

## COMMUNICATIONS

### SMOKING

TO THE EDITOR OF *TRADITION*:

This communication is in response to Rabbi Bleich's analysis of the possible prohibition of smoking (*TRADITION*, Summer, 1977, Vol. 16, No. 4). Rabbi Bleich makes three points which I will address: (1) That the health prohibitions are *specific* in nature and not *general*; hence, no new rabbinic legislation may be enacted for new health hazards. (2) That medically dangerous activities practiced by the multitudes are permissible. (3) That *distant* dangers (in contrast to *near* dangers) are permissible.

(1) There are several instances where *general* Biblical commandments are given *specific* rabbinic forms without these specific forms necessarily exhausting the applicability of the commandment. Thus the law of loving one's neighbor as oneself (Lev. 19:18), was translated rabbinically into the obligations of visiting the sick, comforting mourners, etc., but these specific enactments do not exhaust the possible performances of the gen-

eral commandment (Rambam, Mourning, 14:1). One possible distinguishing example between the rabbinic and Biblical obligation would be visiting a sick person whom one hated. Rav Soloveitchik has pointed out that in such a case there would be a fulfillment of the rabbinic commandment but no fulfillment of the Biblical commandment.

Similarly, the Rambam (Murder, 11:4 and 12:6) explicitly defines the applicability of the positive commandment of removing dangerous obstacles, and the negative commandment of not putting bloodshed in one's house, to apply to "every pitfall that has a danger to life." Hence, every new danger is automatically prohibited without need of specific legislation. Rabbi Bleich himself observes the plausibility of this by noting that had the Rabbis known of the danger of tobacco they would have prohibited it, since this danger is not inferior to the danger of "uncovered water."

(2) We must distinguish between those "multitudinously practiced activities" whose "multitudinousness" is *intrinsic* to society, and

those which are *accidental* to society. In simpler terms we must distinguish between widely prevalent activities that are *redeemable* and those that are *irredeemable*.

The examples that Rabbi Bleich gives—crossing the street, riding in a car . . .—are *redeemable* activities that are *intrinsic* to society. That is, society as we know it would cease to exist if people wouldn't cross streets or ride in cars. But smoking or coin-sucking (Rambam Murder, 12:4) are *irredeemable* activities whose possible widespread prevalence can only be *accidental* to a society. Society would not cease if people abstained from smoking or coin-sucking.

Hence, smoking and coin-sucking (where there is a danger of contact with and ingestion of body sweat) are prohibited (even if they are prevalent), while riding a car and crossing the street aren't. It appears to me that certain aspects of reality may be questioned here: e.g. Is the *safe* driving of cars (using techniques of defensive driving) really harmful? Is smoking really "practiced by the masses?" Among people of ages 10 to 70 for example, is it really the case that 90% or 50% or even 20% smoke? What are the statistical criteria which define "widespread"?

The concept of "redeemable social activity" occurs elsewhere in Halakhah (Theft and Lost, 6:11). While a precise general definition is certainly desirable, it is nevertheless not necessary for prohibiting smoking. For smoking cannot be inferior to coin-sucking or placing food underneath a chair

(Murder, 12:4-5), nor are any of these activities "redeeming". Consequently, since every definition of *irredeemable* must include coin-sucking, and placing food underneath a chair, it must also include smoking.

(3) The concepts of *far* and *near* are spatial terms. In discussing the permissibility of taking a boat-journey, Rabbi Bleich, based on a Responsum, applies them to the temporal sphere (the potential of danger, temporally near or far). I would suggest an interpretation in *probabilities*—a danger that is probably *near* is obviously more likely to be prohibited than a danger that is unlikely.

An examination of the Talmudic precedents to which "God preserveth the simple" applies shows a common denominator of a highly *remote* danger. The passages that Rabbi Bleich quotes—which day of gestation is dangerous for cohabiting (*Niddah* 31a), which weekdays are dangerous for blood-letting (*Shabbath* 129b) . . . —clearly, are statistically *remote* dangers. The danger from smoking however, while *temporally* far, is nevertheless, *statistically* near.

An additional concept to consider is the "degree of danger." As an example, plane riders are *less* likely to have accidents than car riders, but plane accidents are usually *more* fatal than car accidents. Smoking is not fatal immediately. But neither is coin-sucking, whose prohibitive nature emanates from the potentiality of body-sweat ingestion, which is not fatal immediately. Coin-sucking, like cigarette smoking, however, would probably

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be highly injurious and life shortening in the long run.

Coin-sucking and smoking are seen to agree in irredeemability, statistical closeness, and the degree of danger. Furthermore, widespread smoking is an irrelevant consideration with an irredeemable activity whose dangers are statistically close. On the other hand, the suggested analogies between smoking and street walking, car riding, boat journeys, and having intercourse on the ninetieth day of gestation is seen to be specious. Hence, smoking is prohibited according to Jewish Law. The idea that rabbinic Judaism holds coin-sucking to be punishable with lashes (Murder 11:5) yet simultaneously holds smoking permissible is absurd. A serious prohibition of smoking by our rabbinate will help strengthen people's perception of Judaism as a dynamic system embracing all areas of life, and not just the ritual.

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### TO THE EDITOR OF *TRADITION*:

I read with great interest Rabbi Bleich's recent article about the halakhic permissibility of smoking. In this article, he states the fact that "the multitude has trodden thereupon" and that therefore the rule that "The Lord preserves the simple" applies. He cites the responsa of Rabbi Moses Feinstein and of Rabbi Ya'akov Etlinger to support his contention. I believe that several questions can be raised against the halakhic legitimacy of smoking.

I. Rabbi Bleich states that "the majority of smokers do not compromise their health . . . as a result of smoking." I beg to differ. Based on the current evidence, the warning on cigarette packages is that they (cigarettes) *do* (not may) constitute a hazard to the health of the smoker. I would suggest that Rabbi Bleich consult the available literature from the American Cancer Society, the Lung Association, the Heart Association, etc. before stating flatly that the majority of smokers do not compromise their health by smoking. Similarly, I would like to point out that Rabbi Feinstein wrote his responsum in late 1963. Since then, considerable evidence has been uncovered about the harmful aspects of smoking.

II. There appears to be a considerable difference between the Talmud's application of "The Lord preserves the simple" and smoking. In the Talmud, this dictum is applied to such hazards as performing a circumcision on a cloudy day or on a day when a south wind is blowing. In such cases, the Talmud applies this dictum to permit the circumcision. Similarly, the Talmud permits blood-letting at an "inauspicious" time (astrologically speaking) because "everybody does it" and so we say "The Lord preserves the simple." In both cases, the particular act is not harmful in itself. Rather, an indirect side effect may occur. The Talmud says that one need not worry about this side effect because "The Lord preserves the simple." Cigarette smoking is a toxic activity — not a harmless activity with a toxic side effect. There is no evidence that

the Talmud would include smoking under this dictum.

In addition, while it is true that the Sages of the Talmud did not decree against smoking, the fact that they did not include "uncovered water" under the protection of "The Lord preserves the simple" indicates that the Sages did not mean to include overtly toxic and/or hazardous activities under that maxim.

III. Based on the most recent evidence, the physiological changes caused by smoking are *not* innocuous. Rather, they are distinctly unhealthy — but they are reversible if a person stops smoking soon enough. If that is true, the distinction raised by the *Binyan Zion* would not apply in this case since smoking would represent an immediate danger rather than a future danger. Thus, while it is true that "intercourse itself poses no hazards," it is equally true that smoking (which raises the blood pressure and paralyzes the cilia, among other things) itself is hazardous.

IV. Finally, Rabbi Bleich neglects the effect of smokers on *non-smokers*. There are many people who become seriously (and, in several cases, irreversibly) ill when exposed to cigarette smoke. Such people can not be told not to breathe when they are around smokers. A smoker, however, can be instructed to refrain from smoking around non-smokers. Because *Roshei Yeshivah* refuse to prohibit smoking in the *Batei Midrashim*, the non-smoking students are exposed to considerable hazard. In some cases, the hazard to the non-smoker is even greater than the

hazard to the smoker! I would suggest that Rabbi Bleich read the literature describing the dangers of "sidestream smoke." Furthermore, in the case of the non-smoker, there is evidence that society is no longer "quite willing" to accept these risks. In fact, various states and certain federal agencies have already promulgated rules and regulations to protect the non-smoker. Even if one would assume that smokers are entitled to endanger themselves — are they entitled to endanger others around them? Are smokers to be allowed to expose innocent bystanders to the dangers of emphysema, heart attack, cancer, or high blood pressure?

Finally, if smoking is allowed, does the Halakhah mandate that smokers be segregated from non-smokers?

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RABBI BLEICH REPLIES:

While the sentiments expressed by Mr. Weiss and Dr. Hendel are certainly deserving of approbation insofar as general policy with regard to the issue at hand is concerned, they present no new information having bearing upon the relevant Halakhah.

I can assure both writers that I have carefully examined the literature which has come to my attention. 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. This would be a significant factor

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in terms of the point made with regard to the thesis formulated by R. Ya'akov Ettlinger. The very fact that physiological changes caused by smoking are reversible indicates that, halakhically speaking, they are innocuous in those who do not develop life-threatening conditions.

In discussing the possible prohibition of a hazardous activity it is necessary to differentiate between applicable biblical and rabbinic prohibitions and to examine separately the parameters of each. Published articles on this subject often fail properly to distinguish between the two. The biblical obligation with regard to removing dangerous obstacles quite evidently does not apply to all manners of danger. It is precisely in this context that Rambam, *Hilkhot Rotzeach*, chap. 11, distinguishes between biblical and rabbinic prohibitions. Even assuming, as does *Arukh ha-Shulchan*, *Choshen Mishpat* 427:8, that such actions involve an inherent biblical transgression as well, actions which "the multitude have trodden thereupon" are, nevertheless, not forbidden. [See *Arukh ha-Shulchan*, *Yoreh De'ah* 116:11.] Moreover, according to *Binyan Zion* this prohibition is applicable only to actions involving an immediate danger. The biblical obligation derived from the commandment to construct a fence around one's roof refers to the removal of a hazardous obstacle posing an imminent danger. A distinction between a "redeemable social activity" and one which is not, may or may not be a valid explanation of why the Sages chose to ban

certain activities and not others. There is no textual or contextual evidence that this constitutes the governing factor. Since prohibitions against activities which do not present an imminent danger are specific rather than general in nature the question is entirely academic.

Dr. Hendel confuses two distinct and independent lines of argumentation. Rabbi Feinstein's argument based upon the principle "The Lord preserves the simple" is independent of the question of proximate danger. The responsum of *Binyan Zion* is addressed to the permissibility of sea-journeys and the like, not to bloodletting and cohabitation on the ninetieth day of gestation. Smoking and sea-voyages are analagous both temporally and statistically.

If Dr. Hendel intends to argue that the selfsame considerations which prompted the Sages to ban coin-sucking are, in principle, applicable to cigarette smoking, his argument is quite cogent. I indicated this clearly in my comments. However, there would be nothing at all absurd in maintaining that coin-sucking is to be punished with lashes and simultaneously maintaining that smoking is permissible. [Parenthetically, there is no explicit statement in Rambam declaring coin-sucking to be punishable with lashes; the specific reference is to uncovered water and other actions which are explicitly mentioned in *Avodah Zarah* 12b as punishable with lashes. Cf. *Shulchan Arukh*, *Choshen Mishpat* 427:10, and *Arukh ha-Shulchan*, *Yoreh De'ah* 116:11.] The clashes to which reference is made (*Hilkhot Rotzeach*

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115:) are described by Rambam as *makkot mardut*, i.e., punishment for infraction of a rabbinic prohibition. 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 according to Jewish law. 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. “Just as it is forbidden to declare that which is forbidden to be permissible, so it is forbidden to declare that which is permissible to be forbidden.”

### TO THE EDITOR OF *TRADITION*:

In the Summer 1977 issue, J. Immanuel Schochet starts his article, “Let Sins be Consumed and not Sinners” with a fine Torah discussion, but then shifts gears and becomes a propagandist. He says, “Facts do not lie and at times we have no choice but to refer to the empirical data to resolve a stalemated debate.” Instead of empirical data, he presents unsubstantiated statements to the effect that the Separatists are the saviors of Yiddishkeit in America, and are *the* reason for all progress of Jewish education and Jewish commitment that has taken place since World War II.

The Separatists do not concern themselves with facts. They do not place any value on Historical or Sociological research. They assume that whatever they do is perfect and right. I shall, however, use his-

tory and sociology to refute their statements. It is a fact that the greatest progress was made by Orthodoxy in the post World War II years. This was not the age of the melting pot. This was an age when American cultural attitudes were more hospitable. There was a new pride and interest in one's own sub-culture. It was right to be a hyphenated American. It was the time of growth in membership in churches and synagogues. This was followed by the period climaxed by Roots. Now we are witnessing the return by Americans to traditional, conservative religions. Events in modern Jewish history have changed the Jews. Can anyone deny that the holocaust made an indelible impact on us? The emergence of the State of Israel and its continued growth has done much to bring Jews back to Yiddishkeit. I do not think that the Separatists take credit for either of these events. There were other changes in the American Jewish community. We attained preeminence in science, the arts, business, and even politics. In many social circles it became fashionable to be Jewish. All these helped contribute to Orthodoxy's success.

A little historical research will show that many cities did very well without the aid of Separatists. I was born, raised, and educated in Chicago, as my parents before me. All of the Torah institutions were founded and nurtured by non-Separatists. The first Separatist institution was founded in 1960. The Jewish community of Chicago witnessed the same growth in Orthodoxy and Orthodox institutions as

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was true in other major American cities.

The Separatists are afraid of facts. In a community that I know well, there is only one day school, and it is controlled by Separatists. The school publicized that a study was made of the graduates and found that all of them were religious. When the Director of the school was questioned about the fact that a number of graduates were not observant, he explained that they really had not made a study. He and his fellow administrators at the school reviewed the names of all the students whom they could recall and concluded that they were all religious. They did not even review the lists of all the graduating classes and they had never contacted any of the graduates. When an offer was made to make a scientific study, this was declined. They have refused to have any scientific educational studies made of the school even if the people conducting the study were observant Jews. Once, Torah Umesorah started to make a study of

the boys' division of the high school, but this was aborted by the school administrator. I fail to understand what *Issur* there is in knowing how effective our educational institutions are. It seems to me that since these studies might just help the school save one more soul, or make one more scholar, that they must be encouraged.

A logical result of the evils of Separatism is now taking place. The Yunge Leit of the Separatist Yeshiva Gedola, in the same community, now have a violent disagreement with their teachers. They are opposed to the day school that their own Roshei Yeshiva control. They want a *cheder* where the children will have almost no secondary education, no exposure to the outside world, and will be separate from non-religious students. It seems as if they want to be separated from the sin, the sinners, and the righteous as well. These are the empirical facts about the dangers of Separatism.

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