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## Halakhic Views Toward Different Jews

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ויחן שם ישראל נגד ההר – כאיש אחד בלב אחד

“And the children of Israel encamped opposite the mountain [of Sinai]”—“they were as one individual (*ke’ish echad*) with one heart (*be’lev echad*).”<sup>1</sup>

The Torah was given to one people. At the seminal moment of revelation on the mountain of Sinai, all Jews united in shared faith and acceptance of the yoke of Torah. One of the core components of our initial nationhood was this sense of shared destiny.

The paradigm of “*ke’ish echad be’lev echad*” certainly remains an ideal, but we as a people have wrestled continuously with the question of how to define our shared community and how to identify and relate to those who have strayed from its core mission and values.

## Part I

The starting point of the discussion is necessarily the notion that “[*yisroel*] *af al pi she’chata yisroel hu*” (a Jew who has sinned is still a Jew).<sup>2</sup> Although there are scholarly critiques regarding the appropriate application of this principle, with some commentaries noting that the specific context in which it was coined (regarding *Akhan* taking from the spoils of *Yericho*) does not necessarily lend itself to sweeping generalization,<sup>3</sup> we generally accept that a Jew cannot through behavior or belief be shorn of his birthright.<sup>4</sup> Thus even a Jew who converts to another religion remains Jewish in the technical sense.

The implications of this principle are twofold. First, any transgressor remains obligated to observe *mitzvot* and remains subject to punishment for all transgressions. Second, the Jewish community views such an individual as Jewish, so that if the individual contracts a marriage with another Jew, a *get* (Jewish divorce) is required. If a Jewish woman converted to Christianity and bore a child, the child would be considered Jewish and could marry within the faith without requiring a conversion.<sup>5</sup>

On the other hand, there are also limitations imposed upon the inclusion of sinners in the community of Israel. Simply put, *mumar dino ke’akum* (an apostate/renegade has the law of a gentile).<sup>6</sup> At least with respect to certain laws, one who has cast off the yoke of Jewish faith is treated as a non-member of the faith. This treatment has implications with respect to a wide range of practices, such as whether the individual may: (1) serve as a valid witness; (2) count toward a *minyan*; (3) be subject to the rights and responsibilities of laws relating to interactions with fellow Jews (*arvut*);<sup>7</sup> or (4) be able to handle wine without rendering it prohibited wine (*stam yeynam*).

Who is defined as *mumar dino ke’akum*? First, the label applies to those who are actual apostates to another religion. Included as well are those who renounce belief in the fundamental tenets of Judaism, who knowingly violate all (or most) of the Torah even if only out of temptation (“*mumar l’khol haTorah kulah*”), who knowingly violate any precept of the Torah (at least according to some authorities) in hostile provocation (“*mumar l’hakhis*”), or who violate the *Shabbat* in

a flagrant, public fashion (“*mehalel Shabbat be’farhesia*”).<sup>8</sup> However, there are mitigating considerations as well, including the limited level of exposure and knowledge that a Jew has concerning his or her obligations<sup>9</sup> (“*tinok she’nishbah*”—literally, a Jew taken hostage as a child), which some authorities consider as a potential vindicating factor even concerning lack of faith,<sup>10</sup> the mistaken notion of many Jews that their impermissible behavior is really permissible<sup>11</sup> (“*omer mutar*”) and our general lack of expertise in terms of knowing how to rebuke sinners<sup>12</sup> (“*ein anu beki’in betokhacha*”) in order to restore them to the proper path.

Much of the literature regarding appropriate levels of tolerance and inclusion with respect to non-observant Jews consists of a balancing act between how expansively to define *mumar dino ke’akum* and how much to weigh mitigating considerations. Upon a review of the rabbinic literature, three distinct approaches emerge among *halakhic* authorities:

The first approach is one of near-absolute tolerance (not of the sins, but of the sinners<sup>13</sup>). Advocates of this approach generally rely upon a combination of the Rambam’s description of descendants of the Karaites as *tinok she’nishbah*,<sup>14</sup> the Rambam’s observation that there is greater room to label sinners as “inadvertent” if an entire community erroneously concludes that it is acceptable to forsake the Torah,<sup>15</sup> Rabbi Yaakov Ettlinger’s argument that even a *mehalel Shabbat be’farhesia* could be classified as a *tinok she’nishbah* in the modern age so that his touching of wine would not render it prohibited,<sup>16</sup> R. Dovid Tzvi Hoffman’s reliance upon that argument to allow *Shabbat* violators to count toward a *minyan*,<sup>17</sup> and the Chazon Ish’s famous words about how people are to be held less culpable by the community for their sins in the modern age of hidden revelation.<sup>18</sup> Adherents to this approach argue in favor of retaining an expansive definition of Jewish community which would accord virtually all sinners the full benefits of privilege and recognition in the traditional Jewish community.<sup>19</sup>

The second approach is one of “strict judgment” or “trepidation.” This approach relies upon a more limited reading of the Rambam (based on an apparently more accurate text in the *Mishneh Torah* concluding with the less embracing phrase of “*lo yemaher l’horgan*”—

“do not hurry to execute them”),<sup>20</sup> a more balanced reading of the Chazon Ish (noting that the Chazon Ish, taken on the whole, seems to support a more case-by-case analysis),<sup>21</sup> a rejection of Rabbi Ettlinger’s thesis (based on a combination of the view of the Radvaz, who argued that Jews who are familiar with the existence of observant Judaism and observant Jewish practices could hardly be classified as *tinok she’nishbah*,<sup>22</sup> and the observation that most people do not fall within Rabbi Ettlinger’s description of those who demonstrate their faith in God by “making *Kiddush* before violating *Shabbat*”), an endorsement of Rabbi Elchanan Wasserman’s<sup>23</sup> thesis, in the name of Rabbi Chaim Soloveitchik,<sup>24</sup> that all those who do not have faith in God are by definition willful sinners<sup>25</sup> (with an additional understanding, based on the Rambam, that one must believe in all thirteen fundamental principles of faith to be a member of the community of Israel)<sup>26</sup> and an acceptance of the general philosophy of the *Minchat Elazar* that there is a special requirement “*le’rahek ha’rehokim*” (i.e., to keep a distance from those who are distant) in order to protect the traditionally observant community from the insidious influences of the general culture.<sup>27</sup> Adherents to this approach espouse limited interaction with the non-observant, insulated communal institutions among the Orthodox, and heightened suspicion toward innovations in traditional *halakhic* practice.<sup>28</sup>

The third approach embraces the rabbinic dictum of “*tehei smol doheh v’yamin mekarevet*” (literally, “the left hand shall push away while the right hand draws near”).<sup>29</sup> Proponents of this approach emphasize the common bonds that unite all Jews while also disqualifying sinners from certain Jewish law functions. The philosophical paradigm for this approach ranges from Rabbi Joseph B. Soloveitchik’s<sup>30</sup> distinction between a “covenant of fate”—shared by all Jews, and a “covenant of destiny”—manifested by entering into the Torah covenant of Sinai,<sup>31</sup> to Rabbi Ahron Soloveichik’s pragmatic distinction between “friendship”—to be displayed to all Jews, and “fellowship”—reserved for those who keep the faith.<sup>32</sup> The *halakhic* formulation of this approach is found in the *responso* of Rabbi Moshe Feinstein (1895–1986, New York), who while viewing contemporary sinners as *tinok she’nishbah*, nonetheless maintained that as a technical matter they

remain disqualified from serving as valid witnesses,<sup>33</sup> and incapable of rendering a *minyan* “*tefilah b’tzibur*” (a communal prayer according to *halakhah*) through their participation,<sup>34</sup> because of the objective reality of their non-observance.

My sense is that the instinctive Jewish spirit weighs heavily in favor of tolerance and inclusion. Nonetheless, we engage in a balancing act of all three approaches, as we try to love all Jews regardless of creed or deed,<sup>35</sup> create insular communities to protect ourselves from the forces of assimilation, and, in accordance with Rabbi Feinstein, disqualify non-observant Jews as marriage witnesses and therefore save numerous members of their communities from *mamzerut* (illegitimacy).<sup>36</sup>

How we navigate and negotiate the competing approaches defines our response to a variety of issues, both those that we have inherited from previous generations and those that epitomize the changes in contemporary Jewish life. In this sense, the topic of this article, although familiar, is nonetheless deserving of reassessment, since many current issues are implicated.

## Part II

The remainder of this paper will use the three approaches outlined above as a springboard to focus upon three specific issues pertinent to our discussion: (1) the relevance of a person’s denominational affiliation; (2) attitudes toward other denominations and their clergy; and (3) defining and evaluating Orthodox Judaism today.

The first issue is whether it makes sense to assess relationships between Jews on the basis of denominational affiliations. How much does affiliation matter?

On the one hand, affiliation is an indication of a person’s presumed beliefs and aspirations. For example, the tolerant approach of Rabbi Yaakov Ettlinger was based on the argument that *Shabbat* desecrators worship at the same synagogues and live within the same community as their more observant co-religionists. In an early article in *Tradition* arguing in favor of inclusiveness of the non-observant Orthodox, Howard Levine posited that such Jews deserve “true Orthodox fellowship” by virtue of their seeking the truth of Torah and

keeping open “the channel of communication to the higher ideals of Torah.”<sup>37</sup> If non-Orthodox movements do not represent such channels of communication, then affiliation might indeed matter.

On the other hand, a person’s non-Orthodox affiliation was more of a statement at the time of the creation of separate denominations within Judaism than it is today. Those affirmatively breaking away from Orthodox Judaism may have been making a statement regarding their desire to break away from traditional *halakhic* practice or philosophical belief. Such consternation was certainly expressed in reaction to the formation of the Reform movement by rabbinic leaders such as Rabbi Samson Raphael Hirsch (1808-1888) and Rabbi Moses Sofer (1762-1839). However, today, when most Jews affiliated with these movements are in the category of “*ohazim be’darkhei avoteihem*” (following in the paths of their parents), as the Rambam writes with respect to the children of Karaites,<sup>38</sup> there is less of a basis to judge a person’s convictions based on denominational affiliation.

The second issue is how to relate to other movements as a whole, or to the clergy of the other denominations. While *poskim* might be comfortable viewing individual members as independent of denominational branding, the same does not ring true with respect to non-Orthodox clergy. For example, Rabbi Moshe Feinstein wrote in a number of places that any rabbi—even if personally observant—is disqualified from serving as a valid witness or *dayan* simply by dint of his willingness to affiliate with the ideology of the Conservative movement.<sup>39</sup> Second, *halakhic* authorities are more likely to reject the legitimacy of non-Orthodox movements as a general matter, as was most controversially demonstrated in the widely publicized (and criticized) declaration by a group of rabbis from Agudath Harabonim in 1997 that “Reform and Conservative are not Judaism at all. Their adherents are Jews, according to the Jewish Law, but their religion is not Judaism.”<sup>40</sup>

The stronger reservation concerning association with non-Orthodox clergy and movements manifested itself in the ban issued by eleven *Roshei Yeshiva* in 1956 prohibiting Orthodox rabbis from participating in the Synagogue Council of America because it included clergy members from all denominations of Judaism. Among the signers

of the ban were such Torah luminaries as Rabbi Moshe Feinstein, Rabbi Aharon Kotler, Rabbi Yaakov Yitzchok Ruderman, and Rabbi Yitzchok Hutner.

Conspicuously missing from the manifesto was the Rav, Rabbi Joseph B. Soloveitchik. Correspondence of the Rabbinical Council of America indicates that the Rav was uncomfortable with any kind of public statement on both political and policy grounds. In various articles and letters, the Rav formulated a more nuanced balance between engaging non-Orthodox clergy with respect to social and political matters of importance to the broader Jewish community (*klapei hutz*) and refraining from dialogue or cooperation with respect to theological matters (*klapei penim*).<sup>41</sup>

Is the time now ripe for reconsideration of these boundaries? Sometimes areas of social concern cannot be addressed independent of the framework of *halakhah*. For example, with respect to *agunah* issues, I have found that there is an inestimable value in obtaining the cooperation of clergy across denominational lines to ensure that women receive *gittin* (Jewish bills of divorce) in accordance with *halakhic* requirements. Similarly, the collective Jewish community benefited from cooperation among all the denominations in submitting *agunah* cases from the World Trade Center tragedy to the Beth Din of America for resolution. The fact that Reform and Conservative clergy felt comfortable referring congregants to the Beth Din of America was attributable in part to our participation in a joint meeting of Jewish communal leaders in which we discussed the processes that we had put into place to help undertake these difficult cases.

Also, in an age in which Orthodoxy and its institutions have grown considerably stronger, there is arguably less of a danger of Orthodoxy being diluted through discussions with leaders from other denominations. Rather, there may be more of an opportunity to heighten observance levels, both on a communal level as well as on a personal level, with respect to individuals raised in communities outside of Orthodoxy who are truly seeking religious meaning and guidance from their Orthodox counterparts.

Indeed, we may be at a time when the threats coming from other denominations are not as relevant. Conservative Judaism, while

more traditional in nature than Reform Judaism, was viewed as more dangerous by Rabbi Joseph B. Soloveitchik because it purported to be *halakhic* while endorsing practices such as driving in a car on *Shabbat* to synagogue, which from an Orthodox perspective would constitute *mehalel Shabbat be'farhesia*. The danger from the Reform movement was less in the direction of distorting *halakhah*, but more based on the concern that it would draw Jews away from observance altogether. However, at this point in history, the Conservative movement is declining in membership and the Reform movement has become more embracing of tradition. Might this not be a golden opportunity to bring all Jews back into the fold of traditional Judaism through earnest discussion, expressions of unity, and "cords of love"?

Naturally, this thought process requires care and caution. However, my own observation is that there is more of a thirst for the erudition, authenticity, and institutional success embodied by Orthodox Judaism. In this environment, any overtures by other denominations to work together with Orthodox institutions should be viewed more positively and less skeptically. The main caveat, and concomitant test of sincerity for the non-Orthodox, would be the requirement that Orthodox institutions maintain *halakhic* autonomy and authority with respect to any such venture. Any diminution in this capacity would inevitably trigger all of the hazards anticipated by the *Minchat Elazar*, in insisting on complete repudiation, as well as by Rabbi Joseph B. Soloveitchik, in restricting areas of association.

The third issue is whether we are doing a good enough job of self-definition and self-evaluation.

What is "Orthodox Judaism" anyway? Rabbi Samson Raphael Hirsch, in his essay, "Religion Allied with Progress," complained that the term "Orthodox Judaism" was created by the Reform movement, and that the term had the unfortunate effect of legitimatizing alternative denominations and practices within Judaism.<sup>42</sup> One solution, which appears to have been adopted by Rabbi Mordechai Gifter,<sup>43</sup> was to marginalize the use of the term "Orthodox," which does not appear on its face to lay claim to more authenticity than other denominational terms, and to use instead the term "Torah Judaism." However, any



modifier to the term “Judaism” implies that we are committed to a culture of fragmentation and disunity.

Rabbi Abraham Isaac Kook (1865-1935, Israel), in a letter penned in 1932,<sup>44</sup> identified a separate pitfall with the identification of a particular group of Jews as the *Charedim* or “Torah Jews.” Bemoaning the bifurcation of Jews in the Holy Land into “*Charedim*” and “*Chilonim*” (secular Jews), Rav Kook argued that the age-old classification of Jews into the categories of *Tzadikim* (righteous), *Beinonim* (intermediate), and *Reshaim* (wicked) created more inclusiveness and potential for *teshuvah* (repentance) among all Jews. Otherwise, those who view themselves as *Charedim* or “Orthodox” or even *frum* (which is essentially the “*frum*” way of saying “Orthodox”) may see no need to examine their own shortcomings and do *teshuvah*, and those who are described as the “*Chilonim*” may view themselves as “*acher*,” beyond the pale of potential return.

Also, the fact that “Orthodox Judaism” has created a certain type of sociological community of observant Jews creates the potential danger for a “defining down” of prerequisites in observance.<sup>45</sup> In the context of conversion, Rabbi Chaim Ozer Grodzinsky (1863-1940, Vilna) articulated the standard indicia of observance (or *frumkeit*) as *Shabbat* observance, *kashrut*, and observance of laws of family purity.<sup>46</sup> However, while these are symbols of the most public and visible indications of observance, assuredly the requirements of *kabbalat ol mitzvot* (acceptance of the yoke of commandments) extend to all 613 commandments. Approximately a year ago, I attended a meeting of local Orthodox rabbis regarding conversion issues. At one point in the meeting, a respected rabbi in attendance blurted out in an agitated tone, “What about business ethics? How can we define people as observant if they live their lives in violation of basic Jewish principles of business ethics?!”<sup>47</sup>

This issue, in turn, returns us to Rabbi Kook’s trenchant observation. In obsessing over the appropriate relationship between the Orthodox community, or “our” community, and Jews of other denominations and other observance levels, we run the risk of failing adequately to examine our own observance level. How should others

relate to us if we are guilty of *lashon hara* (derogatory speech), of business ethics violations, or of breaches in the obligation to love one's fellow Jew? We would be wise to consider the dictum of the *gemara* in *Bava Metzia*, "*keshot atzmekha ve'ahar kakh k'shot aherim*" (adorn yourself first before adorning others).<sup>48</sup> The best type of influence is through positive modeling of behavior, both on an individual and on a communal level.

At the same time, self-evaluation may be an easier exercise than self-definition. Even as we express renewed hope and optimism with respect to our ability to relate to Jews outside of Orthodox Judaism, the question of how we relate to each other within the Orthodox camp has become more vexing.

Significantly, there is no longer a single *posek* or group of *poskim* who are universally recognized by all segments of the community. Not every issue is decided on the basis of widespread consensus. There is much more "individualized" *psak* of different groups within the community, sometimes regarding the innovation of practices that strike many in the Orthodox camp as unconventional and uncomfortable, such as in the realm of women's participation in Jewish ritual. In a number of cases, Orthodox communities have witnessed the formation of new "*minyanim*" which sometimes seem to operate furtively and mysteriously, in accordance with less conventional rules and practices.

The individualization of ritual practice is consistent with a comment that I recently heard from a colleague that we are now living in a "post-denominational" age, a term that I later discovered had been catapulted into popular usage following a 2005 *Jerusalem Post* article by Uriel Heilman entitled "Beyond Dogma," which championed the "religious energy of post-denominationalism."

There is both a utopian opportunity latent in post-denominationalism as well as a serious danger. The opportunity is of reuniting all of the Jewish people under one banner. The danger is that this movement also has the potential to result in deeper fragmentation, as it paves the way for more individualistic definition of Jewish practice in confrontation with Torah tradition and threatens to obliterate notions of community. This is why tolerance in our tradition is always

tempered with trepidation. The resolution often lies in our ability, like Rabbi Feinstein's approach toward non-observant Jews, to craft an approach of pragmatic legalism based on age-old *halakhic* principles.

In this sense, we should not be so quick to cast aside the convenience of maintaining a defined community of "Orthodox Judaism." At least Orthodox Judaism has come to represent a certain preservation of tradition and acceptance of the authority of the leaders of the respected *yeshivot* and established rabbinic institutions that have effectively been defining our community for the last number of centuries. While no formal alliance was created, it was understood that certain institutions, such as Agudath Israel, the Orthodox Union, the Rabbinical Council of America, the National Council of Young Israel, Mizrachi, and a wide range of *yeshivot* encompassing both the likes of Lakewood and Yeshiva University, belonged in that camp, and that certain practices, such as the insistence on having a *mechitza* in synagogue, were requirements for Orthodoxy.<sup>49</sup> I think that there was also an unofficial acknowledgment of the legitimacy of the major *poskim* who rendered decisions for those in the "Orthodox" camp, even as there may have occasionally been rifts between different Orthodox communities regarding positions taken on individual issues (such as secular education and religious Zionism).

Elimination of any labels could thus have the adverse effect of blurring the accepted standards for the *poskim*, protocols, and institutions involved in the *halakhic* decision-making process. Thus, as I previously indicated, even as we seek to break down barriers, there is a value in paying heed to the sources of trepidation together with the sources of tolerance.<sup>50</sup> The ideal of *ke'ish echad be'lev echad* is ultimately predicated upon *kabbalat HaTorah* (acceptance of the Torah).

In conclusion, it appears that we are living both in an age of messianic potential for the future of Jewish unity but also in a time of serious peril. The challenge is in our ability to confront the balancing act with precise judgment and positive thinking. While a siege mentality might help preserve the existing infrastructure of Orthodoxy, it may also alienate those who are searching for a post-denominational age of both heightened individualism and at the same time greater Jewish unity. Opportunities will present themselves for dialogue with both clergy and laypersons of other denominational backgrounds, and there

are occasions when attitudes of tolerance can lead to *kiruv rehokim* (successful outreach) and a strengthening of the observant Jewish community. As long as our *sine qua non* remains absolute adherence to Torah tenets and a retention of *halakhic* autonomy at all times, we should be prepared, albeit gingerly, to undertake the challenge.

The Talmud in *Shabbat* 55a records a period (described in *Yechezkel*, chapter 9) in which the absolutely righteous people of the generation, who kept the entire Torah from “*alef*” to “*taf*,” were punished together with the sinners of the generation. Despite the fact that the reproach of the righteous would have gone unheeded, the Talmud explains that they were punished because they should have at least made the effort to engage in outreach with the non-observant members of the generation. Commentators discuss why the righteous people were held accountable, in light of the reality that their efforts would not have borne fruit.<sup>51</sup> I would suggest that the message of this passage is that they were punished because of their provincialism—their attitude that the other Jews who were not observant were not even within the realm of their universe. May we be successful at elevating ourselves and our attitude toward all our brethren and thus merit returning to the pristine state that existed at the time of the Torah covenant at Sinai.<sup>52</sup>

## NOTES

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1. *Shmot* 19:2, and Rashi (Rabbi Shlomo ben Isaac, 1040-1105, France) *ad loc*.
2. *Sanhedrin* 44a
3. See *Maharshdam* (Rabbi Shmuel de Medina, 1506-1580, Salonica), *Even Haezer* 10.
4. See *Shulhan Arukh*, *Even Haezer* 44:9 (Rabbi Joseph Caro, 1488-1575).
5. Although this is the normative rule, there are gray issues on the margins. Thus the *Gemara Yevamot* 17a with respect to the ten tribes provides a basis for the possibility that an entire community could lose its status as Jews through assimilation, or that an apostate's descendants could similarly lose claim to their Jewishness following the passage of several generations (see, however, *Tzitz Eliezer*

13:93, Rabbi Eliezer Judah Waldenberg, 1917-2007, Israel). See also the *Tur* (Rabbi Jacob ben Asher, 1269-1343) to *Even Haezer* 44, quoting earlier opinions that held that even a first-generation apostate is fundamentally viewed as non-Jewish for purposes of contracting marriage. In the classic case of a child of a Jewish woman and a non-Jewish man, where the normative Jewish law is that the child is Jewish (see *Pithei Teshuvah*, *Even Haezer* 4:1), there are opinions that the child requires conversion if not brought up Jewish (*Maharit Algazi*, *Bekhorot*, 8th chapter), or that the child requires conversion if the mother had completely apostasized to another religion (*Igrot Moshe E"H* 1:8; this does not, however, appear to be a mainstream opinion). See generally R. Gedalia Felder (d.1992, Toronto), *Nachlat Tzvi*, Vol. 2, pp. 224-227, 229-230, and R. Aharon Lichtenstein, "Brother Daniel and the Jewish Fraternity," in *Leaves of Faith*, Vol. 2 (New Jersey, 2004). Additionally, in the case of a Jew who has practiced another religion, the *Rema* (Rabbi Moses Isserles, 1525-1572, Poland) cites the practice that such an individual who returns to his Jewish faith, while still Jewish, needs to immerse in front of a *Beth Din* in order to accept *divrei chaverut* (*Yoreh De'ah* 268:12). As to whether a child of an apostate who was simply following the "customs of his forefathers" in practicing a different faith would need to undergo such an immersion, see R. Yitzchak Yaakov Weiss (1902-1989, Hungary and Israel), *Minchat Yitzchak* 4:100.

6. See *Shulchan Arukh*, *Yoreh De'ah* 2:5.
7. Areas of application include lending to such Jews *b'ribbit* (with interest), or the ability to do *bittul reshut* (nullification of property interests) for an *eruv*, whether it is permissible to hate such people, whether the principle of *yotza motzi* (exempting others in the repeat performance of a *mitzvah*) would be applicable to them, and whether they are included in the commandment of *tokhacha* (rebuke). The application of certain laws may depend upon whether the term *achva* (brotherhood) is employed by the Torah (indicating a requirement of *ahikha be'mitzvo*— being kinsmen with respect to *mitzvah* adherence). See *Tzitz Eliezer* 8:18. See also D. Ariav, *L'reakha Kamokha* (Jerusalem, 5762), vol. 2, pp. 285-295, in which he discusses distinctions among different classifications of *mumrim* for purposes of many of these laws.
8. See *Shulkhan Arukh*, supra n. 6, and *Siftei Da'at* (*Pri Megadim*) *ad lo.c.*, 2:17 (R. Joseph ben Meir Teomim, 1727-1793, Poland).
9. See *Shabbat* 67b.
10. See, e.g., R. Joseph Grunblatt, "Confronting Disbelievers," in *Tradition* 23:1 (1987); *Rashash* (Rabbi Shmuel Shtrashan, 1819-1885, Vilna) *Shabbat* 31a, s.v., "Geireh."
11. See *Makkot* 7b, 9a. The degree to which the rationale of *omer mutar* can be utilized as mitigating culpability is dubious. The Rambam indicates in *Hilkhot Rozeach* (5:4) that an *omer mutar* is *karov l'meizid* (i.e., almost on par with the culpability level of a deliberate transgressor). See the discussion in R. Avraham Wasserman, *Re'akha Kamokha*, pp. 31-39 (5768).
12. See *Erchin* 16b: אמר ר' טרפון תמה אני אם יש בדור הזה שמקבל תוכחה . . . אמר ר' אלעזר בן

עזריה תמיהני אם יש בדור הזה שיודע להוכיח ("R. Tarfon said: I wonder if there is anyone in this generation who can accept rebuke. . . . R. Elazar ben Azaria said, I wonder if there is anyone in this generation who knows how to rebuke"). See also R. Yonatan Voliner, *Marganita Tava*, para. 17, appended by R. Yisroel Meir Kagan (the *Chofetz Chaim*, 1838-1933) at the end of his book *Ahavat Chesed*.

13. See *Brachos* 10a.
14. *Hilkhot Mamrim* 3:3; the basis of the exemption of a *tinok she'nishbah* from the punishment of *moridin* according to the Rambam is that he is viewed as *anus* (under duress).
15. Ramban's Commentary to the Torah, *Bemidbar* 15:22.
16. *Binyan Tzion* 2:23 (1798-1871, Germany). It was noted in an article in *Jewish Tradition and the Non-Traditional Jew* (p. 73) that Rabbi Ettlinger appended a notation that this responsum "was only theoretical in nature and not intended as a normative ruling." My own reading, based on his son's introduction to the volume, is that this notation was not made by Rabbi Ettlinger himself but by his son when his son compiled the second volume of Rabbi Ettlinger's *responsa*, which was published posthumously. The notation, which reads "*pesakim she'lo l'halacha le'maaseh*" (i.e., rulings that are theoretical in nature) actually introduces the entire set of *responsa* beginning with *responsum* 23 and continuing throughout the rest of the volume. From a close reading of the chronology of the *responsa*, it appears that his son may have published as *halachah le'maaseh* (i.e., normative rulings) those *responsa* that were authored after the publication of the first volume of *Binyan Tzion*, and as *pesakim she'lo l'halachah le'maaseh* those *responsa* (including 2:23) that were authored prior to the publication of the first volume but not chosen by his father for publication.
17. *Melamed L'Hoeil, Orach Chaim* 29 (1843-1921, Berlin).
18. *Yoreh De'ah* 2:16; 2:28 (1878-1957, Israel).
19. Rabbi Wasserman's book, *supra* n. 11, is generally reflective of this approach. See also R. Naftali Tzvi Yehuda Berlin (the Netziv, 1817-1893, Volozhin), *Meishiv Davar* 1:44, in which the Netziv stresses his concern that especially in the present era, when we exist in the world of exile, we should make a special effort to draw closer, rather than to characterize each other as heretics. See also his explanation in his introduction to *Sefer Bereishit* in *He'emek Davar* as to why *Sefer Bereishit* is called "*Sefer HaYashar*."
20. See Menachem Adler, *Bina V'Daat*, p. 25, n. 67 (Jerusalem, 5768).
21. See *Binah V'Daat*, *supra* n. 20 at 30-31, and n. 83, based on *Chazon Ish, Yoreh De'ah* 1:6.
22. *Radvaz* (1479-1573, Safed), *Mamrim* 3:3. Interestingly, Rabbi Yehuda Herzl Henkin, in his book *Understanding Tzniut* (2008), levels a similar criticism with respect to what he rues as an over-reliance upon the concept of *Tinok Shenishbah* to justify tolerance for sexual relationships that are contrary to *halakhah*. See also R. Yerachmiel Fried, *Ma'adanei Shlomo, Moadim*, 26-29 (Jerusalem, 5762), who presents a similar view in the name of R. Shlomo Zalman Auerbach (1910-

1995, Israel) with respect to non-observant Israelis, but still maintains that such individuals should be treated as in the category of *shogeg*.

23. 1874-1941 (Lithuania).
24. 1853-1918 (Brisk).
25. Kovetz *Ma'amarim*, p. 19.
26. *Bina V'Daat*, *supra* n. 20, at p. 8, n. 2; see Rambam, *Peirush Hamishnayot, Sanhedrin*, Chapter 10, s.v. "*HaYesod HaYud Gimel*."
27. *Minchat Elazar* 1:74 (Rabbi Chaim Elazar Spira, 1871-1937, Munkatch).
28. Rabbi Adler's book, *supra* n. 20, is generally reflective of this approach.
29. See *Sanhedrin* 107b.
30. Rabbi Soloveitchik (the "Rav") lived from 1903 to 1993.
31. See Rabbi Joseph B. Soloveitchik, "The Voice of My Beloved Knocketh (*Kol Dodi Dofek*)," pp. 80-89 (reprinted by Student Organization of Yeshiva with permission of the RCA, 5768). In this essay, the Rav utilized this distinction to champion religious Zionism, which represented both the covenant of fate and the covenant of destiny, as opposed to secular Zionism, which represented only the covenant of fate. This distinction between the different covenants which bind all Jews socially and religiously is understood by many as thematically consistent with Rabbi Soloveitchik's earlier distinction (from a 1954 letter in the *Tog Morgen Journal*) between interacting with non-Orthodox movements with respect to matters "*klapei hutz*" such as political and social issues, and avoiding interaction with respect to theological issues. See Walter Wurzbarger, "Rabbi Joseph B. Soloveitchik as Posek of Post-Modern Orthodoxy" in *Exploring the Thought of Rabbi Joseph B. Soloveitchik* (R. Marc Angel, ed.; Ktav, 1997), and R. Seth Farber, "Reproach, Recognition and Respect: Rabbi Joseph B. Soloveitchik and Orthodoxy's Mid-Century Attitude Toward Non-Orthodox Denominations," in *American Jewish History* (June 2001).
32. See Rabbi Ahron Soloveichik (1917-2001), "Jew and Jew, Jew and Non-Jew," in *Logic of the Heart, Logic of the Mind*, pp. 69-92 (Brooklyn, 1991).
33. *Igrot Moshe, Even Haezer* 1:82 (section 11, s.v. "*V'amina*"), *Even Haezer* 4:32(7).
34. *Igrot Moshe, Orach Chaim* 1:23.
35. See, e.g., Rabbi Yisroel Meir Kagan, *Kol Kitvei Chafetz Chaim Hashalem*, 3:65.
36. See, e.g., *Igrot Moshe, Even Haezer* 1:76,77.
37. Howard Levine, "The Non-Observant Orthodox," in *Tradition*, Vol. 2, No. 1, pp.1-19 (1958).
38. *Mishneh Torah, Laws of Mamrim*, 3:3.
39. See, e.g., *Igrot Moshe, Even Haezer* 2:17; 4:13(3); 4:78; *Yoreh De'ah* 1:160, 4:58. In an earlier *responsum* (*Even Haezer* 1:135), Rabbi Feinstein appeared to be more ambivalent regarding the validity of a Conservative rabbi serving as a witness, speculating that perhaps he did not believe in the movement's dogma but accepted the post only for financial reasons. Rabbi Feinstein was more categorically dismissive of conversions performed by Reform rabbis (see *Even Haezer* 3:3). It should be noted that R. Ahron Soloveichik ruled that a conversion

performed for an individual who previously underwent a conversion under Conservative auspices—where the rabbis officiated in Conservative synagogues and belonged to the Conservative movement—required a new blessing even if the rabbis were personally observant and the convert fully accepted the yoke of commandments. See *Techumin* 20:310; cf. Wurzbarger, *supra*, at 14.

40. A full text of the declaration can be found at [http://truejews.org/Igud\\_Historic\\_Declaration.htm](http://truejews.org/Igud_Historic_Declaration.htm). The *New York Times* reported on the declaration prior to its issuance in an article entitled “Rabbi Group Is Preparing to Denounce Non-Orthodox,” by Gustav Niebuhr, March 24, 1997.
41. See R. Nathaniel Helfgot, *Community, Covenant and Commitment*, pp. 143-157, and *supra* n. 31.
42. See R. Samson Raphael Hirsch, “Religion Allied with Progress” in *The Collected Writings of Rabbi Samson Raphael Hirsch*, vol. 4 at 111.
43. Rabbi Mordechai Gifter lived from 1915 to 2001 and served as a member of the Moetzet Gedolei HaTorah of Agudath Israel of America.
44. Printed in *Ma’amarei Re’iya*, pp. 76-77.
45. See also *The American Hebrew*, Vol. LXIII- No. 6 (June 10, 1898) p. 172, detailing the proceedings of the Convention of Orthodox Congregations, in which the chair, Mr. Lewis Dembitz, objected to the use of the word Orthodoxy on the grounds that the term was more indicative of belief than practice, and expressed a preference for the title *Shomre Hadath* (observers of the law). I am grateful to Rabbi Jacob J. Schacter for providing this reference.
46. See *Achiezer*, 3:26 and 3:28.
47. See also Howard Levine, *supra* n. 27 at 13-14, who makes a similar observation as a favorable consideration regarding non-observant Orthodox Jews who are at least scrupulous in their ethical behavior toward each other.
48. *Bava Metzia* 107b.
49. See also *The American Hebrew*, *supra* n. 45, quoting Dr. B. Drachman as favoring the term Orthodox because it is “identified in the popular mind with strict observance of the law, and we should cling to it.”
50. My views on this subject have been shaped in part during my involvement in the Jewish communal world over the last decade. For an earlier piece written during my student days, see J. Reiss, “Who Is a Jew? The Rhetoric of Religion,” *Hamevaser* (May 1988).
51. See, e.g., comments of Rabbi Elazar Moshe Halevi Horowitz *ad loc.* See also the comments by R. Nachum L. Rabinovich in *Jewish Tradition and the Non-traditional Jew*, pp. 202-203, with respect to this passage.
52. I also direct the reader to a beautiful paragraph in the *Pardes Yosef* by Yosef Patzonovsky (circa 1875-1942, Poland), *Parshat Beshalach*, s.v. “*Umikan*,” in which he exhorts his readers to embrace all Jews, no matter how far they may have strayed, with the pithy phrase “*tov le’hahayot me’likvor*” (it is better to restore a person to life than to bury him).