

Tinok sh’Nishba (The Captured Child)

Part I – Various Groups of Jews

The Significance of Being a Part of *Yisrael*

The starting point in understanding the Torah perspective towards evildoers is the *Mishnah*¹, which states –

“All of *Yisrael* have a portion in *Olam Haba* – the world to come.”

The Rambam² spells out just how far reaching this is –

All of the wicked, [even those] whose transgressions *are greater* [than their merits] are judged according to their transgressions, but are granted a portion in *Olam Haba*, for all of *Yisrael* have a portion in *Olam Haba*.

As clear as that sounds, the *Mishnah* then continues – “And these are the ones who have *no* portion in *Olam Haba*...” and proceeds to list those without a portion.

How can that be understood? If, as the Rambam explains, even those whose transgressions are *greater* than their merits have a portion in *Olam Haba*, then who could possibly be excluded?

The language of the *Mishnah* is – “All of *Yisrael* have a portion in *Olam Haba*.” “*Yisrael*” refers to the Jewish *nation* which has a special quality of connection to both Hashem and *Olam Haba*. The various cases listed in both the *Mishnah* and the Rambam (of those without a portion in *Olam Haba*) are people who have separated themselves from this national and metaphysical entity called “*Yisrael*.” Many of those are Jews who don’t have a proper belief in the foundations of Judaism. For example, among those who the Rambam³ tells us have no portion in *Olam Haba*, are *minim* (deniers of some essential aspects of G-d), *apikorsim* (denying prophesy or G-d’s knowledge of man’s actions), and those who deny the authenticity of the Torah.

The Rambam⁴ explains that whoever does not believe in the foundations of Judaism is called an *apikores* and judged like a non-Jew. This is also the *p’sak* (ruling) of the *Shulchan Aruch*⁵.

In addition to these non-believers are those whose *actions* demonstrate their disconnect from the Jewish nation. The main examples of these are *mumar l’hach’is*, *mumar l’kol haTorah*, *meshumad*, and *mechalelei Shabbat b’farhesia*, all of whom we will define and discuss shortly.

Not only will these non-believers and severe transgressors be limited in terms of *Olam Haba*, they will also be limited in terms of how the rest of the Jewish community relates to them in *this* world.

¹ *Sanhedrin* 10:1

² *Hilchot Teshuva* 3:5

³ *Hilchot Teshuva* 3:6

⁴ *Hilchot Shechita* 4:14

⁵ *Choshen Mishpat* 266:2

Many of the verses dealing with the interpersonal *mitzvot* contain the word *rei'acha* – your friend and neighbor (as in *v'ahavta l'rei'acha kamocho* – love your neighbor as yourself, *amitecha* – your nation (as in *hoche'ach tochi'ach et amitecha* – give correction to your nation), or *achicha* – your brother (as in *lo tisna et achicha bilvavecha* – don't hate your brother in your heart). While these interpersonal obligations still apply even towards many transgressors, some of the more serious categories of transgressors are no longer considered to be *rei'acha*, *amitecha*, or *achicha* in terms of our obligations towards them. These terms are understood specifically in terms of those that are doing *mitzvot* properly, as in – your brother or nation in regard to *mitzvot*.

The Rambam concludes this list with a key clarification: One loses his portion in *Olam Haba* only if he does not do teshuva (spiritual return back to Hashem). If he does do teshuva, however, even in private, then he *will* have a portion in *Olam Haba*⁶.

Mumar L'hachlis (A Brazen Rebel)

Someone who rejects the Jewish nation, joins an alternative religion, or *brazenly* violates the *mitzvot* is defined as a *mumar l'hach'is* – a deliberate rejector of Hashem and His *mitzvot*⁷. So too, someone is considered a *mumar* if he practices idolatry⁸ or consistently violates a particular transgression, not because he has a natural desire for it, but as an act of rebellion⁹. He may be a Torah believer who could just as easily have done something permissibly, but nevertheless, chose to contemptuously do it in a prohibited fashion. It is as if he says that there are only 612 *mitzvot*. Since he thereby subjects all the *mitzvot* to his own judgment, he is effectively denying the Divine origins of the Torah, and is consequently considered to be a *mumar l'kol haTorah* – an apostate in relation to the entire Torah¹⁰.

One would be permitted to speak *lashon hara* (negative speech) about him, one would not have to return his lost object¹¹, and seemingly, one would be exempt from the mitzvah of *lifnei iver* (not to place a stumbling block) towards him¹². Not only is one not required to love him; it is, in fact, a mitzvah to hate him¹³. Some, however, say that despite this, one is still obligated in the mitzvah of *tochacha* (correction or rebuke) towards such a person, i.e., to reach out to him if there is a chance that he will respond positively¹⁴. One is not required to judge him meritoriously¹⁵, one would not be required to lend him money¹⁶, and if one did so, one would be allowed to charge him interest¹⁷.

⁶ *Hilchot Teshuva* 3:14, 4:6

⁷ Rambam *Hilchot Teshuva* 3:9

⁸ Rambam *Hilchot Avodat Kochavim* 2:5

⁹ Rambam *Hilchot Teshuva* 3:9, *Biur Halacha* 1:39

¹⁰ Rambam *Hilchot Teshuva* 3:9

¹¹ *Choshen Mishpat* 266:2

¹² *Shach*, *Yoreh De'ah* 151:6

¹³ *Avot d'Rebbe Natan* 16:5

¹⁴ *Tanna d'vei Eliyahu Rabba*, chap.18

¹⁵ *Shaarei Teshuva* 3:218

¹⁶ *Yoreh De'ah* 251:1

¹⁷ *Tosfot Avodah Zara* 26b

Generally, one is not obligated to give him charity¹⁸, and one should not redeem him from captivity¹⁹. Finally, one should not mourn him when he dies²⁰.

However, in any situation where a person's status as a *mumar* is in doubt, one would have to be stringent and fulfill all of these interpersonal *mitzvot* towards this person, since this is a doubt about a Torah-mandated obligation. The status of being a *mumar* affects many other *mitzvot* as well.

***Mechalelei Shabbat b'Farhesia* (A Public Shabbat Desecrator)**

One who *publicly* violates Shabbat is also considered to be like a non-Jew²¹ because it is as if he is denying that Hashem created the world. This is tantamount to idolatry²², regardless of whether he actually believes in idolatry or not²³. Since Hashem gave us the Shabbat as a sign and a covenant between us and Him, violating the Shabbat in public is far more consequential than failing to observe any other mitzvah²⁴. Shabbat so strongly identifies the Jewish People, that by defying it, the transgressor has removed himself from the Jewish nation²⁵ and denied the fundamentals. As terrible as it is when a person does any other transgression, only violating Shabbat is considered an act of heresy²⁶.

Rav Asher Weiss, therefore, writes –

It seems simple that being *mechalei Shabbat b'farhesia* – would also forbid one's *shechita* (ability to slaughter), wine and *eidut* (testimony).

It seems that a *mechalei Shabbat* is compared to a non-Jew and an idolator, not merely because of the stringency of Shabbat, but because this is throwing off the yoke of Heaven, and denying the fundamentals [of Judaism]. There is, therefore, a logic that this should also be the case with a Rabbinical violation of Shabbat. And, in fact, the *Chayei Adam* writes, "A Jewish *mumar* or *rasha* who is *mechalei Shabbat b'farhesia*, even only Rabbinically, is considered like a non-Jew."

Most, however, hold that a *mechalei Shabbat b'farhesia* with Rabbinical prohibitions is *not* a *mumar*.

And the *Pitchei Teshuva* even says that only *chilul Shabbat* which is *chayav kareit* (has the penalty of being cut off) would cause one to be considered a *mumar*.

Why is it necessary that the *chilul Shabbat* be *b'farhesia* – i.e., either in front of ten Jews, or where it is clear that it will become publicized?

¹⁸ *Tosfot Avodah Zara* 26b

¹⁹ *Yoreh De'ah* 251:1

²⁰ *Rambam Hilchot Avel* 1:10

²¹ *Tur, Orach Chaim* §385

²² *Rambam Hilchot Shabbat* 30:15

²³ *Igrot Moshe, Yoreh Deah* 2:5

²⁴ *Rambam*, end of *Hilchot Shabbat* 30:15

²⁵ *Chatam Sofer, Choshen Mishpat* §195

²⁶ *Igrot Moshe, Yoreh Deah* 4:58

The *Chatam Sofer*²⁷ quotes others who learn this from the case in the Torah of the one who was killed for gathering wood on Shabbat, which was specifically a public transgression.

In contrast to this, the *Igrot Moshe*²⁸ explains that it is simply more brazen to violate Shabbat publicly.

There are, however, a number of mitigating factors in terms of viewing public violators of Shabbat as non-Jews.

The *Baal Ha'itur*²⁹ only considered a *mechalel Shabbat b'farhesia* to be a *mumar* if it was with agricultural work.

Rebbe Akiva Eiger³⁰, and the *sefer Machanei Chaim*, both maintain that [one would only be considered to be a *mumar*] if he was *mechalel Shabbat* in front of Jews who were themselves *shomrei Shabbat* (Shabbat observant).

And some say that one would be considered to be a *mumar* only if people testified about his public *chillul Shabbat* in front of him in *Beit Din*.

The *Igrot Moshe*³¹, however, writes that even if one were *mechalel Shabbat* in front of other *mumarim*, he would still be considered to be a *mumar*.

Another exemption is if one would be embarrassed to violate Shabbat in front of a prominent person, even though he would not refrain in front of others. He would then not be judged as a non-Jew, and he would also not be judged as a *mumar* for the entire Torah³².

Rav Shlomo Zalman Auerbach³³ writes that this would also be the case if one were embarrassed to violate Shabbat around one's parents. If, however, one was merely refraining from *chilul Shabbat* to be polite, and not because of embarrassment, then we might not be able to be lenient.

Rav Aharon Feldman holds that this also applies to any secular Jew who is visiting an observant household. If, while in that house, he would be careful to not deliberately violate Shabbat, then he would not have the status of a deliberate Shabbat violator.

All together, these requirements make it very difficult to declare anyone to be a public Shabbat desecrator as far as considering him to be like a non-Jew.

The most significant change with this entire issue has to do with the enormous shifts within the Jewish (and even non-Jewish) world in the past two centuries. During most of Jewish history, public Shabbat desecration was rare, and was dealt with very severely.

²⁷ *Likutim* 6:83

²⁸ *Orach Chaim* 1:33

²⁹ *A Daat Yachid* – singular opinion

³⁰ *Yoreh Deah* 264, the beginning of *Hilchot Milah*

³¹ *Yoreh De'ah* 1:70

³² *Torat Chaim* – *Eruvin* 69a

³³ *Halichot Shlomo* 3:325

This began to change at the beginning of the 1800s, during the *Haskalah* (Enlightenment). This led to a change in how those who violated Shabbat were viewed, since this was often committed as a result of ignorance or simply due to the difficulty in finding jobs which allowed Shabbat observance. Subsequently, many violated Shabbat simply because they had been brought up with a very limited concept of what Shabbat was.

An additional factor in the halachic status of unaffiliated Jews is the difference between an environment that is mostly observant and one that is not. Breaking Shabbat is only considered to be an act of rebellion if most people in the community are keeping it. Otherwise, it is the ones that are keeping Shabbat who seem to be separating themselves from the majority.

Independent of all this, the opinion of many *Poskim* is that the whole concept of viewing *mechalelei Shabbat b'farhesia* as non-Jews, is only a Rabbinical designation. On a Torah level, they retain the status of a *Yisrael gamur* (complete Jew) – *Mahari Asad*, *Maharshag*, the *Tzitz Eliezer*, and Rav Ovadia Yosef. There are, however, many who argue on this³⁴.

It should also be noted that, even when we compare these transgressors to non-Jews, there still exist many differences between them and non-Jews. First of all, they can certainly do teshuva and get rid of that status entirely³⁵. But even if they don't do teshuva, we will circumcise their children, even on Shabbat³⁶. Just as with a *mumar l'hach'is*, we will break Shabbat to save their lives³⁷, and their *kiddushin* (ability to get married) is valid in every aspect³⁸. And, finally, we apply to them the concept – *Yisrael, af al pi sh'chata, Yisrael hu* – A Jew, even if he transgresses, is always a Jew³⁹.

***Mumar L'tei'avon* (One who Rebels from Desire)**

A separate category from these particularly severe ones is a *mumar l'tei'avon*. This is one who violates an *issur* (prohibition) simply because it wasn't available in a permissible manner. It is an act of desire much more than a sign of rebellion⁴⁰.

A *mumar l'tei'avon* is someone who transgresses, not out of disbelief, but just to satisfy his own financial, sensual, materialistic desires, or other needs⁴¹.

Alternatively, he may opt out of a mitzvah because it poses effort or challenges that he is not willing to deal with⁴². Such a person is not considered comparable to a non-Jew⁴³. The mitzvah to love one's fellow Jew will still apply to him⁴⁴. Someone who does not

³⁴ *Maharsham, Daat Torah, Arugat HaBosem*

³⁵ *Rema, Yoreh Deah 268:12*

³⁶ *Shevet Levi 4:134:4*

³⁷ *Seridei Eish 2:11*

³⁸ *Tur, Even HaEzer 44, Yabia Omer, aleph, Yoreh Deah 11:4*

³⁹ *Sanhedrin 44a*

⁴⁰ *Rashi – Chulin 3a, Avoda Zara 26b*

⁴¹ *Biur Halacha §39*

⁴² *Rashi, Chulin 3a*

⁴³ *Rambam – Hilchot Shechita 4:14*

⁴⁴ *Yad Rama, Sanhedrin 52b*

fulfill certain *mitzvot* simply because he does not care enough would also not be considered to be like a non-Jew. Although we are exempt from some obligations towards a *mumar l'tei'avon*, we are certainly required to save his life and to return his lost articles. It is also forbidden to charge him interest. There is a dispute whether one is obligated to sustain him and to give him charity.

According to Rav Moshe Feinstein, American Jews who violated Shabbat by going to work, but who were otherwise observant, were in this category of *mumar l'tei'avon*. In the absence of knowing what a person's motivations are, we presume that they are motivated by non-ideological reasons (making him only a *mumar l'tei'avon*) and not by a desire to rebel against Hashem⁴⁵.

The Rambam⁴⁶ writes that an expert slaughterer who is a *mumar [l'tei'avon]*... is fully able to slaughter. The only requirement is that a reliable Jew must check his knife... for it can be presumed that he may not trouble himself to check it.

According to Rav Ovadia Yosef, the wine that was touched by such Jews remains kosher. In fact, the challenge to earn a livelihood is so great that several *Rishonim*⁴⁷ actually consider one who transgresses out of concern for his livelihood to be an *onnes* (forced by circumstances)⁴⁸.

Many of the responsa of Rav Moshe Feinstein dealing with this issue concerned a generation that had come to America from European backgrounds, and had arrived at least nominally Orthodox and Shabbat observant. Today, of course, many Jews are more than one generation removed from their Orthodox roots. This serves as an additional reason to be lenient.

Although the strict principles mentioned previously (that a *mumar* is considered to be like a non-Jew, etc.) do not apply to a *mumar l'tei'avon*, nevertheless there are other laws which do apply. As we pointed out, the Torah uses the word *rei'acha*, *achicha*, or *amitecha* with respect to various interpersonal *mitzvot*. The *Mishnah Brurah*⁴⁹ is unsure whether a *mumar l'tei'avon* is included within these various categories.

In general, if we see a Jew violate an *issur*, like eating non-kosher meat *b'meizid* (willfully), but we don't know whether he did this *l'hach'is* or *l'tei'avon*, we judge him as a *mumar l'tei'avon*, to establish his *chezkat kashrut* (presumption of innocence)⁵⁰.

⁴⁵ *Igrot Moshe – Yoreh Deah 5:5*

⁴⁶ *Hilchot Shechita 4:14*

⁴⁷ *Ramban, Rabbeinu Yona, and the Rivash*

⁴⁸ *Yabia Omer, aleph, Yoreh Deah 11*

⁴⁹ *Siman 608 in the Biur Halacha*

⁵⁰ *Ketav Sofer, Choshen Mishpat §20*

Part II – How to Relate to Non-Observant Jews

Positive Attitude Toward Secular Jews

As seriously as the Torah views those who violate the fundamentals of Judaism and the most central *mitzvot*, at the same time, it has always maintained a tremendous respect and love towards every Jew.

Jews are called the children of Hashem, as it says⁵¹ – “*Banim atem l’Hashem Elokeichem.*”

And even when Jews are not following the will of Hashem, they are still called children to Hashem⁵².

Rebbe Meir says, based on four different verses – *Bein kach u’bein kach* (i.e., whether they are [acting like proper children] or not) *atem kruyim banim* (you are [still] called children).” And even if they are worshipping idols, they are still called full-fledged children⁵³.

In addition, *Rabban Shimon ben Gamliel*, *Rebbe Shimon*, *Rebbe Yishmael*, and *Rebbe Akiva* all hold – *Kol Yisrael b’nei melachim heim* – All of *Yisrael* are the children of Kings⁵⁴.

The *Ramcha*⁵⁵ explains –

Since there is a sanctity within *K’nesset Yisrael* (the Jewish people), which encompasses the entire nation, and is what makes them *Yisrael*, this includes the evildoers. As the Rabbis⁵⁶ tell us — ‘Although [a Jew] transgresses, he is always [called] *Yisrael*.’”

Similarly, the *Ramak*, in *Tomer Devorah*, taught about the mitzvah of love towards the *resha'im* (wicked) –

One should accustom himself to bring the love of people into his heart, even the *resha'im*, as if he is his brother, and even more than this, until he has established the love of all people within his heart... And he should say – “If only they were *tzadikim* (righteous), returning in *teshuva*, and all of them great and pleasing to Hashem.”... What will he love [about them]? He will think about the good in them, cover up their blemishes, not focus on their negatives, but rather their positive qualities. He should say in his heart... “Why should I hate the one that Hashem loves?” In this way, his heart will turn towards the good and he will accustom himself to think about all of their positive qualities.”

Mitzvah to Hate the Evil – But with Love and Limitations

⁵¹ *Devarim* 14:1

⁵² *Maharsha* on *Kiddushin* 36a and in his *Chidushei Agadot* on *Baba Batra* 10a

⁵³ *Kiddushin* 10a, *Rashbah* 1:194

⁵⁴ *Shabbat* 128a

⁵⁵ *Daat Tevunot* §160 pg. 191

⁵⁶ *Sanhedrin* 44a

While the *Tomer Devorah* writes – “One should accustom himself to bring the *love* of people into his heart, even the *resha'im* (wicked), as if he is his brother,” the *Gemara*⁵⁷ seems to say the exact opposite – that it is a mitzvah to *hate* the *resha'im* when they have clearly done transgressions! And the *Shulchan Aruch*⁵⁸ also says this –

One who does a transgression, and doesn't return even after being warned, it is a mitzvah to hate him until he does teshuva and returns from his wickedness!

Tosfot, on this *Gemara* in *Pesachim*, points out that, although there is a mitzvah to hate the *resha'im*, we still need to control our *yetzer* (negative inclination) to prevent a vicious cycle of this causing them to hate us, and eventually lead us to a *sinah gemurah* (complete hatred), which *would* end up being a violation of the Torah.

The *Kovetz Shiurim* explains that, according to *Tosfot*, it is only permissible to hate the transgressor because of the transgression that he did. Any other aspect of hatred towards him would be a violation of “*lo tisnah* – don't hate.” *Tosfot*, therefore, holds that someone who does a transgression is included within the category of “*achicha* – your brother” where the prohibition of “*lo tisnah*” would still be relevant. However, “*lo tisnah*,” like many other interpersonal prohibitions, refers only to hatred without a meaningful purpose, what we would call “*sinat chinam* – pointless hatred.” But, for example, showing the transgressor that his transgression is unacceptable, or in order not to become morally insensitive to his actions, we would be allowed to hate him. If, however, we have any other motivation for the hatred besides the transgression, we would then be transgressing “*lo tisnah*.”

The understanding of *Tosfot*, in light of the *Kovetz Shiurim*, is that there is no allowance to hate the *rasha* himself. Even a Jew who transgressed is still called *Yisrael* and “*achicha*.” And, therefore, even with a transgressor, we are prohibited with the prohibition of “*Lo tisnah et achicha bilvavecha* – don't hate your brother in your heart.” And, just like he is “*achicha*” with the prohibition of *sinah*, he is also “*rei'acha* – your neighbor” with “*v'ahavtah l'rei'acaha kamocho* – and you should love your neighbor like yourself.” Therefore, when the *Gemara Pesachim* says – “if you see someone do a transgression, it is a mitzvah to hate him,” that must be specifically with regard to the prohibition violated, not about the Jew himself.

Rav Yechezkel Levinstein⁵⁹ and *Rabeinu Yona*⁶⁰ also say this – our hatred needs to be for the *actions* of the wicked, not for the wicked ones themselves.

We see this attitude with *Moshe Rabbeinu* (our teacher) defending the Jewish People despite their various transgressions in the desert.

The Rambam⁶¹ holds that even when there is a mitzvah to hate a *rasha*, in other words, in a case where “he has still not done teshuva” – if one finds him struggling with a burden [i.e., on either him or his animal] – it is still a mitzvah to [help him to] load and unload... The Torah is concerned about [all] Jews, whether they are wicked or righteous,

⁵⁷ *Pesachim* 113b

⁵⁸ *Choshen Mishpat* 272:11

⁵⁹ *Ohr Yechezkel – Chelek Daled – Middot – Sinat Resha v'lo Sinat HaReshaim – Kuf Mem Gimmel*

⁶⁰ *Pirkei Avot* 4:19

⁶¹ *Hilchot Rotzeach uShmirat HaNefesh* 13:14

since they are [all] attached to Hashem, and they believe in the *Ikar HaDat* (main principles of the religion). This is clearly stated in the *possuk*⁶² – “G-d says, as I live, [I don’t] desire the death of the wicked, but rather that the *rasha* should return from his evil path, and live.””

In his commentary on the *Mishnah*, the Rambam spells this point out –

We are obligated to love every Jew who believes in the fundamentals of Judaism, whatever his other transgressions may be.

The Rambam, along with others⁶³, learn that the obligation to help, and even to give precedence, to our “enemy” with loading and unloading is talking about an adversary we are actually supposed to hate, because of a transgression which he did. It is remarkable how far the Torah goes to temper even this justified hatred we need to have towards evildoers.

The *Rema*, however, sides with the other *Rishonim* (early authorities) who say that we are not required to give precedence [i.e., to help with his loading or unloading before anyone else] to a transgressor whom we should hate. Rather the “enemy” we need to help with loading and unloading is someone we are *not* supposed to hate, but someone we feel a *personal* animosity towards. Most of the *Acharonim* (later authorities) adopt this position of the *Rema*.

In any case, we see the tremendous emphasis on how important it is to limit even the proper hatred we have towards transgressors, whether or not we need to actually go out of our way to give them precedence with the loading and unloading of their burdens.

The *Tanya* explains that one should hate the evil in the person while simultaneously loving the good within him. The Torah mandates a complex set of feelings we are supposed to feel, because people are capable of feeling such different emotions in their hearts simultaneously.

The *Abarbanel* says that we should love the transgressor, period, but hate his evil actions. Even though he transgressed, it is wrong to hate him in your heart. Rather you should hate his actions and reprove him.

Rav Asher Weiss suggests that *Tosfot* is telling us we may hate the transgressor, but only to a limited degree. Prioritizing loading the animal of the evildoer will ensure that the intensity of our hatred does not become too great. There should be no personal animosity towards him, simply anger and bitterness that he has transgressed Hashem’s will.

The common denominator of these approaches is that, although it is a mitzvah to hate wickedness, this hatred must be very limited. Therefore, one is still obligated in the mitzvah of “*v’ahavta l’rei’acha kamocho* – and you should love your neighbor like yourself” towards such a person. We may redeem him if he is captured. We are required to save his life and to return his lost objects. It is forbidden to take interest from him. And some commentators say that we are even obligated to sustain him and to give him *tzedaka* (charity).

⁶² *Yechezkel* 33:11

⁶³ *Tosfot* in *Bava Metzia*, the *Semag* and Rav Yosef Karo

The *Sefer HaTanya* notes that often Jews who seemed to have left Torah and *mitzvot* entirely were nevertheless willing to give up their lives when commanded to publicly denounce Judaism. For the same reason, Rav Dessler writes that there never was and never will be a true heretic. Deep down, at the bottom of his heart, every Jew knows the truth.

However we understand this simultaneous loving and hating, the key is that we want the transgressor to do teshuvah, and not to be punished. It is the transgression we want destroyed, not the transgressor. In fact, the verse in *Gemara Pesachim* speaks specifically of hating the evil, not the transgressor.

The *Gemara*⁶⁴ tells us that Rebbe Meir once prayed that some wicked people in his neighborhood should die. His wife, Bruriah, pointed out that, based on a verse, we want the end of transgressions, not the end of transgressors. She, therefore, encouraged him to pray for them to do teshuva. He prayed for this and they did end up doing teshuva.

Furthermore, even this hatred that we are allowed to have towards a *rasha* in terms of the transgressions he violated, is permissible only after we have fulfilled the *mitzvot* of *tochacha* and *kiruv* (trying to bring them close). In other words, we have done whatever we could to speak to him positively and show him our love to get him to abandon his evil path and return to the good. Only if he, G-d forbid, continues transgressing after all of this, is it then permissible for us to hate him, but still exclusively in terms of the transgressions in his hand. Some even say that this limited hatred we should have towards a transgressor is merely an external expression as a part of our *tochacha*, to help him to improve his ways.

Remarkably, this obligation with *tochacha* and *kiruv* (regarding transgressors), is incumbent upon us not only once, but “*harbei p’amim* – many times,” as the *Sefer HaChinuch* teaches⁶⁵ –

This prohibition [against hatred] applies in all places and times, to men and women. One who transgresses, and establishes hatred in his heart towards any *proper Jew*, violates this prohibition. There are no lashes, [however,] since this involves no physical act.

But there is no prohibition of hatred toward the *wicked*. It is actually a mitzvah to hate them *after we have given them tochacha* for their transgressions *harbei p’amim*, and *they still don’t want to return* from them.

The *Sefer HaChinuch* is teaching us that even though we are obligated to hate a *rasha*, this is only once we have fulfilled the requirement of *tochacha* and *kiruv*, rebuked him for his evil, and sufficiently tried to bring him back to the good, as he says – “*harbei p’amim*.”

The *Sefer HaChinuch*⁶⁶ adds that –

It is permissible, and also a mitzvah, to hate *resha’im*... once we see that they have destroyed and perverted their actions, *until there is no more hope in them*,

⁶⁴ *Brachot* 10a

⁶⁵ *Mitzvah Reish-Lammed-Chet* – *Shelo Lisno Achim* (Not to hate your brothers)

⁶⁶ *Taf-Samech-Aleph* – Not to refrain from speaking negatively about a missionary

and they no longer listen to their teachers, they disparage their words and ignore their teachings.”

In other words, we may only hate the wicked “once we see that... *there is no more hope in them.*”

The *Pele Yo'etz*⁶⁷ also says this –

We are only permitted to hate a *rasha* once we have given him *tochacha kama paamim* (many times), and he is still continuing his rebellion, angering *Avinu sh'b'Shamayim* (our Father in Heaven), and causing pain in *Shamayim*. It is forbidden to hate anyone else.

This tells us that hatred towards the wicked is allowed only once they have ignored all of the efforts of those reaching out to them. Since they disparage those trying to help them, they no longer have any hope.

The Rambam⁶⁸ and the *Smag* both say similarly – The mitzvah to hate someone who transgressed is only once he was warned and did not do teshuva. The Rambam adds – “There is now a mitzvah to hate him until he does teshuva and returns from his evil.”

In light of all this, the *Chazon Ish*⁶⁹ says remarkably –

According to the words of the Rabbis, all that we can do today is to love them and bring them close in order to [try to] bring them back to the good... It is [therefore] forbidden for us to hate a *rasha* until he has received *tochacha* and been brought close to the good properly.

What Hashem really desires, of course, is not to hate the *rasha*, but rather to return him from his negative path and guide him to the positive straight path, so that he will merit to life in *Olam Haba*. As *Yechezke*⁷⁰ says –

G-d says, as I live, [I don't] desire the death of the wicked, but rather that the *rasha* should return from his evil path, and live.

Hating *Apikorsim* (Heretics)

All that we have said so far applies to a *mumar l'tei'avon* but not to the more serious categories of transgressors and deniers, like a *mumar l'hach'is*, *min*, *kofer*, or an *apikores*. In these cases, the restraints on our hatred do not apply, and we are exempt from *v'ahavta l'rei'acha kamocho* towards such transgressors. There is also no mitzvah of *tochacha* towards them. Despite this, we are encouraged to pray for every transgressor to do teshuvah. The *Ya'arot Devash* even tells us to include them in the *brachah* of *Refa'einu* (healing).

As the *sefer Magen Avot*⁷¹ explains, based on the *Avot d'Rebbe Natan* –

The only allowance of hatred is for those who hate Hashem, as it says⁷² – “Behold, those who hate Hashem, I hate.”

⁶⁷ *Ahavat Re'im*

⁶⁸ *Hilchot Rotzeach* and *Shmirat HaNefesh* 13:14

⁶⁹ *Yoreh Deah* – *siman beit*

⁷⁰ 33:11

⁷¹ Chapter 2

⁷² *Tehillim* 139:21

However, even with *apikorsim* and those that disparage the religion, the *Chafetz Chaim*⁷³ taught, that we need to *initially* relate to them with shalom –

If one is in a place with *apikorsim* and those who attack the Torah, and he wants to institute some guidelines for the community... and he had tried to [initially] *address them with peace* but they didn't listen to his words, the *Beit Yosef* [who spoke about the importance of being modest in one's behavior] was not talking about a case like this at all. Rather, it is [now] a mitzvah to hate them and to fight with them, and to nullify their advice as much as one can.

The Rambam⁷⁴ writes about how severely we should relate to *apikorsim* –

The Jewish *apikorsim* are not like *Yisrael* in any way at all, and we should never accept them [back] in teshuva... The *apikorsim* are those who follow after nonsensical ideas until they end up violating the essentials of the Torah brazenly and arrogantly, thinking that there is nothing wrong with this. It is forbidden to speak with them and to respond to them at all.

The *Ramach*, quoted by the *Beit Yosef*, is amazed by the words of the Rambam –

This is puzzling, since the *gemara* says explicitly that we should accept them. Who is able to say that we should not accept any *baal teshuva*? And the *meforshim* (commentaries) on the Rambam have already struggled to reconcile the words of the Rambam.

The *Kesef Mishnah* points to the Rambam in the third *perek* of *Hilchot Teshuva*, where he says –

All of the *reshaim*, the *mumarim*, and similar cases that return in teshuva, whether openly or privately, we accept them.

Independently of how to reconcile the words of the Rambam, we certainly see how harshly we need to relate to those with heretical beliefs. But while we are required to distance ourselves from the *apikorsim* and those similar to them, in any case, even they [should] have hope to [be able to] return to the good and be accepted. This seems to be why the *Chafetz Chaim* taught to initially relate to them with shalom.

⁷³ *Biur Halacha, siman aleph*

⁷⁴ *Hilchot Avodat Kochavim 2:5*

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*⁷⁵ –

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, explain⁷⁶ 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 writes⁷⁷ 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 Rambam⁷⁸ 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 –

⁷⁵ *Shabbat* 7:1

⁷⁶ *Gemara Shabbat* 68b

⁷⁷ *Hilchot Mamrim* 3:3

⁷⁸ *Hilchot Mamrim* 3:3,4

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 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 writes⁷⁹ 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*⁸⁰ suggests an answer to this first apparent contradiction within the Rambam. He writes that most texts of the Rambam⁸¹ 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*⁸² says this as well.

And, in terms of the *korban shavuah* that an *omer mutar* is *patur* from bringing, the *Chut HaMeshulash*⁸³ 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*

⁷⁹ *Hilchot Shavuot* 1:13

⁸⁰ *Hilchot Malveh v'Loveh* 2:5

⁸¹ *Hilchot Mamrim* 3:3

⁸² §132

⁸³ §13

(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 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*⁸⁴ 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'nishb'u* 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.

⁸⁴ 3:3

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'nishba*. 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 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*⁸⁵ 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 Ramban⁸⁶, as well as the *Tashbatz*⁸⁷ 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

⁸⁵ *Yoreh De'ah* §159

⁸⁶ *Baba Metzia* 71

⁸⁷ *Responsa* 2:139

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*.

And we see a similar inference from the words of the Ramban⁸⁸ – “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’nish’b’u*, even according to these *Rishonim* who argue on the Ramban. And this is what Rav Yitzchak Berkowitz, the current *Rosh HaYeshiva* of Aish HaTorah, holds.

Rabbi David Tzvi Hoffman⁸⁹ articulates this point⁹⁰ –

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

⁸⁸ *Baba Metzia* 71b

⁸⁹ 1843-1921

⁹⁰ *Melamed L’Ho’il* §29

behaving normally. And this is sufficient to *not* consider the violator to be a *mumar*.

Rav Yaakov Ettlinger⁹¹ 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 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*⁹² –

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 Yosef⁹³ 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

⁹¹ (1798-1871) *Binyan Tzion* §23

⁹² *Aleph*, §33

⁹³ *Yabia Omer* 1:197

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*⁹⁴ 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 Rambam⁹⁵, 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 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

⁹⁴ *Yoreh De'ah* 2:28

⁹⁵ *Hilchot Mamrim* 3:3

avosot ahavah (cords of love) and to help them to achieve a clarity as much as we possibly can⁹⁶.

The *Chazon Ish*⁹⁷, 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*⁹⁸ 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*⁹⁹ 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*.

⁹⁶ *Chazon Ish – Yoreh Deah – 2:16*

⁹⁷ *Yoreh De'ah 1:6*

⁹⁸ §385

⁹⁹ *Yoreh Deah 159:3*

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*¹⁰⁰ explains that the Rambam argues on the *Nimukei Yosef*, and the *halacha* follows him.

Different Opinions

The *Taz*¹⁰¹ also holds that the *Tzedukim* are *tinokot sh'nish'b'u*. The *Shach*¹⁰², 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 Edelstein¹⁰³ 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 Feinstein¹⁰⁴, 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.

¹⁰⁰ §102

¹⁰¹ *Orach Chaim* §385

¹⁰² *Yoreh De'ah* §2:24

¹⁰³ *The Laws of Outreach* (page 105-107)

¹⁰⁴ *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 Karelitz¹⁰⁵ 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*.

¹⁰⁵ *Chut Sheini – Shabbat – chap. 40*

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 writes¹⁰⁶ —

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 truth¹⁰⁷.

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*.

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 individually¹⁰⁸.

¹⁰⁶ Responsa *Minchas Asher* 1:10

¹⁰⁷ Rambam – *Hilchot Mamrim*, 3:1-3, *Chazon Ish* – *Yoreh De'ah* 1:6, 2:28

¹⁰⁸ *Chazon Ish* — *Yoreh De'ah* 1:6, 2:28

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*¹⁰⁹.

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 Shternbuch¹¹⁰ 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 Feinstein¹¹¹ 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 Kaminetsky¹¹² 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 bloodshed¹¹³.

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

¹⁰⁹ *Chut Sheini – Shabbat* — ch. 40, *Shevet Levi* 9:198, *Zichron Yehuda* — *Orach Chaim* §99, and in the name of Rav Eliyashiv

¹¹⁰ Printed in *Moadim u'Zmanim* 9:14

¹¹¹ *Igrot Moshe, Even Ha'Ezer* 1:82:11

¹¹² *Emmet l'Yaakov*, note §217

¹¹³ End of *Beit HaBechira* on *Baba Kama* on the *din* of “*moridin v'ein maalin.*”

Hashanah was sentenced to death. The Brisker Rav remarkably raised a large ransom to free this person. Although the simple reading of the Rambam¹¹⁴ is that it is *assur* to save *apikorsim*, the Brisker Rav quoted the *Meiri* and also based himself on a different Rambam¹¹⁵. 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*¹¹⁶.

¹¹⁴ *Hilchot Eidut* 11:10

¹¹⁵ *Peirush l’Mishnayot to Chulin, perek aleph*

¹¹⁶ *Uvdot v’Hanhagot l’Beit Brisk* 2:265

Part V – *Kulot* (Leniencies) of *Tinok Sh’Nishba*

There are many areas where the practical halacha today is impacted by the widespread reality of secular Jews who are considered to be *tinokot sh’nish’b’u*.

Filling in a letter of a *Sefer Torah*

As we discussed, one who is *mechalel Shabbat b’farhesia* should have the status of a non-Jew and should, therefore, be *pasul* (disqualified) for *ketivat Sefer Torah* (writing a Torah scroll). As a result, many¹¹⁷ prohibit honoring secular Jews, who are presumably *mechalel Shabbat b’farhesia*, with filling in a letter at a *hachnasat Sefer Torah* (celebration for completing a Torah scroll).

However, based on secular Jews being considered to be *tinokot sh’nish’b’u*, the *sefer U’Makareiv B’Yamin* writes that there is room to be lenient with *mechalelei Shabbat* today, since most of them do not have the *din* of *mechalel Shabbat b’farhesia*. Furthermore, there is the concern of *eivah* (hatred) if we exclude them from filling in a letter. It is possible that they may then resort to even worse behavior. So, in order to not push them further away, we could be lenient when there is a need for it.

Lashon Hara (Negative Speech)

There are two different aspects to the allowance to speak *lashon hara* about a *rasha*, and they need to be balanced. First, the negative speech should make the transgressor feel that he is somewhat outside of the *machaneh Yisrael* — Jewish people. But, on the other side, if everyone would be allowed to speak *lashon hara* about him without any limitation, this would prevent bringing him closer, since he would see that all are viewing him as a *rasha*. Therefore, there needs to be some degree of *to’elet* — benefit, to be permitted to say the *lashon hara*.

The *sefer Netivot Chaim* on the *Chafetz Chaim*¹¹⁸ explains —

Although a *mumar l’tei’avon* is not included within *amitecha* for many *halachot*, in terms of *lashon hara*, he is not completely excluded. It is, therefore, *assur* to speak about him unless all five of the normal conditions [to speak negatively about someone] are met.

The *Be’er Mayim Chaim*¹¹⁹ writes about two different aspects to this necessary *to’elet* (benefit). First, is to distance other people from the evil path, since they hear that people are speaking negatively about the evil doer. And, secondly, when the transgressor hears that people are disparaging him due to his bad behavior, this may actually encourage him to return from his evil path. The speaker of the *lashon hara* must be careful, however, not to derive any satisfaction from the negatives he is attributing to this person. In addition, it must not come from any negative feelings he has towards him. It should only be [motivated by] the truth.

This is all in contrast to an *apikores*, or a *mumar l’hach’is*, who threw off all observance. Since they both completely left the category of *amitecha*, there is actually a mitzvah to

¹¹⁷ *Minchat Eliezer, Chayei Asher, Yad Yitzchak*, and Rav Moshe Shternbuch

¹¹⁸ 4:44

¹¹⁹ 4:32:4

disparage and speak *lashon hara* about them, since this is inherently considered to be beneficial. Due to the great danger that they pose, whatever can be done to distance them from the *klal* is a mitzvah. We need to be more concerned about preventing damage to *Klal Yisrael* than bringing them back in *teshuva*. We are, therefore, not even required to make sure that there is no enjoyment in speaking negatively about them, because of the automatic benefit in hating them.

The *Chafetz Chaim* once wrote an extremely sharp letter against a particular *apikores*, and then another letter to substantiate his words [in the first letter]. Since this letter was against an *apikores*, the *Chafetz Chaim* did not hold back from writing so sharply against him. On the contrary, he considered it a mitzvah to disparage the *apikores*.

Counting for a Minyan and Other Davening Issues

There is a question whether non-observant Jews may be counted towards a minyan. Both the *Shulchan Aruch*¹²⁰ and the *Rema pasken* that a regular transgressor may be counted as part of a minyan as long as he had not been put into *nidui* (i.e., ostracized). Some *poskim* explain this by noting that the source for the requirement of a minyan is learned from the verse that refers to the ten bad spies. Rav Moshe¹²¹ also suggests a logic to permit counting *mechalelei Shabbat* for a minyan. Since public *kiddush Hashem* is defined by ten Jews, even if they are *kofrim* or *mumarim*, perhaps we can also count them for davening. {There are, however, a number of reasons to argue on this.} And, finally, the *Netziv* says that since we accept offerings from transgressors, we should allow them to be a part of our minyan as well.

The *Mishnah Brurah*¹²² quotes the words of the *Pri Megadim* —

The *Shulchan Aruch* is speaking specifically about where one is violating *l'tei'avon* (because of desire). If, however, one is violating *l'hach'is* (as an act of rebellion against Hashem), even with a single *aveirah*, or one is a *mumar l'avoda zara*, or *mechalel Shabbat b'farhesia* (publicly violating Shabbat), even *l'tei'avon*, it is then forbidden to count him towards the minyan.

The *Mishnah Brurah*¹²³ adds — “Also, one who denies *Torah sh'Ba'al Peh* cannot be counted for a minyan,” which the *Kaf HaChayim*¹²⁴ agrees with.

The *Netziv*¹²⁵ writes similarly — One who accepts idolatry and [one who is] *mechaleil Shabbat b'farhesia*, where we would *not* accept his offerings, because we assume that he won't do *teshuva*, and therefore his *tefillah* is also a *to'eva* (abomination), how would it be possible for us to join together with him [for *tefillah*]?

Another issue is that someone who does not believe in a particular mitzvah cannot fulfill his obligation in that mitzvah. Hopefully, we can assume that if a Jew wants to participate in davening, he does believe in it. And by showing up to the minyan, he is also showing that he actively wants to be a part of the community of the Jewish People.

¹²⁰ 55:11

¹²¹ *Igrot Moshe* — *Orach Chaim* §23

¹²² §46

¹²³ §46

¹²⁴ §16

¹²⁵ *Meishiv Davar* §9

According to Rav Moshe Feinstein, even if one is stringent on whether contemporary non-affiliated Jews count towards a minyan, one could be lenient with them making up the minyan for saying *Kaddish* and other matters of sanctity. At the same time, any prayer that does not involve ten Jewish believers is not considered *tefilla b'tzibur* — the special status of communal prayer. Rav Elyashiv also permitted counting him in a minyan in order to justify saying *Kaddish* and *Borchu*. Other *poskim*, however, hold that such a person may not be counted as part of a minyan for any matters of *kedusha* (sanctity).

Although Rav Shlomo Zalman Auerbach defined secular Jews of today as *tinokot shenish'b'u*, he still wrote that it is improper to allow them to be counted towards a minyan. He permitted counting such a Jew for a minyan only where failure to include him would cause quarreling in the *shul*. This is actually the approach of most authorities. And some *poskim* permit counting non-observant Jews only when they are very clearly *tinokot shenish'b'u*.

Rav Noach Oelbaum, a prominent Rav in New York, writes in *Minchat Chen*¹²⁶ — “It appears that, according to the opinion of most *poskim*, *mechalelei Shabbat* today are like *tinokot sh'nish'b'u*. Therefore, although one should try to find a minyan of ten proper Jews, in a time of need, one could include them in a minyan.”

And, independent of whether they should be counted towards the minyan, the Rambam¹²⁷ writes that they should certainly be welcomed into the shul —

It is not fitting to distance those who desecrate Shabbat and to disparage them. Rather we should bring them close and encourage them to do the *mitzvot*. Our Rabbis have already explained that [even] if one who rebelled willfully comes to the shul to daven, we should accept him, and not treat him negatively.

***Shaliach Tzibur* (Leading the Davening)**

Many *poskim* forbid having a non-observant Jew lead the davening as the *shaliach tzibur*, since he is not a proper agent for the congregation. However, Rav Dovid Tzvi Hoffman¹²⁸ does allow a Shabbat desecrator, who is a *tinok sh'nish'ba*, to serve as the *shaliach tzibur*. Rav Henkin allows a Shabbat desecrator to lead the *beginning* of the davening under extenuating circumstances. And perhaps even further allowances may be made to avoid conflict. Rav Dovid Cohen allows someone who believes in Hashem but who is not observant to lead the davening and the *bentching*, as long as his motivation is sincere.

When it comes to one who doesn't believe in the foundations of Judaism, however, the *Mishnah Brurah*, writes that it is forbidden for him to serve as the *shaliach tzibur*. But even here, for the sake of preventing resentment, he may be allowed to lead the *end* of the davening.

According to many of the *poskim*, even with *tinokot sh'shish'b'u*, where they were never educated about Torah and *mitzvot*, if they want to lead the davening, for a *yahrtzeit* or something similar, we should push them off with different excuses. If, however, they

¹²⁶ pg. 157

¹²⁷ *Igeret HaShmad*

¹²⁸ *Melamed l'Ho'il — Aleph — Orach Chaim §29*

simply begin leading the davening [on their own], we should still answer *amen* and *Kedusha* after them, and not separate from the minyan. This [of course] is [only] if they believe in Hashem, even if they are *mumarim*.

We see similarly from the words of Rav Ovadia Yosef¹²⁹ —

In our generation, according to our many transgressions, many are educated in secular schools and are in the category of a *tinok sh'nish'ba*. If, however, they do teshuva, none of their *aveirot* will be mentioned anymore. As the *Magen Avraham*¹³⁰ mentions, if one is forced to transgress, and then returns in teshuva, everyone agrees that he can be appointed to lead the davening. All who return in teshuva, it is a mitzvah to draw him close with ropes of love, and to appoint him to lead the davening all of the days of the year.

The clear inference from his words, however, is that Rav Ovadia Yosef is only lenient with a *tinok sh'nish'ba* once he has *already* done teshuva. But as long as he is connected to his *aveirot*, even if this is because he was educated in an environment of non-Jews and is a *tinok sh'nish'ba*, we may still not appoint him to lead the davening.

Rav Moshe Shternbuch¹³¹ also discusses one who has done teshuva. He writes that it is *pashut* (simple and obvious) that a *ba'al teshuva* who received no Torah education and was in the category of a *tinok sh'nish'ba*, according to all opinions is seen as a *tzadik gamur* (completely righteous person), and can be appointed as the *shaliach tzibur*, even for Rosh Hashanah and Yom Kippur. He is not considered to have a bad name from his youth [which would normally be a disqualification]. On the contrary, there is an advantage for him to be the *shaliach tzibur*. His *tefillot* are accepted and pleasing to Hashem since he has sanctified G-d's Name through returning in teshuva.

Aliyot to the Torah

While, in principle, any Jew can be called up to the Torah¹³², including transgressors, it is considered to be a *chilul Hashem* to show honor to Shabbat violators by giving them an *aliyah*. The *Chacham Tzvi* extended this *chilul Hashem* to bystanders who would see this without protesting. His son, Rav Yaakov Emden, qualified his father's ruling, however, and limited it to apostates who had converted to another religion¹³³. It is thus unclear how the *Chacham Tzvi* would rule about giving *aliyot* to secular Jews today.

Rav Moshe Feinstein¹³⁴ writes that regular *mumarim* today seem to be *l'tei'avon*, since they are like *tinokot sh'nish'bu*. And, specifically since they are coming to daven, we see that they have *emunah* in Hashem. Therefore, in a case of *tzorech gadol* (great need), one could honor a *mechalel Shabbat l'tei'avon* with an *aliyah*.

However, given all of the issues involved, Rav Shlomo Zalman Auerbach suggests that we give them the honor of *hagbah* and *gelilah* (picking up and helping to tie the Torah scroll), but not an *aliyah* to the Torah, unless it is specifically a *kiruv minyan*.

¹²⁹ *Chazon Ovadia — Yamim Nora'im* pg. 38

¹³⁰ §8

¹³¹ *Teshuvot v'Hanhagot* 1:99

¹³² *Megillah* 23a, *Orach Chaim* 282:3

¹³³ *She'eilat Ya'avetz* 1:79

¹³⁴ *Igrot Moshe* 3:12,22

The *Chazon Ish* [as well as the *Ben Ish Chai*] permitted calling up a non-observant Jew to the Torah only after the initial seven men had been called up. And Rav Henkin ruled that since the *ba'al koreh* reads from the Torah today, we may give an *aliyah* to a *tinok sh'nish'ba*, provided that only observant Jews who are able to recite proper *brachot* are called up for the first and the last *aliyot*.

Separate from the question of honor, *brachot* (blessings) on the Torah that are said by one who does not believe in Hashem are not considered to be *brachot*. The issue of the *brachot* seems to be the main concern to Rav Moshe Shternbuch¹³⁵ regarding giving *aliyot* to secular Jews —

Most of the *mechalelei Shabbat* here in Israel are *l'tei'avon* and like a *tinok sh'nish'ba*. They never heard about the seriousness of Shabbat and were not raised with the Torah. The main concern, however, is that their blessing for the Torah is not a *bracha*, but rather blasphemous. How can they say that we were chosen from all of the nations and given the Torah when they aren't keeping the Torah, or accepting the yoke of Torah, at all?

Birkat Kohanim

There is a dispute among the *Poskim* whether a *Kohen* who is a *mumar* for *chilul Shabbat* may perform the *Birkat Kohanim*. Most authorities forbid him to do so¹³⁶, but Rav Moshe Feinstein said that while it would be best if he would not do it, we cannot disqualify him if he wants to¹³⁷. There are even some *poskim* today who hold that non-observant *Kohanim* should actually be permitted to perform the *Birkat Kohanim*¹³⁸.

Intermarriage

Rav Yosef Tuvis¹³⁹ ruled that a man living with a non-Jewish woman should not be the reader of the Torah. He explained that this *geder* (fence) is particularly appropriate, since the *aveira* of intermarriage has a loss which is not found with any of the other illicit relations (i.e., that the children are not considered to be his)¹⁴⁰.

In addition, many *poskim* rule that they should not even be counted in a minyan, as a means of conveying a message of disapproval towards intermarriage. However, the skyrocketing intermarriage rate has brought some *poskim* to draw the conclusion that this is no longer the correct approach to take, besides the fact that many of them could be viewed as *tinokot sh'nish'b'u*.

The *Minchat Yitzchak*¹⁴¹ seems to say that all Jews know it is forbidden to marry a non-Jew, since it destroys the Judaism of their children. There are, however, Jews who were raised around non-Jews, with no Torah or *mitzvot* who don't see anything wrong with this

¹³⁵ *Teshuvot v'Hanhagot* 1:472

¹³⁶ *Pri Chadash, Orach Chaim* 128:39

¹³⁷ *Igrot Moshe, Orach Chaim* 1:33

¹³⁸ *Zakein Aharon* 1:12, *Yabia Omer, chelek zayin, Orach Chaim* 15:4

¹³⁹ *Zichron Yehuda*

¹⁴⁰ *Even HaEzer, siman* §16

¹⁴¹ 3:65

at all. In their eyes, [marrying someone Jewish] is simply a good thing to do. Perhaps, therefore, they could be considered as *tinokot sh'nish'b'u* even with intermarriage.

Standing up for *Kavod* (Honor) and *Yireh* (Fear/Respect)

While there is a mitzvah to stand up in front of a *zakein* (elder) who is seventy years old, there is a question whether one is obligated to stand up in front of a *zakein* who does not keep Torah and *mitzvot*.

Based on the *Gemara*¹⁴², there is a *machloket Rishonim* about who we are supposed to honor by standing up. This centers on the meaning of a *zakein ashmei*, who the *Gemara* tells us we are obligated to honor. Is he a *rasha v'am ha'aretz* (evil and ignorant person) as *Rashi* says, or a *bor v'am haretz* (lowly and ignorant person) as *Tosfot* says?

According to *Tosfot*, *Rosh*, *Ran*, and the *Chinuch*, the *chiyuv* is to stand up in front of a *zakein am ha'aretz*, but not a *zakein rasha*. This also appears to be the opinion of the *Rambam*¹⁴³ and the *Rema*¹⁴⁴ — “[The mitzvah applies] even with an *am ha'aretz*, as long as he is not a *rasha*.” The *halacha* is according to these *Rishonim* that we are not required to stand up in front of a *rasha*.

As we have already discussed, many secular Jews today are considered to have the *din* of a *tinok sh'nish'ba*. Most of them violate Shabbat because they were not raised to appreciate it, and they never heard about the seriousness of its prohibitions. As it says in the *Shulchan Aruch HaRav*¹⁴⁵ —

Although they heard afterwards that they were Jewish, and they saw Jews and their religion, they are still like one who was coerced, since they were raised among the non-Jews and their religion.

It would, therefore, seem incorrect to call them *resha'im* in terms of the *halacha*. If so, we may be obligated to stand up in front of them according to all opinions.

Rav Wozner¹⁴⁶ writes —

It is simple and obvious (*pashut me'od*) that [on the one hand] a [secular Jew who is a] *tinok sh'nish'ba* is not doing the proper actions of the nation. [But on the other hand,] he will not be judged as a *rasha* since his transgressions are being done *b'shogeg* (not willfully). [He concludes that the halacha is that —] there is no obligation to stand up before a [secular] *zakein* who is a *tinok sh'nish'ba*. However, there is room *l'hader* (to give some honor to) a *zakein* like this, in a casual way, at least with words.

Rav Nissim Karelitz is quoted¹⁴⁷ similarly —

We should not stand up before a *zakein* like this. [Since] “there is a *zilzul* (cheapening) to honor one who is not fulfilling *mitzvot*, the logic would seem to be

¹⁴² *Kiddushin* 32b

¹⁴³ *Hilchot Talmud Torah* 6:9

¹⁴⁴ *Yoreh De'ah* § 244

¹⁴⁵ End of *Hilchot Ribit*

¹⁴⁶ *Shevet Levi*

¹⁴⁷ *Kibud v'Hadar* — pg. 447

that we need not honor him. [But at the same time] it is forbidden to shame or strike him.

The *sefer Kibud v'Hadar* also brings the opinion of Rav Elyashiv —

We assume that all of the [secular] elders are *mochel* (forgo any honor), and therefore [the requirement to] give them any honor is doubtful. But if they wouldn't be *mochel*, then *m'ikar hadin* (the basic halacha is that), we would need to stand up to our full height for an elder in the category of a *tinok sh'nishba*.

If, however, one finds himself in a situation where not standing up before an elder would look like a *chilul Hashem*, like not giving up one's seat for an elder on a bus, or not standing up in a place where everyone else is standing up, it would seem that we should give some honor and stand up before an elder who is a *tinok sh'nishba*, according to all opinions.

Part VI – More Guidelines with Secular Jews

Kibud Av v'Eim (Honoring Parents)

Is a *ba'al teshuva*, or any religious child, obligated to honor his non-observant parents?

The *Shulchan Aruch*¹⁴⁸, based on the Rambam, writes — “A *mamzer* is *chayav* in *kavod* and *yirah* of his parent. Even if the parent is a *rasha* and a *ba'al aveirot*, give him *kavod* and have *yirah* from him.”

The *Tur*¹⁴⁹ and *Hagahot Maimoniot*¹⁵⁰, however, argue on the Rambam —

The obligation on children to return a stolen animal that their deceased parent left to them, because of the *kavod* of the parent¹⁵¹, is only when the parent had done teshuva before he died. Therefore, we see that, as long as the parent has not done teshuva, the children are not obligated in his *kavod*.

The *Rema paskens* similarly —

There are those¹⁵² who say that there is no *chiyuv* to honor a parent who is a *rasha* unless he does teshuva.

Presumably, when the *Shulchan Aruch* requires a child to have both *kavod* and *yirah* for an evil parent, it is referring to a *mumar l'tei'avon*. However, all should agree that one is exempt from either honoring or revering a parent who is a *mumar l'hach'is*.

Independent of this, however, a critically important quality which is relevant to the relationship of every child to their parents is *hakarot hatov* (gratitude). This is mentioned by the *Sefer HaChinuch*¹⁵³ when he discusses the mitzvah of *kibud av v'eim* —

It is fitting for a person to recognize and respond with kindness to anyone who gave him a benefit, and not to be despicable and ungrateful, by ignoring this

¹⁴⁸ *Yoreh De'ah* §240

¹⁴⁹ *Yoreh De'ah* §240

¹⁵⁰ *Sefer HaMitzvot* — *Mitzvat Asei* §102

¹⁵¹ *Baba Kama* 94b

¹⁵² *Tur*, *Mordechai*, and *Hagahot Maimoniot*

¹⁵³ §33

benefit. This is a terrible quality and the most disgusting both to G-d and people. We need to remember that our parents are the reason we are in this world, and therefore it is truly fitting to give them all of the honor and help that we can.

Based on this *Sefer HaChinuch*, the *Yalkut Yosef*¹⁵⁴ says that there is even an obligation to honor a parent that one never had a relationship with, since one should still recognize this benefit [of being in this world].

Many of the contemporary *poskim* say this as well¹⁵⁵.

He concludes —

In any case, we accept the *p'sak* of the master (*Mechaber*). The child should certainly honor his parents even if they are not following Torah and *mitzvot*.

The *Ohr HaChaim*¹⁵⁶, however, infers from the words of the Rambam that giving *kavod* and *yirah* to an evil parent is only if this evil is temporary. For example, he did an *aveirah* that would be called evil, but is not *continuing* to do so. But if he is a *rasha gamur* (totally evil person) and is completely corrupted, the child need not honor him.

Even according to the *Rema*, that one is not obligated in the *kavod* of these [secular] parents, at the same time, many *poskim* write that it is *assur* to directly cause them pain. In other words, they distinguish between the *chiyuv* of *kavod* and the *issur* of *tza'ar*.

The *Shulchan Aruch*¹⁵⁷ states this very strongly —

[Even if] one's father and mother were *resha'im gemurim* (completely wicked) and transgressors, and even if they had been sentenced to death and were being taken out to be killed, it would still be *assur* for the child to hit or curse them.

The *Shach*¹⁵⁸ also says this —

Although we are not obligated to honor them, we are forbidden to afflict them.

The *Taz*¹⁵⁹ concurs —

The *Tur* differentiates between hitting and cursing [on the one side] and honoring [on the other]. Although it is forbidden to hit or curse them, even so, there is no obligation to honor them.

The *halacha*, according to most, is that it is difficult to exempt a child from the obligation of *Kibud Av v'Eim*. This is especially true today since most people who are not keeping the *mitzvot* are doing so not to rebel against Hashem, but rather because of the general situation of our generation. They are like *tinokot sh'nish'b'u bein ha'nachrim*. Therefore, it seems that *baalei teshuva* should be obligated to honor their parents despite them not keeping the *mitzvot*, even according to the *Rema*.

Rav Ovadia Yosef elaborates on this —

¹⁵⁴ *Kibud Av v'Eim* — *chelek aleph*, pg. 525

¹⁵⁵ *Chayei Adam* 7:18, *Kitzur Shulchan Aruch* 143:9, and Rav Ovadia Yosef — *Yabia Omer* — *chelek chet*, *Yoreh De'ah* §21

¹⁵⁶ *Rishon l'Tziyon* 96b

¹⁵⁷ *Yoreh De'ah* 241:4

¹⁵⁸ 240:20

¹⁵⁹ 240:17

Since secular Jews today are [generally] *tinokot sh'nish'bu bein hanachrim*, we should certainly honor them, as the *Chazon Ish*¹⁶⁰ writes about the different perspective we need to have towards secular Jews today. Therefore, even when the parents continue to violate Shabbat and do other *aveirot*, their children need to relate to them with *kavod*... Perhaps they will [even] listen and return, since the Torah's ways are ways of pleasantness and all of her paths are peace.

Rav Ovadia Yosef, however, explains –

Everything we said is when the parents are not stopping the children who have merited to recognize and return to the truth... or are, at least, indifferent to them. If, however, the parents are tormenting them for having done teshuva, and afflicting them because they hate the religion, they are [then] in the category of *minim* and *apikorsim* whom we certainly don't honor, and Hashem actually prevents from [receiving] honor.

Wine

The Torah forbids benefiting from wine that was used for idolatry. *Chazal* extended this prohibition to include any wine of a non-Jew, as well as wine of a Jew that was handled by a non-Jew, called *stam yeinam*. One of the reasons for this is to limit social contact between Jews and non-Jews that could [possibly] lead to intermarriage.

Once *Chazal* viewed a *mumar l'hach'is* (or the other severe categories) like a non-Jew, it necessarily became forbidden to drink wine that was handled by a *mumar l'hach'is* as well. The *Chatam Sofer* writes that giving secular Jews the status of non-Jews in this context, and forbidding their wine, was a penalty. Therefore, if there is any doubt whether the wine was handled by the *mumar l'hach'is*, the wine may end up being permitted in certain pressed circumstances.

In addition, many authorities maintain that, if the secular Jew who handled the wine is a *tinok sh'nish'ba*, it does not become forbidden as *stam yeinam*. And even if we are not sure about the status of a particular Jew, we may not need to consider the wine he touched to be *stam yeinam*. This is because the majority of secular Jews in the world are considered to be *tinokot sh'nish'bu*, and the prohibition of *stam yeinam* is only a rabbinical enactment. Even so, the *Binyan Tzion* wrote — “One who is stringent to consider the wine of these transgressors as *stam yeinam* will receive a blessing, although those who are lenient have [substantial arguments] upon which to rely.”

Rav Moshe Feinstein held that it is forbidden to drink wine that was handled by contemporary Shabbat violators¹⁶¹. This was also the position of Rav Yaakov Kamenetsky¹⁶².

Kiddush Made by a Shabbat Violator

Rav Ovadia Yosef held that, under extenuating circumstances, a child may even rely upon the *Kiddush* made by his secular father. If possible, however, he should avoid drinking from the wine, as long as that will not cause resentment¹⁶³.

¹⁶⁰ *Yoreh Deah* 2:16

¹⁶¹ *Igrot Moshe*, *Yoreh Deah* 4:58

¹⁶² *Emmet l'Yaakov*, *Yoreh Deah* 124:56

Eidut – Testimony

Rav Asher Weiss writes —

There are those who want to permit the testimony of secular *mechalelei Shabbat b'farhesia*, based on the words of the Rambam, who views them as *tinokot sh'nish'b'u*. In my humble view, there is no basis to this at all. And even the words of Rav Shimon Gabizon, who permitted the testimony of the *Kara'im* in his time, were forcefully rejected. While both the *Beit Yosef* and the *Rema* followed the approach of Rav Shimon Gabizon, that was only in terms of what we found in the *Shulchan Aruch* explicitly. In other words, we won't punish them or lend to them with *ribit*, their *kiddushin* will be effective, and we don't view them as non-Jews or *mumarim*. But it is [also] very difficult to say that they are *tzadikim gemurim*, and to judge them as being completely coerced.

Furthermore, even Rav Shimon Gabizon permitted the *Kara'im* to testify only because he felt that they mistakenly saw themselves as being observant. He also wrote this about the *anusim* in Spain who were *mechalelei Shabbat b'farhesia*, but were careful with the *mitzvot* which they performed in private. Since they saw themselves as behaving properly, and viewed themselves as being observant, and stayed in Spain only due to issues with their wives and children, they were kosher to testify.

Secular Jews today, however, have no interest in keeping the Torah, don't see themselves in any way as observant, and many of them have no belief in the Torah. There is, therefore, no way to allow them to testify, even according to the approach of Rav Shimon Gabizon.

Tochacha

According to the *Bi'ur Halachah*, there is no obligation to give *tochacha* to *mechalelei Shabbat b'farhesia* or *mumarim l'hach'is*. Since the verse says — “*hoche'ach tochi'ach et amitecha*,” the *Tanna d'Vei Eliyahu* explains that the recipient must be “*amitecha b'mitzvot* — your friend in *mitzvot*.”

If, however, there was a chance that reproofing *mechalelei Shabbat b'farhesia* or *mumarim l'hach'is* would be effective, the *Minchat Chinuch* writes that one would be obligated to do so. In this respect, *tochacha* differs from all other *mitzvot* where the terms *rei'echa*, *amitecha*, and *achicha* are mentioned, since the whole point is to transform the transgressor so that he will henceforth be included within *rei'acha*, *amitecha*, and *achicha*.

In addition, it seems reasonable to presume that this exclusion, to not consider *mechalelei Shabbat b'farhesia* or *mumarim l'hach'is* as *amitecha b'mitzvot* was referring to those who were brought up in an observant environment, and were given a proper education. Since today's secular Jews are generally not considered to be evildoers, but rather *mumarim l'tei'avon* and *tinokot shenish'b'u*, it is very possible that the *Chafetz Chaim* would agree that they would be included within the category of *amitecha b'mitzvot*, to require us to give them *tochacha*, in any case.

¹⁶³ *Yalkut Yosef, Kibud Av v'Eim 7:9*

There should be no mitzvah to give *tochacha*, however, if the transgressor is considered unreachable to begin with. The *Gemara*¹⁶⁴ says, just as it is a mitzvah for a person to say something which *will* be heard, it is also a mitzvah *not* to say something which will *not* be heard. The concern seems to be that this may lead to further alienation of the person. As the verse¹⁶⁵ states, “Do not reprove the scoffer, lest he come to hate you.”

While the *Shelah*¹⁶⁶ called *tochachah* “a very great *mitzvah*,” it is also a difficult one to do. In fact, the *Gemara*¹⁶⁷ actually tells us –

Rabbi Tarfon said: “I would be amazed if there is anyone in this generation who could *accept* reproof, for if one would say to another, ‘Take the splinter out from between your teeth’ (i.e., he would correct him about a small matter), the other would respond: ‘Remove the beam from between your eyes’ (i.e., he would accuse him of doing a worse transgression). And, the *Gemara* continues, on the other side, Rabbi Elazar ben Azariah said: “I would be astonished if there is anyone in this generation who knows how to *give tochacha*.”

The *Chafetz Chaim* and the *Chazon Ish* both apply this to our generation, i.e., that we do not know how to properly give *tochacha*. That does not, however, mean that we are exempt from doing this mitzvah. Even though the *Chafetz Chaim* and *Chazon Ish* cite this principle, they still clearly maintain that we are obligated in the mitzvah of *tochacha* in practice.

The real significance of our inability to properly give *tochacha* is the implication that this has for the secular Jews of our generation. Without proper reproof, they are never considered to be “after *tochacha*,” and truly cognizant of their transgressions. Virtually all of them should, therefore, retain their full status with respect to *mitzvot*, and we should be unable to apply any of the penalties today that would normally apply to transgressors.

The *Chafetz Chaim*¹⁶⁸ says this explicitly —

It is *assur* to hate a *rasha gamur* until he has gotten *tochacha*, according to the *Maharam m’Lublin*. And there is no one in this generation who is able to give *tochacha* [properly], as we see in the *Gemara*¹⁶⁹. Perhaps, if he had gotten *tochacha*, he would have accepted it. All the more so, it is forbidden to curse him. Rather, we should request *rachamim* for him and that Hashem should help him to achieve a complete teshuva.

The *Chazon Ish*¹⁷⁰ says similarly and remarkably —

According to the words of the Rabbis, all that we can do today is to love them (i.e., the secular Jews) and bring them close in order to [try to] bring them back to the good. As the Sages say¹⁷¹ — There is no one in this generation who knows how to give *tochacha* [properly]. If that was in their generation, all the more so in ours. [We need to remember that] the requirement of *tochacha* precedes the

¹⁶⁴ *Yevamot* 65b

¹⁶⁵ *Mishlei* 9:8

¹⁶⁶ Chapter 27

¹⁶⁷ *Arachin* 16b

¹⁶⁸ §17

¹⁶⁹ *Arachin* 16a

¹⁷⁰ *Yoreh Deah* — *siman beit*

¹⁷¹ *Arachin* 16b

obligation to hate. It is [therefore] forbidden for us to hate a *rasha* until he has received a proper *tochacha*.

The *Chazon Ish* also writes that those who are distant in our generation are in the category of *tinokot sh'nish'b'u*. They, therefore, never left the status of *amitecha* and *rei'acha*. As a result, we should behave towards them with *v'ahavta l'rei'acha kamocho*, they are included within the *issur* of *lo tishah et achicha bilvavecha*, and we are obligated to judge them to the side of merit.

Therefore, he concludes — “We should simply steer them back with chains of love and sustain them with [spiritual] illumination to the best of our abilities.”

Conclusion

It is striking that our beliefs seem to be much more significant than our actions in terms of how the Torah views us in both this world and the World to Come. And even when one's actions are what cause a Jew to be categorized as a non-Jew, such as *mumar l'hach'is*, *mumar l'kol haTorah*, *meshumad*, and *mechalelei Shabbat b'farhesia*, that is simply because those actions are seen as expressing underlying negative beliefs.

This is also reflected in the term “orthodox” which we commonly use. Orthodox is Greek for “proper beliefs” — “ortho” meaning proper and “dox” meaning beliefs. That is an extremely accurate term. What defines a Jew as orthodox is that he or she has proper beliefs. The various behaviors we generally associate with being orthodox (i.e., in terms of keeping the *mitzvot*) are simply expressing those proper beliefs.

The Rambam, at the end of his explanation of the thirteen foundations of Judaism¹⁷² writes this very clearly —

From when a person believes in all of these foundations [of Judaism], and he has a clear belief in them, he [is considered to have] entered within *Klal Yisrael*. It is then a *mitzvah* to love him and have mercy upon him, and to behave towards him with all that Hashem commands towards a person and his friend, in terms of love and brotherhood. And even if he does whatever *aveirot* he wants because of his desires and being overpowered by his lowly physical nature, he will [of course] get the [appropriate] *onesh* (negative consequence) for his *aveirot*, but he will have a portion in *Olam Haba*, and [simply] be considered among the rebels of *Yisrael*.

If, however, a person corrupts any foundation among these foundations, behold he has left the *klal* and denied the essentials. He is called a *min* and an *apikores*..., and it is a *mitzvah* to hate him and to destroy him. And the verse¹⁷³ that applies to him is — “Behold, those that hate Hashem, I hate.”

The Rambam speaks here about two different extremes. Those who “believe in all of these foundations and have a clear belief in them” are what we call orthodox Jews. They have the proper beliefs even if their actions aren't always so perfect. And then there are those who have “corrupted any foundation among these foundations.” That would seem to be someone who had a proper upbringing and education but then rebelled against Hashem. Where do the secular Jews in the last number of generations fit into this? We certainly can't call them orthodox Jews who “believe in all of these foundations and have

¹⁷² At the conclusion to the *hakdamah* of his *Peirush l'Mishnayot for Perek Chelek*

¹⁷³ Tehillim 139:21

a clear belief in them.” But they also don’t seem to have *willfully* “corrupted any foundation among these foundations.”

These secular Jews are those we generally refer to as *tinokot sh’nish’b’u*. Their lack of observance and proper beliefs looks much more like ignorance than any type of a rebellion against Hashem and Torah. And while it may be impossible for us to know what happens to them in *Olam Haba*, the halacha is guiding how we should relate to them in this world. They are widely understood, in terms of the practical halacha, as being within *Klal Yisrael* and included in *amitecha*.

And that would explain why the *Chazon Ish* writes¹⁷⁴

A tinok sh’nish’ba has the status of a [regular] Jew...

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 should [therefore] not act towards them with the severe *dinim* which *Chazal* speak about with the wicked whom we are supposed to hate...

It is our responsibility to [work to] return them with *avotot ahavah* (cords of love) and to help them to achieve a clarity as much as we possibly can.

The final sobering point, however, is that while Hashem is very forgiving, reality is very unforgiving. It is very possible that the liability of most secular Jews today is quite limited. But that certainly doesn’t mean they haven’t lost more than we can possibly imagine in both this world as well as the world to come. That is the true tragedy of all of the non-orthodox Jews. And that is also the massive responsibility which we all need to feel towards them, to try to alter their situation, in the words of the *Chazon Ish* – “as much as we possibly can.”

¹⁷⁴ *Chazon Ish* – *Yoreh De’ah* 1:6, *Yoreh De’ah* 2:28, *Yoreh Deah* – 2:16