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APPENDIX

A RESPONSE TO THE QUESTION

Whether Unfermented Wine May Be Used In Jewish Ceremonies.

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(Translated from the Hebrew original)

THE QUESTIONS

1. Is there any reason why fermented wine should be preferred to unfermented in the performance of Jewish religious ceremonies?
2. Is there any reason why grape-juice may not be used in the performance of those ceremonies?

THE RESPONSE

The above questions were referred to me by the Rabbinical Assembly of the Jewish Theological Seminary of America. They have become of more than theoretical importance because of the prohibition by the Eighteenth Amendment to the Constitution of the United States of the "manufacture, sale or transportation within" the United States of intoxicating liquors "for beverage purposes". Under the Volstead Act and the Regulations of the Department of Internal Revenue, Jews are permitted to buy wine for the performance of their religious customs. This privilege has given rise to widespread abuse which has attracted attention from many quarters. Many people, not Rabbis, have presumed to exercise the functions of Rabbis, in order to procure and help others procure wine not at all for religious purposes, but for "beverage purposes". The Rabbinical Assembly has been moved by the discovery of these scandals to ask whether fermented wine is indeed essential to the performance of any Jewish religious ceremony.

I. THE HISTORICAL DEVELOPMENT OF THE USE OF WINE IN JEWISH CUSTOM.

1. *The Origin of the Use of Wine in Jewish Ritual.*—In order to understand fully the laws regarding the use of wine in Jewish ceremonies

it is necessary to know some of the facts concerning the development of these customs. The sages of Israel never introduced the drinking of wine as a religious custom. They merely gave a religious sanctification to the use of wine which before their times had been drunk in a purely secular way after the fashion of other Oriental peoples. It is a general tendency of rabbinic Judaism to give religious sanction to purely secular actions. By adding a prayer to the drinking of the wine, and by reducing the amount used to a single cup, the wine drinking ceased to be merely indulgence of the appetite, and its use became a religious rite. This is the origin of the use of wine in every case where it has become part of Jewish ceremonial.

2. *The Use of Wine in Religious Ceremonies as Recorded in Scripture.*—In the Pentateuch the use of wine in the performance of religious ceremonies is mentioned only in connection with libations. The sacrifice being a symbolic way of communing with God, it was composed of all the elements of a Palestinian festival meal: meat, bread, wine, and oil. See Exodus, 29:40, Numbers 28:7, 10, 14, and other passages.

3. *The Passover Meal.*—The first reference to the use of wine in a religious ceremony outside the Temple occurs in the Book of Jubilees 49.6, which was composed about the year 100 before the Common Era. Wine is there mentioned as part of the Paschal feast. A similar reference occurs in the early Christian writings (Matthew 26.27). In the tenth chapter of the treatise *Pesahim* which has been shown (Hofmann, *Die Erste Mishna*, pp. 8, 16.) to have been composed before the Fall of the Second Jewish Commonwealth, wine is referred to as an integral part of the Passover meal.

Four cups of wine are drunk in connection with the Passover service. In order to understand the origin of these four cups we must bear in mind that at first the meal, which now follows the recital of the Passover service, preceded it. The Passover home service began with a meal, which consisted of the Paschal lamb, the unleavened cakes, the bitter herbs, and of course, of wine. As at every other festival meal, wine was drunk before the meal and after it. The wine drunk before the meal was *reduced* by the sages to a single cup over which was pronounced the benediction for the Sanctification of the Day (*Kiddush*); the wine drunk after the meal was again reduced to a single cup, over which grace after the meal was recited. This *Kiddush* cup was common

to all festivals, and the custom of reciting grace after the meal over a cup of wine was continued even on week-days till our own times.

After the meal the child would ask for the meaning of the strange customs observed on that night and the reply to it would form the service of the evening (the modern Haggadah). After the service, the people would indulge in festive songs, beginning with the great Jewish paean, the *Hallel*, which consists of Psalms 113-118. This singing was accompanied by drinking which the Rabbis limited to two cups, one before the *Hallel* and one after it. There thus arose the custom of drinking four cups of wine on Passover night, and even in later times when the Haggadah for various reasons, was recited before the meal, the four cups continued as an integral part of the service of the evening.

4. *Kiddush and Habdalah*.—We have seen how the wine ordinarily drunk before the festival meal was sanctified by the Rabbis into a religious ceremony, and the benediction ushering in the holy day pronounced over it. The same development took place regarding the ushering in of the Sabbath. There thus arose the custom of reciting the *Kiddush* both for the Sabbath and other festivals over a cup of wine. This ceremony was well established by the first century, since the schools of Shammai and Hillel who flourished in that century differed at that early period as to the proper method of performing the ceremony under various conditions.

Just as at the beginning of the Sabbath and the festivals, a benediction was pronounced, so there developed the custom of reciting a benediction at their termination. The final meal, like all festival meals in Palestine, was followed by the drinking of wine. The Rabbis made the cup of wine, drunk at that time, the occasion of the pronouncing of a benediction for the terminating of the Sabbath or festival. This was called the *Habdalah*, the prayer dividing the holy day from the week-day.

5. *Nuptial Benedictions*.—The Jewish marriage ceremony in early times consisted of two distinct festive occasions: the *erusin* or betrothal, which in Jewish law has legal validity and cannot be dissolved except by due ceremony of divorce; and the *nissuin* or wedding ceremony. These two ceremonies have in modern times been merged into one, the passing of the ring from the bridegroom to the bride being

performed at the same time as their entrance into the canopy, although the first is the legal *erusin* and the second the theoretical *nissuin*.

Each of these ceremonies has its own benedictions, and in modern times each is recited over a cup of wine. Two cups of wine are thus needed for every marriage ceremony.

There is no mention of the need of a cup of wine for either ceremony in the Talmud or the early gaonic works. R. Isaac of Vienna (thirteenth century) in his code (*Or Zorua* I, 742) declares that the use of wine in connection with the marriage benedictions were ordained by the Rabbis as is "stated in the treatise *Sotah*, of the Talmud of Jerusalem, chapter *Keshem* (*i. e.* chapter 5)" Now in the chapter of *Sotah* mentioned there is no reference to the use of wine at weddings, and the word *Keshem* must therefore be emended to *Meshem*, which is an abbreviation for the words *Mashuah Milhamah* or chapter 8 of *Sotah*. In that chapter there occurs a tanaitic statement discussing the question whether wine with a pungent taste may be used for various religious ceremonies. It is mentioned in that connection that such wine may be used "to sanctify a bride in marriage"

This expression is ambiguous since it may mean either that the wine may be used as a gift to the bride in consideration of which she becomes sanctified in marriage, or that it may be used to recite the benedictions of the nuptial ceremony. While R. Isaac of Vienna seems to adopt the second interpretation, there is no parallel for the use of the expression in that sense. In speaking of the nuptial benedictions, the Talmud refers to them as "the benedictions of the bridegroom" but never as the "benedictions of the bride".

The first interpretation receives some support from a statement of R. Sa'adja Gaon (Babylon, first half of the tenth century) in his *Seder* (quoted in *Seder R. Amram*, ed. Frumkin, II, p. 196b) that, after the benedictions of *erusin*, the bridegroom says to the bride, "Be thou sanctified to me in marriage in consideration of this cup and its contents" This expression implies that the cup of wine is the actual means whereby the bride is married to the bridegroom and not the cup over which the benediction is pronounced. The custom of giving a cup of wine to the bride was extant among the Singali Jews, as can be seen from their prayer-book (Amsterdam, 1769, p. 45b). In spite of this support it is difficult to assume that already in talmudic times

the custom of giving a bride a cup of wine in consideration of the marriage had already been established.

Far more likely is it that the passage should be emended by omitting the words "the bride". Thus instead of our text, "and one may sanctify the bride with it". We should read and one "may sanctify with it". The sanctification would then refer to the Sabbath and the festivals, for which the words are used without particularization. The insertion of the words "the bride" which misled the commentators was due, no doubt, to an error of some scribe who noticed that the previous item was "and one may console the mourners", and therefore thought that the parallel to it ought to be "and one may sanctify the bride" (For the use of wine in the consolation of mourners, see below, section 8).

The assumption that our text of the Jerusalem Talmud is corrupt gains color from the fact that Maimonides, refers to the use of wine at weddings as being merely a custom (Laws of *Ishut*, 3.24). Similarly R. Nissim b. Jacob (North Africa, tenth century) speaks of the cup of wine as being an essential part of the *nissuin* or wedding ceremony, but claims that it is not essential to the *erusin* or betrothal. (His view is quoted by Asheri, Ketubot 8b). In view of the fact that R. Nissim and Maimonides were more intimately acquainted with the Talmud of Jerusalem than any other of the earlier scholars, it follows that their failure to take cognizance of the passage under discussion implies that it read differently in their copies. Our text may therefore be assumed to be corrupt.

Some of the early German codifiers mention another passage from the Talmud of Jerusalem which deals with the need of wine at weddings, but the passage is not found in our texts, and is doubtless a later addition. See R. Eleazar of Worms (thirteenth century), *Rokeah*, 352, and R. Eliezer B. Joel Ha-Levi also called Rabiah, (Germany, thirteenth century) in *Abi-ezri*, 98.

The oldest passage in which reference is made to the use of wine in connection with the wedding ceremony is the *Masseket Soferim* 19.11, and *Masseket Kallah*, chapter 1, Gemara, both of which were compiled in gaonic times. See also R. Menahem Meiri (Provence, twelfth century) in his *Magen Abot*, p. 30-32.

6. *The Use of Wine in Connection with the Rite of Circumcision.*—That the rite of circumcision was in early times accompanied by a feast

follows from Talmud (Sabbath 130a). But there is no reference made either there or elsewhere in the Talmud to the pronouncing of a benediction at the ceremony over a cup of wine. Nor is it mentioned in the early codes like that of R. Isaac Alfasi (Spain, eleventh century) or Maimonides. Nevertheless, the use of wine in connection with this ceremony is an old custom, which already prevailed in gaonic times; witness R. Natronai Gaon and other Geonim (*Halakot Gedolot*, ed. Hildesheimer, p. 106. The passage is not found in the older text.)

7. *The Use of Wine in Connection with the Rite of Redemption of the First-Born.*—As is well-known, the first-born male son of an Israelite is redeemed from a priest on the thirty-first day of his life. While there is no mention made in the Talmud or the early codes regarding the use of wine in connection with this ceremony, its use had become customary in gaonic times, according to Asheri (b. Germany, c. 1250: d. Spain, 1328), in his code *Kiddushin*, chapter 1 (end). See also the *Tur*, by R. Jacob, son of Asheri, *Yoreh De'ah*, 305, and R. Joseph Caro (Palestine, sixteenth century), in the *Shulhan 'Aruk*, *Yoreh De'ah* 305.

8. *The Use of Wine in the Consolation of Mourners.*—In talmudic times it was customary for the friends of a bereaved person to provide the first meal after the funeral of the deceased. It seems that at first it was customary to provide wine at this meal. But to this custom, there developed objections, so that in many places lentils and eggs were substituted for wine (See Talmud of Jerusalem, Berakot 3.1). Concerning the abuse of the drinking of wine in the house of mourners, see Ketubot 8b, and *Semahet*, end.

Nevertheless it is to be noted that the passage in the Talmud of Jerusalem, cited above, concerning the use of wine in consoling the mourners, refers not to this custom, but to the use of wine in reciting the benediction of consolation. Benediction of the consolation mentioned in so early a source (as Yerushalmi Pesahim 88, Sanhedrin 61) of the mourners was recited over a cup of wine as late as the time of R. Paltoi Gaon and R. Natronai Gaon in some communities (*Gaonim Kadmonim* 35). In view of the fact that this benediction must be pronounced over a cup of wine it was relevant for the Talmud of Jerusalem to discuss whether it may be recited over wine with a pungent taste. The custom has, however, fallen into desuetude. The

friends of the mourners supply food for a meal rather than wine, and no special benediction is pronounced.

II. THE MAIN PASSAGES IN THE BABYLONIAN TALMUD BEARING ON THE GRADE OF WINE TO BE USED IN RELIGIOUS CEREMONIAL.

1. *The passage in Baba Batra 97a.*—Having examined the history of the development of the various Jewish customs in which wine is used we shall now proceed to study the passages in the Babylonian Talmud that bear on the status of the various grades of wine that may be used in these ceremonies. Before entering on this discussion, it will simplify matters if a few definitions are prefaced.

There are three conceptions in Jewish ritual law regarding the importance of performing a commandment in a certain way. There are details which are essential to the fulfilment of a commandment. If any one of these is omitted the action is not regarded as valid, and generally speaking, must be repeated. This is called unfit *bedi'abad* after the act. There are some details which are only necessary *lekatehillah*. That is, they ought to be observed, but if they have been omitted their omission does not render the act itself invalid. Thus, in the evening of the New Moon, mention ought to be made of the festival in a special prayer. The omission of the prayer does not, however, necessitate the repetition of the entire prayer, because the mention of the New Moon in the evening prayer is important only *lekatehillah*. If the mention is omitted from the morning or afternoon prayer, the prayer must be repeated, because the even *bedi'abad*, the prayer is unacceptable.

An important question is then whether the use of fermented wine, if it be found to be preferable, is a matter of *lekatehillah*, that is, whether its use is unessential to the validity of the ceremony, or if it is also *bedi'abad*, that is, whether the failure to use it would render the ceremony invalid.

If, as I expect to show, the use of fermented wine is neither *lekatehillah* nor *bedi'abad*, that is, if it is not all important from the legal point of view, there may still remain a reason for using it under the principle of *Mitzwah min ha-mubhar*. This principle is that any commandment should be fulfilled in the best possible way. There are some details in the observance of the law, which are not essential either *lekatehillah* or *bedi'abad*, and are nevertheless observed by the most

pious as being the most appropriate form of observing the ceremony. We will, therefore, first discuss the legal necessity of the use of fermented wine, and then the question of *mitzvah min ha-mubhar*.

Since the use of wine in religious ceremonial is in Scripture exclusively connected with the Temple service, all Talmudic discussion of the need of wine in any service necessarily centres about the regulations concerning its use in libations. The earliest reference to the quality of wine to be used in the Temple service is to be found in the words of R. Judah b. Baba who was a young man at the time of the Fall of Jerusalem. He is reported ('Eduyyot 6.1) to have said: "Wine, forty days old, may be used for libations."

This statement is ambiguous as it does not tell us whether wine less than forty days old is unfit for the altar-use *lekatehillah* or *bedi'abad*. The Mishnah is therefore interpreted by a statement in the Tosefta (Menahot, 9.12, ed. Zuckerman, p. 526) where we read: "One ought not to use wine less than forty days old for the libations; nevertheless if one has used it, the service is valid." The law is thus laid down that wine less than forty days old is unfit *lekatehillah*, but acceptable *bedi'abad*.

The importance of this statement of the Tosefta to an understanding of the questions relating to the use of various grades of wine in Jewish ritual will become evident upon an examination of the main passage in the talmud dealing with the problem, the one found in the treatise Baba Batra 97a.

It reads: R. Zutra b. Tobiah said in the name of Rab: One may pronounce the *Kiddush* only over such wine as may be offered on the altar. Question: Which wine is excluded by Rab's statement? Is it wine from the press? Have we not a *Baraita* of R. Hiyya. "One should not use wine from the press *lekatehillah*, but it is acceptable *bedi'abad*." But since the wine from the press is acceptable for libations *bedi'abad*, it is acceptable for *Kiddush lekatehillah*. Moreover, Raba has explicitly stated; "one may press out a cluster of grapes and pronounce the *Kiddush* over its juice immediately."

It is necessary to point out here that the Talmud uses the expressions "wine from the press," "wine less than forty days old" interchangeably for unfermented wine. The expression "new wine" in the Talmud refers to wine of the same year, as shall be seen below. In the medieval

codes. the expression "new wine" is, however, often used of unfermented wine. The word *tirosk* is often used in the Talmud as well as in later writings, as it is always used in Scripture, to designate unfermented wine.

From this statement it will appear that the quotation of the Baraita of R. Hiyya in the Talmud has reference to no other passage than the one in the Tosefta, which has been quoted. It is well known that our Tosefta is largely composed of the teachings *baraitot* of R. Hiyya. The change of expression from "wine less than forty days" to "wine from the press" is of course negligible since they are synonymous. It is strange that none of the commentators or codifiers have pointed out the identity of the *baraita* in the Talmud with the statement in the Tosefta. And yet there can be no question of their identity.

From the passage that has been quoted from the Talmud it is clear that unfermented wine may be used for *Kiddush lekatehillah* and this is emphasized by Raba's statement that one may recite the *Kiddush* over juice freshly pressed from the grapes, without waiting for fermentation to begin.

None of the commentators has explained how the Talmud derived the statement that the grade of wine sanctioned *bedi'abad* for the Temple service is sanctioned *lekatehillah* for the home service. It seems that the Talmud derives that from a redundancy in Rab's words. The usual expression for such a thought as Rab's would have been "Wine fit for the altar is fit for *Kiddush*" Such expressions are common in the Talmud. See for example, Niddah 6.4; A person fit to judge is fit to be a witness. From the circumlocution of Rab the Talmud is led to suppose that he means that only wine unfit *bedi'abad* for the Temple is unfit for *Kiddush*, but wine which is acceptable, even *bedi'abad*, for libation may be used *lekatehillah* for *Kiddush*.

In the *Halakot Gedolot*, the earliest Jewish compendium of the Talmud, this passage from Baba Batra is re-stated with some changes. The statement of Raba as quoted there reads: "One may press out a cluster of grapes and pronounce the *Kiddush* over the juice, since the juice of the grape is considered wine in connection with the laws of the Nazirite." It is difficult to determine whether the part of the statement that is not found in the Talmud is an addition by the author of the *Halakot Gedolot*, or is taken from his text of the Talmud. The

statement is repeated in the same form as in the *Halakot Gedolot*, in the *Sha'are Simhah* I, p. 2b, of R. Isaac ibn Ghayyat, but he apparently took it from the *Halakot Gedolot*. The editor of the *Sha'are Simhah* objects to this proof that is based on the recognition of grape-juice as wine in the case of the Nazirite because a Nazirite may not even drink vinegar. But this objection is not justified, since the prohibition of wine-vinegar for the Nazirite is based on the express words of the Bible, "he shall drink no vinegar of wine" (Numbers 6.3). On the other hand since there is no express mention of grape-juice among the drinks prohibited to the Nazirite, its prohibition by the Rabbis can only be justified on the ground that it is considered wine.

2. *The Passage in Pesahim 108b*.—A passage which deals with the various grades of wine and which has troubled the commentators and codifiers is the baraita, quoted in Pesahim, 108b, and which states that the four cups of the Passover service may be "of either raw or mixed wine, new or old." The Orientals and Greeks usually drank wine mixed with water, in the proportion of three parts of water to one of wine. Such a preparation is called in Hebrew "*Yayin Mazug*", mixed wine, while unmixed wine is called "*Yayin Hai*", raw wine.

R. Samuel ben Meir (also called Rashbam, from his initials, a grandson of Rashi, living in France, in the twelfth century) in his commentary on this passage gives two interpretations. According to the first, new wine is preferable to old, according to the second, the old is preferable. *Tosafot* (ad loc) accept the second view, basing their interpretation on a passage in Megillah 16b where we are told that Joseph sent his father *old wine*, which is good for aged men. But it is to be noted that the word *old* is not found in that passage in the better texts (see *Dikduke soferim*, ad loc.).

The second interpretation of R. Samuel b. Meir, while, it has the support of *Tosafot*, is open to a very serious objection. The Talmud does on rare occasions mention a simpler case last. But this cannot be true in the *Baraita* under discussion. There is clearly a parallelism intended between the two parts of the baraita, "mixed and unmixed, fresh and old." Just as the minimum required for unmixed wine is the simpler case, so obviously is the use of fresh wine. If old wine is preferable to new, that should have been mentioned first just as the unmixed wine is mentioned first.

The baraita can best be understood in the light of a mishnah in Menahot 8.6; one may not use *old* wine for the libations according to Rabbi, but his colleagues sanction its use.

Maimonides in his commentary on this passage remarks that wine becomes somewhat spoiled after the first year, by developing an acid taste. This view of Maimonides, which would make old wine inferior to new, is contradicted by a passage in the sifra (Leviticus 26.10, ed. Weiss, 11a) "Ye shall eat old store long kept." This verse informs us that the older the food the better it will be. One might suppose that this blessing of continual betterment with age would be limited to wine, which in the ordinary course of events *better with age*, therefore, is added the word "long-kept" to imply that even such things as ordinarily deteriorate with age, will improve because of this blessing. It is evident from this passage that the sages considered old wine superior to new. Further corroboration of this fact will be found in 'Abodah Zarah 40b.

The first interpretation of R. Samuel b. Meir, which, like that of Maimonides, made new wine better than old, thus faces a contradiction in the passage of the Sifra, while the second as we have seen is hardly more tenable.

The difficulty in the interpretation of the baraita in Pesahim disappears, however, in view of the interpretation of the mishnah of Menahot by the Talmud (*ad loc.*). The Talmud explains that by old wine in that mishnah is meant wine more than a year old, which is unfit for use on the altar. It now becomes clear that while generally wine improves in quality for the first year, it may then begin to develop a pungent taste. From this point of view new wine, *i. e.* wine of less than a year's age is superior to wine of more than one year's age, and so the baraita in Pesahim does well to mention the new wine first.

From this discussion it is evident that the baraita in Pesahim cannot be used to prove the superiority of fermented over unfermented wine, since it deals not at all with the difference in wines caused by fermentation, but rather with the difference between wine less than a year old and that more than a year old.

3. *Passages Dealing with the intoxicating and Non-Intoxicating Wines.*— Besides these passages which deal with the legal status of fermented and unfermented wines in regard to some of the ceremonies, there are

several other laws regarding which the Talmud discusses the distinction between intoxicating and non-intoxicating wines. Thus a priest having drunk a *rebi'it* (about a tenth of a pint) of wine may not enter the Temple. A judge may in such a case not render a decision. A young man cannot be convicted as a rebellious son", in accordance with the law in Deuteronomy 21:18-21, unless he has proven himself intemperate by drinking a certain minimum of intoxicating wines, and eaten a minimum of meat, that have been stolen. In order to deal comprehensively with the question of the various grades of wine in Jewish law the passages bearing on these laws must be considered.

The Tosefta (Keritot 1.20) in commenting on Leviticus 10.9 reads: "Who is considered a priest unfit to enter the sanctuary? One who has drunk a *rebi'it* of wine which was more than forty days old." The remainder of the passage of the Tosefta can only be understood by emending it in accordance with the text of the Talmud Keritot 13b. The following regulations then result:

1. If he drank a *rebi'it* of fermented wine, he is unfit to enter the temple.
2. If he drank a *rebi'it* of unfermented wine he may enter the temple.
3. If he drank more than a *rebi'it* of unfermented wine or if he drank very old wine—four or five years old—to the extent of more than a *rebi'it* and entered the temple he is guilty. In the cases when the quantity mentioned is more than a *rebi'it*, even mixed wine is prohibited. This now clarifies the opinion expressed by Maimonides (Laws of Things Unfit for the Altar, 7.7.) that wine after its second year is unfit for altar purposes. The commentators could not find the source for this statement. In Menahot 7.1, the passage referred to above, there is a difference of opinion between Rabbi and the other scholars only regarding the drinking of wine that is more than one year old. There is no distinction made there between wine less than three years old and wine more than three years old. The source for the statement of Maimonides is clearly the Tosefta which has just been quoted, which declares that wine four or five years old is in the same status as unfermented wine. Since the Mishnah provides that one may not *lekatehillah* bring unfermented wine on the altar, that law applies also to very old wine. It appears too that Maimonides' reading of the Tosefta was "three or four years" instead of "four or five years" as in our texts.

4. *The Passage in the Talmud of Jerusalem bearing on the Grades of Wine in regard to Religious Ceremonies.*—The only passage in the Talmud of Jerusalem bearing on the status of the various grades of wine in their relation to religious ceremonials, occurs in Sotah 8.5. The text of the printed editions has puzzled the commentators and it can only be understood if we reconstruct it with the help of the manuscript material supplied in the Yerushalmi Fragments (Jewish Theological Seminary Publications Volume I).

It then reads: "If he (the 'rebellious son') drank unfermented wine, what is the law? If he drank wine with a pungent taste, what is the law? (According to the Talmud, the status of the wine with a pungent taste is the same as that of unfermented wine). We have a *baraita*: 'Wine with a pungent taste may be used for *erub* and *shittuf* (ceremonies for permitting carrying on the Sabbath under specified circumstances) and for saying grace after the meal, and to pronounce the marriage benedictions (according to the emendation suggested above, page 6, it is to be translated, "to sanctify the Sabbath") and for consoling mourners. It may be sold by a merchant as wine. If, however, one contracts to sell wine without defining the grade, one cannot compel the buyer to accept wine with a pungent taste. One who has drunk it may not decide cases of law or absolve vows or enter the temple." From this *baraita* we can only infer that wine with a pungent taste may not be used for libations, but whether a young man who drinks it may be convicted as a 'rebellious son', is undecided."

In the Babylonian Talmud (Sanhedrin 70a) the statement is made that a young man who has drunk unfermented wine may be adjudged a "rebellious son." But while the Babylonian rabbis were definite as to the law in the matter, the Palestinians were in doubt. The omission of any reference in the tannaitic source to the use of such wine for libations made it certain that it was not acceptable for that purpose. But the failure to mention the case of the "rebellious son" might be explained as due to the fact that the *baraita* does not deal with the prohibited uses of wine, witness its omission of any reference to the Nazirite.

From a purely logical point of view, too, it might be argued that while the wine may be acceptable for religious purposes, the only reason that the intemperate use of wine is considered a characteristic of the use of wine "rebellious son" is that it is habit forming, and it is possible that

wine with a pungent taste will not develop habitual use in the same degree as other wine.

Therefore, whether the emendation suggested above (p. 6) is accepted or not, the *Baraita*, definitely admits the use of wine with a pungent taste, and unfermented wine which is always of the same status as wine with a pungent taste, for religious ceremonies outside the Temple.

We have thus proven on the basis of the main passages both of the Babylonian Talmud and that of Jerusalem that unfermented wine may be used *lekatehillah* for *Kiddush* and other religious ceremonies outside the temple. In the temple its use is sanctioned only *bediabad*. Indeed, in no way is fermented wine to be given any preference over unfermented in the ceremonies outside the temple. Raba summarizes the law well in the statement: "One may press out the juice of grapes and immediately recite the *Kiddush* over it."

This view is echoed in all the more important codes. It is found in the gaonic works, such as the *Seder R. 'Amram Gaon*, ed. Frumkin, I. p. 34, *Sha'are Simhah* of Ibn Ghayyat, I, p. 2; in the *Sefer Ha-'Ittim*, of R. Judah b. Barzillai, Albarceloni (Spain, c. 1100) p. 204; in the *Mahzor Vitri*, p. 86; in the *Sefer Ha-Orah*, by the pupils of Rashi, ed. Buber, p. 38; by Asheri, in his code to Baba, Batra, 97a; in the *Tur, Orah Hayyim*, by R. Jacob b. Asher (Spain, fourteenth century) 272 (beginning), and in the *Shulhan Aruk, Orah Hayyim*, by R. Joseph Caro, 272.2. Since Isserles in his notes to the *Shulhan Aruk*, makes no comment on this passage, it is to be presumed that he agrees with it. We therefore have the consensus of the opinion of all the codifiers, early and late, to the fact that unfermented wine may be used for *Kiddush*, and that implies the other ceremonies of Jewish ritual outside the temple, on the same terms as fermented wine.

III. IS IT MITZWAH MIN HA-MUBHAR TO USE FERMENTED WINE IN JEWISH RELIGIOUS CEREMONIES?

1. *The View of the Author of the Halakot Gedolot*.—Having seen that unfermented wine may be used *lekatehillah* for religious ceremonies outside the temple, we must now turn to the study of the problem of whether it is not a better form of fulfilling those commandments to use fermented wine. As has been explained above, there are often details of Jewish ceremonial which, while not required for the proper

fulfilment of a commandment, are nevertheless observed by the more pious Jews as *mitzwah min ha-mubhar*.

The author of the *Halakot Gedolot* (Laws of *Kiddush* and *Habdalah*, end) says: "If one has no wine, one may take grapes and press them out on Friday or the festival eve and in the night pronounce the *Kiddush* over the juice. For Rabbah has said, *etc.* Where wine is difficult to procure, one may take dried grapes (raisins) and soak them in water and use the liquid for *Kiddush*."

It is to be noticed *first* that this author limits the application of Rabbah's rule permitting one to recite the *Kiddush* over juice immediately after being pressed from the grapes, to cases where one has no other wine; secondly, that the author limits the use of wine of raisins still further, by permitting its use only in *countries* where wine is difficult to obtain; *thirdly*, that while the author refers to Rabba's statement, and indeed quotes from Baba Batra 97a the entire passage which has been discussed above, he fails to quote the baraita of R. Hiyyaa, which is included in that passage. These three facts present difficulties which must be explained in order to understand the views of the author on the use of the various kinds of wine in Jewish ceremonies.

2. *The Reading of the Hildesheimer Edition of the Halakot Gedolot.*—The reading of the older version of the *Halakot Gedolot*, which has been cited, agrees with that quoted in Albarceloni's *Sefer Ha-'Ittim*, p. 204. In the Hildesheimer edition, which represents a different (French) version of the *Halakot Gedolot*, the use of the wine of raisins is permitted not only in countries where wine cannot be obtained but also in countries where grapes are procurable, provided, the person has no wine of grapes or grapes available at the moment.

3. *Is the Restriction on the Use of Wine of Raisins and Wine immediately pressed from the Grapes based on a supposed Inferiority of those Wines for Religious Uses?*—The objection of the author of the *Halakot Gedolot* to the use of wine of raisins is shared by other Geonim. R. Amram Gaon writes in his *Seder* (ed. Frumkin, p. 226): "If one cannot find wine within a reasonable distance from his home, or if he is on board ship and cannot obtain any wine, he may obtain wine for the four Passover cups by soaking raisins in water. For the sages have taught that wine of raisins ought not to be used in the temple service, but *bedi'abad* its use is

sanctioned. Since it is sanctioned *bedi'abad* for the purpose of libation, it may be used *lekatehillah* for *Kiddush* and *Habdalah*."

Either from the *Seder R. Amram* or some other gaonic source, maintaining the same principles, this statement is quoted by Ibn Ghayyat, in his *Sha'are Simhah, Pesahim, 99*; in *Sha'are Teshubah, 117*; by Zedekiah b. Abraham 'Anaw (Italy, thirteenth century) in his *Shibbole Ha-Leket*, p. 101 a; by R. Abraham b. Nathan of Lunel (Provence, twelfth century) in his *Manhig*, p. 88a. See also *Geonica, Texts and Studies of the Jewish Theological Seminary, Vol. II, p. 228*.

The author of the *Manhig* (*loc. cit.*) criticizes the gaonic objection to the use of the wine of raisins in these words: "I hold that since its use is sanctioned *bedi'abad* in the temple service it is acceptable *lekatehillah* for us in our ceremonies outside the temple even when other wine is procurable. For when no other wine is obtainable, it may be used even in the temple."

It is clear that the objections of the Geonim to the use of raisin wine is based not on any supposed inferiority of that wine for religious ceremonies outside the temple, but on the apprehension that in its preparation too much water or raisins that are too dry might be used. For this reason they set down the law that the wine of raisins is not to be used wherever other wine or even raw grapes from which the juice may be pressed are procurable.

The great Spanish authorities, as well as those of France and Germany, did not accept this restriction of the Geonim of the use of the wine of raisins. The view of R. Abraham b. Nathan of Lunel, author of the *Manhig*, has already been quoted. Similarly R. Isaac b. Sheshet Barfat in his responsum (no. 9) and his contemporary and countryman—R. Simeon b. Zemah Duran, (North Africa c. 1400) in his responsum (I. 57) severely criticized a Rabbi for deciding against the use of the wine of raisins in a wine producing country. Similarly Albarceloni, in his *Sefer Ha-Ittim* (p. 204) quotes R. Samuel ibn Nagdela (Spain, tenth century) as having expressed dissatisfaction with restriction. See also Duran's *Ma'amar Hamez, 34a*, where he refers to the use of the wine of raisins in such a wine-producing country as Algiers.

While the views of the author of *Halakot Gedolot*, restricting the use of the wine of raisins were shared by the other Geonim, his views restricting the use of the fresh juice of grapes to such persons as had no other wine

in their *homes* is shared by no other known authority. The pupils of Rashi quote the view in the *Sefer Ha-Orah*, but it is well-known that medieval writers often quote gaonic statements with which they do not agree. R. Amram Gaon expressly quotes the Talmud statement that "a person may press out a cluster of grapes and pronounce the *Kiddush* over the juice" and does not in any way qualify the permission. R. Amram thus makes no distinction between unfermented wine and wine immediately pressed from the grapes. It seems that even the author of the *Halakot Gedolot* does not consider the one intrinsically inferior to the other. His objection to the practice of pressing out the juice of grapes on Friday for the *Kiddush* of the oncoming Sabbath is that he apprehends that one may forget and press the grapes not on Friday but on the Sabbath itself. The question of whether grapes may be pressed on the Sabbath is discussed by R. Aaron of Lunel (Provence, thirteenth century) in his *Orhot Hayyim*, Sabbath 3, Meals, 22; and in the abstract of *Et Hayyim*, published in the Steinschneider Festschrift, p. 203. See also responsum of R. Hai (Pumbeditha, eleventh century), in the commentary of R. Nissim on Sabbath (end); and *Rabiah*, Sabbath 330.

The views of the author of the *Halakot Gedolot* have now been explained. He omits the quotation of the baraita of R. Hiyya, although he doubtless had it in his text, because it was his purpose to explain only his own restrictions on the permission to use various grades of wine. As he had no restriction to offer against the use of unfermented wine, he omitted the mention of it. He objects to the use of wine of raisins in countries where grapes or the wine of grapes is obtainable because he apprehends that the wine of raisins may not be prepared properly. He objects to the use of juice immediately pressed from the grapes, out of apprehension that that may lead to the violation of the Sabbath by having the grapes pressed on that day. He would therefore permit the use of juice immediately from the grapes on festivals since the apprehension does not apply to such days, in view of the fact that food may be prepared on them.

4. *The View of Ibn Ghayyat and that of R. Jacob b. Asher.*—R. Isaac, ibn Ghayyat in his *Sh'are Simhah* 1-2 infers from the objections of the author of the *Halakot Gedolot* to the use of raisin wine that the same restriction applies also to the other wines permitted in the Talmud or religious ceremonies outside the Temple, but qualified for the libation

service only *bedi'abad*. He says that where wine of a superior grade can be obtained its use is commendable. This is the source of the view of R. Jacob b. Asher (Spain, fourteenth century) in his *Tur, Orah Hayyim*, 272, that it is better to use wine of superior grade for Kiddush than any wine which may have become soured or spoiled.

The care with which R. Jacob formulated his statement of the view of Ibn Ghayyat is noteworthy. He did not merely transcribe the words of that scholar, but changed them so that they might not imply any obligation to acquire wine of the first quality if one did not already possess it. He rather exhorted those possessing wines of different grades to use the better wines for *Kiddush*. This is in conformity with the general rabbinical view that one ought not to be niggardly in the performance of a religious ceremony.

Moreover, it is noteworthy that both R. Jacob b. Asher, in his *Tur* (*loc. cit.*), and R. Joseph Caro in his *Shulhan 'Aruk* (*Orah Hayyim*, 272) place unfermented wine in a category by itself and do not include it in the list of inferior grades. The kinds of wine to which they object are: the wine at the mouth of the barrel, because it may be moldy; the wine at the bottom of the jar, because it may be mixed with lees and it is not permitted to pronounce the *Kiddush* over lees; black wine and white wine, because wine of red color (having the color of wine) is preferable; and wine which retains some of its flavor but has developed somewhat acid taste.

It is thus seen that according to the views of the two most generally accepted Jewish codes, the *Tur* and the *Shulhan 'Aruk*, no precedence whatever is to be given to fermented over unfermented wines. It is not even *mitzvah min ha-mubhar* to use fermented wines.

IV. THE SOURCE OF THE ERRONEOUS OPINION THAT FERMENTED WINE IS PREFERRABLE IN RELIGIOUS CEREMONIAL.

1. *The View of R. Abele Gumbiner*.—While it has shown that for every religious purpose, save libations, unfermented wine is as acceptable as fermented, there still remains to be discussed the view of R. Abele Gumbiner (Poland, seventeenth century) in his commentary to the *Shulhan 'Aruk, Orah Hayyim*, (272.2). He there states: "Although unfermented wine may be used for *Kiddush*, it is better to use fermented wine." The author refers to paragraph 600 of the book, where he quotes as authority for his view R. Moses Isserles in his commentary on the *Tur*,

Orah Hayyim, 600. Isserles there deals not at all with the laws of *Kiddush* but with those concerning the pronouncement of the benediction over the season (*sheheheyanu*) on the second night of Rosh ha-Shanah. As is well known, this benediction forms a part of the *Kiddush* of festival days, and contains a prayer of thanks for having been permitted to live to celebrate the festival. It is to be recited only the eve of the first day of the festival. Since each festival is in the lands outside of Palestine observed for two days, the benediction is recited on both nights. But the two days of Rosh ha-Shanah are said in the Talmud to be considered but as one long day. Some sages therefore objected to the recital of *sheheheyanu* on the second night of Rosh ha-Shanah. In order to be sure that one is not reciting an unnecessary benediction, it was customary in Germany in the Middle Ages, and it is still the custom in many localities to-day, to recite the *sheheheyanu* over new wine, on the second night of Rosh ha-Shanah. Since one would in any case recite that benediction over the new wine — one could satisfy the views of all the authorities by the use of new wine on that night.

Isserles in commenting on this law remarks that he read in a book of customs (*Minhagim*, he does not specify which) that one who used new wine for *Sheheheyanu* should nevertheless use old wine for the *Kiddush* itself. One would therefore on the second night of Rosh ha-Shanah need two cups of *Kiddush*, one containing old wine for the general benedictions, and one containing new wine for the *sheheheyanu*.

As Isserles does not give the reason for the custom of having two cups of wine, R. Ablee Gumbiner supposed that it was because fermented wine is preferable for *Kiddush*.

With due respect to this authority, it must be admitted that had he had before him the source quoted by Isserles he could certainly not have expressed this opinion, in view of the fact that it is not only contrary to the express law as laid down in the Talmud and codes, but also to the practice of the Ashkenazic Jews.

2. *The Practice of Maharil*.—The custom as described by Isserles is first found in the collection of customs by R. Jacob Molin, also called Maharil, from his initials (Germany, c. 1400). Maharil is the greatest authority on the religious practice of Ashkenazic Jews. He says in his book (*Laws of Rosh ha-Shanah*): "There are some who decide that one should pronounce the *Kiddush* on a cup of old wine rather than on new

wine. The reason is that a benediction over new wine cannot include old wine, since we read in the Talmud of Jerusalem that if one drinks fermented wine during a meal, he must recite a second benediction, although he may have recited a benediction over new wine at the beginning of the meal. Since old wine is to receive a special benediction it is better and preferable for *Kiddush*. When he reaches the benediction of *Shehe-heyanu* he should take the cup of new wine in his hand."

The passage cited from the Talmud of Jerusalem by Maharil is not found in that Talmud in the form quoted, but there can be no doubt that this scholar had in mind the passage in Berakot, chapter 6, which reads: If one drinks new wine and thereafter old wine, one must recite a second benediction.

Maharil is quite correct in stating that the preference for old wine for *Kiddush* is based entirely on the fact that since one might drink old wine during the meal, it is better to recite the *Kiddush* over it in order not to pronounce an additional benediction. It is a general principle of rabbinic law that one should avoid the repetition of benedictions. But if one is not in the habit of drinking wine in the course of a meal, there is no objection to the use of unfermented wine for *Kiddush*. See *Rabiah*, paragraph 152, p. 159, and *Shibbole ha-Leket*, loc. cit.

This interpretation of the words of Maharil receives full corroboration from a study of the rest of the passage. It continues: "Maharil once asked that unfermented wine be brought to the synagogue for *Kiddush* on the second night of Rosh ha-shanah, and they pronounced the *Kiddush* over that wine. Asked why the custom in the synagogue should differ from that at home (where one recites *Kiddush* over fermented wine), Maharil replied that since in the synagogue it is customary for children to drink the wine, unfermented wine is preferable, since children like it. At home fermented wine ought to be used since older persons prefer that."

From this story it follows that in the opinion of Maharil fermented wine is not to be preferred to unfermented except in cases where one might drink fermented wine in the course of the meal.

3. *The Practice of R. Meir b. Baruch of Rothenberg*.—An examination of the book of custom which Isserles quotes as a basis for the requirement of the two kinds of wine for *Kiddush* on the second night of *Rosh ha-Shanah* will further show how baseless is R. Abele's interpreta-

tion of this custom. The book of customs to which Isserles refers is either that of R. Abraham Klausner (Austria, fourteenth century) or that of his pupil, R. Isaac Tyrna. In both of the books the custom is stated as given in Maharil. But they add as authority for the custom the following citation from R. Samson b. Zadok, a pupil of R. Meir b. Baruch of Rothenberg, who lived in Germany in the thirteenth century: "Unfermented wine may be used for *Kiddush* in accordance with the view of Raba, that a person may press out the juice of a cluster of grapes and pronounce the *Kiddush* over it. That is the law, and such was the custom of R. Meir b. Baruch on the second night of Rosh ha-Shanah." This statement is found on page 5b and again on page 8b of Klausner's book.

This quotation proves that R. Abele Gumbiner cannot be correct in his interpretation of the custom, for how can we assume that R. Meir b. Baruch, one of the greatest German rigorists, would use a less preferable wine for *Kiddush*. Nor can it be said that he used unfermented wine when fermented wine was difficult to procure, since it is explicitly stated to have been his regular custom to use unfermented wine on the second night of Rosh Ha-Shanah. Neither can it be said that he lived in a land where fermented wine was scarce; witness his own words (*Tashbez*, 301): "But in this country which is full of wine." And further we know that he lived at first in Rothenburg, Bavaria, and later was held captive in the castle of Ensisheim, Alsace, both of which are districts very rich in wine. Finally, R. Samson b. Zadok, in recording his master's custom, would doubtless have added an explanation of it, if it were at all out of accord with the accepted law and usage.

R. Meir's custom of using a cup of unfermented wine instead of the two generally used for *Kiddush* on the second night of Rosh Ha-Shanah is easily explained. R. Meir b. Baruch was in the habit of fasting on Rosh ha-Shanah (*Hag. Maim.*, Laws of Shofar, and responsa of R. Meir b. Baruch, ed. Bloch, 54), "but he would recite the *Kiddush* because in his opinion the pronouncing of *Kiddush* over wine is a biblical injunction." Since R. Meir fasted the possibility of drinking fermented wine during the meal was excluded, and therefore he could use unfermented wine for *Kiddush* without hesitation

(It should be noted that in our editions of the *Tashbez* the descrip-

tion of R. Meir's custom has been abbreviated, and merely reads: "R. Meir was in the habit of refraining from drinking the new wine till Rosh ha-Shanah, and then he would recite the *sheheyanu* over it." From this statement one might suppose that R. Meir used two cups of wine, but the citation in the Book of R. Abraham Klausner shows the above interpretation to be the correct one. and it may be added that it is supported by the reading of the Ms. of the *Tashbez* in the library of the Jewish Theological Seminary of America.

4. *The Practice of R. Shalom of Neustadt.*—Besides these great authorities, R. Meir, his pupil R. Samson b. Zadok, and Maharil, who, as we have seen, used unfermented wine for *Kiddush*, we must mention the usage of R. Shalom, the teacher of Maharil of Isserlein, and of most of the great German scholars of the first part of the fifteenth century. Of him it is said by Maharil: R. Shalom held that one may use unfermented wine for *Kiddush* in accordance with the statement of Raba, and *he, himself, used unfermented wine that was two weeks old, although fermented wine could be bought in the market.*"

5. *Another criticism of the view of R. Abele Gumbiner.*—R. Elijah Schapiro, in his commentary to the *Shulhan 'Aruk, Orach Hayyim*, writes, in criticism of the interpretation of R. Abele Gumbiner: "It seems to me that if one has in one's possession fermented wine, one ought to use that, but one is under no obligation to procure fermented wine for the purpose of *Kiddush*."

This view seems to agree with that of Maharil, who declares the use of fermented wine for *Kiddush* dependent on its intended use during the meal, but that intrinsically there is no reason why one should prefer to pronounce the *Kiddush* over fermented wine.

Moreover, from the very fact that Isserles makes his comment about the use of two kinds of wine in discussing the laws of Rosh ha-Shanah, and not in discussing the law of *Kiddush*, it follows that in general he had no objection to the use of unfermented wine for *Kiddush*. It is inconceivable that if he had such objection he would have silently passed over the statement of R. Jacob b. Asher and of R. Joseph Caro sanctioning it.

The statement of R. Abele Gumbiner that fermented wine is to be preferred for *Kiddush* thus stands refuted.

V. CONCLUSION.

We thus arrive at the following decisions:

1. From the point of view of Jewish law and custom, there is no preference to be given to fermented wine over unfermented, both are of equal standing. The author of the *Magen Abraham*, who alone among Jewish writers on the subject held a different view, was led to his opinion by a misunderstanding of the works of the earlier authorities.

2. Wine of raisins may not be used for the temple service *lekatehillah* but its use is sanctioned *bedi'abad*. It may, however, be used for *Kiddush* and other religious ceremonies outside the temple *lekatehillah*. The Geonim restricted the use of the wine of raisins, but the great codifiers did not accept their view. The custom of using unfermented wine of raisins was widely spread in North Africa in the fourteenth century with the sanction of R. Isaac b. Sheshet Barfat and R. Simeon b. Zemah Duran. In our own time it is prevalent in Lithuania.

3. As for the use of grape-juice for *Kiddush* and other religious ceremonies that involves a discussion of the law regarding boiled wine. I have authoritatively been informed that grape-juice is not heated to the boiling point, and moreover there is a possibility of its fermentation. The Jewish codifiers differ in their views regarding boiled wine. The Geonim and the early Spanish scholars forbid its use for *Kiddush*; the French and German scholars, followed by the later Spanish rabbis, like Nahmanides (twelfth century), Ibn Adret, his pupil, permit its use *lekatehillah*. The question of main interest here is the degree of boiling which renders wine unfit. This is mentioned neither by Maimonides nor by R. Joseph Caro in their codes. R. Jacob b. Asher (*Tur, Orah Hayyim*, 1272) writes: "There are many views regarding boiled wine. R. Shemaiah wrote in the name of his master, Rashi, that the benediction for it is the same as that for water. And such is also the opinion of Ibn Ghayyat: If wine has been boiled *even a little*, and similarly if even a little honey has been put into it, the benediction for it is the same as that for water. R. Hai wrote: "If one has put wine over the fire and it has boiled one can no longer pronounce the *Kiddush* over it."

On the basis of R. Jacob's words we might be led to suppose that Ibn Ghayyat's view differs from that of the Geonim whom he quotes,

for it appears that while the Geonim prohibit the use of boiled wine, he prohibits the use of wine "boiled even a little." Fortunately, Ibn Ghayyat's book has been preserved and an examination of it (91b) shows that the views of R. Hai and Ibn Ghayyat are identical. Doubtless R. Jacob had a corrupt copy of Ibn Ghayyat's work where the words "even a little" were inserted after the word "boiled".

Nahmanides in his commentary on 'Abodah Zarah 30 writes that wine is to be considered boiled only when its volume has decreased through the process. R. Joseph Caro in *Yoreh De'ah*, 123.3, decides that wine is not to be considered boiled unless it has been heated till it seethes. See also the notes of R. Elijah Gaon of Vilna in that passage. There can be no doubt that wine is not considered boiled in regard to the laws of *Kiddush* unless it has been heated until it seethes.

Since grape-juice is not heated to the boiling point, and furthermore the possibility of its fermentation is not totally destroyed, but only diminished, it may be used for *Kiddush* in the same way as other unfermented wine.

4. As for the objection that has been raised against the use of unfermented wine for religious ceremonies on the ground that it is against Jewish custom, the following must be remarked. There can be no doubt that in the past most of the wine used for religious purposes was fermented, since the process of preventing the fermentation was unknown. But to base on such a fact the prohibition of the use of unfermented wine would be as unreasonable as to suppose that because only wax and tallow candles were used for lighting synagogues, the use of gas and electricity for that purpose is forbidden. It was well said by R. Samuel di-Medina (Res. *Yoreh De'ah*, 40) that no custom that has arisen from accidental association has any binding power. It is self-evident that the use of fermented wines hitherto for religious purposes was due to the natural fact that wine ferments within a short period. And in those countries where the wine of raisins, which ferments less readily, was used, most of the wine used for religious purposes was unfermented. See R. Simeon b. Zemah Duran's *Ma'amar Hamez*, p. 34a. It is a known fact that in Lithuania, a country that has produced distinguished scholars, and where Jewish laws are very rigorously observed, the wine of raisins was regularly used for

all religious purposes, in spite of the objections to its use raised by some of the Geonim. How much less objection can be raised to the use of unfermented wine, which, as we have seen, is declared by the scholars of all ages to possess the same status as fermented wine in regard to its use for religious purposes outside of the temple.