

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

### *Meikel* (Lenient)

Rav Ovadia Yosef<sup>1</sup> 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*<sup>2</sup> 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 Rambam<sup>3</sup>, 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 *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

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<sup>1</sup> *Yabia Omer* 1:197

<sup>2</sup> *Yoreh De'ah* 2:28

<sup>3</sup> *Hilchot Mamrim* 3:3

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 can<sup>4</sup>.

The *Chazon Ish*<sup>5</sup>, 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.

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*<sup>6</sup> 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*<sup>7</sup> poskins like the Rambam that the *Kara'im* have the status of *Yisrael*, as he writes –

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<sup>4</sup> *Chazon Ish* – *Yoreh Deah* – 2:16

<sup>5</sup> *Yoreh De'ah* 1:6

<sup>6</sup> §385

<sup>7</sup> *Yoreh Deah* 159:3

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*<sup>8</sup> explains that the Rambam argues on the *Nimukei Yosef*, and the *halacha* follows him.

## Different Opinions

The *Taz*<sup>9</sup> also holds that the *Tzedukim* are *tinokot sh'nish'b'u*. The *Shach*<sup>10</sup>, 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 Edelstein<sup>11</sup> discusses how Rav Moshe Feinstein viewed non-observant Jews –

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 Feinstein<sup>12</sup>, 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.

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<sup>8</sup> §102

<sup>9</sup> *Orach Chaim* §385

<sup>10</sup> *Yoreh De'ah* §2:24

<sup>11</sup> *The Laws of Outreach* (page 105-107)

<sup>12</sup> *Dibarta Baum – Chelek Aleph*, p. 724

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.

Rav Nissim Karelitz<sup>13</sup> 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'nish'b'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*.

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<sup>13</sup> *Chut Sheini – Shabbat* – chap. 40

## 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'nish'b'u*.

Rav Asher Weiss writes<sup>14</sup> —

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'nish'b'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'nish'b'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 truth<sup>15</sup>.

*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'nish'b'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*.

*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 individually<sup>16</sup>.

*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*<sup>17</sup>.

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<sup>14</sup> Responsa *Minchas Asher* 1:10

<sup>15</sup> Rambam – *Hilchot Mamrim*, 3:1-3, *Chazon Ish* – *Yoreh De'ah* 1:6, 2:28

<sup>16</sup> *Chazon Ish* — *Yoreh De'ah* 1:6, 2:28

<sup>17</sup> *Chut Sheini* – *Shabbat* — ch. 40, *Shevet Levi* 9:198, *Zichron Yehuda* — *Orach Chaim* §99, and in the name of Rav Eliyashiv

## 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'nish'b'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 Shternbuch<sup>18</sup> 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 Feinstein<sup>19</sup> 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 Kaminetsky<sup>20</sup> 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 bloodshed<sup>21</sup>.

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 person. Although the simple reading of the Rambam<sup>22</sup> is that it is *assur* to save *apikorsim*, the Brisker Rav quoted the *Meiri* and also based himself on a different Rambam<sup>23</sup>. 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

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<sup>18</sup> Printed in *Moadim u'Zmanim* 9:14

<sup>19</sup> *Igrot Moshe, Even Ha'Ezer* 1:82:11

<sup>20</sup> *Emmet l'Yaakov*, note §217

<sup>21</sup> End of *Beit HaBechira* on *Baba Kama* on the *din* of “*moridin v'ein maalin*.”

<sup>22</sup> *Hilchot Eidut* 11:10

<sup>23</sup> *Peirush l'Mishnayot to Chulin, perek aleph*

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*<sup>24</sup>.

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<sup>24</sup> *Uvdot v'Hanhagot l'Beit Brisk* 2:265