

## *Rationality and Halacha: The Halacha L'Moshe MiSinai of Treifos*

By: ASHER BENZION BUCHMAN

### Rashba's and Rivash's Rejection of Science

In his article justifying the ban on the works of Rabbi Nosson Slifkin, Rabbi Aharon Feldman<sup>1</sup> enlists the aid of two of our most influential *Rishbonim*, Rashba and Rivash. He tells us that both of them insist that “it is forbidden to say that the Sages erred in matters of science.” Indeed, in the *teshuva* quoted, Rivash is quite explicit on this point with regard to *hilchos treifos*.<sup>2</sup> If we accept what the doctors say, we will have overturned the laws of *treifos* which are a *halacha l'Moshe misinai*, and in fact we will be saying “that the Torah is not from the Heavens.” Rashba<sup>3</sup> also insists that the doctors are absolutely unreliable with regard to their evaluations of *treifos*. One must totally ignore what they say, for the laws governing when we say an animal is

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<sup>2</sup> ע"י שו"ת ריב"ש סי' תמ"ז "שאיין לנו לדון בדיני תורתנו ומצותיה על פי חכמי הטבע והרפואה שאם נאמין לדבריהם אין תורה מן השמים חלילה כי כן הניחו הם במופתיהם הכוזבים. ואם תדון בדיני הטרפות על פי חכמי הרפואה שכר הרבה תטול מן הקצבים כי באמת יהפכו רובם ממות לחיים ומחיים למות ויחליפו חי במת, שהם מלעיגים בנו עליהם— יוצק זהב רותח לתוך פיהם ... כי לא מפי הטבע והרפואה אנו חייין. אנהנו על חכמינו ז"ל נסמוך אפילו יאמרו לנו על הימין שהוא שמאל שהם קבלו האמת ופירושי המצוה איש מפי איש עד מש"ר ע"ה." ועיי"ש שטען שהרמב"ם "שנה מעט" מדברי הגמ' אצל צומת הגידין, ואינו כן כמו שמבואר באחרונים, רק דיש הבדל בין עוף לבהמה

<sup>3</sup> This *teshuva* of Rashba is not quoted by Rabbi Feldman.

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destined to die from a wound are *halacha l'Moshe misinai*. To deny these facts is to deny our *mesorah* from Sinai.<sup>4</sup>

Rivash goes on to argue, that since we cannot possibly accept what the doctors say with regard to the *halacha l'Moshe misinai* of *treifos*, we should not accept their testimony with regard to anything they say that contradicts *Chazal*, even if it is not something that was received, but something that the Rabbis deduced (*ibid.*)<sup>5</sup> Rivash goes further than this as well. In the question addressed to Rivash, the questioner suggests that when *Chazal* say that an infant is considered *kolu lo chadashav* (having come to full term) after nine months, they do not require nine full months but rather part of the 9th month is sufficient.<sup>6</sup> He suggests this position since the doctors of his time testify that babies will generally live if born any time within the 9th month. Although this is a viable explanation of *Chazal's* intent, the Rivash rejects it since he feels the simpler reading is to require nine full months. He will not factor into his evaluation of the *Gemara's* intent the evidence presented by the doctors, even though, in so doing, *Chazal's* words would then be consistent with the doctors' claims.

The Rashba quoted by Rabbi Feldman goes even further than Rivash in his rejection of science. Rashba rejects a position taken by Ra'ah [verify] and Ramban, that they felt compelled to take because the traditional explanation ran contrary to the observable facts of nature with regard to whether meat is *polet* (expels liquid) under a certain condition<sup>7</sup>. These other *Rishonim* refuse to accept the simple reading of the *gemara* since it runs against not just scientific claims but

4 ע"י שו"ת הרשב"א א:א:צח "אם ראית ושמעת מי שמיקל ומכשיר ביתרת או בכל מה שמנו חכמים מכלל הטרפיות אל תשמע לו ולא תאבה לו ולא תהיה כזאת בישראל. וכל מי שמכשיר זה נראה בעיני כמוציא לעז על דברי חכמים וכו' ומה שמנו חכמים מכללן אי אפשר להם בשום צד לבא לידי היתר לעולם. ועולא כלל כל הטרפיות בשמונה מינין ואמר בריש פרק אלו טריפות שמונה מיני טרפות נאמרו למשה בסיני אלו הן וכו' הנה שאנו אומרין אלא נאמרו למשה בסיני".

5 See note 11 where Rivash explains that *Chazal's* experimentation was superior to that of the scientists.

6 ע"י שם תשובות תמ"ו-תמ"ח.

7 ע"י משמרת הבית ד:א דף 18 "ואע"פ שהרמב"ן ז"ל כתב, לא כחולק אלא כמתמיה - שאין אלו אלא דברי נביאות דמאן לימא לן הכי? אין לנו אלא כדברי חכמים הבקיאים בהלכה הבקיאין בטבעים, וסומכין עליהם בזה כמו שסומכים עליהם באיסור קליפה ונטילת מקום ובאיסור (הכל) [הכחל] ובדיני תתאה גבר ועילאה גבר ובשאר דרכי איסור והיתר שלמדנו מהם ואין אנו נשענים על בינתינו ולומר זה אפשר וזה לא אפשר".

simple observation.<sup>8</sup> The Rashba argues that our observations run contrary to many laws of *bliab* (absorption) with regard to *hilchos ta'aruvos* (laws governing prohibited substances that have become intermixed with permissible food). He contends that we must merely accept that *Chazal* were more expert than we are in matters of the laws of science. This attitude is born of what was noted in an earlier *Hakirah* article.<sup>9</sup> There it was demonstrated that Rashba decides against the rationality of Rambam—in Rambam's rejection of the power of *segula* to effect physical phenomenon and his claim that scientific rules govern all physical events—by arguing that the magnet proves that nature is subject to the mystical rules of *segula* as well, for “no one will ever be able to explain this phenomenon in a rational way.”<sup>10</sup> The attitude that Rashba expressed in matters of *hashkafa* permeates his thought and influences his *psak* not only in issues such as the definition of *avodah zarah*, but in the mundane laws of kashruth.

Rivash justifies his assault on the evidence presented by doctors and scientists of his day by noting that they did not use repeated controlled experiments to come to their conclusions but merely made claims based on superficial examination.<sup>11</sup> Rashba also speaks of their unreliability in testing animals for *treifos*,<sup>12</sup> saying that they cannot be trusted to have observed the same animal for the entire 12-month period needed to establish non-*treifus* and are likely to have miscounted or switched animals. In his own day, Ramban

<sup>8</sup> עי' בדק הבית (שם) "וכתב המחבר דדברים כפשטם דאע"פ שהתחכה שנפלה עליה החלב קבלה טעם החלב ונאסר ונעשית היא עצמה כחתיכת נבלה מ"מ כל שהוא נוגעת ביבש אפילו שתיהן חמות אינה פולטת כלל מן החלב שבלעה ומיחל גמור של היתר הוא שפולטת וכו' ודברים אלו מבואר שאינן וכו' אלא ודאי דברים אלו אינן וכלהו בורכא"

<sup>9</sup> See *Hakirah* Volume 2, *U-Madua lo Yeresev*, esp. pp. 33-38.

<sup>10</sup> עי' שו"ת הרשב"א א:תיג "ולא ישיג עיון טבע זה כל חכם שבחכמים אלו של חכמת הטבע"

<sup>11</sup> עי' שו"ת הריב"ש (שם) "לא נאמין אל חכמי היונים והישמעלים שלא דברו רק מסברתם ועל פי אי זה נסיון מבלי שישגיחו על כמה ספקות יפלו בנסיון ההוא כמו שהיו עושין חכמינו ז"ל כמוזכר בפרק המפלת (ל:) אני מביא ראיה מן התורה ואתם מביאים ראיה מן השוטים וכו' כי באולי נסו באחת או בשתים וראו שנגמר לתחלת תשיעי ואולי היה בר ז' ואשתהי או שהיו מבעילות קדומות. ואף אם מסרום לשומר אין אפטרפס לעריות ואימר שומר בא עליהן ויותר יש לנו להאמין בשמואל"

<sup>12</sup> "ומאן דאמר ש(א)ה[ה]ינה מתקיימת שתים ושלוש שנים לא היו דברים. ומי שמעיד טעה בכך וכו' אנו שואלין אותו שמעיד מאין אתה יודע ששהתה זו? שמא שכחת או שמא טעית או שמא נתחלף לך בזמן או שמא נתחלפה לך בהמה זו באחרת שאי אפשר להעיד שתהא בהמה זו בין עיניו כל שנים עשר חודש"

maintained that “we must not deny the evidence of our own eyes,”<sup>13</sup> but a generation later the greatest students of his school were doing just that. Nevertheless, we can understand why they did so. Science was so primitive, medicine so ineffective, and so little was understood—that even the most brilliant and educated of men could believe that science had absolutely no reliability. Indeed, “scientific” claims were not the result of rigorous scientific examination and one could be justified in discounting them if they ran against what seems to be *Chazal’s* intent. However, seven hundred years later it would be incorrect to make these same claims, and thus it is inappropriate for Rav Feldman to look to these *Rishonim* to validate his anti-science arguments.

### ***Hilchos Treifos* and Rav Moshe Feinstein’s Acceptance of Scientific Fact**

Seven hundred years later, the *poskim* of the previous generation had no intention of accepting this attitude of Rashba and Rivash. When confronted with a contradiction between what medicine tells us about wounded and sick animals and the *treifos* that *Chazal* have handed down to us, the Chazon Ish<sup>14</sup> and Rav Moshe Feinstein zt”l<sup>15</sup> never considered the possibility that the doctors were wrong. Rav Moshe notes the position of Rashba and explicitly explains that his attitude is incorrect. He tells us that in the days of Rashba, long-distance communication between areas was so limited that Rashba was unaware of what had been proven elsewhere and thus was skeptical when told that certain wounds could be cured.<sup>16</sup> According to Rav Moshe, Rashba is just wrong and today in *gan eden* he admits

<sup>13</sup> עי' רמב"ן עה"ת דברים יח:ט "ואנחנו לא נוכל להכחיש דברים יתפרסמו לעיני הרואים" See at length *U-Madua Lo Yeresem* cited above, note 8. We demonstrated in that article that Ramban himself was primarily a rationalist.

<sup>14</sup> עי' חזו"א אה"ע סי' כ"ז ס"ק ג.

<sup>15</sup> עי' אגרות משה חו"מ ח"ב סי' ע"ג אות ד.

<sup>16</sup> ובימי הרשב"א לא עשו הניתוחים האלו ואפילו אם נודמן באיזה מקום שעשה איזה רופא גדול לא ידעו ממנו. דלא היה שייך לידע אז כל כך ממה שנעשה בעולם כפי שיודעין בדורותינו מעת שהתחילו לשתמש במסילות הברזל להוליך על ידי זיעת מים רותחין..שעי"ז באין בימים אחדים למדינות הרחוקות ביותר ... שזה יותר מחמשים שנה שמתמשים בעראפלינס ... והידיעות בשעה אחת וגם בפחות משעה על ידי טילאפון.

it.<sup>17</sup> Although the present-day Talmudic student is trained to believe that a *Rishon* can never be considered wrong and our task is merely to explain the differing opinions, this is not Rav Moshe's opinion. In this area, where a *Rishon* has predicated his position upon the stance that observable fact must be denied, the position of that *Rishon* must be rejected. It would be illogical to disagree with Rav Moshe, and the ramifications of this fact will be discussed in a future article.<sup>18</sup>

Rav Moshe and the Chazon Ish take an almost identical approach in explaining the discrepancy between scientific finding and Talmudic conclusions. *Tosfos* (*Moed Koton* 11a s.v. *kavra*) had blazed the way for them by claiming, in several places where observable fact seems to contradict rabbinic contentions, that *נשתנה הטבע*, "nature has changed." *Chazal* were right in their day but things have changed. Rav Moshe refers to two types of changes. 1) The hardness of animals may have changed and while certain wounds used to kill they no longer do, and, in reverse, certain wounds that did not kill in Talmudic times, do kill today. 2) Doctors are able to cure that which could not be cured in previous generations. However, explains Rav Moshe, while the definition of *treifa* is assigned to that which cannot be cured, this definition is dependent on the time of *Matan Torah* when the *halacha l'Moshe misinai* of *treifos* was given. Although the fatal quality of the wounds listed in the Talmud is only valid in Talmudic

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<sup>17</sup> שאף הרשב"א אם היה חי וכן עתה שהוא בגן עדן מודה שיש מקצתן מאלו שמנו במשנה וגמ' שהן טרפה שיכולין לחיות ... והאמת לדינא הוא כהרמב"ם

<sup>18</sup> A Tannaitic case demonstrates the principle that a mistake in fact has no standing. Rav Tarfon (*Sanhedrin* 33a) ruled that an animal without a uterus was a *treifa*, and then was notified that before leaving Egypt the mares were stripped of their uteruses so they would not reproduce. His response was *הלכה חמורך טרפון* "there goes your donkey Tarfon," that this error made him a *טועה בדבר משנה* (mistaken in a matter already decided in the Mishnah) who had to compensate the person on whose animal he had ruled. In fact, there is a Mishnah (*Chulin* 54a) that specifies a missing uterus does not make an animal a *treifa* as Rashi (*ibid.*) notes, but the Mishnah was not compiled until later (see *Maharatz Chiyus* (*ibid.*)), thus the *Shach* (*Choshen Mishpat* 25:9:2) interprets that in Rav Tarfon's case, indisputable fact has the status of an undisputed Mishnah. He bases this on Rambam's language (*Hilchos Sanhedrin* 6:1) "טעה בדברים הגלויים הידועין". The Rivash himself (*Teshuvos HaRivash* 498) seems to interpret the *Gemara* as the *Shach* does.

times, nevertheless the definition of *treifa* is dependent on those times. Rav Moshe has returned to the approach of Ramban (which seems to be that of Tosfos as well) that especially in the scientific age, "we must not deny the evidence of own eyes."<sup>19</sup> He assumes, as is necessary for this explanation, that between the time of *Matan Torah* and the end of the Talmudic period there was no change in the hardness of animals, nor in the ability to cure them.<sup>20</sup> Rav Moshe does not explain why these laws should be dependent on this era, but the Chazon Ish, to some degree, does. He refers to the two thousand years of Torah that the *Gemara* speaks of<sup>21</sup> and thus contends that the laws of the Torah are bound by this period.<sup>22</sup> This limitation, as presented by the Chazon Ish seems at first glance, to be of a mystical rather than a rational bent. If a *treifa* is defined as an animal that is destined to die from its wound, why should this definition be dependent on the time of *Matan Torah* and not the age in which the animal is living?

### The Two Thousand Years of Torah and Rationalism

It is possible, however, to see the *Zman Matan Torah* principle and the *treifos* solution of Rav Moshe and the Chazon Ish in a fully rational light. Another *halacha* that certainly goes back to the time of *Matan Torah* concerns the *melachos* of Shabbos. The 39 *melachos* are derived from that which was performed in the building of the *mishkan* (Bava Kama 2a). It is interesting, however, to note that neither the Mishnah (*Shabbos* 73a) nor the Rambam (*Hilchos Shabbos*, Chapters 7ff) emphasize this point and the order of presentation of the *melachos* in both works revolves around the process of producing food (סדר) (הפת, making clothing, and building. What is really accomplished by linking the *melachos* to the *mishkan*, is to relate the fundamental aspects

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<sup>19</sup> See note 13.

<sup>20</sup> והכלל דנקט במתני' דכל שאין כמוה חיה טרפה נשנה זה רק על זמן מתן תורה שהיא גם כן בזמן המשנה והגמ'.

<sup>21</sup> 2000-4000 in Creation, See *Hakirah* volume 3, "A Y2k Solution to the Chronology Problem."

<sup>22</sup> ונמסר לחכמים לקבוע הטרפות ע"פ רוח הקדש שהופיע עליהם, והנה היה צריך להקבע בב' האלפים תורה ... והיו קביעות הטרפות כפי השגחתו ית' בזמן ההוא ... ואפשר דהנתוחים שבזמנינו לא היו מועילים בימים הראשונים (שם).

of what constitutes “work” to the ancient era. Were modern man asked to define 39 fundamental acts of work, he would most certainly come up with a different list than that of the Mishnah. If man from the first two thousand years—before civilization had fully developed—were to come up with a list, it would also be different, and more primitive. The list in the Mishnah, taken from the intermediate part of civilization’s development, is conceptual and attuned to the fundamental principles of the acts of “creating” that the Torah considers appropriate for the **שם מלאכה**.

Similarly, Rambam in *Moreh Nevuchim*,<sup>23</sup> states that some Biblical laws are based on prohibiting practices of *Avodah Zarah* that existed at the time of *Matan Torah*, and were we to know more about the *Avodah Zarah* of that time, we could understand these laws better. How strange that the eternal Torah be dependent upon practices that existed only in the ancient world! But this era of the Torah was also the age of *Avodah Zarah*.<sup>24</sup> The practices of this time reflect man’s psychological longing for a means to connect to Divine power in order to attain a sense of personal security and “spiritual” fulfillment. The Torah’s laws are designed to combat those corruptive<sup>25</sup> impulses that are part of the human psyche, and these are most clearly identified in the era of *Matan Torah*.

Bearing the above in mind, we can easily see how it would be reasonable to interpret that the **שם טרפה** would depend on what is fundamentally a critical wound. When medicine was entirely primitive, during the first two thousand years, perhaps even minor wounds would lead to death. In the present era even very critical wounds can be cured, and the Torah would still consider these wounds as *treifos*, for until the animal is treated, the wound is considered fatal. The proper era in which to gauge what constitutes a fatal wound is the middle two thousand years of Torah. Essentially, Ramban presents at least part of this idea. The Talmud questions how it is possible to say that a cut in the **צמת הגידין** (*Chulin* 76a) makes an animal a *treifa* while the animal is kosher if the leg is cut off at a

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<sup>23</sup> עי' ג:כט "כי הרבה מן המצות לא נתבאר לי ענינם וידעתי טעמיהן אלא כאשר עמדתי על שטות ובכמה מקומות במ"נ מבאר ה"צאבה" והשקפתיהם ומעשיהם ועבודתיהם." (מהדורת קפה) הרמב"ם דנאסר מעשה דוקא מפני שהיה מנהג עובדי ע"ז, כמו אצל כלאים

<sup>24</sup> See *Sefer Hamitzvos Aseh* 187 that the Canaanites are *ikar avodah zarah*.

<sup>25</sup> Proper religious service comes from the desire to serve the Divine.

point even above these tendons? While the Talmud's answer is cryptic and seems incomplete,<sup>26</sup> Ramban (*Chidushei Haramban*, *ibid.*) explains that the intent of the Talmud's answer is that even though the animal could be made kosher by operating and cutting off the whole leg, still, so long as this is not done the animal is a *treifa*. Yes, he notes, the Talmud tells us that if an animal can be cured it is not a *treifa* even before being cured, and the rule is that a *treifa* cannot return to a state of kashruth.<sup>27</sup> Nevertheless, our case differs, for the animal's state is completely changed with amputation.<sup>28</sup> In other words, when an animal can be saved by means of a radical operation, rather than by the administration of salves and herbs that constitute normal cures, then it is not considered to have been cured, but have entered into a new state. Ramban, would probably hold that all modern operations would not be included in the healing that prevents the שם טרפה from applying.

### Rambam on Rabbinic Genius and Fallibility

Rav Moshe contends that his explanation is the one given by Rambam, who being a man of science, was aware already in his own time that the *treifos* defined by *Chazal* were inaccurate.<sup>29</sup> However, he is well aware that Rambam's language does not support his interpretation. Rambam writes as follows:

ואין להוסיף על טרפות אלו כלל. שכל שארע לבהמה או לחיה או לעוף חוץ מאלו שמנו חכמי דורות הראשונים והסכימו עליהן בבתי דיני ישראל אפשר שתחיה, ואפילו נודע לנו מדרך הרפואה שאין סופה לחיות. וכן אלו שמנו ואמרו שהן טרפה, אע"פ שיראה בדרכי הרפואה שבידינו שמקצתן אינן ממיתין ואפשר שתחיה מהן - אין לך אלא מה שמנו חכמים שנאמר על פי התורה אשר ירוך. (הלכות שחיטה י:יב-יג)

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<sup>26</sup> טרפות קא מדמית להדדי, אין אומרות בטרפות זו דומה לזו שהרי חותכה מכאן ומתה חותכה מכאן וחיה.

<sup>27</sup> מימרא דרבה חולין סח: מה טרפה כיון שנטרפה אין לה היתר וכו'.

<sup>28</sup> "אם נחתכו למעלה מצומת הגידין וחיתה ואח"כ נשחטה לאו נטולת הגידין היא זו אלא חתוכת הרגלים למטה מן הארכובה היא זו וכשרה".

<sup>29</sup> אבל הרמב"ם שהיה חכם גדול ביותר וגם היה רופא גדול בדורו ידע שהאמת הוא כפי שידוע מדרכי הרפואה אבל לא הוקשה לו כלום.

In order to read Rav Moshe's explanation into Rambam he must change the *girsas* in *Mishneh Torah*. Rambam writes that the testimony of the Rabbis of old proves that an animal that they have called kosher (not labeled as a *Treifa*) "אפשר שתחיה" "can live." Rav Moshe says that the text should be changed to read (*Hilchos Shechita* 10:12-13) "היה אפשר שתחיה" "it would have lived," i.e., in their times. There is no *girsas*, however, that supports Rav Moshe's reading. A careful and exact reading of Rambam, in fact, leads to another explanation as to why the *treifos* listed by *Chazal* are not those that were recognized by the medical men of Rambam's day. Rambam, according to all authoritative *girsas*, as Rav Moshe noticed<sup>30</sup> (and the *Kesef Mishnah* (*ibid.*) did not) makes two different statements about the nature of the discrepancy. First, he explains, that if an animal is said by the doctors to be doomed, and *Chazal* do not consider it a *treifa*, then "אפשר שתחיה", it can live. Rambam, the rationalist, tells us that *Chazal* could cure this animal even if the doctors of his day could not. In fact, this is not irrational. Even today, doctors are looking at ancient cures and finding that some have efficacy. *Chazal* were entrusted with defining the laws of *treifos* and delved into the injuries, illnesses and cures of animals. Just because we can't cure them, does not mean that they couldn't. Rambam has confidence in the wisdom of *Chazal*. He sounds almost like Rashba and in fact<sup>31</sup> the *Kesef Mishnah* interprets Rambam as being in agreement with Rashba.

But in the next halacha, as Rav Moshe notes, Rambam says that if the doctors can cure it, nevertheless "אין לך אלא מה שמנו"<sup>32</sup>

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<sup>30</sup> Rav Moshe, however, changes the *girsas* in order to make the two statements consistent.

<sup>31</sup> Rav Yosef Karo interprets Rambam to share the opinion of Rashba, in rejecting the claims of the doctors. Noting that this is Rambam's argument in halacha 12, he assumes this is the case in halacha 13 as well. This is not a viable reading of Rambam, as Rav Moshe notes.

<sup>32</sup> "We only have that which the Rabbis counted, for it says 'According to the Torah which they will teach you.'" My thanks go to Jay Fenster who first pointed out to me that here Rambam is referring to Bais Din's authority that cannot be overturned until another Sanhedrin has done so. Shortly before publication, I found that an online essay by Gil Student "Halakhic Responses to Scientific Developments," quotes this reading of Rambam in the name of the *Sefer Yad Yebuda* (3:30). The essay which can be found at:

”חכמים שנ' על פי התורה אשר יורוך He does not deny that the doctors can cure what he himself sees is curable. He will not deny what is clearly true. Nevertheless, the שם טרפה (the identification of an animal as a *treifa*) is a function of the decisions of the Sanhedrin, and as Rambam explains (see *hakedama* to *Mishneh Torah*), the conclusions of the Talmud are final and cannot be overturned until the Sanhedrin is reestablished. In fact, the definition of *treifa* in our day is flawed, for this definition should be updated as the Rabbis learn more about veterinary medicine. Some of the defined *treifos* will live even without modern cures,<sup>33</sup> and since Rambam never relies on נשתנה הטבע (nature has changed), it is most probable that *Chazal* were mistaken in their original diagnoses. *Chazal* are not infallible as the principle of פר העולם דבר של צבור<sup>34</sup> makes abundantly clear.<sup>35</sup> Moreover, every Bais Din can overturn the decisions of a previous court on issues of interpretation of Torah law. This is so because court after court reexamines every nuance of the law, trying to find the absolute truth on an issue, and is not satisfied with the decisions of precedent (*Mishneh Torah, Hilchos Mamrim 2:1*). In the introduction to his *Pirush Hamishnayos*,<sup>36</sup> Rambam explains that before the time of Hillel and Shammai, there were no disagreements on issues that arose, for the debaters would eventually all yield to a winning argument. Rambam feels that on all issues there is an objective truth and *Chazal* were engaged in a constant search for it - and at their peak they would find it.<sup>37</sup> In modern days, with a modern Sanhedrin (*Hilchos Sanhedrin 4:11*), the laws of *treifos* would change based on the discoveries of

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<http://yasharbooks.com/Open/OpenAccess03.pdf> categorizes these halakhic responses in a thorough manner.

<sup>33</sup> "שאפשר לחיות ברפואות ואף גם בלא רפואות ... ואף לאחר שישתנו הטבעיים ויכלו לחיות גם בלא רפואות כמו שרואין ויודעין כל העולם כולו" (כך כתב ר' משה שם)

<sup>34</sup> A sacrifice to be brought when the Sanhedrin has erred in a decision. See *Vayikra* 4:13

<sup>35</sup> The *Yated Neeman De'ab VeDibur*, 2 Shevat 5765, reporting on the Slifkin ban, quotes Rabbi Elya Ber Wachtfogel as saying that *Chazal* are infallible and evidence to the contrary suggested by the halacha of פר העולם דבר של צבור is erroneous. We anxiously await Rabbi Wachtfogel's explanation of this halacha.

<sup>36</sup> See Kapach edition, volume 1, pp. 11-12.

<sup>37</sup> "כי שני אנשים שהם שווים בהבנה ובעיון ובידיעת הכללים שלמדים מהם לא תהיה בהם מחלוקת במה שלומדים מאחת המדות בשום פנים" עיי"ש

modern science and medicine. Perhaps, as Ramban feels, the cures brought about by surgery would not be included in the equation and the changes would not be that radical, but nevertheless, some changes would be made. But, until that day, the definitions of *treifos* of the last Sanhedrin will stand. For the perfection and rectification of the law we await the era of *Moshiach*—*כבראשונה*— (“return our judges as in days of old.”)

### **The *Halacha L'Moshe MiSinai* of *Treifos***

According to our explanation of the Rambam, he attributes the definitions of *treifos* to Sanhedrin, but are not these laws all *halacha l'Moshe misinai*? And if so, how can we claim that they were meant to change with the discoveries of science? In fact, the explicit argument of Rivash, and the implied argument of Rashba is based on the fact that *treifos* are *halacha l'Moshe misinai* and, as such, how can they be contradicted by any mortal authority? This seems to be the reason, as well, that Rav Moshe Feinstein chose to change the *girsas* of Rambam, rather than to interpret him along the lines we have explained.<sup>38</sup> The answer to this question is found by examining the nature of the *halacha l'Moshe misinai* that was received with regard to *treifos*. The *Rishonim* have noted that the Talmudic account of this *halacha* is perplexing. *Tanna D'vei Rebbi Yishmoel* speaks of eighteen *treifos* that are *halacha l'Moshe misinai* while *Ula* (Chulin 43a) has eight categories that comprise the *halacha l'Moshe misinai*. Rambam produces a list of seventy distinct *treifos*, (*Hilchos Shechita* 10:9) culled from Talmudic discussions and decisions. Rashba (*Sheelot V'tshuvot Harashba* 1:98) answers the contradiction by saying that the individual *treifos* are all *halacha l'Moshe misinai* and later authorities condensed the list of *treifos* by categorizing them. According to this approach, apparently one shared by Rivash as well, the contradiction in *treifos* is between science and our *mesora misinai* and therefore there seemed to be no choice but to deny science.<sup>39</sup>

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<sup>38</sup> עיי"ש שכמה פעמים הדגיש דודאי היו דברי חכמים אמתיים דהם הלל"מ. וכן דכתב דאפשר לפרש דברי רבינו בלי לשנות את הגירסא "שגם בזמננו יכולים להיות אף שלא ידוע לנו הרפואה".

<sup>39</sup> Or, to do as Rav Moshe and the Chazon Ish do, and say the laws of *treifos* were based on the era of *Matan Torah*.

On the other hand, Rambam only refers to the *halacha l'Moshe misinai* that *Ula* spoke of: ושמונה מיני טרפות נאמרו לו למשה בסיני ואלו הן: דרוסה, נקובה, חסרה, נטולה, פסוקה, קרועה, נפולה ושבורה (הלכות שחיטה ח:ב). The simple understanding of Rambam's position is that only eight categories of *treifos* were handed down to Moshe. It was given to the Rabbis to determine exactly when these types of wounds were fatal and only then were they defined as *treifos*. *Tanna Dvei Rebbi Yishmoel* spoke of the expanded list of the eighteen *treifos* mentioned in the Mishnah as being the clear intent of the *halacha l'Moshe misinai* but they were compiled with the input of *Chazal*. The seventy *treifos* brought by Rambam are entirely the result of the analysis of the Rabbis of the Talmud, utilizing as a guideline the eight categories handed down from Sinai. Rav Yonasan Eibshitz<sup>40</sup> notes that this must be Rambam's understanding, for in his introduction to the *Perush Hamishnayos* he tells us that on those issues on which there is a *halacha l'Moshe misinai* there is no disagreement between the Rabbis.<sup>41</sup> The guardians of the *mesora* fully preserved that which was handed down from Sinai. The fact that there are many issues of dispute on the individual *treifos* makes it clear that the details of individual *treifos* are not part of the *mesora*.<sup>42</sup>

According to Rambam, a general understanding of the medical principles involved in defining *treifos* is part of the *mesora*, but it was left to the *chachomim* to study animals and their health issues in order to define the *שם טריפה*, and in changing times, the definition

<sup>40</sup> עי' פלתי סי' כט ס"ק א, ובכרתי שם ס"ק ה.

<sup>41</sup> עי' הוצאת קפח דף יא "וזה אין בו מחלוקת כלל, אלא כל זמן שיאמר אדם קבלתי כך וכך מסתלק כל וכו'... אבל סברת מי שחשב שגם הדינים שיש בהם מחלוקת קבלה ממה, ונפלה בהם מחלוקת מחמת טעות בקבלה או שכחה, ושהאחד צודק בקבלתו והשני טעה בקבלתו וכו' הנה זה חי' דבר מגונה ומזר מאד וכו' וחושד באנשים שמהם קבלנו את התורה.

<sup>42</sup> In general, the attitude of Rivash and Rashba is related to the belief that the *mesora* from Sinai was very detailed. The Rambam's position, that all issues on which there is disagreement are not part of the *mesorah* from Sinai, makes quite clear his belief that the original *mesorah* was not that detailed and much was left to the Rabbis to decide. A careful reading of Rambam in the second *shoresh* of the *Sefer Hamitzvos* indicates that he is in agreement with Rambam in his belief that the bulk of the details of Torah law were deduced by the Rabbis and not part of the *mesora* from Sinai.

would change.<sup>43</sup> Thus, in a technical sense, the nature of the *halacha l'Moshe misinai* is at the core of the disagreement between Rambam and Rashba. Moreover, Rashba's belief, shared with Ramban, that the higher sciences are of a mystical nature, led him to believe that the *halacha l'Moshe misinai* contained a detailed description of all wounds that are fatal.<sup>44</sup> According to Rashba, the later disagreements amongst the Rabbis resulted from the loss of the deeper understanding of these sciences. Rambam, the rationalist, believed that Moshe Rabbenu was given only basic principles of medicine and a fuller understanding of these laws would evolve with time.

Rav Moshe Feinstein (ibid.) and the Maharam Shik<sup>45</sup> before him, note that Rambam differs from other *Rishonim* on another issue related to *treifos*. Most *Rishonim*<sup>46</sup> understand that a human being is subject to the same *treifos* that are defined for animals, although we are hard pressed to adjust for the differences in the anatomies of man and beast.<sup>47</sup> Rambam, however, is clear that when it comes to declaring a human as being a *treifa*, it is solely the domain of doctors (*Hilchos Rotzeach* 2:8). Only in relation to the *treifos* of animals, where a definition of a Torah term is at stake, was the definition of the term put into the domain of *Chazal*. The שם טרפה בהמה (identification of the animal *treifa*) must be defined because one of the Torah's 613 *mitzvos* is based on this prohibition, thus it is the responsibility of the Sanhedrin to define it. In regard to טרפות אדם (human *treifa*), while its definition is relevant in determining if one is responsible for murdering a person with fatal symptoms (*Sanhedrin* 78a, *Hilchos Rotzeach* 2:8, *Hilchos Edus* 20:7)<sup>48</sup>, the שם טרפה is not a Biblical term, and it was not expected that *Chazal* would be in charge of defining it.

<sup>43</sup> אין לך אלא מה שמנו חכמים, שנ' על פי התורה explained Rambam אשר יורוך.

<sup>44</sup> Rav Moshe also feels this way. But the language of the Chazon Ish, cited above implies that the individual *treifos* were identified by *Chazal*, albeit with *ruach bakodesh*.

<sup>45</sup> עי' שו"ת מהר"ם שיק או"ח סי' רסח אבל דעתו דרבינו סובר כר"ת דשאני אדם דאית ליה מזל ומקבל רפואה ולכן באלו הטרפות שנאמרו לגבי בהמה אלו יאמרו הרופאים דיכול להיות יש לחוש לדבריהם.

<sup>46</sup> עי' רש"י מכות ז. ד"ה אם ורמב"ן ורשב"א שם ותוס' ב"ק נא. ד"ה נעביד ותשובת רימג"ש בשמ"ק ב"ק כו.

<sup>47</sup> עי' תוס' ותוס' הרא"ש חולין מב: ד"ה ואמר ותוס' בכורות לו: ד"ה כדי ור"ש אהלות ב:ג.

<sup>48</sup> ועי' אנציקלופדיה תלמודית ערך טרפה (אדם) היכן נוגע לדינים אחרים.

It is only logical to assume that these laws should change along with medical advancement, and this is the way Rambam rules.

## Conclusion

In the laws of *treifos* and elsewhere, indeed Rashba and Rivash rejected the apparent reality that they were faced with, assuming that *Chazal* were more reliable than facts established by science. But this attitude was only viable in a time when science was unreliable and rightly viewed with skepticism. The leading *poskim* of the last generation, Rav Moshe Feinstein and Chazon Ish, living in an era where no rational person would deny the truths of science, followed the lead of Ramban. They demanded that we accept the evidence of our own eyes and proceeded to reconcile the difficulties presented by modern observation by explaining that *halacha* was not meant to reflect scientific reality—and resolved apparent contradictions with arguments base on *lomdus*. Rav Moshe tells us explicitly that Rashba himself, living today, would no longer maintain his position. Still, both Ramban and Rashba shared a common belief that the knowledge of the physical world that Chazal had was superior to that of modern scientists. Ramban believed that *Chazal's* understanding in this area was profound, for they were the masters of the superior “spiritual” sciences.<sup>49</sup> Those following this school of thought believed that the original *halacha l'Moshe misinai* included the medical details of what constitutes a fatal wound that makes an animal a *treifa*. Both Rashba in his day and Rav Moshe Feinstein in our day worked with this idea. Nevertheless, Ramban himself did not consider *Chazal* infallible in these matters<sup>50</sup> and was open to the possibility that they had erred in matters of science. He insisted that that we never deny the evidence of our own eyes.

Rambam's approach was different from those that came after him, believing that: 1) *halacha* works in harmony with the rules of nature; 2) there is no such thing as superior “spiritual” sciences and the *mesora* from Sinai did not include any advanced knowledge of the natural sciences—the *halacha l'Moshe misinai* of *treifa* only gave basic

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<sup>49</sup> See *Hakirah* vol. 2, *U-Madua Lo Yeresem* cited in note 13.

<sup>50</sup> See *Vayikra* 12:2, where he brings the opinion of the Greeks side by side with the opinion of *Chazal*, which they contradict.

medical guidelines; and 3) the process of Talmud Torah that *Chazal* were entrusted with, was the pursuit of truth. This quest is ongoing and in *hilchos treifos* the advances of science would enhance their understanding of Torah. In his attempt to discredit Rabbi Slifkin, Rabbi Feldman turns to the words of Rashba and Rivash— and maintains that “it is forbidden to say that the Sages erred in matters of science.”<sup>51</sup> How unfortunate it is that many of the rabbinic authorities of our day have rejected the rationalism of Ramban. How sad it is that they have not embraced the principles of Rambam who viewed Talmud Torah as an ongoing pursuit of truth. ❧

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<sup>51</sup> *Chazal* believed in spontaneous generation. Does Rabbi Feldman believe that we cannot say they erred in this matter? He seems to go as far as these *Rishonim* (see opening paragraphs) in their belief that we should follow the simple readings of texts and disregard scientific evidence even if a plausible explanation can be advanced to reconcile the words of *Chazal* with science. He rebukes Rabbi Slifkin for trying to reconcile Torah with the theory of evolution. He would prefer to deny rather than reconcile. Rav Moshe tells us that Rashba could not travel widely to discover the truth. Had he been able to do so, he would have done it. Rav Feldman refuses to make that trip.