

# CENTER FOR MODERN TORAH LEADERSHIP



## DINAH AND DNA

By Rabbi Aryeh Klapper

Midrash Halakhah is no longer a productive discipline. We no longer use either Rabbi Yishmael's (כלל ופרט) or Rabbi Akiva's (ריבוי מיעוט) formal exegetical tools to derive law from Torah. But that doesn't mean that we no longer derive halakhah from Torah. It means only that we do so only in less formulaic ways.

Our understanding of past midrash halakhah is often predicated on a sharp conceptual distinction between "midrash" and "asmakhta". "Midrash" produces law with "deoraita" status, while "asmakhta" produces law with "derabanan" status. While each term in those statements should be extensively qualified, the framework generates a useful corollary, namely: When a "midrash" is rejected as an incorrect interpretation of Scripture, any legal assertions associated with that midrash are rejected as well unless/until they can be derived from another Scriptural source. Rejecting an "asmakhta", by contrast, has no formal impact on the acceptance of associated legal assertions.

This has a practical consequence that may seem ironic. A law that claims to be deoraita is often more vulnerable to argument than one that claims to be derabanan.

Is the distinction between "midrash" and "asmakhta" meaningful in a post-Midrash Halakhah world? I think that question deserves extensive treatment. For now, here is one parallel irony to consider: A source based on a feeble interpretation of Scripture may be a stronger halakhic precedent than one based on a strong argument. This is because the feeble connection to Scripture suggests that the source holds the underlying position strongly enough to use it as a frame for understanding Scripture, whereas the strong connection may reflect only a literary preference.

It's important to recognize that even the most compelling Scriptural interpretations usually generate only abstract halakhic positions. Applying those positions to our reality is an independent step, and it's entirely possible for such positions to have no application in our reality. This is especially true for positions that are derived indirectly from interpretations that are valuable for their non-legal implications, for example because they help us better understand a narrative.

The Torah's account of the coming-into-being of Dinah generates a host of interpretations with no direct legal intent. Nonetheless, such interpretations are cited as precedent in at least five ongoing halakhic conversations. In each of these contexts, it might be important to clarify the extent to which the legal force of the precedent depends on how compelling we find the interpretation, or conversely, that the legal force of the precedent is enhanced by the weakness of the textual connection.

The five halakhic contexts are:

- Whether/when it is permissible to pray for a child to be of a particular gender
- Whether/when to test fetuses for inevitably fatal conditions

- Whether to cite shehechyanu for the birth of a daughter
- Which of the egg mother, the gestative mother, and/or the parturitional mother is the halakhic mother in a case of surrogacy
- Whether the Torah recognizes the possibility of a human being changing gender

I'll briefly present the interpretational frameworks that generate the legal precedents; explain how they generate the legal precedents; and then leave you to think about what force those precedents have and why, and whether/how they should and should not be applied to our reality as we perceive and understand it.

The Torah uses a four-verb formula to introduce ten of Yaakov's twelve sons:

- became pregnant = הרה;
- she bore (a child) = ילד;
- she said = אמר;
- she called – קרא.

"She said" introduces an etiology for the child's name, while "she called" introduces the name itself.

For example:

*Bilhah became pregnant/והרה*

*She bore/ותלד to Yaakov a son*

*Rachel said/והאמרה: Elokim has judged me, and also heeded my voice, and He gave me a son;*

*Therefore she called/וקראה his name Don.*

Only two of those verbs are used to introduce Dinah, Yaakov's only named daughter.

*And afterward, she bore/ילדה a daughter  
and she called/ותקרא her name Dinah.*

Many pshat commentators feel compelled to explain why the Torah doesn't include Leah's speech at Dinah's naming. For example, Rashbam apparently asserts that there was no speech - people acknowledge G-d less for the birth of daughters than sons. I don't understand how this (and Ibn Caspi's balder statement that women are worth less than men) solves the problem. Dinah was given this name; even if it wasn't intended as acknowledgement to G-d, why is understanding "Dinah" less important than understanding "Don"?

Another suggestion is that Dinah was named retroactively, after she was raped, rather than on the basis of her parents' hopes and dreams. I'm not clear on how that explains her name. Maybe Dinah is just piggybacked on the explanation of Don, since they come from the same root.

Targum Yonatan fills the structural gap with what seems to be an entirely invented statement:

ומן בטר כדן ילידת ברת וקרת ית שמה דינה,

ארום אמרת:

"דין הוא מן קדם י"י דיהון מיני פלגות שיבטייא, ברם מן רחל אחתי

יפקון תריין שיבטיין היכמה דנפקו מן חדא מן אמהתה."

ושמיע קדם י"י צלותא דלאה, ואתחלפו עובריאי במעהון,

והוה יהיב יוסף במעהא דרחל, ודינה במעהא דלאה.

Afterward, she bore a daughter, and she called her name Dinah,  
because she said:

**"It is a din from Hashem that half the tribes should come from me, and that from Rachel my sister two tribes should emerge, just as (two) emerged from each of the maidservants."**

**Leah's prayer was heard by Hashem, and the fetuses in their wombs were switched,**

**so that Yosef was in Rachel's womb and Dinah in Leah's womb.**

This insertion may be derived from the other structural gap we identified, the absence of "she became pregnant". The author of this interpretation concluded that Leah did not 'become pregnant' with a daughter, but rather with a son, although she gave birth to a daughter.

An obvious problem is that the Torah says regarding Yosef *She became pregnant, and she bore a son*: if Yosef was switched with Dinah, then Rachel did not *become pregnant* with him?! This seems an unanswerable weakness. However, there is a way to save the approach, if not the specific interpretation. The Torah does not say that Rachel 'became pregnant' with Binyamin. So perhaps Dinah was actually switched for Binyamin. This requires significantly revising the timeline of the verses, so that Dinah is born after Yosef, and after Yaakov leaves Lavan's house, despite being introduced before then. However, this makes sense structurally in that we finish listing the children of Leah, Bilhah, and Zilpah before beginning Rachel's, and provides an excellent explanation of the Torah saying *afterward she bore a daughter*. It may also require us to understand the narrative of Yaakov's decision to leave Lavan as fundamentally about Rachel. This may be a ground for the position that Rachel dies because Yaakov could not be married to two sisters in the Land.

We can account for the absence of *she became pregnant* regarding Dinah without needing a parallel son by saying that she was not switched in the womb for a male fetus but rather transformed in the womb from a male fetus. This is the position taken by Rav on Berakhot 60a.

מיד נהפכה לבת

*Immediately she was transformed into a daughter.*

Note also that the calculation attributed to Leah is likely derived from yet another structural oddity. Yosef's name is apparently given two separate etiologies:

נתקרה

נתקלה בן

נתאמר: אסף א-לקים את-תקרתני:

נתקרה את-שמו יוסף לאמר: יסף ילקח לי בן אחר:

*She became pregnant*

*She bore a son*

*She said: Elokim has gathered away my shame*

*She called his name Yosef, saying: Hashem will add to me another son.*

The second etiology uses the verb-root of Yosef/*will add*, but seems to make no sense: why would Rachel react to Yosef's birth by asking for another son? This can be resolved by saying that Rachel knew that she would produce two tribes.

The last word of the second etiology, אחר/*another*, is consonantly identical with the אחר/*afterward* that introduces Dinah's birth. This supports a connection to Yosef rather than Binyamin.

Note also that so far as I can tell all commentators on the Talmud assume that even if the fetuses were not switched in the womb, Rachel and Leah were simultaneously pregnant, and therefore if Dinah was gender-switched from male to female in the womb, Rachel's son must similarly have been switched from female to male. Rav Yaakov Kaminetzky suggests that the transformation was not absolute, so that Dinah retained masculine traits, and Yosef female traits.

However, this entire midrashic edifice still hangs from a hair, since there is a non-miraculous way of giving significance to the absence of *she became pregnant*, namely that Dinah was a twin and conceived as part of the same pregnancy as Zevulun. Moreover, it's not at all clear to me that the absence of *she became pregnant* is significant. I began this essay by noting that the Torah uses all four verbs to introduce 10 of Yaakov's sons. The two missing are Zilpah's children, and the Torah mentions neither pregnancy. So perhaps there is no significance at all to whether or not it is mentioned, or perhaps we've completely mistranslated the verb and it means something else entirely.

So much for the interpretational framework. Some halakhic connections are:

- Leah successfully prayed for the gender transformation of her fetus. Therefore, it is not considered a "vain prayer", meaning a prayer that seeks to alter the past, if one prays for an already conceived child to be a particular gender. Note that the Bavli and Yerushalmi dispute how late in the pregnancy this might be possible, and that Rav Yaakov Kaminetzky's interpretation fits interestingly with contemporary scientific accounts of how a person can be genetically of one sex and yet apparently develop physically as the other.
- Chashukei Chemed, which I want to emphasize again is not a guide for practical halakhah, suggests that it is best to pray for a fetus' health before any tests are done, as prayer is less likely to be efficacious in changing an already observed past (shades of Heisenberg?), and Leah's prayer demonstrates that fetuses are wholly plastic to prayer.
- Rabbi Moshe Steinberg of Kiryat Yam used the absence of an etiology for Dinah's name as evidence against Tzitz Eliezer's position that one makes Shehechiyanu for the birth of a daughter. Tzitz Eliezer's impassioned response is worthwhile reading (Tzitz Eliezer 10:21:2).
- On the reading that Dinah was switched with Rachel's female fetus, since the Torah seems to clearly identify Dinah as Leah's daughter, it follows that genetic motherhood is halakhically irrelevant. (Of course, one can argue that nothing can be derived from pre-Sinai narratives, that miracles cannot be used as precedents, etc.)
- On the reading that the fetuses were transformed rather than switched, then plainly halakhic sex is not immutable at the moment of conception, or alternatively, the gender of a soul does not irrevocably determine the sex of a body. (Of course, this has not necessary implications for post-birth transformations, artificial transformations, and so forth, nor does it set forth any criteria for what constitutes such a transformation.)

Shabbat shalom!

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