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**T**his contribution to the Open Access Project is an essay by Rabbi Gil Student, previously published online on the *Torat Emet* website ([www.aishdas.org/toratemet](http://www.aishdas.org/toratemet)), on the issue of what to do when contemporary science contradicts accepted *halakhah*. Should we ignore science, revise Jewish law or creatively reconcile the two?

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# Halakhic Responses To Scientific Developments

Gil Student

Judaism is a very practical religion. It is concerned largely, but not solely, with actions. For this reason, the rabbis have always been concerned with reality. How must one act in this situation? What does one do in that case? Both actual and theoretical scenarios have been and continue to be lengthily discussed to clarify how one must act in those cases. But what happens when later investigation informs us that the reality discussed in those situations is incorrect? What if the discussion of reality assumed a scientific fact that we now know is mistaken?

## Sages and Science

### Tradition and Science

Before we ask these questions, we must first ask whether it is possible for rabbis to make a mistake. This question is particularly important if we assume that they received all of their knowledge from God at Sinai, as transmitted throughout the ages. Even if we believe that this is not the case, but that the sages of every generation, particularly those of the Talmud, were divinely inspired, then mistakes should be impossible. Can these holy and inspired rabbis err? Would God let them make mistakes?

First, we must make clear that Moshe did not receive scientific knowledge at Sinai and that science was not transmitted throughout the ages to the great rabbis. The first *Mish-*

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*nab* in *Avot* says, "Moshe received Torah from Sinai." Torah, not science. Rashi (Exodus 12:2), quoting the *Mekhilta*, says that Moshe showed the Jews pictures of a moon and said that they should sanctify the new month when the moon looks like that. He did not explain to them the monthly orbit of the moon around the earth rather he showed them what a new moon looks like. Would anyone suggest that during Moshe's stay on Mt. Sinai he studied geometry and physics? Certainly not. He studied Torah directly from God and that is what he transmitted to Yehoshua, who transmitted it to the elders...

If the sages did not receive all of science from Sinai, then from where did they gain their scientific knowledge? As we have discussed elsewhere, the talmudic rabbis were keen observers of the world and performed experiments to better understand reality (e.g. *Hullin* 45b, 57b). Additionally, they consulted with scientists of their time. Aside from explicit mentions of consultations with doctors in the Talmud (e.g. *Hullin* 77a), there are many striking similarities between Greek and Roman science on the one hand and talmudic science on the other. While it is certainly possible that Aristotle and the rabbis arrived at certain identical conclusions independently, it is very likely that some rabbis were either familiar themselves with Greek and Roman science or consulted with doctors who were. For example, the *Mishnah* (*Hullin* 9:10) mentions the existence of a mouse that was half animal and half dirt. Since the sages obviously did not witness this imaginary creature themselves, they probably either read about it (perhaps in Plinius' *History of Nature* 9:58) or heard about it from others. Similarly, the *Gemara* in *Hullin* 45b seems to accept that hearts have two chambers. This is in accordance with how Hippocrates and Galen understood the heart (see *The Kosher Code Of The Orthodox Jew*, section 40 n. 2). The many parallels between talmudic and ancient medicine, some of

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which may be merely coincidental, are discussed extensively by Julius Preuss in his *Talmudic and Biblical Medicine*.

### Sages and Errors

The answer to whether God would allow the sages to err is, based on classical sources, a resounding yes. The Torah (Leviticus 4:13-21) informs us that when the entire congregation sins based on a mistaken ruling, the leaders must bring the sin-sacrifices because it is their fault. Clearly, the halakhic deciders of the community can make mistakes. The *Sifra* (9:9,10) learns from the verse (Leviticus 23:2) "Which you shall proclaim as holy assemblies" that the rabbinical court decides when the new month begins (and therefore determines when holidays occur) even if they err in determining the astronomical reality of the lunar cycle. "You, even accidentally. You, even mistakenly. You, even against your will." Clearly, it is possible for rabbis to make mistakes about when the new month begins. Indeed, the talmudic tractate *Horiyot* is dedicated to what must be done when rabbis rule in error. The only conclusion can be, as one scholar eloquently put it, inspiration does not imply infallibility. Only God is infallible.

R. Yosef Karo, in his *Kessef Mishneh* (*Hilkhos Mamrim* 2:2) asks why scholars of the Gemara era, *Amoraim*, may not dispute the rulings of scholars from the Mishnaic era, *Tannaim* and, similarly, why post-Talmudic scholars may not argue with Talmudic scholars. Rabbi Karo's answer is not that past scholars were all correct and, therefore, they must be right. Rather, he invokes a technical reason involving the authority of their halakhic rulings even if we believe them to be incorrect (see below for more on this).

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Rambam says outright in his *Moreh Nevukhim* (3:14) that Talmudic sages can be incorrect on scientific matters:

Do not ask me to reconcile everything that they (the sages) stated about astronomy with the actual reality, for the science of those days was deficient, and they did not speak out of traditions from the prophets regarding these matters.

Similarly, Rav Sherira Gaon (or possibly his son, Rav Hai Gaon) wrote the following regarding the medical cures suggested in the Talmud (*Teshuvot Ha-Geonim*, ed. Harkaby, no. 394):

Our sages were not doctors and said what they did based on experience with the diseases of their time. Therefore, there is no commandment to listen to the sages [regarding medical advice] because they only spoke from their opinion based on what they saw in their day.

There is nothing heretical in respectfully saying that some sages were incorrect in regard to some scientific facts. The key, however, is to say it respectfully. It is easy to be arrogant and compare a rabbi's scientific knowledge to a schoolchild's. But it must be remembered that a schoolchild today is informed from two thousand years' worth of scientific breakthroughs that the sages of the Talmud did not have. You are not comparing a rabbi with a child. You are comparing a rabbi with a schoolchild standing on the shoulders of Newton, Galileo, Harvey, Einstein, and thousands of others. The rabbi is not to be blamed for his misunderstanding nor to be pitied. He was a valiant and pious person who dedicated his life to knowledge. While historical circumstances may have led him to err on a few issues, on 99 percent of relevant topics he knew more than even the greatest Torah scholar of our day.

### Centralized *Halakhah*

But the fallibility of halakhic decisors does not mean that each person should make his own halakhic rulings. If that were the case, there would be no organized relig-

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ion because every person's worship would be different. Even more importantly, very few people are knowledgeable enough to make educated decisions based on a robust knowledge of the entire Torah. Is it not better for there to be a possible few mistakes of an organized religion than millions of mistakes of a disunified people? The *Sefer HaHinukh* (496) makes this very point:

The views of people are different and it is impossible to get many opinions to agree on matters. The Master Of All, blessed be He, knows that if the intent of the written Torah was given to each person to determine according to his judgment, everyone would explain the words of the Torah as they see fit and the disagreements in Israel about the commandments would be numerous. The Torah would be made into many different Torahs... Therefore, God, who is the Master of all wisdoms, completed our Torah - the true Torah - with this commandment: that we are obligated to follow the true explanation that was transmitted to our early sages, of blessed memory... Even if they say that the right is left and the left is right, we cannot depart from their rulings. Meaning, even if they err in an issue we should not dispute them but follow their error. It is better to withstand one mistake with everyone relying on one authority than to have each person follow his own halakhic opinion because this would disrupt the religion, cause disunity of the people, and destroy the nation entirely.

Even if the sages were mistaken on certain scientific facts, the overall corpus of rabbinic literature must still remain the basis of Judaism. It is better to tolerate a few errors than to encourage religious chaos. As we will see, some take this approach in regard to every single *halakhah* and will never allow changing an *halakhah* based on modern science. Others are more willing to change some *halakhot*. However, the suggestion that since the rabbis did not have access to modern science we must reject their entire world view is both over-reactive and impractical. That would destroy the Jewish religion and the Jewish people.



# Types of Responses

What do we do when an *halakhah* seems to be based on incorrect science? For example, the *Gemara* (*Shabbat* 135a) states that a baby born in its eighth month from conception cannot survive and, therefore, the Sabbath should not be violated to try to save it. However, a baby born in its seventh or ninth month is viable and the Sabbath must be violated for its sake. Doctors today tell us that a baby born in its eighth month is viable. How do we, as an halakhic community, react?

## 1. Do Not Change *Halakhah*

### 1a. Skeptical

There are three main responses, with different nuances among them. The first possible response is not to change anything. From one perspective, this is due to a profound skepticism about science. Over the past 200 years, indeed over the past 20 years, scientific theory after theory has been recognized as truth and then rejected as incorrect. Medical studies are touted as proving a fact that is later disproved by more studies. Practical medical advice, such as whether eating fish is healthful, changes almost annually. Why, skeptics ask, should we change an established *halakhah* based on a constantly changing science? If doctors next year change their minds and tell us that they were mistaken and that babies born in their eighth month are not viable, much desecration of *Shabbat* will have been caused.

### 1b. Fixed *Halakhah*

Others, perhaps less skeptical, offer a different reason for not changing *halakhah*. There was a time in history when *halakhah* was more fluid and changes in reality caused changes in *halakhah*. However, there was a point in history, approximately coincident with the closing of the *Mishnah*, when reality as it relates to *halakhah* became fixed. At that point, halakhic assumptions were finalized. Any new information we have subsequently gained, any changes that have occurred in reality or our understanding of it, are irrelevant to halakhic conclusions (*Hazon Ish, Yevamot 57:3*).

### 1c. Closed Talmud

Another similar approach is based on the answers to a different question. Why were *Amoraim*, sages of the *Gemara*, unable to argue with *Tannaim*, sages of the *Mishnah*? Furthermore, why are post-Talmudic rabbis unable to argue with either *Tannaim* or *Amoraim*? The *Kessef Mishneh (Hilkhos Mamrim 2:2)* says that both the *Mishnah* and the *Gemara* were closed by a meeting of the leading rabbis of the time who finalized its contents. At those points, the contents of the *Mishnah* and later of the *Gemara* were considered to be acts of a central court, *Sanhedrin*, that can only be changed by a later *Sanhedrin* of greater authority. R. Tzvi Hirsch (Maharatz) Chajes in his *Torat Nevi'im, Ma'amar Lo Tasur (Kol Sifrei Maharatz Chajes, vol. 1 pp. 97-104)* expands on this point as does R. Elhanan Wasserman in his *Kovetz Shiurim, Kuntres Divrei Sofrim ch. 2* (see also his exchanges with the *Hazon Ish* printed in the back of *Kovetz Inyanim*). The final rulings of the Talmud cannot be reversed by anyone except a great *Sanhedrin*, which does not cur-

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rently exist. Therefore, even if science implies that *halakhah* as decided in the Talmud should change, only a *Sanhedrin* can make that change.

While all of this seems to imply the horrific conclusion that a baby born on the Sabbath in its eighth month from conception will not be cared for, in practice there are other considerations, as we shall see.

## 2. Change *Halakhah*

### 2a. Incorrect Knowledge

Another possible response is to advocate changing *halakhah* whenever it seems to contradict science. This can come from two different understandings. The first is simply that the sages of different generations did not have any special understanding of science. Rather, they knew the science of their times and occasionally erred alongside the leading scientists of their generations.

### 2b. Nature Changed

Others would argue the exact opposite. The rabbis had divine assistance in understanding scientific reality. If so, how can contemporary science disagree with the sages' perception of reality? Evidently, reality has changed. Whether it is due to changes in climate, diet, exercise patterns, or even what some term "micro-evolution", nature has changed and the scientific facts of 1500 to 2000 years ago are sometimes different from what we observe today. Therefore, it is not that *halakhah* changes but that it must relate to a new reality.

An example of these different attitudes exists in regard to talmudic cures for diseases. The Talmud contains many suggested remedies for various medical symptoms (e.g. *Gittin* 67b). Rav Sherira Gaon wrote in a responsum quoted above that people should not try the medical cures in the Talmud because they do not work. *Tosafot* (*Moed Katan* 11a), however, say that the cures do not work because nature has changed. The cures that worked in the time of the Talmud no longer work today. Both agree that the cures should not be used because they do not work. However, they disagree over why they do not work.

### 3. Case-By-Case Response

A third response is much more nuanced. According to this view, science is used by the sages in two ways. One is as a basis for making halakhic rulings. For example, the *Mishnah* (*Yevamot* 16:4) rules regarding a man who falls into the sea and whose leg is recovered that if the leg was cut off from above the knee then the man has certainly died and his wife may remarry. According to the sages' medical understanding, a man whose leg is cut off from above the knee will definitely die within twelve months. Based on this understanding, the rabbis ruled that his wife may marry another man.

Another way the sages used science is to explain a received tradition or an observed phenomenon. For example, there is an established *halakhah* that lice may be killed on the Sabbath while fleas and other animals may not (*Shabbat* 107b). What is the reason for this distinction? Based on their understanding of the world, the rabbis of the Talmud explained that lice do not sexually reproduce and it the prohibition to kill animals on the

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Sabbath only applies to those that sexually reproduce. Indeed, until Louis Pasteur in the late seventeenth century proved it impossible, scientists believed almost unanimously that lice and many other animals were produced spontaneously and not through sexual reproduction. The sages used this scientific "fact" to explain the *halakhah* that they had received as a tradition.

These two uses of science by the talmudic rabbis lead to different reactions when the science is revised. In the first case, when the *halakhah* is based on the science, once the understanding of reality is changed the *halakhah* must be as well. And so the Rambam ruled in *Hilkhot Gerushin* (13:16) that what is necessary for a woman to remarry is a wound from which a man cannot recover. Rambam never mentions the *Mishnah's* example of a man whose leg was cut off from above the knee. Even more telling is how Rambam defines a deadly wound in *Hilkhot Rotzeah* 2:8 - "Every person is considered whole... until we know for certain that he is a *tereifah* and the doctors say that this wound can not be cured in a person..." Contemporary medicine defines which wounds are deadly.

However, in the second type, science was only used to explain the *halakhah*. If the science is shown to be incorrect, the *halakhah* should not be changed. Rather, a new explanation should be sought to explain the *halakhah*. Thus, while in the time of the Talmud it was sufficient to say that lice can be killed on the Sabbath because they do not reproduce, in the Rambam's time that was not a satisfactory explanation. To the Rambam, fleas also do not sexually reproduce and, therefore, the talmudic distinction that permitted killing lice on the Sabbath but not fleas had to be explained differently. The Rambam wrote in *Hilkhot Shabbat* 11:2-3:

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Insects which reproduce sexually or which are generated from dust like fleas - he who kills them [on the Sabbath] is as liable as if he had killed an animal. But insects generated from excrement or rotting fruit... he who kills them is exempt... It is permitted to kill lice on Sabbath because they are [generated] from sweat.

The Rambam explained that the prohibition against killing animals on the Sabbath does not depend on whether the animal is sexually reproduced but on from what it was generated. We are not prohibited from killing on Sabbath animals that are generated from sweat, such as lice. He knew the *halakhah* and tried to find an acceptable explanation of it based on the science of his times.

We will discuss this topic at greater length later in this essay. Now, however, let us address a number of topics and see how different halakhic authorities reacted to scientific changes that affect *halakhah*.

## Sunrise and Sunset

The determination of the times for the rising and setting of the sun, and therefore the beginning and end of the day, is one that depends greatly on an understanding of the astronomy of the earth's movement around the sun. In *Pesachim* 94a, R. Yehudah is quoted as saying that the time between sunset and the appearance of stars is the time it takes to walk four *mil*. However, R. Yehudah is quoted in *Shabbat* 34b as saying that *bein hashmashot*, the time between sunset and dusk, is the time it takes to walk three quarters of a *mil*. This apparent contradiction, whether it is three quarters of a *mil* or four *mil*, is explained in different ways.

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### Three Explanations

According to R. Avraham Ibn Ezra (Exodus 18:13) and R. Eliezer of Metz (*Yere'im*, 274), the period of *bein hashmashot* begins three quarters of a *mil* before sunset and concludes with sunset. Sunset is when *bein hashmashot* ends and night definitely begins. The four *mil* represent the time from sunset until all of the stars appear, the whole time being definite night.

The Geonim (*Otzar Ha-Geonim*, *Pesachim* 94), whose view was essentially championed by the Vilna Gaon (*Orah Hayim* 261:12), explain that *bein hashmashot* begins with sunset and lasts for three quarters of a *mil* until *tzeit hakokhavim*, the appearance of three average-sized stars, when night definitely begins. While some, most notably R. Yechiel Michel Tukaczinsky in his *Bein Ha-Shmashot*, argue that in Jerusalem stars cannot be seen at the time the Geonim established for *tzeit hakokhavim*, R. Yehudah (Leo) Levi has verified that a trained observer can indeed spot three medium stars at this time (*Jewish Chrononomy*, Hebrew section, section 3, chapter 2, answer 2). The Vilna Gaon further explained that the four *mil* mentioned in *Pesachim* begin with sunset and end with the appearance of many stars at a point that has already been night for a long time.

Rabbeinu Tam (*Tosafot*, *Shabbat* 35a) explains that the four *mil* begin with sunset and end with *tzeit hakokhavim*. *Bein hashmashot* does not begin with sunset but begins with three quarters of a *mil* before *tzeit hakokhavim*. According to Rabbeinu Tam, definite night is not until 4 *mil* after sunset. This diagram shows the three different views.

	Sunset			
	3/4 mil	3/4 mil	2 1/2 mil	3/4 mil
<b>R. Eliezer of Metz</b>	Bein Hashmashot	Definite night begins		Appearance of many stars
<b>Geonim/ Vilna Gaon</b>	Bein Hashmashot	Definite night begins		Appearance of many stars
<b>Rabbeinu Tam</b>				Bein Hashmashot Definite night begins

## **Rabbeinu Tam and the Sun's Motion**

Rabbeinu Tam further explains what *bein hashmasbot* represents. According to R. Yehudah, who gave us these timeframes, the sun travels back and forth across the earth, during the day below the firmament (sky) and during the night above the firmament. *Bein hashmasbot* is the time it takes for the sun to travel through the firmament (from below to above) so that it can begin its trek back over the earth, above the firmament.

Clearly, R. Yehudah according to Rabbeinu Tam is basing the halakhic definition of night on a pre-Ptolemaic understanding of the sun's travel above the earth. R. Yehudah thought that the sun travels back and forth above the earth. However, science has told us for centuries that the sun does not move back and forth above the earth. Rather, the earth rotates daily so that, from the perspective of someone on earth, the sun goes around the world, rising and setting on its approximately circular path. The sun does not need time to travel through the firmament, what Rabbeinu Tam called *bein hashmasbot*. Since Rabbeinu Tam's explanation of this topic is contradicted by science, how should the halakhic community respond?

### **1a. Skeptical**

It is hard to imagine anyone today being skeptical of the established fact that the earth rotates on its axis while the sun remains relatively motionless or claiming that this aspect of nature has changed since the time of the Talmud. There are those, however, who are skeptical that Rabbeinu Tam ever intended to contradict science. R. David Luria (Radal), at the end of his long introduction to *Pirkei De-Rabbi Eliezer*, quotes R. Moshe



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Hayim Lutakes that position. Rabbeinu Tam was speaking mystically when he referred to the sun's motion above the earth and through the sky.

### 2a. Incorrect Knowledge

Others, such as Rav Hai Gaon, argue that this view contradicts reality and must therefore be rejected (Rav Hai Gaon lived well before Rabbeinu Tam but still rejected the view that Rabbeinu Tam later accepted).

### 3. Case-By-Case Response

A third approach, what we have termed a "Case-By-Case Response", was offered by the *Minbat Cohen* (1:10). He asked this very question and answered that Rabbeinu Tam chose a certain observable time and decided, based on the *Gemara*, that it marked the beginning of definite night. His explanation of this ruling, which is incorrect, is irrelevant. The position of the sun in its descent that corresponds to Rabbeinu Tam's *tzeit hakokhavim* remains an appropriate time regardless of how Rabbeinu Tam explained his choice. The *Minbat Cohen* added that the author of *Maggid Mishneh*, a 13th century talmudic scholar and astronomer, agreed with Rabbeinu Tam's time despite the pre-Ptolemaic explanation.

## Tereifot

Another area where Torah must sometimes react to scientific developments is that of *tereifot*. The *Gemara* (*Hullin* 42a) records a debate over whether an animal with an injury that renders it a *tereifah* can live for more than twelve months. While *Tannaim* and *Amoraim*

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dispute this point, all agree that the animal will eventually die from this injury. The clear conclusion of the Talmud is that a *tereifah* will not live beyond a year. However, our understanding of animal medicine has progressed dramatically since the time of the *Gemara*. What happens when veterinary science contradicts the Talmud? Moreover, what happens when we observe a *tereifah* living beyond 12 months? Do we revise the *halakhot* of *tereifo*?

For example, one of the types of *tereifah* is a *derusab*, an animal that has been pierced by the nails of a predator. The *Gemara* (*Hullin* 53a) explains that a *derusab* is considered a *tereifah* because the predator secretes a venom into its prey as it retracts its nails. However, we now know that this is not correct and that the predators mentioned in the Talmud do not secrete venom. Should we therefore permit a *derusab* against the ruling of the *Gemara*?

The *Gemara* in *Hullin* 46a has a debate over how much of an animal's liver can be removed without causing the animal to die. The conclusion is that as long as there are two olive-sized pieces of liver, one near the gall-bladder and the other near the "the most vital place" (either the diaphragm or the right kidney), then the animal can live and is not rendered a *tereifah*. This is how the *Shulhan Arukh* (*Yoreh Deah* 41:1) ruled. As the Rivash (*Responsa*, 447) pointed out, medicine tells us that such an animal cannot survive. Experiments have demonstrated that an animal can only regenerate its liver if at least one quarter of its original size remains (*The Kosher Code of the Orthodox Jew*, section 41 n. 2). However, one quarter of an average animal's liver is much larger than two olives.

On the other hand, the *Misnah* in *Hullin* 54a says that an animal is kosher if its skull is diminished as long as the brain is intact. On 54b, Rav Nahman qualifies this that only up to a *sela's* worth of the skull can be removed. If a *sela* or more is removed then the animal is a *tereifah* and so the *Shulhan Arukh* (*Yoreh Deah* 30:2) ruled. However, it is common for birds to

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live with more than a *sela* of their skull removed. For example, the *Tzemah Tzedek* pointed out that clefts can be found in the skull of geese that are covered by a membrane. Yet the geese live with this.

We see that sometimes the Talmud permitted an animal that we now observe cannot live and sometimes forbade an animal that we now observe can live. How should *halakhab* respond to this information?

This is particularly troublesome because the *Gemara* in *Hullin* 42a says that the laws of *tereifot* were given to Moshe on Sinai. If so, how can they be wrong?

### Skeptical

The Rashba (*Responsa*, 1:98) was skeptical that science could prove the laws of *tereifah* to be incorrect. Anyone, he claimed, who has observed a *tereifah* living more than twelve months is either lying or witnessing a minor miracle. Similarly, Rivash (*Responsa*, 447) wrote:

We will not believe Greek or Arabic philosophers who only spoke out of their own theories or on the basis of some experiment or other without paying attention to all the possible errors that can befall such an experiment.

While the Rashba and Rivash were referring to medieval medicine, R. Shlomo Heiman followed the same line of reasoning in regard to twentieth century medicine. He argues in *Hid-dushei Rav Shlomo* (*Hullin*, ch. 11) that if scientists contradict the laws of *tereifot*, the scientists must be wrong.

### Alternate Solution

The Maharshah in his *Yam Shel Shlomo* on *Hullin* (3:80) suggested that the laws of *tereifot* were formulated regarding the overwhelming majority (*ruba deruba*) of animals. However,

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there can be the rare exception of a *tereifah* that lives longer than a year. The *Shakh* (*Yoreh Deah* 57:48) uses this to explain why if we observe an animal that suffered an injury that rendered it a *tereifah* live for more than a year we do not determine that this injury does not make any animal a *tereifah*. This animal can be an exception. The Rashba in the above cited responsum argued against this theory but the *Kereiti U-Peleiti* (57:) tried to defend the Maharshah and *Shakh* against the Rashba's arguments. However, this does not necessarily answer all of the questions. If there are a few animals that survive a *tereifah* injury then this explanation suffices. But if it can be demonstrated that **every** animal that has a particular injury will survive, this explanation does not help.

### 1b & 2b. Fixed *Halakhah* & Nature Changed

The *Bekhor Shor* on *Hullin* 58a agrees that science can demonstrate that certain statements of the Talmud regarding *tereifot* are no longer correct. However, that does not mean that at the time they were said they were incorrect. It only means that now they are incorrect. If nature has changed since the time of the Talmud then both the Talmud's statements about animals and current scientific statements are correct. The *Hazon Ish* (*Yevamot* 57:3) follows this approach as well. It is not that science has disproved the Talmud. Rather, science has demonstrated what is correct today. While it may sound controversial to suggest that animals have changed over the past 1500-2000 years, it is actually to a degree an observed fact upon which all agree. Charles Darwin made this knowledge famous based on his observations in the Gallapagos Islands. Animals adapt and change over time based on their environment. While many will question whether evolution applies to the **origin** of animals, no one will disagree that fully developed animals will evolve from that point.

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Should the laws of *tereifot* then change to fit the current reality? The *Hazon Ish* explains, based on the *Gemara* in *Avodah Zarah* 9a, that the world was divided into three periods - two thousand years of *tohu*, two thousand years of Torah, and two thousand years of *Moshiach*. The full explanation of this passage is fascinating but will take us well off topic. However, the *Hazon Ish* explained that the laws of *tereifot* were based on nature as it was during the time of Torah, the two thousand years between Avraham and approximately the close of the *Mishnah*. Since at that time the *tereifot* as described in the Talmud caused an animal to die within a year, we are still forbidden to eat such animals even if they can now survive for over a year.

### 1c. Closed Talmud

The *Yad Yebudab* (30:3) takes another approach. To answer this, he turns to the Rambam. The Rambam writes in *Hilkebot Shechitah* 10:12-13:

One must not add to these laws at all. For anything that happens to an animal or a bird outside of those [*tereifot*] that were listed by the early sages and were agreed upon by Jewish courts, there is a possibility that it will survive, even if we know from medicine that it will not survive. Similarly, those that were listed and were called *tereifah*, even if it seems from the medical methods we have that some are not fatal and it is possible to survive - you only have what was listed by the sages, as it says "According to the law that they will teach you."

The general rules of *tereifot* were given at Sinai and their details were debated in the Talmud and agreed upon by the scholars of the time. When the Talmud was closed, the final rulings of the Talmud were given the status of a ruling issued by a high court that cannot be overruled. Even if we now believe the rulings to be incorrect, we do not have the capability of changing them.

### **3. Case-By-Case Response**

R. Dessler only discusses *derusab* but offers an approach that can be extended to all *tereifot*. He suggests that, as the *Gemara* says, *derusab* is one of the *tereifot* that was given at Sinai. However, the details of exactly what is prohibited was a matter of debate. The sages observed that, for example, animals scratched by wildcats had a higher fatality rate than those scratched by dogs and concluded that it was due to venom secreted from the predatory wildcats. In other words, the scientific explanation came after the *halakhab*. Looking back, we know that the higher fatality rate cannot be due to venom because wildcats do not secrete venom. However, there must still be an explanation to the phenomenon that underlies the *halakhab*. R. Dessler suggested that the explanation was that a wildcats' nails penetrate farther into its prey than a dog's and therefore allow more dirt from the nails to enter the prey's body and cause infection.

From this we can elicit a general response to medical questions that raise doubt regarding the laws of *tereifot*. The general rules were given at Sinai and the details were put in place by the sages based on observations. These *halakbot* were then given explanations. When science tells us that these explanations are wrong, we need to focus on the original observations that prompted the explanations and try to offer alternative explanations.

## Premature Babies

### Fetal Development

As we already mentioned, the Talmud claims that babies born in their eighth month from conception are not viable. The *Haizon Ish* (*Yoreh Deah* 155:4) explains that the sages observed that babies born in their seventh month rarely survived. However, a small but significant percentage lived. In the eighth month, the survival rate dropped even lower. But in the ninth month, the survival rate rose sharply. This phenomenon is reflected in other ancient medical works such as those by Hippocrates and Galen (see J. Preuss, *Biblical and Talmudic Medicine*, 14:14). Keep in mind that until recently infant mortality was very high. Many newborns never lived past their first month. Indeed, this is reflected in *halakhab* in that parents do not fully mourn a baby that dies in its first month alive. Before the month passed, there was a strong likelihood that the baby would not survive.

To explain this drop in infant survival in the eighth month, the sages adopted the medical explanation that babies develop along two paths - a seven month path and a nine-month path. Babies in the seven-month path progress at a rate so that they are fully developed after seven months while babies in the nine-month path are only fully developed after nine months. A nine-month baby born in its seventh or eighth month cannot survive because it is not sufficiently developed. However, the rabbis observed that there were still some very few babies born in their eighth month who survived. These babies, it was explained, were seven-month babies who were born late.

With all this in mind, we can understand the following from *Tosefta, Shabbat* 16:4.

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Who is an eight-month [baby]? Any [baby] who has not completed his months.  
Rebbe says: His signs identify him - his hair and fingernails... Rabban Shimon  
ben Gamliel says: Whoever has lasted thirty days is not a stillborn...

According to the first anonymous opinion, any baby born in its eighth month, i.e. who has not completed its nine-month development period, is considered to be an eight-month baby that will not survive. According to Rebbe, only a baby that is born in its eighth month and is not developed enough to have fingernails and hair is considered to be an eight-month baby. Even if a baby is born in its eighth month, if it is fully developed it is deemed viable and treated appropriately. According to R. Shimon ben Gamliel, any baby that survives its first thirty days is deemed viable. In *Shabbat* 136a, Shmuel rules like R. Shimon ben Gamliel. Whether R. Shimon ben Gamliel is coming to add to Rebbe's criteria, so that even a partially developed eight-month baby is deemed viable if it survives thirty days, or he is coming to subtract from Rebbe's criteria, or a number of other possibilities is discussed by the commentaries. For summaries of these discussions see R. Aharon Yaffén's footnotes to Mossad HaRav Kook's edition of the Ritva's novellae to *Yevamot* 80b and *Minbat Yitzhak* 4:123:3. Regardless, the *Shulhan Arukh* (*Orah Hayim* 330:7-8, *Yoreh Deah* 266:11) rules that a baby born in its eighth month that has fingernails and hair is considered viable in regard to the laws of *Shabbat*. What is significant is that the rabbis recognized that a baby born in its eighth month can live a full and long life. However, based on their observations and medical knowledge, they said that the overwhelming majority does not.

### Halakhic Ramifications

The non-viability of an eight-month baby has halakhic ramifications. A widow whose only child is a non-viable eight-month baby is considered childless in regard to the levirate



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marriage. If she had given birth to a viable child she would not be obligated to perform the levirate marriage or *halitzah* ceremony. However, since her child's chances of living are so remote she is considered childless and is prohibited from remarrying until she fulfills the necessary biblical requirements (*Yevamot* 80a-b).

Additionally, the needs of a seriously ill person may be cared for even if they require violating the laws of the Sabbath. A newborn baby, in particular, requires great care. While most of those needs do not require violating the Sabbath, if they did the Sabbath could be violated. However, for a non-viable baby that has essentially no chance of survival, the Sabbath may not be violated. The concerns of an eight-month baby that does not have fully grown fingernails and hair do not override the Sabbath (*Shabbat* 136a).

Today, modern science gives us a different understanding of a fetus' development than that of the sages. Babies develop steadily until their last month. Those born in their seventh month are less likely to survive than those born in their eighth month. Premature babies can suffer from difficulty in modulating temperature and underdeveloped capillaries and lungs which can be alleviated with respirators and incubators. Today, babies born in their eighth month routinely survive. How should *halakhab* respond to this change?

### Defining an Eight-Month Baby

Before we address this question, let us first discuss an often overlooked issue – a definition of terms. What is an eight-month baby?

The Talmud says that a normal (nine-month) gestation period is approximately 271 days from conception. Modern medicine places the due date of a baby at approximately 280 days from the mother's last menstrual cycle. Since a religious woman may only have marital

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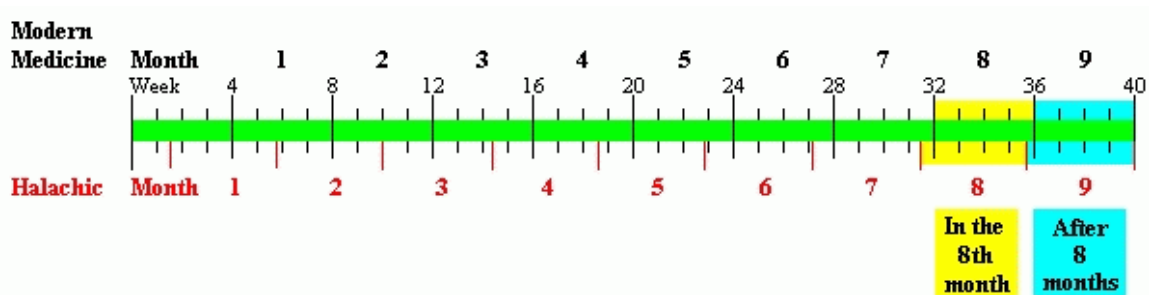
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relations beginning with 12 days after starting to menstruate (after she immerses in a *mikvah*), the 271 days translate into approximately 283 days, which is essentially equal to modern medicine's 280.

Modern medicine divides the 280 days into ten months of 28 days. What is generally called the ninth and final month is really the tenth month - from weeks 36 to 40. The eighth month is from weeks 32 to 36 and the seventh month is from weeks 28 to 32.

*Halakbah* divides the 271 days into nine months of about 30 days each (*Responsa Rashbash* 513). Translating that into the weeks we used above (from the last menstruation), the ninth month is from weeks 35.7 to 40. The eighth month is from weeks 31.4 to 35.7 and the seventh month is from 27.1 to 31.4.

Additionally, the simple understanding of the Talmud is that an eight-month baby is one born after eight full months, i.e. after 35.7 weeks. This is the understanding of most commentators with only the Ramban dissenting (*Responsa Rivash* 446).



It is a daily occurrence for babies to be born at 36 weeks and survive without the assistance of respirators or incubators. With their assistance, the survival rate is greater than 95%. How should the halakhic community react to this undeniable reality?

The first point that needs to be made is that *halakbah* only needs to address those babies born without fully grown fingernails and hair. Only those born between 35.7 and 40 weeks who are under-developed are an issue. Nevertheless, the problem remains.

## **2b. Nature Changed**

The Rashbash (R. Shlomo ben Shimon Duran; early 15th century) quotes the authors of *Tosafot* as saying that already by their time nature had changed. While in the days of the Talmud babies' months were determined by how many months had been completed, they are now calculated by which month the baby is in. While for the Talmud a baby born in weeks 35.7 to 40 (after eight months) was premature, this baby would now be considered full-term (a nine-month baby). Now, only babies born in weeks 31.4 to 35.7 (in their eighth month) are considered premature (*Responsa Rashbash* 513). This is how the Rama ruled in *Shulhan Arukh* (*Even Ha-Ezer* 156:4). The *Hazon Ish* (*Yoreh Deah* 155:4) continued along this line and noted that today a significant number of babies born in their eighth month are viable on their own. This must mean that nature has changed, although he does not speculate as to whether it is due to better prenatal care, healthier diets, or other causes. Since nature has changed and eight-month babies are no longer inherently at risk, the *halakhab* as it relates to current nature is different than it is in regard to Talmudic nature. Since eight-month babies are deemed viable, the Sabbath may be violated for their needs and women who give birth to such a baby are not considered childless.

There were two issues that we pointed out above. One is that babies born after eight months are not only viable but are more viable than those born after seventh months. The other is that with modern medical care even premature babies can survive. The *Hazon Ish* solved both issues by ruling that nature has changed and that eight-month babies are no longer born non-viable. Any baby that can survive, whether on its own or with medical help, is considered a viable baby.

## **Alternate Solution**

The *Minhat Yitzhak* (4:123:19-20) refused to go that far. He was not ready to say that the Talmudic understanding of the development of babies is no longer true. Of the two issues above, he only addressed the second. Even though eight-month babies are inherently less viable than others, modern medical care can help those babies survive. Since these babies become viable through medical assistance they are therefore viable. It is not that nature has changed. Rather, modern medicine has found techniques to help the non-viable survive.

## **Spontaneous Generation**

### **Lice on Shabbat**

As mentioned earlier, the Talmud in *Shabbat* 107b asserts that it is permissible to kill lice on *Shabbat* because they are not generated from sexual reproduction. The passage reads as follows:

*Mishnah*: Other insects - one who injures them is exempt... Gemara: Who taught this? R. Yirmiyah says: This is R. Eliezer as it is taught: R. Eliezer says: One who kills a louse on Shabbat is like one who kills a camel on Shabbat. Rav Yosef attacked this: R. Eliezer and the rabbis only argue regarding [killing] a louse that does not sexually reproduce (lit.: that is not fruitful and does not multiply) but regarding other insects that sexually reproduce they do not disagree.

According to R. Eliezer, it is forbidden to kill a louse on the Sabbath. The anonymous majority of rabbis, however, permit killing a louse on the Sabbath because it does not sexually reproduce. As the continuation of this passage makes clear, the dispute between R. Eliezer and the rabbis is not over whether lice are spontaneously generated but over the significance

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of this fact to the laws of the Sabbath. According to the rabbis, it renders lice permissible to be killed on the Sabbath and this is how almost all halakhic codes rule. (Interestingly, the important eighth century work *Halakhot Pesukot* ch. 136 rules that it is forbidden to kill lice on Shabbat. But this, along with *Responsa Geonim Shaarei Teshuvah* no. 225, is a clear minority view. According to them, however, there is no halakhic implication from this scientific discussion.)

As already mentioned, it is a well established fact that lice reproduce. With the aid of a magnifying glass, their eggs can be seen. While prior to the 17th century science claimed that lice and many other animals are generated spontaneously, science now considers it to be a strongly established fact that no animals are generated spontaneously. How does *halakhab* respond to this radical scientific change?

## 2. Change *Halakhah*

This was first raised in a now-famous passage in the early 18th century Talmudic encyclopedia *Pabad Yitzchak*. Its author, R. Yitzhak Lampronti, had an exchange with R. Yehudah Brill of Montoba on this topic. R. Lampronti recommended revising the *halakhab* based on the new scientific understanding and prohibiting killing lice on the Sabbath. While he was quite hesitant to do this and only did so because he was being stricter based on science and not more lenient, we need to keep in mind that he was living at a time when science was in flux. It was an exciting time of advances when accepted theories were being overturned. He had no way of knowing with certainty that this particular theory would remain standing. This ruling of the *Pabad Yitzchak* has been recently confirmed in *Responsa Shevet Ha-Kehati* 3:126, who claims that nature has changed, and *Piskei Teshuvot* 314:6. Rav Yosef Qafih in his com-

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mentary to *Mishneh Torah* (*Hilkhot Shabbat* ch. 11 n. 4) also prohibits killing lice on the Sabbath based on modern science.

### 1a. Skeptical

However, R. Lampronti's correspondent, R. Yehudah Brill, was more skeptical of scientific advances. Science, he claims, has limits and its methodology does not give its practitioners enough information to understand the inner workings of the world. Therefore, this *halakhab* cannot be changed.

### 1b. Fixed *Halakhah*

R. Menahem Kasher argued against changing the *halakhab* for a different reason. If we forbid something that was previously permitted, we are implying that all of the previous generations inadvertently sinned. R. Kasher garnered a host of sources, as is his way, that use this reasoning not to change *halakhab*. See, for example, *Gittin* 5b. (*Torah Shelemah*, vol. 1 no. 710; *Mefane'ah Tzefunot*, vol. 17 ch. 7 n. 2; *Ha-Adam Al HaYare'ah* p. 50).

### 3. Case-By-Case Response

As we explained above, R. Eliyahu Dessler considered this to be a case where the *halakhab* preceded the science. Knowing already that one is permitted to kill lice on the Sabbath, the sages tried to explain this based on the then-established reality of spontaneous generation. Later, when science had changed a little, Rambam explained it based on spontaneous generation from sweat or excrement. Today, when science has changed dramatically, we

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must find a more suitable explanation. R. Dessler suggested that *halakhab* is intended for people to observe and therefore only recognizes items that are visible to the unaided eye. God does not expect us to rule halakhically based on information we cannot naturally gather. Since lice eggs are too small to be seen unaided, lice look as if they grow from the item in which they appear and are given the same halakhic status as their apparent origin. Since hair and fruit are not living animals that we are prohibited from killing on the Sabbath (picking fruit off a tree is a separate prohibition), lice are given that same status. Incidentally, this logic has ramifications regarding microscopic insects found in fruit, but this is not the place for that discussion.

## Conclusion

We have seen that halakhic authorities have been keenly aware of scientific advances and their relation to Torah. No rabbi should be surprised when told that lice reproduce because this has been discussed widely in halakhic literature. However, how *halakhab* should react to changes in scientific understanding was never discussed explicitly in the Talmud and modern authorities need to deduce their approaches from the classical texts. This leaves room for different reactions to scientific changes. Some believe that the proper approach is to revise *halakhab*. Others believe that they do not have the right to do so. And, as we discussed, others argue that only some *halakhot* may be changed. Who is correct? This is a matter that requires not just knowledge of certain areas of *halakhab* but a firm grasp of all *halakhot* and the entire halakhic process. This is an area where one need to have a feel for how *halakhab* develops and is decided. In other words, only the greatest of experts can even offer

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an opinion and, while even the experts may disagree, we do not believe that we have mastered the entire halakhic process well enough to merit having an opinion. May God send us Eliyahu speedily to clarify the *halakhab*.



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