

## **Building at What Cost- Dissent**

**Rabbi David Booth and Rabbi Joshua Heller**

*This paper was submitted, in October 2018, as a dissent to “Building at What Cost?” by Rabbi David Hoffman. Dissenting and concurring papers are not official positions of the CJLS.*

Rabbi David Hoffman’s Teshuvah “Building at What Cost?” is a well written and cogently argued Teshuvah. We agree that the ideal is for any construction project undertaken for the sake of Jewish institutions or individuals to halt on Shabbat and Yom Tov. However, we feel that Rabbi Hoffman’s Teshuvah is too broad in its limitations and fails to take seriously the financial concerns involved. As a result, we are opposed.

1. While some Jews are less learned in Rabbinic material today, than may have been in previous generations, we believe our communities are deeply attuned to the sacredness of Shabbat, as it relates to Jewish institutions. That means we have an opportunity to educate on how, in traditional Rabbinic sources our Sages have balanced competing spiritual and ethical concerns. It is also a common practice in our institutions for non-Jewish workers to perform a range of tasks on Shabbat, visible to the community, that would be violations of Shabbat if they performed by Jews, or at the specific request of Jews. However, it is widely understood these tasks are permitted because non-Jewish employees are doing so in the manner and schedule most convenient for them. We believe that answering questions about when and how we do construction on a Jewish communal building presents a significant moment of Jewish education and we ought to seize it. We have a variety of tools at our disposal now to educate.
2. The amount of money involved is relevant. Communal resources must be held with great care. The Talmud and other Rabbinic sources agree that we have a sacred responsibility to use donated funds as carefully as possible. There are principles of "*HaTorah Hasah al Mamonam Shel Yisrael*" - the Torah was concerned for the financial resources of the Jewish people, and "*Hefsed Merubeh*"- allowing leniency in a situation of great loss. The sums involved in construction are enormous. Even relatively small changes to a timetable may snowball into millions of dollars in additional costs which may delay or make impossible the construction of key Jewish infrastructure. A number of poskim, including Ovadiah Yosef, rule to permit synagogue construction to take place on Shabbat when not doing so might result in the failure of the project.<sup>1</sup> The specific financial implications may vary significantly from one jurisdiction to another based on when local regulations permit construction or require overtime pay, and the circumstances of the organization. Rabbi Hoffman asserts that the costs for the JTS project were not impacted

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<sup>1</sup> See R. Ovadiah Yosef, Yabeah Omer OH 8:28. Though the initial question refers to construction that has already taken place, R. Yosef cites tens of sources that construction would be permitted even to begin with if the successful completion of the project were at stake.

by this decision, and this may be true. Rabbi Booth's own community is actively building right now and its contractor estimated that stopping all work on shabbat would impose an additional cost well over \$1 million. In addition, that project is a full rebuild which means that the community would be in temporary space for an additional 4-6 months, a prospect that would impact community integrity in negative ways.

3. Rabbi Hoffman's read of Kablanut seems overly strict. Shulkhan Arukh O.H. 244:1 makes clear that Jews may have non-Jews engage in contracted work on Shabbat. Caro's concern in the case of construction is one of appearances. If the work is done publicly, then it creates a concern even among non-Jews. The location of the project matters as does the awareness of sacredness. In the case of the JTS project, the location is quite prominent and visible to passersby as a Jewish facility. In many other cases, a construction project may be far less prominent. Even Caro would permit construction work if it were not visible to the general public, or it were not clear that the work was being done for Jews. Today, it is widely understood that all large construction projects are done through a web of general contractors and subcontractors who are paid to complete the project and that the building owner has no direct control over the daily schedule or the hiring of subcontractors and day laborers who may be part of the project.<sup>2</sup> Given the great expense, we could then rule to allow construction provided it were not readily visible to the public, or an educational process took place so people would understand that the construction company is acting through Kablanut, and the daily activities are not being done at the specific direction of the building owner.
4. In all cases, it should be clear to all concerned that the choice to work on Shabbat was that of the contractors involved, for their own benefit, and that the work would be performed by non-Jews. The institution which hires the contractor may allow the contractor to set whatever schedule might happen to be most efficient, but should not specify that construction must take place on Shabbat. Of particular relevance is a common situation where one aspect of a project falls behind. Further tasks and their subcontractors may miss the window that had been set aside for them, and the whole schedule and budget may be disrupted to a much greater extent. A general contractor may seek to avoid the resulting cascading delays and cost overruns by adding weekend construction days to get back on schedule. The additional cost of weekend overtime is minimal compared to the cost of delays for the project as a whole, cost over-runs which the sponsoring institution may not have the ability to cover.
5. One issue that is of concern to Rabbi Hoffman that may not apply in other cases is the visibility and impact of the construction to the community. In the case of the JTS project, many who are aware of and observe Shabbat are living immediately adjacent to the place of construction, and would have their Shabbat experience impacted. The sight and sound of having the project ongoing on Shabbat would very much lessen the aura of Shabbat. Rabbi Booth's community is renting space elsewhere, and the area surrounding the site is

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<sup>2</sup> See R. Moshe Feinstein, Igrot Moshe 4:52, who admits that this is technically true, though in the end he rules more strictly.

not otherwise frequented by Jews, so the construction project does not affect that community's immediate feeling of Shabbat.

We thus agree that Rabbi Hoffman made an appropriate halakhic decision in the case of JTS, and that the ideal would be for any building project to halt on Shabbat. However, we simply cannot agree with him that this applies to all Jewish building projects. Construction of a Jewish communal building on Shabbat may be permitted if the alternative will result be significant financial impact on the community, if the work can be done without being visible and disruptive to the community, and if the choice to build on Shabbat is the result of a decision by the non-Jewish contractors. These issues need to be addressed with great sensitivity to a variety of competing needs on a case by case basis.