

Part 5 – *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, many¹ 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*² explains —

Although a *mumar l’tai’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*³ 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.

¹ *Minchat Eliezer, Chayei Asher, Yad Yitzchak*, and Rav Moshe Shternbuch

² 4:44

³ 4:32:4

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 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*⁴ 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 Moshe⁵ 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*⁶ 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*⁷ adds — “Also, one who denies *Torah sh'Ba'al Peh* cannot be counted for a minyan,” which the *Kaf HaChayim*⁸ agrees with.

The *Netziv*⁹ 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.

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

⁴ 55:11

⁵ *Igrot Moshe* — *Orach Chaim* §23

⁶ §46

⁷ §46

⁸ §16

⁹ *Meishiv Davar* §9

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*¹⁰ — “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 Rambam¹¹ 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 Hoffman¹² 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 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 Yosef¹³ —

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

¹⁰ pg. 157

¹¹ *Igeret HaShmad*

¹² *Melamed l'Ho'il* — *Aleph* — *Orach Chaim* §29

¹³ *Chazon Ovadia* — *Yamim Nora'im* pg. 38

teshuva, none of their *aveirot* will be mentioned anymore. As the *Magen Avraham*¹⁴ 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'nishba* 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 Shternbuch¹⁵ 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'nishba*, 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 Torah¹⁶, 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 religion¹⁷. It is thus unclear how the *Chacham Tzvi* would rule about giving *aliyot* to secular Jews today.

Rav Moshe Feinstein¹⁸ writes that regular *mumarim* today seem to be *l'tei'avon*, since they are like *tinokot sh'nish'b'u*. 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 *gellilah* (picking up and helping to tie the Torah scroll), but not an *aliyah* to the Torah, unless it is specifically a *kiruv minyan*.

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 Shternbuch¹⁹ regarding giving *aliyot* to secular Jews —

¹⁴ §8

¹⁵ *Teshuvot v'Hanhagot* 1:99

¹⁶ *Megillah* 23a, *Orach Chaim* 282:3

¹⁷ *She'eilat Ya'avetz* 1:79

¹⁸ *Igrot Moshe* 3:12,22

¹⁹ *Teshuvot v'Hanhagot* 1:472

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 so²⁰, but Rav Moshe Feinstein said that while it would be best if he would not do it, we cannot disqualify him if he wants to²¹. There are even some *poskim* today who hold that non-observant *Kohanim* should actually be permitted to perform the *Birkat Kohanim*²².

Intermarriage

Rav Yosef Tuvis²³ 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)²⁴.

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*²⁵ 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 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*²⁶, 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*

²⁰ *Pri Chadash, Orach Chaim* 128:39

²¹ *Igrot Moshe, Orach Chaim* 1:33

²² *Zakein Aharon* 1:12, *Yabia Omer, chelek zayin, Orach Chaim* 15:4

²³ *Zichron Yehuda*

²⁴ *Even HaEzer, siman* §16

²⁵ 3:65

²⁶ *Kiddushin* 32b

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*²⁷ and the *Rema*²⁸ — “[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*²⁹ —

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 Wozner³⁰ 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 quoted³¹ 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 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'nish'ba*.

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'nish'ba*, according to all opinions.

²⁷ *Hilchot Talmud Torah* 6:9

²⁸ *Yoreh De'ah* § 244

²⁹ End of *Hilchot Ribit*

³⁰ *Shevet Levi*

³¹ *Kibud v'Hadar* — pg. 447