



RESPONSA

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In light of dozens of scientific studies proving the dangers of smoking, is smoking prohibited by Jewish law? And if so, why is smoking so prevalent in the ultra-Orthodox community, which is so scrupulous about observing *halachah*?

Since the Surgeon General's report first established the dangers of cigarette smoking in 1964,¹ more than 40 responsa have been written on this subject. The majority, whether Orthodox, Conservative or Reform, have ruled that cigarette smoking is prohibited by Jewish law, giving at least 13 reasons for this conclusion. Six of the most cogent reasons are:

1) Maimonides' *Mishneh Torah* contains a list of activities to be avoided for reasons of health (*De'ot* chapter 4). The introduction states:

Seeing that keeping the body healthy and whole is the way of God for it is impossible to understand or know anything about the Creator if one is sick, *therefore a person must distance himself from things which destroy the body and accustom himself to things which heal the body.*

Smoking is an activity "which destroys the body" and is therefore forbidden by Maimonides.

2) In Deuteronomy (4:9,15) God tells the Jewish people: "Take utmost care and watch yourself scrupulously." The Talmud (*Berachot* 32b) derives from these verses that a person must scrupulously guard his physical health. This ruling was codified by Maimonides (*Rotzeach* 11:4) and the *Shulchan Aruch* (*Hoshen Mishpat* 427:8). Thus, whoever smokes transgresses the commandment to "watch yourself scrupulously."

3) In addition to the general principle cited above, many specific activities were

forbidden by the rabbis because they endanger human life, among them drinking water from an uncovered barrel lest a snake had poisoned the barrel with its venom (*Mishnah Terumot* 8:4-5) and putting coins in one's mouth lest they transmit dangerous bacteria (*Yerushalmi* ibid. 8:3). Maimonides and the *Shulchan Aruch* who codified these prohibitions emphasize that these are merely *examples* and not an exhaustive list (*Rotzeach* 12:6; *Hoshen Mishpat* 427:10; *Yoreh Deah* 116:5). Thus smoking is included in the list of things prohibited by our sages because they endanger human life.

4) According to the Mishnah (*Bava Kamma* 8:6), a person is not permitted to injure himself, a principle codified by the standard codes of Jewish law (Maimonides, *Hovel Umazik* 5:1; *Shulchan Aruch*, *Hoshen Mishpat* 420:31). Smoking is a form of self-inflicted injury and is thereby prohibited by Jewish law.

5) The Talmud rules: *Hamira sakanta mei-issura* or "Regulations concerning danger to life are more stringent than ritual prohibitions" (*Hullin* 10a). In other words, in case of a doubtful transgression of ritual law, rabbis rule in the direction of leniency, but if there is a possibility of one of the physical dangers listed above a more stringent rule results. Therefore, even if one claims that cigarette smoking is not *necessarily* dangerous since not all smokers die of cancer, it would still be forbidden on the grounds of doubtful danger.

6) Lastly, some smokers claim they have faith that God will protect them from the dangers of smoking. But the Talmud has already ruled on numerous occasions that one may not consciously place oneself in a dangerous situation because "one does not rely on miracles."³ This principle has also been codified in the *Shulchan Aruch* (*Yoreh Deah* 116:5), thus a smoker may not rely on miracles and is required to stop smoking.

If smoking is so clearly prohibited by Jewish law, why is it prevalent in ultra-Orthodox circles? A number of ultra-Orthodox *poskim* (rabbinic authorities), while admitting that smoking is not a good idea or discouraging the practice, have consistently refused to prohibit smoking. The most prominent one was Rabbi Moshe Feinstein (1895-1985), who wrote five responsa on the subject.⁴ Ordinarily, the Talmud discourages one from disagreeing with a prominent rabbi after his death since he cannot defend himself (*Gittin* 83b), but smoking is no ordinary issue. It is an issue of *pekuach nefesh*, or the saving of a life, which takes precedence over almost all of the *mitzvot* (commandments) in the Torah (*Sanhedrin* 74a). Furthermore, it is essential to refute his approach because he has had a greater influence on the ultra-Orthodox community than any other halachic authority.

In 1964 Rabbi Feinstein refused to prohibit smoking "in particular because a number of great Torah sages in past generations and in our own smoke." This is, of course, irrelevant. Those sages did not know that smoking was dangerous; they thought it was beneficial and healthful.⁵ Indeed, one rabbi who heard from doctors that smoking was dangerous for "weak people" ruled that they should stop smoking!⁶ Furthermore, Rabbi Feinstein believed that great Torah sages are influenced by *ruach hakodesh*, or "God's holy spirit," and are infallible.⁷ This belief was invented in modern times and is entirely foreign to normative Judaism.⁸

Rabbi Feinstein seemed totally unaware of the scientific facts about the dangers of smoking. Even in his 1981 responsum he compares smoking to "many types of food which people enjoy very much like fatty meat and very strong foods." On the other hand, halachic authorities who studied the scientific evidence ruled that smoking is absolutely forbidden by Jewish law.⁹

The Talmud says that it is dangerous to circumcise a child or let blood on a cloudy day or on a day when the south wind blows, but since many have trodden on that path [and not been harmed] "God protects the simple" (*Yevamot* 72a).¹⁰ Rabbi Feinstein and others extend this principle to the case of smoking. Since many have smoked and not died "God protects the simple." This analogy, questionable at best, may apply when the public is simple and unaware of the dangers involved, but today every smoker has been warned innumerable times of the dangers of smoking and yet ignores the warnings. Therefore the smoker is consciously placing himself or herself in danger, which is clearly forbidden.

Furthermore, in the five cases described in the Talmud, the activity itself is innocuous (e.g., eating) or a *mitzvah* (e.g., circumcision) and the rabbis were willing to ignore some *external* danger by invoking the principle of "God protects the simple." But smoking *itself* is lethal and the principle is therefore not relevant.

Lastly, a number of rabbis stress that the Talmud only invokes this principle when the danger involved has not been proven, but it cannot be utilized when we can clearly see that smoking is dangerous and that God does not wish to protect the smoker.

In addition, Rabbi Feinstein's approach to cigarette smoking is clearly contradicted by his approach to marijuana smoking. In a little known responsum from 1973 concerning marijuana he stated: "It is obviously forbidden by a number of basic laws in the Torah. *First of all, it damages and destroys the body.*" The inconsistency is glaring. Marijuana is forbidden because it destroys the body, a fact that remains to be proven, while smoking, which is clearly deadly, is permitted according to the principle that "God protects the simple!" He continues: "Furthermore, marijuana causes a great craving which is greater than the craving for food and the like which are essential to sustain human life." And cigarettes do not? (Indeed, Rabbi Feinstein himself makes a similar statement about cigarettes in his 1981 responsum.) Lastly in his responsum on marijuana, he states: "It is certainly forbidden to bring oneself to a

craving greater than that for food and for a thing which a person has no need for." Are cigarettes any different?

If marijuana is forbidden because it destroys the body, arouses a great craving and serves no purpose, then cigarettes should be forbidden for the same reasons!

Many people assume that Rabbi Feinstein and others refused to forbid smoking because of the Talmudic principle, "one should not impose a restriction on the community unless the majority can abide by it" (*Bava Kamma* 79b). In other words, we cannot prohibit smoking because many smokers will not be able to abide by our decision. However, none of the responsa on smoking invokes this principle. Second, most people are non-smokers, so the majority can easily abide by this decision. Finally, this principle is irrelevant because as we have seen this is not a new restriction. Smoking is already forbidden by the existing halachah and there is no need for any new restriction.

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 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.

The complete Hebrew responsum upon which this column is based will appear shortly in the *Responsa of the Va'ad Halakhah of the Rabbinical Assembly of Israel*, vol. 4[(5750-5751), Jerusalem, 1991.

¹ According to the latest Surgeon General's Report: "Smoking related illnesses cause more than one of every six deaths in the United States." (Washington Post, September 26, 1990, p. A4)

² Most of the responsa are in Hebrew. For English responsa see: Rabbi Moses

Aberbach, Tradition 10/3 (Spring 1969). pp. 49-60; Rabbis David Bleich, Solomon Freehof, and Seymour Siegel in Elliot Dorff and Arthur Rosett eds., *A Living Tree*, (1988, pp. 345-359); R. Nathan Drazin in Leo Landman, ed. *Judaism and Drugs*. 2nd edition. (1973, pp. 71-81); Dr. Fred Rosner, *Modern Medicine and Jewish Ethics*, (1986, pp. 363-375).

³ *Megilah* 7b, *Pesachim* 50b, *Kiddushin* 39b, *Shabbat* 32a, *Ta'anit* 20b and see *Zohar to Bereishit* 111b.

⁴ *Igrot Moshe, Yoreh Deah*, Part 2, no. 49 (from 1964); *Yoreh Deah* Part 3, no. 35 (197:5); *Hoshem Mishpat*, Part 2, no. 76 (1981); *Noam* Vol. 24 (1982), pp. 506-508 and *Pe'er Tahat Efer*, Jerusalem, 1988, p. 19. All quotes below are from these responsa.

⁵ See, for example, the responsa cited by R. Freehof, note 2 above, pp. 354-355.

⁶ R. Israel Meir Hakohen, the Chafetz Chaim (1838--1933), in *Likutei Amarim*, (1967, no. 13).

⁷ See, for example, Alan Yuter. *Judaism*, Vol. 28 (1979), pp. 155--159.

⁸ See, for example, R. Hahn David Halevi, *Aseh Lekha Rav* Vol. 2, (1978, pp. 146-147).

⁹ See, for example, R. Haim David Haled, *Aseh Lekha Rav*, in nine different responsa; R. Eliezer Waldenberg, *Tzitz Eliezer*, Vol. 15, no. 39.

¹⁰ The concept also appears in *Shabbat* 129b; *Niddah* 31a; *Avodah Zarah* 50b and *Yevamot* 12b.

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