# Midrash, Miracles and Motherhood: The Birth of Dinah and the Definition of Maternity
## *Tzarich Iyun L'Dinah*

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## I. Introduction

In the present age of medical discovery, with developments completely unforeseen by our predecessors, it is challenging to find legal precedent in both American law and halakhah to address the attendant legal ramifications of these new technologies. The field that perhaps best typifies this trend is the specialty of reproductive medicine and the treatment of infertility. Physicians now have the ability to manipulate the process of procreation in ways previously assumed to be relegated to God alone.

For the last few decades, rabbinic authorities have searched for legal precedent to address issues such as donor insemination, surrogacy, pre-implantation genetic diagnosis, stem cell research, and the production of artificial

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reproductive seed. As there is rarely clear and direct precedent in the Torah, Talmud or legal codes for such historically novel innovations, rabbinic authorities must expand their search to unconventional areas of rabbinic literature, such as the midrashic, aggadic, or other non-legal texts. For example, early discussions on artificial insemination focused on the story of Ben Sira, a story that while cited tangentially in halakhic sources ultimately derives from a non-halakhic and non-midrashic source.[1]

One area in which a non-halakhic source has featured prominently in the halakhic discussions is the definition of maternity in the case of surrogate motherhood.[2] The halakhic solution to the definition of maternity in such cases remains one of the most complex issues in contemporary medical halakhah. There is no consensus on this matter, and all possible legal positions have been espoused by contemporary authorities.

Of the few sources that have been found to be relevant to the halakhic discussion of maternity, we find the Biblical story of the birth of Dinah. In this essay, we analyze the rabbinic approaches to this story, as well as the incorporation of this story into the exegetical literature (*parshanut hamikrah*). We then review the uses of this story in halakhic discussions on the definition of maternity. While this story has received brief, sporadic treatment in the past, this essay provides an extensive review of the rabbinic literature on this topic.

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1   E. Reichman, "The Rabbinic conception of conception: An exercise in fertility," Tradition 31:1 (Fall 1996), 33-63.

2   Technically, a surrogate mother provides both the egg, as well as the gestation. Mary Beth Whitehead was the first American surrogate mother. A gestational host is the term for a woman who carries an embryo created from another egg donor. This essay refers to the case of a gestational host, though I use the commonly accepted colloquial term surrogate mother instead.

## II. The Story of the Birth of Dinah

In *Bereishit*,[3] we read of the births of the children of Yaakov. Leah gives birth to six of the twelve tribes, and for the birth of Leah's first six children, the Torah states that she conceived (*vatahar*) and she bore (*vatailed*) a child. For the description of the birth of Dinah, however, the Torah deviates from the typical phrasing, stating, "And afterwards, she bore a daughter and named her Dinah." It is the use of the word "afterwards" (*v'achar*), as well as the change from the previous literary pattern of "she conceived and she bore" (*vatahar vatailed*) that draws the attention of the midrashim. The multitude of interpretations and versions of the events that flow from this deviation comprise the substance of this essay.

## Version 1A- Gender Change through the Prayers of Rachel

We begin our analysis with *Bereishit Rabbah*:

And afterwards she bore a child, etc., We learn, if one's wife is pregnant, and he prays 'may it be thy will that my wife bear a male child,' behold this is a prayer in vain… R' Yehuda bar Pazi says even if the woman is sitting on the birthing stool, the gender of the child can change... as it is written 'and afterwards she bore a daughter.' Dina was originally created as a male, and through the prayers of Rachel, who said, 'may Hashem add for me an additional son,' the child became a female.[4]

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3   Chapter 30.

4   Albeck, 72.

The *Midrash* adds that the matriarchs, including Rachel, were prophetesses, and that Rachel asked God for only "one" additional son, in the singular, since she knew that after the birth of Yosef only one of the total of twelve tribes was yet to be born. A number of key points can be gleaned from this *Midrash*: 1) Rachel is the one who prays; 2) The substance of the miracle was a gender change of the fetus in Leah's womb from male to female; 3) The event transpired *after* the birth of Yosef.[5]

The *Talmud Yerushalmi*'s approach is consistent with that of the *Midrash Rabbah*, and addresses the reason for the Torah's use of different phrasing for the birth of Dinah.

> In the name of Beit Yannai, the initial conception of Dinah was as a male, but after Rachel prayed, the fetus was changed to female, as it says "And *afterwards* (my emphasis), she bore a daughter and named her Dinah." *After* (my emphasis) Rachel prayed, the fetus became female.[6]

### Version 1B- Gender Change through the Prayers of Leah

The *Midrash Tanchuma*[7] has a slightly different variation of the events that led up to Dinah's birth. Similar to the *Midrash Rabbah*, the discussion begins with the question of whether one can pray for the gender of a child when

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5    For further elaboration of this version, see R' Menachem Kasher, *Torah Shleimah*, *Vayeitzei*, 67; *Pardes Yosef*, *Parshat Vayeitzei*, n. 21. The *Pardes Yosef* attempts to align the commentary of *Ibn Ezra*, who claims that Zevulun and Dinah were twins, with the version that Rachel is the one who prayed for the gender change. *Chizkuni* and *Radak* also claim that Dinah was Zevulun's twin.

6    *Yerushalmi Berachot* Chap. 9, Halakhah 3.

7    *Vayeitzei*, n. 8

one's wife is already pregnant. As proof that one indeed can change the gender of the fetus through prayer, the *Midrash* brings the story of Leah. According to the *Midrash*, after she bore six sons, Leah saw through prophecy that twelve tribes would be born to Yaakov. She had already given birth to six of them, and was now pregnant with another male child. According to her calculations, the two maidservants had each given birth to two, for a combined total, with her six, of ten. If she would deliver another male child, this will leave only one male child left to be born to Rachel. Rachel would then be inferior to even the maidservants who each bore two of the tribes. Leah therefore prayed to God:

> Master of the world, if my child is a male, Rachel will then be of even lesser status than the maidservants, (who each bore two of the tribes).

The *Midrash* then continues:

> Immediately God heard her prayer and the male fetus in her womb was changed to a female.

The *Midrash* also explains why Leah chose to call the child by the name of Dinah:

> And why did Leah call the child Dinah? Because the righteous Leah stood *b'din* (in judgment) before God. God responded to her- Just as you are merciful, I will also have mercy on her (Rachel), as its say immediately thereafter, "and God remembered Rachel."

While the nature of the birth described by the *Tanchuma*, a gender change of the fetus in-utero, is identical to that of the *Midrash Rabbah*, there is one fundamental difference. In the *Tanchuma*, it is Leah who prays, as opposed to Rachel. Dinah's name conveys this fact. It also appears clear from the *Tanchuma* that Yosef was not yet born at the time of Leah's prayer, as Leah enumerates all the existing male children, and a child from Rachel is not amongst them.

The Talmud appears to follow the tradition of the *Tanchuma*,[8] and like the other sources, begins with a discussion of the effectiveness of praying for a specific gender child once a woman is already pregnant. As proof that prayer can effectuate gender change, the story of Leah is mentioned. Like the *Tanchuma*, the Talmud maintains that Leah prayed after making the calculations of how many of the tribes (*shevatim*) would be born by Rachel. Her prayers were answered and the male child in her womb converted to a female. The Talmud concludes, however, that one cannot learn the effectiveness of prayer for gender from this case, as this case was miraculous, and an exception to the natural order.

The continuation of the passage is also relevant to our discussion below. The Talmud continues that perhaps the case where Leah prayed was within forty days gestation, when one can indeed change the gender with prayer. But, the Talmud queries, can one indeed change the gender with prayer even within forty days? R' Yitzchak, son of R' Ami, states that if a man is *mazria* (emits seed) first it will be a female child, while if a woman is *mazra'at* (emits seed) first

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8    *Berachot* 60a.

it will be a male child.[9] Thus, it is reproductive physiology, the seed emission, which determines gender immediately, and irrevocably, upon conception. Prayer could not possibly alter this. The Talmud responds by claiming that in a case of simultaneous seed emission (*hazra'ah*), the gender is not immediately determined, and prayer can still have an effect for forty days. This notion of gender determination associated with precedential seed emission is a key to the explication of a number of Biblical passages discussed below.

Like the *Tanchuma*, the Talmud maintains that Leah is the one who prayed, and the nature of the miracle was an in-utero gender change of the fetus from male to female.

### Version 2A- Inter-Uterine Exchange of Dinah and Yosef

There is yet another variation on the birth of Dinah that is found in the *Targum Yonatan ben Uziel*.[10] It is this quite different version of the miraculous birth of Dinah that features in contemporary halakhic discussions of surrogate moth-

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9   The words *mazria* and *mazra'at* are the masculine and feminine forms of the verb to give forth seed. What exactly was meant by *Chazal* by the term *mazria*? For the male, it is clearly interpreted as the emission of reproductive seed, but for the female, it is not at all clear. *Chazal* were not aware of the woman's parallel seed emission, ovulation, although they do acknowledge a contribution of the female. Did they interpret *mazra'at* as the female climax, or as the emission of some form of seed? How is the entire principle of gender determination based on precedence of seed emission to be interpreted in light of modern medicine? This is not our focus here, and the reader is referred elsewhere. See Yaakov Levi, "*Isha ki tazria*," *Koroth* 5:9-10(July, 1971), 716-17; Julius Preuss, *Biblical and Talmudic Medicine*, Fred Rosner, trans. and ed. (Hebrew Publishing Company; New York, 1978), 390-391; N. Kass, "Sex determination: Medically and in the Talmud," *Koroth* 7:11-12(June, 1980); F. Rosner, "Sex preselection and predetermination," in his *Biomedical Ethics and Jewish Law* (Ktav, 2001), 165-173; A. Korman, *HaAdam v'Tivo biMada uvYahadut* (Tel Aviv, 2002), 112-118. For our purposes, we acknowledge that this principle of gender determination was an accepted fact by *Chazal*, and one which created a number of exegetical challenges, as we shall see below.

10   *Bereishit* 30:21.

erhood. According to the *Targum Yonatan* it is Leah who prayed, based on the same calculations of the total number of tribes, but the nature of the miracle was radically different.

> And God heeded the prayers of Leah and exchanged the fetus in her womb; and Yosef was placed in the womb of Rachel, while Dinah was placed in the womb of Leah.

Instead of a gender change in-utero, the *Targum Yonatan* describes an inter-uterine transfer or exchange. Leah and Rachel were pregnant simultaneously, with Leah carrying a female fetus and Rachel a male fetus. After Leah's prayers, the two fetuses exchanged places, with Leah giving birth to Dinah and Rachel to Yosef. [11]

The *piyyut* (liturgical poem) "*even chug*" recited on Rosh Hashanah also corroborates this version of the story.[12] The author, assumed to be R' Eliezer HaKalir, in talking about the travails of the infertile Rachel, and her ultimate blessing of fecundity, states "to appease her by exchanging Dinah for Yosef."[13] This is generally accepted as referring to the inter-uterine exchange.

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11  This version is often quoted from the *Maharsha* (*Niddah* 31a), who cites the *Paneach Raza* as also espousing the inter-uterine transfer version, and uses this version to solve a textual difficulty in the Torah raised by the account of Dinah's birth as told in *Berachot*.

12  Complete Artscroll Machzor for Rosh Hashanah (Mesorah Publications; Brooklyn, 1985), 312.

13  Regarding the value and perception of the *piyyutim* in the eyes of rabbinic authorities, R' Eliezer Fleckeles writes in the very first responsum of his *Teshuva Me-Ahavah*: "Come and see how precious were the *piyyutim* in the eyes of the holy *Rishonim* to the extent that all their writings and language were well known to them (*shegura b'fihem*), as I will show you many examples." One example R' Fleckeles cites is the case of Dinah and the use by the *Maharsha* of the language of the *piyyut* to support his thesis.

In the premier Hungarian halakhah journal *Vayelaket Yosef*,[14] in an article devoted to the analysis of the story of Dinah's birth, R' Shlomo Fisher posits a novel thesis in claiming that the passage in *Berachot* (see above) actually refers to an inter-uterine exchange, consistent with the approach of the *Targum Yonatan*, and *not* to a gender change, as is conventionally thought.[15] (More on this below.) R' Fisher bases this, in part, on two linguistic observations: 1) After recounting the incident of Dinah's birth, the *Gemara* discounts it as a proof to its question by claiming, "*ain mazkirin ma'aseh nissim*," we do not bring proof from miracles. R' Fisher points out that the word "miracles" is in the plural, implying that there was more than one miracle in this case. He considers this an allusion to the fact that there was an inter-uterine exchange, and thus two miracles that transpired- one for Leah and one for Rachel.[16] 2) When the *Gemara* recounts the nature of the miracle it states, "*miyad nehefchah l'bat*," the fetus immediately converted to a female. R' Fisher notes that the word *nehefchah* is in the feminine. Had the miracle been that the male fetus converted to a female, the phrase should have been in the masculine, *nehefach*, as it was the male fetus that converted. Rather, the meaning of the phrase is that the fetus was converted for *her*

14  *Vayelaket Yosef* 6:9(Adar, 5664) [February-March, 1904], n. 82.

15  He does not mention that his predecessor, R' Moshe Margalit, espoused the same thesis in his *Mareh HaPanim* on the *Talmud Yerushalmi*, although the latter's analysis is not as fully developed. (See below on approach to variant versions.) The *Maharsha* cited above appears to maintain this approach as well.

16  One could ask why in fact there had to be two miracles. Transferring Yosef to the womb of Rachel was necessary to accomplish the main objective of Rachel giving birth to two of the *shevatim*. Why was it necessary for Dinah to be transferred to the womb of Leah? What did this accomplish? See *Pardes Yosef*, *Parshat Vayeitzei*, n. 21 who cites the *Livyat Chen*'s answer to this question.

(Leah) into a female, after the inter-uterine exchange.[17]

R' Fisher also claims that the inter-uterine exchange can even be inferred from the Torah's language. The word that serves as the basis for the notion that Dinah's birth was unique is "*v'achar*," and "afterwards," Leah bore a daughter. The rabbis interpret the word "afterwards" to indicate after Leah made a judgment about her child. R' Fisher queries where this is alluded to in the word "*v'achar*?" All this word means is that the following transcribed events happened "afterwards." R' Fisher therefore offers a novel interpretation of the use of the word as a means of alluding to the miracle of the inter-uterine exchange. After recounting the birth of Zevulun, the Torah recounts the births of Dinah and Yosef. One would obviously think that these events occurred in sequential order. However, the introduction of the word "*v'achar*," according to R' Fisher, indicates otherwise. It means that "after" the following *group* of events transpired, namely the simultaneous pregnancies of Leah and Rachel and subsequent inter-uterine exchange of Dinah and Yosef, *then* Leah gave birth to a daughter. The word "*achar*" implies "after" all the events recounted below, including the birth of Yosef. This is not to be understood as a standard description of consecutive events; rather the whole section needs to be considered together.

### Version 2B- Inter-Uterine Exchange of Dinah and Binyamin

There is one version according to which Rachel prayed after Yosef was born, and at that stage there was an inter-

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17 One could argue that the phrase should then have read "*miyad nehefchah **lah** l'bat,*" that the child was converted *for her* into a female.

uterine transfer between Leah and Rachel. However, according to this version, it was Binyamin, not Yosef, who was switched with Dinah.[18] This version is not cited extensively in the exegetical or later halakhic literature.

## Version 2C- Combination of Inter-Uterine Exchange and Gender Change

R' Avraham Yaakov HaLevi Horowitz, in his *Tzur Yaakov*,[19] offers a truly unique interpretation of the inter-uterine exchange mentioned in the *Targum Yonatan*. He claims that the physical bodies did not switch between the wombs of Leah and Rachel; rather, the male child within Leah changed to a female, and the female child within Rachel became a male. Only the souls switched after the gender changes took effect. This version contains both a gender change and an inter-uterine transfer, though the transfer was not of the physical bodies, but of the metaphysical souls. This is a synthesis of the two major versions of the birth of Dinah. [20]

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18 This is cited in the name of *Seichel Tov* by R' Menachem Kasher, *Torah Shleimah*, *Vayeitzei*, 67-69. R' Kasher details a number of textual variants in the *midrashim* and *Yerushalmi* about the story of Dinah's birth and raises a series of questions created by the textual inconsistencies.

19 n. 28. See below, section on ovarian transplantation, for further treatment of this source. See also, R' Meir Bronsdorfer, "Egg donation and the *yichus* of the child," (Hebrew) *Yeshurun* 21(*Nisan*, 5769) [April, 2009], 557-564, who incorporates this source into his halakhic discussions.

20 R' Tzvi Ryzman in his *Ratz KaTzvi* (E. H., chapter on *hashtalat shachlot* [ovarian transplants]) assumes that the simple meaning of the passage in *Berachot* regarding the gender change is that there was a gender change for the fetuses of *both* Leah and Rachel. Perhaps he derived this from R' Horowitz (*Tzur Yaakov*, n. 28), who he cites, and who seems to imply this as well. I have not come across this approach to the passage in *Berachot* elsewhere, and the accepted meaning of the passage is that there was only a gender change of the fetus within Leah. According to this accepted version, Rachel was not necessarily pregnant simultaneously with a female child, and there was no need for the event to involve Rachel.

## Approach to the Variant Versions

R' Moshe Margalit, in his commentary *Mareh HaPanim* on the *Talmud Yerushalmi*[21] was well aware of the conflicting versions of the birth of Dinah and asserts that, for each approach, the originator of the prayer determined the nature of the subsequent miracle. According to those who maintain that Rachel is the one who prayed,[22] the prayer occurred after the birth of Yosef, and the miracle was a gender change of Leah's fetus. An inter-uterine transfer could not have been possible if Yosef was already born. According to those who maintain that Leah is the one who prayed, Rachel was pregnant, but Yosef was not yet born. The miracle was the inter-uterine exchange of Yosef for Dinah.[23]

The *Mareh HaPanim* uses this approach to interpret the conclusion in *Berachot* that we do not learn from miracles. The conclusion of the Talmud is *not* that one cannot, in general, learn from miraculous incidents, but rather, in this case, as Leah is the one who prayed, the miracle was an inter-uterine exchange. Since there was no gender change in this miracle, one of course cannot learn about the power of prayer to change gender from this incident.

The problem with this interpretation is that the passage in *Berachot* states explicitly that upon Leah's prayer, the fetus immediately converted to a female. It does not imply or state explicitly that there was an inter-uterine ex-

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21 *Yerushalmi Berachot* Chap. 9, *Halakhah* 3, s. v., "*al shem.*"

22 *Midrash Rabbah* and *Yerushalmi Berachot.*

23 For another approach to the differences between the versions of the *Bavli* and the *Yerushalmi* of the birth of Dinah, and how this relates to whether Leah or Rachel prayed, see R' Yoel b. David Dispeck (1715-1793), *Pardes Dovid* (Warsaw, 1900), 47. R' Dispeck also discusses the gestational period up to which one can pray, whether up to forty days or to the time a woman sits on the birthing stool, and how this relates to the differences between the two Talmuds.

change. The *Tanchuma* also maintains that Leah prayed, yet the miracle was a gender change, not an inter-uterine exchange. The *Mareh HaPanim* was not the only one to maintain that the passage in *Berachot* in fact assumes that there was an inter-uterine exchange.[24]

## III. The Story of the Birth of Dinah in Biblical Commentaries

The story of the birth of Dinah, especially the version of the inter-uterine exchange, has been mentioned by Biblical commentators throughout the centuries to either interpret cryptic phrases or to solve seeming interpretive contradictions. The following section draws on a wide array of sources that have invoked the story of Dinah's birth in their commentaries. While the focus of these sources is purely exegetical, we can nonetheless infer from a number of them the author's position on the definition of maternity in halakhah.

### The Change of Language by the Birth of Dinah

As discussed above, the Torah's deviation from the phrase "and she conceived and she bore" (*vatahar vatailed*) serves as a springboard for the discussions of Dinah's unique birth. The *Da'at Zekainim MiBa'alei Tosafot*[25] follows the approach of the *Targum Yonatan* that the miracle was an inter-uterine transfer, and adds an additional textual interpretation. In the case of Dinah's birth, the Torah deviates from the typical phrasing of "she conceived and she bore," stating instead, "and afterwards, she bore a daughter

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24  See position of R' Fisher, in *Vayelaket Yosef*, discussed above.

25  *Bereishit* 30:21.

and named her Dinah." While other sources focus on the use of the word "afterwards," the *Da'at Zekainim* addresses the absence of the phrase "she conceived and she bore." By the other births, Leah both conceived and bore the same child. In this case, while she conceived one child, Yosef, she gave birth to another, Dinah, as an inter-uterine exchange occurred. That is why the Torah could not say that "she conceived and she bore" a child. This was simply not true for the birth of Dinah.[26]

### The naming of Yosef by Rachel

In his *Pardes Yosef*, R' Yosef Patsanovski employs the inter-uterine exchange to interpret the statements of Rachel after Yosef's birth.[27] In naming Yosef, Rachel says, "*asaf Hashem et cherpati*" –"God has brought in my disgrace."[28] According to the *Pardes Yosef*, Rachel meant that her disgrace was mitigated in front of the world, as now a child was born to her. She however knew that this was not truly her child, but one conceived in the womb of Leah. She therefore says, "*Yosef Hashem **li** ben achair*," may God add on for *me* another child, a child that I will conceive and

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26 R' Chezkiya Manoach offers the same interpretation of this verse in the *Chizkuni*. This interpretation would work equally well for the other version of the miracle, that there was an in-utero gender change. In this case as well, it would be inaccurate to state that Leah both conceived and bore a female child, as she initially conceived a male child. A challenge to the interpretations of the *Da'at Zekainim* and *Chizkuni* , however, is the use of the phrase "*vatahar vatailed*" for the birth of Yosef. If indeed the deviation from the phrase "*vatahar vatailed*" is because there was an inter-uterine exchange, this should have applied equally to the Rachel's birth of Yosef. Yosef also was not both conceived and born by Rachel, and this phrase should have been omitted there as well. See also *HaTur HeArukh*, *Bereishit* 30:21.

27 *Pardes Yosef*, *Parshat Vayeitzei*, n. 21.

28 *Bereishit* 30:23-24.

will truly be mine.[29] This assumes that Rachel was aware of the exchange. This also assumes that the "genetic" mother is the halakhic mother.

### The Prelude to the Rape of Dinah

Rabbi Eliezer Friedman, in an article in the halakhah journal *Tel Talpiyot*,[30] questions the motivation behind Rashi's comment on the verse that introduces the story of the rape of Dinah, "and Dinah the daughter of Leah went out" ("*vataitze Dinah bat Leah*").[31] Rashi compares Dinah's going out to Leah's going out. What bothered Rashi about the fact that Dinah was here referred to as the daughter of Leah, and not the daughter of Yaakov, to the extent that he needed to justify it by creating a comparison between Leah and Dinah. He answers that Rashi was compelled to address the fact that Dinah was called the daughter of Leah, and not Yaakov, in order to be consistent with his approach elsewhere. On the verse "in addition to Dinah *his* daughter,"[32] Rashi specifically notes that Dinah, a female, is associated with her father, based on the Talmudic principle regarding gender determination and the timing of seed emission. (See above.) Therefore, when the Torah writes "and Dinah the daughter of Leah went out," and deviates from this pattern, Rashi is compelled to find a specific reason for the change.

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29  See same idea in R' Mordechai Carlbach, *Chavatzelet HaSharon*, *Bereishit*, *Vayigash* p. 658.

30  *Tel Talpiyot* 19:7(*Tevet*, 5671) [January, 1911], n. 58, p. 55-56. R' Friedman addresses the position of Rashi and arrives at the identical conclusion as R' Fisher, though he was clearly unaware of R' Fisher's earlier lengthy contribution.

31  *Bereishit* 34:1.

32  *Bereishit* 46:15.

However, R' Friedman questions the very position of Rashi that Dinah, a female, should be associated with her father, based on *Berachot*, which states that Dinah was conceived originally as a male, only later to be converted to a female. Therefore, Dinah should not be called the daughter of Yaakov. R' Friedman therefore posits that Rashi did not accept the notion of a gender change; he accepted the version of the *Maharsha*, the *Targum Yonatan* and the *piyyut* that there was an inter-uterine exchange. Therefore, Dinah was conceived and born as a female and should rightfully be identified as the daughter of Yaakov. Therefore, when she is identified as "*Dinah bat Leah*," Dinah the daughter of Leah, this is a deviation from the accepted norm and begs interpretation. This is what led Rashi to provide the commentary that the goings out were parallel between Leah and Dinah.[33]

### The Age of Yosef When He Descended to Egypt[34]

In the context of his lengthy essay on Rashi's approach to the birth of Dinah, Rabbi Shlomo Fisher utilizes the story of the inter-uterine exchange to interpret a Biblical passage.[35] He comments on the necessity of the Torah to mention the age of Yosef when he was sold by his brothers – seventeen years of age.[36] He mentions the tradition

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33 R' Friedman offers a proof that Rashi held of the inter-uterine exchange theory based on Rashi's alternate version of the text of the passage in *Berachot*.

34 See R' Yehoshua Yaakov Rabinowitz (1801-1901), *Ein Yaakov* (Pietrikov, 5655 [1895]), 17-19, for an explanation of the dreams of Yosef based on the different versions of the birth of Dinah.

35 *Vayelaket Yosef* 6:9(*Adar*, 5664) [February-March, 1904], n. 82, p. 82. More on this essay below.

36 *Bereishit* 37:2.

that all the *shevatim* were born with a female twin.[37] Since maternal siblings are forbidden to marry according to the Noachide laws, each *shevet* married a daughter from another mother. R' Fisher claims that Yosef would naturally have married Dinah, as Yosef assumed that they were from different mothers. He was unaware of the miraculous inter-uterine exchange that led to his birth. In fact, however, as both Yosef and Dinah were created from the womb of Leah, they were not only paternal siblings, they were, according to R' Fisher, maternal siblings as well. In order to prevent Yosef from the sin of elicit sexual relations (*arayot*), God arranged for him to descend to Egypt at the age of seventeen, shortly before the typical age of marriage, eighteen. This seems to imply that both conception and gestation can determine maternity, as Leah conceived Yosef, but only gestated Dinah, yet R' Fisher considers Leah to be the halakhic mother of both.

### Yehuda's Appeal Not to Kill Yosef

R' Meir Simcha of Dvinsk invokes the inter-uterine exchange in at least two places in his Biblical commentary, *Meshekh Chokhmah*. In the first case, he uses it to explain an extraneous phrase in the story of Yosef and his brothers.[38] In appealing to his brothers not to kill Yosef, Yehudah

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37 See R' Fisher's article for further elaboration of this idea. He addresses whether Yosef and Dinah, who were born through unusual means, also had twins. For a review of the literature on the notion that twins were born with each *shevet*, including specific discussion about Dinah and Yosef, see M. Greenbaum, "On the twins born with the *shevatim*," (Hebrew) *Nezer HaTorah* (*Nisan*, 5768), 117-121. See also *Pardes Yosef, Parshat Vayeitzei*, n. 21, who incorporates the twinning tradition into his commentary on the story, and also explains the Ibn Ezra's interpretation that Zevulun and Dinah were twins.

38 See second example below.

says of Yosef, "he is our brother, our flesh."[39] The *Meshekh Chokhmah* explains the addition of the phrase "our flesh," in the following manner. According to Talmud *Niddah*, there are three partners in creation. The man contributes the white substance from which are derived the bones, etc., and the woman contributes the red material from which are derived the skin and the flesh.[40] If there was an inter-uterine exchange when Yosef was born, then he was originally conceived by Leah. It was Leah, then, the woman, who contributed his flesh. What Yehudah was alluding to was that Yosef was both their paternal sibling, "our brother," as well as their maternal sibling, "our flesh," as the flesh is derived from the mother, and they shared a common mother, Leah. This assumes that the "genetic" mother is the mother. It also assumes that Yehudah was aware of the inter-uterine transfer.[41]

## The Daughters of Yaakov Comfort Him

The *Chatam Sofer* (R' Moshe Sofer) uses the story of the inter-uterine exchange to explain a very perplexing *Midrash*. When Yaakov mourns upon hearing of Yosef's disappearance, the Torah informs us that "all his sons and all his daughters arose to comfort him."[42] Many commenta-

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39 *Bereishit* 37:27.

40 For further analysis of this passage, and of the rabbinic literature that deals with the male and female contributions to the child, see E. Reichman, "The Rabbinic conception of conception: An exercise in fertility," *Tradition* 31:1 (Fall 1996), 33-63. See also, R. Kiperwasser, "'Three partners in a person': The genesis and development of embryological theory in Biblical and Rabbinic Judaism," *Lectio Difficilior* 2(2009), 1-37.

41 See *Teshuvot HaRabaz*, E. H., 5, who gives the identical interpretation of the phrase "our brother, our flesh."

42 *Bereishit* 37:35.

tors focus on the use of the plural form for daughters. As only one daughter of Yaakov, Dinah, is listed in the Torah, what could the plural term "daughters" be referring to?[43] Some introduce here the notion that each son (*shevet*) was born with a twin, therefore Yaakov actually did have many daughters.[44] The *Chatam Sofer*, however, addresses a different midrashic statement. The *Midrash* asks: "How many daughters did Yaakov have? He only had one, and even this one he would have preferred to bury." The *Chatam Sofer* posits that Yaakov associated the (supposed) death of Yosef with the bad *mazal* of Rachel. He quotes Rashi as subscribing to the story of the inter-uterine exchange that Yosef was originally conceived by Leah, only to later be transferred to the womb of Rachel. Yaakov imagined that if the transfer had not occurred, Yosef would have been born to Leah and would still be alive. The twelve tribes would then still be complete. Furthermore, even the sight of Dinah was not a comfort for Yaakov in his mourning, but rather a painful reminder of these events. In some sense, he would have preferred to have buried Dinah rather than Yosef. This is the meaning of the *Midrash*, "He only had one (daughter), and even this one he would have preferred to bury." Note that the *Chatam Sofer* also assumes that Rashi accepted the story of the inter-uterine exchange. He also assumes that Yaakov was aware of the exchange.

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43  See Rashi, *Bereishit* 37:35.

44  See M. Greenbaum, "On the twins born with the *shevatim*," (Hebrew) *Nezer HaTorah* (*Nisan*, 5768) [April, 2008], 117-121.

### *Shaul Ben HaKena'anit* and the Marriage of Dinah to Shimon

The nature of Dinah's birth also receives attention regarding the tradition that Dinah married Shimon. Among the list of Shimon's children, we find the name *Shaul Ben HaKena'anit*. *Chazal* identify this child as the product of Shimon and Dinah. After being raped and kidnapped by Shechem, Dinah would only agree to leave the city of Shechem on the condition that Shimon marry her.[45] The nature of the prohibition against incest prior to the giving of the Torah is a matter of some debate, but the accepted opinion is that paternal siblings were permitted, while maternal siblings were forbidden.[46] How could Shimon then marry Dinah if they were maternal siblings?

The *Paneach Raza* (R' Yitzchak b. Yehudah Halevi) solves this problem by stating that Dinah was conceived in the womb of Rachel. This implies that he accepts the notion that there was an inter-uterine exchange. Since Dinah was conceived by Rachel, she was therefore the daughter of Rachel. As such, she was not a maternal sibling to Shimon, just a paternal sibling. This implies that it is conception (or genetics) that determines maternity.

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45  See, for example, Rashi, *Bereishit* 46:10 and *Bereishit Rabbah* 80:11.

46  See, for example, Rashi, *Bereishit* 20:12.

As this exegetical interpretation has halakhic implications, since it allowed an otherwise illicit marriage to take place, it is one of the most frequently cited sources in the halakhic literature on the definition of maternity.[47]

## The List of Leah's Descendants and the Position of Rashi

In the Torah journal *Vayelaket Yosef*,[48] R' Yitzchak Maier Hacohen Schwartz poses a question for the reader. In the enumeration of the names of the people that descended to Egypt, the Torah lists the descendants of Leah in the following fashion: "These are the sons of Leah whom she bore to Jacob… in addition to Dinah his daughter."[49] Rashi

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47  It is this *Paneach Raza* which is cited by the *Maharsha* as the source of the belief that Dinah was born through an inter-uterine exchange. See also *Moshav Zekeinim miBa'alei HaTosafot, Tosafot Hashalem, Kotnot Or* and *Peirush HaTur HeArukh* on *Bereishit* 46:10.

R' Eliyahu Mizrachi suggests a different reason why Shimon was able to marry Dinah, citing opinions that marriage according to Noachide laws is permitted for even maternal siblings. R' Meir Bronsdorfer claims that Rashi was of the same opinion. According to R' Bronsdorfer, Rashi maintained that Dinah was born through a gender change, in accordance with the conventional understanding of the passage in *Berachot*. As such, Shimon and Dinah were both paternal and maternal siblings. The only way they could have married is if even maternal siblings were allowed to marry according to Noachide laws. See R' Meir Bronsdorfer, "Egg donation and the *yichus* of the child," (Hebrew) *Yeshurun* 21(*Nisan*, 5769) [April, 2009], 557-564.

See R' Shimon Oshenberg's (16th century) commentary on Rashi, *Devek Tov*, with notes of R' Aharon Walden (5674 edition), on *Bereishit* 46:10. The *Devek Tov* is quoted by Rabbi Friedman (*Tel Talpiyot* 19:7(*Tevet*, 5671) [January, 1911], n. 58, p. 55-56) as proof that Rashi accepted the version of the inter-uterine exchange. I assume his inference is from the notes on the text by R' Walden. R' Walden implies that indeed Rashi accepted the version of the inter-uterine exchange. This very passage from the *Devek Tov* was also referenced in an earlier edition of *Tel Talpiyot* by R' Moshe Yosef Roth in his halakhic discussion on the definition of maternity in a case of ovarian transplantation. (*Tel Talpiyot*, Year 17, vol. 21(*Tamuz*, 5668) [July, 1908], n. 176, p. 192.) See below. See also R' Mordechai Carlbach, *Chavatzelet HaSharon, Bereishit, Parshat Vayigash*.

48  *Vayelaket Yosef* 6:5(*Tevet*, 5664) [December, 1903], n. 49.

49  *Bereishit* 46:15.

comments on the fact that the sons are called the "sons of Leah," associated with their mother, while the daughter, Dinah is identified as "Dinah *his* daughter," associated with her father. Rashi assimilates these associations with the Talmudic passage on the physiology of gender determination and comments that the females are associated with Yaakov to teach you that if a man emits seed first, a female child will result, while if a woman is emits seed first, a male child will result. (See above.)

R' Schwartz queries how Rashi could infer the gender determination principle from this verse specifically. Rashi himself writes earlier[50] that after Leah's prayer, the child within her was changed to a female. If so, then at the time of conception, Dinah was a male. Only after Leah prayed, did the male become a female. How then can we derive from here that if a man emits first, a female child will result? This child was originally a male and should thus have been associated with the mother? R' Schwartz reports that he asked this immensely challenging question to many and had never received a satisfactory response. He beckoned any reader to respond.

Some months later, R' Schwartz received a response to his vexing question. I suspect he could not have anticipated the expansiveness of the response provided by R' Shlomo Fisher,[51] which spans fourteen double column small print pages, and presents a thesis on the resolution of this seeming internal contradiction within Rashi, as well as an explication of the *Midrashim* dealing with the miracle of the birth of Dinah.[52]

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50  *Bereishit* 30:21.

51  *Vayelaket Yosef* 6:9(*Adar*, 5664) [February- March, 1904], n. 82.

52  A full explication of his thesis is beyond the scope of this article.

R' Fisher maintains that Rashi, as well as the passage in *Berachot*, (see above) held that there was an inter-uterine exchange. In addition to other involved proofs to this thesis, he notes that remarkably, Rashi on the very next verse after the birth of Dinah cites a *piyyut* to aid his interpretation. The *piyyut* he cites is "*even chug*," the very same *piyyut* that details the birth of Dinah and maintains that she was born through an inter-uterine exchange (see above). Clearly, Rashi, who cited this very *piyyut* in the next verse, was familiar with the version of Dinah's birth elaborated therein, and concurred that it was an inter-uterine exchange. This answers R' Schwartz's question, for Dinah, according to the inter-uterine exchange explanation, was always a female, from conception, and was correctly associated with her father.

### The List of Rachel's Descendants

As discussed above, in enumerating the descendants of Leah amongst the seventy people who descended to Egypt, the Torah says, "These are the sons of Jacob whom she bore (*yalda*) to Jacob." It is on this verse that Rashi cites the doctrine of gender determination based on the Talmudic passage, that males are conceived when the female emits seed first, and vice versa. This is inferred by the Torah's association of the woman with the male children- "These are the *sons* of Jacob whom *she* bore (*yalda*)."

When the Torah enumerates the descendants of Rachel, however, the language is different: "These are the *sons* of Rachel who were born (*yulad*) *to Jacob*."[53] The male children are here associated with the man. While Rashi does

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53 *Bereishit 46:22.*

not comment on this deviation, the *Meshekh Chokhmah* questions why by the sons of Rachel it does not say whom *she* bore (*asher yalda*), as by Leah. He answers here as well by invoking the story of the inter-uterine exchange. Rachel initially conceived a female child, though she gave birth to a male child. The male children listed here, while all descendants of the children *born* to Rachel, were not all descendants of children *conceived* by Rachel. Yosef was the product of an inter-uterine exchange and was not the product of Rachel's seed. He was the product of Leah's seed and was only later transferred to the womb of Rachel. The Torah could therefore not use the phrase "whom *she* bore (*asher yalda*)," associating Rachel with the birth of all these male children, as this was not in fact the case.

## IV. The Use of the Story of Dinah's Birth in Halakhic Discussions on the Definition of Maternity

For centuries, the story of Dinah's birth remained confined to the exegetical literature. This was to change when technological advances facilitated the possibility of surrogate motherhood. With this new treatment for infertility it was now possible for the first time to have two possible mothers- an egg donor, or genetic mother, and a birth mother. With two candidates now vying for motherhood, the very definition of maternity in halakhah was challenged. These new challenges led to the exhumation of the story of Dinah, and in particular, the version of the

inter-uterine exchange.[54] Based on the story of the inter-uterine exchange, Dinah also had two possible mothers-the "genetic" mother (Rachel, who conceived her), and the birth mother (Leah, who bore her). According to this version, who was the legal mother of Dinah? Both Leah and Rachel contributed to Dinah's birth, but which carried the halakhic seal of maternity?

Contrary to popular belief, the use of the story of Dinah for halakhic purposes did not begin with the development of surrogate motherhood in the late 20th century. The halakhic exhumation of this story began in the early 20th century with a little known halakhic chapter whose reverberations are still felt in the halakhic literature to this very day. In 1907, in the halakhic journal *Vayelaket Yosef*, a question was posed by R' Yaakov Gordon for forum discussion.

> Physicians have developed a new procedure to treat infertility through the transplantation of reproductive organs from one woman to another. Who is the halakhic mother in this case? Would it be the donor or the recipient?

This question was not fictional, but was based on a case of ovarian transplantation that had been performed successfully on an infertile woman a year earlier, with the

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54 The story of the inter-uterine exchange was also used for halakhic purposes to determine paternity in artificial insemination. See. R' Y. Z. Mintzberg, "Artificial insemination," *Noam* 1(5718) [1958], 159. To my knowledge he is the only authority to use the source in this way. This source is mentioned by R' Bick in his "Ovum donations: A rabbinic conceptual model of maternity," *Tradition* 28:1(Fall, 1993), 28-45. See comments on R' Mintzberg's analysis by R' Y. Ben-Maier, "In vitro fertilization: The relationship of the child to the gestational or biological mother," (Hebrew) *Assia* 41(*Nisan*, 5746) [April, 1986], 25-40, at n. 8.

resulting birth of a healthy child. This remarkable case and its medical, ethical and halakhic ramifications has been discussed elsewhere,[55] but for our present purposes, it is the first time in medical history that the definition of maternity became subject to debate.

In the case of ovarian transplantation, one woman's ovarian tissue, containing the genetic material, was transplanted into the abdominal cavity of another woman. This woman then conceived and delivered a child with the donor's eggs. Who would be the halakhic mother in this case? This was one of the questions considered by the rabbis of that generation. In this historical chapter we find, for the first time, the mention of the story of Dinah in a practical halakhic context.[56] The story was then revisited in the late 20th century with the development of surrogate motherhood for the treatment of infertility. This section treats these two periods separately. In the more recent discussions of surrogate motherhood, the story of Dinah is frequently mentioned, though significantly downplayed, as more primary halakhic sources have superseded the non-halakhic material.

## The Halakhic Chapter of Ovarian Transplantation

In providing halakhic responses to the new procedure for the treatment of infertility, ovarian transplantation, a number of authorities in the early 20th century invoked the

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55  E. Reichman, "The halakhic chapter of ovarian transplantation," *Tradition* 33:1(1998), 31-70.

56  R' Bleich writes that the first to use the aggadic discussion of Dinah's birth in a halakhic discussion was R' Menasheh Grossberg in an article dated 5684 [1923]. See his "Maternity identity revisited," *Tradition* 28:2(Winter, 1994). R' Grossberg, like the others cited here, is addressing the case of ovarian transplantation. The literature cited here precedes 5684.

story of Dinah to solve the maternity riddle. However, despite utilizing the same story of the inter-uterine exchange, divergent conclusions were drawn.

Some used the inter-uterine exchange to assert that the birth mother is the halakhic mother. For example, R' Eliyahu Posek, author of *Mor v'Ahalot*, cites the *Targum Yonatan* and the *piyyut* "*even chug*" of R' Eliezer HaKalir confirming the inter-uterine exchange.[57] He further notes that Dinah is called the daughter of Leah and Yosef the son of Rachel. He interprets this to mean that the birth mother is the halakhic mother.[58]

R' Betzalel Zev Safran (1866-1930)[59] arrives at a similar conclusion that the birth mother is the halakhic mother based on the inter-uterine exchange of Dinah and Yosef. The Torah clearly states, "and it was that Rachel gave birth to Yosef," and also, "Dinah the daughter of Leah." The Torah teaches us thereby that the birth mother is the true halakhic mother. He adds that there is nothing that is not hinted to in the Torah.

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57  *Ohel Yitzchak*, Year 5, Vol. 4(*Tevet*, 5667) [December, 1906], p. 4. This was a response to the question posed by R' Yaakov Gordon in the previous issue of *Ohel Yitzchak*, Year 5, Vol. 3(*Kislev*, 5667) [November, 1906], p. 4. R' Gordon apparently sent this question to multiple journals. When I initially wrote on the halakhic chapter of ovarian transplantation, I was unaware of the articles in *Ohel Yitzchak* and thought the halakhic exchange in *Vayelaket Yosef*, initiated by R' Gordon's question as well, to be the first on the topic. The question of R' Gordon in *Ohel Yitzchak* (December, 1906) predates that printed in *Vayelaket Yosef* by almost a year and appeared some seven months after the case report of a successful ovarian transplantation by Dr. R T. Morris was published.

58  The *psak* of R' Posek is cited approvingly by R' Tzvi Hirsch Friedling in *HaB'er*, Year 6, vol. 3(5691) [1931].

59  *Teshuvot HaRabaz* E. H., 5. He also cites R' C. Y. D. Azulai as utilizing the inter-uterine exchange to interpret a Talmudic passage in his *Devash L'fi*, s. v., *Ayin Hara*.

R' Moshe Yosef Roth[60] brings the inter-uterine exchange discussion from the *Paneakh Raza*, who comments on the identity of *Shaul ben HaKena'anit* and the question of how Shimon could marry Dinah. The *Paneakh Raza*'s conclusion is that Dinah is halakhically the daughter of Rachel, the "genetic" mother. (See above.) R' Roth therefore concludes that the ovarian donor would be the halakhic mother.[61] The same conclusion is echoed by R' Menashe Grossberg.[62]

There is one authority that discounts the use of the inter-uterine exchange, but not on halakhic grounds; rather, on purely technical grounds based on his novel interpretation of the exchange. R' Avraham Yaakov HaLevi Horowitz, in his *Tzur Yaakov*,[63] suggests a variation on the inter-uterine exchange. He claims that the physical bodies did not switch between the wombs of Leah and Rachel; rather, the male child within Leah changed to a female, and the female child within Rachel became a male. Only the souls switched after the gender changes took effect. Therefore this story cannot be used to ascertain maternity in the case of ovarian transplantation. He bases this, in part, on the

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60  *Tel Talpiyot*, Year 17, vol. 21(*Tamuz*, 5668) [July, 1908], n. 176, p. 192.

61  See R' Menashe Klein, a contemporary *posek*, *Mishneh Halakhot Mahadura Tinyana* Y. D., 436, who discusses uterus transplantation and uses the inter-uterine exchange in his analysis.

62  See *Sha'arei Torah*, *Sha'ar Menashe* 15(5684) [1924], n. 3. R' Bleich mentions this source in his *Contemporary Halakhic Problems* 2(Ktav Publishers; New York, 1983), 91-93, but does not mention the context of this halakhic discussion and the entire chapter of ovarian transplantation. See also R' Yehonatan Halevi Eyebeshutz in *HaB'er*, Year 8, v. 3(*Sivan* 5693) [June, 1933], 80, who cites R' Grossberg. In a response to Rabbi Grossberg, R' Joshua Feigenbaum (*Sha'arei Torah* 15:4) rejects the proof of Rabbi Grossberg, claiming that one cannot derive halakhah from aggadic sources. This is also cited by R' Bleich.

63  n. 28.

time of ensoulment. The soul of a child is bestowed upon conception. Therefore, the soul of Yosef was bestowed when he was conceived by Leah. The soul was later transferred to the male child carried by Rachel.

## Contemporary Discussions of Surrogate Motherhood and the Definition of Maternity

The story of the inter-uterine exchange has also been incorporated into the contemporary halakhic discussions about the definition of maternity in cases of surrogate motherhood.[64] Here, too, varying conclusions are drawn from the same sources. The story however has generally received less halakhic weight in this second, later halakhic chapter, and has been largely supplanted by more purely halakhically oriented sources, with some exceptions.

R' Moshe Hershler[65] and R' Moshe HaLevi Soloveitchik[66] utilize the story for halakhic purposes and claim that based on the inter-uterine exchange, it is the birth mother who is the halakhic mother. As the Torah says, "and afterwards she bore a daughter," this implies, R' Hershler asserts, that only after the birth of the child was Dinah halakhically called Leah's daughter. Furthermore, R' Hershler adds, we have no proof whatsoever to consider the genetic mother (or egg donor) to be the mother. R' Hershler maintains that while we generally do not derive halakha from

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64  There are dozens of articles in the halakhic literature on the definition of maternity in cases of surrogate motherhood. For reviews of the major positions, see A. Steinberg, *Entzyclopedia Hilkhatit Refuit* 2(Machon Schlesinger; Jerusalem, 1991), s.v., *hafrayah chutz gufit*; A. Avraham, *Nishmat Avraham* 3(Schlesinger Institute; Jerusalem, 2007), 30-40.

65  *Halakhah U'Refuah* 1(Jerusalem, 5740 [1980]), 319-320.

66  "Test tube babies,"(Hebrew) *Or HaMizrach* 100(5741) [1981], 122-128.

aggadic sources, we can use aggadic sources to support a logically derived conclusion (*sevarah*), as is the case here. The issue of deriving halakhah from aggadic sources pervades the discussions regarding the extrapolation from the story of the birth of Dinah to modern medical halakhah.[67]

Rabbi Avraham Yitzchak HaLevi Kilav[68] cites the inter-uterine exchange briefly, and while acknowledging that we do not derive halakhah from aggadic sources, he nonetheless derives one principle from the story- that one can only have one halakhic mother. R' Yaakov Ariel[69] likewise minimizes the utility of the inter-uterine exchange story due to its non-halakhic nature, as well as the disparate versions of the events.

R' Moshe Sternbuch rejects the application of the inter-uterine exchange to contemporary halakhah, but not due to concern about deriving halakhah from aggadic sources. He claims that we cannot derive halakhah from miraculous events. R' Sternbuch maintains that logic dictates that the egg donor should be the halakhic mother. The miraculous uprooting of Dinah from Rachel's womb severed that natural maternal connection. We therefore cannot learn from this case.

More attention is given to the story of the inter-uterine exchange by R' Yisrael Meir Lau.[70] Citing the issue of Dinah's marriage to Shimon, R' Lau marshals the inter-uterine exchange in support of identifying the genetic

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67 On this topic, see A. Steinberg, *Entzyclopedia Hilkhatit Refuit* 2(Machon Schlesinger; Jerusalem, 1991), 135, at n. 63; A. Avraham, *Nishmat Avraham* 3(Schlesinger Institute; Jerusalem, 2007), 36.

68 *Techumin* 5, 260-267.

69 *Techumin* 16, 171-180.

70 *Yachel Yisrael* 3:89.

mother as the halakhic mother. He notes that this contradicts the conclusion derived from a Talmudic source[71] that the birth mother is the halakhic mother, but posits that this latter ruling applies only when the original maternal-fetal connection was abrogated, as in the Talmudic case of conversion.

R' Lau also raises a question that challenges the veracity of the inter-uterine exchange. If, as discussed above, Shimon was able to marry Dinah because Dinah was really the child of Rachel, then Yosef should likewise be considered the legal child of Leah, in whose womb he was conceived. The Torah seems to reject both assertions. First, Dinah is referred to explicitly as "*bat Leah*," (daughter of Leah) and furthermore, the Torah refers to Binyamin as Yosef's maternal brother- "*Vayar et Binyamin achiv ben imo*" (and he saw his brother, Binyamin, his mother's son). R' Ben-Maier[72] adds another verse clearly indicating that Yosef was the child of Rachel and casting doubt on the inter-uterine exchange- "and the children of Rachel were Yosef and Binyamin."[73]

In 1981, in an early discussion on maternity in surrogate motherhood, R' Bleich mentions the inter-uterine exchange to support the position that maternal identity is determined by conception, but concludes that halakhah

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71  *Yevamot* 97b

72  R' Y. Ben-Maier, "In vitro fertilization: The relationship of the child to the gestational or biological mother," (Hebrew) *Assia* 41(*Nisan*, 5746) [April, 1986], 25-40, at n. 8. R' Ben-Maier brings an opinion from R' Shlomo Min HaHar that all these proofs are fruitless, as the terms "*ben*," "*bat*," and "*yaldah*" do not specifically refer to a biological relationship and are used in the Torah also to refer to simply raising a child.

73  *Bereishit* 35:24.

cannot be derived from aggadic sources.[74] A decade later,[75] he cites the use of the inter-uterine exchange to support the halakhic opinion in favor of the birth mother, but does not consider the aggadic source dispositive. R' Ezra Bick addresses the story in his legal analysis and response to R' Bleich's 1991 article,[76] and brings the Tur's explanation as to how Shimon could marry Dinah as proof that maternity is derived by genetics/conception. (See above section on *Shaul ben HaKena'anit*.) While R' Bick states that "this is, to the best of my knowledge, the only classical halakhic source relevant to this question," he does not believe it sufficient to adjudicate the matter. He also accepts the principle that halakha cannot be based on aggadic sources, but limits this to directly applying halakhah from a specific aggadic statement. He does believe and advocate that aggadic principles in general be used to guide or inform halakhic decisions in cases where no other relevant halakhic material exists, as he believes to be the case for the definition of maternity.

Most recently, R' Meir Bronsdorfer,[77] despite reaffirming the principle that halakhah cannot be derived from aggadic sources, devotes a lengthy discussion to the story of Dinah and its implications for the determination of maternity. He concludes that while some erroneously infer

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74 *Tradition* 19:4(Winter, 1981), 359-360.

75 J. David Bleich, "In vitro fertilization: Questions of maternal identity and conversion," *Tradition* 25:4(Summer, 1991), 82-102. This article was a rebuttal to R' Bick's article in *Tradition* cited above. R' Bleich devotes little attention to the aggadic story of Dinah's birth in his extensive writings on the definition of maternity in halakhah and focuses primarily on halakhic material.

76 E. Bick, "Ovum donations: A rabbinic conceptual model of maternity," Tradition 28:1(Fall, 1993), 28-45.

77 R' Meir Bronsdorfer, "Egg donation and the *yichus* of the child," (Hebrew) *Yeshurun* 21(*Nisan*, 5769) [April, 2009], 557-564.

from the story of the inter-uterine exchange that the birth mother is the halakhic mother, the story actually confirms, though cannot be used to prove, that the genetic mother, or egg donor, is the halakhic mother.

## V. Conclusion

In this essay, we have explored the different aggadic versions of the birth of Dinah and have discussed the use of this story both in the exegetical and halakhic literatures. With new and unforeseen advances in medicine, finding halakhic precedent is challenging. Contemporary rabbinic authorities, in the absence of other clear precedent, often turn to aggadic, non-halakhic material. While the use of this material can shed light on the issues and possibly, with limitations, may be used for halakhic purposes. However, its use is also fraught with potential difficulty. Each instance must be analyzed independently. With regard to the use of the story of Dinah for the determination of maternity in halakhah, the consensus amongst rabbinic authorities is that we do not place great weight upon this aggadic source. This is because of the general principle of not deriving halakhah from aggadic sources, coupled with the conflicting conclusions drawn from this particular source by earlier scholars. This essay clearly illustrates the latter point. Herein, we have shown that there are not only many aggadic versions of the birth of Dinah, but even those who accept the inter-uterine exchange version, derive different halakhic conclusions from the story. In sum, *tzarich iyun l'Dinah*, with its intended double entendre. Clarification is required for the law (*dinah*) of maternity in surrogate motherhood; and clarification is also required for the aggadic story of Dinah's birth.