

Part III – Status of *Tinok Sh’Nishba* (A Captured Child)

Tinok Sh’Nishba

The level of culpability of a non-observant Jew, whether he is considered deliberate, negligent, or not responsible for his transgressions, will be impacted by his family, schooling, and neighborhood. It also makes a difference why, and how frequently, he commits transgressions.

We learn in the *Mishnah*¹ –

Whoever *forgets* the *ikar* (essential aspect) of Shabbat and does many *melachot* (prohibited activities) on many different *Shabbatot* is only obligated to bring a single *chattat* [offering].

Based on the simple wording of the *Mishnah*, the obligation to bring this [single] *chattat* [offering] would only be for one who had originally recognized the concept of Shabbat but had then *forgotten* it. But there would seem to be no obligation of even [this single] *chattat* [offering] for one who had never recognized or never even known about the concept of Shabbat in the first place, such as a *tinok sh’nishba bein ha’amim* (infant who had been captured [and then raised] among the non-Jews). Rebbe Yochanan and Reish Lakish, therefore, explain² that a *tinok sh’nishba* is not considered to be *shogeg* (i.e., negligent and required to bring an offering for his non-observance of Shabbat), but rather an *onnes* (i.e., coerced and fully exempt from the need to bring any offering at all). However, according to Rav and Shmuel, even a *tinok sh’nishba* who had *never* recognized the concept of Shabbat, would still be obligated to bring a *chattat* offering for his violation of Shabbat as a *shogeg*.

The Rambam *paskens* according to the words of Rav and Shmuel because of a *Braisa* which supports Rav. Therefore, according to the Rambam, a *tinok sh’nishba* has the *din* of a *shogeg*, and must bring a single *chattat* for [violating] Shabbat as well as all other *chattat* violations. If so, it is obvious that a *tinok sh’nishba* must do *teshuva* for whatever he violated, as if he had done them all *b’shogeg*.

The *Acharonim*, however, point out that the Rambam seems to have contradicted himself. He writes³ that the *b’nei Kara’im* (children of the Kararites) have the *din* of a *tinok sh’nishba* and are *k’annusim* (i.e., compelled by circumstances).

The Rambam⁴ initially addresses the case of one who doesn’t believe in *Torah sh’ba’al peh* (the Oral Law) and is thereby not included within *Yisrael* –

Once it is known that one does not believe in *Torah sh’ba’al peh* (the Oral Law), he is pulled down and not lifted up. He is like all of the *apikorsim*, those who say the Torah is not from Heaven, the *mosrim* (those who hand over Jews or their property to the evil authorities), and the *mumarim* (those who openly ignore one mitzvah or many *mitzvot*). All of these people are not included within *Yisrael*. They [therefore] don’t require witnesses, a warning, or judges [to be culpable].

The Rambam continues –

What is this referring to? To a person who denies *Torah sh’ba’al peh* (the Oral Law) from his own understanding and what [he thinks] makes sense to him. He follows

¹ *Shabbat* 7:1

² *Gemara Shabbat* 68b

³ *Hilchot Mamrim* 3:3

⁴ *Hilchot Mamrim* 3:3,4

after his weak mind and after his own stubbornness. He, therefore, denies *Torah sh'ba'al peh* on his own, like *Tzadok* and *Beisos*, as well as all of their mistaken disciples. However, the children of those disciples, and their grandchildren, who were misled by their elders, born into heresy, and raised in it, they are like a *tinok sh'nishba bein hagoyim* – one who was raised by non-Jews within their [non-Jewish] religion. They are not interested in following the path of the *mitzvot* since they were like one who was forced (*k'annus*). And even if they hear afterwards that they are Jewish, and they see Jews and Judaism, they are [still] *k'annus*, since they were raised on these mistakes. This is the situation of those who cling to the mistaken ways of their elders. It is, therefore, fitting to return them in teshuva, and to draw them with words of peace, until they return to the eternal Torah, so people won't be quick to kill them.

The Rambam also writes⁵ that an *omer mutar* (one who thinks a particular transgression is permissible) is *patur* (exempt) from a *korban shavuot*. Therefore, it seems clear that the *din* (judgment) of one who had violated Shabbat because he had simply never heard of it, should be an *onnes*, not a *shogeg*.

The *Mishnah l'Melech*⁶ suggests an answer to this first apparent contradiction within the Rambam. He writes that most texts of the Rambam⁷ say that the *Kara'im* are “*k'anusim, v'ein m'har'rim l'horgam* (like they are compelled, and we should not rush to kill them).” In other words, they are only *k'annusim* in terms of not being killed. That is why we don't kill them like other *kofrim b'Torah* (deniers of the Torah). But they are still considered to be *shogegim* as far as the need to bring a *korban chattat*. The *Maharam Shick*⁸ says this as well.

And, in terms of the *korban shavuah* that an *omer mutar* is *patur* from bringing, the *Chut HaMeshulash*⁹ explains that this is the only *korban* he is exempt from offering. But a *tinok sh'nishba* would be *chayav* to bring a *korban chattat*, even without a prior awareness of the *aveirot*. Perhaps the understanding of the Rambam is like that of Rav Elchanan Wasserman, who writes that everyone is capable of discovering the truth if they are intellectually honest.

And if a *tinok sh'nishbah* is considered to be a *shogeg*, and obligated to bring a single *korban chattat*, he must also do a full teshuva (i.e., with *viduy* and *charata* – verbalization and regret) for the *aveirot* he did even before he fully recognized the truth. There would be no difference how serious the *aveirot* were, since the issue is that he didn't recognize the Torah. Rav Moshe Sternbuch, therefore, holds that a *baal teshuva* is *chayav* to do teshuva as if he had done every *aveirah* once *b'shogeg*.

Rav Berkowitz says that this leniency, of only needing to do teshuva for a single *aveirah* within each category, should be true only for those *mitzvot* which he would not have been likely to have known about. However, with *aveirot* like *gezel* (stealing), *mazik* (causing damage), and similar ones, one should certainly need to do a full teshuva for each separate violation. Since even our *seichel* (intelligence) obligates us to not do these *aveirot*, one who violates them would be considered to be a *poshea* (fully culpable) on every single violation, independent of fully knowing about the Torah.

It is remarkable that a *tinok sh'nishba*, who had never heard of the Torah at all, is obligated to do teshuva for the transgressions he had violated, even though he had never actually

⁵ *Hilchot Shavuot* 1:13

⁶ *Hilchot Malveh v'Loveh* 2:5

⁷ *Hilchot Mamrim* 3:3

⁸ §132

⁹ §13

heard of them, once he recognizes the true religion, as if he had done them *b'shogeg*. The *baal teshuva* should not, however, focus on his *aveirot* of the past, but rather on the positive actions which he will be doing in the future. The concern is that, if he thinks too much about his past actions, this may hurt his spirit and, G-d forbid, cause him to return to his negative behavior.

Radvaz

The *Radvaz* writes that it appears the Rambam wrote what he said in *Hilchot Mamrim*¹⁰ to try to find a merit for the *Kara'im*. But the *Radvaz* himself disagreed –

[The *Kara'im*] who are found in our days, if we would have the possibility to pull them down, it would be a mitzvah to do so. We are constantly trying to return them to the good, and encourage them to believe in *Torah sh'ba'al peh*, while they blaspheme and disparage the transmitters of the tradition (i.e., the Sages). We are, therefore, unable to include them within the category of *anusim* (those that are compelled), but rather as *kofrim* in *Torah sh'ba'al peh*.

We see from the words of the *Radvaz* that whoever mocks the words of those who try to bring them close, are in the category of a *mumar*. The position of the *Radvaz* seems to be that the children of the *Kara'im* have the status of *anusim* only as long as they are not aware of the Torah and its *mitzvot*. Once we try to return them to the good and they don't respond positively, however, they then become *minim* and *mumarim*, just as their fathers were.

That sounds like, in today's world, that whoever rejects the efforts of the various organizations involved in *kiruv rechokim* (those who try to bring the distant ones closer) would seem to be in the category of a *mumar* according to the *Radvaz*.

Rav Eliyahu Mizrachi, however, rejects this stringent approach of the *Radvaz*. He explains that when the Rambam wrote – “*v'lo y'maheir l'hargam* – we should not be quick to kill them,” the meaning is simply that there is no more *din* of *moridin* – pulling the transgressors down. The Rambam is, therefore, telling us to relate to the children of the *Kara'im* in a positive manner. Rav Mizrachi proves this from a *teshuva* (responsa) of the Rambam himself –

Although they have been rebelling and acting badly while we have been trying to correct them for many years, we should still treat them (i.e., the children of the *Kara'im*) properly, teach them Torah and circumcise their children. They are considered to be *anusim* and *tinokot sh'nish'bu* even though we have been rebuking them.

The root of the argument seems to be that, according to the *Radvaz*, the *b'nei Kara'im* would be considered *anusim* only if they had never been informed about Judaism. However, from when they know about the principles of the Torah and the *mitzvot*, and they don't accept *tochacha* (correction), their *din* is that of non-Jews and *mumarim* in every respect. The opinion of those that argue on him, however, is that whoever is raised and educated with *kefira* remains with the *din* of a *tinok sh'nish'ba*. There is no real substance to the words of rebuke if the transgressors are unable to hear them.

In other words, even after such people are *informed* about Judaism, their status would not change until they actually come to *understand* that the Torah is G-d-given and they are obligated to adhere to all its laws. Simply being told about Shabbat, without knowing what it means to experience it, and without recognizing that it is of Divine origin and obligatory, is

¹⁰ 3:3

not considered really knowing about Shabbat. (Rav Shimon Schwab and Rav Isaac Herzog have gone further than this position, stating that even those who, in our times, were brought up in Orthodox homes but are now no longer observant, may be considered to be *tinokot shenish'b'u*.)

Nimukei Yosef

The *Nimukei Yosef* also disagrees with the Rambam. He writes –
What is the case of the *tinok sh'nishba bein hagoyim*? One who never recognizes the Torah of *Yisrael*. But one who is within *Yisrael*, but still goes and clings to the principles of the non-Jews, we should pull him down.

The *Beit Yosef*¹¹ quotes the *Nimukei Yosef* –
Only one who never recognized the Torah of *Yisrael* is called a *tinok sh'nishba*. But one who is within *Yisrael*, but still goes and clings to the principles of the non-Jews, we pull him down.

According to this, the *Beit Yosef* says that the *Kara'im* may have the status of *m'shumadim*, those who converted out. He concludes, however, that

We don't leave the explicit words of the Rambam because of the words of the *Nimukei Yosef*."

This is true despite the Ramban¹², as well as the *Tashbatz*¹³ also following the opinion of the *Nimukei Yosef*.

According to the simple reading of the *Nimukei Yosef*, it would seem that today, where there are observant Jews in virtually every country in the world, we would never be able to consider the child of a *mumar* as a *tinok sh'nishba*, since there is no situation of Jews being captured and raised *exclusively* among the non-Jews.

There is, however, an important inference we can draw from the words of the *Nimukei Yosef* (who lived in the fourteenth and fifteenth centuries) in terms of the Jewish world today. He wrote –

This one (i.e., the *ben mumar*) is standing among *Yisrael*, yet he is going and clinging to the *chukim* of the non-Jews. Therefore, we pull him down.

The main claim against the *ben mumar* is that, although "he is standing among *Yisrael*, he is going and clinging to the *chukim* of the non-Jews." When he says that this person is "standing among *Yisrael*," he seems to be speaking about a time when the majority of *Yisrael* is following Torah and *mitzvot* (like, for example the fourteenth and fifteenth centuries). That is why there is such a strong claim against the *ben mumar* – how could he abandon the Torah of *Yisrael* and follow after the mistakes of his parents? We certainly can't compare that to the situation today, where the great majority of Jews are tragically not following Torah and *mitzvot*, and people frequently speak of those who are following Torah and *mitzvot* as crazy and irresponsible people. It is difficult to assume that the *ben mumar* who was raised in this environment today should *certainly* have recognized the truth on his own. It seems very appropriate, therefore, to give the contemporary *ben mumar* the *din* of a *tinok sh'nishba*, even according to the understanding of the *Nimukei Yosef*.

¹¹ *Yoreh De'ah* §159

¹² *Baba Metzia* 71

¹³ *Responsa* 2:139

And we see a similar inference from the words of the Ramban¹⁴ – “If one knows and *abandons* the Torah of *Yisrael* and clings to idolatry and the principles of the non-Jews, he is a *meshumad gamur*, and we pull him down.”

The Ramban is only calling someone a *mumar* if he “*knows and abandons* the Torah of *Yisrael*,” meaning that he recognizes the truth but doesn’t follow it. That is specifically when he would be called a *meizid*, and not a *shogeg*.

According to the opinion of the Ramban, therefore, since the majority of *Klal Yisrael* are not following Torah and *mitzvot* today, it is difficult to say that one should have *obviously* gone and clung to the Torah of *Yisrael*. Even more than this, there are so many different groups and movements today who claim that they are the ones who have the Torah of *Yisrael*. This confuses masses of people in terms of what is the true Torah of *Yisrael*.

Since those who do not observe Torah and *mitzvot* are so widespread throughout *Klal Yisrael* today, it seems that the claim of the Ramban, *Nimukei Yosef*, *Tashbatz*, and other *Rishonim* is no longer relevant. Since such a large portion of *Klal Yisrael* are not following the Torah, it is difficult to claim that the *ben mumar* should *certainly* have attached himself to *Yisrael*. Accordingly, there is a strong logic to consider the *chilonim* (secular Jews) today as *tinokot sh’nishb’u*, even according to these *Rishonim* who argue on the Rambam. And this is what Rav Yitzchak Berkowitz, the current *Rosh HaYeshiva* of Aish HaTorah, holds.

Rabbi David Tzvi Hoffman¹⁵ articulates this point¹⁶ –

In our days, no one should be considered a *mechalel Shabbat b’farhesia*, because the majority are doing it. When most of *Yisrael* is meritorious and a minority is brazenly doing this prohibition, then they would be [considered] deniers of Torah, doing abominations arrogantly, and separating themselves from the community. Since, as a result of our many transgressions, the majority breach the boundaries, this breakdown has a positive aspect (i.e., in terms of how we view the transgressor) – the individual thinks that this *aveirah* is not so great and he doesn’t need to violate it only in private. Their “public” is, therefore, really like “private.” Those who are careful are now called *perushim* and *muvdalim* (those who have separated), while the transgressors are [seen] as behaving normally. And this is sufficient to *not* consider the violator to be a *mumar*.

Rav Yaakov Ettlinger¹⁷ writes similarly –

The affliction of non-observance is so widespread that most see *chilul Shabbat* as permissible... And, all the more so, with their children who come after them. They don’t know and haven’t heard the laws of Shabbat, and are just like the *Tzedukim* who are not considered *mumarim*, even though they don’t keep Shabbat, since the actions of their fathers is in their hands, and they are like a *tinok sh’nishba l’bein hagoyim*, as we explained.

And, in terms of the practical *halacha*, he continues –

It is difficult to know how to judge *poshei Yisrael* today since *chilul Shabbat* has become completely permissible for most of them. Some of them daven on Shabbat, make *Kiddush* and then openly violate Shabbat. One who violates Shabbat is generally considered to be a *mumar*, because by denying Shabbat he is denying the Creation and the Creator. Yet this person acknowledges them by davening and making *Kiddush*. And what about their children who come after them, who never saw

¹⁴ *Baba Metzia* 71b

¹⁵ 1843-1921

¹⁶ *Melamed L’Ho’il* §29

¹⁷ (1798-1871) *Binyan Tzion* §23

nor heard the laws of Shabbat? They seem to be exactly like the *Tzedukim* who were not considered to be *mumarim*, even though they violated Shabbat. This is because they were simply following the actions of their parents, and were like a *tinok sh'nishba* among the nations. Therefore, in my humble opinion, one who is *machmir* to forbid the wine they touched should be blessed. Those that are lenient, however, have a basis, even without investigating whether they know the laws of Shabbat and are being brazen.

We can also add what is written in the *Igrot Moshe*¹⁸ –

I have explained the distinction within [*chilul*] *Shabbat* between private and public with considering one to be like a non-Jew. Seemingly, this isn't logical, since even private [*chillul Shabbat*] has the same degree of severity that there is in public, in terms of Shabbat and *kefira* (denial of G-d). In fact, there is even a bit more *kefira* with private, as we see in *Baba Kama*⁷⁹ between a *ganav* (stealing privately) and a *gazlan* (stealing publicly)... It is possible that public could also be considered like private [today] since the onlookers will certainly not say that this is an action of *kefira*. Rather, one is simply doing the transgression of *chilul Shabbat* because that is what their parents did.

Part IV – Guidance from *Gedolei Yisrael* (Great Scholars) towards Secular Jews

Meikel (Lenient)

Rav Ovadia Yosef¹⁹ explains –

This logic is neither wondrous nor distant. The entire reason one who is *mechalel Shabbat b'farhesia* is like a *mumar* for the entire Torah is that he is doing an action with open *chutzpah*. But that was only when the entire community was holy. Today, however, as a result of our many transgressions, when misfortunes are widespread, and violations of Shabbat are common and pervasive, and many have never heard of the prohibitions at all, they are not considered to be a *mumar* for the entire Torah.

While Rav Yaakov Ettlinger may have been the first to say that going to shul or making *Kiddush*, shows that even Shabbat violators recognize that Hashem created the world, several generations later, it became increasingly clear that even those Jews who did not make *Kiddush* simply did not know better.

These Jews see their behavior as normative for most Jews, and therefore legitimate in their eyes, while they view Shabbat observers as having separated themselves from the majority. Many do not see Shabbat observance as an act of testifying that G-d created the world. For them Shabbat is simply a day of rest, for those who choose to do so, and they feel that each Jew is entitled to choose what level of Shabbat observance is good for him. [in addition,] many feel that Hashem will forgive them for any Shabbat desecration they commit.

Chazon Ish

The *Chazon Ish*²⁰ says that [all of the negative consequences for one who is rebelling or denying the fundamentals] is only when the person is not an *onnes* (one with limited free will). He quotes the Rambam²¹, that the children and students [of the *Tzedukim*] are considered like *anusim* and *tinokot sh'nish'b'u*. A *tinok sh'nishba* brings [merely] a single

¹⁸ *Aleph*, §33

¹⁹ *Yabia Omer* 1:197

²⁰ *Yoreh De'ah* 2:28

²¹ *Hilchot Mamrim* 3:3

korban, as it says in the beginning of *perek Klal Gadol* in *Gemara Shabbat*. We are, therefore, commanded to sustain their lives, and even to be *mechalel Shabbat* to save them.

Based on this Rambam, the *Chazon Ish* holds that the secular Jews today – the *amei ha'aratz harechokim* (ignorant who are distant) and *acheinu hato'im* (our mistaken brothers), are similarly in the category of *anusim* and *tinokot sh'nish'b'u*. Therefore, we should not act towards them with the severe *dinim* spoken of by *Chazal* in reference to the *resha'im gemurim* (completely wicked) whom we are supposed to hate. Rather, we need to return them to the good through love, as much as we possibly can.

This is not merely a function of the assimilation and ignorance of the secular Jews themselves. He writes –

It appears that there is no *din* of *moridin* (pulling down the rebels) except when the *hashgacha* of Hashem is revealed, like a time when there are miracles and a *bat kol*, and the *tzadikim* of that generation are governed by a *hashgacha pratit* (Divine Supervision) which is evident to all... The destruction of the wicked will then strengthen the world since everyone will know that the generation being misled brings retribution, pestilence, war, and famine to the world. However, at a time of assimilation...pulling them down will not be a repair for the breach; it will only increase the problems, since they will see it [simply] as actions of destruction and violence, *chas v'shalom*. And since our whole purpose is to improve the situation, this *din* [of *moridin*] applies only when it will actually make things better. [Therefore,] it is our responsibility to [work to] return them with *avosot ahavah* (cords of love) and to help them to achieve a clarity as much as we possibly can²².

The *Chazon Ish*²³, therefore, holds –

A *tinok sh'nishba* has the status of a [regular] Jew and his *shechitah* (slaughtering) is permissible. Similarly, those whose parents separated from the ways of the community, and were raised without Torah, also have the *din* of a *Yisrael* in all matters.

We assume that if someone would inform them and make the proper effort for them to do *teshuva*, that they would not willfully refrain from returning. If, however, they would willfully refuse to return, even once this sufficient effort would have been made with them, then they would indeed have the status of a *mumar*. The degree of effort will depend on a number of different factors. Only a *Beit Din* could establish the degree of effort that would be required for every single person.

It is possible that the *Chazon Ish* is not arguing on the basic approach of the *Radvaz*. He, however, seems to be holding that the definition of a *tinok sh'nishba* does not merely depend on the time and place, but is also a function of each individual.

We need to understand what caused his transgressions. Were they a rebellion against Hashem, or just following the actions of his ancestors? To what degree was he influenced by his surroundings? How much understanding does he have of the concept of what *Yisrael* is, and what his ancestors separated from?

And, of course, how much contact has he had with G-d fearing people who would be able to help him return to the good. One may need a great degree of *siyata d'Shimaya* (Heavenly assistance) to open his closed heart. After all, he was raised and nourished his entire life with the foundations of heresy in the fundamentals of the religion. We need to, therefore, do a separate evaluation for every single person.

²² *Chazon Ish – Yoreh Deah – 2:16*

²³ *Yoreh De'ah 1:6*

The *Chazon Ish* also understands that even one who has not yet returned in *teshuva* has a *chezkat kashrut* (status of being proper). He assumes that if the transgressor had indeed received a proper degree of effort, he would have returned in *teshuva*. And, therefore, he does not have the *din* of a *mumar*.

In summary, there is a *machloket Rishonim* (argument among the early authorities) whether someone who is not observant due to not having been educated with Torah, despite later discovering that there are Jews who do observe the *mitzvot*, is considered to be a part of *Yisrael*. *Tosefet Shabbat*²⁴ tells us that both *Tosfot* and the *Rosh* disagree with the Rambam with the *din* of the *Kara'im*.

But, in the end, the *Shulchan Aruch*²⁵ poskins like the Rambam that the *Kara'im* have the status of *Yisrael*, as he writes –

The *Kara'im* do not have the *din* of *mumarim*, and it is *assur* to lend to them or from them with *ribit*.

The *Rema* says this is also true with the child of a *mumar* –

A *tinok sh'nishba l'bein ha'ovdei kochavim* who don't know the Torah of *Yisrael* at all, have the *din* of *Kara'im* and it is *assur* to lend to them with *ribit*.

The *Darkei Moshe*²⁶ explains that the Rambam argues on the *Nimukei Yosef*, and the *halacha* follows him.

Different Opinions

The *Taz*²⁷ also holds that the *Tzedukim* are *tinokot sh'nishb'u*. The *Shach*²⁸, however, writes that the *Tzedukim* have the status of *mumarim*, which is how the *Mishna Brurah* leans.

It is important to clarify that, although other *Rishonim* argue with the Rambam in the case of the *Kara'ites*, it seems they would agree that the concept of *tinok sh'nishba* could be applied to anyone who was completely deprived of an authentic Jewish education. That person would, therefore, retain the status of *rei'acha*, *amitecha*, and *achicha*, and we would remain obligated to him with respect to all interpersonal *mitzvot*. At the same time, he is not entirely innocent of all culpability which would have rendered him exempt from even having to bring a *korban*.

The amount of education and involvement that is needed for each person to understand what Shabbat and the other *mitzvot* are, cannot be precisely defined. It depends on the receptivity and sensitivity of each Jew. The *Chazon Ish* maintains that there is a point at which enough effort has been invested in teaching such a person so that one could then begin to consider him a deliberate transgressor. However, he was clear that only a *Beit Din* could establish that fact, and that it would need to be determined on a case-by-case basis.

Rav Moshe Feinstein

Rabbi Avraham Edelstein²⁹ discusses how Rav Moshe Feinstein viewed non-observant Jews –

²⁴ §385

²⁵ *Yoreh Deah* 159:3

²⁶ §102

²⁷ *Orach Chaim* §385

²⁸ *Yoreh De'ah* §2:24

²⁹ *The Laws of Outreach* (page 105-107)

The position of Rav Moshe Feinstein on the status of contemporary, non-observant Jews is difficult to determine.

Some claim that Rav Moshe ruled that such Jews are in the category of *mumarim*.

There certainly is evidence to this position from a number of *teshuvot* in *Igrot Moshe*. At the Agudah Convention in 1973, however, Rav Moshe Feinstein declared that, "... many people who are far from a Torah life can be categorized as *tinokot shenish'b'u*."

Likewise, his son, Rav Dovid Feinstein³⁰, elaborated on his father's ruling and stated that those Jews who have been educated in public school and whose parents are not observant can be considered *tinokot sh'nish'b'u* for many of the laws of the Torah.

It seems that the strict position of Rav Moshe was speaking about Jews who were raised where they were exposed to Torah communities. Other secular Jews, however, should be considered to be *tinokot sh'nish'b'u*.

Although the *poskim* seem to adopt different approaches for determining the status of contemporary non-observant Jews, they do emphasize that the status of different people will depend upon their various backgrounds and environment.

It is difficult to categorize all secular Jews one way or the other, even though most unaffiliated Jews are likely to be *tinokot sh'nish'b'u*, depending upon their backgrounds and environment. The situation also changes with time. For example, today there are fewer Jews who grew up in homes where Shabbat or aspects of it were kept. The default assumption, though, is that someone who was brought up in a non-observant family is to be considered a *tinok sh'nishba* unless there are indications to the contrary. At the same time, many contemporary *poskim* maintain that the halachic dispensation to say that Shabbat violators in our day are *tinokot sh'nish'b'u* may be applied only under extenuating circumstances. As a result, many of the lenient rulings that affect how we relate to non-observant Jews cannot be applied indiscriminately.

Determining the status of Jews who strayed from the path of Torah is more complicated, and a lot depends on whether the person did so as an act of deliberate rebellion against G-d.

As far as the not-yet-observant Jew himself is concerned, he is never considered entirely faultless and he will surely have to bring a *korban* when the *Beit HaMikdash* will be rebuilt. For, as Rav Elchanan Wasserman writes, "belief in Hashem and His Torah is intellectually compelling."

***Machmir* (Strict) Both Directions**

It is also not so clear whether Rav Elyashiv viewed secular Jews as *mumarim* or as *tinokot sh'nish'b'u*. Therefore, he held that we must be strict in all aspects in these matters. On the one side, we are required to perform interpersonal *mitzvot* for the benefit of non-observant Jews, since they might be considered *tinokot sh'nish'b'u*.

Nevertheless, in the areas where a *mumar* would be disqualified (e.g., *brachot* and giving testimony in *beit din*), we must be strict and consider a non-observant Jew to possibly be a *mumar*.

Rav Moshe Feinstein also seems to follow this logic [of being *machmir* in both directions]. This is the position of other authorities as well. Some *poskim* distinguish between Jews in different places in the world.

³⁰ *Dibarta Baum – Chelek Aleph*, p. 724

Rav Nissim Karelitz³¹ writes that, even in Israel, where everyone knows there are Jews who observe the Torah, we may be able to consider non-observant Jews as *tinokot sh'nishb'u*, since they were educated to heresy. But if they had heard enough, they would then be *meizid*. Where we don't know this, we should be *machmir* to consider one as *both* a *mumar* and a *tinok sh'nishba*. The *Shevet Levi* also writes that it is difficult to give them the full status of *tinok sh'nishba* even though they are certainly *anussim*. Therefore, we should generally be *machmir* to consider them *both* like a *tinok sh'nishba* and a *mumar*.

Meikel (Lenient) Because of the Media

It is interesting that Rav Asher Weiss viewed the awareness which many secular Jews have about the religious communities in both Israel and the US as a reason why they should actually be *more* likely considered to be *tinokot sh'nishb'u*.

Rav Asher Weiss writes³² —

I know that some say, in today's world, with widespread access to the media, where everyone knows that we are commanded by the Torah to keep Shabbat, there are no longer any *tinokot sh'nishb'u*. Rather, whoever is *mechalel Shabbat b'farhesia* should have the *din* of a *mumar*. However, in my humble view, this leads to the opposite conclusion. The media paints such a negative picture of those who keep the Torah, and incites against them, while a non-Jewish education has implanted a complete disparagement against anything with Jewish sanctity within the hearts of the children. It is, therefore, even more logical to give them the *din* of *tinokot sh'nishb'u*. According to the *Chazon Ish*, and those who argue on the *Radvaz*, the definition of a *tinok sh'nishba* depends not on mere knowledge of the *mitzvot*, but rather on one's education and appreciation [of the *mitzvot*].

To Summarize:

Aleph — A *tinok sh'nishba bein hagoyim* (child captured [and raised] among the non-Jews) is judged as an *onnes* (one who was compelled [to transgress]). And one who was educated without Torah is generally considered to be a *tinok sh'nishba* even though he knows that he is Jewish and he has heard that there are Jews who observe the Torah and *mitzvot*, since he doesn't know or appreciate the truth³³.

Beit — Many *Rishonim*, however, define one who does not keep Torah and *mitzvot* as a *mumar*, not a *tinok sh'nishba*, since he should have connected to the Jews around him, and not followed after those who are *kofer* in the Torah.

Gimmel — It makes sense to say that this would only have been when most of the Jews were following Torah and *mitzvot*. Since today most of *Klal Yisrael* are not following the Torah, it is difficult to say about secular Jews that — “they should have connected to the Torah of *Yisrael*.” And, therefore, there is room to consider secular Jews today as *tinokot sh'nishb'u*, since everything is according to the place and the time.

Daled — If so, we would be able to consider them as Jews for all matters, to violate Shabbat to save them, cook for them on Yom Tov, not to charge them interest on a loan, not to forbid any wine that they touch, and their children should properly honor them. And with regard to all of the laws of the Torah, we should consider them as complete Jews. That would include even the *mitzvot bein adam l'chaveiro* which are only relevant for *rei'acha*, *achicha*, and *amecha*.

³¹ *Chut Sheini – Shabbat* – chap. 40

³² *Responsa Minchas Asher* 1:10

³³ *Rambam – Hilchot Mamrim*, 3:1-3, *Chazon Ish – Yoreh De'ah* 1:6, 2:28

Hei — If, however, one had heard enough to know that the Torah is true, and still continued in his ways, he would then be judged as a *meizid*. The judges of his generation would need to evaluate every case individually³⁴.

Vav — And where we are unclear if a non-observant Jew today recognizes the truth, we should be *machmir* to consider him as both a *mumar* and a *tinok sh'nishba*³⁵.

Status of *Apikores* (Heretic)

Up until now, we have been speaking about how to view the transgressions (i.e., negative *actions*) of secular Jews who are considered to have been *tinokot sh'nishb'u*. It is a very different question whether, and how, the concept of *tinok sh'nishba* would affect the problematic *beliefs* of secular Jews.

The Steipler Rav held that *tinok sh'nishba* was *not* an exemption with denial of *emunah* in Hashem and His Torah. In a letter to Rav Moshe Shternbuch³⁶ he wrote — “Even if we say that there is a *din* of *tinok sh'nishba*, what about those who are suspected of heresy and denial of the Written and Oral Torah?”

Rav Moshe Feinstein³⁷ agreed —

We see that *kefira* is considered as if one has left *Klal Yisrael*, since one is no longer connected to the Jewish religion. Therefore, as long as one is mistaken in this, he is not included within *Klal Yisrael*, and is *pasul* (disqualified) for *eidut*.

Rav Yaakov Kaminetsky³⁸ however, disagreed with this stringency —

We need to sit in *aveilut* for those who violate Shabbat today, since they don't know the significance of Shabbat. And even if they learned a bit in their youth, that is not sufficient to establish the seriousness of these matters in their hearts. And even if they see those who keep Shabbat, or have relatives who keep it, in their eyes they are considered to be mixed up and confused. Therefore, they are like a *tinok sh'nishba*. And this is even if they have *de'ot kozvot* (*heretical thoughts*).

Rav Shmuel Vosner also viewed *tinok sh'nishba* as being relevant as far as heretical thoughts —

The understanding of the halacha is that [the leniency of] *tinok sh'nishba* applies with both *avoda zara* and *kefira*, if the 'captivity' caused this to him.

The *Meiri* is, perhaps, the earliest source for the need to carefully analyze every case of *kefira*. He wrote —

One who is known as an *apikores* or *m'galeh panim b'Torah* is among those who are *moridin* (pulled down)... But all of these words need much deliberation and careful analysis from the great Sages and those with much understanding. A person should never be quick when it comes to bloodshed³⁹.

There was a striking case of a *mumar l'hach'is* who used to smoke right in front of the Brisker Rav while he was going to shul on Shabbat morning. This person ended up committing some serious offence while in the Russian army, and right after Rosh Hashanah was sentenced to death. The Brisker Rav remarkably raised a large ransom to free this

³⁴ *Chazon Ish* — *Yoreh De'ah* 1:6, 2:28

³⁵ *Chut Sheini – Shabbat* — ch. 40, *Shevet Levi* 9:198, *Zichron Yehuda* — *Orach Chaim* §99, and in the name of Rav Eliyashiv

³⁶ Printed in *Moadim u'Zmanim* 9:14

³⁷ *Igrot Moshe, Even Ha'Ezer* 1:82:11

³⁸ *Emmet l'Yaakov*, note §217

³⁹ End of *Beit HaBechira* on *Baba Kama* on the *din* of “*moridin v'ein maalin*.”

person. Although the simple reading of the Rambam⁴⁰ is that it is *assur* to save *apikorsim*, the Brisker Rav quoted the *Meiri* and also based himself on a different Rambam⁴¹. He writes there that the purpose of this *din* [of *moridin*] is to safeguard the *emunah* of the nation — “We kill [the heretic] so Israel will not be misled and their *emunah* be damaged.” The Brisker Rav explained that this is no longer the relevant action, since there are, unfortunately, many like him, so his death will not change the situation. The Brisker Rav himself, therefore, went to the head of the town to free this person on *Erev Yom Kippur*⁴².

⁴⁰ *Hilchot Eidut* 11:10

⁴¹ *Peirush l'Mishnayot to Chulin, perek aleph*

⁴² *Uvdot v'Hanhagot l'Beit Brisk* 2:265