

Communications

Tradition welcomes and encourages letters to the editor. Letters, which should be brief and to the point, should not ordinarily exceed 1000 words. They should be e-mailed to tradition-letters@rabbis.org, or may be sent on disk, together with a hard copy, to Tradition Letters, Rabbinical Council of America, 305 Seventh Avenue, New York, NY 10001. Letters may be edited.

CONTEMPORARY TSENI'UT

TO THE EDITOR:

Rabbi Yehuda-Herzl Henkin's timely exposition on the subject of contemporary *tse'ni'ut* (*Tradition* 37:3, Fall 2003) was thorough, incisive and insightful, enlightening and elucidating, and successfully places the subject in proper halakhic context so that the current discussion can take place in a properly informed and constructive environment, irrespective of ideology or personal preference.

It should be emphasized, however, that while, as R. Henkin points out, halakha must undoubtedly take actual local custom into account both in determining the halakha and in responding to and ruling on particular cases, nevertheless it is equally important that local custom should be required to conform to halakhic parameters in order to be taken seriously or to be accepted as normative in any way.

One sees this quite clearly from the poignant, well-known and twice-quoted passage in *Arukh ha-Shulhan* (*Orah Hayyim* 75:7), where he introduced his halakhic ruling by first unequivocally decrying and strongly condemning local practice and the then-current state of affairs, calling it a "plague," instead of simply proceeding directly to the halakha that "we are permitted to pray and recite blessings" in their presence. His ability to deal with the issue pragmatically and to realistically determine the halakha in light of existing practice does not and was not intended in any way to codify or legitimize that conduct or standard of behavior.

Perhaps the underlying problem is the tendency of so many of our fellow Jews to seek out the halakha not in a true quest for what their behavior should be *ab initio*, but rather to justify, legitimize or permit what they are *de facto* already doing or seek to do, much like, *le-havdil*, a client asks a lawyer what the law is, having already done or decided what he wants to do but not wanting to run afoul of the law or of any societal consequences or penalties.

TRADITION

Our sages applied or derived halakha after-the-fact based on the existing circumstances or situation only in the face of a *fait accompli* when absolutely necessary, as in the case of the *aguna*, not to legitimize or justify ongoing behavior simply because it was extant or common practice.

Similarly, the standards of *limud zekhut* are also by definition much different from those which determine what our conduct or custom should be *le-khathila*. We must endeavor to be practicing Jews and observe halakha to the best of our ability *le-khathila*, rather than seeking to legitimize or codify existing local custom *be-di'avad*. In that way we will remain true to the age-old standards of names, speech and dress that resulted in our redemption from *Mitsrayim* and becoming a people in the first place, whatever (or in spite of) the current popular and accepted mores and standards of dress and speech of the increasingly debased culture and society which surrounds us today, and in accordance with the admonition not to follow the customs or practices of the society amongst whom we either live or have lived (*Levit.* 18:3).

Halakhic standards are ideals to be aspired to and achieved to the best of our abilities, not downgraded to the lowest accepted common denominator simply because we, the current attitude or climate, or the society in which we live, are not up to achieving or observing those standards. That is why *Arukh ha-Shulhan* so openly, strongly and unequivocally condemned the existing accepted local custom and behavior almost as a precondition before proceeding to his halakhic ruling. With moderation and understanding appropriate to the people and the circumstances we should do no less in our own discussions and exploration.

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HALAKHIC AXIOLOGY WITHIN THE *SEFER HA-HINNUKH*

TO THE EDITOR:

I am grateful to Rabbi Mayer Twersky (*Tradition* 37:3, Fall 2003) for drawing our attention to a number of *mitsvot* in the *Sefer ha-Hinnukh* where the author applies what R. Twersky calls the “expansivity principle.” These, we are told, are instances where one is able to identify “the

legal-moral-spiritual kernel” of a particular *mitsva* and apply it to additional cases. R. Twersky judges this “remarkable method” to be “significant conceptually” because it reveals “a fundamental spiritual conception of Torah and *mitsvot*.” We are referred to Ramban on *Levit.* 19:2 and *Deut.* 6:18 who according to R. Twersky “may have influenced the *Hinnukh* by his emphasis on Halakhic axiology” (note 3).

I wish to suggest that the entire matter may be understood in a much more straightforward manner than R. Twersky makes it out to be. What he chooses to call the “expansivity principle” is simply a matter of deductive logic in which similarity or class inclusion permits the application of properties in the general principle to all qualifying instances. That this was and is a legitimate part of Torah exegesis is made clear by Rambam in *Hilkhot Avel* 14:1 who points out that the Rabbinic *mitsvot* such as “visiting the sick” and “consoling the mourners” are all derivable from the Biblical *mitsva* of “Love your *re’ah* as yourself” (*Levit.* 19:18). The language of Rambam is *harei hen be-kelal . . .*, i.e., they are included in *ve-ahavta* which is understood as a general principle which says: “Do for others what you wish others to do for you.” In that particular case, the Torah itself formulates the *mitsva* as a general principle *kelal gadol ba-Torah*. Ramban, as well, identifies the *mitsva*, *ve-asita ha-yashar ve-hatov* (*Deut.* 6:18) as a general principle “*bazar lomar be-derekh kelal she-aseh ha-tov ve-hayashar be-khol davar*.” And in *Levit.* 19:2, Ramban recognized in *kedoshim tiheyu* a general principle: *tsiva be-davar kelali*. However, in the cases cited from the *Hinnukh*, the general principle is not found in the Torah itself but rather the *Hinnukh* is able to identify a moral component within the *mitsva* which is sufficient for it to be generalized. This is an insight confirmed by ordinary language analysis which shows that behind every individual moral judgment there lies a moral principle. This is a necessary feature of moral language.

This explains R. Twersky’s observation that “the *Hinnukh* applies this principle to a very small percentage of the 613 *mitsvot*” (note 2). This is, of course, to be expected since this applies only to those *mitsvot* where one can identify a moral component. Thus in the six *mitsvot* cited by R. Twersky, the so called “expansivity principle” is simply the application of a general rule to particular cases that are similar in relevant respects.

R. Twersky singles out the *Hinnukh*’s treatment of *mitsvot* 346 and 482 as ostensible additional instances of the use of the “expansivity principle” and yet are somewhat different. Unlike the other six cases, the *Hinnukh* does not present his “expansions” as obligatory but only as

TRADITION

“appropriate and becoming.” My own interpretation in line with the theory I have outlined above which I believe a close reading of the *Hinnukh* on these *mitsvot* will confirm, is that in these two cases, the *Hinnukh* has simply not succeeded in identifying a moral component. Hence his suggestions, which incidentally are not very clear, are not logical inferences but only *etsa tova ka mashma lan* and therefore not obligatory.

It is interesting to note that Yehiel Michael Guttman in a 1931 article entitled *Behinot Kiyyum ha-Mitsvot* (Makor Publishing Ltd., Jerusalem, 1978, p. 20) pointed out that the Talmudic sages in interpreting the Biblical material (*midrash*) sometimes employed a method of constriction (*midat ha-tsimtsum*) and sometimes a method of expansion (*midat ha-harbava*). He noted that the latter method was used mainly in dealing with the rational and the moral *mitsvot*.

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RABBI TWERSKY RESPONDS:

Professor Spero writes that “the *Hinnukh* is able to identify a moral component within the *mitsva* which is sufficient for it to be generalized.” This is purported to be a “much more straightforward” explanation, an alternative to my “so called” expansivity principle. Philosophical jargon aside, I fail to see anything new or different in Professor Spero’s letter. Nor does his explanation seem any simpler. When all is said and done, the *Hinnukh’s* *biddush* consists of identifying the moral-spiritual kernel of a specific *mitsva* and applying it to other cases. His analysis reflects as well as reinforces a spiritual conception of *Torah u-mitsvot*. Prof. Spero prefers the phrase “moral component” to my “moral-spiritual kernel,” and “class inclusion” to my “expansivity principle.” So be it. *De gustibus non est disputandum*.

The difference that Prof. Spero mentions between the Ramban and the *Hinnukh* is correct; accordingly, I already highlighted that very difference in footnote three of my article.

Finally, I thank Professor Spero for drawing my attention to the 1931 article that supports my analysis and terminology.