

# SHAVUOT-TO-GO

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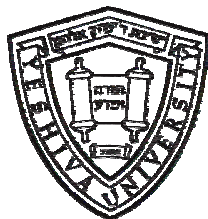
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Compiled and edited by  
Rabbi Josh Flug

## MEDICAL ENHANCEMENT: PROMISES AND PERILS

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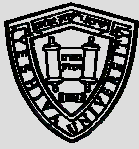
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ישיבת רבנו יצחק אלחנן  
*Rabbi Isaac Elchanan Theological Seminary*

Max Stern Division of Communal Services  
Center for the Jewish Future  
**YESHIVA UNIVERSITY**





## **From the Desk of Rabbi Kenneth Brander**

Dean, Yeshiva University's Center for the Jewish Future

Dear Friends,

It is my sincere hope that the Torah found in this virtual ספר may serve to enhance your יום טוב (holiday) and your לימוד (study).

We have designed this project not only for the individual, studying alone, but perhaps even more for a חברותא (a pair studying together) that wish to work through the study matter together, or a group engaged in facilitated study.

With this material, we invite you to join our Beit Midrash, wherever you may be, להגדיל תורה ולהאדירה (to enjoy the splendor of Torah) and to engage in discussing a matter that touches on a most contemporary matter, and which is rooted in the timeless arguments of our great sages from throughout the generations.

בברכת חג שמח,

***Rabbi Kenneth Brander***

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**Please direct questions and comments to [lectures@yu.edu](mailto:lectures@yu.edu)**

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## *Medical Enhancement: Promises and Perils*

Biotechnological advances in recent times provide new hope in the prevention and treatment of disease, the management of disabilities, and the healing of injuries. With the development and popularization of these technologies, the possibility exists to use these technologies not only for treatment and prevention of disease, but also for the purposes of improving the lifestyles of otherwise healthy people. Preimplantation genetic diagnosis (PGD) can be used to eliminate debilitating genetic diseases, or it can be used to custom design a child to the desires of the parents.<sup>1</sup> Preconception gender selection can be used to prevent the birth of a hemophiliac, or it can be used for family balancing.<sup>2</sup> Psychotropic medications can be used to treat depression, or they can be used to allow someone to remain in a constant state of euphoria. Memory enhancement drugs can be used to treat a patient with severe memory loss, or it can be used to help a student attain a higher score on his exam. There are many other examples of such technologies.

A number of questions must be addressed with regards to these new technologies. First, is the use of medicine for purposes other than treatment of disease, palliation of pain or rectification of abnormalities warranted? Second, any newfound technology will by definition have a possibility of unknown long term adverse effects. Does the inherent risk of the unknown preclude the use of these technologies? Third, trends in use of these technologies can have damaging effects on the general society, and specifically the Jewish community. Abuse of PGD can lead to societal pressure to forgo natural methods of procreation in order to produce the “best” child. The one- to- one male to female ratio can be skewed due to overuse of gender selection. Psychotropic medications can be abused on a communal level to serve as a means of regulating behavior of children instead of being used exclusively for the treatment of psychological disorders. The communal danger only exists if there is a widespread trend to use these technologies. Whose responsibility is it to ensure that these trends don’t develop? What can be done to prevent these trends from developing?

**Before you proceed, you might want to spend a few minutes discussing these issues with a friend or learning partner.**

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<sup>1</sup> PGD is the diagnosis of an embryo for various genetically inherited traits prior to implantation of the embryo using in-vitro fertilization (IVF). The embryo is only implanted if the diagnosis meets the satisfaction of the parents.

<sup>2</sup> Preconception gender selection is the use of sperm sorting, PGD, or a combination of both, in order to ensure the desired gender of the embryo prior to conception.



## ~ Enhancing our Lives through Medicine ~

Whenever a new medical breakthrough is discovered or invented, it is always accompanied by the question “Are human beings overstepping their bounds with this breakthrough? Is this something that ought to be left in the hands of the Divine?” This question is given even more import when its use is not for the treatment of disease etc., but rather for “enhancement” purposes.

There is a concept of Divine intervention, but at the same time there is a concept of *hishtadlut* (human initiative). If someone is hungry, he must eat in order to satisfy his hunger and he cannot rely on the miracles of G-d. Ostensibly, the same applies to medicine. If a person is ill, he must seek the advice of a physician in order to be healed and doing so should be not a contradiction of the Divine plan. However, as we will see, the permissibility to seek the advice of the physician is not entirely obvious and there may in fact be situations where taking medicine constitutes a contradiction of the Divine plan.

We may be familiar with the Torah’s license for the physician to practice medicine:

### **1. Shemot 21:19**

If he shall stand and walk outside leaning on his staff he (the aggressor) is absolved from punishment but he shall pay for his loss of time and his medical expenses.

### **שמות כא:יט**

אם יקום והתהלך בחוץ  
על משענתו ונקה המכה  
רק שבתו יתן ורפא  
ירפא.

The Torah is discussing a situation where one person strikes another. If the victim survives but is injured, the aggressor must pay for his loss of time as well as his medical expenses.

### **2. Babba Kama 85a**

The School of R. Yishmael comments: and (he shall pay for) his medical expenses- from here we learn that permission is granted to a physician to heal.

### **בבא קמא פה.**

דבי ר' ישמעאל אומר  
ורפא ירפא מכאן שניתן  
רשות לרופא לרפאות.

The School of R. Yishmael notes that if the Torah is demanding that the aggressor pay the medical expenses of the victim, it must be permissible for the physician to heal the victim.



## Discussion Questions

The conclusion of the School of R. Yishmael seems rather obvious. Do we really need a special derivation to allow a physician to practice medicine? If the School of R. Yishmael didn't make this point, would we conclude that it is prohibited for a physician to practice medicine?



Let's keep these questions in mind as we explore the various approaches of the Rishonim to the statement of the School of R. Yishmael.

### Approach 1

#### 3. Rashi, *Babba Kama* 85a, s.v. *Nitnah*

And we don't say "The Almighty smote him and he is going to treat himself?"

רש"י ב"ק פה. ד"ה נתנה

ולא אמרינן רחמנא מחי ואיהו מסי.

According to Rashi, if the Torah did not provide us with this verse, what would we have thought? Now that the Torah does provide us with this verse, what is the conclusion?

### Approach 2

#### 4. Tosafot HaRosh, *Berachot* 60a, s.v. *MiKan*

R. Ya'akov of Orleans asked: Isn't it obvious that a physician should be required to treat a patient ... and he answered that the physician is given permission to charge a patient for treatment for we would have otherwise thought that he should be obligated to treat a patient for free.

תוס' הרא"ש ברכות ס. ד"ה מכאן

הקשה ה"ר יעקב מאורלייני"ש פשיטא למה לא ירפאו הרופאים הא כתיב והשבות לו ודרשינן זהו השבת גופו וכתיב לא תעמד על דם רעך ותירץ שניתן רשות לרפאו' בשכר דסד"א שחייב לעשות בחנם מטעמא דפרישית.

R. Ya'akov of Orleans is providing a different approach to the problem. According to R. Ya'akov of Orleans, does the School of R. Yishmael address the issue of contradicting the Divine plan? What is the issue that the School of R. Yishmael is addressing?



### Approach 3

#### 5. Ramban, Vayikra 26:11

In general then, when Israel is in perfect [accord with G-d], constituting a large number, their affairs are not conducted at all by the natural order of things, neither in connection with themselves, nor with reference to their Land, neither collectively nor individually, for G-d blesses their bread and their water, and removes sickness from their midst, so that they do not need a physician and do not have to observe any of the rules of medicine, just as He said, *for I am the Eternal that healeth thee*. And so did the righteous ones act at the time when prophecy [existed], so that even if a mishap of iniquity overtook them, causing them sickness, they did not turn to the physicians, but only to the prophets, ...This is also the intent of the Rabbis' interpretation: *"And he shall cause him to be thoroughly healed"*. From here [you deduce the principle] that permission has been given to the physician to be healed" **They did not say "permission was given to the sick to be healed" [by the physician], but instead they stated [by implication] that since the person who became sick comes [to the physician] to be healed, because he has accustomed himself to seeking medical help and he was not of the congregation of the Eternal whose portion in this life, the physician should not refrain from healing him;** whether because of fear that he might die under his hand, since he is qualified in this profession, or because he says that it is G-d alone Who is the Healer of all flesh, since [after all] people have already accustomed themselves [to seeking such help]. Translation taken from R. Charles Chavel (trans.), *Ramban: Commentary on the Torah* (Shilo Pub. House, 1974), ad loc.

**רמב"ן ויקרא כו:יא**  
והכלל כי בהיות ישראל שלמים והם רבים, לא יתנהג ענינם בטבע כלל, לא בגופם, ולא בארצם, לא בכללם, ולא ביחיד מהם, כי יברך השם לחמם ומימם, ויסיר מחלה מקרבם, עד שלא יצטרכו לרופא ולהשתמר בדרך מדרכי הרפואות כלל, כמו שאמר כי אני ה' רופאך. וכן היו הצדיקים עושים בזמן הנבואה, גם כי יקרה עון שיחלו לא ידרשו ברופאים רק בנביאים . . . וזו היא כונתם באמרם ורפא ירפא מכאן שנתנה רשות לרופא לרפאות, לא אמרו שנתנה רשות לחולה להתרפאות, אלא כיון שחלה החולה ובא להתרפאות כי נהג ברפואות והוא לא היה מעדת השם שחלקם בחיים, אין לרופא לאסור עצמו מרפואתו, לא מפני חשש שמא ימות בידו, אחרי שהוא בקי במלאכה ההיא, ולא בעבור שיאמר כי השם לבדו הוא רופא כל בשר, שכבר נהגו.

Ramban seems to take a very limited approach to the physician's license to practice medicine. What is his approach? How does Ramban's approach compare with that of Rashi and R. Ya'akov of Orleans?



### Approach 4

#### 6. Ibn Ezra, Shemot 21:19

Permission was granted to the physician to heal injuries and wounds that are visible externally. However, any ailment that is internal, the healing is in the hands of the Almighty.

#### אבן עזרא שמות כא:יט

שנתן רשות לרופאים לרפא המכות והפצעים שיראו בחוץ. רק כל חלי שהוא בפנים בגוף ביד השם לרפאתו.

How is Ibn Ezra's opinion similar to that of Ramban? How is it different?

R. Ovadia Yosef discusses a case of someone who is told by his physician that it is dangerous for him to fast on Yom Kippur. This individual doesn't want to eat on Yom Kippur and claims that he is going to let G-d determine his fate. One angle that R. Ovadia Yosef explores is the fact that according to Ramban and Ibn Ezra, this individual's decision falls in line with the Torah's expectation. R. Ovadia Yosef responds:

#### 7. Yechaveh Da'at 1:61

In truth, even Ramban agrees that nowadays - when all prophetic visions are not accessible and prophecy has ceased from Israel - we must follow the advice of physicians ... and even if R. Avraham Ibn Ezra disagrees, one cannot rely on his opinion as it contradicts all of our rabbinic decisors.

#### שו"ת יחווה דעת א:סא

באמת שגם הרמב"ן מודה שבזמן הזה שנסתם כל חזון, והסתיימה ונפסקה הנבואה מישראל, מחוייבים להתנהג על פי עצת הרופאים ... ואפילו אם היה רבי אברהם אבן עזרא חולק על זה, בודאי שאין לסמוך עליו נגד דעת כל רבותינו הפוסקים.

According to R. Ovadia Yosef, the opinions of Ramban and Ibn Ezra are not considered normative opinions. R. Yosef concludes that this individual may not fast on Yom Kippur against the orders of the physician.

We have already established that R. Ya'akov of Orleans does not address the issue of contradicting the Divine plan. Removing the opinions of Ramban and Ibn Ezra from the equation, we are now left to analyze the opinion of Rashi. According to Rashi, the derivation of the School of R. Yishmael was necessitated by a premise (*hava amina*) that practice of medicine contradicts the Divine plan. Rashi does not tell us the conclusion. Do we allow the physician to practice medicine simply because we reject the notion that medicine is a contradiction of the Divine plan? Alternatively, do we accept the notion that there is a concern of



contradicting the Divine plan, and the only reason why it is allowed is because the Torah specifically permits it? In other words, now that we know the conclusion of the School of R. Yishmael, are there still certain treatments that contradict the Divine plan?

This question is posed by R. Moshe Feinstein in light of a comment of Tosafot:

### 8. Tosafot, *Baba Kamma* 85a, s.v. *Shenitna*

If one should ask, it can be derived from “*rapo*” alone (and why does the Torah state “*v’rapo yirape*”)? One can answer that from “*rapo*” alone we would have only derived the permissibility of the physician to heal man-inflicted wounds, but we would have thought that “G-d-inflicted” illnesses would appear as if contradicting the decree of the King. [The additional “*yirape*”] teaches that this too is permitted.

**תוספות בבא קמא פה.  
ד"ה שניתנה**  
וא"ת והא מרפא  
לחודיה שמעינן ליה  
וי"ל דה"א ה"מ מכה  
בידי אדם אבל חולי  
הבא בידי שמים  
כשמרפא נראה כסותר  
גזירת המלך קמ"ל  
דשרי.

R. Moshe Feinstein addresses a case of someone who was instructed by a physician that he must eat on Yom Kippur. This patient wanted to know if it is permissible to insert an intravenous (IV) tube which would allow him to fast on Yom Kippur. R. Feinstein, for numerous reasons, prohibits insertion of the IV tube. One of the reasons he gives is the following:

### 9. *Igrot Moshe, Orach Chaim* 3:90

Perhaps there is also a prohibition in doing this, for Tosafot writes regarding the derivation of R. Yishmael (etc.) ... It is possible that in conclusion that which the Torah permits and obligates (the physician) to heal is not because it is not considered a contradiction to the decree of the King – (The approach that it is not considered a contradiction of the Divine plan is) based on the assumption that the decree of the King only applies until the proper physician and medicine is sought out (and the purpose of the decree was) to instill fear in the individual that he may not survive and in situations where he spends money (the

**אגרות משה או"ח ג:צ**  
ומסתפקנא דאולי יש גם איזה  
איסור בזה, דהא התוספות  
ב"ק דף פ"ה כתבו על הא  
דדרשת ר' ישמעאל שניתן  
רשות לרופא לרפאות הוא  
דוקא מדתנא ביה קרא ורפא  
ירפא דמה שלא שמעינן מרפא  
לחודיה דהו"א ה"מ מכה  
דבידי אדם אבל חולי הבא  
בידי"ש כשמרפא נראה כסותר  
גזירת המלך קמ"ל דשרי, וא"כ  
אפשר שמה שהתורה התירה  
וגם חייבה לרפא אינו משום  
דקמ"ל דלא הוי כסותר גזירת  
המלך, מטעם דאמרין דגזירת  
המלך היתה רק שיחלה עד





purpose of the decree was) to cause him a loss of money in addition to the physical pain (involved in the treatment). Rather (the conclusion is that) even though the practice of medicine is a contradiction of the Divine decree, the Torah allows the practice of medicine and obligates treatment, similar to the permissibility and the obligation to pray (whose purpose is) to nullify the Divine plan as we find in all of the prayers throughout the Scriptures. And even in situations where we don't know the Divine plan, there is still an obligation to pray. The same applies to the Torah's permissibility to heal with all different forms of medicine in order to nullify the Divine plan and this is one of the secrets of G-d that we don't know. **For this reason it is possible that the Torah only permitted contradiction of the Divine plan for the purpose of healing an ailing individual, and one should not apply this permissibility to allow someone to fulfill the mitzvah of fasting on Yom Kippur since it is a contradiction of the Divine plan being that the King does not want this person to fast.**

שימצאו את הרופא והרפואה שיצטרך ושיהיה לו פחד שמא לא יתרפא ואם עולה הרפואה להוצאת ממון הוא גם להפסידו בממון יחד עם צער הגוף, אלא שאף שהוא בעצם כסותר גזירת המלך התירה תורה לרפאותו וגם חייבה, וכמו שמותר וגם חייבין להתפלל לבטל גזירת המלך כדמצינו בכל התפלות שבקראי, ואף במקום שלא גילה השי"ת דעתו שיתפלל אף בלשון הניחה לי, כמו כן התירה תורה לרפאות בכל מיני סמים לבטל גזירתו בעניני טבעיים והוא מכבשי דרחמנא שאין לנו לידע, וא"כ אפשר שלא התירה תורה לסתור גזירת המלך אלא לרפאות את החולה ממחלתו ואין למילף שיהיה חדוש זה גם כדי שיוכל לקיים מצות הצום מאחר שהוא כסותר גזירת המלך שהמלך אינו רוצה שיצום.

R. Moshe Feinstein was not the first to introduce this limitation to the physician's license to practice medicine. In a responsum authored in 1882, R. Menachem Mendel Panet, *Teshuvot Sha'arei Tzedek, Yoreh Deah* no. 143, states that the license to practice medicine is limited to treatment of disease and alleviation of pain. Use of medicine to treat a healthy individual for "the purpose of enhancement," is prohibited as there is no license to practice medicine in such a situation. R. Panet concludes that it is therefore prohibited to perform or receive any form of treatment of infertility, as this falls under the category of enhancement.

R. Eliezer Waldenberg, *Tzitz Eliezer* 11:41, agrees in principle with R. Panet's assertion that one may not practice medicine for enhancement purposes. However, he disagrees with R. Panet's application to fertility treatment. There is halachic precedent for fertility treatment dating back to Ramban, who personally administered fertility treatments in his own medical practice. R. Waldenberg



claims that fertility treatment does not overstep the boundaries of this limitation because fertility is essential for the propagation of the world. Nevertheless, R. Waldenberg does prohibit cosmetic surgery based on R. Panet's suggestion that the license to practice medicine does not extend to enhancement.

While R. Feinstein seems to agree to the premise of R. Panet and R. Waldenberg, he clearly disagrees with both of their applications. R. Feinstein authored numerous responsa regarding fertility treatments (see for example, *Igrot Moshe, Even HaEzer* 1:7) and he also permits cosmetic surgery without mentioning the problem of contradicting the Divine decree (*Igrot Moshe, Choshen Mishpat* 2:66).

### Discussion Questions

Why does R. Feinstein apply the physician's license to practice medicine to fertility treatments and cosmetic surgery but not to insertion of an IV tube in order to allow someone to fast on Yom Kippur? **Think about this question and relate your answers to the use of biotechnology for enhancement purposes.**



Here are a few possible ways to distinguish:

#### Approach 1

R. Feinstein allows medicine for any situation where an attribute of the patient is clearly below average. If a couple is suffering from infertility, they can be treated simply because most couples can bear children and the purpose of the medicine is to "heal" this deficiency.

If we assume this approach, what does that mean for biotechnology for enhancement purposes? What does it mean for cosmetic surgery?

#### Approach 2

Following *Approach 1* would lead one to the conclusion that cosmetic surgery is only permitted for someone who has a blemish that is clear and obvious. Yet, R. Feinstein does not make such a limitation in his responsum. This second approach is going to go back to the comments of Ibn Ezra who distinguishes



between external treatments and internal treatments. This might also be the intention of Tosafot in distinguishing between wounds and diseases. As such, it is possible that cosmetic surgery, which is external, does not appear to contradict the Divine plan, while insertion of an IV tube does.

How does this approach relate to biotechnology for enhancement purposes?  
How does this approach relate to fertility treatments?

It seems that since *Approach 1* is insufficient to answer R. Feinstein's permissibility of cosmetic surgery and *Approach 2* is insufficient to answer R. Feinstein's permissibility of fertility treatments, one would have to combine both approaches and assume that both are valid.

### Approach 3

R. Feinstein, in concluding this section notes that the reason why the IV tube is a contradiction of the Divine plan is because "the King does not want this person to fast." Perhaps R. Feinstein's novel approach is limited to situations where it is clearly obvious what the Divine will is. In the case of the IV tube, R. Feinstein feels that it is clearly obvious that G-d does not want this individual to fast on Yom Kippur. Regarding fertility treatments and cosmetic surgery it not obvious what the Divine plan is.

Regarding biotechnology for enhancement purposes, is there any way to know if it is a contradiction of the Divine plan?

**10. Be'er HaGolah, adapted by R. Yitzchok Adlerstein (Mesorah Press, 2000).**

Abaye said, "The laws about sorcery parallel the laws of [forbidden labor on] Shabbos. Some of them [i.e., some acts, are punishable] by stoning; some of them [leave the perpetrator] exempt [from stoning,] but [are nonetheless] forbidden; and some of them [are] permissible in the first place. One who [actually] performs an act [through sorcery is punished [by stoning]. One who [merely] creates an

**מהר"ל באר הגולה באר שני**

בפרק ד' מיתות (ס"ז, ב') אמר אביי הלכות כשפים כהלכות שבת יש מהן בסקילה ויש מהן פטור אבל אסור ויש מהן מותר לכתחלה העושה מעשה בסקילה האוחז את העינים פטור אבל אסור מותר לכתחלה כדרב חנינא ורב אושעיא כל מעלי שבתא הוו עסקי בהלכות יצירה ומיברי להו עיגלא תילתא ואכלי ליה ע"כ. ואמרו כיון שאמר ג' מיני כשפים הם יש ללמוד שדבר זה הוא כישוף והתירו כשפים, ודבר זה ח"ו לא עלה על דעתם, אף מפני שרז"ל



illusion [actions] is exempt [from stoning] but [his action is nonetheless] forbidden. [Actions that are] permissible in the first place [are those that are] like [the actions] of Rav Chanina and Rav Oshaya, who would delve into the laws of Creation every Erev Shabbos, and a calf which was at one-third of its maturity would be created for them, and they would eat it (*Sanhedrin* 67b).

This passage appears to condone some varieties of magic. After all, it claims that there are three forms of magic, and that one of them is permitted!

G-d forbid that *Chazal* should have intended such a conclusion. What they permit is not a form of “magic” as we

generally use the term. Nonetheless, the permissible activities of R' Chanina and R' Oshaya share a strong common element with impermissible magic. *Chazal* group them together because of this shared aspect ...

Both permissible and impermissible theurgy have a very real impact on the ordinary world. In the words of *Chazal*, magic is able to “contravene the Heavenly Court.” G-d Himself gave us the ability to overturn some of the fixed laws of the “apparent” reality that we call Nature. In this sense, using one of the holy Names of G-d is “magic,” since it, too, can accomplish the unusual and unexpected.

G-d Himself taught Man about the connection between His Names, and the general, everyday laws of physical existence. Thus, he gave man access to the tools with which to accomplish unusual results. If you think about it, you will realize that this is no different from our everyday prayer. Do we not ask G-d to tear up Heavenly decrees? Do we not implore Him to act behind the scenes, and change what we might otherwise consider predictable and determined? Is not prayer itself a tool in our hands to countermand the “authority” of the Heavenly Courts and their Divinely inscribed set of laws? If we were to ban the use of *Sefer Yetzirah*, we would have to ban all petitionary prayer as well! Yet, Hashem encourages us to pray. He expects us to utilize the efficacy of our entreaties to Him to reshape our world. He just suggests that we should often take up a spiritual hammer, rather than just a physical one, to bang the nails into the new structure.

מפרשים לשון כשפים שמכחישין פמליא של מעלה, פי' מה שנגזר מצבא עליונים על הארץ הם משנים ומבטלים, כי העולם הזה נוהג על ידי העליונים והכשפים מבטלים אשר נגזר מצבא עליונים בשביל כך נקרא המבטל גזירת עליונים אף ע"י שם בשלון כשפים ... ולפיכך ספר יצירה שבו הזכרת שמותיו ית' אשר בהם ברא עולמו, כי ביה ה' צור עולמים שכל העולם נברא בשמותיו, אין זה דבר יוצא מסדר עולם אף כי הוא מבטל טבעי הדברים והמנהג. דאלי"כ היה אסור התפלה כי התפלה מבטלת ג"כ גזירת עה"ז, וכן גם הדברים הטבעיים יכול לבטל ע"י שמו ית'. ודבר זה בודאי מותר, כי אל הש"י בודאי כח לבטל טבעי הדברים, ואין זה דבר יוצא מסדר



Maharal is of the opinion that contradicting the Divine decree is only a concern within the context of use of supernatural powers. Even use of “supernatural powers”, when done within a certain framework, does not pose a problem. The practice of *Kabbalah* as well as prayer are two examples of permissible methods of using these powers. Both of these methods are considered *reversing* the Divine decree as opposed to *contradicting* the Divine decree.

Based on the comments of Maharal, R. Shmuel Vosner, *Shevet HaLevi* 6:198, disagrees with the entire premise of R. Panet (later adopted by R. Feinstein). According to R. Vosner, there is never a concern that medicine will constitute a contradiction of the Divine plan.

.....

### *Concluding Questions*

.....

- 1) Is practicing medicine considered a contradiction of the Divine plan?
  - 2) Are there situations where use of medicine is prohibited?  
What are those situations?
- .....





## ~ Not Without Cost ~

Any new biotechnology will carry with it a certain element of risk. Some of these risks are known short-term side effects. Additionally, there is some degree of risk of the unknown. Will this biotechnology stand the test of time, or we will find out ten years from now that there is some dangerous long-term side effect? [Let's keep in mind how long it took to discover the effects of "Thalidomide," "Phen-fen," "Vioxx", etc.] In dealing with a Torah perspective on biotechnology for enhancement purposes, we must deal with both the known short-term side effects as well as the risk of the unknown.

The field of Medicine will always weigh the potential risks against the benefits in dealing with risk assessment and decision-making. Is this a concept that the Torah recognizes?

Let's explore the sources relating to self-endangerment and risk:

### 11. Devarim 4:5-15

5) Look! I have taught you statutes and laws as the ETERNAL, my GOD, commanded me, [for you] to do [them] within the land which you are entering to take possession of. 6) You shall safeguard [these laws] and do [them], for [through] this you [will be considered] wise and intelligent in the eyes of the nations, who will hear about all these statutes and say, 'This great nation is purely a wise and intelligent people.' 7) For which [other] great nation has GOD close to them [to accept their prayers], like

### דברים ד: ה-טו

ה. ראה למדתי אתכם חקים ומשפטים באשר צוני ה' אלקי לעשות כן בקרב הארץ אשר אתם באים שמה לרשתה. ו. ושמרתם ועשיתם כי הוא חכמתכם ובינתכם לעיני העמים אשר ישמעון את כל החקים האלה ואמרו רק עם חכם ונבון הגוי הגדול הזה. ז. כי מי גוי גדול אשר לו אלקים קרבים אלו ואלקינו בכל קראנו אליו. ח. ומי גוי גדול אשר לו חקים ומשפטים צדיקים ככל התורה הזאת אשר אנכי נתן לפניכם היום. ט. רק השמר לך ושמר נפשך מאד, פן תשכח את הדברים אשר ראו עיניך ופן יסורו מלבבך, כל, ימי חייך והודעתם לבניך ולבני בניך. י. יום אשר עמדת לפני ה' אלקיך בחרב באמר ה' אלי הקהל לי את העם ואשמעם את דברי אשר ילמדון ליראה אותי כל הימים אשר הם חיים על-האדמה ואת בניהם ילמדון. יא. ותקרבון ותעמדון תחת ההר וההר בער באש עד לב השמים חשך ענן וערפל. יב. וידבר ה' אליכם מתוך האש קול דברים אתם שמעים ותמונה אינכם ראים זולתי קול. יג. ונגד לכם את בריתו אשר צנה אתכם לעשות עשרת הדברים ויכתבם על שני לוחות אבנים. יד. ואתי צנה ה' בעת ההוא ללמד אתכם חקים ומשפטים לעשות אתם בארץ אשר אתם עברים שמה לרשתה. טו. ונשמרתם מאד לנפשתיכם כי לא ראיתם כל תמונה ביום דבר ה' אליכם בחרב מתוך האש.



the ETERNAL, our GOD, [is close to us] whenever we pray to him? 8) And which [other] great nation has statutes and laws, like all of this Torah that I am putting before you today? 9) However, be careful and guard yourselves very well, so that you do not forget the things you saw with your own eyes and that they are not removed from your heart your entire lifetime, and you shall inform your children and grandchildren of them: 10) The day that you stood before the ETERNAL, your God, at Chorev, when the ETERNAL said to me, “Assemble the people for Me and I shall let them hear My words, so that they learn to fear Me all the days that they are living on earth, and that they teach [this to] their children.” 11) You then drew near and stood at the foot of the mountain, and the mountain was blazing with fire [reaching] as far as the very heart of the heavens, [with] darkness, cloud and [even] thick cloud. 12) The ETERNAL then spoke to you from within the fire; you were hearing the sound of words, but did not see any image, except sound. 13) He informed you of His covenant that He was commanding you to do, the Ten Proclamations, and wrote them down on two tablets of stone. 14) And at that time, the ETERNAL commanded Me to teach you [about] the statutes and the laws, for you to do them in the land to which you are crossing over so as to take possession of it. 15) You shall be very careful of yourselves, since you did not see any image on the day the ETERNAL spoke to you at Chorev from within the fire. -Translation taken from R. Binyamin Moore (trans.), The Torah (Feldheim, 1999), ad loc.

What do the special warnings in verses 9 and 15 refer to? Do they refer to self-endangerment? Let's take a look at the following story quoted in the Gemara:

### 12. Berachot 32b

The rabbis taught: There was an incident regarding a pious individual that was praying on the road. A government official came and greeted this individual and he did not return the greeting. The official said: Fool! Does it not state in your Torah “However, be careful and guard yourselves very well” and it also states “You shall be very careful of yourselves.” When I greeted you, how come you did not return the greeting?

### ברכות לב:

תנו רבנן מעשה בחסיד אחד שהיה מתפלל בדרך ובא הגמון אחד ונתן לו שלום ולא החזיר לו שלום המתין לו עד שסיים תפלתו אמר לו ריקא והלא כתוב בתורתכם רק השמר לך ושמר נפשך וכתוב ונשמרתם מאד לנפשתיכם כשנתתי לך שלום למה לא החזרת לי שלום.



How did the government official understand verses 9 and 15? Does it relate to self-endangerment? Is this his own interpretation, or did he know that in Jewish circles there was an additional level of interpretation?

The Gemara comments on the Mishna's ruling that one who curses himself receives lashes:

### 13. *Sh'vuot* 36a

(He who curses) himself (is culpable) as it is stated "You shall be very careful of yourselves."

### שבועות לו.

עצמו דכתיב רק השמר לך  
ושמור נפשך מאד

What type of prohibition does one violate when he curses himself? What do we see about the parameters of the prohibition of self-endangerment from this example?

There are two exceptions to the prohibition of self-endangerment:

### Exception 1

### 14. *Shabbat* 129b

Samuel also said: The correct time for bloodletting is on a Sunday Wednesday and Friday, but not on Monday or Thursday, because a Master said: He who possesses ancestral merit may let blood on Monday and Thursday, because the Heavenly Court and the human court are alike then. Why not on Tuesday? Because the planet Mars rules at even-numbered hours of the day. But on Friday too it rules at even-numbered hours? Since the multitude are accustomed to it, 'the Lord preserveth the simple.' -Translation taken from R. I. Epstein (ed.), *The Babylonian Talmud* (Soncino, 1938), ad loc.

### שבת קכט:

אמר שמואל פורסא  
דדמא חד בשבתא ארבעה  
ומעלי שבתא אבל שני  
וחמישי לא דאמר מר מי  
שיש לו זכות אבות יקיז  
דם בשני ובחמישי שבת  
דין של מעלה ושל מטה  
שוין כאחד בתלתא  
בשבתא מאי טעמא לא  
משום דקיימא ליה  
מאדים בזווי מעלי שבתא  
נמי קיימא בזווי כיון  
דדשו ביה רבים שומר  
פתאים ה'.

The Gemara explains that certain forms of self endangerment are permissible based on the verse (Tehillim 116:6) "*Shomer peta'im Hashem*," G-d protects the simple. This leniency applies to risks that many people are willing to take.



**דברים כד: יז-טו**  
 יד. לא תַעֲשֶׂה  
 שְׂכִיר עָנִי וְאֶבְיוֹן  
 מֵאֲחִיךָ אוֹ מִגֵּרְךָ  
 אֲשֶׁר בְּאַרְצְךָ  
 בְּשַׁעְרֶיךָ. טו.  
 בְּיוֹמוֹ תִּתֶּן שְׂכָרוֹ  
 וְלֹא תִבֹּא עָלָיו  
 הַשֶּׁמֶשׁ כִּי עָנִי הוּא  
 וְאֵלָיו הוּא נֹשֵׂא  
 אֶת נַפְשׁוֹ וְלֹא  
 יִקְרָא עָלֶיךָ אֵל ה' **וְהָיָה בְּךָ חָטָא.**

ואליו הוא נשא את נפשו מפני  
מה עלה זה בכבש ונתלה באילן  
ומסר את עצמו למיתה לא על  
שכרו.

איך יכניס עצמו איש יהודי  
למקום גדודי חיות רעות ואף  
גם בזה מי שהוא עני ועושה זו  
למחייתו לזה התורה התירה  
כמו כל סוחרי ימים מעבר לים  
שכל מה שהוא לצורך מחייתו  
ופרנסתו אין ברירה והתורה  
אמרה ואליו הוא נושא את  
נפשו ואמרו רז"ל מפני מה זה



walk up a ramp or hang from a tree and put his life on the line? Was it not for his wages?" But regarding someone who enters into a place of wild animals and places himself in danger and his main intention is not for livelihood but rather because of desires of the heart, he violates the dictum "You shall be very careful of yourselves."

עלה בכבש ונתלה באילן ומסר עצמו למיתה לא על שכרו כו', אבל מי שאין עיקר כוונתו למחייתו ומתאוות לבו הוא הולך אל מקום גדודי חיות ומכניס עצמו בסכנה הרי זה עובר על ונשמרתם מאוד כו'.

R. Landau understands that the Torah uses the verse "and for [these wages] he puts his life [in danger]," to permit people to assume certain risks in order to maintain their livelihood. This includes risks that would otherwise constitute a violation of self-endangerment. Therefore, hunting for sport is prohibited, but hunting for one's livelihood is permitted.

.....  
*Discussion Questions*  
.....

- 1) Do these leniencies apply to all different degrees of risk? Is one allowed to engage in Russian roulette for the purpose of his livelihood?
- 2) Are the two leniencies related?



.....  
R. Ovadia Yosef, *Yabia Omer* 3:7, notes that the Gemara only applies the principle of *Shomer peta'im Hashem* to a few cases. This principle is never applied to assuming risks for purposes where there is no real need to assume any risk. If we accept this premise, we can suggest that really both leniencies are one and the same. One can only assume risk if there is a pressing need to do so. This applies both to a laborer and to someone who is in another pressing situation.

R. Hershel Schachter, *B'Ikvei HaTzon*, no. 34 notes that there are three levels of risk:

- 1) There are activities that are clearly considered dangerous (like Russian roulette). These activities are outright prohibited.



- 2) There are activities that are not viewed as dangerous although there may be some very remote possibility of danger. These activities are permitted and do not require the principle of *Shomer peta'im Hashem*.
- 3) There are activities which some people view as dangerous and others do not. This is where the Gemara applies the principle of *Shomer peta'im Hashem*.

We can now come to a fuller understanding of the principle of *Shomer peta'im Hashem* as well as the verse “and for [these wages] he puts his life [in danger].” Regarding activities that are not inherently dangerous, one is permitted to weigh the potential risks against the benefits. If the benefit is minimal (such as the case in hunting for sport), the amount of risk one can take is minimal. If the benefit is great (such as the case in hunting for livelihood), the amount of risk one may take is greater.

How does this relate to the use of biotechnologies for enhancement purposes? Let's take the example of preimplantation genetic diagnosis (PGD). In order to perform PGD, one must undergo in-vitro fertilization (IVF). Use of IVF produces a higher rate of multiple pregnancies.<sup>3</sup> Multiple pregnancies pose a risk to the mother<sup>4</sup> as well as the fetuses.<sup>5</sup> Can you see a distinction between the risk/benefit ratio in using IVF to treat infertility and the risk/benefit ratio in using IVF to choose a an embryo with the genetic makeup to yield a child with blonde hair?

There are many technologies available that can greatly enhance our lives. The question that must always be addressed is: Do the benefits of these technologies outweigh the risks?

Until this point, the discussion of self endangerment was limited to known quantifiable risks. When the risk is known it is possible to weigh the risks against the benefits. However, as mentioned previously, there are unknown risks one can never predict. Does the prohibition of self-endangerment extend to the risk of the unknown?

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<sup>3</sup> See Egbert R te Velde and Bernard J Cohlen, “The Management of Infertility,” *New England Journal of Medicine* 340 (1999): 224-227.

<sup>4</sup> A Conde-Agudelo et al., “Maternal Morbidity and Mortality Associated With Multiple Gestations,” *Obstetrics and Gynecology* 95 (2000): 899-904. These risks include: preeclampsia, postpartum hemorrhage, puerperal infection, anemia, urinary tract infection and caesarian delivery.

<sup>5</sup> M. Dhont et al., “Perinatal Outcome of Pregnancies After Assisted Reproduction: A Case-Control Study,” *Journal of Assisted Reproduction and Genetics* 14 (1997): 575-580.



Let's explore the following question regarding the prohibition of self-endangerment: Is the prohibition of self-endangerment a function of a positive commandment to actively guard and protect one's health or is it a function of a negative prohibition to partake in activities that are dangerous?

How do you think the question of whether the prohibition of self endangerment is a positive commandment or negative commandment relates to the question of unknown risk?

Let's examine the sources:

### 18. *Sh'vuot* 36a

(He who curses) himself (is culpable) as it is stated "You shall be very careful of yourselves," as per the statement of R. Avin in the name of R. Illa who stated "Any place where the words *hishamer*, *pen* or *al* are mentioned it connotes a negative commandment."

### שבועות לו.

עצמו דכתיב רק השמר  
לך ושמור נפשך מאד  
כדברי אבין אמר רבי  
אילעא דאמר כל מקום  
שנאמר השמר פן ואל  
אינו אלא לא תעשה.

One can only receive lashes for violation of a negative commandment. The Gemara, in explaining why someone receives lashes for cursing himself, bases itself on the premise that the word "*hishamer*" is used in the context of the prohibition of self-endangerment, which connotes violation of a negative commandment.

This ruling is codified by Rambam:

### 19. Rambam, *Hilchot Sanhedrin* 26:3

One who curses himself receives lashes (in the same manner) as if he cursed others as it is stated "be careful and guard yourselves very well."

### רמב"ם הל' סנהדרין כו:ג

המקלל עצמו לוקה כמו  
שקלל אחרים שנאמר השמר  
לך ושמור נפשך.

Does this lead one to the conclusion that the prohibition of self-endangerment is a negative commandment? Let's see another ruling of Rambam:

### 20. Rambam, *Hilchot Rotzei'ach* 11:4

Any hazard that is potentially lethal there is a positive commandment to remove it and to

### רמב"ם הל' רוצח יא:ד

כל מכשול שיש בו סכנת  
נפשות מצות עשה  
להסירו ולהשמר ממנו



beware of it and to be extremely cautious in this matter as it is stated “be careful and guard yourselves very well.” And if one does not remove them or places obstacles that lead to danger one has violated a positive commandment.

ולזהר בדבר יפה יפה  
השמר לך ושמור נפשך,  
ואם לא הסיר, והניח  
המכשולות המביאין לידי  
סכנה, ביטל מצות עשה.

How does this passage differ from the previous passage? Does this passage lead one to the conclusion that the prohibition of self-endangerment is a function of a positive commandment?

R. Yerucham F. Perlow (*SeferHaMitzvot LaRasag, Aseh* no. 1 and *Aseh* no. 77) offers two approaches to resolve the apparent inconsistency in the rulings of Rambam.

### Approach 1

21. Rambam is of the opinion that *hishamer l'cha ush'mor nafshecha me'od* is a negative commandment. That which Rambam states “Any hazard that is potentially lethal there is a positive commandment to remove it,” does not refer to the verse *hishamer l'cha ush'mor nafshecha me'od*, but rather to the *mitzvah* of *ma'akeh*, the positive obligation to build a fence around the roof of one's house (Devarim 22:8). [The entire chapter 11 of *Hilchot Rotzei'ach* deals with this *mitzvah*.] Rambam then states “and to beware of it and to be extremely cautious in this matter as is states ‘*hishamer l'cha ush'mor nafshecha me'od*,’” as a tangential matter referring to the negative violation of self-endangerment. Rambam never meant to associate the verse *hishamer l'cha ush'mor nafshecha me'od* with any positive commandment.

### Approach 2

22. *Hishamer l'cha ush'mor nafshecha me'od* is a positive commandment. The Gemara that states that there is a negative violation for cursing oneself does not refer to the violation of *hishamer l'cha ush'mor nafshecha me'od*, but rather to the general negative violation of using G-d's name in vain. The positive commandment of *hishamer l'cha ush'mor nafshecha me'od* serves to expand the prohibition of using G-d's name in vain to include cursing oneself. Had there been no violation of self-endangerment, cursing oneself might be considered a permissible form of using G-d's name. However, since there is a positive



commandment to guard one's life, and cursing oneself constitutes a transgression of that commandment, use of G-d's name to curse oneself constitutes a violation of using G-d's name in vain.

*Approach 3* is presented by R. Chanoch H. Eiges, *Marcheshet* 3:29:

**23.** When the situation requires one to be proactive in eliminating hazards, one who fails to do so is in neglect of a positive commandment. Therefore, Rambam in *Hilchot Rotzei'ach* records a positive commandment for failure to remove dangerous obstacles. However, when the situation requires one to avoid danger, one who actively places himself in a dangerous predicament is in violation of a negative commandment. Therefore, Rambam in *Hilchot Sanhedrin* records a negative commandment for one who curses himself.

This third approach presents the possibility that the verse actually connotes a positive and a negative commandment. Can you find a textual proof from the verse to support this idea?

We can now address the issue of risk of the unknown. If the prohibition of self-endangerment is a function of a positive commandment to guard and protect oneself, one would be required to be proactive in guarding one's health. One must know the safety of an activity before partaking in it. If the prohibition of self-endangerment is a function of a negative violation, it is arguable that the violation only applies to known dangers. Until one can pinpoint an exact danger, there is no obligation to refrain from an activity with unknown risks.

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### *Concluding Questions*

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- 1) Does the Torah recognize a risk-benefit ratio in dealing with risk assessment decisions?
- 2) How can one distinguish between a risky procedure performed for health purposes and a risky procedure performed for enhancement purposes?
- 3) How do we deal with the risk of the unknown?



.....



## ~ Who is Responsible? ~

This section deals with the societal damage that can be caused by widespread use of biotechnologies for enhancement purposes. If a few people choose the gender of their child, the damage to societal will be minimal. However, imagine if it becomes widespread and the sacrosanct one-to-one male-to female ratio is severely skewed. It will cause a “shidduch crisis” ten times the magnitude of the current one. Imagine a classroom where 50% of the students are taking medication for memory improvement and the other 50% can’t afford these medications. These examples are just a sample of the possible societal damage that can emerge from use of biotechnologies for enhancement purposes

Question: Halachic prohibitions notwithstanding, is there anything that can be done to regulate or monitor these activities on a communal level in order to thwart the possibility of societal damage?

The Talmud is replete with rabbinic enactments, including enactments that are for the purpose of “*tikkun ha’olam*,” preservation of society. Who has the power to institute these enactments?

### 24. Rambam, *Hilchot Mamrim* 1:1-2

The Supreme Court in Jerusalem represents the essence of the Oral Torah. Its members are the pillars of direction; law and order emanate from them to all of Israel. Concerning them the Torah assures us, as it is written: “You shall act in accordance with the directions they give you” (Deuteronomy 17:11). This is a positive command. Anyone who believes in Moses, our teacher, and in his Torah, must relate religious practices to them and lean upon them ...Whether their direction is based upon what they have learned from tradition, referred to as the Oral Torah, or it is derived from what they have independently discovered by means of any of the rules whereby the Torah is interpreted, and meets with their approval, **or it is in the form of temporary regulations designed to preserve the biblical laws, measures consisting of decrees and ordinances and customs**, we are biblically

### רמב"ם הל' ממרים א:א-

ב  
בית דין הגדול  
שבירושלים הם עיקר  
תורה שבעל פה, והם  
עמודי ההוראה ומהם חק  
ומשפט יוצא לכל ישראל,  
ועליהן הבטיחה תורה  
שנאמר על פי התורה אשר  
יורוך זו מצות עשה, וכל  
המאמין במשה רבינו  
ובתורתו חייב לסמוך  
מעשה הדת עליהן ולישען  
עליהן ... אחד דברים  
שלמדו אותן מפי  
השמועה והם תורה שבעל  
פה, ואחד דברים שלמדו  
מפי דעתם באחת מן  
המדות שהתורה נדרשת  
בהן ונראה בעיניהם  
שדבר זה כך הוא, ואחד  
דברים שעשאו סייג



commanded to obey our sages with regard to any of these three categories. Whoever disregards one of them breaks a prohibitive command. It is stated (*Midrash Tanaim*, Devarim17:10): “*You shall act in accordance with the directions they give you* these are the decrees and ordinances and customs which are directed toward the public to strengthen observance and to preserve society.” Translation (except the last sentence) taken from Phillip Birnbaum (trans.) *Mishneh Torah : Maimonides’ Code of Law and Ethics*, (Hebrew Publishing Company, 1974) ad loc.

לתורה ולפי מה שהשעה  
צריכה והן הגזירות  
והתקנות והמנהגות, כל  
אחד ואחד מאלו השלשה  
דברים מצות עשה לשמוע  
להן, והעובר על כל אחד  
מהן עובר בלא תעשה,  
הרי הוא אומר על פי  
התורה אשר יורוך אלו  
התקנות והגזירות  
והמנהגות שיורו בהם  
לרבים כדי לחזק הדת  
ולתקן העולם.

Does this power still exist nowadays? If there a different recourse to regulate and monitor the use of the biotechnologies?

In post-Talmudic times, the concept of *cherem* was used to enact laws that relate to communal matters. A *cherem* is a form of public oath. If members of a community accept upon themselves a prohibition, that prohibition is binding. There are two problems with employing a *cherem* to regulate abuse of biotechnology. First, we don’t want to categorically prohibit biotechnology because there are many therapeutic purposes for these technologies. To prohibit biotechnology for enhancement purposes would be difficult to implement because some “enhancement” cases warrant more consideration than others. Consider, for example, a case reported in *Ha’aretz* (2002) of a Cohen who suffered from male infertility. In order for his wife to bear a child, it was necessary for her to receive sperm from an outside donor. Being that the child would not be considered a Cohen, the couple desired to have a girl in order to avoid embarrassment. This case is one in which gender selection is used for non-therapeutic purposes, yet some might not consider this enhancement. Second, not everyone is a member of a national (international) organization that is set up to issue injunctions. This issue is not something that can be dealt with on a local level.

How, then, can we ensure that society as a whole doesn’t abuse biotechnology?





Let's look at the following Midrash:

### 25. Midrash Tanchuma, Parshat VaYigash no. 2

When the Holy One, Blessed Is He, wished to give the Torah to Yisroel, He said to them, "Will you accept My Torah?" They said, "Yes!" He said to them, "Give me a guarantor that you will observe it." They said to Him, "Avrohom, Yitzchok and Yaakov will be guarantors." He said to them, "your forefathers themselves require guarantors." For Avraham said (Bereishit 15:8), "How will I know [that I will inherit it]?" Yitzchok loved the one who hates Me, as it (is) written (Malachi 1:3), "And I hated Esav." And Yaakov said (Yeshaya 40:28), "My way is hidden [from Hashem]." They said to Him, "Our children will be our guarantors." Thereupon the Holy One, Blessed Is He, accepted them and gave the Torah to Yisroel, as it is stated, "Out of the mouths of babes and sucklings You have founded strength." Thus, when Yisroel neglects Torah study, the Holy One, Blessed Is He, demands recompense from the guarantors. Translation taken from R. Avrohom Davis (trans.), *The Metsudah Midrash Tanchuma* (2005).

### מדרש תנחומא פרשת ויגש ס' ב

בשעה שבקש הקב"ה ליתן את התורה לישראל אמר להן תקבלו תורת, א"ל הן, א"ל תנו לי ערב שתקיימו אותה, א"ל אברהם יצחק ויעקב יהיו ערבים, אמר להן אבותיכם הן בעצמם צריכים ערבים, אברהם אמר במה אדע (בראשית טו) יצחק אהב את שונאי דכתיב ואת עשו שנאתי (מלאכי א) יעקב אמר נסתרה דרכי (ישעיה מ) אמרו לו בנינו יהיו ערבים שלנו, מיד קבלן הקב"ה ונתן את התורה לישראל שנאמר מפי עוללים ויונקים יסדת עוז (תהלים ח) לפיכך כשישראל מבטלין את התורה הקב"ה פורע מן הערבים.

The Torah was given on condition that every member of the Jewish people takes responsibility for his fellow Jew. Every individual must ensure to the best of his ability that Torah values are carried out by the rest of the Jewish people. *Tikkun Ha'Olam*, preservation of society, is a Torah value as evidenced by Rambam's statement that the rabbinic court should institute enactments for the preservation of society.

Question: What is the individual's responsibility? He could take the approach that an activity that would be calamitous if every person participated is prohibited for one individual. Alternatively, he could take the "wait and see" approach.

Each approach has its weakness. The first approach is similar to Kant's "categorical imperative" which has difficulty making exceptions for the gray



areas where there is a potential need for these biotechnologies. The second approach lacks rigor and is subject to the “slippery slope” effect.

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### *Concluding Questions*

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- 1) What do you think is the magnitude of the problem discussed in this section?
- 2) Do you think that this problem must be addressed in the near future?
- 3) What do you propose as a solution to this problem?



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