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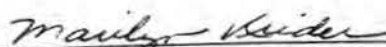
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CIGARETTE SMOKING IN JEWISH LAW AND ETHICS

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Thesis Submitted in Partial Fulfillment of
Requirements for Ordination

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PREFACE

A few years ago, I heard a sermon in which the Rabbi proposed that the list of foods considered "non-kosher" should be expanded. These new items, he believed, should be based not on Biblical precedent but on ethical awareness. An example was veal which, although kosher, should be avoided by Jews because of the way the calves are mistreated. Kashrut is thus modified by an ethical principle: צַדִּיק בְּעַל-חַיִּים, the prevention of cruelty to animals, which according to the Talmud, is Biblical law (Bava Mezia 32b).

This idea led me to consider the relationship between Jewish law and ethics. If some things which are permissible constitute an ethical violation, should they not be considered "treif"?

I decided to investigate such an example. Cigarette smoking was, to me, an obvious illustration. Clearly the laws of kashrut do not apply to tobacco ingestion. It is also abundantly clear that Judaism supports and promotes life above all else: פִּיקּוּחַ נַפְשׁ דְּרוּחָהּ הֵכֵל (Sanhedrin 94a, Ketubot 19a, etc.), including the laws of kashrut (Yoma 83a). Should not cigarette smoking, which has been shown to be a major health hazard, be banned according to Jewish law and ethics?

As this work is being completed, the United States government is considering legislation to ban smoking in all public buildings. An unprecedented six former Surgeons General publicly supported this ban and the Administration's

claim that it would save the lives of 5,000 to 9,000 nonsmokers along with 33,000 to 99,000 smokers who would quit or reduce their smoking.¹

At the same time, Canada's Supreme Court has recently required the nation's cigarette manufacturers to put the world's strongest health warnings on their products. Among the eight warnings which are to appear are: "Tobacco smoke can harm your children," "Smoking can kill you" and, for the first time an acknowledgement that "Cigarettes are addictive."²

Opponents of these kinds of legislation decry them not as an ethical advancement but as "social engineering on a vast scale" comparable to Prohibition.³ Some also dispute the causal connection between smoking and disease.

The medical evidence overwhelmingly disputes this last claim. A search of the medical database "PaperChase" of the National Library of Medicine and the National Cancer Institute found almost 5,000 references using the parameters: SMOKING/AE (Adverse Effects). The summaries show the medical community considers the harmful effects of smoking to be a medical fact. Similarly a judge has recently ruled that cigarettes are

1 Philip J. Hiltz, "Smoking Ban Wins Clinton's Support", New York Times, February 8, 1994, A10.

2 Peter Benesh, "Canada Toughens Cigarette Warnings" The Blade, Tuesday March 8, 1994, A1.

3 Op. cit.

legally defective because "when used as intended, they cause cancer, emphysema, heart disease and other illnesses."⁴

The goal of this investigation is to cut through the rhetoric and examine cigarette smoking as it appears in Jewish writings. The process involved four steps:

1. Historical: a look at early responses to smoking before the danger to health was well-known.

2. Survey the modern literature in chronological order to see how the arguments developed and how the advancement of scientific knowledge in this area effected the debate.

3. Analyze the legal arguments by focusing on the five Orthodox Responsa which deal directly with the proposal to ban smoking entirely.

4. Investigate the integration of this material in the life of a Jewish person from two perspectives: Orthodox and Reform.

It is hoped that by following this procedure, we can learn more not only about this issue alone but about the applicability of Jewish Law and Ethics to a practical problem of modern life.

I would like to thank Rabbi Alan Sokobin and Rabbi Edward H. Garsek for their help with some of the translations, my advisor Dr. Eugene Borowitz for his shaping of this work and

⁴ David Margolick, "Judge Says Hazards Make Cigarettes Defective by Law", New York Times, Thursday May 13, 1993, A14.

my thinking, and especially to Rabbi Moshe Cahana for his invaluable input at many stages. My father's guidance, wisdom and knowledge are forever a model to me of what a Rabbi should be. I pray that I may live up to his example.

Finally, I would like to thank my wife Ida Rae Cahana for her eternal patience, support and inspiration. And to David Yehuda Cahana who makes everything worthwhile. Together they have set my life to music and I am forever grateful.

CHAPTER 1: HISTORICAL DEVELOPMENT

TOBACCO USE IN WESTERN CULTURE

Tobacco was introduced to Europe through the voyages of Christopher Columbus. Native Americans of the West Indies offered tobacco leaves to Columbus and his men in 1492 as tokens of friendship.¹ Within 30 years of Columbus' voyages, a tobacco trade had been established by the Spaniards between the Caribbean and India, and trade later developed with Japan, China and the Malay peninsula.² Although the Spanish tried to monopolize tobacco trade, many growers smuggled the leaf to Dutch and English ships. Tobacco was introduced as a cash crop to the Virginia colony about 1611 and the first shipment reached London in 1613. Within three years, tobacco became the most significant crop and chief export of the British

1 U.S. Department of Health and Human Services. Smoking and Health in the Americas (Atlanta, Georgia: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 1992; DHHS Publication No. [CDC] 92-8419); p. 19.

2 Ibid., p. 23. See also J.C. Robert, The Story of Tobacco in America (Chapel Hill, North Carolina: University of North Carolina Press, 1967).

Colonies in North America.³ There is evidence that Jews were active, and perhaps leaders, in the tobacco business.⁴

The use of tobacco was not accepted whole-heartedly in Europe. While some believed that it had medicinal purposes, perhaps in imitation of South American Indians, other Europeans believed that it was a heathen practice to be strongly discouraged. Many people claimed that smoking and chewing tobacco were harmful to health. The most famous attack on tobacco appeared in 1604, when King James I anonymously issued A Counter-Blaste to Tobacco, in which he disclaimed any medical value of tobacco and described smoking as a loathsome practice.⁵

TOBACCO USE IN EARLY HALAKHIC LITERATURE

As tobacco became reality in both the Ashkenazic and Sephardic Jewish communities, several halakhic questions were raised. The first full discussion of the use of tobacco by a Jewish legal authority was written by Chaim Benvenisti of Constantinople (1603-1673) in his long supercommentary to the Tur, K'nesses Hagdola (in the supplementary volume, Shiurey

3 Ibid. p. 24. See also N.M. Tilley The Bright-Tobacco Industry, 1860-1929. (Chapel Hill, North Carolina: University of North Carolina Press, 1948).

4 Solomon B. Freehof, "The Use of Tobacco," Reform Responsa for Our Time (New York: Hebrew Union College Press, 1977), p. 52.

5 Op. cit. p. 24. See also James I, King of Great Britain A Counter-Blaste to Tobacco 1604. Reprint. (Emmaus, Pennsylvania: Rodale Books, Inc., 1954).

K'nesses Hagdola, #567, sec. 3). He deals with the legal question of whether tobacco may be smoked on fast days. In general, he is opposed to smoking on any fast day because it brings Judaism shame in the eyes of the Moslems, who strictly refrain from smoking on their fast days.⁶

Over the next few centuries, several other issues regarding the smoking of tobacco were raised. These included: the permissibility of smoking on holidays, smoking on Passover, smoking a cigarette which has been lit from a tallow (non-kosher) candle, smoking in the synagogue, smoking on Shabbat, and whether smoking requires a blessing.⁷ Similar issues were raised regarding other forms of tobacco ingestion, such as snuff.⁸

SMOKING AS A HEALTH HAZARD

Smoking tobacco was first implicated as a cause of cancer in 1761.⁹ In the United States, the epidemiological evidence

6 Freehof, p. 51. See also: י. ז. כהנא, הטבק בספרות ההלכה: מחקרים בספרות התשובות (ירושלים: מוסד הרב קוק, תשל"ו), page 317, in which a long quote from Chaim Benvenisti is excerpted.

7 See כהנא (pp. 317-325) for an extensive discussion of each of these topics. See also Freehof pp 50-55 for a shorter overview. Some of these topics are reexamined in J. David Bleich "Survey of Recent Halakhic Periodical Literature: Smoking on Yom Tov" Tradition, Vol. 21, No. 2 (1983) pp. 167-172. See also the Responsum of Rabbi Obadiah Yosef: האם מותר לעשן סיגריות בימי תענית צדור ובתשעה באדר שורת דעה ג' עמ' ה' סימן ל"ט.

8 כהנא pp. 325-329.

9 D.E. Redmond, Jr., "Tobacco and Cancer: The First Clinical Report, 1761" New England Journal of Medicine 282:18-

was made available to the general public in January of 1964 when an advisory committee appointed by then Surgeon General Luther L. Terry issued its report on the relationship between smoking and health.¹⁰ The report concluded that cigarette smoking is a cause of lung cancer and laryngeal cancer in men, a probable cause of lung cancer in women, and the most important cause of chronic bronchitis. Although there was not sufficient evidence at that time to show a causal connection with other diseases such as emphysema and cardiovascular disease, the committee concluded that "cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action."¹¹ Since that time there have been 24 reports on health and smoking by surgeons general of the United States Public Health Service, expanding and strengthening the conclusions of the 1964 report. The 1989 report estimated that 390,000 Americans die each year from diseases caused by smoking: 115,000 deaths from heart disease; 106,000 from lung cancer; 31,600 from other cancers; 57,000 from chronic obstructive pulmonary disease; 27,500 from

23, 1970. Quoted in Fred Rosner, "Cigarette Smoking and Jewish Law", Modern Medicine and Jewish Law (New York: Yeshiva University, 1972) p. 25.

10 Smoking and Health: Report of the Advisory Committee to the Surgeon General of the Public Health Service (Washington, D.C.: U.S. Government Printing Office, 1964)

11 Ibid. p. 33. See Appendix A.

stroke; and 52,900 from other conditions related to smoking.¹² A coalition formed by the American Heart Association, the American Lung Association and the American Cancer Society claims that in 1994, 30 years after the issuing of the Surgeon General's first report, 420,000 Americans are dying of smoking related disease.¹³

HALAKHIC DISCUSSION OF A PROHIBITION ON SMOKING

Even before the causal relationship between tobacco smoking and serious illness was demonstrated with any definitude, halakhic writers began to suggest a full prohibition on smoking as a matter of health. The earliest was Rabbi Israel Meir ha-Kohen (Kagan), the *Lafez Hayyim* (1839-1933). His writings indicates an awareness that his contemporary medical community sees some hazard to smoking and he chastises those who continue despite medical warnings:¹⁴

. . . Some doctors have ordered	הנה כמה רופאים גזרו
that anyone who is weak is	אומר שכל מי שהוא אדם
forbidden to habituate themselves	חלש אסור להרגיל את עצמו
to [cigarette smoking] for it	בזה שמחליש כוחותיו.

12 Reducing the Health Consequences of Smoking: 25 Years of Progress. A Report of the Surgeon General. U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. DHHS Publication No. (CDC) 89-8411, 1989.

13 Warren E. Leary, "A 30-Year Report Card on Smoking Prevention"; The New York Times; January 12, 1994, B7.

14 לפי ארמון פריד See Appendix A.

saps their strength and sometimes is life-threatening. And I have spoken several times with weak people about this, and they tell me that they know well that smoking is hard on them. But since they are habituated to it, it is harder for them to quit. And I said to them, who told you to let yourself get addicted? . . . If by smoking one's strength is diminished, certainly one can claim that in the final judgement one does this of one's own free will and not by force!

ולפעמים נוגע גם לנפשו. והנה דברתי כמה פעמים עם חלשי כח אודות זה, וענו לי שגם הם יודעים ומכירים בעצמם שהעישון קשה להם. אך מפני שהורגלו בזה מכבר קשה להם לפרוש מזה. ואמרתי להם מי התיר לכם להרגיל עצמכם על כך. . . ואם על ידי העישון נגרעו כוחותי בודאי יתבע לבסוף לדין על זה דהלא עשה זה ברצון לבו ולא באונס.

In another work, Kagan repeats his theme of intolerance at those who claim an inability to break the habit of smoking and adds another reason to prohibit smoking: bitul Torah.¹⁵

. . . .And also the Evil Inclination has found a strategy to trap people into the sin of bitul Torah (neglecting study), and this is smoking cigars and cigarettes. Besides the well-

. . . וגם לאלד מצא היצוד תחבולה איך ללכדם העון ביטול תורה, והנה עושו הסיגארען והפאפיראסען. שחזק מזה שהם מוזקים לגוף כידוע.

15 See Appendix A. זכור למרים, פרק י' 15

known damage to the body, they also damage one's soul by preventing the study of Torah. For one who smokes generally spends at least half an hour a day preparing and smoking. And once one is in the habit it is hard to break from it. . . . How well do I know that people will rationalize: "It is not in our power to break this habit!" The question is - Who caused you to be in this situation? You yourselves caused it! For had you not gotten yourselves in the habit in the first place, it would be easy for you to stop. You yourselves are responsible!

עוד גורמים היזק לנשמתו
בביטול תורה, כי האדם
המעשן יבלה לכהפיח חצי
שעה ביום על תיקון ועישון.
וכשנתרגל בזה איז כבר קשה
לו להמנע מהם... והנה ידעתי
גם ידעתי ששיבו הרבה
אנוסים היינו שלא הי' בכחנו
להמנע מזה אבל השאלה
תהיה מי גרם לכם שתהיו
אנוסים הלא אתם העצמכם
גרמתם לזה כי לולא
התרגלתם מקודם כי איז
הי' נקל לכם להמנע מזה
ואיך אתם בעצמכם חייבתם
בזה

Perhaps based on the Hafez Hayyim's chastisement, some Rabbis and Roshei Yishivot forbade students of their Yeshiva from smoking tobacco. Rabbi Yaakov Yitzchak Schneerson, the previous Lubavitch Rebbe, in a letter written over two decades before the Surgeon General's report, prohibited all students in Lubavitch schools under the age of 20 from smoking, and urged all others to quit. This prohibition "applies to all

the students wherever they are and is in effect 24 hours a day." Schneerson does not, however, give a rationale for his ruling or cite any sources.¹⁶

16 Rabbi Yaakov Yitzchak Schneerson of Lubavitch, Letter dated December 20, 1942, Igrois Koidesh, Vol. 7, (Brooklyn: Kehot Publication Society, 1983), p. 66. See also: Y. Grubner, "Kunteres B'Issur Ishun," HaDarom 53 (1984), pp. 71-83 for a further discussion on smoking in the Yeshiva, including actions by M.M. Schneerson and the Gerer Rebbe. See also Eliezer Menahem Shach's (Rosh Yeshivah of the Ponevez Yeshiva) 1984 letter in Menachem Slae, Smoking and Damage to Health in the Halachah, (Jerusalem: Acharai Publications, 1990) pp. 58-61. Rabbi Moshe Feinstein issued a prohibition on smoking in the Yeshiva in his Responsa "Regarding Smoking Cigarettes in the Beit Hamidrash and the Beit Haknesset Which Disturbs Others." Igrot Moshe, Hoshen Mishpat 2:18 (1981).

CHAPTER 2: MODERN HALAKHIC RESPONSE TO SMOKING

MODERN RESPONSA ON PROHIBITING SMOKING

The first responsum to discuss smoking as a health hazard was written a week after the publication of the Surgeon General's 1964 report. This responsum by Rabbi Moshe Feinstein (1895-1985), one of the most prominent modern poskim, is a mere 8 lines long and contains essentially two arguments: 1) smoking cannot be forbidden because "the multitude trample upon it" and 2) in cases of potential danger such as this "God protects the simple." Rav Feinstein also is reluctant to forbid it because "there are many great scholars in past generations and in our generation who smoke."¹⁷

Five years later, Rabbi Moses Aberbach, a member of the faculty of Hebrew Teachers College in Baltimore, offered a refutation to this position in the pages of Tradition: A Journal of Orthodox Thought. In his review, Aberbach combines the contemporary medical data with traditional sources and attempts to argue the points raised by Feinstein. While not mentioning Feinstein by name (or quoting his responsum), Aberbach states:

At the very least, therefore, smoking is a form of self-injury, which is overwhelmingly condemned and forbidden by rabbinic law. Since these facts have

ר' משה פיינשטיין: "דבר עישון סיגריות שרת אגרות משה" יורה דעה, חלק ב', סימן 17
 See Appendix B for full text and translation. מט (תשכד).

been common knowledge for some years, it is astonishing that authoritative Gedolim have not yet made any pronouncement on the question of smoking; that, on the contrary, strictly Orthodox Jews, including major rabbinic leaders, continue to indulge in cigarette smoking, without apparently giving any thought to the Issur involved.¹⁸

In the following years, other Orthodox Jewish writers echoed Aberbach's position in print; most notably Fred Rosner¹⁹ and Nathan Drazin.²⁰ In 1976, the Sephardic Chief Rabbi of Tel Aviv, Rabbi Hayyim David Halevy (1924-), publicly declared cigarette smoking to be a violation of Jewish law. His statement received a great deal of publicity in Israeli print and television and was widely reported in the United States.²¹

18 Moses Aberbach, "Smoking and the Halakhah", Tradition, Vol. 10, No.3 (1969), p. 54.

19 "Cigarette Smoking and Jewish Law", Modern Medicine and Jewish Law (New York: Yeshiva University, 1972) 25-31. Revised and retitled "Cigarette and Marijuana Smoking" in Modern Medicine and Jewish Ethics (Hoboken, New Jersey: Ktav Publishing House and New York, New York: Yeshiva University Press 1986) 363-375. Revised for second edition, 1991, 391-403.

20 "Halakhic Attitudes and Conclusions to the Drug Problem and its Relationship to Cigarette Smoking" in Judaism and Drugs, Leo Landman, ed.; (New York: Federation of Jewish Philanthropies of New York, Commission on Synagogue Relations, 1973) 71-81.

21 JTA Daily News Bulletin, November 28, 1976 and The New York Times, December 11, 1976, p. 2.

Rabbi Halevy formally stated the prohibition in a responsum of the same year.²²

Among the supports rallied by most of these proponents of a halakhic ban on smoking is chapter 4 of Maimonides' Mishne Torah, Hilkhhot Deot, in which he brings a long list of items that are proper to do in order to guard one's health. Most are taken from the Talmud but some, according to Rabbi Halevy, are derived from Maimonides' own experience as a doctor. Those who support a halakhic ban on smoking bring this law as a proof that all things which injure the body, as does cigarettes, must be avoided.

It was not until 1977 that a defense of Rabbi Feinstein's prohibition appeared in the pages of Tradition by the noted Halakhic scholar J. David Bleich.²³ Acknowledging the arguments of Aberbach, Halevy, Rosner and Drazin, Bleich finds that "...it is not possible to sustain the argument that smoking, in addition to being foolhardy and dangerous, involves an infraction of Halakhah as well." Bleich restates

22 ר' חיים דוד הלוי, "איסור העישון מכח ההלכה: עשה לך רב חלק ב' שימן א' (תשל"ז) 22. In subsequent Responsa, Halevy has covered a wide range of topics associated with smoking including whether cigarettes are permitted on Passover (3:18:a); if it is permitted to smoke after the afikomin (3:18:b); if one may make a vow to quit smoking (3:25); and if one's father tells you to buy cigarettes for him, are you required to obey? (6:58). See Bibliography for complete list.

23 J. David Bleich, "Survey of Recent Halakhic Periodical Literature: Smoking", Tradition, Vol. 16, No. 4 (1977), 121-123.

the dictums of "God preserves the simple" and "the multitude have trodden upon it" and explains them this way:

Willfully to commit a daredevil act while relying upon God's mercy in order to be preserved from misfortune is an act of hubris. . . Therefore, one may not place oneself in a position of recognized danger. . . Nevertheless, it is universally recognized that life is fraught with danger. Crossing the street, riding in an automobile, or even in a horse-drawn carriage for that matter, all involve a statistically significant danger. It is, of course, inconceivable that such ordinary activities be denied to man. Such actions are indeed permissible since "the multitude has trodden thereupon," i.e., since the attendant dangers are accepted with equanimity by society at large. Since society is quite willing to accept the element of risk involved, any individual is granted dispensation to rely upon God who "preserves the simple."²⁴

Bleich also notes an argument which distinguishes "immediate danger" from "potential danger." According to this formulation: "immediate danger must be eschewed under all circumstances; future danger may be assumed if, in the

24 Ibid., pp. 121-122.

majority of cases, no harm will occur." Bleich sees cigarette smoking as falling into the latter category because "no danger is present at the time the act is performed. The health hazards posed by smoking lie in the future."²⁵

Bleich's position is argued in a subsequent issue of Tradition by Dr. Russell Jay Hendel and Zvi I. Weiss,²⁶ who claim, among other points, that he lacks a complete understanding of the scientific data. In his defence, Rabbi Bleich remarks that:

Presently available information does not support the conclusion that the longevity of a majority of smokers is shortened as a result of indulgence in this habit. That would be a significant factor in terms of the point made with regard to the thesis [contrasting immediate and potential danger.²⁷]

And finally, Rabbi Bleich offers the interpretation that Maimonides' list of prohibitions in Deot 4 is exhaustive, rather than categorical. Since Maimonides did not mention smoking, he did not prohibit smoking. "To say that had tobacco been known in the Talmudic period, smoking would have been banned is not the same as saying that it is prohibited

25 Ibid., pp. 122-123.

26 "Communications: Smoking", Tradition, Vol. 17, No. 3 (1978) 137-142.

27 Ibid., p. 140.

according to Jewish law." Thus he concludes: "In the absence of a rabbinic decree an otherwise permissible activity may be ill-advised, deplorable and downright foolish - but not a violation of Jewish law."²⁸

In the same year as Rabbi Bleich's review (1977), the first Reform responsum on the subject of smoking was authored by Rabbi Solomon B. Freehof. This responsum makes no mention of the contemporary halakhic debate, but gives a review of the early legal literature on the topic regarding such issues as whether a blessing is needed, whether smoking is permitted on fast days, etc. Freehof then goes on to discuss the laws requiring one to guard one's health, both in Mishnah (Baba Kamma 8:6 and Talmud 91b) and in the Mishne Torah (Rotzeach 11:5) and concludes:

. . . If ever the medical profession definitely agrees that the use of tobacco is of danger to every human being, then, of course, it could well be argued that Jewish law, which commands self preservation, would prohibit its use. Until such time, we can only say that those for whom it is surely harmful would be carrying out, not only the recommendation of their doctor, but the mandate of Jewish law if they give up their use of tobacco.²⁹

28 Ibid., p. 142.

29 Freehof, p.56

This responsum of Freehof's is the only Reform ruling dedicated to the discussion of a full prohibition on smoking. However, in 1985 the CCAR Responsa Committee discussed a ban on smoking in the synagogue. After a review of the literature which included both Feinstein and Bleich, the Responsum concludes:

We, however, feel it is necessary to move beyond this cautious stance. When it is within our power to ban smoking, we should do so on the grounds of personal health as well as the health of our neighbors. It would, therefore, be appropriate for a synagogue to ban smoking entirely in its building or to restrict it to a few isolated areas.³⁰

In 1981, Rabbi Moshe Feinstein wrote a follow-up to his original, brief responsum. In it, he reiterates the principles "God protects the simple" and the inability to apply a ban in instances when "the multitude trample upon it." Feinstein concludes:³¹

Now, in matters such as these,	ולדברים כאלו דמי עישון
that is smoking cigarettes, those	סיגריות שאלו הרגילין בהן

30 CCAR Responsa Committee, "A Ban on Smoking in the Synagogue", CCAR Yearbook, Vol. XCVI (1986). Also in Walter Jacob, Contemporary American Reform Responsa, (New York: Central Conference of American Rabbis, 1987), pp. 19-20. Responsum dated December 1985.

31 ר' משה פיינשטיין, "אם יש איסור בעישון סיגריות" שרת אגרות משה: חושן משפט, חלק ב': סימן עז (תשמ"א).
See Appendix B for full text.

who are habituated to it enjoy it very much and are sorry when they do not have cigarettes, more than from want of good food, and even more than from lack of any food for a short time, and the damage from it is anyway only a bare minimum. And all the more so since they make up a very small number of those who are sick from cancer and other dangerous illnesses. . . . And of a fear such as this, it is said "God protects the simple."

נהנין מזה מאד ומצטערין
כשאין להם סיגריות עוד
יותר מחסרון מיני אוכלין
טובים. ואף יותר מחסרון
אוכלין לגמרי לזמן קצר.
והקלקול לחלות מזה הוא
עכ"פ רק מיעוט קטן
וכש להחלות מזה בטרטן
(קענסער) ובעוד מחלות
מסוכנות הוא קטן ביותר.
ובחשש כזה אמרין שומר
פתאים ה'.

In the same year, Feinstein wrote a Responsum relating to the issue of second-hand or side-stream smoke. Responding to the question of whether smoking can be prohibited in the Beit Hamidrash if the smoking bothers other students, Feinstein writes:³²

. . .for there are students who cannot tolerate the smoke and for whom it is hard on their bodies and they become sick from it. As

... שיש אברכים שאינם
יכולים לסבול העשן וגם
משמע שקשה לגופים שחולים
מזה שהרי כתבו בגוסס

32 ר' משה פיינשטיין: "בדבר עישון סיגארעטן בביהמ"ד וביהכ"ז שמפריע לאחרים שרת" אגרות משה: חושן משפט: חלק ב': סימן י"ח (תשמ"א).

they wrote in their request, it gives them much discomfort, headaches, injures their health, and may even shorten their lives. And regarding what they wrote, it is well-known that it is harmful to many people, and even those who do not smoke may be harmed by the smoke of others not far from them and from the smoke in the Bet Midrash. . . the law is clear and simple as I have written, that it is prohibited for smokers to smoke in the study hall if even one person is present who is discomforted from it, even if he is not injured and made ill, and certainly if the possibility of illness and injury exists.

הבקשה שאיכא להם צער גדול וכאב ראש ומזיק להבריאות שלהם. ואולי מקצר גם את החיים ולדבר כתיבתם ידוע שהוא דבר המזיק להרבה אינשי. וממילא יש לחוש שאיכא גם שיוכלו לחלות גם מהעשן שאחרים מעשנים לא רחוק ממנו. ומהעשן אשר נמצא בביהמ"ד. הדין ברור ופשוט כדכתבתי שאסור להמאשגין לעשן בביהמ"ד כשנמצא שם אף אחד שאינו מעשן שמצטער מזה אף כשאינו ניזוק ונחלה וכ"ש כשיש לחוש גם לחלות וליזוק מזה. . .

In a 1983 issue of Tradition, Rabbi Bleich gives a full review of the problem of second-hand smoke. Although he disputes the evidence that "exposure to usual levels of passive inhalation of tobacco smoke poses any hazard to the nonsmoker" he concludes:

. . . there is no doubt that all rabbinic decisors are in full agreement that smoking in public areas is forbidden when it causes actual harm, pain or discomfort to others. While the potential health hazards of passive inhalation of tobacco smoke may be subject to debate, it is certain that involuntary inhalation causes discomfort to many non-smokers. Such discomfort may not be imposed upon non-smokers who are entitled to "quiet enjoyment" in public areas.³³

The issue of passive smoking was also addressed at the 1982 convention of the Rabbinical Assembly (Conservative). A resolution was adopted that recognized the personal health hazards involved with smoking, but focused on supporting "local legislation that bans smoking in public places."³⁴

In 1982, Rabbi Eliezer Yehudah Waldenberg, a member of the Supreme Rabbinical Court, issued a Responsum that discusses both the issue of prohibiting smoking as a health hazard and prohibiting smoking when it puts others at risk. Among the sources Waldenberg cites is the Hafez Hayyim's

33 J. David Bleich, "Survey of Recent Halakhic Periodical Literature: Smoking in Public Places", Tradition, Vol. 21, No. 2 (1983), p. 177.

34 Resolution of the Rabbinical Assembly, 1982 (from Proceedings of the Rabbinical Assembly 44:182 [1983]).

view, 1982-83) 2:97.

remarks from ליקוטי אמרים noted in Chapter 1. Waldenberg, however, puts it into the context of Kagan's time:

<p>Now the ruling of the Hafez Hayyim zt"l of which we speak, places a restriction on a weak person as the doctors of that time ordained; which was before the full extent of the damage was revealed. Today when the shame of smoking has been revealed in the fullness of its serious evil, and its power to kill and destroy has been clearly shown, it applies to any person, even those who do not appear to be weak. . .</p>	<p>ודק של החזק וצ"ל הנאמרים בהגבלה על אדם חלש כפי שגזרו הרופאים שבזמנם עוד בטרם שנתגלה היקף היזיקו. כהיום הזה שנתגלה בהתו של העישן במלוא חריפות-רעלו ונראו בעליל עצומי הרוגיו ריבוי חללין חלים המה איפוא על כל בני האדם. הגם שלא נראים חלשי כת והחובה.</p>
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Waldenberg concludes:³⁵

<p>To summarize, it is Torah which comes to our words by Halakhah and it is lawful that</p>	<p>בסיכומם של דברים זאת תורה העולה מדברינו להלכה. כי שפיר יש מקום לאסור</p>
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ר אליעזר וולדנברג. אם יש לאסור על פי דין אישתי סיגריות: ציץ אליעזר: חלק טז; 35 סימן לט.

Reprinted in Assia 35, Vol. 9, No. 3, (Feb. 1983) pp. 10-15; and in Sefer Assia, pp. 252-257; and in Pe'er Tachat Efer, pp. 30-35. See Appendix B for full text. For a further discussion on when people are entitled to object to passive smoking, see S. K. Gross, Shevet ha-Kehati, No. 332, (Jerusalem, 1987) and Rabbi Yonah Metzger, "Ishun B'autobus Tziburi (Smoking on a Public Bus)," Meyam Hahalacha (Tel Aviv, 1987-88) 2:97.

there is room to prohibit smoking	העישון על פי דין תורה.
by Torah law. And similarly when	וכמו כן בשמעשנים
there are smokers in a public	במקומות ציבוריים יכול
place, it is legal for any single	שפיר כל אחד ואחד
person there who is afraid that	מהנמצאים שם שחושש מזה
it will afflict their health, to	לפיגוע בבריאותו למחות
prohibit them from smoking.	בידי המעשנים שלא יעשנו.

In 1985, the Dr. Falk Schlesinger Institute for Medical-Halackic Research at Shar'are Zedek Medical Center in Jerusalem, published a book of articles on medical ethics and Halakhah entitled Emek Halachah.³⁶ One chapter is devoted to articles on the adverse effects of smoking and the Halakhic response. In the following year, the Institute published its fifth volume of Sefer Assia, a "collection of original articles, abstracts and reports of matters of Halakhah and medicine."³⁷ This volume expands on the discussion of smoking from a medical and halakhic perspective. Some articles are repeated, such as overview of the halakhic issues by the editor, Dr. Mordechai Halperin. Others are newly included, such as the Responsa of Feinstein ("Smoking in the Beit

36 Mordechai Halperin (ed.), Emek Halachah, ASSIA, A Collection of Articles Relating to Physicians and Medicine in Halachah (Jerusalem: Emek Halachah Foundation, 1985), pp. 279-313.

37 Mordechai Halperin (ed.), Sefer Assia, vol. 5 (Jerusalem: Rubin Mass, 1986) pp. 220-262.

Hamidrash") and Waldenberg noted above. Both volumes contain medical articles on the hazards of smoking.

In 1988 the only book-length work devoted exclusively to the subject of smoking and the Halakhah was published in Israel. This book is titled: Pe'er Tachat Efer, which comes from Isaiah 61:3 "(Adonai has sent me. . .) to give them a garland instead of ashes." The author explains the title this way:³⁸

The name of this book. . . is a	שם בספר . . . בא לדמח על
hint about the proper path for a	הדרך בראייה ליהודי -
Jew - who steers straight in all	הנהגה ישרה בכל עניניו על
matters according to the Torah	פי בתורה והמצוה. אדם
and Mitzvot. One who chooses the	שיבחר בפאר בכמנעות
"garland" of abstaining from	מעישון תחת אפר בטיגריה.
smoking in place of the "ashes"	יצעד בדרך זו . . .
of cigarettes will stride in this	
path. . .	

This book contains reprints of many of the responsa discussed above as well as statements of many Roshei Yeshivot regarding smoking on holidays, weekdays and in public places. It also contains sections on the laws of guarding one's health and why smoking violates them, the laws against smoking on Yom Tov, the laws of "removing a stumbling block", and a section

38 פאר תחת אפר: העשון בימי חול ובימים טובים לאור ההלכה, דב אטינגר, ירושלים. תשמ"ט. דף ט'

on medical data regarding the effects of smoking. The book even includes an 18th century acrostic poem "denouncing smoking" written by the Sephardic rabbi Hayyim Modai (1720 - 1794).

In 1990, the most extensive English review of the Hebrew literature relating to smoking and the Halakhah was published by Rabbi Menachem Slae.³⁹ This 90 page booklet discusses the halakhic obligation to safeguard one's health, the prohibition against harming oneself, a discussion of the laws relating to damage to the fetus (of which smoking has been implicated), a listing of 36 mitzvot relating to smoking culled from the Sefer HaChinuch, a discussion of the injunction not to indulge one's passions (mentioned in Feinstein's 1981 responsum), and a short overview of the responsa prohibiting smoking. Rabbi Slae also mentions, but does not give the reference for, two anonymous pamphlets on the subject which were written by the same author identified only as "a yeshiva student." These pamphlets are entitled "Cigarettes and the Damage They Cause, In the Light of Halacha and Mussar" (1965) and "Ma'aleh Ashan (Raising Smoke): Aspect of Smoking in Halacha, Mussar and Health (1972).⁴⁰"

39 Menachem Slae, Smoking and Damage to Health in the Halachah, (Jerusalem: Acharai Publications, 1990).

40 Ibid., p. 42.

The most comprehensive responsum on the subject was issued in 1991 by the Va'ad ha-Halakhah of the Rabbinical Assembly of Israel.⁴¹ Like Waldenberg's, this responsum covers both the subjects of banning smoking as a personal health risk and passive smoking as a public health risk. This review notes either in its text or bibliography all the modern halakhic literature, including the English articles mentioned above. It is the only Hebrew text, for example, which references the Responsum of Solomon Freehof.

Beginning with the scientific evidence that smoking "harms the body and shortens the life,"⁴² this responsum reviews 13 halakhic points which indicate to the committee that smoking is not permissible, including such well-known principles as: the saving of a life overrides all laws, the sages have forbidden many things because they contain a danger to life, one does not depend on a miracle, and ba'al tashchit (do not be wasteful). In addition it gives a rebuttal to the arguments of Rabbis Feinstein and Bleich. The Va'ad's Responsum concludes:⁴³

. . .the Halakhah forbids	ההלכה אוסרת את
smoking, forbids it absolutely,	העישון איסור מוחלט וכל
and one who heeds it will be	הנזהר ממנו עליו תבוא ברכת

41 דוד גולניקין. "תשובה בעניין חס ההלכה לעישון: תשובות ועד ההלכה של כנסת הרבנים בישראל: כרך ד. (תשנ"א - תשנ"ב) ירושלים תשנ"ב. Responsum dated 1991.

42 Ibid., p. 37

43 Ibid., p. 49.

blessed. Similarly, it is forbidden to smoke in a public place a priori, but if someone transgresses and smokes anyway, any person in that place is permitted to prohibit it and the smoker is required to leave that place.

טוב. כמו כן. אסור לעשן במקום צבורי לכתחילה ואם עבר ועישן רשאי כל בן אדם הנמצא במקום למחות על כך וחייב במעשן להתרחק מהמקום.

This responsum was summarized in English by its author, Rabbi David Golinkin, in a 1991 issue of Moment.⁴⁴ This article focuses on the refutation of Feinstein's position. While acknowledging that "the Talmud discourages one from disagreeing with a prominent rabbi after his death since he cannot defend himself (Gitten 83b)" Golinkin finds that smoking is "no ordinary issue" since it is an issue of pikuach nefesh.⁴⁵ Thus, he concludes:

Rabbi Feinstein's position on smoking was one of the most unfortunate halachic decisions of our generation. If he had forbidden smoking in 1964, thousands of Jews who looked to him for halachic guidance would have kicked this deadly habit. Who knows how many lives might have been saved? But it

44 David Golinkin, "Responsa", Moment Vol. 16, No. 5 (October 1991) 14-15.

45 Ibid., p. 14.

is not too late. We hope that the ultra-Orthodox poskim will soon realize what all other poskim realized years ago: Smoking is lethal and is therefore forbidden by Jewish law.⁴⁶

It is interesting that Rabbi Golinkin here makes a distinction between the "ultra-Orthodox" Rabbinic decisors and all others. As the Va'ad's review makes clear in its citing of Rabbis Waldenberg, Halevy and others, the divisions are not so clear-cut.

The most recent halakhic discussion published on this subject is by The Orthodox Roundtable, a project of the Rabbinical Council of America. Four prominent North American Orthodox Rabbis discussed both passive and active smoking and concluded:

. . .based upon present research and the stated argument of Rabbi Moshe Feinstein, the smoking of cigarettes constitutes a blatant violation of the Torah's commandment against inflicting harm on oneself and hence is absolutely prohibited halakhah u'l Ma'aseh.⁴⁷

46 Ibid., p.15.

47 Rabbis Jeffrey Woolf, Reuven Bulka, Daniel Landes, Saul Berman; RCA Roundtable: Proposal on Smoking, 1992.

Further they suggested three "definite actions" to eradicate smoking from the Jewish community:

1. Smoking should be banned from all synagogue buildings, Day Schools, Mikva'ot and all other institutions and events under the supervision of the Rabbi.
2. Rabbis should themselves cease to smoke, and should publicly educate their congregations as to the medical and Halakhic severity of smoking. . .
3. Rabbis should take the lead in promoting smoke-free environments in their community as an important avenue of kiddush Hashem and kiddush HaHayyim.

The Roundtable is thus the first and only group to examine not only the legal issues involved, but to suggest leadership roles for its Rabbis as an ethical imperative.

THE LEGAL ISSUES

Having now surveyed the range of writings on the possibility of enacting a ban on smoking as a danger to health, the next step is to analyze the Halakhic arguments to examine their validity. First we must separate out the issues and principles invoked and examine their context and application.

For this stage it is first important to determine which of the legal texts are most appropriate to use. Many of the works examined in the previous section are articles by noted scholars whose opinions and observations are highly valued, yet they do not carry the full weight of Halakhic authority.

The category of legal literature that is most useful in this investigation is the "Responsa literature." That is, responses to letters sent to recognized poskim (Rabbinic decisors) which have been collected into published volumes. Of all the articles written about the possible Halakhic prohibition on cigarette smoking, five works fit into this category:

1. Rabbi Moshe Feinstein, "Regarding the Smoking of Cigarettes" (1964)
2. Rabbi Hayyim David Halevi, "The Prohibition on Smoking by Force of Halakha" (1976)
3. Rabbi Moshe Feinstein, "If the Smoking of Cigarettes is Forbidden" (1981)

4. Rabbi Eliezer Waldenberg, "Is it Forbidden By Law to Smoke Cigarettes?" (1982)
5. Rabbi Hayyim David Halevi, "Concerning The Prohibition on Smoking" (1989)

The full texts and translations of these five Responsa are found in Appendix B.

After much deliberation, I have decided not to include the responsum of the Rabbinical Assembly of Israel's Va'ad ha-Halakhah, even though its encyclopedic nature would have provided much insight into the legal discussion. This decision was based on the definition of "Responsa" as being rulings promoted to a halakhicly bound community, which the Va'ad does not represent. As Rabbi Eugene Borowitz noted in his book Renewing the Covenant:

. . . The halakhah is not just something that the ray "says" but a ruling that, once he has specified it, the people are required to do, classically, by God's own authority. Any concept of halakhah that forgoes this notion of requirement should not call itself "halakhah"; that is, if one is using the term figuratively, one should expect the resulting "halakhah" to have only figurative authority, with the true legislative power reserved for the self.⁴⁸

48 Rabbi Eugene B. Borowitz, Renewing the Covenant, A Theology for the Postmodern Jew (New York: Jewish Publication Society, 1991), p. 282.

It is the objective of this section to understand the legal issues as they relate within a law-based community. The application of this to the Liberal (non-halakhicly bound) community is discussed in Chapter 3.

From these texts, I have gleaned five legal principles on which the arguments both for and against smoking rely. Three are found in Maimonides' Mishne Torah: "Guard Your Health" (Deot 4:1), "Remove the Stumbling-Block" (Rotzach 11:4) and "The Sages Have Forbidden Many Things" (Rotzach 11:5). The final two principles are from the Talmud and actually operate in unison. They are: "God Protects the Simple" and "The Multitude Trample Upon it." (Numerous citations. See below.) Each of these will be examined in their original contexts and in their application towards our problem in the Responsa.

MAIMONIDES' MISHNE TORAH

Of all the sources brought to bear on the subject of prohibiting smoking, the ones most often quoted on both sides come from Maimonides' Mishne Torah. Three texts are used: Deot 4:1 which discusses the obligation to guard one's health, Rotzach 11:4 which discusses the laws of removing a stumbling block, and Rotzach 11:5 which notes that many things have been forbidden by the sages because of a danger to health.

Deot 4:1**"Guard Your Health"**

In Halakhah One of Deot chapter 4, Maimonides gives not only the commandment to guard one's health, but the underlying reason for insuring that one stays healthy:

By keeping the body in health and	הואיל והיות
intact one walks in the way of	הגוף בריא ושלם מדרכי השם
God, since it is impossible to	הוא, שהרי אי אפשר שיבין
have any understanding or	או ידע דבר מידיעת הכורא
knowledge of the Creator when one	והוא חולה. לפיכך צריך
is sick, therefore it is a	אדם להרחיק עצמו
person's duty to avoid whatever	מדברים המאכזרים את הגוף.
is injurious to the body, and	ולהנהיג עצמו בדברים
cultivate habits which are	המבראים והמחלימים.
conducive to health.	

The remainder of the chapter constitutes a long set of rules for proper eating, drinking, hygiene and exercise. As Halevi notes in his responsum (1976) many of the items on this list come from the Talmud, but many are derived from Maimonides' own experiences as a doctor.

In discussing this list of prohibitions Moshe Feinstein (1964) concludes:

And see in Maimonides,	ועין ברמבם פ"ד מדעות
chapter 4 of <u>Deot</u> in which he	שנקט שם עניני אוכלין
discusses food and drink which is	ומשקין הטובים לבריאות

good and healthy and that which is bad and not healthy. He does not write there in terms of a Biblical or Rabbinic prohibition as he does write in Rotzach 11:4 about the removal of a stumbling-block that endangers life.

הגוף והרעים להריאות הגוף
ולא כתב בלשון איסור לא
מדאורייתא ולא מדרבנן
שאסרו חכמים. כדכתב
בהסרת מכשול שיש בו סכנת
נפשות בפ"א מרוצח ה"ד

And in his second Responsa on the subject (1981) he concludes:

But (Maimonides) did not, despite all these things that he detailed, concern himself to forbid absolutely those things which the majority of people enjoy and which does not cause most people any damage. . . .

הוא משום דעל כל הדברים
האלו שפרט אותם לא שיך
לאוסרן ממש מאחר דהרוב
מקן עניני הנאה הן ולדובא
דרובא דאינשי לא מו"ק להו
כלום . . .

The issue thus becomes one of interpretation. Feinstein finds Maimonides' stress on avoiding unhealthy things not as a set of commandments but at most a suggestion of good behavior. Halevi, on the other hand, finds the list to be a set of examples of things which should be forbidden because they harm health. And further that they are laws and not suggestions, for:

All this Maimonides wrote in his great legal book "Yad Hazakah"

כל זה כתב הרמב"ם בספרו
ההלכות הגדול ה"ד החזקה.

[Mishne Torah]. Maimonides did not intend this to be good advice, for that is done richly in his other books and the many letters he wrote. Rather Maimonides intended to give a Halakhic ruling, on the same principle of the basic obligation that "Since by keeping the body in health and intact one walks in the way of God" whose source is "Guard yourself and guard your life."

לא בתכין הרמב"ם בכך לעצות טובות בלבד. כי זאת היה עושה בעשרות ספרים אחרים ואגרות רבות שכתב. כאן התכין הרמב"ם לפסוק הלכה, על אותו יסוד של החובה הבסיסית שהיה הגוף בריא ושלם מדרכי ה' הוא שמקורו בפסוק: נשמרתם מאד לנפשותיכם.

Halevi finds the source for Maimonides' ruling in Deuteronomy (4:9) "Only guard yourself and guard your lives very well. . . ." which is repeated as a warning (4:15) "And guard your lives very well. . . ." Maimonides, however, uses this as a proof-text for another concept, that of removing the stumbling-block:

Rotzach 11:4

"Removing the Stumbling-Block"

. . . Likewise, it is a positive commandment to remove any

... וכן כל מכשול שיש בו סכנת נפשות מצות

stumbling-block involving danger to life, to take heed and to be extremely careful with it, as it says "Only take heed, and guard yourself scrupulously (Deut. 4:9)." And if one does not remove any stumbling-blocks liable to cause danger, one has thereby failed to carry out a positive precept as well as transgressed [the negative commandment] "You shall not bring blood guilt [Deut. 22:8]."

עשה להסירו ולהשמר ממנו
ולהזהר בדבר יפה יפה.
שנאמר השמר לך
ושמור נפשך. ואם לא
הסיר והניח המכשולות
המביאין לידי סכנה ביטל
מצוה עשה ועבר בלא
תשים דמים.

As Feinstein noted above, this is written with the force of Halakhah, using the language of a prohibition. By contrasting these two sections, he finds the former to be less compelling Halakhically, but simply a guide for good living from Maimonides' point of view. Even so, one could argue that if the leaders of a community have the knowledge that smoking is a risk to health, it is their obligation to remove the stumbling-block by forbidding it. Not so, according to Feinstein:

. . . And there are many of them
for whom it is impossible to
avoid it, for many people are

... ואיכא הרבה מהן שאי
לזהור בהו להרבה אינשי
שטרידי בפרנסתן ואיכא

busy making a living and there are those so very poor that we cannot prohibit them, we can only stir up that which has been hidden and make them aware so that they know which things are good and which are bad, and advise them in the language that Maimonides adopted in the whole chapter.

הרבה שלא שייך שיהיו בזה
עניים שמרויחין רק מה
שמצומצם לכדי חייהם שלכן
לא שייך לאסור אלא רק
לעורר להעלמא במה שידעו
איזה דבר הוא טוב ואיזה
דבר הוא רע וליעץ להם
כהלשון שנקט הרמב"ם שם
בכל בפרק.

Rotzach 11:5

"The Sages Have Forbidden Many Things"

The text from Rotzach which immediately follows anticipates the argument that risking one's life is a private affair:

Many things have been forbidden by our Sages because they may endanger life. Now, if anyone transgresses these prohibitions, saying "I am placing only myself in danger, and what right have others to interfere?" or "I do not care about this" – such a person is punished by flogging inflicted for disobedience.

הרבה דברים אסרו חכמים
מפני שיש בהם סכנת נפשות
וכל העובר עליהן ואומר
הריני מסכן בעצמי ומה
לאחרים עלי בכך או איני
מקפיד בכך מכין אותא מכת
על מציח

Maimonides' statement here is repeated almost verbatim in Shulchan Aruch, Choshen Mishpat, 427:9 (which is the last section of Choshen Mishpat). According to Waldenberg, flogging is not the only option: "This means that others are allowed to motivate (the smoker) with any means available."

Waldenberg also discusses whether the prohibition is Biblical or Rabbinic. He concludes that it is Biblical even though the paragraph begins with the words "many things were forbidden by our Sages," i.e., the Rabbis. If it is Rabbinic, however, we would see an example of new items discovered to be harmful which were subsequently forbidden.

Following this passage are several rules of things that must not be done (much of which is quoted in Halevi [1976]) for example; not drinking from a river at night for fear of swallowing a leech (11:6), not drinking uncovered water for fear that a reptile might have drunk from it earlier and left behind its poison (ibid.), and not putting small coins in one's mouth for fear that it might have the dried saliva of someone who is diseased (12:4).

If Maimonides' list of harmful items here and in Deot 4 are examples, (i.e. the list is representative, not exhaustive) then it would seem possible to add to the list something recently discovered to be harmful, such as cigarette smoking.

Taken together, these three statements from Mishne Torah give a rationale for protecting one's own health, a sense of

responsibility to protect others, the ability to prohibit harmful things and a punishment for those who believe that they have a right to risk their own lives.

"GOD PROTECTS THE SIMPLE"

In the Talmud

In his two Responsa on the subject of smoking and health, Rabbi Moshe Feinstein relies on the principle "שומר פתאים ה'" "God protects the Simple." Feinstein notes that this phrase, from Psalm 117:6, is applied in three instances of potential danger in the Talmud. The first occurs in Niddah 31a:

It is learned (in a Beraita): One	תנא המשמש מטתו ליום
who has intercourse in the	תשעים כאילו שופך דמים
ninetieth day (of pregnancy), it	מנא ודע אלא אמר אביי
is as though blood has been shed.	משמש וחולך ושומר פתאים
But how could one know? Abaye	ה.
said, one has intercourse as	
usual and "God will protect the	
simple."	

Clearly to the Rabbis the ninetieth day of pregnancy carries with it some danger; whether to the fetus or to the mother is not made clear. If it is to the fetus it would be interesting to apply this towards the discussion of abortion,

for if one causes harm to a fetus on the ninetieth day, is this actually "shedding blood"?

But the question that is being addressed here is, how can one know when the ninetieth day of a pregnancy has arrived? If it is a matter of shedding blood (i.e. murder) than accuracy would be crucial. Rather, according to this principle, one goes about normal life and trusts that God will protect us in our ignorance.

The second case, from Niddah 45a deals also with pregnancy:

Did not Rav Bibi teach in the presence of Rav Nachman: Three women make use of an absorbent (to avoid pregnancy): a minor, a pregnant woman and a nursing mother. The minor because otherwise she might become pregnant and die. A pregnant woman because otherwise it might cause a spontaneous abortion². A nursing mother because otherwise she might have to wean her child prematurely and it would die. And what is a 'minor'? From the age of eleven years and one day to the age of twelve years and

והתני רב ביבי קמיה דרב
נחמן ג' נשים משמשות במוך
קטנה מעוברת ומניקה קטנה
שמה תתעבר ותמות מעוברת
שמה תעשה עוברה סנדל'
מניקה שמה תגמול את בנה
וימות ואיחודי קטנה מבת י"א
שנא ויום אחד ועד י"ב שנה
ויום אחד פחות מכאן או יתר
על כן משמשת והולכת דברי
ד"מ וחכ"א אחת זו ואחת זו
משמשת כדרכה והולכת ומן
השמים ירחמו שנאמר שומר
פתאים זו

one day. One who is less or more than this age carries on with intercourse. So says R. Meir. But the Sages ruled: The one as well as the other carries on with intercourse in a normal manner and mercy will come from heaven, as it says in Scripture: "God protects the simple."

This example is often quoted in the discussion of the permissibility of contraception in Jewish law. Although the text states that there is a danger to the life of a minor who is physically capable of conception but is at great risk if she does so, the sages ruled that she still must carry on with her marital intercourse during the year of danger. And she will be protected because "God protects the simple."

This case is very different than the previous one. The danger to the underage woman is known and accepted, and there is no difficulty in determining when the dangerous period arises. Nevertheless, she is to carry on as if there is no danger, relying on Providence to protect her.

Although not noted by Feinstein, this text recurs verbatim three more times in the Babylonian Talmud: Yebamot 12b, Yebamot 100b and Ketubot 39a.

The third Talmudic example of שומר פתאים ה' occurs in Shabbat 129b. This instance has to do with the proper times for blood-letting:

The correct times for blood-letting are on a Sunday, Wednesday and Friday. . . . Why not on Tuesday? Because then the planet Mars rules on even-numbered hours of the day. But on Friday it also rules at even-numbered hours! But since the multitude trample on it, "God protects the simple."

פורסא דדמא חד בשבתא
ארבעא ומעלי שבתא . .
כאחד בתלתא בשבתא מאי
טעמא לא משום דקיימא ליה
מאדים בזווי מעלי שבתא נמי
קיימא בזווי כיון דדשו ביה
רבים שומר פתאים ה'.

This discussion also deals with a "known danger." The planet Mars is often associated with war and pestilence. Even-numbered hours of the day are similarly regarded as being susceptible to disaster⁴⁹. The combination of the two is particularly dangerous. So Tuesday, the day when the planet Mars rules the even-numbered hours, is not an appropriate day for blood-letting. However, the objection is raised that Mars rules the even-numbered hours on Friday as well! But it seems that blood-letting was a common custom on Friday and therefore "God protects the simple."

⁴⁹ See Joshua Trachtenberg, Jewish Magic and Superstition, (New Jersey: Behrman, 1939), pp. 251-253.

Note that in this instance, even though a danger is apparent, the language used is not one of "forbidding." The discussion is on appropriate or auspicious days for blood-letting.

This example combines the principles of *שו"ת פתאים ה'* and *דשו* : "God protects the simple" and "the multitude trample on it," the second of Feinstein's principles which allow leniency. Even though it is known to be a danger, most people do it. Therefore, it cannot be forbidden.

Also not mentioned by Feinstein in his responsa, the phrase "God protects the simple" is applied to three more instances in the Talmud. The first is from Yebamot 72a and deals with other inauspicious days:

R. Papa said: on a cloudy day and on a day when the Shuta³ (south wind) is blowing, we do not perform circumcisions nor is one bled. But today since the multitude trample on it (we do it and) "God will protect the simple."

אד פפא הלכך יומא דעיבא
יומא דשותא' לא מהלינן
ביה ולא מסוכרינן ביה
האידינא ודשו בה רבים
שו"ת פתאים ה'.

Like the previous instance, this case deals with inappropriate days for performing important functions. The text occurs in the context of a discussion on why the Israelite men were not circumcised in the wilderness. One

answer given is because the North wind, which brings favorable weather, did not blow on them throughout their forty years of wandering. Thus, a circumcision, and similarly a bleeding, should not be performed on cloudy days or when the Shuta, a destructive south wind, is blowing.

Like the previous example, this one combines the rationale of "the multitude trample on it" with "God protects the simple." Since people are doing it, even though they should not, God will protect them in their innocence. These are the only two instances in which the phrase "the multitude trample on it" appears in the Talmud.

The example of "God protects the simple" in Avodah Zarah 30b refers to the prohibitions of drinking wine that may have been used for idolatrous purposes. The rule is that diluted wine is rendered unfit and should be suspect if it is left uncovered (30a). However:

R. Hiyya b. Ashi said in the name of Samuel: the opening of a fig does not (come under the rules of liquids) left uncovered. For it is taught: R. Eliezer says, One may eat grapes and figs at night and need not fear, for it says: "God protects the simple."

אמר רב חייא בר אשי אמר
שמאל פי תאנה אין בו משום
גילוי כמאן כי האי תנא
דתניא רבי אליעזר אומר
אוכל אדם ענבים ותאנים
בלילה ואינו חושש משום
שנאמר שומר פתאים ה'

This instance is especially appropriate to our discussion on the dangers of smoking in that one fears leaving wine uncovered because a snake may come and drink from it and poison the wine (30a). The objection, then, is not only of using wine that may have an idolatrous use but that it may actually have a hidden danger to life.

The final example is found in Sanhedrin 110b. This instance is more philosophical than legal. It is not involved with dangerous elements but rather enlightens the meaning of the word פתאים or "simple."

The children of the wicked of Israel do not enter the world to come. . . this is according to Rabban Gamaliel. R. Akiva said they do enter to world to come, as it is written, "God protects the simple" and in the cities of the sea the word for child is "simple."

קטני בני רשעי ישראל אין
באין לעוה"ב. . . דברי רבן
גמליאל ר"ע אומר באים הם
לעוה"ב שנא שומר פתאים ה'
שכן קורין בכרכי הים לינוקא
פתיא.

פתאים is thus not only "simple" but childlike and innocent. One who is aware of a danger cannot claim innocence and rely on God's Providence. And today, there are few who could honestly say that they are wholly unaware of the dangers caused by cigarette smoking.

30. In addition to the response discussed here, it should be noted that the Talmudic text which I have not included as a primary text includes an extensive refutation of the application of this principle (see section 3.8.11-9).

"GOD PROTECTS THE SIMPLE"

In the Responsa

Since Feinstein raises the points of "the multitude trample upon it" and "God Protects the simple" as his major rationale for refusing to enact a ban on smoking, it would seem that any responsum coming to the opposite conclusion would have to refute its application. And in general they do.⁵⁰

Waldenberg, in his responsum, while not mentioning Feinstein by name, notes that there are some who rely on this principle. After discussing some of the medical evidence showing the harmful effects of smoking, he states:

In light of this, clearly there is not a shadow of doubt that there is no place for self-congratulations (as some would like) and to rule that since the multitude trample on it, one can apply the Rabbinic principle which appears in several places which notes that it is a universal custom in places where there is a fear of danger they

לאור זה נראה ברור ללא צל של ספק כי אין מקום להתברך בלב (כפי שאחרים רוצים לומר כן) ולהודות כי חיות והעישון רבים דשים בו אם כן יש להחיל על זה במאמר חדל בכמה מקומות על מנהג עולם במקום שיש לחוש לסכנה שפסקו פסקם ואמרו: זהאינא דדשו בו רבים

50 In addition to the Responsa discussed here, it should be noted that the Responsum of the Va'ad Halakah which I have chosen not to include as a primary text includes an extensive nine point refutation of the application of this principle. See there section 3.8.(1-9).

ruled: "Since the multitude trample on it, God protects the simple." But they only ruled so in cases where [the danger] was not apparent and when its existence is not seen; or conversely where many see it and the entirety pass it and it does not harm them (see for example in Yebamot 4 12b and 72a and also in Avodah Zara 30b). But in the example before us, scientific investigation and medical experience has in the last decades uncovered the terrible extent of bodily damage caused by smoking. The awareness is universally known. . . If so, it is most certainly absurd to ignore this, to dismiss it out of hand, and to say that in an instance such as this one says "God protects the simple."

שומר פתאים ד'. דלא אמרו
 כן אלא במקומות דלא
 מתגלה הבתם והמציאות
 לא הראתה אל היפוכו של
 דבר, אדרבא ראו שרבים וכן
 שלימים עברו ולא ניזוקו (עיין
 לדוגמא במסכת יבמות ד'
 י"ב ע"ב ודף ע"ב ע"א וכן
 בע"ז דף ל' ע"ב). אבל
 בכגון הנידון שלפנינו אשר
 בעיקר בעשרות בשנים

באחרונות לאור המחקרים
 המדעיים והרפואיים השונים
 נתגלו בממדים מבהילים
 היזיקי הגוף המרובים
 והמסוכנים אשר העישן גורם
 בכפוף, והתדעה הזאת גם
 יצאה טבעה בעולם. . .
 אם כן בודאי ובודאי
 שאבסורדי הוא להעלים
 עין מכל זה ולהפסיד בלאחר
 יד ולומר כי גם על כגון זה
 נאצר שומר פתאים ד'.

Thus Waldenberg finds that the principle of *שומר פתאים ה'* applies only to cases where the danger is not apparent: either it is unseen or is subject to dispute because the majority who interact with it are unharmed. It is likely that Feinstein would agree with this, and certainly in 1964 felt comfortable saying that "the majority are not harmed." In 1981, the scientific evidence was harder to refute. Never-the-less, Feinstein concluded:

Now, in matters such as these, that is smoking cigarettes, those who are habituated to it. . . make up a very small number of those who are sick from cancer and other dangerous illnesses. . . But in any case, of all the sick found in hospitals and those who do not come to hospitals, certainly these (smokers) are a minority compared to those of the world who do not contract anything. And of a fear such as this, it is said "God protects the simple."

ולדברים כאלו דמי עישון סיגריות שאלו הרגילין בזה... והקלוקל לחלות מזה הוא עכ"פ' רק מיעוט קטן וכיש להחלות מזה בסרטן (קענסער) ובעוד מחלות מסוכנות הוא קטן ביותר... מ"מ' ודאי כל החולים הנמצאים בבתי החולים וגם בצירוף אלו שלא באו לבתי החולים הוא מיעוט לגבי אלו דעלמא שנמצאו בבתיהם שלא נחלו כלל, ובחשש כזה אמרין שומר פתאים ה'.

Feinstein thus argues the causal connection of smoking to cancer, since one cannot say that the majority of those who

have cancer are smokers. However, he does not defend or refute the opposite position: that the majority of those who smoke contract cancer (and other diseases). To Waldenberg and others, this is the heart of the argument. If "the multitude were to trample on it" and not suffer adverse effects, one could apply the principle "God protects the simple." However, with each passing year the scientific data disclaims further that possibility. The multitude do trample on it, they do suffer the consequences, and the effects are, today, well known.

In Halevi's first responsum (1976), he makes no mention of either principle. His second responsum (1989) is devoted to a direct refutation of applying "God protects the simple." to the case of smoking. However, his observations differ from those of Waldenberg. Noting the application of this principle to the case of not performing circumcision on an inauspicious day (Yebamot 72a), Halevi writes:

. . . And the poskim do not mention this prohibition at all. Neither does the Shulchan Aruch, although the Bet Yosef (262). . . brings the opinion of Rabainu Yerucham who writes that we should not postpone a circumcision on account of a cloudy day, but we can postpone

... והפוסקים לא הזכירו איסור זה כלל וגם מן לא הזכירו בשו"ע. אף שבבית-יוסף (סימן רסב). . . בהיא סברת רבינו יוחנן שכתב שאין לדחות מילה בשביל יום מעונן. אא"כ התירוק חלה מטורח חודך וכו' עיי"ש. הרי שידר לחלק בין דבר

it if the baby is sick. We see here a differentiation between something which is not particularly logical (even if it is natural) like a cloudy day, and something which is understood to be natural, like the weakness of a baby. . . . But the principle which arises from all of this is that when the danger is natural and logical, and particularly when the danger is proven and even more so when all the physicians confirm that the danger of smoking is very great, we certainly cannot rely on the principle "God protects the simple." Can a person put a fire to his breast and his clothes do not catch fire? Therefore it is clear that smoking is very dangerous to health and is forbidden by force of Halakhah.

שאינו מתפס כל כך בהגיון
(אף כי לכאורה דרך טבא
היא) כיום מעונן. לדבר שהוא
מוכן בדרך הטבע כחולשת
התינוק אך
כלל העולה מכל דברינו.
שבדבר שהסכנה נתפסת
בדרך הטבע וההגיון. וכל-
שכן כאשר היא מחשית
ובדוקה. וכש בן בנו של
כש כשכל הרופאים מאשרים
כמה גדולה סכנת העישון
והוכח הדבר. ודאי אין לומר
שומר פתאים ה'. היחתה איש
אש בחיקו ובגדיו לא
תשרפנה. ולכן פשוט
שהעישון הוא מסוכן מאד
לבריאות ואסור הוא מבח
הדין.

Halevi thus brings a new rubric: "God protects the simple" is applicable not only to cases where the danger is

unknown but also to those where the danger is not logical or natural. Smoking, however, since its effects are known and natural, as well as being subject to scientific analysis, is not subject to the exemption of "God protects the simple."

"THE MULTITUDE TRAMPLE UPON IT"

As noted above, in two Talmudic instances (Shabbat 129b and Yebamot 72a) the rubric "For the multitude trample upon it" is combined with "God protects the simple." In fact, it is given as a rationale for relying on God's Providence for protection, which is normally not allowed. This prohibition is derived from Ta'anit 20b:

One never stands in a dangerous place and says "Make a miracle for me!" For no miracle will be made. And one who continues to say "Make a miracle" is whipped as deserved. R. Hana said: What is the proof text? "I am unworthy of all the kindness and all the truths (that you have shown your servant. . . [Gen. 32:11]).

לעולם אל יעמוד אדם במקום
סכנה ויאמר עושין לי נס
שלא אין עושין לו נס ואם
תימצ' לומר עושין לו נס
מכין לו מזכותיו אמר רב
חנן מאי קרא דכתיב קטנתי
מכל החסדים ומכל האמת

See also in Shabbat 32a.

Interestingly, none of the Responsa discuss the point of "the multitude trample upon it" separately from "God protects

the simple." Clearly not everything that the people do is Halakhically permissible simply because they do it! Only in the instances discussed above: when the danger is not apparent or, according to Halevi, when it is not logical or natural, may the danger be ignored and God's Providence be relied upon. The multitude trampling upon the prohibition is seen not as a case for leniency, as it might appear in the Talmud, but as another datum to show that the supposed harm is not real. Again, medical evidence continues to accumulate showing that even though many people continue to smoke, they are putting themselves at risk when they do so.

And finally, if "the multitude trample upon it" means that society has chosen to accept the risk as they do with riding in automobiles or walking across busy streets, as Rabbi Bleich has suggested⁵¹, then society's current attitude towards smoking must be taken into account. Smoking is no longer widely accepted or tolerated. Many restaurants in the United States have banned smoking entirely and an effort is presently underway to ban smoking in any public facility. High taxes on cigarettes are gaining legislative popularity. These efforts are aimed particularly at protecting non-smokers from the dangers of second-hand smoke, but reflect an ongoing recognition of the dangers inherent in smoking.

51 (1977), p. 122.

NOTES TO TRANSLATIONS

1. סנדל: According to Jastrow (p. 1004) a "flat, fish-shaped abortion". See Niddah 3:4 "A woman who discharges a sandal-like foetus or a placenta" also Tosefta Nidda 4:7 "the sandal of which they speak means a foetus resembling the sea-fish called sandal."
2. יומא שותא: a day when the shuta, a severe south wind, blew. See also Shabbat 32a.
3. עולם הבא: עולם - "The world to come"
4. על כל פנים: עכ"פ - "In any case"
5. מכל מקום: מ"מ - "anyway"

CHAPTER 3: JEWISH RESPONSIBILITY

RABBINIC AUTHORITY

Having now surveyed all the material on tobacco smoking and Jewish Law and having analyzed the legal principles and their application to our problem, we now must integrate our findings into the life of a Jewish person. What should a Jew do with this information? What is the Jewish responsibility to act on this knowledge?

Before answering these questions, we must know who this Jewish person is. In our modern world the relationship to Jewish law and ethics varies according to affiliation. Two large categories are often invoked: "Traditional" and "Progressive" based to a large extent on the interpretation of Jewish law. For the purposes of this work, the full spectrum of these broad categories are represented by two examples: Modern Orthodoxy and Reform Judaism.

MODERN ORTHODOX

Those in the Modern Orthodox community might initially find themselves in a quandary over this issue. We have identified five Responsa by three different Rabbis which are directly on the point of this possible prohibition. Two of these, those written by Moshe Feinstein, come to the opposite conclusion of the remaining three: cigarette smoking, while

ill-advised, cannot be banned entirely. How is one to judge between conflicting Responsa?

The late Rabbi Moshe Feinstein held a unique position in the Modern Orthodox community. He was considered Posek ha-Dor, the great Rabbinic decisor of our generation. Feinstein was president of the Union of Orthodox Rabbis and chairman of the American branch of the Mo'ezet Gedolei ha-Torah of Agudat Israel. His rulings are accepted as authoritative by Orthodox Jews around the world.⁵²

Had Feinstein only written the first of these two responsa, one could make the argument that the scientific evidence indicting smoking as a health hazard was far from conclusive in 1964. However, his second responsum was written in 1981, at a time when the evidence was far more convincing, at least to Rabbis Halevi and Waldenberg. In addition, Feinstein acknowledged the health hazards of second-hand smoke in his responsum banning smoking in the synagogue and study halls of the Yeshivoth,⁵³ and even used risks to health as a partial reason for banning marijuana smoking.⁵⁴ Thus Feinstein's responsa must be judged not on historical factors like a paucity of scientific data, but on their own merits.

52 Encyclopedia Judaica (1973)

53 ר' משה פיינשטיין, "דבר עישון סיגארעטן בביהמ"ד וביהכ"נ שמפריע לאחרים שרת אגודת משה, חשן משפט, חלק ב'; סימן י"ח (תשמ"א).

54 ר' משה פיינשטיין, "איסור עישון סמים, אגודת משה יורה דעה, חלק ב'; סימן לה (תשל"ג).
 54 Fred Manner, "Rabbi Moshe Feinstein's Influence on
 Vol. XX (1990), p. 62.

The dilemma was expressed movingly by Dr. Fred Rosner, to whom Rabbi Feinstein's 1981 responsum was addressed:

I still do not fully understand (Rabbi Feinstein's) reasoning and continue to press my personal views about the dangers of smoking and my conviction that it should be halachically prohibited. Nevertheless, I accept Rabbi Feinstein's ruling unhesitatingly. He was my posek (rabbinic decisor). . . His written responsa and other writings are sacred and accepted as authoritative by all Jews.⁵⁵

Dr. Rosner, who was one of the first writers to suggest that cigarette smoking was counter to Jewish law, finds himself at intellectual disagreement with his posek, and is no doubt aware that other poskim have ruled differently. What then is the extent of Rav Feinstein's authority over him. Can Dr. Rosner tell an Orthodox patient to quit smoking based on his belief that it is against Jewish Law?

A recent issue of Tradition, a magazine published by the Rabbinical Council of America (Orthodox), was devoted to the subject of Rabbinic authority. One article by Dr. Eli Turkel

55 Fred Rosner, "Rabbi Moshe Feinstein's Influence on Medical Halacha" The Journal of Halacha and Contemporary Society, Vol. XX (1990), p. 62.

is titled "The Nature and Limitations of Rabbinic Authority."⁵⁶

In it, Dr. Turkel writes:

In summary, there is no way, in contemporary society, of deciding who is "the" gadol ha-dor whose opinions are halakhically binding. In practice, each person must choose his or her own rabbinic authority and follow his decisions. It is also clear that one should not choose a different rav for each she'elah based on what he or she knows in advance to be the rav's opinion on that issue.⁵⁷

Authority is not imposed, according to this view, but accepted. As long as the authority of the posek is granted by the individual who voluntarily accepts it, it is binding. However, it is not sufficient to simply accept the word of the Rav. Dr. Turkel points out that:

Rabbi Feinstein himself was very insistent that his teshuvot were binding only for the person who had asked the question and that, for every one else, they were meant only as a guide. At the end of his introduction to the first volume of his responsa, he requests that his readers study each issue for

⁵⁶ Tradition 27:4 (1993), pp. 80-99.

⁵⁷ Ibid. p. 87.

themselves and not simply take his rulings at face value.⁵⁸

Dr. Rosner, then, may well be bound by the ruling of Rabbi Feinstein, since he was the person to whom the (1981) responsum was addressed. However, other Orthodox lay people who consider Rabbi Feinstein to be their Rav are encouraged to study the discussion using Feinstein's ruling as their guide. Similarly, they would be obligated to the authority of their own rabbi.

What about the Modern Orthodox Rabbi, to whom the community looks for guidance. May he come up with a ruling that is in opposition to that of one of the great poskim of the generation? And how does such a Rabbi decide between two opposing rulings?

In the same issue of Tradition mentioned above is an article by Rabbi Jeffrey R. Woolf (one of the members of the RCA Roundtable whose discussion on smoking is quoted above) on the dilemma of an Orthodox Rabbi who must decide between the differing opinions of two poskim.⁵⁹

Rabbi Woolf notes two modern Responsa which give authority to the individual Rabbi to come to a decision based on his own understanding of the law, even if it conflicts with

⁵⁸ Ibid. p. 86.

⁵⁹ Jeffrey R. Woolf, "The Parameters of Precedent in Pesak Halakhah", Tradition 27:4 (1993), pp. 41-48. The following quotes are taken from this article.

the findings of his teacher. Both responsa base their decision on the Talmudic passage from Bava Batra 130b-131a:

Rava said to Rav Papa and to	אמר רבא לרב פפא
Ravina b. R. Joshua: Should a	ולרב הונא בריה דרב יהושע
decision of mine come before you,	כי אתי פסקא דדינא ידי
and you notice a flaw in it, do	לקמיכו חזית בית פירכא
not tear it up until you have	לא תקרעוהו עד דאתית
brought it to me. If I have an	לקמאי אי אית לי טעמא
argument (i.e. in reply to the	אמינא לכו ואי לא הדרנא
objection), I will tell you. If	בי לאחר מיתה לא מיקרע
not, I will retract. After I	תקרעוהו ומגמר נמי לא
die, neither tear it up nor learn	תגמרו מיניה לא מיקרע
from it. Do not tear it up, for	תקרעיניה דאי הואי התם
perhaps if I were still alive I	דלמא הוה אמינא לכו
would have resolved the	טעמא מגמר נמי לא תגמרו
difficulty. Do not learn from	מיניה דאין לדיין אלא
it, because a judge must rely	מה שעניו ראות
upon his own opinion.	

The first responsum Woolf brings is by R. Hayyim David Halevi:⁶⁰

In reality, the concept of "a judge must rely upon his own opinion" has a much deeper meaning. . . that a judge's decision must be based solely upon the depth of his understanding of the relevant

60 Quoted in Woolf p. 42. חיים דוד הלוי עשה לך רב 61:2 (1989)

Halakhah. . .No precedent binds him, even if it is a ruling of a court composed of scholars greater than he, or even of his teachers.

And the second responsum Woolf brings which gives authority to a scholar to produce a ruling which counters that of a prior posek comes from none other than Moshe Feinstein himself:⁶¹

(Referring to Rava's statements). . .so long as they could not find a response it was forbidden for them to rule in accordance with Rava, even though he was their Master! And if so, a fortiori and a fortiori again there is no reason to be concerned about objecting to the opinions and differing with the great Sages of our generations, even the greatest of the great as long as it is done with deference and respect.

Thus, Woolf concludes:

Assuming that a Rabbi possesses the requisite scholarly skills, is thorough in his analysis, pursues his study with sensitivity in a modality of yir'at Shamayim, and expresses himself respectfully, civilly and substantively, he is morally and halakhically obliged to follow the

61 Ibid. ר' משה פינשטיין, אגרות משה יורה דעה חלק ג', סימן פז, (תשל"ז).

dictates of his analysis and legal convictions as to the proper path the Torah instructs him to take.⁶²

Using this understanding, then a Modern Orthodox Rabbi would be freed of the dilemma posed by Dr. Rosner. He would have to look at the Responsa and the principles involved and judge them on their own merits without regard to the obvious respect held for one's teacher who may have ruled differently.

It seems to me that the application of the principles "The multitude trample upon it" and "God protects the simple" upon which Rabbi Feinstein's arguments lie do not hold up to the powerful arguments brought by Rabbis Halevi and Waldenberg. They cogently argue the these principles are applied by the Talmud only in narrow contexts in which the danger is unknown, unclear, or illogical. The danger caused by smoking cigarettes is none of these things. And most importantly, this exemption pales before the principle of pikuah nefesh, the obligation to save a life. Therefore, I believe that a Modern Orthodox rabbi would be compelled to uphold the ban on cigarette smoking enacted by Rabbis Halevi and Waldenberg even over the objection of Rabbi Feinstein.

62 Ibid. p.43

REFORM

The problem of Rabbinic authority is different for the Reform Jew, whether a lay person or Rabbi. He or she does not recognize the Halakhah as binding, or the rulings of any posek to be absolute. Halakhah, like other aspects of Jewish learning, are to be consulted as a guide to inform the individual conscience. As stated in the Central Conference of American Rabbis' Centenary Perspective (1976):

Reform Judaism shares this emphasis on duty and obligation. Our founders stressed that the Jew's ethical responsibilities, personal and social, are enjoined by God. . . Within each area of Jewish observance Reform Jews are called upon to confront the claims of Jewish tradition, however differently perceived, and to exercise their individual autonomy, choosing and creating on the basis of commitment and knowledge.

Thus one is free to exercise individual autonomy but within the boundaries of ethical responsibility and knowledge. On this subject, Rabbi Eugene Borowitz wrote:

If rational people should legislate for themselves, then tradition may be a guide or spur to us, but it cannot command our assent. Conscience must be our ultimate authority. When conscience conflicts with Jewish law, Halakhah, as with regard to women's

rights, Reform Jews feel it their duty - literally - to break with Jewish tradition.⁶³

The case of smoking, however, is one of those instances when the ethical and the legal majority opinion coincide. The Jewish conscience, so accustomed to the emphasis placed on saving and preserving life within Jewish tradition, cries out for the need to preserve those who are needlessly putting their lives and those around them at risk by smoking cigarettes. Even the argument that one has a right to place one's own self in danger finds no basis in Jewish law or ethics. In the face of growing scientific evidence of the dangers of smoking, there can be no ethical stance which justifies the habit.

Similarly, an understanding of the Jewish legal principles which have been discussed here show that, despite a minority opinion, cigarette smoking is contrary to Jewish law. The legal justifications do not stand up to the overwhelming emphasis Jewish law places on preserving ones health and avoiding avoidable dangers. The technical problems of whether a halakhic ban on smoking can be enacted are of less concern within the Reform Jewish community. Such a prohibition would likely convince few Reform Jews to quit, but

⁶³ Rabbi Eugene B. Borowitz, Reform Judaism Today, Vol. 1. (New York: Behrman House, 1978), p. 96.

an appeal to the ethical consciousness and a program of information might.

RABBINIC LEADERSHIP

Armed with the knowledge of the Jewish position towards cigarette smoking, and the frightening statistics published by scientists and governmental institutions, it seems clear to me that any Rabbi has a responsibility to take a leadership role within his or her community. An Orthodox Rabbi should study the relevant responsa and source texts. In addition, he should examine his own conscience and the relevant medical data. Then, should his findings agree with those of Halevi, Waldenberg and others, he should use his halakhic authority to enact a ban on smoking within his community.

A halakhic ban would have less practical meaning within Reform, Conservative and Reconstructionist communities. Nevertheless, a Rabbi of these communities who has similarly consulted the sources and his or her own conscience and who arrives at a similar conclusion should use their authority as spiritual leaders to inform their congregations about their legal findings as well as to cajole them towards appropriate action.

Should they not come to this conclusion, however, certainly all would agree that under Jewish law, one is not obliged to endure second-hand smoke. Therefore any Rabbi

should be compelled to enact the suggestions of the RCA Roundtable and ban public smoking in all synagogue buildings.

This instance is one of the rare examples in which Rabbis from every Movement can unite to expunge a danger to the life and health of the people. From a Halakhic and ethical point of view there can be a unanimity of opinion and efforts at education and action can be coordinated.

It is not often that actions undertaken by Rabbis can literally save lives. This is one instance in which thousands can be saved. We are compelled by Jewish law and conscience to act.

APPENDIX A

ר' ישראל מאיר הכהן (חפץ חיים) זכור למרים (ירושלים תשי"ח) פרק י
 Rabbi Israel Meir Kagen (Hafetz Hayyim), Zecor L'Miriam
 (Jerusalem, 1958), chapter 10. Date of original
 publication not given.

ר' ישראל מאיר הכהן (חפץ חיים) ליקוטי אמרים (תשכ"ז) פרק י"ג
 Rabbi Israel Meir Kagen (Hafetz Hayyim), Likutei Amarim, (1967)
 Ch. 13. Date of original publication not given.

ר' יעקב יצחק מליובאוויטש (Schneerson) . אגרות-קודש. סדר ז' (תשי"ג) עמ' סז. ברוקלין.
 (1983)
 Rabbi Yaakov Yitzchak Schneerson of Lubavitch, Letter dated
 December 20, 1942, Igrois Koidesh, Vol. 7, (Brooklyn:
 Kehot Publication Society, 1983), p. 66.

Hafetz Hayyim

Zecor L'Miriam, Ch. 10

. . .and now we find many people who do not read newspapers and are not even aware of them. And for them the Evil Inclination found a strategy to trap people into the sin of bitul Torah (neglecting study), and this is smoking cigars and cigarettes. Besides the well-known damage to the body, they also damage their souls by neglecting the study of Torah. For a man who smokes generally spends at least half an hour a day preparing and smoking. And once he is in the habit it is hard to break from it. Sometimes it happens that he lacks a single cigarette and wastes more time, for he goes from person to person looking for a cigarette until he finds it and in this way wastes more time. Over the course of a year this lost time adds up to hundreds of hours of bitul Torah. How well do I know that people will rationalize: "It is not in

חפץ חיים

זכור למרים פרק ט'

והנה נמצאו אנשים הרבה שאינם קוראים ואינם יודעים מהעיתונים וגם לאלה מצא היצוד תחבולה איך ללכדם העוק ביטול תורה, והוא עוֹשֵׁן הַסִּיגָרָעֵן והפאפיראסען. שחוק מזה שהם מזיקים לגוף כידוע. עוד גורמים היזק לנשמתו בביטול תורה, כי האדם המעשן יבלה לכהפיח חצי שעה ביום על תיקון ועישון. וכשנחרגל בזה אזי כבר קשה לו להמנע מהם. ולפעמים יקרה שבאם יחסר לו פאפיראס אחד יבלה כמה זמן עליו. שילך מזה לזה ויבקש עד שימצא ועייז יגרם לו כמה עת חמן לבטלה. ואיך במשך שנה כשיצטרפו אליו השעות יחסרו לו כמה מאות שעות שעבר עליו בביטול תורה. והנה ידעתי

our power to break this habit!" The question is - Who caused you to be in this situation? You yourselves caused it! For had you not gotten yourselves in the habit in the first place, it would be easy for you to stop. You yourselves are responsible!

גם ידעתי ששיבו הרבה
אנוסים היינו, שלא הי' בכחנו
להמנע מזה אבל השאלה
תהיה מי גרם לכם שתהיו
אנוסים הלא אתם העצמכם
גרמתם לזה כי לולא
התרגלתם מקודם כי אז
הי' נקל לכם להמנע מזה
ואיכ אתם בעצמכם חייבתם
בזה.

Hafetz Hayyim

Likutei Amarim, Ch. 13

החפץ חיים

ליקוטי אמרים

Concerning this issue of smoking cigarettes, I will speak a bit about it. Some doctors have ordered that anyone who is weak is forbidden to habituate themselves to it for it saps their strength and sometimes is life-threatening. And I have spoken several times with weak people about this, and they tell me that they know well that smoking is hard on them. But since they are habituated to it, it is harder for them to quit. And I said to them, 'who told you to let yourself get addicted? Truly the sages have said (in Bava Kama 92) 'One who injures himself even though he is not entitled to, is acquitted' (for to whom will he pay [damages] if not to himself). But after all, did they not say that one is not permitted to injure oneself? One is not permitted because (it says) 'And you shall

ואגב דאתי לידו אודות עישון הסיגארין. נדבר קצת אודות בזה. הנה כמה רופאים גזרו אומר שכל מי שהוא אדם חלש אסור להרגיל את עצמו בזה שמחליש כוחותיו. ולפעמים נוגע גם לנפשו. והנה דברתי כמה פעמים עם חלשי כח אודות זה. וענו לי שגם הם יודעים ומכירים בעצמם שהעישון קשה להם. אך מפני שהורגלו בזה מכבר קשה להם לפרוש מזה. ואמרתי להם מי התיר לכם להרגיל עצמכם על כך. אמת חזיל אמרו (בביק צ"ב) החובל בעצמו אעפ"י שאינו רשאי פטור (כי למי ישלם אם לא לעצמו) אבל אל כל פנים הלא אמרו שאינו רשאי לחבל בעצמו. ראשית משום תשמרתם לנפשותיכם. ועוד. דין הוא. דהלא תבל ומלואה

guard yourself very well' (see below, section 5). And further it is judged: is not the world and its fullness G-d's possession and by G-d's honor were we created and G-d gave strength to each person according to his needs in Torah and the world. The slave is not free to act as he wishes, for does he not belong to his master? If by smoking one's strength is diminished, certainly one can claim that in the final judgement one does this of their own free will and not by force!

של הקביה ולכבודו בראנו
ונותן לכל אחד בחסדו כח
כפי צרכו לתורתו ולעולמו.
ועיך ירשה העבד לעשות
לעצמו כפי רצונו הלא הוא
שייך לאדונו. ואם על ידי
העישון נגרעו כוחותיו בודאי
יתבע לבסוף לדין על זה
דהלא עשה זה ברצון לבו ולא
באונס.

Rabbi Yaakov Yitzchak (Schneerson) of
Lubavitch

Igrois Koidesh, Vol. 7

December 20, 1942¹

With this, I submit to my friend my instruction to make an announcement to all the students who smoke, that it is completely and absolutely forbidden for any student under twenty years of age to smoke, irregardless of whether it is a cigar, cigarette or pipe. And this prohibition applies to all the students wherever they are and is in effect 24 hours a day. This instruction should be implemented with the full strength and force of my friend's (long life to him!) excellent supervision. And any student who transgresses this instruction should be punished severely.

And, my friend, regarding the students who are older than twenty, you should request of them for the sake for their own good, both spiritual and material, that they attempt to discontinue smoking by decreasing it

ר. יעקב יצחק מליובאוויטש

ב'ה י"ב טבת תש"ג

בזה הנני להמציא לידיד את פקודתי לעשות רשימה מכל התלמידים יחיו המעשנים ולאסור באיסור גמור ומחולט את העישון לתלמידים פחותים מבן עשרים שנה. בלי הבדל אם פאפיראסן או סיגארן ופיפקס. ואסור זה חל על כל התלמידים בכל מקום שהם בכל משך כדי' שעות המעלע'. תהי פקודה זו נשמרת בכל תוקף עוז בהשגחה מעולה מידידי ש"י. והתלמיד העובר על פקודה זו יענש קשה.

ואת ידידי התלמידים יחיו אשר בגיל מעשרים ומעלה יבקש בשמי לטובתם — ברוחניות ובגשמיות — שישתדלו לעזוב את העישון על ידי שימעטו בזה מיום ליום עד אשר יעזבוהו לגמרי. וכל

every day until they give up smoking entirely. And all that fulfill my request, it will be good for him in body and spirit; and please inform me of those students (long life to them!) who are over twenty and who fulfill my request.

אשר ימלא בקשתי זו טוב יהי לו
ברוחניות ובגשמיות ובבקשה
להודיעני מי מהתלמידים ש"מבן
עשרים ומעלה ממלא את
בקשתי.

NOTES

1. I am grateful to Rabbi Edward H. Garsek and Rabbi Yosi Shem Tov for bringing this letter of the former Lubavitcher Rebbe to my attention.
2. המעת לעת - "Twenty-four hours". See Nidd. 1:1; Hull. 51b; 7eb. 74b.
3. כל דהו -
4. שיחיה - "Long Life to Him!"

APPENDIX B

ר' משה פיינשטיין: בדבר עישון סיגריות שרת אגרות משה: יורה דעה: חלק ב': סימן מט (תשכד)
 Rabbi Moshe Feinstein, "Regarding the Smoking of Cigarettes,"
Igrot Moshe, Yoreh De'ah, II, No. 49. (1964)

ר' חיים דוד הלוי: איסור העישון מכח ההלכה: עשה לך רב: חלק ב' סימן א (תשל"ז)
 Rabbi Chayyim David Halevi, "The Prohibition on Smoking by
 Force of Halakhah" Ase Lecha Rav 2:1 (1976)

ר' משה פיינשטיין: אם יש איסור בעישון סיגריות שרת אגרות משה: חושן משפט: חלק ב':
 סימן עז (תשמ"א)
 Rabbi Moshe Feinstein, "If the Smoking of Cigarettes is
 Forbidden," Igrot Moshe, Choshen Mishpat 2:76 (1981)

ר' אליעזר וולדנברג: אם יש לאסור על מי דין אישתי סיגריות: ציצ אליעזר: חלק טז: סימן לט
 Rabbi Eliezer Waldenberg, "Is it Forbidden By Law to Smoke
 Cigarettes?" Tsits Eliezer 15:39, 5742. Also in Assia
 35, Vol. 9, No. 3, (Feb. 1983) pp. 10-15; and in Sefer
Assia, pp. 252-257; and in Pe'er Tachat Efer, pp. 30-35.

ר' חיים דוד הלוי: על איסור העישון: אסור להציל עצמו בממון חבריו: עשה לך רב: חלק ט:
 (תשמ"ט) עמ' נד-נז
 Rabbi Hayyim David Halevi, "Concerning The Prohibition on
 Smoking" Ase Lecha Rav 9:28 (1989), pp. 54-56.

Rabbi Moshe Feinstein

"Concerning Smoking Cigarettes"

משה פיינשטיין

בדבר עישון סיגריות

7th Day of Hannukah 1964

י' דחנוכה תשכ"ד.

Regarding the smoking of cigarettes, it is proper to be wary of this since there is certainly a fear of starting this (habit). But one cannot say that it is forbidden as a risk to health since the multitude trample on it. And concerning this, the Gemora already said on a similar matter: "God watches over the simple" in Shabbat 129 and Niddah 31. And this is especially true since there are many great scholars in past generations and in our generation who smoke.

In any case, even those who prefer not to take the risk need not fear that they are "putting a stumbling-block before the blind" by offering a flame or match to a smoker.

הנה בדבר עישון סיגריות
ודאי מכיון שיש חשש
להתחלות מזה מן הראוי
להזהר מזה. אבל לומר
שאסור מאיסור סכנתא'
מכיון שדשו בה רבים כבר
איתא בגמ' בכה"ג' שומר
פתאים ה' בשבת דף קכ"ט
ובנדה לא ובפרט שכמה
גדולי תורה הדורות שעברו
ובדורנו שמעשנין.

וממילא אף לאלו
שמחמירין לחוש להסכנה
ליכא איסור לפני'ע' בהושטת
אש וגפרורים למי שמעשן.

NOTES

5. אִסּוּר סכנתא - a forbidden risk to health. See Hull. 9b "how can you compare what is forbidden ritually with what is forbidden on account of a risk to health?"
6. בכדאי גוּא - In this manner
7. לפני עור - Putting a stumbling block before the blind (Lev. 19:14)

Rabbi Hayyim David Halevi

"The Prohibition on Smoking by Force
of Halakha" (1976)

Many are those who have entreated me in writing and conversation to clarify for them the Halakhic basis for forbidding smoking (concerning which I ruled on a television program). Thus I am doing this in the midst of the newspapers in the hope that the same people who are attached to Halakhah with conviction, will make an effort to abstain, because of this, from smoking.

The warning that is hinted in the Torah is in the verse "But take utmost care and guard yourselves scrupulously" (Deut. 4:9) and similarly in the verse "Guard your lives very well" (*Ibid.*, 15). From these verse, our Rabbis learned the obligation to be careful and guard life (see *Brachot* 32b).

Maimonides ruled that this is Halakhah in these words:

ר' חיים דוד הלוי

איסור העישון מכח ההלכה

רבים הם הפונים אלי
בכתב ובעל-פה. להבהיר
להם את הבסיס ההלכתי
לאיסור העישון (אודותיו
פסקתי בתכנית טלביזיה).
ולכן, הריני עושה זאת
באמצעות העתונות בתקווה
כי אותו צבור במתיחס
להלכה בחיוב. יתאמץ
להמנע עקב זאת מעישון.

האזהרה המרומזת בתורה.
היא הפסוק דק השמר לך
ושמר נפשך (דברים ד'
טסוק ט'). וכן הפסוק
ונשמרתם מאד לנפשותיכם
(שם פסוק טז). מפסוקים
אלה למדו רבותינו חובת
חזירות ושמירה על החיים
(עין בבבא לבי).

הרמבם פסק כן להלכה

וזו לשונו.

[Rotzach 11:4] All stumbling-blocks that have within them a danger to life, it is a positive mitzvah to remove it and guard others from it. As it says: "Guard yourself and guard your life." [5] The sages have prohibited many things because they have inherent danger, and one who disregards them and says 'I am only risking my own life and what claim do others have on me?' or 'I do not mind this' it to be whipped for disobedience. [6] These rules are: a person must never put his mouth to a pipe spouting water and drink from it. One must not drink from rivers or ponds at night, for fear that he might swallow a leech without seeing it. One must not drink uncovered water, [for a snake or some other reptile might have drunk from it, and cause one to die.] [12:1] Wild animals and birds that bite

כל מכשול שיש בו סכנת נפשות. מצות-עשה להסירו ולהשמר ממנו [ולהזהר בדבר יפה יפה]. שנאמר השמר לך ושמרו נפשך [. . .] הרבה דברים אסרו חכמים מפני שיש בהם סכנת נפשות. וכל העובר עליהם ואומר הריני מסכן בעצמי ומה לאחרים עלי בכך. או איני מקפיד בכך. מכין אותו מכת מרדות. ואלו הם: לא יניח אדם פיו על הסילון (צנור) המקלח מים וישתה. ולא ישתה בלילה מן הנהרות והאגמים. שמא יבלע עלוקה והא אינו רואה. ולא ישתה מים מגולים וכו'. בהמה חיה ועוף שנשכם נחש. או שאכלו סם הממית

snakes, or that eat poison that is deadly to humans are forbidden because of danger to life (even if they are not forbidden because they are treif), etc. [4] One must not put small change into one's mouth, because they may bear dry saliva of . . . one who is diseased. Or perspiration, for all human perspiration is deadly poisonous except for that which comes from the face, etc.

And the list there (of other prohibitions) is long.

Perhaps one would ask, is not the plain-sense meaning of the aforementioned verse (Deut. 4:15) to guard the soul from the error of perusing idol-worshipping, for the conclusion is ". . . for you saw no manner of form on the day that Adonai spoke to you (at Horab out of the fire)."?

It seems to me that was Maimonides' intention to explain this

אדם. אסורים משום
סכנת נפשות (אף
שאינם אסורים משום
טריפה) וכו'.
אסור לאדם ליתן
מעות לפיו שמה
יש אליהם רוק
יבש של . . . חולים.
או זיעה. שכל
זיעת אדם סם
המות חוץ מזיעת
הפנים וכו' (בהלכות
רוצח פרק י"א וי"ב).
וברשימה שם ארוכה.

שמה ישאל השואל.
והלא פסוקים הנ"ל
כמשוטם מכונים לשמירת
הנפש מפני טעות אחרי
עבודה-זרה. שכן הסיום
שם הוא. כי לא ראיתם
כל תמונה ביום דבר
ה' עמכם.

נראה לי שעל שאלה
זאת התכוין הרמב"ם לתת

question in Halakhah Deot (4:1):

Since by keeping the body in health and intact one walks in the way of God, since it is impossible to have any understanding or knowledge of the Creator when one is sick, therefore it is a person's duty to avoid whatever is injurious to the body, and cultivate habits which are conducive to health. And these are. . .

And the list here is also long.

The Rambam's intention here is very clear. If the Torah had commanded: guard yourself and guard your life lest you forget standing at Sinai and the giving of the Torah and what you saw then and what you did not see in order that you not be led astray into idolatry, the Rabbis have understood in the depth of their wisdom, the intention that is hidden which comes out of the words of Torah. Would that it were possible to command an action or a cessation, to a human

בהלכות דעות (פרק ד הלכה א') וזו לשונו: הואיל והיות הגוף בריא ושלם מדרכי השם הוא, שהרי אי אפשר שיבין או ידע דבר מידיעת הבורא והוא חולה, לפיכך צריך אדם להרחיק עצמו מדברים המאבדים את הגוף. ולהנהיג עצמו בדברים המבריאים והמחלים. ואלו הם וכו'. והרשימה גם שם ארוכה.

כונת הרמב"ם ברורה ביותר, אם צייתה תורה, בשמר לך ושמור נפשך פן תשכח את מעמד הר-סיני ותניגת התורה, ומה שראית באותו מעמד ומה שלא ראית כדי שלא תטעה אחרי עבודה-זרה, הבינו רבותינו בעומק חכמתם, את הכונה הנסתרת היוצאת מדברי התורה, האם אפשר לצוות על עשייה או מחלל, לאדם שבריא וזאת דומה

who's existence is flimsy and faulty, a human on who's heels is illness and who's thoughts are not clear, simply to act or to stop. But from hence the conclusion is clear, for first and foremost guard your health, so that then you will be able to guard also the things that were commanded at Sinai.

It is also appropriate to point out with special emphasis that in Halakhah Deot Maimonides clearly outlines a person's path of proper conduct, in the way of guarding one's health. A section on meals and their quantity, the kinds of food liable to harm one's health, limitations in time (i.e. the seasons) and amounts of inherent damage that are in food, a section on the activities of the small intestine, exercise, a section on sleep and its appropriate times, a section on washing and cleanliness, bloodletting (cupping), marital relations, etc.

Not all of the things that

ולקיות. לאדם שעקב מחלתו גם מחשבתו אינה צלולה. דיה לעשות או לחזול. ומכאן ברורה המסקנא. כי בראש וראשונה. שמור על בריאותך. כדי שאז תוכל לשמור גם על מה שצוית באותו מעמד בהר-סיני

מן הראוי לצין בהדגשה מיוחדת כי בהלכות דעות התוה הרמב"ם דרכי התנהגות ברורים לאדם. כיצד ישמור על בריאותו. סדרי המזון וכמיותו. סוגי מאכלים העשויים להזיק לבריאות הגבלתם בזמן (עונות השנה) ובכמות לפי מדת הנזק שבאכילתם הפעלה סדירה של בני מעיים. התעמלות סדרי שינה חמנית. סדרי רחצה ונקיון. הקזת דם יחסי אישות וכדומה.

לא כל הדברים שהזכיר

Maimonides mentions are copied from the words the rabbis of the Talmud. A large portion of them are written based on his medical knowledge, and a portion of them are even in opposition to the words of the Talmudic rabbis (however this is not the place to explain this.) And at the beginning of the chapter he writes, as noted above: "therefore it is a person's duty to avoid whatever is injurious to the body, and these are. . ." and thus follows the long list.

All this Maimonides wrote in his great legal book "Yad Hazakah" [Mishne Torah]. Maimonides did not intend this to be good advice, for that is done richly in his other books and the many letters he wrote. Rather Maimonides intended to give a Halakhic ruling, on the same principle of the basic obligation that "Since by keeping the body in health and intact one walks in the way of God" whose source is "Guard yourself and guard your life."

הרמב"ם העתקו מדברי רבותינו בתלמוד. חלק גדול מהם כתבם עפ"י בשכלתו הרפואית וחלק מהם אף בניגוד לדברי רבותינו בתלמוד (מטעמים שאין זה המקום להסבירם). ובראשית בפרק כתב כפי שצוין לעיל: לפיכך צריך להרחיק אדם עצמו מדברים המאבדים את הגוף ואלו הם וכאן באה הרשימה הארוכה.

כל זה כתב הרמב"ם בספרו ההלכתי הגדול ה"ד החזקה". לא בתכון הרמב"ם בכך לעצות טובות בלבד, כי זאת היה עושה בעשרות ספרים אחרים ואגרות רבות שכתב. כאן התכוין הרמב"ם לפסוק הלכה על אותו יסוד של החובה הבסיסית שהיה הגוף בריא ושלם מדרכי זה הוא שמקורו בפסוק ושמירתו מאד לעשותה.

Now, even though the principle of the thing is because of health, when it became a ruling of Halakhah, it was forbidden to all people with the strength of the holiness of Halakhah, as are all the judgments that are explained there, and just as there is no person who meditates on the prohibition [of mixing meat and] milk or [eating an animal's] blood, etc., so to is the law concerning separating the revealed danger to health, because it is sanctified with the force of Halakhah.

(It should be pointed out that some of these things mentioned above, and others that are not mentioned, are ruled as Halakhah also in the Shulchan Aruch of our Teacher the Beit Yosef [Joseph Caro], in the section Yorai Da'ah 116, and in Choshen Mishpat 427, and others, and the great Poskim both Rishonim and Achronim removed and added among them many prohibitions)

As a matter of fact, prohibitions that arise from danger to health are

מעתה אף כי עיקרם של דברים הוא משום בריאות הרי שכאשר נפסקו להלכה נאסרו על כל אדם מכח קדושת ההלכה כלל דין אחר המבואר שם וכשם שאין שום אדם מהרמר באיסור חלב או דם וכדומה. כך הוא הדין ביחס לפסיקה הנובעת מסכנת בריאות משום שהיא מקודשת מכח ההלכה.

(יצוין שחלק מן הדברים שנזכרו לעיל ועוד אחרים שלא נזכרו. נפסקו להלכה גם בשולחן ערוך של מרן הבית-יוסף. בחלק יורה-דעה סימן קטז. ובחושן-המשפט סימן תכז ועוד. וגדולי הפוסקים ראשונים ואחרונים העתיקו וחזיטו עליהם איסורים רבים).

ואודבא המורים הם הדברים שנאסרו מכח סכנת

more stringent than other prohibitions; for whenever there is doubt about a prohibition it is ruled leniently, but if there is doubt about a danger to health it is ruled strictly. In the words of our Rabbis: "Danger (constitutes) the most severe prohibition." (Hullin 10b).

This and others our Teacher ha-Heda [Hayyim Yosef David Azulai (1724-1807)] (in B'rachai Yosef section Even ha-Ezer 13:10) raised the doubt that even though it says in Halakhah "that which is not commanded the sages did not forbid," it is possible that in matters of danger they forbade even that which is not commanded (a conclusion which applies to this matter).

It is abundantly clear that the damage that is caused to health by all the things mentioned above, are like nothing compared to the damage caused to a person from smoking cigarettes (and similarly from smoking marijuana). It has been proven by

בריאות מאיסורים אחרים.
שכן כל ספק באיסור
נידון לקולא, ואילו ספק
מסכנת בריאות נידון
לחומרא, וכלשון רבותינו,
חמירא סכנתא מאיסורא
(חולין י').

זאת ועוד, מן החידא
(בברכי חלק אבן-העזר סימן
י"ג אות י') העולה ספק
שלא אף שמקובל בהלכה
דבר שאינו מצוי לא גזרו
עליו חכמים, יתכן שבדבר
שנסכנה גזרו אף שאינו
מצוי (מסקנתו היא להשוותם
לענין זה).

ברור ביותר שהנזק הנגרם
לבריאות מכל אותם דברים
שנזכרו לעיל, הוא כאין
וכאפס לעומת הנזק הנגרם
לאדם מעישון סיגריות
(וכל-שכן עישון סמים).
וכבר הוכח במחקרים

scientific research, that the illnesses of cancer and heart attack strike a larger percentage of smokers than non-smokers. Specifically, anyone who smokes worries and feels the pollution that is seen as a result of smoking.

I have absolutely no doubt that if smoking had been wide-spread in the days of our Rabbis the Sages of the Talmud, and even in the days of the great Poskim, and if they had known by means of the research of scientists about the many dangers attached to smoking, they would have forbidden it with an absolute ban, with the strength of judgement and the Halakha.

Therefore it is clear and simple in my eyes that there is a ban on smoking, and all people are obliged who wish to guard their health, in order to serve their God with the fullness of their strength, to abstain from smoking.

"And the one who listens to [us] will dwell in safety." [Prov. 1:33].

מדעיים שבמחלת הסרטן. ובהתקפי לב, לזקים אחוז המעשנים יותר מאלה שאינם מעשנים. ופרט לכך, כל אדם המעשן חש ומרגיש בעצמו את זיהום ריאותיו בעקבות העישון.

אין לי שום ספק שאם היה העישון נפוץ בימי רבותינו חכמי התלמוד, ועאפילו בימי גדולי הפוסקים, והיו יודעים מתוך חקירות אנשי המדע על הסיכון הרב בכרוך בעישון, היו אוסרים אותו איסור מחלט. מכא ברין וההלכה.

ולכן ברור ופשוט לעניות דעתי שיש איסור בעישון, וחובת כל אדם הרוצה לשמור על בריאותו, כדי לעבוד את אלקיו בכל מלוא כחותיו, להמנע מעישון.

ושומע לנו ישכון

בית

Rabbi Moshe Feinstein

"If Smoking Cigarettes Is Forbidden"

(1981)

Concerning this, the principle is given: "God Protects the Simple" in Shabbat 129b and Nidda 45a which relates to two cases in which there is a potential danger to life and [nevertheless] people are not careful about avoiding it, even though it is certainly true that in normal cases of life-threatening danger it is forbidden to rely on this [principle], even if one chances upon a potential danger of which people are not wary.

It seems simply that in some cases there are many whose health is not adversely affected their health in any way. For example, many types of food that people enjoy too much, like fatty meat and very spicy foods. Even though they may adversely affect some people, it would be impossible to declare them "forbidden foods" on the

משה פיינשטיין

אם יש איסור בעישון

סיגריות

אסור חג שבועות תשמ"א

הנה ליתן כלל להא דאמר
שומר פתאים ה' בשבת (קכ"ט
ע"ב) ובנדה (מ"ה ע"א) בשני
דברים שאיכא בהם חשש
סכנתא ולא זהירי בהו.
אף שודאי בסתם חשש
סכנתא אסור לסמוך ע"ז
אף אם יודמן כה"ג בדבר
שיש בו חשש סכנתא ולא
זהירי בהו אינשי.

נראה משאוס דבר
דאיכא הרבה שלא קשה להו
לבריאותם כלום כגון הרבה
מיני אוכלין שהאינשי נהני
מהם ביותר כבשרא שמנא
ודברים חריפים ביותר אבל
קשה זה לבריאותן של כמה
אינשי. ליכא בזה איסור
מלאוכלן מצד חשש סכנתא

basis of a potential danger to life, since most people are not endangered by them.

And see in Maimonides, chapter 4 of Deot in which he discusses food and drink which is good and healthy and that which is bad and not healthy. He does not write there in terms of a Biblical or Rabbinic prohibition as he does write in Rotzach 11:4 about the removal of a stumbling-block that endangers life. He states that it is forbidden to put it down and we are obligated to remove it, even if one is only fearful for ones self. As it says: "Guard yourself and guard your life that you do not spill blood." And even if there is only a potential danger to life, it is prohibited by the Rabbis and they established a punishment for disobedience (ibid. #5). One might think that it is private matter on the basis of this chapter and chapter 12, but he wrote only the beginning of a general argument in the first chapter (Deot

מאחר דהרוב אינשי לא
מסתכנן מזה.

ועיין ברמב"ם פ"ד מדעות
שנקט שם עניני אוכלין
ומשקין הטובים לבריאות
הגוף והרעים להריאות הגוף
ולא כתב בלשון איסור לא
מדאורייתא ולא מדרבנן
שאסרו חכמים. כדכתב
בהסרת מכשול שיש בו סכנת
נפשות בפ"א מרוצח ה"ד
שאסור להניחו ומחייבין
להסירו אפילו שהוא חשש
רק לעצמו מעשה דקרא
דהשמר לך ושמור נפשך
ובלאו דלא חשים דמים
וכשאיכא וק' חשש סכנה
אסור מדרבנן ומכין מכת
מרדות (שם ב"ה) וחשיב
פרטי הדברים דט' הפרק
וגם בפ"ב אלא כתב וק'
הקדמה מסביר בעלמא
בראש הפרק והאיל הויות
הגוף בריא ושלם מודכי חשש
הוא שהרי א"א' שיהיו או

4:1) "Since by keeping the body healthy and whole one walks in the ways of God - since it is impossible to understand or know anything about the Creator when one is sick - therefore one must distance one's self (from that which is injurious to the body and cultivate habits which promote health.)"

But he did not, despite all these things that he detailed, concern himself to forbid absolutely those things which the majority of people enjoy and which does not cause most people any damage. And there are many of them for whom it is impossible to avoid it, for many people are busy making a living and there are those so very poor that we cannot prohibit them, we can only stir up that which has been hidden and make them aware so that they know which things are good and which are bad, and advise them in the language that Maimonides adopted in the whole chapter.

ידע דבר מדיעת הבורא
הוא חולה. לפיכך צריך
להרחיק עצמו.

והוא משום דעל כל הדברים
האלו שפרט אותם לא שייך
לאוסרן ממש מאחר דהרוב
מהן עניני הנאה הן ולרובא
דרובא דאינשי לא מזיק להו
כלום ואיכא הרבה מהן שאי
לחזור בהו להרבה אינשי
שטרידי בפרנסתן ואיכא
הרבה שלא שייך שיחזרו בו
עניים שמדויחין רק מה
שמצומצם לכדי חייהם שלכן
לא שייך לאסור אלא רק
לעודד להעלמא במה שידעו
איזה דבר הוא טוב ואיזה
דבר הוא רע וליעץ להם
כחלשון שנקט הרמב"ם שם
בכל בפרק.

Now, in matters such as these, that is smoking cigarettes, those who are habituated to it enjoy it very much and suffer when they do not have cigarettes, more than from want of good food, and even more than from lack of any food for a short time, and the damage from it is anyway only a bare minimum. And all the more so since they make up a very small number of those who are sick from cancer and other dangerous illnesses. Even though His Honor who sees many sick people, for His Honor is a doctor in a hospital and sees almost every day those who have cancer of the lung and throat and other organs, and finds that more of them smoke cigarettes, and this is also true in other hospitals. But in any case, of all the sick found in hospitals and those who do not come to hospitals, certainly these (smokers) are a minority compared to those of the world who do not contract anything. And of a fear such as this, it is said

ולדברים כאלו דמי עישון סיגריות שאלו הרגילין בזה נהנין מזה מאד ומצטערין כשאין להם סיגריות עוד יותר מחסרון מיני אוכלין טובים. ואף יותר מחסרון אוכלין לגמרי לזמן קצר. והקלקול לחלות מזה הוא עכ"פ' רק מיעוט קטן וכש' להחלות מזה בסרטן (קענסער) ובעוד מחלות מסוכנות הוא קטן ביותר דאף שמע"כ' ראה הרבה חולים שמע"כ' שהוא רופא ונמצא בבית החולים ורואה כמעט בכל יום חולים בסרטן הריאה והגרון וגם באיברים אחרים שנמצאו יותר באלו שמעשנים סיגריות וכן הוא נמי גם בשאר בתי חולים. מ"מ' ודאי כל החולים הנמצאים בבתי החולים וגם בצידוף אלו שלא באו לבתי החולים הוא מיעוטא לגבי אלו דעלמא שנמצאו בבתייהם שלא נחלו כלל. ובחשש כזה

"God protects the simple."

However, it is certainly proper that every person, especially a Torah scholar, for there is a possible danger and there is nothing beneficial to it. Also, one should avoid (smoking) so as not to become habituated to it. In any case, one should certainly not get into the habit and a man should not allow his small children to get in the habit even if he is a smoker himself. Also, were it not for the potential danger to life it would still be forbidden to get into this habit because one certainly should not indulge oneself in the fulfillment of cravings. On the contrary it is proper for every man to distance himself from cravings and other pleasures.

אמרינן שומר פתאים ה'.

אבל ודאי מן הראוי לכל איש ובפרט לבני תורה שלא לעשן מאחר שהוא חשש סכנתא ואין בזה שום תועלת וגם הנאה לאלו שלא הורגלו בזה וממילא ודאי אין להתרגל לזה ולא יניח אדם לבניו הקטנים שיתרגלו בזה אף אם הוא עצמו נתרגל, וגם בלא ענין חשש הסכנה הזה יש לאסור להתרגל בזה דהא ודאי אין להמשיך עצמו לדברי תאוות והנאות אלא אודבא מהראוי לכל אדם למעט עצמו מתאוות ותענוגים יתרים.

NOTES

1. על זה - "about this"
2. כי האי גוּנא - "in that manner"
3. על סמך - "on the basis of"
4. אי אפשר - "it is impossible"
5. על כל פנים - "anyway"
6. כל שכן - "all the more so"
7. שמעלת כבוד - "His Honor," a title of respect
8. מכל מקום - "anyway"

Eliezer Y. Waldenberg

(1982)

Is There a Legal Prohibition on Cigarette Smoking and Is it the Right of Someone in an Enclosed Space with a Smoker to Protest That the Smoke Is Harmful to Them.

I received your dear, long letter of January 29 only this week and that is the reason for the lateness of my reply to you, and with it my apologies.

I looked over, with great attention, the long essay "The Health Hazards of Smoking" which you included in your letter. And in answer to your request, I hereby give my ruling on this subject from the point of Halakhah as I see it.

1) I was shocked and frightened and a shiver took hold of me as a result of the deep and clear explanation and the medical data that you brought up provide proof as 100 witnesses would do. These show

אליעזר יהודה וולדינברג

אם יש לאסור אל פי דין עישוני סיגריות ואם הזכות בידי המצאים במדוצה אחת עם המעשן למחות ביחו בינמק שהעשן מזיק להם.

יקרת מכתבו מתאריך ה' שבט קבלתי רק בשבוע וחצי סיבת איחור תשובתי אליו עד היום ואמו הסליחה.

עברתי בתשומת לב מרובה על מאמרו הארוך על יסיכוני בריאות בעישון שצורף למכתבו. נענה למבוקשו הנני להשיב לו בזה את חוות דעתי על הנושא מנקודת ההלכה הנלעגת.

(א) נדהמתי ונבהלתי וממש רעדו אחותי עקב הסברות המעמיקה והבהירה, וראיותי הרפואיות המופתיות והוכחותי הממשיות המעידות כמאה עדים שהעישון של סיגריות כמותו

that smoking cigarettes is like the "embers of a broom fire" to the body. For "it is harmful in the most grave manner to the health of the smoker." And that smoking is likely to cut short one's life, heaven forbid. You cite frightening statistics that point out the most serious consequences engendered by smoking. And on its satanic wings many victims fall, for myriads upon myriads of people around the world come to them robbed (as a result of it) in the domain of the body, particularly in the reparatory system, it is greatly pernicious. Thus, emphysema, chronic bronchitis, damage to the heart and blood vessels, shrinkage of the stomach and intestines, etc., etc; until the doctors have decreed that smoking is the primary killer of humanity.

In light of this, clearly there is not a shadow of doubt that there is no place for self-congratulations (as some would like) and to rule

בגחלי רתמים לגוף. כי הוא מזיק בצורה חמורה ביותר לבריאות הגוף של המעשן. וכי העישן עלול ממש לקצר את החיים חזו. וסופר ומונה מספרים מבהילים מהסטטיסטיקה המתפרסמת מדי פעם המצביעה ומראה באצבע על התוצאות החמורות ביותר מריבוי העישן. ואשר בכנפיה -- הסטניים נופלים קרבנות לדוב והרבה יותר מעשרות אלפים ורבבות אנשים ברחבי העולם באים עליהם כחתף (כתוצאה מזה) כשטחי הגוף ואבריו השונים ובעיקר באברי הנשימה והריאות. גידולים ממאירים. וכן. נפחת-הריאות. ברונכיטיס כרונית היזיקים ללב ולכלי הדם התכווצויות בקיבה ובמעיים. ועוד ועוד. עד כי הרופאים גזרו אומר כי העישן הוא הקוטל הראשון של האנושות.

לאור זה נראה ברור ללא צל של ספק כי אין מקום להתברך בלב (כפי שאחרים רוצים לומר כן) ולהזרות כי היותו העישן

that since the multitude trample on it, one can apply the Rabbinic principle which appears in several places which notes that it is a universal custom in places where there is a fear of danger they ruled: "Since the multitude trample on it, God protects the simple." But they only ruled so in cases where [the danger] was not apparent and when its existence is not seen; or conversely where many see it and the entirety pass it and it does not harm them (see for example in Yebamot 4 12b and 72a and also in Avodah Zara 30b). But in the example before us, scientific investigation and medical experience has in the last decades uncovered the terrible extent of bodily damage caused by smoking. The awareness is universally known, such that the governments of some great and powerful nations have put out laws requiring warning labels on every pack of cigarettes stating "The

רבים דשים בו אם כן יש להחיל על זה במאמר חז"ל בכמה מקומות על מנהג עולם במקום שיש לחוש לסכנה שפסקו פוסקים ואמרו: זהאידינא דדשו בו רבים שומר פתאים ד". דלא אמרו כן אלא במקומות דלא מתגלה הכתם והמציאות לא הראתה אל היפוכו של דבר. אדרבא ראו שרבים וכן שלימים עברו ולא ניוזקו (עיין לדוגמא במסכת יבמות ד"ב ע"ב ודף ע"ב ע"א וכן בע"ז דף ל' ע"ב). אבל בכגון הנידון שלפנינו אשר בעיקר בעשרות בשנים באחרונות לאור המחקרים המדעיים והרפואיים השונים נתגלו בממדים מבהילים היזיקי הגוף המרובים והמסוכנים אשר העישון גורם בכנפיו. והתודעה הזאת גם יצאה כבר טבעה בעולם עד כדי כך שבכמה מדינות גדולות ועצומות יצא החוק מאת ממשלותיהם על חובת ציון אזהרה על כל תפיסות סיגריות האומרת "הרופה הממשלתי הראשי מחזיר את המעשנים שהעיקר מסכן את

Surgeon General warns smokers that smoking is harmful and dangerous to health." And I recently read an American governmental report in the name of the Surgeon General stating that "more than 100,000 Americans will die this year from cancer because they smoked cigarettes," and also that "smoking cigarettes is today the principle cause of death by cancer in the United States" And there is no action a person can affectively take to lessen the danger of cancer than quitting smoking. If so, it is most certainly absurd to ignore this, to dismiss it out of hand, and to say that in an instance such as this one says "God protects the simple."

2) Therefore you are right when you say that on this subject we have to apply Maimonides' ruling from chapter 4 of Hilkhot Deot, Halakhah 1 of the chapter, which says:

Since by keeping the body in health and intact one walks in

בריאותם ומזיק לה: ואני קורא כעת דרך ממשלתי אמריקאי. ומטעם הרופא האמריקאי הראשי שכתפרסם דוקא השווע בכ"ע האומרת יותר ממאה אלף אמריקנים ימותו השנה מסרטן בגלל שעישנו סיגריות. וכן כי עישון סיגריות הוא כיום הגורם העיקרי לתמותה ממחלת בסרטן בארה"ב. ושאינ פעולה בה יכול אדם לנקוט על מנת להוריד את סכנת הסראן בצורה יותר אפקטיבית (השפעתית) מאשר הפסקת העישון. אם כן בודאי ובודאי שאבסורדי הוא להעלים עין מכל זה ולהפטיר בלאחר יד ולומר כי גם על כגון זה נאצר שומר פתאים ד.

על כן צדק כבר במאמרו שאודבא על כדון דא יש להחיל פסקו של הרמבם בפד מהל דיעות דא שפוסק ואומר:

דחואיל דחיות הנף בריא ושלם מדכי

the way of God. . . therefore one needs to distance oneself from those things which are injurious to the body.

And not only this, but one must enlist also the passage of Maimonides (Rotzach V'Shemirat Nefesh 11:5) which says:

The sages have prohibited many things because they have inherent danger, and one who disregards them and says 'I am only risking my own life and what claim do others have on me?' or 'I do not mind this' should be whipped for disobedience.

This means that others are allowed to motivate him with any means available.

Similar wording to Maimonides' is found in Shulchan Aruch, Choshen Mishpat 427:9 (note that this is the last section of Choshen Mishpat):

One who disregards these things and transgresses them and says

השם הוא וכו' לפיכך צריך להרחיק אדם עצמו מדברים המאבדן את הגוף.

ולא עוד אלא שיש להחיל על זה גם פסקו של הרמבם (בפ"א) מה רוצח ושמירת נפש היה שפוסק דל.

הרבה דברים אסרו חכמים מפני שיש בהם סכנת נפשות וכל העובר עליהן ואומר הריני מסכן בעצמי ומה לאזורים על בכך או איני מקפיד בכך מכין אותה מכת על מרדות עכ"ל.

זאת אומרת שמוטל גם אחרים להניע אותה מכך בכל האמצעים שבידיהם.

וכדברי רמבם אלה נפסק להלכה גם בשו"ע חושן משפט ט' מכ"ז סעי' ט' (המעניין שהוא הסעיף האחרון המסיים דיני חרם) דל: כל העובר על דברים אלו וכיוצא בהם ואמר הריני מסכן

"I am only risking my own life and what claim do others have on me?" or "I do not mind this" is to be whipped for disobedience. And the one who is careful about it, good will be his lot.

The Be'er Hagolah in Halakhah 60 questions if this is a prohibition from the Torah or the Rabbis. But the Lavush in Choshen Mishpat (Op. cit.) finds it obvious that it is from Torah, and says: "one is whipped for disobedience for he transgressed something forbidden by Torah, as it is written: 'Guard yourself and guard your soul. . .'" (despite the enigmatic words of Maimonides noted above which begins this paragraph with "Many things were forbidden by the Sages. . ." which sounds like a sign that it is a transgression enacted by the Rabbis; but this is not the place to extend this discussion.) ³ is harder

3) Further, we find a special

בעצמי ומה לאחרים עלי בכך או איני מקפיד בכך מן אותו מכת מידות והנזהר מהם תבא עליו ברכת טוב עכ"ל.

והבאר הגולה

שם בסקים מסתפק אם האיסור הוא מדאורייתא או מדרבנן. אבל הלבוש בחרם שם משיטא ליה שהוא מדאורייתא. ומסיים בלשון: מכין אותו מכת מידות שהרי עבר על איסור דאורייתא דכתיב השמר לך ושמור נפשך וגומר (אלא דמפשטות דברי הרמבם הגיל שמתחיל את ההלכה הזאת בלשון: הרבה דברים אסרו חכמים ונר משמע דיטל דהאיסור הוא מדרבנן. ואכמ"ל).

(ג) ומצינו אחד מידות שיצא

individual who sounded an alarm against smoking decades ago, that is the great Cohen, the righteous scholar, Baal Hafetz Hayyim the Mishnah Berurah z"l. In his book Likutei Amarim chapter 13, where he speaks of the great evil that is smoking, for with it one is occupied in idle things and idle speech, wastes time, wastes money, etc. And he continues:

. . . concerning this issue of smoking cigarettes, we will speak a bit about it. Some doctors have ordered that anyone who is weak is forbidden to habituate themselves to it for it saps their strength and sometimes is life-threatening. And I have spoken several times with weak people about this, and they tell me that they know well that smoking is hard on them. But since they are habituated to it, it is harder for them to quit. And I said

להתריע נגד העישון כבר לפני עשרות שנים. היה הכהן הגדול מאדיו הגהצ בעל החפץ חיים והמשגיב דל. והוא לו בספרו ליקוטי אמרים פרק י"ג דמדי דברו והטיפו על ברעות הכבדות אגב העישון. שעייכ קובעים א"ע לדבר דברים בטלים ולהד. בזבח זמן ובזבח כספים וכי. מוסיף וכותב ודל:

ואגב דאמי לידו אודות עישון הסיגארין נדבר קצת אודות זה. הגה כמה רופאים גזרו אומר שכל מי שהוא אדם חלש אסור להרגיל את עצמו בזה שמחליש כוחותיו. ולפעמים נוגע גם לנפשו. והנה דברתי כמה פעמים עם חלשי כח אודות זה. וענו לי שגם הם יודעים ומכירים בעצמם שהעישון קשה להם. אך מפני שהורגלו בזה מכבר קשה להם לפרוש מזה. ואמרתי להם מי התיר לכם להרגיל עצמכם על כך. אמת

to them, 'who told you to let yourself get addicted? Truly the sages have said (in Bava Kama 92) 'One who injures himself even though he is not permitted to do it, is acquitted' (for to whom will he pay [damages] if not to himself). But after all, did not they already say that one is not permitted to injure oneself? One is not permitted because (of the Torah instruction) 'And you shall guard yourself very well' (see below, section 5). And further it is judged: is not the world and its fullness G-d's possession and by G-d's honor were we created and G-d gave strength to each person according to his needs in Torah and the world. How then can the slave act as he wishes, for does he not belong to his master? If by smoking one's

חזיל אמרו (בב"ק צ"ב) החובל בעצמו אעפ"י שאינו רשאי פטור (כי למי ישלם אם לא לעצמו) אבל אל כל פנים הלא אמרו שאינו רשאי לחבול בעצמו, ראשית משום ונשמרתם לנפשותיכם, ועוד. דין הוא, דהלא תבל ומלואה של הקביה ולכבודו בראנו ונותן לכל אחד בחסדו כח כפי צרכו לתורתו ולעולמו, ועיקר ירשה העבד לעשות לעצמו כפי רצונו הלא הוא שייך לאדונו, ואם על ידי העישון נגרעו כוחותיו בודאי יחבע לבסוף לדין על זה דהלא עשה זה ברצון לבו ולא באונס עכ"ל.

strength is diminished, certainly one shall be called to judgement for it, because in the final judgement one does this of their own free will and not by force!

And see further in his book Zecor L'Miriam, Chapter 23 where he also speaks about the evils of smoking, but from another point of view. He concludes simply by saying "Besides the well-known damage to the body, they also damage one's soul by preventing the study of Torah."

So we have these words which urge us on, from the righteous posek the Hafetz Hayyim zt"l, about the serious prohibition on smoking because it harms the body. And it did not occur to him to say about it "G-d protects the simple" as many others, including smokers, do. Rather his clear ruling is that if by smoking one diminishes one's strength "surely the result is that

ויעוין עוד בספרו
זכור למרים פרק כ"ג דכשגם שם
שדבר מרעת העישון מפנים שונים.
מפסיד בתוך דבריו בפשיטות
וכותב בלשון שחזן מה שהם
מזיקים לגוף כידוע עוד גורמים
היוזם לנשמתו בביטול תורה
יעו"ש.

הרי לנו דברים כדרכנות
מפני הפוסק המקובל הזה וצ"ל
על האיסור החמור של העישון
כשה מזיק לגוף. ולא עלה על
דעתו שיש לזמר בזה שומר פתעים
הי הואיל ורבים וכן שלמים
מעשנים. אלא פסק פסקו הברור
כי אם על ידי העישון יגרעו
מכוחותיו בודאי יתבע לבסוף
לדין על זה.

one will finally be judged by it."

Now the ruling of the Hafetz Hayyim zt"l places a restriction on a weak person as the doctors of that time ordained; which was before the full extent of the damage was revealed. Today when the shame of smoking has been revealed in the fullness of its serious evil, and its power to kill and destroy has been clearly shown, it applies to any person, even those who do not appear to be weak, worry and take pity on their life as a consequence of it, for in the end one will be judged on it if by smoking one's strength is diminished or if one should fall ill as a result of it, Heaven forbid! Or that it would lessen one's life-span, Heaven forbid! Therefore one should pay attention to guard oneself fully from smoking, and from the smoke that comes out from it may G-d protect; for it takes the possessions of a person's body and

דרך של החיזק וציל הנאמרים
בהגבלה על אדם חלש כפי
שגזרו הרופאים שבזמנם עוד
בטרם שנתגלה היקף היזיקו.
כהיום הזה שנתגלה בהתו של
העישון במלוא חריפות-רעלו
ונראו בעליל עצומי הרוגיו ריבוי
חללי. חלים המה איפוא על
כל בני האדם. הגם שלא נראים
חלשי כח והחובה על כל אורא
לחוש ולחוש על נפשו לפן יתבע
לבסוף לדין על זה אם על ידי
העישון יגרעו עייכ מכוחותיו או
שיפול חלילה בתוצאה מזה לידי
איזה מחלה. או שיגרעו משנות
חייו חזו. ולכן יתן אל לבו לשמור
את עצמו מכל משמר מהעישון
ומעשנו היוצא ממנו השם ישמרו.
ומוצא קן לו בגוף האדם ומשחית
כל חלקה טובה שבפנימיותו.

destroys all the good parts that are in one.

4) Now, as to this strict prohibition expounded by the righteous Gaon the Hafetz Hayyim as noted above, I find its source in the words of the Ramban [Nachmanidies] in chapter 18 of Sanhedrin Halakhah 6, which discusses an instance when the Sanhedrin did not enforce the death penalty and did not invoke flogging for one who had transgressed, on the basis that he might be insane, perhaps he grew bitter from the toil of waiting to die, for he thrust a knife into his stomach and threw himself from the roof. And as the RADBAZ (Rabbi David Ben Zari) interpreted there:

The soul of a person is not their possession but rather the possession of the Holy One, for it is written: "the souls are mine. . ." therefore it is not helpful to confess guilt about

ד) וחומרת האיסור שמסביר אותו הגה"צ החי' זצ"ל כמבואר לעיל, אני מוצא בת אב לו בדברי הרמב"ן בפ"ח מהל' סנהדרין ה"ז שפוסק שלכן הסנהדרין אין ממיתין ולא מלקין במודה בעבירה שמא נטרפה דעתו בדבר זה, שמא מן העמלין מרי נפש הוא המחכים למות שתוקעין החרבות בבטנם ומשליכין עצמן מעל הגגות, וכפי שמסביר הרדב"ז שם שהוא זה

לפי שאין נפשו של אדם קניינו אלא קנין הקב"ה שנא' הנפשות לי חנה ויילכך לא תועיל הודאתו בדבר שאינו שלו ע"ש.

something which is not theirs.

Thus the explanation of the Hafetz Hayyim zt"l is eminently suitable: "How can a slave be permitted to do to himself as he pleases, for does he not belong to his master?" And as we have noted, the soul of a person is not their own but rather the possession of the Holy One.

Similarly the source of the Hafetz Hayyim's explanation is found in the Be'er Hagolah, Choshen Mishpat 90:

And it seems to me the reason the Torah cautions about guarding one's life is because in grace did the Holy One create the world to benefit the creatures who would recognize God's greatness and serve God by taking on God's mitzvot and Torah as it is written: "All who are called by My name were created for my glory." [Is. 43:7] And God gives them a good reward in their work. But

ותאם והולם אפוא הסברו של החזן זצ"ל שכותב דאין ירשה העבד לעשות לעצמו כפי רצונו הלא הוא שייך לאדונו והיינו כגד שאין נפשו של אדם קנינו אלא קנין הקב"ה.

וכמו כן נמצא בית אב לתר דברי ההסבר של החזן זצ"ל בבאר הגולה בחורם שם אות צ שכותב וז"ל:

ותלענד הטעם שהזהירה תורה על שמירת הנפש הוא מטעם שהקב"ה ברא את העולם בחסדו להיטב להנבראים שיכידו גדולתו ולעבד עבודתו בקיום מצוותיו ותורתו כמו שאמר הכתוב כל הנקרא בשמי' [לכבודי בראתיו וכי וליתן להם שכר טוב בעמלם והמסכן את עצמו כאילו מאס ברצון בוראו ואינו רוצה לא בעבודתו ולא במתן שכרו ואין לך זלזול אפקידותא יותר מזה עכ"ל.

if one endangers oneself as if he rejects the will of his Creator and does not want to do God's service or receive God's reward, then there is no greater contempt or irrelevance than this.

And it is clearly seen that the words of the Hafetz Hayyim zt"l on this are based on the wonderful words of the Be'er Hagolah noted above. And about this there is more to add, for included in the perfect words of the Hagolah are the wonderful and concise words of Maimonides from chapter 4 of Hilkhot Deot which explains that by keeping the body in health and intact one walks in the way of God "for it is impossible to have any understanding or knowledge of the Creator when one is sick." Therefore, continues the RAMBAM, "one needs to distance oneself from those things which are injurious to the body." Thus we need, as noted above in the Be'er

ורואים בעליל

שדרי החדה זצ"ל בזה המה
תרומה מדבריו הנפלאים של
הבאר בגולה הנד. ועל זה יש
עוד להסיף שגם דברי הבאר
הגולה כלולים המה בדברי
הרמב"ם הנפלאים והקצרים
בפ"ד מהל' דיעות שמסביר.
דהואל והיות הגוף בריא
ושלם מדרכי השם הוא שהרי
אי אפשר שיבין או ידע דבר
מידעת הבורא והוא חולה.
לכן ממשיך הרמב"ם וכותב
צריך להרחיק אדם עצמו
מדברים המאבדין את בנפשו.
והיינו כגון בבאר הגולה כדי
שיוכל לעיני לעבוד עבודתו
יתבדך בדרכי קיום מצותיו
ותורתו ולהכיר גדולתו.

Hagolah, to serve God who is to be blessed, by way of accepting God's mitzvot and Torah and to recognize God's greatness.

Therefore, I believe that there is increasing room to forbid smoking by way of the Halakhah. And especially to enjoin it as a preventative ban, to abstain from smoking around those who have not yet been trapped in the habit of smoking, for it makes it harder to free oneself of it and it is also harmful at times to their nerves, etc. One is in need of great efforts in order to break this habit. None-the-less one must break it with any ways and means.

4) In your wonderful article discussed above, you write that in recent research it is made clear that people who are in the proximity of a smoker in a close space, like a work place, auditoriums, vehicles, etc. are turned into passive smokers. And this is liable to

באשר על כן נעלד
שיש מקום נרחב לאסור את
העישון על פי ההלכה וביחוד
להורות בזה איסור-מצו. היינו
למנוע עישון אצל אלה שעדיין
לא התמכרו להרגל זה של
העישון שאז קשה כבר הפרישה
ומזיקה ג"כ לפעמים לעצביו
וכוונתו. חקוק למאמצים גדולים
כדי לפרוש מהרגל. ואשר
למעשה הוא צריך אעפ"כ
לפרוש בכל הדרכים והאמצעים.

(ד) ובהיות שכך במאמרו
הנפלא כותב שבמחקרים
האחרונים שנעשו מתברר כי
האנשים הנמצאים בקרבת מעשן
במקומות סגורים כגון מקומות
עבודה אולמות כלי רכב וכדומה
הם נחשבים למעשנים פאסיביים.
זה עלול לבהיא אותם לנזקים

cause them damage in their breathing, coughing and even bronchitis and pneumonia. Thus the evil effect is not only limited to smokers but also to their children and those with whom they live. Therefore I wish to add to this that when there are those who smoke in public places, like a yeshiva, the work place, public areas, etc. it is the right according to Halakhah for anyone who is there and who needs to be there to oppose the smoker and demand that they not smoke, for it also harms, more or less, those around and those who are in close proximity. For the exhaled smoke causes bodily harm to a person and they may protest against it. This is one of those things for which one cannot even apply a prior claim. The source of this is in the suggia of Gemora, Baba Batra 4:23, and it was ruled also as Halakhah by Maimonides in chapter 11 of Halakhah Shecainin 7, and also in Choshen

בדרכי הנשימה לשיעור ואפילו לדלקת הסימפונות והריאות רבזה ההשפעה לדעה איננה רק למעשנים אלא גם לילדיהם ולסביבה בה הם חיים. לכן ברצוני להוסיף בזה כי המעשנים במקומות ציבוריים כגון בשיבות מקומות עבודה ומקומות ציבור וכדומה, הזכות לפי ההלכה לכל אחד ואחד הנמצא והצריך להמצא שם להתנגד למעשנים ולדרוש מהם לא לעשן בהיות שזה מדיק פחות או יותר גם לסובבים אותו ולנמצעים במחיצתו. ודבר זה שעשן מדיק לגוף האדם ויכול למחות על כך. ושה אחד מדברים שלא מעיל בזה אפילו חזקה מקות בית אב לו בטוגית הגם במסכת בבא בתרא ד' כג' תפסק כן להלכה ברמבם בפירא מה שכתב ה"ו וכן בוד"מ סי' קנ"ה סע' ל'. וכי שמעבירים שם טעמו של דבר ילמי שאין דעתו של אדם סובלת נזקין אלו וחזקתו שאי

Mishpat 155:36. And as it is explained, the essence of the matter is: "Just as it not a person's idea to endure damages, the prior claim does not apply for the damage caused is permanent damage." And see further in Choshen Mishpat 155:37, where the author and the RAMA (Rabbi Moses Isserlis) disagree over smoke that is not constant. The author [Shulchan Aruch] rules that it is like when the smoke commences, so one may stop even smoke that is not constant. But the RAMA rules that smoke that is not constant, even when it commences one cannot protest. (And any smoke that is not daily is not "constant.") The SHACH concurs with the writer [Shulchan Aruch]. And the GRAA [Gilyon Rabbi Akiva Aiger] writes that his opinion follow the RAMA's. And see Nitivot Hamishpat 100:7 whose opinion inclines towards the SHACH. And further he writes that even if there were not this

מחל שהביקו היזק קבוע.
ויעזין בחורם שם סעי' לז
שנחלקו המחבר והרמא בעשן
שאינו תדיר. והמחבר סובר
לכתחילה מצי' לעכב אפילו
בעשן שאינו תדיר. והרמא
סובר דבעשן שאינו תדיר
אפילו לכתחילה לא יוכל
למחות (וכל דלא ה"ר קיטרא
חיובא דיומא לאו מדיר הוא).
והשך סב"ק י"ט מכריע לפסוק
בזה כהמחבר. והגרע"א מובא
בפ"ת שפ"ם סק"ז דעתו כהרמא.
ויעז"ש בנתיבות המשפט ס"ק
סז דדעתו נוטה כהשך. וזוין
מזה מוסיף וכותב. דאפילו
אי לא הוי רק מחלוקת בפוסקים
מכל מקום בפלוגתא ודכוחתא
על במזיק לחב"א רע"י ע"ש.

שם
וה"כ
הוא

disagreement among the poskim in any case the one who causes damage has to prove his case (see further there).

See also in the book Choshen Aaron on Choshen Mishpat where he writes that the whole dissention between the author and the RAMA is only when the damage does not take place immediately. But if the damage is actually before us it is a principle that one may protest. And in our subject under discussion, one may say that the damage is called "actually before us."

And in the case of yishivot, and work places, the smoke is constant, for it is found (from one smoker or another) most of the day.

6) In terms of protesting against this, not only the neighbor whose environs are invaded by the smoke may protest; even in areas which belong to the many the right

ועוד יעוין בספר חושן אהרן
על חרם שכותב לומר שכל
פלוגתתם של המחבר והרמא
הוא רק כשאין דבר הניזוק
לעת עתה אבל אי ההיזק
הוא במציאות לפנינו גם עשן
כל שהוא יודו כרע' דיכול למחות
עייש. ובנידוננו י"ל דנקרא
דהיזק הוא במציאות לפנינו.

ולמעשה בישיבות ובמקומות
מלאכה נקרא בכלל עשן זה
כתדיר כי הוא נמצא למעשה
(ממעשן זה וממעשן זה) רובא
דיומא.

ו) למחות בזה יכול למחות לא
רק שכן שנכנס העשן ברשותו
משכנו. כי אם גם במקומות
חשיכים לדבים הזכות בידי כל
אחד מהרבים למחות על כך.

is in the hands of any one of them to protest about it. So I saw in the pamphlet "Haza Ha-Tenufa" from the student the RASH (Rabbi Abraham Stern) z"l which is published at the end of the book Shaalot Utshuvot Hayyim of the HADIRA (Hayyim Yosef David Azulai [1724-1807]) z"l in note 26:

Just as there is no prior claim to smoke for it causes great harm and one does not intend to endure it, so too there is no prior claim for any great harm, whether it is a harm to many or if it is a harm to one person alone, for that person did not intend to endure this harm. And it is removed even though the harm is in a public place where the producer would normally have a prior claim.

Thus the Halakhah is explicit on this that they may protest harmful smoke not only if it comes into one's personal area, but even if it

ובכזה ראיתי בקונטרס חזה בתנופה מתלמיד הראש' דל הנדפס בסוף ספר שרת חיים שאל להחידא' דל באות כז שכתב בזהל:

כשם שאין חזקה לקוטרא ובהיכ לפי שהן נזקין בה גדולים ואין הדעת סובלת כך אין חזקה לכל נזק גדול בין שיהי הנזק החזא כולל את הרבים ובין שלא יהא כולל אלא אותו האיש לבדו לפי שאין דעתו סובל הנזק החזא ומסלקין אותו אף על פי שמקום הנזק החזא ברשות הרבים שהחזיקו בו מעצמו אלו בעלי הנזק וכא עכ"ל.

חרי בהדיא שהחלכה בזה שיכולים למחות בעשן המזיק החזא לא רק כשהוא נכנס ברשותו היחיד. אלא גם

is in a public place, for those harmed also have a claim to this space. And not only may a group protest it, but one person who does not intend to bear the damage (see also in Shulchan Aruch ibid. 41 on this subject that also a single person who does not intend to bear it may protest even though the remaining people are willing to bear it).

7) Even if until now one endure the smoke, still one can come back and claim that in the light of newly revealed information on the harm caused by smoking cigarettes, one cannot bear it now. And this is learned from the Responsa of the RASHBA 3:162 who responds concerning damages caused by smoke and lavatories, that all these damages which cause harm the body one may say 'I thought I could bear it but I cannot.' Especially in our case, one one may invoke this pretext and say 'in the light of new information

כשהוא ברשות הרבים מפני שגם לניזק חלק בו. ולא רק הרבים יכולים למחות על כך. אלא גם היחיד שאין דעתו סובל הנזק (עיין גם בשו"ע שם בסעי' מא בנוגע לזה שגם יחיד שאינו סובל יכול למחות אע"פ ששאר בני אדם כן סובלים זאת ע"ש).

(ז) ואפילו אם עד כה סבלו את המעשן. מכל מקום יכולים לחזור בהם ולטעון שלאור ההתגליות החדשות על ההזיקים שגורם עשן הסיגריות לא יכולים לסבול זאת מעתה. ויש ללמוד זאת ממה שמצינו בשרת הרשבי"א דג' ס' קס"ב שהשיב בנוגע לנזקין כקוטרא ובית הכסא. דכל נזקין אלו שהן כנזקי הגוף יכול לומר סבור הייתי לקבל ואינו יכול לקבל ע"ש. ומה במכל שכן לכגון נידונו שיכול לטעון בכזאת חיות שיש לו אמתלא מבודדת על כך

I cannot bear this harmful stench.'

It should be pointed out further the limitation written in Nitivot Hamishpat 156:107, that if the person is healthy and will not benefit the first prior claim has force. For surely illness is the result of smoke and lavatory runoff. And this is the law where ever one does not benefit even in the damage of smoke.

8) And what is the limit of the distance? He does not explain. The beginning of this we find in the RAMA 155:20, that for all damages that do not come to light, the limit of distance is far, so that it does not cause harm according to investigation. Or that it is distanced until no smoke comes upon others.

9) To summarize, it is Torah which comes to our words by Halakhah

הויאל ונתחדש לו המידע על זה. ולכן שוב איננו יכול לסבול שאיפת הריח המזיק הזה אל תוכו.

יש לציין עוד למה שכותב במגביל זה הנתיבות המשפט בסעיף קנז סקז. דאם היה בריא ונחלה לא מהני החזקה הקודמת שכבר החזיק. וחולה ודאי דמי לקוטרא וביהכיס עש. והוא הדין איפוא גם כאן לא מהני אפילו בהחזיק לעשן.

(ח) ושיעור הרחקה בזה? היות ולא נתבאר שיעור על כך. יש להחיל בזה פסק הרמא בס' קנה סעי' כ' שפוסק. וכל הידיקות שלא נתבאר שיעור הרחקתן. השיעור הוא. בכדי שלא יזיק לפי ראות הבקיאן עיי'ש. או שידחיק עד כדי שיעור שלא יגיע העשן אל האחרים.

(ט) בסיכומם של דברים זאת תורה העולה מדברינו לחלוקת

and it is lawful that there is room to prohibit smoking by Torah law. And similarly when there are smokers in a public place, it is legal for any single person there who is afraid that it will afflict their health, to prohibit them from smoking.

כי שפיר יש מקום לאסור העישון על פי דין תורה. וכמו כן בשמעשנים במקומות ציבוריים יכול שפיר כל אחד ואחד מהנמצאים שם שחושש מזה לפיגוע בבריאותו למחות בידי המעשנים שלא יעשנו.

NOTES

1. "Embers of a broom fire" - Midrash Tihillim to Psalms CXX compares the evil tongue to the embers of a broom fire, for although it is extinguished on the surface, it continues to burn within. See Jastow, p. 1503.

2. הנראה לעניות דעתי - הנלענד

3. "in any case." אם על פי כן: אעפ"כ

4. גליין רבה עקיבא איגר - בגרעא

5. כלל ועקר - כ"ע

6. "one can say" וכול לומר - י"ל

7. רבי אברהם שטון - ראש

8. חיים יוסף דוד אבולאי - חידא

wanted to know why I did not give

a reason for not relying on this

principle.

Rabbi Hayyim David Halevi
 "Concerning the Prohibition on
 Smoking (1989)"

ר חיים דוד הלוי
 על איסור העישון

I received your letter on the 27th of Elul. I thank you for your blessings and good wishes and I reciprocate, them for the one who blesses is to be blessed. My answer to you was delayed because of my many public obligations, and it will be short due to a lack of time.

Concerning your question about a rabbi who publicly stated his disagreement with my ruling to prohibit smoking, etc. You thought that this was the Gaon Rabbi Moshe Feinstein of blessed memory, who permitted smoking (Iggerot Moshe; Hoshen Mishpat 2:76) and based it upon the principle "The multitude trample upon it and God protects the simple." You wanted to know why I did not give the reason for not relying on this principle. (see), which became Halakha

הנני מאשר קבלת מכתבך מיום דך אלול תשמ"ז. ומודה לך מאד על ברכתך ואיחולך. וברך עשיב כי המכרך יתברך. איחורה תשובתי עד כה מפאת טרדות הצבור הרבות שהשתרגו על על צוארי. וגם עתה עשיבך בקצרה צאפט הפנאי.

א. לשאלתך על מש שרב אחד בודד חלק בפומבי על מסקנתי לאסור העישון וכו'. וחשבתי כי הוא הגרמ פיינשטיין זצ"ל. וצינת שהוא כתב להתיר העישון (אגרות משה ח"מ ב' ע"ז) מדין דשו"ב ביה רבים ושומר פתאים ה'. ולא הסברתי מדוע אין לסמוך על סברא זאת. (אכן הדין שם כ' וסבב דם ופרא בתנה שרבים מקילים

The truth is that I was not thinking of Rabbi Feinstein of blessed memory, but of another rabbi who immediately after my book was published publicly declared that there is not a prohibition on smoking, etc. And out of respect I did not mention his name, as it is my custom not to mention names if there is no particular reason to do so.

As to this section of Iggerot Moshe which you mentioned, and here I am relying on the words you quoted, that smoking is permitted because "the multitude trample upon it and God protects the simple." I am of the opinion that this rule cannot be applied in this case because the Talmud only applies "the multitude trample upon it" in cases where the danger is not apparent and understood by the laws of nature. For example, the case of a katlanit [a woman who survives two husbands] whom the Talmud prohibits [from marrying again] (Yebamot 64b), which became Halakhah

האמת אומר שאני לא התבנתי ללב פיינשטיין וצ"ל. אלא ללב אחד יבדלתי שיצא מיד אחרי פרסום ספרי הנ"ל בהכרזות נחרצות שאין שום איסור בעישון וכו'. ומפני הכבוד לא הזכרתי שמו. כי כך דרכי להמנע מהזכרת שמות אם אין בכך הכרח.

והנה חלק זה של אגרות משה אמא והגני מסתמך בדברי על ציטוט דבריך בלבד. שהחזיר העישון משום דשו ביה רבים ושומר פתעים ה'. ולענד אין להסתמך כלל על סברא זאת שלא נאמר בשם לסמך על דשו ביה רבים אלא בדבר שאין סכנתו נראית ומובנת בדברך הטבעי כגון ענין קטלנית שנזכר איסורה בשם (יבמות סד.) ומסקה מן בשרע להולכה (אבן העזר סימן ט.) וכתב שם הרמא בהגות שרבים מקילים

in the Shulchan Aruch (Even ha-Ezer 9). And the RAMA [Rabbi Moses Isserlis] commented "many are lenient about this and we should not oppose them." And the TAZ [Turei Zahav] wrote about this principle (*ibid.* 3) "the multitude trample upon it and God protects the simple, etc." which he learns from the issue of blood-letting on Erev Shabbat which is allowed for this reason (Shabbat 129b - see the explanation given by RASHI). And neither of these two cases, the katlanit and blood-letting, can be understood by the laws of nature; rather they are matters conformed to without logical understanding. And since "the multitude trample upon it" [i.e. many people do it] "God protects the simple." But in matters where the danger is apparent and natural and also comprehensible, how can we apply the principle "God protects the simple" and permit its practice?

In this way we can answer the objection that that could be made

בדברים אלו ואין מחזין
בידיהם. וכתב על זה
הס"ז (שם סק"ג) משום דדשו
בה רבים ושומר פתאים
ה' וכו'. ולמד כן מהתרת
הקזת דם בערב-שבת
שנזכר טעם זה להתיר
(מסכת שבת קכ"ט.) ועיי' ש
בפירוש רש"י. ושני ענינים
אלה כונתי קטלנית והקזת-
דם בע"ש אין הם ענין שמזיק
בדרך בטבע. אלא ענין
טעליי בלתי מוכן בהגיון.
וכיון דדשו בו רבים שומר
פתאים ה'. אבל בדבר שנזקו
גלוי ומוכן בדרך הטבע וגם
נראה לעין ממש. מהיכא
תיתי לומר שומר פתאים ה'
ולתתיר.

ובזה נראה לענ"ד לתרץ
מה שיש לכאורה לחקשות

concerning the words of the TAZ who ruled that a katlanit could marry because the Talmud permits blood-letting on Erev Shabbat, etc.; for "G-d protects the simple" is the reason clearly given in the Talmud, but in the case of the katlanit the Talmud simply states that it is forbidden. If it were possible to rely on "God protects the simple", why did the sages of the Talmud not say so themselves as they did in the case of blood-letting? The answer is that for anything which brings a danger not according to the laws of nature, but rather an unnatural one, we can apply the principle "the multitude trample upon it and God will protect the simple," and permit it.

See also in the Bet Yosef (Even ha-Ezer 9) who looked into the question of applying the principle "G-d protects the simple" to a Talmudic scholar who knows and understands the laws. It seems obvious that for anything which has a

על דברי הט"ז שלמד היתר לדין קטלנית מוזקת דם בערב שבת וכו' והלא טעם שומר פתאים ה' נזכר שם מפורש בשם ואילו גבי קטלנית סתמא דתלמודא היא לאסור. ואם אפשר היה לסמוך על שומר פתאים ה' למה לא אמרו כן חכמי השם בעצמם כפי שאמרו בהקזת דם בע"ש. אבל למד כן ומשם שהיא סברא שכל דבר שנוק הנמשך ממנו אינו דרך הטבע אלא ענין טגוליי בלבד ניתן לסמוך על הא דדשו ביה רבים ושומר פתאים זה להחיד.

ועיין מש מן ה"ב (באדע"ס ט) בשם הא"ז שחקר אם שייך טעם זה של שומר פתאים ה' לתלמידי חכמים שידוע ומכר וכו' עיי' באורך. ומשם הוא שכל דבר שנוק הוא

natural danger there is no reason to differentiate between a scholar who knows and is acquainted with it and an ignoramus. But when the danger is specific to that thing alone, the power of imagination can not harm one who does not understand the matter. But a scholar who know and is acquainted with the depths of the matter and understands it certainly has a fear that he may be harmed, for he is not a simple person. And all this because he can imagine that he is likely to be harmed, which is not the case for the ignoramus.

This matter is also mentioned in Yebamot 72 which says "on a cloudy day and on a shuta day (a day when the south wind blows) we do not perform a circumcision. . . but today, since the multitude trample upon it, [we do it and] God protects the simple." And the poskim do not mention this prohibition at all. Neither does the Shulchan Aruch, although the Bet Yosef (262) quotes the opinion of the RITBAH

דרך הטבע אין שום סעם לחלק בין ת"ח וזידע ומכיר לבין עם-הערץ. אבל דבר שנוקו הוא סגול"י בלבד. מי שאינו מבין ענין זה אין כח בדמיון שולט בו להזיקו. אבל ת"ח שידע ומכיר עומק הענין ומבינו. הרי שבדאי קיים חשש לגביו. שברי אינו פתי. וכל זה משום הדמיון שעלול להזיקו משאי"כ בעם הארץ.

עוד נזכר ענין זה בימות ע"ב. יומא דעיובא ויומא דשונא (יום המועון ויום שרוח דרומית מנשבת) לא מהליגין ביה וכו' ומאידנא דדשו ביה רבים שומר פתאים ה'. והפוסקים לא הזכירו איסור זה כלל וגנו מן לא הזכירו בשו"ע. אף שבבית-וסף (סימן רסב) צ"ט דעת הריטבא שהוציאו להמנע

[R. Yom Tov Ben Avraham-Ashvili] that one who wishes to perform a circumcision on a cloudy day it is fine for they do not depend on the principle "God protects the simple." And further he brings the opinion of Rabainu Yerucham who writes that we should not postpone a circumcision on account of a cloudy day, but we can postpone it if the baby is sick. We see here a differentiation between something which is not particularly logical (even if it is natural) like a cloudy day, and something which is understood to be natural, like the weakness of a baby. Therefore the Shulchan Aruch did not bring the opinion of the RITBAH mentioned above, because in this we certainly rely on the principle "the multitude trample on it and God protects the simple." And see further on this matter what the HIDA [Hayyim Yosef David Azulai (1724-1807)] wrote in his Responsa Hayyim Shal 1:59. that the danger of ~~is~~ Similarly, the ZEMAH ZEDEK (Yoreh

מלמול ביום המעון טוב
עושה שאינו נאמך על שומר
פתאים ה' ושוב בהיא סברת
רבינו ירוחם שכתב שאין
לדחות מילה בשביל יום
מעון. אאיכ התינוק חולה
מטורה הדרך וכו' עיי"ש.
הרי שירד לחלק בין דבר
שאינו מתפס כל כך בהגיון
(אף כי לכאורה דרך טבא
היא) כיום מעון. לדבר שהוא
מוק בדרך הטבע כחולשת
התינוק. ולכן לא הביא
מן בשורע סבית הריטביא
הגיל משום שכזה ודאי
שיש לסמוך על הא דרשו
ביה רבים ושומי פתאים ה'.
ועיין מש בזה מן החידא
בשרת חיים שאל חלק א'
סימן נ"ט.

וכן כתב הצמח צדק (יד)

De'ah 263) wrote that since "now we do not know much about the 'cloudy day'. . . we should not be concerned with it, because it is anyway a far-fetched thought that a cloudy day will harm the circumcision of a baby who is in his bed at home. But if there is a fear that the baby is sick, even if it is a remote fear, we definitely may postpone the circumcision. And since we are permitted to postpone it, we are obliged to do so." Clearly when there is a fear of illness it is very crucial to postpone the circumcision. But on a cloudy day which is a very distant thing, according to his definition, the rule is that we need not be concerned at all.

The list of things on this is very long. But the principle which arises from all of this is that when the danger is natural and logical, and particularly when the danger is proven and even more so when all the physicians confirm that the danger of smoking is very great, we certainly

סימן רס"ג) שאף דעכשיו לא בקיאין ביזמא דעיבא וכו' ולכן אין לחוש לזה. זהו משום שכלא"ה הוא ענין רחוק מאד שיזמא דעיבא יזיק לנימול שהוא במטה בבית אבל בנדה זה שהוא חשש חולי הגוף אף אם נאמר שהוא רחוק. עכ"ז ודאי רשאי לדחות ומאחר שרשאי יש לומר שבנדה זה גם מחוייב להמתין איזה זמן וכו' עיי"ש. הרי מפורש שבחשש מחלה החמיר מאד לדחות המילה ואילו ביום במעונן שהוא דבר רחוק מאד, כהגדרתו. פסק שאין לחוש כלל.

והדברים בזה ארוכים אך כלל העולה מכל דברינו. שבדבר שהסכנה נתפסת בדרך הטבע וההגיון. וכל-שכן כאשר היא מוחשית ובדוקה. וכש בן בנו של כש כשכל החופאים מאשרים כמה גדולה סכנת העישון

cannot rely on the principle "God protects the simple." Can a person put a fire to his breast and his clothes do not catch fire? Therefore it is clear that smoking is very dangerous to health and is forbidden by force of Halakhah.

והוכח הדבר. ודאי אין לומר שומר פתאים ה'. היחלתה איש אש בחיקו ובגדיו לא תשרפנה. ולכן פשוט שהעישון הוא מסוכן מאד לבריאות ואסור הוא מכה הדין.

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