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GRAPE JUICE: THE SOLUTION TO PROHIBITION

On January 16, 1919, the Eighteenth Amendment to the United States Constitution was ratified and Prohibition became the law of the land. Prohibition raised significant challenges for Jews who utilized wine for numerous religious rituals. While sacramental wine was excluded from Prohibition, legally using this exception required organization, proper oversight, and honesty. Difficulties in attaining these led to the halakhic exploration of permitting grape juice for Jewish ritual. Non-Orthodox rabbis encouraged the use of grape juice as a means of avoiding potential abuse of sacramental wine. They identified grape juice as the ‘new wine’ explicitly mentioned in the Gemara as appropriate for *kiddush*. In response, Orthodox leaders prohibited grape juice. However, lack of care in formulating their *pesak* resulted in the Orthodox masses consuming *stam yeinam*, non-Jewish wine prohibited by rabbinic decree, for almost three decades.

Prohibition and the Orthodox (non-)Reaction

The Eighteenth Amendment prohibited “the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes...” The implementation of the amendment was defined by the Volstead act, which passed through both houses of Congress on October 28, 1919, overriding the veto of President Woodrow Wilson.

Wine for sacramental purposes was explicitly excluded from Prohibition. Thus, theoretically, Jews could continue to acquire wine for *kiddush*, *havdala*, and other rituals. The Volstead act detailed how this would be done: “The head of any conference or diocese or other ecclesiastical jurisdiction may designate any rabbi, minister, or priest to supervise the manufacture of wine to be used for the purposes and rites in this section mentioned, and the person so designated may, in the discretion of the

TRADITION

commissioner, be granted a permit to supervise such manufacture.” These identified religious leaders would then be permitted to receive and distribute sacramental wine to their flock.

Christian denominations could follow these guidelines in a straightforward manner. Each denomination had a centralized and structured clerical hierarchy allowing for the easy identification of priests and ministers. In addition, their need for wine was limited to religious ceremonies held in church and thus distribution was easily controlled. For Jews, however, the rules outlining sacramental wine usage left ample room for abuse. There were no clearly identified rabbinic heads of ‘ecclesiastical jurisdictions.’ In fact, none of the Jewish denominations could easily identify its clergy, as many rabbis had come unannounced from Europe, found jobs, but remained unknown to the leaders of any denomination. Nor could they point to any central institution or governing body. To make matters even more difficult, Jewish rituals requiring wine were generally performed at home, without oversight. How could even an honest rabbi ensure that wine sold to his congregants would not be used for beverage purposes?

The Reform movement immediately recognized the inherent potential for abuse in the Volstead Act and in 1920 took steps aimed at ensuring adherence to the law. Their proposal, sent to the Union of Orthodox Rabbis, suggested the establishment of a joint committee that would identify proper authorized rabbinic personnel in each geographical area. This would centralize Jewish clergy and provide oversight of individual rabbis. The Reform attempt at outreach was not well received. Not only did the Union of Orthodox Rabbis fail to respond to the Reform movement’s proposal to join forces, but the Union’s leaders actively tried to convince the government that only their rabbis should be permitted to issue sacramental wine permits. No action was taken by the Orthodox rabbinate to block potential abuse of sacramental wine privileges, and political struggles within the Orthodox rabbinate surrounding sacramental wine combined with abuses of sacramental wine privileges were soon reported in the Jewish and secular press.¹

A Simple Solution?

An additional step taken by the Reform movement to avoid sacramental wine scandals was to permit grape juice for Jewish ritual. ‘Unfermented

¹ For a full treatment of Orthodox rabbinate’s response to Prohibition see Hannah Sprecher, “Orthodox Rabbis React to Prohibition,” *American Jewish Archives*, 43:2 (1991), 135-179.

wine' was first processed in 1869 by Thomas B. Welch, a strong supporter of the Prohibition movement, for use during his church's communion service. His son Charles Welch founded Welch's Grape Juice Company in 1893. As the temperance movement gained popularity in the United States so did grape juice, and when Prohibition became the law of the land, the question of using grape juice for Jewish ritual became critical. The Reform Central Conference of American Rabbis submitted this question to R. Julius Rappaport,² who allowed the substitution based on the following gemara (*Bava Batra* 97b):

R. Zutra the son of Tuvia said in the name of Rav, "we recite *kiddush* only over wine that can be used for the wine libations on the altar." What [type of wine] does this [rule] exclude? Perhaps one would say [the rule comes] to exclude wine [directly] from the press. But does not R. Hiyya learn "wine from its press should not be brought [for wine libations] but if it is [the libation] is *post facto* acceptable." And since [such wine] is acceptable *post facto* we [can use the wine for *kiddush*] even *a priori*! For Rava says 'a person may squeeze a cluster of grapes and recite *kiddush* over it...'

By allowing newly squeezed 'wine,' the gemara affirms that wine need not undergo fermentation to be usable for *kiddush*. The permissibility of newly squeezed wine for *kiddush* is codified by the Rambam³ and Shulhan Arukh.⁴ Thus, concludes R. Rappaport, non-fermented grape juice may be used for *kiddush* and other Jewish ritual. With this halakhic decision in hand, Reform Jewry no longer needed sacramental wine and could rest assured that no sacramental wine scandals would arise in their camp.

As reports of abuse of the sacramental wine privilege continued to appear in the press,⁵ the Conservative movement also began considering the permissibility of grape juice for Jewish ritual. Their decision was announced in the *New York Times* on January 25, 1922: "Unfermented Wine Favored by Rabbis." The accompanying article discussed the opinion of Prof. Louis Ginzberg, who claimed that unfermented wine is approved by the Talmud for religious ritual. The article goes on to say that as of the time of the announcement there were no companies producing

² American Reform Responsa 30, (1920) pp. 108-112.

³ Mishneh Torah, *Shabbat* 29:17.

⁴ *Orah Hayyim* 272:2.

⁵ See for example, the March 30, 1921 *New York Times* article headlined, "Trace Many Forged Rabbi Wine Permits," which discusses the Menorah Company and the seizure of \$250,000 worth of wine. The entire Menorah Company scandal is detailed by Sprecher.

kosher grape juice but that this issue would be investigated. The next day⁶ the *New York Times* reported that the Conservative rabbis would attempt to convince the Union of Orthodox Rabbis to support the use of grape juice in Jewish ritual so as to avoid further sacramental wine abuse. "It was learned that a committee would be appointed to confer with a committee of the Union of Orthodox Rabbis within the next month. The purpose of the meeting is to attempt to persuade the Orthodox rabbis to look upon the wine question in a modern light. If united Jewry could inform Congress that it did not need any special privileges from the Prohibition Enforcement Director, all scandals would be averted, it was pointed out." It is not clear whether such a conference ever took place.

Prof. Ginzberg's Responsa and the Orthodox Reaction

Prof. Ginzberg published a lengthy Hebrew treatise on the usage of various wines for Jewish ritual which addressed the permissibility of grape juice.⁷ He also wrote an abridged English version which was included as an Appendix to the *American Jewish Yearbook*.⁸ In the English version, Prof. Ginzberg motivates the need to consider grape juice for Jewish ritual:

This privilege [permission to buy wine for sacramental purposes] has given rise to widespread abuse which has attracted attention from many quarters. Many people, not Rabbis, have presumed to exercise the functions of Rabbis, in order to procure and help others procure wine not at all for religious purposes, but for 'beverage purposes.' The Rabbinical Assembly has been moved by the discovery of these scandals to ask whether fermented wine is indeed essential to the performance of any Jewish religious ceremony.

This massaging of the facts, blaming scandals completely on those who are 'not Rabbis,' was apparently seen as appropriate for the English version, which would be read by the public at large. In the Hebrew version, presumably aimed at his Orthodox counterparts, Prof. Ginzberg was more direct. After proving the permissibility of grape juice for Jewish ritual, Prof. Ginzberg concludes,

⁶ "Unfermented Wine Approved by Rabbis," *New York Times*, January 26, 1922.

⁷ The original responsum was published by the Jewish Theological Seminary in 1922.

⁸ *American Jewish Yearbook* 25 (1924), 401.

I am certain that all Torah scholars will agree with my findings and warn the nation not to follow those who are ‘muddled by wine and dazed by liquor.’ In this manner they bring praise on the God of Israel and the name of Israel will be sanctified by removing the ugly stain from our midst. ‘For you are a holy people unto your God.’⁹

Prof. Ginzberg’s responsum makes a number of salient points. First, the gemara in *Bava Batra* clearly states that non-fermented wine, and thus grape juice, can be used for *kiddush a priori*. Second, Prof. Ginzberg demonstrates that using fermented wine is not even a *mitsva min ha-muvbar* – the choicest way to perform the commandment. This requires him to challenge the *Magen Avraham* who states explicitly¹⁰ that it is better to use old wine for *kiddush* than wine from the press (unfermented wine). Prof. Ginzberg does this by claiming that the *Magen Avraham* did not have before him original sources and thus drew mistaken conclusions.¹¹ Finally, Prof. Ginzberg notes that grape juice is not heated to the boiling point and thus is not considered *mevushal* – boiled.¹² Fermentation may still occur in grape juice and thus grape juice really is equivalent to the gemara’s unfermented wine.

Prof. Ginzberg’s attack of the *Magen Avraham* is, without question, the weakest and most controversial part of his responsum, and in the Hebrew version he notes that it is not even necessary:

Even the [Magen Avraham] would admit that it is preferable to make *kiddush* on new wine rather than cause a desecration of God’s name and a desecration of the [Jewish] Nation. Everyone knows the harm to the Nation that has been caused by commerce in sacramental wine.

⁹ P. 71 this translation is taken from Sprecher.

¹⁰ *Orah Hayyim*, 272:3.

¹¹ The *Magen Avraham* is based on the *Darkhei Moshe* (*Orah Hayyim* 600:1) who states that on the second evening of Rosh Hashana the Maharil (*Hilkhot Rosh ha-Shanah* 4-5) recited *kiddush* on old wine despite using new wine for the blessing of *she-behiyyanu*. Prof. Ginzberg says that this preference is simply because a blessing over old wine can cover new wine but not vice versa. Furthermore, the Maharil once asked that new wine be used for *kiddush* in shul on the second night of Rosh Hashana, and the Maharam me-Rotenberg used new wine for *kiddush* on the second night of Rosh Hashana (the 1978 edition of R. Klausner’s *Sefer Minhagim* attributes this to Mahar”a).

¹² There is an argument amongst the Rishonim as to whether boiled wine is considered wine at all. According to Prof. Ginzberg grape juice is not subject to this argument since it is not sufficiently heated to be considered boiled.

TRADITION

This point was expressed in an even more radical form, though in a non-halakhic context, by R. Shraga Feivel Mendlowitz, principal of Yeshiva Torah Vodaath. Writing in *Dos Yiddische Licht*¹³ he passionately opines: “One need only consider the wine business in which many rabbis are heavily engaged. How much shame, how much degradation, how much desecration of the Torah lies therein! Rabbis who ought to be the ones to ensure that the laws of the land are upheld are instead the direct or indirect cause of their violation... Truth be told, even if wine for ritual purpose were a biblical commandment, the current desecration of God’s name would still not be justified, how much more so that it is only a rabbinic commandment, and it can be fulfilled by using raisin wine!... Therefore, I beseech you, my brethren, no matter how great a Torah scholar a rabbi is, if he is a cause for the desecration of Heaven, he must be removed from the community.” R. Mendlowitz’s call for such extreme measures fully supports the contention of Prof. Ginzberg.

R. Mendlowitz ‘retracted’ the above statement in the next issue of *Dos Yiddische Licht*. In an open letter R. Mendlowitz explains that he meant only to condemn ‘reverends’ who gave wine permits to irresponsible people resulting in scandal, and in no way intended to question the honor of Orthodox rabbis. It is doubtful that R. Mendlowitz’s ‘retraction’ reflects his true feelings. The facts were as he stated them in his original piece. However the lesson from his retraction is clear: Orthodox leaders were not going to admit to any wrongdoing by their camp. Therefore, Prof. Ginzberg knew that an argument based on desecrating God’s name would not work. The response would simply be to blame others (as we will see later on). To convince the Orthodox rabbinate to permit grape juice he must argue on a purely halakhic basis.

A halakhic response to Prof. Ginzberg from the Orthodox rabbinate was long in coming. In 1926 a strident and assertive response came from R. Yitzchak Simcha Hurewitz of Hartford, Connecticut. Yet, it was not published in any of the available rabbinic periodicals. Rather, it was published as part of his commentary to the Rambam’s *Sefer ha-Mitsvot*.¹⁴ Commenting on the commandment to recite *kiddush*, R. Hurewitz notes that the rabbis instituted its recitation over wine because wine “awakens the heart and gladdens the soul.” Thus it is obvious, says R. Hurewitz, that if the alcohol is removed from wine such that it can never ferment, like in grape juice, its importance is lost and it has the same status as lemon or orange juice. This assertion paves the way for R. Hurewitz to disprove the thesis of Prof. Ginzberg.

¹³ 1 (1923): 3-4, quoted and translated by Sprecher in n. 63.

¹⁴ *Yad ha-Levi, mitstva* 155.

R. Hurewitz's insult-laced attack is mainly focused on Prof. Ginzberg's attempts to disprove the Magen Avraham.¹⁵ He also (falsely, but in line with the typical approach of the Orthodox rabbinate) places all blame for the desecration of God's name squarely on the shoulders of "our brothers who tear down and hate us (presumably non-Orthodox Jews)." Finally, he differentiates between grape juice and 'wine from the press.' The latter has the taste and smell of wine and includes a small amount of alcohol, and thus it is halakhically considered wine. Grape juice does not have the taste or even the smell of wine and therefore it is not halakhically wine.¹⁶ Rather, it is like orange juice or any other fruit juice. R. Hurewitz was so convinced of his position to the extent that he argued that if grape juice is touched by a non-Jew it is not forbidden under the rubric of *stam yeinam*. We will return to this point later.

An Orthodox attack on Prof. Ginzberg was finally published in a rabbinic journal in November 1929¹⁷ by Dr. Henry Illoway, son of the antebellum R. Bernard Illoway. Dr. Illoway follows the rationale of R. Hurewitz: grape juice cannot be used for Jewish ritual because it lacks alcohol and cannot ferment.

The responsum of Prof. Ginzberg seems to have had little influence on the Orthodox Jewish populous, who continued using sacramental wine throughout the Prohibition Era. Grape juice, far from being considered wine, was treated like any other fruit juice. In this way they fulfilled the words of R. Hurewitz, who wrote, "the Jews amongst whom we sit are straight and righteous and will not heed the words of the sinners (Conservative Jewish leaders)." Dr. Illoway's response was probably more widely read and provided additional halakhic backing to R. Hurewitz. However, by the time it appeared, although unbeknownst to American Jewry, the halakhic attack on grape juice had already begun to falter.

In October 1926, a letter was sent to R. Hurewitz from R. Tsevi Pesah Frank, Chief Rabbi of Jerusalem, with comments on the former's analysis of the halakhic status of grape juice and attack on Prof. Ginzberg.¹⁸ R. Frank does not include in his published responsa R. Hurewitz's

¹⁵ R. Hurewitz notes that the reason a blessing over new wine does not cover old wine is precisely because old wine is more important (in fact the Maharil states explicitly, "since old wine receives its own blessing, it is more important, and thus the first choice for *kiddush*"). Furthermore, Maharam used new wine only on the second night of Rosh Hashana demonstrating that, in general, old wine is preferable.

¹⁶ R. Hurewitz does not quote Prof. Ginzberg's explicit statement (both in the English and Hebrew version of his responsum) that grape juice can ferment.

¹⁷ *Ha-Pardes* 3:8, 19, Marheshvan 5690, November 1929.

¹⁸ *Har Tsevi, Orach Hayyim* 1:158.

original message but he praises R. Hurewitz's rejoinder to Prof. Ginzberg's dismissal of the Magen Avraham. Nevertheless, R. Frank disagrees with the contention that grape juice is like other fruit juice and thus is not acceptable for *kiddush*. R. Frank argues as follows: halakhic practice is in accordance with the opinion of the Shulhan Arukh¹⁹ that boiled wine is acceptable for *kiddush*. No one has ever placed a restriction on the earliest time the boiling can be done. Rather, as soon as the grapes are squeezed the wine is halakhically acceptable for *kiddush* and boiling it, thus stopping fermentation, even immediately after pressing, does not change this status. R. Frank's responsum, written in Israel where Prohibition, sacramental wine scandals, and the non-Orthodox acceptance of grape juice were not a factor, effectively nullified the thrust of R. Hurewitz's argument. One is left to wonder whether R. Frank's response contributed to R. Hurewitz's decision not to publish his opinion in a rabbinic journal.²⁰

Halakhic Precedents for Grape Juice

As a way to avoid sacramental wine abuses, R. Mendlowitz suggested using raisin wine for *kiddush*. The fact that he could make this suggestion during Prohibition implies that raisin wine is non-alcoholic. The permissibility of raisin wine for *kiddush* is explicitly stated in *Bava Batra* and would appear to fashion a strong precedent for the use of grape juice. Interestingly, Jewish ritual use of unfermented raisin wine was introduced into the Prohibition debate almost a century earlier. In 1836 New York journalist and politician Mordecai Noah noted that Jews use unfermented raisin wine specifically on Passover. Thus, he argued, it was likely the wine used by Jesus at the Last Supper and could therefore be used for Christian communion.²¹ Noah even provided a recipe for home-made raisin wine: the raisins should be soaked in water for about a week, making sure to keep the container in a warm place. The reason American Jewry of the 19th century had the custom to specifically use unfermented raisin wine on Passover is not our purpose here. What is important is the manufacturing process described by Noah. The raisin wine manufacturing process

¹⁹ *Orah Hayyim* 272:8.

²⁰ R. Ben-Zion Meir Hai Uziel writing in 1941 (*Mishpetei Uziel*, vol. 3, *Orah Hayyim* 26), argues that if *ha-gafen* can be recited on wine made by soaking raisins in water (as we discuss later), it can certainly be recited over grape juice. He does, however, encourage the use of good wine for *kiddush*.

²¹ J. D. Sarna, "Passover Raisin Wine, "The American Temperance Movement, and Mordecai Noah: The Origins, Meaning, And Wider Significance of a Nineteenth-Century American Jewish Religious Practice," *HUCA* 59 (1988), 269-88.

has been continuously discussed since the time of the Geonim.²² It is only the raisin wine described by later Aharonim, where the ratio of raisins to water is extremely low, that could furnish a precedent for unfermented grape juice and is the raisin wine referred to by R. Mendlowitz.²³

Raisin wine may also be an appropriate precedent for grape juice in another way. The *Arukh ha-Shulhan*²⁴ notes that the raisins used to make raisin wine in his day had no moisture in them whatsoever. Using such raisins to make wine for *kiddush* is directly against the Geonim quoted by the Rif. Yet, such wine has been used for generations! His solution is to define wine for Jewish ritual based on what is socially accepted as wine. Since in Lithuania at that time wine from completely dry raisins was considered wine, the *Arukh ha-Shulhan* argued, it can be used for *kiddush*. This theme is echoed by Prof. Ginzberg. Even if one believes that fermented wine is preferable to grape juice, that can be true only when fermented wine is sought after by society. During the time of Prohibition when no one seeks fermented wine, one cannot say it is halakhically preferable to grape juice.

Another possible halakhic precedent for grape juice was noted by Dr. Illoway. A *baraita* quoted in *Bava Batra* states that wine that is *koses* cannot be used even *post facto* for the wine libations and thus cannot be used for *kiddush*. Wine that is *koses* is explained by Rashbam (s.v. *yayin*) as wine that cannot ferment: “[*Koses* wine] is the wine that is sold in the marketplace and it is unfit [for wine libations] because it is not intoxicating and cannot become intoxicating, unlike wine from the press which, in the end, will become intoxicating.” The flaw in Dr. Illoway’s argument

²² The Rif (*Pesahim* 22b, see also Rambam *Shabbat* 29:17, Meiri *Pesahim* 107a) quotes the Geonim as saying that raisins which withered while on the vine, but are moist enough such that liquid would come out of them if pressed, may be soaked in water and pressed for raisin wine. This manufacturing process is completely different from that described by Noah and, as attested to by the Rivash (Responsum 9), produced fermented wine of high quality. Raisin wine produced using Noah’s method may not be acceptable at all according to these Rishonim. Rashbets (*Ma’amar Hamets* section 112), however, described a raisin wine produced by soaking raisins in water (see *Hakham Tsevi* 140 who strongly disagrees).

²³ The *Bekhor Shor* (*Bava Batra* 97b) defends the custom of soaking raisins in more than six times their volume of water and even allows this ratio to be based on the volume of the raisins themselves rather than the amount of wine coming out of the raisins. The *Mishna Berura* (272:16) notes that there are those who disagree with the *Bekhor Shor* and require the amount of water to be less than six times the raisin volume. Nevertheless, the *Mishna Berura* feels one should not be more stringent than the *Bekhor Shor*. In the *Biur Halakha* he suggests that raisins are stronger than grapes with respect to dilution and thus even a greater ratio is permitted.

²⁴ *Orah Hayyim*, 204:15-16, 272:7

(though it is repeated by other Aharonim) is that the gemara actually rejects the *baraita*, noting that the status of *koses* wine is an Amoraic dispute between R. Yohanan and R. Yehoshua ben Levi. Rashbam halakhically follows R. Yohanan, who says that *ha-gafen* is the proper blessing over *koses* wine and thus it can be used for *kiddush*.²⁵ The precedent of Dr. Illoway becomes a proof to Prof. Ginzberg.

A third possible precedent for grape juice is *hiliston*, identified by the gemara as a wine which only *a priori* cannot be used for the wine libations, and, thus, can be used for *kiddush*. Rashbam (s.v. *hiliston*) identifies *hiliston* as “sweet wine that is very weak.” The Meiri²⁶ adds that the wine is either naturally sweet or becomes sweet because the grapes are left in the sun. It is not usable *a priori* for the wine libations because it is not and cannot become intoxicating. Nevertheless, *kiddush* can be recited over such wine. This would seem to be the perfect precedent for grape juice and would indicate that grape juice can be used for *kiddush*.

A final grape juice precedent is *aropi*. The *Beit Yosef*²⁷ quotes the *Orhot Hayyim* that the blessing on *aropi* is *she-haKol*. What is *aropi*? The Keneset ha-Gedola²⁸ describes the manufacturing process: grapes are pressed, sprinkled with a known white powder, and left for an hour or slightly longer. This causes the wine to remain sweet and not ferment. Then the wine is heated below the temperature of *yad soledet bo*, i.e. low enough that it does not make the wine *mevushal*. From this description it would seem that *aropi* is like grape juice except that the fermentation is stopped via a type of white powder rather than heating. Nevertheless, the blessing over *aropi* is *she-haKol* and thus it would not be usable for *kiddush*. *Aropi* would then furnish a precedent against the use of grape juice for *kiddush*.

Other sources, however, indicate a different manufacturing process for *aropi*. The Keneset ha-Gedola himself, in his responsa Ba’ei Hayyei,²⁹ describes that the powder is put on the grapes, keeping the wine sweet until it can be cooked and made into a ‘honey’ called *aropi*. This *aropi*, which is more a syrup than a liquid, clearly cannot be utilized for *kiddush* and the blessing upon it would be a *she-haKol*. This syrup-like substance has a halakhic history starting with the Rishonim that we will return to

²⁵ See Rashbam, *Bava Batra* 97b s.v. *lemautei*, 95b s.v. *yayin, de-ikrim, lama*, and 96a s.v. *had*.

²⁶ *Pesahim* 107a s.v. *yayin*.

²⁷ *Orhot Hayyim* 202 s.v. *katuv be-O^oH*.

²⁸ *Shu^ot Keneset ha-Gedola* 1.

²⁹ *Yoreh Deah* 170.

later. Similarly, the *Birkei Yosef*³⁰ says *aropi* is grape juice that has congealed. Modern Aharonim³¹ identify *aropi* with this latter manufacturing process.³²

Grape Juice and *Stam Yeinam*

Despite Prof. Ginzberg and R. Frank, American Orthodoxy continued to use wine for religious ritual throughout Prohibition. With the repeal of Prohibition in 1933, one might have expected that the question of grape juice would fall by the wayside. Yet, grape juice continued to be produced and sold in the United States, and Orthodox Jews bought and drank it, treating it as they would any other fruit juice. It was not until 1950 that this was recognized as problematic.

In 1950, R. Nissan Telushkin wondered about the following in an article published in *Ha-Pardes*³³: Even the most observant of Jews consider grape juice like any other fruit juice without concern that it is touched and manufactured by non-Jews. Indeed, the blessing they recite over grape juice is *she-haKol*. However, there is no question that between the time the grapes are squeezed and the time the fermentation is halted, the liquid from the grapes is halakhically wine and subject to the strictures of *stam yeinam*. If it was touched by non-Jews, (as it presumably was) the liquid is prohibited even if subsequently the fermentation is stopped.

How could it be that so many good Jews violated the decree of *stam yeinam*? In the effort to fight against Prof. Ginzberg, Orthodox Jews were told that grape juice is like any other fruit juice. If this were true, grape juice should be permissible even if manufactured and handled by non-Jews; however, it is not true. Even if one were to argue that grape juice itself can be touched by non-Jews without halakhic ramifications, at one point it was wine and subject to the laws of *stam yeinam*. After years of Orthodox Jews drinking non-Jewish (and thus non-kosher) grape juice, R. Telushkin makes this obvious point.

³⁰ *Orah Hayyim* 202.

³¹ See for example the *Minhat Yitshak*, 8:14.

³² R. Menashe Klein (*Mishneh Halakhot* 10:67, see also *Mishneh Halakhot* 13:38) suggests another possible grape juice precedent, diluted wine. In the time of the gemara it was a given that dilution was necessary before drinking wine. However, diluted wine could not be used even *post facto* for the wine libations (*Bava Batra* 97b). The reason for this Rashbam (s.v. *mazug*) explains is that diluted wine is not *shekhar*. R. Klein takes this to mean that it is not intoxicating though it is clearly optimal for *kiddush*.

³³ *Ha-Pardes* 24:13, p. 1

TRADITION

R. Telushkin formulates the problem as follows. There are two possible ways to stop the fermentation process: boiling the wine or putting certain chemicals in the wine. Either way the resulting juice would not be prohibited if touched by a non-Jew.³⁴ However, before fermentation was stopped the juice is halakhically wine for *kiddush* and thus should be prohibited when touched by a non-Jew. R. Telushkin attempts two possible rationales for leniency. First, the grapes for grape juice are squeezed with the explicit intention of not letting the juice ferment. Perhaps in such a case the juice is not halakhically wine even before stopping fermentation. He rejects this rationale based on a responsum of the Maharah Or Zarua (9). The Maharah Or Zarua notes the halakhic similarities between ritual impurity and *yein nesekh*. Just as impure food that is made into a liquid becomes pure, so too *yein nesekh* (a liquid) that is turned into food loses its prohibited status. This equivalence is then applied to a honey made by mixing a certain type of powder with the juice of grapes. Even if the grapes are squeezed by a non-Jew and the juice is thus *stam yeinam* before the powder is mixed in, the result is no longer prohibited once it solidifies. The honey in question appears to be *aropi*, and from this discussion we see that, although the grapes were squeezed specifically with the intent of not making the juice into wine, the juice still becomes *yein nesekh*. Thus, this rationale for leniency with respect to grape juice fails.³⁵

A second rationale for leniency is the possibility that the entire process, from squeezing the grapes through removal of the ability to ferment, is done by machine. If so, there is no problem of non-Jewish wine. However, R. Telushkin notes, we cannot make this assumption without proper supervision. Thus, this leniency is also highly questionable.³⁶

R. Telushkin notes that there is a halakhic difference between the two attempted rationales. The first assumes that grape juice is not wine.

³⁴ R. Moshe Shternbuch (*Teshuvot ve-Hanhagot, Orah Hayyim* 69) differentiates between these processes saying that grape juice that has been cooked immediately after being squeezed can be used for *kiddush*, while grape juice in which the fermentation has been halted by chemicals cannot be used for *kiddush*. Surprisingly, R. Shternbuch does not mention the precedent of *aropi*.

³⁵ The Ran (Responsum 5) also speaks of a type of ‘honey’ made from grapes in which the grapes are first covered with a certain white powder. Because of this, when the grapes are squeezed the wine that comes out stays sweet. This wine is then boiled until it becomes thick like honey. The question raised to the Ran is whether this honey, when manufactured by non-Jews, is permissible to Jews.

³⁶ R. Moshe Feinstein (*Yoreh Deah*, 1:50) suggests a third manufacturing process for grape juice that would render it immune from becoming *yein nesekh*: the grapes themselves are cooked. In this case the juice that comes out would be considered boiled and not subject to *yein nesekh*. R. Feinstein further states that the factory would be believed to say that this is the manufacturing process they use.

While the second allows for the possibility that grape juice does have the status of wine. R. Telushkin ends by calling on the rabbanim to weigh in on this important question. R. Telushkin's willingness to entertain the possibility that grape juice is like wine was a first step towards American Orthodox Jewry's acceptance of grape juice for religious rituals.

Twelve years later the pendulum had swung the other way. R. Yosef Eliyahu Henkin addresses a complaint that grape juice is being marketed as kosher wine for use at the Seder.³⁷ R. Henkin agrees with the questioner that it would have been more proper to say that only those who are sick should resort to using grape juice. However, grape juice is no worse than freshly squeezed wine, which can certainly be used for *kiddush*. R. Henkin then quotes the Keneset ha-Gedola and the method of making *aropi* as a precedent for not using grape juice, and ends without taking a firm stance.³⁸

Some modern-day halakhic authorities continue to express doubts about the use of grape juice for *kiddush*. However, many permit grape juice even *a priori* including R. Ovadia Yosef,³⁹ R. Shlomo Zalman Auerbach,⁴⁰ and R. Shmuel HaLevi Vosner.⁴¹ In fact, R. Menashe Klein

³⁷ *Ha-Pardes* 36:8, p. 5, see also *Kol Kitvei R. Henkin*, 2:18, where, in the second and chronologically later letter, he prefers the use of wine which is intoxicating to grape juice unless it is difficult for someone to drink alcohol. However, one certainly recites *ha-gafen* over and can make *kiddush* on grape juice since grape juice can be made into wine.

³⁸ Despite the testimony of Mordechai Noah, later halakhic authorities have noted that the criteria for wine at the Seder may be more strict than the criteria for *kiddush*. For example, R. Moshe Feinstein is quoted (*Haggada Kol Dodi* 3:4) as prohibiting grape juice for the Seder because one does not drink grape juice '*derekh herut*,' the way of freedom (R. Yosef Dov Soloveitchik is cited in this manner, but is presented as saying that one who prefers grape juice should use it, [R. Herschel Schachter, *Nefesh ha-Rav*, Jerusalem: Reishit Yerushalayim, (1994), 185]). Another approach (*Hilkhos Hag be-Hag, Pesah*, 19:11 see also *Mikraei Kodesh*, 2:35), notes that the four cups at the Seder are a function of *simhat yom tov*, the joy of the holiday. This cannot be fulfilled by grape juice. Nevertheless, a number of halakhic authorities, including the Hazon Ish, are reported to have used grape juice for the Seder (*Seder ha-Arukh*, p. 112).

³⁹ *Yehaveh Da'at* 2:35; the only halakhic question R. Yosef addresses in his responsum is whether boiled wine can be used for *kiddush*. Assuming that it can, (which is R. Yosef's conclusion) grape juice can be used for *kiddush*. R. Yosef is not at all concerned that grape juice is not intoxicating. This is especially interesting in light of R. Yosef's opinion that *hamar medina*, the drink of the land which at times can substitute for wine, must be intoxicating (*Yabbia Omer* 3, *Orah Hayyim* 19).

⁴⁰ *Minhat Shlomo* 1:4 because halakhically everything follows taste and grape juice tastes like wine.

⁴¹ *Shevet ha-Levi*, 9:58 allows grape juice for *kiddush* based on the Meiri's comments regarding *hiliston*.

echoing, but not quoting Prof. Ginzberg, goes so far as to challenge the statement of the *Magen Avraham* that old wine is in some way preferable for *kiddush*.⁴²

Conclusion

The question of using grape juice for Jewish ritual arose due to external historic forces. Prohibition restricted the use of wine and non-Orthodox Jews started to use grape juice in its place. Initial Orthodox reaction to the use of grape juice may not have been based purely on halakhic issues, but rather as a response to these non-Orthodox attempts to change the status quo. This is evidenced by the statements of authorities outside of the United States who were much more open to using grape juice for Jewish ritual than their American counterparts. Even after the repeal of Prohibition, it took American rabbis almost two decades to realize that their reactive insistence that grape juice was like other fruit juices was taken seriously by the Orthodox laymen, allowing them to believe it permissible to drink prohibited grape juice. When this mistake was realized, and it became clear that grape juice must be considered wine with respect to *stam yeinam*, it did not take long for grape juice to be considered wine for ritual as well.

This study demonstrates the pitfalls in determining halakha in a reactive fashion. Even if the Orthodox rabbis in America honestly felt that grape juice could not be used for Jewish ritual, there was clearly a need to differentiate between it and other fruit juices. Though it may appear counter-intuitive to define grape juice as wine in the context of being touched by a non-Jew but not with respect to ritual, this may very well be a valid halakhic stance. This nuance, though subtle, needed to be explained, and the lack of explanation led to violation of halakha. Orthodox leaders should not be afraid to be halakhically honest and have confidence in their flock to understand nuance and sophistication.

⁴² R. Klein comments that wine nowadays (1993) is mixed with sugar and is not made in the same way as in the time of Hazal. Furthermore, water is added and all sorts of chemicals are poured in to make the wine stronger. Thus, there may even be opinions that you cannot make *ha-gafen* on today's wine. At least with grape juice you know the juice is from grapes.