

Secular Jews and Forbidden Wine

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Question: I often meet with secular Jews in communal or business matters, and at these events unpasteurized Israeli wine is served. Is it permitted to drink wine such as this, served by Sabbath-violating Jews? I feel that abstaining from drinking this wine causes much embarrassment, and even damage to the image of religious Judaism.

AnsWER: Religiously observant Jews had the practice not to drink wine touched by Jews who violate the Sabbath. However, there is room for discussion in light of the reality of our time. In order to treat the matter in its full complexity, we must begin the discussion from the Talmud and Medieval Authorities (*Rishonim*).

Part I — The Talmudic Pericopae

Eruvin

We learn in the Talmud, Tractate *Eruvin*:¹

אמר רב הונא: "איזהו ישראל מומר? — זה המחלל שבתות בפרהסיא." Rav Huna said: "What is an apostate Jew? — he who violates the Sabbath in public."

1. b. *Eruvin*, 69a

Keren I

אמר ליה רב נחמן: "כמאן? אי
כרבי מאיר דאמר: חשוד לדבר
אחד חשוד לכל התורה כולה
אפילו באחד מכל איסורין
שבתורה נמי! אי כרבנן
– האמרי: חשוד לדבר אחד לא
הוי חשוד לכל התורה כולה, עד
דהוי מומר לעבודת כוכבים!"

Rav Naḥman said to him: "Whom does your position follow? If it is Rabbi Meir, who said 'he who is suspect with regard to one matter of Jewish law is suspect with regard to the whole Torah,' then even one who violates any statute can be considered an apostate! If it is the rest of the Rabbis, who said 'he who is suspect with regard to one matter is not suspect with regard to the whole Torah,' then one would have to worship false gods in order to be considered an apostate!"

It seems that Rav Naḥman's difficulty is not an innocent question ("according to whom do you hold?"), but rather the expression of a position: Since your statement flies in the face of all the known positions regarding this issue, it is not to be followed as law (*halakha*).

Rav Naḥman bar Yitzḥaq explains Rav Huna's statement as applying to the specific context of the laws of *Eruvin*:²

אמר רב נחמן בר יצחק: "ליתן
רשות ולבטל רשות.

וכדתניא: 'שראל מומר משמר
שבתו בשוק – מבטל רשות,
שאינו משמר שבתו בשוק
– אינו מבטל רשות. מפני
שאמרו ישראל נוטל רשות
ונותן רשות, ובנכרי עד
שישכיר. כיצד? אומר לו: רשותי
קנויה לך, רשותי מבטלת לך
– קנה, ואין צריך לזכות'."

Rav Naḥman bar Yitzḥaq said: "[Rav Huna's statement is meant only with regard] to the giving and annulment of property.

As the *baraita* states: 'An apostate Jew who is Sabbath-observant in the marketplace may annul his property. One who is not Sabbath-observant in the marketplace may not annul his property, because it is a stated principle that Jews may give and take properties, but non-Jews must rent them. In what manner [may Jews simply give and take properties]? One says to the other — "my property is transferred to you, my property is annulled for you," and does not need to make a formal property transaction'."

Rav Ashi, however, interprets Rav Huna's statement as having a wider

2. According to Jewish Law, it is forbidden to carry objects between different properties, both public and private, on the Sabbath. *Eruvin* are the laws that deal with the constitution and management of these different property zones with regard to the Sabbath.

significance, although he states that it is the position of only a single earlier sage (*tanna*):

רב אשי אמר: "האי תנא הוא, דחמירא עליה שבת כעבודה זרה,"	Rav Ashi said: "This [statement of Rav Huna] is that <i>tanna</i> who holds Sabbath observance as being as serious a law as that prohibiting idol worship."
כדתניא: "מכם" – ולא כולכם, פרט למומר. מכם – בכם חלקתי ולא באומות. מן הבהמה – להביא בני אדם הדומין לבהמה. מכאן אמרו: מקבלין קרבות מפושעי ישראל כדי שיחזרו בתשובה חוץ מן המומר והמנסך יין והמחלל שבתות בפרהסיא."	As stated in the <i>baraita</i> : "'Of you' ³ — and not all of you — to exclude apostates; 'Of you' — I have differentiated among you and not the nations; 'From the animals' — to include human beings who are similar to animals. Because of this it was said that we accept sacrifices from even criminal Jews, so that they might repent — except for the apostate, and he who makes idolatrous libations, and he who violates the Sabbath publicly."

Although Rav Ashi finds a *baraita* that supports Rav Huna's position, it seems from his phrasing that he accepts the position of Rav Naḥman — that Rav Huna's statement is not to be taken as *halakha* — and therefore portrays his position as an isolated minority opinion (*de'at yahid*), not to be taken as normative.⁴

Hullin

In contrast to the attitude expressed in Tractate *Eruvin*, Tractate *Hullin* identifies with the position of the *baraita* (Rav Huna's position). It quotes the *baraita* (albeit in a different context) without any reservations regarding the comparison of Sabbath-violation to idolatry:

3. Lev 1:2

4. From the tone of the continuation of this passage in the Talmud, which concludes with the *baraita* and the words "therefore: worship of false gods and the [violation of the] Sabbath are like each other" it seems that the position of the Talmud identifies with Rav Huna's statement.

אמר רב ענן אמר שמואל:
 "ישראל מומר לעבודת כוכבים
 – מותר לאכול משחיתתו, שכן
 מצינו ביהושפט מלך יהודה
 שנהנה מסעודת אחאב, שנאמר:
 'ויזבח לו אחאב צאן ובקר הרוב
 ולעם אשר עמו ויסיתוהו לעלות
 אל רמות גלעד'..."

מיתבי: 'מכם' – ולא כולכם,
 להוציא את המומר, 'מכם'
 – בכס חלקתי ולא באומות, 'מן
 הבהמה' – להביא בני אדם
 שדומים לבהמה. מכאן אמרו:
 מקבלין קרבנות מפושעי ישראל
 כדי שיחזרו בהן בתשובה, חוץ
 מן המומר ומנסך את היין ומחלל
 שבתות בפרהסיא.

הא גופא קשיא, אמרת: מכם
 – ולא כולכם, להוציא את
 המומר, והדר תני: מקבלין
 קרבנות מפושעי ישראל!

הא לא קשיא: רישא מומר לכל
 התורה כולה, מציעתא מומר
 לדבר אחד;

אימא סיפא: חוץ מן המומר
 ומנסך את היין ומחלל שבת
 בפרהסיא,
 האי מומר היכי דמי? אי מומר
 לכל התורה כולה, היינו רישא!
 ואי מומר לדבר אחד, קשיא
 מציעתא!

Rav Anan said to Shmuel: "It is permitted to eat of an animal slaughtered by an apostate Jew, as we see from the example of Yehoshaphat, king of Judah, who ate from Ahab's feast, as it is written: 'Ahab slaughtered much sheep and cattle for the people with him, and persuaded him to go up to the Gilead heights...'"⁵

But there is a challenge from a *baraita*: "Of you"⁶ — and not all of you — to exclude apostates; 'Of you' — I have differentiated among you and not the nations; 'From the animals' — to include human beings who are similar to animals. Because of this it was said that we accept sacrifices from even criminal Jews, so that they might repent — except for the apostate, and he who makes idolatrous libations, and he who violates the Sabbath publicly."⁷

The *baraita* itself is difficult! At first, it says: "to exclude apostates," and then it writes: "we accept sacrifices from even criminal Jews"!

No, this difficulty can be resolved by positing that the first statement refers to apostates who reject the *entire* Torah, and the second to an apostate with regard to only one law.

But then the *end* of the *baraita* states: "except for the apostate, and he who makes idolatrous libations, and he who violates the Sabbath publicly." Into which category does this "apostate" fall? If the first, the *baraita* is here merely repeating what it has said previously ("to exclude apostates"); if the second, the *baraita* explicitly contradicts what it has just said ("we accept sacrifices from even criminal Jews")!

5. 2 Chronicles, 18

6. Lev 1:2

7. Clearly, therefore, we do not accept the slaughter of apostate Jews!

אלא לאו הכי קאמר: חוין מן
המומר לנסך את היין ולחלל
שבתות בפרהסיא,
אלמא מומר לעבודת כוכבים
הוה מומר לכל התורה כולה,
ותיבתא דרב ענין תיובתא.

No, rather, the end of the *baraita* should be written thus: “except for the apostate who makes idolatrous libations and violates the Sabbath publicly.”
We see from this that an apostate to idol-worship is equivalent to an apostate from the entire Torah, and that Rav Anan’s statement can be finally rejected.⁸

Even though the Talmud does not deal directly with our issue, it seems to accept the position of the *baraita*, and does not identify with Rav Ashi’s position (that the *baraita* is a *de’at yaḥid*). The tension between the Talmud’s stance in *Hullin* and Rav Ashi’s in *Erwin* is expressed in a disagreement among the *Rishonim*.

Part 2 — The Rishonim

Rashi

In commenting on *Hullin* (ad loc.), Rashi explains how the *baraita* makes a simple comparison between a Sabbath-violating Jew and an apostate to idolatry.

מקבלין קרבנות מפושעי ישראל
במומר לדבר אחד, חוין מן
המומר לנסך את היין ולחלל
שבתות דהני חמירי. אלמא מומר
לעבודת כוכבים כמומר לכל
התורה כולה דמי, האי תנא
חמירא ליה שבת כעבודת
כוכבים דהעובד עבודת כוכבים
כופר בהקב"ה והמחלל שבת
כופר במעשיו ומעיד שקר שלא
שבת הקב"ה במעשה בראשית.

We accept sacrifices of criminal Jews who are apostates with regard to only one law, except for those who perform idolatrous libations and violate the Sabbath, who are treated more stringently. Therefore, the apostate to idolatry is equivalent to an apostate to the entire Torah. The *tanna* who states this treats the Sabbath as being equal in gravity to the laws of idolatry, for the idol-worshiper rejects God, and the Sabbath-violator rejects his works, and testifies falsely that God did not rest from creation.

8. b. *Hullin* 5a

Although Rashi explains well the position of the *tanna* that is stringent in judging Sabbath-violators, he hints at what Rav Ashi states — that this is a *de'at yahid*, not to be followed — when he says: “The *Tanna* who states this treats the Sabbath as being equal in gravity to the laws of idolatry.”

This stance of Rashi is expressed in a responsum from his disciples:

אותה שאילה ששאל רבי על
האנוסים: (מצא תשובה אחת
רבי ושלחה פני ר'). משומד
שנשתמד במקום אחד ובא
במקום אחר, אם כשנשתמד לא
חילל שבתות שותין עמו. דאמר
גר שנתגייר וקיבל עליו כל
מצות ומולין אותו ונתרפא
ומטבילין אותו וטבל ועלה הרי
הוא [כישראל] לכל דבריהם.
ואי אשתמד ומקדש הני
קידושו קידושין וצריכה גט.

ומשומד זה שחלל שבתות
בפרהסיא אינו [כישראל]
שנאמר ביני ובין בני ישראל
אות היא לעולם. כל המשמר
שבת נקרא ישראל. ותניא
מקבלין קורבנות מפושעי
ישראל כדי שיחזרו בתשובה
חוץ מן המשומד לנסך יין
ולחלל שבת בפרהסיא. הלכך
מחלל שבתות בפרהסיא כגוי
הוא. ואנוסים שחיללו שבתות
בפרהסיא ותשובתם לא
נתפרסמה עד מתי מותרים
לשותת יין עם אחיהם, אם
בגלוי ניכר תשובתם מותר ואם
לא לא.

This question that my Rabbi has asked about those who are forcibly converted... A Jew who has been converted [to Christianity] in one place, and now arrives in a new one: if, when he was converted, he did not violate the Sabbath, it is permissible to drink with him. For it was said that someone who converted to Judaism, and accepted upon himself all of the commandments, and was circumcised and healed, and immersed in the ritual bath, is considered [like a Jew] in all things. And if someone was converted to Christianity and married a Jew, it is a legitimate marriage, requiring a bill of divorce.

However, a Jew who has been converted and publicly violates the Sabbath is not considered [like a Jew], as it says “between the children of Israel and Myself it is an eternal sign” — anyone who observes the Sabbath is considered a Jew. And the *baraita* states: “we accept sacrifices from even criminal Jews, so that they might repent — except for the apostate who makes idolatrous libations, and he who violates the Sabbath publicly.” Therefore, those who publicly violate the Sabbath are like non-Jews. Now, those who were forcibly converted and violated the Sabbath in public and have not publicly repented — when are they permitted to drink wine with their brethren? This is permissible only if their repentance is clear but not otherwise.

והשיב: שכתב בתשובה שמצא,
דמחלל שבתות כעובד עבודה
זרה, ומיייתי ראייה מיהא
מקבלין קורבנות מפושעי
ישראל וכי. לא נוטה דעתי
אחריה אלא בעודו במשומדותו.
חדא דיחידיהא הוא ולא עבדי
כוותיה, דאמר רב הונא איזהו
ישראל משומד זה המחלל
שבתות בפרהסיא. והוינן בה
[למאן] לר' מאיר (כולה). ואמר
רב הונא האי תנא היא דחמידא
שבת כע"ז. דתניא מכם ולא
כולכם. מדקאמר האי תנא
[הוא], שמוע מינה לית הלכתא
כוותיה.

And he answers that it was written down in a responsum that he found, that one who violates the Sabbath is considered an idol-worshipper. And it brings evidence from “We accept sacrifices from even criminal Jews” etc. My opinion does not lean toward [this responsum] unless the person in question is still in his converted state. Firstly, it is a *de'at yahid* and we do not follow it, as Rav Huna had said: an apostate Jew is one who violates the Sabbath in public... And Rav Huna had said “this is the *tanna* that holds the Sabbath to be just as serious as idol-worship, as it says in the *baraita* that begins ‘Of you — and not all of you.’” Because he uses the words “this is the *tanna*” we can infer that the halakha is not according to this position.⁹

After initially establishing that one cannot hold Sabbath-violators and idol-worshippers to be comparable, he adds another rationale for leniency:

ועוד כשקיבלו על עצמן לשוב
ליראות צורינו בפרהסיא הרי הן
בכשרותן.

And what's more, when they have taken it upon themselves to return to fearing God in public, they are no longer considered problematic.

Rabbeinu Yonah

In the *Sha'arei Teshuva* (part 3), R. Yonah disagrees with Rashi:

ועל מצות שבת אמרו רבותינו
זכרונם לברכה: שקולה שבת
כנגד כל המצוות. ואמרו
רבותינו זכרונם לברכה: כי
העובד עבודת כוכבים או
המחלל שבת בפרהסיא הוא
מומר לכל התורה כולה,
ושחיתו נבלה, ואוסר את היין
במגעו.

And regarding the commandment of the Sabbath, our Rabbis of blessed memory said (j. *Ned* 3:14): “The Sabbath has the weight of all of the commandments together.” And our Rabbis of blessed memory said (b. *Hullin* 5a) that idol-worshippers and public violators of the Sabbath are apostates from the entire Torah, and it is forbidden to eat of their slaughter, and wine is forbidden at their touch.

9. Responsa of Rashi, 169; also quoted in *Sefer ha-Pardes*, p.99

R. Yonah justifies his position saying “the Sabbath has the weight of all of the commandments together,” and his words fit Rav Ashi’s explanation of the Gemara, (albeit not holding that this is a *de’at yahid* but rather the position of the Gemara in *Hullin*).

Rashba

Like his teacher R. Yonah, Rashba did not think that Rav Huna’s position was merely a *de’at yahid*, but rather held that, as he could find some *tannaitic* backing for his statement, it is in fact *halakha*. This seems to be supported by the pericope in *Hullin* and the tone of the end of the pericope in *Eruvin*:

<p>...אפילו מומר לחלל שבתות בפרהסיא הוי מומר לכל התורה כולה. וכדתניא מקבלין קרבנות מפושעי ישראל כדי שיחזרו בתשובה חוץ מן המומר ומנסך את היין ומחלל שבתות בפרהסיא. ופרישא לה בגמרא בריש פרק קמא דחולין דהכי קאמר חוץ מן המומר לנסך את היין ולחלל שבתות בפרהסיא</p>	<p>...even an apostate who violates the Sabbath publicly is considered an apostate to the entire Torah. As the <i>baraita</i> states: “we accept sacrifices even from criminal Jews, so that they might repent — except for the apostate, and he who makes idolatrous libations, and he who violates the Sabbath publicly.” And the Talmud explains, at the beginning of the first chapter of <i>Hullin</i>, that it should be written as such: “except for the apostate who makes idolatrous libations, and he who violates the Sabbath publicly”¹⁰</p>
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It is clear that Rashba stakes his position in the heels of the R. Yonah, as he quotes him extensively in another responsum.

<p>עוד מפי הר' יונה ז"ל פסק בענין יין נסך ששמע לפסוק לחכמי צרפת כי משומד לע"ז והוא הולך ממקום למקום ובעיר אחת הוא מאמין בע"ז בפני גוים ובעיר אחרת נכנס בבית ישראל ואומר שהוא יהודי ואין אנו יודעים אם הוא יהודי אם לאו. אם נכנס בתורת יהודי מסתם.</p>	<p>And also, from the mouth of R. Yonah of blessed memory — he ruled in the issue of libation-wine that he heard from the great Rabbis of France that a Jew who has been converted to idolatry — who moves from one place to another, in one city believing in false gods in the presence of non-Jews, and in another city entering a Jew’s house, and claiming to be a Jew, and we don’t know whether he is a Jew or not — whether or not we may simply assume that he is Jewish.</p>
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10. Responsa of the Rashba, Part 1:315

הפסק כן הוא: יען שהוא אומר
לנו שהוא יהודי אינו עושה יין
נסך והטעם כי הע"ז מלתא
דמסתבר הוא שיהיה שקר
וכשהוא אומר שמאמין בה הוא
עושה להנאת יצרו הרע ואינו
מאמינו בלבו וכשהוא אומר לנו
שהוא ישראל הוא אומר בלב
שלם מפני שאמונתנו היא
אמונה ישרה וטובה ונכונה
ואמתית ומילתא דמסתבר היא.

אבל משומד לחלל שבתות
בפרהסיא או שאינו מאמין
בדברי רבותינו הוא מין ויינו יין
נסך וספריו ספרי קוסמין ויש
אומרים אף בניו ממזרים וענין
חלול שבתות או מי שעבר על
דברי רבותינו לדעתו או שהוא
עובד ע"ז שהוא מוחזק בו
שלשה פעמים אבל בפעם א' או
שתים אינו עושה יין נסך ובפני
עשרה צריך שיחלל.

And the ruling is: Because he claims to be Jewish, he does not make wine forbidden by touching it, the reason being that it is more likely that his false-worship is the lie, and when he says that he believes in it, he is only doing it for the benefit of his evil inclination, and does not really believe it in his heart, and when he tells us that he is Jewish, he does so with full honesty, for his faith is straight and good and correct and true, and this is the most likely thing.

But one who has converted to a practice of violating the Sabbath in public, or who does not believe in the words of our Rabbis, he is a sectarian, and his wine is idolatrous libation-wine and his books are of dark magic, and some say that even his children are bastards. And this issue of Sabbath-violation, or someone who knowingly goes against the teachings of our Rabbis, or who worships false gods, applies when he has set a precedent by doing it three times. But the first or second time does not make his wine idolatrous — and he must violate the Sabbath in the presence of ten others.¹¹

Even though R. Yonah, and in his footsteps Rashba, accepts the position of the Rabbis of France that the wine of someone who declares public loyalty to God is not forbidden despite rumors about his past, they hold that the status of one who publicly violates the Sabbath is similar to that of a “sectarian” and a worshipper of false gods.

It is important to note that while the Rashba comes to the same conclusion as Rabeinu Yonah, his rationale is significantly different. R. Yonah suggests that violation of Shabbat is equivalent to the violation of all of the *mitzvot*; it is the abrogation of normative practice that is the problem. Rashba, however, equates the Sabbath-violator with the category of *min* or heretic; for him, Shabbat violation is to be understood as tantamount to an expression of heresy.

It is the theological dimension associated with Shabbat violation that is

11. Rashba, *Responsa*, 7:179

problematic for Rashba, as opposed to the dimension of practice expressed by R. Yonah. This distinction is significant because Rashba's position interprets the violation of Shabbat as a theological statement. If there were reason to interpret the violation of Shabbat as unrelated to any theological position, this breach in practice would be much less significant.

Indeed, we will see later on that Rabbis Ettlinger, Assad, and Hoffman all suggest that in the modern context, Shabbat violation should not be understood as an expression of heresy and, consequently, they rule leniently. Their position is built on Rashba's rationale. R. Yonah's understanding that Shabbat observance in and of itself has the importance of all other *mitzvot* does not allow for this contextualization of Shabbat observance and subsequent leniency.

R. Yosef Karo

A large part of this responsum of Rashba is brought by R. Yosef Karo in his *Beit Yosef* (YD 124) but is not ruled explicitly in the *Shulḥan Arukh*. Rather, in the *Shulḥan Arukh*, R. Karo follows Rambam, who equates the status of Sabbath-violating Jews and non-Jews in many areas, but does not apply this equation specifically to the laws of the permissibility of wine.¹²

Like Rambam, the *Shulḥan Arukh*, and similar works, apply this equation in different areas,¹³ but do not relate specifically to the issue of wine. Nevertheless, because R. Karo quotes the stringent position of Rashba in his *Beit Yosef*, it is difficult to rely on the position of Rashi and his disciples, even in a case where we are concerned about offending others. However, this lenient position will remain in the background as we continue the discussion, working with the position accepted as *halakha*.

Part 3 — Sabbath-Violating Traditional Jews

Many have discussed this issue over the past few generations, since Sabbath

12. *Shabbat* 30:15, *Eruvin*, 2:16, *Gerushin* 3:15, *Sheḥiṭa* 4:14, *Ma'asei ha-Qorbanot* 3:4, *Gezeila va-Aveida* 11:2

13. *OH* 385:5, *EH* 123:2, *Seder ha-Get* 9, *HM* 266:2

violators have become more numerous. The responsum of Rashba, as brought in the *Beit Yosef*, has been in the forefront of that discussion.

The Penalty Model: Ḥatam Sofer and Ḥazon Ish

R. Avrohom Yeshaya Karelitz, in his *Ḥazon Ish* (YD 2:23) argued that there is no reason to prohibit the wine of Sabbath-violating Jews, as the prohibition of non-Jews' wine was established merely from fear of intermarriage. Therefore, he claims, there would be no reason to prohibit the wine of Sabbath-violating Jews.

Despite this strong argument, R. Karelitz does not come down definitively on one side of the issue, writing “it would seem to be permitted,” but finishing his words by stating that the *Beit Yosef* quoted the responsum of Rashba, which forbids it. R. Karelitz closes with the words — “and his source is not known.”¹⁴ The most one can say about R. Karelitz's opinion is that his bend toward leniency is clear, although he does not take a strong position.

Even before R. Karelitz, R. Moshe Sofer (Schreiber) encountered difficulties with this prohibition. In a responsum (*Ḥatam Sofer* YD 120), he explained the law as a penalty:

והכא מה שעושה י"נ איננו משו' חתנות כי מותר להתחתן בבנותיו ולא משום לתא דע"ז אלא משום קנסא עשאוהו כגוי ע"ז.	And here, the function of “idolatrous wine” is not the consequence of a fear of intermarriage, as it is permitted to marry their daughters, and not because it might come to actual idolatry, but rather as a penalty, they [the Rabbis] made them as non-Jews.
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14. R. Karelitz's claim that Rashba's source “is not known” is puzzling, as the basis for his position is rather clear. R. Yonah and Rashba (and Rashi for that matter) understand Rav Huna — and the *tanna* that constitutes his basis — according to Rav Ashi's interpretation: “The *Tanna* who states this treats the Sabbath as being equal in gravity to the laws of idolatry,” but, unlike Rashi, they do not agree that this is a lone view. Hence, in the eyes of the medieval Sephardic Rabbis, there is no real way of differentiating between an apostate to other religions, an apostate merely with regard to Sabbath violation, and a non-Jew. Therefore, the legal status of a non-Jew applies immediately even to these apostates. They feel no need to enter into a detailed discussion about every different legal consequence of this; it is thus clear to them that the wine of such apostate Jews has the status of that handled by non-Jews.

R. Karelitz also portrays the prohibition as a penalty, but he appears to explain this penalty in the simplest way: economic sanction.¹⁵ On this basis he writes:

<p>ומגעו על ידי דבר אחר או מגעו ביד שלא בכונת מגע מותר בשתיה, וכך מדדו ביד וכיוצא בזה, אבל נגע דרך מלאכתו במלאכה שאין בה טרדה אסור בשתיה וכמש"כ לעיל ואם הוא פועל בעשיית היין בחזקת שנגע דרך התעסקות ואסור בשתיה.</p>	<p>And wine that he has handled by means of some other object, or handled with his hands unintentionally, is permissible to drink, and likewise, if he measured it by hand, etc., but if he touched it as part of his work — unhurried work — it is forbidden to drink, as written earlier. And if he is a worker in making the wine, we can assume that he has touched it as part of its routine production, and it is forbidden to drink.¹⁶</p>
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This leniency makes the most sense if we understand the penalty as economic.

However, even if we might be inclined to understand the penalty in a different way, as a social sanction, it seems that it is most significant in cases where the Sabbath-violators are in the minority, and suffer when the community doesn't drink their wine. On the other hand, the penalty seems of little value in a situation where, to our misfortune, many do not recognize the value of the holy Sabbath, and prohibiting their wine does not inflict any real social damage on them.

This position was communicated to me in the name of Rabbi Shlomo min-Ha-Har, who, following in the footsteps of R. Sofer, believed that in our days, when the majority of Jews are Sabbath-violators, the penalty was less meaningful. In essence, he argued, we are only penalizing ourselves, and therefore, the penalty is null.

The Heretic Model — R. Yaakov Ettlinger and R. Yehuda Assad

As opposed to Rabbis Sofer and Karelitz, some of the halakhic arbiters understood Rashba according to his simple meaning, i.e. as establishing the basic status of public Sabbath-violators.

For example, Rabbi Yaakov Ettlinger wrote:

15. See *Hazzon Ish, Yayin Nesekeh* 49. The idea that that *stam yainam* is meant to be an economic sanction is implied several times in this chapter.

16. *Hazzon Ish, Yayin Nesekeh* 49:7; many thanks to my teacher Rabbi Yehuda Amital for directing my attention to this source.

אבל לפושעי ישראל שבזמנינו
לא ידענא מה אדון בהם אחר
שבעו"ה פשתה הבהרת לרוב
עד שברובם חלול שבת נעשה
כהיתר אם לא יש להם דין
אומר מותר שרק קרוב למזיד
הוא ויש בהם שמתפללים
תפילת שבת ומקדשים קידוש
היום ואח"כ מחללים שבת
במלאכות דאורייתא ודרבנן
והרי מחלל שבת נחשב כמומר
בלבד מפני שהכופר בשבת
כופר בבריאה ובבורא וזה מודה
ע"י תפילה וקידוש.

ומה גם בבניהם אשר קמו
תחתיהן אשר לא ידעו ולא
שמעו דיני שבת שדומין ממש
לצדוקין דלא נחשבו כמומרים
אעפ"י שמחללין שבת מפני
שמעשה אבותיהן בידיהם והם
כתינוק שנשבה לבין עובדי
ככבים.

ולכן לענ"ד המחמיר להחשיב
נגיעת יין של הפושעים הללו
לסתם יינם תבוא עליו ברכה.
אכן גם למקילים יש להם על
מה שיסמכו אם לא שמבורר
לנו שידוע דיני שבת ומעוז פניו
לחללו בפני עשרה מישראל
יחד שזה ודאי כמומר גמור
ונגיעת יינו אסור. כנלענ"ד
הקטן יעקב.

But the sinning Jews of our time — I do not know how to treat them, now that, due to our great iniquities, the cancer has spread to such an extent that, to the majority of them, violation of the Sabbath is considered permissible. They might have the status of a Jew who thinks that something forbidden is permitted, which is only *close* to willful sin — there are some among them who pray the Sabbath prayers, and say the *Qiddush*, and afterwards violate the Sabbath with biblically and rabbinically proscribed acts of labor. Sabbath-violators are considered apostates because he who denies the Sabbath denies the creator and creation, but here these people attest to these very things through prayer and *Qiddush*!

And what of their children, raised by them, that have never known or heard the laws of the Sabbath, and are really similar the Sadducees, who were never considered apostates, even though they violated the Sabbath, because they were merely upholding the traditions of their ancestors, and were like Jews kidnapped at birth and raised among the non-Jews.

Therefore, in my humble opinion, he who is stringent, and holds that wine handled by these wrongdoers has the forbidden status of non-Jewish wine, should be blessed. However, even those who are lenient have something to rely upon, if it is not clear to us that the Jew knows the laws of the Sabbath but flouts them by violating it in the presence of ten other Jews together, in which case he is clearly a full-fledged apostate, and any wine he touches is forbidden. This is how it appears to the humble opinion of the little Jacob.¹⁷

R. Yehuda Assaf makes this point in an even sharper manner:

17. *New Binyan Tzion Responsa* 23

Keren I

וידוע כי הם מתנהגים בכל שארי מצות התורה ונזהרים משארי עבירות התורה אין דינם כמומר לע"ז לאסור יין במגעו. And if it is known that they obey all the other commandments, and are careful to avoid the rest of the prohibitions, they are not considered apostates to false gods in that they prohibit wine by handling it.¹⁸

Although not directly referencing wine, R. David Tzvi Hoffman makes a similar argument about the status of Sabbath-violating Jews in his period:

עוד יש סניף להקל דבזמננו לא מיקרי מחלל שבת בפרהסיא, כיון שרובן עושין כן, דבשלמא אם רוב ישראל זכאין, ומעטים מעיזים פניהם לעשות איסור זה הרי הוא כופר בתורה ועושה תועבה ביד רמה ופורש עצמו מכלל ישראל, אבל כיון דבעו"ה רובם פורצים הגדר תקנתם קלקלתם, There is a further reason to be lenient: that in our time there is no "public Sabbath-violation" per-se, since the majority does this. Certainly, if the majority of Israel were innocent, and there were only a few who rebelled by performing this forbidden act — they would be rejecting the Torah and doing an abomination high-handedly, and separating themselves off from the community of Israel. However, because, due to our abundant sins, the boundaries have been breached, their saving-grace is their sinning.

היחיד חושב שאין זה עבירה גדולה כל כך וא"צ לעשות בצנעה, ופרהסי' שלו כבצנעה, ואדרבה היראים קרואים בזמננו פרושים ומובדלים, והפושעים הם ההולכים בדרך כל הארץ The individual thinks that it is not such a great sin, and there is no need to hide it, and doing it in public is for him the same as doing it in private. And on the contrary, the God-fearing ones among us now are considered separated-off, and the wrongdoers are merely following the common way of life.¹⁹

It is important to note the fact that these great sages are not dealing with fully secular Jews, but rather traditional, albeit Sabbath-violating, Jews. In any event, the claim raised by Rabbi Ettlinger, that their children are like Jewish children kidnapped by non-Jews at birth, is relevant even to secular Jews in our time, and therefore, we will be broad in scope when continuing.

18. *Yehuda Ya'aleh Respona* 1, YD 50; See also the *Responsa H'elkat Ya'aqov* YD 48, and the *Respona* of the Mahari Ashkanazi YD 16

19. *Melamed Leho'il Respona*, Part 1 (*Orach Chayim*), Section 29

Separation of Sinners Model — R. Haim Spira

Diametrically opposed to this approach stands Rabbi Haim Elazar Spira (the Munkaczer Rebbe), who does not see the prohibition as relegating Sabbath-violating Jews to a certain status, but rather as an effort to keep the influence of sinners away from fully observant Jews.

According to his way of thinking, the prohibition stands in our generation at full strength:

מאי מהני קידוש ותפלה
כשמחלל השבת במלאכה, וכי
יש שביטה לחצי שבת, ישתקעו
הדברים ולא יאמרו להקל ע"י
זה במגע יינו... אין לנו לחוש
לקרב הפושעים, שאדרבה זהו
חשש שגזרו חז"ל, כדי שלא
ילמד עוד ממעשיו, ואנן ניקום
ונבטל זאת בסברות כרסיות
ולהתיר, כדי שנוכל להתחבר
עמם ולקרבם בזרוע, ועי"ז
ילמדו ממעשיו הרעים, לכן
יתפרדו כל פועלי און.

What good are *Qiddush* and prayer when he violates the Sabbath by working? Is there such a thing as resting for half a Sabbath?! Those who speak should be quiet, and not say to be lenient with regard to this issue of handling of wine... we should not presume that we can bring back wrongdoers — on the contrary, this was the intention of our Rabbis of blessed memory, that we might not learn from their ways. And we would rise and annul this, reasoning from our gut and permitting it, so that we can connect with them and take them into our arms? By this they (the observant) will learn from [the Sabbath-violators'] evil ways! Therefore, 'let all evildoers be dispersed'.²⁰

Ironically, R. Assad (*ibid*), armed with the very same facts and scenario, makes the exact opposite argument:

ומה גם כעת היום בזמנינו
שהדור פרוץ מרובה אין
להרחיקם כ"כ ולדחותם בשתי
ידיים חלילה שלא יפקרו טפי
ויותר טוב לקרבם בזרוע.

And nowadays, that the generation is greatly licentious, we should not push them off so much, shoving them away with both hands — heaven forbid that they should become further away, and better that we should take them in our arms.

20. *Minḥat Elazar* 1:74

Part 4 — Sabbath Violators in Our Secular Age

Although all of the lenient arbiters just referenced were not talking about secular Jews nowadays, but rather the traditional Sabbath-violating Jews of their time, R. Karelitz does take up this question. He rules that modern secular Jews have a similar status to that given previously by other authorities to Sabbath-violating traditional Jews:

ועוד יש בזה תנאי שלא יהיה
אנוס וכמ"כ הר"מ בפ"ג
מהלכות ממרים ה"ג דבניהם
ותלמידיהם חשיבי כאנוסים
וכתינוק שנשבה. ותינוק
שנשבה מביא קרבן כדאמר
בפרק כלל גדול, ומצוים אנו
להחיותו ואף לחלל עליו השבת
בשביל הצלתו. ובהגה"מ פ"ו
מהל' עדות כתב דאין רשאים
לשנאתו אלא אחר שאינו מקבל
תוכחה. ובסוף ספר אהבת חסד
כתב בשם הגר"י מולין דמצוה
לאהוב את הרשעים מה"ט
והביא כן מתשובת מהר"ם
לובלין, כי אצלנו הוא קודם
תוכחה שאין אנו יודעים
להוכיח ודיינינו להו כאנוסים
ולכן אי אפשר לנו לדון בזה
לפטור מן היבום וכן לענין שאר
הלכות.

Additionally there is a condition that [the Sabbath-violator] not be forced to do so, as Maimonides wrote... that their children and students are considered forced, like someone kidnapped at birth, who is permitted to bring a sacrifice... and whose life we are commanded to save, and even to violate the Sabbath to do so. And in the *Hagahot Maimoni*, chapter 6 of the laws regarding witnesses, it is written that we are not permitted to hate him unless he does not accept criticism. And at the end of the book *Ahavat Hessed* it is written in the name of the great Rabbi Yaakov Moelin that it is a commandment to love evil people for this reason. And he brought a proof from the responsa of Maharam Lublin that as far as we are concerned, he is always not-yet-chastised, as we are incapable of effectively reprimanding him, and we, therefore, treat them as if they had been forced, and therefore, we cannot rule to exempt them from levirate marriage, and so too with other laws.²¹

Even though R. Karelitz does not discuss the law regarding Sabbath-violators in our generation when discussing the rules regarding wine, he says explicitly that this is how we must rule regarding other laws.²² This approach was

21. *Hazzon Ish, Shehitā* 2:28

22. However, see in the earlier discussion of R. Karelitz's view where it seems that he did not rely on his general statement regarding modern-day Sabbath-violators *le-halakha*. This requires further investigation.

adopted explicitly by Rabbi Shlomo Goren, who permitted the wine of Sabbath-violators in our time following in the footsteps of R. Karelitz.²³

...משמע שגם לקולא יש
להורות שמומרים לדבר אחד,
שנידונים כמומרים לכל התורה
כולה, כגון מחללי שבת
בפרהסיא וכופרים בתורה
שבע"פ, אין עליהם דין מומר
בזמן הזה משום שהם קודם
תוכחה, שאין בדור הזה מי
שידוע להוכיח. מזה יוצא שגם
לעניין יין נסך אע"פ שהרשב"א
פסק שמחלל שבת בפרהסיא
עושה יין נסך, זהו לפי דינא
דגמרא, כאשר הם לאחר
תוכחה, אבל בזמן הזה שאין
אנו יודעין להוכיח, כמו שפסק
בתשובת מהר"מ לובלין, למה
יעשה יין נסך אם לכל שאר
ההלכות אין דינו כמומר ...

אי לזאת, לעניין יין נסך אנו
יכולים לצרף את שיטת
המקילים במומרים לדבר אחד,
כגון מחללי שבת וכופרים
בתורה שבע"פ, שאינם נידונים
עכשיו כמומרים לפי ההלכה,
מפני שהם קודם תוכחה.
לשיטת הסוברים שאין מחללי
שבת בפרהסיא עושים יין
נסך ...

...It would seem that one should rule leniently that those who are apostates with regard to one matter and are thereby considered to be apostates with regard to the entire Torah, like Sabbath violators and those who deny the oral law — that they do not have the status of heretic nowadays since they are without rebuke, for there is no one in our generation who is competent to rebuke them. From this one can deduce that even with regard to *yayin nesekh*, even though Rashba decided that [the touch of] one who violates Shabbat publicly does create *yayin nesekh*, this would be according to the law of the Talmud, when the person doing so has been rebuked, but nowadays, since we do not know how to rebuke, as was demonstrated in the responsum of Maharam Lublin, why would [his touch] create *yayin nesekh* when with regard to all other matters of halakha he is not accorded the status of an apostate...

Considering this, with regard to *yayin nesekh*, we can join the positions of those who are lenient with regard to those who apostatize against a particular law... and do not regard them as having the status of apostates in modern times, since they are without rebuke, to the position of those who believe that [the touch] of Sabbath violators does not create *yayin nesekh*...

Therefore, it would seem that we may be lenient with regard to this matter.

23. Rabbi Shlomo Goren, "The Law Regarding Public Sabbath-Violators in This Age," from *Iturei Kohanim*, Issue #110, Nisan 5754; My thanks to Rabbi Yossi Slotnik, who found this article.

Conclusion

In summary, we may drink of wine poured by modern-day Sabbath-violating Jews for a few reasons:

- a. In most cases, we are talking about normal handling of the wine, but not its production process; and R. Avrohom Yeshaya Karelitz already ruled to be lenient in such cases.
- b. The status of public Sabbath-violators is the subject of a disagreement between the great *Rishonim*. Even according to the opinion widely held to be *halakha*, that they have a similar status to that of non-Jews, there is still much room for distinction between public Sabbath-violators in the time of the Talmud and the *Rishonim* and those of our generation, and therefore it is possible to be lenient.
- c. Although secular Jews of our time are different from the Sabbath-violators of his generation, the words of Rabbi Yehuda Assad are still appropriate: “And nowadays, that the generation is greatly licentious, we should not push them off so much, shoving them away with both hands — heaven forbid that they should become further away, and better that we should take them in our arms.”