

SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

MAY A SABBATH-DESECRATOR DRINK WINE?

Writing in the Nisan 5771 issue, no. 71, of the European Torah journal *Kol ha-Torah*, R. Samuel Baruch Genut examines the question of whether a Sabbath-desecrator may drink wine that he himself has touched. There are oral reports of a similar question having been posed decades ago to R. Meir Dan Plocki, renowned as the author of *Hemdah Yisra'el* and *Klei Hemdah*, during his visit to the United States in the 1920s to raise funds on behalf of the Mesivta of Warsaw. An immigrant who had been a ritual slaughterer in Europe, but in America was reduced to earning a livelihood in the needle trades, approached that rabbinic figure with an intriguing question. He had qualms with regard to the proficiency and reliability of local *shohetim* and wished to know whether he might slaughter fowl for his own consumption.¹ The problem was that he supported himself and his family by working on *Shabbat* and a Sabbath-desecrator is disqualified from serving as a *shohet*. Although each of the two questions involves a somewhat different set of issues, there are factors common to both.

¹ This gentleman posed a second question to Rabbi Plocki as well. The Gemara, *Menahot* 37b and *Eruvin* 96a, formulates the rule that *tefillin* may not be donned on *Shabbat* because *Shabbat* (Exodus 31:13 and 31:17) and *tefillin* (Exodus 3:16) are each described as a “sign.” The Gemara reasons that since *Shabbat* is a “sign,” the further sign of *tefillin* is superfluous and hence, if donned, would diminish the status of *Shabbat* as a “sign” on that day. The gentleman queried whether, since he was not observing *Shabbat*, it was perhaps necessary for him to demonstrate the “sign” of *tefillin* on the seventh day as well. This anecdote was related to me by R. Shimon Ludmir and by his brother, the late R. Mordecai Ludmir. Neither was aware of Rabbi Plocki’s response to these questions. Presumably, *Shabbat* constitutes a “sign” by virtue of divine sanctification of the day independent of its observance by any particular Jew, while *tefillin* become a “sign” only when worn, as stated by Scripture, “and you shall bind them for a sign.” Hence, even one who violates the *Shabbat* who also dons *tefillin* on that day demonstrates that he disdains *Shabbat* as a “sign.”

I. THE PROHIBITION

I. Non-Jews

As reported by the Gemara, *Shabbat* 17b and *Avodah Zarah* 36b, the prohibition banning wine touched by a pagan is numbered among the “eighteen matters” interdicted upon a single occasion sometime during the tannaitic period. Wine handled by pagans was forbidden by the Sages for two distinct reasons: 1) It was the practice of idolaters to offer a portion of their wine as a libation dedicated to an object of idolatrous worship, thereby rendering the wine an idolatrous offering from which a Jew is forbidden to derive any benefit. The rabbinic edict that was promulgated included a ban on wine touched by any non-Jew, including those known to abjure idol worship. However, Rema, *Yoreh De’ah* 123:1, rules that the restriction against wine touched by non-Jews who are not idolaters is limited to drinking such wine but does not include a ban against other forms of benefit, such as sale of the wine to a non-Jew. 2) Unrestrained fraternization facilitates relationships that may ultimately lead to forging marital bonds as well.² Moreover, consumption of wine can have the effect of diminishing sexual inhibitions and thereby contribute to extramarital liaisons with non-Jews who may be prone to promiscuity. The Sages banned wine touched by a non-Jew in order to curtail social intercourse with non-Jews. Curtailment of conviviality fostered by sharing wine was designed to reduce the incidence of intermarriage and licentiousness.³

² Rashi, in his commentary on the Mishnah, *Avodah Zarah* 36b, s.v. *ve-ha-sheleket*, explains that food cooked by non-Jews was forbidden “because of marriage.” However, subsequently, in his commentary on the Gemara, *Avodah Zarah* 38a, s.v. *mi-de-rabbanan*, Rashi comments that such foodstuffs are forbidden to a Jew in order to prevent intimacy with regard to food and drink “lest [the non-Jew] cause him to eat something unclean.” Both explanations are cited by *Tur Shulhan Arukh*, *Yoreh De’ah* 113. R. Shlomoh Kluger, *Teshuvot Tuv Ta’am va-Da’at*, *Mahadura Telita’i*, II, no. 16, resolves the contradiction by observing that food and wine were banned even in situations in which there is no biblical prohibition against intermarriage, e.g., the food and wine of an apostate, in order to prevent violation of the dietary code. R. Moshe Sternbuch, *Teshuvot va-Hanhagot*, I, no. 470 and II, no. 400, states simply that the notion of preventing marriage includes discouragement of all camaraderie that would diminish religious observance. See *infra*, note 11. Rabbi Sternbuch cites a similar comment of *Mishnah Berurah*, *Sha’ar ha-Ziyun* 385:2, regarding the children of Karaites. For a further discussion of the concern leading to promulgation of the edict see *infra*, sec. II.

³ *Kesef Mishneh*, *Hilkhot Ma’akhalot Assurot* 11:3, as understood by *Lehem Mishneh*, *ad locum*, regards the edict as designed to prevent even seclusion with a non-Jewess. For a thorough discussion of the chronology and ambit of these various edicts as well as of the many controversies among early-day rabbinic scholars regarding those matters see *Encyclopedia Talmudit*, XXIV, 330-350.

Some early-day authorities maintain that the original decree was based upon a concern with regard to intermarriage and hence was limited to drinking wine touched by a non-Jew, whereas no restriction was imposed on other types of benefit. Those authorities maintain that, at a later time, an additional decree was issued banning even benefit from wine handled by a pagan because of the possibility that the wine might have been used for an idolatrous purpose. Other authorities maintain that the primary motive was the fear of an idolatrous libation but, since such a possibility was remote, they would not have banned benefits other than drinking the wine if it were not for a concomitant concern regarding intermarriage. A third view is that the sole concern was the fear that the wine might have been used in conjunction with an idolatrous libation. Yet another position is that the entire basis for the edict was a fear of intermarriage but nevertheless all benefit that might be derived from such wine was prohibited. The onus of resultant financial loss was designed to serve as a deterrent to developing unrestricted social relationships. According to each of these views, cooked wine, regarded as inferior in quality, was excluded from the prohibition because such wine would not have been offered as a libation and would not be served to a guest.

2. Sabbath-Violators

There is no explicit talmudic statement banning wine handled by a Sabbath-desecrator. However, the Gemara, *Hullin* 5a, relegates a person who repeatedly and publicly desecrates the Sabbath and one who pours idolatrous libations to the status of an apostate in declaring that such an individual is not eligible to bring sacrifices. The Gemara, *Eruvin* 69b, also cites that rule in equating a person who publicly desecrates the Sabbath with an apostate and idol-worshipper with regard to technical provisions regarding carrying in a common private domain on *Shabbat*.⁴ Ostensibly, marriage with the daughter of a Sabbath-desecrator is not interdicted. Hence, there seems to be no cogent reason to forbid wine touched by such an individual. That is the view of an anonymous early-day authority cited by *Sefer ha-Eshkol*, III, *Hilkhot Yayin Nesekeh*, sec. 58 and of *Teshuvot Mahari Ashkenazi*, *Yoreh De'ah*, no. 16, as well as of R. Chaim ibn Attar, renowned as the author of the *Or ha-Hayyim* commentary on the

⁴ The Sabbath-desecrator was deemed to be a heretic because *Shabbat* is testimony to God's creation of the universe. Hence Sabbath desecration is regarded as tantamount to denial of God as Creator. See Rashi, *Hullin* 5a, s.v. *ela*. There is a controversy among rabbinic authorities with regard to whether that principle is biblical or rabbinic in nature. See *infra*, note 37 and accompanying text.

Pentateuch, in his *Hefez ha-Shem*, *Hullin* 4b.⁵ Nevertheless, a number of early-day authorities, including *Teshuvot ha-Rashba*, VII, no. 179 and *Teshuvot ha-Rivash*, no. 4, declare that a person who publicly desecrates the Sabbath or who does not accept the teachings of the Sages is deemed to be a heretic and it is forbidden to drink wine that he or she has touched.⁶ That ruling is accepted by *Bet Yosef*, *Yoreh De'ah* 119 and *Yoreh De'ah* 124, and applied to Marranos by Rema, *Yoreh De'ah* 124:9. In support of that position, *Bet Yosef*, *Yoreh De'ah* 119 and *Mishneh le-Melekh*, *Hilkhot Shegagot* 3:7, cite *Teshuvot ha-Rashba* who attributes that view to Rabbenu Yonah.⁷ *Nekudat ha-Kesef*, *Yoreh De'ah* 124:2, concurs with that ruling.

II. MARRIAGE WITH SABBATH-VIOLATORS

Hazon Ish, *Yoreh De'ah* 2:23, draws attention to the obvious distinction between a non-Jew with whom a marriage is prohibited and a Jewish heretic with regard to whom there is no similar restriction,⁸ but does not challenge the binding nature of the rule concerning wine touched by a Sabbath-violator as codified by *Bet Yosef* and Rema.⁹ However, much earlier,

⁵ See R. Jacob Breisch, *Teshuvot Helkat Ya'akov*, I, no. 76, who inclines toward that view. See also *infra*, note 6.

⁶ *Sefer ha-Eshkol*, III, *Hilkhot Shehitah*, sec. 2 and *Hilkhot Yayin Nesekh*, sec. 58, cites that view in the name of *Ba'al Halakhot Gedolot*, no. 60, *Hilkhot Shehitah*. Cf., *Teshuvot Helkat Ya'akov*, I, no. 76, sec. 1, who advances a conflicting interpretation of *Ba'al Halakhot Gedolot's* position based upon a variant reading quoted by *Or Zaru'a*, *Hilkhot Shehitah*, no. 367.

⁷ See Rabbenu Yonah, *Sha'arei Teshuvah* 3:142. See also R. Shimon ben Zemah Duran, *Tashbaz*, III, no. 312; R. Chaim Joseph David Azulai, *Birkei Yosef*, *Yoreh De'ah* 124:2; and *Or Zaru'a*, *Hilkhot Shehitah*, no. 367. Cf., the analysis of *Tashbaz* advanced by *Helkat Ya'akov*, *ibid.*, sec. 3.

Bet Yosef, *Yoreh De'ah* 268, cites Rabbenu Yeruham as declaring that even a person who performs forbidden labor on *Shabbat* for personal pleasure or benefit (*le-tei'avon*), rather than wantonly, is deemed a heretic and so rules in *Shulhan Arukh*, *Yoreh De'ah* 2:5. The discussion of R. Chaim Hirschensohn, *Malki ba-Kodesh*, II, 143-160, endeavoring to show that this position reflects an individual view and was intended only as hyperbole is simply incorrect. See R. Ovadiah Yosef, *Teshuvot Yabi'a Omer*, I, *Yoreh De'ah*, no. 11, sec. 25. The view of R. Moshe Feinstein, *Iggerot Mosheh*, *Orah Hayyim*, V, no. 37, sec. 8, will be discussed later in the text.

⁸ See *supra*, note 2.

⁹ *Pithei Teshuvah*, *Yoreh De'ah* 112:1, cites *Tiferet le-Mosheh*, *Yoreh De'ah* 113:9, who rules that the similarly motivated prohibition against consuming bread baked by a non-Jewish householder does not extend to bread baked by a *mumar*, or apostate, for precisely the same reason. *Tiferet le-Mosheh* reasons that, while bread baked by a non-Jewish householder is forbidden in order to deter intermarriage, there is no

R. Moshe Sofer, *Teshuvot Hatam Sofer, Yoreh De'ah*, no. 120 and IV, no. 83, asserted that in equating Sabbath-desecrators with apostates the Sages, in effect, declared them to be non-Jews, thereby placing them outside the pale of the community by virtue of rabbinic decree as a form of punishment¹⁰ and with intent imposed all rabbinic restrictions pertaining to preparation and handling of food by non-Jews upon

prohibition against marrying the children of Sabbath-violators and hence there is no reason to forbid bread baked by their parents. *Tiferet le-Mosheh* notes that *Bet Yosef* cites authorities who maintain that the prohibition against eating food cooked by a non-Jew was enacted in order to prevent inadvertent consumption of non-kosher food, in which case it would it apply to a Sabbath-violator as well. Cf., *Pithei Teshuvah, Yoreh De'ah* 113:1. Many latter-day authorities including *Pri Hadash, Yoreh De'ah* 112:3, cited by *Pri Megadim, Yoreh De'ah, Sifte'i Da'at* 112:2; R. Judah Aszod, *Teshuvot Yehudah Ya'aleh, Yoreh De'ah*, no. 31; R. Moshe Schick, *Teshuvot Maharam Shik, Orah Hayyim*, no. 281; *Teshuvot Tuv Ta'am va-Da'at, Telita'i*, II, no. 16; R. Shlomo Ganzfried, *Kizur Shulhan Arukh* 72:2; *Kaf ha-Hayyim, Yoreh De'ah* 112:11; R. Shalom Mordecai Schwadron, *Teshuvot Maharsham*, II, no. 262; R. Mordecai Winkler, *Teshuvot Levushei Mordekhai*, II, *Even ha-Ezer*, no. 18 and III, no. 184; and R. David Judah Zilberstein, *Shevilei David, Yoreh De'ah* 119:2, rule that not only wine but also bread baked by a *mumar* is forbidden. Food cooked by a *mumar* is also prohibited by *Kizur Shulhan Arukh* 72:2; *Kaf ha-Hayyim, Yoreh De'ah* 113:1; and *Hazon Ish, Yoreh De'ah* 2:23. Cf., *Teshuvot ve-Hanbagot*, I, no. 470 and II, no. 386. Many authorities, including *Kizur Shulhan Arukh* and *Kaf ha-Hayyim* explicitly couple Sabbath-violators with *mumrim*.

Maharam Schick also questions whether it is permitted to slaughter an animal on *Yom Tov* on behalf of a Sabbath-violator. Regarding the same question, in a different guise, *Mishnah Berurah* 512:2 rules that it is forbidden to cook on *Yom Tov* on behalf of a Sabbath-desecrator. That issue is further discussed by R. Moshe Sternbuch and in letters addressed to him by R. Ya'akov Yisra'el Kanievsky published in the former's *Mo'adim u-Zemanim*, VIII, no. 46.

Among those who permit bread baked and food cooked by Sabbath-violators are R. Hayyim ibn Attar, *Hefez ha-Shem, Hullin* 4b; *Teshuvot Hatam Sofer*, VI, no. 83; *Iggerot Mosheh, Yoreh De'ah*, I, no. 45 and R. Eliezer Waldenberg, *Teshuvot Ziz Eli'ezer*, IX, no. 41. See also *infra*, note 12 and accompanying text.

Iggerot Mosheh, Yoreh De'ah, I, no. 46, expresses some doubt with regard to the permissibility of bread and food cooked by Sabbath-violators but is "inclined" to a lenient view. However, he regards the milk of Sabbath-violators in a different light. Since they are nonobservant, there is reason to forbid their milk, not because of rabbinic legislation giving them the status of non-Jews, but because of a concern that they might not hesitate to adulterate their milk with non-kosher milk. Nevertheless, he regards their milk as permissible in locales in which the milk of non-kosher species is viewed with repugnance.

¹⁰ Cf., *Teshuvot Hatam Sofer, Even ha-Ezer*, I, no. 108, s.v. *u-lefi aniyut da'ati*. Taken literally, Hatam Sofer's comments reflect the thesis that the rabbinic power of expropriation includes the power to abrogate a parental-filial relationship, thereby, in effect, rendering the apostate *sui generis* and hence, quite literally, not of Jewish parentage. See also Hatam Sofer's gloss on *Orah Hayyim* 31:1 as well as *Shakh, Yoreh De'ah* 159:5. Cf., however, this writer's *Be-Netivot ha-Halakhah*, IV, 169-177.

Sabbath-desecrators as well.¹¹ *Hazon Ish*, *Yoreh De'ah* 49:7, similarly opines that the prohibition is a form of penalty that applies even to heretics and Sabbath-violators with whom marriage is permitted. Alternatively,¹² it may be argued that, as is often the case with regard to rabbinic decrees, in conferring the status of an idolater¹³ upon a person who publicly desecrates the Sabbath, the Sages established a general principle admitting of no exception (*lo plug*).¹⁴ Accordingly, wine touched by an idolater or Sabbath-desecrator is forbidden even though the rationale upon which the prohibition is based does not apply.¹⁵ A depiction of the status of a Sabbath-violator as a heretic,¹⁶ together with a clear statement recognizing

¹¹ Cf., however, Hatam Sofer's *Petihah Kollelet: Hiddushei Hilkhot Yesodei ha-Torah* published as an addendum to the Prague 5586 edition of *Hiddushei ha-Ramban* on *Kiddushin* in which Hatam Sofer expresses doubt with regard to the inclusion of Jewish heretics in the edict prohibiting wine touched by a non-Jew. Hatam Sofer expressly contradicts the view set forth in this responsum in his novellae on *Shulhan Arukh*, *Yoreh De'ah* (London, 1955) 224:4, where he rules that the edict prohibiting wine touched by a non-Jew is not applicable to a Sabbath-violator.

¹² *Teshuvot ve-Hanhagot*, I, no. 470 and II, no. 400, offers a third possibility, *viz.*, that Sabbath-violators were classified as non-Jews and their wine forbidden as a means of preventing all forms of social intercourse in order to curtail their influence over observant Jews. If so, he contends, there is no basis for leniency with regard to modern-day Sabbath-violators; quite to the contrary, the less odious their behavior, the more pernicious is their negative influence. However, Rabbi Sternbuch's analysis of the talmudic dicta equating Sabbath-desecrators with idol-worshippers is strained and is not reflected in the writings of early-day authorities.

¹³ R. Isaac Schorr, *Tevu'ot Shor* 11:12, maintains that the legislated status of a Sabbath-desecrator is not simply that of a gentile but of an actual idol-worshipper. That view leads to the counterintuitive conclusion that, according to the authorities who maintain that benefit may be derived from the wine of a non-Jew who is not an idolater, no benefit may be derived from the wine of a Sabbath-violator even though he is not an actual idolater.

¹⁴ That explanation of the nature of the decree is reflected in a comment of *Hiddushei ha-Ran*, *Hullin* 10b. See also the comments of *Teshuvot Har Zevi*, *Yoreh De'ah*, no. 105, s.v. *u-be-inyan*.

¹⁵ See *Teshuvot ha-Rashba*, I, no. 248. Rashba's interlocutor sought to permit bread baked by a priest who, having taken a vow of celibacy, had no daughters. Rashba dismisses that contention on the grounds that many priests had children born before entering the priesthood, members of the hierarchy had spouses, and all others "did not have chaperones." More fundamentally, Rashba counters that such edicts are binding even in situations in which the underlying rationale does not pertain. Similarly, *Kaf ha-Hayyim*, *Yoreh De'ah* 112:9-11, cites authorities who forbid bread baked by children, eunuchs who have no children, bread baked in the royal palace or the homes of government officials who would not consider marriage with Jews, as well as of Jewish idol-worshippers with whom marriage is permissible. Although there is no fear of intermarriage, according to these authorities, food cooked by such individuals is forbidden because of *lo plug*.

¹⁶ The question of whether a Sabbath-violator is accorded the status of a non-Jew arises with regard to other areas of Jewish law as well. A question with regard to the

that it is permitted to contract a marriage with the daughter of a heretic, is inherent in the comments of Ramban and Ran, *Hullin* 4b.¹⁷

status of a Sabbath-violator arises with regard to carrying on *Shabbat* from a private domain to a common area or *vice versa*. Jews who share a courtyard with gentiles must pay the gentile a nominal rental for use of the courtyard in order to carry between their homes and the courtyard on *Shabbat*. *Shulhan Arukh, Orah Hayyim* 385:3, rules that apostates and Sabbath-violators are to be treated as gentiles from whom permission to carry must be rented. A single non-Jewish resident does not render carrying in such areas forbidden unless there are at least two Jewish householders who also share the common area and who require an *eiruv* to render carrying permissible. See *Shulhan Arukh, Orah Hayyim* 382:1.

The reason that a single Jewish householder is not required to take any action in order to carry in a common area is that pagans were suspected of harboring murderous intentions and hence the phenomenon of a Jew living alone in a courtyard together with a gentile was a rarity that was ignored by the Sages in promulgating Sabbath edicts. A Jewish apostate was not suspected of such malevolent intentions and hence, since there would have been no reticence in sharing a common courtyard, there would have been no logical reason to dispense with the requirement of renting the right to use the common areas on the Sabbath from an apostate. R. Elijah of Lublin, *Teshuvot Yad Eliyahu*, no. 12, does indeed draw that conclusion in distinguishing between a gentile and an apostate in this regard. *Korban Netanel*, in his commentary on Rosh, *Eruvin* 6:13, sec. 40, and R. Noah Chaim Berlin, *Azei Almogim* 385:4, disagree and argue that the edict requiring apostates to be treated as non-Jews was global in nature and admits of no exceptions even in circumstances in which there would be logical reason for not applying the rule. Cf., R. Jacob Orenstein, *Yeshu'ot Ya'akov, Orah Hayyim* 385:2. The views of *Yad Eliyahu* and *Korban Netanel* are reviewed by R. Moshe Grunwald, *Teshuvot Arugat ha-Bosem, Orah Hayyim*, no. 76. See also R. Solomon Judah Tabak, *Teshurat Shai*, no. 318. See also *infra*, note 36.

Regarding counting a Sabbath-violator as a member of a *minyán* or according him an *aliyah*, see *Pri Megadim, Orah Hayyim, Eshel Avraham* 141:8 who rules that any person disqualified from serving as a witness cannot be called to the reading of the Torah. Cf., *Teshuvot ve-Hanbagot*, I, no. 472. See also *infra*, note 34 and accompanying text.

R. Judah Grunwald, *Teshuvot Zikbron Yehudah, Orah Hayyim*, no. 99, cites *Teshuvot Bet Yozer*, who suggests that an apostate cannot categorically be treated as a non-Jew for all purposes of Jewish law since, if he experiences pangs of conscience and feelings of repentance, his status reverts to that of a Jew. Cf., *Nahal Eshkol*, III, *Hilkhot Shehitah* 2:9. *Shitah Mekubbezet* reportedly states that it is for this reason that one may not lend money on interest to a *mumar*. *Zikbron Yehudah* is unwilling to conclude that a contemporary Sabbath-violator has the status of an apostate with regard to regulations governing carrying on *Shabbat*, in part because of this reason and in part due to the position of Mahari Aszod that will be discussed presently.

¹⁷ See also *Teshuvot Bet Yosef, Dinei Gittin*, no. 4b. See however, R. Nathan Gestetner, *Teshuvot Le-Horot Natan*, I, no. 39, sec. 3, who understands Ramban and *Teshuvot ha-Rashba* as asserting that marriage with a Sabbath-desecrator is rabbinically prohibited for an entirely different reason, *viz.*, fear of bastardy.

Cf., R. Samuel Ehrenfeld, *Teshuvot Hatan Sofer*, no. 28, who asserts that *Hiddushei ha-Ran, Hullin* 4b, implies that marriage with an apostate is rabbinically prohibited. *Hatan Sofer* expresses uncertainty with regard to whether that is the case with regard

Although certainly a minority, there are authorities who do prohibit marriage with Sabbath-violators. For those authorities, banning wine handled by a Sabbath-desecrator was entirely cogent. R. Moshe Schick, *Teshuvot Maharam Shik, Orach Hayyim*, no. 305, rules that it is forbidden to marry the daughter of an idolater.¹⁸ Maharam Schick dismisses the above-cited comments of Ran arguing that Ran's position flows from his view that intermarriage is biblically prohibited only with members of the Seven Nations and hence cannot apply to a Jewish idolater¹⁹ whereas the normative position, as recorded in *Shulhan Arukh, Even ha-Ezer* 16:1, is that intermarriage with any gentile is forbidden.²⁰

R. Eliezer Deutsch, *Teshuvot Pri ha-Sadeh*, I, no. 62, advances a more moderate view. *Pri ha-Sadeh* takes note of the argument that, since wine touched by a non-Jew who does not engage in idol-worship was banned only as a means of preventing intermarriage, there is no reason similarly to prohibit wine touched by a Sabbath-violator because in the latter case there exists no impediment to marriage. Apparently conceding that there is no absolute prohibition against such marriages, *Pri ha-Sadeh* responds that "it is not proper (*eino ra'ui*)" to marry the progeny of a woman who does not observe the laws of family purity. *Pri ha-Sadeh* concedes that no

to a Sabbath-desecrator as well. *Teshuvot Maharam Shik, Even ha-Ezer*, no. 14, apparently understands the statement of *Hiddushei ha-Ran* to be more limited. The Gemara, *Avodah Zarah* 36b, states that, apart from other prohibitions against consorting with non-Jews, there is a particular prohibition forbidding gentile women to *kohanim*. Maharam Schick states that, according to *Hiddushei ha-Ran*, since a Jewish idolater is categorized as a pagan, the daughter of a Jewish idolater is included in the prohibition binding upon *kohanim*. Cf., R. Mordecai Winkler, *Teshuvot Levushei Mordekhai*, II, *Even ha-Ezer*, no. 18, who ascribes a more sweeping view to Maharam Schick.

See also the view of *Hatam Sofer* as expressed in *Teshuvot Hatam Sofer*, VI, no. 83, and of R. David Sikili, *Kiryat Hanah David*, no. 2, cited *infra*, note 24 and accompanying text who ascribes that view to R. Shlomoh Luria.

¹⁸ Nevertheless, marriage with all gentiles is forbidden at the very minimum by virtue of rabbinic decree. If so, Maharam Schick's opinion is a bit puzzling: having declared the apostate to possess the status of a gentile, it should follow that the rabbinic prohibition against intermarriage would apply, just as Maharam Schick asserts that it applies if the prohibition is biblical in nature. Maharam Schick may have reasoned that such a ban could not have been enacted because it would represent a *gezeirah le-gezeirah*, i.e., a rabbinic prohibition superimposed upon another rabbinic prohibition. Cf., *Teshuvot Ziz Eli'ezer*, IX, no 41, sec. 5.

¹⁹ Cf., *Teshuvot Maharam Shik, Even ha-Ezer*, no. 14. See also *Teshuvot Hatam Sofer, Even ha-Ezer*, I, no. 22 and VI, no. 83 and R. Shimon Grunwald, *Teshuvot Maharash*, II, no. 49, who permit marriage with Sabbath-violators.

²⁰ See also the opinion of R. Menachem ha-Bavli cited in *Teshuvot Bet Yosef, Dinei Gittin*, no. 14; R. Shimon Sofer, *Hitorerut Teshuvah*, I, no. 12; and *Darkei Teshuvah* 113:15.

prohibition was enacted against drinking wine touched by a Sabbath-observer who disregards the rules of *niddah*. Nevertheless, he contends, the prohibition against drinking wine touched by a non-Jew extends even to wine touched by a Sabbath-violator who also fails to observe the laws of family purity since “it is not proper” to marry the issue of such a union.

That argument, however, lacks cogency. *Pri ha-Sadeh* candidly concedes that at no time was the wine of a person who fails to observe *niddah* interdicted. If it is also conceded that Sabbath-violators were not classified by the Sages as idolaters for purpose of forbidding wine touched by them, there is no basis for concluding that wine touched by persons who violate the Sabbath and also transgress the laws of *niddah* was forbidden. Moreover, although the progeny of a woman who does not observe the laws of *niddah* are described as *pagum*, or “tainted,” marriage with such individuals was never prohibited. Indeed, *Iggerot Mosheh, Even ha-Ezer*, IV, no. 14 and no. 23, sec. 3, declares that the appellation “*pagum*” engenders no halakhic consequence whatsoever.

Another authority who maintains that marriage with an idol-worshipper was formally interdicted is R. Abraham Bornstein, *Teshuvot Avnei Nezer, Yoreh De'ah*, no. 92. *Avnei Nezer* demonstrates that the wine of a Jewish idol-worshipper or heretic is indeed forbidden, not despite the fact that marriage with them is prohibited, but precisely because such marriage was forbidden. Ran, *Avodah Zarah* 29b, cites Rashbam who asserts that, since instances of actual libations were few in number, there would not have been a blanket prohibition forbidding all such wine but for the consideration of marriage. Accordingly, concludes *Avnei Nezer*, the sole reason for prohibiting wine touched by a Jewish heretic is also a concern with regard to marriage. *Avnei Nezer* further comments that although, as reported by the Gemara, *Hullin* 4b, Jehoshaphat drank wine together with Ahab, he did so only because, at that early time in Jewish history, the rabbinic edict against drinking wine touched by a non-Jew had not yet been promulgated. The Gemara states explicitly that, when promulgated, the edict extended to heretics such as Ahab as well. As to the rationale for including apostates and heretics in the ambit of the prohibition, *Avnei Nezer* asserts that, in declaring such individuals to be categorized as non-Jews, the Sages *ipso facto* prohibited marriage with them as well. That position is quite similar to the earlier-cited position of Hatam Sofer, but *Avnei Nezer* goes beyond Hatam Sofer in ruling that marriage with the child of such an individual is also prohibited. However, unlike Hatam Sofer, *Avnei Nezer* asserts that the Sages reasoned that the daughter of an apostate was quite likely to be an apostate as well. Marriage with such a woman was forbidden, not because she is the daughter of an apostate, but because she herself is an

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apostate. *Avnei Nezer* argues that, since marriage with an apostate was forbidden, there was every reason to forbid wine touched by—or bread baked by—an apostate. Hence, concludes *Avnei Nezer*, those foods and beverages were forbidden as a means of discouraging interdicted marriages.²¹

Hazon Ish, Yoreh De'ah 2:23, also cites the discussion of the Gemara regarding Jehoshophat and Ahab to demonstrate that wine touched by a Jewish heretic who is not a confirmed idol-worshipper is included in the prohibition. However, contrary to *Avnei Nezer*, *Hazon Ish* asserts that there is no prohibition against marrying the daughter of such an individual. *Hazon Ish* notes that the Gemara states that the meat of animals slaughtered by Ahab was permitted because he was not suspected of dedicating the slaughter to a pagan deity. Nevertheless, even though similarly not subject to suspicion with regard to wine, we are informed that Ahab would have been subject to the edict banning the wine with an idol-worshipper. The only reason for that distinction, argues *Hazon Ish*, is that the Gemara regarded such individuals to be tantamount to gentiles but only for purposes of the edict against drinking wine touched by them. Many early-day authorities maintain that the wine of a gentile who does not habitually serve idols was prohibited primarily because of fear of intermarriage but even benefit other than drinking was also interdicted because of a secondary fear that, on occasion, a libation might have been poured. According to those authorities, the wine of a Jew suspected of even occasional idol-worship was included in that ban when it was enacted.

However, argues *Hazon Ish*, the discussion of the Gemara, *Hullin 4b*, serves to establish that the wine of a Jewish idol-worshipper is forbidden even if the Jew is only an occasional idol-worshipper who is unlikely to have performed an idolatrous libation. *Hazon Ish* maintains that, if it is only forbidden to drink wine touched by a non-Jew who does not at all worship idols while other forms of benefit are permitted, the prohibition limited to drinking such wine must be based solely upon fear of intermarriage. Accordingly, concludes *Hazon Ish*, there is no basis to prohibit drinking the wine of a Jew who does not worship idols but who desecrates the Sabbath since there is no reason to suspect that he has performed an idolatrous libation and marriage with his daughter is entirely permissible. *Hazon Ish* cites the contradictory view of *Teshuvot ha-Rashba* but professes ignorance of a source for that view.

²¹ In light of Hatam Sofer's gloss to which reference was made, *supra*, note 10, it might be argued that progeny born to a Jew after he has become a Sabbath-desecrator are stripped of parental relationship and hence deprived of their status as Jews regardless of the child's observance or nonobservance. That argument was advanced neither by Hatam Sofer nor by *Avnei Nezer*.

R. Judah Aszod, known as Mahari Aszod, *Teshuvot Yehudah Ya'aleh, Yoreh De'ah*, no. 50, who, as will be shown, found reason to distinguish between Sabbath-violators of his day and those of the talmudic period, nevertheless was stringent with regard to the bread and food of Sabbath-violators branded as heretics. Mahari Aszod contends that, in categorizing Sabbath-violators as idolaters, the Sages applied the selfsame restrictions imposed upon gentiles upon Sabbath-violators as well. Consequently, he maintains, it is rabbinically forbidden to contract a marriage with a Sabbath-violator. Prohibitions against bread, cooked food, and wine are equally applicable, he contends, to Sabbath-violators by virtue of their legislated status as non-Jews.²² That position is entirely similar to the view later advanced by *Avnei Nezer*.

Mahari Aszod demonstrates the validity of this view on the basis of a statement of *Pri Hadash, Yoreh De'ah* 112:2. *Pri Hadash* rules that bread baked by Karaites is forbidden in light of the declaration of *Teshuvot Mabib*, I, no. 38, to the effect that Karaites who follow their own calendar are Holy Day violators. There is indeed a prohibition against marriage with a Karaite as recorded by Rema, *Even ha-Ezer* 4:37, and hence it is quite understandable that bread baked by a Karaite is forbidden. Predicating the prohibition against partaking of Karaite bread upon the fact that Karaites desecrate the Holy Days is not at all cogent unless it is also posited that it is forbidden to marry individuals who violate Sabbath and Holy Day strictures.²³

Teshuvot Hatam Sofer, VI, no. 83, advances the view that a person who has severed ties with the Jewish community and has become “assimilated among the gentiles” has the status of a non-Jew and it is forbidden to marry his daughter, whereas a Jewish idolater who has not become assimilated and whose children may identify themselves as Jews do not have that status.²⁴ Nevertheless, as earlier noted, *Hatam Sofer* recognizes that wine touched by Sabbath-violators is forbidden by way of penalty.

²² Mahari Aszod makes the further point that marriage to a Sabbath-violator may not have been formally interdicted, but such a marriage must nevertheless be eschewed since a Sabbath-violator has no credibility with regard to *kashrut* or matters of family purity. Cf., *Teshuvot Maharam Shik, Orah Hayyim*, no. 281 and *Hitorerut Teshuvah*, I, no. 12.

²³ Those who permit wine handled by a Karaite, e.g., *Taz, Yoreh De'ah* 124:2, do not necessarily permit wine handled by a Sabbath-violator since there are grounds for distinguishing between profanation of Sabbath and violation of Holy Day restrictions. See *Sedei Hemed, ma'arekhet ha-mem*, no. 86, s.v. *ve-ha-ga'on*.

²⁴ This is also the position of *Kiryat Hanah David*, no. 2, who ascribes that view to R. Shlomoh Luria.

III. CONTEMPORARY SABBATH-VIOLATORS

I. R. Jacob Ettlinger

As a practical matter, many modern-day authorities distinguish between present-day Sabbath transgressors and those of earlier ages. Observance of *Shabbat* is affirmation of belief in God as the creator of the universe. Hence the Sages understood that desecration of the Sabbath could not be entertained other than pursuant to rejection of belief in God as Creator. As stated by Rashi, *Hullin* 5a, since belief in God as Creator and violation of Sabbath restrictions is incongruous, Sabbath violation was assumed to constitute demonstrative evidence of heresy. The first authority to challenge the validity of that linkage in modern-day society was R. Jacob Ettlinger in his *Teshuvot Binyan Zion ha-Hadashot*, no. 23. Changes in commercial, social and religious life during the eighteenth and nineteenth centuries in Western Europe had resulted in widespread erosion of Sabbath observance. Writing in mid-nineteenth century Germany, *Binyan Zion* presents three distinct reasons for distinguishing between contemporary Sabbath-violators and those of the talmudic period: 1) since nonobservance of the Sabbath had become commonplace many contemporary Sabbath-violators regarded their actions as normatively permissible.²⁵ *Binyan Zion* presumably assumes that they regarded Sabbath-observance as merely an act of piety.²⁶ 2) *Binyan Zion* points to the anomalous, but hardly uncommon, behavior of individuals who affirmed God's role as Creator of the universe in reciting *kiddush* but who then proceeded to transgress *Shabbat* restrictions in pursuit of a livelihood.²⁷ Such individuals

²⁵ See also R. Chaim Ozer Grodzinski, *Teshuvot Abi'ezer*, III, no. 25, who accepts this contention but adds that, for purposes of disqualification from serving as a witness, *Mishneh le-Melekh*, *Hilkhot Malveh ve-Loveh* 4:6, s.v. *shtar*, maintains that a person who makes such an error is rabbinically disqualified.

²⁶ Cf., *Iggerot Mosheh*, *Yoreh De'ah*, I, no. 160, who makes the same point with regard to acceptance of *mizvot* on the part of converts. However, in *Even ha-Ezer*, II, no. 20, *anaf* 4, he expresses incredulity with regard to this argument as formulated by *Binyan Zion* and declares that "it is incorrect to consider them as accepting as permissible such a stringent prohibition and [one] that is well known to the extent that even the gentiles know that, to Jews, labor is forbidden on that day."

²⁷ *Teshuvot Yabi'a Omer*, *Yoreh De'ah*, I, no. 11, sec. 18, reports that, when yet a young man serving as a *dayyan* in Egypt, he became aware of a phenomenon of large numbers of individuals who worked on *Shabbat* in order to earn a livelihood but who rose early on Saturday morning in order to attend services before going to their workplaces and who also scrupulously refrained from smoking and the like throughout the Sabbath day.

may be transgressors but can hardly be considered heretics.²⁸ 3) In turn, their children grew up in invincible ignorance of *Shabbat* laws and hence, he argues, have the halakhic status of infants “captured by the heathens” who cannot be held accountable for their actions.²⁹ Neither such parents nor their progeny, contended *Binyan Zion*, can be regarded as heretics on the basis of *Shabbat* violations unless they are knowledgeable and desecrate the Sabbath both publicly and wantonly. In support of that argument *Binyan Zion* cites R. Moses di Trani, *Teshuvot Mabit*, no. 37, who, during an earlier period of Jewish history, made that argument with

²⁸ R. Chaim Eleazar Shapiro, *Teshuvot Minhat Elazar*, I, no. 74, offers a rather odd response to *Binyan Zion*'s second argument. *Minhat Elazar* notes that one must affirm God as Creator continuously. Recitation of *kiddush* and the Sabbath prayers constitute an affirmation only during the period in which such pronouncements are actually made. Acts of Sabbath-transgression, argues *Minhat Elazar*, serve as a denial of God resting during the balance of the Sabbath day. That rebuttal is hardly apropos. There is no requirement for an ongoing positive affirmation of God as Creator. The issue is that transgression of Sabbath laws is presumptive evidence of denial of that principle and *Binyan Zion*'s point is that affirmation in prayer of God as Creator serves to negate that presumptive inference. *Minhat Elazar* reiterates his rejection of *Binyan Zion*'s view in his addenda to *Teshuvot Minhat Elazar*, *Kuntres Shiyurei Minbah*, no. 74.

²⁹ That point is also accepted by *Teshuvot Zikhron Yehudah*, no. 99. See also *Hazon Ish*, *Yoreh De'ah* 1:7 and 2:28. R. Yitzchak Ya'akov Weisz, *Teshuvot Minhat Yitzchak*, III, no. 26, sec. 4, regards the view of *Binyan Zion* as a *dohek gadol*, i.e. to be relied upon only with great difficulty.

Hazon Ish, *Yoreh De'ah* 1:6, writes that if a “child held captive among pagans” has received instruction and has become knowledgeable but remains adamant and refuses to return to the practice of Judaism, he is to be accounted a *mumar*. See also *Kol ha-Torah*, no. 71, p. 336. Cf., *Hitoverut Teshuvah*, I, no. 12 and R. Benjamin Silber, *Oz Nidberu*, IX, no. 55, who question whether that assumption is universally valid. See also R. Shlomoh Zevi Schick, *Teshuvot Rashban*, no. 139, s.v., *mikhtavo*.

In a discussion of an entirely different matter, *Iggerot Moshav*, *Even ha-Ezer*, I, no. 82, *anaf* 11, s.v. *ve-amina*, Rabbi Feinstein comments that it is reasonable to assume that such individuals should not be equated with persons “held captive among the pagans.” That categorization, asserts *Iggerot Moshav*, includes only persons who literally know no better because they were not raised among Jews. In contrast, the Sabbath-violators under discussion grew up among practicing Jews often having observant, believing parents. Although they were subject to conflicting influences, *Iggerot Moshav* maintains that permitting themselves to be intellectually seduced by transgressors, particularly in the face of parental example, occurs only by operation of free choice and hence such a person cannot be deemed “a captive child.”

Although writing in a non-halakhic context, R. Abraham I. Kook, *Iggerot Re'iyah*, I, no. 138, espouses a diametrically-opposing view. Rabbi Kook speaks of the power of contemporary culture and mores as rising to the level of *force majeure* and hence regards contemporary transgressors, despite their knowledge of Judaism, as acting under “absolute duress.”

regard to Karaites.³⁰ *Binyan Zion* concludes that “many of the transgressors of the generation” are similar to Karaites in their ignorance and, moreover, unlike the Karaites who rejected other fundamental practices of Judaism, particularly as pertaining to circumcision, marriage and divorce, contemporary Sabbath-violators do observe other commandments.

Binyan Zion's view is cited and endorsed by R. Isaac Schmelkes, *Teshuvot Bet Yizhak, Yoreh De'ah*, II, *Kuntres Aharon*, no. 23 and *Even ha-Ezer*, II, no. 65;³¹ R. Mordecai Schwadron, *Teshuvot Maharsham*, I, no. 121; R. Chaim Ozer Grodzinski, *Teshuvot Abi'ezer*, III, no. 25; R. Chaim Chizkiyahu Medini, *Sedei Hemed, Kelallim, ma'arekhet ha-mem*, no. 86, s.v. *ahar zman*; and was a weighty consideration in a ruling issued by R. Ovadiah Yosef, *Teshuvot Yabi'a Omer*, I, *Yoreh De'ah*, no. 11, sec. 18.³²

2. R. Moshe Feinstein and R. David Zevi Hoffmann

R. Moshe Feinstein, *Iggerot Mosheh, Orah Hayyim*, I, no. 33, *Even ha-Ezer*, II, no. 20, *anaf*⁴, and *Yoreh De'ah*, IV, no. 58, sec. 3, reaches the same conclusion as *Binyan Zion* but introduces an intermediate step in the argument. Categorization of Sabbath-desecrators as heretics is limited to those who transgress publicly. *Iggerot Mosheh* explains that the distinction lies in the fact that even a firm believer may succumb to temptation because of economic concerns or other temptations. However, when the act of Sabbath-violation is performed publicly, such motives remain *in pectore* and the observer sees naught but an act of heresy. However, contends *Iggerot Mosheh* somewhat tentatively, perhaps, in a society in which economically and socially motivated Sabbath violation is rampant and is widely known to be so even among believers, public transgression is not *ipso facto* an act of heresy. In *Even ha-Ezer*, II and *Yoreh De'ah*, IV, *Iggerot*

³⁰ *Teshuvot Minbat Elazar*, I, no. 74, takes issue with *Binyan Zion*'s inference on two grounds: 1) Mabit's language is tentative and, more significantly, Mabit concedes that Karaites, although not biblically disqualified from serving as witnesses, are nevertheless disqualified from serving in such capacity by rabbinic decree. However, *Minbat Elazar* fails to establish the crucial point, *viz.*, that Sabbath-violators such as those described by *Binyan Zion* have been declared heretics by virtue of rabbinic decree. 2) *Minbat Elazar* asserts that Mabit's ruling was limited to Karaites who lived in communities in which there were no Rabbanite inhabitants and hence had no exposure to traditional Judaism. That conjecture is almost certainly inaccurate. See *Teshuvot Yabi'a Omer*, I, *Yoreh De'ah*, no. 11, sec. 18.

³¹ Cf., R. Samuel Baruch Genut, *Kol ha-Torah*, Nisan 5771, p. 331, note 1, who appears to have misread *Bet Yizhak*'s comments.

³² See also *Teshuvot Helkat Ya'akov*, I, no. 76.

Mosheh limits his permissive ruling to individuals who are observant in other areas. It is only such a person's observance of other commandments, contends *Iggerot Mosheh*, that enables one to conclude that Sabbath desecration on his part is not born of heretical views.

The same argument was formulated several decades earlier in a somewhat different manner by R. David Zevi Hoffmann, *Teshuvot Melammed le-Ho'il, Orah Hayyim*, no. 29. The distinction between public and private transgression may be presumed to lie in the fact that, recognizing the gravity of his prospective misdeed, shame and embarrassment will constrain even a person who cannot otherwise resist temptation from transgressing in the presence of others who will hold him in derision. In contemporary times, as a result of desensitization in the wake of large-scale transgression, no such inhibition exists. Hence, concludes *Melammed le-Ho'il*, in our age, public desecration is no more evidence of heresy than was private desecration in days gone by.

Despite his essential agreement with *Binyan Zion's* view, expressed in *Iggerot Mosheh, Orah Hayyim*, I, no. 33, in an undated responsum published earlier in that same volume, *Iggerot Mosheh, Orah Hayyim*, I, no. 23, devoted to the question of whether Sabbath-violators may be counted as a member of a quorum of ten for purposes of prayer and the reading of the Torah, Rabbi Feinstein does not take cognizance of contemporary socio-religious realia as a mitigating factor. *Iggerot Mosheh* does, however, note that the definition of a "congregation" as consisting of a minimum of ten males is derived from Numbers 14:27. Scripture depicts as "this evil congregation" the ten dissident spies sent by Moses to scout the Promised Land. Since those spies denied basic principles of faith, argues *Iggerot Mosheh*, it must be concluded that even heretics are included in the statutory quorum of ten constituting a community or a public. Both "public" profanation of the Divine Name and "public" sanctification of the Divine Name such as occurs in prayer can occur only in the presence of that quorum.³³ *Iggerot Mosheh* further suggests that, for purpose of prayer and the like, a heretic may be included in the quorum because, despite his lack of belief, he remains fully obligated to observance of all commandments. It may, however, be countered that, if Hatam Sofer's thesis is accepted, heretics and Sabbath-desecrators have been rendered gentiles by virtue of rabbinic decree for all purposes consequent upon that status. It should also be noted that R. Zevi Ashkenazi, *Teshuvot Hakham*

³³ That argument was earlier advanced by R. Jacob Horowitz, writing in the Polish Torah journal *Ha-Be'er*, VIII (5693), no. 3, sec. 53 and rejected by *Kiryat Hanah David*, no. 2, s.v. *ve-hen ha-yom*.

Zevi, no. 38; *Pri Megadim*, *Orah Hayyim*, *Eshel Avraham* 55:4; *Teshuvot Hatan Sofer*, no. 28; and R. Naphtali Zevi Judah Berlin, *Teshuvot Meshiv Davar*, I, no. 9, rule that the Sabbath-violator described by the Gemara may not be included in a *minyán*. That is apparently also the view of *Magen Avraham* 199:2.³⁴

In addition, in *Iggerot Mosheh*, *Yoreh De'ah*, II, no. 132, in responding to an entirely different question, Rabbi Feinstein states unequivocally that wine touched by a Sabbath-violator is forbidden and cautions a student against partaking of unboiled wine touched by a nonobservant relative.³⁵ That is apparently the view expressed by *Iggerot Moshe* in *Orah Hayyim*, III, no. 22 as well.

3. R. Judah Aszod

A contemporary of *Binyan Zion*, R. Judah Aszod, known as Mahari Aszod, in his *Teshuvot Yehudah Ya'aleh*, *Yoreh De'ah*, no. 50, permits drinking wine that has been handled by contemporary Sabbath-desecrators for two entirely different reasons:

1) There is a controversy with regard to whether the rule equating Sabbath-violators with idol-worshippers and branding them as *mumrim*, i.e., as heretics, is biblical or rabbinic in nature. R. Betzalel Ashkenazi, *Teshuvot Rabbenu Bezalel*, no. 3, R. Joseph Colon, *Teshuvot Maharik*, no. 161, and R. Yechiel Michel Epstein, *Arukh ha-Shulhan*, *Yoreh De'ah* 2:14, maintain that the rule is biblical in nature.³⁶ However, R. Elijah of Lublin,

³⁴ Cf., R. David Zevi Hoffmann, *Teshuvot Melammed le-Ho'il*, *Orah Hayyim*, no. 29 and *Teshuvot ve-Hanbagot*, I, nos. 469 and 472.

³⁵ Other authorities who reject the view that there is a fundamental distinction between contemporary Sabbath-violators and those of previous eras include R. Netanel Fried, *Teshuvot Pnei Mevin*, *Orah Hayyim*, nos. 91 and 92 and R. Mordecai Winkler, *Teshuvot Levushei Mordekhai*, I, *Orah Hayyim*, no. 111 and *Mahadura Tinyana*, *Orah Hayyim*, no. 9.

³⁶ *Mordekhai*, *Yevamot* 4:28, cites the view of R. Yehuda'i Ga'on to the effect that a widow of a childless man whose brother is an apostate is not subject to the requirement of levirate marriage or *halizah*. The most obvious explanation of that view is that it is rooted in the premise that, as a matter of biblical law, an apostate is classified as a gentile. See also *Teshuvot Mahari Minz*, no. 12; *Teshuvot Maharashdam*, *Even ha-Ezer*, no. 10; and *Teshuvot Yabi'a Omer*, I, *Yoreh De'ah*, no. 11, sec. 2. If so, dissolution of a marriage contracted by an apostate requires a *get* only by virtue of rabbinic decree. See *Teshuvot ha-Radvaz*, no. 351.

Teshurat Shai, *Mahadura Tinyana*, no. 103, asserts that according to the authorities who maintain that an apostate lacks the capacity to contract a biblically valid marriage, utensils acquired from a *mumar* require immersion in a *mikveh*.

Teshuvot Yad Eliyahu, no. 12 asserts that the rule is the product of a rabbinic enactment.³⁷ Mahari Aszod maintains that the authorities who prohibit wine touched by a Sabbath-desecrator do so because they accept the premise that such individuals are equated with idol-worshippers by provision of biblical law which admits of no exception. Mahari Aszod argues that those who regard the prohibition as rabbinic in origin would limit the rule to matters such as the validity of their performance of ritual slaughter from which idol-worshippers are biblically disqualified by reason of statute but not to wine because even wine touched by an idol-worshiper is prohibited only by reason of actual concern for idolatrous worship. Accordingly, since there is no reason to suspect that a Sabbath-violator has performed an idolatrous libation nor is there reason to restrict fraternization with such individuals because of concern regarding marriage, there appears to be no reason why wine that a Sabbath-violator has handled should be banned.³⁸

2) Mahari Aszod points out that a Sabbath-transgressor becomes disqualified as a witness only if testimony to that effect is presented before a *bet din*. An evildoer who is barred from serving as a witness can be disqualified only upon testimony to his infraction presented before a *bet din* in his presence. Similarly, argues Mahari Aszod, a Sabbath-violator acquires the status of a heretic only if he transgresses the Sabbath publicly in the presence of at least ten Jews or, according to some authorities, with the knowledge of at least ten Jews.³⁹ Mahari Aszod then advances the novel view that a Sabbath-violator acquires the status of a heretic only if testimony to such public Sabbath violation is presented before a *bet din*. He argues that an individual cannot be branded a Sabbath-desecrator for purposes of rendering wine that he may touch non-kosher other than by testimony before a *bet din* that he has publicly violated the Sabbath. That view is endorsed by R. Yekuti'el Yehudah Teitlebaum, *Teshuvot Avnei Zedek, Yoreh De'ah*, no. 60. It is, however, rejected by *Teshuvot Maharam*

³⁷ See also *Teshuvot Yehudah Ya'aleh, Yoreh De'ah*, no. 50; *Nahal Eshkol*, III, *Hilkhot Shehitah* 2:9; and *Teshuvot Yabi'a Omer*, I, *Yoreh De'ah*, no. 11, secs. 4-10, who cite additional authorities who subscribe to this view. See also *Da'at Torah, Yoreh De'ah* 2:27.

³⁸ *Sefer ha-Eshkol*, III, *Hilkhot Yayin Nesekeh*, sec. 58, cites an earlier authority who for that very reason maintains that wine touched by a Jewish idolater is entirely permissible.

³⁹ See R. Joseph Colon, *Teshuvot Maharik*, no. 159; R. David ibn Zimra, *Teshuvot ha-Radvaz*, IV, no. 92; *Tashbaz*, I, no. 158; *Shakh, Yoreh De'ah* 157:4; *Teshuvot Yehudah Ya'aleh*, I, *Yoreh De'ah*, no. 8; and *Tevu'ot Shor* 2:27. See also *Nahal Eshkol*, III, *Hilkhot Shehitah* 2:8. Cf., R. Shalom Mordecai Schwadron, *Da'at Torah, Yoreh De'ah* 2:30.

Shik, Orah Hayyim, no. 28; R. Chaim Eleazar Shapiro, *Teshuvot Minbat Elazar, Yoreh De'ah*, I, no. 74; *Teshuvot Yad Yizhak*, I, no. 195; and R. Netanel Fried, *Teshuvot Pnei Mevin, Orah Hayyim*, no. 91.⁴⁰

Teshuvot Minbat Elazar, Yoreh De'ah, I, no. 74, demonstrates that, although formal testimony before a *bet din* may be required in order to disqualify an individual from serving as a witness, there is no requirement for such proceedings for the purpose of establishing that a person is a heretic in order to forbid meat that he has slaughtered or wine that he has touched. *Shakh, Yoreh De'ah* 2:17, recognizes that a person may acquire such status by slaughtering an animal on *Shabbat* but asserts that, for technical halakhic reasons, if an individual's initial act of Sabbath transgression is an act of slaughter, he acquires such status only upon completion of the slaughter. Hence, the first animal slaughtered on *Shabbat* by such an individual is not rendered non-kosher because of the Sabbath violation of the slaughterer.⁴¹ Were Mahari Aszod's thesis accepted as correct, the first act of slaughter could not possibly be invalid since testimony to the transgression could not be presented to a *bet din* until after the slaughter has been completed.⁴² A similar argument is presented by R. Moshe Grunwald, *Teshuvot Arugat ha-Bosem, Orah Hayyim*, no. 76.⁴³

⁴⁰ It is evident that Mahari Aszod's thesis regarding testimony before a *bet din* is also rejected by R. Amram Blum, *Teshuvot Bet She'arim, Yoreh De'ah*, no. 25, s.v. *ve-od. Teshuvot Maharsham*, VI, no. 94, remarks that when the deviant conduct of the Sabbath-violator "is known with certainty it is difficult to be lenient."

⁴¹ Rambam, *Hilkhot Shehitah* 4:14, rules that a single act of Sabbath-desecration establishes the violator's status as a *mumar*. *Tosafot* and Rashba, *Hullin* 14a, maintain that three acts of Sabbath-desecration are necessary to acquire the status as a *mumar*. *Hagahot Asheri, Hullin* 1:7, expresses doubt with regard to the matter. Rashba, *Torat ha-Bayit, bayit rishon, sha'ar* I, asserts that a single act establishes the status of a *mumar* but contradicts himself in *Teshuvot ha-Rashba*, cited by *Bet Yosef, Yoreh De'ah* 119, in stating that three acts are necessary. See *Shakh, Yoreh De'ah* 4:4. *Tevu'ot Shor* 11:12 resolves the contradiction by asserting that it is only for rendering wine that he touches non-kosher that three acts are necessary but that a transgressor's *shehitah* becomes invalid upon a single act of desecration.

⁴² For a quite different reason Rambam, *Commentary on the Mishnah, Hullin* 14a, maintains that the Sabbath-desecrator becomes disqualified only upon completion of the act.

⁴³ This view is rejected by *Shevilei David, Yoreh De'ah* 119:2. It is also evident that *Teshuvot Hatam Sofér, Yoreh De'ah*, no. 120 and *Teshuvot Maharam Shik, Orah Hayyim*, no. 128, do not accept the view that testimony before a *bet din* is required for such disqualification. *Shevilei David* asserts that it is forbidden for a person to testify together with another individual whom he knows to have committed a transgression that would disqualify the latter from serving as a witness. Testimony before a *bet din*, he maintains, is necessary only to make the transgressor's status known to individuals who have no personal knowledge of the transgression.

Teshuvot Pri ha-Sadeh, I, no. 62, accepts Mahari Aszod's principle but contends that it has only limited application. Testimony before a *bet din* is necessary, argues *Pri ha-Sadeh*, only in the case of a Sabbath-violator who is otherwise observant and God-fearing. In such instances, testimony before a *bet din* is required, he contends, because the miscreant's laxity with regard to Sabbath observance may be due to ignorance of the severity of the transgression or because of financial need. If so, proceedings before a *bet din* may cause him to mend his ways and, if not, his status as a transgressor will be confirmed by the *bet din*. Indeed, Mahari Aszod speaks explicitly of Sabbath-violators who are otherwise fully observant. Hence, argues *Pri ha-Sadeh*, contemporary Sabbath-violators whose manifold transgressions in all areas of observance are a matter of public knowledge are not qualified to serve as witnesses even without formal disqualification by a *bet din*. Accordingly, *Pri ha-Sadeh* concludes, wine touched by them is prohibited in all circumstances.

IV. THE SABBATH-VIOLATOR AND HIS OWN WINE

The question presented by Rabbi Genut in *Kol ha-Torah* regarding whether a Sabbath-violator may drink wine that he himself has touched was earlier discussed in the eighth and most recent volume of *Iggerot Mosheh, Orah Hayyim*, V, no. 37, sec. 8. The issue, however, is couched in somewhat different terms. Unlike earlier-cited authorities, *Iggerot Mosheh* does not entertain the notion that, having equated a Sabbath-violator with an idol-worshipper, the Sages regarded him as a non-Jew for all prohibitions associated with that status. Rather, he notes that the prohibition against drinking wine handled by a non-Jew is the product of two separate edicts, each based upon a different consideration: 1) fear that the non-Jew may have employed the wine for idolatrous purposes; and 2) concern with regard to possible intermarriage. *Iggerot Mosheh* assumes as a matter of course that there is no prohibition against marrying the daughter of a Jewish idolater. Therefore, it is only the edict based upon fear of wine used for an idolatrous act that also applies to wine handled by a Jewish idolater. Hence, argues *Iggerot Mosheh*, there was no cogent reason to include in that prohibition a Sabbath-violator who is known not to practice idolatry. Although he takes note of *Bet Yosef's* citation of *Teshuvot ha-Rashba*, *Iggerot Mosheh* regards *Bet Yosef's* failure to record Rashba's ruling in codifying the edict in his *Shulhan Arukh* as an *argumentum ad silentium* conclusively indicating that *Bet Yosef* rejected

that view.⁴⁴ Accordingly, *Iggerot Mosheh* regards the commonly accepted practice of not drinking wine touched by a Sabbath-desecrator to be simply a matter of custom. Moreover, although customs frequently have the force of law, *Iggerot Mosheh* contends that restrictive customs are relegated to the status of pietistic practices that do not rise to the level of normative law. That analysis leads to the conclusion that matters abjured solely on the basis of custom are limited only to that which has become actual practice. Thus, although it is the practice not to drink wine touched by a Sabbath-violator, there quite obviously never arose a custom for a Sabbath-violator not to drink wine he himself touched. With a final flourish, *Iggerot Mosheh* concludes that even if there is doubt with regard to the validity of his analysis, it represents, at the minimum, a plausible understanding of the underlying issue. Since the rule with regard to questions involving a rabbinic prohibition is that matters of doubt are adjudicated permissively, the result is that a Sabbath-desecrator may indeed drink wine that he has touched.

Given the overwhelming consensus among latter-day authorities affirming the prohibition against drinking wine touched by a Sabbath-violator, *Iggerot Mosheh's* position is surprising, to say the least. Moreover, the thesis developed in that responsum stands in sharp contradiction to *Iggerot Mosheh's* earlier-cited multiple statements affirming the prohibition. Perplexed by Rabbi Feinstein's surprising *volte face*, Rabbi Genut turned to a long-time, but unnamed, disciple of Rabbi Feinstein for clarification. Rabbi Genut quotes the disciple's reply in which the latter writes that "it is known to me that many of the responsa [included in the posthumously-published eighth volume of *Iggerot Mosheh*] were not before the eyes of my master and teacher...and there is also doubt with regard to many responsa in the seventh volume."⁴⁵

Of course, in light of the earlier-cited responsa of *Iggerot Mosheh* which reflect fundamental agreement with the conclusions of *Binyan Zion*, Mahari Aszod and *Melamed le-Ho'il*, it would not have been necessary for Rabbi Feinstein to formulate a novel thesis in order to permit a contemporary Sabbath-violator to drink wine he himself has touched. Other considerations cited by various authorities provide additional

⁴⁴ In addition, there is no reference to the prohibition of wine touched by a Sabbath-violator in Rambam's codification of the prohibition against wine touched by a non-Jew.

⁴⁵ *Kol ha-Torah*, p. 333. Cf., the editors' introduction to volume VIII, p. 3, in which they enumerate the responsa they acknowledge as not having been written by Rabbi Feinstein but as dictated and reviewed by him.

grounds for leniency with regard to wine touched by Sabbath-violators.⁴⁶ *Tashbaz*, III, no. 43 and *Bet Yosef, Even ha-Ezer* 44, cite *Sefer ha-Ittur*⁴⁷ who maintains that public desecration branded as tantamount to idolatry is limited to *avodat karka*, i.e., labor performed upon the land, since by its nature such activity is public and notorious. Other authorities⁴⁸ assert that only one who has the shamelessness and audacity to perform a forbidden act of labor on the Sabbath in the presence of an *adam gadol*, i.e., a “great” or “prominent” individual, can be judged to be acting on the basis of heretical beliefs rather than for reasons of self-gratification.⁴⁹

Rabbi Genut cites R. Nissim Karelitz, *Hut Shani* 512:1, who also rules that a Sabbath-violator may drink wine that he himself has touched. Rabbi Karelitz apparently accepts the earlier-cited view of Hatam Sofer who maintains that the prohibition against drinking wine touched by a Sabbath-violator is not based upon the considerations that led to the ban against wine touched by a non-Jew but is in the nature of a penalty. The penalty was designed to cause others to shun the Sabbath-violator and his company. Hence, he argues, no purpose would be served by restraining the Sabbath-violator from drinking his own wine. However, Rabbi Genut reports that the late R. Joel Kloft of Haifa argued that, even according to Hatam Sofer, the status imposed upon a Sabbath-violator in the form of a penalty was general in nature and hence no distinction can be made on the basis of variegated effects. The issue in dispute is whether the rabbinic edict establishing the penalty was blanket in nature or whether it was tailored to allow for cogent exceptions. Neither Rabbi Karelitz nor Rabbi Kloft deduces textual support upon which a resolution might be based.

R. Moshe Sternbuch, *Teshuvot ve-Hanhagot*, I, no. 473 and II, no. 400, understands the prohibition based upon a fear of intermarriage as having been predicated upon a fear of all social intimacy that can lead to wayward influence and hence as applicable to the wine of Sabbath-violators

⁴⁶ *Le-Horot Natan*, I, no. 39, sec. 11, adduces leniencies based upon the limited nature of moving or handling that serves to render the wine prohibited.

⁴⁷ See *Torat Hayyim, Eruvin* 69a and *Eliyahu Rabbah, Orach Hayyim* 385:3. For an interesting analysis of *Sefer ha-Ittur*'s reasoning see R. Shimon Moshe Diskin, *Ohel Yehoshu'a* (Jerusalem, 5738), Exodus 31:17, reprinted in *idem, Maset ha-Melekh: Ohel Yehoshu'a* (Jerusalem, 5758), Exodus 31:17.

⁴⁸ Cf., however, R. Israel Mintzberg, *She'erit Yisra'el, Even ha-Ezer*, no. 7, who cites a grandson of the author of *Tashbaz*, quoted in *Teshuvot ha-Re'em* appended to *Mayim Amukim*, no. 31, who insists that there is a scribal error in *Sefer ha-Ittur* resulting in an incorrect ascription of this position to that authority. Cf., *Teshuvot Le-Horot Natan*, I, no. 39, secs. 7-9.

⁴⁹ See in particular, *Teshuvot Maharsham*, I, no. 121, and Cf., *idem, Da'at Torah, Yoreh De'ah* 2:30.

as well. Yet, in *Teshuvot ve-Hanhagot*, I, no. 473, he argues that there would be no point in prohibiting a Sabbath-violator to drink wine that he himself has touched. However, apparently in agreement with the view of Rabbi Kloft, Rabbi Sternbuch contends that, if the prohibition against drinking the wine is in the nature of a penalty, it should be applicable even in such circumstances.

Nevertheless, Rabbi Sternbuch does find a parallel edict which he believes serves as a paradigm for excluding wine that the Sabbath-violator has himself touched. The Sages prohibited eating *terumah* or sacrificial offerings touched by a common person (*am ha-arez*) who was not regarded as trustworthy with regard to matters of ritual purity. Despite that prohibition, contends Rabbi Sternbuch, “we do not find” that it is forbidden to give or serve *terumah* to such an individual. The prohibition, he insists, was never imposed upon the *am ha-arez* himself.⁵⁰ Similarly, he argues, wine touched by a Sabbath-violator is forbidden only to others but not to the Sabbath-violator.⁵¹

In a letter published in R. Moshe Sternbuch’s *Mo’adim u-Zemanim*, VIII, no. 46, R. Ya’akov Yisra’el Kanievsky also addresses the question of whether a Sabbath-violator may drink wine that he himself has touched. Although Rabbi Kanievsky does not reach a definitive conclusion, he presents a novel argument in favor of permitting him to do so. The Sages ruled that a Sabbath-desecrator has the status of a non-Jew but they did not assign him a status more restrictive than that of a non-Jew. A non-Jew may drink wine that he has touched with impunity. Were a Sabbath-desecrator to be forbidden to drink his own wine, his status would be even more restrictive than that of a non-Jew.

V. THE SABBATH-VIOLATOR AND HIS OWN *SHEHITAH*

The question of whether a Sabbath-violator may eat meat that he himself has slaughtered is less complex. The Mishnah, *Hullin* 13a, declares that animals slaughtered by a non-Jew are carrion. The standard versions of Rambam, *Hilkhot Shehitah* 4:11 indicate that, based upon the verse “lest he call you and you eat from his slaughter” (Exodus 34:15), the slaughter

⁵⁰ Cf., R. Moshe Sternbuch’s earlier work *Halikhot u-Minhagei ha-Gra*, *Hilkhot Nisu’in*, no. 181 cited *infra*, sec. VI, in which he makes a far more limited claim.

⁵¹ Cf., R. Moshe Teumim, *Uriyan Telita’i*, no. 40, who appears to agree with his interlocutor that there is even more reason to forbid the wine to the Sabbath-desecrator himself as a penalty than to forbid it to others.

of an idol-worshiper is biblically invalid.⁵² In the very next paragraph, *Hilkhot Shehitah* 4:12, Rambam continues, “And [the Sages] erected a great fence with regard this matter [in declaring] that even the slaughter of a non-Jew who does not serve idols is carrion.” *Kesef Mishneh*, *ad locum*, and *Bet Yosef*, *Yoreh De’ah*, 2, followed by *Bah*, infer that Rambam understands the biblical verse as referring to an actual idolater. A contextual reading of the scriptural passage would indeed support that understanding. The blanket ruling forbidding meat slaughtered by any non-Jew reflects a rabbinic decree expanding the biblical proscription. That analysis of Rambam’s ruling is accepted by *Taz*, *Yoreh De’ah* 2:1.

Shakh, *Yoreh Deah* 2:2, disagrees and asserts that slaughter performed by any non-Jew is biblically invalid. *Shakh* dismisses the inference that must be drawn from Rambam’s codification in *Hilkhot Shehitah* 4:12 by pointing to a variant textual reading which he regards as more authoritative. According to that version, Rambam writes, “And [the Sages] erected a great fence with regard to the matter [in declaring] that even the slaughter of a *Kuti* who does not serve idols is carrion.” According to *Shakh*, Rambam here uses the word “*Kuti*,” not as a cognomen for any non-Jew, as is frequently the case, but in its literal sense as “Samaritan.” According to that analysis, Rambam rules that Samaritans are Jews but that their slaughter was banned by a rabbinic decree because, as reported in the Gemara, *Hullin* 6a, on one occasion, Samaritans were found to harbor an image of a dove on Mount Gerizim. That variant text may readily be construed as declaring that it is only the slaughter of Samaritans for which a rabbinic decree was necessary, whereas the slaughter of all non-Jews is biblically forbidden.

Tosafot, *Hullin* 3b, and Rosh, *Hullin* 1:5, explicitly declare that meat slaughtered by a non-Jew is biblically prohibited. The basis of their ruling is a statement of the Tosefta, *Hullin* 1:1, “The slaughter of a non-Jew is invalid and the slaughter of a monkey is invalid as is said ‘you shall slaughter...and you shall eat’ (Deuteronomy 12:21)—not that which a non-Jew has slaughtered, not that which a monkey has slaughtered and not that which was slaughtered of its own accord.” The Tosefta understands the verse as requiring that the act of slaughter be performed by one to whom the verse permitting consumption of meat is addressed, *viz.*, a Jew, to the

⁵² Nevertheless, Rambam, *Hilkhot Avot ha-Tum’ah* 2:10, recognizes that slaughter performed by a pagan is efficacious for purposes of precluding biblical defilement as carrion. Such defilement, Rambam opines, is rabbinic in nature as an extension of the defilement legislated for items sacrificed to pagan deities in cultic worship. The latter defilement, according to Rambam, is rabbinic in nature.

exclusion of primates and non-Jews and to the exclusion of an animal that dies of natural causes.⁵³

As has been noted previously, there has been some controversy with regard to whether the general rule characterizing a *mumar*—and hence a Sabbath-violator—as a non-Jew is biblical or rabbinic in nature. Certainly, according to *Kesef Mishneh's* understanding of Rambam, if a non-Jew is disqualified from acting as a ritual slaughterer only by virtue of rabbinic decree, a *mumar* could not be regarded as biblically disqualified. Indeed, it is in large part because *Shakh* was convinced that a *mumar* was specifically excluded from performing ritual slaughter that he refuses to ascribe to Rambam the view that even a non-Jew was rabbinically disqualified. *Shakh* points to the discussion recorded in the Gemara, *Hullin* 5a, in which a biblical verse is cited apparently to substantiate exclusion of a *mumar* from slaughter.

Hiddushei R. Akiva Eger, in a gloss on *Shakh's* comment, advances a completely opposite view. According to R. Akiva Eger, it is impossible to apply the exclusion derived from the verse “you shall slaughter...and you shall eat” to a Jewish apostate. Non-Jews, and certainly monkeys, are not bound by the Sinaitic covenant. However, the obligations of Jewish apostates, idol worshippers, and even those who reject the Torah in its entirety, are in no way mitigated by virtue of their heresy. Despite their rejection of fundamental doctrines and precepts of Judaism, they remain fully bound by all commandments. Hence, argues R. Akiva Eger, there is no basis to prohibit the slaughter of an apostate or a Sabbath-violator on the grounds that he is not a “*bar zevibah*,” i.e., a person bound by the rules of slaughter; quite to the contrary, the imperative “you shall slaughter” is addressed to every Jew, including apostates.⁵⁴ R. Akiva Eger proceeds to explain the discussion presented in *Hullin* 5a in a manner consistent

⁵³ *Kesef Mishneh*, *Hilkhot Avot ha-Tum'ah* 2:10, declares that Rambam regarded the prohibition established by the Tosefta to be rabbinic in nature and the derivation to be no more than *asmakhta*, i.e., a mnemonic device.

⁵⁴ Cf., however, *Sedei Hemed*, *Kellalim*, *ma'arekhet ha-mem*, no. 86, s.v. *ve-im mumar*, who explains that, a *mumar* is deemed to be a *bar zevibah* by virtue of his lack of concern for ritual slaughter only because slaughter is discretionary in the sense that there is no obligation to eat meat. Hence the *mumar's* disdain of slaughter removes him from the ambit of a *bar zevibah*, whereas insofar as obligatory commandments are concerned, e.g., circumcision, the mandatory nature of the commandment renders him comparable to other Jews. Regarding circumcision, cf., Rema, *Yoreh De'ah* 264:1; *Magen Avraham* 189:1; *Teshuvot Hatam Sofer*, *Yoreh De'ah*, no. 1; R. Chaim Eleazar Shapiro, *Ot Hayyim ve-Shalom* 264:4-5; and *Teshuvot ve-Hanbagot*, I, no. 471. Regarding *tefillin* written by a *mumar* see *Shulhan Arukh*, *Orah Hayyim* 31:1 and *Hatam Sofer*, *ad locum*.

with that thesis. According to R. Akiva Eger, slaughter performed by a *mumar* is invalid only as a matter of rabbinic decree.

It is thus evident that, according to all authorities, a *mumar* is intrinsically disqualified from serving as a ritual slaughterer by virtue of his status as a non-Jew either by biblical law or rabbinic decree rather than as a “fence” designed to prevent some other untoward act. If so, a *mumar*, who is assuredly commanded to obey all biblical and rabbinic laws, is bound by all *kashrut* regulations, including the prohibition against meat slaughtered by a *mumar*, himself included. The sole issue is whether present-day Sabbath-violators are to be understood as encompassed within the ambit of Sabbath-violators categorized as heretics.

VI. A PRACTICAL APPLICATION

No doubt the *Berditchiver* would find redemptive delight in beholding a Sabbath-violator’s readiness to refrain from drinking wine because of scrupulousness with regard to forbidden foods and would draw divine attention to the devotion of even a wayward Jew. But, alas, in our age, such individuals are few and far between and hence it would seem that there is a dearth of individuals to whom resolution of the question is a matter of practical concern. That, however, is not the case. The issue, in one of its ramifications, is potentially encountered by every rabbi who joins a nonobservant bride and groom in marriage and pronounces the nuptial blessings over uncooked wine which he then presents to the newlyweds. Indeed, any Jew who invites a nonobservant person to be his *Shabbat* guest faces the identical dilemma with regard to *kiddush* wine.

The issue in such cases is quite simply one of *lifnei iver*, i.e., placing a stumbling block before the blind. Is the rabbi or host guilty of causing another Jew to transgress, albeit inadvertently, by making the wine available? Quite obviously, if the Sabbath-violator may drink the wine that he himself has touched, the person presenting the wine incurs no infraction. However, if the Sabbath-violator may not do so, facilitating the act is prohibited. Even if the wine belongs, and is readily available, to the recipient, the act would be rabbinically proscribed as “assisting transgressors.”

The issue of placing a stumbling block before the blind in the context of selling—rather than giving—wine to a Sabbath-violator was first raised by four relatively recent authorities: R. Yechezkel Panet, *Teshuvot Avnei Zedek, Yoreh De’ah*, no. 60; R. Abraham Israel Alter Landau, *Teshuvot Bet Yisra’el, Orah Hayyim*, no. 61; R. Meir Arak, *Minbat Pittim, Yoreh De’ah* 151; and R. Ya’akov Breisch, *Teshuvot Helkat Ya’akov*, I, no. 76. *Avnei*

Zedek disposes of the problem by following Mahari Aszod in declaring wine of contemporary Sabbath-violators to be permissible. *Bet Yisra'el* rules that it is permissible to sell wine to a Sabbath-violator because it is not certain that the recipient's handling of the wine renders it forbidden since it is possible that he has repented of his transgressions before touching the wine. *Bet Yisra'el* believes that the very fact that the purchaser seeks to buy kosher wine, rather than readily available non-kosher wine, is an indication of contrition. Although he does not state so explicitly, *Bet Yisra'el* seems to accept the view of the authorities who maintain that there is no prohibition of *lifnei iver* in situations in which it is merely doubtful that a transgression will occur.⁵⁵ *Helkat Ya'akov* bases himself upon *Shakh*, *Yoreh De'ah* 151:6, who maintains that it is permissible to assist a *mumar*⁵⁶ and upon the consideration that, although drinking his own wine is perhaps forbidden, failure to sell him kosher wine is likely to result in the would-be transgressor acquiring wine that is certainly non-kosher.⁵⁷

A more comprehensive analysis of the problem is presented by R. Meir Arak, *Minhat Pittim*, *Yoreh De'ah* 151. *Minhat Pittim* assumes as a matter of course that a Sabbath-violator may not drink wine that he himself has touched. Hence the issue is whether it is permissible to become complicit in the Sabbath-violator's transgression by selling him wine. In disagreement with other authorities who maintain that causing a person to commit any rabbinic infraction represents a biblical violation of the prohibition against placing a stumbling block before the blind, Ritva, *Mo'ed Katan* 2a, maintains that the prohibition is limited to assistance in violating rabbinic edicts having a basis in Scripture, e.g., forbidden labor on the intermediate days of a festival. Apparently rejecting the applicability of

⁵⁵ See R. Moshe Nachum Yerushalimsky, *Birkat Mosheh*, *Kuntres ha-Teshuvot*, no. 21 who permits such acts but only when the transgression is the rabbinic prohibition against assisting transgressors rather than the biblical prohibition against placing a stumbling block before the blind. See also *Teshuvot Tuv Ta'am va-Da'at*, *Mahadura Telita'i*, II, no. 50.

⁵⁶ For an elucidation of *Shakh's* position see *Arnei Nezer*, *Yoreh De'ah*, no. 156 and cf., *Teshuvot Helkat Ya'akov*, I, no. 77, sec. 2. *Shakh's* view is rejected by numerous authorities, including *Magen Avraham* 347:4; *Tiferet Yisra'el*, *Avodah Zarah* 2:1; and *Mishnah Berurah* 347:7. See also *Tosafot* and Rosh, *Avodah Zarah* 6b and cf., *Turei Even Haggigah*, *Arnei Milu'im* 13a.

⁵⁷ An explicit discussion by earlier authorities of whether assistance is permissible when designed to reduce a certain transgression to a doubtful transgression eludes this writer. However, conflicting views with regard to whether rendering assistance in order to reduce the severity of a transgression is permissible are cited and discussed by R. Yitzchak Eliyahu Adler, *Lifnei Iver* (*Ofakim* 5749), pp. 152-156.

the principle of *lo plug*, *Minhat Pittim* observes that in contemporary times people do not pour idolatrous libations. Hence, wine handled by a non-Jew is now prohibited only by virtue of the decree seeking to minimize fraternization with gentiles. Unlike the decree banning benefit from an object that might have been employed in the worship of an idol, the decree designed to minimize fraternization with gentiles is not rooted in Scripture and, hence, argues *Minhat Pittim*, should, according to Ritva, not give rise to the prohibition of *lifnei iver*. *Tosafot*, *Avodah Zarah* 22a, s.v. *teipuk*, regards the biblical prohibition against placing a stumbling block before the blind to be applicable with regard to all rabbinic infractions.⁵⁸ Nevertheless, according to all authorities, if the prohibited substance is readily available from a non-Jew there is no biblical prohibition since the stumbling block is in place even in the absence of any action on the part of the party in question. The rabbinic prohibition against assisting transgressors, however, remains operative even in such circumstances.

In addition *Minhat Pittim* expresses concern that, even if the biblical prohibition against placing a stumbling block does not pertain to all rabbinic violations, the more general rabbinic prohibition of *mesaya le-yedei*

⁵⁸ See also Rashba, *Tosafot Rabbenu Elhanan*, Rash me-Shanz, Me'iri and *Hiddushei ha-Ran*, *Avodah Zarah* 22a. A literal reading of *Tosafot* would indicate that causing a person to commit a rabbinic transgression represents placement of a stumbling block before him and hence is biblically proscribed. R. Joseph Babad, *Minhat Hinnukh*, *Komez ha-Miknah*, nos. 232 and 328, asserts that causing a rabbinic transgression represents no less a stumbling block than imprudent advice. *Teshuvot Havvot Ya'ir*, no. 185; *Teshuvot Mishpetei Shmu'el*, no. 134; *Teshuvot Pnei Yehoshu'a*, *Hoshen Mishpat*, no. 9; and *Teshuvot Arugat ha-Bosem*, *Yoreh De'ah* 235 similarly maintain that the transgression is biblical. See also *Yad Mal'akhi*, no. 364. However, *Pri Megadim Eshel Avraham*, *Orah Hayyim* 163:2; *Sedei Hemed*, *Divrei Hakhamim*, no. 36; *Teshuvot Tuv Ta'am va-Da'at*, *Mahadurah Telita'i*, II, no. 32; *Sedei Yizhak*, I, no. 5 and *Birkat Mosheh*, *Kuntres ha-Teshuvot*, no. 21 assert that the prohibition is rabbinic in nature. See also *Mishneh le-Melekh*, *Hilkhot Malveh ve-Loveh* 4:2, s.v. *ve-ani*. R. Chaim Ozer Grodzinski, *Teshuvot Ahi'ezer*, III, no. 65 contraintuitively suggest that causing a person inadvertently to commit a rabbinic infraction may represent a biblical transgression but that causing him to sin knowingly involves only a rabbinic transgression. See also *Teshuvot Ahi'ezer*, III, no. 81. The position of *Tosafot* is also espoused by Rashi, *Shabbat* 150a, s.v. *ve-lo yomar*; Rosh, *Bava Mezi'a* 5:42; and by Rashba and Ran, *Hullin* 57b. See *Sedei Hemed*, *ma'arekhet vav*, *klal* 26, sec. 21. However, Ramban, *Avodah Zarah* 21b; Ritva, *Mo'ed Katan* 2a; *Tosafot*, *Hagigah* 18a, s.v. *holo shel mo'ed*; *Teshuvot ha-Radvaz*, V, no. 1,579; and Rosh, *Mo'ed Katan* 1:1 state that the prohibition against placing a stumbling block does not pertain to rabbinic prohibitions. The contradiction between the statements of Rosh in *Bava Mezi'a* and in *Mo'ed Katan* is addressed by *Torat Hesed*, *Orah Hayyim*, no. 5; *Nahalat Zevi*, *Yoreh De'ah*, no. 160; and R. Shalom Talbes, *She'ilat Shalom*, no. 75. For a fuller discussion see *Sedei Hemed*, *Divrei Hakhamim*, no. 36 and *Lifnei Iver*, pp. 52-56.

overei averah, i.e., assisting transgressors, is applicable.⁵⁹ Nevertheless *Minhat Pittim* cites Rashba, *Gittin* 61a, who rules that the prohibition against assisting transgressors is suspended for reason of *darkei shalom*, i.e., to promote harmonious relationships. In addition, both Rashba and Rambam, *loc. cit.*, maintain that the rabbinic prohibition against assisting transgressors applies only to situations in which the assistance is entirely for the benefit of the transgressor; however, when the person rendering assistance also himself benefits thereby, e.g., by realizing a profit from a sale, such assistance is permitted. Indeed exclusion from the prohibition of rendering assistance in situations involving *darkei shalom*, they contend, is actually an exclusion because *darkei shalom* constitutes benefit to the person rendering assistance.

Minhat Pittim concludes that sale of wine to a Sabbath-violator is permissible. Since wine is readily available from other merchants, the infraction is rabbinic rather than biblical and hence the sale is permitted when undertaken for the benefit of the person rendering assistance. *Minhat Pittim* ascribes a similarly permissive view to R. Chaim Jair Bacharach, *Teshuvot Havvot Ya'ir*, no. 185, who in forbidding the sale of non-kosher wine to a *mumar* implies that it is permissible to sell kosher wine to him. It is clear that *Minhat Pittim's* conclusion applies only to sale of wine to a Sabbath-violator but not to a gift of wine designed solely for the benefit of the recipient.

Several contemporary writers, including R. Chaim Benjamin Goldberg, *Bein Yisra'el le-Nokhri* (Jerusalem, 5754), chap. 22, note 28; R. Aaron Zakai, *Ha-Huppah ve-ha-Nisu'in* (Jerusalem, 5758), vol. I, chap. 14, note 4; and R. Yitzchak Yosef, *Huppah ve-Kiddushin* (Jerusalem, 5765) 10:3, have focused upon the issue confronting the marriage performer. Drawing upon sources that have been cited herein, they have ruled permissively primarily in reliance upon the authorities who permit drinking wine touched by Sabbath-desecrators, particularly those of our day.⁶⁰ One

⁵⁹ Some authorities maintain that assisting in the commission of a rabbinic transgression that could not be carried out but for that assistance is rabbinically forbidden, but that merely facilitating a transgression that itself is only rabbinic in nature is not prohibited. See *Teshuvot Maharsham*, VI, no. 11; *Teshuvot Torat Hesed, Orah Hayyim*, no. 5; *Sedei Hemed, Kelallim, ma'arekhet yav* no. 26, sec. 3. A conflicting view is expressed by R. Isaac Elchana Spektor, *Teshuvot Bet Yizhak, Orah Hayyim*, no. 29. See also *Mishnah Berurah* 163:32 and *Arukh ha-Shulhan* 163:3. See also *Tiferet Shmu'el, Bava Mezi'a* 69a and *Teshuvot Maharsham*, II, no. 93. For a fuller discussion see R. Yitzchak Zevi Sofer, *Mispar ha-Sofer*, I, no. 32 and *Lifnei Iver*, pp. 145-148.

⁶⁰ R. Menasheh Klein, *Teshuvot Mishneh Halakhot, Mahadura Tinyana, Even ha-Ezer*, no. 378, dismisses the problem on the grounds that, as recorded in the Palestinian Talmud, *Bikkurim* 3:2, the sins of a groom are forgiven on the wedding day. That

additional mitigating consideration is the position of *Shakh, Yoreh De'ah* 151:6, who rules that there is no constraint upon facilitating transgression on the part of a *mumar* provided that the *mumar* is capable of transgression even without such assistance. Hence, even assuming that Sabbath-violation is indicative of non-belief and hence the Sabbath-violator has the status of a *mumar*, nevertheless serving wine to such an individual would not constitute a forbidden act.

R. Moshe Sternbuch, *Teshuvot ve-Hanhagot*, I, no. 473, also takes note of the position of *Sha'ar ha-Melekh, Hilkhot Ishut* 9:16, who rules that, in any matter involving a halakhic controversy, assistance in performing the act cannot be regarded as placing a stumbling block before the blind. Earlier, *Teshuvot Bet Yizhak, Orah Hayyim*, no. 61, permitted selling wine to a nonobservant Jew in part because he regarded the customer's purchase of kosher wine as an indication of repentance.

Rabbi Yosef, *Huppah ve-Kiddushin*, presents what he believes to be a logical consideration rendering such acts unquestionably permissible according to all authorities. Rabbi Yosef asserts that, if the Sabbath-violator has the status of a non-Jew, it is a non-Jew who is drinking the forbidden wine and hence assistance on the part of the Jew is not prohibited, presumably because there is no rabbinic prohibition forbidding non-Jews from drinking such wine. That argument is not at all compelling. The rabbinic edict commands only that wine handled by a Jewish idol-worshipper or Sabbath-violator be treated as wine handled by a non-Jew. The Sages did not declare the status of a Jewish idol-worshipper or Sabbath-desecrator to be that of a gentile for all purposes. Every Jew, even an idol-worshipper, is bound by all commandments and all prohibitions, including the edict forbidding wine handled by a gentile. Hence, there is reason to contend that he is forbidden to drink wine that he himself has touched.

The first to address the problem confronting the marriage performer, R. Jacob Breisch, *Teshuvot Helkat Ya'akov*, I, no. 77, cites the opinion of *Magen Avraham* 163:2 to the effect that placing forbidden food in the mouth of a transgressor constitutes a biblical violation.⁶¹ In addition to

argument might justify presenting wine to a bride who does not observe *Shabbat* only if the bride's sins are also forgiven. For a discussion of that question see R. Abraham Elimelech Kornfein, *Shimmushah shel Derashah* (Jerusalem, 5758), no. 187. Moreover, Rabbi Klein's argument is without merit according to the many authorities who maintain that expiation of sin is contingent upon repentance. Cf., *Shimmushah shel Derashah*, no. 187.

⁶¹ See R. Joseph Babad, *Minhat Hinnukh, Kovez ha-Minhah*, no. 232, who demonstrates that placing a stumbling block in the form of causing a person to commit a rabbinic infraction constitutes a biblical violation.

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the lenient view expressed by many authorities with regard to the wine of Sabbath-violators, particularly those of modern times, *Helkat Ya'akov* finds an interesting reason to exclude wine used in the wedding ceremony from the prohibition. *Helkat Ya'akov* argues that, if the decree is designed to discourage intermarriage, it could hardly be applicable in the context of a marriage between two Jews and if the decree is born of a fear of an act of idol-worship it is hardly relevant in the context of performance of a *mizvah*. However, that argument, intriguing as it may be, is extremely weak since, if the prohibition is applicable to Sabbath-violators who are not idolaters and with whom marriage is permitted, it is applied by virtue of the principle of *lo plug*, i.e., rabbinic edicts are blanket prohibitions applying even in situations in which the underlying rationale does not pertain.

R. Moshe Sternbuch, *Hilkhot ha-Gra u-Minbagav, Dinei Nisu'in*, sec. 181, formulates a novel view to the effect that a Sabbath-violator may drink only wine that he himself owns but not wine presented to him by another person. Rabbi Sternbuch draws a comparison to the rule formulated by the Gemara, *Hagigah* 22b, to the effect that utensils and clothing touched by an *am ha-arez* who may not be scrupulous with regard to matters of ritual impurity are always regarded as having been defiled but an exception was made with regard to the person's own clothing and utensils. Accordingly, Rabbi Sternbuch advises that, when purchasing wine for use at the wedding, the marriage performer explicitly declare that he is acquiring title on behalf of the groom.

A simple and obvious expedient available both to the rabbi performing a marriage and to a host is utilization of *yayin mevushal*, i.e., cooked wine. Use of such wine serves to obviate the problem in its entirety since cooked wine is not encompassed within the decree banning wine handled by a non-Jew or a *mumar*.

VII. AN AFTERWORD

In mid-nineteenth-century Western Europe Rabbi Ettlinger and Mahari Aszod became aware that many of their coreligionists were compromising Sabbath observance because of financial concerns coupled with accelerating ignorance of the severity of their infractions. A century later, in a totally different milieu in twentieth-century Egypt, Rabbi Ovadia Yosef described the phenomenon of large numbers of Jews who attended early services on the Sabbath and then proceeded to their work places and yet

scrupulously observed those Sabbath laws that did not interfere with earning a livelihood.⁶²

In mid-nineteenth-century America, Sabbath observance was even more besieged than in Europe. R. Abraham Rice, in his youth a fellow student of R. Jacob Ettlinger in Würzburg, was the first ordained rabbi to settle in the United States. He arrived in 1840 and sometime thereafter ruled that Sabbath-desecrators were not to be called to the reading of the Torah. When this ruling was flouted, he instructed that those faithful to his guidance not respond “Amen” to the blessings pronounced by Sabbath-desecrators. Unsurprisingly, Rabbi Rice’s stance was exceedingly unpopular and aroused much dissension.⁶³

By the late nineteenth and early twentieth centuries, as a result of dire economic circumstances, tens of thousands of otherwise observant Jews felt constrained to work on the Sabbath. The six-day workweek and strictly enforced blue laws resulted in many employers insisting upon labor on Saturday as a condition of employment. Sabbath observance declined at an alarming rate. One historian of American Jewry reports with irony that the members of Congregation Shomrei Shabbos, a Boston Orthodox synagogue, were overwhelmingly Sabbath-violators. He also records a Yiddish women’s *tehinah* prayer, published in America, that bemoans the difficulty of Sabbath repose when the “burden of making a living is so great” and beseeches the Almighty to “Grant a bountiful living to all Jewish children that they should not...have to desecrate your holy day.”⁶⁴

This writer recalls a visit to Curacao sometime in the early 1970s. The island boasted a single Orthodox synagogue in which the only *Shabbat* service commenced at 7:00AM in order to accommodate worshippers who, without exception, at the close of services left to open business establishments that catered to a bustling Saturday tourist trade.⁶⁵

⁶² See *supra*, note 27.

⁶³ See I. Harold Sharfman, *The First Rabbi* (Malibu, Calif., 1988), p. 183.

⁶⁴ See Jonathan D. Sarna, *American Judaism* (New Haven and London, 2004), pp. 162-164. The prayer Sarna cites was published in *Shas Tehinah Hadashah* (New York, 1916), pp. 38-41. See also Sarna’s citation (page 163) of the moving account of Harry Fischel’s wrenching decision to decline an enticing offer of employment in order not to desecrate the Sabbath.

⁶⁵ I am informed that a prominent synagogue located in New York City’s lower East Side boasts a 7:00 A.M. *Shabbat* service known to this day as the “working man’s *minyan*.” Synagogue protocol prescribes that the services conclude by 8:45 and are followed by a brief *kiddush*. The schedule was instituted in the early decades of the twentieth century in order to accommodate worshippers who wished to pray and fulfill the obligation of *kiddush* before leaving for work. This schedule is scrupulously adhered to until this day, despite the fact that every present attendee, without exception, is a Sabbath-observer.

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Decades later, in our own day, society has developed a far different workplace ethic and even legal safeguards designed to protect Sabbath-observers are available. Today the material situation of Sabbath-observers is vastly improved even while, sadly, countless fellow Jews have grown to adulthood in secular households in which ignorance of the Sabbath and its practices reigns. The net result is, strangely, that although nonobservance of Sabbath on the part of those individuals is hardly an act of brazen heresy or purposeful disavowal of Judaism, the opposite has often become a significant signpost. Moving—even if slowly—toward committed Sabbath observance has become a marker of a return to Judaism.

If, in the early twentieth century, Rabbi Kook accurately described the phenomenon of nonobservance as the effect of the raging currents of a seductive, alien culture, the dawn of the twenty-first century heralds an era in which, as he wrote, those who were distant will return intellectually and “out of love.” May his prayer that they “will return in a highly exalted state”⁶⁶ be speedily fulfilled.

⁶⁶ *Iggerot Re'iyah*, I, no. 138.