

# The Public Health VS the People's Autonomy: Banning Smoking in Orthodox Jewish Community

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## Abstract

Smoking is a worldwide problem. Research in recent years has shown us that smoking and second hand smoking can cause many diseases<sup>1</sup>. As a result of the understanding of the results of smoking, the house of legislator in Israel decided to legislate a law that people under the age of 18 cannot smoke and, a couple of years later, it decided to ban smoking in public places. The problem begins when the law is affecting the person's autonomy and the person's culture. More than four decades ago when the smoking habit began in Israel, no one knew what the influence would be. Now, although that information is available, the orthodox community in Israel is not exposed to the knowledge. Smoking in this community begins from Purim<sup>2</sup> or from the Bar-Mitzvah<sup>3</sup> and from the will of the young orthodox to rebel. This law raises a question: Is it ethical to deprive the young orthodox of the right to smoke? Alternatively, is there a better way to stop the orthodox from smoking than only the regulation? In this paper, the author will try to show that regulation alone will not help in the orthodox community, and we need to think on more options to make the orthodox more informed to smoking problems. The author thinks that the best way will be to educate the orthodox community from young age.

## Keywords

Smoking, Orthodox Jews, people's autonomy, public health

We have two ways of analyzing the ethics of smoking: the activity of smoking itself and how the smoking affects the smoker or how it influences other people (Dawson 2011).

If we think about smoking itself then we can fit it to the virtue ethics. Smoking makes people more relaxed, less stressed, sometimes helps them to lose weight, helps with constipation, and, from behavioral point of view, it is a reason to go for a break at work, have time for yourself, and sit outside in the fresh air with no one bothering you. For the smoker, it looks like it is the good life and the cigarettes help him to enjoy.

On the other hand, we also have reason why

smoking that does not affect anybody except the smoker is not ethical:

(1) Consequentially (Sinnott-Armstrong 2011): Smoking will harm the happiness of at least one person, except of the smoker. It will make the smoker less healthy and it will shorten his life. The consequence will be worse than if the person will not smoke. The smoker maybe will enjoy more when he smokes but his life will be shorter and will be harder

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because of the damage that smoking is doing for the smoker's health;

(2) Deontology (Alexander and Moore 2012): The act of smoking has a bad value. Smoking is an addictive habit because of materials in the cigarette, and because this harms the person's free will, he depends on the cigarette and their lives surround around the smoking. Because of the harm that it dose to the freedom of the smoker, it is not ethical to smoke;

(3) Virtue-Ethics (Hursthouse 2012): Although smoking for itself can make a person feel better for some time, in the long run, smoking interferes with our ability to live well and to function properly; this violates the principle of a golden mean.

The author thinks that from all of those approaches, the most important one is the deontology approach. The reason for it is that the main problem in smoking, in the author's opinion, is affecting the smoker's free will. The smoker begins to look for the cigarette. Buying shirts that will be suitable for a pack of cigarette, he tries to go to a break from work every time he wants to smoke and he cannot begin the day without smoking. The author thinks that everything that manages the person's life to accept for himself is problematic.

Until now, we speak on if smoking for itself is ethical or not, but is it ethical to smoke when the smoker knows that the smoking can affect other people?

(1) Kantianism: When a person smokes near another person, the smokers who smoke near others fail to treat those others as ends in themselves with their own preferences for not being subject to smoke. The smoker harms the person who is near him and it does not bother him that the person is getting harm.

(2) Utilitarianism: According to it, the action is right if it will maximize happiness. Smoking will maximize the happiness of one person; some smokers believe that, for short time, it will harm the happiness of the smoker and in the long run, it will harm the

happiness of all of the surrounding.

In this case, the habit of smoking of one person is managing the life of another person. This thing is harming the happiness of most of the people who are around the smoker.

## AUTONOMY

In *Principles of Biomedical Ethics*, Beauchamp and Childress state one version of the principle of respect for autonomy as follows: "Autonomous actions should not be subjected to constraints by others" (Beauchamp and Childress 2009). An autonomous action is an action rationally undertaken by a capacitated person.

In the subject of smoking, autonomy has another side. The question is if the smoker is autonomous to his actions. Smoking is addictive then we can argue that although the beginning of smoking is an autonomous decision of the smoker or at least what the smoker thinks in the case of kids or teenagers, the continuing smoking is a habit because of the addictive nature of the cigarettes and because this is not a fully autonomous action.

Hooper and Agule (2009) thought that some regulation needs to be done to protect the people's higher-order autonomy. The reason is that although people have the capacity to choose to have a full autonomy, people need to have the full information about smoking and they need to get to a basic level if they reach intellectual maturity for having the option to get to some reason decision, more than this, they need to have the option to reflect on their first-order desires and be able to act according to their second-order desires. According to this, we can understand the regulation is more important to kids under 18 years old (in Israel) and to people with some kinds of mental retardation.

Hopper and Agule (2009) showed us another point of view on autonomy and smoking. When there are people who smoke in public place, they denied the

people who do not smoke to be in the same place. So we can see that the smoking regulation has an impact on the autonomy of the smoker and of the non-smoker.

## SMOKING REGULATION IN ISRAEL

The law against smoking in public places in Israel was enacted in 1983 and was amended in 2012. The law describes the places where people cannot smoke and who can enforce the law; the extension of the law adds places and areas around buildings and in restaurants where people cannot smoke.

The extension of the law prevents people from smoking in synagogues, which is very problematic to the religious communities. People who used to smoke in the synagogues or near them during study now need to go far from the synagogue and taking a break is more difficult.

Baron-Epel et al. (2012) mentioned that the law will be difficult for all parts of the Israeli community to follow, because there is not consistent use of various punishment and reinforcement, making the implementation of the law to be problematic. Article of Baron-Epel et al. checked people who know the law and can understand it, and they will have problem to follow it, let alone the orthodox community that does not connect to most of the media. The group that Baron-Epel et al. checked is people who go to pubs and bars without good enough implementation of the law, and they will not act according to it. The law was supposed to be enforced with fines to smokers and bars owners; the problem is that most of the time the police or the Municipal Authority does not enforce it. The problem of acting according to the law is that smoking in pubs and bars has become a habit to them. In our case, it is like that it becomes habit to the orthodox to smoke in the yeshiva, at the end of Saturday, and in some events. More than this, in our case, it is more problematic because not as the secular Jews who go to pubs and bars and know the danger of

smoking and the law, the orthodox do not always know the law and the effects of smoking; but still in most of the high yeshiva, the Rabbi who is the head of the yeshiva prohibits smoking even if the orthodox who study do not know the law.

## SMOKING IN THE ORTHODOX COMMUNITY

People from the orthodox community who begin to smoke usually begin at the age of 13 just before their bar-mitzvah and continue for years or when they leave their parents' house and go to the high yeshiva; and there is one period of the year that the young orthodox want to smoke, Purim and at this time, it is the first time that they try cigarette but they do not always continue smoking after Purim.

Orthodox people live according to the Halacha<sup>4</sup> and according to the rabbinical rulings so they do not have a lot of options to do what they want. The community is isolated (Gurovich and Cohen-Kastro 2004) and most of them do not go to the university or even have cell phones or access to the internet, as does the secular community.

Most of them cannot rebel because everything that they will do to rebel can be considered to be against the rabbi ruling. Smoking, because it began as something that is allowed to do, is sometimes like rebelling but permissible. In Purim, the kids smoke because they want to look older and also in the bar-mitzvah, they smoke because it is a sign of moving from childhood to maturity. Then smoking is still in the gray area and the orthodox can smoke if they want to rebel.

The problem of smoking as a way to rebel is that when you begin, it is hard to stop. There is a point in life when the orthodox know what they want to do and they understand that they want to stop smoking, but at this point, it is too late and it is difficult for them to stop smoking. This is one of the reasons that some rabbis do not think that all of the community can obey

a ruling to stop smoking.

## SMOKING AND THE HALACHA

After years of smoking and the knowledge that smoking is hazardous for our health, religious people began to ask rabbis if smoking is permitted according to the Halacha. One of the questions was to the Va'ad Halakhah of the Rabbinical Assembly of Israel (Golinkin 1991). The assembly answered that smoking is prohibited for at least 13 reasons. The main reasons are:

(1) Life overrides all (*Pikuach Nefesh*)—the Amora Smohel learned this from verse 5 in *Leviticus* 18: “You shall keep my statutes and my ordinances; by doing so one shall live: I am the Lord”<sup>5</sup>. According to his interpretation of *Leviticus*, all people must keep the Lord’s laws as long as doing so does not endanger their life except of three cases: idolatry in Judaism, incest, and murder. If it is so then avoiding endangering our lives is (almost) God’s highest priority, and smoking endangers our lives, so smoking should be avoided.

(2) “Seeing that keeping the body healthy and whole is the way of God...” In chapter 4 of De’ot in Maimonides’ *Mishneh Torah*, he wrote a list of activities to be avoided for reasons of health. 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 that destroy the body and accustom himself to things that heal the body.

Smoking is one thing that prevents the individual from knowing God by destroying the body and is therefore forbidden by Maimonides.

(3) “Take utmost care and watch yourself scrupulously”. In *Deuteronomy* (4: 9, 15), God tells the Jewish people: “Take utmost care and watch yourself scrupulously”. The *Talmud* (Berakhot 32b)

derives from these verses the rule that a person must scrupulously guard his physical health and this ruling was codified by Maimonides (*Rotzeah* 11: 4) and the *Shulhan Arukh* (*Hoshen Mishpat* 427: 8). Thus, whoever smokes transgresses the commandment to “watch yourself scrupulously”.

Although there are many reasons not to smoke according to the halacha, we can find five rabbis (Rabbi Oyarbach, Elishav, Bleich, Josef, and Finstein) who agree that people should not smoke but not that it is forbidden according to the Halacha. Some of their opinions are:

(1) We will not render a ruling that most of the public cannot obey (*Avoda Zara*, 36, 5)<sup>6</sup>—People who smoke cannot stop so we do not want to require something that we know that some people cannot achieve.

(2) It is better that they will be doing thing by mistake then deliberately (*Bitza*, 30, 71)—It is better that most of the smokers will smoke by accident or from not knowing the harm that cigarettes do than that they will deliberately do something that harms them or goes against the Halacha. In our case, it is better that they will continue to smoke when they do not know that it is wrong and not that they will continue to smoke and they will know that it is wrong.

## THE PUBLIC HEALTH VS THE PEOPLE’S AUTONOMY

Smoking affects the public health and the people’s autonomy. In our case, it affects the orthodox more than that it affects the secular community. The orthodox who smoke are affected because of the regulation, especially of not smoking under the age of 18, which is the time when the young orthodox want to rebel, and it is the only way they can rebel and the regulation is taking it from them.

Another way the law affects the orthodox is the freedom to choose where to study. Because there are high yeshivas that do not accept people who smoke,

then they have fewer options. There is also the problem that when studying in groups, people do not want to be with them and in the end of the Shabbat, they only want to smoke and do not end it with their family.

The two paragraphs above addressed how the regulation affects the orthodox smoker. In addition to this, there is also the impact on the public; all the people who will be around the orthodox smoker will get harm because of the materials in the cigarettes and people will not want to go to high yeshivas where there are smoking people.

The main difference between the things that affect the smoker to the people around the smoker is that the smoker chooses to smoke but the people around him do not choose to be affected from this. The only thing that the author can think to justify the option to smoke is that it is the only option of the orthodox to rebel. The option to rebel is problematic because it is happening most of the time before the age of 18 and the law forbids from smoking in this age; the reason is that the kid is not adult and maybe he does not have all the information he needs to the maturity (Hooper and Agule 2009) to understand what he does.

In this case, the public health is more important than the person's autonomy. The most important option to the orthodox is the option to rebel but because it is done at the teenage years and in those years the young orthodox does not have the maturity to understand their action, then the author tends to prefer the public health.

## CONCLUSIONS

The orthodox community lives an isolated life and does not know much about smoking and one of the main reasons why they smoke is because when they are young, they want to look older and because it is their only way to rebel. There is a problem that they begin in a young age without knowing or understanding the meaning of smoking.

If we will inform them about the dangers of smoking then we will make them sin if they will continue to smoke. However, letting the orthodox continue smoking will harm the ones near them who do not smoke while not letting the orthodox smoke, we will take them the only freedom they know, and that means we will take from them the only option that they have to rebel.

The regulation in the orthodox community is important and as time goes on, all the orthodox will be able to stop smoking and the young orthodox will find some other ways to rebel, which is better than that the people around them will be harmed because of the smoking. The author also thinks that to make the orthodox stop smoking except of regulating smoking, we need to educate the orthodox community from a young age about the danger of smoking.

The author thinks that the main reason for not smoking is the effect of smoking on the free will of the smoker and of the people around him. The author thinks that most of the things that run the person's life except of himself are problematic, especially when it affects the person's health.

## Notes

1. Health Effects of Cigarette Smoking. Retrieved ([http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/effects\\_cig\\_smoking/](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/)).
2. Prayer of Thanks: Orthodox Fighting the Scourge of Smoking in the Community. Retrieved (<http://www.ynet.co.il/articles/0,7340,L-4413730,00.html>). In Hebrew.
3. Bar-Mitzvah is a Jewish coming of age ritual. Male kids are coming of age at the age of 13.
4. Halacha is the collective body of Jewish religious laws, based on the Written and Oral Torah, including the 613 mitzvot, and later talmudic and rabbinic law, as well as customs and traditions compiled today in the Shulchan Aruch, "the Code of Jewish Law".
5. See <http://bible.oremus.org/?passage=Leviticus+18>.
6. See <http://www.daat.ac.il/encyclopedia/value.asp?id1=385>. In Hebrew.

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