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## The Halakhic Status of the Secular Jew: A Question of Public, Not Personal, Halakhah

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An eternal covenant has been established between *Am Yisrael* and the Almighty. The Torah repeatedly states that this covenant is a mutual commitment of two parties—we are to be the unique people of God, and we will accept him as our God. The first covenant was enacted with Abraham, and God combined the *brit* of circumcision with the eternal promise of a covenant with the Land of Israel and People of Israel. The final covenant is binding for all time. “I make this covenant, with its sanctions, not with you alone, but both with those who are

standing here with us this day before the Lord our God and with those who are not with us here this day.”<sup>1</sup>

We are speaking here of an eternal mutual commitment as well as reward for those who keep the covenant and punishment for those who defy it. Nowhere does the Torah suggest in any way that it is possible to abrogate this commitment. True, toward the end of his life Joshua (24, 15) suggests that “if you are loath to serve God, choose which ones who are going to serve” but even this statement does not constitute a prophetic acceptance of the possibility of cutting the unique bond between God and *Am Yisrael*.

The Oral Torah expresses distinctly the *halakhic* implications of the covenant. The *halakhah* demands from each and every Jew to obey all of the Divine commandments. It does not recognize the right of a Jew to freely choose his/her faith and does not grant any legitimacy to breaking the covenant. There is no option to desist from keeping the *mitzvot*: *halakhah* does not recognize lifestyles that allow for the individual to choose for himself how to express his Jewishness; we find no *halakhic* possibility of cutting a Jew off from his God. In addition to the mandated commitment of the individual, the *halakhah* demands that the community enforce the observance of *mitzvot* by all Jews and offers a number of means to achieve this goal: it requires rebuking any Jew for transgressions and it forbids any Jew from “putting a stumbling block” before another by aiding transgression, even if the transgressor sees nothing wrong in his actions and has no intention of abiding by *halakhic* guidelines. *Halakhah* disqualifies a transgressor as a valid witness. It includes an entire system of sanctions to be applied to the transgressor.

In this way, the *halakhah* sees the Torah as that which constitutes the individual identity of the Jew and as the lynchpin of Jewish existence.

*Halakhah* distinguishes between identifying “who is a Jew” and establishing “what is a Jew.” The first question is answered using genealogical criteria—a Jew is one born to a Jewish mother—and adds to it the possibility of conversion. On the other hand, a normative Jew is one who fulfills the *regula* of the Torah. This observance is a necessary condition (even if perhaps not a sufficient one) to see one’s behavior as

appropriate as a Jew and as such to view the person as a proper member of the Jewish community.

According to Rambam, such membership is dependent not on behavior alone, but also on acceptance of philosophical principles. Maimonides formulates his reading of the Jewish precepts of faith, and at the end of his *Introduction to Chapter Helek*. He states that “anyone who denies any of those principles has left the community and denied the basis of Judaism and is to be called *min* and *apikoros* and it is obligatory to hate and destroy him.” Thus Rambam extends the sanctions imposed on deviant behavior to those who do not subscribe to the basic precepts of Jewish faith.<sup>2</sup>

From the end of the eighteenth century and throughout the nineteenth, the identification of the Jewish people with the Torah collapsed. Emancipation, secularization, national liberation, ideology, culture, internal dissention within observant Jewry in the wake of the controversy between Hassidim and Mitnagdim, remnants of the great disillusionment after the apostasy of Shabbtai Zevi, as well as other factors—all these brought many to lose their faith, and as a result to leave the way of the Torah. A literary expression of this reality is Shalom Aleichem’s *Tevye the Milkman*, which later became the basis for the Broadway play and Hollywood film *Fiddler on the Roof*. The different paths taken by Tevya’s daughters—one marrying a non-Jew, one emigrating to America, one off to Siberia—are both realistic and allegorical; they include a depiction of Russian Jewry at the close of the nineteenth century and an allegory of disintegration of the traditional Jewish world.

Torah Judaism has thus been confronted with one of the greatest challenges in the course of its history. The position that denies the legitimacy of any Jewish existence bereft of a commitment to Torah and *mitzvot*, for long upheld both by theory and in practice, has been confronted by a reality of a Jewish identity that has forsaken that very commitment. The *halakhic* approach found itself in a head-on collision with reality. Regarding those Jews who intermarried, assimilated, and denied their Jewishness there was no need for formulating a new *halakhic* stance. Many families sat *shiva* for such a child and cut off all familial or national connection with their offspring. Others, however,

retained their identity as Jews while rejecting the Torah of Israel. They expressed their Jewishness in different ways: through Yiddish language and culture, Jewish communal activity, or in the study of *Hochmat Yisrael* (academic study of Judaism). But these did not take place as part of the discourse of Torah within the Jewish people. In addition, toward the close of the nineteenth century the Zionist movement was established. This in effect was an alternative basis for Jewish identity, which offered the Jew a new focus of awareness and existence.

Paradoxically, this alternative saved the Jewish people, because it offered the possibility of being an integral part of the Jewish people without commitment to the God of Israel. The descriptions, prevalent in parts of the *haredi* world as if until the advent of Zionism all Jews were fully observant and Herzl is to blame for the phenomena of secularization and assimilation, are totally unfounded. Such claims deny the benefit that Zionism, with all its shortcomings, has brought to the Jewish people and which the Shoah has made even more evident. However, it cannot be denied that Zionism was a threat to the structure of Jewish identity based on Torah. The challenge was especially ominous because for the first time there was an alternative vision for the entire Jewish community and not just for individuals.

This new reality posed a difficult challenge to *halakhists*. It wouldn't be inaccurate to say that the initial response was one of confusion. There was a direct collision between declarations denying the possibility of secular Jewish existence and a reality which, ignoring those declarations, reflected a totally different basis for Jewish identity, both for the individual and for the Jewish people as a whole. Many Jews saw themselves as part of the Jewish collective, and even engaged in study of traditional Jewish texts, while totally rejecting *halakhic* norms. *Halakhists* had to confront this new reality as it related to personal behavior, as well to its impact on society, such as to the status of sanctions that in the past were applied to transgressors.

The classic strategy of the *halakhah* in dealing with new realities is application of pre-existing categories and structures. In general, the *halakhah* tends not to create new frameworks but rather prefers to examine reality from a familiar perspective. This is precisely what *halakhah* did when secularism became prevalent in the Jewish com-

munity toward the end of the eighteenth century. The first known responsum that deals with this new phenomenon was that of Rabbi Jacob Ettlinger (Germany, 1798-1871) in his book *Binyan Tzion ha-Hadashot*. Rabbi Ettlinger doesn't try to hide the perplexity in facing the new reality, and he shares his hesitation about the proper response:

... as to Jewish sinners of our time, I do not know how to consider them.... For because of the multitude of our sins the sore has spread greatly, to such an extent that for most of them the desecration of the Sabbath has become like a permissible act, unless we were to define them as "those who think that a certain transgression is permitted," which is considered close [but not exactly equivalent] to intentional transgressors. ... There are those among them who offer Sabbath prayers and recite the *Kiddush* and then violate the Sabbath in actions prohibited both by the Torah and by rabbinical decree, and while one who desecrates Shabbat is considered an apostate because denying the Shabbat is tantamount to denying the very act of Creation, this person affirms Creation by participating in the prayer and *Kiddush*.<sup>3</sup>

When dealing with the offspring of transgressors, he attempts to utilize yet another category:

Regarding their children who have never even heard of the laws of Shabbat, they are like the Saducees who are not considered apostates despite the fact that they desecrate Shabbat because they are only following the ways of their parents, and they are like infants who were held captive by idolators.

A careful reading will discern that Rabbi Ettlinger writes clearly that he doesn't definitively know how to digest this new phenomenon, unknown to *halakhic* decisors in previous generations. After presenting this doubt, in the short passage we quoted he tried to identify no less than four (!) possible categories that could be utilized: they may be *mezidim* (intentional transgressors), *omrim mutar* (those who incorrectly think that a certain forbidden action is permitted), *tinokot shen-ishbu* (captive infants), or *mumarim* (apostates). For the *posek*, these

are well-known *halakhic* categories, which had been used successfully to define phenomena in traditional Jewish society. Doing so required a not insignificant amount of *halakhic* juggling. For example, the “captive infant” is a category that originates in criminal law and lowers the level of culpability. Rabbi Ettlinger transforms it into a term that deals with normative communal behavior. This transformation is not totally original: it follows Rambam, who wrote of the children of Karaites as “captive infants.” (Mamrim 3, 3)

As I pointed out previously, this is the usual way for *halakhic* treatment of new conditions. Rav Ettlinger’s analysis was trail-blazing, and other *halakhic* categories subsequently have been proposed to define the status of the secular Jew, beyond the four that appear in the *responsum* quoted above. One example is to define secular Jews as a whole (in light of the Ramban on *Bamidbar* 15:22) as a community of inadvertent sinners. Recently Rabbi Yehuda Brandes proposed identifying the secular Jew with the classic *am-ha’aretz*. His claim is that the original meaning of the term refers not to the person’s intellectual achievement, but to the degree of *halakhic* commitment. The converse of the *am-ha’aretz* is not the *hacham*, but rather the *haver*, who is punctilious in his observance of *mitzvot*.

In analyzing the paths taken by the *halakhah* in recent generations we can discern four different methodologies:

1. An absolute denial of changes in reality, thus continuing to classify secular Jews as intentional sinners or even apostates. This is the approach of the Satmar Rebbe *zatzal* in his book *Va-Yoel Moshe* and of various contemporary *halakhic* decisions that forbid contact with secular Jews, and certainly deny recognizing them. I note that even Rabbi Ettlinger did not preclude the possibility of seeing them as intentional transgressors or apostates.
2. Awareness of secularization, but imposing a specific interpretation on the situation. For example, secular Jews are not culpable for their actions, because the reason for their being secular Jews is that they were “taken captive” since infancy. This definition comes close to defining secular Jews as people

- coerced into sin, since they had no way of determining what the right actions are and therefore have no legal responsibility.
3. Facing the reality of secularization but claiming that secular Jews are simply mistaken. This methodology allows different ways of defining them—whether as inadvertent sinners, as those who think that the prohibited action is in fact permitted, or as communal *shogeg*—and each possibility suggests a specific way of perceiving the secular world.
  4. A claim that *halakhah* itself recognizes different degrees of Judaism. This argument is the basis for the recent suggestion of Rabbi Brandes regarding *halakhic* recognition of the *am ha'aretz*. Another possibility, raised by Rabbi Dov Linzer (“The Discourse of Halakhic Inclusiveness” *Conversations*, Spring 2008/5768), is that in the modern era the notion of “one who says it is permitted” should not be seen a person who “should have known better” but regarded as one sincerely convinced that such actions are permitted and cannot be expected by us to believe otherwise. Consequently the *halakhah* can utilize the category of *omer mutar* to promote an inclusive attitude to non-observant Jews by the Jewish community.<sup>4</sup>

There is no need to explain the advantages of using ready-made *halakhic* categories. Defining new realities by using such categories continues time-honored *halakhic* process and allows wide acceptance of circumstances that were previously not recognized by *halakhah*. At the same time, we are all aware of the problems involved in *halakhic* decisions based solely on this type of deliberation.

The major impediment to this discourse is the obvious fact that the secular person is indeed a new reality. He is neither an infant nor a captive (this claim was already made by Rav Shlomo Zalman Auerbach *zatzal* in his book *Ma'adanei Shlomo*, pp. 27-29); he certainly has not adopted another religion; he is not simply someone who “thinks that that which is forbidden is in fact permitted,” since he (and many secular Jews) may have no intention at all of fulfilling the word of God; he is not an intentional transgressor, for he has no wish to rebel against the Almighty—he is simply a secular Jew.

We may prefer to continue and fool ourselves by insisting on defining him by using one of the traditional categories, thereby offending the secular Jew. These definitions are relevant to a Jewish society in which secularization is a marginal phenomenon but are impossible to sustain when most of society is secular and *shomrei mitzvot* are in the minority. Today's reality is even more complex, because most secular Jews retain some relationship to Judaism while entertaining a large variety of personal definitions of their Jewish identity.<sup>5</sup>

Beyond the conceptual problems regarding this method, there are additional difficulties in continuing the *halakhic* approach that identifies secularism with classical *halakhic* categories. For example, defining a secular Jew as a captive infant says little more than ruling that he should not be treated as a non-Jew because he is not culpable for his *halakhic* criminality. However, such a ruling does not offer guidelines to many day-to-day questions relating to interactions with a secular Jew. *Halakhically*, he is subject to all *halakhic* norms, including the prohibition "not to put a stumbling block" before him. In fact, sharing a society with secular Jews presents many practical questions. These have been pointed out in Rabbi Avraham Wasserman's recent book *L'reiacha Kamocha*, in which he states that identifying secular Jews as captive infants is far from a panacea for the crisis confronting our people and it does not exempt us from further analysis of the problem of secularization.

Furthermore, these definitions are incapable of honestly confronting issues regarding *halakhic* positions on issues of public policy in the State of Israel. The reality of Israel as a secular state raises questions relating not only to the status of the secular individual but to that of the secular public realm: legislation and courts, the commercial system and mutual cooperation, and the ability to maintain a society in which the majority does not accept *halakhic* norms and in effect forces the religious minority to compromise its religious life (examples would be the myriad problems of *tzniut* in the public domain, and prevalent transgression of the laws of *lashon hara* by the media).

Furthermore, these solutions include a modicum of self-deception. In a review of Rabbi Wasserman's book I pointed out that we allow ourselves easy solutions due to the fact that in our contemporary



reality there is a clear secular majority and we, as a minority, have to determine what our behavior should be.

This emphasizes the most complex questions. After all, the book deals with practical *halakhic* questions and proposes a possible way to navigate them, notwithstanding the difficulties I have mentioned. However, the most profound questions concern secularity itself. The reader of this comprehensive book will learn how to “manage” in a world with secular Jews, but will not know to what we aspire, and how we would want this world to look as long there are still those (ourselves included) who have not yet done full *teshuvah*. These are the questions which ultimately have to be asked regarding the individual and the community. Let us assume that there is a religious majority which would enable legislation of any behavioral norms we want—how then would we treat secularism? Would there be coercion to observe the *mitzvot* in both public and private sectors? Would there be legitimization for secular organizations? Given the gap in birth rates between the religious and secular communities, I’m not sure that these questions belong to the messianic future—we may be confronted with them sooner than we think. However, even if the practical application of these questions is distant, our answers—which touch the raw nerves of the attitude toward the “other” and the awareness of the autonomy of the individual in contrast with the obligation to serve God and keep his commandments—will guide our present conditions. Someone who learns Rabbi Wasserman’s book does not find out, at the end of the day, what we really think about secular Jews.

It seems, therefore, that we must introduce an additional *halakhic* method in order to deal with the question of the secular Jew. In order to do this, I wish to evoke a model which exists regarding the problem of mixed religious–secular couples, and to extend it to the public sphere.

One of the most complex and complicated questions regarding secularism and secularization is the *halakhic* attitude and ruling re-

garding a mixed couple in which one of the partners is not religious. This reality has become more and more common. This often happens when an unmarried woman decides to marry an unobservant man in order not to remain alone or as a result of lifestyle changes among couples in which one partner decides to become religious or conversely, no longer to be observant. This phenomenon is consistent with the attitude of tolerance, typical of our contemporary era.

As far as I know, there are no published *halakhic* decisions that confront this issue. There is “oral Torah,” which is disseminated in the name of various rabbis, but no clear and distinct *halakhic* response. We find no ruling requiring the observant partner to seek a divorce, and on the other hand, we don’t have decisions that honor the world of the secular partner and allow various *halakhic* leniencies in order to facilitate the life of such a couple.

To begin with, there is a basic question of policy: what is the correct attitude to these cases. Should our approach be grounded on the obligation for optimal *halakhic* compliance, and only if a marriage can allow such compliance shall we offer it legitimation? Conversely, we could have a different point of departure: the rabbi could see his bailiwick as the preservation of the existing family unit or of saving a woman from loneliness and distress and therefore could go the extra mile in order to find a *halakhic* way to assist such a union. Such a rabbi will support dissolution of the marriage only if its preservation is absolutely impossible.<sup>6</sup>

In the past, the answer to this question was simple: The Jew’s first and foremost obligation is the fulfillment of the commands of God. As such, the basic approach would question if this family could indeed observe the *mitzvot* in an optimal manner. If this is not to be, then the family has no *halakhic* right to exist.

Justifying the more lenient position (which is prevalent today) is more complex but is possible. It is grounded in awarding paramount importance to the sanctity of the Jewish family and based on the well-known Midrash: “The Torah says that in order to bring reconciliation between husband and wife, My holy name may be erased” (*Shabbat* 116a), which has many ramifications in rabbinic concern for the preservation of the family. This position is predicated on the view that the

covenant of marriage between the couple, which invokes He “who sanctifies his people Israel through *huppah* and *kiddushin*,” is profoundly significant and that this sanctity should serve as the basis for any *halakhic* deliberation. Consequently, many *dayanim* try to restore *shalom bayit* when confronted with a feuding couple; there are certain leniencies allowed in order to preserve marital life; and it is exceedingly rare for a *bet din* to use compulsion to effect a divorce in a case of transgressions *bein adam lamakom*.

I wish to emphasize that this is not a detached analysis of *meta-halakhah* or of a philosophical formulation of *halakhah*. I am using the very mode of discourse that should be utilized by a rabbi when determining the *halakhah*. The language that I refer to is the one of the *halakhic* tradition, which has its own type of argumentation and proof. However, it is undeniable that the choice of sources and the different weight given to different texts, all part of the traditional process of *psak*, derive both from a *halakhic* worldview and from an attitude which may be grounded in sources that are not only *halakhic*.

While, as I have noted, I am not aware of a systematic analysis of the question of the mixed couple, there are discussions of proximate questions, which can indicate possible approaches to these questions. One of them, common in the Diaspora, is the question of families created by marriage of a Jewish partner and a non-Jewish one. Regarding this question there is a broad range of views. Some rabbis refuse any contact with these families, demand that the Jewish community exclude them, and refuse to engage in conversion of the non-Jewish member, basing themselves on the *halakhah* that prohibits conversions for an ulterior motive.<sup>7</sup> On the other hand, there are *poskim* who take a different position. Their attitude derives from the commitment to ensure that no Jew shall be married with a non-Jew and to try to “bring home” each member of the Jewish people. Therefore, within *halakhic* constraints everything possible must be done in order to prevent total estrangement from *Am Yisrael*. This question is on the agenda of Jewish communities all over the globe and unfortunately is also encountered in Israel today.<sup>8</sup>

Undeniably, these different *halakhic* positions result from profound spiritual disagreements regarding assumptions relating to the

preservation of Torah and not from formal disagreements about the interpretations of texts. Not surprisingly, the sources used by the discussants include those not to be found in usual *halakhic* discourse such as Midrash, description of traditions, and analysis of basic principles, alongside more conventional *halakhic* sources.

This essay does not focus on the question of conversion of those married to a Jew or of the status of Jewish couples in which one partner is *halakhically* observant and the other is not. I wish to treat the general question of the status of secular Jews, concentrating on the reality in Israel, but with ramifications for the Diaspora.

My lengthy introduction proposed that the question of secularism might require additional modes of *halakhic* methodology to the conventional one, and that this augmentation may enable resolution of many contemporary problems. I claim that in addition to the corpus of textual sources, the discourse must consider a broader *halakhic* view: not only on the individual, but also on the nation. This broader view would utilize the same approach that *poskim* adopt with the question of secularism within the family. Just as they supplement their *halakhic* considerations with concern for the preservation of the family, *halakhic* decisions regarding secularism must adopt a broader view of the question.

I will briefly note the essential assumptions that should inform *poskim* when dealing with secular Jews in the State of Israel.

1. Collective *pikuach nefesh*.<sup>9</sup> The continued viability of the State of Israel is dependent on Jewish unity. This is an indisputable fact, obvious to anyone aware of Israeli reality and unrelated to any religious position. Our enemies know that if they succeed in creating dissent between the different parts of the Israeli population, they will destroy the major source of our strength. Indeed, they devote significant efforts to achieve that goal. Jewish history is full of cases in which internal conflicts brought about different types of *hurban*, among which we are most familiar with the strife at the end of the Second Temple period. Therefore, for purposes of national *pikuach nefesh*, *halakhic* decision-making must take questions of national unity into consideration. My position against refusal to obey orders

in the context of the uprooting of Gush Katif (as I presented in the 2006 Orthodox Forum) was derived to a great degree from this consideration, even granting the *halakhic* presumption that withdrawal from territory in *Eretz Yisrael* is categorically forbidden.

2. National unity: This is not just a condition for continued existence, but an inseparable part of the rabbinic ethos. This is akin to what we have noted in regard to the continued union of a couple when one has chosen to live a life of estrangement from Torah and *mitzvot*. Innumerable rabbinic statements deal with this issue. It is enough if we quote the Midrash: “Rabbi said: How great is peace, for even if Israel practice idolatry but manage to maintain peace among themselves, the Holy One, blessed be He, says, so to speak, ‘I have no dominion over them since peace is with them’” (*Bereishit Rabbah*, 38,6). It is impossible to maintain this solidarity when one side does not recognize the existence of the other, relates to him as an infant and as a captive, delegitimizes him for various purposes, and is unwilling to join common endeavors.<sup>10</sup>
3. The *halakhah* recognizes the concept of *derech erez* and ascribes great importance to the way that communities choose to conduct themselves. We encounter this in all aspects of *halakhah*—such as in recognition of local commercial behavior, of communal legislation, and in the specific reference of the Torah, when dealing with the *mitzvah* of appointing a king and establishing a political regime, to “all of the nations surrounding me.” Not everything in the secular world is to be rejected only because it does not originate in Torah. This awareness can enable a broad footing for *piskei halakhah* regarding realms of activity created by the secular world which could be accepted by *halakhah* and allow cooperation with secular Jews.
4. One prevalent position in Orthodox education views the world as a struggle between the Children of Light and Children of Darkness. The Children of Light are Torah Jews, while the others are secular Jews.<sup>11</sup> This position is supported by a homiletical reading of *Bereishit* 20,11: “Surely there is no fear

of God in this place, and they will kill me because of my wife.” This verse would seem to support the assumption that ethical behavior is impossible in a place where there is no fear of God. However, this reading is not only textually incorrect (for indeed in the story Avraham is shown to be wrong, and God attests that Avimelech acted in good faith) but is also contradicted by reality. There are many things in the secular world whose introduction into the religious world (using requisite care in order to “convert” them) could enhance the world of Torah. In a previous article<sup>12</sup> I illustrated this claim by describing the contribution of secular Jews in crucial areas for us: the Zionist movement and the status of women based on equality. When the world of *halakhah* itself is aware of its own shortcomings, there is inevitably a different attitude toward secularism. For adopting such an attitude, Rav Kook *zatzal* suffered much contempt, but nonetheless it remains true. In the many governmental committees dealing with ethical questions in which I participate, I have met true *tzadikim*, who are devoted to transforming Israeli society to one of *tzdakah u'mishpat*.<sup>13</sup>

*Halakhic* decisions regarding secularism and the status of secular Jews must therefore take these three principles into account. The *posek* must assess if his *psak* endangers the existence of the Jewish people, must consider if it causes a perilous rift in the nation by jeopardizing the spiritual principle of unity, and must question if the renunciation of secularism or the disdain inherent in seeing all secularists as infants or as thoughtless sinners inhibits the possibility of the *halakhic* world itself to enrich itself by contact with elements in the secular world, elements that are vital for the *halakhic* world and for religious existence.

It is very important to emphasize that this position does not compromise the basic stance that negates secularism and does not deny the total commitment to covenant that I presented in the beginning.<sup>14</sup> Unity and striving for unity do not mean uniformity and do not exclude profound disagreements and a constant attempt to bring the people of Israel closer to their Father in Heaven. The regard and acceptance of the secular “other” allow presenting him with a *halakhic*

alternative and with a deep Jewish identity. I fully believe that every Jew must be connected to his creator, from scrupulous observance of *halakhah* to deep inner relationship to the *ribono shel olam*.

My major assertion is that the attempt to define secularism by applying nothing but existing *halakhic* categories is insufficient. It is incorrect because it contradicts Torah and reality, and it shows lack of integrity because modern secularism is different from that defined in the classical sources. It is incorrect because it does not solve our contemporary problems. It is incorrect because it does not truly allow us to create a national entity and because it precludes true dialogue. On the other hand, a deeper understanding of the centrality of *ahdut Yisrael*, and a common understanding and the appreciation of the contribution of the secular world to the Torah, could allow a more worthy confrontation with the challenges before us.

## NOTES

1. *Devarim* 29, 13.
2. Rambam notes additional ramifications of denial of the principles of faith in his *Laws of Repentance* (3:6). In his definition of those who do not merit a place in the World to Come he includes, among others “*minim, apikorsim*, those who deny [the divine origin] of the Torah, and those who deny the resurrection of the dead and the coming of the redeemer.”
3. Rabbi Jacob Ettlinger, *Binyan Zion ha-Hadashot*, no. 23.
4. A different attempt to define the status of the secular Jew is connected to social status. The Rambam states that “he who abandons the ways of the community, even if he did not violate the law, but separates himself from the community of Israel, does not perform *mitzvot* as part of the community, does not share in their afflictions, and does not participate in communal fasts, but rather follows his own way like a member of other nations, as though he was not part of Israel—has no place in the World to Come. He who, like king Yehoyachin, commits sins defiantly, whether he performed major infractions or minor ones, has no place in the World to Come” (*Teshuva* 3:11 and see *Aveilut* 1:10). Consequently, some authorities suggested that in addition to considerations of heretical ideas or of behavior not in accordance with *halakhah*, secular Jews should be excluded from the Jewish people because of their secession from the community. Interestingly, even Rav Kook agonized over this question and expressed the dilemma in his essay “On Those Slain in the Heights” (included in *Ma’amarei Hara’ayah* ed. Aviner and Landau, pp. 89-93). This question is especially intriguing in light of the consideration that when secular Jews become a majority, it is not clear if indeed they can be seen as “abandoning the community.” See below.

5. Another aspect of the painful fact that most Jews are not observant of the *mitzvot* is the entangled issue of conversion. The demand to accept “the yoke of *mitzvot*” as part of the conversion process requires more from the convert than is common among secular “traditional” Jews. We justify this requisite by saying that the requirements to join the “exclusive club” of the Jewish people are greater than those that will prevent us from excluding someone who already has joined the club. However, this argument is incomprehensible for many who cannot understand why norms accepted by the majority of the community do not suffice for the convert.
6. In the first paragraphs of *Shulchan Aruch, Even Ha-Ezer* 155 there is a list of violations of *halakhah* on the part of the woman which are grounds for divorce. However, it is not clear if the transgressions require divorce when the husband wishes to continue cohabitation. R. Ovadia Yosef (*Yabia Omer* 3, *Even Ha-Ezer* 23) discusses this problem, and after great hesitance and with immense *halakhic* sensitivity he concludes that it is possible to maintain the marriage, both because this is not a situation where the woman is to be suspected of adultery and because of the great value of *shalom bayit*.
7. See *Ahiezer* 3:26, which is based on a *responsa* of Maimonides 332. See also *Tzitz Eliezer*, who also followed Rambam. R. Ovadiah Yosef (*Torah Shebe'al Peh* 13, p.24) offers a lenient ruling, since a conversion for ulterior motives is, after the fact, valid and if that is the case, in the case of doubt it is permitted *l'chatchila*.
8. Many of the rulings of the special courts for conversion deal with these issues.
9. Many *halakhic* deliberations suggest that in dealing with questions of *Klal Yisrael* the perspective of the community should be taken into account. The article of Professor Rakover (“*Klal Yisrael—Philosophy and Law*” *Techumin* 16: 211-234) includes the basic sources for a discussion of this issue. An example of the implications of the existence of the State of Israel regards the question of ransoming captives, as in the painful case of Gilad Shalit. Many authorities have suggested that the *halakhic* considerations in the case of Jews who live among Gentiles are different from those that apply to an independent and sovereign state.
10. This factor was raised during the debate on Orthodox succession from Jewish communities in Europe, to which the *Netziv* in his writings expressed strong opposition, in disagreement with R. S. R. Hirsch.
11. This is reflected in the *halakhic* deliberations regarding testimony of secular Jews. Those who accept such testimony note the fact that the person is not presumed to lie or to engage in wanton sexual behavior, and therefore the testimony may be permitted *b'diavad*. See *Seridei Esh* (3,19). In a more general sense see the words of Rabbi Herzog (*A Constitution for Israel* 3, pp. 231 ff.), who speaks of natural morality, quoting R. Yonatan Eybeschuetz (*Urim V'Tumim* 28,3).
12. “L'Chatchila”, *Tzohar* vol. 5, 137-162.
13. R. Yehuda Halevi in *Kuzari* wrote far-reaching things regarding the classification of the commandments. He claims that the central message of the prophets is that anyone who is deficient regarding *derech erez* should not climb to greater



heights, even regarding commandments such as Shabbat and circumcision. "For the Torah will not be complete without the fulfillment of the social and rational law, and in this law are included acts of justice and of thanksgiving for the divine good. If someone is lacking these, why should he bring sacrifices or observe the commandments of Shabbat or circumcision which are not mandated rationally, even if they are not rejected by reason (2,48).

See also my essay "Bat Mitzvah : Three Levels," *Bat Mitzvah* (2002) pp. 128-138.

14. Regarding the position of Rav Kook I have written in an essay in Amnon Bazak (ed.) *Al Derech ha'avot: Jubilee Book for the Herzog College*, Alon Shvut 5761.