on a religious character.\* The law, which among the Hebrews was always---and here particularly---bound up with religion, attempted to strengthen the natural relationship by emphasizing its ethical significance. Children were regarded as God's creatures. They were a boon and a blessing to the parents (Psalm cxxviii, 3-6). God entrusted them to the parents. They are, then, the property of the parents. The father and the mother are God's agents or messengers in relation to their children. Children are, therefore, obligated to honor their father and mother next to God.\*\* And so just as blasphemy and the profanation of the name of God are to be punished by death, so to curse parents, to consider them lightly, or to strike them is likewise punished by death (Exodus xxi, 15, 17; Lev. xx, 9; Deut. xxvii, 16; see also Ezekiel xxii, 7; Micah vii, 3; Pv. xix, 26). In Proverbs no legal punishment is mentioned, but various imprecations are pronounced. "Whoso curseth his father or his mother, his lamp shall be put out in the blackest darkness" (Pv. xx, 20). What is meant is that he shall lose his life. This is the ethical version of the legal prescription. Similarly: "The eye that mocketh at his father, and despiseth to obey his mother, the ravens of the valley shall pick it out, and the young vultures shall eat it" (Pv. xxx, 17). Such a verse as, "There is a generation that curse their father, and do not bless their mother" (Pv. xxx, 11), placed as it is with several other verses which start in the same way (ויר), may reflect an actual condition of the time when it was written. That is to say, in spite of the severity of the ancient code of parental honor, in life there were occasional lapses. But the ethical nature of the verses in Proverbs is not necessarily contradictory to the legal code in the Pentateuch. The law probably could be enforced. In practice, however, the penalties for disrespect to parents were not always inflicted. Law is not life. Proverbs, being a book of wise sayings, wishes to emphasize the ethical character of the filial relationship.

\*Samuel Mayer: Vol. II, #247, #243

\*\*Yad, Mamrim vi, 1; Kidushin 31a; Yoreh Deah cxxl, 1, 4

The two principal terms used in the Bible to enjoin parental respect, viz., fear and honor, imply reverence and veneration respectively. There are, first of all, the commandments of honoring <sup>parents</sup> (Exodus xx, 12; Deut. v, 16). The fact that they are in ~~the~~ <sup>both</sup> Decalogues is sufficient proof of their importance. Strangely enough the reward for obedience is stated: "That thy days may be long..." (Exodus); "That thy days may be long, and that it may go well with thee..." (Deuteronomy). As in the case of the Sabbath commandment, this one---usually counted as the fifth---in Exodus is rather mystical in the reward it prescribes. In Deuteronomy, the additional "and that it may go well with thee" is probably an explanation of "that thy days may be long", and has a social significance. The recompense for honoring parents will be a well-ordered life, stability, and prosperity. In Leviticus xix, 3 the reverence of parents seems to be as important as the observance of the Sabbath. That both are of a highly religious character must be meant by the rather cryptic phrase which follows: "I am Yahwe your God"---אני יהוה אלהיכם.

But the commandments of parental honor ~~do~~ do not necessarily imply that children are responsible for the deeds of their parents. Although the Pentateuch states that "the iniquity of the fathers" is visited "upon the children unto the third and fourth generation" (Exodus xx, 5; Deut. v, 9), Ezekiel (xviii; cf. Jeremiah xxxi, 29) declares expressly for individual responsibility. In life, nevertheless, children often bear "the iniquity of the fathers". This is recognized in Lamentations (v, 7): "Our fathers have sinned,...and we have borne their iniquities."

Variations of the Mosaic commandment to honor parents are found in other books. Proverbs has the typical expression: "Hear, my son, the instruction of thy father, and forsake not the teaching of thy mother" (Pv. i, 8; see also vi, 20, xxiii, 22). The affectionate and loving regard of children for parents is proof of what the filial relationship <sup>really</sup> must have ~~really~~ been in ancient Israel. A captive woman was the chattel of her Israelitish captor. Yet the law allows her a month's time in which to mourn over her parents (Deut. xxi, 13). Elisha begs Elijah:



"Let me, I pray thee, kiss my father and my mother, and then will I follow thee" (I Kings xix, 20). There are those final words in Malachi which makes of the affection between parents and children a Messianic hope:-

"הנה אנכי שלח לכם את אליה הנביא

לפני כוא יום יהיה הגדול והנורא

והשיב לב אבות על בנים ולב בנים על אבותם"

"Behold, I will send you Elijah the prophet

Before the coming of the great and terrible day of Yahwe;

and he shall turn the heart of the <sup>fathers</sup> ~~children~~ to the children, and the heart  
of the children to their fathers."

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*C. Babylonian*

In Babylonia the family system was strong, almost like that of Rome.\* In Israel the unity of the family lay in its religious-ethical character. The father's authority was supreme and the legal enactments enforcing the parental authority were quite severe. But it is questionable whether the prescribed legislation was very often carried out. On the other hand, in Babylonia, though the father's authority was not so despotic as that of the *pater familias* in Rome, it was far greater than that in Israel and Arabia.

Adoption of children takes an important place in the Hammurabi Code. It does not seem to have found a place in the Hebrew Code. However, the obedience required of adopted children in Babylonia apparently reflects what was expected of one's own child.\*\* Coercion was the rule. The filial relationship was, then, of an abstract nature. For a concrete relation call for reciprocal rights and duties. The Babylonian child, however, had duties but no rights. There was no remonstrance from the father's decision.\*\*\* Severe punishment was inflicted for the denial of parents, or for rebellion against them. The Mosaic law does not legislate for it. In Babylonia it had already been codified in the so-called "Sumerian Laws":-

1. "If a son say to his father, 'Thou art not my father,' one shall brand him, set a mark upon him, and sell him for silver."

2. "If a son say to his mother, 'Thou art not my mother,' one shall brand his forehead, deny him the city, and expel him from the house."

The following two laws give the parents the right to deny their son:-

3. "If a father say to his son, 'Thou art not my son,' he shall leave house and home."

4. "If a mother say to her son, 'Thou art not my son,' he shall leave house and goods."

The ~~Babylonian~~ Hammurabi Code is even more severe than the Sumerian Laws

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\*S. A. Cook: The Law of Moses and the Code of Hammurabi, Chp. VI, P. 128

\*\*T. G. Pinches: Family---Assyrian-Babylonian in Hasting's Encyclopaedia

\*\*\*Andreas Eberharter: Ehe und Familienrecht der Hebräer, P. 184-185

for certain classes of adopted children. Children could not disclaim their foster-parents (C. H. 192, 193). In Hebrew law it seems impossible to disown children. Children of concubines or unfavored wives cannot be denied the right to inherit equally with the others. The expulsion of Jephthah (Judges xi, 1-3) is either an instance where the law was broken or one which preceded the legislation upon inheritance. In Babylonia, on the other hand, parents could disown their children. The severity of the law was modified in practice (C. H. 190, 191)\*. Even if a son offends his father, he cannot be expelled until he is brought to the judge, and then only after a second offense (C. H. 138, 139). This law seems less harsh than the law concerning a stubborn and rebellious son in the Hebrew Code. ~~Thereafter~~ In Deuteronomy (xxi, 18-21) the son is brought to the elders and, if convicted, is stoned, not merely expelled. Similarly, in the Hammurabi Code, if a son strikes his father, his hand is cut off (195); but the Mosaic Code provides a death penalty for smiting (Exodus xxi, 15) and cursing parents (Exodus xxi, 17; Lev. xx, 9; see also Ps. xx, 20; Matthew xv, 4). Driver points out, however, that the "severity of the penalty was in accordance with the high respect paid to both parents in Israel".\*\* The fact that the same penalty is provided for cursing as for striking parents indicates, besides the belief in the efficacy of an imprecation, that the Hebrew law considers disrespectful speech to parents equally as bad as disrespectful acts towards them. The emphasis is on the high regard for parents rather than on their authority. The further fact that the mother is placed on the same plane with the father, though the father's legal authority is almost supreme, again indicates that the particular laws are not interested in parental authority but in the high esteem with which parents are to be held.

Childhood in Babylonia was not utterly bereft of affection. The severe laws were probably not extensively practiced in view of the Babylonian liking for children. Childhood, on the whole, was not unpleasant. The respect due to parents was apparently willingly given. Letters between

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\*S. A. Cook: The Law of Moses and the Code of Hammurabi

\*\* S. R. Driver: Cambridge Bible, Exodus xxi, 15

parents and children express the highest regard and affection for each other. Babylonian children, like Hebrew children, were considered a boon and a blessing and were known as "the children of the gods".\* Here we have a direct proof of our original thesis that, in spite of the fact that the law makes of children mere chattels which could be sold and disposed of at will, in life the filial and parental relationship is based largely on affection and love, not merely on fear and coercion.

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\*T. G. Pinches: Children, Family---Babylonian-Assyrian, Hastings's Encyclopaedia of Religion and Ethics

*D. Greek*

The respect for parents in Athens was an elementary duty which the Greeks emphasized as strongly as any other people of antiquity. Children had to honor and obey their parents, supply them with the means of subsistence when they could not do so themselves, and provide them with a respectable burial. At no age could children desist from these duties.\* Indeed, it was the presupposed duty of parents to develop in their children not only honor to the state but also respect for their parents.\*\* It was one of the great "unwritten laws".\*\*\* The duty of children towards parents was, then, first, a material one, namely, to care for them in their old age. But, more broadly, it is to be described as honor towards parents. There was a law which punished children who failed to look after their parents or allowed them to suffer want. The absence of piety towards parents was a legal bar from public office. For the Athenian the most repulsive phase of the sophistic attack on moral ideas concerned this point. The ethical problems which arose for sons, when one parent was turned against another, proved extremely interesting to the Greeks. ~~-----~~

Maltreatment of parents was actionable, and could be punished with the loss of civil rights. Solon is said to have made no mention of such a crime on the ground that he considered its occurrence impossible.<sup>4</sup> In other words, parental honor was presupposed by him as an almost natural and instinctive duty of children towards parents.

It is well to note the emphasis that the Greek philosophers and writers laid on parental honor and on the filial relationship. Their opinions are strongly reminiscent of the Hebraic attitude to the problem. Plato, for instance, lays it down that after the gods and the demigods parents ought to have the most honor.<sup>5</sup> Throughout his whole life every man should pay his parents the utmost deference and respect.<sup>6</sup> The high

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\*Samuel Mayer: Vol. II, # 247, B

\*\*Arthur Fairbanks: Family---Greek, Hastings's Encyclopaedia

\*\*\*W. H. S. Jones: Children---Greek, Hastings's Encyclopaedia

<sup>4</sup>Laws IV, 717, C-D

<sup>5</sup>Laws XI, 930E-932A

<sup>ethical</sup>  
high<sup>position</sup> position here accorded to parents is equalled only in the Mosaic code. Plato goes on to say that piety towards parents is the best worship of the gods. This Platonic idea finds no direct counterpart in the Hebrew Scriptures, but it receives even stronger expression in the Midrash, where several <sup>Biblical</sup> verses are so interpreted as to show that ~~the~~ honor to parents is more important than honor to God.\* According to Plato anyone who witnessed the act of a child striking a parent, and failed to interfere, ought to be severely punished, and the offender himself condemned to perpetual exile or to death if he ever ventured home. He recommends that ~~children~~ parents should leave their children a legacy of the spirit of reverence rather than a store of gold.

Aristotle says that it is ~~better~~ proper to pay parents honor such as is given to the gods.\*\* Xenophon, in his vindication of Socrates to the Athenians, makes this philosopher rebuke his son for ingratitude to his mother. The claims of religion were not considered superior to those of father and mother, particularly of the latter. Euripides bids children love their mother. Other Greek writers speak similarly of the honor to and affection for parents.

The Greeks, unlike the Babylonians and the Romans, did not stress the legal aspects of the filial relationship. Their view of parental honor was more like the Hebrew. For the Israelite parental respect was a case in ethics and religion. For the Greek the motive was philosophical.

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\*Pesikta 23; Mechilta; Jerushalmi, Peah 1

\*\*Ethics Nic. ix, 2, 8



E. Roman

The Roman parent was assured of respect by law, not by affection. The authority of the father was almost absolute, and the legal relation of child to parent was almost equivalent to that of a slave to his master. The child had no remonstrance from the father's decision. The head of the family was the unrestricted and independent ruler <sup>in</sup> ~~of~~ the family circle.\* His authority was even greater than that of the state over its citizens. This slave relationship of Roman children to their parents was a matter of education. It was of ~~extreme~~ supreme significance in Roman law and in the development of the Roman character.

In an attempt to increase the authority of the state over that of the family father, that is, in the wish of the Roman emperors to set themselves up as the supreme heads, the state adopted measures to limit the tyrannical nature of the father's authority. It was not entirely successful. The filial relationship was ingrained in the Roman character. It could not be easily reformed. The law could merely define the existing relation and set forth the father's authority.

In a society based on the *agnatic* principle and on the *patria potestas*, the maintenance of the family and its <sup>sacra</sup> ~~sacra~~ was a matter of the most vital interest and importance. The family was a cult. The duty of children was therefore chiefly religious. More especially, the duty of children was the worship of the deified ancestors or *di Mares* (literally, "good gods"). The head of the family had not only the paramount duty of scrupulously fulfilling the ancestral rites, but also provide a successor in the person of a real or an adopted son.\*\* The latter took up the burden of the sacrifices and of the ancestral/rites after the father had laid it down at death. The departed spirit of his father was conceived of as having lost its individuality and of having become an immortal part of the larger mass of the *di Mares*. Thus in Rome ancestor-worship was kept alive.

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\*Samuel Mayer: Vol. II, #243, C

\*\*Jesse Benedict Carter: Family---Roman, Hasting's Encyclopaedia

The Roman principle of parental honor was similar to the Babylonian notion, but it was far more advanced legally and far better and more fully defined and regulated. It is to be noted, however, from the fact that children were expected to respect father and mother alike, in spite of the father's absoluteness, that even in law the ethical relation broke through the bonds of authority. The affection for parents, especially for the mother, is attested to by many writers. ~~Th~~ We see that law cannot account for all that the filial relationship implies. Even in Rome the law was but an adjunct of the fundamental relationship as ~~its~~ it is found in nature and in life.

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F. Conclusions and Comparisons

The conceptions <sup>of</sup> ~~about~~ the filial relationship in antiquity had, in many respects, the same character in Israel, Babylonia, Greece, and Rome. The principle of *pater familias* was everywhere more or less prevalent. In Rome and in Babylonia it was almost unlimited. In Greece it was somewhat more limited. There, however, the legal principle was not so well determined. It was more limited in Israel. Where the family father's authority was most absolute, coercion could be used. There was more freedom where the father's authority was restricted.

In ancient times the family was centered about the cult. The duty of the child was, therefore, largely religious. By the establishment of a family parents were assured that ~~their~~ departed spirits would not have to wander about. They thus left someone to perform the ancestral rites. The <sup>perpetuation</sup> ~~continuation~~ of the family was therefore essential. In Israel, too, the family in early times centered about the cult.\* The family cult held the family together and made for unity, which was an important feature in the ancient family.

The legal demands on children as well as the punishments inflicted for infractions of the law were everywhere very harsh. They were almost primitive and barbaric in Babylonia and in Rome, in both of which the child was a mere slave of the father. The severity was not as great in Greece, where an attempt was made to found the filial duties on philosophic principles. In Israel ethical and religious principles were introduced.

Yet, despite the cruelties that may have been perpetrated, the relationship of child to parent in ancient times was not an unpleasant one. Affection between parents and children was not at all uncommon.

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\*Benzinger: *Hebräisches Archaeologie*, II Teil, pp. 133-138  
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## Chapter II---The Filial Relationship: Talmudic

When the political organization becomes disrupted, preservation demands stronger social and family ties. The period in which the Talmud came to being was one of unrest. With the destruction of Jerusalem and the Temple, the Jews had to seek other than territorial means by which to preserve themselves. Emphasis was, therefore, laid on the spiritual and cultural phases of Jewish life.

In the family there was less insistence on the legal relations than before, but the ethical ties were greatly strengthened. There was no Jewish state to enforce the law. Yet, because of the desire to maintain the integrity of Israel, family life was even better than ever before.

The general principles guiding the filial relationship were largely those of pre-Talmudic days. But their expression and practice were ~~farther~~ <sup>greatly</sup> extended. The elements of reverence and ~~affection~~ <sup>affection</sup> veneration were heightened. Parental honor became almost an ideal, something which was to be always striven for but could never be attained. One had to ~~to~~ observe the precept of parental honor; but that one, no matter how hard he tried, could never perform it fully was recognized by the Sages in the statement: "Even if one do so a thousand times a thousand, one would not yet attain to half the parental honor in the Torah."<sup>\*</sup>

Parental honor now emerged as an almost purely ethical concept. It became a matter of moral obligation (חובה מוסרית) and religious precept (מצוה דתית).<sup>\*\*</sup> Neither the filial nor the parental duties were completely codified. In the Mishnah both are introduced as incidental matters.<sup>\*\*\*</sup> It would almost seem that the Mishnah did not consider them as subjects for codification. In the Gemara parental respect is discussed, but the point of view seems ethical rather than legal.<sup>°</sup> The emotions were thus given free play.<sup>°°</sup> Merely to perform the commandments of parental respect in the Shulchan Aruch was not considered sufficient. After all, the filial relationship could not be codified. It was beyond codification.

<sup>\*</sup>Jerushalmi, Peah 1

<sup>\*\*</sup>Asher Gulak: The Foundations of Hebrew Law, Book III, Chp. IV, Pp. 66-70

<sup>\*\*\*</sup>Kidushin I, 7      <sup>°</sup>Kidushin 29a-32b

<sup>°°</sup>Israel Abrahams: Jewish Life in the Middle Ages, Pp. 121-123, 344

Rabbi Moses Isserles (רמ"ה), commenting on the very first law of parental honor in the Shulchan Aruch states: "However, the court cannot compel one to perform the precepts of <sup>the</sup> parental honor of father and mother," for it is an affirmative precept the reward of which is immediately attached, which is something whose performance the court cannot compel,\*\*\*----

אכזר עשה שמתן שכרה בצדה אין בית דין יכולין עליה.<sup>שלמה</sup>

That is to say, there is a general rule in the Talmud that any affirmative precept that has the designation of its reward immediately following the commandment itself cannot be enforced by an earthly court (בית דין שלמה). Immediately after the commandment of parental honor, the Decalogue adds: "That thy days may be long...and that it may go well with thee..." which is the reward. The assumption of the Talmud, then, is that both the reward and the punishment in the matter of parental respect lie in the hands of God, since he himself assigns the reward in the Scriptures. At any rate, we see that the Rabbis realized that the law of parental honor can be only of ethical efficacy, not of legal efficacy.

The relations of children to parents are codified under the heading of "The Laws of the Honor of Father and Mother"---הלכות כבוד אב ואם. Both honor and fear are included under this heading. The word for honor used in the Talmud and in the codes is <sup>masculine</sup> ~~anoun~~ derived from the Piel---בָּנָה. It has reference to the "weighty" consideration for parents, hence "honor". The word for fear is סוּרָה, not יָרָא, as in the Bible. The Talmudic word is ~~derived~~ a masculine noun, really a present participle, derived from the Hiphil. It goes a step further than the Biblical term. It does not mean merely "fear", but "regarding with fear," hence "respect", "reverence".

How is a son to fear his father, that is, to respect him? He is not to stand or sit in a place specially designated for his father; he is not to contradict him, nor to evaluate his words; he is not to call him by name.\* This is the passive function. The active function is honor. The son must support his parents, clothe them, bring them in and bring them out.\*\* A son need not go begging to support his parents. He must, never-

\*Yoreh Deah, 249 cxxl, 1, from Beth Joseph, based on Chulin 110

\*\*Chulin 110

\*Yoreh Deah cxxl, 2

\*\*Yoreh Deah cxxl, 4



theless, honor <sup>then</sup> ~~him~~ at such material expense to himself that if it be necessary for him to cease his work and thereby become a beggar, he must do so.\* There is almost a paradox here. He need not go begging in order to support his parents. Yet if honor to them demands that he leave his work, even if he become a beggar because of it, he must do it.

Negatively, a son may not curse or revile his parents, nor strike them.\*\* The court may punish the offender, in the first case, by stoning, in the second, by strangling. These laws are so restricted by the Rabbis that there is small chance for the court ever to inflict the death penalties. To be punished for cursing parents the offender must be warned (חורא) and the testimony of witnesses is required. One can only be put to death for using one of the names of the Deity, not a <sup>L. e., an epithet or a metonymy.</sup> substitute name, Warning and witnesses are also necessary before one can be punished for striking his parents.\*\*\* Smiting is nothing less than the inflicting of a wound.

It is noteworthy that the Tur and the Shulchan Aruch omit the subject of "the stubborn and the rebellious son". Such a person, the Talmud says, "Never existed nor was ever created,"--"לא היה ולא נברא". Maimonides, however, wishing to compile all the precepts, whether they were applicable or not, whether they were "Precepts that depend on the Land (מצוות חלויות בארץ)" or do not "depend on the Land", includes this subject.<sup>o</sup> But even here the law is extremely limited. No punishment can be prescribed unless the son be given warning.<sup>o</sup> Since the Torah calls him "a drunkard and a glutton"---"וולל וכוזא", he becomes such a person only when, in the company of low people, he eats repulsive flesh and drinks wine greedily. The amounts that he must eat and drink before he can be brought to trial are enormous. The age at which he can be punished is also designated. A minor is irresponsible and cannot be punished. A legal fiction is used to show that one who has attained puberty can also not be punished.<sup>ooo</sup> Thus the actual time in which the death penalty, stoning, can possibly be inflicted is only three months. Even after all these

\*Yoreh Deah cxxl, 5

\*\*Yoreh Deah xxxli

\*\*\*Yad: Mamrim vi, 5

<sup>o</sup>Yad: Mamrim vii

<sup>oo</sup>ibid Mamrim vii, 1

<sup>ooo</sup>ibid Mamrim vii, 5, 3

xx Such as Great, Mighty, Gracious, etc.  
Sanhedrin 35a; Shevuoth vii, 8



conditions are fulfilled, the son is not immediately put to death. His parents must first bring him to a court of three. There after due testimony, he is flagellated. This is the chastening which is prescribed in the Scriptures: "And though they chasten him, he will not hearken unto them" (Deut. xxi, 18). If he continue in his evil ways, he is to be brought before a court of twenty-three, where the death penalty may be inflicted. However, his parents may forgive him. Both parents must bring him to court, for the Scriptures say: "And his father and his mother shall lay hold of him" (Deut. xxi, 19).

There is a remarkable similarity between the procedure in the case of a stubborn and rebellious son in ~~the~~ Jewish law and that of a disobedient son in the Hammurabi Code\*. Under the Code if a father wishes to disown his son, the judges must first inquire into the matter. If he have committed no serious crime or misdeed, his father cannot cut him off. If he have, the judges condone his first offense. He may be expelled only after his second offense. In Jewish law the penalty prescribed, stoning, is more severe, in consonance with the high regard for parents.

Despite the severity of the Rabbinic law of parental respect, parents are warned not to be too exacting, not to take too much advantage of their rights. The Biblical saying: "Thou shalt not put a stumbling-block before the blind"---"לא תשני לפני עור" (Lev. xix, 14) is given a moral, not a literal, connotation by the Halacha. The father may not lay ~~unnecessary~~ emphasis on the respect due to him. "Forgive them and hide thine eyes from them, for the father who forgives for his honor, his honor is forgiven," are the words of the Talmud.\*\* Therefore, also, "he who strikes his grown son is excommunicated, for he transgresses on, 'Thou shalt not put a stumbling block before the blind.'""\*\*\*

Sometimes the filial relationship assumes a reciprocal character. If parents wish to serve or otherwise honor their worthy son, the law of parental honor requires that he permit them to do so.<sup>o</sup>

\*Hammurabi Code: 168-169

\*\*Kidushin 32a; Yoreh Deah cxxl, 19; Yad: Mamrim vi, 8

\*\*\*Yoreh Deah cxxl, 20; Yad: Mamrim vi, 9; Moed Katon 17a

<sup>o</sup>Yoreh Deah cxxl, 25

There are, however, two categories of precepts which are superior to parental honor. These may be called (1) intellectual and (2) religious duties.

The Shulehan Aruch states explicitly: "The study of Torah is greater than the honor of father and mother."\* The Mishnah tells us that the study of the Law is equivalent to parental honor, charitable deeds, and acts of peace combined---"חלוקה חורה בננו בלח".\*\* ~~אף על פי כן~~ Not only does the study of the Law take precedence but the honor to one's teacher is prior to that of a parent. The teacher's lost article must be sought and returned before the father's. If the two be carrying heavy burdens at the same time, the teacher must be relieved of his burden first. If both be in captivity, the teacher must be ransomed first. But, of course, if the father be also a scholar, the father takes precedence.\*\*\* A parent may ~~pass over~~ <sup>waive</sup> the honor due to him, but a teacher's honor may never be neglected.° This opinion is not held by R. Joseph. Yet from his statement, "Even if a teacher ~~passes over~~ <sup>waive</sup> his honor,..." <sup>even he believes that</sup> it can be inferred that a teacher stands higher. If the son wishes to go elsewhere to ~~to~~ pursue his studies, particularly because of some famous teacher who is located there, and if his father tries to prevent him from going because he fears that harm may come to him, the son need not obey him?° The spiritual relations are superior to the physical. "One's father," the Mishnah says, "brings one to this world, but one's teacher who teaches him wisdom brings him to the world to come." There was no Jewish nation in the physical or territorial sense. Its culture, the pursuit of the study of the Torah was its only source of strength, its only means of preservation. The needs of the time built up the *mores*. And so both the Torah and the teachers of the Torah took precedence over parental respect. How much this idea was a development of the times can be seen from the fact that, though the Torah does not even mention honor to a teacher, the Talmud makes it superior to parental honor.

\*Yoreh Deah cxxl, 13; Megillah 13b

\*\*Peah I, 1

\*\*\*Baba Mezia 32a; ibid II, 11

°Kidushin 32a

°°Yoreh Deah cxxl, 25

The requirements of religion<sup>and ethics</sup> also take precedence over parental honor. A child must not obey his parent if he is ordered to do something which is against the Law; for while a child is duty-bound to honor his parents, both he and his parents are duty-bound to honor God---~~XXXXXXXXXX~~<sup>XXI</sup>

"כֹּלֵם הֵיכֵן בְּכֹדוֹ": When the father commands his son to do something for him, say, to bring him a glass of water, and there is some precept to be performed, if the precept can be performed by others as well, he must obey his father; otherwise, he must himself first perform the precept,---

"שֶׁאֵין וְאֵם הֵיכֵן בְּכֹדוֹ"\*\*. A case in ethics is that of the parent forbidding his son to make peace with a person with whom the former is on unfriendly terms. The son need not obey him;\*\*\* for as the Tur puts it: "It is forbidden to hate any Jew if no one saw him commit a sin."° Peace is a cardinal principle in Jewish law. It takes precedence<sup>almost over</sup> ~~overalmost~~ any kind of commandment. Another case in ethics as well as in common-sense is that of the parent interfering in the choice of a bride. The Ramah states expressly: "If the father prevent the son from marrying any woman that the son desires, he need not obey his father,"°° In Jewish life parents were generally given the decision in the matter of selecting a bride or a bridegroom. (The words "son" and "father" are not to be taken in the strict sense. Neither parent can prevent either<sup>the</sup> son or the daughter from marrying anyone the latter pleases.) Yet this was only a moral obligation which the child felt he owed to his parents. Even in the Bible Samson could not be prevented from marrying a Palestinian woman. "Therefore shall a man leave his father and his mother," say the Scriptures, "and shall cleave unto his wife" (Genesis ii, 24). The Rabbis realized that it would be too much to allow interference by parents in the marital relation. Here affection has to be the ruling factor. The two who are most concerned, who are to live together for the rest of their lives must make the final decision. One cannot live ~~with~~ in marital relation with a person whom he dislikes, despite the parents' preference. The purpose of the Rabbis was to strengthen the family and the unity there

\*Yebamoth 3a

\*\*Kidushin 32a

\*\*\*Yoreh Deah cxxl, 13

°Tur in the name of the Rosh, his father

°°Yoreh Deah cxxl, 25, Hagah, from the Maharik Shoresch 137

Duty to oneself also precedes the duty towards parents. In Jewish law the "self" generally takes precedence. One looks for his own lost article even before that of his teacher's.\* One ransoms himself from captivity before anyone else.\*\* R. Judah points out that one who deals in this manner with himself helps to ~~eliminate poverty in Israel~~ <sup>diminish poverty in Israel,</sup> in accordance with the verse in Deuteronomy: "There shall be no needy among you" (Deut. xv, 4). However, although such be the law, one should, according to Rashi, go beyond the law (לפני מצות הוי), and have prior regard for teacher or for parent.

It is hard to distinguish Halacha from Hagadah in the Talmudic discourses on parental honor. Much that seems to be Hagadah forms the basis of Halacha in the compilations of the later codifiers. And this is proper. It is not necessary to separate the two. The same spirit pervades both.

Parents are sacred objects, almost divine. Parents have an equal share with God in man. Honor paid to them is honor paid to God. Consequently, when one grieves his parents, he also ~~grieves~~ grieves God.\*\*\* The honor to parents is sometimes said to be prior to the honor to God. The explanation given is that to honor God one must own something in order to be able to give the tithes, etc.; But one must ~~own~~ honor parents whether he owns something or not.<sup>o</sup> In Judaism the relations between man and man are often more emphasized than those between God and man. An overpious person might pay his dues to God but fail to realize that he was committing a religious offense in failing to honor his parents. R. Joseph, whenever he heard his mother's footsteps, would say: "I shall rise before the divine presence (שכינה) which is entering."<sup>oo</sup> The parent is God's agent through whom a human being is brought to life. Divinity therefore rest on the parent. The very fact that the Holy One ~~is~~ included the precept of parental honor in the Ten Commandments, that is, God's very unselfishness, as it were, in placing "Honor thy father and thy

\*Baba Mezia 33a

\*\*Horayoth 13a

\*\*\*Kidushin 30b

<sup>o</sup>Pesikta 23; Mechilta; Jerushalmi, Peah 1

<sup>oo</sup>Kidushin 31b



mother" with "Thou shalt have no other gods before Me", is a proof to the nations that "I am the Lord thy God".\* He who uttered such a principle is veritably the Lord. In another place the Midrash queries why the law of parental honor is placed adjacent to the law ~~of~~ against murder in the Decalogue.\*\* "Why is the one subject next to the other? Merely to teach you: If a man has provision within his house and does not support his father and his mother even when they are young---and there is no need to say, when they are old---<sup>it</sup> is as if he were a murderer before God all his days. Therefore it is said, 'Honor,' that you might 'not murder'." To provide for parents is an ethical duty within the ~~sphere~~ sphere of parental honor. Not to support them, especially when they are old,--- the aged were always looked upon with added respect in Israel,\*\*\*---is murder in the moral sense.

Parental respect is a most weighty matter---"חסרון כבוד"\*\*\* something most difficult to observe fully. There are no limits to its extent. The heathen of Askalon who would rather lose some fabulous sum of money ~~rather~~ than take the key from under the pillow upon which his father is sleeping is most highly esteemed by the Rabbis.<sup>o</sup> The obligation is even greater upon him who is commanded to honor father and mother, that is, upon an Israelite. In the Palestinian Talmud the heathen patrician who would not sit upon the stone upon which his father sat is considered deserving of high praise. The fact that he later worships that stone--- which reminds us of ancestor-worship---is not criticised.<sup>o</sup> <sup>If one's</sup> ~~infinite~~ father or mother take a purse and cast it into the sea in his presence, he ~~must not shame his parents.~~ <sup>must not shame his parents.</sup><sup>ooo</sup> One must bear patiently with his parents even when he loses materially and is pained mentally. If parents disgrace one in company, he must remain silent. For if one must obey a human king's order, he must certainly perform this commandment, which is a divine precept. <sup>oooo</sup> Because of the infinite duties involved in the precept of parental honor, several sages actually rejoice over the fact that their parents are

\*Kidushin 31a

\*\*Tana d'Bei Elijah 26; Yalkut Shimoni

\*\*\*Sumner: Folkways, p. 308-309

\*\*\*\*Tanchumam

<sup>o</sup>Kidushin 31a

<sup>oo</sup>Jerushalmi, Peah 1

<sup>ooo</sup>Kidushin 32a; Yad Mamrim vi, 7; Yoreh Deah cxxl, 8

<sup>oooo</sup>Kidushin 31a; Yad Mamrim vi, 8; Yoreh Deah cxxl, 3

not living.\* The burden of parental respect is such a heavy one that it is best to be saved the need of observing the commandment. Only Abraham could be exempted from parental honor because of his great mission.\*\*

Parental honor is a sort of cardinal virtue along with charitable deeds (תנאים, נסילות חסדים), making peace between people (בין אדם לחבירו) and the study of the Law (תלמוד תורה)--though the last is superior--"whose fruits are enjoyed in <sup>this</sup> ~~these~~ world and whose permanent root is in the world to come."\*\*\* The words quoted may be the Rabbinic understanding of the Scriptural verse, "In order that thy days may be long and that it may go well with thee" (Deut. v, 16). Even a wicked person (רשע) is recompensed for respecting his parents.\*\*\*\* The destiny of nations and races can be affected by the amount of respect the founders show to their parents. Shem and Japheth were rewarded because they dealt respectfully with their father. <sup>because he did not show</sup> Ham was cursed <sup>the</sup> deference due to a parent? Of course the Rabbis look upon history as a matter of personalities rather than one of social groups and movements.

Parental honor calls for seemingly disrespectful acts from the children if the parents demand them. R. Ishmael is commanded to permit his mother to "wash his feet and to drink of the water", since she wants to do so.<sup>oo</sup> A son "inherits the Garden of Eden" by becoming a slave of the king in his father's place, though his father be forced to grind flour. On the other hand, he "inherits Gehinom" if he treats his father in a servile fashion, though he feeds him luxuriously.<sup>ooo</sup>

Parental honor continues after the death of the parent. One must speak reverentially of his departed parent. One may not mention something in his father's name merely with the words, "So said ~~my~~ father." He must use the formula: "So said my father, my master,---may I be the atonement for his death." Twelve months after the death of his parents he must use this formula: "May his memory be for a blessing for the life of the world to come!"<sup>oooo</sup>

\*R. Zeira and R. Abon in Jerushalmi, Peah 1 and R. Joohanah in Kidushin 31b

\*\*Bereshith Raba 39, Lech Lecha

\*\*\*Peah I, 1

\*\*\*\*Tanchuma Kedoshim 15

°Bereshith Raba 36, Noah

ooJerushalmi, Peah 1

oooibid

ooooKidushin 32a



The Talmudic view of parental honor is, then, one of veneration for parents and the filial relationship is one of devotion to parents. The Rabbis make a plea for parental respect. They do not threaten coercion. The Pentateuch is more peremptory. In Babylonia and Rome the legal relation is supreme. The child is the property of the father. In Greece the law is somewhat milder, but the child can still be sold at will by the father. In Israel the father could not even give the daughter in marriage without her consent. The filial relationship <sup>finds</sup> ~~has~~ a place in the codes, but it is conceded that parental honor cannot be legally enforced.

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### Chapter III---Children and the Family

#### 4. *The Family: The Mother Family and the Father Family*

1. General.---The human family, as that among animals, has as its purpose the preservation of the species. It is organized to provide for the needs of the female and to protect both female and young. The human family, because of the longer period required for the care of the children, has greater permanence than the animal family.\* Children are naturally the principal objective for the preservation of the species.

The mother family is the system in which descent and kin are reckoned through women. On the analogy of the <sup>animal</sup> family as well as on general grounds, it would seem that the mother family, in most instances, preceded the father family, which is the system in which the line is reckoned through men. It may be assumed that the mother family existed at one time or another among almost every people. The natural function of the woman as the bearer of children first gave her the higher position in the family. "The economic value of the woman, as an important factor in the production of material comforts and utilities, as a source of the accession of strength from outside, and as the mother of the future members of the tribe, was recognized at an early stage."\*\*

Under the mother family children and property were the mother's. The nearest relative was her brother, who was the next male guardian of the children.\*\*\* He held the position which later became recognized under the father family for the father. At this stage the family, as an association of both parents and their offspring, can hardly be said to have existed. It was a unit consisting of the mother and offspring, more or less closely associated with a male head---usually the mother's brother---within the kin.

The ultimate reasons for the mother family and for a change to the father family were in the life conditions, industrial arts, war, pressure of populations, etc. It ~~is~~<sup>was</sup> only by gradual stages that the husband

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\*E. N. Fallaire: *Family*, Hastings's *Encyclopaedia of Religion and Ethics*

\*\**ibid*

\*\*\*Sumner: *Folkways*, Pp. 354-357

was able to secure independence of the unit of which he became the head, in location, in the disposal of property, and in the orderings of the lives of its members. The substitution of the patrilineal for the matrilineal descent---sometimes described as the substitution of the patriarchate for the matriarchate---has been accompanied or preceded by a readjustment of the organization of the social unit. It may well be believed that the change from the mother family to the father family is the greatest and most revolutionary in the history of civilization. By changes in the life conditions it became possible for the man to get his wife to himself away from her kin, and to become the owner of his children.\* The father then became the supreme head of the family, the *pater familias*. Perhaps to defend himself from the mother and her kin, who were consciously or unconsciously striving to bring back the condition of the mother family, it was held necessary by the father to assume absolute authority and to enforce his authority by religious, civil, and state laws.

2. Biblical.---In historic times the Israelitish family had already reached the stage of polygamy which is accompanied by the father-right. Like all the other Semites,<sup>however</sup> the Hebrews passed through the stages of totemism, endogamy, and reckoning descent in the female line. There are distinct traces of an earlier matriarchate. The matrilineal descent of the tribes from the wives of Jacob sometimes appears. There are indications of polyandrous relations, relations which could only exist in the mother family. Marital connections between brothers and sisters, which occurred only in a polyandrous state, are heard of in the Scriptures. According to W. R. Smith, the levirate marriage also sprang from polyandry.\*\* A vestige of the mother-right is found in the fact that children were usually named by the mother (Genesis iv, 12; xix, 37; xxix, 31; xx, 6; xxxv, 16; xxviii, 28; Judges xiii, 24; I Samuel i, 20; iv, 21; Isaiah vii, 14). The wife could adopt a maidservant as a concubine for her husband

\*Sumner: Folkways, Pp. 354-357

\*\*W. R. Smith: Kinship and Marriage in Early Arabia

and appropriate the children of such a union (Genesis xx, 3f.). The fact that Sarah declared the son of the concubine, Hagar, would not inherit with her own son (Genesis xxi, 10)---contrary to the Deuteronomic law which makes equal heirs of all the offspring of the father, no matter what position their mothers held---may also imply a vestige of the mother-right.\*

Whatever remains of the mother-right may be found in the Bible, there is, nevertheless, no doubt that the family is assumed to be a distinct patriarchate and that the father-right is predominant. The purpose of the Hebrew family was to maintain the patrilineal descent and to preserve the patriarchal headship. The aim of wedlock was to have and to bring up children who would carry on the family tree (Genesis xx, 1; xxiv, 30; I Samuel i, 5f.; Genesis xvi, 4). It is natural that under the father-right, though girls were not objected to, boys would be preferred. They could carry on the cult and maintain the patrilineal descent.

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\*Benzinger: Hebräisches Archäologie, II Teil, 133-136

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*B. Father and Mother*

1. General.---The change from the mother family to the father family throws much light on the superior authority and honor accorded to the father. The mother bears the child. She usually nourishes and rears it. Yet the father has the greater power. Why? The father family is being maintained by superior physical force. That is its ultimate strength. It is that which allows it to assert itself legally. The source of the semi-mystical notion that the mother is nothing more than the field on which the father sows, that is, that she is merely the passive element in a union of which the father is the active element, lies in this superiority assumption of the father family. We know that the relation of child to parent was stronger under the mother-right, that old women were not so barbarously treated as old men.\* The devotion of a child to its mother is and was universally greater. But the introduction of the father-right won more respect for the father because of the legal authority enforced by and founded in physical strength.

Mothers often show resentment when a daughter is given or sold in marriage. That fact is not at all strange. The mother bears and rears the child. Yet she receives no compensation for it. The father assumes the right to sell the girl and to take the bride-price.

If procreation had not been put under the dominion of a great passion, if the group interest did not demand that they bear children, mothers would probably refuse to do so because of the burden children entail. "There is nothing in the sex relation, or in procreation, to bring about a continuing relation between a man and a woman. It is the care and the education of the children which first calls for such a continuing relation.\*\* A man and a woman were brought together by a higher interest in the struggle for existence. The woman with the child needed the union more, and probably she was more unwilling to enter it. Since she needs the man, the woman must endure her inferior position.

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\*Sumner: *Folkways*, P. 308-309

\*\**ibid*, P. 345



2. Biblical.---In historic times the Hebrew family was already a distinct patriarchate. The patriarchal family was evidently looked at in the light of a monarchical state. The wife was in a subordinate position. The family was the most important social unit and the whole of the social organization before there was tribe or nation. Some authority was necessary, and in the father family this was naturally vested in the father.\* In Israel the state was hardly ever a strong and well organized unit. It could never procure the loyalty which was given to the family. Hence even after the social organization grew more complex and many kindred families lived together as tribes and tribes as nations, the patriarchal family was the most powerful unit and retained its pristine strength and authority.

The father was the supreme authority in the family. The *patria potestas* was not, as some authorities hold, absolute, but it was extremely powerful. Abraham prepares to sacrifice Isaac (Genesis xxii). Jephthah sacrifices his daughter (Judges xi, 39). The protest of the prophets and the Pentateuchal legislation against child-sacrifice indicates that the practice was not uncommon. The father's authority was vested in the entire household. The daughter-in-law was under his dominion. Judah orders Tamar to be burned for breaking the marriage-vow (Genesis xxxviii, 24). Children are the property of the father and can be seized for debt (II Kings iv, 1; Nehemiah v, 5). The father could sell his daughter in marriage and into slavery *ketana* (Exodus xxi, 7-11). He could also arrange his son's marriage (Genesis xxiv). He had the right to chastise his children and to apply corporeal punishment (Deut. viii, 5, xxi, 18; Pv. xiii, 24; xxii, 3, 15; xxiii, 13-14; xxix, 15, 17). He could insist on the utmost respect and obedience from them (Exodus xx, 12; Lev. xix, 3; Deut. v, 16; Ezekiel xxii, 7; Micah vii, 6; Pv. i, 8; vi, 20; xxiii, 22; xxviii, 24; xxx, 17). The father could disallow the vow made by an unmarried daughter (Numbers xxx, 4-6).\*\*

But the father did not always assert his authority. David continually forgives Absalom for his follies. When Absalom is slain he mourns for him most bitterly, and shows genuine affection (II Samuel xix, 1).

\*T. 3. Soares: The Social Institutions and Ideals of the Bible, Chap. III

\*\*Jewish Encyclopaedia: Family and Family Life; Father

Usually respect to parents was willingly given. Isaac is content to let his father choose a bride for him (Genesis xxiv). That he might have selected her himself can be seen from Jacob's action. Moreover, under the Biblical law the father could not give his son in marriage. Solomon shows marked <sup>respect towards</sup> ~~reference to~~ his mother, Bath-Sheba. (I Kings ii, 19f.) The contrast which we observe here between Absalom's revolt against his father and Solomon's high regard for his mother gives us a true life-picture of filial relationships and of family life in ancient Israel. Parental authority was almost absolute, but it is evident that in life it was not always expressed.

The children belong to the father. The children of concubines are therefore equal to those of the chief wife, for they are all the children of the father. Fatherhood, then, is assured. Motherhood is uncertain unless the father recognizes it.

There were ~~some~~ limitations on the father's authority, and some of these arose from the mother's authority and influence. In questions of honor and respect she stands on an equal plane with the father (Exodus xx, 12; ~~xxi~~, 15; Lev. xix, 3; xx, 3; Deut. v, 16; xxi, 18; xxvii, 16). It is to be observed that the law concerning a stubborn and rebellious son <sup>Deut. xxi, 18-21</sup> calls for the mother's cooperation: "If a man have a stubborn and rebellious son, that will not hearken to the voice of his father and the voice of his mother, and though they chasten him, he will not hearken unto them. Then shall his father and his mother lay hold on him, and bring him out unto the elders of his city.....And they shall say unto the elders of his city: 'This our son is stubborn and rebellious; he doth not hearken unto our voice; he is a glutton and a drunkard.'"

In spite of the subordinate legal position of <sup>the</sup> woman, the place of the mother was very high in Israel (Ps. xlv, 18f.). In the Decalogue as well as in the Holiness Code she stands with the father as the recipient of honor and respect (Exodus xx, 12; Lev. xix, 3; Deut. v, 16). Her ethical equality as well as her ~~worthy~~ and affectionate position in the home is attested to in many Scriptural verses (Genesis xxviii, 7; Joshua ii, 13, 18; vi, 23; Judges xiv, 2ff.; I Samuel xxii, 3; II Samuel xix, 38; I Kings xix, 20; Ezekiel xxii, 7; Zechariah xiii, 3; Psalms xxvii, 10;

Psalms cix, 14; many passages in Proverbs). In the home life and training the mother is of equal importance with the father (Jeremiah xvi, 7; Pv. xxx, 17). Tender relations are portrayed by a mother's love (Genesis xxiv, 37; Jeremiah xxxi, 15; Isaiah lxvi, 13; Lamentations ii, 11-12; Psalms xxxv, 14; Pv. iv, 2). In the Book of Proverbs the high position of the mother is particularly stressed. Her teachings are constantly enjoined as being of equal weight with those of the father (Pv. i, 8; vi, 20; x, 1; xv, 20; xvii, 25; xix, 23; xx, 20; xxiii, 22, 25; xxviii, 24; xxx, 11, 17). Special attention may be directed to Proverbs xxx, 1 where the wise sayings of king Lemuel are said to have been taught to him by his mother. The queen mother was a personage of great importance in ancient Israel. In the history of the kings her name is given in connection with the accession of her son as king in the set phrase, "and the name of the mother was....." (I Kings ii, 23; xiv, 21, 31; xv, 2, 10; xxii, 42; II Kings viii, 26; xiv, 2; xv, 2, 33; xviii, 2; xxi, 1, 19; xxii, 1; xxiii, 31, 36; xxiv, 8, 18; cf. I Kings i, 11; ii, 13, 20, 22). In the Apocrypha the mother's position is very high. Ben Sira (Ecclesiasticus iii, 16) declares: "He that provoketh his mother is cursed of the Lord." In IV Maccabees 15 the mother is held in high esteem. The early education of the children was in the hands of the mother (Pv. xx, 1). Proverbs contains many references to the instruction of the father and the teaching of the mother. The word ~~למד~~ <sup>למד</sup> used for instruction implies reverence and discipline, aspects of parental respect which are in accord with the father's power. The word ~~למד~~ <sup>למד</sup> used for teaching <sup>bears</sup> the sense of loving guidance, of moral monitorship, in accordance with the mother's function.

The legal position of the woman in relation to her children was a quite worthy one in ancient Israel. The love of the child belonged to the mother, respect and obedience to the father.\* But that the mother was completely equal to the father in authority and in position cannot be said.\*\*

\*Benzinger: Hebräisches Archaeologie

\*\*A. Eberharter: Ehe und Familienrecht der Hebräer, P. 184-185

Jewish Encyclopedia: Father, Mother, Children, Family and Family Life

Hastings's Encyclopedia: Family---Biblical and Christian

3. Babylonian.++-In Babylonia the principle of *pater familias*, which generally accompanies the father family, held full sway. We have already stated that the father's authority was not as despotic as in Rome, but was greater than in Israel.\* There was no remonstrance from the father's decision. There was from the mother's. For both the child and the mother were the father's property. The father had the power of life and death over his children. He could sacrifice them to the gods or sell them for debt or into slavery.\*\* He could hand his sons over to priestly and his daughters to vestal service. But upon doing so, he lost his authority over them. In the case of a husband's long absence from home, if there was no provision in the house, a woman could become another man's mistress. With the return of her first husband, she resumed her former place. But the children remained with their real father.\*\*\* Though she bore and reared the children, she had no further authority over them; she received no compensation, but <sup>was</sup> ~~is~~ the property of her husband.

If a son struck his father his hand was cut off.\*\*\*\* The mother is not mentioned, contrary to Biblical law which places the mother on an equal plane with the father in all instances of parental honor, respect, and devotion. Did the Babylonian law, nevertheless, apply to the mother and the word for "father" really meant "parent", or was the father-right so powerful that the son could not be punished for striking or for disrespect to his mother unless the father permitted?

Yet the mother had great influence. As in Israel, young children were under the mother's care. She had the right to hand them over to a wet-nurse.<sup>o</sup> She took them with her when she was divorced, although they returned to the father when they were old enough.<sup>oo</sup> When the father was away on official business, the mother and the children were to be provided for; otherwise, she could enter another house <sup>with the children.</sup> ~~to her~~ was left the surveillance over the children as well as over the household while the husband was absent.<sup>ooo</sup> The Sumerian Laws gave her as well as her hus-

\*P. 10

\*\*C. H. 113-117, 210

\*\*\*C. H. 29f.

\*\*\*\*C. H. 195

<sup>o</sup>S. A. Cook: Law of Moses and the Code of Hammurabi, Pp. 128-137

<sup>oo</sup>C. H. 135, 137

<sup>ooo</sup>C. H. 29f.

band the right to expel her son.\* On the other hand, if the son denied her, he was severely punished. The Code says nothing about the mother's right to cut off her son for disrespect.\*\* This is unlike the Deuteronomic law (xxi, 18f.) which calls explicitly for the cooperation of the mother. But in the case of certain ~~xxi~~ classes of adopted children, father and mother are mentioned together for the punishment that ~~xx~~ is to be inflicted in case such children disclaim them.\*\*\*

Letters between children and parents show not only respect and reverence for parents but also devotion to and affection for father and mother, particularly for the mother.

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\* Above P. 10

\*\*C. H. 168-169

\*\*\*C. H. 192-193



4. Greek.---In Athens the father family was, of course, the rule. Upon divorce or separation of <sup>the</sup> parents, the children remained with the father. The mother returned to her family. She could lay no claim upon the children. They belonged to the family of the father.

As in Israel, however, the mother in Athens had great influence. She was equal in honor and respect. She was more affectionately considered than the father. Euripides bids children love their mother, "for there is no sweeter love than this". The word he uses is a strong one, denoting passionate and even sentimental attachment. One Greek writer holds that the claims of religion are not superior to those of a mother. Xenophon, in his vindication of Socrates to the Athenians, makes this philosopher rebuke his son for ingratitude to his mother. The training <sup>the</sup> in early years was supervised by the mother.\* The philosophers and writers mention the mother ~~for~~ with the father for equal honor and devotion.\*\* This fact is even more noteworthy because of the low position of women in Athens. In Homer ~~the~~ woman is equal. In Sparta she remained so. There her legal rights as a mother were equal to those of the father.

5. Roman.---In Rome the situation was very much like that in Babylonia. The principle of *patria potestas* received its classic expression among the Romans.\*\*\* The Roman father was assured of respect by law, not by affection. The child was practically a slave of the father. He had the power of life and death. He could sell them into slavery or into marriage. His son had to worship his Di Manes. He was subjected to strict discipline as a child, and never escaped from its effects through life.

The mother, nevertheless, had her influence within the inner circle of the family. The early training of the child was in her hands. Many writers speak of the affection bestowed on the mother. Children were expected to respect father and mother alike. When parents were separated, young children went to the mother if the wedlock had not been broken through any fault of hers. Children were obligated to support her as well as <sup>father.</sup> the ~~the~~.

\*Hastings's Encyclopaedia: Family---Greek; Children---Greek

\*\*Above P. 13-14

\*\*\*See above P. 15-16

3. Talmudic and Rabbinic.---In Halacha the superior position of the father was maintained.\* As far as the father was concerned, for example, no distinction was made between legitimate and illegitimate children.\*\* A child is considered legal when it is recognized by the father. The evidence of the father was conclusive when he testified that a given person was his son, whether he was so known by common repute or not. Without such a recognition neither the child nor the mother has any claim on the father.\*\*\* Some scholars in the middle ages, who had been influenced by Aristotelianism, argued that though Jewish law had made no provision for children---particularly for those of a heathen woman by a Jewish father---if they were not recognized by the father, natural justice ought to interfere and compel him to recognize them. Such was the question put by R. Israel to Rabbenus Asher ben Jechiel. The latter was opposed to any arguments from secular logic.\*\*\*\* Rabbenus Asher's opinion remained the authoritative one.

In the family the patriarchal as distinct from the matriarchal system was continued. Genealogy was traced through the father. "The family of the father is called family; the family of the mother is not called family"---"משפחת אב קרויה משפחה, משפחת אם אינה קרויה משפחה".<sup>o</sup> Since the father is the head of the family, deference to him precedes that to the mother. When both order their son to do something at the same time, for instance, to bring them a drink of water,<sup>oo</sup> he must first perform the bidding of the father, for both the son and his mother are under the authority of the father. A son must show respect to his father's wife who is not his mother and to his mother's husband who is not his father<sup>ooo</sup> probably because the man in the house, whether he be his father or not, is the head of the family. The Rabbis, however, put this entirely under the principle of parental honor, that is, that the devotion one has for his real parents would naturally call for some respect to his foster-parent.

\*See above Pp. 13-27

\*\*Dr. Chaim Tchernowitz: Inheritance of <sup>Illegitimate</sup> ~~Jewish~~ Children according to Jewish Law

Law Samuel Mayer: Die Rechte der Israeliten, Athener, und Römer, Vol. II, #245

\*\*\*Rosh: Responsa LV, 9

°Baba Bathra 109b

°°Kidushin 31a

°°°Ketuboth 103a

Where the patriarchal headship is not involved and where there is no conflict between the bidding of the father and the mother, the two are on a plane of equality.\* When they are divorced, the son may himself decide which of the two to obey first.\*\* Not all of the authorities are agreed on this law. In the Talmud a widow's son inquired which parent must be first obeyed in the case of a conflicting order. The answer was that the father is supreme. The widow's son then asked, "How is it if she be divorced?" He is humorously answered: "From thy eye-lids can be seen that thou art a widow's son. <sup>Set</sup> ~~Put~~ water for them in a bowl and call them as one would hens.\*\*\*\*" Rabinowides ~~inexistent~~ presumably did not wish to derive any law from this humorous incident, for he is silent on the matter of how obedience is to be shown to divorced parents. But Isaac of Fez (Alfassi) assumes, from the answer given to the widow's son, that the parents are equal when they are divorced.

In the case of a stubborn and rebellious son the father's authority is restricted by requiring the consent and the cooperation of the mother to bring the son to trial. Both must agree to have him punished, and both must bring him to trial.\*\*\*\*

Young children were under the mother's care. The mother ~~is~~ was a moral mistress. A boy is declared to be more attached to his mother when he is young.<sup>o</sup> A daughter always remained with her mother until she was married.

It is incumbent upon one to ransom his mother from captivity before anyone else.<sup>oo</sup> This is not meant to be a superior estimation of the mother. Captivity in ancient times for a woman meant sexual misuse and pollution. Her captor could use her as his mistress or sell her into slavery, as he desired. Hence one did his utmost to ransom an Israelitess.

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\*Yad: Mamrim vi, 1; Tur: Hilchoth Kibud Ab v'Em; Kidushin 30b

\*\*Yoreh Deah cxxl, 14

\*\*\*Kidushin 31a

\*\*\*\*Sanhedrin 48b-70b; Yad: Mamrim vii, 5, 6

<sup>o</sup>Ketuboth 102b, 45b; Yad: Ishoth xxi, 17; Tur Eben Haezer 82

<sup>oo</sup>Horayoth 13a

If she were one's mother the son naturally had to ransom her first.

The Rabbis recognize that in life one is usually more devoted to his mother.\* The reason given by the Rabbis is unworthy: "Because she entices him with words"---"שגור כנוריה". On the other hand, one reveres (fears) his father more than his mother. To equalize matters, the Torah, say they, names the mother before the father for reverence and the father before the mother for honor. What we may gather from all this is that the Rabbis emphasize that both parents must be equally revered and honored.

The mother is highly regarded in the Talmud and in the Midrash. The heathen of Askelon is considered praiseworthy because he did not complain when his imbecile mother insulted and reviled him in the presence of aristocratic company.\*\* Rabbi Ishmael was ordered to accede to his mother's demand to wash his feet and to drink of the water.\*\*\* For her it meant honoring one of high intellectual attainment. To him it seemed a base thing to allow a mother to do. Yet his colleagues insisted that she be obeyed, when she complained that he was not conducting himself in a honorable manner toward her when he objected to letting her debase herself before him. Rabbi Tarfon's act of having his mother walk on his hands when her sandals fell off her feet was considered but an infinitesimal part of the obligation of parental honor.\*\*\*\* Even his deed of having his aged mother climb on his back when she got on or off her bed was not considered as something particularly remarkable.<sup>o</sup> The high esteem of the mother by the Rabbis is well illustrated in the words of ~~Rabbi~~<sup>R.</sup> Joseph: "Whenever he heard his mother's footsteps, he would say, 'I shall stand before the divine presence (שכינה) which is entering.'"<sup>oo</sup>

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\*Kidushin 31a

\*\*\*Jerushalmi, Peah 1

<sup>o</sup>Kidushin 31b

\*\*Jerushalmi, Peah 1; Kidushin 31a

\*\*\*\*ibid

<sup>oo</sup>ibid

The Beraitha teaches the influence of the mother on her offspring through simple heredity when it says: "Most sons follow the nature of the mother's brothers."\* This is a peculiar reminiscence of the condition under the mother-family.

Just as the children were legally less bound to the mother so had the mother almost no obligations towards them. The father had to provide for the young child, circumcise his son, redeem ~~his~~ his first-born, teach him Torah, set him (or his daughter) married, teach him a trade, and according to some, even teach him how to swim. But the mother had none of these duties.\*\*

Comparatively speaking, then, the position of the mother in Rabbinic literature is quite high. Everywhere, in Israel, in Babylon, in Athens, and in Rome the woman's inferior legal rights <sup>as a parent</sup> ~~in the family~~ corresponded with the general low position of women. But ethically the ~~of the mother~~ mother was on a plane of equality with the father.

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\*Baba Bathra 110a

\*\*Kidushin 29a-30b; Sifra, Parasha Kidushin; Tosefta I



*C. Sons and Daughters.*

1. General.---The father-right implies the inferiority of the woman in general. The son may some day become a father. He will continue the patrilineal descent. He will maintain the cult. The daughter, on the other hand, will have to adopt her husband's name and enter his family. She will belong to his clan and tribe. Her cult <sup>will be</sup> ~~is~~ that of the husband. She is therefore inferior to the son and is less desirable. She is usually a mere chattel of her parents while the son has some privileges. It is true that in the Orient a daughter could continue her father's line through her sons if he himself had none. But he could legally adopt a son if he desired.\*

2. Biblical.---Though the mother in Israel was highly esteemed and held a high position in the home, the daughter's place was as low as elsewhere in antiquity. Practically all the prescriptions for parental honor in the Bible, all the wisdom teachings in Proverbs are directed towards the son, not towards the daughter. The reason for this is not that the daughter did not need to respect her parents but that there was no such problem as far as she was concerned. She was the father's chattel and he could do with her almost as he pleased. The father might arrange the marriage of his son (Genesis xxiv); but he could not sell him or give him in marriage. Samson insisted on marrying whomever he wished, even out of Israel, and his parents had to consent (Judges xiv, 1-4). A man could sell his daughter even into slavery, though not to foreigners (Exodus xxi, 7-11). The purchaser or his son must marry her; otherwise, she leaves his house. If a man's daughter is seduced, the father has the right to force her seducer to marry her or, if the father does not wish him to marry her, he can extract money from him (Exodus xxii, 15-16). The daughter

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\*Samuel Mayer: Vol. II, #246

apparently has no say in the matter. It is to be observed, however, that sons as well as daughters were seized for debt (II Kings iv, 1; Nehemiah v, 5). In Nehemiah the situation is deplored, particularly because daughters were being brought into bondage. This indicates that in life the daughter was not considered a mere chattel.

It is usually said that in Israel the father had the power of life and death over his children, particularly over his daughters. But this is unproven. In the case of sons the father certainly had no such right. The sacrifice of children to Baal and to Moloch, a practice which is brought as proof of the father's power of life and death, was a Canaanitic custom which came over to Israel. The intended sacrifice of Isaac is something which has crept into the Bible from primitive days, and it is really an answer to those who thought that Yahwe required the life of the most beloved object for atonement. The sacrifice of Jephthah's daughter <sup>(Judges 11, 29-40)</sup> illustrates the efficacy of a vow rather than the power of life and death. It would seem from her answer that her consent was necessary before she could be sacrificed: "And she said unto him: 'My father, thou hast opened thy mouth unto the Lord; do unto me according to that which hath come out of thy mouth.'" There is no doubt that the Israelites often thought to avert Yahwe's wrath by the sacrifice of children. But legally the father had no right to do this (Lev. xviii, 27; xx, 1-5; Deut. xii, 30f.; xviii, 9-12). The prophets denounced it vehemently (Jeremiah vii, 31; xix, 5; xxxii, 35; Ezekiel xx, 30f).\* The prophets, furthermore, declared that the child <sup>is</sup> ~~was~~ not responsible for the father's <sup>(Ezekiel xvii)</sup> sin. That would automatically dispense with the need of child-sacrifice, for the child could not atone for the sin of the father.

It would seem that just as the father could have a disobedient son put to death (Deut. xxi, 18f.), so could he have his immoral daughter

\*Andreas Berthar: Ehe und Familienrecht der Hebräer, P. 134-135

likewise punished. Judah ordered Tamar, his daughter-in-law to be burnt for prostitution (Genesis xxxviii, 24). By marrying Judah's son Tamar had become a member of that family. With the death of her husband, she being childless, the father held parental authority over her. Now we should certainly expect the father to have at least as much right over his own daughter. In the Priestly Code ~~this~~<sup>it</sup> is definitely stated that if the daughter of a priest plays the harlot, she shall be burnt (Lev. xxxi, 9). The father and the mother are the guardians of their daughter's virginity. If the husband accuses his wife of not having been a virgin, and brings proof therefor, she is stoned. She has disgraced, not her husband, but her father's house (Deut. xxii, 13-21). And of course under no circumstances was the father allowed to cause his daughter to become a prostitute (Lev. xix, 29).

The father may forbid his <sup>unmarried</sup> daughter's vows (Numbers xxx, 4-5), but apparently he cannot forbid his son's vows. Here the absoluteness of the father's authority over his daughter is most concretely expressed. The consolation given the daughter for the father's action is almost mystical in significance: "And the Lord will forgive her because her father disallowed her." The father's authority is set up even against her vow to Yahwe.

Until she marries a daughter remains with her mother, while the son, after a few years, is under the father's supervision or is given over to a nurse (Numbers ~~xix~~ xi, 12; Isaiah xlix, 23).

The distinction made between sons and daughters pertained particularly to the family cult. Males continued the line and maintained its cult. Sons remained with their father to build up his household. The sons were the first heirs. Daughters, even when they did inherit, as in the case of the daughters of Zelophehad (Numbers xxxvi, 6, 8), had to marry within the family of their father's tribe. Inheritance by daughters is an exception which is permitted only when the father has no

other male heirs. In general, daughters were lost to the father when they entered the father-in-law's household. The bride-price was considered a sort of indemnity. Daughters were therefore not in a position to carry on the father's cult.\* Since the ~~main~~ <sup>main</sup> purpose of the Israelitish family was to maintain the line, the greater importance of sons in a patriarchal system is a natural consequence.

8x 3. Ancient.---In the Hammurabi Code daughters are hardly mentioned in their relations to parents. If a son struck his father, his hand was cut off.\*\* But the daughter was a mere chattel, and no doubt would not have dared to strike her father. If she did the father could do whatever he pleased with her.

In Hebrew law it does not seem that the father had the right to make his sons responsible for his debts, for nowhere is he given the permission to sell his sons. That this was, nevertheless, done is evident from Nehemiah v, 5. In Babylonian law a man's sons and daughters as well as their mother could be seized for debt. Babylonian law makes no mention of the right of the father to disown his daughter as it does of a son. Nor does it prescribe any punishment for a daughter who disclaims her parents.\*\*\* Neither was possible. A daughter was the property of the father. He could do with her as he wished. He couldn't disown her for she did not inherit anyhow. He could no doubt drive her out of the house. There were slight limitations on his authority over sons. But he had the power of life and death over both. The only exception was when they entered the Temple service. Then they belonged to the god in whose service they were, not to the father.

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\*Benzinger: Hebräisches Archaeologie, Pp. 147-152; H. Pless: Das Kind in Brauch und Sitte der Völker

\*\*C. H. 195

\*\*\*C. H. 132-133; Sumerian Laws

In Athens the father had the power of life and death over his children. Solon limited this right to the selling of daughters into slavery and to the disowning of sons if they were disobedient. As in Babylonian law this had to be preceded by court action. The father could give his daughter away in marriage. He could allow a stranger to adopt his son. The adopted son, as in Babylonian and Roman law, had the same rights as a real child. In the Mosaic Code adoption is not a matter for legal consideration. In Greek law the children belonged to the father, but the daughter was raised by the mother. The father lost his authority over his son when he became of age, over his daughter when she was married.

In Roman law both sons and daughter were practically the slaves of their father. He had the power of life and death, could sell them, and disown them at will. The difference was that the son could inherit from the father and carry on his cult, whereas the daughter could do neither. Both, as in Babylonia, were released from the father's authority when they entered the Temple service.

4. Talmudic and Rabbinic.---The legal status of the daughter changed materially in the Talmud. She could not be sold.\* After reaching her majority (נשוא, after the age of twelve years and six months) she was independent.\*\* She did not inherit from her father, but she had to be provided for after his death until she married.\*\*\* She as well as the son had to be supported. Once she was married, even if she <sup>was</sup> thereafter divorced or ~~widowed~~ widowed, she remained independent of her father.\*\*\*\*

The comparative duty of the father ~~to~~ to his sons and to his daughters did not correspond with his authority over each of these. There were only a few limitations on his authority over his daughters. Yet his only duties to them were to provide them with a dowry and get them married. He had far less authority over his sons. Yet his duties to them

\*Kidushin 69a; Yal: Abadim i, 10

Ketuboth iii, -3; Niddah v, 7; Baba Mezia i, 5; J. E.: Daughter

\*\*\*Ketuboth iv, 2

\*\*Ketuboth iv, 4-5; ibid Gemara 43b;

\*\*\*\* Ketuboth iv, 2



were more numerous. In addition to those duties which could be performed only in relation to males (e.g. circumcision and redemption of the first-born---only a male was considered a first-born, בכור), the father had to teach his sons Torah, teach <sup>at their wives</sup> them a trade, and even teach them how to swim.\* But it must be remembered that daughters were expected to come under the surveillance of their husbands and would, therefore, have no need of the preparation that sons received.

In Talmudic law parental honor is as incumbent upon the daughter as it is upon the son. She may not curse her parents.\*\* She may not smite them.\*\*\* The law of filial piety in relation to daughters is summarized in the following words: "Both man and woman are duty-bound in fear and in honor. But <sup>the</sup> man has the means to perform it, and the woman has not the means to perform it, for the authority of others is over her. Hence if she be divorced or widowed, both are equal."\*\*\*\* The law of parental piety, then, is the same for both sons and daughters, except that under the conditions in the father family, which is assumed, the husband can prevent <sup>his wife</sup> her from bestowing honor on her parents. There is one further exception. A daughter could not be punished for being stubborn and rebellious, "for it is not her way to indulge in food and in drink as a man, for it is said [in the Scriptures], 'son' and not daughter".° In Biblical law a stubborn and rebellious daughter was an impossibility, for the father could do with his daughter almost as he pleased. But the Rabbis did not give this authority to the father. Since the practice of punishing a daughter for the vice of drinking and greed did not exist, they had to find an explanation. And so, in accordance with their exegetical methods, they laid emphasis on the word "son". But in Talmudic days the law really had no practical value, for it probably was not used even in relation to sons.

In general, then, in Rabbinic law, as in every ancient law,

\*Tos. Kidushin i, 11; Jerushalmi Kidushin 51a; Kidushin 29a-b, 30a; Tannuim, Buber edition, Shelach #23 with note 108, etc.

\*\*Sanhedrin 85b; Yad: Mamrim v, 1; Yoreh Deah cxxli, 1

\*\*\*ibid Sanhedrin; ibid Yoreh Deah; ibid Yad: Mamrim v, 5

\*\*\*\*Kidushin 30b; Sifra: Kidushin; Pesefta I; Yad: Mamrim vi, 3; Y. D. cxxl, 1

°Yad: Mamrim vii, 11; Sanhedrin 69b-70a

parents had greater authority over daughters than over sons. In most  
societies, however, there was no problem of parental piety in regards to  
daughters because ~~daughters~~<sup>they</sup> were merely the property of their parents.  
But in Jewish law this question does arise, and the decision is that  
daughters, unless they are married, have the same duties to their parents  
as sons.\*

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\*See above: The Filial Relationship, Talmudic, No. 12-27

## Chapter IV---Filial Piety in Jewish Law with Comparisons to other Laws\*

### A. The General Authority of Parents.

The authority of the father over his children pertains to their persons, their things, and their actions. The mother had no authority over her children on her own account. She derived it from the father.

In Israel children are considered gifts of God. It was a generally accepted opinion that the world was created for the multiplication of the species (Genesis i, 28),\*\* alleging Isaiah xlv, 18: "He created it not a waste; he formed it to be inhabited."\*\*\* To have children is a blessing of God. As the parents themselves, they belong to God. Parents are God's agents and representatives in relation to their children, that is to say, they derive their authority from God.\*\*\*\* Their power over their children is, therefore, almost as great as God's.

In Babylonian and Roman law the *pater familias* was supreme. There was no remonstrance from his decision or authority. His power over his children was like that over his slaves. He had the right of life and death. In Athens this right was limited by Solon to that of selling his daughter into marriage or into slavery and disowning his unruly son. In Israel, once a child was recognized, it could not be disowned or expelled. The Mosaic Code gives the father the right to sell his daughter, but only on the condition that the purchaser or his son marry her. She may not be sold to foreigners. Rabbinic law made the sale of daughters entirely ineffective.

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\*Note.---This chapter is, to some extent a summary. As such it is largely based on what has already been said. The principal source here used is Samuel Mayer: *Die Rechte der Israeliten, Athener, und Römer*, ~~ix~~ <sup>ix</sup> ~~Teil~~ Vol. II, Part ii, P. 410ff., #243-249. Where the reference is not given, it is to be understood that the assertion is based on what has already been said or on Samuel Mayer. Other references will be designated as they occur.

\*\*George Foot Moore: *Judaism in the First Centuries of the Christian Era*, Volume II, Pp. 119-140, The Family

\*\*\*Eduyoth i, 13

\*\*\*\*The injunction is in the Decalogue, which is presumed to have been revealed by God.

Parents may chastise their children. They may inflict corporal punishment upon them for the sake of discipline. <sup>they do</sup> But ~~it~~ not have the power of life and death. The Deuteronomic Code required that a disobedient son be handed over to justice, which, after due process of the law, may assume the right of life and death (Deut. xxi, 18-22). The law requires that both the father and the mother bring him to trial. Constitutionally speaking this prescription accomplishes two purposes: (a) it limits the authority of the father inasmuch as the decision of the court is needed; (b) it sets up the cooperation of the mother through which the father's mistreatment of the son is prevented.

In Talmudic law corporal punishment may be inflicted only on a minor, that is, a boy who has not yet attained the age of thirteen years and one day or a girl who is not yet twelve years and six months old. The father is forewarned not to strike a grown son. The exigencies of the situation may stir the son to defend himself and to strike his parent. This is forbidden in the Scriptures, but the father brings it upon himself. He has, figuratively speaking, set a "stumbling-block before the blind".\* Chastisement should be an evidence of love. R. Eliezer ben Jacob <sup>cites the verse:</sup> ~~states~~ "Whom the Lord loveth he correcteth, even as a father the son in whom he takes pleasure" (Proverbs iii, 12).\*\*\* R. Weir <sup>quotes:</sup> ~~states~~ "Thou shalt know in thy heart that as a man chastises his son, so the Lord thy God chastises thee" (Deut. viii, 5).\*\*\*\* A father does not punish his son according to his deeds but out of a desire to better his ways.\*\*\*\* <sup>later Rabbis</sup> Some authorities do not consider the son too old for corporal punishment until he has passed his twenty-fourth (according to others, his twenty-second) year,---unless he be married, in which case he is always considered an adult."

Children who have passed their minority may marry without the parents' permission or consent.\*\*

\*Moed Katon 17a      \*\*Sifra, Friedmann's edition, 72bf; see also Hebrews xii, 5f and Revelation of John iii, 19      \*\*\*ibid; see also Apocalypse of Baruch lxxix, 2

\*\*\*\*George Foot Moore: Judaism, Vol. II, Chastisement, P. 254

\*Kidushin Chp. <sup>Rashi</sup> lxxv which the Ramah, Yoreh Deah cxxl, 20 bases himself

on Maharshah 68 on Kidushin Chp. I

\*\*Yoreh Deah cxxl, 25, Ramah, based

on the Maharik, Shoresch 167

The father may release his unmarried daughter from a vow (Numbers xxx, 4-8).

Whatever minors may find belongs to the father. What they may find when they have attained their majority belongs to them.\* A girl is considered adult when she reaches puberty<sup>(17-173)</sup>. But a son is considered a minor as long as his father supports him. In such a case he must give any article that he may find to his father.\*\* The father also has a right to the services or earnings of his children during their minority.\*\*\*

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\*Baba Mezia i, 5

\*\*Baba Mezia 12a

\*\*\*Ketuboth iv, 4



*B. Types of Fatherhood*

The authority of the father is generally derived from the raising of children in a legally regulated marital state (i.e., in wedlock), from the legitimation of children brought up outside of the marital state, or from the legal adoption of strange children. Legally children in relation to the father are like the subject of the state: natural, civil, appropriated (adopted). Correspondingly one is a father by nature, through marriage, and by adoption.

1. The Fatherhood of Nature and of Marriage.---In Greek and Roman law a child was not considered legitimate unless it were born of a free woman in full wedlock. A child born out of wedlock or of a woman of low caste, that is, a so-called natural child, was considered fatherless. It belonged to the same class as the mother who had to nourish and rear it.

In Israel fatherhood does not depend on wedlock but on blood-relationship. There is no distinction between legitimate and illegitimate children. A child is considered legal <sup>when</sup> ~~and~~ it is recognized by the father. The evidence of the father is conclusive when he testifies that a given person is his son although he is not so known by common repute.\* Without recognition neither the child nor the mother can claim any rights.\*\* A child born in wedlock, however, cannot be declared a bastard unless the mother agreed to do so with the father.\*\*\*

2. The Fatherhood of Adoption.---Adoption is a means of appropriating children. It is an artificial way of acquiring children, whereby a person declares legal rights, duties, and responsibilities in relation to children who are not his own either through matrimony or by nature. Adoption was a wide-spread custom in Asia and in the Orient. It was held to be a religious duty to have a son who would inherit the estate, maintain the cult, and continue the line. If one had no son, his daughter could represent him through her sons. But a father could adopt a son and declare him to be his spiritual as well as his legal heir. A father could,

\*Dr. Chaim Tchernowitz: The Inheritance of Illegitimate Children according to Jewish Law

\*\*Eben Ha'ezer iii, 9, lxxi, 4, iv, 28, xxii, 2

\*\*\*In Jewish law a bastard (yomo) is a child of an incestuous union, i.e., the issue of any connection forbidden in the Torah.

however, also adopt a daughter who would stand in the same legal position as his real daughter.

In Babylonian, Greek, and Roman law adoption was commonly practiced. In the Hammurabi Code adoption takes a very important place. In fact, the law relating to filial piety is largely that of the adopted son, and it can only be assumed---it is not definitely stated---that the same obedience was required of a man's own children. Adopted children in Babylonia, Athens, and Rome had the same rights and duties as real children. A father could allow his young son to be adopted in a strange house, and the one who adopted him then assumed the fatherhood.

"In ancient Israel, as in other nations of antiquity, no great distinction was made between blood relationship and artificial kinship, created by any sort of attachment to the family, e.g., through adoption and the like."\* In Mosaic law the power of the father was restricted in the matter of adoption. Only natural children and kin could inherit. The sons of concubines had the same rights as those of the chief wives, and those of disliked wives were on an equal footing with those of favorite wives.

In Talmudic law a method of adoption seems to have been found. One can declare that a given person is his son, and can make him his heir.\*\* "If one say, 'This is my son,' he is to be believed."\*\*\* Since the father's word is sufficient, it would seem that he can declare that anyone is his son and heir, though he really be not his offspring.

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\*Dr. Chaim Tchernowitz: *ibid*

\*\*Baba Mezia 134a

\*\*\*Yad: Yerusha iv, 1; Choshen Mishpat cclxxix, 1

*C. Duties.*

The reciprocal duties between parents and children have their source in nature, in law, and in knowledge. Among most peoples these duties derive from the physical, moral, and spiritual nature of man, and involve the preservation of the species, as well as the propagation of the same. In as far as they are determined by law, they have the specific character of a state principle.

In Babylonian, Greek, and Roman law the duty of the father was especially religious, i.e., he had to prepare the son in the performance of the cultic rites. This corresponds, to some extent, to the father's duty in Israel of teaching his son Torah. All codes required that parents rear their children. Absolute obedience was demanded of children. In Rome and in Athens children were expected to respect father and mother alike. As in Israel they had to provide them with the means of subsistence when they were unable to do so themselves, either on account of old age or on account of ill health. In Athens children had to provide a respectable burial for their parents. This is practiced in Israel but does not take the form of a strict law. In Greek law at no age were the children released from these particular duties. In Jewish law honor to parents was obligatory at all ages and incumbent on both sexes. But a married daughter could not be required to perform her filial duties as she was under the dominion of her husband.

For the Israelite the reciprocal duties between parents and children are religious. For the Athenian they were religioso-civil. For the Roman and the Babylonian they were chiefly legal. The authority of the father was absolute. The law attempted to strengthen as well as to regulate his authority.

The Jewish father has to support his children while they are young. He must circumcise and redeem his son (i.e., his first-born son from the priest); he must teach him Torah, get him a wife, teach him a trade; he must, according to some, also teach him to swim.\* His son is his

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\*Kidushin 29a

heir. He must provide his daughter with a dowry, leave provision for her after his death if she be still unmarried, and get her married.

Children are duty-bound to respect and to honor father and mother next to God. They must support them.\* To have light regard for parents or to strike them is punished by death (Exodus xxi, 15; Lev. xx, 9; Deut. xxvii, 12). Dear to God is the honor of father and mother, for the Scripture employs the same expression about honoring, revering, and cursing parents as about honoring, revering, and cursing God, thus according to the hermeneutical rule equalizing the things themselves.\*\* The rewards attached to them are equivalent. It is logical that father, mother, God should be thus joined,\*\*\* for they are so to speak, partners in bringing the child to life.\*\*\*\*

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\*Kidushin 31a; Yad: Mamrim vi, 13; Yoreh Deah cxxl, 1, 4

\*\*Niddah 31a; Mechilta de-R. Simeon ben Jochai on Exodus xx, 12; Mechilta on Exodus xx, 12; Sifra on Lev. xix, 3; Jerushalmi, Peah 15c; Kidushin 30b

\*\*\*G. F. Moore: Judaism, The Family

\*\*\*\*ibid Mechilta de-R. Simeon ben Jochai; ibid Kidushin; ibid Niddah; cf. Philo: On the Ten Commandments, §xxii-xxiii

*D. The Relation of Children to Divorced (Separated) Parents.*

In the father family the children always belong to the father. In Athens, upon separation of the parents (or upon the husband's death), the mother returned to her family and the children remained with the family of the father. The Hammurabi Code asserts that if the husband is absent and leaves his wife and children unprovided for, the mother may become the mistress of another man and may take her children with her. She must go back to her first husband when he returns. The children always belong to the real father. Those of the first husband must be brought back to him; those of the second husband must be left with him. In Roman law, after the authority of the father had been restricted by the emperors, the advantage of the child was the primary consideration in the case of the separation of ~~the~~ parents. Young children generally remained with the mother, unless the wedlock had been broken through her fault. The expense of rearing them was the father's. When they became of age they went to the father. In general, in Babylonian, Greek, and Roman law children belonged to the father upon separation of the parents. But filial piety had to be shown to both parents none the less.

In Jewish law the wife comes under the husband's authority as long as she is married to him. His power over the children is therefore greater than hers. If her husband is not the father of her children, she takes precedence; and of course if she be not the mother of her husband's children, he takes precedence. But upon the separation of the parents by divorce, children must honor their parents equally, and may choose <sup>to obey</sup> ~~whichever~~ parent they wish in case of a conflicting order.

The apportioning of children when the parents are divorced depends on the sex and the age of the children. A daughter belongs to her mother. A son remains with his ~~father~~ <sup>mother</sup> if she so desires until his sixth year because a boy until this age is more attached to his mother.\* The expense is the father's. Even if the mother be at fault, as long as there is no problem of her neglecting her children, a young son remains with her.

\*Ketuboth 102b; 65b; Yad: Ishoth xxi, 17; Tur Eben Haezer 2; Eben Haezer 82



*5. Release of Children from Parental Authority*

**Paternity** in ancient law was unlimited in time as well as in degree. That was **the first rule**. But as time went on, and law began to ~~branching~~ out, this principle was conditioned and more closely defined.

In Babylonia the father's authority ceased with his death, with the entrance of his children into temple service, and with the marriage of his daughter. The real father lost his authority over his child if he permitted someone to adopt him.

An Athenian father lost his authority upon his natural death and upon his civil death (i. e., upon the loss of his citizenship). As in Jewish law, he also lost it when the son reached the age of twenty. It ended when the father permitted another person to adopt his son, when he disowned his son, and when he gave his daughter away in marriage. But if her husband died <sup>or</sup> ~~and~~ divorced her, she returned to her father's family and paternity was resumed.

In Rome the general principle was that paternity was absolute in time as well as in degree. Restrictions grew up later. The father's authority could be lifted in three ways:-

(I) It ended: (1) if the father died a natural death; (2) if he died a civil death (i. e., lost his citizenship); (3) if he sold his daughter, if he expelled his son, or if he entered into another and incestuous marriage.

(II) It could be lifted: (1) through a formal release similar to that of freeing a slave---for the slave relationship applied between father and child---i. e., emancipation; (2) <sup>through</sup> ~~to~~ the submission of the father to the authority of another *pater familias*, i. e., *arrogation*; (3) through the adoption of his son into another family by the permission of the real father.

(III) It ceased: (1) when the son became a Priest and the daughter a Vestal, but not when the son became a Consul or a Senator, that is, as long as the paternal authority did not conflict with that of the state; (2) When the daughter ended a completely binding and legal wedlock, whereby she submitted

to the *Di Wines* of her husband or to those of her father-in-law if her husband was still under paternal authority. In a free and illegal marriage her father retained his authority. He could withdraw her from it at will. She had to get permission from him to marry another if she became a widow. Thus in Rome, because of the absoluteness of paternity, a complicated system of legislation was needed to obtain release from the father's authority.

In Jewish law a bastard is legally released from his father's authority. Ethically he was expected to show piety toward his father.\* A child either of whose parents is unknown is released from the authority of such a parent, even if it be later testified as to the identity of the unknown parent.\*\* A proselyte is legally released from his non-Jewish father's authority. He is <sup>nevertheless</sup> expected to show deference to his parents.\*\*\* If one's father be evil, he is legally released from his authority. But he may not smite his parents or revile them.\*\*\*\* One whose parents have become mentally unbalanced is released from their authority.°

The legal authority of the father also ends with his death, when his son has attained his twentieth year, or when he has given his daughter in marriage.°° However, one is never released from filial piety, not even after the death of his parents.°°° Parents cannot enforce their authority so as to prevent their children from marrying whomsoever they may desire, from making peace with whomsoever they may wish, from studying Torah wherever and with whomsoever they may want.°°°

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\*This is a question of filial piety in the first instance (לכחולה) but calling for no penalty if it is not shown (כיוקרה). Yebamoth 22a; Kidushin 32b; Yad: Mamrim vi, 11      \*\*Yebamoth ii, 5; Yad: Mamrim v, 9-10---  
Such a child was known as a *shetuki* (שטוקי)      \*\*\*Yebamoth 22a; Yad: Mamrim v, 11      \*\*\*\*Yebamoth 22b; Sanhedrin 35a; Yad: Mamrim v, 12-13  
°Yad: Mamrim vi, 5; ibid Rabad, Ran, Beth Joseph; Tur on Rambam; Kidushin 31b Rab Assi left his imbecile mother and went to Palestine. From this Maimonides derives the law that one is to do the best one can with parents of unbalanced mind, but may leave them if he can no more endure them. The Rabad objects: "If he goes away a leaves him whom may he bid to keep them?" The ~~Shulchan~~ Shulchan Aruch accept Maimonides' view---Yoreh Deah cccxl, 10  
°°Ketuboth 148a; ibid iv, 5      °°°Kidushin 31b; Yad: Mamrim vi, 5; Yoreh Deah cccxl, 1      \*Ybid 25x      \*\*ibid 13      \*\*\*17

## Chapter V---Conclusion: The Philosophy of the Filial Relationship

If it is important to know how a thing arose, it is just as important to know what the thing later became. When we turn from the origin and source of the notions of filial piety to the Talmudic and Rabbinic *Anschauung* we find that those older notions, when they still exist, are now unconscious, that a development has taken place, and that an entirely new philosophy has been woven about the filial relationship.\* What principles and what reasons are behind the Jewish Code of filial piety?\*\*\*How does legal philosophy apply to it?\*\*\*

The relation between parent and child is a derivative of the conjugal. It is first abstract, that is, the child has no active share in the relationship. When the child gets older, when it can do and will, it is concrete. In the Jewish Code that relation is natural and therefore divine; it is not artificial and rational. A child is such by virtue of being a man's own offspring, not by virtue of adoption or arrogation. The relationship is fundamental. Man by marriage lives in another. By generation he *relives* in another. The child is given him by God in order that he might so relive in another. Father and mother have each an equal share with God in the child. The three form a partnership in the child. The child is of the parents' soul, body, blood, and flesh.

The child is joined to the parent by the three fundamental psychic divisions of man: sentiment, intelligence, and affection. Because the parent has a causal relationship to the child, that of generation, he must always be superior to the child. "What God is to the world," Philo asserts, "that parents are to their children; since just as God gave existence to that which had no existence, they also, in imitation of his power, as far at least as they were able, make the race of mankind everlasting."\*\*\*\* Older men are considered higher than younger men. Parents must

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\*See Chapter I, 4., The Filial Relationship

\*\*The Jewish aspect of the problem is based on previous discussions and on Philo's treatises *On the Fifth Commandment* and *On the Honour due to Parents*.

\*\*\*The general aspects are based on Luigi Miraglia: *Comparative Legal Philosophy*---Tr. from the Italian by John Lisle

\*\*\*\*Philo: *On the Honour due to Parents*, G. D. Yonge ed., Vol. III, i-vii, xi,

be respected for their age. Mere honor to the aged is placed next to the fear of God: "Thou shalt rise up before the hoary head, and honour the face of the old man, and thou shalt fear thy God: I am the Lord" (Lev. xix, 32). Parents, then, are superior to their children not only because they are older than their offspring but also because they are those who produced and caused them and have reared them. They are the most thorough benefactors of their children. Parents are selected not by human choice, not by lot or election, but by that in nature "which regulates all divine and human affairs in accordance with justice". Therefore, those who are meticulous about the honor of their parents are not especially worthy of praise.\*

The fact that the parent has given birth to the child gives rise to a chain of sentiment, a chain which can never be broken. The sentiment is two-fold: (a) The parent has children for his own sake, for his own good, to relive in them and to continue his geneological line; (b) the parent has children for their good, for the propagation of the species. In the Jewish view children are a divine gift. Parents are commanded to have children not only because they are to relive in them, to continue living through them, but also because it is so commanded. "Be fruitful and multiply"---"פרו ורבו",---is the first of the six hundred and thirteen commandments (תר"י סזח). To have children for the sake of children is just as important as to relive in others, to leave those who will pray for their souls when they are gone (קייט), and to leave heirs. The latter is sacrificed for the former.

The *patria potestas* is derived from the causal relationship. through God's wish the parent gave birth to the child. "Parents," says Philo, "are the servants of God for the propagation of children, and he who dishonours the servant dishonours also the master."\*\* The parent is, then God's messenger and representative. The child must obey, honor, and

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\*Philo: *ibid*

\*\*Philo: On the Ten Commandments, Vol. III, xxii-xxiii, Pp. 160-163



fear his parent next to God. In Leviticus xix, 3 fear is enjoined rather than affection, as Philo points out, because affection is spontaneous and natural and needs no law. But parents may be loved and not respected. Fear is therefore specifically prescribed by a commandment.

The causal relationship is the natural and therefore the divine reason for the *patris potestas*. But the tendency is also to govern it by human reason. Philo shows that the Fifth Commandment of the Decalogue partakes of the character of the first five and of the last five. It marks the transition between these two divisions. The first five deal with the duties to God. The nature of parents is divine "by reason of the similarity of the act of generation to God the Father of the Universe". The second five commandments deal with the duties to men. Now the nature of parents are mortal "on account of their relationship to men and also to other animals, and likewise on account of the perishable nature of the body". Impiety towards parents is convicted by two tribunals: that of God and that of men. He who neglects his duty to his parents is guilty of two sins: of impiety to God and of wrong to men.\* Parents generally rear, support, instruct, and educate their child. Reciprocal duties arise out of the *patris potestas*: the duties of parents to children--to generate and to rear them; consequently, the moral obligation of children to honor them. The gift of generation is given to parents and can never be requited or recompensed. Even animals are grateful not only to their masters for good services done unto them but also to their parents whom they often feed when they grow old. "Children have nothing of their own which does not belong to the parents, who have either bestowed it upon them from their own substance, or have enabled them to acquire it by supplying them with the means.\*\*"

The mother may also enjoy the *patris potestas*. But unity in the family requires that one of the parents exercise it. Under the father-right

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\*Philo: *ibid*

\*\*Philo: *ibid*



the father naturally exercises it.

Parents, then, are both the masters and the rulers over their children, and the children are their servants. They have the right to treat children severely and <sup>have them</sup> even put them to death if they are extremely disobedient and unruly (Deut. 21, 18f.). Such a son, described as a drunkard and a glutton, is put to death "on account of what he might become, because he will likely be a murderer".\* But the permission is not given unless both parents are agreed, for the punishment is too great to be decided by one parent. "It is not probable that both will agree unless his iniquities are very grievous, and weigh down by a certain undoubted preponderance that firm affection which is firmly implanted in the parents by nature."\*\* So also he who strikes his parents is slain, "for it is not fit that man should live who insults those who are the cause of his living."\*\*\* He is killed, as Maimonides puts it, "on account of his great audacity, and because he undermines the constitution of the family, which is the foundation of the state."\*\*\*\* It is not reasonable that a man should have his hand removed for smiting his parents, as the laws of some people prescribe, for it is senseless merely to cast away the sword of him who murdered with the sword. He and not his hands must be punished for the guilt. He who belittles his parents is likewise slain because he is a public enemy of all men since he is the enemy of the authors of his being."

Since to continue to live in others is the main object, there can be no distinction between legitimate and illegitimate children. If the child is of the <sup>body</sup> flesh of the parent he can relive in him. If he is not, if he is merely adopted, he does not really continue to relive in him. Adoption is therefore not commonly practiced in Israel.

To conclude: in Jewish law the filial relationship is derived from the parental wish to relive in others. Blood-relationship is fundamental. Filial piety derives from the causal relation, ~~Sentiment~~, affection, and intelligence.

\*Maimonides; Moreh Nebuchim, III, xli  
\*\*\*ibid

\*\*\*\*Maimonides: ibid

\*\*Philo: <sup>the</sup> On Honour due to Parents  
\*Philo: ibid

*Samuel Feibelbaum*