

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.

HALAKHIC AXIOLOGY WITHIN THE SEFER HA-HINNUKH

TO THE EDITOR:

In his recent article, “Halakhic Axiology within the *Sefer ha-Hinnukh*” (*Tradition* 37:3, Fall 2003, pp. 49-56), Rabbi Mayer Twersky, with great learning and incisiveness, succeeds in identifying and shedding light upon a hitherto unnoticed “method of extrapolation and analysis” which “the author of the *Sefer ha-Hinnukh* creatively employs on a number of occasions . . . to expose additional halakhic mandates.” R. Twersky refers to this “method of extrapolation and analysis” as “the expansivity principle.” He shows how the *Hinnukh* extrapolates, in several instances, by virtue of this principle an additional halakhic directive from the particular *mitsva* under discussion, and he further shows how “the *Hinnukh* clearly indicates that while the extrapolated directive is not directly, specifically included in the *mitsva* it is nonetheless normative.”

One anomalous and, it would seem, problematic example of the *Hinnukh*’s use of the expansivity principle is *mitsva* 429, “which lists the prohibition against a person’s deriving benefit from idolatry or its accessories” by adding them to his money and his possessions. As R. Twersky notes, the *Hinnukh* appends the following to his conclusion:

It is also included in this prohibition that a man should not add to the money which the Almighty has graciously given him in righteousness other possessions acquired by robbery, forced purchase, interest charges, or by any ugly or repugnant business. For all this is included under accessories of idols, because the inclination of a man’s heart is evil and it covets (illicitly acquired money) and brings it into the house, and the evil inclination is referred to as a type of idolatry, as our Sages said. . . .

R. Twersky in the body of his essay points to “a noteworthy, albeit subtle, feature” of this postscript. Unlike the other examples of the *Hinnukh*’s use of the expansivity principle that R. Twersky examines,

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The extrapolative component of *mitsva* 429 is not introduced or identified by the phrase *lefi ha-domeh* or any such equivalent phrase. It is simply and naturally included in the conclusion and again in unambiguously mandatory terms.

In an end note appended to this observation (p. 56, n. 19) R. Twersky raises the following problem:

Admittedly, as Professor Bernard Septimus commented to me, in this instance the *Hinnukh's* reasoning seems more homiletic than halakhic. Nevertheless, he presents his conclusion in normative halakhic terms.

R. Twersky concludes, "All in all, this example requires further study."

Indeed, if we combine the above two observations, the apparently problematic nature of this postscript to *mitsva* 429 becomes evident. Precisely this instance where the *Hinnukh's* reasoning in his use of the expansivity principle is "admittedly . . . more homiletic than halakhic" is also precisely the instance where the halakhic directive thus extrapolated "is not introduced or identified by the phrase *lefi ha-domeh* or any such equivalent phrase, but is simply and naturally included in the conclusion and again in unambiguously mandatory terms." How are we to account for this? I believe that a halakhic analysis of the special nature of this *mitsva*, as contrasted to the other *mitsvot* where the *Hinnukh* uses the expansivity principle, will enable us to resolve the problematic nature of this postscript.

Each of the other *mitsvot* where the *Hinnukh* uses the expansivity principle is clearly defined and delimited. The function of the expansivity principle then is to create what we might term a normative penumbra, encompassing additional halakhic directive(s) surrounding the basic *mitsva*. For example, *mitsva* 414, according to the *Hinnukh's* understanding, admonishes the *Sanhedrin* and Exilarch not to appoint any unqualified judges. The *Hinnukh* adds:

It is part of the *mitsva* by way of resemblance (my translation of "*lefi ha-domeh*") that any person chosen by the members of the community in order to appoint officials over them for any matter should not appoint an unqualified official.

(I have corrected here R. Twersky's translation, which is misleading. In particular, his translation of "*lefi ha-domeh*" as "as it would seem" misses the mark.)

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Mitsva 429 is fundamentally different. Here the basic *mitsva*, rather than being clearly defined and delimited, already contains within itself a normative penumbra. *Mitsva* 429 does not simply prohibit deriving benefit from idolatry, but rather prohibits deriving benefit from idolatry or its accessories. And when the *Hinnukh* by his use of the expansivity principle here maintains that “It is also included in this prohibition that a man should not add to the money which the Almighty has graciously given him in righteousness other possessions acquired by robbery, forced purchase, interest charges, or by any ugly or repugnant business,” he immediately goes on explain, “For all this is included under accessories of idols.” Note well: “All this is included” not because one is deriving benefit from idols, but because one is deriving benefit from “accessories of idols.”

The above analysis allows us to account for the anomalous status of *mitsva* 429. In those instances where the function of the expansivity principle is to create a normative penumbra surrounding a basic *mitsva* that itself is clearly defined and delimited, the halakhic directives constituting that normative penumbra being thus created must be clearly analogous to the halakhic directive set forth by the basic *mitsva* itself. Even then, the penumbra thus created, while normative, is still to be distinguished from the clearly defined and delimited basic *mitsva*. In *mitsva* 429, by contrast, the function of the expansivity principle is to incorporate a particular halakhic or ethical directive into the normative penumbra—accessories of idolatry—that is contained in the very definition of the basic *mitsva* itself. I would argue, then, that the *Hinnukh* believes 1) that in order to incorporate a particular halakhic or ethical directive into an already existing normative penumbra, even reasoning that “seems more homiletic than halakhic” suffices; and 2) that once that particular halakhic or ethical directive has been incorporated, by virtue of the expansivity principle, into that already existing normative penumbra, it would follow that since the already existing normative penumbra is an integral component of the basic *mitsva*, the new halakhic directive that has now been incorporated into that already existing normative penumbra similarly is by extension “simply and naturally included” in the basic *mitsva* “in unambiguously mandatory terms.”

I believe that my own analysis just reinforces R. Twersky’s point about the subtle dialectical interplay between halakhic and spiritual concerns in the *Sefer ha-Hinnukh*. I am reminded here of how my teacher and R. Twersky’s father, the late and much lamented R. Professor Yitzhak Twersky *zt”l*, in his many essays and books demonstrated with unrivaled

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textual mastery, sensitivity, and insight how a similar dialectical interplay is to be found in the writings of the Rambam. Indeed, R. Twersky's article both substantively and stylistically—substantively in its focus on the *Sefer ha-Hinnukh's* concern with “the moral-spiritual core of the *mitsvot*” and stylistically in the elegance and eloquence of its formulations—forcibly and poignantly calls to mind the writings of his late father.

I look forward to future essays from Rabbi Twersky's pen.

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HAZARDOUS MEDICAL PROCEDURES

TO THE EDITOR:

There is an error in the penultimate paragraph of page 95 of my article titled “Hazardous Medical Procedures” appearing in *Tradition* 37:3, Fall 2003. The final sentence of that paragraph should read:

Net life-quanta gained by a patient who successfully undergoes surgery will be sixty days minus three days, or fifty-seven days. To be sure, absent surgery, each of the patients would have lived three days. Nevertheless, taking into account the loss of three days of life in each of the two instances of unsuccessful intervention, the net gain as a result of surgical intervention will be fifty-one days. On balance, such a risk is entirely prudent.

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Correction:

In *Tradition* 38:2 (Summer 2004), pages 108 and 109 were transposed, due to a printer's error.